



Centre on Housing Rights and Evictions  
(COHRE)

Prepared for

Office of the High Commissioner for Human Rights

Concerning

**Israel**

To Assist in Preparation of Documents for the Third Cycle Universal Periodic  
Review

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# I. INTRODUCTION

United Nations General Assembly resolutions leading to system-wide human rights institutional reform have brought about major opportunities for the implementation of human rights in all UN Member States. One of the most important of these developments is the new institution of the Universal Periodic Review (UPR). General Assembly Resolution 60/251 mandates that constructive engagement with States will be the dominant mode of the UPR. The UPR will engage in “interactive dialogue” with the “full involvement of the country concerned”. The guiding principles behind the UPR are universality, impartiality, objectivity and non-selectivity. The UPR thus constitutes among the most important developments in the Charter-based system of human rights review in the history of the United Nations.

On 18 June 2007, the 5<sup>th</sup> Human Rights Council adopted unanimously a text on institution building, among other things setting out the modalities of the Universal Periodic Review. As set out in the 18 June resolution, the Office of the High Commissioner for Human Rights (OHCHR) is to prepare for Council two 10-page texts on each country coming under UPR assessment. The first of these documents is to summarize material included in the reports of treaty bodies and special procedures regarding the country concerned. The second document summarises “additional credible and reliable information” coming to the attention of the OHCHR.

The Centre on Housing Rights and Evictions (COHRE) herewith offers the present submission on human rights issues within Israel, and within the occupied Palestinian territories as a result of Israeli practices, with the aims of (i) assisting the work of the OHCHR in providing the Human Rights Council with high quality reporting in these areas; as well as (ii) facilitating civil society input into this revolutionary new international procedure. It is our hope that, during this crucial first phase of the Universal Periodic Review, in which its credibility as a mode of addressing human rights harms is inevitably under intense scrutiny, the material provided herein can provide a sound basis for engagement with the authorities of Israel, as well as other relevant officials and agencies.

Following a brief summary of the information herein, this submission provides an annex containing:

- A summary of relevant information derived from the reports of treaty bodies and special procedures, highlighting key priorities;
- Two recent COHRE reports, based inter alia on extensive first hand documentation research, highlighting a number of issues raised in this submission.

## II. EXECUTIVE SUMMARY

### 1. Israel

#### 1.1. Rights to housing, water and sanitation

The right of all peoples to an adequate standard of living, including housing, water and sanitation, is guaranteed under international law by a number of treaties ratified by Israel, primarily the International Covenant on Economic, Social and Cultural Rights (ICESCR:1966), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD:1963), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW:1979) and the Convention on the Rights of the Child (CRC:1989). United Nations Treaty Bodies and credible human rights NGOs have in recent years identified the following patterns and practices in Israel, giving rise to serious concerns regarding Israel's human rights record:

- ***racial discrimination in access to housing and basic services;***
- widespread ***inadequate housing*** conditions among the Arab minority;
- ***widespread forced evictions*** disproportionately affecting the Arab minority;
- ***large scale property and land expropriation*** with little or no effective or adequate compensation provided to those affected;
- a ***lack of access to safe water and sanitation*** for large segments of the indigenous Bedouin community of the Negev/Naqab;
- a ***lack of consultation and participation in decision-making*** of relevance to affected individuals and/or communities.
- ***non-ratification of international review mechanisms*** including the optional protocol to the Convention Against Torture; optional protocol 1 of the International Covenant on Civil and Political Rights; the optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; or Article 14 of International Convention on the Elimination of All Forms of Racial Discrimination.

#### 1.2 Racial discrimination

Despite a number of decades of experience with equality law, particularly in the field of gender, the Israeli lawmaker has studiously failed to enshrine an effective ban on discrimination on racial or ethnic grounds, for reasons related directly to the problem of the ethnic ownership of the state. Israel's Basic Law: Human Dignity and Liberty (1992) which serves as Israel's bill of rights does not enshrine the principle of equality or the prohibition on racial discrimination. Further, as noted by the Committee on Economic, Social and Cultural Rights the "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens". Moreover, "This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education".<sup>1</sup> The Council should urge the Government of Israel to enact a legally binding prohibition against discrimination on the basis of ethnicity, race and religion. It should further urge Israel to declare that it recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals

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<sup>1</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 16.

or groups claiming to be victims of violations of human rights protected under ICERD as set out in Article 14 of ICERD.

### 1.3 Large scale property and land expropriation

Since the Creation of the State of Israel in 1948, Israel has repeatedly and systematically expropriated land from Palestinian Arabs, and transferred it to the State of Israel. This ‘national land’ is held for the exclusive use and benefit of the Jewish people and comprises 93% of the total area of the State.<sup>2</sup> The land is owned and held by the State (including the Development Authority and Israel Land Administration) and para-state agencies (including the World Zionist Organization and Jewish National Fund).<sup>3</sup> The Committee on the Elimination of Racial Discrimination has expressed its concern regarding “information according to which these institutions manage land, housing and services exclusively for the Jewish population” and urged Israel “to ensure these bodies are bound by the principle of non-discrimination in the exercise of their functions”.<sup>4</sup> No similar laws or agencies work to protect Arab land or property ownership in Israel. Palestinian Arabs living in Israel (circa. one fifth of the population) own less than 3 per cent of the land. In 2000 the Israeli Supreme Court in *Ka’adan v. The Israel Lands Administration* ruled that Palestinian citizens of Israel could no longer be discriminated against in the provision of State lands. Yet, it is of concern that in July 2007, a draft bill which declares that land belonging to the Jewish National Fund (circa. 13% of State lands) should be allocated to Jews only passed its preliminary reading in the Knesset.<sup>5</sup>

### 1.4 Right to return and land and property restitution

The right of refugees and internally displaced persons to return is articulated in a number of prominent international commitments, foremost among them Article 13(2) of the Universal Declaration of Human Rights.<sup>6</sup> International standards articulate that return must be voluntary and must occur in safety and dignity. Further, every refugee and displaced person has the right to have their housing, land and property restored to them, which includes the right to be compensated for any damage caused by conflict. Only in limited cases where restitution is factually impossible, where those affected choose not to return, or when it is part of a negotiated peace settlement can compensation take precedent over restitution.<sup>7</sup> It is of grave concern that, in 2007, there were approximately 7 million Palestinian refugees and around 450,000 Palestinians internally displaced within the State of Israel.<sup>8</sup> IDPs include those displaced by the 1948 war and those displaced subsequent to the creation of the State of Israel as a result of forced population transfer, land expropriation and house demolitions. The 1967 war led to further internal

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<sup>2</sup> See, Israel Land Administration [www.mmi.gov.il](http://www.mmi.gov.il) (click on ‘General Information’).

<sup>3</sup> COHRE and BADIL Resource Center for Palestinian Residency and Refugee Rights, *Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*, (May 2005), available at [www.cohre.org/israel](http://www.cohre.org/israel)

<sup>4</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 19.

<sup>5</sup> The Association for Civil Rights in Israel (ACRI), *The State of Human Rights in Israel and the Occupied Territories: 2007 Report*, p.15.

<sup>6</sup> In addition in Article 12(4) of the ICCPR and articles 45, 127, 132-135 of the Geneva Convention on the Protection of Civilian Persons in Times of War.

<sup>7</sup> Both the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons and the Guiding Principles on Internally Displaced Persons recognise the right to return and restitution. Both documents are based on internationally recognised human rights and humanitarian standards and as such constitute an authoritative compilation of standards regarding refugees and IDPs.

<sup>8</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007*.

displacement.<sup>9</sup> The Council should urge the Government of Israel to recognise the right to return and the right to housing, land and property restitution of all refugees and IDPs.

## 1.5 Inadequate housing

The 1965 Planning and Construction Law attempted to regulate planning through the development of national and regional master plans and zoning of land for residential, agricultural and industrial use. The Law forbade the construction of any structure without a license; forbade construction in agricultural zones; and prohibited unlicensed structures from being connected to basic services and utilities. The *de facto* discriminatory application of this law has disproportionately affected Palestinian citizens of Israel; around 84,000 indigenous Bedouin live in 45 ‘unrecognized’ villages in the Negev, and large numbers of Arab citizens live in ‘unrecognized’ neighbourhoods in the Mixed Cities (Acre, Jaffa, Haifa, Ramleh and Lod). The absence of official planning for these areas prevents residents from building legally. In many cases, retroactive application of the Law has rendered historic villages illegal. It excludes residents of these areas from accessing basic services such as water, sanitation and electricity and renders them vulnerable to forced eviction and home demolitions. Lack of adequate housing alternatives and the absence of services, facilities and equal economic opportunities in these areas have created a total lack of parity in the standard of living between Arab and Jewish citizens of Israel. Health indicators show the Bedouin of the Negev/Naqab to have the highest incidence of infant mortality and diseases in Israel, caused by unsanitary living conditions.<sup>10</sup> Government efforts to relocate the Bedouin into townships have largely met with resistance, among other things because of the inadequacy of the arrangements offered and because relocation is often conditional upon their relinquishing land claims or moving to townships built on lands which are subject to ownership claims by other Bedouin.<sup>11</sup> The Bedouin culture and way of life is based on a strong connection with the land and relocation into townships therefore raises concerns of cultural inadequacy.<sup>12</sup> This factor together with the lack of full and meaningful participation of the Bedouin in the initiatives to find a solution to the current condition, and the fact that they rank among the poorest communities in Israel, all explain the opposition to the relocation plans. Racial discrimination in access to housing has prevented Palestinian citizens from living in a number of Jewish neighbourhoods and in the Mixed Cities physical barriers often divide Arab and Jewish residents. The Committee on the Elimination of Racial Discrimination recommended that Israel “assess the extent to which the maintenance of separate Arab and Jewish ‘sectors’ may amount to racial segregation” and should “develop and implement policies and projects aimed at avoiding separation of communities, in particular in the areas of housing and education”.<sup>13</sup>

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<sup>9</sup> BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007*, p.43.

<sup>10</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), pp. 35-37.

<sup>11</sup> Ahmad Amara, ‘The battle for the land and housing rights of the Negev Bedouin’, in COHRE, *Housing and ESC Rights Law Quarterly*, Vol.5, No. 1, March 2008, p.3.

<sup>12</sup> General Comment 4: The Right to Adequate Housing issued by the UN Committee on Economic, Social and Cultural Rights states in para. 8 (g) that; ‘The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed,’ UN. Doc. 13/12/91

<sup>13</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 22.

## 1.6 Forced Evictions

Lack of security of tenure renders individuals and communities vulnerable to forced evictions and home demolitions. The practice of forced evictions, targeted primarily against Palestinian citizens, is on the increase in Israel and occurs without due process, adequate compensation or provision of adequate alternative housing rendering individuals and communities destitute. In the unrecognized villages of the Negev/Naqab 227 homes were demolished in the unrecognized villages in 2007. On 2 April 2008, the entire village of Twail abu Jarwal was demolished; this was for the fifth time in three years.<sup>14</sup> In violation of international law, residents of the unrecognized villages are rarely forewarned about the exact date of sanctioned demolitions and as a result, families are unable to adequately prepare for the imminent demolition. Demolitions and relocation to government townships have also had a disproportionate negative impact on women who lack the skills necessary to adapt to their new urban environment and lose the traditional protection of tribal system which renders them vulnerable to domestic violence.<sup>15</sup> There have been more than 100 house demolitions affecting Arab residents in Ramleh, Lod and Acre since 2003.<sup>16</sup> At present there are 500 demolition orders for Lod and about 150 for Ramleh.<sup>17</sup> In Jaffa, over the past year and a half, 497 eviction orders have been given to Palestinian families in the Ajami and Jabaliya neighbourhoods by Amidar Israel National Housing Company. Amidar accuses the residents of “squatting” in the properties and “building additions” without obtaining the required permit from the planning and construction authorities. Under Israeli law, evictions are permitted in such circumstances. However, the residents maintain that the current plans to develop Jaffa by the Tel Aviv municipality is in fact a plan to Judaize the area and force Arab citizens from their homes and businesses. This belief is understandable in light of the fact that many of the purported legal violations committed by the residents (squatting and building additions) happened over 20-30 years ago.<sup>18</sup> The Council should urge Israel to recognise that evictions are only to be carried out in line with international standards, *inter alia* only in exceptional circumstances, after genuine consultation, with adequate and reasonable notice to all affected. Further, legal remedies and, where necessary, legal aid, must be made available to those affected. Under no circumstances should evictions render people homeless.

## 1.7. The right to water and sanitation

In Israel, 98% of citizens are connected to the water network and 100% of those in urban areas have access to improved sanitation. Exclusion from water and sanitation service provision, through the application of the 1965 Planning and Construction Law, has disproportionately affected Palestinian citizens of Israel most notably Bedouin residents of the unrecognized villages. Non-connection to the water network results in consumption levels amongst Bedouin communities often falling below World Health Organization recommended levels, forces them to travel long distances to fetch water, collect water from dubious sources and store it in unhygienic conditions. It further increases the cost of water to ten times that of water piped directly into citizens' homes. Lack of adequate sanitation facilities leads to open defecation in many areas, consequently negatively impacting upon the Bedouin's right to health through the spread of water-borne disease. A number of neighbourhoods in the Bedouin government townships are not connected to the sewage system including Ar'ara, Kuseife and Laqye. Open streams of sewage flow through the Bedouin village of Un Betin and an Arab neighbourhood in Ramleh,

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<sup>14</sup> Information provided to COHRE by the Regional Council for the Unrecognized Villages.

<sup>15</sup> COHRE, *The impact of forced evictions on women in Palestine, India and Nigeria*, (2002) pp. 11-27.

<sup>16</sup> New Israel Fund-Shatil, *Mixed Cities Project*, (2007) p.2.

<sup>17</sup> Ibid.

<sup>18</sup> Arab Association for Human Rights, *Unprotected Citizens: Amidar public housing company threatens to evict 497 families in Jaffa-Tel Aviv*, (2008), available at: [www.arabhra.org](http://www.arabhra.org).

causing a health hazard and placing intolerable living conditions on residents.<sup>19</sup> Recent efforts in court to connect the villagers of the unrecognized villages to the water network have failed and as such violations of the Bedouin's right to water and sanitation are without remedy.<sup>20</sup>

## **1.8 Lack of consultation and participation**

Arab citizens are significantly under-represented at local, regional and national decision-making levels. Lack of participation in planning bodies is a significant cause for concern. Under-representation has resulted in Master Plans failing to provide for the needs of Arab citizens and Arab municipalities being underfunded. Current proposals for developing the Negev such as the National Strategic Plan for the Development of the Negev, the National Outline Plan and Beer Sheva Metropolis Plan open the door to increasing Jewish settlement in the Negev. Whilst plans include the upgrading of infrastructure and transport for the area they do not cover thousands of residents of the unrecognized villages perpetuating injustice, inequality and discrimination in resource allocation. Persons belonging to national, ethnic and religious or linguistic minorities have both the right to participate in the development process and enjoy the benefits of development on an equal basis with non-minority groups. The public committee charged with submitting policy recommendations for the residential settlement of the Bedouin of the unrecognized villages does not contain one representative from the unrecognized villages. The United Nations Human Rights Committee has stated that State parties to the International Convention on Civil and Political Rights are obliged to take "measures to ensure the effective participation of members of minority communities in decisions which affect them."<sup>21</sup>

## **2. The occupied Palestinian territories**

### **2.1. The right to water and sanitation**

The right to water and sanitation is an intrinsic aspect of the right to an adequate standard of living and the right to the highest attainable standard of health guaranteed by the International Covenant on Economic, Social and Cultural Rights. As defined by United Nations human rights bodies, every person is entitled to sufficient and safe water for personal and domestic uses. Each person is entitled to water and sanitation services that are within safe physical reach, are affordable and are conducive to public health and the protection of the environment. As an occupying power Israel is legally responsible to respect, protect and fulfil the right to water and sanitation in all territories under its effective control. Israel must further comply with the provisions of international humanitarian law, including the Fourth Geneva Convention, in the occupied Palestinian territories including the provisions to ensure that civilians are guaranteed access to drinking water, water for personal hygiene and sanitation; ensure public health and hygiene is maintained in the occupied territory; comply with the prohibition on attacks to civilian infrastructure, including drinking water installations; respect the principle of proportionality which requires that any reaction to an attack is not excessive by causing harm to civilians or civilian property which outweighs the expected military advantage.

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<sup>19</sup> COHRE, *Submission to the Goldberg Committee regarding violations of the human right to water and sanitation in the unrecognized villages of the Negev/Naqab*, [www.cohre.org/israel](http://www.cohre.org/israel).

<sup>20</sup> These include cases brought forward by Adalah and by Community Advocacy. For more information see COHRE, *Submission to the Goldberg Committee regarding violations of the human right to water and sanitation in the unrecognized villages of the Negev/Naqab*, pp.24-26.

<sup>21</sup> United Nations Human Rights Committee, *General Comment No. 23: The Rights of Minorities (Article 27)*, (1994) UN Doc. CCPR/C/21/Rev.1/Add.5, para. 7.



## 2.2 Unequal and discriminatory allocation of shared water resources

Israel extracts over 85% of shared water resources from the Mountain Aquifer (western, eastern and north-eastern). From the Coastal Aquifer, Israel utilizes 82% of resources available for exploitation. The remaining 18% is utilized by Gaza. Palestinians have had no share in the Jordan River since the Israeli occupation in 1967. Israeli domestic consumption is on average 4.3 times greater than Palestinian domestic consumption. Per capita domestic water consumption in the oPt is on average 76 litres daily (The World Health Organization sets the standard of 100 litres of water per person per day to ensure that all health concerns are met<sup>22</sup>) whereas per capita daily consumption in Israel is 330 litres, with Israeli settlers in the West Bank consuming 369 litres.<sup>23</sup>

## 2.3 Gaza

The sanctions on and blockade of the Gaza Strip have caused a severe retrogression in the realization of the right to water and sanitation, constituting collective punishment of the civilian population. As a result of the blockade, equipment and supplies needed for the construction and maintenance of water and sanitation facilities were denied entry, hindering commencement of projects to repair, rehabilitate and upgrade existing infrastructure. In February 2008, a lack of chlorine due to the blockade placed around 400,000 people at risk of drinking contaminated water. Restrictions on fuel and electricity most of which is supplied by Israel led to the periodic paralysis of water and waste-water services. In the first week of May 2008, all 135 water wells in Gaza were out of fuel. Twenty ceased to operate. The remaining 115 had to rely on intermittent electricity supplies and were therefore non-functional for around eight hours each day. As a result 35% of Gaza's population received water once a week, 30% once every four days and 30% once every three days. As of January 2008, per capita daily use of water in Gaza had fallen to an average of 52 litres, with some residents using a mere 14 litres.<sup>24</sup> Since January 2008, and as of the date of this submission, due to a lack of power, around 50,000 cubic metres of raw or partially treated sewage were being released daily into the Mediterranean Sea. This is likely to cause severe damage to the marine environment in Gaza and southern Israel, constitutes a health hazard to bathers and those who eat sea food, and may pollute Gaza's underground aquifer, its main water source. The fuel shortage and electricity cuts caused the periodic cessation of sewage pumping stations. Sewage flooded the streets in the Zeitoun district of Gaza City in January and May 2008 causing a serious health hazard and potentially placing 250,000 people at risk. Some sewage pumping stations were forced to release sewage into pools designed to store storm water overflow in residential areas. Israeli Defence Forces have deliberately targeted water and sewage infrastructure. Between 27 February 2008 and 4 March 2008, damage to electrical transformers and voltage lines affected 10 water wells leaving 230,000 Gazans without water for nearly two days. Municipal workers have been fired upon at times, preventing them from carrying out work related to water and waste-water services.<sup>25</sup>

## 2.4. West Bank

The construction of physical barriers such as roadblocks and checkpoints in the West Bank have severely restricted water access. In the Hebron district the community in Karama are not connected to the water network and road blocks and checkpoints have significantly restricted the ability of water tankers to enter this area causing residents to pay increased prices for water or

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<sup>22</sup> Howard, G & Bartram, J, *Domestic Water Quality, Service Level and Health*, World Health Organization, (2003), p.22.

<sup>23</sup> Palestinian Hydrology Group- WaSH MP, *Water for Life: The Dilemma of Development Under Occupation*, (2006) p.53.

<sup>24</sup> The World Health Organization states the absolute minimum is 20 liters per person per day.

<sup>25</sup> Centre on Housing Rights and Evictions, *Hostage to Politics: The impact of sanctions and the blockade on the human right to water and sanitation in Gaza*, (June 2008)

travel long distances to access water points.<sup>26</sup> The construction of the Security Barrier on Palestinian land has further appropriated both land and water resources and prevented a number of communities, particularly in the area of Qalqiliya from accessing agricultural wells on which they are dependent for work and livelihood. The Council should urge the government of Israel to ensure that any security measures it takes are guided by the principle of proportionality and do not violate the economic, social and cultural rights of the Palestinian people or impede access to water. The Council should further urge the Government of Israel to comply with the advisory opinion of the International Court of Justice regarding the illegality of the wall being constructed on Palestinian territory. There have also been numerous reports of the Israeli Defence Forces demolishing water wells as happened in Beit Ula in Hebron on 10 March 2008, and there are frequent reports of well and cisterns being demolished in the Jordan Valley. Destruction of water and sanitation services and infrastructure not only violates the right to water and sanitation but is recognized as a war crime under international humanitarian law. The Council should urge the Government of Israel to immediately cease in carrying out punitive measures directed against the civilian population in the occupied territories.

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<sup>26</sup> COHRE field research, Interview with OCHA representative in the West Bank, February 2008.

# ANNEX 1

## III. SUMMARY OF RELEVANT INFORMATION DERIVED FROM THE REPORTS OF TREATY BODIES AND SPECIAL PROCEDURES, HIGHLIGHTING KEY PRIORITIES

### 1. Introduction

Israel is required, as a result of its international human rights law obligations to respect, protect and fulfil the human rights of its citizens without discrimination of any kind. It is further required to respect, protect and fulfil the human rights of citizens in territories over which it maintains effective control and to abide by international humanitarian law in the occupied territories. A number of treaty bodies have confirmed the applicability of both international human rights law and humanitarian law to the occupied territories<sup>27</sup> as has the International Court of Justice.<sup>28</sup> The Government of Israel is legally bound to ensure that the rights to freedom from discrimination, adequate housing, access to water and sanitation, and land and property restitution, are adequately protected. Treaty bodies and Special Rapporteurs have found the following human rights violations to be prevalent in Israel and in the occupied Palestinian territories as a result of Israeli practices:

- widespread ***inadequate housing*** conditions, among Arab citizens of Israel;
- ***forced evictions*** carried out disproportionately affecting Arab citizens of Israel;
- **racial discrimination in access to housing and basic services** in Israel;
- **land expropriation** and lack of adequate compensation for losses;
- a **lack of access to safe water and sanitation**, for Arab communities in Israel and Palestinians in the occupied territories;
- a **lack of consultation and participation in decision-making** of relevance to affected individuals and/or communities;

COHRE urges the Human Rights Council and the Office of the High Commissioner of Human Rights to take note of the observations and recommendations made, and incorporate them into their assessment of the Government's compliance with its obligations. Whilst a number of the observations listed date back to 1998, their inclusion is still warranted as the recommendations made to Israel have not been implemented.

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<sup>27</sup> For example, *Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) upon Consideration of Reports Submitted by States Parties*, A/52/38/Rev.1, 12 August 1997, para. 170; *Concluding observations of the Human Rights Committee: Israel*, CCPR/C/79/Add.93, 18 August 1998, para. 10; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.27, 4 December 1998, para. 8; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001; *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23 May 2003, para. 15; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel*, CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32.

<sup>28</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion of 9 July 2004*, (2004), p.40, paras. 90-101 and 120-121, [www.icj-cij.org](http://www.icj-cij.org), (click on 'Cases'> 'Advisory Proceedings').

## 2. Israel

### 2.1 Racial discrimination in access to land

*“Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”<sup>29</sup>*

Racial discrimination is strictly prohibited by a number of international conventions ratified by the State of Israel. Yet, Israel has failed to incorporate this norm into its Basic Law -- effectively Israel’s bill of rights -- although a number of specific laws, such as those relating to education and health, do include a prohibition on racial discrimination. The Committee on the Elimination of Racial Discrimination has called upon Israel to “ensure that the prohibition of racial discrimination and the principle of equality be enacted as general norms of high status in domestic law.”<sup>30</sup> The Jewish character of the State of Israel confers preferential treatment on Jewish as opposed to non-Jewish citizens in law, policy and practice. The Committee on the Elimination of Racial Discrimination has noted that it is concerned that the distinction made between Jewish nationals and other citizens “is accompanied by other privileges, in particular regarding access to land and benefits”.<sup>31</sup> The Committee recommended that Israel “ensure that the definition of Israel as a Jewish nation State does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights.”<sup>32</sup>

In Israel, 93 percent of land is held for the exclusive use and benefit of the Jewish people by the State (including the Development Authority and Israel Land Administration) and para-state agencies (including the World Zionist Organization and Jewish National Fund). The Committee on the Elimination of Racial Discrimination has expressed its concern regarding “information according to which these institutions manage land, housing and services exclusively for the Jewish population” and urged Israel “to ensure these bodies are bound by the principle of non-discrimination in the exercise of their functions”.<sup>33</sup> Likewise, the Committee on Economic, Social and Cultural Rights “notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that these institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel’s obligations under the Covenant.”<sup>34</sup>

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<sup>29</sup> UN Human Rights Committee, *General Comment No. 18: Non-discrimination* (Thirty-seventh session, 1989), para.1.

<sup>30</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 16.

<sup>31</sup> *Ibid.* Para. 17

<sup>32</sup> *Ibid.*

<sup>33</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 19.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc E/C.12/1/Add.27, (1998) para. 11.

The Committee on the Elimination of Racial discrimination welcomed the decisions of the Supreme Court in *Ka'adan v. The Israel Lands Administration* (2000) and *Kibbutz Sde-Nahum et al v. Israel Land Administration et al* (2002), which ruled that State lands should not be allocated on the basis of any discriminatory criteria or to a specific sector. The Committee further welcomed the Israel Land Administration's subsequent adoption of new admission criteria for all applicants. However the Committee noted that it "remains concerned ... that the condition that applicants must be 'suitable to a small communal regime' may allow, in practice, for the exclusion of Arab Israeli citizens from some State-controlled land" and recommended that Israel "ensure that State land is allocated without discrimination, direct or indirect, based on race, colour, descent, or national or ethnic origin" and "assess the significance and impact of the social suitability criterion in this regard."<sup>35</sup>

## 2.2. Racial discrimination in access to housing and basic services

Non-discrimination in housing is required by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) Article 5(e) (iii), which provides that "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and 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: [...] The right to housing." The International Covenant on Civil and Political Rights (ICCPR) Article 2(1) provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant [including the right to freedom from interference with one's home, art.17], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The right to adequate housing is guaranteed under Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, which recognizes "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" to be applied in a non-discriminatory manner. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires in Article 14 that; "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to women the right ... [t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, ... and water supply..."

The Committee on Economic, Social and Cultural Rights has noted its concern in the differing treatment afforded Jews and non-Jews in Israel, particularly Arab and Bedouin Communities. The Committee expressed its concern that the "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class status to its non-Jewish citizens".<sup>36</sup> It further noted "This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap."<sup>37</sup> Likewise, the

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<sup>35</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 23.

<sup>36</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 16.

<sup>37</sup> Ibid.

Committee on the Elimination of Racial Discrimination has urged Israel to “take steps to ensure equality of treatment for all Israeli citizens in relation to all Covenant rights.”<sup>38</sup>

There is a complete lack of parity in the living conditions between Palestinian citizens of Israel and Jewish citizens of Israel. The discriminatory application of the 1965 Planning and Construction Law has meant that many Palestinian citizens of Israel live in unrecognized neighbourhoods in the mixed cities or in the case of around 84,000 Bedouin of the Negev/Naqab, in unrecognized villages. These citizens are unable to acquire building permits to legalize or upgrade their properties and are denied equal access to basic services. The Committee on Economic, Social and Cultural Rights “notes with concern the situation of Arab neighbourhoods in mixed cities such as Jaffa and Lod which have deteriorated into virtual slums because of Israel’s excessively restrictive system of granting government permits without which it is illegal to undertake any kind of structural repair or renovation.”<sup>39</sup> It further urged Israel “immediately to take steps to respect and implement the right to an adequate standard of living, including housing, of ... the Palestinian Arabs in the mixed cities.”<sup>40</sup>

The segregation of Palestinian neighbourhoods from Jewish neighbourhoods sometimes including through the construction of physical barriers such as walls is a cause for grave concern. Article 3 of ICERD provides; “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.” In this regard, the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) defines “the crime of apartheid” as including “Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups ... the expropriation of landed property belonging to a racial group or groups or to members thereof.”<sup>41</sup> The Committee on the Elimination of Racial Discrimination “notes with deep concern that separate “sectors” are maintained for Jewish and Arab persons, in particular in the areas of housing and education, and that according to some information, such separation results in unequal treatment and funding.”<sup>42</sup> It further recommended Israel “should develop and implement policies and projects aimed at avoiding separation of communities, in particular in the areas of housing and education. Mixed Arab-Jewish communities and schools should be promoted and strong action taken to promote intercultural education.”<sup>43</sup>

The Committee on Economic Social and Cultural Rights “continues to be concerned about the situation of Bedouins residing in Israel, and in particular those living in villages that are still unrecognized ... Despite measures by the State party to close the gap between the living conditions of Jews and Bedouins in the Negev, the quality of living and housing conditions of the Bedouins continue to be significantly lower, with limited or no access to water, electricity and sanitation ... The Committee is also concerned that the present compensation scheme for Bedouins who agree to resettle in “townships” is inadequate.”<sup>44</sup>

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<sup>38</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 32.

<sup>39</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc E/C.12/1/Add.27, (1998) para. 23.

<sup>40</sup> Ibid. Para 41.

<sup>41</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), adopted and opened for signature and ratification by UNGA resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976, Article II (d).

<sup>42</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 22.

<sup>43</sup> Ibid.

<sup>44</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 27.

The Government of Israel has been taking steps to find a solution for the situation of the Bedouin in the unrecognized villages and has established a public committee to submit policy recommendations to the government to facilitate the residential settlement of Bedouin. The main trend so far has been to attempt to move the Bedouin of the unrecognized villages off their land (either ancestral, historical lands or lands to which they were transferred by the State of Israel subsequent to its creation). Residents of the unrecognized villages have by and large resisted these attempts to resettle them in government built townships due to the poor socio-economic conditions in these areas; sub-standard services and facilities; the fact that relocation to urban centres would compel them to abandon their traditional lifestyle which is predominantly rural and based on small scale farming; that relocation would destroy cultural characteristics and community cohesion and because relocation is often conditional on them abandoning their claim to the land. Further, compensation provided to those who have agreed to relocate has been low. The Committee on Economic, Social and Cultural rights urged Israel “to recognize all existing Bedouin villages, their property rights and their right to basic services, in particular water” and “adopt and adequate compensation scheme for Bedouins who have agreed to resettle in “townships”.”<sup>45</sup> The Committee on the Elimination of Racial Discrimination recommended “recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited by them.”<sup>46</sup>

It is often the case that women in minority groups suffer greater marginalization than both their male counterparts and women of the majority group. The Committee on the Elimination of Racial Discrimination has stated that it is “concerned by the discrepancies still remaining between the infant mortality rates and life expectancy rates of Jewish and non-Jewish populations, and by the fact that minority women and girl children are often the most disadvantaged.”<sup>47</sup> The Committee on the Elimination of Discrimination Against Women has expressed concern “about the fact that non-Jewish women had worse living conditions than Jewish women”.<sup>48</sup>

### 2.3. Land expropriation, reparations and restitution

With the creation of the State of Israel in 1948, many Palestinians were forced to flee their land and properties becoming either refugees or internally displaced within the new state. Israel subsequently enacted a series of discriminatory laws to seize Palestinian property and permanently dispossess Palestinians on the basis of their national/ethnic affiliation including the Emergency Regulations, the Absentees’ Property Law, the laws and operations pertaining to land registration and settlement of title, and the Land (Acquisition for Public Purposes) ordinance of 1943. Those displaced by such laws and policies have been denied their right to return and right to restitution and are therefore subject to continuing violation of their human rights.

