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### Совет по правам человека

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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав, включая  
право на развитие**

### **Доклад Специального докладчика по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте Ракель Рольник**

Добавление

### **Миссия в Израиль и на оккупированную палестинскую территорию<sup>\*\*\*</sup>**

#### *Резюме*

Специальный докладчик по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте совершила поездку в Израиль и на оккупированную палестинскую территорию 30 января – 12 февраля 2012 года. В настоящем докладе она представляет свои выводы и рекомендации в отношении защиты и поощрения права на достаточное жилище в Израиле и на оккупированной палестинской территории.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на арабском языке.

\*\* Термин "оккупированная палестинская территория", использовавшийся во время визита Специального докладчика, в настоящее время пересматривается в связи с принятием резолюции 67/19 Генеральной Ассамблеи.

## Приложение

[Arabic and English only]

### **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Israel and to the Occupied Palestinian Territory (30 January–12 February 2012)**

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## I. Introduction

1. From 30 January to 12 February 2012, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, undertook an official country visit to Israel and the Occupied Palestinian Territory (OPT). The purpose of the mission was to assess the situation of the right to housing within Israel and in the OPT.
2. The Special Rapporteur expresses her gratitude to the Government of Israel and the Palestinian National Authority for the invitation and the support provided for her mission. She also thanks the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory for its logistical support for her work.
3. During her visit, the Special Rapporteur met with officials and representatives of the Government of Israel and the Palestinian National Authority, international agencies and non-governmental organizations in Israel and in the OPT. In Israel, she visited Jerusalem, Tel Aviv, Jaffa, Haifa, Akko, Sderot, Be'er Sheva and different villages in the Negev and Galilee. In the OPT, she visited East Jerusalem, Ramallah, Bethlehem, Hebron, communities in the Jordan Valley and the Gaza Strip. In her visits to Israeli and Palestinian communities, she met with local residents and saw their housing conditions. The Special Rapporteur thanks all those who met with her and shared information for the preparation of the present report. She is particularly grateful to all those who received her in their homes and communities.
4. The report is divided into three sections. The first describes the main findings of the Special Rapporteur's visit to Israel. The second section describes the findings relating to the OPT. The final section contains conclusions and recommendations.

## II. Israel

5. Since the establishment of the State of Israel, adequate housing has been at the center of the Government strategy to absorb immigrants and refugees in order to establish a home for the Jewish community. Israel received successive immigration waves from different regions of the world and was relatively successful in quickly accommodating them in newly developed and expanded urban and rural areas. During the initial decades, the State acted as a major provider of public housing. However, since the 1980s—with a small interruption in the mid-1990s when approximately 500,000 families from the former Soviet Union immigrated to Israel—this approach has changed. Mortgage subsidies have reduced the direct public involvement in the housing sector.
6. The combination of subsidized mortgages policies with few rental options under an unregulated market has led to an exponential increase in housing prices. In 2011, large public demonstrations in Israeli cities underlined the public frustration with the rise in the cost of living, including the lack of alternatives for affordable housing, triggering a review of relevant laws and policies.
7. In addition to contributing to the affordability crisis that affects middle- and low-income quintiles of the overall Israeli population, housing laws and policies appear to have continuously failed to protect and assist Palestinian citizens of Israel (minorities representing 20 per cent of the population, also referred to as "Arab Israelis", which include Muslims, Christians, Druze and Bedouins). For example, tenure insecurity, overcrowding, evictions and demolitions are often reported among these groups.

## A. Legal framework

8. Israel is party to six core international human rights treaties, including, inter alia, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

9. Israel has no formal constitution, but has adopted a series of Basic Laws that guarantee a number of fundamental rights.<sup>1</sup> The Basic Laws do not explicitly protect economic and social rights, such as the rights to adequate housing or access to water, which is an issue that has been the subject of ongoing public debate.<sup>2</sup> Specifically, the right to adequate housing is not explicitly recognized in any Israeli law. Internal procedures of the Ministry of Construction and Housing are used to regulate the provision of public housing and housing assistance. Additionally, the Basic Law: Human Dignity and Liberty does not explicitly guarantee equality and the prohibition of discrimination.

10. The Basic Law: Israel Lands establishes the principle of national ownership of the land (sect. 1). Currently, 93 per cent of Israel lands are publicly owned and can only be leased, not sold. They are managed by the Israel Land Administration. The Israel Land Council, a body comprised of representatives of Government ministries and of the Jewish National Fund, determines the policy of the Israel Land Administration.<sup>3</sup>

11. Following the creation of the State of Israel a series of laws were adopted regarding ownership of land, regulating the acquisition and management of private land and amending previous laws, notably from the Ottoman and British mandate periods. A number of these laws, as described below, disproportionately affected the Palestinian population.<sup>4</sup>

## B. Housing affordability and adequacy

12. The mass construction of public housing under the framework of a planned development strategy was fundamental to the relative success of Israel in absorbing the successive waves of Jewish immigration. In the late 1960s, 206,000 units of public housing were in place.<sup>5</sup> Various housing schemes were associated with the creation and expansion of development towns and immigrant neighbourhoods, such as different packages of subsidies and infrastructure projects.

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<sup>1</sup> Common core document submitted by Israel (HRI/CORE/ISR/2008), para. 109.

