

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



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

**Centre on Housing Rights and Evictions
Position Paper**

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EXECUTIVE SUMMARY

The Gaza Strip is currently undergoing a humanitarian crisis which includes the widespread denial of economic, social and cultural rights. This humanitarian crisis has been precipitated by sanctions imposed on the Gaza administration by both Israel and Western countries and Israel's closure of Gaza's border crossings which amounts to a blockade on the territory. This position paper describes violations of the human right to water and sanitation in Gaza that have been caused or exacerbated by the sanctions and blockade in the period from January 2006 to the present.

The Centre on Housing Rights and Evictions (COHRE) is particularly concerned by the following denials of the human right to water and sanitation arising from the current Israeli occupation, blockade and international sanctions on the Gaza Strip:

- The collapse of basic service provision in the water and waste-water sectors
- Israel's denial of entry for essential materials required to operate and maintain water and sewage services
- The Israeli restrictions on the amount of fuel entering the Gaza Strip which has negatively impacted upon the operation of essential services
- The deteriorating health of Gazans as a result of declining water quality and the prevention of entry for water purification chemicals such as chlorine
- Israeli military incursions that have targeted water and sewage infrastructure
- Unaffordable increases in the price of water and sewage disposal
- The state of near collapse of waste-water treatment plants that is likely to unleash a widespread humanitarian and environmental catastrophe
- The reduction in the amount of water available for personal and domestic needs
- The abrupt and severe cut-off of financing for public works in the Gaza Strip as a political position of Western states, and the Quartet, which includes the United Nations, United States, European Union and Russia.

Due to financial and economic sanctions, the blockade preventing spare parts from entering Gaza and the fuel restrictions, water provision has been intermittent in certain areas for a number of months, with some people facing cuts of up to eighteen hours per day. Rising levels of poverty have also meant that many households are struggling to pay for clean drinking water and can no longer afford the cost of emptying their septic tanks, leading to the overflow of sewage which threatens public health. This already dire situation is rapidly deteriorating. Since January 2008, due to a lack of fuel, the Gaza Power Generating Company has had to cut the power supply, leaving Gaza's 1.5 million people with daily power cuts of up to eight hours reducing access to drinking water, especially for those who live in high rise buildings which require electricity to pump the water to higher levels. On 20 January 2008, the Gaza power plant was shut down and Gaza City was plunged into darkness. The Coastal Municipal Water Utility, the water service provider in Gaza, recently announced that if fuel did not arrive by 22 January 2008, the water and sewage systems of one and a half million people would cease to operate. This could cause a massive health crisis and the outbreak of water-borne disease. On 21 January 2008, the Palestinian Water Authority acknowledged that 40 percent of the houses in the Gaza Strip had no running water and the following day reports emerged that sewage was flooding the streets.

The waste-water treatment facilities in Beit Lahia (northern Gaza), Gaza City and Khan Younis (southern Gaza) are at high risk of flooding due to their state of disrepair, a lack of spare parts

for necessary maintenance, and disruptions to the supply of fuel and electricity required to operate the systems pumps. Heavy winter rains could cause the waste-water reservoir in Beit Lahia to overflow sending 1.5 million cubic metres of sewage into surrounding districts, directly threatening the life and property of 50,000 people and potentially contaminating the water supply of up to 300,000 people, unleashing a humanitarian and environmental disaster of epic proportions.

The blockades and sanctions affect a wide range of sectors including health, education and the broader economy. The above-listed denials of the right to water and sanitation therefore help illustrate the broader denials of all economic, social and cultural rights in Gaza. COHRE recognises that the blockade and sanctions are motivated by threats to Israel's security and the doubts Israel and several other States hold about the intentions of the Hamas organisation. However, these concerns do not justify the denial of economic, social and cultural rights of the people of Gaza. The blockade, as well as the full range of economic and financial sanctions imposed on the Gaza administration, are not essential in order to protect Israel's security concerns and do not contribute to the peace process. It is clear that these acts constitute collective punishment designed in part to force the population of Gaza to switch their political allegiance from one party to another. That these sanctions are being carried out with the support or acquiescence of a significant number of States, and the United Nations through its participation in the Quartet, can only help to undermine public confidence in the United Nations and undermine the rule of law at the international level.

The primary and urgent recommendations of this position paper include:

- Israel and Western states must cease without delay all actions undermining the economic and social rights of the people of Gaza.
- Israel must immediately lift the blockade on the Gaza Strip and allow the free flow of essential goods and equipment into Gaza.
- Israel must cease its policy of restricting fuel supplies to Gaza in reprisal for rocket attacks and withdraw proposals to limit electricity supplies to Gaza.
- Donor countries and agencies should immediately resume funding to the water and waste-water sectors in Gaza and send immediate assistance to the waste-water treatment facilities in Beit Lahia, Khan Younis and Gaza City to prevent a humanitarian catastrophe from occurring. Governments that have not previously assisted the Palestinian Authority should consider doing so.
- All states must lift banking sanctions imposed on the Gaza administration in order to permit the funding of necessary public services.
- The government of President Abbas and Prime Minister Fayyad must provide necessary funding to the agencies in Gaza responsible for water and sanitation and other basic services, including making salary payments for all public service workers.
- The Gaza administration must allocate all available resources to ensuring that public services, including water supply and sanitation are maintained, in spite of the constraints placed by Israel and donors.
- The Gaza administration must allocate maximum available resources to ensure the progressive realisation of economic, social and cultural rights of the people of Gaza.
- The European Union should immediately suspend the EU-Israel Association Agreement in line with Article 2 which makes clear that economic cooperation among the parties shall be based on a respect for human rights and democratic principles.

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

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1. BACKGROUND

1.1 Historical background to the water crisis in the Gaza Strip

The area, which is today the Gaza Strip, was once considered an area of great strategic importance as the first source of freshwater north of the Sinai Desert.¹ The Arab-Israeli war of 1948 incorporated two-thirds of mandate Gaza into Israel and led to the mass-influx of refugees into the Gaza Strip, increasing its population by more than 300 percent and placing huge stress on water resources. Following the Six-Day War of June 1967, and with its occupation of the West Bank, Gaza Strip and Golan Heights, Israel significantly enhanced its hydrological position.² Israel established control over water resources and prohibited unlicensed construction of new water infrastructure through a series of Military Orders in the 1960s. A number of Palestinian wells were confiscated by Israel and many more dried up as a result of Israel's over pumping from deeper wells. In 1986, the abstraction (pumping) quota of Palestinians from their wells was reduced by 10%.³ Further measures to limit water consumption by Palestinians comprised blocking natural springs and existing wells, uprooting thousands of citrus trees and demolishing cisterns.⁴

The main source of fresh water for the arid Gaza Strip is the Coastal Aquifer. The Gaza Strip is one of the most densely populated places on earth and the aquifer is pumped in excess of its ability to recharge. Water demand in Gaza is 150 million cubic metres per year (mcm/yr). With an aquifer recharge rate of 90 mcm/yr there is an annual deficit in aquifer storage of 60 mcm.⁵ Over abstraction of the Coastal Aquifer, has led to a deterioration of water quality including high levels of salinisation from sea water intrusion. This is compounded by other problems such as ground water contamination from agricultural chemicals including fertilizers and pesticides. The excessive extraction and contamination of ground water, due to demand exceeding supply and poor water management, limits domestic use and threatens the long term sustainability of important water resources which will also impact upon future generations. Moreover, the natural means of water-table replenishment in Gaza has been prevented due to Israel's construction of an earthen berm between the Hebron Hills and Gaza Strip which diverts runoff to its natural destination.⁶

Throughout the occupation, problems contributing to a water crisis in Gaza have included Israel's systematic destruction of wells and other water and sewage infrastructure, Israel's denial of infrastructure construction and maintenance, unequal extraction and discriminatory distribution of water resources to the detriment of the Palestinians, over pumping throughout the occupied Palestinian territories (oPt) by the settler colonies and Israel's dumping of waste materials in the oPt which has further contaminated natural resources including water. Moreover, Israelis both inside Israel and in the oPt, consume a much greater quantity of water than Palestinians and face fewer restrictions on water drawn from shared resources.⁷ In Gaza,

¹ Kelly, K & Homer-Dixon, T, 'Environmental Scarcity and Violent Conflict: The Case of Gaza', (1995), available at <http://www.library.utoronto.ca>.

² Jarrar, A, *Water from Conflict to Cooperation, Palestine and Israel Case, How to Promote Cooperation*, Palestinian Water Authority, (2003), p.1.

³ Ibid. p.2.

⁴ Kelly, K & Homer-Dixon, T, (1995), as above.

⁵ Information provided to COHRE by Yasser Nasser, Oxfam GB, 30 December 2007. The PLO Negotiations Support Unit states that the recharge of the aquifer is 50-60 mcm/yr which would place the annual deficit as being even higher.

⁶ Information provided to COHRE by Joseph Schechla, Coordinator of Housing and Land Rights Network, Habitat International Coalition, 12 January 2008.

⁷ Kelly, K & Homer-Dixon, T, (1995), as above.

Palestinians were paying up to twenty times more for water than Israeli settlers were paying and significantly more than residents of Israel due to Israel's subsidization of water for Israeli citizens.⁸

1.2. The current situation

In January 2006, the victory of the Islamic Resistance Movement (Hamas) in the Palestinian legislative elections led to most Western donors placing a series of financial sanctions upon the Palestinian Authority (PA).⁹ The European Union (EU), United States (US) and other western countries suspended the provision of direct financial assistance to the PA, while continuing to provide humanitarian and emergency aid directly to the Palestinian population through other mechanisms. This was based on the Principles set by the Quartet (United States, United Nations, European Union and Russia) which called on donors to reconsider aid to the PA if the Palestinian government refused to recognize Israel's right to exist, to renounce violence and/or to adhere to previous agreements, key elements of the peace process.¹⁰ In a confidential report leaked to a British newspaper, Alvaro de Soto, the United Nation's former Special Co-ordinator for the Middle East Peace Process, condemned the boycott of the Palestinian government saying it:

... effectively transformed the Quartet from a negotiation-promoting foursome guided by a common document [the road map for peace] into a body that was all but imposing sanctions on a freely elected government of a people under occupation as well as setting unattainable preconditions for dialogue.¹¹

In an effort to place further pressure on Hamas, the Government of Israel froze the transfer of taxes it collects on behalf of the PA, as stipulated in the Oslo Agreements, amounting to US\$60 million per month and depriving the PA of around 50% of its monthly budget.¹² The United States also implemented a series of banking restrictions prohibiting monetary transfers to the Hamas-led unity government.

On 14 June 2007 following outbreaks of violence between Hamas and opposition Fatah affiliated forces; Hamas took control of the Gaza strip.¹³ When Fatah President Abbas formed an emergency government in Ramallah, the United States and EU ended the 15 month embargo of the PA in the West Bank. On 1 July 2007 the Government of Israel released some (about a quarter of those then owed) tax revenues it had withheld and transferred US\$188 million to

⁸ Ibid.

⁹ Whilst sanctions on Gaza worsened in June 2006 and again in June 2007, restrictions and the gradual closure of Gaza have been in place since Israel's disengagement from the Gaza Strip.

¹⁰ See 'Quartet Statement on the Situation in the Middle East', 30 January 2006, available at <http://www.state.gov> (click on 'Press Releases' > '2006' > 'January')

¹¹ McCathy, R, & Williams, I, 'Secret UN Report Condemns US for Middle East Failures', *The Guardian*, 13 June 2007, <http://www.theguardian.co.uk>.

¹² House of Commons International Development Committee, *Development Assistance and the Occupied Palestinian Territories*, (London, January 2007), p.11, <http://www.publications.parliament.uk>.

¹³ The International Crisis Group argues that the collapse of the Mecca Agreement which formed the basis for the Hamas-Fatah power sharing arrangement was due to "deliberate and systematic attempts to undermine it", including the refusal of outside players, specifically the US and the EU, to "deal with the national unity government and only selectively engaging some of its non-Hamas members, by maintaining economic sanctions and providing security assistance to one of the parties in order to outmanoeuvre the other." See, International Crisis Group, *After Gaza*, Middle East Report No.68, 2 August 2007, p. i.

bolster Abbas's government.¹⁴ Meanwhile, Hamas became increasingly isolated and Israel intensified its restrictions on the movement of goods into and out of the Gaza Strip. Israel altered the movement arrangements at the five Gaza border crossing points under its control (Erez, Nahal Oz, Karni, Sufa, Kerem Shalom) restricting the passage of people and goods between Gaza and Israel.

