

Amicus Curiae Brief - Overview

The right to housing of long-term occupants and the competing rights of owners in the case of vulnerable communities

Signatories to the opinion:

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Brief overview

A. Balancing - the occupants' right to housing trumps the original owners' right to gain possession of the property

International law recognizes a fundamental right to housing, which includes not just the right to shelter, or proper living conditions, but also the right not to be evicted from one's home. The long-term occupants' right to continue living in their homes is recognized not just pursuant to the right to housing, but also the rights to family life, community life and culture, and in some cases, also to the property rights long-term occupants develop in certain conditions. Along

with recognizing the rights to housing and property, international law stipulates **balancing tests** for cases in which they clash with other rights, such as the right of original owners who seek to gain possession of the property.

According to international human rights law, the following considerations must be taken into account with respect to eviction applications:

- a. **The occupants:** whether they entered the property in good faith; whether the property in question is a single home or part of a community, whether the community in question is a vulnerable discriminated minority, how long the occupants have lived in the property, what alternative housing options are available to them, whether they have a legitimate expectation to have permanent, unlimited possession of the property.
- b. **The owners seeking eviction:** the extent of their connection to the property – whether they are a person who lived in it or their descendants/inheritors, whether they are a private individual or a corporation, and, if it is a corporation, whether its interest in the property is financial or other.

The application of the balancing test in the case of Batan al-Hawa shows the scales are clearly tipped in favor of the Palestinian occupants and the eviction applications must be dismissed.

The occupants' rights to housing and property supersede the right of the parties acting on behalf of the pre-1948 original owners to gain possession of the property.

- **The occupants' good faith:** whether the occupants entered the property lawfully and whether they knew or should have known it had other owners. In post-WWII Germany, the authorities of the GDR nationalized properties belonging to West Germans and housed East Germans in them. When Germany was unified, property lawfully purchased by East Germans was not returned to the original owners.

There is no dispute that the Palestinian occupants entered the Batan al-Hawa properties in good faith. They purchased title from a person who presented as the owner and had possession of the property, while the Jordanian and Israeli authorities did nothing to warn or notify them that pre-1948 owners claiming title existed.

- **The identity of the original owners seeking eviction and their ties to the property:** The closer the personal ties the owners have to the property, the stronger their right to possession thereof. If, for instance, the owner is a corporation rather than a private individual, its right

is diminished. If the owner has a financial interest in the property (as opposed to an emotional one), the remedy tends towards compensation rather than eviction.

In the case of East Jerusalem, in Sheikh Jarrah and in Silwan, the parties seeking the eviction are corporations run by settlers who have no personal ties to the property. Furthermore, they are the substitutes of original owners who never lived in the property in the first place. On the other hand, the Palestinian occupants have been the sole residents of these properties for decades, maintaining community life therein. Therefore, their rights supersede.

- **Vulnerability and discrimination** - International human rights law mandates **special weight be accorded to the right to housing of vulnerable groups** suffering from inequality and discrimination. Since in most cases, forced evictions target the weakest in society, particularly minorities, international law requires states to adopt policies that provide these groups with effective protection against the threat of eviction.

An example of this can be found in a ruling by the European Court of Human Rights against France, after the government evicted a Roma community that had lived in a certain area for years illegally and in contravention of zoning. The court ruled that due to the community's vulnerability, the eviction violated their right to housing and failed to meet the proportionality tests.

Palestinians living in East Jerusalem, including in Sheikh Jarrah and Batan al-Hawa, are victims of systemic discrimination: they have no citizenship (but are rather residents only); they are economically disadvantaged (75% of the population lives under the poverty line), and their communities are grossly underserved, as manifested in poor infrastructure, lack of basic services, lack of planning, house demolitions and housing density at twice the average national rate.

Time: Time is one of the factors affecting ties to a property - in other words, the length of time since the original owners lost the property and whether or not they found suitable living alternatives in that time, affect the validity of their claim to reclaim possession.

In Cyprus, when Greek Cypriots demanded to regain possession of properties taken by the Turkish authorities in Northern Cyprus, the European Court of Human Rights ruled against their application and allowed Turkish residents to continue living in the properties. The time that had elapsed since the property was lost was one of the considerations highlighted by the court. Notably, while in Cyprus the time-lapse was 30 or 40 years, in East Jerusalem, it is more than 70.

B. Recognition of the occupants' title

Aside from the right to housing, international law acknowledges that in some circumstances, the ties occupants have to a property gives rise to title, and while it does not negate the owners' title, it does provide another layer of protection from eviction.

For instance, the European Court of Human Rights acknowledged title had been acquired by a displaced family from Georgia who lost their property during the war and were settled by the state in the house. In another case, the Inter-American Court acknowledged an indigenous people's right to certain areas in Paraguay despite the absence of a title deed. The court ruled this right could, in certain circumstances, even trump the private property rights of individuals or corporations who had purchased the land in good faith and ordered the restitution of traditional lands to the indigenous people.

C. The state's responsibility in eviction applications against residents of Batan al-Hawa and Sheikh Jarrah.

Every country has obligations towards vulnerable groups whose right to housing is in peril. In the case of Sheikh Jarrah and Batan al-Hawa, **the state carries enhanced, unique obligations, as it played a significant, active role in the entire process that resulted in the threat of eviction against the residents** and, in fact, laid the infrastructure for this threat:

- The state created a normative framework that allows releasing assets owned by Jews prior to 1948 to substitutes, even when they are not the heirs, and even when they are corporations.
- The state created a normative framework that precludes the symmetrical release of assets to pre-1948 Palestinian owners;
- The state approved the Administrator General's wrongful policy of releasing property automatically without inquiries with all parties concerned and without so much as informing the occupants.
- State institutions (the Charitable Endowment Registrar, the Administrator General and the District Court) allowed the appointment of trustees for a charitable endowment established prior to Israel's creation in a non-public process, without notifying the occupants and without allowing others to compete for the appointment.

- The state sanctioned the Administrator General's policy of releasing assets by way of restoring rights thereto without even considering awarding compensation in place of restitution.

The power gap between the families and the parties applying for their eviction is unmistakably clear. The families belong to a legally and politically vulnerable group that is subjected to discrimination, while the applicants enjoy the support of the State of Israel and have access to its infrastructure. **For these reasons, the eviction proceedings must not be considered as a dispute between the applicants and the occupants alone, but as one that includes the state and its authorities.**

For all these reasons, the Dweik family's rights to its home must be recognized and a ruling must be made that these rights supersede the right of the pre-1948 owners to gain possession of the property and evict the family.