

CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



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**Written Submission of the  
Centre on Housing Rights and Evictions  
(COHRE)  
to the Human Rights Committee and its  
relevant Special Rapporteur  
at its 97<sup>th</sup> Session  
on the occasion of the  
Country Report Task Force consideration of  
the Periodic Report of Israel**

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## 1. INTRODUCTION

1. The Centre on Housing Rights and Evictions (COHRE) is a leading international non-governmental human rights organisation committed to promoting practical legal and other solutions to endemic problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of housing rights including the related right to water and sanitation. COHRE places particular emphasis on securing respect for the rights of groups that have traditionally faced discrimination. COHRE has consultative status with ECOSOC. For further information see [www.cohre.org](http://www.cohre.org), [www.cohre.org/opt](http://www.cohre.org/opt) and [www.cohre.org/israel](http://www.cohre.org/israel).

2. COHRE respectfully submits this Shadow Report to bring to the attention of the Human Rights Committee (Committee) the acts and omissions of Israel including forced eviction and demolition of housing as well as actions and omissions that result in denial of access to safe drinking water and sanitation facilities and infrastructure that amount to violations of the International Covenant on Civil and Political Rights.

## 2. FORCED EVICTIONS AND HOUSE DEMOLITIONS

3. The following are but a small sample of the forced evictions and house demolitions that occur in not only the West Bank and Gaza, but also in the Palestinian sections of the so-called “Mixed Cities” in Israel and of Bedouin villages in the Negev and other regions of Israel proper. These examples are, however, emblematic of the overall policies and practices of Israel with respect to violations of the right to adequate housing that rise to violations of the International Covenant on Civil and Political Rights (ICCPR).

### *2.1 Collectively and Individually Punitive Forced Evictions and House Demolitions*

4. According to B’Tselem:

From 1967 to 2005, Israel implemented a policy of demolishing and sealing houses in the West Bank and Gaza Strip to punish relatives of Palestinians who had harmed Israelis. Underlying the policy was the claim that, given potential attackers’ concerns for their families, it would deter Palestinians from carrying out terror attacks. In the framework of this policy, Israel demolished or sealed 667 houses from October 2001 to the end of January 2004, leaving more than 4,200 persons homeless.<sup>1</sup>

5. While this practice ostensibly was halted in 2005, such punitive forced evictions and home sealing or demolition continue. For instance, on 19 January 2009 Israel sealed parts of the house owned by the Abu Dhaim family in Jabal al Mukabbir, occupied East Jerusalem, to punish them for the actions of their son who was responsible for a violent attack on a Jewish Yeshiva in March 2008. The floors that were sealed were a residential

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<sup>1</sup> B’Tselem, *Demolition for Alleged Military Purposes*, (20 January 2009).

floor, on which the perpetrator, his parents and one of his brothers lived, and the basement floor, which has apartments for rent.

6. The sealing was carried out after a panel of judges of the Israeli High Court of Justice, headed by Justice Miriam Naor, rejected the petition of the family and of HaMoked: Center for the Defense of the Individual. The court accepted Israel's argument that, in the opinion of the Israel Security Agency, the policy serves as a deterrent, and held that the State may use this measure again. The judges approved the sealing even though Israel did not argue that relatives of the perpetrator had aided him or known of his plans.<sup>2</sup>

7. Similarly, following a violent bulldozer attack on Jaffa Road in Jerusalem on 2 July 2008 by a Palestinian resident of occupied East Jerusalem, Mr. Hussam Duwiyat, high ranking Israeli officials including then Prime Minister Olmert and then Defense Minister Ehud Barak, publically called for the demolition of the home of the individual responsible for the attack. Attorney General Menachem Mazuz stated publically that demolishing the homes of "terrorists" is permissible by law, notwithstanding Israel's human rights treaty obligations. Around 20 people lived in the home of Mr. Duwiyat in the Sur Bahir neighbourhood of East Jerusalem. All, including members of his family, claimed no prior knowledge that the attack perpetrated by Mr. Duwiyat would be carried out.<sup>3</sup> As recently as March 2009, Israeli officials have called for the home of the family of a Palestinian who carried out a bulldozer attack in Jerusalem to be demolished.

8. While the Israeli Committee Against House Demolitions (ICAHD) reports that punitive demolitions only account for 8.5 per cent of overall demolitions,<sup>4</sup> it is clear that they remain a pervasive feature of Israeli policy and practice in the occupied Palestinian territory. Indeed, in 2003 the Human Rights Committee urged Israel to cease the punitive destruction of housing including those carried out on houses of families whose members are suspected of carrying out terrorist activities. The Human Rights Committee concluded that such actions violate the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment (Art.7 of the ICCPR).<sup>5</sup>

9. The punitive destruction of Palestinian homes was also evidenced during Israel's 22 day military assault on the Gaza Strip, 'Operation Cast Lead', which began on 27 December 2008. While Israel ostensibly carried out this attack in response to illegal and indiscriminate rocket fire into its territory by Palestinian militants, the wide-spread and devastating effect in terms of deaths, injuries and destruction of housing and related infrastructure that the military campaign had on the civilian population demonstrates collective punishment. Reports on the effects of the invasion of Gaza in early 2009 note that some 4,000 homes were totally destroyed and 17,000 homes badly damaged, leaving some 90,000 Gazans homeless. Reports indicate that over half a million people fled their homes at some point during the conflict in search of a safe place of refuge, but with Gaza's borders sealed, no proper shelters or warning system in the Gaza Strip, and

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<sup>2</sup> See, *id.*

<sup>3</sup> See COHRE statement, 'COHRE calls upon Israel to end house demolitions as a means of collective punishment', 15 July 2008, [www.cohre.org/opt](http://www.cohre.org/opt)

<sup>4</sup> ICAHD, 'Statistics on House Demolitions (1967-2009)', <http://www.icahd.org/eng/articles.asp?menu=6&submenu=2&article=517>

<sup>5</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee: Israel. 21/08/2003*, UN Doc. CCPR/CO/78/ISR, (21 August 2003), para. 16.

attacks carried out on UN emergency shelters, there was no such refuge. The resulting psychological trauma inflicted on the civilian population was immense, with OCHA reporting that “the psycho-social impact of recent events on Gaza’s residents is likely to last for years to come; some may never fully recover.”<sup>6</sup>

## ***2.2 Discriminatory Forced Evictions and House Demolitions***

10. According to the 2008 report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967:

Houses are frequently demolished for “administrative” reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of “normal” town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.<sup>7</sup>

11. Similarly, according to Amnesty International, in 2007 alone Israel demolished more than 100 homes in the West Bank and East Jerusalem for so-called “administrative” reasons whereby only Palestinians are systematically denied building permits and risk home demolition for any construction to their existing houses.<sup>8</sup> These forced evictions and home demolitions rendered hundreds of families homeless. Between 19 January and 16 February 2009, 31 Palestinian owned structures, of which 15 were residential, were demolished in both Jerusalem and Area C of the West Bank.<sup>9</sup> These actions led to the displacement of 130 Palestinians, of which 60 were children, and affected a further 174 persons. These figures do not take into account the large number of self demolitions carried out by Palestinians under pressure from the Israeli authorities, including the threat of fines.

