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## **The Right to Water - A Policy of Denial and Forced Displacement in the Occupied Palestinian Territory**

### **Palestinian Council for Human Rights Organisations (PCHRO) contribution to European External Action Service regarding implementation of EU-Israel Action Plan in 2011**

#### **I. Introduction**

In view of the EU's "New and Ambitious Neighbourhood Policy"<sup>1</sup> (ENP) and the upcoming review by the European External Action Service (EEAS) of the progress made in the implementation of the EU-Israel Action Plan, we, the undersigned human rights organisations would like to highlight several issues of concern. As this paper intends to emphasise, the EU is inconsistent in its reporting on violations of international human rights and humanitarian law in its progress reports on Israel; an inconsistency which undermines the ENP review process. Secondly, this briefing draws attention to a key human rights issue which the EU has failed to consider in previous progress reports on Israel: the right to water. As Palestinian NGOs dedicated to the promotion and protection of human rights in the Occupied Palestinian Territory (OPT), we urge the EEAS to take these issues into consideration in the drafting of the Progress Report on Israel for 2012.

#### **II. Assessing the Implementation of the EU-Israel Action Plan**

The ongoing Review of the ENP offers important opportunities for the promotion and protection of human rights. The EU has committed itself to a "new approach [...] based on mutual accountability and a shared commitment to the universal values of human rights, democracy and the rule of law."<sup>2</sup>

While the main objective of the Progress Report on Israel is the assessment of progress made in the implementation of the EU-Israel Action Plan (rather than providing a comprehensive human rights review of Israeli policies), the ENP reports provide an important reflection on "[d]emocracy, human rights and fundamental freedoms" and "the

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<sup>1</sup> This new or innovative and "ambitious" approach is referred to in two 2010 landmark joint communications: Commission (EC), 'Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions' (Communication) COM(2011) 200 Final, 8 March 2011 <[http://ec.europa.eu/commission\\_2010-2014/fule/docs/news/joint\\_communication-a\\_partnership\\_for\\_democracy\\_and\\_shared\\_prosperity\\_with\\_south\\_med\\_en.pdf](http://ec.europa.eu/commission_2010-2014/fule/docs/news/joint_communication-a_partnership_for_democracy_and_shared_prosperity_with_south_med_en.pdf)> (accessed 4 November 2011) and High Representative of the European Union for Foreign Affairs and Security Policy and the European Commission, 'A New Response to a Changing Neighbourhood' (25 May 2011) <[http://ec.europa.eu/world/enp/pdf/com\\_11\\_303\\_en.pdf](http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf)> (accessed 07 November 2011).

<sup>2</sup> A New Response to a Changing Neighbourhood (n1).

situation in the Middle East."

### 1) Lack of Clear Language on International Law

The language of the EU-Israel Action Plan referring to international law is rather vague, stipulating that the EU and Israel will "[w]ork together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law."<sup>3</sup> The Action Plan further affirms the objective "of reaching a comprehensive settlement of the Israeli/Palestinian conflict"<sup>4</sup> as well as the "importance of adherence to international law."<sup>5</sup>

However, neither the Action Plan nor the progress reports make reference to Israel's concrete obligations under international law, including under international human rights and humanitarian law. There are no clearly defined criteria or yardsticks against which the EU will assess whether or not Israel has progressed in the implementation of the Action Plan objectives of promoting international law, democracy and peace. This shortcoming seriously undermines the review process. In order to ensure an appropriate evaluation of progress made by Israel in the implementation of its Action Plan with the EU, it is crucial that the EU formulate clear assessment criteria that are reflective of Israel's international legal obligations.

In its 2011 review of Israel the EU should therefore take note of the recent conclusions and recommendations of UN treaty bodies as expression of internationally recognised human rights standards. In particular, the EU should monitor the implementation by Israel of recommendations made by the UN Committee on Civil and Political rights,<sup>6</sup> the UN Committee Against Torture,<sup>7</sup> the Committee on the Rights of the Child,<sup>8</sup> as well as the UN Committee on Economic, Social and Cultural Rights, which will publish its findings on 5 December 2011.<sup>9</sup> It is important to recognise that Israel has continuously

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<sup>3</sup> EU-Israel Action Plan, point 2(1), chapter "Shared Values", section on "Democracy, human rights and fundamental freedoms", pp. 4 – 5

<[http://ec.europa.eu/world/enp/pdf/action\\_plans/israel\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf) > accessed 23 November 2011.