The Karni crossing is the main crossing for commercial goods and is therefore essential for the functioning of Gaza's economy. Since 12 June 2007, the Karni crossing has been closed to all incoming and outgoing products, except for the use of a single conveyer belt, which typically operated on a twice weekly basis to allow wheat grain and animal feed into the Gaza Strip. From mid-June until late October, Sufa and Kerem Shalom crossings were the only entries for commercial and humanitarian goods. On 28 October 2007, Sufa crossing, which was the principal alternative crossing point for commercial goods since the closure of Karni, accounting for 76% of the inflow of supplies to Gaza, was permanently closed.¹⁵ On 23 December 2007, the Israeli government announced that Sufa would be re-opened for humanitarian and commercial supplies. Yet, from 26 December 2007- 1 January 2008, it was only operational for one day.¹⁶ Since October, Kerem Shalom was the only crossing point open for commercial supplies and humanitarian aid, yet was unable to respond to the needs of those in the Gaza Strip. Kerem Shalom's limited capacity means it is only able to process approximately 50 truckloads a day, whereas Karni was processing over 750.¹⁷ Moreover, the use of Kerem Shalom as the only crossing point for goods has had significant cost implications for aid agencies. The World Food Programme reports that "logistic and supply arrangements cost three times as much through Kerem Shalom than through Karni".¹⁸

Rafah crossing, which borders with Egypt and is the only Gaza crossing not under direct Israeli control,¹⁹ has also been closed almost constantly since 9 June 2007.²⁰ The closure of border crossing points has led many human rights organisations to declare that Gaza has become, in effect, an open air prison.²¹ The UN Committee on the Elimination of Racial Discrimination has also expressed that it is "deeply concerned that the severe restrictions on the freedom of movement in the Occupied Palestinian Territories, targeting a particular national or ethnic group ... have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health."²²

¹⁴ Benn, A, 'Israel transfers \$188 million in tax revenues to Palestinian gov't', Haaretz, 2 July 2007, <http://www.haaretz.com>.

¹⁵ UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3, <http://www.ochaopt.org>. In November exceptionally, 6,834 calves were permitted to enter Gaza through Sufa.

¹⁶ OCHA, 'Protection of Civilians Weekly Report', 26 December 2007- 1 January 2008, p.1, <http://www.ochaopt.org>.

¹⁷ OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3. Kerem Shalom is currently undergoing expansion, but it is unlikely that even after expansion capacity will exceed 80 truckloads per day.

¹⁸ OCHA, 'Gaza Humanitarian Situation Report', 01-31 October 2007, p.3.

¹⁹ There are four parties involved in operating the Rafah crossing Israel, Egypt, the PA and the EU.

²⁰ Some 6,000 Palestinians are reportedly still stranded in Egypt unable to return to their homes and families and a number have died whilst waiting to cross. On 3 December 2007 the Israeli authorities, allowed around 2,300 Palestinian pilgrims to cross the Rafah border for the Hajj pilgrimage to Mecca. The Egyptian authorities also allowed them to return to Gaza through Rafah, a move which provoked outrage from the Israeli Government which had wanted the pilgrims to return through Kerem Shalom for security reasons.

²¹ See, for example, B'Tselem, *The Gaza Strip-One Big Prison*, (May 2007), <http://www.btselem.org> (click on 'Publications').

²² United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, (2007), UN. Doc.CERD/C/ISR/CO/13, para. 34 available at

On 19 September 2007, Israel's Security Cabinet declared Gaza a "hostile entity". Soon after, Israel placed further restrictions on the flow of financial assets to the Gaza Strip. In spite of widespread condemnation by the United Nations and the European Union amongst others, the Israeli cabinet voted to gradually reduce fuel and electricity supplies to the Gaza Strip, in reprisal for unlawful Qassam rocket attacks by Palestinian militants while voting against disconnections to the water supply.²³ The Cabinet also voted to restrict commercial supplies to Gaza. Israel began to limit fuel supplies entering Gaza through Nahal Oz crossing on 28 October 2007. On 29 October ten Israeli and Palestinian human rights organizations petitioned the Israeli Supreme Court to order the State not to disrupt fuel and electricity supplies to Gaza.²⁴ They argued that the reduction of fuel supplies would cause widespread damage to essential services in Gaza including health systems and water wells. Moreover, they stated that the disruptions caused to the supply of essential goods and services amounts to the collective punishment of Palestinians, since Israel is preventing the people of Gaza from obtaining these goods and services from an alternative source.²⁵ The court upheld the government's decision to reduce fuel and diesel supplies to Gaza but ordered the state to suspend the cutting of electricity for two weeks until a detailed review of the consequences of such a decision could be carried out. On 20 December 2007, Israel's state attorney's office submitted a document to the Supreme Court admitting that the plan to cut electricity supplies to Gaza was based on incorrect information regarding the amount of electricity supplied by Israel and, despite the courts decision to suspend the plan to cut electricity, Israel's Electric Company had between the 5 to 18 December reduced electricity supply to Gaza by 5% due to a mistake.²⁶ The justices were highly critical of the State's presentation of its case, but extended the deadline for further submissions and the court hearing until late January 2008.²⁷ At the time of writing, the decision was still pending. On 18 January 2008, after a period of escalating violence, Israel closed all border crossings and blocked humanitarian aid except in exceptional circumstances.

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

Gaza has become a besieged and imprisoned territory as a result of economic sanctions imposed by Israel and the West ... External borders have been mainly closed ... It is a controlled strangulation that seriously violates norms of human rights law and humanitarian law but which apparently falls within the generous limits of international toleration.²⁸

<http://www.ohchr.org>, (click on "Treaty Bodies"> "Committee on the Elimination of Racial Discrimination"> "Sessions"> "Israel"> "Concluding Observations").

²³ 'Israeli Government Declares the Gaza Strip a "Hostile Entity" and votes to Cut off Vital Services', The Alternative Information Center, 19 September 2007, <http://www.alternativenews.org>.

²⁴ B'Tselem, 'Human Rights Organizations Petition Supreme Court against Suspension of Power Supply to Gaza', Press Release, 29 October 2007, <http://www.btselem.org>, (click on 'Press Releases').

²⁵ Adalah, 'Supreme Court Approves Israeli Government's Decision to Cut Fuel Supplies to Gaza and Temporarily Freezes Cuts in Electricity Supplies', News Update, 4 December 2007, <http://www.adalah.org>, (click on 'English'> 'Press Releases').

²⁶ Gisha, 'Court Document Reveals Military's Reckless Electricity Gamble in Gaza', Press Release, 20 December 2007, <http://www.gisha.org> (click on 'News Releases').

²⁷ Gisha, 'Court Criticizes State Attorneys for Submitting Erroneous Information on Gaza Electricity Supply', Press Release, 25 December 2007, <http://www.gisha.org> (click on 'News Releases').

²⁸ Dugard, J, *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967*, (August 2007), UN Doc.A/62/275, para.17, <http://www.ohchr.org>, (click on 'Special Procedures'> 'Country Mandates').

Due to a lack of funds, the Gaza administration is unable to provide basic public services and many public sector employees, including teachers and health workers, have not received their salaries in full or on a regular basis.²⁹ Unemployment has reached an all time high as Palestinians can no longer cross to Israel for work and current import/export restrictions have led to the suspension of 90% of Gaza's industrial activity.³⁰ Farmers and fishermen are also unable to export their produce. The United Nations Development Programme reports that, in Gaza, 70% of households live below the poverty line and 42% of households live in extreme poverty (below \$1.38 per person, per day).³¹ Around 85% of Gazans are now dependent on partial food aid.³² The blockade has prevented hundreds of students from travelling to educational institutions abroad.³³ Even as medical supplies in Gaza's hospitals were, as of December 2007, running out, the Israeli authorities have denied Palestinians in need of urgent life-saving treatment from accessing hospitals outside of the Gaza Strip.³⁴ Vital services, dependent on fuel and electricity to operate, are on the brink of collapse. The economic and social rights of Gazans have been dramatically eroded, including their right to water and sanitation.

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

²⁹ The PA has recently provided an emergency contribution for salaries amounting to one month's payment. Many workers had not been paid since the beginning of the year. There are also reports that whilst many public sector workers received full salaries from the PA in Ramallah, a large number of Hamas affiliated employees received no pay.

³⁰ World Bank, *Two years after London: Restarting Palestinian Economic Recovery*, (Sept 2007), p.3, <http://www.worldbank.org>, ('Publications',> 'Documents and Reports').

³¹ United Nations Development Programme (UNDP), *Development Times, Issue No.1: Poverty in the Occupied Palestinian Territory*, (July 2007), p.2, <http://www.undp.ps>.

³² Oxfam, 'Continued commercial closure of Gaza will cause complete humanitarian dependency, groups warn in advance of Middle East Quartet meeting', Press release, 15 July 2007, <http://www.oxfam.org>, (click on 'More News'> 'Press Releases 2007').

³³ Human Rights Watch, 'Gaza: Israel Blocks 670 Students from Studies Abroad', Press Release, 20 November 2007, <http://www.hrw.org>, (click on 'News Releases').

³⁴ See press releases by Physicians for Human Rights Israel available at <http://www.phr.org.il>, (click on 'English' > 'Updates/Press Releases').

2. IMPACTS ON THE RIGHT TO WATER AND SANITATION

2.1 Arbitrary restrictions on water and sanitation services

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

As a result of the blockade, equipment and supplies needed for construction and maintenance of water and sanitation facilities (spare parts, water pipes, pumps, and fuel) have been denied entry to the Gaza Strip. The Coastal Municipal Water Utility (CMWU) responsible for the provision of water supply and sewage services in Gaza is struggling to maintain the 135 water wells, 33 sewage pumping stations and three waste-water treatment plants under its control. In June 2007 Oxfam reported that the CMWU had been waiting for over three months for US\$500,000 worth of equipment.³⁵ On 3 September 2007, the CMWU issued an appeal calling for international support to apply pressure on the Israeli authorities to open commercial crossing gates between the Gaza Strip and Israel. It stated that the prevention “of the necessary infrastructure materials and equipments in general and of water and wastewater in particular will certainly lead to a progressive breakdown of major water and wastewater facilities (wells, sewage pump stations and wastewater treatment plants).”³⁶ In mid-November 2007 the United Nations Children’s Fund (UNICEF) reported that 10 wells serving 150,000 people in the Gaza Strip needed to have their electrical motor replaced and 10 pumping stations serving 600,000 people in Gaza City, Jabalia and Rafah are in need of urgent repair.³⁷ Also in November the United Nations Relief and Works Agency (UNRWA) responsible for operating many water wells which serve the refugee camp population, announced that spare parts ordered in July, needed to maintain the engines and keep the wells operational, had not been allowed to enter Gaza.³⁸ By December 2007, 3 wells in Gaza city were unable to operate due to a lack of spare parts leaving 140,000 people with limited access to water.³⁹ Further, due to import restrictions some 600 water containers are in need of urgent replacement.⁴⁰

Large water and waste water infrastructure projects have also been frozen due to the blockade. On 9 July 2007, UNRWA announced the suspension of all construction projects in Gaza, amounting to some US\$93 million, including water and sanitation works, due to the lack of basic building supplies.⁴¹ The United Nations Development Programme (UNDP), the European Commission, international NGOs and donors, and the World Bank have also had to cancel or postpone a number of projects, many of which are related to water infrastructure. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), “Israel has denied a request to get spare parts into Gaza for World Bank and UNICEF-funded projects, including pipes, valves, water and waste-water pumps and electromechanical spare parts.”⁴²

³⁵ Oxfam International, 'Oxfam condemns the caging of Gaza', Press release, 25 June 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

³⁶ Appeal from CMWU, 3 September 2007, cited in Palestinian Hydrology Group, WaSH Monitoring Program, 'Gaza Strip Situation Report, June to mid-September 2007', <http://www.phg.org>.

³⁷ OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007, <http://www.ochaopt.org>.

³⁸ OCHA, 'Gaza Strip Humanitarian Fact Sheet', November 2007.

³⁹ OCHA, 'Gaza Strip Humanitarian Fact Sheet', December 2007.

⁴⁰ Ibid.

⁴¹ OCHA, 'Misery and Hardship for thousands as UN construction projects halted in Gaza', 9 July 2007, <http://www.reliefweb.int>.

⁴² OCHA, 'The Humanitarian Monitor', November 2007, p.2, <http://www.ochaopt.org>.

