

## TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. HISTORICAL BACKGROUND.....	4
III. PATTERNS AND IMPACT OF PROPERTY DESTRUCTION AND FORCED EVICTION .....	7
III. 1. Impact on the economic situation.....	8
III. 2. Impact on women .....	9
IV. DESTRUCTION FOR “MILITARY/SECURITY NEEDS” .....	10
IV. 1. Punitive house demolition .....	10
IV. 2. “Preventive” and “security” destruction.....	14
IV. 2.1 The West Bank .....	14
IV.2.2 Farms and agricultural land destroyed to build the fence/wall .....	17
IV. 2.3 The Gaza Strip.....	18
IV. 2.4 Destruction of “temporarily” confiscated land.....	25
IV. 3. Israel's justifications for the destruction in the Occupied Territories: “military/security needs” .....	27
IV. 4. Definition of legitimate targets, combat activities and proportionality.....	29
IV. 5. Claims that property had been used for attacks.....	30
IV. 6. Claims that the destroyed properties were “abandoned”.....	31
IV. 7. The failure of the Israeli Supreme Court to protect the internationally guaranteed right to housing.....	32
V. DEMOLITIONS OF UNLICENSED HOUSES: DISCRIMINATORY PLANNING AND BUILDING POLICIES AND ENFORCEMENT MEASURES .....	33
V. 1. Background to the demolition of unlicensed houses .....	33
V. 2. Planning and building policies.....	34
V. 3. Building restrictions in the Occupied Territories since the Oslo Accords .....	36
V. 4. The impact of Israeli settlements on building restrictions for Palestinians .....	38
V. 5. Land confiscation/expropriation.....	39
V. 6. Discriminatory enforcement of planning and building regulations .....	40
V. 7. The unrecognized Bedouin villages in the Negev region: trespassers in their homes.....	43
V. 8. Planning and building restrictions in East Jerusalem .....	46
VI. APPLICABLE INTERNATIONAL LEGAL STANDARDS .....	50
VI. 1. Applicability of international law in the Occupied Territories .....	50
VI. 2. International human rights law .....	52
VI. 2.1 The right to housing .....	52
VI. 2.2 Discrimination.....	54
VI. 2.3 Forced eviction.....	55
VI. 2.4 Due process and right to effective remedy.....	57
VI. 3. International humanitarian law.....	58
VI. 3.1 Prohibition on destruction of property and disproportionate use of force ....	59
VI. 3.2 Prohibition on collective punishment.....	60
VII. RECOMMENDATIONS .....	61



# **Israel and the Occupied Territories**

## **Under the rubble: House demolition and destruction of land and property**

### **I. INTRODUCTION**

For decades Israel has pursued a policy of forced eviction<sup>1</sup> and demolition of homes of Palestinians living under occupation in the West Bank and Gaza Strip and the homes of Israeli Arabs in Israel. In the past three and a half years the scale of the destruction carried out by the Israeli army in the Occupied Territories has reached an unprecedented level. The victims are often amongst the poorest and most disadvantaged in both Israeli and Palestinian society. Most of the houses demolished by the Israeli army in the Occupied Territories were the homes of refugee families, who were expelled by Israeli forces or who fled in the war that followed the creation of Israel in 1948.

More than 3,000 homes, hundreds of public buildings and private commercial properties, and vast areas of agricultural land have been destroyed by the Israeli army and security forces in Israel and the Occupied Territories in the past three and a half years. Tens of thousands of men, women and children have been forcibly evicted from their homes and made homeless or have lost their source of livelihood. Thousands of other houses and properties have been damaged, many beyond repair. In addition, tens of thousands of other homes are under threat of demolition, their occupants living in fear of forced eviction and homelessness.

Forced evictions and house demolitions are usually carried out without warning, often at night, and the occupants are given little or no time to leave their homes. Sometimes they are allowed a few minutes or half an hour, too little to salvage their belongings. Often the only warning is the rumbling of the Israeli army's bulldozers and tanks and the inhabitants barely have time to flee as the bulldozers begin to tear down the walls of their homes. Thousands of families have had their homes and possessions destroyed under the blades of the Israeli army's US-made Caterpillar bulldozers. In the wake of the demolitions men, women and children return to the ruins of their homes searching for whatever can be salvaged from under the rubble: passports or other documents, children's schoolbooks, clothes, kitchenware or furniture which were not destroyed.

In most cases the justification given by the Israeli authorities for the destruction of homes, agricultural land and other properties is "military/security needs", while in other cases the justification is lack of building permits. The result is the same: families are left homeless and destitute. They must rely on relatives, friends and charity organizations for shelter and subsistence.

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<sup>1</sup> For the definition of forced eviction, see p 56.

The destruction of Palestinian homes, agricultural land and other property in the Occupied Territories, including East Jerusalem, is inextricably linked with Israel's long-standing policy of appropriating as much as possible of the land it occupies, notably by establishing Israeli settlements. The establishment of Israeli settlements in the Occupied Territories violates international humanitarian law,<sup>2</sup> and the presence of these settlements has led to mass violations of human rights of the local Palestinian population.

As well as violating international humanitarian law *per se*, the implementation of Israel's settlement policy in the Occupied Territories violates fundamental human rights provisions. The seizure and appropriation of land for Israeli settlements, bypass roads and related infrastructure and the discriminatory allocation of other vital resources, including water, have had a devastating impact on the fundamental rights of the local Palestinian population, including their rights to an adequate standard of living and to housing.

Israeli settlements in the West Bank and Gaza Strip have spread considerably in the past decade and in the same period the number of Israeli settlers has increased by more than 50%.<sup>3</sup> With the spread of Israeli settlements and related infrastructure throughout the Occupied Territories, in order to ensure the safety and freedom of movement of Israeli settlers in the West Bank and Gaza Strip, the Israeli army has committed increasingly frequent and grave violations of the human rights of the Palestinian population. These violations include widespread destruction of Palestinian homes, land and other properties, as a result of which thousands of Palestinians have been forcibly evicted and made homeless.

In Israel it is essentially the homes of Palestinian citizens of Israel (Israeli Arabs) which are targeted for demolition. House demolition in the Arab sector is linked to the state's policy of large-scale confiscation of land and to restrictive planning regulations. Much of the land surrounding Arab towns and villages has been confiscated and the remaining Arab owned land has been mostly zoned as green land on which it is forbidden to build. In addition, discriminatory policies in the allocation of state land have further reduced the possibilities for Israeli Arabs to obtain permits to build homes to accommodate their growing housing needs. The resulting long-standing problem of lack of building permits in the Arab sector has led many to eventually build their homes without permits and these homes are frequently demolished. Whereas government policies and planning regulations have curtailed the growth

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<sup>2</sup> - Article 49 of the Fourth Geneva Convention states categorically: "...*The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies.*"

- Article 55 of the Hague Regulations forbids the occupying State from changing the character and nature of state property, except for security needs and for the benefit of the local population. Israel's building of settlements, roads and related infrastructure for Israeli civilians in the West Bank and Gaza does not meet these two exceptional criteria.

- The Rome Statute of the International Criminal Court, in force since 1 July 2002, includes among the war crimes within the jurisdiction of the court the: "*transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies...*" "*when committed as part of a plan or policy or a part of a large scale commission of such crimes*" (Article 8 (2) (b) (viii)). This crime is further defined in the Elements of Crimes, a supplementary instrument to the Rome Statute adopted in September 2002.

<sup>3</sup> At present there are more than 380,000 Israeli settlers in the Occupied Territories, which have a population of some 3,500,000 Palestinians.

and development of Arab towns and villages, in the Jewish sector the policy has been to expand existing towns and villages and establish hundreds of new villages. Moreover, even though violations of planning and building regulations are also widespread in the Jewish sector, it is in the Arab sector that homes are frequently demolished.

This report analyses the main patterns and trends of forced eviction, house demolition and destruction of property by the Israeli army and security forces in Israel and the Occupied Territories in the light of international human rights and humanitarian law.

Amnesty International has campaigned against the practice of house demolition for years.<sup>4</sup> The organization's researchers have visited hundreds of sites of homes and other properties destroyed by the Israeli army and security forces, and interviewed the inhabitants, neighbours, eyewitnesses, relief workers and others. In compiling this report the organization has drawn on information gathered in the course of its research and field work, as well as on information provided by or available from other sources. These include the Israeli authorities, bodies, agencies and mechanisms of the United Nations, international organizations working on the ground, and Israeli and Palestinian lawyers and non-governmental organizations.

The issue of forced evictions, house demolitions and destruction of properties in Israel and the Occupied Territories is only one of the many issues on which Amnesty International campaigns. The organization's main concerns include:

- extrajudicial executions and other unlawful killings of Palestinians by the Israeli army and security forces;
- deliberate killings of Israeli civilians in suicide bombings and other indiscriminate and targeted attacks by Palestinian armed groups;
- the lack of concrete measures by both Israel and the Palestinian Authority to stop and prevent killings of civilians, the lack of adequate investigations and prosecution for the majority of killings, and the impunity afforded by both sides to those who commit gross human rights violations, including war crimes and crimes against humanity;
- arbitrary detention without charge or trial for prolonged periods of individuals suspected of security-related offences and ill-treatment and/or torture of detainees by both Israel and the Palestinian Authority;
- increasingly stringent restrictions imposed by the Israeli army on the movement of Palestinians inside the Occupied Territories and the impact of these restrictions on the fundamental rights of the Palestinian population, including their right to work, to healthcare, to education and to food.

These and other concerns are addressed in numerous reports and other material issued by Amnesty International in recent years.<sup>5</sup>

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<sup>4</sup> See for example *Israel and the Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*; December 1999 (AI Index MDE 15/59/99) and *Israel/Occupied Territories: Wanton destruction constitutes a war crime*, 13 October 2003 (AI Index: MDE 15/091/2003).

<sup>5</sup> Amnesty International's reports, statements and other material are available on <http://web.amnesty.org/library/eng-isr/index>

## II. HISTORICAL BACKGROUND

Between the two world wars the British authorities ruled Palestine under a League of Nations mandate, which ended when the State of Israel was proclaimed on 14 May 1948. Arab protests against a UN partition plan were followed by war between Arab and Israeli armies from which Israel emerged victorious. More than 800,000 Palestinians were expelled or fled from Israel and became refugees in the Gaza Strip, West Bank or neighbouring countries. Two parts of mandate Palestine remained outside Israel: the Gaza Strip, which came under Egyptian administration; and the eastern part of Palestine, which was taken over by Jordan in 1950 and became known as the West Bank. Hostilities between Israel and Egypt, Syria and Jordan in June 1967 ended in Israel's occupation of the West Bank (including East Jerusalem, which was annexed by Israel) and the Gaza Strip. Israel also occupied Syria's Golan Heights (annexed by Israel in 1980) and the Sinai Peninsula (later returned to Egypt).

The Palestinians who remained in Israel after the establishment of the state became Israeli citizens but were placed under military rule until 1966. Many became internally displaced after they were expelled or fled from their villages. The land and properties of the Palestinians refugees and of those internally displaced by the war were confiscated. Today more than 1,000,000 Palestinian and Bedouin citizens of Israel, known as Israeli Arabs, account for some 18% of the population of Israel. Most of them live in northern Israel, in the Galilee and Triangle regions; about 100,000 live in towns known as mixed towns (such as Haifa, Ramle, Lod, Jaffa and Akko); and some 130-140,000 Bedouins live in the Negev in the south of the country. In the West Bank and Gaza Strip some 3,500,000 Palestinians, more than 1,500,000 of them refugees,<sup>6</sup> have lived under Israeli military occupation since 1967 and some 200,000 live in East Jerusalem with a special status as permanent residents.

### **Recent developments:**

Between 1993 and 1995, negotiations between Israel and the Palestine Liberation Organization (PLO) led to a series of agreements, known as the Oslo Accords, between the two parties. A Palestinian Authority (PA) was established, with jurisdiction over parts of the West Bank and Gaza Strip. In 1995 Yitzhak Rabin, the Israeli Prime Minister who signed the Oslo Accords with the Palestinians, was assassinated by an Israeli right-wing activist opposed to the peace agreement with the Palestinians. After that, many of the provisions of the Oslo Accords were never implemented.

In September 2000 a Palestinian uprising (*intifada*) broke out. Since then some 2,500 Palestinians, more than 450 of them children, have been killed by the Israeli army and more than 900 Israelis, including more than 100 children, have been killed by Palestinian armed groups. Tens of thousands of Palestinians have been arrested by the Israeli army, and some 6,000 remain detained, many on charges of involvement in attacks against Israelis. The Israeli army has destroyed thousands of Palestinian homes, large areas of agricultural land and hundreds of other properties. This, and the stringent restrictions imposed by Israel on the movement of Palestinians within the Occupied Territories, have led to the virtual collapse of the Palestinian economy. Most Palestinians in the Occupied Territories live below the poverty line and depend on some form of assistance for survival. Since the outbreak of the *intifada* in 2000 the Oslo Accords have essentially become moot. The PA remains in place but its ability to function has been increasingly curtailed. The Israeli army has repeatedly bombed and raided most of the PA security services installations, prisons and other institutions, and it routinely carries out raids and incursions in Palestinian towns, refugee camps and villages which are supposed to be under the PA's jurisdiction. For the past two years Israel has confined PA President Yasser 'Arafat to his headquarters in the West Bank city of Ramallah, and does not allow Palestinian officials, legislators and civil servants to move freely in the Occupied Territories. Recently rivalries and infighting within the PA leadership, its security and political apparatus and among Palestinian political factions have increased, resulting in a further deterioration of the situation and an increasing spread of lawlessness.

<sup>6</sup> More than 2,500,000 other Palestinian refugees live in Jordan, Syria and Lebanon.

**CASE STUDY: THE BASHIR FAMILY**

The case of the Bashir family illustrates many of the patterns of forced eviction, house demolition and destruction and expropriation of land described in this report. The family – Khalil Bashir, a school principal, his wife Souad, their six children and his elderly mother – has long been under pressure from the Israeli army to leave their home and their land, situated on the edge of the village of Deir al-Balah, in the Gaza Strip, near the Israeli settlement of Kfar Darom.

From the beginning of October 2000 onwards Israeli soldiers frequently raided the house and prohibited the family from using the upper floors and pressured them to leave the house. The family complied with the restrictions, fearing that if they left the house would be destroyed. In November 2000 Khalil Bashir's brother, who lived next door (about 150 meters to the east, further away from the Kfar Darom settlement) gave in to the Israeli army pressures and moved to temporary accommodation, so as to keep his family safe during what he thought would be a passing tension. Within days the army destroyed his house and most of the Bashirs' land around the house, uprooting the olive and date trees and the vegetable orchard.

A few days later, on 4 December 2000, the army destroyed Khalil Bashir's parents' old house, adjacent to his, and occupied the upper floor of his house. Since that date the Bashir family have been confined to the ground floor, while the top floor has been turned into an army base. The middle floor does not appear to be used by the soldiers but the family is not allowed upstairs. The soldiers have placed their own ladder at the back of the house to access the top floor and the roof, have blocked the upstairs windows and the edges of the roof-terrace with sandbags and camouflage, and have made holes in the external walls all around the house which they use as sniper positions. Loud banging and debris thrown into the courtyard indicate that internal walls have been torn down.

Even though the Israeli army has full control of the house, from the house itself and from the watchtower a few meters away<sup>7</sup>, soldiers have frequently opened fire on the house from their watchtower and from the settlement. The sides of the house which face the army position and the settlement are riddled with bullets, including heavy calibre bullets and shells, and the ground floor rooms facing the army position (the kitchen and a bedroom) have sustained extensive damage from army fire. Amnesty International delegates have visited the Bashirs' house on several occasions in the past three years and inspected the damage. Three members of the Bashir family have been injured by Israeli army fire. On 13 October 2000, Khalil Bashir's 17-year-old son Yazan was shot and injured in the leg while he was getting water to put out a fire in the garden, apparently caused by a flare thrown by the army. On 28 April 2001 soldiers shot from the watchtower into Khalil Bashir's bedroom while he was lying on his bed reading, injuring him in the back of the head and neck, and causing extensive damage inside the room. On 18 February 2004 Israeli soldiers shot from the watchtower opposite the house and seriously injured Khalil Bashir's 15-year-old son Yusuf. At the time Yusuf was outside the house with his father, seeing off their visitors, two United Nations (UN) staff members and a

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<sup>7</sup> In 1992, after the killing by a Palestinian of an Israeli settler from the Kfar Darom settlement, Israeli settlers damaged some Palestinian properties in the area and appropriated a piece of the Bashirs' land, between their house and the settlement. Shortly afterwards, the Israeli army built a watchtower on the piece of land which had been appropriated by the settlers.

staff member of the United Nations Association International Services (UNAIS). The three visitors had just got into their vehicle, clearly marked with the UN emblem, and were about to leave when a single shot was fired from the Israeli army watchtower, about 20 meters from where they were standing. Yusuf was hit by a bullet in the back, very close to the spine. At the time of writing he remains in hospital and it is not known if he will walk again.

Over the past three and a half years the Israeli army has progressively destroyed all the cultivated land around the Bashirs' house. By the late summer of 2001 only the garden in front of the house remained untouched, with well-tended palm trees and flowers. On the evening of 23 August 2001 the army uprooted the palm trees and the rest of the vegetation and destroyed the low wall separating the garden from the road. Four days later the army destroyed a chicken barn adjacent to the house. The destruction of the Bashirs' garden appears to have been part of a large scale operation carried out by the IDF in the area in retaliation for a Palestinian mortar attack against the Kfar Darom settlement earlier that day.<sup>8</sup>

The repeated attacks against the Bashirs' home and the destruction and damage of their houses and land serve no apparent security purpose and appear to be part of a pattern of intimidation and harassment aimed at forcing the family to leave their home.

In January 2004 the Israeli army issued a seizure order for some land belonging to Palestinians in the area around the Kfar Darom settlements (see p. 27). Part of the land being seized belongs to the Bashir family and is situated behind their house. An appeal challenging the seizure order is currently pending.

Usually houses which have been taken over by the Israeli army cannot be accessed without prior authorisation from the Israeli army but for the first three years some representatives of international organizations and foreign journalists were able to visit the Bashir family without seeking permission from the army. However, in February 2004 Israeli soldiers in the watchtower opposite the Bashirs' house told international UN staff members that they needed prior authorization from the army's command to visit the family. The family has consistently avoided receiving relatives or friends out of fear that the Israeli army may harm local visitors or accuse them of attempting to attack the soldiers stationed in the house.

Khalil Bashir and his family told Amnesty International about the difficult situation in which they live: *"I do not understand why the soldiers behave as they do, why they treat us as if we were enemies when they know that we have never caused any harm to them or to others. We have always extended our hands in peace and still do, in spite of everything. We are absolutely opposed to violence and have told the soldiers many times that so long as we are in our house we will never allow anyone to shoot from this house. The soldiers know that no attack, no act of violence has ever been committed by us or by anyone else from this house. It is for this reason that we will never leave our house, because we know that the minute we leave the house empty the army will claim that it was used by gunmen and will destroy it. That is what they did to my brother and to many others. They forced my brother to leave, and as soon as he left they destroyed his house. I do not understand this logic, what are they thinking*

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<sup>8</sup> On 23 August a mortar launched by Palestinians fell on a house in the Kfar Darom settlement, smashing the roof and the ceiling of a room but causing no injuries. A statement issued the following day by the Israeli army Spokesperson's Unit makes no mention of the destruction of the Bashirs' property and of other properties in the area.



