



## The Right to Adequate Housing in the Gaza Strip

Briefing Note  
December 2012

### Israeli actions violating of the right to adequate housing in the Gaza Strip

- As the Occupying Power, Israel has obligations regarding the right to adequate housing for people living in the Gaza Strip. Actions carried out by the Israeli army are in violation of these obligations. Israel's forces carry out attacks which result in the destruction of civilian homes. Additionally, Israel violates the right to adequate housing by refusing to allow an adequate amount of construction material into the Gaza Strip, which prevents people from building and rebuilding houses sufficient for their needs.
- Since the beginning of its occupation of the Gaza Strip and the West Bank in 1967, Israel has carried out systematic attacks against civilians in the occupied Palestinian territory. These attacks include the destruction of civilian houses, particularly in the 'buffer zone.'<sup>1</sup> The Israeli army attacks civilian houses in the Gaza Strip using a number of different methods, including attacks by drones, warplanes, tanks and bulldozers, resulting in the total or partial destruction of houses, as documented in the accompanying fact sheet "Israeli Attacks against Houses in the 'Buffer Zone' in the Gaza Strip".
- Israel's attacks against civilian homes result in the displacement of Palestinian families, temporarily as well as permanently. During 2011, the 36 inhabitants of 7 households were permanently displaced, including 8 women and 19 children, following Israeli attacks on civilian homes. Another 14 inhabitants of 1 household were temporarily displaced, including 3 women and 8 children. From January until June 2012, 32 inhabitants of 5 households were temporarily displaced as a result of attacks on homes, including 13 women and 7 children.
- Furthermore, Israel violates the right to adequate housing by preventing the import of construction material into the Gaza Strip via the Israeli controlled border. From January 2011 until June 2012, on average, only 6.27% of the needed amount of cement was allowed to enter into the Gaza Strip, severely impairing the ability of the people in the Gaza Strip to (re-)build adequate housing. During the same time period, on average, only 56.8% of the needed amount of aggregates and 1.56% of the needed amount of iron was allowed to be imported into the Gaza Strip. Although some construction materials entered from Egypt via smuggling tunnels,

---

<sup>1</sup>The 'buffer zone' was unilaterally imposed by Israel in 2007 and officially extends 300 meters into the Gaza Strip. In reality, however, the 'buffer zone' extends up to 1,500 meters into the Gaza Strip. The existence of the 'buffer zone' is now in question following the ceasefire agreement between Israel and Hamas on 21 November 2012. At the time of publication, concrete evidence did not exist confirming the dismantling or a decrease in the size of the 'buffer zone.'



the amount of construction materials available and accessible on the Gaza market remains insufficient and does not detract from Israel's responsibilities as the Occupying Power.

- During 'Operation Cast Lead'<sup>2</sup> 2,114 houses were completely destroyed and another 3,242 of houses were deemed uninhabitable due to damages sustained in the Israeli offensive. Many of the families whose homes were destroyed were registered as refugees. Severe restrictions placed on the importation of construction materials have delayed the provision of adequate housing by UNRWA<sup>3</sup> for registered refugees in the aftermath of 'Operation Cast Lead', forcing many families to live in tents and makeshift shelters for extended periods of time.
- During Israel's latest offensive on the Gaza Strip, which lasted from 14 to 21 November, 127 civilian homes were completely destroyed. Another 153 civilian homes were extensively damaged. More than 600 homes sustained minor damages.
- When lacking adequate shelters, the violation of the right to adequate housing often results an increased risk of developing health problems due to inadequate protection from the elements, decreased access to clean water, and unsanitary living conditions, violating the right to health and the right to water and sanitation.

#### Illegality of Israel's actions related to the right to adequate housing in the Gaza Strip

- In the Gaza Strip, Israel has the duty to fulfil its obligations under all human rights instruments to which it is a party, and this has been established under international law by numerous arguments, state practice, and jurisprudence of the International Court of Justice, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights.<sup>4</sup> With particular regard to the International Covenant on Economic, Social and Cultural Rights [ICESCR], it has been affirmed that Israel is not only bound by its provisions as an Occupying

---

<sup>2</sup> Israel's 27 December 2008 – 18 January 2009 offensive on the Gaza Strip in which 1,419 Palestinians were killed (82.2% of whom were civilians). During the offensive 7,878 housing units were completely or partially destroyed (rendered uninhabitable), affecting 51,842 individuals.