<sup>2</sup> The Association for Civil Rights in Israel (ACRI), Proposed Basic Law: Social Rights (November 2011), available from [www.acri.org.il/en/wp-content/uploads/2012/01/social-rights-bill-ENG.pdf](http://www.acri.org.il/en/wp-content/uploads/2012/01/social-rights-bill-ENG.pdf). See also The Association for Community Empowerment (YEDID), “YEDID presents a Basic Law of Social Rights to the Trachtenberg Committee”, available from [www.yedid.org.il/?id=4395](http://www.yedid.org.il/?id=4395).

<sup>3</sup> See [www.mmi.gov.il/envelope/indexeng.asp?page=/static/eng/f\\_general.html](http://www.mmi.gov.il/envelope/indexeng.asp?page=/static/eng/f_general.html).

<sup>4</sup> Examples include: the Absentees’ Property Law, 5710-1950 and other related legislation; the Land (Acquisition for Public Purposes) Ordinance, enacted in 1943 during the British mandate, and amendments; the State Property Law, 5711-1951; the Prescription Law, 5718-1958, which modified the application of the Ottoman Land Code; the National Parks and Nature Reserves Law, 5723-1963; the Planning and Building Law, 5725-1965; the Land (Settlement of Title) Ordinance; the Land Law, 5729-1969; and the Antiquities Law, 5738-1978.

<sup>5</sup> ACRI, “Real estate or rights, housing rights and Government policy in Israel” (ACRI, 2008), p. 12.

13. Over the initial decades, the State continued to play a central role in providing indirect support for home ownership, particularly through facilitating infrastructure for new residential developments and subsidized credit for home buyers. However, in the mid-1990s, a sharp policy shift took place, with a clear reduction of State involvement in providing housing support; the sale of public housing property; and an increasing emphasis on stimulus to enable private housing markets.

14. The strong emphasis on the promotion of home ownership through subsidized mortgages appears to have provoked a distortion in the housing market and contributed to a rise in inequality, as housing price increases have been disproportionately high for the poorest. For example, between 1993 and 1998, it was estimated that 44 per cent of households in Israel purchased a housing unit and the housing price index rose by 90 per cent. The price increase was faster and higher in the lower submarket range (88 per cent) than in the higher submarket range (51 per cent). For the lower wealth quintiles, the rise in housing prices led to an increase in household expenses for housing, while for the upper wealth quintiles it led to a decrease. The rise in real estate prices also seriously affected the rental market.<sup>6</sup>

15. The Special Rapporteur met with various representatives of civil society involved in the 2011 demonstrations, who emphasized that adequate housing had become practically unaffordable for too many Israelis, especially for young people and marginalized groups. Moreover, they stated that in the few cases housing support options were available, those were located in remote areas offering limited work opportunities. The Special Rapporteur also met with Government officials who described initiatives to assess public policies and devise new strategies to improve access to adequate housing in response to the protesters. Authorities indicated that there were prospects of increased budget support, but emphasized that the limited expansion of housing was partially related to stringent planning rules.

16. The number of households in low-rent publicly owned dwellings has fallen dramatically over the last 10 years.<sup>7</sup> The construction of new public housing units, except for the elderly, has all but stopped and the stock has shrunk to approximately 66,000 units,<sup>8</sup> mostly concentrated in the periphery and deprived areas. Moreover, in 1998, the Government started selling public apartments to long-time residents at discounted rates. The income generated through the sales was not used in the replenishment of the public housing stock (contradicting the law regulating this process).<sup>9</sup> This reduction seriously affected the capacity to assist the poorest groups of the population.

17. In this context, rental assistance programmes become the main alternative for the low-income groups. However, public rental assistance initiatives have also been reduced and rent assistance values have not kept up with the drastic rise in rent prices. Moreover, private rental contracts are governed only by general legislation and offer almost no protection as regards legal security of tenure.<sup>10</sup>

18. Additionally, the Special Rapporteur was informed that development projects implemented through new public tenders often do not make provision for affordable or

<sup>6</sup> See G. Ben Shitreet and D. Nahshon-Sharon, *Housing Policy in Israel* (Jerusalem, The Center for Social Policy Research in Israel, 2003) (in Hebrew only).

<sup>7</sup> P. Hemmings, "How to improve the economic policy framework for the housing market in Israel", Organization for Economic Co-operation and Development (OECD) Economics Department Working Paper No. 912 (2011), p. 10.

<sup>8</sup> ACRI, information submitted to the Committee on Economic, Social and Cultural Rights for consideration during the compilation of the list of issues on the third periodic report of Israel (October 2010), p. 9.

<sup>9</sup> ACRI, "Real estate or rights", p. 12.

<sup>10</sup> *Ibid.*, pp. 3 and 11.

public housing. Furthermore, only in 2009 were the laws amended to obligate the allocation of portions of publicly tendered land to affordable housing, but this was allegedly not fully implemented.<sup>11</sup>

19. In response to some of these claims, Government authorities announced an increase in the support for rental assistance and additional initiatives to accelerate the development of residential units accessible to low-income groups.

20. The Special Rapporteur also received complaints regarding inadequate alternatives to public housing, the lack of transparency in the selection process, and deficiencies in criteria for eligibility for housing support. The Organization for Economic Co-operation and Development also underlined the inadequacy of the various complex point systems used in public housing assignments and rent and mortgage support.<sup>12</sup> The use of criteria such as number of years of marriage, number of children and number of years of military service seems to be ineffective in targeting the poorest groups and particularly reduces the eligibility of minorities, youth and single persons to obtain support.