*when they do such things? One day they destroy a piece of land and the next week they destroy something else, as if it was a game, but they destroy people's lives. They are putting our family through a terrible ordeal. But in spite of everything we believe in peace, because we should live in peace as good neighbours. This is what we have always taught our children and this is what we believe even now with the soldiers on top of us, raiding our home, shooting at us and humiliating us. We do not respond to the soldiers' provocations. We do not respond to violence with violence and we are determined not to leave our home, no matter what they do. This ordeal has been going on for years, they took some of our land, raided my house, and in the last years it got so much worse; our greatest worry is for the safety of our children."*

In the past two years three of the Bashirs' oldest children have gone to study abroad. In February 2004, shortly after the Israeli army shot Yusuf Bashir, his 18-year-old sister Amira, who is now studying abroad, told Amnesty International: *"I am so worried for my brother, I don't know if he will walk again; and I am worried about my three little siblings, my parents and my grandmother and I pray that they will be safe, that nothing will happen to them. The home should be the safest place but for our family it is not; but it is our home and we should not be forced to leave it. No one should be forced out of their home and we won't leave our house. We have never harmed any Israeli or anyone else. We just want to live in our home in peace"*.

### **III. PATTERNS AND IMPACT OF PROPERTY DESTRUCTION AND FORCED EVICTION**

The destruction of houses, land and other properties falls into two categories: houses built without a permit and houses, land and other properties which the Israeli army claims are destroyed for "military/security needs", including the destruction of the family homes of Palestinians suspected of carrying out attacks.

**1 – Unlicensed houses:** The destruction of houses in the Arab sector in Israel and in parts of the Occupied Territories on the ground that they were built without a permit. Hundreds of homes have been demolished in the Arab sector in Israel in the past few years alone, whereas such demolitions in the Jewish sector are an extremely rare occurrence, if they occur at all. Similarly, in the Occupied Territories it is invariably Palestinian homes and other properties which are destroyed while Israeli settlements, which are illegal under international law, continue to be expanded. The main reasons why many houses are built without a permit in the Arab sector in Israel and in parts of the Occupied Territories, including in East Jerusalem, is the fact that it is very difficult and often impossible for Israeli Arabs and Palestinians to obtain building permits in these areas.

**2 – "Military/security needs":** The vast majority of the homes, land and other properties destroyed by the Israeli army in the West Bank and Gaza Strip in recent years fall under the category, which Israel defines as destruction for "military/security needs". The scale of the destruction in this category is massive, including more than 3,000 Palestinian homes, large areas of cultivated land, hundreds of commercial properties (shops, workshops and factories) and public buildings, as well as tens of thousands of other homes and properties which have been damaged, many beyond repair. The criteria used by the Israeli army to define

“military/security needs” are extremely broad. This category can be divided into four, at times overlapping, sub-categories:

**A.** Punitive demolitions of houses belonging to families of Palestinians who are known or suspected of involvement in suicide bombings and other attacks against Israeli civilians and soldiers have become routine. The Israeli authorities assert that these homes are destroyed as a “deterrent”, in order to dissuade other Palestinians from carrying out attacks against Israelis. Usually these houses are blown up by the Israeli army, frequently resulting in neighbouring houses also being destroyed or damaged.

**B.** Houses, land, and other properties which the Israeli authorities claim it is necessary to destroy for “security needs”, notably to build or expand roads or other infrastructure for the benefit or protection of Israeli settlers or soldiers.

**C.** The destruction of houses, land and other properties which the authorities contend were used or could be used by Palestinian armed groups to shoot or launch attacks against Israelis, and which Israel argues it is entitled to destroy at any time. This category, which the authorities often refer to as “preventive”, may include any house or property near Israeli settlements, army positions and roads used by Israeli settlers and soldiers. When carrying out this kind of operations, the Israeli army frequently targets several homes, and on a number of occasions tens or even scores of homes have been destroyed in one single operation. Even though the Israeli authorities claim that the destruction is intended to prevent future attacks from the area, such demolitions are often also manifestly carried out in retaliation for Palestinian attacks and as a form of collective punishment on the inhabitants of a given area. In some cases the destruction also serves the purpose of removing Palestinians from areas where Israel has a particular interest in seizing control of the land, notably near Israeli settlements and army positions, along the Green Line between Israel and the Occupied Territories and along the border with Egypt, with a view to subsequently expanding Israeli settlements or building new roads or other infrastructure intended to consolidate and/or benefit Israeli settlements and/or strengthen Israel’s hold on the land.

**D.** Properties which Israeli authorities claim were destroyed in the course of combat activities.

The majority of the homes that were demolished and damaged on grounds of “military/security-related needs” were located in the Gaza Strip and a large percentage were in refugee camps. These demolitions have targeted the poorest and most vulnerable sector of the Palestinian population in the Occupied Territories. The destruction of homes is mostly carried out at night, with no prior notification. Usually, the only warning for the inhabitants is the rumbling of armored bulldozers and tanks approaching and beginning the destruction. Their arrival is often accompanied by Israeli army gunfire in an effort to make the residents vacate their homes and discourage resistance. The occupants of the targeted houses are almost without exception given no opportunity to salvage their possessions. In some cases people have been injured and even killed by collapsing structures or while fleeing; others were beaten, ill-treated or fired upon as they tried to protest or resist the demolition.

### **III. 1. Impact on the economic situation**

In addition to the demolition of thousands of homes, the extensive destruction of agricultural land will continue to have severe repercussion on the Palestinian economy for many years to

come. Hundreds of thousands of olive, citrus, almond, date and other trees have been uprooted by Israeli army bulldozers, along with vegetable and other crops. Olive trees particularly take many years to grow and become productive. The trees and orchards uprooted in the past three and half years constituted a source, and in many cases the only source, of livelihood for hundreds of thousands of people. Agriculture was a major sector of the Palestinian economy, especially since most Palestinians who used to work in Israel have no longer been permitted to do so in recent years. Many had invested their savings to develop and improve their family farms with costly greenhouses and irrigation networks, only to see them destroyed by Israeli army bulldozers, often before they could harvest their crops. The land on which trees and crops stood has since been made inaccessible to Palestinian farmers and it now either lies in waste or is being used by the Israeli army. Even if Palestinians were allowed to resume farming the land which has been destroyed in recent years, it would take a long time and considerable resources for it to become productive again.

### **III. 2. Impact on women**

*“The children look to us, their parents, for protection and security and when our home was destroyed they were traumatized by the experience and destabilized by the situation we found ourselves in, without a home. People came to destroy our home and we, their parents, could do nothing to prevent it; they lost all their belongings and we could not replace them; I was no longer able to give them what they needed most, a home and a sense of security. I tried to comfort them but didn’t have the means to make them feel secure. I myself was so traumatized by what happened that I could not cope for quite a long time”.*

‘Arabia Shawamreh, mother of seven children, whose home was demolished four times

The majority of the tens of thousands of people who have been forcibly evicted and made homeless by the destruction of their homes are women and children, mostly refugees. All those whose homes have been destroyed have been affected, individually and as families, as they are forced to make adjustments and live in conditions which often place additional strains on their family relations.

Most Palestinian women do not work outside the home and their house is the space which they feel is their own. Men spend more time outside the house for work and social activities, and children go to school and play outside, whereas for most women the running of the house is mainly their responsibility or their primary activity. Whether they work outside the house or not, women devote a significant amount of their time and energy in unremunerated and often overlooked work in the home, and are therefore particularly affected by forced eviction and the destruction of their homes. When families are made homeless by the demolition of their homes, women bear the brunt of rebuilding the home.

In most cases the families whose homes have been demolished cannot afford to pay for alternative accommodation and have therefore been forced to move in with relatives, who often do not have sufficient space to accommodate an additional family. Since women spend more time in the house it is they who are more affected by the discomfort of living in someone else’s space, where they can no longer take responsibility for the administration of the family space and activities.

In addition to the practical problems, the loss of privacy and space often puts strain on the relationships between family members. Mothers often feel undermined in their role as a source of authority and emotional and material support for their children.

*“That was the beginning of a new type of suffering. Staying in my parents’ old house has robbed me of my freedom – I have to take their feelings constantly into account, and I do not want to become a burden. I also have to keep the house spotless; it is not our home so we have to be considerate. I am missing out on spending time with my husband because I’m so preoccupied with taking care of the children. I feel constantly tense, desperately needing a private place for my family; even a small room with mice would be fine for us! I want my children to be able to move around as they wish and to play freely with their toys. I want us to feel that we are still a family. I have become so depressed that I cannot eat, and this depression has had an effect on my husband and children.”*

Testimony of a woman whose home was demolished, to the Women’s Centre for Legal Aid and Counselling (WCLAC), Ramallah, West Bank

In its submission to the 59<sup>th</sup> session of the UN Commission on Human Rights in March 2003 the Centre on Housing Rights and Evictions (COHRE) noted that:

*“Women suffer immensely from forced eviction. ... Domestic violence is higher in the precarious and often stressful situation of inadequate housing, especially before and during a forced eviction.”*

Women’s rights organizations in the Occupied Territories agree that Palestinian women are particularly affected by forced eviction and house demolition and by the increased tensions which often develop within the affected families as a result, including an increase in domestic violence. Moreover, women whose families have been made homeless as a result of the demolition of their homes feel even less able to complain and seek redress, both because they feel that in the face of the loss of the family home their grievances are not seen as a priority and because the additional practical and financial difficulties caused by the destruction of the family home make it more difficult to find a solution to their individual problem.

## **IV. DESTRUCTION FOR “MILITARY/SECURITY NEEDS”**

### **IV. 1. Punitive house demolition**

On 3 March 2003 Noha Maqadmeh, a mother of 10 children who was nine months pregnant, was killed in her bed in the middle of the night when her home collapsed as Israeli soldiers blew up a neighbouring house, in the al-Bureij refugee camp in the Gaza Strip. (The targeted house belonged to the family of a Palestinian who had carried out a shooting attack against Israeli soldiers three weeks earlier at the Gush Katif Junction). Noha’s husband and most of her children were injured, some of them seriously. Six other nearby houses were destroyed by the blast, leaving some 90 people homeless. Noha’s husband Shukri, still wearing a neck brace and in pain from the injuries he sustained when their home collapsed on the family, told Amnesty International: *“We were in bed, the children were asleep; the bedroom was the most sheltered room, at the back of the house, away from the tanks shooting in the street. There was an explosion and walls collapsed on top of us. I pulled myself from under the rubble and*

*called for help from my neighbours, but the tanks were shooting at anyone who went outside into the street and no one could come. I was in pain, didn't know what to do. I started to dig in the rubble with my hands; first I found my two little boys and my three-year-old girl. Then my older boy and girl (17 and 16 years old) managed to get out from under the rubble and helped me to dig for my wife and the other children. Then my neighbours came in to help and one by one we found the other children but my wife remained trapped under the rubble with our youngest daughter, who is two; she was holding her when the wall fell on her. As we got to them I could hear that she was in pain, she was injured and she kept urging me to help the children, and the children were crying for their mother. We called an ambulance but it could not approach because the tanks were still outside. We wanted to carry her in a blanket to the nearby UNRWA clinic but the tanks were shooting at anyone who got out into the street. When the soldiers left my neighbours took us to hospital but she died before reaching the hospital. Maybe if the ambulance had been allowed to come, if she could have got to hospital soon, she would have been saved, I don't know. She died, the baby who was due to be born a few days later died, and now our 10 children don't have a mother anymore and we don't have a home anymore. I still can't move my neck; the children were injured and are traumatized. What can I tell them when they ask me why the Israelis did this to us? We never harmed anyone, they killed my wife and destroyed our lives."*

According to the Israeli army "*the demolition of houses of terrorists sends a message to suicide bombers and their accomplices that anyone who participates in terrorist activity will pay a price for their actions*".<sup>9</sup>

The practice of destroying the homes of the families of Palestinians known or suspected of attacks against Israelis was widely used by Israel in previous decades but had been discontinued since 1997. It was resumed in 2001 and since then hundreds of houses have been destroyed for this reason in the West Bank and Gaza Strip. Israel has never used this practice against Israeli Jews convicted of serious politically motivated crimes, such as the murder of the Prime Minister or bomb attacks against Palestinians or Israeli Arabs.

Since it resumed this policy in 2001 the Israeli army has destroyed close to 500 homes of families of known or suspected Palestinian attackers. These houses are usually blown up, whereas for other types of demolitions the army generally uses armored bulldozers, except for larger and sturdier buildings. The army uses powerful explosive charges and frequently nearby houses are also destroyed or seriously damaged in the process. In the past, when the Israeli army targeted the homes of families of known or suspected Palestinian attackers it often sealed, rather than destroyed, the houses, a measure which, unlike demolition, can eventually be reversed.<sup>10</sup> However in the past three years the targeted houses have been systematically destroyed.<sup>11</sup>

<sup>9</sup> This sentence is usually included in the announcements made by the Israeli army's Spokesperson about this category of house demolition. See: [www.idf.il/newsite/english/main.stm](http://www.idf.il/newsite/english/main.stm)

<sup>10</sup> These practices became widespread during the first *intifada* (1987 to 1993). Between 1987 and 1997 the Israeli army demolished some 500 homes of families of known or suspected Palestinian attackers and sealed more than 300 others.

<sup>11</sup> The only exceptions have been some three apartments in the Jerusalem area, which have been sealed or filled with concrete.

On 10 September 2003, the Israeli army blew up an eight-storey apartment building in the Wad Abu Kteila district of Hebron. 68 people were made homeless, 53 of them women and children.

Hana 'Ajluni, who lived in the building, told Amnesty International: *"My husband was in hospital and I was at home with my five children: Muhammad who is just two months old, Rania, 2, 'Umar, 4, Rami, 5, and Shadi, 11. At about 3 or 4am I heard shooting and sound bombs and got up in a panic. The soldiers were shouting in Arabic 'those who want to live get out and those who stay will die'. They kept shouting but I don't know what; I froze, didn't know what to do. Then I grabbed the children and started to leave the building; the soldiers were still shooting as we reached the front door of the building to get out. One of my neighbours, Basem, was injured in the neck. As we stood outside the front door the soldiers made all of us women take off our headscarves and all the men undress, there in the street in front of us and the children. Then they handcuffed and blindfolded all the men one by one and took us across the road and put us all (women and children) together in a room, and the men*



Hana and Hassan 'Ajluni and their children, September 2003.  
© AI

*in another room. Before they took us into that house they had put all the residents of that house into one room. Basem, who was injured in the neck, was not taken to hospital until a few hours later. At about 10am they let us women and children go out but we could not return to our homes because the soldiers were still shelling the building. The men were kept until about 6pm. At about 2pm the soldiers took out the bodies of two armed men they had been chasing but we were still not allowed to go back to our homes. I kept wondering how much damage there would be to*

*my apartment; I had no idea that I would never see my home again. At about 6pm the soldiers blew up the building but it did not collapse; the first three floors were partially destroyed but the building was still standing, but we could not go back in anymore because it was very dangerous. The following morning the soldiers put more explosives and the whole building collapsed, as you see it now. When my husband came home from hospital the following day he found that we don't have a home any more. We had been living in this building for six months only, we had bought our apartment, spent all our savings; it was a beautiful and spacious apartment with four bedrooms; it was a new building, Now we are living in a tent, with nothing ..."*

A nine-year-old child, Tha'ir Muhammad al-Suyuri, who lived in a nearby building, was killed by shrapnel from a shell fired by an Israeli army tank during the attack. He had been standing at the kitchen window to see what was happening. Tartil Abu Hafez Ghaith, an 18-year-old student, was also standing at her kitchen window one floor above, and was seriously injured in the stomach by shrapnel from the same tank shell.

The two armed Palestinians who were killed inside the building did not live there and the inhabitants of the building said they were not known to them.<sup>12</sup> It is not entirely clear what was the reasoning of the Israeli army behind the destruction of this building. The Israeli army announced that it had "...demolished the house of Abdallah Kawasamah, and his brother, Basal Shafik Kawasmah. The two Hamas operatives planned many terrorist attacks and dispatched a number of terrorists".<sup>13</sup> However, according to the inhabitants of the building neither man lived in the building. The building was new and contained 26 apartments, 16 of which were inhabited (the families had moved in the previous few months) and the rest were not yet occupied. The building belonged to 'Umar Hassan al-Qawasmi and one of the tenants in the building was Jawad 'Umran al-Qawasmi, whose son Fu'ad had had his house destroyed by the Israeli army on 18 May 2003.<sup>14</sup> The al-Qawasmi family is a very large extended family. Most of the 15 other families who lived in the building had bought their apartments.

The Israeli authorities contend that these demolitions are not intended to punish the families of suicide bombers and others known or suspected of involvement in attacks, but rather to "deter" potential attackers, who may refrain from getting involved in attacks if they know that their families will be made homeless and will suffer because of their actions.

Amnesty International considers these punitive forced evictions and house demolitions as a flagrant form of collective punishment, a violation of a fundamental principle of international law. The Israeli authorities' claim that such demolitions are effective in dissuading potential attackers is entirely irrelevant in light of International humanitarian law, which places clear limits on the actions which an occupying power may take in the name of security, and the absolute prohibition on collective punishment is one of the most important of these rules. Collective punishment is never permissible under any circumstances.

The al-Najmah family, whose son Shadi participated in a shooting attack in Netanya on 9 March 2002, in which two Israeli civilians were killed and 50 wounded, was punished for the act committed by their son. The family house in al-'Ayn refugee camp in Nablus was destroyed on 22 October 2002 at 2.30am. Shadi's parents and siblings, including a married brother with his wife and their child, lived in the house. The powerful explosive charge used by the Israeli soldiers to blow up the al-Najmah family house also destroyed six other nearby houses in which nine families lived. The 61 inhabitants of these houses were left homeless as a result. One of the destroyed houses belonged to Maryam Sheikh. She told Amnesty International: "*This was our home, for me, my three sons and my daughters-in-law and their children, 27 of us in all. One of my sons raised birds for a living; all the birds were killed when the army blew up the houses; he had 4,000 shekels worth of birds at the time. The army gave us no time to take out anything; just a few minutes to gather the children and get out of the house*". The following day the Israeli army issued a statement announcing that it had destroyed the al-Najmah house, but making no mention of the fact that six neighbouring houses were also destroyed when the soldiers blew up the al-Najmah house.<sup>15</sup>

<sup>12</sup> One of them was 'Izzeddine Misk, whose house was also destroyed the following day. See:

<http://www.idf.il/english/announcements/2003/september/12.stm>

<sup>13</sup> <http://www.idf.il/english/announcements/2003/september/11z.stm>

<sup>14</sup> <http://www.idf.il/english/announcements/2003/may/19.stm>

<sup>15</sup> <http://www.idf.il/english/announcements/2002/october/23.stm>

## IV. 2. “Preventive” and “security” destruction

### IV. 2.1 The West Bank

Forty-year-old Nabila al-Shu’bi, who was seven months pregnant, her three children Anas, ‘Azzam and ‘Abdallah, aged 4, 7 and 9, her 48-year-old husband Samir, her sisters-in-law Fatima and ‘Abir (aged 57 and 38 respectively) and her 85-year-old father-in-law ‘Umar, were left to die under the rubble of their home, when it was demolished by Israeli army bulldozers on 6 April 2002 in the old city of Nablus. The Israeli army kept the area under strict curfew for days, denying access to rescue workers, and it was not until a week later, on 12 April, that their bodies were found under the rubble of the house by relatives and neighbours. It is not known if they were killed by the collapsing walls or if they died later from injuries or of asphyxiation. Two other relatives survived trapped under the rubble for a week.