The right to “housing, land and/or property restitution” is articulated by the *Pinheiro Principles*, which “reflect widely accepted principles of international human rights, refugee and humanitarian

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<sup>45</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 43.

<sup>46</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 25.

<sup>47</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 24.

<sup>48</sup> UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Israel*, UN Doc. A/52/38/Rev.1, (1997) para. 161.

law and related standards.”<sup>49</sup> Principle 2 (“The right to housing and property restitution”) provides that:

2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.

2.2 States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.

A similar articulation of the right to restitution is found in CERD General Comments 22 and 23. CERD General Comment 22 provides that:

(c) All [refugees and persons displaced by military or ethnic conflict, on the basis of ethnic criteria] have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void;

(d) All such refugees and displaced persons have, after their return to their homes of origin, the right to participate fully and equally in public affairs at all levels and to have equal access to public services and to receive rehabilitation assistance.<sup>50</sup>

The Committee on Economic, Social and Cultural Rights has expressed “its concern over the plight of an estimated 200,000 uprooted “present absentees”, Palestinian Arab citizens of Israel most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed by the Government of Israel to return after the war. Although a few have been given back their property, the vast majority continue to be displaced and dispossessed within the State because their lands were confiscated and were not returned to them.”<sup>51</sup> Further, “The Committee strongly recommends equal access to housing and settlement on State land for the “present absentees” who are citizens of Israel.”<sup>52</sup> Likewise the Committee on the Elimination of Racial Discrimination expressed that it “is concerned about the denial of the right of many Palestinians to return and repossess their land in Israel ... The Committee reiterates its view,

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<sup>49</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (‘Pinheiro Principles’), UN Doc. E/CN.4/Sub.2/2005/17, (2005), para. 8 (stating that these standards are “enshrined in the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the 1951 Convention relating to the Status of Refugees; the Geneva Convention relative to the Protection of Civilian Persons in Time of War; and the Second Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts. The Principles also reflect other relevant international human rights and related standards, in particular, the Guiding Principles on Internal Displacement, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law and relevant UNHCR Executive Committee Conclusions.”).

<sup>50</sup> CERD, *General Recommendation No. 22, Article 5 and Refugees and Displaced Persons*, contained in UN Doc. A/51/18 (1996), para. 2 (c)-(d).

<sup>51</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc E/C.12/1/Add.27, (1998) para. 25.

<sup>52</sup> Ibid. Para. 41.



expressed in its previous concluding observations on this issue, and urges the State party to assure equality in the right to return to one's country and in the possession of property.”<sup>53</sup>

The dispossession of the Bedouin of the Negev/Naqab is ongoing, hand in hand with the appropriation of Negev/Naqab land for exclusively Jewish use. The Negev Land Acquisition Treaty (Peace Treaty with Egypt) Law of 1980 expropriated Bedouin property and removed some 8,000 Arab farmers from their lands when Israel pulled out its military bases from the Sinai and relocated them in Be'er Sheva/Beersheba, where the majority of the Bedouin are now concentrated. Current proposals for developing the Negev/Naqab will also result in greater dispossession of the Bedouin from their land. There are a large number of outstanding land claims between the Bedouin and the Government of Israel, efforts to remedy these in the courts have largely failed and compensation given to Bedouin who have given up their claim to the land has generally been inadequate. Those that have left their land have been re-settled in urban enclaves restricting their ability to continue the practice of their culture and way of life.

CERD General Comment 23, paragraph 5 states:

The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.<sup>54</sup>

## 2.4. Forced Evictions

As a state party to the ICESCR, the Government of Israel is obliged to respect the right to adequate housing, as guaranteed under Article 11(1), for everyone within Israel, and to refrain from the practice of forced evictions. It is furthermore obliged to protect everyone within Israel from forced evictions undertaken by third parties, including private entities.

According to General Comments No. 4 and 7 of the Committee on Economic, Social and Cultural Rights, forced evictions can only be justified in highly exceptional circumstances, and all feasible alternatives to eviction must be explored in meaningful consultation with the persons affected. If and only if such “exceptional circumstances” exist, and there are no feasible alternatives, can evictions be deemed justified. However, in those rare cases where eviction maybe justified, it must be carried out in strict compliance with international human rights law and in accordance with general principles of reasonableness and proportionality. These include, inter alia:

- Genuine consultation with those affected;
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

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<sup>53</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 18.

<sup>54</sup> CERD, *General Recommendation No. 23, Indigenous Peoples*, contained in UN Doc. A/52/18, annex V (1996), para.5.

- Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- All persons carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- Provision of legal remedies; and
- Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Furthermore, and in any event, forced eviction must not result in rendering individuals homeless or vulnerable to the violation of other human rights. Indeed, the Government of Israel is obligated to ensure that adequate alternative housing and compensation for all losses is made available to affected persons. Reports from credible human rights NGOs show that the State of Israel has not complied with these procedural and substantive protections before ordering and carrying out numerous instances of forced evictions.<sup>55</sup>

The “right to be protected from displacement” has been recognized by the Sub-Commission on the Promotion and Protection of Human Rights in its adoption of the *Pinheiro Principles*. Principle 5 states that:

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

Palestinian citizens of Israel, particularly the Bedouin of the Negev, continue to be subject to displacement from their homes and lands as a result of forced evictions and home demolitions. The Committee on Economic, Social and Cultural Rights has noted a number of serious human rights violations that conflict with the Pinheiro Principle 5 above such as that “Bedouins continue to be subjected on a regular basis to land confiscations, house demolitions, fines for building “illegally”, destruction of agricultural crops, fields and trees, and systematic harassment and persecution by the Green Patrol, in order to force them to resettle in “townships”.<sup>56</sup>

<sup>55</sup> See, for example, Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages*, (2008) [www.hrw.org/reports/2008/ipto0308/](http://www.hrw.org/reports/2008/ipto0308/) or Centre on Housing Rights and Evictions, *Violence: The Impact of Forced Evictions on Women in Palestine, India and Nigeria*, (2002) [www.cohre.org/israel](http://www.cohre.org/israel)

<sup>56</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 27.

### 3. The occupied Palestinian territories

#### 3.1 The right to water and sanitation

Israel as an occupying power holds a number of responsibilities towards the Palestinians of the occupied territories in regards to their human rights. The UN Committee on Economic, Social and Cultural Rights has stated that the Covenant applies to “all territories and populations under [Israel’s] effective control” and that “the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities”.<sup>57</sup> The International Court of Justice has also ruled that the International Covenant on Economic, Social and Cultural Rights is “applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.”<sup>58</sup>

The right of each person to water and sanitation is implicitly recognised in a variety of international human rights treaties, and is necessary to ensure universally held values such as freedom, equality and dignity for all. The right to water and sanitation is an intrinsic aspect of both Article 12, the right to health and Article 11 (1) the right to an adequate standard of living of the International Covenant on Economic Social and Cultural Rights (ICESCR) ratified by Israel. States that have ratified this treaty have declared repeatedly that the right to an adequate standard of living includes access to water and sanitation.<sup>59</sup> The right to water and sanitation can be found in a range of other treaties in addition to the ICESCR. The Convention on the Rights of the Child, ratified by Israel, recognizes the right of the child to the highest attainable standard of health and states that the provision of clean drinking water is necessary to combat disease.<sup>60</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, states that women have the right “To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”<sup>61</sup> The right to water and sanitation is also essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera. Access to water and sanitation is therefore implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR).<sup>62</sup> According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.<sup>63</sup>

General Comment No. 15 on the Right to Water and the Sub-Commission Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation taken together, explain that the right to water and sanitation includes the following:

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<sup>57</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (2003), UN doc.E/C.12/1/Add.90., para.31.

<sup>58</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, p.49, para.112.

<sup>59</sup> Programme of Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 States, and Habitat Agenda, adopted in the framework of the Second United Nations Conference on Human Settlements (Habitat II), endorsed by 171 States.

<sup>60</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1557 UN Treaty Series 3, Article 24 (2) (c),

<sup>61</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), Article 14 (h).

<sup>62</sup> (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6.

<sup>63</sup> See Human Rights Committee, *General Comment 6, Right to Life*, (1982) UN Doc. HRI/GEN/1/7, para. 5.

**Sufficient water:** Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally includes drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>64</sup>

**Clean water:** Safe water that, in particular, is free from hazardous substances that could endanger human health,<sup>65</sup> and whose colour, odour and taste are acceptable to users.<sup>66</sup>

**Accessible water and sanitation:** Water and water and sanitation services and facilities that are accessible within, or in the immediate vicinity of, each household, educational institution and workplace, and which are in a secure location and do not pose a threat to physical security.<sup>67</sup> The Sub-Commission Guidelines state that sanitation must be safe, adequate and conducive to the protection of public health and the environment.<sup>68</sup>

General Comment No. 15 and the Sub-Commission Guidelines do not define the term ‘sanitation’. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least, a toilet or latrine, along with associated services such as sewage or latrine exhaustion. The criterion of ‘conducive to the protection of public health and the environment’ in the Sub-Commission Guidelines indicates that wastewater drainage channels are required for situations where piped water, but not sewage, is available in urban and peri-urban areas. It also implies that wastewater and excreta needs to be treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

**Affordable water and sanitation:** Water and sanitation can be secured without reducing any person’s capacity to acquire other essential goods and services, including food, housing, health services and education.<sup>69</sup>

Further, as an occupying power, under international humanitarian law, Israel is responsible for the welfare of the civilian population and must ensure that Palestinians are provided with or allowed to secure the basics for survival including food, water, medical supplies and shelter. Prisoners of war and/or protected persons are guaranteed access to drinking water, water for personal hygiene and sanitation under the Geneva Conventions.<sup>70</sup> The fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War (1949) states that an occupying power is responsible for maintaining public health and hygiene in an occupied territory which necessitates the provision of clean drinking water and adequate sanitation.<sup>71</sup> It further states “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal”.<sup>72</sup> Military action which impedes water access is also prohibited. Additional Protocol I to the Geneva Conventions makes clear that “It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, crops, livestock, *drinking water installations* and supplies and irrigation works” (emphasis added).<sup>73</sup>

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<sup>64</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (2002), UN Doc. E/C.12/2002/11 para. 12 (a).

<sup>65</sup> General Comment No. 15, para. 12 (b), referring to the respective WHO Guidelines.

<sup>66</sup> General Comment No. 15, para. 12 (b).

<sup>67</sup> General Comment No. 15, para. 12 (c) (i), 29, Sub-Commission Guidelines section. 1.3 (a)-(c).

<sup>68</sup> Sub-Commission Guidelines, section. 1.2.

<sup>69</sup> General Comment No. 15, para.12 (c) (ii); Sub-Commission Guidelines, section. 1.3 (d).

<sup>70</sup> Third Geneva Convention, Articles 20, 26, 29, 46. Fourth Geneva Convention Articles 56, 85, 89, 127.

<sup>71</sup> Fourth Geneva Convention, Article 56.

<sup>72</sup> Fourth Geneva Convention Article 59.

<sup>73</sup> Article 54. Emphasis added.

### **3.2 Violations of the right to water and sanitation in the occupied Palestinian territories as a result of Israeli practices**

The former Special Rapporteur on adequate housing, Mr. Miloon Kothari, in his report on the occupied Palestinian territories, noted six principle methods of institutionalized violations of the Palestinian people's right to water affecting housing and habitat:

- (a) Destruction by military and paramilitary (settlers) of Palestinian water sources, pumps, wells and distribution infrastructure;
- (b) Non-provision of water infrastructure, including networks and facilities for local solutions;
- (c) Lack of proper maintenance of existing infrastructure so as to prevent leakage and water loss;
- (d) Outright prevention of Palestinians from drilling and constructing water-delivery facilities, most notably in areas of Jewish settler colonies;
- (e) Discriminatory distribution and insufficient water supply to Palestinians in areas that the Israeli water utility (*Mekorot*) controls; and
- (f) Pollution and contamination of Palestinian aquifers through the combined dumping of lethal waste, hazardous use of chemical fertilizers and overpumping, leading salinization.<sup>74</sup>

### **3.3. Unequal and discriminatory allocation of shared water resources**

The unequal and discriminatory allocation of shared water resources to the detriment of Palestinians is an issue for grave concern. Israel exercises greater control over shared surface and underground water resources. The Israel-Palestinian Interim Agreement (1995) resulting from the Oslo process allocates 80 percent of shared groundwater to Israel with 20 percent allocated to the Palestinians, of which nine percent is sold to them by the Israeli water company Mekorot. Palestinians have no access to the Jordan river. The 'Joint Water Committee' that was subsequently established to oversee management of water resources and water and sanitation projects in the West Bank is dominated by Israel which maintains an effective veto on development proposals. The issue of control over water resources and allocation is one of the major issues to be addressed in the Final Status Negotiations. Meanwhile, in the absence of significant progress in the peace process, Palestinians have suffered lack of control over their natural resources, a key aspect of the right to self-determination; violations of their economic, social and cultural rights, resulting from the inequitable water distribution and access; and a violation of their right to participate in decision making related to water and sanitation. The right to water and sanitation, in common with all human rights, is linked to the right to participate in decision-making. Thus, it provides for all persons to be given a genuine opportunity to influence and enhance policy formulation and improvements in the water and sanitation sector.

The Committee on Economic, Social and Cultural Rights noted with concern that "while [Israel] annually diverts millions of cubic metres of water from the West Bank's Eastern Aquifer Basin, the annual per capita consumption allocation for Palestinians is only 125 cubic metres while settlers are allocated 1000 cubic metres per capita."<sup>75</sup> Five years later the Committee reiterated that it was "particularly concerned about limited access to and distribution and availability of

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<sup>74</sup> Mr. Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, (2002) UN Doc. E/CN.4/2003/5/Add.1, para. 66.

<sup>75</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc E/C.12/1/Add.27, (1998) para. 24.

water for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.”<sup>76</sup> In this respect the Committee strongly urged Israel “to take immediate steps to ensure equitable access to and distribution of water to all populations living in the occupied territories, and in particular to ensure that all parties concerned participate fully and equally in the process of water management, extraction and distribution.”<sup>77</sup> The Committee on the Elimination of Racial Discrimination similarly called upon Israel to “ensure equal access to water resources for all without any discrimination.”<sup>78</sup>

### 3.4 Lack of access to water

Lack of access to water resources has been impeded in the West Bank by the construction of physical barriers such as roadblocks and check-points which have further restricted the movement of water tankers, pushing up prices. The Committee on Economic, Social and Cultural rights expressed it is “gravely concerned about the deplorable living conditions of Palestinians in the occupied territories, who -- as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints -- suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food.”<sup>79</sup>

The Security Barrier built on Palestinian land and recognized as illegal by the International Court of Justice,<sup>80</sup> has prevented many Palestinians from accessing water wells. The Committee on Economic, Social and Cultural Rights stated that it was “particularly concerned about information received concerning the construction of a “security fence” around the occupied territories, which allegedly would infringe upon the surface area of the occupied territories and which would limit or impede access by Palestinian individuals and communities to land and water resources.”<sup>81</sup> Whilst the Security Barrier was built as a response to Israel’s legitimate security concerns, security measures should be guided by the principle of proportionality and not impinge on the economic and social rights of Palestinians, including their right to water and sanitation. The Committee on Economic, Social and Cultural Rights further urged Israel “to ensure that any security measure it adopts does not disproportionately limit or impede the enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to land and water resources by Palestinians, and that adequate restitution and compensation are provided to those who have incurred damage to and loss of property and lands as a result of these security measures.”<sup>82</sup>

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<sup>76</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (2003), UN doc.E/C.12/1/Add.90., para.26.

<sup>77</sup> Ibid. para. 41.

<sup>78</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 35.

<sup>79</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (2003), UN doc.E/C.12/1/Add.90., para. 19.

<sup>80</sup> See Advisory Opinion of the International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*.

<sup>81</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (2003), UN doc.E/C.12/1/Add.90., para.24.

<sup>82</sup> Ibid. para.40.

## ANNEX 2

### IV. RECENT COHRE REPORTS HIGHLIGHTING A NUMBER OF THE ISSUES RAISED



#### Centre on Housing Rights and Evictions (COHRE)



**Submission to the Goldberg Committee regarding  
violations of the human right to water and sanitation in the  
unrecognized villages of the Negev/Naqab**

February 2008

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# INTRODUCTION

This is a submission by the Centre on Housing Rights and Evictions (COHRE) to the Goldberg Committee, established pursuant to Cabinet Resolution No. 2491 of 28 October 2007 which states that “the committee will submit recommendations for an expansive, comprehensive, and realizable program that sets guidelines for Bedouin settlement arrangements in the Negev- including compensation levels, alternative land allocation arrangements- and that includes recommendations for legislation as needed.”<sup>83</sup> COHRE is generally concerned about the lack of security of tenure in the Negev and the policy of demolition of structures and forced evictions, rising levels of poverty and grossly inadequate service provision, including health care. More particularly COHRE is concerned about the lack of access to basic water and sanitation services, all of which point to a systematic pattern of widespread violations of economic, social and cultural rights in the unrecognized villages. COHRE urges the Committee to find a solution to the dire situation in the unrecognized villages, one that guarantees the human dignity of the Bedouin inhabitants, based on respect for their inalienable human rights.

The right of all peoples to water and sanitation is guaranteed under international law by a number of treaties ratified by Israel, primarily the International Covenant on Economic, Social and Cultural Rights (ICESCR:1966), the Convention on the Rights of the Child (CRC: 1989), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW: 1979). The prohibition on racial discrimination with respect to water and sanitation is also guaranteed by the International Convention on the Elimination of Racial Discrimination (ICERD: 1969). Further, Israel’s Water Law (1959) recognizes the existence of a right to water and states that the right to water is guaranteed for domestic purposes, agriculture, industry, handicraft, commerce and services, and public services.<sup>84</sup> The right is premised on the fact that water is fundamental for the health and well being of mankind and is indispensable for leading a life in human dignity. It is also inextricably linked to the right to an adequate standard of living, including housing.

This submission highlights several acts and/or omissions of the state of Israel, which is under obligation to respect, protect and fulfil the provisions of the treaties mentioned above for all of its citizens, giving rise to violations of the human right to water and sanitation in the unrecognized villages of the Negev. It is based on a combination of field missions to the Negev, interviews with NGOs working in the field and members of the Bedouin community as well as a review of secondary materials. The study evaluates the situation as it stands in the unrecognized villages guided by key aspects of the human right to water and sanitation:

- Non-discrimination and attention to vulnerable and marginalised groups
- Water availability and allocation
- Physical accessibility of water and sanitation
- Water quality and hygiene
- Affordability of water and sanitation
- Participation and access to information
- Accountability

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<sup>83</sup> Cabinet Resolution No. 1999, *Establishment of an Authority for Bedouin Settlement Arrangements in the Negev*, 15 July 2007, Unofficial Translation.

<sup>84</sup> The Water Law of 1959, Chapter One, Articles 5 & 6, [www.mfa.gov.il](http://www.mfa.gov.il).

# 1. BACKGROUND TO THE UNRECOGNIZED VILLAGES

The Negev (Naqab in Arabic) is the southern region of what is today the State of Israel. Prior to the creation of the State of Israel in 1948 there were some 90,000 Bedouin Arabs living in the Negev, comprising the overwhelming majority of its inhabitants. For the semi-nomadic Bedouin population, land was an important resource, intricately linked to their culture and way of life. They used the northern Negev to cultivate crops and moved around with their herds for grazing. The Bedouin system of landownership was based on traditional forms of inter-tribal arrangement. Accordingly, and also due to reasons regarding taxation, many of the Bedouin did not register their lands in the Ottoman or British land registries as many other Arabs did. Moreover, both the Ottomans and the British respected the customary rights the Bedouin had to the land and did not attach importance to the arid, desert terrain of the Negev classifying it as *mawat* ('dead') land, which was not economically viable.

With the Israeli War of Independence (Arab-Israeli War) of 1948 many Bedouin fled or were expelled from their lands and the Bedouin population was reduced to 10,000. For the newly created state of Israel, the land of the Negev was seen as an integral part of the country and Jewish immigrants were encouraged to settle there. The first Israeli Prime-Minister, David Ben Gurion, started the National Water Carrier project which transferred water, through a system of huge pipes and canals, from the Sea of Galilee in the north of Israel to the Negev of the south to encourage the agricultural development of the region. However, whilst water was provided to the kibbutzim and moshavim (cooperative agricultural Jewish communities) in the area, the Bedouin who had been farming the land for generations were not provided with water.<sup>85</sup>

Israel did not recognize Bedouin ownership of the land in the absence of a land registration document issued by either the Ottomans or the British. Consequently much of the land, held by Bedouin Arabs for generations, was confiscated by the state, most of it in accordance with the Land Acquisition Law of 1953. A large majority of the Bedouin remaining in the Negev after the 1948 war, and who subsequently became citizens of Israel, were concentrated in the north-eastern Negev, in the area east of Be'er Sheva (Beersheba). This enclosed area became known as the *Sijag*. Those that were forcibly relocated to this area were not provided with either housing or compensation. From the 1950s–1970s the Bedouin of the *Sijag* comprised two groups: the original inhabitants of the land and internally displaced persons (IDPs). From 1969 to the mid-1980s, many of the IDPs were relocated into government-planned townships. "Israel's rush to remove and relocate the Bedouin population of the Negev was part of an effort to pre-empt potential claims by the latter to their lands and to enable Israel to transfer legal title to these lands in the name of the State."<sup>86</sup>

Today, the Bedouin comprise circa 25% of the Negev's population, owning less than 2% of its land. There is an ongoing land ownership dispute between the Bedouin and the State of Israel. Many Bedouin were permitted to register their land from 1969-1971 but this policy has since been terminated and all outstanding land is referred to as 'land under dispute'. The Israeli government is prepared to buy this land but at a very low price and on the condition that the Bedouin give up their claim to it. Over half of the Bedouin population live in seven government

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<sup>85</sup> Swirski, S, 'Current Plans for Developing the Negev: A Critical Perspective', Advai Center for Information Equality on Equality and Social Justice in Israel, (January 2007), p.5.

<sup>86</sup> Centre on Housing Rights and Evictions (COHRE) & BADIL Resource Center for Palestinian Residency and Refugee Rights, *Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*, (May 2005), p.62.

planned towns, and one regional council, the Abu-Basmaa Regional Council, which currently consists of around five villages. The number of villages in the Abu-Basmaa Regional Council will be increased to nine in the near future. The Bedouin living within the Government planned townships are among Israel's poorest socio-economic group. These communities are characterised by low levels of employment, poor infrastructure, sub-standard facilities and services, and high levels of poverty, currently causing an outward migration primarily back to the villages. As of February 2008, a number of the recognized Bedouin towns had only partial or non-existent sewerage systems including neighbourhoods in Ar'ara, Kuseife and Laqye and water and electricity supplies are of a very low standard.<sup>87</sup> The city of Rahat, the biggest of the recognized Bedouin localities, has Israel's lowest proportion of 20-29 year olds studying at an academic institution.<sup>88</sup>



The unrecognized village of Tal A'rad

The remainder of the Bedouin, which today is around 80,000 people, have stayed in 46 unrecognized villages. Since 2002, the Government of Israel has recognized nine villages and three are in the process of becoming recognized. 34 villages remain “unrecognized” which despite having between 600-4,000 residents per village do not exist on any official map. All Bedouin constructions within the unrecognized villages are regarded as “illegal” pursuant to the 1965 Planning and Construction Law, which requires all construction to be subject to a permit in order to be built. As the houses of the unrecognized villages do not have the required license, residents live under constant threat of the demolition of their homes. The houses in the unrecognized villages are often shacks with tin roofs, which become unbearably hot in the summer and do not provide adequate shelter during the cold winters.

Non-recognition is a means employed by the State to force the residents off their historical lands and concentrate the Bedouin into the Government designated urban enclaves. The unrecognized villages lack basic infrastructure facilities and services such as electricity, running water, roads, health care and kindergartens. The Bedouin are repeatedly told by the Government of Israel that they will receive all the facilities and services they require when they move to the government built townships. Other punitive methods employed to drive the Bedouin of the unrecognized villages off their land include widespread forced evictions and house demolitions, destroying the

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<sup>87</sup> Information provided to COHRE by Shmulik David, Lobbying Consultant, Shatil, February 2008.

<sup>88</sup> Swirski, S, ‘Current Plans for Developing the Negev: A Critical Perspective, Advai Center for Information Equality on Equality and Social Justice in Israel, (January 2007), p.4.

Bedouin's crops through spraying them with chemical agents and even demolishing mosques.<sup>89</sup> The UN Committee on Economic, Social and Cultural Rights states in General Comment No.4 (The Right to Adequate Housing): "Notwithstanding the type of tenure, 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."<sup>90</sup>

The United Nations Committee on the Elimination of Racial Discrimination, in its consideration of Israel's periodic report in June 2007, expressed concern that "the lack of basic services provided to the Bedouins may in practice force them to relocate to the planned towns."<sup>91</sup> Further:

The Committee recommends that the State party enquire into possible alternatives to the relocation of inhabitants of the unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouin to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them. It recommends that the State party enhance its efforts to consult with the inhabitants of the villages and notes that it should in any case obtain the free and informed consent of affected communities prior to such relocation.<sup>92</sup>

Likewise the United Nations Committee on Economic, Social and Cultural Rights urged Israel "to recognize all existing Bedouin villages, their property rights and their right to basic services, in particular water, and to desist from the destruction and damaging of agricultural crops and fields, including in the unrecognized villages. The Committee further encourages the State party to adopt an adequate compensation scheme for Bedouins who have agreed to resettle in 'townships'."<sup>93</sup>

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<sup>89</sup> The Regional Council for the Unrecognized Villages in the Negev, *Unrecognized: Summary of 2006 Activities*, (2006), p.4.

<sup>90</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The right to adequate housing*, UN Doc. E/1992/23, para.8 (a).

<sup>91</sup> United Nations Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, UN Doc. CERD/C/ISR/CO/13 (2007), para. 25.

<sup>92</sup> *Ibid.*

<sup>93</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN Doc. E/C.12/1/Add.90 (2003) para. 43.

## 2. LEGAL OBLIGATIONS OF ISRAEL

### 2.1. International Law

The legal basis for the right to water and sanitation is found primarily in the International Covenant on Economic, Social and Cultural Rights (ICESCR: 1966). Israel ratified the ICESCR on 3 October 1991 and is legally bound by the treaty at all levels of government.

Article 11(1) of the ICESCR, regarding the right to an adequate standard of living, provides:

*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 cooperation based on free consent.*

Article 12(1) of the ICESCR, regarding the right to the highest attainable standard of health, provides:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

The Committee on Economic, Social and Cultural Rights (CESCR),<sup>94</sup> adopted General Comment No. 15: The right to water in 2002. Although General Comment No. 15 is not itself legally binding, it is an authoritative interpretation of the provisions of the ICESCR, which is legally binding on States that have ratified or acceded to it. General Comment No. 15 states:

*Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living, including adequate food, clothing and housing. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.<sup>95</sup>*

The right to water is therefore implicit within the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of health outlined in the

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<sup>94</sup> The Committee on Economic, Social and Cultural Rights (CESCR) sought the authorisation of the United Nations Economic and Social Council (one of the primary UN organs made up of member States) to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10.

<sup>95</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15 The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 3. All Human Rights Treaties, Conventions and General Comments can be found at <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

ICESCR.<sup>96</sup> General Comment No. 15 appears to locate sanitation within the right to adequate housing and the right to health, where it states:

*In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.*<sup>97</sup>

The UN Sub-Commission on the Promotion and Protection of Human Rights has subsequently produced an analysis of the legal basis and implications of the right to water and sanitation. The report states that sanitation, along with water, is a component of the right to an adequate standard of living recognised in Article 11 (1) of the ICESCR and states: “It is arguable that the right to adequate sanitation can be identified under international human rights law and this should be affirmed authoritatively by the international community”.<sup>98</sup> This argument has weight because at the International Conference on Population and Development in Cairo, a United Nations inter-governmental conference, States defined both water and sanitation as components of the right to an adequate standard of living. In 2006, the Sub-Commission adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (“Sub-Commission Guidelines”), which aimed to “highlight the main and most urgent components of the right to water and sanitation”.<sup>99</sup> In 2007, the United Nations Commissioner for Human Rights stated that, “it was now time to consider access to safe drinking water and sanitation as a human right.”<sup>100</sup>

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) was ratified by Israel on 3 October 1991. The Convention sets out an agenda to end discrimination against women, and explicitly references both water and sanitation within its text.

Article 14(2) (h) of CEDAW provides:

*14(2) States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ...*

*(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.*

The Convention on the Rights of the Child, 1989 (CRC) was also ratified by Israel on 3 October 1991. The text of the CRC explicitly mentions water, environmental sanitation and hygiene.

*Article 24(2)(c) and (e) of the CRC provide:*

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<sup>96</sup> A useful analysis of General Comment No. 15 is provided in S. Salman, and S. McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (World Bank: Washington DC, 2004).

<sup>97</sup> General Comment No. 15, para. 29.

<sup>98</sup> Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, UN Doc. E/CN.4/Sub.2/2004/20, paras. 40-44.

<sup>99</sup> United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, (2006) UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, para. 3.

<sup>100</sup> Report of the UN High Commissioner for Human Rights on water and sanitation, *see* note 1, para. 66.

*1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...*

*2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...*

*c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution; ...*

*(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;*

The right to water and sanitation is also essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera. Access to water and sanitation is therefore implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991.<sup>101</sup> According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.<sup>102</sup> The Universal Declaration of Human Rights (1948) also states in Article 25 (1) that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”.

Both the ICESCR and the ICCPR guarantee that the rights recognized in both of the Conventions are applied on a non-discriminatory basis, to all citizens within a State party’s territory “without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>103</sup>

The International Convention on the Elimination of Racial Discrimination (ICERD) was ratified by Israel on 3 January 1979. Article 5(e) of ICERD requires that:

*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and 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: ... economic, social and cultural rights.*

### **Obligations to respect, protect and fulfil the right**

According to the CESCR, State parties to the ICESCR have obligations to respect, protect and fulfil economic, social and cultural rights, without discrimination, in regard to the people of their country.<sup>104</sup>

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<sup>101</sup> (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6.

<sup>102</sup> See Human Rights Committee, *General Comment 6, Right to Life*, (1982) UN Doc. HRI/GEN/1/7, para. 5.

<sup>103</sup> ICCPR (1966) Article 2(1), ICESCR (1966) Article 2(2).

<sup>104</sup> General Comment No. 15, para. 21. For further information on obligations to respect, protect and fulfil economic, social and cultural rights in general, see M. Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon, 1994), pp. 107-111.