<sup>4</sup> EU-Israel Action Plan, point 2(1), chapter "Regional and International Issues", section on "The Situation in the Middle East" p. 6. <[http://ec.europa.eu/world/enp/pdf/action\\_plans/israel\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf) > accessed 23 November 2011.

<sup>5</sup> Ibid.

<sup>6</sup> Human Rights Committee, 'Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant' (3 September 2010) UN Doc CCPR/C/ISR/CO/3 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/448/06/PDF/G1044806.pdf?OpenElement>> accessed 09 November 2011.

<sup>7</sup> UN Committee Against Torture (CAT), 'Concluding observations of the Committee against Torture: Israel' (23 June 2009) Un Doc CAT/C/ISR/CO/4 <<http://www.unhcr.org/refworld/docid/4a85632b0.html>> accessed 25 November 2011.

<sup>8</sup> UN Committee on the Rights of the Child (CRC), 'Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict' (29 Jan 2010) UN Doc CRC/C/OPAC/ISR/CO/1 <<http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPAC-ISR-CO-1.pdf>> accessed 15 November 2011.

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights (UNCESCR), 'Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on

refused to accept the applicability to the OPT of various human rights treaties that it has ratified, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>10</sup>

## 2) Lack of Consistency in Reporting on Violations

In its progress reports on Israel, the EU does not review the latter's violations of international law in a consistent manner. Some violations are addressed under the section titled "Democracy, human rights and fundamental freedoms," in the chapter on "shared values;" others in the chapter on "the situation in the Middle East." While the section on democracy and human rights covers the main violations committed by Israel within the state of Israel (e.g. freedom of association, expression and assembly, minority rights), the EU only partially covers Israeli violations committed against Palestinians living in the OPT (i.e. those committed in relation to the detention of children and administrative detention). Most other violations committed in the OPT are addressed – if at all – in the chapter on the Middle East (e.g. settlement activity, home demolition and eviction, the closure of the Gaza Strip, freedom of movement, settler violence). When addressing human rights concerns in the context of the Middle East peace process (rather than in the section of democracy and human rights), standards of scrutiny are only partly guided by human rights principles or by international humanitarian law. Consequently, their assessment is affected by political (or other) considerations.

Paradoxically, some violations of international law committed by Israel in the OPT, rather than being addressed in the Progress Report on Israel, are dealt with (sometimes exclusively) under the section on human rights and fundamental freedoms of the Progress Report for the OPT, which covers the implementation by the Palestinian Authority (PA) of its Action Plan with the EU.<sup>11</sup> This inconsistency in the reporting undermines an effective assessment of progress in the implementation of the EU-Israel Action Plan.

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Economic, Social and Cultural Rights: Israel' (12 July 2010) UN Doc E/C.12/ISR/3 <http://www.unhcr.org/refworld/docid/4e79dbac2.html> accessed 25 November 2011.

<sup>10</sup> See, for example, UN Human Rights Committee, Replies of the Government of Israel to the list of Issues (12 July 2010), UN Doc CCPR/C/ISR/Q/3/Add.1.

<sup>11</sup> For example in the 2010 Progress Report on the OPT (which assessed the implementation of 2009 recommendations), the EU is reporting on the Gaza blockade, settlement activity and settler violence. European Commission, 'Implementation of the European Neighbourhood Policy in 2009: Progress Report on the occupied Palestinian territory' (12 May 2010)

<[http://ec.europa.eu/world/enp/pdf/progress2010/sec10\\_515\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2010/sec10_515_en.pdf)> accessed 06 November 2011.

### **III. Access to water in the OPT**

#### **1. Israel's Water Policies and Practices**

As noted above, access to water in the OPT is an issue that has yet to be properly examined by the EU. For many years the Palestinian population of the OPT has suffered from a shortage of clean, safe water. Water is not scarce in the region, which contains several productive aquifers as well as the Jordan River and other natural water sources. However, the problem of water scarcity for Palestinians is a direct result of Israel's water policies and practices in the OPT. These policies allow Israel to appropriate and exercise control over Palestinian water sources, ensuring that a vastly unequal allocation of water resources benefits Israeli citizens living in Israel and those residing in settlements in the West Bank, including East Jerusalem, which were established in contravention of international humanitarian law. This systematic discrimination continues to result in widespread violations of the right to water for Palestinians, which in turn has severe impacts on the rights to life, to adequate food and housing, to work and to health.