When the army briefly lifted the curfew on 12 April 2002 Nabila’s brother-in-law, Mahmud ‘Umar, started to dig in the rubble of the house with the help of his neighbours, hoping to find his relatives alive. They continued to dig after the Israeli army re-imposed the curfew after two hours, in spite of warning shots fired by Israeli soldiers in their direction. They first came across a small opening on the ground floor of where the house once stood; miraculously, in the small space that remained, 67-year-old Shamsa and her 68-year-old husband ‘Abdallah were still alive. The rescuers went on digging through the night and eventually found the bodies of the other eight members of the family, all huddled in a circle in a small room.

Neighbours whose homes were demolished at the same time as the al-Shu’bi’s house and who fled when the demolition began, told Amnesty International that the soldiers did not warn the residents to evacuate the houses before beginning the demolition. No comment was issued by the Israeli army about individual demolitions during these large-scale military operations.<sup>16</sup>

Large scale destruction of houses and other properties in the West Bank began in early 2002, when Israel launched a series of prolonged offensive operations, incursions and raids in refugee camps and towns throughout the West Bank. In every refugee camp and town they raided, Israeli soldiers left a trail of destruction. Army tanks rolled over parked cars, broke down walls and house fronts and smashed electricity poles. Extensive damage was also caused to houses, shops and other buildings by bullets and tank rounds.

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<sup>16</sup> See Amnesty International’s report *Israel and the Occupied Territories: Shielded from scrutiny: IDF violations in Jenin and Nablus*, 4 November 2002 (AI Index: MDE 15/143/2002).



The largest single demolition operation carried out by the Israeli army was in Jenin refugee camp in April 2002. The army completely destroyed the al-Hawashin quarter, an area of 400 x 500 meters, and partially destroyed two additional quarters of the refugee camp, leaving more than 800 families, totaling some 4000 persons, homeless.<sup>17</sup> In the course of this and other Israeli army offensives there was considerable armed resistance by Palestinians, and the Israeli authorities claimed that the army destroyed the area in the course of combat with Palestinian gunmen.



Man pointing at the rubble of his destroyed house in Jenin refugee camp, April 2002. © AI

However the evidence, including aerial photographs of the refugee camp, indicates that when the Israeli army carried out much of the bulldozing of houses the armed clashes between Israeli soldiers and Palestinian gunmen had already stopped and Palestinian gunmen had already been arrested or had surrendered.<sup>18</sup> After thorough investigation of the Israeli army operations in Jenin and Nablus, Amnesty International concluded that the extensive destruction of homes and properties by the Israeli army was not justified by military necessity and as such constituted a war crime.

Since mid-2002 Israeli army raids in refugee camps in the West Bank have been less intensive and prolonged but more frequent, and destruction of Palestinian homes and other properties by the army in the course of such operations has continued. Amnesty International considers that most of the destruction carried out in these raids has been unnecessary and/or disproportionate.

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On the morning of 5 September 2003 Israeli soldiers blew up a seven storey building in Nablus in which eight families lived, including 31 children, most of them less than 12 years old. Ibtisam, a teacher and mother of four children (three girls aged 13, 9 and 9 months and one boy aged 11) told Amnesty International: *At about 9-9.30 pm Israeli soldiers called on all of us living in the building to get out; they used a megaphone and spoke in Arabic; they said we had to leave the building immediately. We were in pajamas, the children were in bed already; me and my husband took the children from their bed and we all went downstairs as we were, we didn't even have time to get dressed. It was the same for the other neighbours; we all have children, we all scrambled to get the children from their bed and get out. It was a panic; I didn't have time to take milk or anything else for my baby; I just had time to wrap her up. We were scared, didn't know what was happening. I was still in pain from the recent back operation I have had and I tried to explain this to the soldiers but they were rude and did not allow me to sit down. They took us all to the school across the road (the Said Ibn 'Amr School), blew up the door to get it open and put us all inside, we women and children in the*

<sup>17</sup> Information supplied to Amnesty International by UNRWA on 13 June 2002.

<sup>18</sup> See footnote 15.

basement and all the men on the third floor. We were kept there all night, with no food, water, nothing; we had no idea what was happening with our husbands, we were worried; we kept trying to get the children to sleep but most cried and did not sleep. There was a lot of shooting, heavy shooting from tanks. At about 6am the soldiers allowed me and four other women who had small babies to go back into the building to get milk for the babies; we needed things to change the babies and for the other children too but the soldiers only gave us 5 minutes. The building was in a bad state, it had been fired at a lot. Before we were allowed to go in, at about 3.30am, the soldiers had sent one of the men in with a group of soldiers to inspect the place, then they sent him back to the school and later they sent him back in with another of the men; just the two of them without the soldiers, and told them to go bring the body of the armed man they had killed. They found the armed man who had been killed by the army; his head and right arm were missing, his left arm was broken and he had other injuries. He was armed. The two men took his body downstairs but left his gun upstairs and the soldiers sent them back up to get it and made them inspect the body before they approached. Then the soldiers took the two men back to the school and we all stayed there a few hours more. Then suddenly the soldiers blew up the building, without telling us and without allowing us to go in to get anything. We were left with nothing, in our pajamas. Why did they have to blow up the place? There was no one left in the building after they killed that armed man; he didn't live in our building, we didn't know him and didn't know he had got into the building; how could we know? I stayed in my apartment, we all did, and all the more

so after dark; how can we know who comes in and out of the building? It was a big building. We had saved for 14 years to buy this apartment; it was fully equipped and we had lived in it less than a year. Now we have nothing, all our furniture, clothes, documents, money, the children's school bags, our photographs, everything got buried in the rubble. The children have been traumatized by what happened, they saw their home destroyed, and every day they see the rubble of their home and don't have a



These women and children were made homeless when the Israeli army destroyed a seven-storey apartment building in Nablus on 5 September 2003. After the destruction they had to move in with relatives. © AI

home any more. Now me and the children are staying with my father and my husband moves between relatives; it is very difficult. What am I supposed to tell my children when they ask what happened and why this happened to us? We just want to live in peace and dignity, we ask for nothing else". There was no comment from the Israeli army about the destruction of this building.

## IV.2.2 Farms and agricultural land destroyed to build the fence/wall



Construction of the concrete wall in Abu Dis, East Jerusalem, March 2004. © AI

depths. To date less than half of the route has been completed, mostly in the northern regions of the West Bank and around Jerusalem. In addition to the large areas of particularly fertile Palestinian farmland that have been destroyed, other larger areas have been cut off from the rest of the West Bank by the fence/wall. According to the Israeli authorities the fence/wall is intended to block entry into Israel to Palestinian suicide bombers and other potential attackers. However, the fence/wall is not being built between Israel and the Occupied Territories but



A US-made Caterpillar bulldozer is destroying land to build the fence/wall near Ras Atiya, West Bank . © AI, 2003

Since the summer of 2002 the Israeli army has been destroying large areas of Palestinian agricultural land, as well as other properties, to make way for a fence/wall which it is building in the West Bank. The fence/wall is planned to run for some 650 kilometers, most of it through the West Bank, from north to south.<sup>19</sup> It has an average width of 60 to 80 meters, including barbed wire, ditches, large trace paths and tank patrol lanes on each sides of the fence/wall, as well as additional buffer zones/no-go areas of varying mostly (close to 90%) inside the West Bank, turning Palestinian towns and villages into isolated enclaves, cutting off communities and families from each other, separating farmers from their land and Palestinians from their places of work, education and health care facilities and other essential services. This in order to facilitate passage between Israel and more than 50 illegal Israeli settlements located in the West Bank.<sup>20</sup>

<sup>19</sup> In February 2004, on the eve of the International Court of Justice's hearing on the legality of the location of the fence/wall inside the West Bank, changes were made to some 15 km of the already built fence/wall in the West Bank and Israeli officials announced that further changes were being considered to the planned route in areas where the fence/wall has not yet been built. At the time of writing no confirmed information was available concerning possible changes.

<sup>20</sup> For more details see Amnesty International's report *Israel and the Occupied Territories: The place of the fence/wall in international law*, 19 February 2004 (AI Index: MDE 15/016/2004).

“Military/security needs” cannot be invoked to justify measures that benefit unlawful civilian Israeli settlements at the expense of the occupied Palestinian population. The construction of the fence/wall inside the Occupied Territories is such a measure. Routing the fence/wall *inside* the West Bank in a manner purportedly aimed at protecting unlawful settlements and resulting in unlawful destruction and appropriation of Palestinian property and other violations of Palestinian rights is not proportionate or necessary. The fence/wall, in its present configuration, violates Israel’s obligations under international humanitarian law.

In the village of ‘Izbat Salman, near Qalqilya, the Quzmar family, like their neighbours, lost most of their land when the fence/wall was built around their village. ‘Abd al-Nasser Quzmar used to work in Israel but with the outbreak of the *intifada* access to Israel became impossible and his land became his only source of income, the only means for him to support his family of six. He invested all his savings in the family farm to make it more efficient and productive, built greenhouses and a sophisticated irrigation system for intensive cultivation. When Amnesty International first visited the village in October 2002, ‘Abd al-Nasser Quzmar and the other villagers had just learned that the fence/wall was going to encircle their village, destroying much of their land and cutting them off from the rest of it. Marks made by the Israeli army on stones and trees indicated where the fence/wall was going to be built, tightly around the village. However the villagers were not notified in advance of its exact locations. Some only found out when the Israeli army bulldozers arrived and started to uproot trees and whatever else was on the land and others found the military orders for the seizure of their land left by the Israeli army posted on trees. The villagers’ protests and court appeals were to no avail. Thousands of olive and citrus trees and vast vegetable orchards were destroyed to make way for fences, ditches and patrol lanes. Most of the remaining land belonging to ‘Abd al-Nasser Quzmar and his neighbours is now on the other side of the fence/wall, and it is difficult at best and often impossible for the farmers to reach their land.

#### IV. 2.3 The Gaza Strip

*"You have a very striking picture of people fleeing. But fleeing to where? If you're in Rafah, you can't go south because there is a border, you can't go west because there is an ocean, and you can't go north and you can't go east because there is nowhere to go. You can't get out of Gaza. So, if you've been a refugee many times over there is no longer anywhere to where you can flee".*

Peter Hansen, UNRWA Commissioner-General, speaking after the large-scale destruction of refugee homes in Rafah (Gaza Strip) in October 2003.

The destruction of homes has been most extensive in the Gaza Strip, one of the most densely populated areas in the world,<sup>21</sup> where in the past three and half years close to 3,000 homes have been destroyed, most of them homes of refugees. According to the United Nations Relief and Works Agency (UNRWA) between October 2000 and October 2003, more than 2,150 homes were destroyed and more than 16,000 damaged. In the same period 600 homes were

<sup>21</sup> The Gaza Strip covers an area of 360 km<sup>2</sup>, and is home to some 1.3 million Palestinians. Palestinians are barred from more than a third of the land in the Gaza Strip, which is used exclusively by some 6-7,000 Israeli settlers and by the Israeli army.

destroyed in the West Bank.<sup>22</sup> The families whose houses were demolished have been living in tents donated by humanitarian organizations, in already over-crowded relatives' homes or in rented apartments. However, the latter option is one which most victims of house demolition cannot afford, unless they receive assistance from the donor community. In his 2003 annual report to the UN Secretary-General, UNRWA's Commissioner-General, referring to the large-scale destruction by the Israeli army of Palestinian refugees' homes, stated that:

*"the rhythm of shelter destruction in the Gaza Strip increased significantly"*<sup>23</sup> and that UNRWA *"was not able to keep up with the pace of shelter destruction"*.<sup>24</sup>



House demolition in Rafah refugee camp. © AI, July 2001

In a three-day operation which started on 10 October 2003 the Israeli army destroyed some 130 houses and damaged scores of others in Rafah refugee camp and nearby areas, making more than 1,200 Palestinians homeless. According to UNRWA 76 refugee homes were completely destroyed, 44 were partially destroyed and 117 were damaged. Several non-refugee homes were also destroyed in the same operation near the refugee camp. Most of those left homeless were children.

Hamda Radwan, a 67-year-old refugee and several of her relatives were among those whose homes were destroyed. Hamda, a refugee, had previously lost her home in 1948, when she and her family had to flee from their homes in Jaffa during the war which followed the establishment of the state of Israel.

Suha 'Abdallah, whose house was partially destroyed in the same operation, told Amnesty International: *"There was no tunnel or anything in our home, anyone can come and see for themselves; part of the house is still standing but it is not safe anymore; the remaining walls could collapse at any moment. The soldiers know that we didn't do anything, they came to the*

<sup>22</sup> See: [www.un.org/unrwa/emergency/appeals/7th-appeal.pdf](http://www.un.org/unrwa/emergency/appeals/7th-appeal.pdf).

<sup>23</sup> Shelter is the term used by UNRWA for the homes in the refugee camps it administers.

<sup>24</sup> Report covering the period 1 July 2002 – 30 June 2003. Ref: A/58/13, Supplement No. 13, dated 10 October 2003.

*house and my husband and my son were there and they told us to leave immediately. We had no choice. They smashed some things and took other things and destroyed part of the house; why? And now what are we to do? Destroy the rest of the house ourselves so that it does not fall on anyone”.*

The already poor sewage system was further damaged by the Israeli army tanks and bulldozers, along with water mains and electricity and telephone lines. The Israeli army stated that during the operation it had uncovered three tunnels used by Palestinian armed groups to smuggle weapons from Egypt to the Gaza Strip.<sup>25</sup> In the preceding six weeks some 50 other houses were also demolished in Rafah, leaving hundreds more Palestinians homeless.



House demolition in Rafah, near the border with Egypt.  
©AI, February 2002

The area of the Gaza Strip where the largest number of homes has been destroyed is the refugee camp in Rafah, in the south of the Gaza Strip, on the Egyptian border, where close to 1,000 homes have been destroyed and hundreds of others have been partially destroyed or very seriously damaged since October 2000. The refugee camp is very densely populated, with rows of houses separated by narrow alleyways. Up to the autumn of 2000 the first rows of houses in the refugee camp stood only meters from the border, which is controlled and

patrolled by the Israeli army.<sup>26</sup> Since then, the massive destruction progressively carried out by the Israeli army has turned to rubble several rows of houses, up to 300 meters from the border.

On 23 June 2001, at about 3am, the Israeli army threw stun bombs and used loudspeakers to call on the inhabitants of the Barahmeh district of the refugee camp, along the Egyptian border, to leave immediately. Within two hours 20 houses were destroyed. The Barhoum family lost 11 houses, in which 75 people lived.

Suhaila Ahmad Salim Barhoum, a widow, lived in one of the demolished houses with her son and daughter and her brother. She told Amnesty International: *“I woke up at the sound of the army shooting and I ran off inside the camp with the children; other times when the army shot we ran away and waited until the shooting stopped to come back. But this time the tanks came up against the houses with the bulldozers. When they left there was only rubble and dust left in the place of our houses. I had a nice house; four rooms, one for each of us, the kitchen, the bathroom and a hall. I built it four years ago. My previous house was demolished in 1982,*

<sup>25</sup> <http://www.idf.il/english/announcements/2003/october/16.stm>

<sup>26</sup> Up to 1982, during Israel’s occupation of the Egyptian Sinai Peninsula, the refugee camp was spread on both side of the border. When Israel ended its occupation of the Sinai in 1982 the border was drawn in the middle of the refugee camp and the refugee homes on the border line were demolished and later rebuilt further inside the camp or elsewhere.

*when they established the border. Then my house was right where the border is now. After some time I got some compensation but it was not enough, and I had to wait to have enough money to build a new house. And now I won't be able to build another house again; I have nothing left, nothing for my children".*

Suhaila's aunt, 70-year-old Fadhiya Suleiman Ibrahim Barhoum, lived in a house nearby with her two sons, their wives and their 12 children. She told Amnesty International: *"They destroyed the house with all our things; I worked all my life and now I have nothing left, and my sons have nothing left and they have children; one has eight and the other has four. The house was three homes, one for me and two for my sons; there were six rooms and two bathrooms, one for each of them. We worked so much to build our house. God help us, I don't sleep at night any more. And they keep destroying more houses, every day more houses; maybe tomorrow they'll destroy this one too (her relatives' house where she is staying). God help us; why this on top of everything else? The army also destroyed my land, over there, near the house (pointing to the rubble of her house nearby); all my olive trees, you can still see them, there; they uprooted all of them, didn't leave even one; they uprooted them from here, from my heart; even if I plant other olive trees, I won't live to see the olives; I'm too old, and I have no more land and no home, nothing."*

The destruction in the Rafah refugee camp has been progressive, targeting row after row of houses – contrary to claims by the Israeli authorities that only houses used by Palestinians to shoot at Israeli soldiers patrolling the border and houses used as cover for tunnels used for smuggling weapons from Egypt were destroyed. However, already from the end of 2000 Palestinians living in the refugee camp close to the border told Amnesty International that Israeli soldiers had told them that many rows of houses were going to be destroyed. Statements by Israeli army and government officials confirm that this was indeed the intention. In January 2002 Major-General Yom Tov Samiah, Commander of Israeli army Southern Command at the beginning of the *intifada*, commenting on the destruction of some 60 Palestinian homes in Rafah refugee camp by the Israeli army on 9 and 10 January 2002 told Israeli Radio:

*"These houses should have been demolished and evacuated a long time ago...Three hundred meters of the Strip along the two sides of the border must be evacuated... Three hundred meters, no matter how many houses, period."*<sup>27</sup>

Israeli officials have put forward different arguments for the demolition of these houses. Some argued that the demolitions had been made necessary because armed Palestinians attacked Israeli army troops from these houses and/or because the houses served as cover for tunnels used to smuggle weapons into the Gaza Strip from Egypt, while others indicated that the demolition was in retaliation for the killing of four Israeli soldiers at the Kerem Shalom army base in southern Israel on 9 January 2002. Major-General Doron Almog, Commander of the Southern Command, said that *"Most of our operations have focused on the Rafah area, as that is where the two Hamas terrorists came from."*<sup>28</sup>

<sup>27</sup> Voice of Israel, 16 January 2002.

<sup>28</sup> Jerusalem Post, 13 January 2002, quoting Major-General Doron Almog speaking on Israeli TV Channel 2's "Meet the Press".

The Israeli army spokesperson's office issued different statements according to which the demolished houses: "*served as cover for gunmen's fire*", "*were suspected of serving as cover for tunnels used weapon in smuggling operations*"; or were targeted "*in response to the terrorist attack that killed an IDF officer and three soldiers.*"<sup>29</sup>



Destroyed houses in Khan Yunis refugee camp, near the Israeli settlement of Neve Dekalim (Gush Katif settlement bloc), in the Gaza Strip. © AI, November 2002

North of Rafah, the Khan Yunis refugee camp has also suffered large-scale demolition of homes at the hands of the Israeli army. The refugee camp is surrounded on three sides (north, west and south) by the Gush Katif block of Israeli settlements, inside which are several Israeli army bases. Since its establishment the settlement block, a former Israeli army base which was turned over to Israeli settlers in 1977, has continued to expand and in 2000 the perimeter fence of the settlement was only meters from the outer row of houses of the Khan Yunis refugee camp. As in the

Rafah refugee camp, the Israeli army has progressively destroyed row after row of homes in the refugee camp, clearing a large area of the camp near the perimeter of the Israeli settlement. To date more than 200 homes have been destroyed and a similar number have been damaged beyond repair and rendered uninhabitable. After the destruction of Palestinian homes in the refugee camp the Israeli army has built an eight-meter concrete wall around the perimeter of the Israeli settlement, where the settlement buildings are closest to the refugee camp.