## Obligations to respect, protect, fulfil economic, social and cultural rights

**Obligations to respect** require that State parties refrain from interfering directly or indirectly with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, or from unlawfully diminishing or polluting water resources.<sup>105</sup>

**Obligations to protect** require that State parties prevent third parties (including individuals, groups, corporations and other entities under their jurisdiction) from interfering with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should adopt effective legislative and other measures to prevent third parties from denying equal access to water or polluting or inequitably extracting from water sources.<sup>106</sup>

**Obligations to fulfil** can be disaggregated into obligations to facilitate, promote and provide. The CESCR indicates that State parties are to *facilitate* a right by taking positive measures to assist individuals and communities to enjoy the right. State parties are to *promote* a right, for example, by ensuring that there is appropriate education concerning the hygienic use of water, the protection of water sources and methods to minimise wastage. State parties are obliged to *provide* a right when individuals or a group are unable, for reasons beyond their control, to realise that right themselves by the means at their disposal.<sup>107</sup>

## 2.2 Domestic law

In 1992, the Israeli Knesset passed the Basic Law-Human Dignity and Liberty. It stipulates that there shall be no violation of the life, body or dignity of any person and that all persons are entitled to protection of their life body and dignity.<sup>108</sup> The same law also guarantees that there shall be no violation of the property of a person.

The Basic Law-Freedom of Occupation 1994 proclaims that basic human rights are founded on the recognition of the “value of the human being, the sanctity of human life; and the principle that all persons are free”.<sup>109</sup>

Most specifically, the Water Law 1959 guarantees the right of “every person to receive and use water subject to the provisions of this law”. Section 6 stipulates the recognised purposes of water uses as domestic, agriculture, industry, handicraft, commerce and public service.

The totality of these domestic laws confers on the right-holders (including the Bedouin of the Negev) an entitlement to be treated by the duty-bearer (the state of Israel at all levels of government) properly and in a manner that recognises their value as human beings of equal worth and status with every other person in Israel. This means that every law, policy or governmental action must in itself and its effect enhance these rights and anything to the contrary would amount to a violation by the state of Israel of its very own laws.

<sup>105</sup> General Comment No. 15, para. 21.

<sup>106</sup> General Comment No. 15, para. 23.

<sup>107</sup> General Comment No. 15, para. 25.

<sup>108</sup> Basic Law: Human Dignity and Liberty (1992) Article 2.

<sup>109</sup> Basic Law: Freedom of Occupation (1994) Article 1.



## **2.3 The relationship between Israel's domestic law and its obligations under international law**

International law stipulates that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”.<sup>110</sup> Significantly, a party to a treaty may not invoke provisions of its domestic law to justify its failure to perform a treaty.<sup>111</sup> Clearly, Israel is obliged to perform every provision of a treaty it has ratified honestly and equitably and cannot use its domestic law or policy to opt out of its treaty obligations. Legally, Israel is obliged to adopt laws, policies and measures that give effect to the range of rights guaranteed in the several treaties it has ratified. Any domestic law, policy or measure that fails to guarantee these rights or actively interferes with them is a violation of international law.

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<sup>110</sup> Vienna Convention on the Law of Treaties (1969) Article 26. The state of Israel has ratified this convention.

<sup>111</sup> Ibid, Article 27.

### 3. VIOLATIONS OF THE RIGHT TO WATER AND SANITATION IN THE UNRECOGNIZED VILLAGES

#### 3.1 Non-discrimination and attention to vulnerable and marginalised groups

A crucial aspect of the human rights framework is that everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination. Non-discrimination means that there is no distinction, exclusion, restriction or preference, which is based on any ground (e.g. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason.<sup>112</sup> The reference to ‘other status’ implies the inclusion of other grounds that lead to unequal enjoyment of the right to water and sanitation. Thus, for example, discrimination on the basis of descent, such as caste, is also prohibited by the ICESCR. ‘Social status’ may include residence in remote rural areas and informal settlements, and also refer to people living in under-privileged areas, which can constitute discrimination on the basis of social condition. Non-discrimination includes more than avoidance of active discrimination against particular groups. It also includes proactive measures to ensure that government policies and programmes do not exclude particular groups, including by failing to address the particular needs of vulnerable or marginalised groups. Other treaties to which Israel is a State party which explicitly forbid discrimination include the International Convention on the Elimination of All forms of Racial Discrimination (1965) and the International Convention on Civil and Political Rights (1966).

The Bedouin Arabs of the Negev constitute a group which is marginalized economically, socially and politically within Israeli society. The discrimination they face, in terms of water and sanitation provision, is part and parcel of a much wider process of systematic and systemic discrimination against Palestinian Arab landowners, landholders and land users since the creation of the State of Israel. The discriminatory laws Israel has employed to seize Arab property and permanently dispossess Palestinian Arabs in Israel on the basis of their national/ethnic affiliation include the Emergency Regulations, the Absentees’ Property Law, the laws and operations pertaining to land registration and settlement of title, and the Land (Acquisition for Public Purposes) ordinance of 1943.

According to the Israeli Academics Jeremy Forman and Alexandre Kedar “The culmination of the process was the integration of appropriated Arab land into the country’s new system of Jewish Israeli ‘national land’ known as ‘Israel Lands.’”<sup>113</sup> This national land, land held for the exclusive use and benefit of the Jewish people, comprises 93% of the total area in the state. The land is owned and held by the state (including the Development Authority and Israel Land Administration) and para-state agencies (including the World Zionist Organization and Jewish National Fund). No similar laws or agencies work to protect Arab land or property ownership in

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<sup>112</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), UN. Doc. E/C.12/2002/11 (2003), para. 13, *See also* ICESCR, Art. 2.2, United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, section 3.1 and UN Human Rights Committee, *General Comment No. 18: Non-discrimination*, para. 7.

<sup>113</sup> *Ibid.* p.809.

Israel. Palestinians Arabs living in Israel, who constitute around one-fifth of the population, some 1.2 million people, own less than 3 percent of the lands.<sup>114</sup> Discriminatory policies continue today to violate the rights of the Arab population within Israel including to an adequate standard of living and housing, water and sanitation, and rights to livelihood and cultural heritage. Moreover, those who have been or continue to be the victims of such serious human rights violations have not received adequate restitution and compensation for their losses, which is recognized as being the appropriate remedy under international law.

The dispossession of the Bedouin of the Negev is ongoing, hand in hand with the appropriation of Negev land for exclusively Jewish use. The Negev Land Acquisition Treaty (Peace Treaty with Egypt) Law of 1980 expropriated Bedouin Arab property and removed some 8,000 Arab farmers from their lands<sup>115</sup> when Israel pulled its military bases out of the Sinai and chose to relocate them to Be'er Sheva where the majority of the Negev's Bedouin are concentrated. Current proposals for developing the Negev, including the National Strategic Plan for the Development of the Negev (Negev 2015), The National Outline Plan (NOP 35) and the Beersheba Metropolis Plan (DOP 4/14/23), seek to attract a large number of Jews from Israel's central region to the Negev (the Negev comprises 60% of Israel's territory yet is inhabited by only 8% of the country's population) and concentrate the Bedouin into government designated townships.<sup>116</sup> The establishment of an Authority for Bedouin Settlement Arrangements in the Negev is consistent with these plans. The Government of Israel seeks to remove the Bedouin from the land, transfer the land to Jewish citizens and concentrate the Bedouin into designated enclaves under the guise of 'development', 'urbanisation', and 'modernisation'. The refusal on the part of the government of Israel to provide the unrecognized villages of the Negev with basic services such as water and sanitation further these goals. These policies constitute flagrant discrimination against the Arab Bedouin population who have the right to access water and sanitation services and facilities, participate in any development plans affecting them, to choose their own path of development, and to continue to practice their culture and way of life which is predominantly rural and based on small scale farming.

The United Nations Committee on Economic, Social and Cultural Rights, which monitors State parties implementation of the ICESCR, highlighted the current wide-spread discrimination faced by non-Jewish minorities in Israel. In its concluding observations the Committee stated that it is:

...deeply concerned about the continuing difference in treatment between Jews and non Jews, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory. The Committee reiterates its concern that the "excessive emphasis on the State as a 'Jewish State' encourages discrimination and accords second-class status to its non-Jewish citizens" ... This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap. In this regard, the Committee expresses its concern

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<sup>114</sup> COHRE & BADIL, *Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*, (May 2005), p.64.

<sup>115</sup> COHRE & BADIL, *Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*, (May 2005), p.54.

<sup>116</sup> For a detailed discussion of these plans, and how they affect the Bedouin communities in the Negev see: Swirski, S, 'Current Plans for Developing the Negev: A Critical Perspective', (January 2007) Adva Center: Information on equality and social justice in Israel, [www.adva.org](http://www.adva.org).

that the State party's domestic legal order does not enshrine the general principles of equality and non-discrimination.<sup>117</sup>

By applying discriminatory policies in terms of water and sanitation provision, Israel is in violation of its international legal obligations under the ICESCR. General Comment No. 15 states that, "States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society."<sup>118</sup> Further, ensuring "the right of access to water and water facilities and services to all on a non-discriminatory basis, especially for disadvantaged or marginalized groups"<sup>119</sup> is a core obligation of the right to water and sanitation and must be implemented immediately especially as Israel has both the financial resources and technical capability to do so.

### 3.2 Water availability and allocation

Water supply for each person should be sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The amount of water available for each person should be consistent with World Health Organization guidelines.<sup>120</sup> While it is important to prioritise the use of water for essential personal and domestic uses over agricultural and industrial uses, the next priority is to allocate water for essential agricultural uses, particularly subsistence agriculture and animal husbandry, as well as ensuring maintenance of ecological flows.

Israel has an extensive and efficient water provision system; 98% of Israeli citizens have fresh water 'on tap' in their homes.<sup>121</sup> 100% of Israelis in urban areas have access to improved sanitation.<sup>122</sup> There is therefore a total lack of parity between the situation for most citizens of Israel and the Bedouin of the unrecognized villages of the Negev who have no basic service provision including electricity, water and sanitation. Further, there are wide disparities in per capita consumption of water between communities in Israel; the per capita consumption in Savion, one of Israel's richest communities, averages 383 cm [cubic metres] per year, and in Tel Sheva, a Bedouin community, the average per capita consumption is 29.1 cm per year.<sup>123</sup> The World Health Organization (WHO) sets the standard of 100 litres of water per person per day to ensure that all health concerns are met.<sup>124</sup> The average Israeli consumes 135 litres of water per person per day.<sup>125</sup> However in the Bedouin community of Abo Tlool average daily per capita

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<sup>117</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, UN. Doc. E/C.12/1/Add.90 (2003) para. 16

<sup>118</sup> General Comment No. 15, para. 14.

<sup>119</sup> General Comment No.15, para. 37 (b).

<sup>120</sup> General Comment No. 15, para 12 (a).

<sup>121</sup> Information provided to COHRE by Wasim Abbas, Coordinator for the unrecognized villages, Physicians for Human Rights, February 2008.

<sup>122</sup> World Health Organisation & United Nations Children's Fund Joint Monitoring Programme for Water Supply and Sanitation, *Coverage Estimates, Improved Sanitation: Israel*, (June 2006), [www.wssinfo.org](http://www.wssinfo.org). The term 'improved sanitation facilities' refers to facilities that are likely to ensure privacy and hygienic use, such as a connection to a public sewer or simple pit latrine. Sources such as public or shared latrines are assumed to be unsafe.

<sup>123</sup> Keinan, T, 'Water Justice: Water as a Human Right in Israel', *Global Issue Papers*, No.15, (March 2005), p.16.

<sup>124</sup> Howard, G & Bartram, J, *Domestic Water Quality, Service Level and Health*, World Health Organization, (2003), p.22.

<sup>125</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages on the Negev*, Mau 2006. p.28.

consumption is 93 litres, and in Ateer/Um Al-Hiran average consumption is 92 litres.<sup>126</sup> In reality water consumption per person per day in these communities is much lower as the figures given include the use of water by a large number of animals/livestock which are also provided with water from the same water point.

The governmental policy of refusing to recognize many Bedouin Arab villages in the Negev and provide them with basic services stems from the Planning and Building Act of 1965. This law stipulates that any building built without the appropriate permit may not be connected to the water, electricity or telephone systems and may even be demolished.<sup>127</sup> The law is in contradiction to Israel's international legal obligations with which domestic law should be consistent. General Comment 15 makes clear that "No household should be denied the right to water on the grounds of their housing or land status".<sup>128</sup> Refusing to provide even the most basic access to water and sanitation to the Bedouin communities of the unrecognized villages constitutes a violation of their right to non-discrimination and a sufficient quantity of safe water necessary for human dignity, life and health.

The situation of Bedouin communities in the unrecognized villages of the Negev, is in stark contrast to the situation of many Jewish citizens, who, having built individual farms in remote areas of the Negev, often without the required permits, are immediately connected to the water supply. Unlike other Israeli citizens, the residents of the unrecognized villages must apply for authorization for a private water connection to be established by Mekerot, the national water company.<sup>129</sup> The authorization has to come from the Drinking Water Allocation Committee, located at the Bedouin Development Authority, a subdivision of the Israel Lands Administration (ILA).<sup>130</sup> Decisions made by this committee are delivered on an arbitrary and ad hoc basis with few residents receiving the required authorization to be connected to the water supply. Applications to the committee can only be from individual applicants (representing at least 10 families), so other residents of the village must themselves attach secondary pipes if they wish to connect the pipelines to their homes, at their own personal expense and lacking any technical knowledge of constructing water infrastructure, as well as pay the owner directly to use the water.<sup>131</sup> The Coalition of Organizations for the Right to Water argues that "The current situation, where some of the residents have private connections, has created a situation of intense internal inequality within Bedouin society, creating a fierce struggle over this vital resource and creating the possibility for profiteering and the exploitation of residents by their neighbours."<sup>132</sup> The Negev Coexistence Forum for Civil Equality also notes that:

According to the Annual Report of the Israel Land Authority, in 2003 the Water Connections Allocation Committee of the ILA met 4 times and considered 80 different applications of Arab-Bedouin citizens for water connection. However, only 6 applications were approved. In some cases, the committee approves temporary water connections for a period of one year, as in the case of residents from the

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<sup>126</sup> Ibid. p.29.

<sup>127</sup> Benvenisti, E & Shaham, D, 'Facially Neutral Discrimination and the Israeli Supreme Court', *International Law and Politics*, Vol.36:677, (2005) p.692.

<sup>128</sup> General Comment No. 15, para. 16 (c)

<sup>129</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006).

<sup>130</sup> For more information on the Drinking Water Allocation Committee see section 3.7 below.

<sup>131</sup> Ibid. p.11.

<sup>132</sup> The Coalition of Organizations for the Right to Water, *Water=Life: Ensuring the Right to Water for the Residents of the Unrecognized Villages in the Negev*. The Coalition of Organizations for the Right to Water includes the following organizations: Al Jamaheer; Community Advocacy; Forum of Representatives and Activists of the Water Groups (established and guided by Community Advocacy); Friends of the Earth-Middle East; Israel Religious Action Center; Israel Movement for Progressive Judaism; Physicians for Human Rights-Israel; The Regional Council for the Unrecognized Villages in the Negev.

unrecognized village of Abde. In addition, the residents are required to pay an unreasonable price of more than \$2,500 for the connection. As a result, these villagers cannot obtain the water access point *de facto*.<sup>133</sup>

From 2003-2006 the Water Allocation Committee of the ILA received 210 requests for water connections and approved water pipes for only 30 of these.<sup>134</sup>

Moreover, the water infrastructure the residents of the unrecognized villages are obliged to construct does not ensure adequate availability of water. The water connections must be of a very narrow diameter, usually one inch, which consequently causes the water pressure to be very low and does not allow for a sufficient supply for a large number of people. Further, as many people establish a connection pipe from the water pipeline to their homes, and these pipelines are above ground, they cause an obstruction to passers-by and due to their exposure to the elements cause the water to freeze in winter and become boiling hot in summer months.<sup>135</sup>

Under the terms of the ICESCR, Israel is obliged to immediately extend water and sanitation services to unserved communities, ensuring that all persons within its territory have access to the minimum amount of safe water on a non-discriminatory basis and irrespective of housing or land tenure. Israel may adopt a relatively low-cost targeted water programme in the interim with a view to upgrading infrastructure in the future to bring it in line with the general national standard of water and sanitation service provision.

### 3.3 Physical accessibility of water and sanitation

Water and sanitation services and facilities should be accessible within, or in the immediate vicinity, of each household, educational institution and workplace and which are in a secure location and do not pose a threat to physical security.<sup>136</sup> Sanitation must be safe, adequate and conducive to the protection of public health and the environment. Lack of access to water and sanitation has a severe effect on human health, exacerbates poverty and undermines economic development.

Whilst 98% of Israeli citizens have access to running water in their homes, the unrecognized villages are not connected to water infrastructure. Most of the inhabitants of the unrecognized villages have to travel several kilometres to the nearest water access points where they fill their water containers and transport them back to the village by donkey or in water tanks attached to tractors. This is a time consuming process which limits the ability of those responsible for water collection to engage in other work or activities. A survey carried out in 2004 by the Regional Council for the Unrecognized Villages in the Negev found that around 47% of villagers were connected to private water connections, 45% obtained their water via containers and 8% via animals.<sup>137</sup> Many villages such as Wadi Al-Naam, Wadi Al-Mshash, Tel Almeleh and Um Al-Hiran have no access to a water connection.

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<sup>133</sup> The Negev Coexistence Forum for Civil Equality, *The Arab Bedouins of the Naqab-Negev Desert in Israel*, Shadow Report submitted to the United Nations Committee on the Elimination of Racial Discrimination, May 2006.

<sup>134</sup> Information provided to COHRE by Shmulik David, Lobbying Consultant, Shatil, February 2008.

<sup>135</sup> The Coalition of Organizations for the Right to Water, *Water=Life: Ensuring the Right to Water for the Residents of the Unrecognized Villages in the Negev*.

<sup>136</sup> General Comment No. 15, para. 12 (c) (i), 29, Sub-Commission Guidelines section. 1.3 (a)-(c).

<sup>137</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), p.30.

The WHO highlights the importance of the physical accessibility of water services. It considers that if a water point is located more than 1,000 metres away from the home, or it takes users over 30 minutes to collect water, it is likely that the levels of water consumption per person will be very low and pose a very high threat to health as hygiene cannot be assured and consumption need may be at risk. Optimal access is defined as water piped into the home through multiple taps as this ensures the 100 litres per person per day necessary to maintain good health.<sup>138</sup> Residents of the unrecognized villages of Atter and Um Al-Harin have to travel a number of kilometres to use a single water connection, the connection was approved by the Water Allocation Committee and established by Mekorot on the basis that it supplies 23.1 litres per person per day, well below WHO recommended levels.<sup>139</sup>

The unrecognized village of Tal A'rad has some 1,600 inhabitants. There is no electricity in the village and no secondary school, the nearest one being located 15 km away. Whilst the primary school in the village is connected to the main water system, none of the houses are connected. The families of the village must travel 1 km to reach the nearest water point; a private connection established by a resident of a nearby village. Before this, the residents of Tal A'rad had to travel 7 km to access the nearest water point. Digging wells in the village is forbidden. As one resident said, "In the past we built cisterns to collect water, but now the State/Mekorot has a monopoly on water".<sup>140</sup>

There is very low water pressure at the water points and the water is limited resulting in prohibitive waiting times for those who need to fill their water tanks. One resident told us that to fill the tanks can take over an hour. Often the water at the water point stops running and families from Tal A'rad village are subsequently obliged to travel 15km to the next nearest water supply. Having to collect and store water in tanks severely limits the amount of water available; residents must conserve water and restrict the quantities they use for drinking and personal and domestic hygiene. For some families a tank of water, which can store up to 4000 litres, lasts 2-3 days, for others 2 weeks. Many villagers are unable to take a shower. None of the houses in Tal A'rad have toilets, there are a few places that have shared facilities but most residents must practice open defecation. Not only does this unhygienic practice carry health risks and contribute to the contamination of underground water sources, it also does not provide adequate privacy, dignity or safety for members of the community, especially women.

The Sub-Commission Guidelines state that, "States should at all levels of government: ... Give priority in water and sanitation policies and programmes to the persons without any basic access".<sup>141</sup> Under the terms of the ICESCR the government of Israel is obliged to ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and water and sanitation facilities that are at a reasonable distance from the household.<sup>142</sup> Water and sanitation facilities and services should be culturally appropriate and sensitive to gender, life-cycle and privacy requirements<sup>143</sup> and conducive to the protection of public health and the environment.<sup>144</sup> Further "communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose to manage their own

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<sup>138</sup> Howard, G & Bartram, J, *Domestic Water Quality, Service Level and Health*, World Health Organization, (2003), p.22.

<sup>139</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), p.42.

<sup>140</sup> COHRE interview with Auad Al-Nabari, Head of Tal A'rad Village Committee, October 2007.

<sup>141</sup> Sub-Commission Guidelines, section. 2.3(a).

<sup>142</sup> General Comment No. 15, para. 37.

<sup>143</sup> General Comment No.15, para. 12 (c) (i)

<sup>144</sup> Sub-Commission Guidelines, section 1.2

services with assistance from the State.”<sup>145</sup> As lack of access to water and sanitation services on the grounds of housing or land status is strictly prohibited under the ICESCR, the Sub-Commission guidelines make clear that “Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities.”<sup>146</sup> Israel must extend water and sanitation services to areas where basic access is currently lacking in order to comply with its international obligations.

### 3.4 Water quality and hygiene

Water should be safe and in particular, free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users.<sup>147</sup> Drinking contaminated water transmits waterborne diseases such as cholera, typhoid, diarrhoea, viral hepatitis A, dysentery and dracunculiasis (guinea worm disease). Insufficient water for washing and personal hygiene leads to water-washed diseases, such as trachoma, and a lack of sanitation facilities can exacerbate water-based diseases such as schistosomiasis and place undue pressure on the bladder and bowels. Stagnant or still bodies of water can serve as a habitat for insects, such as the mosquitoes responsible for malaria, dengue fever and yellow fever.<sup>148</sup>

The health situation of the Bedouin of the Negev is in general very poor and exacerbated by the lack of medical care, health clinics and hospitals available to them. Many of the health problems faced by the Bedouin are a direct result of inadequate water and sanitation services and facilities. Physicians for Human Rights notes a number of water related health problems among the Bedouin Arabs of the Negev including:

- **Dehydration:** The way of life in the unrecognized villages is physically demanding, especially due to the lack of transport available, and fluid loss from the body is often not replenished.
- **Intestinal conditions:** The Bedouin suffer from Giardia lamblia, Rota virus, Cryptosporidiosis and E-coli. In the hot month of August dysentery causes the hospitalization of around 16,000 Bedouin children as compared to 5,000 Jewish children, even though the Bedouin account for a much smaller proportion of the population.
- **Skin disease:** Lack of proper hygiene and sanitation cause high instances of infection and skin diseases such as scabies.
- **A high infant mortality rate:** Whilst in 2004 the average national infant mortality rate for Israel was 4.73 per 1,000 live births, the infant mortality rate amongst the Bedouin of the Negev is 15.8 per 1,000 live births. Whilst a proportion of this figure may be attributable to congenital defects (around 40%) due to the high proportion of inter-familial marriage, a lack of access to/availability of water were found to be a causal factor of infant mortality.<sup>149</sup>

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<sup>145</sup> Sub-Commission Guidelines, section 8.2.

<sup>146</sup> Ibid. section 5.4.

<sup>147</sup> General Comment No. 15, para. 12 (b).

<sup>148</sup> For further information about diseases related to a lack of access to adequate water and sanitation facilities, see [http://www.who.int/water\\_sanitation\\_health](http://www.who.int/water_sanitation_health).

<sup>149</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), pp. 35-37.



The metal containers used to store water in the unrecognized villages are not covered and subsequently oxidise and require regular maintenance and cleaning every three weeks. In Tal A'rad village COHRE was informed that one elderly man fell into a water container whilst cleaning it and drowned. The residents of unrecognized villages often build cisterns on the hill tops to collect rain water but these fill with insects and other debris which also contaminate the water. The pipes which villagers connect to the containers to transport water down to the villages often rust and further threaten people's health. Exposure to the elements means that water is frequently unpleasant and foul-tasting.



In order to protect public health governments should have water quality standards in place and periodically assess whether water is free from contaminants constituting a threat to health at both water sources and points of access. In Israel the Ministry of Health is responsible for the quality of domestic drinking water, including standard setting, sampling and testing, and is authorized to prohibit certain sources as a source of drinking water.<sup>150</sup> Mekorot and local authorities also have a role to play in guaranteeing water quality for consumers and test water quality at various water points. However, the unrecognized villages have no local authority and responsibility for regular sampling or monitoring of water sources or outlets has not been assumed by any other body. The absence of a local authority for the unrecognized villages does not absolve the Government of Israel of its responsibility to ensure the right to health, and water of an acceptable quality, is guaranteed for all of its citizens, whether through public or private provision.

The lack of adequate sanitation facilities and services also causes unhygienic conditions, constituting a grave threat to public health and contaminating ground water supplies. A stream of sewage runs through the Bedouin village of Umm Betin (a village which has recently been officially recognized). Known in Hebrew as Nachal Hevron (the Hebron/Khalil stream) this sewage flows through the village from the occupied Palestinian territories (oPt) partly as a result of the cancellation of sewerage programmes in the oPt by aid agencies such as USAID following the outbreak of the second Intifada. This stream of raw sewage is not only a potential source of disease but also places intolerable living conditions on the residents of Umm Betin. In 2007 subsequent to an appeal before the Supreme Court the government agreed to address the situation in Umm Betin and has been taking steps in this regard. Under the terms of the ICESCR, State parties are obliged "To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation."<sup>151</sup>

### 3.5 Affordability of water and sanitation

Water and sanitation must be affordable for all and secured without reducing any person's capacity to acquire other essential goods and services, including food, housing, health services and education.<sup>152</sup> For the Bedouin Arabs of the unrecognized villages, water, so essential to human life, has become an expensive commodity and is around 10 times higher in cost than

<sup>150</sup> Keinan, T, 'Water Justice: Water as a Human Right in Israel', *Global Issue Papers*, No.15, (March 2005), p.21.

<sup>151</sup> General Comment No. 15, para. 37.

<sup>152</sup> General Comment No. 15, para. 12 (c) (2), Sub-Commission Guidelines, section 1.3 (d)

water piped directly into Israeli citizen's homes. Due to not being connected to the water system, residents of the unrecognized villages must pay for the truck (if they do not own one), or other transport, fuel and containers with which to collect their water on top of the cost of the water itself. In the village of Tal A'rad, some families were paying 400 NIS per week (aprox. US\$ 111) out of an average household income of 4,000 NIS per month: i.e. around 40% of their monthly income. This undoubtedly reduces their ability to obtain other essential goods to which they have a human right and which are necessary in order to live a life in dignity. It must also be borne in mind that there currently exists a very high unemployment rate within the unrecognized villages.

The owner of the connection that other villagers use also has substantial costs to pay; not only to the national water company Mekorot for the connection and water, but also for the person who stands guard at the tap. Further, where water is provided by unregulated third parties, a high opportunity for exploitation of this vital resource exists. The Sub-Commission Guidelines indicate "States should at all levels of government ... Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations."<sup>153</sup> General Comment No. 15 states "Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water"<sup>154</sup>

In Israel the water supply is cut off for communities where the local municipality or individuals have not paid their water debts to the national water company Mekorot.<sup>155</sup> Whilst this happens rarely, it disproportionately affects Arab villages and towns, which are generally poorer than Jewish municipalities.<sup>156</sup> In October 2007, COHRE learnt that the water supply had been disconnected in the biggest of the government planned townships, the city of Rahat. The government disconnected the water supply on the basis of non payment including to kindergartens and schools and a number of residents who had paid their bills, which constitutes collective punishment.<sup>157</sup> Whilst it is recognized that disconnection is one form of control that water utilities have for ensuring payment for water delivered, there are specific criteria in situations of disconnection due to non-payment. General Comment No. 15 states "Before any action that interferes with an individual's right to water is carried out. ... based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water."<sup>158</sup> The Sub-Commission Guidelines state that: "No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services."<sup>159</sup> These standards have been interpreted by the United Nations High Commissioner for Human Rights as follows:

[T]he quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source which can provide a minimum amount of safe drinking water to prevent disease. In this respect, there is a strong presumption that disconnections of institutions

<sup>153</sup> Sub-Commission Guidelines, section. 2.3 (e).

<sup>154</sup> General Comment No. 15, para. 24

<sup>155</sup> Keinan, T, 'Water Justice: Water as a Human Right in Israel', *Global Issue Papers*, No.15, (March 2005), p. 4.

<sup>156</sup> Ibid. p.28.

<sup>157</sup> COHRE interview with Sunny Kalev, lawyer from The Israel Religious Action Centre, October 2007.

<sup>158</sup> General Comment No. 15, para. 56.

<sup>159</sup> Sub-Commission Guidelines, section 6.4.

serving vulnerable groups, such as schools, hospitals and refugee camps are prohibited.<sup>160</sup>

Courts in Argentina, India, Brazil and South Africa have reversed decisions to disconnect people from the water supply based on an inability to pay.<sup>161</sup> Further, cases of discrimination in disconnection of basic services have been won in the courts. In Bulgaria a Romani man was disconnected from the electricity network. The Sofia District Court ruled that the plaintiff had suffered discrimination as this practice disproportionately affected Romani communities, and ordered the electricity company to reinstate his access to electricity.<sup>162</sup>

Whilst the human right to water and sanitation prioritizes water for personal and domestic uses, it is recognized that access to an adequate amount of safe water is also essential for guaranteeing other human rights such as the right to livelihood, food and enjoying cultural practices.<sup>163</sup> COHRE welcomes the recent Israeli government decision to finally allow Bedouin sheep herders to receive water at the subsidized rate available to other farmers after facing years of discrimination in terms of water pricing policy.

In order to fulfil its legal obligations to ensure the right to water and sanitation for all residing within its territory, the Government of Israel is obliged, under the terms of the ICESCR to ensure that water services, whether publicly or privately operated are affordable for all, including the Bedouins of the unrecognized villages of the Negev. The Government of Israel should also immediately cease its policy of disconnecting the water supply on the basis of non-payment to households where they are unable to access alternative water and sanitation services and especially to institutions servicing vulnerable groups such as kindergartens and schools.

### 3.6 Participation and access to information

All people have the right to participate in decision-making processes that may affect their rights. The United Nations Human Rights Committee has stated that State parties to the International Convention on Civil and Political Rights are obliged to take “measures to ensure the effective participation of members of minority communities in decisions which affect them.”<sup>164</sup> The 1992 Minorities Declaration also states that “persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live.”<sup>165</sup> Yet the Bedouin of the Negev are marginalized from the political process in Israeli society, as well as decision making with relation to development plans that affect their lives. This has led to their needs not being prioritized and resulted in, amongst other things, their inequitable access to water and sanitation facilities and services.

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<sup>160</sup> *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, para. 59.

<sup>161</sup> M. Langford, A. Khalafan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions COHRE, 2004), p.111.

<sup>162</sup> See *Mr. Rumén Grigorov v. the Sofia state-owned electricity company*, decision adopted 12 July 2004.

<sup>163</sup> General Comment No. 15, para.6.

<sup>164</sup> United Nations Human Rights Committee, *General Comment No. 23: The Rights of Minorities (Article 27)*, (1994) UN Doc. CCPR/C/21/Rev.1/Add.5, para. 7.

<sup>165</sup> *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, (adopted by General Assembly Resolution 47/135 of 18 December 1992).