As of September 2011, 313,000 Palestinians across 113 communities are not connected to a water network and are considered at high risk of water scarcity.<sup>12</sup> As such, they depend on water delivered by trucks, which costs up to five times the amount paid by household connected to the water network and is often of questionable quality.<sup>13</sup> 50,000 people in 151 communities live on less than 30 litres per capita daily (lpcd).<sup>14</sup>

The World Health Organisation (WHO) recommends an average consumption of 100 lpcd.<sup>15</sup> The average daily consumption for Palestinians is 70 lpcd. Many Palestinian communities in the OPT survive on as little as 20 litres, which is the minimum amount recommended by the WHO for "short-term survival" in emergency and disaster situations. The Palestinian village of al-Nuweima, which lies to the north of Jericho, for example, struggles with 24 lpcd.<sup>16</sup>

The level of inequality between Israeli settlers in the OPT and Palestinians in terms of access to water is striking. The Dead Sea settlements of Mitzpe Shalem and Qalya

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<sup>12</sup> Diakonia, 'Israel's Administrative Destruction of Cisterns in Area C of the West Bank' (September 2011) <[http://www.diakonia.se/documents/public/IHL/IHLanalysis/Diakonia\\_Cisterns\\_Legal\\_Brief\\_28092011\\_LOW.pdf](http://www.diakonia.se/documents/public/IHL/IHLanalysis/Diakonia_Cisterns_Legal_Brief_28092011_LOW.pdf)> accessed 22 November 2011.

<sup>13</sup> UNGA, Department of Public Information, 'Arbitrary Detention, Excessive Force, Israeli Settlement Activity Increasing Palestinian Hardship, Regional Commission Chief Tells Second Committee' (26 October 2011) Second Committee, 23rd & 24th Meetings UN Doc GA/EF/3319.

<sup>14</sup> Al-Haq and EWASH, 'Joint Parallel Report submitted by the Emergency Water, Sanitation and Hygiene group (EWASH) and Al-Haq to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the Third Periodic Report of Israel' (September 2011) Para 24.

<sup>15</sup> World Health Organisation, 'Technical Note No 9 – Minimum water quantity needed for domestic use in emergencies' (2011) <[http://wedc.lboro.ac.uk/resources/who\\_notes/WHO\\_TN\\_09\\_How\\_much\\_water\\_is\\_needed.pdf](http://wedc.lboro.ac.uk/resources/who_notes/WHO_TN_09_How_much_water_is_needed.pdf)> accessed 20 November 2011.

<sup>16</sup> Al-Haq and EWASH (n13) Para 29.

consume approximately 700 lpcd. The Jordan Valley settlements of Beda'ot and Ro'i enjoy more than 400 lpcd for household use only. The nearby Palestinian village of al-Hadidya, a herding community with a population of 230, struggles with only 22 lpcd. Israeli settlers in the West Bank, with a population of over 500,000, consume approximately six times the amount of water used by a Palestinian population of some 2.5 million.<sup>17</sup> This discrepancy in water use is even greater when water used for agricultural purposes is taken into account.

Palestinians, who are prevented from accessing 77 per cent of the Jordan Valley, including all access to the Jordan River and all adjacent springs, have access to only 30 per cent of all water production from the Eastern Aquifer. Israel utilises the remainder, with 75 per cent of that allocated for settlement use.<sup>18</sup>

Palestinian communities, isolated from their springs, wells and other traditional water sources, must travel long distances to access water. At the same time, Israeli settlers, who live in settlements, face no such shortages or challenges in accessing water. This is clearly demonstrated by the extensive irrigation, thriving gardens and swimming pools that are all features of Israeli settlements.

### The Gaza Strip

The 1.5 million Palestinians living in the Gaza Strip have access to only one source of water; the southern end of the Coastal Aquifer. Israel does not allow the transfer of water to the Gaza Strip, and the population there has resorted, for many years, to over-extraction from the Coastal Aquifer at a rate of twice the aquifer's yearly sustainable yield.<sup>19</sup> This has resulted in a progressive deterioration in the water quality in the Gaza Strip.

While the average amount available in the Gaza Strip stands at 80-100 lpcd and is above the average consumption in the West Bank, at present, 90-95 per cent of this water supply is polluted and unfit for human consumption.<sup>20</sup> The only fresh water source is polluted by raw sewage and the infiltration of seawater, which is itself contaminated by raw sewage.<sup>21</sup> According to the Department of Health of the UN Relief and Works Agency (UNRWA), waterborne diseases are increasingly common, and watery diarrhoea

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<sup>17</sup> Ibid. Para 27.

<sup>18</sup> Ibid. Para 26.