21. The precarious housing situation of vulnerable groups excluded from all assistance schemes is an issue of grave concern that was also brought to the Special Rapporteur's attention. In particular, she received information concerning asylum seekers and refugees who are denied work permits and access to health and other basic services and find themselves in a very precarious situation. According to the information received, many such persons are homeless for long periods or live in extremely precarious conditions. In a number of cases their health can be at risk, as they often lack warm clothing to protect them from the cold and suffer from poor nutrition.

22. Another element that appears to contribute to the inadequacy of housing support policies is a disregard for specific social and cultural patterns of different groups by planners. The strict land and planning regime appears to have produced not only the clear exclusion of Palestinian groups, as detailed below, but has also affected some Jewish groups. The distribution of migrant waves in peripheral areas of Israel and the adoption of Northern/Western models of urbanization seem to have contributed to the marginalization of non-Western Jewish groups, creating political and economic gaps between Ashkenazi Jewish communities and all other groups. Historically, for example, research has indicated that members of the Ashkenazi communities benefited from better valued properties and received more land per capita than Sephardim (Mizrahi)-dominated localities.<sup>13</sup>

### C. Palestinian minorities in Israel

23. Concerns about the prevalent social economic exclusion of Palestinian minorities living in Israel and the persistence of discriminatory laws and practices have already been expressed by international human rights mechanisms.<sup>14</sup> The persistence of these disadvantages over decades is reflected in recurrent reports on violations of the right to adequate housing of Palestinian minorities living in Israel.

<sup>11</sup> ACRI, "What happened to us? How did Israel become a country impossible to live in with dignity?", second page. Available from [www.acri.org.il/en/wp-content/uploads/2011/08/ACRI-what-happened-ENG-web.pdf](http://www.acri.org.il/en/wp-content/uploads/2011/08/ACRI-what-happened-ENG-web.pdf).

<sup>12</sup> Hemmings, "How to improve", p. 23.

<sup>13</sup> A. Kedar and O. Yiftachel. "Land regime and social relations in Israel", in *Realizing Property Rights*, Swiss Human Rights Book, vol. 1, H. de Soto and F. Cheneval, eds. (Zurich, Rüffer & Rub, 2006), pp. 134-135.

<sup>14</sup> See, for example, the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/14-16) and of the Committee on Economic, Social and Cultural Rights (E/C.12/ISR/CO/3).

24. Throughout her visit to Galilee, the Negev (the situation of Bedouins is addressed below) and Jaffa and in meetings in Tel Aviv, the Special Rapporteur was informed about expropriation of Palestinian lands; inadequate city planning and non-issuance of construction permits, often leading to irregular construction and, in some cases, to eviction and demolition orders due to an absence of construction permits; inadequate financial allocations to address the housing needs of minorities in Israel; and the failure to adopt targeted and culturally adequate solutions to assist minorities.

25. The control by the State of 93 per cent of the land in Israel (achieved in part through the expropriation and acquisition of lands originally owned by displaced Palestinians) deeply affected the capacity of Palestinian communities living inside Israel to develop or expand.<sup>15</sup> The official role of Jewish organizations, such as the Jewish National Fund and the Jewish Agency, in the formal system of planning and development of Israel contributed further to the exclusion of all non-Jewish groups, who were often unable to directly benefit from development initiatives carried out by these agents.

26. The contrast between the effectiveness of planners in establishing new Jewish cities and villages and their failure in promoting the expansion or development of Palestinian areas is therefore stark: it is reported that since 1948, the State has established more than 700 new Jewish communities and not a single minority community (excepting towns established for promoting the forced urbanization of Bedouins).<sup>16</sup>

27. As indicated by various studies, not only have no new localities been developed to accommodate non-Jewish citizens, but a significant number of villages hosting Palestinian minorities remain unplanned or have outdated master plans. As all construction, including for the expansion of existing homes, requires a permit to build that is granted only after planning is concluded, the absence of planning often implies the prohibition of further construction to accommodate the natural growth of populations.

28. In this sense, decades of limited or inadequate planning has resulted in the proliferation of irregular constructions in communities hosting Palestinian minorities inside Israel. This places many minority families under great pressure, as building without a permit constitutes a criminal offence and structures built irregularly are often designated for demolition.

29. In Galilee, for example, the Special Rapporteur visited the village of Majd el-Krum, where residents informed her that despite the population having almost tripled over the last three decades, no expansion of the city municipal boundary had been authorized. In this context, most families had built and expanded housing units without official authorization. Some have had their newly built units demolished, while others have received demolition orders. Residents were particularly frustrated as many owned land in areas outside the existing municipal boundary where zoning restrictions had prohibited residential use. Residents pointed out that newer neighbouring villages with Jewish majorities enjoyed better infrastructure and had expanded over the same period of time.

30. In the old city of Akko, Palestinian citizens of Israel who live as protected renters in areas under public custody informed the Special Rapporteur about the impact of the ongoing process of gentrification. Most property in the area is under the control of the Israel Land Administration, which was in the process of privatizing some areas and developing its touristic potential. Residents claimed they were not consulted in this planning process and informed the Special Rapporteur that they were unable to afford to

<sup>15</sup> Kedar and Yiftachel, "Land regime", pp. 129-146.

<sup>16</sup> Oren Yiftachel, "Ghetto citizenship: Palestinian Arabs in Israel", in N. Rouhana and A. Sabagh, eds., *Israel and the Palestinians – Key Terms* (Haifa, Mada Center for Applied Research, 2009), p. 59.

buy the property they currently lived in or cover the costs required for the maintenance of the historic site; therefore they were placed under permanent threat of eviction. The Special Rapporteur observed the same phenomenon in Jaffa, where she visited another group of Palestinian residents under threat of eviction.