In the Agreement on Movement and Access of November 2005, the Government of Israel and PA consented to ensure that all crossing points between Israel and the Occupied Palestinian Territory would “operate continuously” in order to “promote peaceful economic development and improve the humanitarian situation on the ground.”⁴³ The Government of Israel systematically violates this agreement alleging that the closure of border crossings is a legitimate response to “security concerns”. Israel does have both the right and the duty to protect its citizens. However, its response has been exercised in a disproportionate manner. If any party obstructs the materials and spare parts needed for the construction, maintenance and repair of water and sewage facilities from entering the Gaza Strip, the ensuing gradual collapse of basic service provision will undermine Gazans’ right to access water and sanitation facilities and services. As part of its legal obligations to respect, protect and fulfil the right to water and sanitation in a territory whose border it controls, Israel must not obstruct humanitarian supplies from entering the Gaza Strip, hinder aid agencies in implementing their programmes, or allow any other party to do so.

Israel is a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁴ According to the UN Committee on Economic, Social and Cultural Rights and the International Court of Justice, Israel is responsible for the realisation of economic and social rights in all territories under its effective control and is obliged not to obstruct the exercise of these rights in areas where competence has been transferred to the Palestinian authorities.⁴⁵ Due to its negative impact on economic and social rights, including the right to water and sanitation, Israel’s blockade on Gaza violates the ICESCR.

2.1.2 Reduction of fuel and threatened reduction of electricity undermining essential services

Gaza is reliant on Israel for the majority of its fuel and petrol and over 60% of its electricity. The Gaza power station is completely dependent on Israel for fuel in order to operate. The international community has voiced its concern over the impact fuel and electricity sanctions may have on the civilian population and criticised the Government of Israel’s decision. UN Secretary General Ban Ki Moon stated that the “punitive measures taken by Israel ... harm the well-being of the entire population of the Gaza Strip”, and as such are “unacceptable”.⁴⁶ The EU’s

⁴³ The Agreement on Movement and Access, 25 November 2005, available at www.nad-plo.org, (click on ‘Current Issues’> ‘Agreements on Rafah Crossing & Movement & Access’).

⁴⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 United Nations Treaty Series 3, available at: <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

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

⁴⁶ ‘Israel’s Gaza fuel cuts alarm UN’, BBC News, 29 October 2007, <http://www.news.bbc.co.uk>.

Commissioner for External Affairs has called the sanctions “collective punishment”.⁴⁷ The decision of the Israeli Supreme Court to permit fuel reductions in contradiction of basic humanitarian principles sets an alarming precedent.

In its submission to the Supreme Court on 19 November 2007, the Israeli military argued that the fuel and electricity cuts would not affect basic services. However, the effect that a limitation on power can have on water and sanitation services in Gaza has been shown in the past. On 28 June 2006, Israeli air forces bombed the Gaza power plant in a deliberate and targeted attack, aiming six missiles at the plant’s six transformers.⁴⁸ Electricity production was halted, leaving the Israel Electric Company as the sole provider of electricity in the Gaza Strip and causing Palestinians to be increasingly dependent on Israel’s supply of power. Shortages were prolonged, and electricity was provided for 6-8 hours at a time with cuts of similar length. It became impossible to ensure a continuous supply of water and local authorities had to rotate water supply amongst different areas with each area receiving water for a few hours at a time. Those living in high rise apartments (approximately one half of the residents of Gaza City) were particularly affected and many did not receive water for more than 2-3 hours a day. The cessation of sewage pumps nearly led to sewage flooding the system and a disaster was narrowly averted. Due to this attack, and the problem of acquiring fuel and getting the spare parts and experts required for maintenance into Gaza, the power plant has since only operated at approximately 35% of its 140 Mw capacity.⁴⁹

Water and sewage infrastructure is dependent on fuel and electricity to operate. It is essential for the purification of drinking water, extracting water from wells and pumping it around the supply system and to the upper floors of multi storey buildings. It is also necessary for the removal of human waste and the operation of sewage pumps and treatment facilities. Fuel is also required for water tankers to distribute water to unserved and underserved communities and for the sewage trucks and maintenance vehicles. Reducing the supply of fuel (and the threatened reduction of electricity) violates international humanitarian law’s prohibition of an occupying power attacking or denying objects indispensable to the basic subsistence of the civilian population.⁵⁰

In October 2007, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported a 47% decrease in regular diesel and a 9% decrease in industrial gasoline since the sanctions began.⁵¹ On 28 November fuel supplies faced further restrictions. The Gaza based Palestinian Centre for Human Rights reports that between 29 November and 5 December 2007 “Gasoline supplies dropped to 90,000 litres a day (73% decrease); benzene supplies dropped to 25,000 litres a day (63% decrease); whereas natural gas supplies dropped to 100 tons (56% decrease)”.⁵² The CMWU is currently receiving only 50% of the amount of fuel it requires to operate the water facilities under its control including wells, pumping stations and sewage

⁴⁷ Harel, A, ‘EU warns Israel not to impose ‘collective punishment’ in Gaza’, Haaretz, 6 November 2007, <http://www.haaretz.com>.

⁴⁸ See BTselem, *Act of Vengeance: Israel’s Bombing of the Gaza Power Plant and its Effects*, (September 2006) <http://www.btselem.org>, (click on ‘Publications’> ‘2006’).

⁴⁹ Information provided to COHRE by Michael Bailey, Advocacy and Media Manager, Oxfam GB, 28 December 2007.

⁵⁰ Additional Protocol I to the Geneva Conventions (1977), Article 54 & Additional Protocol II to the Geneva Conventions (1977), Article 14, <http://www.icrc.org>, (click on ‘Humanitarian Law’ > ‘The Geneva Conventions and their Additional Protocols’). See section 5.1 below for the legal status of the Additional Protocols.

⁵¹ OCHA, ‘Gaza Humanitarian Situation Report’, 01-31 October 2007, p.2.

⁵² Palestinian Centre for Human Rights, ‘Weekly report on Israeli human rights violations in the Occupied Palestinian Territory, 29 November-5 December 2007’, <http://www.pchrgaza.org>, (click on ‘PCHR Documents’> ‘Reports’> ‘Weekly Reports’).

treatment facilities.⁵³ The shortages have been compounded due to a strike by Gaza fuel companies in protest of the cut backs and delays in payment from the PA to Israeli companies.⁵⁴

Some water wells have no electricity supply so are therefore dependent on generators to operate. Others use generators to back up systems in times of electricity cut offs. Fuel and diesel is necessary to power the generators. The CMWU has had to divert fuel required to operate the water system to the sewage system as a matter of priority because a failure to pump sewage leads to a larger and more immediate public health crisis than a failure to provide drinking water. People have alternative options when their taps run dry but human waste flooding streets and homes would cause an immediate humanitarian disaster. On 1 November 2007, seven water wells in the areas of Beit Hanoun, Beit Lahia and Jabalia began to run out of fuel. In Beit Hanoun three water wells have stopped working 24 hours a day and people are only receiving water intermittently. The four other wells in Beit Lahia and Jabalia have stopped operating all together.⁵⁵ During the first two weeks of November, seven water wells in Gaza City were operating on a limited basis or were shut down, due to fuel shortages, leaving 50,000 people with 75% less water.⁵⁶ The continued lack of fuel will also begin to similarly affect the sewage system.

On 5 January 2008, Palestinian officials announced that across the Gaza Strip Palestinians will have their electricity cut for eight hours a day due to fuel shortages and depletion of reserves resulting from the Israeli cutbacks.⁵⁷ Fuel deliveries to the Gaza Power Plant have reduced from 300,000 litres per day to 249,000, whilst consumption continues to be around 275-295,000 litres/day.⁵⁸ Local electricity production has been reduced by some 35%.⁵⁹ OCHA states that the irregular electricity supply is placing strain on the water supply system:

Running water in Gaza is only available in most households for around eight hours per day. If there is no power when water is available, it cannot be pumped above ground level, reducing the availability of running water to between four and six hours per day.⁶⁰

These power cuts will undoubtedly affect other essential services including the operation of hospital equipment currently dependent on emergency generators, not designed for prolonged and sustained use and requiring fuel to function in times of cut offs. Likewise, the CMWU is dependent on emergency generators for the pumping and treatment of water and wastewater. OCHA warns, "If the CMWU cannot provide its own emergency power supply because of its own fuel shortages, it has to pump raw sewage into the sea which damages the coastline in Gaza, southern Israel and Egypt. If regular supply is not resumed the chance of major disruption to water supply in Gaza and to the marine environment is increased."⁶¹ On 20 January 2008, due to a lack of fuel, the power plant was shut down and Gaza City was plunged into darkness. On the same day, the CMWU announced that if fuel supplies do not arrive within two days the water and sewage systems for one and a half million people in Gaza will cease to operate.⁶² This will

⁵³ OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007.

⁵⁴ OCHA, 'The Humanitarian Monitor', November 2007, p. 1.

⁵⁵ Affidavit submitted by the CMWU to The High Court of Justice on 5 November 2007, p.3 cited at <http://www.gisha.org>, ('Court Documents'> 'A Petition to stop electricity and fuel cuts to the Gaza Strip').

⁵⁶ Oxfam, 'Gaza siege puts public health at risk as water and sanitation services deteriorate, warns Oxfam', Press release, 21 November 2007, <http://www.oxfam.org>, ('More News'> 'Press Releases 2007').

⁵⁷ 'Palestinian official: Gaza to cut to partial power due to shortage', Haaretz, 6 January 2008, www.haaretz.com.

⁵⁸ OCHA, 'Gaza Humanitarian Situation Report: Power Shortages in the Gaza Strip', 8 January 2008, www.ochaopt.org.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Oxfam, 'Shutdown of Gaza and escalating violence', Press release, 20 January 2008, <http://www.oxfam.org>, ('More News'> 'Press Releases 2007').

carry significant health implications and could lead to the outbreak of water-borne disease. On 21 January 2008, the Palestinian Water Authority declared that 40 percent of the houses in the Gaza Strip had no running water.⁶³ On 22 January there were reports that sewage was flooding the streets of Gaza.⁶⁴

The Israeli government is also threatening to cut the electricity that it supplies to Gaza which would only exacerbate the already dire situation. A petition to stop the proposed electricity cuts, due to the disruptions they would cause to essential services, has been brought before the Israeli Supreme Court by ten Israeli and Palestinian human rights organizations and a decision is still pending. As an occupying power controlling Gaza's border, Israel is legally obliged to respect, protect and fulfil the right to water and sanitation of the people of Gaza. As the Gaza administration is not in a position to meet all of Gaza's electricity needs, Israel as the occupying power is obliged to continue to provide electricity.

International humanitarian law prohibits indiscriminate attacks on civilians and as such the rocket attacks by Palestinian militants on Israeli communities are illegal and are not to be condoned under any circumstances. However, violations of international humanitarian law by one party, do not justify violations by another party. Due to the escalating humanitarian crisis and breakdown of water and sewage services that the sanctions have caused, the Government of Israel's policy constitutes collective punishment through imposing intolerable living conditions on the civilian population in reprisal for the actions of individuals for which they cannot be regarded as responsible.

2.1.3 Financial sanctions leading to the collapse of basic service provision

The Gaza-Jericho Agreement of 1994 transferred responsibility for water and sewerage to the newly established Palestinian Authority. In 1995 the Palestinian Water Authority (PWA) was created and assigned a mandate to regulate and manage the water sector and resources and plan infrastructure development. The withholding of tax revenues, aid and prohibitions on monetary transfers have severely limited the ability of the PA and its agencies to fulfil their responsibilities towards the Palestinian population including respecting, protecting and fulfilling the right to water and sanitation. The PWA reports that as a result of Israeli and donor sanctions there has been a significant decrease in the budget for water and sanitation.⁶⁵

The payment of salaries to public sector workers forms a large part of PA public expenditure but due to the freeze on direct funding of the PA, employees are not being paid. The continued non-payment, or incomplete payment of salaries has led to a series of strikes by municipality workers predominantly in Gaza City, Khan Younis and Jabalia. A large part of municipalities' revenues comes from service charges (including water bills) but increasing levels of poverty mean that many Gazans are unable to pay. The Palestinian Hydrology Group warns that "it is very important to solve this problem in order for the employees to be able to continue providing the needed services related to solid waste, water and wastewater services in addition to the provision of operation and maintenance work for available facilities."⁶⁶ A fifteen day strike in Gaza City left mounds of

⁶³ Hass, A, 'Palestinian Water Authority: 40% of Gazans lack running water', Haaretz, 22 January 2008, <http://www.haaretz.com>.

⁶⁴ 'Angry Gazans storm Rafah crossing', Aljazeera, 22 January 2008, www.aljazeera.net/English.

⁶⁵ Information provided to COHRE by the PWA, December 2007.