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<sup>6</sup> OCHA, *The Humanitarian Monitor*, Number 33, January 2009, p. 9.

<sup>7</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, para. 41, UN Doc. A/HRC/7/17 (21 January 2008).

<sup>8</sup> Amnesty International, *Amnesty International Report 2008: The State of the World's Human Rights*, (2008).

<sup>9</sup> Information gathered by the Displacement Working Group, facilitated by OCHA, February 2009.



Demolished Palestinian home, Qalqilya, West Bank, Palestine  
(photo credit: Bret Thiele, COHRE)

12. The Local Outline Plan Jerusalem 2000, which acts as a Master Plan for municipal planning in Jerusalem until 2020, promotes further expansion of unlawful Israeli settlements and demolition of Palestinian homes in occupied East Jerusalem. There is a well founded concern that such measures are an attempt to change the demographic and legal status of East Jerusalem. In the first two weeks of February 2009 alone, 308 demolition orders were issued for Palestinian homes in East Jerusalem.<sup>10</sup> Of particular concern is the Silwan neighbourhood of East Jerusalem, located near the historically and culturally important Haram al-Sharif/Temple Mount, where 88 houses are currently under threat of demolition, and 1300 to 1500 persons are at risk of being displaced and rendered homeless. An alternative plan presented to the planning authorities by the community was rejected by the Jerusalem District Planning Commission on 17 February 2009.<sup>11</sup>

13. In the first half of 2009 in East Jerusalem alone, 26 residential homes and eight other structures were demolished, rendering 255 persons homeless including 104 children.<sup>12</sup> These demolitions included those where the residents were forced to demolish their own homes pursuant to court orders.

14. Such discriminatory housing rights violations are not limited to the Palestinian territory occupied since 1967. For instance, similar “administrative” reasons are given for the demolition of homes belonging to Israeli citizens of Palestinian descent who reside in the so-called “Mixed Cities” of Israel such as Acra, Ramla, Lod and Jaffa. Additionally, Bedouin residents of the so-called “Unrecognized Villages” in the

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<sup>10</sup> Information gathered by Al Maqdese Society ASDE, Legal Clinic, see [www.al-maqdese.org](http://www.al-maqdese.org)

<sup>11</sup> International human rights law strongly encourages the consideration of alternative plans crafted by or with the participation of the community in question. See, *e.g.*, General Comment No. 7 of the Committee on Economic, Social and Cultural Rights.

<sup>12</sup> Al-Maqdese, Demolitions and Displacement in East Jerusalem (15 June 2009).

Negev/Naqab face forced eviction and house demolition as an intentional tactic designed to concentrate them into urban ghettos known as “government townships.” These “government townships”, Tel Sheva, Rahat, Arara, Kseiffa, Segev Shalom, Houra, and Laqiyya are the poorest recognised communities in Israel, and stand in stark contrast to the nearby Jewish-Israeli settlements, many of which boast some of the highest socio-economic indicators in the country. The absence of official planning for these areas prevents residents from building legally and prevents them from being connected to basic services such as electricity, water and sanitation. The Israeli Committee Against House Demolitions reports that in 2007, 759 demolitions took place in Israel, the vast majority against Bedouin owned structures in the Negev/Naqab, and 4,122 demolition orders were issued.<sup>13</sup>

15. In one stark example, Israeli forces, demolition workers, and two bulldozers entered the village of Twail Abu-Jirwal in the Negev/Naqab at 9:30 a.m. on 8 May 2007, while all the men of the village were at work. They destroyed every structure in sight, forcing the women, children and elderly in the village out of the thirty homes before destroying them all, rendering one hundred more Palestinians, who also happen to be Israeli citizens, homeless.<sup>14</sup>

16. Similarly, according to a recent article by Hazem Jamjoum:<sup>15</sup>

The clearest method through which Israeli authorities have displaced Palestinian Bedouin from the unrecognised villages is house demolition. At 5 a.m. on 15 December 2008, more than 200 police and a number of Green Patrol units descended upon the Bedouin encampment of Abdallah al-Atrash, near the Rahat township. Over the following 6 hours, they proceeded to demolish the entire village and forcibly expel all 20 families living there. Not a single structure was left standing, and all men, women, and children were pushed off their land. The residents of this village had been living in the same location for close to 20 years, after having been expelled from their previous homes farther to the west.<sup>16</sup>

### **3. VIOLATIONS OF THE RIGHT TO WATER AND SANITATION**

17. The following are but a small sample of the violations of the right to water and sanitation that occur in not only the West Bank and Gaza, but also in the Palestinian sections of the so-called “Mixed Cities” in Israel and of Bedouin villages in the Negev/Naqab and other regions of Israel proper. These examples are, however, emblematic of the overall policies and practices of Israel with respect to violations of the right to water and sanitation that rise to violations of the International Covenant on Civil and Political Rights.

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<sup>13</sup> Israeli Committee Against House Demolitions, *Annual Report 2007*.

<sup>14</sup> Isabelle Humphries, “42,000 Homes on the Demolition List”, al-Majdal, Issue #34, BADIL Resource Center, Summer 2007. For more on home demolitions and rights violations in the unrecognized villages of the Naqab, see: Human Rights Watch, “Off the Map: Land and Housing Rights Violations in Israel’s Unrecognized Bedouin Villages”, Volume 20, No. 5 (E), March 2008.

<sup>15</sup> Hazem Jamjoum, *Ongoing Displacement of Palestine’s Southern Bedouin*, 4 February 2009.

<sup>16</sup> “Bedouin Village Demolished -- Population Expelled”, RCUV Situation Alert (received via email), 15 December 2008.

## 3.1 Gaza

### 3.1.1 Sanctions and Blockade

18. A catastrophic humanitarian situation has been caused in the Gaza Strip 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 exacerbate 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. The sanctions and blockade on Gaza have led to the periodic paralysis of the water and sanitation sector in Gaza which has resulted in severe human suffering.

19. Israel has attempted to justify 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 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 in violation of international humanitarian law. When such punishment results in unlawful or arbitrary interference with the home, is discriminatory in its intent or effect, or otherwise leads to severe pain or suffering, whether physical or mental, it arises to violations of, *inter alia*, Articles 2, 7, 17, 26 or 27 of the International Covenant on Civil and Political Rights.