31. Uneven public budget allocations are also reported to further contribute to the deterioration of housing conditions of minorities. For example, an analysis of the Israeli State budget for 2012 showed that only 4 per cent of total allocations for city planning reached minority cities and that 99 per cent of the agriculture support was dedicated to Jewish farmers and associations.<sup>17</sup> Half of all budget allocations to assist housing in minority localities are earmarked for the Negev, where the Government pursues a strategy of urbanization of rural Bedouins.<sup>18</sup>

#### **D. Bedouin communities in the Negev**

32. Among Palestinian minorities, Bedouin inhabiting the Negev face one of the most severe problems of inadequate housing conditions and insecurity of tenure within Israel.

33. Bedouins have had a presence in the region for hundreds of years.<sup>19</sup> While their pastoral activities required travelling, their movements occurred around historic villages, privately owned plots and collective pasture lands. Estimates indicate that in 1948, prior to the creation of Israel, between 60,000 and 90,000 Bedouins inhabited the Negev.<sup>20</sup> Since the 1948 war, the groups that remained have been progressively concentrated in the Siyag area in the eastern part of the Negev.<sup>21</sup>

34. Since 1948, Israel has refused to recognize the land ownership of most Bedouin groups or the existence of many Bedouin villages. Israel describes the areas occupied by Bedouins as “the Bedouin dispersal”, claiming that at least 40 per cent of the Bedouin communities live as squatters in “illegal homes” spread over State property.<sup>22</sup> The Government also affirms that the rate of population growth of the Negev Bedouin is the highest in the world, which, together with their dispersion over an extensive area, prevents the State from offering public services.

35. Currently, about 180,000 Bedouins live in the Negev. For decades, the State has promoted the urbanization of this population in planned cities, resulting in approximately 100,000 Bedouins inhabiting seven Government-planned cities. The remaining live either in one of the over 40 “unrecognized villages” or one of the 10 villages that were recently recognized by the State.<sup>23</sup> Israel has indicated that it will continue to invest in the development of planned cities that could host Bedouin families that agree to abandon legal claims for territory and settle in those urban areas.

<sup>17</sup> Mossawa Center, “Analysis of the Government State budget 2012: key statistics in land, housing and planning concerning the Arab minority in Israel”, first and second pages. Available from [www.mossawa.org/default.php?lng=3&pg=9&dp=2&fl=3](http://www.mossawa.org/default.php?lng=3&pg=9&dp=2&fl=3).

<sup>18</sup> *Ibid.*, first page.

<sup>19</sup> See Negev Coexistence Forum for Civil Equality et al., “The Bedouin-Arabs in the Negev-Naqab Desert in Israel” (2009).

<sup>20</sup> *Ibid.*, p. 2.

<sup>21</sup> *Ibid.*

<sup>22</sup> Israel Land Administration, “Bedouin in the Negev”, background note, first page. Available from [www.mmi.gov.il/static/HanhalaPirsumim/Beduin\\_information.pdf](http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf).

<sup>23</sup> Negev Coexistence Forum for Civil Equality, “Israel’s violation of the [International] Convention on the Elimination of All Forms of Racial Discrimination with regard to the Negev Bedouin” (2012), p. 3.



36. During her mission, the Special Rapporteur was especially concerned to note the failure of the State to integrate the unrecognized villages, even those located in the outskirts of major urban areas. The unrecognized village of Assir, for example, has a population of about 2,300 living just outside the city of Be'er Sheva (the seventh largest city in Israel). While residents are counted in the city census, the village remains "illegal" for official purposes and has never been provided with basic public services or infrastructure, including water and sanitation connections.

37. The Special Rapporteur visited the unrecognized village of Al-Arakib and met with local residents who had received eviction orders and already had their homes and public buildings demolished on various occasions in previous years. The village leader presented evidence of the longstanding presence of his community in the area, including copies of documentation on land ownership dating from the Ottoman period. However, despite legal action taken by various civil society actors, demolitions are reportedly continuing.

38. On the other hand, the housing situation of Bedouin living in Government-planned towns is also a concern. The seven planned towns reportedly evolved into pockets of deprivation, unemployment, dependency, crime and social tension.<sup>24</sup> Despite some State benefits, such as health care and child allowances, the precarious infrastructure and spatial isolation of these areas have greatly restricted opportunities for personal mobility or development, contributing to their impoverishment. The planned urban models, often inspired by Northern/Western cultural patterns, were also considered to be culturally inadequate vis-à-vis the Bedouin family structure and their rural economic vocation, further contributing to the deterioration of the socioeconomic environment.

39. During the mission, the Special Rapporteur met also with Government authorities conducting consultations on a new State plan for the unrecognized villages in the Negev (known as the Praver Plan). The plan was adopted in September 2012 and the Government is currently discussing a legislative proposal to implement it.

40. Serious reservations to the Praver Plan and the proposed legislation for its implementation were expressed by representatives of the Bedouin community, who indicated, for example, that: (a) the plan still does not recognize the right of the Bedouin to ownership of their ancestral land; (b) it would legitimize the displacement, dispossession and eviction of residents in various unrecognized villages; (c) it proposes insufficient and inadequate compensation; and (d) it would strip courts of their power of judicial review and possibility to intervene or protect citizens from unfair State land and planning measures. Civil society also presented an alternative proposal, with indications on how to regularize all unrecognized villages and better integrate them into the existing local infrastructure.