The Authority for the Residential Settlement of the Bedouin in the Negev was established by Cabinet Resolution No.1999 of 15 July 2007 within the Ministry of Construction and Housing. The Ministry of Construction and Housing makes clear that the goal of the policy is “to structure the residential settlement of the Bedouin in the Negev within approx. 5 years”, with secondary goals including “to resolve the issue of land ownership claims” and “for every Bedouin in the Negev to reside in a legally regulated residential location”.<sup>166</sup> The current committee (the Goldberg Committee) is charged with submitting policy recommendations to the government regarding Bedouin settlement arrangements in the Negev.<sup>167</sup> Whilst the Committee headed by retired Supreme Court Judge and State Comptroller Eliezer Goldberg, will include three government representatives, nominated by the Prime Ministry, Housing Ministry and Finance Ministry, and four public representatives, appointed by the Minister of Construction and Housing, two of whom will be Bedouins, it is of great concern that not one representative from the unrecognized villages sits on the Committee. Current development plans for the Negev region emphasise the relocation of Bedouin communities into governmental urban enclaves. If full and meaningful participation of the Bedouin themselves in the development and execution of such plans existed, then maybe other solutions could be found more suitable to the specific cultural, religious and social aspects of Bedouin society. In particular, allowing them to remain on their historic lands and preserve their traditional way of life, which may in fact necessitate recognizing the unrecognized villages.

All people should be given full and equal access to information concerning water, sanitation and the environment. The right to water and sanitation, in common with all human rights, is linked to the right to participate in decision-making. Thus, it provides for all persons to be given a genuine opportunity to influence and enhance policy formulation and improvements in the water and sanitation sector. In Israel, access to information concerning water is generally poor, with water issues often being seen as national security issues. Whilst laws such as the Freedom of Information Law and Municipalities Ordinance (clause 238b) require information regarding the quantity and quality of water to be made available to the public, accessing information regarding national water policies is generally very difficult.<sup>168</sup> The former Water Commission was one of the few government departments which had no website and it was often necessary to petition the Supreme Court to obtain information from the Water Commissioner in line with the Freedom of Information Law.<sup>169</sup> The Water Commission was recently replaced by the Water Authority, which took over the Commission’s legal authorities designated under the Water Law. The new Water Authority has improved the situation regarding access to information and has established a website. General Comment No. 15 says: “Individuals and groups should be given full and equal access to information concerning water, water services and the environment held by public authorities or third parties.”<sup>170</sup> This is essential to enable informed participation as well as ensuring transparency.

General Comment No. 15 states: “The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.”<sup>171</sup> Governments have a responsibility, not only to promote and facilitate participation, but also to protect peoples’ right to participate in decisions that affect them. Decisions passed by the Drinking Water Allocation Committee

<sup>166</sup> Ministry of Construction and Housing, *Residential Settlement of the Bedouin in the Negev: Current Situation, Policy and New Organizational Structure*, Presentation, April 2007.

<sup>167</sup> Cabinet Resolution No. 1999, *Establishment of an Authority for Bedouin Settlement Arrangements in the Negev*, 15 July 2007, Unofficial Translation.

<sup>168</sup> Keinan, T, ‘Water Justice: Water as a Human Right in Israel’, *Global Issue Papers*, No.15, (March 2005), p. 27.

<sup>169</sup> Ibid.

<sup>170</sup> General Comment No. 15, para. 48. See also Sub-Commission Guidelines, section 8.3.

<sup>171</sup> General Comment No. 15, para. 48.

regarding connecting residents of the unrecognized villages to the water supply have been delivered without the participation of residents themselves and with little explanation for the basis of the Committee's decisions (see Section 3.7 below). Residents of the unrecognized villages or those representing them, are not invited to appear before the Committee or given information regarding the dates when their petitions are being discussed.<sup>172</sup> Physicians for Human Rights, has submitted a number of petitions to the Drinking Water Allocation Committee on behalf of ten families or more, demanding that they be provided with an adequate quantity of water, some of which did not even receive a final response.<sup>173</sup> Further it is of concern that "most of the committee members are representatives of organizations and institutions who aim to restrict the Bedouin Arab's living space, to exercise control over them and concentrate them in townships."<sup>174</sup> The Committee includes representatives of the military and police, whilst no representative from the Ministry of Health sits on the Committee and only one representative from the Arab Bedouin Community.

Under the terms of the ICESCR, Israel is legally bound to ensure the participation of all groups in the decision making process that affect their right to water and sanitation, ensuring the equitable representation of vulnerable and traditionally marginalized and excluded groups such as the Bedouin of the Negev. The Bedouin of the unrecognized villages also have the right to determine the kind of water and sanitation services they require, how those services should be managed and, where possible, to operate such services themselves with assistance from the State.<sup>175</sup>

### 3.7 Accountability

Persons or groups denied their right to water and sanitation must have access to effective judicial or other appropriate remedies, for example courts, national ombudspersons or human rights commissions. Moreover "All victims of violations of the right to water and sanitation should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition."<sup>176</sup> Despite repeated efforts by the inhabitants of the unrecognized villages to secure access to water services the Israeli government, including the executive, the legislative and the judicial branches, has failed to provide an adequate, fair and effective remedy for violations of the right to water and sanitation suffered by Bedouin Arab communities.

In 2001, Adalah (The Legal Center for Arab Minority Rights in Israel) petitioned the Israeli Supreme Court demanding that 71 residents of seven unrecognized villages be connected to the national water network.<sup>177</sup> However, after approving the connection of around 58 water access points for several villages, the petition was suspended and the Court decided that Bedouin Arabs should instead approach The Drinking Water Allocation Committee with their claims.

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<sup>172</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), pp. 44-45.

<sup>173</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), p.46.

<sup>174</sup> Ibid. p.44.

<sup>175</sup> Sub-Commission Guidelines, Section 8.2.

<sup>176</sup> General Comment No. 15, para.55.

<sup>177</sup> Adalah, 'Adalah to Supreme Court: Using Water Resources as a Way of Exerting Pressure on Arab Bedouin to Leave Unrecognized Villages in the Naqab is illegal', News Update, 12 December 2007.

### FOCUS: The Drinking Water Allocation Committee

The Drinking Water Allocation Committee (the Committee) is formally an advisory body for the Water Commissioner. It is mandated to facilitate connecting residents of the unrecognized villages to the water network, and recommend to the Water Commission whether or not to approve a private water connection. Originally established in the early 1990s by the Ministry of Agriculture, the Committee has since been transferred to the Bedouin Development Authority a sub-division of the Israel Land Administration. The Committee is therefore distanced from the professional body that is responsible for water resources and allocation and instead located within the body responsible for managing public land which is the property of the state, the Jewish National Fund or the Development Authority. An immediate conflict of interest is apparent as the Committee's role is to fulfil water needs. This conflict is compounded by the inclusion of representatives from the police and military, who participate in decision making, and the absence of representatives from the Ministry of Health, disregarding the importance of clean water provision as a fundamental aspect of the right to health and the well being of individuals.

In the workings of the Committee there is an absence of any clear criteria upon which the Committee bases its decisions in the allocation of a scarce natural resource. Moreover, a lack of transparency is evident as there are no clear regulations governing Committee conduct and no records taken of meetings which would make information available to those petitioning the Committee. This is especially important as petitioners are not invited to Committee meetings or given a chance to present their claims. The majority of requests for connection are rejected and decisions are arbitrary, often with no explanation behind the rejection. If a reason is given it is invariably that the petitioner may move to a government designated town, where s/he will be connected to the water supply and all other basic services. A number of petitions were also rejected on the basis of technical issues with excuses such as the calibre of water pipes.

As the Committee is only authorized to approve individual connections (see section 3.2 above) this does not provide an adequate solution to the widespread lack of access to safe, sufficient and affordable water for all the inhabitants of the unrecognized villages.

In 2003 and 2004 Adalah petitioned the Drinking Water Allocation Committee on behalf of 128 families requesting additional water access points. The Water Commissioner denied most of the villager's requests on the grounds that the Arab Bedouin of the unrecognized villages should relocate to government townships in order to be provided with basic services, including water. In April 2005, Adalah filed an appeal to the Haifa District Court (Water Tribunal) against the decision of the Water Commissioner. In September 2006, the Court rejected the appeal as, according to Judge Ron Shapira, behind the appeal lies the issue of the regularization of "Bedouin settlements" and that it was in the interests of the public "not to encourage additional illegal settlement".<sup>178</sup> According to Adalah, "The court's decision in effect makes the water commissioner a tool in the hands of the government, which works to expel Arab-Bedouin citizens, residents of unrecognized villages in the Negev, through the non-provision of basic services, such as the right to clean drinking water."<sup>179</sup> On 2 December 2007, Adalah filed an appeal to the decision with the Supreme Court. One of the main arguments in this appeal is that the recommendations of the Drinking Water Allocation Committee are invariably accepted without any sign of independent consideration by the Water Commissioner, therefore the Drinking Water Allocation Committee has moved beyond a purely advisory role and is the real decision maker regarding whether or not to approve connections to the water supply.

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<sup>178</sup> Yoav Stern, 'Court Rejects Bedouin villager's request for clean water connection', Haaretz, 25 September 2006.

<sup>179</sup> Ibid.

Adalah is not the only organization to support the Bedouin Arab residents of the unrecognized villages to achieve their right to water and sanitation through the Israeli judicial system. Likewise the organization Community Advocacy has been representing four groups from the unrecognized villages (around 600 people) at the Water Tribunal in Haifa. A background to one of the cases follows:

#### **A water connection for Suleiman Abu Ayish, Wadi Anni'am**

Suleiman's father, Eid, has worked for many years for the Jewish National Fund planting and irrigating trees. But for his family who lives in one compound in the unrecognized village of Wadi Anni'am he has been unable to obtain water. Eid's July 2004 request was discussed by the Water Committee in September 2004 and denied.

The family had access to some water in the past via a neighboring family's connection. In recent years this partnership dissolved, leaving 50 the Abu Ayish family without consistent provision of water to their home. The family has subsequently gone back to watering their livestock with water from pits that fill up during the winter. This water is not tested and its quality unknown.

Before submitting a formal application, Eid's son Suleiman arrived at the Bedouin Authority's offices, where he was told explicitly that if he "made noise" (i.e., contacted the media, O.A), he would "get just the opposite". He was told to sit quietly at home, or, as one of the Authority's staff told him, "Go away and don't come back." Suleiman, whose primary objective was to obtain a water connection, did as he was told.

After his father's request was denied, Suleiman Abu Ayish submitted a new application for a water connection in December 2004, on behalf of 142 residents of 15 neighboring families, with the help of the Community Advocacy organization.

As if the fact that nearly 150 people live alongside each other without a water connection is not reason enough to connect them to a water supply, in this case there is another reason. Suleiman has a child with Down syndrome and special needs. The burden of obtaining water is an added responsibility beyond that which a family with a child with Down syndrome carries in any case.

For months no reply was received regarding the water connection. On August 19, 2005, Suleiman Al-Grinawi, Community Advocacy's coordinator of Bedouin Arab rights, wrote to the Bedouin Authority's chairman requesting answers: Did the committee discuss the application at its January 2005 meeting? If so, why was a reply not received? Al-Grinawi also demanded that the reply be given in writing.

It was not until November 2, 2005, eleven months after the application was submitted, that the Bedouin Authority responded. Eid's application had been denied in September 2004, and Suleiman's had been received close to the date of the committee's previous meeting (one may conclude from this that his request was not discussed, although this was not stated explicitly). In addition, the Authority stated that it regarded the second application in an identical manner to the first, but if Suleiman so requested, his application would be discussed on November 15, 2005. In other words, according to Bedouin Authority Water Committee coordinator Moshe Moshe, Suleiman's application was doomed even before it was discussed by the committee, merely because Suleiman was Eid's son, without substantive consideration of his situation and of the application which was submitted on behalf of 15 families. This runs counter to the rules of administrative law that entitle a person to be heard before his case is decided.

On November 28, 2005, Community Advocacy's Suleiman Al-Grinawi argued on behalf of Suleiman Abu Ayish and 114 family members before the committee regarding the need for a water connection.

It took about two more months for the Bedouin Authority to respond. On January 8, 2006, Moshe Moshe notified Suleiman Abu Ayish that his application had been denied.<sup>180</sup>

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<sup>180</sup> Physicians for Human Rights, *Water Discipline: Water, the State and the Unrecognized Villages in the Negev*, (May 2006), pp. 49-51.

On 11 February 2008, an article appeared in the online edition of the Globes Newspaper announcing that the claimants appeal had been rejected by the Water Tribunal on the grounds that the petition to be connected to the National Water Carrier was a means to gain de facto recognition of illegally built settlements. Barbara Epstein, Director of Community Advocacy states, “it is striking that the judge or court chose to publicize this decision even before it was received by the lawyer representing the claimants. This is clearly mixing the government’s political agenda of not recognizing the villages with the basic human right to water. It is very clear that the government, with the support of this court, is using the withholding of water to put pressure on the residents to leave their lands.”<sup>181</sup>

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<sup>181</sup> Community Advocacy, ‘Background on Water Case’, 11 February 2008.



## 4. CONCLUSIONS

At both the international and domestic levels, Israel has clear cut human rights obligations which in so far as the Bedouins of the Negev are concerned, it is not fulfilling. These obligations are not just limited to the provision of adequate water and sanitation facilities but also include giving the widest possible protection and assistance to the families, women and children of the Negev, respecting their rights to culture and to live in community with other members of their group, to an adequate standard of living, to own land and other properties, and to be free from interference with their privacy, family and home. The right to life, the most fundamental of all human rights does not only protect against arbitrary deprivations of life, it also guarantees living in dignity and respect for ones humanity.

Life in the unrecognized villages at the moment is dire, an illustration of the total absence of respect for human rights and the collapse of the social contract that exists between a people and its government. The state of Israel is definitely not starved of resources to guarantee a better quality of life for the Bedouin of the Negev, but has deliberately chosen not to do so because of its policy of relocation. Dealing in this manner with the lives and well being of the Bedouin is undignified, reprehensible and shameful.

## **5. RECOMMENDATIONS TO GOLDBERG COMMITTEE/GOVERNMENT OF ISRAEL**

- Ensure the unconditional connection of all the unrecognized villages to the national water carrier and extend water and sanitation facilities to all those currently without access, on a non-discriminatory basis and irrespective of housing or land status in line with the provisions of the ICESCR.
- Connections to the water carrier should be at an affordable price for all people and water charges in the unrecognized villages should not exceed average water costs in the rest of Israel.
- The connections must allow for water use of an average quantity.
- Without delay cease collective billing and punitive collective disconnection for water and/or sanitation and related services on the basis of non-payment.
- In the short term the Drinking Water Allocation Committee should be under the responsibility of the professional authorities until such a time when the Committee ceases to exist.
- Ensure the full and meaningful participation of Arab Bedouins especially the residents of the unrecognized villages in all decisions affecting their lives, particularly regarding water and sanitation provision. Ensure that the decisions of the Water Allocation Committee are carried out in a fair and transparent manner.
- Cease and desist any further actions, policies, or legislation that confiscates, constrains, expropriates or removes from the use, title, ownership or leasehold of Bedouin Arabs their lands and properties, including in the context of measures undertaken by the State of Israel and para-state agencies (World Zionist Organization, Jewish National Fund and their affiliates).
- Provide adequate legal recourse and remedies for those who have been victims of violations of the right to water and sanitation including financial compensation for damages incurred as a result of not having access to water.
- Make available free legal services to the populations in the Negev/Naqab, such that they may effectively challenge any and all abuses arising in this area.

## **INFORMATION ON THE CENTRE ON HOUSING RIGHTS AND EVICTIONS**

Established in 1992, the Centre on Housing Rights and Evictions (COHRE) is an international, non-governmental human rights organization committed to ensuring the full enjoyment of economic, social and cultural rights for everyone, everywhere, with a particular focus on the human right to adequate housing and adequate public services for all. COHRE is registered as a not-for-profit foundation in the Netherlands. COHRE has an international secretariat based in Geneva, and regional offices for Africa, North America, South America and Asia/Pacific.

The COHRE Right to Water Programme (RWP) was established in 2002. It advocates for reforms in international, national and local governance to achieve the right to water and sanitation for all. RWP carries out its work in conjunction with COHRE's regional programmes for the Americas, Asia-Pacific and Africa, with COHRE's thematic programmes on Litigation, Forced Evictions and Women's Housing Rights and with the support of the COHRE Advocacy Unit in Geneva and the Media Unit. RWP carries out its mandate through the following activities:

### **Supporting national implementation of the right to water and sanitation for marginalised groups through advocacy, capacity building and empowerment**

RWP works directly in partnership with national NGOs and marginalised communities and engages with government bodies to promote necessary reforms. The methods used, which depend on the needs in the particular country expressed by partners include: 1. Promoting policy and legislative reform; 2. Fact-finding investigations; 3. Training for grassroots groups, advocacy NGOs and government officials; 4. Support to local advocacy by national and local groups; 5. Public interest litigation; and 6. Assistance to national NGOs to access the UN human rights monitoring system. RWP has implemented these activities in Argentina, Kenya, Sri Lanka, Brazil, Ghana, Israel and the occupied Palestinian territories.

### **Building capacity globally through publications and training for implementation and promotion of the right to water and sanitation**

RWP aims to assist policy makers and implementers to integrate the right to water and sanitation into their activities at the international and national level. Previous publications include *Legal Resources for the Right to Water*, currently the most detailed publication of international and national standards and jurisprudence on the right to water; and *Monitoring the Right to Water: A Framework for Developing Indicators*. These publications are available at the COHRE website.

### **Promoting stronger international standards on the right to water and sanitation**

RWP has been instrumental in providing legal advice for, and promoting new standards in this area, such as UN General Comment No. 15 on the Right to Water (2002) and the UN Sub-Commission Guidelines for the Realization of the Right to Drinking Water and Sanitation (2006). It also carries out direct Government lobbying and mobilises civil society with the objective of promoting UN Human Rights Council action to strengthen the recognition of the right to water and sanitation and to establish mechanisms for its implementation.

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CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



## **Hostage to Politics: The impact of sanctions and the blockade on the human right to water and sanitation in Gaza**



**Centre on Housing Rights and Evictions  
Report**

June 2008

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## EXECUTIVE SUMMARY

A catastrophic humanitarian situation has been caused by Israel's restrictions on the movement of people and goods at Gaza's border crossings since June 2007 and its reduction of fuel and electricity supplies to Gaza since September 2007. These actions have exacerbated an already dire situation caused by financial and economic sanctions placed on the Gaza administration by Israel and several Western countries since Hamas won the Palestinian legislative elections in January 2006.

Israel has justified its policies on the basis of security threats from Hamas and other armed groups in Gaza. A failure to prevent rocket attacks on southern Israeli communities represents a clear breach of international humanitarian law by the Gaza administration. However, to punish the civilians of Gaza for the acts and the political position of their administration is immoral and constitutes collective punishment. The sanctions and the blockade have led to the widespread denial of the economic, social and cultural rights of the people of Gaza including the human right to water and sanitation. Sanctions imposed by western countries, including the European Union and United States, make them complicit in human rights violations.

In January 2008, the Centre on Housing Rights and Evictions (COHRE) released a position paper examining the impact of the sanctions and blockade on the human right to water and sanitation in Gaza. Since that time the humanitarian situation in Gaza has continued to deteriorate at an alarming rate. Predictions made in COHRE's position paper of January 2008 have since been realised. This report updates and revises the January 2008 position paper reflecting the severity of the crisis in Gaza's water and sanitation sector as it currently stands in light of a number of recent significant developments.

### **The impact of international sanctions, blockade and reductions of fuel and electricity**

- As a result of the blockade, equipment and supplies needed for the construction and maintenance of water and sanitation facilities have been denied entry to the Gaza Strip. This has hindered projects to repair, rehabilitate and upgrade existing infrastructure.
- The blockade has prevented the entry of spare parts needed to repair old or damaged infrastructure. Water losses have caused a reduction in water network efficiency from 70% before the crisis to 53% today. There is evidence that damage to water and sewerage networks is leading to sewage contamination in the water network.
- In many cases, the blockade has prevented the entry of essential water purification chemicals into Gaza. In February 2008, a lack of chlorine placed around 400,000 people at risk of drinking contaminated water. Limited supplies of hydrochloric acid are also hindering the operation of desalination plants.
- Restrictions on fuel and electricity, most of which is supplied by Israel, has led to the periodic paralysis of water and waste-water services. In the first week of May 2008, all 135 water wells in Gaza were out of fuel. Twenty ceased to operate. The remaining 115 were relying on intermittent electricity supplies and are therefore non-functional for around eight hours each day. By June 2008, 15% of Gaza's population had access to water for 4-6 hours per week, 25% had access to water every four days and 60% had access to water every other day. Only 10 out of 37 sewage pumping stations were functioning. All three waste-water treatment plants had run out of fuel and were totally dependent on the intermittent electricity supply. Most water and waste-water service vehicles had stopped operating. Around 70% of Gaza's agricultural wells were running out of fuel supplies.
- As of January 2008, per capita daily use of water in Gaza had fallen to an average of 52 litres, with some residents using a mere 14 litres. This is far below World Health Organization

standards of 100 litres per person per day and an absolute minimum of 20 litres. A reduction in water quantity means that many people have been forced to compromise on hygiene.

- The plunging income of many Gazans has meant that the proportion of household expenditure currently spent on water and sanitation services has increased. An intermittent supply forces people to buy from more expensive and less safe sources such as water tankers. Many Gazans are unable to pay for clean drinking water and are instead turning to untreated agricultural wells for domestic use. Many people are unable to afford the cost of emptying their septic tanks and are disposing their sewage into the streets.
- The three waste-water treatment plants in Gaza are in a critical state of disrepair and at high risk of flooding. In March 2007, a small lake created by overflow into a natural depression next to the filtration basin at Beit Lahia burst its banks and flooded the village of Um Al-Nasser with partially treated sewage causing the death of five people and displacing 1,000. This has raised concerns that the adjacent larger lake which had been formed in the same way would similarly burst its banks and flood Beit Lahia town. If this happens, 1.5 million cubic litres of sewage will flood surrounding areas threatening the life and property of up to 50,000 people and contaminating the ground water supplies of up to 300,000 people. The retaining wall of earth, built up in 2007, shows signs of deterioration with deep longitudinal cracks that may cause serious structural weakening of the banks when it next rains.
- Since January 2008, due to a lack of power, around 50,000 cubic metres of raw or partially treated sewage has been released daily into the Mediterranean Sea. This is likely to cause severe damage to the marine environment in Gaza and southern Israel, constitutes a health hazard to bathers and those who eat sea food, and may pollute Gaza's underground aquifer - its main water source.
- The fuel shortage and electricity cuts have caused the periodic cessation of sewage pumping stations. Sewage flooded the streets in the Zeitoun district of Gaza City in January and May 2008, potentially placing 250,000 people at risk. This neighbourhood remains prone to flooding. Some sewage pumping stations have been forced to release sewage into pools designed to store storm water overflow.
- Financial and economic sanctions have prevented the authorities in Gaza from providing an adequate service to the population. Many municipal employees in Gaza, including those responsible for providing services related to water and waste-water, have not been paid for between three and twelve months.
- Much needed donor investment in the water and waste-water sectors has been withdrawn. At least three major projects have been cancelled or frozen including projects to upgrade water networks and sewage infrastructure and to modernize waste-water treatment plants.
- Israeli Defence Forces have deliberately targeted water and sewage infrastructure. Between 27 February 2008 and 4 March 2008, damage to electrical transformers and voltage lines affected 10 water wells leaving 230,000 Gazans without water for nearly two days. Municipal workers have been fired upon at times, preventing them from carrying out work related to water and waste-water services.

### **Violations of international human rights law**

The sanctions and blockade on Gaza infringe the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty ratified by the governments and legislatures of 158 states, including Israel. The ICESCR recognises the right of every person to health and to an adequate standard of living. States that have ratified this treaty have declared repeatedly that the right to an adequate standard of living includes access to water and sanitation. As defined by the United Nations human rights bodies, every person is entitled to sufficient and safe water for personal and domestic uses. Each person is entitled to water and sanitation services that are within safe

physical reach, are affordable and are conducive to public health and the protection of the environment. As Israel maintains effective control over Gaza due to its control of its borders, it is legally responsible for ensuring the realisation of the right to water and sanitation of the people of Gaza. However, not only has Israel not taken sufficient steps to fulfil this obligation but through its actions, it has deliberately undermined the realisation of the right to water and sanitation in Gaza by:

- Reducing water quality through prevention of entry of water purification chemicals and undermining the provision of adequate and safe sanitation.
- Reducing the affordability of water and sanitation thereby requiring households to reduce consumption of water or sacrifice on other items such as food and health care.
- Reducing the quantity of water for personal and domestic needs including personal sanitation, washing of clothes, food preparation and personal and domestic hygiene.
- Reducing the accessibility of water and sanitation, as water and sanitation services are intermittent and in some situations non-functional.

The ICESCR requires that economic sanctions must distinguish between the leaders and the population and may not be imposed and applied in a manner that imposes disproportionate suffering on a civilian population. Sanctions may not be imposed on goods and services necessary for the right to water. States that are party to the economic sanctions and the restrictions on banking transfers to the Gaza administration are obliged to do all in their power to protect the economic, social and cultural rights of the affected population. In addition, States that have withdrawn funding for water and sanitation services in Gaza have undermined the ICESCR which requires all States to engage in international assistance and cooperation for the realisation of economic, social and cultural rights.

### **Violations of international humanitarian law**

As an occupying power maintaining effective control over Gaza, Israel is obliged to comply with international humanitarian law, including the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and customary international law. Israel has violated its legal obligations to:

- Ensure that civilians are guaranteed access to drinking water, water for personal hygiene and sanitation.
- Ensure public health and hygiene is maintained in the occupied territory.
- Comply with the prohibition on attacks to civilian infrastructure, including drinking water installations.
- Respect the principle of proportionality which requires that any reaction to an attack is not excessive by causing harm to civilians or civilian property which outweighs the expected military advantage.
- Refrain from punishing persons for offences that they have not personally committed.
- Permit and facilitate the delivery humanitarian relief to the occupied territory.

### **Key recommendations**

- Israel must immediately lift the blockade on the Gaza Strip and allow the free flow of goods and equipment into Gaza.
- Israel must cease its policy of restricting fuel and electricity supplies to Gaza in reprisal for rocket attacks.



- Donor countries and agencies should immediately resume funding to the water and waste-water sectors in Gaza. Governments that have not previously assisted the Palestinian Authority should consider doing so.
- All states must lift banking sanctions imposed on the Gaza administration in order to permit the funding of necessary public services.
- The government of President Abbas and Prime Minister Fayyad must provide necessary funding to the agencies in Gaza responsible for water and sanitation and other basic services, including making salary payments to all public service workers.
- The Gaza administration must prevent the attacks on Israeli civilians by Palestinian armed groups operating in Gaza and bring the perpetrators to justice in line with the provisions of international humanitarian law.
- The European Union should re-evaluate the EU-Israel Association Agreement in line with Article 2 which makes clear that economic cooperation among the parties shall be based on a respect for human rights and democratic principles.
- The UN Security Council, General Assembly, Human Rights Council, the Secretary-General and the High Commissioner for Human Rights must clearly denounce the flagrant violations of human rights and international humanitarian law occurring in the Gaza Strip due to sanctions and the blockade and hold Israel accountable for its actions.
- The international community and all concerned States need to work as expeditiously as possible towards opening the border crossings and implementing a cease fire to end the humanitarian crisis in Gaza. Real progress has to be made on the final status negotiations, the reunification of Gaza and the West Bank and the creation of an independent and viable Palestinian State.

A more detailed set of recommendations is provided in Section 4 below



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# 1. BACKGROUND

## 1.1 Historical background to the water crisis in the Gaza Strip

The area, which is today the Gaza Strip, was once considered an area of great strategic importance as the first source of freshwater north of the Sinai Desert.<sup>182</sup> The Arab-Israeli war of 1948 incorporated two-thirds of mandate Gaza into Israel and led to the mass-influx of refugees into the Gaza Strip, increasing its population by more than 300 percent and placing huge stress on water resources. Following the Six-Day War of June 1967, and with its occupation of the West Bank, Gaza Strip and Golan Heights, Israel significantly enhanced its hydrological position.<sup>183</sup> Israel established control over water resources and prohibited unlicensed construction of new water infrastructure through a series of Military Orders in the 1960s. A number of Palestinian wells were confiscated by Israel and many more dried up as a result of Israel's over abstraction (pumping) from deeper wells. In 1986, the abstraction quota of Palestinians from their wells was reduced by 10%.<sup>184</sup> Further measures to limit water consumption by Palestinians comprised blocking natural springs and existing wells, uprooting thousands of citrus trees and demolishing cisterns.<sup>185</sup>

The main source of fresh water for the arid Gaza Strip, one of the most densely populated places on earth, is the Coastal Aquifer, which is pumped in excess of its recharge ability. Water demand in Gaza is 150 million cubic metres per year (mcm/yr). With an aquifer recharge rate of 50-60 mcm/yr there is an annual deficit in aquifer storage of around 100 mcm/yr.<sup>186</sup> Over abstraction of the Coastal Aquifer, has led to a deterioration of water quality including high levels of salinisation from sea water intrusion. This is compounded by other problems such as ground water contamination from agricultural chemicals including fertilizers and pesticides. The excessive extraction and contamination of ground water, due to demand exceeding supply and poor water management, has limited domestic use and threatens the long term sustainability of important water resources which will also impact upon future generations. Moreover, the natural means of water-table replenishment in Gaza has been prevented due to Israel's construction of an earthen berm between the Hebron Hills and Gaza Strip which diverts runoff to its natural destination.<sup>187</sup>

Throughout the occupation, problems contributing to a water crisis in Gaza have included Israel's systematic destruction of wells and other water and sewage infrastructure, Israel's denial of infrastructure construction and maintenance, unequal extraction and discriminatory distribution of water resources to the detriment of the Palestinians, over pumping throughout the occupied Palestinian territories (oPt) by the settler colonies and Israel's dumping of waste materials in the oPt which has further contaminated natural resources including water. Moreover, Israelis both inside Israel and in the oPt, consume a much greater quantity of water than Palestinians and face fewer restrictions on water drawn from shared resources.<sup>188</sup> In Gaza, Palestinians were paying up to twenty times more for water than Israeli settlers were paying and

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<sup>182</sup> Kelly, K & Homer-Dixon, T, 'Environmental Scarcity and Violent Conflict: The Case of Gaza', (1995), available at <http://www.library.utoronto.ca>.

<sup>183</sup> Jarrar, A, *Water from Conflict to Cooperation, Palestine and Israel Case, How to Promote Cooperation*, Palestinian Water Authority, (2003), p.1.

<sup>184</sup> Ibid. p.2.

<sup>185</sup> Kelly, K & Homer-Dixon, T, (1995), as above.

<sup>186</sup> Information provided to COHRE by Fuad Bateh, PLO Negotiations Support Unit, 15 May 2008.

<sup>187</sup> Information provided to COHRE by Joseph Schechla, Coordinator of Housing and Land Rights Network, Habitat International Coalition, 12 January 2008.

<sup>188</sup> Kelly, K & Homer-Dixon, T, (1995), as above.

significantly more than residents of Israel due to Israel's subsidization of water for Israeli citizens.<sup>189</sup>

## 1.2. The imposition of sanctions and the blockade

Since Israel's disengagement from the Gaza Strip, the territory has been subjected to gradual closure and increasing restrictions. However, a number of key events since 2006 have led to the complete isolation of the Gaza Strip with a corresponding rapid deterioration of the humanitarian situation which today can only be described as catastrophic.

