

THE HUMAN RIGHT TO WATER AND SANITATION IN THE oPt

“Lack of access to adequate, safe, and clean water has been a longstanding problem for the Palestinian population of the Occupied Palestinian Territory (oPt). Though exacerbated in recent years by the impact of drought-induced water scarcity, the problem arises principally because of Israeli water policies and practices which discriminate against the Palestinian population of the oPt.

This discrimination has resulted in widespread violations of the right to an adequate standard of living, which includes the human rights to water, to adequate food and housing, and the right to work and health of the Palestinian population.”

Amnesty International, Troubled Waters - Palestinian’s denied fair access to water (2009)

SUMMARY

Palestinians living throughout the oPt suffer repeated denials of their right to water and sanitation. Water resource allocation between Israel and the oPt is discriminatory. Palestinians are deprived of fair access to water resources, and insufficient water and sanitation infrastructure development has left communities with minimal amounts of water to meet basic health and hygiene needs. In the Gaza Strip, repeated military incursions have resulted in the destruction of major water and sanitation services and facilities. The Israeli imposed blockade on



Sabella collects water for her family in Madama Village, West Bank. Photo Credit: Oxfam GB.

Gaza has prevented access for the materials necessary to carry out repairs and maintenance work endangering the health and well-being of the population.

As an occupying power Israel holds the primary responsibility to ensure that Palestinians enjoy their right to water and sanitation. As the Palestinian Authority also holds obligations towards the Palestinian people in areas which fall under its jurisdiction, Israel should not restrict the ability of the Palestinian Authority to fulfil its obligations.

WHAT IS THE HUMAN RIGHT TO WATER AND SANITATION?

International human rights law

According to international human rights law, access to water and sanitation is a human right. This right is enshrined in a number of international treaties which are legally binding on states that have ‘ratified’ them. These include:

- The International Covenant on Economic, Social and Cultural Rights (1966)¹
- The Convention on the Elimination of All Forms of Discrimination against Women (1979)²
- The Convention on the Rights of the Child (1989).³

Israel has ratified the above mentioned treaties and is obliged to implement them in all territories under its jurisdiction, including the occupied Palestinian territory.

National law and policy

¹ The right is implicit in article 11 (1), the right to an adequate standard of living and article 12, the right to the highest attainable standard of health. At: <http://www2.ohchr.org/english/law/>

² Article 14 (2) (h). At: <http://www2.ohchr.org/english/law/>

³ Article 24 (2) (c) and (e). At: <http://www2.ohchr.org/english/law/>

In Palestine, Water Law No. 3 (2002) explicitly recognizes water as a human right. Article 3 (3) provides 'Every person shall have the right to obtain his needs of water of a suitable quality for his use, and every official or private institution that provides water services must take the necessary steps to ensure this right and to make the necessary plans for developing these services.'⁴ The Palestinian Authority is obliged to ensure the realisation of this right in areas under its jurisdiction.⁵

International humanitarian law

As an occupying power, under international humanitarian law, Israel is responsible for the welfare of the civilian population. The Fourth Geneva Convention (1949) states that an occupying power is responsible for maintaining public health and hygiene services in an occupied territory which necessitates the provision of clean water and adequate

sanitation. The Fourth Geneva Convention also prohibits indiscriminate military attacks on civilians, civilian property and infrastructure including drinking water installations and sanitation

"... there was a deliberate and systematic policy on the part of the Israeli armed forces to target ... water installations"

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infrastructure. Furthermore an occupying power must protect the resources of an occupied territory and not use them for the benefit of its own population.⁶

ELEMENTS OF THE RIGHT TO WATER AND SANITATION

The content of the right to water and sanitation in international law is defined in *General Comment No. 15: The Right to Water* (2002) and the UN Sub-Commission on the Promotion and Protection of Human Rights *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005).⁷

Sufficient water: An adequate and continuous water supply must be available for personal and domestic uses. The World Health Organisation recommends on average 100-150 litres per capita per day to ensure all basic health needs are met with an absolute

"When there is no water we cannot wash our children. Many of the small children are becoming sick, and because they are closing the roads, we cannot take them to the health clinics."

Haja Famieh, Resident of Isfey Forga,

minimum of 15 litres. Once personal and domestic needs have been met, adequate quantities of water should be available to secure livelihoods and ensure food security.

