



Lawyers for Palestinian Human Rights' briefing on the impending demolition of the Palestinian community of Khan al-Ahmar in the occupied West Bank and the forcible transfer of its residents



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

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Introduction

1. This briefing addresses the impending demolition of the Palestinian community of Khan al-Ahmar Abu al-Helu, located on the outskirts of East Jerusalem in the occupied West Bank. This demolition entails the forcible transfer of its 188 residents, the majority of whom are children, and 95 per cent are registered refugees with the United Nations Relief and Works Agency (UNRWA).
2. Extensive destruction of property without military necessity and forcible population transfer in an occupied territory amount to war crimes under both the Geneva Convention and the Rome Statute for the International Criminal Court. This was reaffirmed in a [significant public statement](#) by the Prosecutor of the International Criminal Court, Fatou Bensouda, on 17 October 2018.
3. At a Cabinet meeting of the Israeli Government on 21 October, a decision was taken to delay the demolition for several weeks so as [to reportedly consider](#) an offer made under severe duress by residents of Khan al-Ahmar to be relocated to a site several hundred metres away. Israeli officials have previously ignored this suggestion. It is [reported](#) that the Israeli Government's decision to delay followed an intervention from Israel's Attorney General, Avichai Mandelbit, [highlighting](#) that forcibly removing the residents' would undermine Israel's position at the International Criminal Court. Sustained diplomatic pressure is also reported to have contributed to the decision.
4. The Khan al-Ahmar residents' offer is [reportedly a bid](#) to prevent their forcible transfer to an area called 'al-Jabal West' near the Abu Dis municipal rubbish dump by offering to relocate to a different site. The residents have opposed moving to al-Jabal West saying that they were never consulted, that the location is unsuitable for their rural way of life, and that it is adjacent to a rubbish dump. They have similarly opposed a second relocation site proposed two months ago by Israeli authorities which is adjacent to a sewage treatment facility. Their principal position - which is protected by international humanitarian law as they are protected persons residing within occupied territory and there is no military necessity for their forced removal - is to remain in Khan al-Ahmar.
5. It is incumbent upon the UK Government, either acting alone or in concert with other States, to take effective action should the demolition of Khan al-Ahmar and the forcible transfer of its residents materialise. Such action should include specific legal accountability measures.



6. This action is necessary to: a) avoid undermining the credibility of the UK Government's unequivocal public statements that the forcible transfer of protected persons in Khan al-Ahmar would breach international humanitarian law; b) provide an effective deterrent against Israeli authorities further implementing their "relocation plan" affecting 46 named Palestinian communities in the West Bank (see next section below), of which Khan al-Ahmar will be the first to be actioned; and c) underscore the UK Government's stated commitment to respect for the rule of international law and human rights.
7. We accordingly urge the UK Government to take the proposed seven urgent actions outlined at the conclusion of this briefing. These actions have previously been presented by LPHR to the UK Government in the last twelve months with the objective of deterring the demolition and forcible transfer of Khan al-Ahmar.

Context of the impending demolition of Khan al-Ahmar and forcible transfer of its residents

8. Khan al-Ahmar Abu al-Helu is home to 188 people, 53 per cent of whom are children and 95 per cent of whom are Palestine refugees registered with UNRWA. The community also has a school, where some 170 children aged six to fifteen were educated, some of whom come from four nearby communities. Before it was built in 2009, these children had to make lengthy and risky journeys to attend school.
9. Khan al-Ahmar Abu al-Helu will be the first of [46 Bedouin communities](#) named in the Government of Israel's "relocation plan", published in August 2014, to be demolished. It therefore represents a significant test case relative to the implementation of the plan.
10. This "relocation plan" advanced by Israeli authorities affects 1,358 families and 8,174 people, over half of whom are children. From a legal perspective it amounts to a "mass forcible transfer plan". The potential mass demolition of communities and expulsion of the Bedouin from the land must be seen within the context of Israel's continual settlement expansion endeavours within the occupied Palestinian territory, that are contrary to international law and in serious breach of UN Security Resolution 2334.
11. Khan al-Ahmar is one of eighteen of the Bedouin communities named in the 'relocation plan' that is located in or next to the sensitive E1 area around Jerusalem, where the Government of Israel plans to expand existing illegal settlements through the construction of thousands of new illegal settlement housing and commercial units, creating a continuous built-up area between the illegal Ma'ale Adumim settlement and Jerusalem.