In January 2006, the Islamic Resistance Movement ( Hamas ) secured the majority vote in the Palestinian legislative elections and formed a unity government with the opposition Fatah in a power-sharing arrangement based on the Mecca Agreement. The Hamas victory led to most Western donors placing a series of financial sanctions upon the Palestinian Authority ( PA ). The European Union ( EU ), United States ( US ) and other western countries suspended the provision of direct financial assistance to the PA, while continuing to provide humanitarian and emergency aid directly to the Palestinian population through other mechanisms. This was based on the Principles set by the Quartet ( United States, United Nations, European Union and Russia ) which called on donors to reconsider aid to the PA if the Hamas-led Palestinian government refused to recognize Israel's right to exist, to renounce violence and/or to adhere to previous agreements, key elements of the peace process.<sup>190</sup> In a confidential report leaked to a British newspaper, Alvaro de Soto, the United Nations' former Special Co-ordinator for the Middle East Peace Process, condemned the Quartet's boycott of the Palestinian government saying it transformed them from "negotiation-promoting foursome guided by a common document [the road map for peace] into a body that was all but imposing sanctions on a freely elected government of a people under occupation as well as setting unattainable preconditions for dialogue".<sup>191</sup>

The Government of Israel also increased the pressure on the PA in an effort to oust Hamas. It froze the transfer of taxes collected on behalf of the PA, as stipulated in the Oslo Agreements, amounting to US\$60 million per month thereby depriving the PA of around 50% of its monthly budget.<sup>192</sup> The United States further implemented a series of banking restrictions prohibiting monetary transfers to the Hamas-led unity government. These financial sanctions put increasing strain on the PA which struggled to operate effectively in the absence of necessary resources.

On 14 June 2007 following outbreaks of violence between Hamas and opposition Fatah affiliated forces; Hamas took control of the Gaza strip. The International Crisis Group argues that the collapse of the Mecca Agreement was due to "deliberate and systematic attempts to undermine it", including the refusal of outside players, specifically the US and the EU, to "deal with the national unity government and only selectively engaging some of its non-Hamas members, by maintaining economic sanctions and providing security assistance to one of the parties in order to outmanoeuvre the other."<sup>193</sup> When Fatah President Abbas formed an emergency government in Ramallah, the United States and EU ended the 15 month embargo of the PA in the West Bank.

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<sup>189</sup> Ibid.

<sup>190</sup> See 'Quartet Statement on the Situation in the Middle East', 30 January 2006, available at <http://www.state.gov> (click on 'Press Releases' > '2006' > 'January')

<sup>191</sup> McCarthy, R, & Williams, I, 'Secret UN Report Condemns US for Middle East Failures', *The Guardian*, 13 June 2007, <http://www.theguardian.co.uk>.

<sup>192</sup> House of Commons International Development Committee, *Development Assistance and the Occupied Palestinian Territories*, (London, January 2007), p.11, <http://www.publications.parliament.uk>.

<sup>193</sup> International Crisis Group, *After Gaza*, Middle East Report No.68, 2 August 2007, p. i.

On 1 July 2007 the Government of Israel released some (about a quarter of those then owed) tax revenues it had withheld and transferred US\$188 million to bolster Abbas's government.<sup>194</sup> Meanwhile, Hamas became increasingly isolated and Israel intensified its restrictions on the movement of goods and people into and out of the Gaza Strip at the five Gaza border crossing points under its control (Erez, Nahal Oz, Karni, Sufa, Kerem Shalom).

The Karni crossing is the main crossing for commercial goods and is therefore essential for the functioning of Gaza's economy. Since 12 June 2007, the Karni crossing has been closed to all incoming and outgoing products, except for the use of a single conveyer belt, which typically operates on a twice weekly basis to allow wheat grain and animal feed into the Gaza Strip. As Karni Crossing is the only crossing point with adequate infrastructure and ability to process a large quantity of goods the UN Office for the Coordination of Humanitarian Affairs (OCHA) states that; "[t]he opening of Karni and the removal of Israel's ban on exports from Gaza are essential for any hope of an economic revival and an improvement in the humanitarian and economic situation."<sup>195</sup>

Since the closure of Karni crossing, Sufa and Kerem Shalom crossings have been the only entries for commercial and humanitarian supplies, yet both have been subjected to closures on a number of occasions for prolonged periods. Sufa has been the principal alternative crossing point for commercial goods since the closure of Karni, accounting for 76% of the inflow of supplies to Gaza, so lengthy closure, as occurred in October 2007, have hit Gaza hard.<sup>196</sup> Further, a dependency on Kerem Shalom is inadequate. Kerem Shalom is unable to respond to the needs of those in the Gaza Strip, its limited capacity means it is only able to process approximately 50 truckloads a day, whereas Karni was processing over 750.<sup>197</sup> Moreover, the use of Kerem Shalom as the principle crossing point for goods has had significant cost implications for aid agencies. The World Food Programme reports that logistic and supply arrangements cost three times as much through Kerem Shalom than through Karni.<sup>198</sup>

The amount of goods permitted to enter the Gaza Strip has progressively declined, strangling the economy, pushing up prices and causing severe shortages in essential supplies including foods, medicines and equipment and materials necessary to upgrade and repair vital infrastructure. OCHA reports that in February 2008, 1,782 truckloads of goods were allowed entry into Gaza via the Sufa and Nahal Oz crossing points and the conveyor belt at Karni while Kerem Shalom remained closed. This number of truckloads represents an 86% decline from February 2007."<sup>199</sup> Rafah crossing, which borders with Egypt and is the only Gaza crossing not under direct Israeli control,<sup>200</sup> has also been closed almost constantly since 9 June 2007.<sup>201</sup> Erez crossing is closed to

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<sup>194</sup> Benn, A, 'Israel transfers \$188 million in tax revenues to Palestinian gov't', Haaretz, 2 July 2007, <http://www.haaretz.com>.

<sup>195</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation Update for the oPt, 20 March 2008, p.2.

<sup>196</sup> OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3, <http://www.ochaopt.org>. In November exceptionally, 6,834 calves were permitted to enter Gaza through Sufa.

<sup>197</sup> OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3. Kerem Shalom is currently undergoing expansion, but it is unlikely that even after expansion capacity will exceed 80 truckloads per day.

<sup>198</sup> OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3.

<sup>199</sup> OCHA, 'The Humanitarian Monitor', February 2008, p.10.

<sup>200</sup> There were four parties involved in operating the Rafah crossing Israel, Egypt, the PA and the EU.

<sup>201</sup> Some 6,000 Palestinians are reportedly still stranded in Egypt unable to return to their homes and families and a number have died whilst waiting to cross. On 3 December 2007 the Israeli authorities, allowed around 2,300 Palestinian pilgrims to cross the Rafah border for the Hajj pilgrimage to Mecca. The Egyptian authorities also allowed them to return to Gaza through Rafah, a move which provoked outrage from the Israeli Government which had wanted the pilgrims to return through Kerem Shalom for security reasons. The crossing was also



Palestinians except for emergency medical cases and traders who have received a permit to cross from the Israeli authorities.

The closure of border crossing points has led many human rights organisations to declare that Gaza has become, in effect, an open air prison.<sup>202</sup> The UN Committee on the Elimination of Racial Discrimination has also expressed that it is “deeply concerned that the severe restrictions on the freedom of movement in the Occupied Palestinian Territories, targeting a particular national or ethnic group ... have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health.”<sup>203</sup>

The siege on the Gaza Strip, in place since the Hamas takeover was increased in intensity on 19 September 2007. In response to rising rocket attacks on southern Israeli communities, Israel’s Security Cabinet declared Gaza a “hostile entity”. In its decision the Security Cabinet stated that “Additional sanctions will be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip and reduce the supply of fuel and electricity. Restrictions will also be placed on the movement of people to and from the Gaza Strip.”<sup>204</sup> The reductions on fuel and electricity have since been implemented despite a petition by 10 Israeli and Palestinian human rights organizations before the Israeli Supreme Court which argued that such sanctions would cause widespread damage to the functioning of essential services in Gaza including health systems and water wells. UN Secretary General Ban Ki Moon stated that the “punitive measures taken by Israel ... harm the well-being of the entire population of the Gaza Strip”, and as such are “unacceptable”.<sup>205</sup> The EU’s Commissioner for External Affairs called the sanctions “collective punishment”.<sup>206</sup>

On 18 January 2008, following an escalation in violence between Israeli Defence Forces and Palestinian militants and in response to increasing rocket attacks on southern Israeli districts including Sderot and Ashkelon, Israel closed all border crossings between Israel and Gaza, completely blocking supplies of food, fuel, medicine and even humanitarian aid. The situation which lasted until 22 January became critical and led to the cessation of electricity production at the Gaza Power Plant due to a lack of fuel, obstructed the provision of basic services particularly health care and water and sanitation, and placed civilians under intolerable strain. On 23 January 2008 Palestinian militants broke the siege and breached the Rafah crossing. For the next 12 days, somewhere around half the Gazan population flooded across the border into Egypt in frantic search of food, fuel and medical supplies. As the International Crisis Group notes, “The fact that a small Egyptian town such as al-Arish should have seemed such luxury signalled how desperate conditions in Gaza had become”.<sup>207</sup>

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open 2-12 March to allow 257 patients, a number of them injured by Israeli military activity in late February early March, to reach Egyptian hospitals.

<sup>202</sup> See, for example, B’Tselem, *The Gaza Strip-One Big Prison*, (May 2007), <http://www.btselem.org> (click on ‘Publications’).

<sup>203</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, (2007), UN. Doc.CERD/C/ISR/CO/13, para. 34 available at <http://www.ohchr.org>, (click on ‘Treaty Bodies’> ‘Committee on the Elimination of Racial Discrimination’> ‘Sessions’> ‘Israel’> ‘Concluding Observations’).

<sup>204</sup> Gisha, Unofficial translation of the Supreme Court Judgment relating to the reduction of fuel and electricity supplies to the Gaza Strip, 27 January 2008, para.2.

<sup>205</sup> ‘Israel’s Gaza fuel cuts alarm UN’, BBC News, 29 October 2007, <http://www.news.bbc.co.uk>.

<sup>206</sup> Harel, A, ‘EU warns Israel not to impose ‘collective punishment’ in Gaza’, Haaretz, 6 November 2007, <http://www.haaretz.com>.

<sup>207</sup> International Crisis Group, *Ruling Palestine 1: Gaza Under Hamas*, Middle East Report No. 73, 19 March 2008, p.5.

Rocket attacks on southern Israel have continued unabated. Between 27 February and 4 March 2008, Israel launched a large scale military incursion into the Gaza Strip; operation “Hot Winter”. In six days the Israeli Defence Forces left 120 Palestinians dead, 34 of whom were children. A further 269 Palestinians (at least 63 children) were injured. According to OCHA: “At least 55 of those killed and 104 of those injured were civilians not directly involved in the fighting.”<sup>208</sup> Further; “During the ‘Hot Winter’ incursion, 34 children lost a parent. Twenty-one homes were completely destroyed, leaving 147 people homeless. Eighty-eight homes were severely or partially damaged, affecting an additional 616 people.”<sup>209</sup>

In April and May 2008, several attacks by Palestinian militants at border crossing points led to further crossing closures and prevention of fuel supplies from entering the Strip. Several UN agencies were forced to suspend operations including food assistance. Gaza’s sole power plant was put under increasing strain and temporarily stopped operating on 10 May 2008. The UN Special Coordinator for the Middle East Peace Process, Robert Serry, issued a statement condemning “deliberate attacks on civilians at crossings” and further stated:

It is also wrong for Israel to punish a civilian population for such attacks. I call on Israel to restore fuel supplies to Gaza, and allow the passage of humanitarian assistance and commercial supplies, sufficient to allow the functioning of all basic services and for Palestinians to live their daily lives. The collective punishment of the population of Gaza, which has been instituted for months now, has failed.<sup>210</sup>

Both humanitarian and human rights organisations are expressing increasing concern about the deteriorating situation in the Gaza strip and the impact that these punitive sanctions and the blockade have had on the life of the 1.5 million persons who reside there, creating a humanitarian crisis on a scale unprecedented in forty years of Israeli occupation. According to John Dugard, the UN Special Rapporteur for the Occupied Territories:

Gaza has become a besieged and imprisoned territory as a result of economic sanctions imposed by Israel and the West ... External borders have been mainly closed ... It is a controlled strangulation that seriously violates norms of human rights law and humanitarian law but which apparently falls within the generous limits of international toleration.<sup>211</sup>

Due to a lack of funds, the Gaza administration is unable to provide basic public services and many public sector employees, including teachers and health workers, have not received their salaries in full or on a regular basis.<sup>212</sup> Unemployment has reached an all time high as Palestinians can no longer cross to Israel for work and current import/export restrictions have led to the suspension of 90% of Gaza’s industrial activity.<sup>213</sup> Farmers and fishermen are also unable to export their produce. The United Nations Development Programme reports that, in Gaza, 70% of households live below the poverty line and 42% of households live in extreme poverty (below

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<sup>208</sup> OCHA, ‘Humanitarian Situation Update for the oPt’, 20 March 2008, p.1.

<sup>209</sup> OCHA, ‘Gaza Strip Inter-Agency Humanitarian Fact Sheet’, March 2008, p.1.

<sup>210</sup> Robert Serry, Statement to the Press in Gaza, 23 April 2008.

<sup>211</sup> Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967*, (August 2007), UN Doc.A/62/275, para.17, <http://www.ohchr.org>, (click on ‘Special Procedures’> ‘Country Mandates’).

<sup>212</sup> The PA has recently provided an emergency contribution for salaries amounting to one month’s payment. Many workers had not been paid since the beginning of the year. There are also reports that whilst many public sector workers received full salaries from the PA in Ramallah, a large number of Hamas affiliated employees received no pay.

<sup>213</sup> World Bank, *Two years after London: Restarting Palestinian Economic Recovery*, (Sept 2007), p.3, <http://www.worldbank.org>, (‘Publications’> ‘Documents and Reports’).



\$1.38 per person, per day).<sup>214</sup> Around 80% of Gazans are now dependent on partial food aid.<sup>215</sup> Yet, “only 41 per cent of Gaza’s food import needs are currently being met.”<sup>216</sup> According to a report jointly released by eight leading UK humanitarian and human rights organizations: “The Gaza economy is no longer on the brink of collapse – it has collapsed.”<sup>217</sup>

The blockade has prevented hundreds of students from travelling to educational institutions abroad.<sup>218</sup> Further, even as medical supplies in Gaza’s hospitals are running out, the Israeli authorities have denied Palestinians in need of urgent life-saving treatment from accessing hospitals outside of the Gaza Strip.<sup>219</sup> As of March 2008, 55 essential drugs and 142 essential medical supplies were no longer available in Gaza.<sup>220</sup> Essential services, dependent on fuel and electricity to operate, have been paralysed. The economic and social rights of Gazans have been dramatically eroded, including their right to water and sanitation.

In October 2007, and subsequently in February/March 2008, the Centre on Housing Rights and Evictions (COHRE) undertook fact-finding missions to both Israel and the occupied Palestinian territories to investigate the extent of violations of the right to water and sanitation. The missions were part of a long-term commitment by COHRE’s Right to Water Programme to promote human rights standards in water governance in the region. COHRE’s programme of work for Israel and the occupied Palestinian territories includes research, advocacy, cooperation with relevant stakeholders to consider rights based reforms to the water sectors, and providing support to national NGOs and community groups to lobby for the right to water and sanitation. The Israeli Coordination and Liaison Administration denied the COHRE fact-finding mission entry to the Gaza Strip, stating that only ‘recognised’ international organisations were permitted entry. As a result, COHRE has produced this report primarily based on interviews carried out by a consultant from Gaza, and reports and updates from the water authorities in Gaza and international agencies and NGOs working on the ground who have contributed invaluable information to this report.

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<sup>214</sup> United Nations Development Programme (UNDP), *Development Times, Issue No.1: Poverty in the Occupied Palestinian Territory*, (July 2007), p.2, <http://www.undp.ps>.

<sup>215</sup> Inter Agency Report, *The Gaza Strip: A Humanitarian Implosion*, February 2008, p. 4.

<sup>216</sup> Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, (January 2008), UN Doc. A/HRC/7/17, para.19, <http://www.ohchr.org>, (click on ‘Special Procedures’>‘Country Mandates’).

<sup>217</sup> Inter Agency Report, *The Gaza Strip: A Humanitarian Implosion*, February 2008, p.7.

<sup>218</sup> Human Rights Watch, ‘Gaza: Israel Blocks 670 Students from Studies Abroad’, Press Release, 20 November 2007, <http://www.hrw.org>, (click on ‘News Releases’).

<sup>219</sup> See press releases by Physicians for Human Rights Israel available at <http://www.phr.org.il>, (click on ‘English’ > ‘Updates/Press Releases’).

<sup>220</sup> OCHA, ‘Gaza Strip Inter-Agency Humanitarian Fact Sheet’, March 2008, p.1.

## 2. IMPACTS ON THE RIGHT TO WATER AND SANITATION

### 2.1 Arbitrary restrictions on water and sanitation services

#### 2.1.1 Prevention of entry of essential materials necessary to operate and maintain water and sewage services

As a result of the blockade, equipment and supplies needed for construction and maintenance of water and sanitation facilities (spare parts, water pipes, pumps, and fuel) have been denied entry to the Gaza Strip. The Israeli authorities justify this decision based on the assumption that such materials will be used in the manufacture of rockets fired upon communities in southern Israel. The Coastal Municipal Water Utility (CMWU) responsible for the provision of water supply and sewage services in Gaza has been struggling to maintain the 135 water wells, 37 sewage pumping stations and three waste-water treatment plants under its control for a number of months. In June 2007 Oxfam reported that the CMWU had been waiting for over three months for US\$500,000 worth of equipment.<sup>221</sup> By September 2007 the situation was critical and the CMWU issued an appeal stating that the prevention of entry “of the necessary infrastructure materials and equipments in general and of water and wastewater in particular will certainly lead to a progressive breakdown of major water and wastewater facilities (wells, sewage pump stations and wastewater treatment plants).”<sup>222</sup>

The CMWU's bleak prediction has since been proved true and water and waste-water services and facilities have become gradually paralysed without the necessary materials required to repair, rehabilitate and upgrade existing infrastructure. In November 2007 the United Nations Children's Fund (UNICEF) reported that 10 wells serving 150,000 people in the Gaza Strip needed to have their electrical motor replaced and 10 pumping stations serving 600,000 people in Gaza City, Jabalia and Rafah were in need of urgent repair.<sup>223</sup> Also in November the United Nations Relief and Works Agency (UNRWA) responsible for operating many water wells which serve the refugee camp population, announced that spare parts ordered in July, needed to maintain the engines and keep the wells operational, had not been allowed to enter Gaza.<sup>224</sup> By December 2007, 3 wells in Gaza City were unable to operate due to a lack of spare parts leaving 140,000 people with limited access to water.<sup>225</sup>

The CMWU reports that a lack of materials, which remain stranded in Israel, and the inability to upgrade water networks has drastically reduced network efficiency from 70% before the crisis to 53% as of February 2008. Reduced pressure in the network has affected water supply in high level areas. Further the CMWU reports that the non-repair of leaking water networks potentially exposes water to sewage seepage contamination, especially in areas where the sewage network is old or non-existent. The Ministry of Health has claimed that water testing samples have found evidence of faecal coli contamination.<sup>226</sup>

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<sup>221</sup> Oxfam International, 'Oxfam condemns the caging of Gaza', Press release, 25 June 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

<sup>222</sup> Appeal from CMWU, 3 September 2007, cited in Palestinian Hydrology Group, WaSH Monitoring Program, 'Gaza Strip Situation Report, June to mid-September 2007', <http://www.phg.org>.

<sup>223</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007, <http://www.ochaopt.org>.

<sup>224</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', November 2007.

<sup>225</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', December 2007.

<sup>226</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affect of Materials Delay Report', February 2008.

The operation of sewage pump stations is clearly a high priority due to the severe health and ecological consequences the breakdown of such facilities could cause. Yet due to the lack of spare parts required for maintenance and gradual breakdown of back up generators struggling to cope with frequent electricity cuts, pump stations have flooded neighbourhoods - such as in Gaza City, Zeitoun district, on 8 January 2008 - and are now discharging raw sewage directly into the sea (see Section 2.5). Further, due to import restrictions some 600 water containers and 40% of Gaza's municipality vehicles are in need of urgent replacement.<sup>227</sup>

Large water and waste water infrastructure projects financed by donors have also been frozen due to the blockade. On 9 July 2007, UNRWA announced the suspension of all construction projects in Gaza, amounting to some US\$93 million, including water and sanitation works, due to the lack of basic building supplies.<sup>228</sup> This affected job security for around 121,000 construction workers.<sup>229</sup> The United Nations Development Programme (UNDP), the European Commission, international NGOs and donors, and the World Bank have also had to cancel or postpone a number of projects, many of which are related to water infrastructure. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), "Israel has denied a request to get spare parts into Gaza for World Bank and UNICEF-funded projects, including pipes, valves, water and waste-water pumps and electromechanical spare parts."<sup>230</sup> The CMWU reports that the postponement of World Bank financed projects relating to water well construction and maintenance for five wells, due to the lack of the necessary pumps and valves for work to commence, will delay the improvement of water quantity and quality where the water is highly saline, affecting the health of around 100,000 inhabitants in Gaza City and the Middle Area.<sup>231</sup> Further, the construction of those wells would decrease the pumping rates on other wells lessening the currently high levels of abstraction thereby protecting the aquifer and reducing ground water deterioration.<sup>232</sup> Work on a brackish water desalination plant funded by GVC has also been put on hold due to a lack of the necessary R.O unit and booster sets; some 90% of water in the Gaza Strip is not fresh water and requires treatment for use.<sup>233</sup> Further, as contractors are paying taxes and charges on materials held in store in Israel, donors and the CMWU face an additional financial burden. The CMWU reports "most donors are reluctant to finance new projects in the water sector, even those of emergency purposes."<sup>234</sup>

On 11 March and 7 April 2008 the Israeli authorities met with representatives from the World Bank, UNICEF and the CMWU and agreed to address the situation of the lack of spare parts and materials necessary to maintain Gaza's water and sewage networks.<sup>235</sup> In a letter dated 11 May 2008, the Israeli Coordinator of Government Activities in the Territories informed the Palestinian Water Authority that Israel would facilitate the entry of all project-related equipment, fuel and goods for work to commence at the World Bank-financed North Gaza Emergency Sewage Treatment.<sup>236</sup> On 13 May, Tony Blair, Quartet envoy, announced that clearance had been granted for the import of basic materials required by the CMWU and that commencing work on

<sup>227</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', December 2007, p.2.

<sup>228</sup> OCHA, 'Misery and Hardship for thousands as UN construction projects halted in Gaza', 9 July 2007, <http://www.reliefweb.int>.

<sup>229</sup> Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, (January 2008), UN Doc. A/HRC/7/17, para.20, <http://www.ohchr.org>, (click on 'Special Procedures' > 'Country Mandates').

<sup>230</sup> OCHA, 'The Humanitarian Monitor', November 2007, p.2, <http://www.ochaopt.org>.

<sup>231</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affect of Materials Delay Report', February 2008.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> OCHA, 'Gaza Strip Inter-Agency Humanitarian Fact Sheet', March 2008, p.2.

<sup>236</sup> Letter on file with COHRE.

Gaza sewage projects was a priority.<sup>237</sup> The Israeli authorities permitted a small number of spare parts and materials for water and sanitation works to enter Gaza in May 2008, but much equipment remains held up by Israeli Defence Forces.

In the Agreement on Movement and Access of November 2005, the Government of Israel and PA consented to ensure that all crossing points between Israel and the occupied Palestinian territory would “operate continuously” in order to “promote peaceful economic development and improve the humanitarian situation on the ground.”<sup>238</sup> The Government of Israel systematically violates this agreement alleging that the closure of border crossings is a legitimate response to “security concerns”. Israel does have both the right and the duty to protect its citizens. However, its response has been exercised in a disproportionate manner. Israel's obstruction of entry of the materials and spare parts needed for the construction, maintenance and repair of water and sewage facilities in the Gaza Strip has ensured the gradual collapse of basic service provision, significantly undermining the people of Gaza's right to access water and sanitation facilities and services. On 2 May 2008, the Middle East Quartet issued a statement calling for “the controlled and sustained opening of the Gaza crossings for humanitarian reasons and commercial flows” and for all actors to “work towards conditions that would permit implementation of the 2005 Agreement on Movement and Access”.<sup>239</sup>

As part of its legal obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>240</sup> Israel must respect, protect and fulfil the right to water and sanitation in a territory whose border it controls.<sup>241</sup> Both the UN Committee on Economic, Social and Cultural Rights and the International Court of Justice have made clear that Israel is responsible for the realisation of economic and social rights in all territories under its effective control and is obliged not to obstruct the exercise of these rights in areas where competence has been transferred to the Palestinian authorities.<sup>242</sup> Due to the severe retrogression on the realization of economic and social rights, including the right to water and sanitation, that the blockade on Gaza has caused, Israel is in violation of the ICESCR.

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<sup>237</sup> OCHA, ‘Israel-OPT: Quartet envoy upbeat on Gaza sewage projects’, 14 May 2008, [www.reliefweb.org](http://www.reliefweb.org)

<sup>238</sup> The Agreement on Movement and Access, 25 November 2005, available at [www.nad-plo.org](http://www.nad-plo.org), (click on ‘Current Issues’> ‘Agreements on Rafah Crossing & Movement & Access’).

<sup>239</sup> Statement by Middle East Quartet, 2 May 2008, [www.un.org/News](http://www.un.org/News).

<sup>240</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 United Nations Treaty Series 3, available at: <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

<sup>241</sup> For a detailed description of the obligations to respect, protect and fulfil economic and social rights see the Annex Section 5.3.

<sup>242</sup> In fact all the human rights treaty bodies that have reviewed Israel's performance have issued the same determination: For example, *Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) upon Consideration of Reports Submitted by States Parties*, A/52/38/Rev.1, 12 August 1997, para. 170; *Concluding observations of the Human Rights Committee: Israel*, CCPR/C/79/Add.93, 18 August 1998, para. 10; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.27, 4 December 1998, para. 8; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel*, CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001; *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, E/C.12/1/Add.90, 23 May 2003, para. 15; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel*, CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32. See the Annex, Section 5.1 for a more detailed description of Israel's legal obligations to the Palestinians living in the occupied territories. See Section 5.2 for a description of the legal basis and content of the human right to water and sanitation.

Israel's obstruction of humanitarian supplies from entering the Gaza Strip, and its hindrance of the ability of aid agencies to implement their programmes constitutes a breach of international humanitarian law. The Fourth Geneva Convention makes clear that; "If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal".<sup>243</sup> The Rome Statute of the International Criminal Court (1998) defines a war crime as including, "wilfully impeding relief supplies as provided for under the Geneva Conventions".<sup>244</sup>

### 2.1.2 Reduction of fuel and electricity undermining essential services

The Gaza Strip's almost total dependency on the State of Israel extends to its power needs. Gaza is reliant on Israel for the vast majority of its fuel and over 60% of its electricity. The amount of electricity necessary for the Gaza Strip at peak times is slightly over 200 megawatts, of which around 120 megawatts is provided by Israel (via 10 electrical lines supplying different parts of Gaza), 17 megawatts by Egypt (supplying the Rafah district) and the remainder by Gaza's power station. The cost of the electricity sold to Gaza by Israel is deducted from tax revenues that Israel collects on behalf of the PA. The Gaza power station is completely dependent on industrial diesel supplied by the Israeli company Dor Alon and funded by the EU, in order to operate. Between 28 June 2006 and December 2007, due to Israeli air forces bombing the Gaza power plant in a deliberate and targeted attack, aiming six missiles at the plant's six transformers,<sup>245</sup> subsequent restrictions on fuel, and Israel's prevention of entry for spare parts and experts required for maintenance into Gaza, the power plant only operated at approximately 35% of its 140 Mw capacity.<sup>246</sup> The introduction of a repaired transformer in December 2007 increased capacity to 65-80 Megawatts, still short of maximum output. Power outages were therefore frequent in Gaza even prior to the introduction of Israeli restrictions on electricity and the new wave of sanctions has crippled an already fragile system. With regards to fuel, prior to the restrictions, Gazans were ordering 1.4 million litres of ordinary diesel per week and around 350,000-400,000 litres of petrol (gasoline) per week from Israel. Fuel primarily enters the Strip through the Nahal Oz pipeline. Gaza's power plant needs 3.5 million litres of industrial diesel per week to operate.<sup>247</sup>

The punitive intent behind the fuel and electricity sanctions has been voiced by the Israeli government on a number of occasions. Prime Minister Olmert justified his policy of collective punishment by stating that he had no intention of allowing Gazans to "live comfortable and pleasant lives":

As far as I am concerned, all the residents of Gaza can walk and have no fuel for their cars, because they have a murderous terrorist regime that doesn't allow people in the south of Israel to live in peace.<sup>248</sup>

On the same day that Israel began to limit fuel supplies entering the "hostile entity" of Gaza, the 28 October 2007, ten Israeli and Palestinian human rights organizations petitioned the Israeli Supreme Court, seeking an injunction against fuel and electricity sanctions. The petitioners

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<sup>243</sup> Fourth Geneva Convention, Article 59.

<sup>244</sup> Article 8 (2), <http://www.un.org>, (click on 'International Law'> 'International Criminal Court'> 'Rome Statute of the International Criminal Court'). Israel has signed but not ratified this treaty.

<sup>245</sup> See B'Tselem, *Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects*, (September 2006) <http://www.btselem.org>, (click on 'Publications'> '2006').

<sup>246</sup> Information provided to COHRE by Michael Bailey, Advocacy and Media Manager, Oxfam GB, 28 December 2007.

<sup>247</sup> Gisha, Israel's "Relief": Fuel Cuts of Up to 81%, New Electricity Cuts Beginning February 7, Press Release, 27 January 2008, <http://www.gisha.org>.

<sup>248</sup> Al Jazeera, 'Misery mounts in Gaza', 21 January 2008, <http://www.aljazeera.net/English>



argued that the reduction of fuel and electricity supplies would cause widespread damage to essential services in Gaza including health systems, water wells and sewage treatment facilities. Moreover, they stated that the disruptions caused to the supply of essential goods and services amounts to the collective punishment of the civilian population, since Israel is preventing the people of Gaza from obtaining these goods and services from an alternative source.<sup>249</sup> In an interim decision on 29 November the court upheld the government's policy to reduce fuel and diesel supplies to Gaza declaring that it was "not convinced at that time that the respondent's decision to restrict the fuel supply to the Gaza Strip via Israeli border crossings ... harms essential humanitarian needs in the Gaza Strip."<sup>250</sup> However the court ordered the state to suspend the cutting of electricity for two weeks, due in part to the State of Israel's incomplete and erroneous presentation of data, and until a detailed review of the consequences of such a decision could be carried out.

At the next court hearing, relating to the restriction of electricity supply to the Gaza Strip, the State of Israel argued that a reduction of electricity would not harm the fulfilment of essential humanitarian needs in the Gaza Strip but rather would "prevent the supply of electricity to terrorist activities, such as workshops producing Qassam rockets and such."<sup>251</sup> The petitioners countered that "regular power failures already harm the functioning of essential services in Gaza, such as hospitals, since the electrical infrastructure in Gaza does not have the capacity to distinguish between essential services and the civilian population."<sup>252</sup> In its final ruling, on 30 January 2008, the Supreme Court upheld the Government of Israel's decision to reduce fuel and electricity supplies to Gaza. The court stated in its ruling that as Israel's occupation of Gaza had come to an end "the State of Israel bears no general obligation to concern itself with the welfare of the residents of the Strip or to maintain public order within the Gaza Strip, according to the international law of occupation".<sup>253</sup> The Court therefore completely ignored the legal test of occupation under international humanitarian law which remains "effective control" as well as the pronouncements of numerous United Nations bodies which have confirmed that the Geneva Conventions, as well as human rights law, are applicable to all territories occupied by Israel in 1967.<sup>254</sup> Moreover, the Court accepted the Government of Israel's assertion that it would maintain a "minimum humanitarian standard" in the Gaza Strip, a claim which has no legal foundation in humanitarian law. The decision of the Israeli Supreme Court to permit fuel and electricity reductions in contradiction of basic humanitarian principles sets an alarming precedent, shows a contempt for international legal standards and has led to the worsening of an already desperate humanitarian crisis.