<sup>3</sup> "UNRWA (the United Nations Relief and Works Agency for Palestine Refugees in the Near East) provides assistance, protection and advocacy for some 5 million registered Palestine refugees in Jordan, Lebanon, Syria and the occupied Palestinian territory, pending a solution to their plight" [www.unrwa.org](http://www.unrwa.org)

<sup>4</sup> International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion, 8 July 1996, ICJ Reports 1996, para. 25; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports 2004, para. 106 (hereafter *Wall case*); ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December 2005, ICJ Reports 2005, para. 216; Human Rights Committee, 'General Comment 29: states of emergency (Article 4)', UN Doc. CCPR/C/21/Rev.1/Add.11, 2001, para. 3; Committee on Economic, Social and Cultural Rights, 'Concluding observation: Israel', UN Doc. E/C.12/1/Add.69, 31 August 2001.



Power in the Gaza Strip, but also that it is obligated to not raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.<sup>5</sup>

- Article 11(1) of the ICESCR obliges Israel to protect the private property in the Gaza Strip and to refrain from taking any action that would directly contravene the right to adequate housing of the Palestinian people in Gaza Strip.<sup>6</sup>
- The Office of the High Commissioner for Human Rights, in General Comment 4, paragraph 7, provided further details on the definition of adequate housing: "[T]he right to housing should not be interpreted in a narrow or restrictive sense [...] Rather it should be seen as the right to live somewhere in security, peace and dignity [...] the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised [...] Article 11 (1) must be read as referring not just to housing but to adequate housing." The OHCHR cites the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000, both of which have stated: "Adequate shelter means [...] adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".
- In addition to the aforementioned violations of the international human rights law standards, Israel also violates the principles laid down under international humanitarian law. Article 46 of the Hague Regulations<sup>7</sup>, which according to the ICJ is binding on Israel,<sup>8</sup> states that Israel should respect the private property in the Gaza Strip. Moreover, under Article 53 of the Fourth Geneva Convention<sup>9</sup> Israel is prohibited from destroying the real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations. Any harm to the aforementioned property is allowed only under the rarest of rare cases, where such destruction is rendered absolutely necessary by military operations.
- Under the Fourth Geneva Convention private property, which enjoys the protections afforded to civilian objects, may lose such protection against attacks if and only if its nature, location, purpose or use make an effective contribution to military action and whose total or partial

---

<sup>5</sup> ICJ, Wall case, above note 4, para. 112.

<sup>6</sup> Article 11(1), ICESCR: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent."

<sup>7</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

<sup>8</sup> ICJ, Wall case, above note 4, para. 124.

<sup>9</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.



destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.<sup>10</sup> But it must be borne in mind that in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”<sup>11</sup> As a result, it is unlawful to destroy a civilian object without sufficient evidence that it is being put to military use or is about to be so used.

- Most importantly, even when a clear military objective has been identified, Israel “must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.”<sup>12</sup> Given the description of the nature and methods of Israel’s conduct in hostilities in the Gaza Strip, such as carrying out airstrikes in densely populated areas, it is argued that Israel has not adhered to the aforementioned principles under international law and has disregarded its obligations towards rights of adequate housing of the people in the Gaza Strip.
- Consequently, in the ‘buffer zone’ of the Gaza Strip, civilians get internally displaced as a result of tank shelling, air strikes and shooting by Israel’s forces, are the outcome of which is the total or partial destruction of civilian homes, as well as the incitement of fear in the civilian population. Such forced and arbitrary displacement of the civilian population is prohibited as per the provisions of various international legal regimes regulating Israel’s conduct in Gaza Strip.<sup>13</sup>
- By violation of the right to adequate housing, causing displacement and the lack of adequate shelter, Israel increases the risk of developing health problems due to inadequate protection from the elements such as decreased access to clean water, and unsanitary living conditions, violating the right to health and the right to water and sanitation. It is argued that this is a violation of the right to health, as guaranteed under Article 12 of the International Covenant on Economic, Social and Cultural Rights, and the right to water and sanitation, which is reaffirmed as a legally binding right by Human Rights Council Resolution A/HRC/15/L.14.

---

<sup>10</sup> Article 52(2), Protocol Additional to the Geneva Conventions of 12 August 1949, Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

<sup>11</sup> Article 52(3), Protocol I.

<sup>12</sup> ICRC, Article 53, Fourth Geneva Convention: Commentary, 1952, p. 302.

<sup>13</sup> Art. 13 of the Universal Declaration of Human Rights; Art. 12 of the 1966 International Covenant on Civil and Political Rights; Principle 6.1 of the UN Guiding Principles on Internal Displacement; Article 49 of the Fourth Geneva Convention; Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court (U.N. Doc. A/CONF.183/9\*).