- 12.** The residents of Khan al-Ahmar therefore amount to an obstacle to Israeli developments plans for the future expansion of the illegal Ma'ale Adumim settlement and for the E1 area. The affected area is also planned to be surrounded by the illegal Separation Barrier. If implemented, these plans will undermine Palestinian presence in the area, further disconnect occupied East Jerusalem from the rest of the West Bank, and disrupt the territorial contiguity of the occupied Palestinian territory.
- 13.** Israeli authorities have justified the “relocation plan” by claiming that the residents lack title over the land and that the relocation will improve their living conditions. The residents, however, have not been genuinely consulted about the plan. They firmly oppose it and insist on their right to return to their original homes and lands in southern Israel. In the meantime, they have requested protection and assistance in their current location, including adequate planning and permits for their homes and livelihoods.
- 14.** Various Israeli practices have created a coercive environment which functions as a push-factor for the targeted communities in the “relocation plan”. These practices include the restriction of access to grazing lands and markets; the denial of access to basic infrastructure; a prohibitive application process for building permits; and the demolition and threat of demolition of homes, schools and animal shelters. Authorities have also largely failed to protect the communities from intimidation and attacks by settlers.
- 15.** The three designated “relocation” sites for the targeted communities are inadequate and raise serious humanitarian concerns. For a number of reasons, including the limited availability of grazing land at the designated sites, the relocation is expected to undermine the traditional livelihoods and culture of the communities, as was the case for 150 Bedouin families who were relocated from this area in the 1990s. One of the three new “townships” - and the primary proposed relocation for the residents of Khan al-Ahmar - is located next to a refuse dump site, raising serious health concerns.
- 16.** The UN Secretary General has stated that the implementation of the proposed “relocation plan” would amount to mass forcible transfers prohibited by international humanitarian law. He has clarified that under international law “forcible transfer does not necessarily require the use of physical force by authorities, but may be triggered by specific circumstances that leave individuals or communities with no choice but to leave; this is known as a coercive environment” (A/HRC/34/38, March 2017). He has also called on the Israeli authorities to “(c)ease from taking any initiative to relocate communities in Area C in contravention of international law, including Bedouin and herder communities” (A/72/564, November 2017).



17. In specific relation to Khan al-Ahmar, a number of court petitions have been filed by Israeli illegal settlers over the years seeking demolition of both its school and residential structures, including one filed a month after its school was built in 2009. In September 2012, the Israeli Government announced that it was considering a relocation of the community and school through a participatory process, and in November 2013 it indicated its plan to relocate residents to an area north of Jericho, in response to which the residents made clear their opposition. Thereafter, further court petitions were filed by both illegal settlers and residents of Khan al-Ahmar.

Israeli Supreme Court permits the demolition and forcible transfer of Khan al-Ahmar

- 18.** An Israeli Supreme Court judgment of 24 May 2018 gave permission to Israeli authorities to demolish the homes of the community of Khan Al-Ahmar and relocate the residents away from their homes. This decision was confirmed when a final appeal by residents was rejected by the Supreme Court in early September.
- 19.** The 24 May 2018 Supreme Court judgment focused upon the view that the construction in Khan al-Ahmar is 'illegal.' However, this position ignores the reality that residents had been forced to build without the requisite building permissions because these are systematically denied by the discriminatory planning system operated by Israeli authorities in Area C of the occupied West Bank.
- 20.** The Supreme Court judgment also suggested that judicial intervention to prevent the transfer plans is not required because the proposal for relocation is "not an unreasonable one" given the new area for the families to live and arrangements made to continue shepherding. Apart from the fact that this cannot justify forcible transfer, it is also factually incorrect. The Israeli government's statement to the court confirms that the neighbourhood 'is indeed planned in an urban environment', which does not include large pasture lands or farming areas. Accordingly, residents would be forced not only to leave their homes, but to fundamentally change their way of life.
- 21.** Furthermore, and crucially, the Supreme Court judgment fails entirely to engage with the issue of international humanitarian law provisions that should prevent the residents' transfer from Khan al-Ahmar Abu al-Helu. It states that the court will not interfere in decisions made by the Israeli government about 'law enforcement' actions, but gives no explanation for the glaringly clear potential breach of international humanitarian law and international criminal law that is inherent in the forcible transfer of the residents of Khan al-Ahmar.