The amount of fuel permitted to enter Gaza has been gradually decreased over the past few months. In October 2007, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported a 47% decrease in regular diesel and a 9% decrease in industrial gasoline since the sanctions began.<sup>255</sup> On 28 November fuel supplies faced further restrictions. By the end of March 2008, the situation was critical. OCHA reported that "Though the Nahal Oz fuel pipelines are open almost five days per week, fuel supplies to Gaza continue to be restricted to 10,000 liters of benzene and 100,000 liters of diesel per day. In February 2008, Israel allowed around 70,000 litres

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<sup>249</sup> Adalah, 'Supreme Court Approves Israeli Government's Decision to Cut Fuel Supplies to Gaza and Temporarily Freezes Cuts in Electricity Supplies', News Update, 4 December 2007, <http://www.adalah.org>, (click on 'English' > 'Press Releases').

<sup>250</sup> Gisha, *Unofficial translation of the Supreme Court Judgment relating to the reduction of fuel and electricity supplies to the Gaza Strip*, 27 January 2008, para.4, <http://www.gisha.org>.

<sup>251</sup> Ibid. para.6.

<sup>252</sup> Ibid. para.7.

<sup>253</sup> Ibid. para. 12.

<sup>254</sup> See Annex 5.1 for a description of 'effective control' and legal status of Gaza.

<sup>255</sup> OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.2.

of petrol and 700,000 liters of diesel per week to enter Gaza, which is only 27% and 30% of Gaza's estimated weekly requirements."<sup>256</sup> Restrictions on fuel have led to the complete shut down of Gaza's sole power plant on a number of occasions including on 20 January 2008, the 10 May 2008 and 17-19 May 2008. In February 2008, the industrial diesel required to operate the Gaza Power Plant had been reduced from the necessary 3.5 million litres per week to just 2.2 million litres per week, restricting the plant's electricity production to a mere 55 megawatts; less than 70% of full capacity.<sup>257</sup> In the first week of May 2008, the power plant received only 1.88 million litres.<sup>258</sup> The fuel shortages have been exacerbated due to periodic strikes by Gaza fuel companies and the Association of Gas Station Owners in protest of cut backs and delays in payment from the PA to Israeli companies. The attacks on border crossing points by Palestinian militants in April 2008, also led to the freezing of fuel supplies to Gaza for a number of days. Following the reductions of electricity supply (by some 0.5 megawatts) which began on 7 February 2008, daily power cuts of up to 8 hours per day have been commonplace throughout the Gaza Strip, with the exception of Rafah which continues to be supplied by Egypt.

The fuel and electricity cuts have had a disastrous impact on the life of Gaza's residents and must have only increased their feelings of isolation, anger and despair. In addition to living with frequent black outs and being limited in their use of transport, the functioning of hospitals and other essential services has been greatly curtailed affecting those who are most vulnerable; the elderly and the sick. The impact on the water and sanitation sector has been immense. Water and sewage infrastructure is dependent on fuel and electricity to operate. It is essential for the purification of drinking water, extracting water from wells and pumping it around the supply system and to the upper floors of multi storey buildings. It is also necessary for the removal of human waste and the operation of sewage pumps and treatment facilities. Fuel is also required for water tankers to distribute water to unserved and underserved communities and for the sewage trucks and maintenance vehicles to run. Reducing the supply of fuel and electricity violates international humanitarian law's prohibition of an occupying power attacking or denying objects indispensable to the basic subsistence of the civilian population.<sup>259</sup> Furthermore, Israel, as an occupying power holds a positive duty to "*bring in* the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate."<sup>260</sup>

The amount of fuel provided to the CMWU has steadily decreased. In November 2007 the CMWU was receiving only 50% of the amount of fuel it requires to operate the water facilities under its control including wells, pumping stations and sewage treatment facilities.<sup>261</sup> In January 2008 the CMWU received 55,800 litres (37% of its fuel needs); in February 2008, 19,500 litres (13% of its fuel needs); in March 2008, 45,900 litres (35% of its fuel needs).<sup>262</sup> In May 2008 the CMWU received only 5% of the fuel it required.<sup>263</sup> This has significantly diminished the capacity of the CMWU to provide an adequate service to the population. A number of water wells are not powered by electricity so are therefore dependent on generators, run on fuel and diesel, to operate. Other wells use generators as back up systems in times of electricity cut offs; these emergency generators are not designed for prolonged and sustained use. In February 2008, five

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<sup>256</sup> OCHA, Humanitarian Situation Update for the oPt, 20 March 2008, p.2.

<sup>257</sup> OCHA, Humanitarian Situation Update for the oPt, 20 March 2008, p.2.

<sup>258</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>259</sup> Additional Protocol I to the Geneva Conventions (1977), Article 54 & Additional Protocol II to the Geneva Conventions (1977), Article 14, <http://www.icrc.org>, (click on 'Humanitarian Law' > 'The Geneva Conventions and their Additional Protocols'). See section 5.1 below for the legal status of the Additional Protocols.

<sup>260</sup> Fourth Geneva Convention, Article 55.

<sup>261</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007.

<sup>262</sup> OCHA, 'Gaza Humanitarian Situation Report: Impact of fuel shortages on Gaza sanitation-polluting the sea', 29 April 2008, p.2.

<sup>263</sup> OCHA, 'Gaza Strip Inter Agency Humanitarian Fact Sheet', June 2008, p.1.

standby generators broke down, reducing the hours that wells were operational and affecting water availability in some 30% of the Gaza Strip.<sup>264</sup>

The fuel crisis has fluctuated in severity reflecting outbreaks of violence and political developments. At times the lack of fuel has reached crisis point such as in January 2008 when the Gaza Power Plant temporarily ceased to operate, leaving 40 percent of the houses in the Gaza Strip without running water.<sup>265</sup> By May 2008, all of the 135 water wells in Gaza were out of fuel and dependent on the intermittent electricity supply to operate. Around 115 of those wells are connected to the electricity grid, but electricity cuts have meant that for around eight hours a day the wells were not functioning. The remaining 20 that are not connected to the electricity supply ceased to operate altogether. Likewise only 10 out of the 37 sewage pumping stations were functioning (on limited quantities of fuel and electricity) and all three waste water treatment plants had ran out of fuel and rendered totally dependant on electricity.<sup>266</sup> These fuel crises have had a severe detrimental impact on the Gazan populations' right to access sufficient quantities of safe water. As of June 2008, around 15% of the Gazan population access water for 4-6 hours per week, 25% once every four days and 60% have access every other day.<sup>267</sup> Further, around 70 percent of Gaza's 4,000 agricultural water wells dependent on fuel to power their pumps began to run out of supplies. In June 2008, due to a lack of water for irrigation, many farmers were forced to harvest their crops ahead of time or lost them altogether;<sup>268</sup> resulting shortages and possible price inflations will have a significant negative impact upon peoples' right to food. Most water and waste-water service vehicles have stopped working due to the fuel shortage.

The lack of fuel has also led to sewage flooding the streets, as evidenced in the Zeitoun neighbourhood of Gaza City in January 2008 and again in May 2008. Currently, as the CMWU is unable to treat sewage due to the fuel crisis and lack of spare parts required for maintenance, an average of 40-60 million litres (40,000 – 60,000 cubic metres) of sewage is being discharged into the Mediterranean Sea every day of which 20,000 cubic metres is raw and 20,000–40,000 cubic metres is partially treated.<sup>269</sup> This primarily comes from the Gaza City wastewater treatment plant which needs a constant, uninterrupted supply of power for fourteen days to complete the sewage treatment cycle. Due to the frequent electricity cuts caused by restrictions on industrial diesel supply to the Gaza Power Plant, the back up generator used to operate the Gaza City wastewater treatment plant has been over used and broken down on several occasions. The effect that the discharge of this sewage will have on the coastline and marine environment of Gaza, southern Israel and Egypt is immense. There is also a threat of ground water aquifer pollution. According to OCHA, "Given that it costs only \$0.50 per cubic meter to treat sewage, CMWU estimates that, if this sewage was to be treated and made appropriate for domestic and agricultural use, the cost would be far less than that of attempting to mitigate the marine and environmental damage caused by pumping the sewage into the sea."<sup>270</sup> The CMWU estimates that the discharge of 50,000 cubic metres of raw sewage into the sea per day causes a financial loss of around US\$25,000/day or US\$9 million per year.<sup>271</sup>

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<sup>264</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affect of Materials Delay Report', February 2008.

<sup>265</sup> Hass, A, 'Palestinian Water Authority: 40% of Gazans lack running water', Haaretz, 22 January 2008, <http://www.haaretz.com>.

<sup>266</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>267</sup> OCHA, 'Gaza Strip Inter Agency Humanitarian Fact Sheet', June 2008, p.1.

<sup>268</sup> Ibid.

<sup>269</sup> OCHA, The Humanitarian Monitor, February 2008, p.1.

<sup>270</sup> OCHA, The Humanitarian Monitor, February 2008, p.18.

<sup>271</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affects of Materials Delay Report', 27 February 2008.



As an occupying power controlling Gaza's border, Israel is legally obliged to respect, protect and fulfil the right to water and sanitation of the people of Gaza. This means to desist from interfering with the enjoyment of the right to water and sanitation as well as actively facilitating its realization. As the Gaza administration is not in a position to meet all of Gaza's electricity and fuel needs, Israel as the occupying power is obliged to continue to provide power especially where its denial causes widespread human rights violations.

International humanitarian law prohibits indiscriminate attacks on civilians and as such the rocket attacks by Palestinian militants on Israeli communities constitute war crimes and are not to be condoned under any circumstances. However, violations of international humanitarian law by one party, do not justify violations by another party. Due to the escalating humanitarian crisis and breakdown of water and sewage services that the sanctions have caused, the Government of Israel's policy constitutes collective punishment through imposing intolerable living conditions on the civilian population in reprisal for the actions of individuals for which they cannot be regarded as responsible. That Israel is able to reduce industrial diesel supplies funded as part of the EU's programme of humanitarian assistance, shows the influence it has to set the rules of the game. The lack of visible outrage amongst EU member states is testimony to their complicity in a policy designed to subjugate and penalize an entire population for making the 'wrong' democratic choice.

### **2.1.3 Financial sanctions leading to the collapse of basic service provision**

The Gaza-Jericho Agreement of 1994 transferred responsibility for water and sewerage to the newly established Palestinian Authority (PA). In 1995 the Palestinian Water Authority (PWA) was created and assigned a mandate to regulate and manage the water sector and resources and plan infrastructure development. The withholding of tax revenues, aid and prohibitions on monetary transfers have severely limited the ability of the PA and its agencies to fulfil their responsibilities towards the Palestinian population including respecting, protecting and fulfilling the right to water and sanitation. The PWA reports that as a result of Israeli and donor sanctions there has been a significant decrease in the budget for water and sanitation.<sup>272</sup>

Following the legislative elections in January 2006 key donors such as the EU, US, Canada and Japan suspended direct aid (mainly budgetary support) to the PA in an attempt to bypass Hamas. The payment of salaries to public sector workers forms a large part of PA public expenditure but due to the freeze on direct funding of the PA and Israel's withholding of tax revenues, many employees ceased to be paid. International Crisis Group reports that "[o]f 32,000 employees cut from the total PA payroll of 170,000, some 65 percent came from Gaza."<sup>273</sup> The non-payment, or incomplete payment of salaries led to a series of strikes by municipality workers predominantly in Gaza City, Khan Yunis and Jabalia. A large part of municipalities' revenues comes from service charges (including water bills) but increasing levels of poverty mean that many Gazans have been unable to pay. In January 2008 only 5% of households connected to the water network were paying their bills.<sup>274</sup> As a result, as of May 2008, many municipal employees in Gaza have not been paid for between three and twelve months.<sup>275</sup> The Palestinian Hydrology Group warns that "it is very important to solve this problem in order for the employees to be able to continue providing the needed services related to solid waste, water and wastewater services in addition to

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<sup>272</sup> Information provided to COHRE by the PWA, December 2007.

<sup>273</sup> International Crisis Group, *Ruling Palestine 1: Gaza Under Hamas*, Middle East Report No. 73, 19 March 2008, p.22.

<sup>274</sup> OCHA, *The Humanitarian Monitor*, February 2008, p.18.

<sup>275</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

the provision of operation and maintenance work for available facilities.”<sup>276</sup> A fifteen day strike in Gaza City, towards the end of 2007, left mounds of garbage piling up on the streets risking the contamination of ground water and endangering public health. Solid waste produced in the city is estimated at being around 600 tons/day.<sup>277</sup> In March 2008 due to unpaid wages and a lack of fuel for municipality vehicles, solid waste was again not collected.<sup>278</sup> By 23 April 2008, the solid waste councils in 12 municipalities had stopped working, affecting 500,000 Gazans, and UNRWA announced the suspension of its solid waste collection at Gaza’s eight refugee camps.<sup>279</sup> The public health hazard solid waste will cause if it is not properly disposed of and left to rot on the streets of Gaza is a grave cause for concern.

Investment in the development of the water and waste-water sector relies mainly on donor’s contribution. The CMWU estimates that over the next ten years investment of around US\$1.5 billion is needed in the water and waste-water sectors.<sup>280</sup> A number of donor projects related to water and waste-water infrastructure have been frozen or terminated due to sanctions and the unstable political climate.<sup>281</sup> The United States Agency for International Development (USAID) had previously been one of the major donors of water and wastewater projects in the occupied Palestinian territories. International Crisis Group reports that “[t]he share of USAID’s funding for Gaza, which as of June 2007 was 40 per cent of its Palestinian aid program, was cut back to about 10 per cent to avoid any contact with Hamas, which is on the U.S. list of terrorist organizations.”<sup>282</sup> USAID projects to build a desalination plant and a regional water pipeline to provide fresh water to the Gaza Strip were initially frozen. The project has since been cancelled and the funds for the desalination plant have been reallocated elsewhere.<sup>283</sup> Likewise the German government-owned development bank KfW placed its project to construct a new waste-water treatment plant in Central Gaza on hold “until the political and security situation in Gaza has improved”.<sup>284</sup> A waste-water treatment plant financed by a number of countries through the World Bank, which was to transfer the existing treatment facility in Beit Lahia to a new location in north-eastern Gaza, was frozen in 2006 but resumed in 2007 after a flood disaster in the village of Um Al-Nasser (see Section 2.5). Improvements to the waste-water treatment plant in Rafah have also been halted.<sup>285</sup>

Despite the cessation of direct financial support to the authorities in Gaza, donors have continued to provide humanitarian and emergency aid via other means such as through UNRWA and the establishment of temporary mechanisms. The occupied Palestinian territories are heavily dependent on foreign aid and a number of donors have significantly increased the amount of aid going into Gaza in recent months, especially food aid. In spite of this, the Consolidation Appeals Process (CAP) a coordination mechanism to facilitate the provision of humanitarian aid, in which a large number of UN Agencies, NGOs and the Red Cross participate, is severely under-funded.

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<sup>276</sup> Palestinian Hydrology Group, WaSH Monitoring Program, ‘Gaza Strip Situation Report, June to mid-September 2007’, <http://www.phg.org>.

<sup>277</sup> Ibid.

<sup>278</sup> OCHA, ‘Gaza Strip Inter-Agency Humanitarian Fact Sheet’, March 2008, p.2.

<sup>279</sup> OCHA, ‘Gaza Strip Fuel Situation Report’, 23 April 2008, pp.1 & 2.

<sup>280</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>281</sup> Information provided to COHRE by the PWA, December 2007.

<sup>282</sup> International Crisis Group, *Ruling Palestine 1: Gaza Under Hamas*, Middle East Report No. 73, 19 March 2008, p.4. See reference 42.

<sup>283</sup> Information provided to COHRE by Fuad Bateh, PLO Negotiations Support Unit, January 2008. The murder of three US citizens in Gaza also contributed to the cessation of this project as the US government demanded that those responsible be brought to justice before construction would resume.

<sup>284</sup> Information provided to COHRE by Andrea Johnston, Principle Country Manager and Economist, KfW Development Bank, 25 January 2008.

<sup>285</sup> Palestinian Hydrology Group, WaSH Monitoring Program, ‘Gaza Strip Situation Report, June to mid-September 2007’.

OCHA reports that “[t]he total financial requirement under CAP 2008 is USD 261 million, of which 1.3% was funded as of 18 March 2008 ... Agriculture and Water and Sanitation sectors are 1% funded each.”<sup>286</sup>

It must be borne in mind that aid is not an effective substitute for services offered by governmental institutions and does not absolve Israel of its responsibility to ensure basic services are provided to the occupied population. Whilst emergency assistance can provide short-term relief to the people of Gaza it cannot provide a solution to the crisis, ensure human development and ultimately the fulfilment of human rights. The restriction of donor aid to humanitarian and emergency assistance fails to address the fact that sustained, long-term investment in the water and sanitation sectors is needed and its absence has rendered Gazans completely dependent on the good will and charitable hand of the international community.

At the Donor’s Conference held in Paris on 17 December, donors pledged US\$7.4bn worth of aid to be delivered to the occupied Palestinian territories over the next 3 years. The World Bank and several leading aid agencies have argued that aid in itself is not enough and significant improvement in the lives of Palestinians in Gaza will not be seen unless Israel lifts the restrictions on movement of people and goods that is crippling Gaza’s economy. Oxfam stated “[The aid money] is being poured into a leaking bucket. The challenge is to fix the leak not pour faster. Due to Israel’s movement restrictions and the blockade of Gaza, millions of dollars of aid for the Palestinians is being lost. Ending these restrictions is the only way to make the money pledged count.”<sup>287</sup> Furthermore, the aid money is not being provided to the agencies in Gaza responsible for public services.

The crippling of government institutions in Gaza has severely undermined the right to water and sanitation for the people of Gaza. It denies Palestinians their right to self-determination, which includes the right to “freely determine their political status” and “freely dispose of their natural wealth and resources”.<sup>288</sup> It further jeopardises the viability of a future Palestinian state. As an occupying power Israel is legally required to allow and assist agencies in Gaza responsible for water and sanitation to carry out their functions and refrain from calling on donors to cease funding to these agencies.<sup>289</sup> Other States that are party to the economic sanctions and the restrictions on banking transfers to the Gaza administration are also obliged to ensure that such sanctions do not violate Palestinians’ right to water and sanitation or cause a retrogression in the realization of economic and social rights which violates the principles of the ICESCR.

The UN Committee on Economic, Social and Cultural Rights, the primary international arbiter of the ICESCR, has held that States obligations under the Covenant include the requirement to “refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.”<sup>290</sup> Moreover, under the ICESCR, economic sanctions may not be imposed and applied in such a manner that they impose undue suffering on a civilian population. General Comment No. 8 adopted by the UN Committee on Economic, Social and Cultural Rights states “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights

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<sup>286</sup> OCHA, Humanitarian Situation Update for the oPt, 20 March 2008, p.3.

<sup>287</sup> Cited in Bowen, J, ‘Analysis: Palestinian aid and politics’, 20 December 2007, <http://www.news.bbc.co.uk>.

<sup>288</sup> See common Article 1 of both the ICESCR and the International Covenant on Civil and Political Rights (1966), available at <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

<sup>289</sup> See the Annex, Section 5.1.

<sup>290</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (2002), UN Doc. E/C.12/2002/11 para. 31. All General Comments by the Committee on Economic, Social and Cultural Rights are available at: <http://www.ohchr.org>, (‘Human Rights Bodies’>‘CESCR’>‘General Comments’).

by virtue of any determination that their leaders have violated norms relating to international peace and security” and that “lawlessness of one kind should not be met by lawlessness of another kind”.<sup>291</sup> It further states that “In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country.”<sup>292</sup> General Comment No. 15 on the right to water makes clear, “States parties should refrain at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.”<sup>293</sup> Therefore, States parties to the ICESCR that participate in the current economic sanctions and restrictions on monetary transfers to Gaza are in violation of the ICESCR.

The United States, which has taken the lead in imposing restrictions on monetary transfers to Gaza, has not ratified the ICESCR, but is a signatory to it. Under international law, signatories to treaties are not obliged to implement the treaty in full, but are obliged to not engage in actions that defeat the object and the purpose of that treaty. As the principal object and purpose of the ICESCR is to achieve full realisation of economic, social and cultural rights, by imposing sanctions that restrict the realisation of the right to water and sanitation (as well as associated economic and social rights, such as the right to health and the right to an adequate standard of living), the United States is acting contrary to international law.

The actions of all States participating in the economic sanctions on Gaza also violate the Charter of the United Nations, in particular the obligation of promoting universal respect for and observance of human rights,<sup>294</sup> as well as the commitment of all States to the realisation of economic and social rights set out in the Universal Declaration of Human Rights (UDHR).<sup>295</sup>

The withdrawal of funding by most donor states undermines the goals of the ICESCR, even if such States are not participating in the restrictions on banking transfers to the Gaza administration. International cooperation for the realisation of economic, social and cultural rights is an obligation of all State parties to the ICESCR, particularly for those that have the resources to assist.<sup>296</sup> While States have significant discretion in deciding to which countries and regions they can provide assistance, governments that have previously funded the PA should take into account the impact of their withdrawal of funding upon the people of Gaza, particularly given the dire situation there. As such funding is provided in furtherance of a legal obligation in the ICESCR, rather than as a purely charitable donation, donors are responsible for ensuring that decisions to withdraw funding are justified and related to the objectives of the ICESCR, rather than motivated solely by political considerations.

## 2.2 Declining water quality and its impact on health

Poor water quality has been a long-standing problem in Gaza with a corresponding negative impact on human and environmental health. The pollution and contamination of ground water

<sup>291</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 8, The relationship between economic sanctions and respect for economic, social and cultural rights* (1997), UN Doc. E/C.12/1997/8, para. 16.

<sup>292</sup> General Comment No. 8, para. 4. See also the Annex, Section 5.2 relating to international human rights law in the context of economic sanctions.

<sup>293</sup> General Comment No. 15, para. 32.

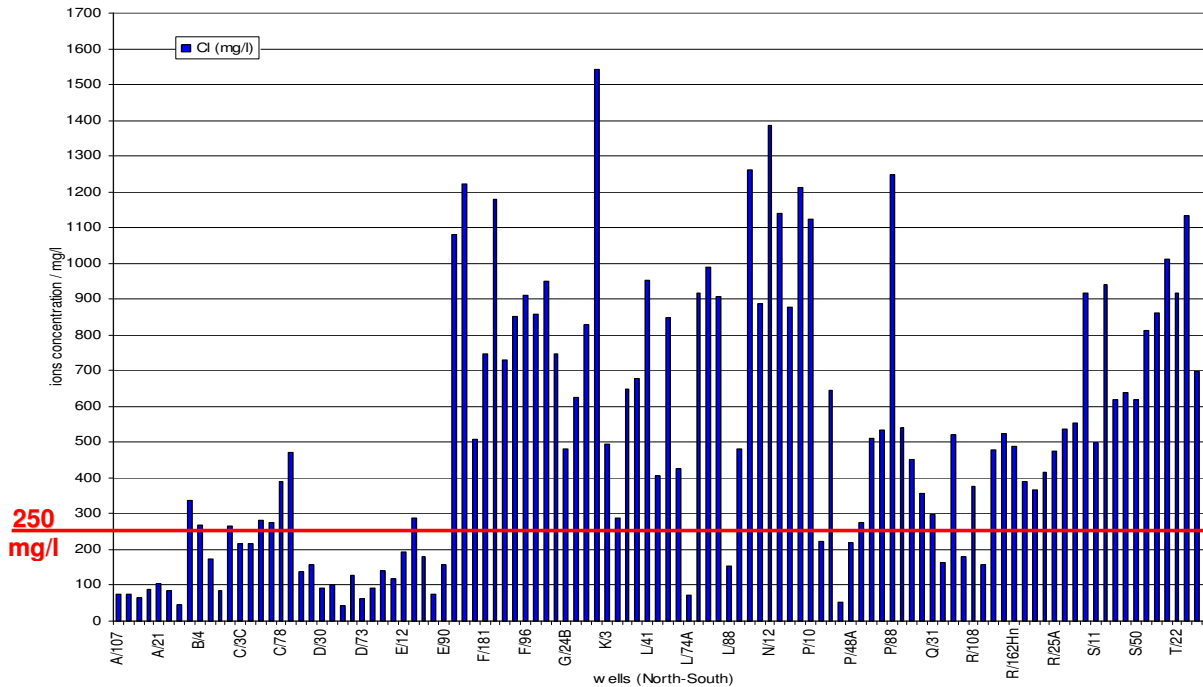
<sup>294</sup> United Nations Charter, Articles 55 and 56.

<sup>295</sup> Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III) (adopted 10 December 1948), Article 22.

<sup>296</sup> See the Annex, Section.2 for a full description of these legal obligations.

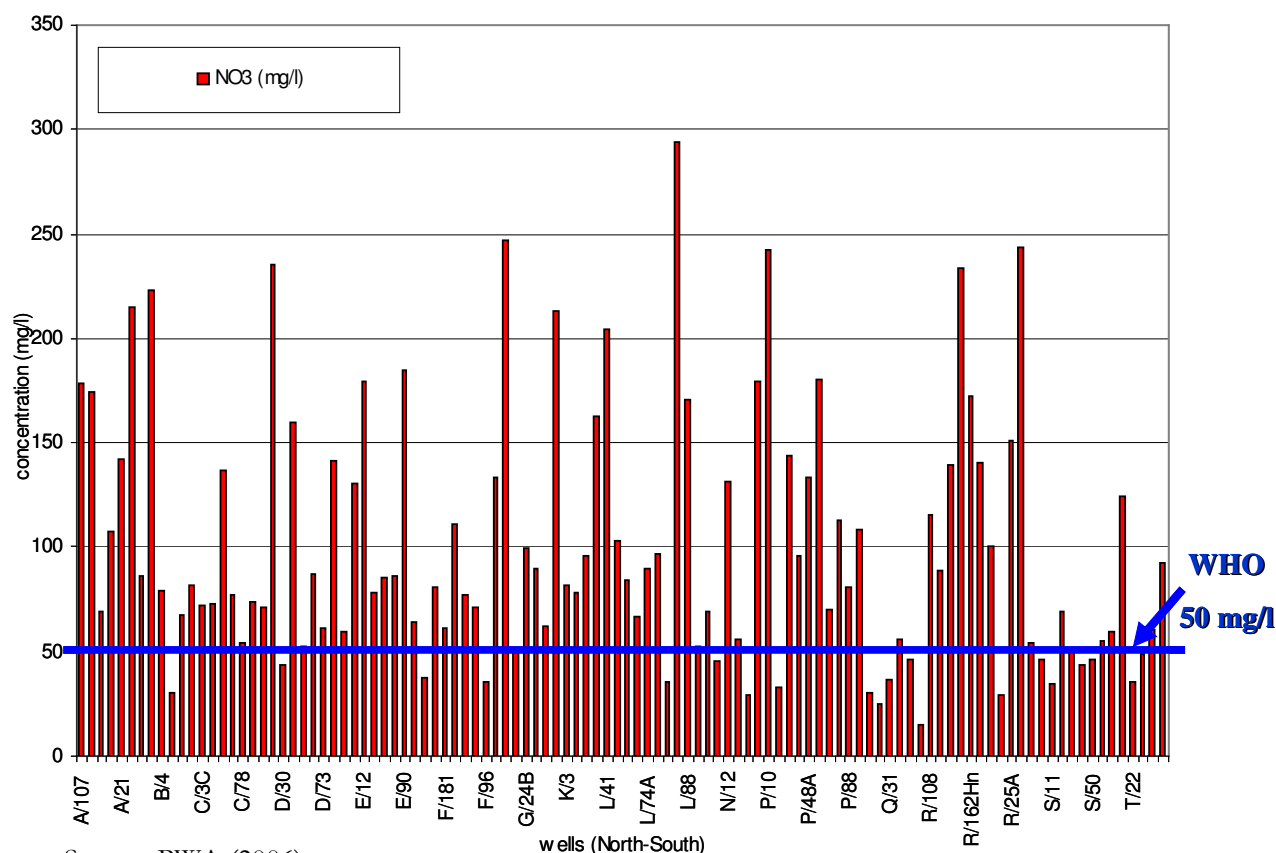
has left water resources unfit for human consumption without purification. High levels of nitrates and chlorides, found in municipal water wells from much of the Gaza strip, exceed the amount the World Health Organization (WHO) considers safe.

**Chart showing the levels of chloride concentration in samples taken from house-hold wells throughout the Gaza Strip (250 mg/l is the amount the WHO considers safe).**



Source: PWA (2006)

Chart showing the levels of nitrate concentration in samples taken from house-hold wells throughout the Gaza Strip (50 mg/l is the amount the WHO considers safe).



Source: PWA (2006)

The already dire situation of water pollution in Gaza has been exacerbated by economic and financial sanctions since 2006. Due to the freeze on chemicals entering the Gaza Strip since the Hamas takeover, and resulting shortages, laboratories in Gaza have been unable to carry out the necessary biological investigations to test water quality.<sup>297</sup> The blockade has also meant that basic supplies such as chlorine and filters have been prevented from entering at border crossing points. Towards the end of 2007 the CMWU reported that there was enough chlorine available in Gaza until mid-December 2007, as well as a reserve of 100,000 m<sup>3</sup> for two months.<sup>298</sup> On the 27 February 2008, the PWA and CMWU issued warnings via radio and newspapers urging people to boil their drinking water, as there had been no deliveries of chlorine through the crossing points since 21 January and there was now a risk that water was contaminated.<sup>299</sup> The refusal of the Israeli government to allow this essential water purification chemical to enter the Strip placed the health of around 400,000 people at risk. The chlorine shortage lasted three days until the CMWU received 135,000 litres of chlorine to cover its needs until mid-April 2008.<sup>300</sup>

Water-borne diseases resulting from the lack of clean drinking water include diarrhoea, hepatitis A, typhoid fever, paratyphoid, and gastro enteritis.<sup>301</sup> Children are most vulnerable to such water-related diseases. In October 2007, the WHO reported that compared to the previous year, the

<sup>297</sup> Information provided to COHRE by Oxfam GB, December 2007.

<sup>298</sup> Ibid.

<sup>299</sup> BBC, 'Gaza issues toxic water warning', 27 February 2008, [www.news.bbc.co.uk](http://www.news.bbc.co.uk)

<sup>300</sup> OCHA, 'Gaza Strip Inter-Agency Humanitarian Fact Sheet', February 2008, p.2.