41. The Special Rapporteur notes that Bedouin communities, who self-identify and have also been recognized as indigenous peoples by international human rights mechanisms, present both in Israel and the OPT enjoy land claims based on longstanding land use and occupancy linked to their traditional livelihoods and distinct cultural identity. These claims must be respected by the State, as affirmed by many international human rights bodies and mechanisms.<sup>25</sup>

<sup>24</sup> O. Yiftachel, "Bedouin Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance", in D. Champagne and I. Abu-Saad, eds., *The Future of Indigenous Peoples: Strategies for Survival and Development* (Los Angeles, University of California Press, 2003), p. 35.

<sup>25</sup> See, for example, the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/13), para. 25, and of the Human Rights Committee (CCPR/C/ISR/CO/3), para. 24. See also the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/18/35/Add.1), annex VI.

### III. Occupied Palestinian Territory

42. Over the last four plus decades of military occupation of the OPT, successive international reports and studies have underscored the pervasive human rights impact of the multiple restrictions placed on the expansion and development of Palestinian society. At the same time, the expanding presence of Israeli settlers in East Jerusalem and the West Bank have greatly altered the territory's landscape, draining natural resources and fragmenting the connections between pre-existing urban areas. Having undergone almost total physical and political isolation for the last five years, Gaza has suffered an extreme deterioration of its socioeconomic environment—more so than any other area in the territory.

#### A. Legal framework

43. Regarding the issue of the applicability of certain norms of international humanitarian law and human rights instruments in the OPT, the Special Rapporteur would like to refer to the advisory opinion of the International Court of Justice of 9 July 2004,<sup>26</sup> as well as, among others, the concluding observations of the Committee on the Elimination of Racial Discrimination,<sup>27</sup> the Committee on Economic, Social and Cultural Rights<sup>28</sup> and the Human Rights Committee.<sup>29</sup>

44. The obligations of Israel as occupying Power are defined by the pertinent provisions of humanitarian and customary international law, notably the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the Regulations concerning the Laws and Customs of War on Land (Hague Regulations), which are recognized as part of customary international law. The Special Rapporteur notes that the same international legal framework is also applicable to East Jerusalem, which under international law is considered occupied territory.<sup>30</sup>

45. In the present context, it is particularly relevant to recall that the occupying Power must generally respect the laws in force in the occupied territory and is prohibited from destroying property except to the extent needed to maintain orderly governance of the territory and for military necessity.<sup>31</sup> Additionally, humanitarian law prohibits, without exception, the transfer of the occupying Power's own civilian population into the territory it occupies.<sup>32</sup>

#### Administrative division of the occupied territory

46. In 1995, pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo Accords), a temporary administrative division of the West Bank into three zones, referred to as Areas A, B and C, was agreed upon in view of a phased transfer of power from Israeli military and civil administration to the Palestinian National

<sup>26</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 171-181.

<sup>27</sup> CERD/C/304/Add.45, paras. 10-12, CERD/C/ISR/CO/13, para. 32, CERD/C/ISR/CO/14-16, para. 10.

<sup>28</sup> E/C.12/1/Add.69, paras. 11 and 12, E/C.12/1/Add.90, paras. 15 and 31, E/C.12/ISR/CO/3, para. 8.

<sup>29</sup> CCPR/CO/78/ISR, para. 11; CCPR/C/79/Add.93, para. 10; CCPR/C/ISR/CO/3, para. 5.

<sup>30</sup> See International Court of Justice, *Legal Consequences*, p. 167.

<sup>31</sup> Hague Regulations, art. 43, Fourth Geneva Convention, art. 53.

<sup>32</sup> Fourth Geneva Convention, art. 49.

Authority.<sup>33</sup> Area A comprises the major Palestinian cities, and both security and civil responsibilities are under the Palestinian National Authority. Area B corresponds to most Palestinian rural communities, and civil authority is under the Palestinian National Authority while security is shared with the Israeli authorities. In Area C Israel retains authority over law enforcement and control over the building and planning sphere.<sup>34</sup> Areas A and B make up roughly 38 per cent of the West Bank; Area C corresponds to approximately 62 percent of the West Bank.

47. The Oslo Accords (annex III, appendix 1, art. 27) specified the responsibilities of planning and zoning, which were eventually to be under the purview of the Palestinian National Authority. Although the Interim Agreement foresaw a gradual transfer of power and responsibility in the sphere of planning and zoning in Area C from the Israeli civil administration to the Palestinian National Authority, this transfer was frozen in 2000.<sup>35</sup>

48. In Area C of the West Bank, Jordanian planning law, as modified by an Israeli military order, is applied.<sup>36</sup> In East Jerusalem, Israeli planning laws have been applied since the unilateral annexation of the area and the expansion of its municipal boundaries in 1967.

49. In Gaza and in Areas A and B of the West Bank, with regards to planning, Jordanian laws as modified by the laws adopted by the Palestinian National Authority are generally applied. Additionally, it is noteworthy that the Palestinian National Authority has adopted the Amended Basic Law of 18 March 2003, which protects the right to property, specifying that property “may not be expropriated except in the public interest and for fair compensation in accordance with the law or pursuant to a judicial ruling” (art. 21, para. 3). It also protects the right to housing and determines that “every citizen shall have the right to proper housing. The Palestinian National Authority shall secure housing for those who are without shelter” (art. 23).

## B. East Jerusalem

50. In East Jerusalem, the Special Rapporteur received multiple complaints on issues concerning the Palestinian population, including discriminatory planning, limited access to public services, evictions and house demolitions. Municipal planning procedures appear to disproportionately restrict the expansion and consolidation of Palestinian neighborhoods in the city, while Israeli settlements have proliferated.