In addition to the destruction carried out in the refugee camps, the Israeli army also destroyed hundreds of non-refugee homes and other properties throughout the Gaza Strip, notably in the agriculture sector. More than 10% of Gaza's agricultural land has been destroyed in the past three and a half years. According to the UN Office for the Coordinator of Humanitarian Affairs (OCHA) more than 1,800 acres of agricultural land were destroyed and more than 226,000 trees were uprooted in the Gaza Strip in 2002 and 2003 alone.<sup>30</sup>

Much of the destroyed land was cultivated with olive, citrus, date and almond trees, and a variety of vegetables cultivated in greenhouses, a method used to maximize the production of the small amount of agricultural land available in the densely populated Gaza Strip. Frequently greenhouses were destroyed without allowing the farmers to dismantle them and at least salvage the frame and canvas for future use. Trees have been systematically uprooted by Israeli army bulldozers, even in cases where the farmers themselves had previously cut them down in the hope that they would be spared and could grow again.

<sup>29</sup> <http://www.idf.il/english/announcements/2002/january/10.stm> and [january/11.stm](http://www.idf.il/english/announcements/2002/january/11.stm)

<sup>30</sup> Consolidated Appeal Process 2004 (CAP) on: <http://ochadms.unog.ch>



Hundreds of wells, water storage pools and tanks, and electrical water pumps providing water for drinking, irrigation and other needs for thousands of people, have been destroyed along with tens of kilometers of irrigation networks. While destroying land and agricultural facilities Israeli bulldozers also uprooted electricity poles and cables, leaving the surrounding areas without electricity.

Another area frequently targeted by the Israeli army is around the Israeli settlement of Kfar Darom, the Kissufim/Abu Houli and Katif/al-Matahin Junctions, and along the east-west road from the Gush Katif settlement to the Kissufim crossing into Israel. Vast areas of date palms, citrus orchards and other crops have been bulldozed by the Israeli army, ostensibly to protect the roads used by Israeli settlers.

The Abu Houli family, who lives and owns much of the land near the Kfar Darom settlement, has had nine houses (belonging to seven families), some 350 dunums of land, a food-processing factory, a plant nursery, a chicken farm (5,000 hens), three wells, and several water storage pools destroyed between October 2000 and August 2001. In all 84 members of the extended family have been affected by the destruction of their land, and 57 were made homeless. Around 10 October 2000 the Israeli army began to destroy some of the family land along the main north-south road (Salah al-Din road/Road No 4) and on 26 October they demolished the first of the family's houses. Yusuf Muhammad Abu Houli, his wife and their nine children were in their home when they suddenly realized that the house was surrounded by tanks and bulldozers. He said: *"We were stunned; all we had time for was to get the children to safety; by the time we had done that, within a few minutes the bulldozers began destroying the house and there was no time to salvage anything."*

A few days later, on 9 November, 'Abd al-Hakim 'Abedrabbo Abu Houli (Yusuf's nephew), an executive in UNRWA's administration, married with four children, had his house demolished. He told Amnesty International: *"The work of years smashed up just like that. The army came at 11pm with two tanks, one bulldozer and one jeep. They shouted at us to get out immediately or they would tear the house down over our heads. Our house was not the first to be demolished but still, you can't really be prepared for something like that; we had no idea that this was just the beginning, that within a few months we would be left with nothing; it's not just the houses, the furniture, the land, everything; it's a part of our lives which has gone..."* After the destruction of his house followed the houses of five other brothers and cousins, and more of the family land.

The Israeli army provided no account or explanation for the destruction of these and other properties in the area.

Between 20 and 22 November 2000 the Israeli army destroyed some 29 houses, and large areas of cultivated land in the area, making some 180 Palestinians homeless. The army made no mention of the destruction of these properties, which was seemingly carried out in retaliation for a roadside bomb attack carried out by Palestinians on the morning of 20 November against a bus carrying Israeli settlers between the Kfar Darom and Gush Katif settlements. Two Israelis were killed in the attack and nine others were injured, including five children.

Among the properties destroyed were five houses and several plots of cultivated land belonging to the 'Abidin family and located to the north-east of the Katif/al-Matahin Junction,



Halima 'Abidin, in front of the tent in which she stayed after the last of the houses of the 'Abidin family was destroyed in August 2001. © AI, August 2001

which were all destroyed on 21 November 2000. A sixth house and 50 dunums of palm and citrus trees belonging to the same family were destroyed in the same area on 12 August 2001. Seventy-five-year-old Halima 'Abidin was living in the house, which belonged to her two sons, who were working abroad. The destruction of this house and of the land around it appears to have been in retaliation for a shooting incident which was reported earlier that day at the nearby junction.<sup>31</sup> Halima 'Abidin and her daughter Samiha told Amnesty International that they were

in the house the whole day and that they had not seen anyone nor heard any suspicious movement near the house. Approximately two hours after the reported shooting, two Israeli army tanks and a bulldozers stationed at the nearby junction approached the 'Abidin house and destroyed it and the land around it. Two electricity poles and the connecting cables were also crushed by the tanks in the process, cutting off the electricity supply to scores of families living in the area.

In the north of the Gaza Strip since the Autumn of 2000, the Israeli army has destroyed large areas of land, as well as houses and other properties. More recently one of the reasons given by the army to justify the destruction is the increase of firing by Palestinian armed groups of *Qassam* mortar/rockets from this area across the fence into Israel.

Between 14 May and 29 June 2003 the Israeli army conducted an incursion in Beit Hanoun in northern Gaza in retaliation for the repeated firing of mortars by Palestinians towards the southern Israeli town of Sderot. The army demolished 21 houses, home to 35 refugee families, and damaged scores of others, destroyed several factories and large areas of olive and citrus tree orchards, bulldozed other land and destroyed water, sewage and road infrastructure.

On 15 May 2003, announcing the beginning of the operation the Israeli army stated: "*During the operation, IDF forces took control of key positions overlooking areas used to fire Qassam rockets at Israeli communities and demolished four structures used by terrorists who have been linked to firing Qassam rockets. In addition, IDF forces exposed wide areas of vegetation used to conceal the launch of rockets. ... The IDF will not allow terrorist*

<sup>31</sup> It is not clear if the shots were fired by a Palestinian gunman targeting the Israeli army base at the junction or from Israeli soldiers targeting a Palestinian suspect. No injuries or casualties were reported.

*organizations to interfere with the daily routine of the residents of Israeli communities in the Gaza Strip and nearby areas”.*<sup>32</sup>

One of the properties destroyed was the tile factory of the Abu Ghaliun family, the biggest and most sophisticated tile factory in the Gaza Strip. Amnesty International delegates visited the factory and witnessed the destruction: a vast quantity of tiles had been smashed into pieces, cement bags had been torn and their contents scattered, large and sophisticated tile-making machines had been deliberately broken, some of the walls of the factory had been demolished and a large number of citrus trees near the factory had been uprooted.

The owner of the factory, Jamil Abu Ghaliun told Amnesty International: *“The factory gave work to 600 people, including those who worked in the factory and those who laid the tiles in the housing projects. Now 600 families have lost their income as a result of the destruction of the factory. We had the best fully automated Italian machines and produced good quality tiles; we exported part of our production to Israel. I worked very hard all my life and the fruit of this hard work was destroyed for no good reason. No one ever fired mortars from anywhere near my factory; I am sure of that because the place was well guarded day and night; I always made sure of that. I have been working with the Israelis for decades; we buy material from them and sell them the tiles we produce. I would never have allowed anyone to commit any act which could jeopardize this. But the army came here, kept us all confined to our home under curfew for days and destroyed so much and left. How can such a thing help security? Has security improved? For me, for our family, this has destroyed our lives; and for so many others. What about the hundreds of families who depended on this factory for their living, to feed their children? I have never harmed any Israeli, on the contrary. The army knows that neither me nor my family have ever done anything against them; they themselves have never accused me or my children of anything, so why destroy our factory, our trees, our lives? More than US\$ 5,200,000 worth of damage. You can see how deliberately, how purposefully they destroyed everything in here, crushing all the tiles, breaking all the cement bags and the machines which are so big and heavy and could not be destroyed in any other way they broke up with explosive, you can see it with your own eyes.”*

#### **IV. 2.4 Destruction of “temporarily” confiscated land**

On 5 February 2004 Israeli soldiers went to the outskirts of the village of al-Mutilla (north-east of the West Bank) and left a plastic folder tied to a tree containing a seizure order for a piece of land on which Israeli army bulldozers had already been working for about a month, uprooting trees and crops. Even before receiving the seizure order the villagers had understood that their land was being taken and destroyed to make way for the fence/wall which Israel is building through the West Bank. The seizure order, signed by Major General Moshe Kaplinsky, Head of the Israeli army Central Command, is similar to the one shown below, and is dated 3 January 2004. According to the order 141.6 dunums of land are seized by the army until 31 December 2005. However, since the seized land is being used by the army to build a sophisticated fence/wall (equipped with electronic sensors and flanked on

<sup>32</sup> <http://www.idf.il/english/announcements/2003/may/15.stm>

each side by deep trenches, trace paths, roads for army tanks patrols, and additional barbed wire fences) which is costing Israel some US\$ 2 million per kilometer, few believe that the land seized for this project will ever be returned to their owners – as this would entail dismantling the costly fence/wall. Given that the work on the seized land was already well underway by the time the villagers received the seizure order, the owners of the land felt that there was no point in appealing against the seizure. In the past 20 months the land of thousands of Palestinian families in the West Bank has been “temporarily” seized in the same manner and destroyed to make way for the fence/wall.

Palestinian land seized by the Israeli army for “military/security needs” has most often been used to expand and build Israeli settlements and related infrastructure, notably roads for the settlers and most recently a fence/wall which separates Israeli settlements in the West Bank from Palestinian towns and villages.

The process began after Israel’ occupation of the West Bank and Gaza Strip in 1967 and continues today. On paper the land is not confiscated but only “temporarily” seized by the Israeli army for unspecified “security” needs for a set period only. But such seizure orders can be extended indefinitely and in the overwhelming majority of cases the land “temporarily” seized by the Israeli army has never been returned to its owners. Hence, in practice land “temporarily” seized is invariably lost. For Palestinians the loss of land means the loss of livelihood, as agriculture has become one of the key means of subsistence since the Israeli labor market has been mostly closed to Palestinians.

Seizure orders are generally not delivered to the owners of the land but are left on the seized land, often stuck on trees, and often not for days or weeks after the date of coming into force of the seizure orders. In any event, most owners of seized land no longer feel that it is worth it to appeal. Few have the financial resources for the legal costs and most believe it is futile to engage in a process which invariably fails them. In the 37 years of Israeli military occupation most of the “temporary” seizures have become a permanent reality. (See chapter on land confiscation/ expropriation).

In January 2004, the Israeli army issued at least 12 “temporary” seizure orders for tracts of land near Israeli settlements in the Gaza Strip. The orders, signed by the Israeli army Commander in the Gaza Strip, Brigadier General Dan Harel, state:

*In the framework of my authority as commander of the Israeli Defense Forces (IDF) in the region, in accordance with all laws and security legislation, I am of the opinion that it is requested for imperative military needs, in wake of the special security circumstances which exist in the region; I hereby declare the following: I hereby declare that the land is being seized for military needs.*

*The land shall be maintained by the IDF and the sole maintenance shall be handed to the land officer at the Southern Command Headquarters, via the Ministry of Defense Coordinator at the administration.*

*The date of entry into force of this declaration is the date of its signature and until 31 December 2005.*

As is current practice, attached were maps of the plots of land being seized and a standard printed form with blank gaps which are filled in by the army commander with details such as the location of the seized land, the name of the owner, the dates etc. The form states:

*Notice regarding the seizure of land for military needs*

*Notice is hereby given that on \_\_\_ the \_\_\_ the Commander of the IDF in the Gaza region, in wake of the special circumstances which exist in the region, and for imperative military needs, has ordered that the land marked on the appended map<sup>33</sup> to the order regarding seizure of land (2004-2) (Kfar Darom security fence) (Gaza region) shall be seized for the construction of security components.*

*Your are hereby given a seven-day period to submit reservations to the Commander of the IDF in the Gaza region regarding his decision. Reservations may be submitted as mentioned to the Commander of the IDF in the Gaza region, through the offices of the (IDF) Legal Advisor of the region:*

*Fax: \_\_\_\_\_*

*Name of the recipient of the notice: \_\_\_\_\_*

*Statuses of recipient: owner/maintainer Bloc \_\_\_ Plot \_\_\_*

*ID number: \_\_\_\_\_*

*Name of the IDF Commander: \_\_\_\_\_*

*Signature: \_\_\_\_\_*

*Date: \_\_\_\_\_*

The seized land is located partly between the two sections of the Israeli settlement of Kfar Darom (central Gaza Strip) and partly near its outskirts. This settlement, like others, was built on confiscated Palestinian land, some of it by means of “temporary” seizures issued decades ago. The owners of the seized land have appealed the seizure but have little hope that their appeal will be successful

### **IV. 3. Israel's justifications for the destruction in the Occupied Territories: “military/security needs”**

#### **Setting the trend**

In the days that followed the outbreak of the *intifada*, the Israeli army abandoned policing and law enforcement tactics and adopted military measures generally used in armed conflict, including large-scale destruction of houses, land and other properties. This pattern quickly became entrenched and widespread and has continued to date.

In East Jerusalem and within Israel, protestors participating in demonstrations after 29 September 2000 threw stones. In the West Bank and Gaza Strip, although most of the demonstrations involved stone-throwing protests, on a number of occasions firearms were used against Israeli security forces by members of the PA's security forces or others.

<sup>33</sup> Maps are usually on a much reduced scale, making it virtually impossible to establish the exact boundaries of the seized land; owners generally find out when the army destroys the land and/or builds roads, fences, or other structures on it.

In responding to these demonstrations, Israeli security forces repeatedly resorted to excessive use of lethal force in circumstances in which neither the lives of the security forces nor others were in imminent danger, resulting in unlawful killings. In the first three weeks of the *intifada* more than 100 Palestinians, including 27 children, were killed by the Israeli security forces. In addition, the army destroyed homes, cultivated land and factories. Much of the initial destruction was in the area around Netzarim/Shuhada Junction, in the Gaza Strip, near the site of demonstrations. For example, on 7 and 8 October 2000 the Israeli army destroyed two four-storey buildings, known as the “twins”, which were home to 39 families, large tracts of cultivated land around the junction, and a nearby metal foundry. After the demolition the Israeli army announced that it had:

*“...carried out engineering works to remove the continual threat in Netzarim junction. Among these activities – the destruction of the buildings known as the ‘Twins’, the destruction of the nearby building known as ‘the factory’ and clearing the terrain several dozens of meters around the IDF position at the junction. ... Netzarim junction is a key position, controlling the main entry route into the Jewish settlement of Netzarim. The violence which occurred at the junction this last week, disrupted the daily life in the settlement”*.<sup>34</sup>

The Israeli army claimed that Palestinian gunmen had fired towards army positions from these properties during the demonstrations. While law enforcement officials are entitled to respond to threats to their security and the security of others, the response must be proportionate; Amnesty International believes that the destruction of these residential buildings and land in these circumstances was a disproportionate response.

The Israeli authorities contend that destruction of houses and other property is entirely justified and proportionate to their “military/security needs” to prevent or respond to attacks by armed Palestinians against Israeli settlements and Israeli army positions. They describe this kind of destruction as “preventive” or “in the course of combat activities.”

The “preventive” category is extremely broad. It includes destruction of properties from which the army claims attacks were carried out or properties which were used for cover during attacks. It also includes the destruction of properties to clear the army’s lines of sight in areas considered as sensitive, to create buffer zones around likely targets, and to clear areas in order to build fences or military installations. In addition, it includes destruction of property for the purpose of building roads to improve access between Israeli settlements within the Occupied Territories and between the settlements and Israel.

According to the Israeli authorities all such activities fall within the framework of “military/security needs”, as they are deemed necessary to prevent attacks by Palestinians against Israeli settlements, settlers and soldiers in the Occupied Territories. According to the Israeli army:

*“The source of authority for the Israeli Defense Forces to harm private property during times of fighting and due to military needs is part of the laws of war, which are part of the international law. Specifically it refers to regulation 23(g) of the*

<sup>34</sup> <http://www.idf.il/english/announcements/2000/october/8.stm>: IDF Acts to Remove Threat in Netzarim Junction.

*Hague Convention of 1907 which permits destruction of property in cases in which 'such destruction [is] imperatively demanded by the necessities of war...'*<sup>35</sup>

Although insisting that it has the right to demolish whatever will assist its military operations, the Israeli army claims it applies the principal of proportionality to ensure that operations do not have a disproportionately adverse effect on civilians. Amnesty International disputes Israel's interpretation of the permissible scope of property destruction under international law (see legal section). The circumstances surrounding the massive destruction of homes, land and other property in the Occupied Territories and its consequences for Palestinians belie the claim that the principle of proportionality enshrined in international law has been respected.

#### **IV. 4. Definition of legitimate targets, combat activities and proportionality**

The Israeli army contends that any house or property which is used in any way by members of Palestinian armed groups is a military target which may lawfully be attacked and destroyed at any time. These demolitions are described by the Israeli army as occurring "in the course of combat activities." The decision to engage in this type of demolition is left to the discretion of the commander in the field, and therefore such actions are not subject to legal deliberation, supervision or appeal.

Within the category defined as destruction for military/security needs, in practice there appears to be little or no difference between demolitions defined as "in the course of combat activities" and those described as "preventive". For example, a house from which a Palestinian gunman has allegedly fired at Israelis and a building, which – due to its proximity to a road or settlement – could be used to target Israelis, may both be destroyed at any time. Both these categories of demolition are also often carried out as a form of collective punishment in retaliation for attacks committed by Palestinians against Israeli civilians or soldiers.

According to the Israeli army's interpretation of international humanitarian law, given the spread of Israeli settlements, settlers' roads and army positions throughout the densely populated Gaza Strip right next to Palestinian refugee camps, towns and villages, virtually every building or plot of land in the Gaza Strip could potentially be considered as a threat and hence as a military target for demolition.

This is clearly not the case. According to international humanitarian law, there are no military objectives in the Occupied Territories which Israeli forces may lawfully attack and destroy at any time. The Israeli security forces may target individuals using a property to attack soldiers or others. In such cases, however, they must use only as much force as is strictly necessary to counter any threat posed to their lives or the lives of others. Israeli forces may, in exceptional circumstances, seize or destroy Palestinian property for a legitimate military purpose – not for the expansion of illegal settlements or settlement infrastructure, nor

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<sup>35</sup> IDF Spokesperson's response to the Israeli human rights organization B'Tselem, published in B'Tselem's report: *Policy of Destruction, House Demolition and Destruction of Agricultural Land in the Gaza Strip*, February 2002 ([www.btselem.org](http://www.btselem.org)).

in retaliation for attacks committed by Palestinians against Israelis. Palestinians affected must have a meaningful right to legally challenge any seizure or destruction order.

In the past three and a half years Israel has failed to uphold such principles by carrying out extensive destruction and eviction without adequate legal safeguards, violating the rights of tens of thousands of Palestinians to adequate housing and a decent standard of living.