⁶⁶ Palestinian Hydrology Group, WaSH Monitoring Program, 'Gaza Strip Situation Report, June to mid-September 2007', <http://www.phg.org>.

garbage piling up on the streets risking the contamination of ground water and endangering public health. Solid waste produced in the city is estimated at being around 600 tons/day.⁶⁷

Investment in the development of the water and waste-water sector relies mainly on donor's contribution. A number of donor projects related to water and waste-water infrastructure have been frozen or terminated due to sanctions and the unstable political climate.⁶⁸ The United States Agency for International Development (USAID) had previously been one of the major donors of water and wastewater projects in the Occupied Palestinian Territories. USAID projects to build a desalination plant and a regional water pipeline to provide fresh water to the Gaza Strip were frozen. The project has now been cancelled and the funds for the desalination plant have been reallocated elsewhere.⁶⁹ Likewise the German government-owned development bank KfW suspended its project to construct a new waste-water treatment plant in Central Gaza. A waste-water treatment plant financed by a number of countries through the World Bank, which was to transfer the existing treatment facility in Beit Lahia to a new location in north-eastern Gaza, was frozen in 2006 but resumed in 2007 after a flood disaster in the village of Um Al-Nasser (see Section 2.5). Improvements to the waste-water treatment plant in Rafah have also been halted.⁷⁰

Following the legislative elections in January 2006 key donors such as the EU, US, Canada and Japan suspended direct aid (mainly budgetary support) to the PA in an attempt to bypass Hamas. Yet, they continued to provide humanitarian aid via other means such as through UNRWA and the establishment of temporary mechanisms. The occupied Palestinian territories are heavily dependent on foreign aid and a number of donors have significantly increased the amount of aid going into Gaza in recent months, especially food aid. Nevertheless, aid is not an effective substitute for services offered by governmental institutions and does not absolve Israel of its responsibility to ensure basic services are provided to the occupied population. Whilst emergency assistance can provide short-term relief to the people of Gaza it cannot provide a long-term solution to the crisis, ensure human development and ultimately the fulfilment of human rights.

At the Donor's Conference held in Paris on 17 December, donors pledged US\$ 7.4bn worth of aid to be delivered to the occupied Palestinian territories over the next 3 years. The World Bank and several leading aid agencies have argued that aid in itself is not enough and significant improvement in the lives of Palestinians in Gaza will not be seen unless Israel lifts the restrictions on movement of people and goods that is crippling Gaza's economy. Oxfam stated "[The aid money] is being poured into a leaking bucket. The challenge is to fix the leak not pour faster. Due to Israel's movement restrictions and the blockade of Gaza, millions of dollars of aid for the Palestinians is being lost. Ending these restrictions is the only way to make the money pledged count."⁷¹ Furthermore, the aid money is not being provided to the agencies in Gaza responsible for public services.

The crippling of government institutions in Gaza has severely undermined the right to water and sanitation for the people of Gaza. It denies Palestinians their right to self-determination, which

⁶⁷ Ibid.

⁶⁸ Information provided to COHRE by the PWA, December 2007.

⁶⁹ Information provided to COHRE by Fuad Bateh, PLO Negotiations Support Unit, January 2008. The murder of three US citizens in Gaza also contributed to the cessation of this project as the US government demanded that those responsible be brought to justice before construction would resume.

⁷⁰ Palestinian Hydrology Group, WaSH Monitoring Program, 'Gaza Strip Situation Report, June to mid-September 2007'.

⁷¹ Cited in Bowen, J, 'Analysis: Palestinian aid and politics', 20 December 2007, <http://www.news.bbc.co.uk>.

includes the right to “freely determine their political status” and “freely dispose of their natural wealth and resources”.⁷² It further jeopardises the viability of a future Palestinian state.

As an occupying power Israel is legally required to allow and assist agencies in Gaza responsible for water and sanitation to carry out their functions and refrain from calling on donors to cease funding to these agencies.⁷³ Other States that are party to the economic sanctions and the restrictions on banking transfers to the Gaza administration are also obliged to ensure that such sanctions do not violate Palestinians’ right to water and sanitation.

The UN Committee on Economic, Social and Cultural Rights, the primary international arbiter of the International Covenant on Economic, Social and Cultural Rights (ICESCR), has held that States obligations under the Covenant include the requirement to “refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.”⁷⁴ Under the ICESCR, economic sanctions may not be imposed and applied in such a manner that they impose undue suffering on a civilian population. General Comment No. 8 issued by the UN Committee on Economic, Social and Cultural Rights states “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security” and that “lawlessness of one kind should not be met by lawlessness of another kind”.⁷⁵ It further states that “In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country.”⁷⁶ Further, as General Comment No. 15 on the right to water makes clear, “States parties should refrain at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.”⁷⁷ Therefore, States parties to the ICESCR that participate in the current economic sanctions and restrictions on monetary transfers to Gaza are in violation of the ICESCR.

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

⁷² See common Article 1 of both the ICESCR and the International Covenant on Civil and Political Rights (1966), available at <http://www.ohchr.org>, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’).

⁷³ See the Annex, Section 5.1.

⁷⁴ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (2002), UN Doc. E/C.12/2002/11 para. 31. All General Comments by the Committee on Economic, Social and Cultural Rights are available at: <http://www.ohchr.org>, (‘Human Rights Bodies’>‘CESCR’>‘General Comments’).

⁷⁵ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 8, The relationship between economic sanctions and respect for economic, social and cultural rights* (1997), UN Doc. E/C.12/1997/8, para. 16.

⁷⁶ General Comment No. 8, para. 4. See also the Annex, Section 5.2 relating to international human rights law in the context of economic sanctions.

⁷⁷ General Comment No. 15, para. 32.

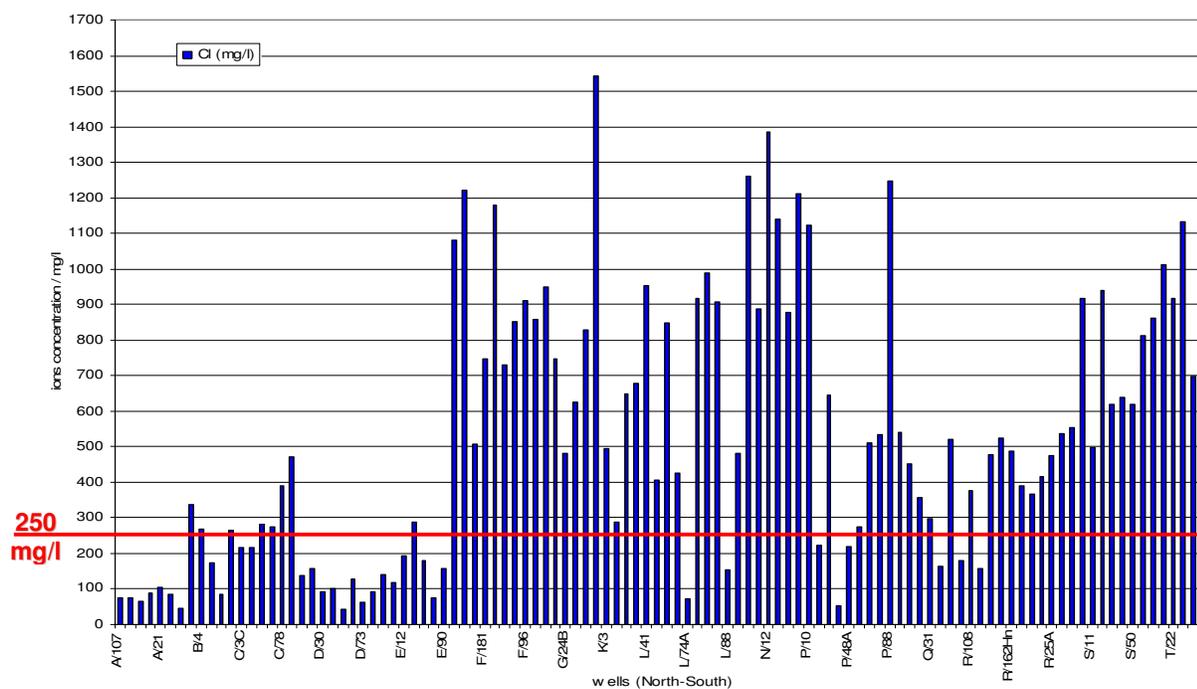
The actions of all States participating in the economic sanctions on Gaza also violate the Charter of the United Nations, in particular the obligation of promoting universal respect for and observance of human rights,⁷⁸ as well as the commitment of all States to the realisation of economic and social rights set out in the Universal Declaration of Human Rights (UDHR).⁷⁹

The withdrawal of funding by most donor states also undermines the goals of the ICESCR, even if such States are not participating in the restrictions on banking transfers to the Gaza administration. International cooperation for the realisation of economic, social and cultural rights is an obligation of all State parties to the ICESCR, particularly for those that have the resources to assist.⁸⁰ While States have significant discretion in deciding to which countries and regions they can provide assistance, governments that have previously funded the PA should take into account the impact of their withdrawal of funding upon the people of Gaza, particularly given the dire situation there. As such funding is provided in furtherance of a legal obligation in the ICESCR, rather than as a purely charitable donation, donors are responsible for ensuring that decisions to withdraw funding are justified and related to the objectives of the ICESCR, rather than motivated solely by political considerations.

2.2 Declining water quality and its impact on health

Poor water quality has been a long-standing problem in Gaza with a corresponding negative impact on human and environmental health. The pollution and contamination of ground water has left water resources unfit for human consumption without purification. High levels of nitrates and chlorides, found in municipal water wells from much of the Gaza strip, exceed the amount the World Health Organization (WHO) considers safe.

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

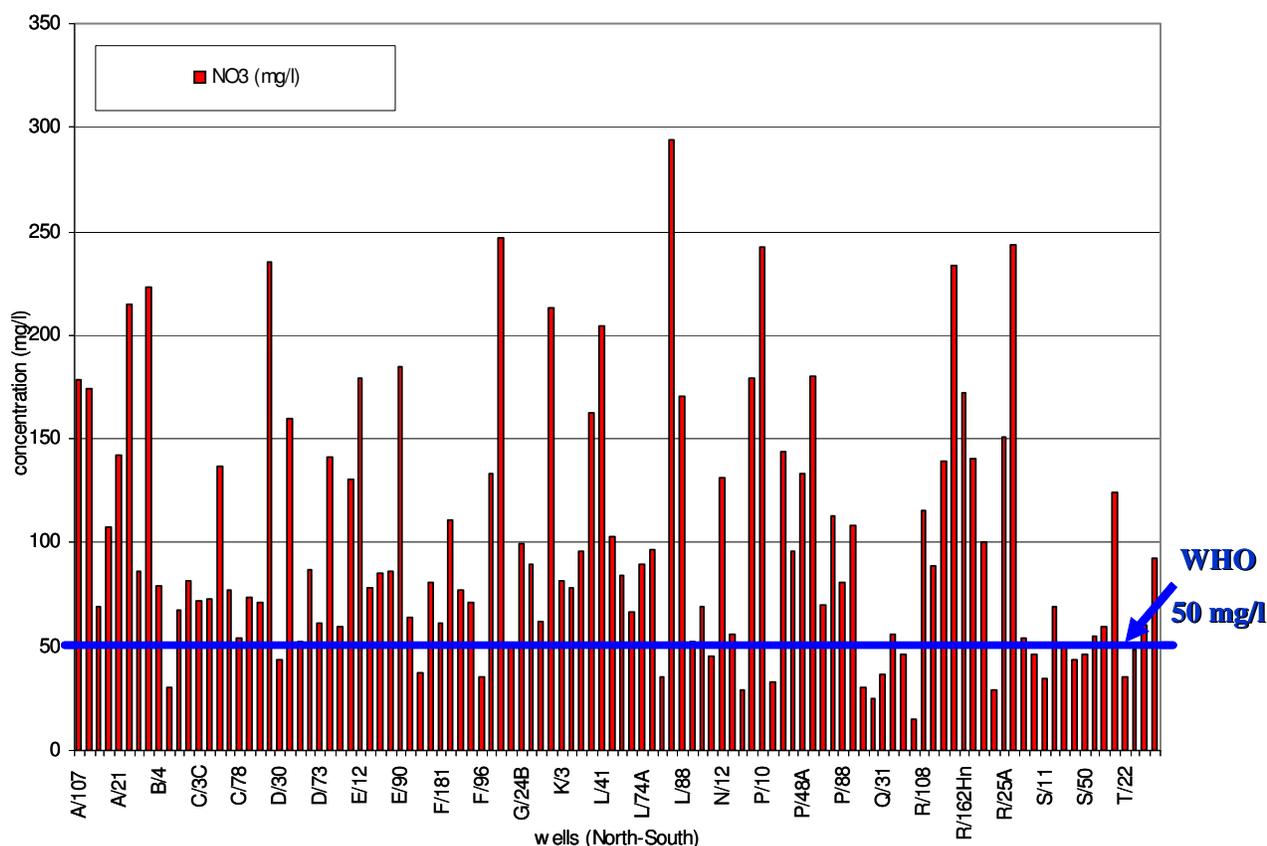


⁷⁸ United Nations Charter, Articles 55 and 56.