20. According to COHRE's report entitled *Hostage to Politics: The Impact of Sanctions and the Blockade on the Human Right to Water and Sanitation in Gaza*, (2008) the international sanctions, the blockade and reductions of fuel and electricity have had the following intentional results:

- As a result of the closure of Gaza's border crossings, equipment and supplies needed for the construction and maintenance of water and sanitation facilities have been denied entry to the Gaza Strip. These actions have hindered projects to repair, rehabilitate and upgrade existing infrastructure, including water and sewage networks and waste water treatment plants, much of which is old or has been damaged by Israeli Defence Forces (IDF) or both.
- There is evidence that damage to water and sewage 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 have also hindered the operation of desalination plants.
- Restrictions on fuel and electricity, most of which is usually supplied by Israel, has led to the periodic paralysis of water and waste-water services. For instance, 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 were therefore non-functional for around eight hours each day. By June 2008, 15 per cent of Gaza's population had access to water for



a mere 4-6 hours per week, 25 per cent had access to water only every four days and 60 per cent 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 per cent of Gaza's agricultural wells were running out of fuel supplies.

- As of January 2008, the sanction and blockade regime resulted in per capita daily use of water in Gaza falling 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. A reduction in water quantity has meant that many people have been forced to compromise on hygiene and health care.

- In June 2009, John Holmes (the United Nation's most senior humanitarian official) concluded that the blockade of Gaza amounted to collective punishment. Electricity supply was still in crisis due to the blockade, in particular due to restrictions on industrial fuel and lack of entry for parts required to fix the electrical network damaged during "Operation Cast Lead". In June 2009 alone, there were power cuts for 6-8 hrs each day, affecting 90 per cent of the population of Gaza. The remaining 10 per cent have had no electricity at all since January due to destruction of the electrical network. This situation continues to affect access to water and sanitation.

- The plunging incomes of many Gazans due to the sanction and blockade regime 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 resorting 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.

- Even before "Operation Cast Lead", the three waste-water treatment plants in Gaza were in a critical state of disrepair and at high risk of flooding due to the sanction and blockade regime. 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. The fear of the threat of the collapse of waste water treatment plants places intolerable suffering on the population living in their vicinity of filtration basins.

- Since January 2008, due to the intentional cut off of power, around 50,000 cubic metres of raw or partially treated sewage has been released daily into the Mediterranean Sea. This is causing extreme environmental harm and constitutes

a grave threat to the population's health in both Palestine and Israel. 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>17</sup>

- Prior to the severe damage caused by “Operation Cast Lead”, 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, placing 250,000 people at risk for serious health impairment. This neighbourhood remains prone to flooding. Some sewage pumping stations have been forced to release sewage into pools designed to store storm water overflow in residential areas.

- Financial and economic sanctions have prevented the authorities in Gaza from providing an adequate service to the population. In the first half of 2008, many municipal employees in Gaza, including those responsible for providing services related to water and waste-water, had 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.

21. In addition to the sanctions and blockade regime, 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>18</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. According to the then Special Rapporteur on the occupied Palestinian territory:

... 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>19</sup>

22. Indeed, Israeli Defense Forces have deliberately targeted water and sewage infrastructure on several occasions. For instance, 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. Furthermore, municipal

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<sup>17</sup> OCHA, ‘Gaza Strip Inter Agency Humanitarian Fact Sheet’, June 2008, p.1.

<sup>18</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>19</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.

workers have been fired upon at times, preventing them from carrying out work related to water and waste-water services (elaborated upon below).

23. 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>20</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, a representative from the Coastal Municipalities Water Utility replied; “There is a risk of getting shot in certain places.”<sup>21</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>22</sup> During the IDF military incursion into the Gaza Strip between 27 February and 4 March 2008, OCHA reported that:

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>23</sup>

24. International humanitarian law strictly prohibits attacks to civilian infrastructure and indiscriminate and excessive use of force.<sup>24</sup> Additional Protocol I to the Geneva Conventions explicitly mentions that attacking drinking water installations constitutes a crime under the laws of war.<sup>25</sup> Moreover all States parties to the International Covenant on Economic, Social and Cultural Rights have the obligation 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>26</sup> Physical security must be guaranteed when accessing water amenities and services.<sup>27</sup> The sanctions and blockade have also hindered investment into rehabilitation of damaged water and sewage infrastructure. All told, these intentional acts and omissions by Israel to deny access to water and sanitation have caused severe pain and suffering on the civilian population of the Gaza Strip who have not only struggled to manage their personal and domestic needs due to lack of access of sufficient supplies of safe water but have had to live with both the indignity and potential health risks of sewage flowing in the streets of residential areas. Indeed, UNRWA reports that diarrhoea and acute bloody

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<sup>20</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>21</sup> Information provided to COHRE by CMWU, December 2007.

<sup>22</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>.

<sup>23</sup> OCHA, ‘Humanitarian Situation Update for the oPt’, 20 March 2008, p.1.

<sup>24</sup> For more detailed information on international humanitarian law, see COHRE, *Hostage to Politics: The Impact of Sanctions and the Blockade on the Human Right to Water and Sanitation in Gaza*, Annex, Section 5.2 (COHRE: Geneva 2008)..

<sup>25</sup> Article 54.

<sup>26</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 21.

<sup>27</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 12 (c) (i).

diarrhoea, diseases directly caused by lack of access to safe water and adequate sanitation, remain the major cause of morbidity among infectious diseases affecting the refugee population of the Gaza Strip.<sup>28</sup>

### 3.1.2 Military Invasion of Gaza: “Operation Cast Lead”

25. The already dire situation in the Gaza Strip was drastically exacerbated in early 2009 with the military invasion by Israel. During the Israeli military offensive on the Gaza Strip, ‘Operation Cast Lead’, between 27 December 2008 and 18 January 2009, water wells, water networks, waste water facilities and water tanks were intentionally targeted and destroyed, causing an estimated \$US 6 million of damage and immense human suffering.<sup>29</sup> Three new wells were completely destroyed in Jabaliya and Beit Hanoun which supplied more than 50,000 persons with water.<sup>30</sup> The intentional destruction of water wells and other water and sanitation infrastructure was also documented in the recent Human Right Council fact-finding mission report lead by Justice Goldstone.<sup>31</sup> At the height of the Israeli military offensive up to one third of the population of Gaza was left without access to clean water, some for ten or more days. The targeting of sewage and waste water treatment plants led to sewage flowing in the streets in a number of areas include Beit Hanoun and Beit Lahia. On 24 January there were severe problems with sewage according to CMWU, which reported that waste water from the treatment plant in the Netzarim area was flooding up to one kilometer from the plant and that waste water in the Beit Lahia lagoon was increasing to the point of risking a collapse of the lagoon.<sup>32</sup> As of 8 February 2009, 300,000 persons remained without tap water, tankered water was in short supply due to a lack of water tankers and prices for water had risen to around 30-40 NIS/cubic meter (US\$ 7.5 - 10) – unaffordable for many. Following the end of overt hostilities, the blockade further prevented humanitarian agencies from being able to enter materials such as cement as well as technicians to carry out the necessary repairs to water and waste water facilities, and otherwise provide aid to the population. This denial of access to Gaza violates the [Fourth] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) which requires the occupying power to facilitate relief schemes reaching the occupied population (Article 59) and has prolonged the suffering of innocent civilians.