#### **IV. 5. Claims that property had been used for attacks**

Israel's most common assertion to justify the destruction of houses, land and other properties is that only properties which have proven to be a threat have been destroyed. The Israeli army's announcements frequently claim that the destroyed properties have been used to carry out attacks. Often Palestinians do not deny that attacks or armed confrontations took place in the area at some point prior to the destruction, but deny that their properties were used to carry out attacks. In the overwhelming majority of cases the Israeli army has not specifically accused those whose houses, land and other properties it has destroyed of having themselves been involved in attacks, and it has not attempted to arrest or prosecute them.

According to the Israeli army's reasoning, the fact that a suspect may have fired from, or run through, someone's land or near someone's house, factory or shop is enough for the property and everything around it to be destroyed – even though the owners or inhabitants played no part in the attack, had no knowledge of it and could not have prevented it. Palestinians whose homes and properties are near Israeli settlements, army positions or other sensitive locations find themselves in an impossible situation. Their movements in and around their properties are severely restricted by the Israeli army. Anyone, be they the owners of the property or trespassers, spotted in these areas at night, and in certain areas even during the day, risks being shot by the army. Therefore the army makes it nearly impossible, even for those inclined to do so, for property owners to protect their land from intruders who may carry out attack against Israelis. Yet, if someone carries out an attack from or near their property, they are punished by having their property destroyed.

Israeli officials have acknowledged to Amnesty International that it is often difficult to pinpoint the point of origin of armed attacks. This acknowledgment concerned mostly sources of Palestinian gunfire, which is easier to establish than the source of mortar fire, which has a variable trajectory and range. Indeed, Israeli soldiers have repeatedly been proved to have been mistaken in identifying sources of fire, even of gunfire at a very short distance. Hundreds of unarmed Palestinians, including children, women and elderly people, as well as foreign journalists and humanitarian workers have been killed in situations where the Israeli army wrongly claimed to have targeted sources of fire.<sup>36</sup>

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<sup>36</sup> Such examples include the cases of Iain Hook, a British national working for the UN who was shot dead by Israeli soldiers in his office in Jenin refugee camp in November 2002; British peace activist Tom Hurdall and British journalist James Miller, shot dead by Israeli soldiers in Rafah in April and May 2003; American peace activist Brian Avery, who was shot in the head by Israeli soldiers in Jenin in April 2003; and Yusuf Bashir, who was shot in the back by Israeli soldiers in the presence of UN staff members in February 2004.



In addition, the Israeli army has generally not conducted ballistics, forensic or on-site investigations to determine the source of gunfire, mortar or other attacks. At times uncertainty is explicit in official Israeli statements, for example describing destroyed properties as being “thought to hide tunnels”.<sup>37</sup>

To date the Israeli army has not accounted for the exact number and location of properties it has destroyed, nor has it provided evidence that the specific properties were used to carry out attacks and were destroyed while being used for such a purpose. Amnesty International delegates, international humanitarian and human rights workers, journalists and others have repeatedly witnessed Israeli soldiers destroying and damaging houses, land and other properties at times when there were no disturbances or confrontations with Palestinians.

In this respect, it is significant that the Israeli authorities have consistently and vigorously opposed the presence of international human rights monitors, despite repeated calls by the international community, Israeli, Palestinian and international human rights organizations and representatives of civil society.<sup>38</sup> Amnesty International believes that international human rights monitors could help reduce violations by both sides and could play an important role to establish the veracity of the claims made by each side concerning the actions of the other side – including keeping an accurate record of the scale and circumstances of destructions carried out by Israel and of attacks by Palestinian armed groups.

#### **IV. 6. Claims that the destroyed properties were “abandoned”**

The Israeli authorities generally underplay the extent of the destruction and the number of people affected by it. They have remained evasive as to whether the army even keeps statistics on the numbers of houses they destroy (other than for the punitive demolitions) and of Palestinians they forcibly evict and make homeless. In most cases the Israeli authorities do not issue statements about demolition operations, and when they do, the announcements provide very few details and usually do not contain even the most basic information such as the number, type and location of the destroyed properties. The destroyed homes are not usually referred to as houses, but rather as “abandoned” or “unpopulated” “buildings” or “structures”. The authorities also tend to avoid the word demolition to describe the destruction of houses and land, using instead expressions such as “engineering works” to “expose” or “clear” certain areas.<sup>39</sup> The destruction of agricultural land is hardly ever mentioned.

Amnesty International and other international organizations and journalists have frequently visited recently demolished homes. The sight of pots of cooked food, half-full bottles of soft drinks or shampoo, pieces of newspapers from the previous day, smashed fridges and television sets, clothes, children’s toys and schoolbooks lying amongst the rubble stood in stark contrast with Israeli army claims that the houses were “unpopulated” or “abandoned”.

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<sup>37</sup> “IDF Activity Against the Palestinian Terrorist Infrastructure,” 23 October 2002, IDF Website, <http://www.idf.il/newsite/english/021023-2.stm>.

<sup>38</sup> The Palestinian Authority has supported the dispatch of international observers.

<sup>39</sup> See IDF and other official statements quoted throughout this report in relation to the specific cases mentioned. Also see the IDF website: <http://www.idf.il/english/news/main.stm> (Spokesperson news/announcements).

Although at times the inhabitants of the destroyed houses were not in their homes at the time of the destruction, this cannot be construed as abandonment. Palestinians who live in areas that regularly come under Israeli army fire, notably around settlements and army positions avoid using the rooms facing these positions if they can. However, many do not have rooms protected from the source of fire. Metal sheets against windows and doors, and thin corrugated roofing material offer little or no protection against frequent Israeli army shelling. Hence people in those areas often leave their homes when army raids, shooting or clashes intensify, and they return home when the tension decreases, usually the following day. However, leaving one's home for a few hours or a few days to seek safe shelter elsewhere cannot be considered as having abandoned it.

In the Gaza Strip the very extensive damage caused by Israeli army gunfire and shelling to thousands of Palestinian houses facing Israeli army positions and settlements, and the manner and timing of much of the damage and destruction, suggests the Israeli army has responded disproportionately, and at times unnecessarily, to threats posed by armed Palestinians operating in these areas. Any destruction or damage aimed at forcing the civilian population in these areas to leave their homes violates international law.

#### **IV. 7. The failure of the Israeli Supreme Court to protect the internationally guaranteed right to housing**

In the case of demolitions for "military/security needs" classified as not in the course of combat activities, the Israeli Supreme Court ruled in 2002 that affected families must be given the right to appeal unless doing so would "endanger the lives of Israelis or if there are combat activities in the vicinity."<sup>40</sup> However, in a subsequent ruling, the Supreme Court ruled that advance notice did not need to be given if it would hinder the success of the demolition,<sup>41</sup> a virtual green light for demolitions to go forward without the possibility of appeal for those affected. This is what happens in most cases.

In cases of advance notification of intended destruction where the owners of the targeted properties have appealed, the Israeli Supreme Court has usually accepted the Israeli army's arguments and assessment of what constitutes military/security needs, and has permitted the demolitions. For example in a factory owner's appeal against demolition to enable the construction of a new road near the Netzarim settlement in the Gaza Strip, the Supreme Court accepted a long list of past security incidents in the area, as well as vaguely worded and unspecified intelligence that there was "intent" to use the property again as a base for attacks.<sup>42</sup>

Amnesty International believes these rulings suggest that the Israeli Supreme Court has too readily accepted the Israeli army's overly broad definition of what is militarily

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<sup>40</sup> Israeli Supreme Court decision in the case 2002/2264, *Yihiye Suleiman al Mutayeb et al v. State of Israel*; 2002/2329, *Basel al Wuhaidi et. al. v. State of Israel*; 2002/2332, *Rafiq Musullem Mutaweh et al v. State of Israel*, and 2002/2333, *Anwar Awadh et al v. State of Israel*, 19 March 2002, as cited in "Israeli Supreme Court Issues Guidelines on House Demolitions," Palestinian Center for Human Rights (PCHR) Press Release 42/2002, 19 March 2002.

<sup>41</sup> See Israeli Supreme Court decision 4219/02, 6 August 2002.

<sup>42</sup> *Ibid.*

necessary (see legal section below). By endorsing this interpretation, the Supreme Court has failed to protect Palestinians in the Occupied Territories from arbitrary destruction of their homes and property and from forced evictions, leaving open the door for Israeli demolitions for almost *any* ostensible military purpose.

## **V. DEMOLITIONS OF UNLICENSED HOUSES: DISCRIMINATORY PLANNING AND BUILDING POLICIES AND ENFORCEMENT MEASURES**

*"We have to begin to educate the Arab public to build high. We live in a small and crowded country and I see that in other Arab countries they build high. There is no reason that everyone in the Arab sector should live in houses"*

Israeli Interior Minister Abraham Poraz, 21 January 2004

### **V. 1. Background to the demolition of unlicensed houses**

The Israeli authorities have for decades pursued a policy of demolishing houses and destroying land and other properties inside Israel and the Occupied Territories. In the overwhelming majority of cases those whose homes and properties have been destroyed are Palestinians and Israeli citizens of Palestinian origin. The situation of house demolition inside Israel differs greatly, both in law and in practice, from that prevailing in the Occupied Territories, and it is in the latter that Israel has carried out the most extensive destruction of homes and property in recent years. However, there are also similarities between the two situations, notably the main underlying causes for the demolition of homes for lack of building permits, a phenomenon which exists both in the Arab sector in Israel and in parts of the Occupied Territories.

The expropriation/confiscation of large areas of Palestinian land has significantly diminished the reserves of available land on which Palestinians and Israeli Arabs can build to accommodate the natural growth of their communities. Planning and building regulations in these areas further restrict the amount of privately owned land on which Israeli Arabs and Palestinians can build.

In the Occupied Territories Palestinians are barred from leasing or building on land which has been declared state land because state land is not for leasing or building on by "alien persons", and the whole of the local Palestinian population of the Occupied Territories are defined as aliens.<sup>43</sup> Palestinians have not been allowed to build on, or make other use of, most of the land

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<sup>43</sup> An alien person is defined as one who is not in one of the following categories:

- (1) An Israeli citizen;
- (2) One who has immigrated (to Israel) under the (Israeli) Law of Return;

which has been available for housing, farming and commercial use by Jewish settlers, whose presence in the Occupied Territories is in violation of international law.

In Israel, since the establishment of the state more than 700 Jewish towns and villages have been established but not a single Arab one. Furthermore dozens of Arab villages which existed prior to the establishment of the state were subsequently re-classified as non-residential and remain unrecognized and under the threat of demolition.

Some 93% of the land in Israel is state land, but some of it is administered through the Jewish National Fund, the Jewish Agency or other bodies which do not lease land to non Jews and do not accept them in the housing projects/communities they establish and other housing projects on state land have been developed specifically for new Jewish immigrants. Other measures which restrict access of Israeli Arabs to land and housing include housing subsidies, which are only available to Israelis who have completed Israeli army service. This excludes Israeli Arabs, who are not conscripted into the Israeli army.

The building plans for many Arab towns and villages in Israel have not been completed, thus restricting or blocking the issuing of building permits, whereas building plans were promptly drawn up for new Jewish towns or villages. Many Arab villages in Israel do not have their own local councils – while smaller Jewish villages do – and depend on Jewish town/village councils, where they have no representation. Privately owned land in Arab villages has been zoned as agricultural and/or placed under the jurisdiction of adjacent Jewish village councils, making it difficult or impossible for Arabs to obtain building permits.

## V. 2. Planning and building policies

At the root of the problem of demolition of unlicensed houses in the Arab sector in Israel and in parts of the Occupied Territories lie Israel's land and planning policies and the manner in which they are enforced. These policies have been characterized by discrimination against Israeli Arabs and Palestinians both in the use of state land, including land previously expropriated from Palestinians, and in the manner in which plans are drawn up for the use of privately owned land, as well as in the enforcement of planning and building regulations. Concerns about discriminatory regulations and practices have long been recognized, including by the Or Commission of Inquiry in its report published in 2002.<sup>44</sup>

### Excerpts from the Or Commission report (September 2003)

*36. In the first 50 years of the state's existence the Arab population has grown seven-fold and at the same time the amount of land allocated for housing construction has remained almost unchanged. Thus the population density in the Arab sector grew considerably and the lack of*

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(3) One who is entitled immigrant status under the Law of Return – that is a Jew by descent or religion;  
(4) A company controlled by (1), (2) or (3).

<sup>44</sup> The Or Commission was set up by the Israeli authorities to investigate events surrounding the killing by Israeli security forces of 13 Palestinian citizens of Israel in protest demonstrations in October 2000 (the excerpts cited above are translated by Amnesty International).

available land harmed young couples looking for housing. Public building did not assist them substantially, new localities were not established, except the Bedouin settlements (townships), and Israel Lands Administration [ILA] land was not usually allocated for building in the Arab sector. Residents of the Arab sector who wish to build on land which they own but which is placed under the jurisdiction of neighbouring Jewish local authorities were blocked by the regulation of these authorities.

37. A major obstacle facing construction for housing purposes in the Arab sector has been the lack of outline and master plans. The preparation and updating of such plans always requires time, yet in the Arab sector there were unreasonable delays. Added to that was the problem of the lack of effective representation of the Arab sector in planning and building committees. In the national and district commissions there was token representation or no representation of the Arab sector. In many cases local commissions were not established in Arab localities and instead, these localities were placed under the jurisdiction of commissions managed by Jews. As a result the decisions regarding the developments of the Arab sector have not been sensitive enough to the needs of the Arab population.

Even after the preparation of plans had been speeded up during the 1990s, by the end of the century half of the Arab localities still did not have approved master plans that enabled the expansion of built up areas and many of them did not have approved outline plans. As a result in large parts of the areas of jurisdiction (of the Arab localities) private land owners could not build houses legally. A widespread phenomenon of unlicensed buildings has developed which partly stems from the inability to obtain building permits. Unlicensed buildings usually consist of single family houses. Demolition orders were issued for houses of Arabs in the Galilee, Negev, Triangle and the mixed cities. It has been claimed that behind the legal situation are political and ideological motives and that a situation of double standards has been created towards the Arab citizens. The citizens began preparing to oppose house demolition; public figures took active part in mobilizing the public in this opposition, encouraging them to defend the houses with their bodies and even called for violence to be used against policemen.



28-year-old Hanan Zbeida. © AI, September 2003

On 18 June 2003 Israeli security forces demolished the home of 25-year-old Hanan Zbeida, who is paraplegic and wheelchair bound. Hanan lives in Lod with his parents and siblings in a house which the families rents from the Amidar (the Israeli authority which administers the houses and properties which belonged to Palestinians who were expelled or forced to flee in the war which followed the establishment of the state of Israel in 1948, and which were declared as “abandoned” and taken over by the state). The house has a garden and a small piece of land adjacent to the house.

On this piece of land there used to be two small storage rooms and in September 2002 the family built a room with

wide doors and an en suite bathroom for Hani, so that he could move more easily in his wheelchair, have some privacy and space to work. Even though he cannot use his hands, Hani works with computers, typing with his head, by means of a stick which he attaches to his forehead. He told Amnesty International that he had been very happy when his family built him his own home next to the family home because it was spacious and more comfortable. His parents stated that when the security forces came to demolish Hani's home and the family protested, the police beat Hani's father and his brother, who had a leg in a cast following a car accident. Shortly after the demolition, the family rebuilt Hani's home but when it was almost complete they received a new demolition order and were forced to halt the work.

The newly built home of Amal and Zuhair Hajji in Majd al-Krum (in the north of Israel) was demolished as soon as they had finished building it on 14 April 2002. Amal's father gave her a piece of land in the west of the village but it is impossible to obtain a building permit because the land is zoned as agricultural. Amal told Amnesty International: *"We have the land but cannot build on it, there is no way of getting a permit; so many people are in the same situation; and so we have no other way than to build our homes without a permit. We have five children, we need a home; we can't keep building on top of existing houses, it is not safe, and even that is not allowed anyway. So what can we do, do we have no right to have a home?"* In Majd al-Krum, like in other villages in the Arab sector in Israel, house density in the area of the village zoned for building has increased dramatically and there is now a shortage of land for building. Part of the village's land was seized for "military needs" decades ago. Although it has not been used for military purposes it has never been returned to the villagers and is reportedly intended to be used for the expansion of the nearby Jewish town of Karmiel.

### **V. 3. Building restrictions in the Occupied Territories since the Oslo Accords**

*"Our policy is not to approve building in Area C"*

Israeli Army spokesperson to Amnesty International delegates in 1999

*"... practically speaking, it doesn't exist as an issue. There are no more construction permits for Palestinians".*

Israeli army Legal Advisor Colonel Shlomo Politus, speaking about Area C of the West Bank to the Constitution, Justice and Law Committee of the Israeli Parliament on 13 July 2003

The Oslo Accords divided the West Bank in three areas: Areas A, B and C. The Palestinian Authority (PA) was given responsibility for civil affairs (such as health, education and building permits) in Areas A and B, which covered only 40% of the West Bank territory but contained 97.6% of the Palestinian population. Israel retained responsibility of both civil affairs and security in Area C, which covered 60% of the West Bank and included most of the unpopulated Palestinian land, the Israeli settlements and the main roads. Areas A and B are

not contiguous but are fragmented into some 227 separate enclaves each surrounded by Area C, under Israeli military and civil control.

The Gaza Strip was similarly divided, with the most densely populated areas under PA jurisdiction and the unpopulated or less populated land under full Israeli control. The latter, referred to as “Yellow Areas” (similar to Area C in the West Bank), cover more than 30% of the Gaza Strip, including Israeli settlements.

As a result Palestinians have continued to be prevented from building in most of the West Bank. Those who, unable to obtain permits, built their homes in these areas without a permit had their homes demolished by the Israeli army. According to figures given by the Israeli military authorities to the Israeli human rights organization B’Tselem, in 2001-2002 the army demolished 419 structures for lack of building permits in Area C of the West Bank. Up to date statistics are not available but Amnesty International has received information on scores of houses and other properties destroyed in Areas C of the West Bank for lack of permits in the past year and a half.

At the same time Israel dramatically accelerated the establishment and expansion of illegal settlements in and around East Jerusalem, in Area C of the West Bank and in the Yellow Areas in the Gaza Strip, and built an extensive network of roads throughout the Occupied Territories to connect these settlements to each other and to Israel. In the seven years of the Oslo peace process, from 1993 to the outbreak of the *intifada* in 2000, Israel increased the number of settlers in the West Bank and Gaza Strip by more than 50%. The expansion of Israeli settlements in the Occupied Territories continues. According to figures published on 2 March 2004 by the Israeli Central Bureau of Statistics (CBS), in 2003 housing construction in Israel fell by 8%, but increased by 35% in the settlements in the Occupied Territories

Israeli settlements and settlers’ roads continue to be built on Palestinian land progressively confiscated or “temporarily” seized by the Israeli military authorities since the beginning of the occupation in 1967.<sup>45</sup> In theory the “temporary” seizure of land on grounds of (unspecified) “security needs” is for a set period only, but can be extended indefinitely. In practice “temporary” land seizures have invariably become permanent.

At present the Israeli army continues to seize Palestinian land on grounds of “military/security needs” in order to build permanent structures to benefit the Israeli settlements in the Occupied Territories.



On the morning of 13 August 2003 five homes were demolished by the Israeli army and border guards in al-Walaja village, to the south-west of Jerusalem. Some 80 people were

has never been revealed. In the West  
been confiscated. Often Palestinians learned  
y started to build a new Israeli settlement  
rs earlier.

Amnesty International May 2004

made homeless by the demolition. Among the destroyed houses was the home of the Shahadeh family: the parents, two daughters and two sons, one of them married with a child. The family had built their house in 1999 and had been living in it since then.