⁷⁹ Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III) (adopted 10 December 1948), Article 22.

⁸⁰ See the Annex, Section 5.2 for a full description of these legal obligations.

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



Source: PWA (2006)

The already dire situation of water pollution in Gaza has been exacerbated by economic and financial sanctions since 2006. Due to the freeze on chemicals entering the Gaza Strip since the Hamas takeover, and resulting shortages, laboratories in Gaza have been unable to carry out the necessary biological investigations.⁸¹ The blockade has also meant that basic supplies such as chlorine and filters have been prevented from entering at border crossing points. The CMWU reports that there is enough chlorine available in Gaza until mid-December 2007, as well as a reserve of 100,000 m3 for two months.⁸² When this runs out, people may have to start drinking contaminated water. Water-borne diseases resulting from the lack of clean drinking water include diarrhoea, hepatitis A, typhoid fever, paratyphoid, and gastro enteritis.⁸³ Children are most vulnerable to such water-related diseases. In October 2007, the WHO reported that compared to the previous year, the number of children aged three and under who were diagnosed as having diarrhoea at UNRWA health clinics in Gaza had increased by 20%.⁸⁴

In some areas of Gaza, the salinity of the water supply means it is unfit even for showering. High levels of saline in drinking water are also a major cause of kidney problems. The CMWU reports that a lack of hydrochloric acid needed for water desalination plants means that soon these plants

⁸¹ Information provided to COHRE by Oxfam GB, December 2007.

⁸² Ibid.

⁸³ UNICEF, 'Humanitarian Action Update: Occupied Palestinian Territory', September 2007, www.unicef.org/opt.

⁸⁴ OCHA, 'Gaza Humanitarian Situation Report', 9 October 2007, www.ochaopt.org.

will have their capacity reduced.⁸⁵ As one Gaza resident said “the water quality was bad before the siege, but it could be better without it because we could have new filters or a new water desalination plant.”⁸⁶

Existing sewage treatment facilities are stretched beyond capacity and significant amounts of sewage is released into the environment without treatment, further contaminating groundwater. Water-borne infections resulting from poor sanitary conditions include trachoma, conjunctivitis, dysentery, gastro-enteritis and hookworm.⁸⁷ In the Northern Gaza Strip, communities living around the Beit Lahia waste-water treatment plant suffer from an alarming number of diseases. More than 50% of children in the area suffer from parasites and helminths, transmitted by the mosquitoes which are prevalent in and around the waste-water lake, causing problems to the digestive system.⁸⁸ The majority of these parasitic infections are caused by *Giardia lamblia*, which is common in children 6-11 years of age and can cause long-term effects such as anaemia, retarded growth and mental disorders. Skin infections and allergies are also common as well as respiratory problems due to the gases produced by sewage pools.⁸⁹

A study by the World Health Organization (WHO) published in October 2007, found a high concentration of nitrates, well above recommended levels considered safe, in the water supply from wells in Gaza City, Jabalia and Khan Younis. The WHO standard for drinking water quality limits nitrates to 50ppm but the WHO found levels of nitrate ranging from 124ppm (Jabalia) to 195ppm (Khan Younis). Nitrate pollution is a direct effect of the discharge of untreated sewage. This nitrate contamination was found to be the cause of the high incidence of the disease methemoglobinemia (blue-baby syndrome) among infants in the Gaza Strip.⁹⁰ The disease prevents haemoglobin in the blood from binding with oxygen and can cause symptoms such as breathing difficulties, fatigue, headaches and even loss of consciousness and can seriously impact upon the child’s development. Whilst this disease primarily affects young children, nitrate contamination can also cause birth defects amongst pregnant women and long-term exposure to nitrates increases the risk of certain types of cancer.

An occupying power is obliged to ensure public health and hygiene is maintained in the occupied territory.⁹¹ Further, the right to water and sanitation requires that water is of an acceptable quality and must be safe for personal and domestic use and therefore free from pollutants or micro-organisms constituting a threat to health.⁹² The Convention on the Rights of the Child, ratified by Israel, also recognizes the right of the child to the highest attainable standard of health and states that the provision of clean drinking water is necessary to combat disease.⁹³ The right to water and sanitation entitles everyone to adequate and safe sanitation that does not endanger

⁸⁵ Information provided to COHRE by Oxfam GB, December 2007.

⁸⁶ Information provided to COHRE, December 2007.

⁸⁷ UNICEF, 'Humanitarian Action Update: Occupied Palestinian Territory', September 2007.

⁸⁸ Al Mezan Center for Human Rights, *On the Brink of Disaster: The Beit Lahia Treatment Plant and Human Rights*, (June 2003), p.17, <http://www.mezan.org>, (click on 'English page'> 'Mezan Publications'> 'ESC Rights reports').

⁸⁹ Ibid.

⁹⁰ Abu Naser, A, et al. 'Relation of nitrate contamination of groundwater with methaemoglobin level among infants in Gaza', *Eastern Mediterranean Health Journal*, Volume 13 No.5, (September-October 2007), <http://www.emro.who.int>, ('Eastern Mediterranean Health Journal Portal'> 'Back issues').

⁹¹ Fourth Geneva Convention, Article 56. All the Geneva Conventions and Additional Protocols can be found at <http://www.icrc.org>, (click on 'Humanitarian Law'> 'The Geneva Conventions').

⁹² General Comment No. 15, para. 12 (b).

⁹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1557 UN Treaty Series 3, Article 24 (2) (c), <http://www.ohchr.org>, (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law').

public health or the environment.⁹⁴ The right to water and sanitation is also essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera. Access to water and sanitation is therefore implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR).⁹⁵ According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.⁹⁶

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

2.3 Destruction of water and sewage infrastructure

Since the outbreak of the second Intifada, Israeli Defence Forces (IDF) have deliberately targeted water and sewage infrastructure throughout the Gaza Strip. The United Nations reported that between 2000 and 2006 IDF destroyed 244 wells in the Gaza Strip, including two drinking water sources.⁹⁷ Many roads, water supply lines and sanitation networks have been dug up using specially designed “back-hoe” tanks and bulldozers. Waste-water treatment plants in Gaza City and Rafah have been attacked or partially destroyed and water storage tanks on Palestinian roof tops and cisterns have been fired at. Maintenance workers have also been harassed and obstructed from carrying out their work. According to Dugard:

... between June and November 2006, IDF carried out 346 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air to surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and sewage networks.⁹⁸

The PWA estimates that in the occupied Palestinian territories as a whole, the cost of rehabilitation to damaged water and waste-water resources and systems is around US\$ 15 million.⁹⁹ The CMWU estimates that in Gaza around 5000 meters of main lines and an equal quantity of sub mains have been destroyed.¹⁰⁰ The cost to international development agencies to repair their original investment is also substantial.

⁹⁴ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res.2006/10, Promotion of the Realization of the right to drinking water and sanitation, (2006), UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005) UN Doc. E/CN.4/Sub.2/2005/25, section 1.2, available at <http://www.ohchr.org> ('Your Human Rights' > 'Human Rights Issues' > 'Water').

⁹⁵ (Adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6.

⁹⁶ See Human Rights Committee, 'General Comment 6, Right to Life UN Doc. HRI/GEN/1/7, para. 5.

⁹⁷ 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, (click on 'reports').

⁹⁸ 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.

⁹⁹ Jarrar, A, *Water from Conflict to Cooperation, Palestine and Israel Case: How to Promote Cooperation*, Palestinian Water Authority, (2003) p.11.

¹⁰⁰ Information provided to COHRE by CMWU, December 2007.

In October 2007 the Israeli military carried out 134 attacks on the Gaza Strip, a large proportion in Palestinian residential areas, targeting civilian property.¹⁰¹ On 28 November 2007, IDF soldiers levelled eight dunums¹⁰² of land in North Gaza, demolishing a water well, and a house.¹⁰³ Those living in areas with high incidences of military incursions, such as the North Gaza town of Beit Hanoun and Southern towns of Khan Younis and Rafah, are frequently unable to access and maintain water wells or properly discharge sewage. When asked about the safety/security level for those collecting water from water points at a distance from their homes, the CMWU replied; “There is a risk of getting shot in certain places”.¹⁰⁴

International humanitarian law strictly prohibits attacks to civilian infrastructure and indiscriminate and excessive use of force.¹⁰⁵ Moreover, all State parties to the ICESCR have the duty to respect the right to water and sanitation. General Comment No. 15 states: “The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water ... or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.”¹⁰⁶ Physical security must be guaranteed when accessing water amenities and services.¹⁰⁷ The sanctions and blockade, addressed in Section 2.1 above, have hindered investment into rehabilitation of damaged water and sewage infrastructure.

2.4 Unaffordable increases to the price of water for household uses

Although approximately 98% of households in Gaza are connected to the drinking water supply network, many households cannot rely on network provision due to water contamination, water shortages, or damage to water networks, and as a result rely on tankered or bottled water. Increasing restrictions at border crossings have created difficulty for water tankers to enter the Gaza strip and increased transportation time resulting in significant price increases. The average price of water provided in tankers in the Gaza Strip is 35 NIS per cubic meter, compared to an average of 15 NIS per cubic meter in the West Bank.¹⁰⁸ Although municipal tariffs for piped water have not been affected, remaining at 1-2.5 NIS per cubic meter, due to increasing poverty as a result of the sanctions and the siege the proportion of household expenditure currently spent on water and sanitation services has increased.¹⁰⁹ The increases in the prices of tankered water are also likely to be unaffordable for most households given the economic circumstances in Gaza.

Many of the pipes in the water distribution network in Gaza are reportedly old, damaged and in need of repair resulting in significant water losses. In most communities, unaccounted-for-water, (i.e. water lost in the distribution network), ranges from between 30-50% of supply.¹¹⁰ Both the PWA and CMWU have reported increases in unaccounted-for-water since the sanctions and blockade on the Gaza Strip began.¹¹¹ Whilst the exact cause of this is not known, it is likely that an inability to pay for water has led to a proliferation in illegal connections. Under the ICESCR,

¹⁰¹ 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’).

¹⁰² 1 dunum = 1,000 square metres.

¹⁰³ OCHA, ‘Protection of Civilians Weekly Report’, 28 November-4 December 2007, <http://www.ochaopt.org>.

¹⁰⁴ Information provided to COHRE by CMWU, December 2007.

¹⁰⁵ For more detailed information on international humanitarian law, see Annex, Section 5.2.

¹⁰⁶ General Comment No. 15, para. 21.

¹⁰⁷ General Comment No. 15, para. 12 (c) (i).

¹⁰⁸ OCHA, ‘The Humanitarian Monitor’, September 2007, No. 17 p.19, <http://www.ocha.org>.

¹⁰⁹ Information provided to COHRE by PWA, December 2007.

¹¹⁰ Palestinian Water Authority, Palestine paper presented to the seminar ‘Water: Source of Life, Source of Peace’, 21-22 November 2003, Barcelona, Spain p.11.

¹¹¹ Information provided to COHRE by PWA and CMWU, December 2007.

all persons have the right to water that is affordable, without reducing a household's ability to purchase other essential goods and services.¹¹² The blockade, including fuel cuts, damage to water infrastructure caused by the IDF, and financial sanctions have needlessly reduced the ability of many households to secure access to affordable water, and therefore give rise to serious concerns under the ICESCR.¹¹³

2.5 Threat of flooding of sewage from collapsing treatment plants

The denial of supplies and funding for waste-water treatment has led to a critical state of disrepair of water and sewage infrastructure. This was exemplified on 27 March 2007 when the earth embankment of an emergency filtration basin at Beit Lahia wastewater treatment plant in the northern Gaza Strip collapsed, flooding the Bedouin village of Um Al-Nasser with raw sewage. Five people died and nearly 1,000 people were displaced. The Palestinian Ministry of Health had to declare a State of Emergency. Yet, this emergency filtration basin is miniscule in comparison to the main sewage reservoir it was built to support, which is also close to breaking down. Beit Lahia reservoir is the natural result of the overflow from the settlement lagoons which treat and re-use wastewater. The waste-water treatment plant was designed to manage sewage for 10,000 people but is now stretched past capacity and managing sewage for 100,000.¹¹⁴ It is desperately in need of spare parts such as pipes for repair and is also reliant on a continuous supply of electricity and fuel to operate the system's pumps. The effluent level is continuously rising and the danger is that in the winter months heavy rain may cause the reservoir to overflow or a build up of pressure may lead its banks to burst sending 1.5 million cubic meters of sewage into surrounding districts. The level of the reservoir was reduced during the summer by portable pumps, provided as an emergency measure after the Um Al-Nasser disaster, but these pumps have since been relocated to Khan Younis to deal with a similar crisis there.¹¹⁵ The town of Beit Lahia, which sits under the reservoir, houses 50,000 people. If the reservoir floods the life and property of Beit Lahia's residents will be directly threatened and the water supplies of up to 300,000 people in surrounding areas could be contaminated. The communities in both Beit Lahia and Um Al-Nasser live in constant fear of being flooded with raw sewage.

