

Amicus Curiae Brief
of the
Centre on Housing Rights and Evictions (COHRE)
the National Lawyers Guild (NLG)
and JCHR (Jerusalem Centre for Human Rights)
submitted to the
Jerusalem District Court
in the case of

**The State of Israel vs.
Ascherman, Arik; Omer, Ori; Hamburger, Shai Eliezer,
Criminal Case # 003751/03**

Introduction

1. The Centre on Housing Rights and Evictions (COHRE), is an independent international human rights non-governmental organization mandated to protect and promote housing rights throughout the world. COHRE is based in Geneva, Switzerland with offices in the United States, Brazil, Ghana, Thailand and Australia and is registered in The Netherlands, Brazil, and the United States as a non-profit organization.
2. COHRE has Special Consultative Status with the United Nations, Consultative Status with the Council of Europe and the Organization of American States, and Observer Status with the African Commission on Human and Peoples' Rights. COHRE respectfully submits this *amicus curiae* brief to the Jerusalem District Court in the case of Rabbi Arik Ascherman, Ori Omer and Shai Eliezer Hamburger.
3. The National Lawyers Guild ("NLG") is an organization of approximately 4000 lawyers, legal workers, and law students in the United States. Founded in 1937, the Guild was the first racially integrated bar association in the United States. During its 65-year history, the NLG has been an important part of the American people's struggle for real democracy, for economic and social justice, and against oppression and discrimination based on race, ethnicity, immigration status, class, gender, or sexual orientation. Since the NLG's inception, international work has been a critical focus of the Guild and its members. Beginning in 1977, the NLG has sent legal delegations to Israel/Palestine and issued reports on the human rights situation there. The NLG respectfully joins in this *amicus curiae* brief in the case of Rabbi Arik Ascherman, Ori Omer and Shai Eliezer Hamburger.
4. **JCHR, Palestine affiliate of the Habitat International Coalition (HIC), is a not for profit organisation based in East Jerusalem and registered in Jerusalem in 2003, dedicated to the protection and promotion of human rights. JCHR is concerned with protecting and promoting civil, political, economic and social rights through the provision of concrete legal assistance to victims of human rights abuse, using both international and domestic laws and forums, and the monitoring and**

documentation of human rights violations. It is also JCHR's mission to raise awareness and educate the Palestinian population concerning human rights issues, principles and values, as well as the rule of law. JCHR respectfully joins in this *amicus curiae* brief in the case of Rabbi Arik Ascherman, Ori Omer and Shai Eliezer Hamburger.

5. By reference, the *amicus curiae* brief also incorporates the legal analyses and conclusions in the Affidavit Concerning the Status of Forced Evictions under International Law submitted by the Centre on Housing Rights and Evictions (COHRE) and the International Commission of Jurists (ICJ).

The eviction of residents from and demolition of homes due to the Systematic Denial of building permits violates the Government of Israel's legal obligations under the International Covenant on Economic, Social and Cultural Rights

6. The wholesale demolition of Palestinian homes in East Jerusalem is a result of a deliberate policy by the municipal authorities to systematically deny building permits to Palestinians in order to alter the demographics of the city. Palestinians do not arbitrarily avoid the law; they are forced to build illegally because they are routinely denied building permits.

7. The demolition of homes due to lack of building permits, as carried out by Israeli authorities, constitutes violations of international human rights law legally binding upon the Government of Israel and its sub-political organs such as the Municipal Government of Jerusalem.

8. The actions of the Government of Israel are clear violations of the International Covenant on Economic, Social and Cultural Rights (Covenant), in particular the right to adequate housing enshrined in Article 11(1) of the Covenant. Israel is a State Party to this treaty and has, therefore, legally obligated to complying with the obligations and rights enshrined the Covenant.

9. Article 11(1) of the Covenant states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

10. The UN Committee on Economic, Social and Cultural Rights, the body mandated by State Parties to monitor the Covenant, elaborated upon the requirements of Article 11(1) of the Covenant in its General Comment No. 4, adopted unanimously in 1991. According to General Comment No. 4, Article 11(1) of the Covenant also requires that:

... all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

11. While building permits may be a useful means to regulate safety and other housing issues, the eviction of persons without such permits and the demolition of their homes is a grossly disproportionate sanction. Furthermore, as the Government of Israel makes the issuance of such permits nearly impossible for persons of Palestinian descent or nationality, it appears that the policy of eviction and demolition is actually a discriminatory collective punishment against persons of such descent or nationality.

12. Article 11(1) of the Covenant requires States Parties to, *inter alia*, refrain from interfering with persons who are able to satisfy their housing needs through their own private action. Indeed, destroying existing housing when the Government of Israel has a legal obligation to progressively attain the full enjoyment of the right to adequate housing within territory it controls amounts to a deliberate retrogressive measure.

13. Deliberately retrogressive measures amount to violations of the Covenant unless “fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” Therefore, the burden is on the Government of Israel to “fully justify” the evictions and demolitions as a means of furthering the totality of human rights enshrined in the Covenant on Economic, Social and Cultural Rights. The facts of this case clearly indicate that such a justification is not possible and thus the eviction of residents from and the demolition of homes lacking proper building permits constitutes a violation of the human right to adequate housing as enshrined in Article 11(1) of the Covenant on Economic, Social and Cultural Rights, which, again, is legally binding upon the Government of Israel and its sub-governmental organs.