26. According to the Palestinian Water Authority (PWA), an initial report on damage to water infrastructure caused by the Israeli invasion of Gaza included:

- Complete destruction of four water wells (Beit Hanoun, Jabalia, Gaza (2));
- Damage on the main water carrier on one of Gaza’s main water wells (Zimmo well);
- Damage on the main water carrier of Gaza (Safa wells);

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<sup>28</sup> OCHA, *Protection of Civilians Weekly Report, 18-24 February 2009*, [www.ochaopt.org](http://www.ochaopt.org)

<sup>29</sup> Coastal Municipalities Water Utility, *Damage Assessment Report: Water and Waste Water Infrastructure and Facilities*, (January 2009), p. 5.

<sup>30</sup> Ibid.

<sup>31</sup> Report of the United Nations Fact Finding Mission on the Gaza Conflict, in particular Chapter XIII, UN Doc. A/HRC/12/48 (15 September 2009).

<sup>32</sup> EWASH Report, *Gaza Emergency WASH Cluster weekly situation report no. 1* (8 February 2009).

- Damage on the main water carrier to Nusairat (from Mughraga wells);
- Damage on the main carrier for Fukhary and Naser villages (Knahounis area);
- Damage on the electrical works of a number of wells in Jabalia and Gaza;
- Damage to the distribution networks east of Gaza City and in the northern area.

27. According to the PWA, an initial report on damage to sewage infrastructure caused by the Israeli invasion of Gaza included:

- Damage on the embankments of the wastewater treatment plant in Sheikh Ejleen area;
- Damage on many main sewage collection lines in Gaza, Jabalia and Beit Hanoun;
- Damage to the electrical panel of one sewage pumping station in Beit Lahia.

### ***3.2 West Bank***

28. There has been a series of droughts affecting the region in recent years which have continued into 2009. Yet water shortages in the West Bank are not solely the result of natural phenomena but are intentionally exacerbated and perpetuated due to both the acts and omissions of Israel. Israeli policy and practice in the West Bank since the occupation began in 1967 has been to expropriate and assert control over Palestinian water resources, maintain an unequal and discriminatory allocation of water resources to benefit both Israeli citizens living in Israel and those living in illegal West Bank settlements, and prevent Palestinians from developing their own resources. This has been achieved primarily through the issuance of military orders subsequent to the occupation, which transferred the power over water resources and water resource management to the occupation authorities. The Oslo peace process only served to formally institutionalise this arrangement. Under the terms of the Oslo II Agreement of September 1995, Israel was allocated nearly six times more water from trans-boundary underground aquifers. Moreover, Israeli citizens consume on average 4.6 times more water than a Palestinian living in the West Bank.

29. Israel has also actively prevented the construction and maintenance of water and sanitation infrastructure in the West Bank. This has primarily been achieved through Israel exercising its effective veto through the Joint Water Committee, which is mandated to approve all water and sanitation projects in the West Bank. In areas of the West Bank that remained under direct Israeli control following Oslo (around 61 per cent of West Bank territory) a further layer of bureaucracy exists, as the Israeli Civil Administration must grant a permit for any construction, including water and sanitation projects. The vast majority of applications for a permit are denied, and any structure built without a permit faces the risk of demolition by the Israeli authorities. As well as prohibiting the construction of wells necessary for Palestinians to secure additional quantities of water to support population growth and socio-economic development, such policies have denied communities access to water and sanitation facilities, including water and sewage

networks and cisterns for rainwater harvesting. In addition to destruction of cisterns and wells, Israeli Defense Forces routinely shoot holes in and consequently destroy water tanks on Palestinian homes.

30. According to B'Tselem:

Discriminatory and unfair division of the shared water sources creates a chronic water shortage in the West Bank. Average per capita daily water consumption of Palestinians in the West Bank is two-thirds of the amount recommended by the World Health Organization. Due to the shortage, many Palestinians have to buy water from tankers at three to six times higher than regular prices, forcing poor families to spend up to one-fifth of their income on water, compared to the slightly more than one per cent that average-income Israeli families spend on water.

An extreme example of the inequality is seen in the average daily per capita water consumption of the 396 settlers living in Pnei Hever, in Hebron District (194 liters), compared to the figure for the 70,000 Palestinians living in the eight kilometers away in the town of Yatta (27 liters).<sup>33</sup>

31. Israeli so-called 'security' measures inside the West Bank such as roadblocks, checkpoints and the construction of the Wall have also obstructed Palestinian access to water resources, services and facilities, resulting in severe suffering of the Palestinian population. Areas that have been designated closed military areas, nature reserves and 'settler only' roads have left large areas of the West Bank inaccessible to Palestinians, or movement within these areas highly restricted. Such measures isolate Palestinian communities from their springs, wells and other water points; force Palestinians to travel long distances to access water; and hinder water tankers and sewage disposal trucks from accessing certain areas, causing them to make long detours which due to increased time and fuel costs have rendered such services unaffordable in many cases.

32. The intentional policies and practices outlined above have restricted the ability of the Palestinian authorities to provide an adequate service to the Palestinian population, and in some cases prevented humanitarian organizations from providing aid and assistance to vulnerable communities. Again, the result is severe suffering of the Palestinian population. As an occupying power, Israel is primarily responsible for the welfare of the Palestinian population in the West Bank and is under an obligation not to obstruct the Palestinian authorities from carrying out their duties in areas for which they are responsible, including water and sanitation provision.

33. Some specific examples of violations of the right to water and sanitation in the West Bank include:

- In August 2007, during a forced eviction of Humsa, a small village in the Jordan Valley, Israeli authorities confiscated water tanks and tractors, the only means by which villages access drinking water.<sup>34</sup> On 16 February 2009, during a demolition

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<sup>33</sup> B'Tselem, *The Water Crisis: 22.3.09: World Water Day – 22 March – waters that cross borders*.