On 10 December 2007, the Gaza-based Al Mezan Center for Human Rights issued a press release calling for urgent action. It stated that the residents of Um Al-Nasser village recently reported that "a large amount of waste water disappeared from the largest basin near their village". If this waste-water has leaked into the underground aquifer that the treatment plant was built above, the main source of drinking water for the entire north Gaza region will be polluted causing a massive humanitarian and environmental crisis. Al-Mezan reports that whilst a project to build an alternative treatment plant and pipeline to transfer waste-water away from the population and aquifer has started, the project has been halted many times due to restrictions on the movement of technicians, equipment and materials required to complete it.¹¹⁶

In Southern Gaza, a waste-water treatment plant in Khan Younis is also at risk of flooding. Untreated sewage flowing through the streets of Khan Younis would have severe health repercussions for the city's 200,000 inhabitants. A project to improve the plant, financed by Italy and Japan through UNRWA, has been put on hold due to a shortage of required materials and

¹¹² General Comment No. 15, para.12 (c) (ii).

¹¹³ General Comment No. 15 para.44 (a).

¹¹⁴ COHRE interview with Oxfam GB, October 2007.

¹¹⁵ Information provided to COHRE by Michael Bailey, Advocacy and Media Manager, Oxfam GB, 28 December 2007.

¹¹⁶ Al Mezan Center for Human Rights, 'Al Mezan Center Calls for Quick Action to Prevent New Environmental Disaster Northern Gaza', Press Release, 10 December 2007, <http://www.mezan.org>.

political complications.¹¹⁷ The waste-water treatment plant in Gaza City is in a similar state of disrepair and at high risk of flooding.

There is inadequate sewerage infrastructure in Gaza. Only around 30% of the population is connected to the sewage system and less than 1% of discharged sewage is properly treated.¹¹⁸ Many Gazans, particularly in Khan Younis district, rely on septic tanks and cess pits which require emptying on a regular basis, usually every two weeks, at the high cost of 50 NIS each time. According to Oxfam, “Overflowing cesspits are invariably a public health hazard, and are of the main causes of contamination for water supplies, especially where illegal connections and intermittent services are prevalent.”¹¹⁹ The problem of overflowing cess pits is particularly acute in Beni Suheila and surrounding areas. In November 2007, OCHA reported that many people could not afford the cost of emptying their septic tanks and were emptying their contents into the streets or connecting their waste-water pipes to the storm water system. It further stated that, “The current situation will deteriorate further during winter, when the overloaded storm water pipes overflow”.¹²⁰

The potential collapse of waste-water treatment plants and flooding of sewage into residential areas constitutes a grave violation of the right to health, both of those directly affected and those in surrounding areas due to the contamination of underground water sources. In the past, the collapse of waste-water treatment plants has violated Gazans right to life and adequate housing. The fear and imminent threat of being flooded by huge amounts of human excrement imposes intolerable conditions on those living in the vicinity of sewage-treatment plants. Israel and donors must shoulder the responsibility of being complicit in such violations of human rights due to the economic sanctions they have imposed.

2.6 Reduction in the amount of water per person

The water sector in Gaza faced significant challenges to ensure an adequate quantity of water per person even before sanctions were imposed. The inequitable extraction and discriminatory distribution of water between both Israel and Palestine, to the detriment of Palestinians, was an issue of concern prior to the blockades and sanctions. The UN Committee on the Elimination of Racial Discrimination has called on Israel to “ensure equal access to water resources to all without any discrimination.”¹²¹ According to the PWA, in 2003, each of the 3.3 million Palestinians in the oPt received an average of less than 100 litres per person per day for all uses, while the Israelis used an average of around 350 litres. Israeli settlers in the oPt used up to 450 litres.¹²² In the Gaza Strip, per capita domestic consumption of water per day was on average 81 litres per person daily.¹²³ This is below the standard of 100 litres that the World Health Organization says is necessary to ensure all health concerns are met.¹²⁴ Thus, further reductions

¹¹⁷ Palestinian Hydrology Group, WaSH Monitoring Program, ‘Gaza Strip Situation Report, June to mid-September 2007’.

¹¹⁸ Palestinian Water Authority, Palestine paper presented to the seminar ‘Water: Source of Life, Source of Peace’, 21-22 November 2003, p.11.

¹¹⁹ Oxfam, *Assessment Report Gaza*, (September 2006), p. 25, <http://www.lacs.ps>, (click on ‘Document Archive’> ‘Donors & Agencies’> ‘Oxfam’).

¹²⁰ OCHA, ‘The Humanitarian Monitor’, November 2007, p.3.

¹²¹ United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination*, (2007), UN. Doc.CERD/C/ISR/CO/13, para. 35, www.ohchr.org, (click on ‘Treaty Bodies’> ‘CERD’> ‘Sessions’> ‘Israel’ > ‘Concluding Observations’).

¹²² Palestinian Water Authority, Palestine paper presented to the seminar ‘Water: Source of Life, Source of Peace’, 21-22 November 2003, Barcelona, Spain p.6.

¹²³ Ibid. p.10.

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

to this amount would be of significant concern. In the hot summer months there are excessive water shortages and people are forced to buy from tankers at three times the normal cost.

Due to a lack of funding and fuel sanctions, 23 of Gaza's 149 public wells have had insufficient fuel since May 2007. This has severely reduced water availability and 210,000 people are only able to access drinking water supplies for 1-2 hours a day. UNICEF reports that as a result, the poorest households, unable to afford purchasing water from private companies, have altered their hygiene and nutrition practices. As families no longer have a supply of water adequate to meet their basic personal and domestic requirements people are showering less frequently and have to send their laundry to relatives.¹²⁵ Severe water shortages also have a disproportional impact on women, who are usually responsible for household maintenance. In July 2007, the CMWU was forced to halve the water supply from eight hours a day to four due to fuel shortages, affecting around 65,000 refugees in Jabalia camp, northern Gaza.¹²⁶ As of December 2007, due to the closures preventing spare parts from entering Gaza and the fuel restrictions, some 250,000 people in Gaza are not receiving a sufficient and continuous supply of water to their homes.¹²⁷ The CMWU reports that on average the water supply is currently cut for around 18 hours per day, but differs according to area.¹²⁸ Those living in rural areas and high-rise buildings are particularly affected by water shortages. A reduction in water quantity means that many people are now purchasing water from various sources which may be expensive and/or of dubious quality.¹²⁹ Further, some people are now depending on agricultural wells (untreated wells) for domestic uses.¹³⁰

The right to water and sanitation requires that all persons have access to a supply of water adequate to meet their basic personal and domestic needs including drinking, personal sanitation, washing of clothes, food preparation and personal and domestic hygiene. The quantity of water available per person should comply with World Health Organization guidelines.¹³¹ Due to the blockade and fuel cuts, Israel is violating its obligation under the ICESCR to ensure that the people of Gaza can access sufficient water for domestic needs.¹³² Donors participating in the restriction of monetary transfers to Gaza are complicit in this violation.

¹²⁵ OCHA, 'Gaza Strip Humanitarian Fact Sheet', 28 November 2007.

¹²⁶ Oxfam, 'Gaza refugees facing massive water cuts, disease', Press release, 6 July 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

¹²⁷ Gisha, 'Facts regarding Israel's Fuel and Electricity Cuts to the Gaza Strip', cited on 5 December 2007 at <http://www.gisha.org>.

¹²⁸ Information provided to COHRE by CMWU, December 2007.

¹²⁹ Oxfam, 'Gaza siege puts public health at risk as water and sanitation services deteriorate, warns Oxfam', Press release, 21 November 2007, <http://www.oxfam.org>, (click on 'More News' > 'Press Releases 2007').

¹³⁰ Information provided to COHRE by Oxfam GB, December 2007.

¹³¹ General Comment No. 15, para. 12 (a). See also Annex, Section 5.2 below.

¹³² General Comment No. 15, para. 12 (a).

3. CONCLUSIONS

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

Economic sanctions are leading to the collapse of PA institutions and are preventing the required funds necessary for the investment in, operation and maintenance of, essential water and sewage services contributing to their gradual breakdown. The water supply and sewage systems are in dire need of emergency overhaul and treatment and valuable parts and machinery are not permitted entry at various crossing points. Waste-water treatment facilities have been particularly affected. There is no telling when the seams will burst, unleashing a sanitation disaster, whose scale will overwhelm the almost non-existent infrastructure in the Gaza Strip leading to a loss of life and widespread health calamities.

In imposing economic sanctions and the blockade Israel, as a party to the ICESCR, failed to consider that such actions 'should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights', whatever the circumstances.¹³³ The policy to reduce fuel and the proposal to limit electricity is bereft of both moral and legal justifications as it does not make a distinction between the 1.5 million civilian population in Gaza and the Gaza administration. Both fuel and electricity, most of which come from Israel are needed to run essential services in Gaza, and Israel's ability to turn both off is being misused in the present circumstances. In terms of the provisions of The Hague Convention, the ICESCR and the Rome Statute, the actions of the state of Israel are contrary to international law. Treating over 1.5 million residents of Gaza as proxies for Hamas is both morally inexcusable and illegal.

The rocket attacks by Palestinian militants on Israeli communities are in direct contravention of international humanitarian law which prohibits indiscriminate attacks on civilians. Due to its effective control of the Gaza Strip, the Gaza administration controlled by Hamas is obliged to prevent these attacks even if carried out by armed groups independent of Hamas. Violations of international humanitarian law by one party, do not justify violations by another party. International humanitarian law requires that Israel may not inflict harm on the civilian population of Gaza in response to rocket attacks, nor may it engage in collective punishment.¹³⁴ Due to the escalating humanitarian crisis and breakdown of water and sewage services that the sanctions have caused, the Government of Israel's policy constitutes collective punishment through imposing intolerable living conditions on the civilian population in reprisal for the actions of individuals for which they cannot be regarded as responsible.

¹³³ General Comment No. 8, para. 1.

¹³⁴ See Annex 5.2 on international humanitarian law.

The sanctions regime and blockade violate the right to water and sanitation guaranteed by the ICESCR, in particular by preventing the necessary investment in -- and maintenance of -- water networks and by restricting access to and reducing the availability and quality of water supplies in Gaza. Poor water quality has had a disproportionate impact on the health of children. The sanctions regime and blockade, are contributing to the breakdown of waste-water treatment facilities which endangers public health and the environment.

Israel has failed to respect, protect and fulfil the human rights of persons residing in the Gaza Strip, guaranteed by legally binding instruments it has ratified, including the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Israel has also failed to act in accordance with the international treaties and customary international law on international humanitarian law regarding the protection of civilians.

The Geneva Conventions and additional protocols guarantee all prisoners of war and other detained persons access to drinking water, water for personal hygiene and sanitation. They further prohibit attacks to civilian infrastructure, indiscriminate and disproportional use of force and state that an occupying power must allow relief supplies to reach the occupied population. Furthermore, grave breaches of the Geneva Conventions include wilfully causing great suffering or serious injury to body or health. The Conventions also prohibit punishment for an offence a person has not committed, collective penalties and all measures of intimidation against protected persons including civilians taking no part in hostilities. Indeed, such grave breaches as well as collective punishment are considered war crimes.¹³⁵

The violations of the right to water and sanitation also rise to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹³⁶ This is because Israel has intentionally instigated acts that cause cruel, inhuman or degrading treatment or punishment resulting in severe suffering. Indeed, the blockade on Gaza is inflicting immense suffering on the people of Gaza, leading to fatal consequences for those whose water is polluted and potentially the destruction of the homes and lives of thousands of people should the water-treatment facilities near Beit Lahia and Um Al-Nasser collapse.

Article 16 (1) of CAT states: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity...”. The European Court of Human Rights, the arbiter of the European Convention on Human Rights and Fundamental Freedoms, in examining the Article 3 ban on torture and other forms of cruel or degrading treatment or punishment, has held that the enforcement of extreme living conditions can rise to the level of degrading treatment within the sense of Article 3. This is particularly true, where, as in the case in Gaza, the enforcement of such degrading conditions is undertaken for reasons of or influenced by racial discrimination.¹³⁷ At the UN Committee Against Torture’s periodic review of Israel the issue was also raised that the border-closure policy was tantamount to cruel and inhuman treatment as it had caused great suffering to many

¹³⁵ See the Annex, Section 5.2 for a full description of these legal obligations.