51. The Local Outline Plan–Jerusalem 2000, although not finalized or officially approved, is the master plan setting out the municipality’s strategies up to 2020. This plan is the first to include both East and West Jerusalem. While it includes questions of planning and development in the Palestinian neighborhoods of the city, the Local Outline Plan does not plan for enough housing units in the Palestinian areas to sufficiently address current shortfalls or accommodate the projected growth in population. Further, the master plan identifies “Maintaining a solid Jewish majority in the city” as one of its main aims and adds

<sup>33</sup> See, inter alia, Office for the Coordination of Humanitarian Affairs, occupied Palestinian territory (OCHA-oPt), Humanitarian Factsheet on Area C of the West Bank (July 2011). Available from [www.ochaopt.org/documents/ocha\\_opt\\_Area\\_C\\_Fact\\_Sheet\\_July\\_2011.pdf](http://www.ochaopt.org/documents/ocha_opt_Area_C_Fact_Sheet_July_2011.pdf).

<sup>34</sup> OCHA-oPt, Area C Humanitarian Response Plan Fact Sheet (August 2010), p. 1. Available from [www.ochaopt.org/documents/ocha\\_opt\\_area\\_c\\_humanitarian\\_response\\_plan\\_fact\\_sheet\\_2010\\_09\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_area_c_humanitarian_response_plan_fact_sheet_2010_09_03_english.pdf).

<sup>35</sup> Ibid.

<sup>36</sup> OCHA-oPt, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*, Special Focus (December 2009), p. 5. Available from [www.ochaopt.org/documents/special\\_focus\\_area\\_c\\_demolitions\\_december\\_2009.pdf](http://www.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf).

5 square kilometres for the expansion of Israeli settlements in East Jerusalem.<sup>37</sup> This policy of “demographic balance”, a stated aim of official municipal planning documents, is discriminatory and thus violates human rights law (see CERD/C/ISR/CO/14-16, para. 25).

52. In addition, it was reported that municipal planning processes lacked transparency and community consultation.<sup>38</sup> In discussions with the Special Rapporteur, Israeli authorities claimed that participation of the Palestinian community was limited because they refused to engage in existing mechanisms as they consider participation would amount to the recognition of the illegal annexation of East Jerusalem by Israel.

53. The situation of the community of Al-Bustan illustrates the challenges posed by planning procedures, even when Palestinian communities attempt to engage with the authorities. There, 750 residents living in 88 homes, some of them predating 1967, are reportedly at risk of being displaced due to a plan by the Municipality of Jerusalem to turn the area into an archaeological park. The Special Rapporteur visited families in Al-Bustan that are being targeted by criminal and civil legal action. She was also shown an alternative urbanization plan prepared by the local leadership and told that that the alternative plan was dismissed by all competent authorities and that they had already exhausted all possible legal mechanisms to challenge the adoption and implementation of the plans of the municipality.

54. Currently, tens of thousands of Palestinians in East Jerusalem and throughout the OPT are estimated to be at risk of their homes being demolished due to unregulated building.<sup>39</sup> As the overall number of permits issued is grossly inadequate to meet the housing needs of Palestinians, many Palestinians have built without obtaining a permit. As a result, numerous homes or extensions to homes are considered illegal and thus the inhabitants are in danger of being subjected to eviction orders and the demolition of their houses. Although persons faced with an eviction can institute court proceedings to protect their legal rights, such proceedings have very little chance of success and were perceived as serving mainly to delay the eviction and demolition process.

55. On the first day of her mission, the Special Rapporteur visited precarious housing units that had been demolished that same morning in East Jerusalem. Throughout the occupied territory, eviction and demolitions often appear to be undertaken without provision for relief and relocation.

56. The Special Rapporteur also received information regarding deficiencies in basic infrastructure in East Jerusalem. The situation on the ground is characterized by a visible neglect of services and infrastructure, including deficient sanitation services and dilapidated sewage and drainage infrastructure.<sup>40</sup> Approximately 53 per cent of the Palestinian residents have no suitable legal connection to water networks.<sup>41</sup> According to an internal Jerusalem

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<sup>37</sup> OCHA-oPt, *East Jerusalem: Key Humanitarian Concerns*, Special Focus (March 2011), p. 33.

<sup>38</sup> See also OCHA, *East Jerusalem: Key Humanitarian Concerns*, Special Focus (March 2011).

<sup>39</sup> See Al-Haq and The Women’s Centre for Legal Aid and Counselling (WCLAC), “Alternative report on Israel to the pre-sessional working group of the Committee on Economic, Social and Cultural Rights, 22-26 November 2010”, para. 6.13; Save the Children UK, *Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High Risk Areas of the Occupied Palestinian Territory* (2009); and WCLAC *Forced Evictions: Assessing the Impact on Palestinian Women in East Jerusalem* (Jerusalem, 2010).

<sup>40</sup> Report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (A/66/364), para. 14.

<sup>41</sup> Ibid.

government report, 2 billion new sheqalim (NIS) would be required to bring the quality of the sewage infrastructure of East Jerusalem to the level existing in the west of the city.<sup>42</sup>

57. When asked by the Special Rapporteur about the reason for these deficiencies, municipal authorities alleged that adequate allocations were made to service Palestinian neighborhoods, but service provision was hampered by the hostility of the local population towards municipal service providers.