<sup>301</sup> UNICEF, 'Humanitarian Action Update: Occupied Palestinian Territory', September 2007, [www.unicef.org/opt](http://www.unicef.org/opt).

number of children aged three and under who were diagnosed as having diarrhoea at UNRWA health clinics in Gaza had increased by 20%.<sup>302</sup> In some areas of Gaza, the salinity of the water supply means it is unfit even for showering. Moreover, high levels of saline in drinking water are a major cause of kidney problems. In December the CMWU reported that a lack of hydrochloric acid needed for water desalination plants meant that soon these plants will have their capacity reduced.<sup>303</sup> By March 2008, this fear had been realized. According to OCHA:

The CMWU has run out of hydrochloric acid to operate its desalination plant in Deir al Balah which makes brackish water fit for consumption for 100,000 people. Until it is allowed new supplies by Israel, the CMWU is using citric acid which damages the plant's filters.<sup>304</sup>

Existing sewage treatment facilities are stretched beyond capacity and significant amounts of sewage is released into the environment without treatment, further contaminating groundwater. Water-borne infections resulting from poor sanitary conditions include trachoma, conjunctivitis, dysentery, gastro-enteritis and hookworm.<sup>305</sup> In the Northern Gaza Strip, communities living around the Beit Lahia waste-water treatment plant suffer from an alarming number of diseases. More than 50% of children in the area suffer from parasites and helminths, transmitted by the mosquitoes which are prevalent in and around the waste-water lake, causing problems to the digestive system.<sup>306</sup> The majority of these parasitic infections are caused by *Giardia lamblia*, which is common in children 6-11 years of age and can cause long-term effects such as anaemia, retarded growth and mental disorders. Skin infections and allergies are also common as well as respiratory problems due to the gases produced by sewage pools.<sup>307</sup>

A study by the World Health Organization (WHO) published in October 2007, found a high concentration of nitrates, well above recommended levels considered safe, in the water supply from wells in Gaza City, Jabalia and Khan Yunis. The WHO standard for drinking water quality limits nitrates to 50ppm but the WHO found levels of nitrate ranging from 124ppm (Jabalia) to 195ppm (Khan Yunis). Nitrate pollution is a direct effect of the discharge of untreated sewage. This nitrate contamination was found to be the cause of the high incidence of the disease methemoglobinemia (blue-baby syndrome) among infants in the Gaza Strip.<sup>308</sup> The disease prevents haemoglobin in the blood from binding with oxygen and can cause symptoms such as breathing difficulties, fatigue, headaches and even loss of consciousness and can seriously impact upon the child's development. Whilst this disease primarily affects young children, nitrate contamination can also cause birth defects amongst pregnant women and long-term exposure to nitrates increases the risk of certain types of cancer.

As of May 2008 raw sewage has been diverted to storm water overflow lagoons in densely populated areas such as Jabalia and Sheik Radwan posing a significant health hazard.<sup>309</sup> Moreover, the release of huge amounts of untreated human effluent into the sea, which has been

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<sup>302</sup> OCHA, 'Gaza Humanitarian Situation Report', 9 October 2007, [www.ochaopt.org](http://www.ochaopt.org).

<sup>303</sup> Information provided to COHRE by Oxfam GB, December 2007.

<sup>304</sup> OCHA, 'Gaza Strip Inter-Agency Humanitarian Fact Sheet', March 2008, p.2.

<sup>305</sup> UNICEF, 'Humanitarian Action Update: Occupied Palestinian Territory', September 2007.

<sup>306</sup> Al Mezan Center for Human Rights, *On the Brink of Disaster: The Beit Lahia Treatment Plant and Human Rights*, (June 2003), p.17, <http://www.mezan.org>, (click on 'English page'> 'Mezan Publications'> 'ESC Rights reports').

<sup>307</sup> Ibid.

<sup>308</sup> Abu Naser, A, et al. 'Relation of nitrate contamination of groundwater with methaemoglobin level among infants in Gaza', *Eastern Mediterranean Health Journal*, Volume 13 No.5, (September-October 2007), <http://www.emro.who.int>, ('Eastern Mediterranean Health Journal Portal'> 'Back issues').

<sup>309</sup> OCHA, 'Gaza Humanitarian Situation Report: Impact of fuel shortages on Gaza Sanitation-Polluting the Sea', 29 April 2008, p.2.



occurring since January 2008, also has the potential to cause a significant deterioration in human health. Bathers are placed at risk of coming into contact with e-coli bacteria which can lead to gastro-enteritis and urinary tract infections and consumers of seafood may also be vulnerable to bacterial contamination.<sup>310</sup> A study conducted by the Ministry of Health and World Health Organization in June 2008 found that sea water on 11 out of 30 beaches in Gaza was contaminated with faecal bacteria.<sup>311</sup> This sewage contamination of sea water does not only place Palestinians at risk of disease; the ecosystem does not stop at borders. In Israel, the general director of the Ashkelon Desalination Plant, only three miles north of Gaza, has confirmed that seawater processed by the plant was contaminated with sewage.<sup>312</sup>

Under the terms of the Geneva Conventions an occupying power is obliged to ensure public health and hygiene is maintained in the occupied territory.<sup>313</sup> Further, the right to water and sanitation requires that water is of an acceptable quality and must be safe for personal and domestic use and therefore free from pollutants or micro-organisms constituting a threat to health.<sup>314</sup> The Convention on the Rights of the Child, ratified by Israel, also recognizes the right of the child to the highest attainable standard of health and states that the provision of clean drinking water is necessary to combat disease.<sup>315</sup> In light of the strong causal links between lack of adequate sanitation and ill health, poverty and loss of dignity, everyone is entitled to adequate and safe sanitation that does not endanger public health or the environment.<sup>316</sup> The provision of adequate sanitation facilities therefore comprises an important component of the rights to health and housing. As the right to water and sanitation is essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera access to water and sanitation is further implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR).<sup>317</sup> According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.<sup>318</sup>

The blockade and restrictions on monetary transfers, which are precipitating a health crisis, are therefore leading to a violation of international human rights law and international humanitarian law. As long as the supplies necessary for water purification, and the necessary resources, both financial and human, are not reaching the Gaza Strip, the health of Gazans can only be expected to deteriorate over the coming months.

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<sup>310</sup> Ibid. p.3.

<sup>311</sup> OCHA, 'Gaza Strip Inter Agency Humanitarian Fact Sheet', June 2008, p.1.

<sup>312</sup> OCHA, 'Gaza Humanitarian Situation Report: Impact of fuel shortages on Gaza Sanitation-Polluting the Sea', 29 April 2008, p.3.

<sup>313</sup> Fourth Geneva Convention, Article 56. All the Geneva Conventions and Additional Protocols can be found at <http://www.icrc.org>, (click on 'Humanitarian Law' > 'The Geneva Conventions').

<sup>314</sup> General Comment No. 15, para. 12 (b).

<sup>315</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1557 UN Treaty Series 3, Article 24 (2) (c), <http://www.ohchr.org>, (click on 'Your Human Rights' > 'What are Human Rights' > 'International Human Rights Law').

<sup>316</sup> United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res.2006/10, Promotion of the Realization of the right to drinking water and sanitation, (2006), UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005) UN Doc. E/CN.4/Sub.2/2005/25, section 1.2, available at <http://www.ohchr.org> ('Your Human Rights' > 'Human Rights Issues' > 'Water').

<sup>317</sup> (Adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6.

<sup>318</sup> See Human Rights Committee, 'General Comment 6, Right to Life UN Doc. HRI/GEN/1/7, para. 5.



## 2.3 Destruction of water and sewage infrastructure

Since the outbreak of the second Intifada, Israeli Defence Forces (IDF) have deliberately targeted water and sewage infrastructure throughout the Gaza Strip. The United Nations reported that between 2000 and 2006 IDF destroyed 244 wells in the Gaza Strip, including two drinking water sources.<sup>319</sup> Many roads, water supply lines and sanitation networks have been dug up using specially designed “back-hoe” tanks and bulldozers. Waste-water treatment plants in Gaza City and Rafah have been attacked or partially destroyed and water storage tanks on Palestinian roof tops and cisterns have been fired at. Maintenance workers have also been harassed and obstructed from carrying out their work. According to Dugard:

... between June and November 2006, IDF carried out 346 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air to surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and sewage networks.<sup>320</sup>

The PWA estimates that in the occupied Palestinian territories as a whole, the cost of rehabilitation to damaged water and waste-water resources and systems is around US\$15 million.<sup>321</sup> The CMWU estimates that in Gaza around 5000 meters of main lines and an equal quantity of sub mains have been destroyed.<sup>322</sup> The cost to international development agencies to repair their original investment is also substantial.

In October 2007 the Israeli military carried out 134 attacks on the Gaza Strip, a large proportion in Palestinian residential areas, targeting civilian property.<sup>323</sup> On 28 November 2007, IDF soldiers levelled eight thousand square metres of land in North Gaza; demolishing a water well and a house.<sup>324</sup> Those living in areas with high incidences of military incursions, such as the North Gaza town of Beit Hanoun and Southern towns of Khan Younis and Rafah, are frequently unable to access and maintain water wells or properly discharge sewage. When asked about the safety/security level for those collecting water from water points at a distance from their homes, the CMWU replied; “There is a risk of getting shot in certain places.”<sup>325</sup> In February 2008, the Gaza based Al Mezan Center for Human Rights reported that the IDF was “frequently firing at municipal and Water Authority workers, who approach solid waste dumps or the sewage treatment plant project in the east of Jabalia [which] prevents them from performing works necessary for public health.”<sup>326</sup>

During the IDF military incursion into the Gaza Strip between 27 February and 4 March 2008, OHA reported that:

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<sup>319</sup> United Nations Economic and Social Council, *Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people living in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan*, -Note by the Secretary-General (2006), UN Doc. A/61/67-E/2006/13, para. 19, [www.un.org/ecosoc](http://www.un.org/ecosoc), (click on ‘reports’).

<sup>320</sup> Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967*, (August 2007) UN Doc.A/62/275, para. 13.

<sup>321</sup> Jarrar, A, *Water from Conflict to Cooperation, Palestine and Israel Case: How to Promote Cooperation*, Palestinian Water Authority, (2003) p.11.

<sup>322</sup> Information provided to COHRE by CMWU, December 2007.

<sup>323</sup> Palestinian Monitoring Group, ‘Monthly Summary of Israeli Violations, 01 October 2007- 31 October 2007’, p.3, <http://www.nad-plo.org>, (click on ‘Reports from the Palestinian Monitoring Group’).

<sup>324</sup> OCHA, ‘Protection of Civilians Weekly Report’, 28 November-4 December 2007, <http://www.ochaopt.org>.

<sup>325</sup> Information provided to COHRE by CMWU, December 2007.

<sup>326</sup> Al Mezan Center for Human Rights, ‘Severe drinking water crisis in Gaza, IOF Siege continues, Prevents entry of materials essential for water treatment’, Press Release, 28 February 2008, <http://www.mezan.org>.

230,000 Gazans were without water for almost two days following damage to 8 electrical transformers and 2 high voltage lines affecting 10 water wells. Water supply to a larger part of the Gazan population was interrupted for shorter periods, due to lack of access of the Water Utility personnel to some wells in the Gaza Strip.<sup>327</sup>

International humanitarian law strictly prohibits attacks to civilian infrastructure and indiscriminate and excessive use of force.<sup>328</sup> Additional Protocol I to the Geneva Conventions explicitly mentions that attacking drinking water installations constitutes a crime under the laws of war.<sup>329</sup> Moreover all State parties to the ICESCR have the duty to respect the right to water and sanitation. General Comment No. 15 states: “The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water ... or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.”<sup>330</sup> Physical security must be guaranteed when accessing water amenities and services.<sup>331</sup> The sanctions and blockade, addressed in Section 2.1 above, have hindered investment into rehabilitation of damaged water and sewage infrastructure.

## 2.4 Unaffordable increases to the price of water for household uses

Although approximately 98% of households in Gaza are connected to the drinking water supply network, many households cannot rely on network provision due to water contamination, water shortages, or damage to water networks, and as a result rely on tankered or bottled water. Increasing restrictions at border crossings have created difficulty for water tankers to enter the Gaza Strip and increased transportation time resulting in significant price increases. The average price of water provided in tankers in the Gaza Strip is 35 NIS per cubic meter, compared to an average of 14 NIS per cubic meter in the West Bank.<sup>332</sup> Although municipal tariffs for piped water have not been affected, remaining at 1-2.5 NIS per cubic meter, due to increasing poverty as a result of the sanctions and the siege the proportion of household expenditure currently spent on water and sanitation services has increased.<sup>333</sup> The increases in the prices of tankered water are also likely to be unaffordable for most households given the economic circumstances in Gaza.

Many of the pipes in the water distribution network in Gaza are reportedly old, damaged and in need of repair resulting in significant water losses. In most communities, unaccounted-for-water, (i.e. water lost in the distribution network), ranges from between 30-50% of supply.<sup>334</sup> Both the PWA and CMWU have reported increases in unaccounted-for-water since the sanctions and blockade on the Gaza Strip began.<sup>335</sup> Whilst the exact cause of this is not known, it is likely that an inability to pay for water has led to a proliferation in illegal connections. Under the ICESCR, all persons have the right to water that is affordable, without reducing a household’s ability to purchase other essential goods and services.<sup>336</sup> The blockade, including fuel cuts, damage to water infrastructure caused by the IDF, and financial sanctions have needlessly reduced the ability of

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<sup>327</sup> OCHA, ‘Humanitarian Situation Update for the oPt’, 20 March 2008, p.1.

<sup>328</sup> For more detailed information on international humanitarian law, see Annex, Section 5.2.

<sup>329</sup> Article 54.

<sup>330</sup> General Comment No. 15, para. 21.

<sup>331</sup> General Comment No. 15, para. 12 (c) (i).

<sup>332</sup> OCHA, ‘The Humanitarian Monitor’, February 2008, p.18, <http://www.ochaopt.org>.

<sup>333</sup> Information provided to COHRE by PWA, December 2007.

<sup>334</sup> Palestinian Water Authority, Palestine paper presented to the seminar ‘Water: Source of Life, Source of Peace’, 21-22 November 2003, Barcelona, Spain p.11.

<sup>335</sup> Information provided to COHRE by PWA and CMWU, December 2007.

<sup>336</sup> General Comment No. 15, para.12 (c) (ii).

many households to secure access to affordable water, and therefore give rise to serious concerns under the ICESCR.<sup>337</sup>

## 2.5 Threat of flooding of sewage from collapsing treatment plants

There are three wastewater treatment plants serving the whole of the Gaza Strip: North Gaza (Beit Lahia), Gaza City and Khan Yunis. The denial of supplies and funding for waste-water treatment has led to a critical state of disrepair of water and sewage infrastructure. This was exemplified on 27 March 2007 when the earth embankment of a small lake created by overflow into a natural depression next to the filtration basin at Beit Lahia wastewater treatment plant in the northern Gaza Strip collapsed, flooding the Bedouin village of Um Al-Nasser with partially treated sewage. The disaster caused the death of five people and nearly 1,000 people were displaced. Due to the fear of a disease epidemic the Palestinian Ministry of Health was forced to declare a State of Emergency. This has raised concerns that the adjacent larger reservoir may similarly burst its banks. The waste-water treatment plant was designed to manage sewage for 10,000 people but now, due to lack of investment and necessary upgrading, is stretched past capacity and managing sewage for 100,000.<sup>338</sup> It is desperately in need of spare parts such as pipes for repair and is also reliant on a continuous supply of electricity and fuel to operate the system's pumps. The effluent level is continuously rising and OCHA reported that on 25 May 2008 the level of the sewage reservoir had risen by 21 centimetres as the CMWU lacked the fuel necessary to pump the sewage into adjacent overflow lakes.<sup>339</sup> Any further increase may cause the reservoir to overflow or a build up of pressure may lead its banks to burst sending 1.5 million cubic meters of sewage into surrounding districts. There are reports that the earth retaining wall which was built up in 2007 shows signs of deterioration with deep longitudinal cracks that may subject the banks to serious structural weakening when it next rains.<sup>340</sup> The level of the reservoir was reduced during the summer of 2007 by portable pumps, provided as an emergency measure after the Um Al-Nasser disaster, but these pumps have since been relocated to Khan Younis to deal with a similar crisis there.<sup>341</sup> If one of the two currently operational pumps fails, there are no spare parts to repair it.<sup>342</sup> The town of Beit Lahia, which sits under the reservoir, houses 50,000 people. If the reservoir floods the life and property of Beit Lahia's residents will be directly threatened and the water supplies of up to 300,000 people in surrounding areas could be contaminated. The communities in both Beit Lahia and Um Al-Nasser live in constant fear of being flooded with raw sewage.

On 10 December 2007, the Gaza-based Al Mezan Center for Human Rights issued a press release calling for urgent action. It stated that the residents of Um Al-Nasser village recently reported that "a large amount of waste water disappeared from the largest basin near their village". If this waste-water has leaked into the underground aquifer that the treatment plant was built above, the main source of drinking water for the entire north Gaza region will be polluted causing a massive humanitarian and environmental crisis. Al-Mezan reports that whilst a project to build an alternative treatment plant and pipeline to transfer waste-water away from the population and aquifer has started, the project has been halted many times due to restrictions on the movement of technicians, equipment and materials required to complete it.<sup>343</sup> The Israel

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<sup>337</sup> General Comment No. 15 para.44 (a).

<sup>338</sup> COHRE interview with Oxfam GB, October 2007.

<sup>339</sup> OCHA, 'Gaza Strip Inter Agency Humanitarian Fact Sheet', June 2008, p.1.

<sup>340</sup> Information provided to COHRE by Michael Bailey, Advocacy and Media Manager, Oxfam GB, 22 May 2008.

<sup>341</sup> Information provided to COHRE by Michael Bailey, Advocacy and Media Manager, Oxfam GB, 28 December 2007.

<sup>342</sup> OCHA, 'The Humanitarian Monitor', February 2008, p.18.

<sup>343</sup> Al Mezan Center for Human Rights, 'Al Mezan Center Calls for Quick Action to Prevent New Environmental Disaster Northern Gaza', Press Release, 10 December 2007, <http://www.mezan.org>.

Coordinator of Government Activities in the Territories has given assurances that work at the North Gaza Waste Water Treatment Plant will commence and materials required for work and relevant personnel will be permitted entry. To date the project is still on hold.

In southern Gaza, the waste-water treatment plant in Khan Yunis is also at risk of flooding. Untreated sewage flowing through the streets of Khan Yunis would have severe health repercussions for the city's 200,000 inhabitants. A project to improve the plant, financed by Italy and Japan through UNRWA, has been put on hold due to a shortage of required materials and political complications.<sup>344</sup> The waste-water treatment plant in Gaza City (population: 600,000) is in a similar state of disrepair and at high risk of flooding. As previously mentioned around 50,000 cubic metres of raw or partially treated sewage is being released into the sea on a daily basis. The CMWU estimates that if the 50,000 cubic metres of waste-water which has been directed to the sea from the Gaza City waste-water treatment plant was effectively treated it could be used to recharge the aquifer and prevent sea water intrusion. As the cost of desalination due to sea water intrusion is around US\$20 for every 1 meter cubed, the cost of desalinating brackish water stands at US\$1,000,000/day.<sup>345</sup> In May 2008, some sewage pumping stations were unable to operate and were releasing sewage into storm water lagoons in the residential areas of Sheik Radwan and Jabalia camp, where three million litres of sewage temporarily gathered in a large concrete pool.<sup>346</sup>

There is inadequate sewerage infrastructure in Gaza. Only around 30% of the population is connected to the sewage system and less than 1% of discharged sewage is properly treated.<sup>347</sup> Many Gazans, particularly in Khan Yunis district, rely on septic tanks and cess pits which require emptying on a regular basis, usually every two weeks, at the high cost of 50 NIS each time. According to Oxfam, "Overflowing cesspits are invariably a public health hazard, and are of the main causes of contamination for water supplies, especially where illegal connections and intermittent services are prevalent."<sup>348</sup> The problem of overflowing cess pits is particularly acute in Beni Suheila and surrounding areas. In November 2007, OCHA reported that many people could not afford the cost of emptying their septic tanks and were emptying their contents into the streets or connecting their waste-water pipes to the storm water system.<sup>349</sup> The population growth places severe strain on an already inadequate sewage system. The CMWU has plans to upgrade the sewage system and modernize sewage pumping stations and waste-water treatment plants to cope with increased sewage production but is unable to do so without the necessary funding, equipment and materials.<sup>350</sup>

In January 2008, due to a lack of fuel and spare parts, four sewage pumping stations in Gaza City and the north of Gaza flooded sending sewage into the streets of surrounding neighbourhoods.<sup>351</sup> On 27 February 2008, the CMWU warned that a number of sewage pumps were in a critical state and were operating for more hours than they were designed to, consuming greater quantities of electricity and placing increasing pressure on the pumps. A number of level detectors, an electrical component necessary to operate the pumps, have burnt out; if this

<sup>344</sup> Palestinian Hydrology Group, WaSH Monitoring Program, 'Gaza Strip Situation Report, June to mid-September 2007'.

<sup>345</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affects of Materials Delay Report', 27 February 2008.

<sup>346</sup> OCHA, 'Gaza Humanitarian Situation Report: Impact of fuel shortages on Gaza Sanitation-Polluting the Sea', 29 April 2008, p.2.

<sup>347</sup> Palestinian Water Authority, Palestine paper presented to the seminar 'Water: Source of Life, Source of Peace', 21-22 November 2003, p.11.

<sup>348</sup> Oxfam, *Assessment Report Gaza*, (September 2006), p. 25, <http://www.lacs.ps>, (click on 'Document Archive'> 'Donors & Agencies'> 'Oxfam').

<sup>349</sup> OCHA, 'The Humanitarian Monitor', November 2007, p.3.

<sup>350</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>351</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', January 2008, p.2.

happens to further detectors there are none to replace them, as they remain held up at the border.<sup>352</sup> Al-Zeitoun area of Gaza City flooded again in May 2008, affecting 1000 people, and remains at high risk of flooding due to the instability of electricity supplies.<sup>353</sup>

The potential collapse of waste-water treatment plants and flooding of sewage into residential areas constitutes a grave violation of the right to health, both of those directly affected and those in surrounding areas due to the contamination of underground water sources. In the past, the collapse of waste-water treatment plants has violated Gazans right to life and adequate housing. The fear and imminent threat of being flooded by huge amounts of human excrement imposes intolerable conditions on those living in the vicinity of sewage-pumps and treatment plants and can be seen to constitute cruel, inhuman and degrading treatment. The violations of the right to water and sanitation also constitute violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>354</sup> Article 16 (1) of CAT states: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...".<sup>355</sup> Israel and donors must shoulder the responsibility of being complicit in such violations of human rights due to the continuing blockade of the Gaza Strip and the economic sanctions they have imposed on Gaza.

## 2.6 Reduction in the amount of water per person

The water sector in Gaza faced significant challenges to ensure an adequate quantity of water per person even before sanctions were enforced. The inequitable extraction and discriminatory distribution of water between both Israel and Palestine, to the detriment of Palestinians, was an issue of concern prior to the blockades and sanctions. In the hot summer months, excessive water shortages are common place and people are forced to buy from tankers at three times the normal cost. The UN Committee on the Elimination of Racial Discrimination has called on Israel to "ensure equal access to water resources to all without any discrimination."<sup>356</sup> According to the PWA, in 2003, each of the 3.3 million Palestinians in the oPt received an average of less than 100 litres per person per day for all uses, while the Israelis used a daily average of around 350 litres.

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<sup>352</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 'Affects of Materials Delay Report', 27 February 2008.

<sup>353</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>354</sup> (Adopted 10 December 1984, entered into force 26 June 1987) 1465 UN Treaty Series 85. Available at [www.ohchr.org](http://www.ohchr.org), (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law'> 'The Core International Human Rights Instruments').

<sup>355</sup> The European Court of Human Rights, the arbiter of the European Convention on Human Rights and Fundamental Freedoms, in examining the Article 3 ban on torture and other forms of cruel or degrading treatment or punishment, has held that the enforcement of extreme living conditions can rise to the level of degrading treatment within the sense of Article 3. This is particularly true, where, as in the case in Gaza, the enforcement of such degrading conditions is undertaken for reasons of or influenced by racial discrimination. See *Moldovan and Others v. Romania*, Applications nos. 41138/98 and 64320/01, Judgement of 12 July 2005. The UN Committee Against Torture, in its periodic review of Israel, concluded that the closure policy amounted to cruel, inhuman and degrading treatment in certain instances as did its policies on house demolitions. See *Conclusions and Recommendations of the Committee against Torture: Israel*, (2001) UN Doc. CAT/C/XXVII/Concl.5. para. 6 (i) & (j)., [www.ohchr.org](http://www.ohchr.org), (click on 'Treaty Bodies'> 'CAT'> 'Sessions'> 'Israel'> 'Concluding Observations').

<sup>356</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, (2007), UN. Doc.CERD/C/ISR/CO/13, para. 35, [www.ohchr.org](http://www.ohchr.org), (click on 'Treaty Bodies'> 'CERD'> 'Sessions'> 'Israel'> 'Concluding Observations').



Israeli settlers in the oPt used up to 450 litres.<sup>357</sup> In the Gaza Strip, per capita domestic consumption of water per day in 2003 was on average 81 litres per person daily.<sup>358</sup> Yet, as of January 2008, per capita daily use of water in Gaza had fallen to an average of 52 litres, with some residents using a mere 14 litres per day.<sup>359</sup> This is far below the standard of 100 litres that the World Health Organization says is necessary to ensure all health concerns are met and the absolute minimum international standard of 20 litres.<sup>360</sup> The current lack of availability and miniscule quantities of water accessible to sections of the Gazan population is of grave concern and is likely to have severe repercussions in terms of the health and well-being of Gaza's residents.

Due to a lack of funding and fuel sanctions, in November 2007, 23 of Gaza's 149 public wells had had insufficient fuel for over six months, severely reducing water availability for 210,000 people who were able to access drinking water supplies for 1-2 hours a day. UNICEF reported that as a result, the poorest households, unable to purchase water from private companies, were altering their hygiene and nutrition practices. As families no longer had a supply of water adequate to meet their basic personal and domestic requirements people were showering less frequently and have had to send their laundry to relatives.<sup>361</sup> Severe water shortages have also had a disproportional impact on women, who are usually responsible for household maintenance. In July 2007, the CMWU was forced to halve the water supply from eight hours a day to four due to fuel shortages, affecting around 65,000 refugees in Jabalia camp, northern Gaza.<sup>362</sup> In December 2007, due to the closures preventing spare parts from entering Gaza and the fuel restrictions, some 250,000 people in Gaza were not receiving a sufficient and continuous supply of water to their homes.<sup>363</sup> In December the CMWU reported that on average the water supply was being cut for around 18 hours per day, but differed according to area.<sup>364</sup> Those living in rural areas and high-rise buildings have been particularly affected by water shortages as there has been insufficient power to operate water pumps that push the water above ground level and through the system. A reduction in water quantity means that many people are now purchasing water from various sources which may be expensive and/or of dubious quality.<sup>365</sup> Further, some people are now depending on agricultural wells (untreated wells) for domestic uses.<sup>366</sup> Between 20 January and 30 January 2008 the CMWU was unable to provide water to 40 percent of the Gaza Strip.

During the Israeli military incursion in March 2008 OCHA reported:

Five major water wells supplying water to 150,000 people in the areas where military operations took place, did not operate between 1 and 2 March as IDF prevented any access to the wells. In addition, some 30% of the population is

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<sup>357</sup> Palestinian Water Authority, Palestine paper presented to the seminar 'Water: Source of Life, Source of Peace', 21-22 November 2003, Barcelona, Spain p.6.

<sup>358</sup> Ibid. p.10.

<sup>359</sup> OCHA, The Humanitarian Monitor, February 2008, p.18.

<sup>360</sup> Howard, G & Bartram, J, *Domestic Water Quality. Service Level and Health*, World Health Organization (2003), p.22.

<sup>361</sup> OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007.

<sup>362</sup> Oxfam, 'Gaza refugees facing massive water cuts, disease', Press release, 6 July 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

<sup>363</sup> Gisha, 'Facts regarding Israel's Fuel and Electricity Cuts to the Gaza Strip', cited on 5 December 2007 at <http://www.gisha.org>.

<sup>364</sup> Information provided to COHRE by CMWU, December 2007.

<sup>365</sup> Oxfam, 'Gaza siege puts public health at risk as water and sanitation services deteriorate, warns Oxfam', Press release, 21 November 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

<sup>366</sup> Information provided to COHRE by Oxfam GB, December 2007.

currently without regular water supply, due to electricity cuts resulting from fuel shortages.<sup>367</sup>

In May 2008, due to the lack of fuel to operate water wells in times of electricity cut offs around 35% of Gaza's population received water once a week, 30% once every four days and 35% once every three days.<sup>368</sup> By June 2008, 15% of Gaza's residents had access to water for four to six hours per week, 25% once every four days and 60% every other day.

The right to water and sanitation requires that all persons have access to a supply of water adequate to meet their basic personal and domestic needs including drinking, personal sanitation, washing of clothes, food preparation and personal and domestic hygiene. The quantity of water available per person should comply with World Health Organization guidelines.<sup>369</sup> As an occupying power, Israel is legally obliged to ensure that protected persons are guaranteed access to drinking water, water for personal hygiene and sanitation under the Fourth Geneva Convention.<sup>370</sup> Due to the blockade, fuel and electricity cuts, and military incursions that hinder access to water, Israel is violating its obligation under the ICESCR to ensure that the people of Gaza have sufficient water for personal and domestic needs.<sup>371</sup>

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<sup>367</sup> OCHA, Gaza Humanitarian Situation Report: Escalation in Violence, 27 February- 3 March 2008, p.2.

<sup>368</sup> Information provided to COHRE by Maher ElNajjar, Deputy Director, CMWU, 6 May 2008.

<sup>369</sup> General Comment No. 15, para. 12 (a). See also Annex, Section 5.2 below.

<sup>370</sup> Fourth Geneva Convention, Articles 85 & 89.

<sup>371</sup> General Comment No. 15, para. 12 (a).

### 3. CONCLUSIONS

*Gaza is no ordinary State upon which other States may freely impose economic sanctions in order to create a humanitarian crisis or take disproportionate military action that endangers the civilian population in the name of self-defence. It is an occupied territory in whose well-being all States have an interest and whose welfare all States are required to promote ... States that are a party to the siege of Gaza are likewise in violation of international humanitarian law and obliged to cease their unlawful actions.*

John Dugard, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, January 2008<sup>372</sup>

The Gaza Strip is undergoing a humanitarian catastrophe of epic proportions precipitated by the deliberate actions and omissions of Israel in imposing a blockade and fuel and electricity cuts on Gaza and obstructing the realisation of the right to water and sanitation in Gaza as well as a number of other economic and social rights. This humanitarian catastrophe is made possible by the lack of will displayed by the international community to intervene and the complicity with these acts by a number of states. Several countries, and the United Nations (as part of the Quartet), have exacerbated the crisis through the imposition of banking sanctions and the withdrawal of desperately needed assistance for public services in Gaza. The European Union has permitted Israel to interfere with its provision of humanitarian assistance in the form of Industrial diesel to the Gaza Power Plant. This situation constitutes a fundamental disregard for the human rights of the people of Gaza. Israel and those states that contribute to or allow these human rights violations to continue have undermined their commitment to fundamental human rights and respect for the dignity and worth of the human person.

Israel has justified its policies on the basis of security threats from Hamas and other armed groups in Gaza. A failure to prevent rocket attacks on southern Israeli communities represents a clear breach of international humanitarian law by the Gaza administration. However, Israel's response to such attacks has been disproportionate and constitutes collective punishment of the people of Gaza for the actions of individuals for which they cannot be regarded as responsible. The sanctions and the blockade have led to the widespread denial of the economic, social and cultural rights of the people of Gaza including the human right to water and sanitation. Sanctions imposed by western countries, including the European Union and United States, make them complicit in human rights violations.

The sanctions and blockade on Gaza infringe the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty ratified by the governments and legislatures of 158 states, including Israel. The ICESCR recognises the right of every person to health and to an adequate standard of living. States that have ratified this treaty have declared repeatedly that the right to an adequate standard of living includes access to water and sanitation. As defined by the United Nations human rights bodies, every person is entitled to sufficient and safe water for personal and domestic uses. Each person is entitled to water and sanitation services that are within safe physical reach, are affordable and are conducive to public health and the protection of the environment.<sup>373</sup> As Israel maintains effective control over Gaza due to its control of its borders, it is legally responsible for ensuring the realisation of the right to water and sanitation of the people of Gaza. However, not only has Israel not taken sufficient steps to fulfil this obligation but

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<sup>372</sup> Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, (January 2008), UN Doc. A/HRC/7/17, para.27, <http://www.ohchr.org>, (click on 'Special Procedures'>'Country Mandates').