The demolition of Khan al-Ahmar is likely to amount to the war crime of forcible transfer, which is prosecutable before the International Criminal Court

- 22.** Palestinian residents in the occupied West Bank have the status of protected persons under the Geneva Conventions. Article 49 of the Fourth Geneva Convention prohibits “forcible transfer” of protected persons for any reasons. Pursuant to Article 147 of the Fourth Geneva Convention, the unlawful forcible transfer of protected persons amounts to a grave breach of international humanitarian law, and accordingly a war crime entailing individual criminal responsibility for all persons involved with its implementation, including government officials.
- 23.** Under Article 49 of the Fourth Geneva Convention, evacuations are only permitted where required for the security of the population or imperative military reasons. This is not the case in regard to actual and planned demolitions by Israeli authorities in the occupied West Bank. Israel has specifically referred to lack of permits for buildings in its purported justification for its proposed actions. This underlines the fact that their plans clearly relate to building permissions and paving the way for the expansion of illegal settlements, both of which fall outside the only legally permitted grounds to justify the transfer of protected persons (that is, military or security needs).
- 24.** Article 8 (2) (a) (vii) of the Rome Statute of the International Criminal Court provides that unlawful transfer is a war crime. Under the Rome Statute, “forcible transfer of population” is defined as “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.” We consider the Israeli government plans for the “relocation” of residents in the occupied West Bank, including in Khan al-Ahmar, would clearly meet this legal definition of the war crime of forcible transfer.
- 25.** It is also important to note that the extensive demolition of private property, when carried out wantonly and unlawfully, constitutes a grave breach of the Fourth Geneva Convention and is a war crime under the Rome Statute.
- 26.** It must be noted in this context that the International Criminal Court is able to examine alleged war crimes committed on Palestinian territory since 13 June 2014, following Palestine's accession to the Rome Statute. The Prosecutor of the International Criminal Court, Fatou Bensouda, underscored this fact in her [important short statement](#) of 17 October 2018 which opened with the following two paragraphs:



“I have been following with concern the planned eviction of the Bedouin community of Khan al-Ahmar, in the West Bank. Evacuation by force now appears imminent, and with it the prospects for further escalation and violence.

It bears recalling, as a general matter, that extensive destruction of property without military necessity and population transfers in an occupied territory constitute war crimes under the Rome Statute.”

The UK Government's position on Khan al-Ahmar is consistent with international law

- 27.** The UK Government has been clear that the demolition of Khan al-Ahmar and forcible transfer of its residents would violate international humanitarian law. In response to two letters from LPHR, the Minister of State for the Middle East, Alistair Burt MP, has notably made explicit and important reference to the legal term “forcible transfer”.
- 28.** In his [reply to LPHR dated 11 October 2017](#), Minister Alistair Burt stated: *“We also make clear to Israel that forcible transfer of protected persons would be a breach of international humanitarian law and would have serious ramifications on Israel's international standing.”*
- 29.** And in his [reply to LPHR dated 27 June 2018](#), Minister Alistair Burt stated: *“the Foreign Secretary made clear in his statement of 1 June, that the UK is deeply concerned by the proposed demolition of the village of Khan al-Ahmar which the UN has said could amount to ‘forcible transfer’ in violation of International Humanitarian Law.”.*
- 30.** Subsequent to this, on 10 September 2018, the UK Government issued a significant [joint public statement](#) with other European nations, Germany, France, Spain and Italy:

“France, Germany, Italy, Spain and the United Kingdom have repeatedly expressed their concern about the village of Khan al-Ahmar, which is located in a sensitive location in Area C, of strategic importance for preserving the contiguity of a future Palestinian state.

We took note of Wednesday’s decision by the Israeli Supreme Court leaving a demolition of Khan al-Ahmar up to the discretion of the Israeli government.

We therefore join High Representative/Vice-President Federica Mogherini in reiterating our call to the Israeli government not to go ahead with its plan to demolish the village – including its school – and displace its residents.



The consequences a demolition and displacement would have on the residents of this community, including their children, as well as on the prospects of the two-state solution would be very serious.”

- 31.** The Prime Minister, Theresa May, at Prime Minister Questions on Wednesday 17 October 2018, underlined the UK Government's opposition to the demolition of Khan al-Ahmar and the forcible transfer of its residents when stating:

“My right hon. Friend the Minister for the Middle East met the Israeli ambassador on 11 October. He made clear the UK’s deep concerns about Israel’s planned demolition of the village of Khan al-Ahmar. Its demolition would be a major blow to the prospect of a two-state solution with Jerusalem as a shared capital, and I once again call on the Israeli Government not to go ahead with its plan to demolish the village, including its school, and displace its residents.”