¹³⁶ (Adopted 10 December 1984, entered into force 26 June 1987) 1465 UN Treaty Series 85. Available at www.ohchr.org, (click on ‘Your Human Rights’> ‘What are Human Rights’> ‘International Human Rights Law’> ‘The Core International Human Rights Instruments’).

¹³⁷ See *Moldovan and Others v. Romania*, Applications nos. 41138/98 and 64320/01, Judgement of 12 July 2005.

innocent persons, including pregnant women “although it remained ineffective in combating terrorism.”¹³⁸ It was also argued that house demolitions may also violate Article 16 of CAT.¹³⁹

Since the intention behind the blockade is to punish, intimidate or coerce those inflicted with severe suffering, Israel’s blockade of Gaza may also rise to the level of torture, as defined in CAT:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁴⁰

The protections guaranteed in Articles 1 and 16 of CAT are applicable as Israel’s policies are not designed to deal with security needs, but rather to inflict severe suffering on the people of Gaza in order to put pressure on them to remove Hamas as the governing authority. Israel is required to investigate and act on such acts of torture or other forms of cruel, inhuman or degrading treatment or punishment. Furthermore, all States parties to the CAT should investigate any officials from Israel responsible for the blockade when such officials visit their countries in order to determine whether that official has been responsible for acts of torture or other acts banned under the CAT.¹⁴¹

Responsibility for the violations of the right to water and sanitation in Gaza does not rest with Israel alone. The international community, including high contracting parties to the Geneva Conventions and State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Charter, has failed in its duty to safeguard the residents of Gaza from ‘inhuman treatment’ and the violation of their ‘inherent dignity’ by the State of Israel. The Fourth Geneva Convention relative to the Protection of Civilians calls on the parties to provide effective penal sanctions against those committing grave breaches against the civilian population (as is the case here), the ICESCR calls for international co-operation to realise the rights in the covenant, the CRC directs State parties to undertake, ‘with regard to economic, social and cultural rights’ measures for the implementation of these rights, within ‘the framework of international co-operation’. ICERD calls upon states ‘to prohibit and eliminate racial discrimination in all its forms’ including in particular the right to freedom of movement and the enjoyment of economic, social and cultural rights. With all of these commitments to human dignity and human rights, the response of the international community to the humanitarian catastrophe in Gaza has been woefully inadequate and clearly an embarrassment to the motivations for these instruments.

Western states are therefore complicit in the violations of the right to water and sanitation by contributing or acquiescing to Israel’s blockade of Gaza and further economic and financial

¹³⁸ UN Committee Against Torture, ‘Summary record of the 496th meeting: Israel. 29/11/2001’, UN Doc.

CAT/C/SR.496, para. 28, www.ohchr.org, (click on ‘Treaty Bodies’> ‘CAT’).

¹³⁹ Ibid.

¹⁴⁰ CAT, Article 1 (1).

¹⁴¹ Such ‘universal jurisdiction’ is provided for in Article 5 (2) of CAT.

sanctions. Donors to the water and sanitation sectors in the Gaza Strip have also acted to undermine the goals of the ICESCR by withdrawing funding that is critically required for public services without adequate justification.

Victims of gross violations of international human rights law and serious violations of international humanitarian law have the right to remedy and reparation, and this has been affirmed by the UN General Assembly (GA). States have the duty to investigate those responsible for such violations and prosecute and punish those found responsible.¹⁴² The GA has stated that: reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴³ Those who have suffered prolonged and continuous violations of their rights as a result of the Israeli occupation including the over abstraction and pollution of underground water resources, the damage and destruction of water and sanitation amenities and discriminatory treatment in access to water as well as the violations caused by the current crisis have the right to both remedy and reparation.

¹⁴² UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, (2006), UN Doc. GA/RES/60/147, para.4, www.un.org/English, (click on 'Documents, Maps'> 'General Assembly Resolutions'> '60th – 2005').

¹⁴³ For more information of the legal elements of reparation and requirements of duty holders see GA Resolution 60/147, as above.

4. RECOMMENDATIONS

To the Government of Israel

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

To the Gaza Administration

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

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

To the Government of President Abbas and Prime Minister Fayyad

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

To donor States

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

To the Arab League

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

To all United Nations bodies and member States

- The UN Security Council, General Assembly, Human Rights Council, the Secretary-General and the High Commissioner for Human Rights must clearly denounce the flagrant violations of human rights occurring in the Gaza Strip due to sanctions and the blockade and hold Israel accountable for its actions.
- The monitoring mechanisms within international human rights instruments should treat the Gaza situation with the urgency that it requires and take the necessary steps allowed under the various treaties to hold Israel and other States responsible for the blockade and restrictions on monetary transfers accountable for the violations of the rights of the people of Gaza, and to prevent further violations of these rights.
- All states must provide effective penal sanctions for those committing grave breaches against the civilian population as per their legal obligations as parties to the Geneva Conventions.
- All States parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) should investigate any officials from Israel responsible for the blockade when such officials visit their countries in order to determine whether that official has been responsible for acts of torture in regard to the blockade.¹⁴⁴
- The Human Rights Council should take action to establish a binding “United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights, the identification of a wider range of exempt goods and services.”¹⁴⁵

¹⁴⁴ See Section 3 for the discussion of the application of the United Nations Convention Against Torture to this issue.

¹⁴⁵ Proposals for such mechanisms are noted in General Comment 8, para. 12.

5. ANNEX

5.1 The applicability of international law to Gaza

Israel withdrew its defence forces from Gaza in 2005 and claimed that its occupation of the Gaza Strip had come to an end. John Dugard, the UN Special Rapporteur for the Occupied Territories states “In deciding on this matter regard must be had to whether Israel retains effective control over the territory as this is the test for occupation recognized by international humanitarian law. Whilst ... the absence of a military occupying power in Gaza has removed many of the features of occupation, it is wrong to suggest that the occupation has ended.”¹⁴⁶ He indicates that targeted assassinations of militants (and innocent bystanders), Israel’s control over airspace, territorial waters and external borders, Israeli administration of the Gaza population register allowing it to control the issue of identity documents necessary for movement, and Israel’s holding of a large number of Gazan prisoners all lead to the conclusion that Israel still maintains effective control over Gaza.

As an occupying power, Israel is obliged to conform to the requirements of international humanitarian law including the Fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War (1949). While Israel has ratified the Geneva Conventions it has neither signed, nor ratified Additional Protocols I and II (1977) and is not a signatory to the Hague Convention and Regulations (1907). Israel has refused to apply the fourth Geneva Convention to the Occupied Palestinian Territories but has accepted The Hague Regulations of 1907 as *de jure* applicable. The Israeli Supreme Court of Justice in *Ayyoub v. Minister of Defence* ruled that the Hague Regulations are customary law, therefore automatically part for municipal law and judiciable in Israel.¹⁴⁷ An occupying power is further obliged to respect the existing legal and civil systems in the occupied territory. International humanitarian law makes clear that; “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”¹⁴⁸

The International Committee of the Red Cross has argued that many of the provisions of international humanitarian law are considered customary international law.¹⁴⁹ Likewise a recent ruling by the International Court of Justice found that “the provisions of the Hague Regulations have become part of customary law” and, along with the fourth Geneva Convention, are applicable to Israel.¹⁵⁰ The Israeli Supreme Court has also acknowledged that the norms of international humanitarian law should be applied in the occupied Palestinian territories.¹⁵¹ Under

¹⁴⁶ Dugard, J *Question on the violation of Human Rights in the Occupied Arab Territories, including Palestine: Report of the Special Rapporteur of the Commission on Human Rights*, (2006), UN Doc. E/CN.4/2006/29, para. 8, <http://www.ohchr.org>, (click on ‘Special Procedures’> ‘country mandates’).

¹⁴⁷ See Supreme Court of Israel, *Suleiman Tawfic Ayyoub et. al. v. Minister of Defence et. al.* (Beit El case), H.C. 606/78, H.C. 610/78, in *Piskei Din*, Vol. 33 (2), p.133.

¹⁴⁸ Hague Convention IV Respecting the Laws and Customs of War on Land, (1907), Article 43, <http://www.icrc.org>, (click on ‘Info resources’> ‘IHL databases’> ‘treaty database’> ‘treaties & documents by topic’). See the Annex section 5.2 for the status of this treaty.

¹⁴⁹ See Henckaerts, J.M, *Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict*, (2005), International Review of the Red Cross, Vol. 87, <http://www.icrc.org>, (click on ‘Publications’> ‘Humanitarian Law’).

¹⁵⁰ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion of 9 July 2004*, (2004), p.40, para. 89, www.icj-cij.org, (click on ‘Cases’> ‘Advisory Proceedings’).

¹⁵¹ See, for example, The Israeli Supreme Court judgement regarding the security fence, *Beit Sourik Village Council v. The Government of Israel and the Commander of the IDF forces in the West Bank*, (June 24, 2004), para. 23 available at

the terms of the Geneva Conventions all parties are under an obligation to ensure that Israel complies with international humanitarian law. The fourth Geneva Convention calls upon High Contracting Parties “to provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches of the present convention”.¹⁵² It defines “grave breaches” as including, “inhuman treatment” and “causing great suffering or serious injury to body or health”.¹⁵³

International humanitarian law and human rights law are complementary. The International Court of Justice has confirmed that “the protection offered by human rights conventions does not cease in the case of armed conflict”.¹⁵⁴ Israel has repeatedly asserted that the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which it is a State party, “does not apply to areas that are not subject to its sovereign territory and jurisdiction” and therefore Israel is not responsible for ensuring the rights of those in the occupied territories.¹⁵⁵ However, the UN Committee on Economic, Social and Cultural Rights, which monitors treaty implementation and reviews State parties’ periodic reports, does not accept this claim. In its concluding observations on Israel, the Committee stated that the Covenant applies to “all territories and populations under its effective control” and that “the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities”.¹⁵⁶ The International Court of Justice has also ruled that the ICESCR is “applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory. In the case of the International Covenant on Economic, Social and Cultural Rights, Israel is also under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to the Palestinian authorities”.¹⁵⁷

5.2 International humanitarian law

Water and sanitation facilities

As an occupying power, under international humanitarian law, Israel is responsible for the welfare of the civilian population and must ensure that Palestinians are provided with or allowed to secure the basics for survival including food, water, medical supplies and shelter. Prisoners of war and/or protected persons are guaranteed access to drinking water, water for personal hygiene and sanitation under the Geneva Conventions.¹⁵⁸ The fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War (1949) states “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its

<http://www.jewishvirtuallibrary.org>, (click on “The Library”> “Israel”> “The Peace Process”> “Boundaries”> “Israel’s Security Fence”).

¹⁵² Article 146.

¹⁵³ Article 147.

¹⁵⁴ International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, p. 46, para. 106.

¹⁵⁵ See Israel’s second periodic report submitted to the Committee on Economic, Social and Cultural Rights, (May 2003), para.5, at <http://www.ohchr.org>, (click on “Treaty Bodies”> “CESCR”> “sessions”> “30”).

¹⁵⁶ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (May 2003), UN doc.E/C.12/1/Add.90., para.31, Emphasis added. <http://www.ohchr.org>, (click on “Treaty Bodies”> “CESCR”> “sessions”> “30”).

¹⁵⁷ International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, p.49, para.112.

¹⁵⁸ Third Geneva Convention, Articles 20, 26, 29, 46. All the Geneva Conventions and Additional Protocols can be found at <http://www.icrc.org>, (click on “Humanitarian Law”> “The Geneva Conventions”).

disposal”.¹⁵⁹ Additional Protocol I to the Geneva Conventions states “It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, crops, livestock, *drinking water installations* and supplies and irrigation works”.¹⁶⁰ Denying the civilian population the means necessary for their survival is a war crime and is recognized as such by The Rome Statute of the International Criminal Court (1998).¹⁶¹ It states “For the purpose of this Statute, “war crimes” means ... Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions”.¹⁶²

Distinction and proportionality

A key principle in international humanitarian law is the principle of distinction, which differentiates between those who participate in the conflict and as such are combatants and those who do not and are therefore afforded protection. Common article 3 of the Geneva Conventions (I-IV) states that “Persons taking no active part in the hostilities... shall in all circumstances be treated humanely”. The principle of proportionality in international humanitarian law makes clear that any reaction to an attack may not be excessive causing harm to civilians or civilian property which outweighs the expected military advantage.¹⁶³ Indiscriminate attacks on civilians, and civilian property and infrastructure is therefore strictly prohibited. Both Israel and armed Palestinian groups are obliged to stop such unlawful attacks immediately or risk being held accountable for war crimes.