58. Another issue of concern is the situation of members of Palestinian communities of East Jerusalem who, due to the construction of the barrier, found themselves on the “West Bank side” of the barrier, although they are located within the boundaries of the municipality of Jerusalem. These communities, such as the Shuafat refugee camp, Dahiyat al-Barid, Ras Khamis and Kfar Aqab—which the Special Rapporteur visited—have been cut off from the municipality. Although they continue to pay municipal taxes, they no longer have access to the basic services to which they are entitled as Jerusalem residents (health care, education, etc.) and face increasing difficulties gaining access to Jerusalem, leading to ever-declining living conditions.

59. The Special Rapporteur also visited areas affected by the barrier in the West Bank. In the village of Al-Walaja, for example, the construction of the barrier will completely encircle the city, which would be connected to the rest of the West Bank by a tunnel. Residents explained that the construction of the barrier combined with the expansion of neighbouring settlements would also completely isolate the community from its agriculture land.

## C. West Bank

### 1. Areas A and B

60. The administrative and physical fragmentation of the West Bank into three different areas severely hampers planning and the implementation of housing and urban policies at the local and regional levels.

61. In both Areas A and B of the West Bank, planning and building powers rest with the Palestinian National Authority.<sup>43</sup> However, as outlined above, the partial implementation of the Oslo Accords left the major portion of the non-urban areas of the West Bank, known as Area C, under Israeli control. Thus, local authorities in areas A and B have limited possibilities with respect to expanding urban areas, promoting inter-municipal integration and improving the connection of urban areas under their control with all surrounding areas, which hampers their ability to better respond to growing housing demands. The Palestinian National Authority also reported facing particular difficulties in providing adequate water and sanitation due to irregular access to water sources controlled by Israel, depleted infrastructure and the lack of space for waste management and disposal.

62. The Palestinian National Development Plan (2011-13) prioritizes the goals of increasing home ownership and addressing the housing needs of a growing population. The

<sup>42</sup> The Municipality of Jerusalem’s November 2010 *Survey of Infrastructure in East Jerusalem* report, as cited by OCHA-oPT, indicates that NIS 1.9 billion is required to bring the level of infrastructure in East Jerusalem up to that of West Jerusalem. OCHA-oPt, *East Jerusalem*, p. 120, endnote 49.

<sup>43</sup> Bimkom – Planners for Planning Rights, *The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C* (2008), p. 21. Available from [http://eng.bimkom.org/\\_Uploads/23ProhibitedZone.pdf](http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf).

Strategic Plan for the Housing Sector (2011-2013)<sup>44</sup> was presented by authorities to the Special Rapporteur but she was informed it was still pending comprehensive implementation. The Plan highlights that the housing deficit in West Bank and Gaza (to 2010) was estimated by the Palestinian Central Bureau of Statistics to be about 132,759 residential units. It identifies the Israeli occupation and the destruction of homes as challenges for the housing sector, but also lists multiple additional internal problems. These include: lack of monitoring capacity, weakness of the judicial authority in dealing with housing and real-estate disputes, the absence of a database on housing, lack of planning and zoning mechanisms and the absence of official budget lines for investment in the housing sector and the absence of a semi-public institution. The plan also indicates several initiatives to be further developed and pursued, including revising and reforming laws regulating the housing sector, investing in public and private partnerships, promoting public and private investment in housing and developing housing policies for people with low income.

63. The Special Rapporteur welcomes the adoption of the strategy, but expresses her serious concern regarding the lack of implementation. Given the serious impact of poverty among Palestinian communities, the Special Rapporteur was particularly concerned by the absence of any further strategy to promote access to land and housing for low-income families, or to upgrade the living conditions, including in Palestinian refugee camps.

64. On other hand, the Special Rapporteur also visited the Rawabi town construction project<sup>45</sup> near Ramallah and Bir Zeit, including a large residential housing construction project undertaken through a public-private partnership supported by international aid and a private investor.<sup>46</sup> A master plan has been drawn up for the residential and commercial urban development, including 5,000 housing units for middle-income persons that will house 25,000 residents.<sup>47</sup> Given the already described serious resource limitations of the Palestinian National Authority to fulfil its mandate, the Special Rapporteur was concerned to note that international donors and local authorities had decided to focus important public investments in a project targeted mostly at high and middle-income persons, without including any affordable housing for the numerous communities living in inadequate conditions.

## 2. Area C

65. It is estimated that some 150,000 Palestinians live in Area C, including 27,500 Bedouin and other herders,<sup>48</sup> two thirds of whom live in localities which are partly located in Areas A and B. According to the information received, since the occupation in 1967 the land made available to Palestinian communities living in Area C has been dramatically restricted through a variety of means.

<sup>44</sup> Developed pursuant to the resolution of the Council of Ministers issued at its session on 17 August 2009 and in accordance with the Sectoral and Cross-Sectoral Strategies Preparation Guidelines issued by the Ministry of Planning and Administrative Development on August 24, 2009. (Palestinian National Authority, Ministry of Public Works and Housing, Strategic Plan for Developing the Housing Sector in Palestine (January 2010), p. 5).

<sup>45</sup> Initiated at the Palestine Investment Conference, held in Bethlehem, 21-23 May 2008. See *Investment Opportunities – Project and Concept Profiles* (2008), available from [www.pipa.gov.ps/p\\_book.pdf](http://www.pipa.gov.ps/p_book.pdf).