The eviction of residents from and demolition of homes due to the Denial of building permits constitutes unlawful forced evictions in violation of the Government of Israel’s legal obligations under the Covenant on Economic, Social and Cultural Rights

14. As the eviction of residents from houses lacking proper building permits is a disproportionate sanction and unlawful, such eviction also constitutes an unlawful forced evictions in violation of Article 11(1) of the Covenant. A forced eviction is defined as:

15. The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

16. The United Nations Commission on Human Rights has affirmed that forced evictions are “a gross violation of human rights” and a practice resulting in “inhumane acts . . . causing great suffering, or serious injury to body or to mental or physical health.”

17. The UN Committee on Economic, Social and Cultural Rights has expressly stated in its General Comment No. 4 that: “Forced evictions are *prima facie* incompatible with the provisions of the Covenant.” As a State Party to the Covenant, the Government of Israel is in violation of its legal obligations enshrined in Art. 11(1) of the Covenant to respect the prohibition on forced eviction and to protect persons from forced evictions carried out by third parties.

The Eviction of Palestinian Residents of East Jerusalem From and Demolition of Their Homes is the Result of Unlawful Discrimination and Violates the Government of Israel’s legal Obligations under the International Convention on the Elimination of All Forms of Racial Discrimination

18. Since the annexation of East Jerusalem in 1967, Israel’s planning policy in the city has systematically and deliberately discriminated against the Palestinian population of the city. While promoting extensive building and investment in the Jewish neighborhoods of East Jerusalem, the Israeli authorities have choked development and building for the Palestinians, who comprise one-third of the city’s population. As Amir Cheshin, former mayor of Jerusalem Teddy Kollek’s advisor on Arab affairs, explained in his book, entitled *Separate and Unequal*: “Israel’s leaders adopted two basic principles in their rule of East Jerusalem. The first was to rapidly increase the Jewish population in East Jerusalem. The second was to hinder growth of the Arab population and to force Arab residents to make their homes elsewhere.” As, Deputy Mayor Haim Miller admitted in 1988, “I don’t sign demolition orders for Jewish homes, only for Arabs.”

19. According to B’tselem, The Israeli Information Center for Human Rights in the Occupied Territories, while 55 per cent of building violations occur in Jewish West Jerusalem, 72 per cent of house demolitions take place in East Jerusalem. This discrimination, together with the discrimination in planning, building and land appropriation by the Jerusalem municipal authorities, clearly violate the CERD.

20. Article 1(1) of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) which Israel ratified, defines racial discrimination as: “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” In Article 2(1), each State Party agreed:

- (a) . . . to engage in no act or practice of racial discrimination against persons, groups of persons or

institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; and

(c) ... [to]take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists....

21. Article 5, Israel and other State parties specifically undertook “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights... (e)(iii) The right to housing.

22. Article 6 of the CERD concerns the role of this and other courts. In it, the States Parties undertook to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

As the forced evictions and demolitions at issue have occurred in occupied East Jerusalem, they also amount to grave breaches of humanitarian law

23. The United Nations, the International Committee for the Red Cross, and the international community have deemed the Geneva Convention relative to the Protection of Civilians in Time of War (Fourth Geneva Convention) applies to the Occupied Palestinian Territories, including East Jerusalem.

24. Article 33 of the Geneva Convention relative to the Protection of Civilians in Time of War (Fourth Geneva Convention) states that: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.” Article 33 states further that: “Reprisals against protected persons and their property are prohibited.”

25. Article 53 of the Fourth Geneva Convention states that: “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited.”

26. Additionally, the destruction of homes constitutes a *grave* breach of the Fourth Geneva Convention. Article 147 of the Convention states that:

Grave breaches to which the preceding Article [Article 146] relates

shall be those involving *any* of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, *wilfully causing great suffering* or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and *extensive destruction and appropriation of property*, not justified by military necessity and carried out unlawfully and wantonly.
(emphasis added).

27. The destruction of property, including housing, is a clear violation of the Fourth Geneva Convention by the Government of Israel. Such actions constitute violations in their own right under Article 53 and because they are used as a form of collective punishment they violate the provisions of Article 33 as well. Pursuant to Article 147, such actions of the Government of Israel constitute *grave* breaches of the Fourth Geneva Convention, not only because they entail the “extensive destruction of property” but also because of they “cause great suffering” among the innocent civilian population.

28. As such, the Government of Israel, pursuant to Article 146 of the Convention, is under an obligation “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts” or to “hand such persons over for trial to another High Contracting Party concerned.”

29. Additionally, under Article 8 of the Rome Statute of the International Criminal Court (Rome Statute), grave breaches of the Fourth Geneva Convention, as enumerated in Article 147, constitute “war crimes” and as such fall under the jurisdiction of the International Criminal Court.

The Defense of Necessity protects those who peacefully seek to prevent gross violations of human rights, grave breaches of humanitarian law, and war crimes from occurring

30. Non-violent civil disobedience in opposition to and aimed at preventing gross violations of human rights, grave breaches of humanitarian law, and war crimes has been recognized as justified by the necessity of self-defense and the necessity of defense of others in several jurisdictions around the world. As such, the Defense of Necessity protects Rabbi Arik Ascherman, Ori Omer and Shai Eliezer Hamburger, and other persons who undertake such non-violent civil disobedience from criminal prosecution.

Sincerely,