Badria Shahadeh told Amnesty International: “Some time after moving into the house we received a demolition order and we appealed to the court. The last court session was in June 2003 and we received a fine of 18,000 Shekels, of which we paid the first two monthly installments before the house was demolished. The court also decided that we must seal all the windows by January 2004, but no decision to destroy the house. The border guards came early in the morning and did not want to listen to anything we had to say and refused to even look at the court papers which we wanted to show them. They told us that they had an order to demolish our house but never showed us any order or any other papers. They gave us no time; we rushed to take out whatever we could; my sister broke her hand trying to take out furniture. My parents are old and they were still asleep; six soldiers took my father from his bed and put him outside the house.”

#### **V. 4. The impact of Israeli settlements on building restrictions for Palestinians**

26. ... Furthermore, the Committee is gravely concerned about the continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories (*ibid*, para. 24).

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 23 May 2003, E/C.12/1/Add.90.7.

During the 37 years of occupation the Israeli authorities have employed a variety of measures to prevent and restrict Palestinian planning, development and building in the West Bank and Gaza Strip. At the same time, successive Israeli governments have pursued with varying degrees of intensity a policy of establishing Jewish settlements on large areas of confiscated Palestinian land all over the Occupied Territories, in violation of international law.<sup>46</sup> Generous financial incentives have made moving to the settlements in the Occupied Territories attractive to Israelis and new Jewish immigrants who would not necessarily have chosen to move there for ideological reasons.

After it occupied the West Bank and Gaza Strip, Israel froze planning in Palestinian towns and villages. Planning schemes dating back several decades and no longer suitable to cater for the needs of a growing population were used as the basis for rejecting Palestinians' applications for building permits. Palestinians, facing a situation where prolonged, complicated and costly permit applications to build on their land were invariably refused, were left with no option but to build their homes without permits. Rather than considering allowing the development of more adequate planning and building procedures to allow for the

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<sup>46</sup> For more details on Israel's settlement policy in the Occupied Territories see Amnesty International's paper: *Israel and the Occupied Territories: The issue of settlements must be addressed according to international law*, 8 September 2003 (AI Index: MDE 15/085/2003).



development of Palestinian towns and villages, Israel adopted a policy of mass demolition of Palestinian houses.

At the same time, Israel developed comprehensive and efficient planning schemes for more than 150 Jewish settlements it established throughout the Occupied Territories. Despite this, thousands of houses were built in these settlements without permits. Israel refrained from demolishing these houses, and instead issued retroactive building permits for thousand of houses constructed without permits and for entire settlements established without government authorization.

## **V. 5. Land confiscation/expropriation**

In Israel, after the establishment of the state, large areas of land were also seized under emergency regulations. The areas were declared closed military zones and the inhabitants/landowners were expelled. Even though the land was officially seized only temporarily, in several cases the owners were never allowed to return.<sup>47</sup>

Israel has expropriated large areas of land both in Israel and in the Occupied Territories by declaring that land which was not officially registered or under continuous cultivation is not in private ownership but is in fact 'state' land. The justification for this is the Ottoman Land Law which defined the *miri* class of ownership under which most Palestinian agricultural land is held by virtue of use. *Miri* land includes pasture and range lands; land not cultivated for three years could be auctioned to a villager prepared to cultivate (or, if there are no claimants, given to a needy villager); cultivation for 10 years entitles the cultivator to *tabu* (deed of ownership). Possession without title deeds was the norm in Palestine prior to the settlement of title deeds process initiated by the British Mandate authorities but which was not completed before the end of the British Mandate.<sup>48</sup> Many Palestinians had not registered their land under either the Ottoman or British administration in order to avoid taxation and because it was not necessary, as their right to the land was never disputed.

After the establishment of the state of Israel (and after 1967 in the Occupied Territories) land shown by aerial photo not to have been cultivated each year for a 10 year period became liable to be forfeit – not to the village but to the state. Notification of an area being declared as state land could be given to a village representative, or posted on the land (for example left under a stone), or the declaration could be made orally. The onus of proof is on the owner to commission a cadastral survey and submit an appeal within a limited period of time. Many owners never received the notification and few have had the resources to mount a legal claim. Hardly any of those who did have been successful.

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<sup>47</sup> Such cases include the villages of Iqrit and Bir'im (in northern Israel, near the border with Lebanon), whose inhabitants were temporarily expelled but have never been allowed to return, in spite of a Supreme Court ruling in their favour, and the villages were subsequently destroyed by the Israeli army. Subsequent appeals to the Supreme Court by the inhabitants of these villages to be allowed to return to their properties are still ongoing and unresolved – 55 years after their temporary expulsion.

<sup>48</sup> The process started in the north of the country, which is where most land was registered in private ownership by the end of the British Mandate.

Under the Absentee Property Law (enacted by Israel in 1950) land, houses and other properties of Palestinians who were defined as absentees was expropriated and declared state land. The law defined as absentees all Palestinians who were outside the country or away from their place of residency after 29 November 1947. More than 800,000 Palestinians who were expelled or fled the country in the war were dispossessed of their land and property under this law, as were about a quarter of the 150,000 Palestinians who remained in the country but who had become internally displaced on account of the war.

Land belonging to Palestinian citizens of Israel was also expropriated through the Land Acquisition for Public Purpose Ordinance (Public Purposes Ordinance). This law, introduced by the British Mandate administration in 1943, allows the authorities to take permanent or temporary ownership of land for public purposes. A public purpose is one defined as such by the authorities who are not required to provide details of the purpose.<sup>49</sup>

## **V. 6. Discriminatory enforcement of planning and building regulations**

The Jewish town of Kamon was established in 1980 around the land of the Sawad family. The family has previously had some land confiscated and has been battling for their rights in Israeli court for decades. The Sawad's family land was included in the 1984 plan of the Misgav Regional Council for the town of Kamon as land zoned for building (included within the blue line of the Kamon plan). However, the Kamon plan was subsequently re-drawn so as to exclude the Sawad family land from the blue line defining the area which can be built developed. When the family challenged the amendment to the plan they were informed that the amendment did not alter the status of their land, which remains zoned for building. However, when the family obtained the plan they learned that their land had been parceled into seven plots each including also some land belonging to the Regional Council. Hence, building permits are subject to the agreement of the Council, even though the family's ownership of the land is not contested and the requested building permits only concern the part of the plots which belong to the family and not those parts belonging to the state. The procedure for parcelation of land can take years and in this case the re-parcelation of the Sawad's family land into plots comprising only their own land would require the agreement of the Council, which has not been forthcoming. Therefore the family has not succeeded in obtaining the necessary building permits for their land.

In the Arab sector in Israel and in the East Jerusalem area much of the privately owned land has been zoned as green land, on which it is not permitted to build. Attempts to have such land re-zoned so that it can be used for building homes have invariably failed. However, in the Jewish sector it has been possible to re-zone agricultural land not just for building houses but also for the construction of commercial properties. Over the years the

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<sup>49</sup> Several areas of Palestinian land expropriated under this law between the 1950s and 1970s were subsequently used to build Jewish towns and villages, including Karmiel and Upper Nazareth.

Israel Lands Administration (ILA) readily approved the re-zoning of land in *moshavim* and *kibbutzim* (agricultural farms in the Jewish sector) from agricultural to commercial use.<sup>50</sup>

*“A 1997 survey by the Planning Authorities of the Agricultural Ministry found 7,400 commercial activities in Moshavs, of which 3,000 were in the central district of the country. This is probably an underestimate since according to data from the Supervision Unit of the Planning and Building Committee in the central district alone there were 7,250 cases of exceptional use of agricultural land. The survey did not show if these were legal or not but according to a letter of December 1997 from the Director of the Planning Authorities to the Agriculture Ministry, most of them did not have statutory status. Exceptional use of agricultural land is also found in urban localities. For example, the Supervision Unit of the District Planning and Building Committee of the central district found that in February 1998 there were 25 structures built without permit on agricultural land in the Petah Tikva area”.* State Controller report 2000<sup>51</sup>

Planning and building regulations, both in Israel and in the Occupied Territories, are enforced in a manner that, in the overwhelming majority of cases, discriminates against Israeli Arabs and Palestinians. Violations of these regulations also occur in the Jewish sector in Israel and in Jewish settlements in the Occupied Territories. However demolitions of homes of Israeli Jews are virtually unheard of. Information from official sources about demolitions is not disaggregated into separate statistics for the Jewish and Arab sectors.<sup>52</sup> However, according to available information only rarely are properties demolished in the Jewish sector and usually these are extensions to existing buildings, rather than entire homes. The practice in the Jewish sector has tended to be retroactive granting of permits and tolerance of unlicensed buildings, rather than demolition.

In the Occupied Territories the establishment by Israel of Israeli settlements is illegal under international law. In addition, the settlements established without government authorization have usually been granted authorization retroactively and have been provided with services such as water and electricity, even prior to being granted authorization. A widely publicized government decision to dismantle a few unauthorized settlement outposts (consisting of mostly uninhabited caravans) in 2003 was not eventually carried out. In some cases the outposts were not removed and in other cases they were removed but were promptly reestablished by the settlers and left in place by the authorities.

<sup>50</sup> In some cases concerning agricultural land in the Jewish sector being used for commercial purposes, rather than for housing, appeals seeking to invalidate ILA's decisions are currently pending before the Supreme Court.

<sup>51</sup> Report 52 B of the State Comptroller, section on “Use of agricultural land for commercial purposes”, page 418, points 2 and 3.

<sup>52</sup> On 19 January 2004 Deputy Minister of the Interior Victor Brilovsky responded to a parliamentary question that: *“The National Supervision Unit of Buildings at the Interior Ministry does not differentiate between the demolition of Jewish or Arab structures. However, it should be mentioned that most of the illegal constructions in open areas are in the Arab sector.”* ([www.knesset.gov.il](http://www.knesset.gov.il)). The latter assertion contradicts information from official sources according to which unlicensed buildings on agricultural land in the Jewish sector are a widespread phenomenon.

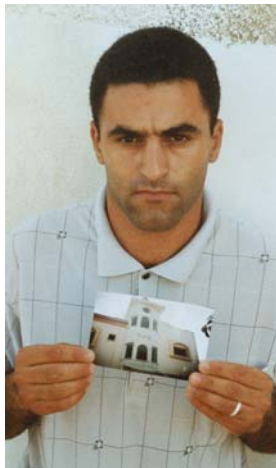
16. The Committee is deeply concerned about the continuing difference in treatment between Jews and non-Jews, in particular Arab and Bedouin communities, with regard to their enjoyment of economic, social and cultural rights in the State party's territory. ... This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of ... lack of access to housing, water, electricity and health care and a lower level of education, despite the State party's efforts to close the gap. In this regard, the Committee expresses its concern that the State party's domestic legal order does not enshrine the general principles of equality and non-discrimination.

Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 23 May 2003, E/C.12/1/Add.90.



As'ad Mu'yin in front of his destroyed house, and below what his house looked like before the destruction, Sept. 2003. ©AI

On 21 August 2003, on the morning of his wedding, As'ad Mu'yin had his house demolished; the house of his cousin Ziad As'ad, who had married a week earlier, was demolished at the same time. The two adjacent houses had been built over the past five years and were located in the West Bank town of Nazla 'Issa (area C according to the Oslo Agreements). As'ad Mu'yin had been living on the ground floor of the house with his parents and three brothers and had furnished and



prepared the second floor to move in with his wife. The house was demolished before he could do so. The new furniture and the wedding gifts disappeared under the rubble, along with the content of the family home on the ground floor. All he has left is a pack of photographs of his house as it was on the eve of the demolition; completely furnished and ready for him to move in with his new bride.

He told Amnesty International: *"The army came early in the morning, at about 7am. I was getting ready for the wedding, for a very happy day. They had bulldozers and there were also border guards and police with them and they gave us 15 minutes to leave the house. We had no time to salvage anything. They said that we did not have building permits and that we needed building permits because this is Area C. But everyone knows that Israel does not give*

*building permits in Area C. Within an hour both our houses were destroyed. There was nothing we could do"*.

Ziad As'ad's house was also on two floors, one for him and one for his brother. He had been living in his half of the house, the upper floor, since his wedding a week before the demolition.

## V. 7. The unrecognized Bedouin villages in the Negev region: trespassers in their homes

*“The police poisoned the fields with airplanes; they must have used something very strong, poison, because we got sick. At first we thought it was a chemical attack from Iraq; the television had talked a lot about Iraq launching a chemical attack on Israel in the American war in Iraq; I hadn’t thought much about it but when the planes came to throw this gas, this poison, I don’t know what it was, I was terrified; my husband was not here, he was in Be’er Sheva and I was alone with the children and I was very scared. The children got really sick; I got very dizzy... Some people vomited and even fainted. I didn’t know what to do. I thought that’s it, it is the chemical attack; then later I learned that it was the police, to kill our crops. Why do they do such things? To bring airplanes to kill our crops? We have nothing here, you see; we don’t get water to irrigate our fields; you can’t cultivate the land without water; and even that little bit we manage to do they destroy; why?”*

A resident of an unrecognized Bedouin village on the destruction of crops in March 2003.

Some 60,000-70,000 Bedouins live in some 45 “unrecognized villages” in the Negev, Israel’s southern region. Although they have lived in the Negev for generations and were the main population of the region before the establishment of the state of Israel, their villages have never been recognized by the authorities and are not provided with basic services, such as running water, electricity, sewage, schools, health facilities and paved roads. Health problems and child mortality rates in these villages are the highest in the country. The inhabitants of these villages are not permitted by the Israeli authorities to build houses nor to farm the land, and live in constant fear that their homes will be demolished. In the past two years alone the security forces have demolished scores of homes in these villages and have destroyed the Bedouins’ crops by helicopter spraying on seven occasions. In the last such incident, on 11 March 2004, the ILA confirmed that the chemical used to spray the fields is the herbicide *Roundup*, produced by the Monsanto Corporation. According to the manufacturer’s instructions, this product should not be used with aerial spraying equipment and even when sprayed at ground level, people and animals should not be allowed in the treated area for seven days.<sup>53</sup> However, the Israeli authorities gave no warning to the local Bedouin population to evacuate the area before spraying the area. A number of people were affected by the crop spraying and had to seek hospital treatment as a result.

Since more permanent constructions in the unrecognized Bedouin villages are more likely to be destroyed by the Israeli authorities, many Bedouins are forced to live in shed-like

<sup>53</sup> See press release of 24 March 2004 about the petition to the Israeli Supreme Court by the Israeli human rights organization Adalah: <http://www.adalah.org/eng/index.php>.

homes with corrugated iron roofs, which offer little protection against the extreme desert climate. Even so, most of their homes and animal sheds are under the threat of demolition. The ILA puts the number of unlicensed (and thus liable to demolition) structures in these villages at 60,000, of which 25,000 are houses, and the Israeli Interior Ministry gives a figure of 30,000<sup>54</sup>.

The authorities have prohibited the Bedouins from building homes and cultivating the land in an effort to prevent them from formally establishing a permanent presence and acquiring land rights through continuous cultivation. Up to the late 1940s the Bedouins held a much larger area of the Negev.<sup>55</sup> After the establishment of the state the authorities forcibly confined the Arab population of the Negev to an area which was declared a closed military zone and became known as the *Siyag* (the *Siyag* is a triangular area between Rahat in the north, Yerucham in the south and Arad in the East). After Israeli military rule over the Arab population ended in 1966, the Bedouins were never allowed to return to the land they previously held. Today they remain in the *Siyag*, on an area which constitutes about 2% of the Negev.<sup>56</sup>

The Bedouins claim that the land of the unrecognized villages belongs to them and that in fact it is only a small percentage of their land even though they do not have deeds of ownership.<sup>57</sup> The Israeli authorities contend that this land is state land, even though it was not registered as state land. In spite of their contention that the Bedouins of the unrecognized villages are trespassers on public land, for years the Israeli authorities have been putting pressure on the Bedouins living in the unrecognized villages (including by destroying their homes and crops and denying them basic services) to sign agreements renouncing their claims to this land and move to urbanized townships being planned by the authorities for them.

In past decades about half of the Bedouin population has given in to government pressures and moved to five townships lacking in infrastructure and opportunities for work and economic development, which were set up by the Israeli authorities especially for the Bedouins. These Bedouin townships remain amongst the poorest localities in the country and have high rates of unemployment and crime. The 60-70,000 Bedouins who continue to live in the unrecognized villages have resisted the government's pressures to give up their land and traditional lifestyle of farming and animal-grazing and to move to such townships.

While stepping up efforts to concentrate the Bedouin population into small townships with little or no employment or development prospects, the authorities have encouraged and sponsored the establishment of new Jewish villages and single farms in the region. According to the State Comptroller report (52B) of 2000 the ILA has leased 66,000 dunums of state land to some 35 Jewish single family farms in the Negev. This makes a striking comparison with

<sup>54</sup> Figures quoted by the State Comptroller in his report 52B of 2000 (section on The Bedouin Diaspora in the Negev, page 111, paragraph 2).

<sup>55</sup> Historically the Negev region in southern Israel had been inhabited almost exclusively by Bedouins. According to the British Mandate Survey of Palestine carried out in 1945-46 by the Anglo-American Committee of Inquiry, some 15% of the land in the Negev was used by Arabs, 0.5% was owned by Jews, 0.2% was public land and the remaining 84% had no defined ownership.

<sup>56</sup> The Negev makes up 60% of Israel's total surface and is sparsely populated.

<sup>57</sup> For details about land registration and acquisition of deeds of ownership see the chapter on Land confiscation/expropriation on page 39.

the situation of the 60-70,000 Bedouins of the unrecognized villages who are not allowed to build homes or farm the land on which they have lived for generations. Isolated Jewish single family farms in the Negev receive services such as electricity and water, while Bedouin villages (even those located near the electricity and water plants) are denied these services.

*The Committee continues to be concerned about the situation of Bedouins residing in Israel, and in particular those living in villages that are still unrecognized. ... Despite measures by the State party to close the gap between the living conditions of Jews and Bedouins in the Negev, the quality of living and housing conditions of the Bedouins continue to be significantly lower, with limited or no access to water, electricity and sanitation. Moreover, Bedouins continue to be subjected on a regular basis to land confiscations, house demolitions, fines for building "illegally", destruction of agricultural crops, fields and trees, and systematic harassment and persecution by the Green Patrol, in order to force them to resettle in "townships".* Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 23 May 2003, E/C.12/1/Add.90(27).

In recent years the Negev has been designated by the government as a priority area for development and for absorption of new Jewish immigrants and the authorities have often restated their determination to remove the Bedouins from the unrecognized villages to seven townships being planned for them.<sup>58</sup>

The government is also taking steps to strengthen eviction laws. A new draft law, called "removal of intruders" law, aims to strengthen the procedures and mechanisms for the "eviction/removal [from public land] of every person, cattle, everything which is built and planted on them, and of everything else which is permanently connected [to the land]".<sup>59</sup> Notably, it provides for a substantially increased budget for security services to carry out more evictions/removals, in a more timely and effective manner.



'Ali Abu Sbeit and his children by the rubble of their destroyed home. © AI, September 2003

On 4 August 2003 Israeli security forces demolished the home of 'Ali and Sara Abu Sbeit and their six children, aged between 13 and two and a half years, in Sa'wa, one of the unrecognized Bedouin villages. 'Ali Abu Sbeit told Amnesty International:

*"The police and border guards came at about 7am. We were still asleep. There were more than 200 of them and they had bulldozers."*

<sup>58</sup> See for example Interior Minister Poraz's statement at the Knesset's debate on the issue of the master plan in the Arab sector, on 21 January 2004 ([www.knesset.gov.il](http://www.knesset.gov.il)).