<sup>19</sup> Amnesty International, 'Troubled Waters: Palestinians Denied Fair Access to Water' (October 2009) <<http://www.amnesty.org/en/library/asset/MDE15/027/2009/en/e9892ce4-7fba-469b-96b9-c1e1084c620c/mde150272009en.pdf>> accessed 18 November 2011.

<sup>20</sup> According to UNEP (September 2009) the figure stands at 90 lpcd:

<[http://postconflict.unep.ch/publications/UNEP\\_Gaza\\_EA.pdf](http://postconflict.unep.ch/publications/UNEP_Gaza_EA.pdf)> accessed 11 November 2011.

In March 2009, the World Bank gave a figure of 152 lpcd, of which one third is lost, leaving 100 lpcd.

<<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf>> accessed 16 November 2011. See also Troubled Waters (n18).

<sup>21</sup> Between 50-80 million litres of raw sewage are released into the Mediterranean Sea daily. Al-Haq and EWASH (n13) Para 75.

and acute bloody diarrhoea are major causes of death in the refugee population of the Gaza Strip.<sup>22</sup> The Coastal Aquifer currently has nitrate levels that exceed World Health Organization (WHO) standards for human consumption by as much as 1,600 per cent, with chloride levels up to 1,200 per cent of what is considered safe for domestic use.<sup>23</sup>

As a result of the ongoing comprehensive closure of the Gaza Strip, the population does not have access to the majority of the materials necessary to improve the water and sanitation infrastructure. As of July 2011, there were 17 water and sanitation projects placed on indefinite hold due to Israel's refusal to admit the required building materials.<sup>24</sup> Until Israel allows access to indispensable building materials, it is estimated that the quality of water in the Coastal Aquifer will continue to deteriorate and will be unusable by 2016, when, in the absence of any alternatives, the Gaza Strip could become unfit for human habitation.<sup>25</sup>

### Denial of Access to Water and Forced Displacement

Israeli forces regularly target for destruction cisterns, wells and springs that are used by Palestinians in Area C. This policy is exemplified by the destruction of three wells in the Jordan Valley this summer alone. In certain cases, water infrastructure is destroyed on the pretext that it was constructed without an Israeli permit, which are virtually impossible to obtain. Rooftop storage containers, water tankers and tractors used to transport water, including those provided by humanitarian organisations, are all targeted for destruction. Other activities include undermining Palestinian water sources by drilling deeper wells for settlements' exclusive use upstream of natural water sources, which cause the springs to run dry.

Ten out of thirteen communities visited by the UN Office for the Coordination of Humanitarian Affairs (OCHA) in Area C in the spring of 2011 reported the occurrence of displacement from within the community. This was explained by a combination of reasons including the restrictive planning criteria laid down by Israeli authorities, limited access to water, and the restrictive presence of the Annexation Wall. Eleven out of the thirteen communities identified a progressive erosion of livelihood as a result of the same reasons for displacement. Four of the communities have been subjected to demolitions since OCHA's visit. A fifth community, Wadi Abu Hindi, which is situated to the southwest of Jericho, has received more than 80 stop-work and demolition notices, according to which most of the structures in the community face imminent demolition, placing its inhabitants at risk of displacement.

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<sup>22</sup> UNRWA, 'Epidemiological Bulletin for Gaza Strip' (February 2009) <[http://www.who.int/hac/crises/international/wbgs/gaza\\_unrwa\\_epi\\_15feb2009.pdf](http://www.who.int/hac/crises/international/wbgs/gaza_unrwa_epi_15feb2009.pdf)> accessed 11 November 2011; See also Troubled Waters (n18).

<sup>23</sup> Al-Haq and EWASH (n13) Para 80.

<sup>24</sup> UN OCHA, 'Monthly Humanitarian Monitor' (July 2011) <[http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2011\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_08_19_english.pdf)> accessed 11 November 2011.

<sup>25</sup> Al-Haq and EWASH (n13) Para 80.