A business and human rights component to the demolition of Khan al-Ahmar that includes the potential involvement of UK companies

- 32.** LPHR is closely monitoring the potential involvement of UK companies in the demolition of Khan al-Ahmar. We consider that this would be in their breach of business and human rights responsibilities and may amount to aiding and abetting a war crime.
- 33.** This follows from LPHR noting that when Israeli authorities began paving an access road to Khan al-Ahmar on 4 July 2018 in preparation for its demolition, the BBC reporter, Tom Bateman, published [a photo](#) of an excavator carrying the logo of the UK company, J.C. Bamford Excavators Limited (JCB).
- 34.** This raised our serious concern that:
- a) JCB's products are contributing to human rights violations against the Palestinian residents of Khan al-Ahmar, and that the provision of JCB's construction equipment for use by the Israel authorities in these (and other) demolitions is in breach of JCB's human rights responsibilities under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises;
 - b) JCB may be in the process of committing the criminal offence of aiding and abetting the commission by another person of a grave breach of the Fourth Geneva Convention, namely aiding and abetting Israeli authorities in perpetrating the forcible transfer of protected persons which is prohibited by Article 49 of the Fourth Geneva Convention. This could incur the criminal liability of individuals within the company.



- 35.** We accordingly urged the UK government, by [a letter dated 5 July 2018](#), to investigate these concerns and outlined a number of recommendations. Among them, we urged that the UK Government should ask JCB to immediately take all available steps and use all available leverage to ensure that its construction equipment is not used to contribute to the demolition process in Khan al-Ahmar or the prohibited forcible transfer of its residents, and that no further equipment be supplied in relation to such purpose.
- 36.** [Minister Alistair Burt's reply of 12 September](#) stated that the UK Government had made enquiries into this issue and that it is committed to fostering respect for the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
- 37.** There was a lack of clarity on whether UK Government officials had sought direct dialogue with JCB as part of its enquiries into JCB's apparent involvement in the pre-demolition process in Khan al-Ahmar.
- 38.** We have therefore sought clarification that the Government's enquiries did include asking JCB to take all necessary measures to ensure its compliance with the UN Guiding Principles on Business and Human Rights / OECD Guidelines, and the details of any response (please see [our letter dated 24 September](#) available on our website). Minister Alistair Burt declined the opportunity to clarify this in his [written response to LPHR dated 10 October](#) (also available on our website)."
- 39.** In addition to this dialogue with the UK Government, [LPHR wrote to JCB on 21 August 2018](#) about our concerns without a response being received. We are now closely monitoring whether the products of UK companies have been involved in the current demolition of Khan al-Ahmar. We will present the results of our investigation soon.

Seven actions for the UK government to consider as part of an urgent intervention

- 40.** It is incumbent upon the UK Government, either acting alone or in concert with other States, to take effective action in response to the demolition of Khan al-Ahmar and the forcible transfer of its residents. Appropriate legal accountability measures are required as both a necessary response to the actions in Khan al-Ahmar, and also as the most effective deterrent against further demolitions and forcible transfers in the occupied West Bank. We accordingly urge the UK Government to take the following urgent actions:



- a) Call upon Israel (in public statements as well as in private communications) to immediately cease further demolitions and forcible transfer plans for Palestinian communities in the occupied West Bank.
- b) Instigate and provide support for the establishment of expert and independent observation and investigation teams to document apparent criminal offences and / or human rights violations linked to demolitions and population transfers in the occupied West Bank.
- c) Raise serious concerns with Israel in regard to any planned or actual commission of the war crime of forcible transfer, and state the UK Government's expectation that any individual responsible for the commission of this war crime be criminally investigated and prosecuted under Israel's legal system.
- d) Assess how it can fully conform with its legal obligation under the Geneva Convention to “ensure respect” for its provisions, including through preparing the domestic exercise of *universal jurisdiction* measures to hold individuals criminally responsible for committing the war crime of forcibly transferring Palestinians in the occupied West Bank.
- e) Issue a public statement concerning the need for JCB and all other UK companies to immediately implement all necessary measures in conformity with their business and human rights responsibilities so as to ensure they are not involved in criminal offences and / or human rights violations connected to demolitions and forcible transfers in occupied territory.
- f) Urge Israel to end its discriminatory and unlawful planning policies and laws by amending its planning legislation and processes to clearly ensure planning and construction rights for Palestinian residents in Area C of the occupied West Bank.
- g) Continue to use precise terminology expressly referring to “forcible transfer” and Israel's specific obligations under international humanitarian law in its bilateral relations, public statements and before international fora on this grave issue.