<sup>59</sup> The *Public Land [Removal of Intruders] Law [Amendment] 2002*, amending the primary 1981 law by the same name, was submitted by the government to the Knesset (parliament) in 2002 and is pending approval.

*They tied my hands behind my back and took me, my wife and the children out. They did not allow us time to take anything out of the house. Some policemen took out a few things but most of what we had remained in the house. They started to hit the house with the bulldozer and demolished it very quickly, then some of them clapped and they all left. It was a terrible day, my wife and the children were very sad, we were all very upset. Since our home was destroyed we have been staying with our relatives, but not all together because there are a lot of us. My wife was very affected by the demolition of our home and she needed looking after to recover, so she and our little daughter are staying with her parents in Ramle, our two oldest daughters are staying with my brother, and me and the three boys are staying with my mother. My children have not seen their mother and their little sister for three weeks. We are going to visit them in Ramle later today; but how can we live like this, we are a family and need our own home.*

*This is the second time that my home has been demolished. The first time was in 1997 and I had to demolish the house myself; or else the authorities were going to make me pay the cost of the bulldozer and everything for the demolition. At that time there was a court order that said that I had to demolish the house and I did. I have always been a law-abiding citizen. I have been serving in the Israeli army for 13 years<sup>60</sup>; every year I do my reserve service; I just finished my reserve duty a few weeks ago, and two weeks after I came home from reserve duty the police came to demolish my home; without warning, I never received any court order or anything. We can't build anywhere, where are we supposed to live? After my house was demolished in 1997 my family and I lived with my mother for three years, but now there isn't space for all of us there. Then in 1999 I built this home, and now we are homeless again".*

On the same day Israeli security forces demolished nine other homes in the same village. The house which was demolished immediately after 'Ali Abu Sbeit's belonged to his cousin, who is married with four children.

## V. 8. Planning and building restrictions in East Jerusalem



Salim and 'Arabia Shawamreh's house has been demolished four times since July 1998. After the last demolition, on 2 April 2003, the house was rebuilt with the help of volunteers from several Israeli human rights groups as a peace centre in memory of Noha Maqadmeh, a mother of 10 children who was crushed to death under the rubble of her destroyed home in Gaza in March 2003 (see page 11),

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Israeli army but some of them enlist voluntarily for army service, whereas Israeli Arabs never serve. Fewer Bedouins serve in the Israeli army now than in previous decades, reportedly because of increasing grievances amongst Bedouins about discrimination and unequal treatment by the state.



and of Rachel Corrie, a 23-year-old American peace activist who was crushed to death by an Israeli army bulldozer in March 2003 as she tried to prevent the demolition of a house in Rafah refugee camp in the Gaza Strip.

Salim and 'Arabia have seven children aged between 2 and 21 years. They are from Palestinian refugee families who lost their homes when their village in the northern Negev was destroyed by Israel after the establishment of the state in 1948. They lived in the overcrowded Shu'fat refugee camp in Jerusalem, and eventually bought a plot of land in the nearby village of 'Anata. After having spent more than four years and a lot of money trying to obtain a permit, they lost hope and built their home without a permit.

They told Amnesty International:

*"The authorities gave us different justifications for refusing us the building permit: that the land was too steep, that it was zoned as agriculture, that signatures were missing from the property deed, that a highway was planned nearby, that their application had been lost. Each time we succeeded to challenge or disprove the reason they had given us for the refusal, our application was rejected on different grounds. We spent thousands of dollars on this process and in the end we understood that it was hopeless and we built our home without a permit".*

'Arabia told Amnesty International about the repeated demolition of their home:

*"The first time they demolished our home it was on 9 July 1998; we had been living in our home for five years. They came in the morning without warning. There were a lot of soldiers and police, with bulldozers. I locked the door but the soldiers threw teargas through the window and broke down the door. They tied Salim's hands so tight they swelled and they beat him and our oldest son, who was 14 at the time. They hit me on the head with a gun butt and ill-treated the children. Some female soldiers grabbed my little girls by the hair and dragged them. I was taken to hospital. We were living in a tent on our land and started to rebuild the house immediately. A month later, when the house was almost finished the army and police came again, in the middle of the night and threatened to shoot anyone who moved, including the Israeli peace activists who were staying with us and helping us. They demolished the house again. The children were terrified and remained disturbed and the little ones wet the bed for a long time after that. The children were traumatized and so was I; I could not even speak for some time; I became very depressed. It was very difficult for all of us"*

The family started to rebuild their house in 1999 and finished it and moved in on 3 April 2001. The following day the Israeli security forces again came to demolish the house and this time they also destroyed the foundations. In the summer of 2002 the family once again started to rebuild their home and on 3 April 2003, as the inside of the house was being finished, the house was destroyed once more. Since the house was rebuilt in the summer of 2003 as a peace centre, the Israeli security forces have again threatened to destroy but at the time of writing this report it had not been demolished.

Hundreds of homes have been demolished in East Jerusalem<sup>61</sup> on the ground that they had been constructed without building permits in recent years, and thousands more are at risk of

<sup>61</sup> According to international law East Jerusalem is part of the Occupied Territories and its annexation by Israel is in violation of international law. However, because of the annexation, East Jerusalem is

demolition. Many Palestinian residents of Jerusalem find it impossible to obtain permits to build homes on their land because most of the Palestinian land has been classified by the Israeli authorities as green land.

When Israel occupied the West Bank in 1967 it immediately annexed East Jerusalem and the land of 28 surrounding towns and villages,<sup>62</sup> and expropriated more than a third (24.5 km<sup>2</sup>) of the total land annexed (71 km<sup>2</sup>). Most of the expropriated land was privately owned by Palestinians. According to the Israeli human rights organization B'Tselem:

*“By the end of 2000, on the land expropriated in East Jerusalem, close to 44,000 housing units had been built for Jews, while not even one housing unit was built for Palestinians” .... “82 percent of the housing units built [in the whole of Jerusalem], were for Jews; 18 percent were for Palestinians. The disparity has been greater in recent years: of the units completed between 1990 and the end of 2000, only 11.4 percent were constructed in Palestinian neighborhoods”.*<sup>63</sup>

Since annexing East Jerusalem Israel has severely limited new construction in the Palestinian neighbourhoods. The expropriation of large areas of land near Palestinian neighbourhoods and villages left most Palestinian neighbourhoods with little or no land on which to build, and where there is land it is not permitted to build on it. Whereas in the rest of the West Bank the Israeli authorities have cited ancient plans which give no opportunity for development, in East Jerusalem they have done the opposite. Shortly after annexation in 1967



This house in Beit Hanina (East Jerusalem), home to the Badr family, was destroyed on 11 September 2001. The demolition reportedly stopped when the soldiers realised they were destroying the wrong house. In the background the Israeli settlement of Reches Shu'fat.  
© AI, September 2001

the Israeli authorities cancelled the (Jordanian) development plan which had been approved in 1966 and which gave extensive opportunity for development. A planning vacuum was thus created pending the approval of new plans and in the interim period only rare *ad hoc* building permits were issued to Palestinians and only in extremely restricted areas.

Since the 1980s outline plans have been drawn up for most of the Palestinian neighbourhoods of East Jerusalem. A striking feature of these plans is the

governed under Israeli civil laws, and not under military laws like the rest of the Occupied Territories. It is to avoid confusion that the situation in East Jerusalem is detailed on its own in this chapter.

<sup>62</sup> The boundaries of the annexed Palestinian land were drawn to include as much land and as few Palestinians as possible, mostly leaving out the urban areas of these towns and villages.

<sup>63</sup> See the section on Discrimination in Planning, Building, and Land Expropriation, on B'Tselem's website: [www.btselem.org](http://www.btselem.org).

extraordinary amount of land, some 40%, zoned as “open landscape” (*shetah nof patuah*), where any form of development is prohibited. The plans approved by the end of 1999 only allow building on little over 11% of the land in the East Jerusalem area which is privately owned by Palestinians, and this land is mainly within already built-up areas. Separate outline plans are issued for Jewish settlements and for Palestinian neighbourhoods, with manifestly different standards adopted. The plans for Palestinian neighbourhoods are geographically restrictive, have insufficient capacity and do not take into account the needs of the Palestinian population.

Geographically, the plans establish a ‘blue line’ boundary around most existing developed areas, within which land is zoned to allow ‘infill’ development on empty plots between existing buildings. No significant allocation of new development land has ever been made. The need to confine the boundaries so as not to exceed the ‘quota’ is cited in Israeli records as justification for the tight development boundaries. Land outside the blue line is zoned as “open landscape”, on which no development is permitted, which in practice often precludes even agriculture.

The zoning of land as “open landscape” has been frequently used to freeze development of land until later confiscation for Jewish settlements (as at Reches Shu’fat, Beit Safafa and the most recent major settlement at Jabal Abu Ghneim/Har Homa). For example, land at Shu’fat which had been zoned for Palestinian housing in the 1966 Jordanian plan, was later re-zoned by Israel as “open landscape” and planted with cypress trees; in 1994 it was allocated to the Jewish National Fund for Jewish housing which has since been built.

The procedures used are also a source of problems. Even though Palestinians normally only build on land in family ownership, no attempt has been made to take ownership patterns into account in formulating the plans. There has been no attempt to devolve local decision making to the local Palestinian neighbourhoods. Even when outline plans are approved it is often then necessary for a detailed plan to be approved, and larger plots require an approved parcelation plan (the subdivision of land into different ownership plots) – a process which can take years to approve.

Due to these and other factors, thousands of Palestinians and Israeli Arabs have found it impossible to obtain building permits even after lengthy and costly application procedures. Many have turned to the courts, incurring further expenses, but in most cases their appeals have been unsuccessful. Others, knowing that they have no chance of obtaining a building permit, have built their homes without applying for a permit. As a result, thousands of homes have been demolished and thousands more are under the threat of demolition.

Many who built their homes without a permit subsequently received heavy fines, in some cases up to the cost of the houses themselves. They believed payment of the fine would result in the building permit being granted or at least in the threat of demolition being removed or suspended until a hoped-for review of the building permit system. However, after paying part of the fine, in some cases most of the fine, they nevertheless received demolition orders.

## **VI. APPLICABLE INTERNATIONAL LEGAL STANDARDS**

Both in Israel and in the Occupied Territories, Israel is bound by international human rights law, including the international human rights treaties to which Israel is a State Party. The most relevant to the concerns addressed in this report include: The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the UN Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) and the UN Convention on the Rights of the Child (CRC).

In the Occupied Territories two sets of complementary legal frameworks apply: international human rights law and international humanitarian law. Hence, in addition to the above-mentioned international human rights treaties, Israel's conduct as the occupying power in the Occupied Territories must also comply with the provisions of international humanitarian law applicable to belligerent occupation, including:

- The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annexed Regulations respecting the Laws and Customs of War on Land of 18 October 1907 (hereafter Hague Regulations);
- The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereafter Fourth Geneva Convention);
- Rules of customary international law, including Article 75 of the 1977 Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I);

### **VI. 1. Applicability of international law in the Occupied Territories**

**International human rights law:** Israel has consistently denied that it is under any obligation to apply the UN human rights treaties to which it is a State Party in the West Bank and Gaza Strip. Israel has argued that under international law it is not required to apply these treaties to areas that are not part of its sovereign territory. It takes the position that limited provisions of humanitarian law should be applied in the Occupied Territories to the exclusion of international human rights law. However, it is a basic principle of human rights law that international human rights treaties are applicable in all areas in which states parties exercise effective control, regardless of whether or not they exercise sovereignty in that area.

In addition, Israel contends that it cannot be internationally responsible for ensuring the implementation of these treaties in these areas because the majority of civil powers and responsibilities have been transferred to the PA under the Oslo Accords. The Oslo Agreements envisage that the PA should exercise extensive powers and responsibilities in the Occupied Territories. However, the PA is clearly dependent on Israel's cooperation to exercise these powers and responsibilities. Israel can and does control the access of the

Palestinian population of the Occupied Territories to vital resources such as land and water. Israel always retained overall effective control of the Occupied Territories. And as stipulated by Article 47 of the Fourth Geneva Convention:

*“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territory and the Occupying power, nor by any annexation by the latter of the whole or part of the occupied territory.”*

Moreover, in recent years Israel has redeployed its forces in towns and villages which according to the Oslo Agreements are under PA jurisdiction and where most Palestinians live. Indeed most of the Palestinian homes, land and other properties which have been destroyed in the past three years were located in areas under the jurisdiction of the PA. There can be no doubt that Israel continues to exercise effective control over the Occupied Territories and is therefore responsible for implementing its obligations under international human rights law.

Israel’s position on the applicability of the UN human rights conventions in the Occupied Territories has not been accepted by any of the UN human rights treaty bodies. For example, the UN Committee on Economic, Social and Cultural Rights (CESCR), in its conclusions on Israel’s initial report in 2000, stated: *“The Committee is of the view that the State’s obligations under the Covenant apply to all territories and populations under its effective control.”*<sup>64</sup> The Committee requested Israel to provide it with additional information on the realization of economic, social and cultural rights in the Occupied Territories *“in order to complete the State party’s initial report and thereby ensure full compliance with its reporting obligations.”*<sup>65</sup> The Committee has reconsidered this issue in the past two years and in 2001 maintained its position that the International Covenant on Economic, Social and Cultural Rights is applicable in the Occupied Territories. It stated that: *“Even during armed conflict, fundamental human rights must be respected and ... basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law and are also prescribed by international law.”*<sup>66</sup>

**International humanitarian law:** Even though Israel has argued before the UN human rights treaty bodies that the appropriate legal regime to be applied in the Occupied Territories is humanitarian law only, it has refused to accept that many of these norms are applicable. While recognizing the *de jure* applicability of the Hague Regulations, Israel has consistently rejected the applicability of the Fourth Geneva Convention to the West Bank and Gaza Strip. Israel maintains that it applies *de facto* unspecified “humanitarian provisions” contained in the Fourth Geneva Convention, while arguing that it is not required to do so by international law.

Israel stands alone in contending that the Fourth Geneva Convention does not apply to its occupation of the West Bank and Gaza Strip. The UN, the International Committee of the Red Cross (ICRC) and the international community have consistently maintained that the

<sup>64</sup> CESCR, E/C.12/1/Add.27, para. 8.

<sup>65</sup> CESCR, E/C.12/1/Add.27, para. 32.

<sup>66</sup> E/C.12/1/Add.69, para. 12.

Fourth Geneva Convention fully applies to the Occupied Territories and that the Palestinians are a protected population under the terms of the Convention.

## VI. 2. International human rights law

### VI. 2.1 The right to housing

The right to housing is a basic right, which is a fundamental component of the right to an adequate standard of living and central to the enjoyment of other human rights. The imperative for all people “of housing for personal security, privacy, health, safety, protection from the elements and many other attributes of a shared humanity”<sup>67</sup> has led the international community to enshrine the right in a number of human rights instruments, including Article 25 of the Universal Declaration of Human Rights and international human rights treaties to which Israel is a party.

For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to adequate housing in Article 11(1):

*“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. States Parties will take appropriate steps to ensure the realization of this right...”*

The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body which monitors states’ implementation of the ICESCR, in its General Comment 3 concerning State Parties’ obligations under the ICESCR, clarifies that:

*“... while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”*<sup>68</sup>

The right to housing encompasses the right to live somewhere in peace, security and dignity, as well as the right to *adequate* housing. The right to adequate housing not only includes adequate privacy, space, security, protection from the elements and threats to health, ventilation at a reasonable cost, but also, among other things legal security of tenure – including protection against forced eviction, harassment and threats; sustainable access to: safe drinking water, heating, lighting, sanitation and washing facilities, refuse disposal, emergency services.<sup>69</sup>

Under Article 12 of the International Covenant on Civil and Political Rights (ICCPR), all persons lawfully on a territory are guaranteed the right to freedom to choose one’s residence.

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<sup>67</sup> *Housing Rights Legislation, Review of international and national legal instruments*, United Nations Housing Rights Programme, Report No.1, UN Human Settlements Programme (UN-HABITAT) and the Office of the High Commissioner for Human Rights (OHCHR), 2002, p 1.

<sup>68</sup> CESCR, General Comment 3, Art. 2, para. 1.

<sup>69</sup> CESCR, General Comment 4, paras 7 and 8.

The right of children to adequate housing is enshrined in Principle 4 of the Declaration of the Rights of the Child. The obligation of States Parties including Israel, in cases of need to provide material assistance and support programmes to families and children, particularly with regard to housing, is set out in Article 27(3) of the Convention on the Rights of the Child (CRC).

The obligation of states, including Israel, to eliminate discrimination against women in rural areas in order to ensure that they enjoy adequate living conditions, particularly in relation to housing, is enshrined in Article 14(2)(h) of the Women's Convention.

The CESCR clarifies State Parties' obligations under Article 11 of the ICESCR in its General Comment 4:

*"... the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity .... the reference in article 11(1) must be read as referring not just to housing but to **adequate** housing".*<sup>70</sup> (emphasis added).

*"In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association ... the right to freedom of residence and the right to participate in public decision making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing".*<sup>71</sup>

*"Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups..."*<sup>72</sup>

In its concluding observations in May 2003 the CESCR expressed serious concerns about Israel's practices which violate the right to housing of Israeli Arabs, including Bedouins in Israel, and of Palestinians in the Occupied Territories.<sup>73</sup>

The Committee also expressed regret that a number of the concerns it had raised in 1998 remained outstanding and reiterated its concerns about these issues.<sup>74</sup>

Among other things, in 1998 the Committee had expressed

<sup>70</sup> CESCR, General Comment 4, para 7.

<sup>71</sup> CESCR, General Comment 4, para 9.

<sup>72</sup> CESCR General Comment 4, para 10.

<sup>73</sup> Concluding Observations of the CESCR: Israel, 23/05/2003; UN Doc: E/C.12/1/Add.9, paras 16, 26 and 27.

<sup>74</sup> Ibid, UN Doc: E/C.12/1/Add.9, paras 12, 26, 27 and 28.

*“... grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews”.*<sup>75</sup>

The Committee also expressed its

*“...deep concern that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognized villages without access to water, electricity, sanitation and roads... In addition, these villagers are continuously threatened with demolition of their home and confiscation of their land.... In this connection, the Committee takes note that while Jewish settlements are constructed on a regular basis, no new Arab villages have been built in the Galilee”.*<sup>76</sup>

In addition, in 1998, the Committee expressed

*“... grave concern about the situation of the Bedouin Palestinians settled in Israel. ... They have no access to water, electricity and sanitation and are subjected on a regular basis to land confiscations, house demolitions, fines for building ‘illegally’, destruction of agricultural fields and trees...”.*<sup>77</sup>

## **VI. 2.2 Discrimination**

The fundamental duty of a State to guarantee rights without discrimination is enshrined in the international human rights treaties, including the ICCPR (Article 2(1) and Article 26) and the ICESCR (Article 2(2)).

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) forbids any discrimination in the exercise of the various rights, including the right to housing. Under Article 5(e)(iii):

*“... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... economic, social and cultural rights, in particular... the right to housing...”*

The CESCR has made clear that the duty to ensure the right to adequate housing applies to everyone without discrimination is not progressive, it is immediate. The Committee also clarified that:

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<sup>75</sup> Ibid, UN Doc: E/C.12/1/Add.27, para 11.

<sup>76</sup> Ibid, UN Doc: E/C.12/1/Add.27, para 26.