Between January and July 2011, 755 Palestinians have been forcibly displaced following the demolition of water and irrigation infrastructure and homes. The livelihoods of some further 1,400 others were adversely affected. This is in comparison to the entire of 2010, when 606 Palestinians were forcibly displaced.<sup>26</sup>

In the same period of 2011, OCHA documented the demolition of 343 Palestinian-owned structures, including homes and water infrastructure, by Israeli authorities in Area C. This is close to five times the amount of structures destroyed during the same months in 2010, when 72 structures were demolished by Israeli authorities.<sup>27</sup> There has been a clear escalation in attacks on water resources and infrastructure in the past twelve months.<sup>28</sup>

Water resources and infrastructure also face regular attacks from the inhabitants of nearby settlements. The Al Sh'ara Spring, for example, which is the sole water source for the village of Madama, located to the south of Nablus, along with the pipe that carries water to the village's storage tank, has been repeatedly damaged by settlers from the Yitzhar settlement. This has included filling the pipe with concrete and contaminating the spring by dumping raw sewage, diapers and chicken carcasses into the water. In February 2011 large rocks were used to block the flow of the spring. Attacks such as these take place with regularity and with impunity. Israel has repeatedly failed to hold settlers accountable for acts of violence and damage to Palestinian property and as such they are occurring with greater frequency.<sup>29</sup>

### The Annexation Wall and Access to Water

The Annexation Wall is not only denying Palestinians access to their land, it also isolates them in many cases from their only sources of water. The path of the Wall clearly places control of Palestinian water sources in the hands of Israel. The vicinity of the Western Aquifer, which is a rich water resource and prime land for the development of wells, is denied to Palestinians by the path of the Wall.

The villages of Falamyra and Jaiyyus, in the Qalqilya district, demonstrate how the route

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<sup>26</sup> Ibid. Para 21.

<sup>27</sup> United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) 'Displacement and Insecurity in Area C of the West Bank' (July 2011) Pg 10. <[http://unispal.un.org/pdfs/OCHA\\_AreaC-DisplacementInsecurity.pdf](http://unispal.un.org/pdfs/OCHA_AreaC-DisplacementInsecurity.pdf)> accessed 07 November 2011.

<sup>28</sup> 20 cisterns were destroyed in the first seven months of 2011, compared to 21 in 2010 and three in 2009. Added to this, seven wells were destroyed in 2009, 12 the following year and 12 more in the first seven months of 2011 alone. The demolition of cisterns and wells in the West Bank has had an adverse impact on the lives of 14,000 people. Al-Haq and EWASH (n13) Para 39.

<sup>29</sup> 90% of cases investigating acts of settler violence were dismissed on the following grounds: "offender unknown" or "lack of evidence". Yesh Din, Monitoring Update: 'Law Enforcement upon Israeli Civilians in the West Bank' (February 2011) <http://www.yeshdin.org/userfiles/file/datasheets/Final%20Data%20Sheet%20Law%20Enforcement%202011%20ENG.pdf> accessed 20 November 2011.

of the Wall constitutes a denial of access to water resources. The Wall separates both villages from six groundwater wells and the water networks upon which they were dependent. One well has since been reclaimed. Having been cut off from two thirds of their land on account of the Wall, the villagers of Jayyus now have access to 23 lpcd.<sup>30</sup> During summer months, running water has been rationed to two hours per day.<sup>31</sup> Similarly, the 43,000 residents of Qalqilya have been separated from 80 per cent of their agricultural land as well as 11 wells by the path of the Annexation Wall.<sup>32</sup>

## **2. Israel's Obligations in the Occupied Palestinian Territory**

As the Occupying Power, Israel is bound by both international human rights and international humanitarian law in the OPT, which are complementary and mutually reinforcing.<sup>33</sup> The UN Human Rights Council has called for Israel to fulfill its obligations as the Occupying Power "in compliance with international human rights and humanitarian law, applicable in the Occupied Palestinian Territory, including East Jerusalem."<sup>34</sup> Furthermore, numerous UN resolutions have called on Israel to respect the provisions of the Fourth Geneva Convention in the OPT.<sup>35</sup>

### 2.1. International Human Rights Law

The International Court of Justice (ICJ) has repeatedly declared that the Occupying Power retains responsibility for fulfilling its obligations under human rights law in the Occupied Territory.<sup>36</sup> In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ clearly stated that Israel's obligations in the OPT extended to the International Covenant on Social and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).<sup>37</sup> Israel has systematically failed to fulfill its obligations in this regard.<sup>38</sup> Israel's policies and practices violate the Palestinian right to non-discrimination, work, housing, property, health and to a healthy environment.

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<sup>30</sup> Al-Haq and EWASH (n13) Para 21.

<sup>31</sup> Troubled Waters (n18).

<sup>32</sup> Al-Haq and EWASH (n13) Para 50.

<sup>33</sup> UN Human Rights Council, Resolution 16/29, UN Doc. A/HRC/RES/16/29 (13 April 2011).

<sup>34</sup> UN Human Rights Council, Resolution 16/29, UN Doc. A/HRC/RES/16/29 (13 April 2011).