<sup>34</sup> Amnesty International, *Amnesty International Report 2008: The State of the World's Human Rights*, (2008).

in Latoon Abu Jumma, a mobile water tank belonging to Bedouin was confiscated by the Israeli authorities.<sup>35</sup>

- The impact of the Apartheid Wall has cut off access to water for several Palestinian villages. The areas of the West Bank cut off from the rest of the West Bank by the Wall include some of the areas richest in water resources, including wells and cisterns. For instance, the villages of Jayyus and Falameya (in the Qalqilyia district) have been cut off from six groundwater wells and the water networks which previously supported them. As a result, the quantity of water has been reduced in Jayyus to 23 litres per capita per day, well below the WHO levels that stipulate 100 litres as necessary to ensure all health concerns are met.<sup>36</sup>
- The approximately 2,000 residents of the farming communities of Masafar Yatir have been cut off from the rest of the West Bank by settlements, bypass roads, closures and checkpoints. These communities have had both housing and water wells destroyed by Israeli Defense Forces. The major source of water involves the collection of rainwater in cisterns, which are in serious disrepair due to continued denial of building permits. This situation has led to outbreaks of water-borne disease beginning in 2006.<sup>37</sup>
- Palestinian residents of the village of Al Tuwani are not allowed to maintain, repair or develop water infrastructure. Any work that is completed is demolished by Israeli authorities.<sup>38</sup> Like in other parts of the West Bank, the discriminatory nature of Israeli policies and practices is apparent as water infrastructure is constructed for nearby unlawful Israeli settlements and outposts.
- In the area around the village of Al Hadidiya, the 20 wells are no longer functioning due to lack of permission to rehabilitate them. Furthermore, in the course of home demolitions the Israeli Defence Forces have confiscated tractors and water tanks that are the only means by which residents can access water.<sup>39</sup>
- Between November 2001 and February 2005, the United Kingdom's Department for International Development funded the Hebron Water Access and Storage Project. The project aimed to improve infrastructure in a number of villages in the south Hebron region as well as work with the communities to improve health and sanitation through education. The project built 686 cisterns and rehabilitated an additional 117 and also co-financed the construction of 1,136 toilets and rehabilitated an additional 81. Halfway through the project the Israeli Defence Force began to target project infrastructure for demolition. On 28 April 2004 two toilets were demolished in Um Fagarah, three in Isfey Tihta and four in Tabban along with two houses. On 3 June 2004, one toilet and three cisterns were destroyed in Um Sidreh, and on 5 July 2004, four group toilets and one single toilet were destroyed in Zenula and one toilet destroyed in Dir Si'deh.<sup>40</sup>

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<sup>35</sup> Information gathered by the Displacement Working Group, facilitated by OCHA, February 2009.

<sup>36</sup> COHRE Report, *Policies of denial: Lack of access to water in the West Bank*, Geneva: COHRE 2008.

<sup>37</sup> COHRE Report, *Policies of denial: Lack of access to water in the West Bank*, Geneva: COHRE 2008.

<sup>38</sup> COHRE Report, *Policies of denial: Lack of access to water in the West Bank*, Geneva: COHRE 2008.

<sup>39</sup> COHRE Report, *Policies of denial: Lack of access to water in the West Bank*, Geneva: COHRE 2008.

<sup>40</sup> COHRE Report, *Policies of denial: Lack of access to water in the West Bank*, Geneva: COHRE 2008.

34. As will be detailed below, the above actions and omissions of Israel not only cause immense physical or mental suffering of the Palestinian population, but are undertaken with the aim to punish or coerce or in a discriminatory manner based on race or nationality or both.



Water tank with tires and faucet intentionally destroyed by Israeli Defense Forces in Area C, West Bank, Palestine (photo credit: Bret Thiele, COHRE)

### ***3.3 Israel: Violations in the Negev/Naqab***

35. Due to the lack of recognition of many Bedouin villages in the Negev/Naqab by Israeli and subsequent lack of official planning for the area, the residents of these ‘unrecognized’ villages are not provided with any basic services including water and sanitation.<sup>41</sup> Like in the Palestinian territory occupied since 1967, the treatment of Palestinians, including Bedouin, residing in Israel is wrought with discrimination and coercive intent. COHRE’s research on the unrecognized villages found that:

- While 98 per cent of Israeli citizens have fresh water ‘on tap’ in their homes, and 100 per cent of Israelis in urban areas have access to improved sanitation, Israeli policy and practice is to refuse access to water and sanitation for the Bedouin of the unrecognized villages.
- While water consumption in Savion (one of Israel’s richest communities) averages 383 cubic meters per year, in Tel Sheva, a Bedouin community, the

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<sup>41</sup> The concept of “Unrecognized Villages” is a legal fiction designed to legitimize the failure of Israel to provide essential services to this segment of the Israeli population.



average per capita consumption is 29.1 cubic meters per year. Average daily per capita water consumption in Bedouin communities is often below World Health Organization guidelines.

- Between 2003 and 2006 the Water Allocation Committee of the Israeli Lands Administration (mandated to approve connections to the water network for Bedouin citizens) received 210 requests for water connections and approved water pipes for only 30 of these. Further, water pipes, if approved, are only permitted to be of a one inch diameter which does not allow for a sufficient supply for a large number of people and causes the water pressure to be very low.
- Water connections, where they exist, often result in the pipes being laid above ground which causes the water to freeze in winter and become near boiling hot in the summer months.
- Residents of a number of unrecognized villages such as Atter and Um Al-Harin have to travel a number of kilometres to access a water connection. In Tel Arad, residents travel 1Km to access the nearest water point. Accessing water and filling water tanks can take a number of hours and prevents those responsible for water collection from engaging in other productive activities.
- There is a large incidence of water borne disease and other negative health impacts amongst Bedouin communities related to a lack of access of clean water and adequate sanitation. In the month of August 2008 alone, some 16,000 Bedouin children are hospitalised for dysentery as compared to 5,000 Jewish children. These numbers are even more illuminating when one considers the Jewish vis-à-vis Bedouin population numbers generally.
- Some Bedouin villages, such as Umm Betin, have raw sewage flowing through them.
- In some villages such as Tel Arad, residents are paying around 40 per cent of their monthly income on clean drinking water (this includes fuel costs for water tankers).
- In October 2007, Israel disconnected the water supply to the city of Rahat (an official city) on the basis of non payment of water bills. However, Israel also disconnected the water supply to a number of residents who had paid their bills including kindergartens and schools which is evidence of collective punishment.
- A number of legal cases taken before the Water Allocation Committee and the Water Tribunal in Haifa, to find remedy for the discriminatory violations of the right to water and sanitation inflicted upon the Bedouin, have been rejected by those mechanisms.<sup>42</sup>

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<sup>42</sup> More information on violations of the right to water and sanitation in the Negev/ Naqab can be found at: COHRE, *Submission to the Goldberg Committee regarding violations of the right to water and sanitation in the Negev/Naqab*, (2008), [www.cohre.org/israel](http://www.cohre.org/israel)

#### 4. **ARTICLE 17: ARBITRARY OR UNLAWFUL INTERFERENCE WITH THE HOME**

36. The Committee has previously concluded that forced eviction violates Article 17 of the ICCPR.<sup>43</sup> In its Concluding Observations on Israel in 2003, the Committee called on Israel to “cease forthwith” the practice of punitive house demolitions.<sup>44</sup> As the facts above demonstrate, Israel has not abided by this directive and the practice of punitive house demolitions continues unabated.