Safe water and sanitation: Water must be free from hazardous substances that endanger human health, and possess an acceptable colour, odour and taste. Water sources should

"Our neighbourhood is disgusting: sewage is flooding our roads and it even comes inside my house. I use strong acid cleaners because I'm afraid about my children's health. There are too many insects here, some as big as my finger, which live on the sewage."

be protected to ensure safe water for present and future generations. Sanitation should be hygienic and not pose a threat to the environment and able to effectively prevent human, animal and insect contact with excreta and transmission of disease. Toilets must ensure

⁴ Palestinian Water Law No.3, Ramallah, 17 July 2002.

⁵ The International Court of Justice (ICJ) has made clear that "Israel is under an obligation not to raise any obstacles to the exercise of [economic and social] rights in those fields where competence has been transferred to the Palestinian authorities," see ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 112.

⁶ Hague Convention IV Respecting the Laws and Customs of War on Land (1907), article 55.

⁷ Available at: www.cohre.org/resources under 'Key United Nations Documents'.

privacy, dignity and safety for the user with excreta and waste water removed or disposed of safely.

Physically accessible water and sanitation:

Water and sanitation facilities must be within safe physical reach, in or near the household, school, work place or health facility and minimise threats to physical security, particularly for vulnerable groups such as women and children. The World Health Organisation recommends that water services should not be located more than 1,000 metres away from the home in order to ensure easy access to minimum quantities of water.⁸

Affordable water and sanitation: Water and sanitation infrastructure, services and ongoing operation and maintenance must be affordable. The cost should not reduce individual or household capacity to acquire

other essential goods and services, such as food, housing, health care and education.

Non-discrimination and attention to vulnerable and marginalised groups: Discrimination in access to water and sanitation is unacceptable under international law. *Everyone* regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status has the right to water and sanitation. Vulnerable and marginalized groups such as Bedouin communities, women, children, the elderly and those with chronic illness or disability often suffer disproportionately from violations of the right to water and sanitation. The specific needs of such groups should be taken into account and prioritised in WASH planning, operation and maintenance.

“The water only comes through the network twice a week. The rest of the time we have to buy it from tankers. It is very expensive.”
Um Akram, resident of Jaheleen Bedouin community near Azariva. West Bank

VIOLATIONS OF THE RIGHT TO WATER AND SANITATION IN THE OPT AS A RESULT OF ISRAELI POLICY AND PRACTICE INCLUDE:

Discriminatory allocation of water resources shared between Israel and Palestine, resulting in severely insufficient Palestinian access to, and control over, water resources:

The UN Committee on Economic, Social and Cultural Rights noted that it was *“particularly concerned about limited access to and distribution and availability of water for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.”*⁹ The UN Committee on the Elimination of Racial Discrimination similarly called upon Israel to *“ensure equal access to water resources for all without any discrimination.”*¹⁰

Preventing Palestinian water resource and water and sanitation infrastructure maintenance, rehabilitation and development:

The former UN Special Rapporteur on adequate housing, Mr. Miloon Kothari noted his concern at the *“non-provision of water infrastructure, including networks and facilities for local solutions; lack of proper maintenance of existing infrastructure so as to prevent leakage and water loss; outright prevention of Palestinians from drilling and constructing water-delivery facilities, most notably in areas of Jewish settler colonies”*.¹¹

⁸ G. Howard & J. Bartram, *Domestic Water Quantity, Service Level and Health*, (Geneva: WHP, 2003), p.22.

⁹ United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel (2003), UN doc.E/C.12/1/Add.90., para.26.

¹⁰ UN Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, UN Doc. CERD/C/ISR/CO/13 (2007), para. 35.

¹¹ Mr. Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, (2002) UN Doc. E/CN.4/2003/5/Add.1, para. 66.