<sup>373</sup> See Annex, Section 5.3 below for a description of the legal standards for the right to water and sanitation.



through its actions, it has deliberately undermined the realisation of the right to water and sanitation in Gaza by:

- Reducing water quality through prevention of entry of water purification chemicals and undermining the provision of adequate and safe sanitation.
- Reducing the affordability of water and sanitation thereby requiring households to reduce consumption of water or sacrifice on other items such as food and health care.
- Reducing the quantity of water for personal and domestic needs including personal sanitation, washing of clothes, food preparation and personal and domestic hygiene.
- Reducing the accessibility of water and sanitation, as water and sanitation services are intermittent and in some situations non-functional.

The imposition of extreme living conditions due to the near collapse of the water and waste water sectors also constitutes cruel, inhuman and degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). All States parties to CAT should investigate any officials from Israel responsible for the blockade when such officials visit their countries in order to determine whether that official has been responsible for acts of cruel, inhuman and degrading treatment in regard to the blockade.

The ICESCR requires that economic sanctions must distinguish between the leaders and the population and may not be imposed and applied in a manner that imposes disproportionate suffering on a civilian population. Sanctions may not be imposed on goods and services necessary for the right to water. States that are party to the economic sanctions and the restrictions on banking transfers to the Gaza administration are obliged to do all in their power to protect the economic, social and cultural rights of the affected population. In addition, States that have withdrawn funding for water and sanitation services in Gaza have undermined the ICESCR which requires all States to engage in international assistance and cooperation for the realisation of economic, social and cultural rights.<sup>374</sup>

As an occupying power maintaining effective control over Gaza, Israel is obliged to comply with international humanitarian law, including the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and customary international law.<sup>375</sup> Israel has violated its legal obligations to:

- Ensure that civilians are guaranteed access to drinking water, water for personal hygiene and sanitation.
- Ensure public health and hygiene is maintained in the occupied territory.
- Comply with the prohibition on attacks to civilian infrastructure, including drinking water installations.
- Respect the principle of proportionality which requires that any reaction to an attack is not excessive by causing harm to civilians or civilian property which outweighs the expected military advantage.
- Refrain from punishing persons for offences that they have not personally committed.
- Permit and facilitate the delivery humanitarian relief to the occupied territory.

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to remedy and reparation, and this has been

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<sup>374</sup> See Annex, Section 5.3 below for a description of international human rights standards on economic sanctions.

<sup>375</sup> See Annex, Section 5.2 below for a description of international humanitarian legal standards.

affirmed by the UN General Assembly (GA). States have the duty to investigate those responsible for such violations and prosecute and punish those found responsible.<sup>376</sup> The GA has stated that: reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>377</sup> Those who have suffered prolonged and continuous violations of their rights as a result of the Israeli occupation including the over abstraction and pollution of underground water resources, the damage and destruction of water and sanitation amenities and discriminatory treatment in access to water as well as the violations caused by the current crisis have the right to both remedy and reparation.

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<sup>376</sup> UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (2006), UN Doc. GA/RES/60/147, para.4, [www.un.org/English](http://www.un.org/English), (click on 'Documents, Maps'> 'General Assembly Resolutions'> '60<sup>th</sup> – 2005').

<sup>377</sup> For more information of the legal elements of reparation and requirements of duty holders see GA Resolution 60/147, as above.

## **4. RECOMMENDATIONS**

### **To the Government of Israel**

- Implement the Agreement on Movement and Access and reopen the various border crossings as a matter of urgency, to allow the free flow of goods, services and equipment necessary for public services and a functioning economy into Gaza.
- Immediately discontinue the practice of cutting fuel and electricity to Gaza in retaliation for rocket attacks by armed Palestinian groups.
- As the occupying power, ensure that all economic, social and cultural rights of Palestinians are respected, protected and fulfilled, including for the people of Gaza. Israel must therefore provide the necessary resources to the Gaza administration for provision of public services, and desist from demanding that the international community refrain from providing funding to Gaza administration for the provision of public services.
- In accordance with international humanitarian law, cease the policy of imposing collective punishment on the people of Gaza in reprisal for the actions of the Gaza administration.
- Implement Additional Protocol I and II of the Geneva Conventions in actions relating to the occupied Palestinian territories, given that many of the provisions of these instruments constitute customary international law.
- Cease to exercise control over Gaza's territory and borders, which is a structural cause of human rights violations, including the right to water and sanitation and also violates the right of Palestinians to self determination. Israel must continue to provide electricity and water services to Gaza for a transitional period until these services can be provided locally in Gaza.
- Provide reparation for the victims of gross violations of human rights law and serious violations of humanitarian law.

### **To the Gaza Administration**

- Prevent the attacks on Israeli civilians by Palestinian armed groups operating in Gaza and bring the perpetrators to justice in line with the provisions of international law.
- Allocate all available resources to ensuring that public services, including water supply and sanitation in Gaza, are maintained in spite of the constraints placed by Israel and donors.
- In order to facilitate the provision of funding for public services, propose to donors a mechanism to ensure transparent use of funds and to guarantee that such funds will be used only for public services and not diverted to any other uses, including military or political uses.

- Cease offensive actions toward Israeli military targets from Gaza in the event that Israel cedes its control of Gaza's borders.

#### **To the Government of President Abbas and Prime Minister Fayyad**

- Carry out all actions within its power to prevent the further deterioration of the already dire water and sanitation situation in the Gaza strip. It should provide necessary funding drawn from released tax revenues, to the agencies in Gaza responsible for water and sanitation and other essential services and make salary payments for all public service employees regardless of political affiliation, in order to permit the provision of basic services.
- Demand the lifting of the blockade on Gaza as a primary Palestinian demand in negotiations with the government of Israel and the international community.

#### **To donor States**

- Donors should resume assistance to the Gaza administration in order to permit the provision of essential basic services. Governments that have not previously assisted the Palestinian Authority should consider providing financial assistance to the agencies in Gaza responsible for the provision of public services.
- Donors should take immediate action, and send the required support, both material and technical, to prevent a catastrophe from happening at the waste water treatment plants in Beit Lahia, Khan Younis and Gaza City and resume all frozen projects in the water and waste water sector.
- Donors should use their influence to place human rights concerns at the top of the agenda in their dealings with both Israel and the Palestinian Authority (Gaza administration and the government of President Abbas and Prime Minister Fayyad).
- All signatories to the ICESCR and the Convention of the Rights of the Child should immediately assess the extent to which their policies are affecting the realisation of the right to water and sanitation in Gaza and abide by their legal obligations.
- European Union States should immediately re-evaluate the EU-Israel Association Agreement in line with Article 2 which makes clear that economic cooperation between the parties shall be based on a respect for human rights and democratic principles.
- The European Union should take a strong public stance against fuel cuts, as the sole donor of the industrial diesel provided to the Gaza Power Plant.
- All states must lift restrictions on monetary transfers imposed on the Gaza administration in order to permit the funding of necessary public services.

#### **To the Arab League**

- The Arab League and especially Egypt should do everything within its power to place pressure on Israel to re-open the border crossing points and call for an end the blockade and financial sanctions on Gaza.

- Arab states should continue to support efforts to end the current impasse between Hamas and Fatah and re-unify Gaza and the West Bank under the Palestinian Authority.

**To all United Nations bodies and member States**

- The UN Security Council, General Assembly, Human Rights Council, the Secretary-General and the High Commissioner for Human Rights must clearly denounce the flagrant violations of human rights occurring in the Gaza Strip due to sanctions and the blockade and hold Israel accountable for its actions.
- The monitoring mechanisms within international human rights instruments should treat the Gaza situation with the urgency that it requires and take the necessary steps allowed under the various treaties to hold Israel and other States responsible for the blockade and restrictions on monetary transfers accountable for the violations of the rights of the people of Gaza, and to prevent further violations of these rights.
- All states must provide effective penal sanctions for those committing grave breaches against the civilian population as per their legal obligations as parties to the Geneva Conventions.
- All States parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) should investigate any officials from Israel responsible for the blockade when such officials visit their countries in order to determine whether that official has been responsible for acts of cruel, inhuman and degrading treatment in regard to the blockade.
- The Human Rights Council should take action to establish a binding “United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights, the identification of a wider range of exempt goods and services.”<sup>378</sup>
- The international community and all concerned States need to work as expeditiously as possible towards opening the border crossings and implementing a cease fire to end the humanitarian crisis in Gaza. Further, real progress has to be made on the final status negotiations, the reunification of Gaza and the West Bank under the Palestinian Authority and the creation of an independent and viable Palestinian State.

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<sup>378</sup> Proposals for such mechanisms are noted in General Comment 8, para. 12.

## 5. ANNEX

### 5.1 The applicability of international law to Gaza

Israel withdrew its defence forces from Gaza in 2005 and claimed that its occupation of the Gaza Strip had come to an end. John Dugard, the UN Special Rapporteur for the Occupied Territories states “In deciding on this matter regard must be had to whether Israel retains effective control over the territory as this is the test for occupation recognized by international humanitarian law. Whilst ... the absence of a military occupying power in Gaza has removed many of the features of occupation, it is wrong to suggest that the occupation has ended.”<sup>379</sup> He indicates that targeted assassinations of militants (and innocent bystanders), Israel’s control over airspace, territorial waters and external borders, Israeli administration of the Gaza population register allowing it to control the issue of identity documents necessary for movement, and Israel’s holding of a large number of Gazan prisoners all lead to the conclusion that Israel still maintains effective control over Gaza.

As an occupying power, Israel is obliged to conform to the requirements of international humanitarian law including the Fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War (1949). While Israel has ratified the Geneva Conventions, it has neither signed nor ratified Additional Protocols I and II (1977) and is not a signatory to the Hague Convention and Regulations (1907). Israel has refused to apply the fourth Geneva Convention to the occupied Palestinian territories but has accepted The Hague Regulations of 1907 as *de jure* applicable. The Israeli Supreme Court of Justice in *Ayyoub v. Minister of Defence* ruled that the Hague Regulations are customary law, therefore automatically part for municipal law and judiciable in Israel.<sup>380</sup> The International Committee of the Red Cross has argued that many of the provisions of the Geneva Conventions are also considered customary international law.<sup>381</sup> Likewise a recent ruling by the International Court of Justice found that “the provisions of the Hague Regulations have become part of customary law” and, along with the fourth Geneva Convention, are applicable to Israel.<sup>382</sup> The Israeli Supreme Court has also acknowledged that the norms of international humanitarian law should be applied in the occupied Palestinian territories.<sup>383</sup>

An occupying power is obliged to respect the existing legal and civil systems in the occupied territory. International humanitarian law makes clear that; “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his

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<sup>379</sup> Dugard, J *Question on the violation of Human Rights in the Occupied Arab Territories, including Palestine: Report of the Special Rapporteur of the Commission on Human Rights*, (2006), UN Doc. E/CN.4/2006/29, para. 8, <http://www.ohchr.org>, (click on ‘Special Procedures’> ‘country mandates’).

<sup>380</sup> See Supreme Court of Israel, *Suleiman Tawfic Ayyoub et. al. v. Minister of Defence et. al.* (Beit El case), H.C. 606/78, H.C. 610/78, in *Piskei Din*, Vol. 33 (2), p.133.

<sup>381</sup> See Henckaerts, J.M, *Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict*, (2005), International Review of the Red Cross, Vol. 87, <http://www.icrc.org>, (click on ‘Publications’> ‘Humanitarian Law’).

<sup>382</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion of 9 July 2004*, (2004), p.40, para. 89, [www.icj-cij.org](http://www.icj-cij.org), (click on ‘Cases’> ‘Advisory Proceedings’).

<sup>383</sup> See, for example, The Israeli Supreme Court judgement regarding the security fence, *Beit Sourik Village Council v. The Government of Israel and the Commander of the IDF forces in the West Bank*, (June 24, 2004), para. 23 available at <http://www.jewishvirtuallibrary.org>, (click on ‘The Library’> ‘Israel’> ‘The Peace Process’> ‘Boundaries’> ‘Israel’s Security Fence’).

power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”<sup>384</sup>

Under the terms of the Geneva Conventions all parties are under an obligation to ensure that Israel complies with international humanitarian law. The fourth Geneva Convention calls upon High Contracting Parties “to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches of the present convention”.<sup>385</sup> It defines “grave breaches” as including, “inhuman treatment” and “causing great suffering or serious injury to body or health”.<sup>386</sup>

International humanitarian law and human rights law are complementary. The International Court of Justice has confirmed that “the protection offered by human rights conventions does not cease in the case of armed conflict”.<sup>387</sup> Israel has repeatedly asserted that the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which it is a State party, “does not apply to areas that are not subject to its sovereign territory and jurisdiction” and therefore Israel is not responsible for ensuring the rights of those in the occupied territories.<sup>388</sup> However, the UN Committee on Economic, Social and Cultural Rights, which monitors treaty implementation and reviews State parties’ periodic reports, does not accept this claim. In its concluding observations on Israel, the Committee stated that the Covenant applies to “all territories and populations under its effective control” and that “the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities”.<sup>389</sup> The International Court of Justice has also ruled that the ICESCR is “applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory. In the case of the International Covenant on Economic, Social and Cultural Rights, Israel is also under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to the Palestinian authorities”.<sup>390</sup>

## 5.2 International humanitarian law

### Water and sanitation facilities

As an occupying power, under international humanitarian law, Israel is responsible for the welfare of the civilian population and must ensure that Palestinians are provided with or allowed to secure the basics for survival including food, water, medical supplies and shelter. Prisoners of war and/or protected persons are guaranteed access to drinking water, water for personal hygiene and sanitation under the Geneva Conventions.<sup>391</sup> The fourth Geneva Convention, relative to the

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<sup>384</sup> Hague Convention IV Respecting the Laws and Customs of War on Land, (1907), Article 43, <http://www.icrc.org>, (click on ‘Info resources’> ‘IHL databases’> ‘treaty database’> ‘treaties & documents by topic’). See the Annex section 5.2 for the status of this treaty.

<sup>385</sup> Article 146.

<sup>386</sup> Article 147.

<sup>387</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, p. 46, para. 106.

<sup>388</sup> See Israel’s second periodic report submitted to the Committee on Economic, Social and Cultural Rights, (May 2003), para.5, at <http://www.ohchr.org>, (click on ‘Treaty Bodies’> ‘CESCR’> ‘sessions’> ‘30’).

<sup>389</sup> United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (May 2003), UN doc.E/C.12/1/Add.90., para.31, Emphasis added. <http://www.ohchr.org>, (click on ‘Treaty Bodies’> ‘CESCR’> ‘sessions’> ‘30’).

<sup>390</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, p.49, para.112.

<sup>391</sup> Third Geneva Convention, Articles 20, 26, 29, 46. Fourth Geneva Convention Articles 56, 85, 89, 127. All the Geneva Conventions and Additional Protocols can be found at <http://www.icrc.org>, (click on ‘Humanitarian Law’> ‘The Geneva Conventions’).

Protection of Civilian Persons in Time of War (1949) states that an occupying power is responsible for maintaining public health and hygiene in an occupied territory which necessitates the provision of clean drinking water and adequate sanitation.<sup>392</sup> It further states “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal”.<sup>393</sup> Denying the civilian population the means necessary for their survival or hindering the provision of humanitarian aid, is a war crime and is recognized as such by The Rome Statute of the International Criminal Court (1998).<sup>394</sup> It makes clear that “For the purpose of this Statute, “war crimes” means ... Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions”.<sup>395</sup> Military action which impedes water access is also prohibited. Additional Protocol I to the Geneva Conventions makes clear that “It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, crops, livestock, *drinking water installations* and supplies and irrigation works”.<sup>396</sup>

### **Distinction and proportionality**

A key principle in international humanitarian law is the principle of distinction, which differentiates between those who participate in the conflict and as such are combatants and those who do not and are therefore afforded protection. Common Article 3 of the Geneva Conventions (I-IV) states that “Persons taking no active part in the hostilities... shall in all circumstances be treated humanely”. The principle of proportionality in international humanitarian law makes clear that any reaction to an attack may not be excessive by causing harm to civilians or civilian property which outweighs the expected military advantage. Indiscriminate attacks on civilians, and civilian property and infrastructure are therefore strictly prohibited.<sup>397</sup> Both Israel and armed Palestinian groups are obliged to stop such unlawful attacks immediately or risk being held accountable for war crimes.

### **Collective punishment**

International humanitarian law prohibits collective punishment. The fourth Geneva Convention, states “No protected person may be punished for an offence he or she has not personally committed.”<sup>398</sup> Article 50 of The Hague Convention and Regulations of 1907, further stipulates that “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly or severally responsible”.<sup>399</sup>

## **5.3 The human right to water and sanitation in international law**

The right of each person to water and sanitation is implicitly recognised in a variety of international human rights treaties, and is necessary to ensure universally held values such as

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<sup>392</sup> Fourth Geneva Convention, Article 56.

<sup>393</sup> Fourth Geneva Convention Article 59.

<sup>394</sup> Israel has signed but not ratified this Statute.

<sup>395</sup> Article 8 (2), <http://www.un.org>, (click on ‘International Law’> ‘International Criminal Court’> ‘Rome Statute of the International Criminal Court’).

<sup>396</sup> Article 54. Emphasis added. See Section 5.1 above for the legal status of the Protocol in customary law.

<sup>397</sup> Additional Protocol I, Articles 48, 51, 52.

<sup>398</sup> Article 33

<sup>399</sup> Available at <http://www.icrc.org>, (click on ‘Humanitarian Law’> ‘Treaty database’> ‘Treaties and Documents’). See Section 5.1 above for the legal status of this treaty in customary law.



freedom, equality and dignity for all.<sup>400</sup> The right to water and sanitation and economic, social and cultural rights in general is based primarily in the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 158 states.<sup>401</sup> The right to water and sanitation is an intrinsic aspect of both Article 12, the right to health and Article 11 (1) the right to an adequate standard of living. States that have ratified this treaty have declared repeatedly that the right to an adequate standard of living includes access to water and sanitation.<sup>402</sup> The ICESCR has a committee of experts, the Committee on Economic Social and Cultural Rights (CESCR), elected by States parties to the ICESCR to help monitor and interpret the ICESCR. In 2002, the CESCR adopted General Comment No. 15: The Right to Water (General Comment No. 15). In 2004, the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that would advise the UN Human Rights Council produced an analysis of the legal basis and implications of the right to water and sanitation.<sup>403</sup> In 2006, it adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (Sub-Commission Guidelines). The Sub-Commission Guidelines are consistent with General Comment No. 15, but include clearer statements defining sanitation as a right in conjunction with access to water, as well as its components. They also focus on short-term implementation rather than on a formal definition of the right.<sup>404</sup>

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following:

**Sufficient water:** Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally includes drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>405</sup>

**Clean water:** Safe water that, in particular, is free from hazardous substances that could endanger human health,<sup>406</sup> and whose colour, odour and taste are acceptable to users.<sup>407</sup>

**Accessible water and sanitation:** Water and water and sanitation services and facilities that are accessible within, or in the immediate vicinity of, each household, educational institution

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<sup>400</sup> A detailed compilation of legal references to the right to water and sanitation is contained in Langford, M et al. *Legal Resources for the Right to Water: International and National Standards* (Geneva: COHRE, 2004). Further information on the right to water and sanitation is available at COHRE, AAAS, SDC, and UN HABITAT, *Manual on the Right to Water and Sanitation* (2007). Both sources are available at: <http://www.cohre.org/water>.

<sup>401</sup> Information as to which human rights treaties have been ratified by particular States is available at: <http://www.ohchr.org> (click on 'Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law').

<sup>402</sup> Programme of Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 States, and Habitat Agenda, adopted in the framework of the Second United Nations Conference on Human Settlements (Habitat II), endorsed by 171 States.

<sup>403</sup> United Nations Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, UN Doc. E/CN.4/Sub.2/2004/20. Available at <http://www.cohre.org/water>, (click on 'Resources and Articles'). The Sub-Commission was replaced in 2007 by the Human Rights Council Advisory Committee.

<sup>404</sup> United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, available at <http://www.cohre.org/water>.

<sup>405</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (2002), UN Doc. E/C.12/2002/11 para. 12 (a). All General Comments by the CESCR are available at: [www.ohchr.org](http://www.ohchr.org) ('Human Rights Bodies' > 'CESCR' > 'General Comments').

<sup>406</sup> General Comment No. 15, para. 12 (b), referring to the respective WHO Guidelines.

<sup>407</sup> General Comment No. 15, para. 12 (b).

and workplace, and which are in a secure location and do not pose a threat to physical security.<sup>408</sup> The Sub-Commission Guidelines state that sanitation must be safe, adequate and conducive to the protection of public health and the environment.<sup>409</sup>

General Comment No. 15 and the Sub-Commission Guidelines do not define the term ‘sanitation’. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least, a toilet or latrine, along with associated services such as sewage or latrine exhaustion. The criterion of ‘conducive to the protection of public health and the environment’ in the Sub-Commission Guidelines indicates that wastewater drainage channels are required for situations where piped water, but not sewage, is available in urban and peri-urban areas. It also implies that wastewater and excreta needs to be treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

**Affordable water and sanitation:** Water and sanitation can be secured without reducing any person’s capacity to acquire other essential goods and services, including food, housing, health services and education.<sup>410</sup>

The right to water and sanitation can be found in a range of other treaties in addition to the ICESCR. The Convention on the Rights of the Child, ratified by Israel, recognizes the right of the child to the highest attainable standard of health and states that the provision of clean drinking water is necessary to combat disease.<sup>411</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, states that women have the right “To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”<sup>412</sup> The right to water and sanitation is also essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera. Access to water and sanitation is therefore implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR).<sup>413</sup> According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.<sup>414</sup>

Finally, the right to water and sanitation, like all human rights, is upheld by the Charter of the United Nations, which obligates UN member states to promote universal respect for and observance of human rights,<sup>415</sup> as well as the Universal Declaration of Human Rights (UDHR), to which all UN states have repeatedly stated their commitment and which states that every person is entitled to economic, social and cultural rights, through national effort and international co-operation (in accordance with the organization and resources of each State).<sup>416</sup>

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<sup>408</sup> General Comment No. 15, para. 12 (c) (i), 29, Sub-Commission Guidelines section. 1.3 (a)-(c).

<sup>409</sup> Sub-Commission Guidelines, section. 1.2.

<sup>410</sup> General Comment No. 15, para.12 (c) (ii); Sub-Commission Guidelines, section. 1.3 (d).

<sup>411</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1557 UN Treaty Series 3, Article 24 (2) (c), <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

<sup>412</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), Article 14 (h), <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’). Israel is a State party.

<sup>413</sup> (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6, <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

<sup>414</sup> See Human Rights Committee, *General Comment 6, Right to Life*, (1982) UN Doc. HRI/GEN/1/7, para. 5.

<sup>415</sup> United Nations Charter, Articles 55 and 56, <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

<sup>416</sup> Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III) (adopted 10 December 1948), Article 22, <http://www.ohchr.org>, as above.

## Obligations to respect, protect and fulfil the right

According to the CESCR, State parties to the ICESCR have obligations to respect, protect and fulfil economic, social and cultural rights, without discrimination, in regard to the people of their country.<sup>417</sup>

### Obligations to respect, protect, fulfil economic, social and cultural rights

**Obligations to respect** require that State parties refrain from interfering directly or indirectly with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, or from unlawfully diminishing or polluting water resources.<sup>418</sup>

**Obligations to protect** require that State parties prevent third parties (including individuals, groups, corporations and other entities under their jurisdiction) from interfering with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should adopt effective legislative and other measures to prevent third parties from denying equal access to water or polluting or inequitably extracting from water sources.<sup>419</sup>

**Obligations to fulfil** can be disaggregated into obligations to facilitate, promote and provide. The CESCR indicates that State parties are to *facilitate* a right by taking positive measures to assist individuals and communities to enjoy the right. State parties are to *promote* a right, for example, by ensuring that there is appropriate education concerning the hygienic use of water, the protection of water sources and methods to minimise wastage. State parties are obliged to *provide* a right when individuals or a group are unable, for reasons beyond their control, to realise that right themselves by the means at their disposal.<sup>420</sup>

## International cooperation obligations

Member States of the UN have pledged to take joint and separate action in co-operation with the United Nations in promoting development and universal respect for human rights and fundamental freedoms.<sup>421</sup> The ICESCR specifically obliges State parties through international assistance and co-operation, especially economic and technical, to take steps to realise progressively the rights recognised in the Covenant.<sup>422</sup> The CESCR has emphasised that international cooperation for development, and thus for the realisation of economic, social and cultural rights, is an obligation of all State parties to the ICESCR and is particularly incumbent upon governments that are in a position to assist others in this regard.<sup>423</sup> Therefore, State parties are obliged to respect the enjoyment of these rights, including the right to water and sanitation, in other countries and “refrain from actions that interfere, directly or indirectly, with the enjoyment

<sup>417</sup> General Comment No. 15, para. 21. For further information on obligations to respect, protect and fulfil economic, social and cultural rights in general, see M. Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon, 1994), pp. 107-111.

<sup>418</sup> General Comment No. 15, para. 21.

<sup>419</sup> General Comment No. 15, para. 23.

<sup>420</sup> General Comment No. 15, para. 25.

<sup>421</sup> United Nations Charter (1945) Articles 55 & 56.

<sup>422</sup> ICESCR, Article 2 (1).

<sup>423</sup> CESCR, General Comment No. 3: *The Nature of States Parties' Obligations*, UN Doc. E/1991/23 para.14.

of the right to water in other countries.”<sup>424</sup> State parties, as members of international organisations, including international financial institutions, are to take due account of the right, and ensure that their policies and actions respect the right to water and sanitation.<sup>425</sup>

General Comment No. 15 states the following:

Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.<sup>426</sup>

According to the Sub-Commission Guidelines, “Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring everyone has access, as promptly as possible, at least to basic water and sanitation services.”<sup>427</sup>

### **Economic sanctions**

Under the ICESCR, economic sanctions may not be imposed and applied in such a manner that they impose undue suffering on a civilian population, including denial of the right to water and sanitation. General Comment No. 15 states: “States parties should never impose embargos or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.”<sup>428</sup>

In General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights, the UN Committee on Economic, Social and Cultural Rights pointed out that sanctions regimes have tended to have significant negative impact on economic, social and cultural rights, including on water and sanitation. While multilateral sanctions have included humanitarian exemptions, such exemptions have been very limited in scope (for example, by not providing for repairs to water supply infrastructure), have been ambiguous and interpreted arbitrarily and inconsistently thus causing delays, confusion and the denial of requests to import essential supplies.<sup>429</sup> It further states that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security” and that “lawlessness of one kind should not be met by lawlessness of another kind”.<sup>430</sup> Moreover, “In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to

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<sup>424</sup> General Comment No. 15, para. 31.

<sup>425</sup> General Comment No. 15, paras.31, 33-36. Sub Commission Guidelines, section 10.4

<sup>426</sup> General Comment No. 15, para. 34.

<sup>427</sup> Sub-Commission Guidelines section 10.2.

<sup>428</sup> General Comment No. 15, para 32. Footnote in quotation omitted. See also Sub-Commission Guidelines, section 10.1.

<sup>429</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 8, The relationship between economic sanctions and respect for economic, social and cultural rights* (1997), UN doc. E/C.12/1997/8, paras. 3-5.

<sup>430</sup> Ibid. para. 16.

international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country".<sup>431</sup>

General Comment No. 8 sets out three sets of obligations relating to economic social and cultural rights in the context of economic sanctions:

First, these rights must be taken fully into account when designing an appropriate sanctions regime. .... Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population. Third, the external entity has an obligation "to take steps, individually and through international assistance and cooperation, especially economic and technical" in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.<sup>432</sup>

General Comment No. 8 notes practical steps that have been proposed to reduce the impacts of sanctions, for example, a transparent set of agreed principles and procedures based on respect for human rights, identification of a wider range of exempt goods and services and the introduction of greater overall flexibility. It also notes that steps can be taken to protect vulnerable groups without jeopardising the policy aim of sanctions.<sup>433</sup>

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<sup>431</sup> Ibid. para. 4.

<sup>432</sup> Ibid. paras. 12-14.

<sup>433</sup> Ibid. paras. 12, 15.

## 5.4 List of abbreviations and acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CESCR	United Nations Committee on Economic Social and Cultural Rights
CMWU	Coastal Municipal Water Utility
CRC	Convention on the Rights of the Child
EU	European Union
GA	United Nations General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDF	Israeli Defence Forces
NGO	Non-Governmental Organisation
NIS	New Israeli Shekel
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
oPt	Occupied Palestinian Territory
PA	Palestinian Authority
PWA	Palestinian Water Authority
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Works Agency
US	United States
USAID	United States Agency for International Development
WHO	World Health Organization

## 5.5 Information on the Centre on Housing Rights and Evictions

Established in 1992, the Centre on Housing Rights and Evictions (COHRE) is an international, non-governmental human rights organization committed to ensuring the full enjoyment of economic, social and cultural rights for everyone, everywhere, with a particular focus on the human right to adequate housing and adequate public services for all. COHRE is registered as a not-for-profit foundation in the Netherlands. COHRE has an international secretariat based in Geneva, and regional offices for Africa, North America, South America and Asia/Pacific.

The COHRE Right to Water Programme (RWP) was established in 2002. It advocates for reforms in international, national and local governance to achieve the right to water and sanitation for all. RWP carries out its work in conjunction with COHRE's regional programmes for the Americas, Asia-Pacific and Africa, with COHRE's thematic programmes on Litigation, Forced Evictions and Women's Housing Rights and with the support of the COHRE Advocacy Unit in Geneva and the Media Unit. RWP carries out its mandate through the following activities:

### **Supporting national implementation of the right to water and sanitation for marginalised groups through advocacy, capacity building and empowerment**

RWP works directly in partnership with national NGOs and marginalised communities and engages with government bodies to promote necessary reforms. The methods used, which depend on the needs in the particular country expressed by partners include: 1. Promoting policy and legislative reform; 2. Fact-finding investigations; 3. Training for grassroots groups, advocacy NGOs and government officials; 4. Support to local advocacy by national and local groups, 5. Public interest litigation; and 6. Assistance to national NGOs to access the UN human rights monitoring system. RWP has implemented these activities in Argentina, Kenya, Sri Lanka, Brazil and Ghana as well as Israel and the oPt.

### **Building capacity globally through publications and training for implementation and promotion of the right to water and sanitation**

RWP aims to assist policy makers and implementers to integrate the right to water and sanitation into their activities at the international and national level. Previous publications include *Legal Resources for the Right to Water*, currently the most detailed publication of international and national standards and jurisprudence on the right to water; and *Monitoring the Right to Water: A Framework for Developing Indicators*. The most recent publication *The Manual on the Right to Water and Sanitation*, is designed to assist policy makers integrate the right into their work. These publications are available at the COHRE website.

### **Promoting stronger international standards on the right to water and sanitation**

RWP has been instrumental in providing legal advice for, and promoting new standards in this area, such as UN General Comment No. 15 on the Right to Water (2002) and the UN Sub-Commission Guidelines for the Realization of the Right to Drinking Water and Sanitation (2006). It also carries out direct Government lobbying and mobilises civil society with the objective of promoting UN Human Rights Council action to strengthen the recognition of the right to water and sanitation and to establish mechanisms for its implementation.