37. In addition to punitive house demolitions, homes of Palestinians have been demolished for ostensibly “administrative” reasons. As mentioned above, however, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has pointed out that:

Houses are frequently demolished for “administrative” reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of “normal” town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.<sup>45</sup>

38. Indeed, paragraphs 380 and 381, including tables 16, 17, 18 and 19, provided in Israel’s own periodic report indicate the discriminatory nature of housing demolitions in occupied East Jerusalem. While Israel fails to disaggregate the ethnic background of those suffering home demolition, the information disaggregated into “Eastern neighbourhoods of Jerusalem” and “Western neighbourhoods of Jerusalem” illustrate the racially discriminatory impact of home demolition due to the disproportionate number of Palestinians living in the “Eastern neighbourhoods of Jerusalem” vis-à-vis the “Western neighbourhoods of Jerusalem.”

39. Similar home demolitions have occurred in the West Bank, including in the Jordan Valley and other parts of the so-called Area C which is under near total Israeli control. Such discriminatory forced evictions and housing demolition also violate the prohibition on arbitrary or unlawful interference with the home as enshrined in Article 17 of the ICCPR.

40. Interference with the home based on unlawful discrimination is arbitrary by definition and thus violates Art. 17 of the ICCPR.

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<sup>43</sup> For instance, see, Human Rights Committee, Concluding Observations on Kenya, para. 22, UN Doc. CCPR/CO/83/KEN (29 April 2005) (“While noting the delegation’s explanations on the issue, the Committee remains concerned about reports of the forcible eviction of thousands of inhabitants from so-called informal settlements, both in Nairobi and other parts of the country, without prior consultation with the populations concerned and/or without adequate prior notification. This practice arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under article 17 of the Covenant.”)

<sup>44</sup> Human Rights Committee, Concluding Observations on Israel, UN Doc. CCPR/CO/78/ISR (21 August 2003).

<sup>45</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, para. 41, UN Doc. A/HRC/7/17 (21 January 2008).

41. Such interference with the home is also unlawful in that it violates, *inter alia*, Israel's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as humanitarian law. For evictions to be considered justified under the ICESCR, they must satisfy certain legal requirements. These are:

First, evictions may *only* occur in very "exceptional circumstances".<sup>46</sup>

Second, States *must* ensure, prior to any planned evictions, and particularly those involving large groups, that *all* feasible alternatives are explored *in consultation with affected persons*, with a view to avoiding, or at least minimizing, the need to use force.<sup>47</sup>

Third, in those rare cases where eviction is otherwise considered 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;
- 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.<sup>48</sup>

Finally, even if the above three conditions have been met, evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, States parties must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. Furthermore, evictions can not be undertaken in a discriminatory manner.<sup>49</sup>

42. The forced evictions and home demolitions fail to meet any elements of this legal test, and consequently are unlawful under the ICESCR.

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<sup>46</sup> International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976 (stating in paragraph 19 that "the Committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.").

<sup>47</sup> Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, para. 14, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

<sup>48</sup> *Id.* at para. 16.

<sup>49</sup> *Id.* at para. 17.

43. With respect to humanitarian law, the Art. 33 of the Fourth Geneva Convention prohibits collective punishment while Art. 53 prohibits “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations.” Consequently, the above-mentioned interference with homes is unlawful under humanitarian law binding upon Israel and thus amounts to a violation of Art. 17 of the ICCPR.

## **5. ARTICLE 26: EQUAL PROTECTION OF THE LAW**

44. As mentioned in the previous section, Palestinians disproportionately suffer forced evictions and housing demolitions. This is not only the case in the West Bank and East Jerusalem, but also in the Negev/Naqab and the so-called Mixed Cities of Ramla, Lod and Acre – where Palestinians with Israeli citizenship suffer from “administrative” actions similar to those carried out in East Jerusalem.

45. Such disproportionate treatment violated the prohibition on forced eviction guaranteed by Article 11 of the International Covenant on Economic, Social and Cultural Rights. Since Article 11 is not respected, protected or fulfilled without discrimination and Palestinians, whether in the occupied territory or in Israel, do not enjoy the equal protection of Article 11 of the ICESCR, such disproportionate treatment also rises to a violation of Article 26 of the ICCPR.

46. Racial discrimination or discrimination based on nationality or both is also demonstrated by the fact that unlawful Israeli ‘outposts’ in the occupied Palestinian territory (*e.g.*, unlawful structures under Israeli law that are often the beginning of Israeli settlements) are not only tolerated by Israel but often supplied with infrastructure such as water, sanitation and electricity. Furthermore, in Israel proper it is the case that according to the Israeli Committee Against House Demolitions (ICAHD) there are up to 84,000 illegal structures – one third of which are Jewish owned (Annual Report 2007). However, forced eviction and demolition of housing disproportionately targets Palestinian citizens of Israel and such discriminatory application of the law violates Art. 26 of the ICCPR.

47. As section 3 above outlines, Israeli also engages in discriminatory actions and omissions with respect to the provision of water and sanitation services. Again, such discrimination is apparent not only in the West Bank, East Jerusalem and the Gaza Strip, but in the Negev/Naqab as well. Further, while 98 per cent of Israeli citizens enjoy household water connections and unlimited access, Bedouin citizens of Israel residing in the unrecognized villages are denied their right to water and sanitation as one means to facilitate their displacement.

48. In addition to the discriminatory treatment of Palestinian homes vis-à-vis Israeli “outposts”, there is also discrimination in that the water supplied to Israeli settlers via the Israeli national water company Mekerot, which is highly subsidized and subject to a different pricing policy than that supplied to Palestinians in the West Bank by Mekerot. Further, water is often distributed to Israeli settlers and Palestinian communities through the same network, but the pipes leading to Palestinian communities are much narrower in diameter, only half an inch as opposed to two inches wide or water flow is restricted due to the insertion of ‘unit roles’. Due to access to and availability of water, Palestinians in the occupied Palestinian territory consume 70 litres/per capita/per day while Israeli

settlers enjoy 320 litres/per capita/per day. This discrimination is one means by which Israel seeks to make life untenable for Palestinians in order to coerce them to leave their lands and rises to a violation of Art. 26 of the ICCPR.