<sup>77</sup> Ibid, UN Doc: E/C.12/1/Add.27, para 28.



*“States must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”*<sup>78</sup>

Israel’s housing and land policies violate the right of Israeli Arab citizens and of Palestinians in the Occupied Territories to non-discrimination.

In March 1998 the UN Committee on the Elimination of Racial Discrimination (CERD) called “... for a halt to the demolition of Arab properties in East Jerusalem and for respect for property rights irrespective of the ethnic origin of the owner.” and expressed concern “... about ethnic inequalities, particularly those centring upon what are known as “unrecognized” Arab villages [in Israel].”<sup>79</sup>

## VI. 2.3 Forced eviction

Forced eviction is the “*permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to appropriate forms of legal or other protections. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.*”<sup>80</sup>

As mentioned, the right to adequate housing includes the right to security of tenure, including legal guarantees against forced eviction, harassment and other threats.<sup>81</sup>

Through forced eviction and the mass demolition of homes in the Occupied Territories and, to a lesser extent in Israel, the Israeli authorities have deliberately made tens of thousands of Palestinians and thousands of Israeli Arabs homeless just in the past few years.

Whether it justifies such action on grounds of “military/security needs” or whether such action is imposed as a form of collective punishment, or whether carried out in enforcement of planning regulations such large-scale forced evictions are inconsistent with the realization of the right to adequate housing. The obligation of the state under international law is that it must refrain from forced evictions.

The CESCR, in its General Comment 4 on the right to adequate housing, has clarified that it:

*“... considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”*<sup>82</sup>

In its General Comment 7, the Committee makes it clear that forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant

<sup>78</sup> CERD, General Comment 4, paras 11 and 6; General Comment 3, para 1.

<sup>79</sup> CERD/C/304/Add.45, paras.11 and 19.

<sup>80</sup> CESCR, General Comment 7, para 3.

<sup>81</sup> CESCR, General Comment 4, para 8(a).

<sup>82</sup> CESCR, General Comment 4, para 18.

and with the provisions of the Geneva Conventions prohibiting the displacement of the civilian population and the destruction of private property.<sup>83</sup>

According to the Committee:

*“States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force...”*<sup>84</sup>

Forced evictions also constitute a violation of the privacy of the home. Article 17(1) and (2) of the ICCPR stipulates that:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

The issue of legal tenure is particularly relevant to the situation of the unrecognized Bedouin villages in the Negev, where the Israeli authorities dispute the Bedouins' claims to ownership of the land. A basic protection against forced eviction is to take measures to confer legal security of tenure on people who lack such protection.

Both the CESCR and the UN Commission on Human Rights (CHR) have called on states to provide legal tenure to those threatened with forced eviction.

The Committee lists various types of tenure, including informal settlements, and adds:

*“notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”*<sup>85</sup>

In its resolution on Forced Evictions in 1993, the CHR, stated that: *“the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing”* and urged governments to *“confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.”*<sup>86</sup>

Forced evictions and demolitions of homes have not only violated the right to adequate housing, the rights to privacy, family and home and the right to the peaceful enjoyment of their possessions, but also have resulted in violations of the rights to life and to security of persons, guaranteed by Article 6 and 9 of the ICCPR. Several people have been

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<sup>83</sup> CESCR, General Comment 7, para 12.

<sup>84</sup> CESCR, General Comment 7, para 13.

<sup>85</sup> CESCR, General Comment 4, para 8(a).

<sup>86</sup> CHR Resolution 1993/77: Forced Evictions, paras 1 and 3.

killed or injured in the demolition of their homes or of nearby buildings or while protesting the demolitions.

The UN Committee against Torture has expressed concern about Israeli policies on house demolitions which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment, in violation of Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee called on the Israeli government to desist from the policy of such house demolition.<sup>87</sup>

## VI. 2.4 Due process and right to effective remedy

Article 26 of the ICCPR stipulates that:

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

Article 17 of the ICCPR guarantees the right not to be subjected to arbitrary or unlawful interference with privacy, family and home, and the right to the protection of law against such interference.

The CESCR has stated that the right to adequate housing is at least consistent with the provision of legal remedies such as:

- a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;*
- b) legal procedures seeking compensation following an illegal eviction;...<sup>88</sup>*

Article 2(3) of the ICCPR requires that States Parties, including Israel, ensure that any person whose rights or freedoms are violated has a right to an effective remedy, determined by a competent authority.

In the rare cases where advance warning of the intended eviction and demolition of a home or property has been given by Israeli authorities, in the overwhelming majority of cases lengthy and costly legal cases did not result in protection against demolition or redress for victims of house demolition. In most cases demolition of houses and destruction of land and other property is carried out without prior notice, leaving little if any recourse for the victims. Israeli courts, including the Supreme Court, have repeatedly sanctioned the Israeli army's demolition of homes as a measure of “deterrence”, and the mass destruction of homes, land and other property on grounds of “military/security needs”. In ruling that the Israeli army need not give advance warning before demolishing homes or other properties the Supreme Court has undermined the victims' right to due process. In cases of demolition of homes on grounds of lack of building permits, the courts have consistently failed to address

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<sup>87</sup> Conclusions and Recommendations of the Committee against Torture: Israel. 23/11/2001. CAT/C/XXVII/Concl.5 (paras 6.j and 7.g).

<sup>88</sup> CESCR, General Comment 4, para 17.

discriminatory laws, planning regulations and enforcement practices which have resulted in house demolition.

### **VI. 3. International humanitarian law**

As the Occupying Power, Israel is bound by the rules of the Fourth Geneva Convention. Israel retains and exercises effective control over the Occupied Territories. For example, Israeli soldiers carry out frequent arrests and searches in houses and other buildings throughout the Occupied Territories, in rural or urban areas, refugee camps, towns or villages, during the day or at night. The Israeli army routinely subjects the Palestinian population of the West Bank and Gaza Strip to curfews and other restrictions, and in the past three and a half years it has imposed a degree of control over the movement of Palestinians and foreigners throughout the West Bank and Gaza Strip unprecedented in the 37 years of occupation.

Israel is prohibited from attacking civilians and civilian objects. Palestinian residents of the West Bank and Gaza Strip are civilians benefiting from the protection of the Fourth Geneva Convention. Armed Palestinians who directly participate in hostilities – for example by shooting at Israeli soldiers or civilians – lose their protected status for the duration of the attack. Article 51(3) of Protocol I Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) explains how civilian status can be temporarily lost. *“Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take direct part in hostilities.”* Palestinians engaged in armed clashes with Israeli forces are not combatants. They are civilians who lose their protected status for the duration of the armed engagement. They cannot be killed at any time other than while they are firing upon or otherwise posing an immediate threat to Israeli troops or civilians. Because they are not combatants, the fact that they participated in an armed attack at an earlier point cannot justify targeting them for death later on.

Similarly, there are no Palestinian objects in the Occupied Territories that meet the criteria of military objectives. Certain objects may be attacked while they are being used for firing upon Israeli forces. But they revert to their status as civilian objects as soon as they are no longer being used for launching attacks.

There has been considerable debate as to whether the violence in Israel and the Occupied Territories has reached a scale and intensity whereby the rules of international humanitarian law on the conduct of hostilities in international armed conflicts should apply, and if so to what extent. It may be argued that a few instances of fighting, such as the prolonged military operations in Jenin and Nablus in the spring of 2002, reached the requisite threshold. In such situations, international humanitarian law sets out standards of humane conduct applicable to both state forces and armed groups. These rules are codified in Protocol I, which applies to international armed conflicts including *“armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their rights of self-determination”* (Article 1(4) of Protocol I). The provisions of Protocol I concerning the protection of the civilian population are regarded as norms of customary international law. In the overwhelming majority of situations of destruction of property and eviction in the Occupied Territories, the applicable legal regime is the Fourth Geneva Convention and human rights standards – not conduct of hostilities standards.

In countering any armed attacks by Palestinians, Israeli forces are prohibited from responding with disproportionate force. The standards that should be applied in determining whether security forces have responded appropriately are those relevant to the use of firearms against members of the public.

### **VI. 3.1 Prohibition on destruction of property and disproportionate use of force**

As the Occupying Power, Israel is forbidden from destroying the property of Palestinians in the West Bank and Gaza Strip, unless it is militarily necessary to do so. Article 53 of the Fourth Geneva Convention stipulates that:

*“Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”*

The Commentary to the Convention is clear that the provision specifically applies to occupied territory.<sup>89</sup>

A similar provision is contained in Article 23(g) of the 1907 Hague Regulations. This Article stipulates that it is forbidden *“to destroy or seize the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war.”*<sup>90</sup>

The commentary to Article 53 of the Fourth Geneva Convention specifically notes that the Hague Regulations apply to situations that would not be covered under Article 53.<sup>91</sup>

And according to Article 147 of the Fourth Geneva Convention, *“extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”* is a grave breach, and hence, a war crime.

Military necessity *“means the necessity for measures which are essential to attain the goals of war, and which are lawful in accordance with the laws and customs of war.”*<sup>92</sup> ... based on four foundations: urgency, measures which are limited to the indispensable, the

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<sup>89</sup> “In order to dissipate any misconception in regard to the scope of Article 53, it must be pointed out that the property referred to is not accorded general protection; the Convention merely provides here for its protection in occupied territory.”

<sup>90</sup> The Israeli army has referred to this article in its responses to Palestinian and Israeli NGOs (such as the Gaza-based Palestinian Center for Human Rights and the Jerusalem-based B’Tselem) about cases of destruction and seizure of Palestinian houses, land and other property. See copy of the Israeli army response to B’Tselem in the report *Israel’s Policy of House Demolition and Destruction of Agricultural Land in the Gaza Strip*, February 2002, [www.btselem.org](http://www.btselem.org).

<sup>91</sup> “It will be remembered that Article 23(g) of the Hague Regulations forbids the unnecessary destruction of enemy property; since that rule is placed in the section entitled “hostilities,” it covers all property in the territory involved in a war; its scope is therefore much wider than that of the provision under [Article 53].”

<sup>92</sup> ICRC, Commentary on Protocol I, p. 393.

*control (in space and time) of the force used, and the means which should not infringe on an unconditional prohibition.*<sup>93</sup>

It should not be interpreted in a broad and vague manner which would undermine the fundamental norms of international human rights and humanitarian law, and measures intended to have long term preventative effects would thus not be justifiable on the grounds of absolute military necessity.

In the case of long-held occupied territory over which the occupying power exercises effective control, military necessity must be read extremely narrowly – in light of the concept of proportionality inherent in policing standards, rather than conduct of hostilities standards which should only apply in the course of actual armed conflict. As there are no permanent military objectives in the Occupied Territories, property can only be destroyed when it is absolutely unavoidable in the course of fighting or when absolutely necessary for lawful military purposes. Such purposes could include the removal of imminent threats to life, but would not include measures aimed at facilitating the expansion and consolidation of Israeli settlements in the Occupied Territories, which are illegal under international law. Even in cases where destruction or eviction may be justified on grounds of absolute necessity for military operations, Israel should consider less drastic alternatives. Demolitions and evictions should never be anything but a last resort. In the past three and half years the Israeli army has carried out extensive destruction of homes and properties throughout the West Bank and Gaza which is not justified by military necessity. Some of these acts of destruction amount to grave breaches of the Fourth Geneva Convention and are war crimes.

### **VI. 3.2 Prohibition on collective punishment**

The Fourth Geneva Convention specifically prohibits collective punishment. Its Article 33 stipulates: “*No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.*” As explained in the authoritative commentary of the ICRC: “*This paragraph then lays a prohibition on collective penalties ... penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed.*”<sup>94</sup>

The *Handbook of Humanitarian Law in Armed Conflict*, a respected interpretative guide to international humanitarian law, interprets the prohibition on collective punishment as follows:

*“Collective penalties and all measures of intimidation and terrorism carried out by the occupying power have only one purpose: to make the population of the occupied territory submissive. Such measures may take different forms, such as a curfew preventing the inhabitants from fulfilling their daily duties, punishment or detention of several members of a group or family for an alleged offense by one member, or the*

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<sup>93</sup> Ibid, p. 396.

<sup>94</sup> ICRC, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, p. 225. (Geneva: ICRC, 1958).

*destruction of the house belonging to the family of an alleged offender. Such acts are prohibited, without exception, by Article 33 [of the Fourth Geneva Convention].*<sup>95</sup>

The prohibition on collective punishment is also a cardinal rule of human rights law.<sup>96</sup> The recently accelerated Israeli practice of demolishing houses owned by relatives of suicide bombers or other Palestinian armed attackers is a blatant form of collective punishment, but the phenomenon also is expressed in other ways. Collective penalties include such measures as attacking an entire community in retaliation for acts committed by members of that community, or arbitrarily restricting the movement of an entire population. The logic of collective punishment is encapsulated by the words of Major-General Doron Almog of the Israeli army who, when reporting that houses in the Rafah refugee camp had been destroyed in retaliation for an attack on an Israeli army post, explained: *“most of our operations have focused on the Rafah area, as that is where the two Hamas terrorists came from.”*<sup>97</sup>

## VII. RECOMMENDATIONS

### TO THE ISRAELI AUTHORITIES:

#### Concerning punitive house demolition, described as “deterrent”

- The demolition of the homes of relatives of Palestinians known or suspected of involvement in suicide bombings or other attacks against Israeli civilians and soldiers violates international law and should stop immediately.
- All those whose homes have been demolished on such grounds should receive full reparation, including adequate compensation, as should those whose homes have been incidentally demolished or damaged in the course of such demolition operations.

#### Concerning destruction of properties claimed to be for other “military/security needs”

- The destruction of houses, land, and other properties without absolute military necessity as prescribed by international humanitarian law should stop immediately.
- The law must be amended in a manner so as to require that, except during the actual conduct of military operations or armed confrontations which make the destruction absolutely necessary, no demolition should be carried out without prior notification to the concerned parties, who should be given adequate time and opportunity to challenge before an independent and impartial court of law any order for the demolition of a house or the destruction of land or other property. Legal aid must be provided to those unable to

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<sup>95</sup> Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflict*, p. 249.

<sup>96</sup> Notably General Comment 29 on Article 4 of the ICCPR.

<sup>97</sup> Major-General Doron Almog, Officer Commander (OC) Southern Command (Gaza Strip), speaking to the Israeli TV Channel 2's "Meet the Press", as quoted by the Jerusalem Post of 13 January 2002.

afford counsel. The current practice of destruction and eviction without prior notice must stop immediately.

- All those whose properties have been unlawfully destroyed without adequate prior notification and the effective opportunity to challenge the decision before a court of law should receive reparation and be allowed, where possible, to rebuild their properties in the same place.
- The creation and expansion of Israeli civilian settlements in the Occupied Territories and infrastructure to support them, including roads, violates international law. Israel must cease and prohibit the destruction of houses, land or other properties for these purposes.
- Measures must be taken to evacuate Israeli civilians living in settlements in the Occupied Territories, in such a manner as to ensure the human rights of Palestinians are respected, in particular their rights to free movement and to an adequate standard of living. Such measures should include respect for the rights of the Israeli citizens evacuated, including adequate compensation.
- Israel must stop construction of the wall/fence *within* the Occupied Territories, remove what has already been constructed within the Occupied Territories, restore seized property, and ensure reparation for land and property seized, confiscated or destroyed.
- The Israeli army should keep and publish accurate records of property destroyed or damaged. Such reporting should be part of the required operational debrief following any military operation. The records should also include detailed information about the circumstances of the damage or destruction of each property.
- A judicial commission of inquiry should be established to investigate all the cases of destruction, confiscation and damage to property carried out by the Israeli army in the Occupied Territories since October 2000, in order to establish the extent of the damage caused and the necessary reparation. The commission should also investigate the legality, according to international law, of the grounds that the army claims rendered the destruction necessary.
- Israel should invite the international community to deploy qualified and experienced observers in the Occupied Territories to monitor the conduct of the Israeli army, Palestinian armed groups and Palestinian security forces. Such independent, expert observers should report publicly on the conduct of all parties in light of international law, including in relation to destruction of and damage to property. The observers should be granted free and unhindered access within the Occupied Territories and to relevant documentation in order to conduct thorough and impartial investigations, including forensic investigation.

#### **Concerning the demolition of unlicensed houses in the Occupied Territories**

- Israel should cancel all demolition orders of unlicensed houses in the Occupied Territories.



- Responsibility for planning and building policies and regulations in the Occupied Territories should be removed from the Israeli authorities and placed solely with the local Palestinian communities.
- All those whose properties have been destroyed in violation of international law should be granted effective redress. Israel should ensure reparation to those whose houses were unlawfully destroyed.

#### **Concerning the demolition of unlicensed houses in Israel**

- All outstanding orders for forced evictions and demolitions should be cancelled and a moratorium should be placed on future forced evictions and demolitions until such time as the law is amended in a manner that complies with international standards.
- Laws and policies governing the zoning and allocation of land must be amended immediately. Provisions which are discriminatory must be repealed or amended. Laws and policies must be implemented in a manner that respects the prohibition on discrimination on grounds including race, religion, national or ethnic origin and descent.
- Legal recognition/status should be granted immediately to the unrecognized villages. Legal security of tenure should be afforded to the residents of these unrecognized villages. Sustainable access to safe, potable drinking water, electricity, sanitation, sewage, refuse disposal, emergency services, medical care and education must be guaranteed to all residents. Efforts to forcibly remove the inhabitants of unrecognized villages should be immediately halted.
- Israel should ensure access to effective redress and reparation to those who have had their homes demolished.

#### **TO THE PALESTINIAN AUTHORITY:**

- The PA should take all possible measures to prevent attacks by Palestinian armed groups and individuals against Israeli civilians in the Occupied Territories and inside Israel.
- The PA should take all possible measures to ensure that Palestinian armed groups and individuals do not initiate armed confrontations from residential civilian areas.
- The PA should support the call on the international community to deploy qualified and experienced observers in the Occupied Territories to monitor the conduct of the Israeli army, Palestinian armed groups and Palestinian security forces, and should undertake to grant full cooperation to any observers who may be deployed in the areas of the Occupied Territories which are under its jurisdiction, including access to relevant documentation necessary for any investigations, including forensic investigation.

**TO THE INTERNATIONAL COMMUNITY:**

- The International community and states parties to international human rights and humanitarian law treaties to which Israel is a party must take steps to ensure Israel's compliance with its obligations under international law.
- States, particularly the USA, should stop the sale or transfer of weaponry and equipment that are used to commit unlawful destruction of homes and other serious violations of international human rights and humanitarian law, until they secure guarantees that Israeli forces will not use the equipment to commit violations.
- Governments and agencies which have been involved in funding or carrying out development projects and emergency assistance should carry out and make public assessments to determine if and to what extent their projects/programs have been adversely affected by the Israeli policy of destruction of properties.

**TO CATERPILLAR Inc.**

- Caterpillar Inc., the US company which produces the bulldozers used by the Israeli army, should take measures – within the company sphere of influence – to guarantee that its bulldozers are not used to commit human rights violations, including the destruction of homes, land and other properties.
- Caterpillar should adopt a code of conduct which complies with the UN Human Rights Norms for Business and should respect and ensure the application of Article 3 of the UN Norms, which states that Trans National Corporations and other business enterprises shall not engage in, nor benefit from, war crimes, crimes against humanity and other violation of international humanitarian law. In particular commentary (a) to Article 3 also states that Trans National Corporations and other business enterprises shall take stringent measures to prevent any products or services which they produce or supply from being used to commit violations of international human rights or humanitarian law and to comply with evolving best practices in this regard.