<sup>35</sup> For example, UN SC Res 681 (20 December 1990) UN Doc S/RES/681 (1990) and UN SC Res 641 (30 August 1989) UN Doc S/RES/641 (1989) both of which reaffirm the applicability of the Fourth Geneva Convention to the OPT.

<sup>36</sup> *Legality of the Threat or Use of Nuclear Weapon*, ICJ Reports (1996), at para. 25; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, ICJ Reports (2005), para. 175.

<sup>37</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports (2004), para. 107-112.

<sup>38</sup> See, for example, UN Human Rights Committee (n10). UN Committee on the Rights of the Child (n8).



The ongoing construction of the Wall is representative of many of these violations in so much as it prevents Palestinians from accessing their land, divides villages and fragments Palestinian society while imposing substantial restrictions on the right to freedom of movement in areas relating to, amongst others, access to health services, educational establishments and primary sources of water.

### Right to Water

Access to a clean, safe and adequate supply of water is a basic human right and forms a core element of the International Covenant on Economic, Social and Cultural Rights (ICESCR). General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights is explicit in this regard, declaring that “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>39</sup>

Examples of violations of the right to water perpetrated by Israel include arbitrary or unjustified disconnection or exclusion from water services or facilities; pollution and diminution of water resources affecting human health; failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; failure to adopt or implement a water policy designed to ensure the right to water for everyone; the failure to take measures to reduce the inequitable distribution of water facilities and services; and failure to ensure that the minimum essential level of the right is enjoyed by everyone.<sup>40</sup>

### 2.2. International Humanitarian Law (IHL)

Israel is bound in the OPT by the provisions of both the Hague Regulations and the Fourth Geneva Convention, which are largely reflective of customary international law. However, its policies demonstrate a blatant disregard for the provisions of IHL, which impose responsibility on the Occupying Power for the well being of civilians in the Occupied Territory. Article 53 of the Fourth Geneva Convention, reflective of customary international law, explicitly prohibits the destruction by the Occupying Power of property belonging to private persons or the Occupied State, except where such destruction is deemed absolutely necessary for military operations. This is clearly not the case with the destruction of water cisterns and wells in the OPT.

Similarly, Article 43 of the Hague Regulations, stipulates that the Occupying Power must ensure the general welfare of the civilian population in the Occupied Territory. Again, Israel, as demonstrated by its policies and practices which deny and obstruct Palestinian

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<sup>39</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, UN Doc. E/C.12/2002/11(2002) at para. 2.

<sup>40</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, UN Doc. E/C.12/2002/11(2002) at para. 44.

access to water, is in clear violation of this provision. In many cases, these policies and practices result in the forced displacement of the Palestinian population. Article 49 of the Fourth Geneva Convention, in addition to prohibiting the transfer of civilians from the Occupying Power into the Occupied Territory, also prohibits the forcible transfer of protected persons from Occupied Territory. The only exception to this otherwise absolute prohibition, which is reflective of international customary law, is if the safety of the occupied population or military necessity demands the forcible transfer of the population. Neither of these can be cited as justification for forced displacement in the OPT. Furthermore, forced displacement of protected persons constitutes a grave breach of Article 147 of the Fourth Geneva Convention, which in turn entails the individual criminal responsibility of the perpetrators.

#### **IV. Recommendations**

The vague human rights language in the EU-Israel Action Plan together with an inconsistent approach of reporting on violations of international law hinders the ability of the EU to adequately assess the progress made in implementing the goals of promoting peace, democracy, human rights and respect for international law, all of which are among the EU's key foreign policy objectives.<sup>41</sup>

In future action plans and progress reports, the EU should therefore include a separate chapter on Israel's respect for its obligations under international human rights and humanitarian law and clarify which concrete human rights benchmarks it will use in order to assess progress and/or lack of implementation of Action Plan objectives. Any advanced status of EU-Israel relations in the framework of the EU's "New and Ambitious Neighbourhood Policy" should be conditioned on Israel's advancement of democratic reform, respect for international law and human rights, which must be assessed based on the above-mentioned benchmarks.

The Palestinian Council for Human Rights Organisations (PCHRO) would like to highlight the absence in recent progress reports of issues relating to the systematic denial of the right to water of protected persons in the OPT. The Council urges the EU to raise this issue in the 2012 Report when assessing Israel's level of implementation of the EU-Israel Action Plan in 2011.

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**Hurriyat - Centre for Defence of Liberties and Civil Rights**

Helmi Alaraaj  
General Director

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