## **6. ARTICLE 27: MINORITY RIGHTS**

49. The Bedouin, particularly in the Negev/Naqab, are a minority within Israel that shares a common culture, including a particular way of life associated with the use of land resources. Israel, however, uses forced evictions and home demolitions as well as denial of access to water and sanitation as means to displace the Bedouin from their traditional lands and force them into urban centres that essentially are urban ghettos known as “government townships”. Indeed, as mentioned above, these “government townships”, Tel Sheva, Rahat, Arara, Kseiffa, Segev Shalom, Houra, and Laqiyya are the poorest recognised communities in Israel, and stand in stark contrast to the nearby Jewish-Israeli settlements, many of which boast some of the highest socio-economic indicators in the country.

50. Such violations of housing rights and the right to water in sanitation, by being designed to destroy the common culture of the Bedouin, rise to violations of Art. 27 of the ICCPR.

## **7. ARTICLE 7: CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

51. As Section 8 below demonstrates, Israel’s policies and practices of forced eviction and home demolition as well as acts and omission resulting in violations of the right to water and sanitation at times amount to violations of the prohibition on torture enshrined in Article 7 of the International Covenant on Civil and Political Rights on account of resulting in physical or mental suffering or both. In the event that the Committee doesn’t find that all of Israel’s acts and omission meet the definition of torture,<sup>50</sup> these acts and omissions at a minimum violate the prohibition on cruel, inhuman or degrading treatment or punishment. Israel has failed to prevent actions and omissions amounting to cruel, inhuman or degrading treatment or punishment instigated by its own policies and practices as well as failing through consent or acquiescence to prevent actions and omission amounting to cruel, inhuman or degrading treatment or punishment by Israeli settlers in the occupied Palestinian territory.

## **8. ARTICLE 7: TORTURE**

52. Torture is specifically defined by the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. To rise to torture, an act must (1) result in severe pain or suffering, whether physical or mental; (2) be intentionally inflicted on a person for such purposes as (a) obtaining from him [or her] or a third person information or a confession, (b) punishing him [or her] for an act he [or she] or a third person has committed or is suspected of having committed, or (c) intimidating or coercing him [or her] or a third person, or (d) for any reason based on

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<sup>50</sup> For the purposes of this Shadow Report, the definition of torture is the definition from the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.

discrimination of any kind; (3) when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

### **8.1                    *Result in severe pain or suffering, whether physical or mental***

53. Forced eviction has been condemned as a “gross violation of human rights” by the UN Commission on Human Rights on several occasions.<sup>51</sup> As the emblematic factual situations illustrate, forced eviction and house demolition cause both physical and mental suffering, as one’s home is essential for living a life with dignity and security. Similarly, creating conditions that result in a lack of drinking water and sanitation, whether through act or omission, results in both physical and mental pain and suffering as water and sanitation are essential for one’s health and well being and indeed very survival.

### **8.2 (b)                *Intent to punish***

54. According to the 2007 report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967:

The demolition of houses has been a regular feature of Israel’s occupation of the OPT. Different reasons or justifications are advanced for such demolitions: military necessity, *punishment* and failure to obtain a building permit. Although the IDF claims to have discontinued punitive home demolitions, instances of such demolitions still occur.

On 29 August 2007, the IDF demolished seven housing units in the Naqar neighbourhood of Qalqiliya, which were home to 48 persons (including 17 children) on the ground that they housed members of the military wing of Hamas.<sup>52</sup>

55. Similarly, as discussed in section 2.1 above, collectively punitive forced evictions and house sealing or demolition was the policy and practice until 2005 and continues to be the practice since 2005. With the Israeli High Court of Justice Abu Dahim case, it appears that the practice of collectively punitive forced eviction and house demolition will again be official policy. Indeed, as recently as April 2009 there was yet another family forcibly evicted only to watch their home being demolished on account of criminal acts of a family member in which the family played no role.<sup>53</sup> In any event, the intent to punish a person for acts they or a third person committed or are suspected of having committed is clear from this policy and practice.

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<sup>51</sup> See UN Commission on Human Rights resolution 1993/77, UN Doc. (adopted 10 March 1993) ; and UN Commission on Human Rights resolution 2004/28, UN Doc. (adopted 16 April 2004).

<sup>52</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, para. 41, UN Doc. A/HRC/7/17 (21 January 2008).

<sup>53</sup> Israeli Committee Against Home Demolitions, Israel continues the policy of collective punishment 7 April 2009.



Demolition of family home in East Jerusalem  
(photo credit: ICAHD)

56. With respect to the right to water and sanitation, Section 3 above details intentional violations of the right to water and sanitation through direct targeting of water and sanitation infrastructure and persons attempting to repair such infrastructure and denial of water and sanitation service provision. The systemic and systematic nature of such policies and practices, and the resulting intolerable living conditions that they impose on the Palestinian population, also have the intent and effect of creating such physical and mental suffering that Palestinians move off their land and out of their homes – resulting in constructive forced eviction.

57. With respect to the military attack on Gaza in early 2009 which resulted in, *inter alia*, intentional destruction of homes and water and sanitation infrastructure, the statement on 29 February 2008 by Matan Vilnai, at the time Israel's Deputy Minister for Defence, that Palestinians risked “bringing an even bigger Shoah” (the Hebrew word for Holocaust) upon themselves if they did not stop firing Qassam rockets into Israel, reveals that Israeli officials not only intended to punish persons or third persons for acts they committed or were suspected of having committed but also demonstrates that Israeli authorities were well aware of the magnitude of the suffering they would be inflicting on the people of Gaza.

58. Finally, the sanction and blockade regime imposed on Gaza itself is intended to punish the civilian population. For instance, then Prime Minister Olmert, referring to the blockade, stated that “We will not let the residents of Gaza live a comfortable and pleasant life” and in early February 2009, in an apparent admission of intent to violate international law, stated that Israel will resort militarily with a “disproportionate” response to rocket attacks from Gaza.

## **8.2 (c) Intent to intimidate or coerce**

59. The punitive acts and omissions of Israel also are intended to intimidate or coerce the civilian population of Gaza to end its actual or perceived support of the democratically elected government of Hamas.