Collective punishment

International humanitarian law prohibits collective punishment. The fourth Geneva Convention, states “No protected person may be punished for an offence he or she has not personally committed.”¹⁶⁴ Article 50 of The Hague Convention and Regulations of 1907, further stipulates that “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly or severally responsible”.¹⁶⁵

5.3 The human right to water and sanitation in international law

The right of each person to water and sanitation is implicitly recognised in a variety of international human rights treaties, and is necessary to ensure universally held values such as freedom, equality and dignity for all.¹⁶⁶ The right to water and sanitation and economic, social and cultural rights in general is based primarily in the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 157 States as of October 2007.¹⁶⁷ The right to water

¹⁵⁹ Fourth Geneva Convention Article 59. See also Articles 89 & 127 relating to drinking water. See Article 56 relating to hygiene and sanitation.

¹⁶⁰ Article 54. Emphasis added. See Section 5.1 above for the legal status of the Protocol in customary law.

¹⁶¹ Israel has signed but not ratified this Statute.

¹⁶² Article 8 (2), <http://www.un.org>, (click on ‘International Law’> ‘International Criminal Court’> ‘Rome Statute of the International Criminal Court’).

¹⁶³ Additional Protocol I, Article 51.

¹⁶⁴ Article 33

¹⁶⁵ <http://www.icrc.org>, (click on ‘Humanitarian Law’> ‘Treaty database’> ‘Treaties and Documents’). See Section 5.1 above for the legal status of this treaty in customary law.

¹⁶⁶ A detailed compilation of legal references to the right to water and sanitation is contained in Langford, M et al. *Legal Resources for the Right to Water: International and National Standards* (Geneva: COHRE, 2004). Further information on the right to water and sanitation is available at COHRE, AAAS, SDC, and UN HABITAT, *Manual on the Right to Water and Sanitation* (2007). Both sources are available at: <http://www.cohre.org/water>.

¹⁶⁷ Information as to which human rights treaties have been ratified by particular States is available at: <http://www.ohchr.org> (click on ‘Your Human Rights’> ‘What Are Human Rights’> ‘International Human Rights Law’).

and sanitation is an intrinsic aspect of both Article 12, the right to health and Article 11 (1) the right to an adequate standard of living. The ICESCR has a committee of experts, the Committee on Economic Social and Cultural Rights (CESCR), elected by States parties to the ICESCR to help monitor and interpret the ICESCR. In 2002, the CESCR adopted General Comment No. 15: The Right to Water (General Comment No. 15). In 2004, the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that would advise the UN Human Rights Council produced an analysis of the legal basis and implications of the right to water and sanitation.¹⁶⁸ In 2006, it adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (Sub-Commission Guidelines). The Sub-Commission Guidelines are consistent with General Comment No. 15, but include clearer statements defining sanitation as a right in conjunction with access to water, as well as its components. They also focus on short-term implementation rather than on a formal definition of the right.¹⁶⁹

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

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally includes drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹⁷⁰

Clean water: Safe water that, in particular, is free from hazardous substances that could endanger human health,¹⁷¹ and whose colour, odour and taste are acceptable to users.¹⁷²

Accessible water and sanitation: Water and water and sanitation services and facilities that are accessible within, or in the immediate vicinity of, each household, educational institution and workplace, and which are in a secure location and do not pose a threat to physical security.¹⁷³ The Sub-Commission Guidelines state that sanitation must be safe, adequate and conducive to the protection of public health and the environment.¹⁷⁴

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

¹⁶⁸ United Nations Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, UN Doc. E/CN.4/Sub.2/2004/20. Available at <http://www.cohre.org/water>, (click on ‘Resources and Articles’). The Sub-Commission was replaced in 2007 by the Human Rights Council Advisory Committee.

¹⁶⁹ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, available at <http://www.cohre.org/water>.

¹⁷⁰ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15, The right to water* (2002), UN Doc. E/C.12/2002/11 para. 12 (a). All General Comments by the CESCR are available at: www.ohchr.org (‘Human Rights Bodies’ > ‘CESCR’ > ‘General Comments’).

¹⁷¹ General Comment No. 15, para. 12 (b), referring to the respective WHO Guidelines.

¹⁷² General Comment No. 15, para. 12 (b).

¹⁷³ General Comment No. 15, para. 12 (c) (i), 29, Sub-Commission Guidelines section. 1.3 (a)-(c).

¹⁷⁴ Sub-Commission Guidelines, section. 1.2.

Affordable water and sanitation: Water and sanitation can be secured without reducing any person's capacity to acquire other essential goods and services, including food, housing, health services and education.¹⁷⁵

The right to water and sanitation can be found in a range of other treaties in addition to the ICESCR. The Convention on the Rights of the Child, ratified by Israel, recognizes the right of the child to the highest attainable standard of health and states that the provision of clean drinking water is necessary to combat disease.¹⁷⁶ The Convention on the Elimination of All Forms of Discrimination Against Women, states that women have the right "To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."¹⁷⁷ The right to water and sanitation is also essential in order to safeguard people from potentially fatal diseases such as diarrhoea and cholera. Access to water and sanitation is therefore implicit in the right to life, which is recognised in the International Covenant on Civil and Political Rights (ICCPR).¹⁷⁸ According to the United Nations Human Rights Committee, the treaty body for the ICCPR, the right to life requires States to implement measures to eliminate epidemics.¹⁷⁹

Finally, the right to water and sanitation, like all human rights, is upheld by the Charter of the United Nations, which obligates UN member states to promote universal respect for and observance of human rights,¹⁸⁰ as well as the Universal Declaration of Human Rights (UDHR), to which all UN states have repeatedly stated their commitment and which states that every person is entitled to economic, social and cultural rights, through national effort and international co-operation (in accordance with the organization and resources of each State).¹⁸¹

¹⁷⁵ General Comment No. 15, para.12 (c) (ii); Sub-Commission Guidelines, section. 1.3 (d).

¹⁷⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1557 UN Treaty Series 3, Article 24 (2) (c), <http://www.ohchr.org>, (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law').

¹⁷⁷ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), Article 14 (h), <http://www.ohchr.org>, (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law'). Israel is a State party.

¹⁷⁸ (adopted 16 December 1966, entered into force 23 March 1976) 999 UN Treaty Series 171, Article 6, <http://www.ohchr.org>, (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law').

¹⁷⁹ See Human Rights Committee, *General Comment 6, Right to Life*, (1982) UN Doc. HRI/GEN/1/7, para. 5.

¹⁸⁰ United Nations Charter, Articles 55 and 56, <http://www.ohchr.org>, (click on 'Your Human Rights'> 'What are Human Rights'> 'International Human Rights Law').

¹⁸¹ Universal Declaration of Human Rights, UN General Assembly Resolution 217 A (III) (adopted 10 December 1948), Article 22, <http://www.ohchr.org>, as above.

Obligations to respect, protect and fulfil the right

According to the CESCR, State parties to the ICESCR have obligations to respect, protect and fulfil economic, social and cultural rights, without discrimination, in regard to the people of their country.¹⁸²

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

Obligations to respect require that State parties refrain from interfering directly or indirectly with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, or from unlawfully diminishing or polluting water resources.¹⁸³

Obligations to protect require that State parties prevent third parties (including individuals, groups, corporations and other entities under their jurisdiction) from interfering with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should adopt effective legislative and other measures to prevent third parties from denying equal access to water or polluting or inequitably extracting from water sources.¹⁸⁴

Obligations to fulfil can be disaggregated into obligations to facilitate, promote and provide. The CESCR indicates that State parties are to *facilitate* a right by taking positive measures to assist individuals and communities to enjoy the right. State parties are to *promote* a right, for example, by ensuring that there is appropriate education concerning the hygienic use of water, the protection of water sources and methods to minimise wastage. State parties are obliged to *provide* a right when individuals or a group are unable, for reasons beyond their control, to realise that right themselves by the means at their disposal.¹⁸⁵

International cooperation obligations

Member States of the UN have pledged to take joint and separate action in co-operation with the United Nations in promoting development and universal respect for human rights and fundamental freedoms.¹⁸⁶ The ICESCR specifically obliges State parties through international assistance and co-operation, especially economic and technical, to take steps to realise progressively the rights recognised in the Covenant.¹⁸⁷ The CESCR has emphasised that international cooperation for development, and thus for the realisation of economic, social and cultural rights, is an obligation of all State parties to the ICESCR and is particularly incumbent upon governments that are in a position to assist others in this regard.¹⁸⁸ Therefore, State parties are obliged to respect the enjoyment of these rights, including the right to water and sanitation, in other countries and “refrain from actions that interfere, directly or indirectly, with the enjoyment

¹⁸² General Comment No. 15, para. 21. For further information on obligations to respect, protect and fulfil economic, social and cultural rights in general, see M. Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon, 1994), pp. 107-111.

¹⁸³ General Comment No. 15, para. 21.

¹⁸⁴ General Comment No. 15, para. 23.

¹⁸⁵ General Comment No. 15, para. 25.

¹⁸⁶ United Nations Charter (1945) Articles 55 & 56.

¹⁸⁷ ICESCR, Article 2 (1).

¹⁸⁸ CESCR, General Comment No. 3: *The Nature of States Parties' Obligations*, UN Doc. E/1991/23 para.14.

of the right to water in other countries.”¹⁸⁹ State parties, as members of international organisations, including international financial institutions, are to take due account of the right, and ensure that their policies and actions respect the right to water and sanitation.¹⁹⁰

General Comment No. 15 states the following:

Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.¹⁹¹

According to the Sub-Commission Guidelines, “Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring everyone has access, as promptly as possible, at least to basic water and sanitation services.”¹⁹²

Economic sanctions

Under the ICESCR, economic sanctions may not be imposed and applied in such a manner that they impose undue suffering on a civilian population, including denial of the right to water and sanitation. General Comment No. 15 states: “States parties should never impose embargos or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.”¹⁹³

In General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights, the UN Committee on Economic, Social and Cultural Rights pointed out that sanctions regimes have tended to have significant negative impact on economic, social and cultural rights, including on water and sanitation. While multilateral sanctions have included humanitarian exemptions, such exemptions have been very limited in scope (for example, by not providing for repairs to water supply infrastructure), have been ambiguous and interpreted arbitrarily and inconsistently thus causing delays, confusion and the denial of requests to import essential supplies.¹⁹⁴ It further states that “the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security” and that “lawlessness of one kind should not be met by lawlessness of another kind”.¹⁹⁵ Moreover, “In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to

¹⁸⁹ General Comment No. 15, para. 31.

¹⁹⁰ General Comment No. 15, paras.31, 33-36. Sub Commission Guidelines, section 10.4

¹⁹¹ General Comment No. 15, para. 34.

¹⁹² Sub-Commission Guidelines section 10.2.

¹⁹³ General Comment No. 15, para 32. Footnote in quotation omitted. See also Sub-Commission Guidelines, section 10.1.

¹⁹⁴ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 8, The relationship between economic sanctions and respect for economic, social and cultural rights* (1997), UN doc. E/C.12/1997/8, paras. 3-5.

¹⁹⁵ *Ibid.* para. 16.

international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country".¹⁹⁶

General Comment No. 8 sets out three sets of obligations relating to economic social and cultural rights in the context of economic sanctions:

First, these rights must be taken fully into account when designing an appropriate sanctions regime. Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population. Third, the external entity has an obligation "to take steps, individually and through international assistance and cooperation, especially economic and technical" in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.¹⁹⁷

General Comment No. 8 notes practical steps that have been proposed to reduce the impacts of sanctions, for example, a transparent set of agreed principles and procedures based on respect for human rights, identification of a wider range of exempt goods and services and the introduction of greater overall flexibility. It also notes that steps can be taken to protect vulnerable groups without jeopardising the policy aim of sanctions.¹⁹⁸

¹⁹⁶ Ibid. para. 4.

¹⁹⁷ Ibid. paras. 12-14.

¹⁹⁸ Ibid. paras. 12, 15.

5.4 List of abbreviations and acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CESCR	United Nations Committee on Economic Social and Cultural Rights
CMWU	Coastal Municipal Water Utility
CRC	Convention on the Rights of the Child
EU	European Union
GA	United Nations General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDF	Israeli Defence Forces
NGO	Non-Governmental Organisation
NIS	New Israeli Shekel
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
oPt	Occupied Palestinian Territory
PA	Palestinian Authority
PWA	Palestinian Water Authority
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Works Agency
US	United States
USAID	United States Agency for International Development
WHO	World Health Organization

5.5 Information on the Centre on Housing Rights and Evictions

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

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

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

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

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

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

Promoting stronger international standards on the right to water and sanitation

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

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