Denial of access to sufficient amounts of water for personal and domestic use as well as that required to secure livelihoods and food security:

International human rights organisations have noted that quantities of water available to Palestinian communities in some areas fall well below internationally accepted levels.¹² Mr. Miloon Koothari further noted the “*Discriminatory distribution and insufficient water supply to Palestinians in areas that the Israeli water utility (Mekerot) controls*”.¹³



Reduced access to safe sanitation facilities, particularly waste water treatment which places both public health and the wider environment at risk:

B'tselem documents Israel's neglect to curb the flow of large amounts of untreated Israeli waste water flowing from illegal settlements and Jerusalem into the streams and valley's of the West Bank as well as Israel's obstruction or refusal to the Palestinian Authority proposals to build waste water treatment facilities.¹⁴ The UN has repeatedly drawn attention to the sanitation crisis in the Gaza Strip due to the breakdown of sewage treatment facilities.¹⁵

Compromised access to water of an acceptable quality, free from hazardous substances or micro-organisms that pose a threat to human health:

The UN Environment Programme has documented the unacceptable levels of chloride and nitrates in the Gaza Strip's drinking water resources, placing public health, particularly for children at risk.¹⁶

Reduced access to affordable water and sanitation services and facilities: Some communities in the oPt pay up to 40% of their monthly income on clean drinking water and cannot afford the cost of emptying their septic tanks.¹⁷

Restriction of Palestinian access to water resources through Israeli 'security' measures such as the Wall, roadblocks, checkpoints:

The UN Committee on Economic, Social and Cultural rights expressed it is “*gravely concerned about the deplorable living conditions of Palestinians in the occupied territories, who -- as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints -- suffer from impingement of their enjoyment of economic, social and cultural rights ... in particular access to work, land, water, health care, education and food.*”¹⁸ The Committee further noted that the Wall “*would limit or impede access by Palestinian individuals and communities to land and water resources.*”¹⁹

Boy collects water in Gaza following Operation 'Cast Lead'. Photo Credit: Maya Vidon White

¹² See for example Amnesty International, *Troubled Waters - Palestinian's denied fair access to water*, (2009) and Centre on Housing Rights and Evictions, *Policies of Denial: Lack of access to water in the West Bank*, (2008).

¹³ Mr. Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, (2002) UN Doc. E/CN.4/2003/5/Add.1, para. 66.

¹⁴ B'tselem, *Foul Play: Neglect of waste-water treatment in the West Bank*, (2009).

¹⁵ *Humanitarian organisations deeply concerned about the ongoing water and sanitation crisis in Gaza: Call for an immediate opening of Gaza's crossings*, Press statement, 3 September 2009, available at: www.ochaopt.org

¹⁶ UNEP, *Environmental Assessment of the Gaza Strip following the escalation of hostilities in December 2008 – January 2009*, September 2009

¹⁷ See for example Amnesty International, *Troubled Waters - Palestinian's denied fair access to water*, (2009) and Centre on Housing Rights and Evictions, *Policies of Denial: Lack of access to water in the West Bank*, (2008).

¹⁸ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic Social and Cultural Rights: Israel* (2003), UN doc.E/C.12/1/Add.90., para. 19.

¹⁹ Ibid. Para. 24.

Destruction of water and sanitation infrastructure: The UN Fact Finding Mission on the Gaza Conflict (Goldstone Report) documents the wide-spread destruction of water and sanitation infrastructure by the Israeli military during Operation 'Cast Lead'.²⁰ Amnesty International documents the destruction of water cisterns, water tanks and other infrastructure in communities across the West Bank, both by Israeli military and settlers.²¹

Imposition of a long-term blockade on Gaza which has prevented access for materials necessary to repair, rehabilitate and maintain water and sanitation infrastructure: The UN Humanitarian Coordinator for the oPt called for an immediate end to the blockade on the Gaza Strip as: "*The deterioration and breakdown of water and sanitation facilities in Gaza is compounding an already severe and protracted denial of human dignity in the Gaza Strip.*"²²

RECOMMENDATION

Israel, as an occupying power, should abide by its international legal obligations and ensure that Palestinians enjoy their right to water and sanitation. Israel should remove all obstacles which prevent the Palestinian Authority from realising this right. The Palestinian Authorities in the West Bank and Gaza should repair infrastructure in order to prevent leakages and should regulate private water distributors to prevent consumption of water of substandard quality. The international community and civil society should act to ensure accountability for violations of Palestinians' right to access water and adequate sanitation.

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²⁰ See, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, (2009), paras. 52 & 54.

²¹ Amnesty International, *Troubled Waters - Palestinian's denied fair access to water*, (2009).

²² *Humanitarian organisations deeply concerned about the ongoing water and sanitation crisis in Gaza: Call for an immediate opening of Gaza's crossings*, Press statement, 3 September 2009, available at: www.ochaopt.org