60. Indeed, since first elected in 2006, the policy of Israel has been to use whatever means necessary to intimidate or coerce the population of Gaza into rejecting Hamas. The means have included forced eviction and housing demolition as well as destruction of water and sewage facilities and infrastructure. Article 33 of the Fourth Geneva Convention expressly forbids collective punishment and concludes that it is a war crime. When resulting in severe pain or suffering, such collective punishment also rises to violations of Articles 1 or 16 of the Convention Against Torture.

61. Furthermore, Israel has explicitly or implicitly given its consent or, at a minimum, acquiesced to actions by Israeli settlers in the occupied Palestinian territory intended to intimidate or coerce Palestinians to leave their homes and land. For instance, Israeli settlers have used violence, threats and destruction of possessions, crops, water sources and infrastructure as a means of intimidating Palestinians near which they live.<sup>54</sup> According to B'Tselem, "Israelis, individually or in organized groups, carry out the attacks on Palestinians and Palestinian property to frighten, deter, or punish them; using weapons and ammunition they received from the Israeli Defence Forces."<sup>55</sup> B'Tselem continues:

The actions against Palestinians include blocking roadways, so as to impede Palestinian life and commerce. The settlers also shoot solar panels on roofs of buildings, torch automobiles, shatter windowpanes and windshields, destroy crops, uproot trees, abuse merchants and owners of stalls in the market. Some of these actions are intended to force Palestinians to leave their homes and farmland, and thereby enable the settlers to gain control of them.

During the olive-picking season, when many Palestinians are at work in the orchards, settler violence increases. The violence takes the form of gunfire, which sometimes results in casualties among the Palestinian olive-pickers, destruction of trees, and theft of Palestinian crops.<sup>56</sup>

## **8.2 (d) Based on discrimination**

62. The suffering caused by violations of housing rights and the right to water and sanitation as a result of discrimination as described above rise to the level of violations of Article 3 of the ICCPR. The racially discriminatory practices bear repeating in that context.

63. As mentioned above, according to the 2007 report of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967:

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<sup>54</sup> Oxfam et al., *Assessment of the Quartet's Performance*, 25 September 2008.

<sup>55</sup> B'Tselem, *Settler Violence: The Nature of the Violence*, at: [http://www.btselem.org/english/Settler\\_Violence/Nature\\_of\\_the\\_Violence.asp](http://www.btselem.org/english/Settler_Violence/Nature_of_the_Violence.asp)

<sup>56</sup> *Id.*



Houses are frequently demolished for “administrative” reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of “normal” town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.<sup>57</sup>

64. Racial discrimination or discrimination based on nationality or both is also demonstrated by the fact that unlawful Israeli ‘outposts’ in the occupied Palestinian territory (*e.g.*, unlawful structures under Israeli law that are often the beginning of Israeli settlements) are not only tolerated by Israel but often supplied with infrastructure such as water, sanitation and electricity. Furthermore, in Israel proper it is the case that according to ICAHD there are up to 84,000 illegal structures – one third of which are Jewish owned (Annual Report 2007). However, forced eviction and demolition of housing disproportionately targets Palestinian citizens of Israel. Further, while 98 per cent of Israeli citizens enjoy household water connections and unlimited access, Bedouin citizens of Israel residing in the unrecognized villages are denied their right to water and sanitation as one means to facilitate their displacement and attack their common culture and way of life.

65. In addition to the discriminatory treatment of Palestinian homes vis-à-vis Israeli “outposts”, there is also discrimination in that the water supplied to Israeli settlers via the Israeli national water company Mekerot, which is highly subsidized and subject to a different pricing policy than that supplied to Palestinians in the West Bank by Mekerot. Further, water is often distributed to Israeli settlers and Palestinian communities through the same network, but the pipes leading to Palestinian communities are much narrower in diameter, only half an inch as opposed to two inches wide or water flow is restricted due to the insertion of ‘unit roles’. Due to access to and availability of water, Palestinians in the occupied Palestinian territory consume 70 litres/per capita/per day while Israeli settlers enjoy 320 litres/per capita/per day. This discrimination is one means by which Israel seeks to make life untenable for Palestinians in order to coerce them to leave their lands.

### ***8.3 Inflicted by the State***

66. It should be clear and uncontested that it is Israel that is directly responsible for the infliction of pain and suffering through, *inter alia*, forced evictions and house demolitions as well as acts or omissions resulting in violations of the right to water and sanitation. Furthermore, Israel has intentionally failed to protect Palestinians from violations by non-State actors, and in particular the Israeli settlers in the occupied Palestinian territory. Indeed, as mentioned above, these offending actions and omissions are part of explicit State policies and practices.

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<sup>57</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, para. 41, UN Doc. A/HRC/7/17 (21 January 2008).

## 9. RECOMMENDED LIST OF ISSUES AND QUESTIONS

67. The State party should disaggregate housing demolitions by race and ethnicity.
68. Regarding policies or practices on forced eviction, house demolition, and denial of access to water and sanitation, what steps is the State party taking to respect and ensure the right to self-determination of the Palestinian people (Article 1 of the ICCPR)?
69. Regarding policies or practices on forced eviction and house demolitions, what steps is the State party taking to respect the right to non-interference with the home (Article 17 of the ICCPR)?
70. Regarding violence and destruction of housing and land by Israeli Settlers, what steps is the State party taking, including steps related to due diligence including strictly prohibiting, investigating and prosecuting any such violence, to ensure the right to non-interference with the home (Article 17 of the ICCPR)?
71. Regarding policies or practices on forced eviction and house demolition which are undertaken based on racial, ethnic or nationality discrimination, what steps is the State party taking to respect and ensure equal protection of the law (Article 26 of the ICCPR)?
72. Regarding policies or practices resulting in denial of access to sufficient water or adequate sanitation which are undertaken based on racial or ethnic discrimination, what steps is the State party taking to respect and ensure equal protection of the law (Article 26 of the ICCPR)?
73. Regarding policies or practices toward Bedouin individuals, groups and communities regarding forced eviction, home demolition, denial of access to sufficient drinking water or adequate sanitation, as well as denial of access to traditional land-based livelihoods, what steps is the State party taking to respect and ensure minority rights (Article 27 of the ICCPR)?
74. Regarding policies or practices on forced eviction and house demolitions, what steps is the State party taking to respect the prohibition of torture or amount to cruel, inhuman or degrading treatment or punishment (Article 3 of the ICCPR)?
75. Regarding policies or practices resulting in denial of access to sufficient water or adequate sanitation, what steps is the State party taking to respect the prohibition of torture or amount to cruel, inhuman or degrading treatment or punishment (Article 3 of the ICCPR)?
76. Regarding violence by Israeli settlers generally, what steps is the State party taking, including steps related to due diligence including strictly prohibiting, investigating and prosecuting any such violence, to ensure the prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 3 of the ICCPR)?

## 10. CONTACTS

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