<sup>46</sup> The project is being developed by the Bayti Real Estate Company, a joint undertaking of the Qatari Government-owned Qatari Diar and Ramallah-based Massar International. (Rawabi Newsletter, Winter Edition–2012, p. 2. Available from [www.rawabi.ps/newsletter/2012/download/en/full.pdf](http://www.rawabi.ps/newsletter/2012/download/en/full.pdf)).

<sup>47</sup> Rawabi Newsletter, p. 2.

<sup>48</sup> OCHA-oPt, Humanitarian Factsheet, first page.

66. Planning and all decisions on construction permit requests by Palestinians in Area C are made by the Civil Administration's Higher Planning Council, comprised exclusively of Israeli officials.<sup>49</sup> Modifications to Jordanian law introduced by Israel in 1971 eliminated Palestinian community participation in the zoning of Area C.<sup>50</sup> Palestinian community members retained the possibility of presenting objections to a plan, although this is extremely limited in cases of plans for settlements, as will be seen below.<sup>51</sup>

67. Two types of plans can be applied to Palestinian villages in Area C: Special Partial Outline Plans prepared by the Israeli civil administration and the Regional Outline Plans from the British Mandate period.<sup>52</sup> Special Partial Outline Plans cover less than 1 per cent of Area C land; that land, in practice, is the only part of Area C where Palestinian construction is allowed and much of the area is built up already. Israeli special plans have been approved only for Palestinian communities—no Israeli settlement has a special plan.<sup>53</sup> Mandatory Regional Outline Plans are applied to those villages without Israeli special plans. Approved by the British Mandate government of Palestine in the 1940s, such plans designate most of Area C as an agricultural zone, and are no longer adequate to deal with current Palestinian planning needs.<sup>54</sup>

68. About 70 per cent of Area C has been allocated for Israeli settlements, military zones, nature reserves, "State land" and the Seam Zone around the barrier, so possibilities for Palestinians to build are restricted.<sup>55</sup> In practice, as Palestinian construction is only permitted in approximately 1 per cent of Area C<sup>56</sup> many residents are forced to build without a permit to meet their housing needs, putting these persons at risk of home demolition and displacement.

69. The Special Rapporteur received information which indicated an increase in the number of demolitions of Palestinian constructions. It was reported that in 2011, a total of 622 Palestinian structures were demolished by Israeli authorities, resulting in 1,094 people displaced, almost double the number for 2010. Between January and June of 2012, 351 demolitions were carried out in Area C, further displacing 615 persons (330 of them children) and affecting over 1900 individuals.<sup>57</sup> The first half of 2012 saw a 20 per cent increase in the monthly average number of demolitions in the West Bank when compared to the same period in 2011, and a 70 per cent increase compared to 2010.<sup>58</sup>

70. Another issue brought to the Special Rapporteur's attention is the restriction on movement and access to water, land and basic services. The effect of such measures is particularly severe in the herding communities, such as the Bedouin, which are often located in remote areas, causing their displacement. Destruction of water infrastructure also

<sup>49</sup> Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation of the al-Rashaydeh Bedouin community in Fasayil al-Wusta, Occupied Palestinian Territory (June 2012), p. 3.

<sup>50</sup> OCHA-oPt, *Restricting Space*, pp. 2 and 5.

<sup>51</sup> Bimkom, *The Prohibited Zone*, p. 43.

<sup>52</sup> OCHA-oPt, *Restricting Space*, p. 8.

<sup>53</sup> *Ibid.*, p. 9.

<sup>54</sup> *Ibid.*, p. 10.

<sup>55</sup> *Ibid.*, pp. 5-6.

<sup>56</sup> OCHA-oPt, Humanitarian Factsheet, first page.

<sup>57</sup> United Nations Relief and Works Agency, Demolitions in 2012. Available from [www.unrwa.org/etemplate.php?id=1287](http://www.unrwa.org/etemplate.php?id=1287).

<sup>58</sup> OCHA-oPt, *The Monthly Humanitarian Monitor* (July 2012), p. 4. Available from [www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2012\\_07\\_27\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2012_07_27_english.pdf).

causes displacement in Area C, where Israeli forces regularly take over or target for destruction cisterns, wells and springs used by Palestinians<sup>59</sup> or confiscate water tanks.<sup>60</sup>

71. The Special Rapporteur visited the al-Jahalin Bedouin community of Khan al-Ahmar in Area C, which is under the direct control of the Israeli authorities. Having previously been subject to numerous demolitions, the community is now at risk of displacement as a whole, due to its location on what is considered public or State land.<sup>61</sup> In the framework of an approved master plan ordering the expulsion of this community, an Israeli Civil Administration delegation visited the herding community in November 2011 to inform the people about their imminent transfer from the Ma'ale Adumim area.<sup>62</sup> According to information received by the Special Rapporteur during her visit, this plan was prepared and approved without any consultation or participation of the affected community. The only school in the area, which was built by the community itself, is subject to a demolition order. Although during the time of the visit community leaders were told by authorities that this school would not be demolished in the near future, the demolition order had not yet been repealed.

72. In the Jordan valley, the Special Rapporteur also visited the Al-Hadidiya community and the village of Al-Aqaba. A re-zoning that transformed their living space and the surrounding areas into a dedicated military and settlement area resulted in these communities being deprived of indiscriminate access and full exercise of their in rem usufruct and use rights, for example, access to grazing lands and sources of water, with respect to related and nearby agricultural land—a situation that threatens their livelihoods. The settlers have closed off the land, leaving access only through a gate and allowing the community to enter only at certain hours and for short periods of time. The members of this community are living under extremely harsh conditions, with no access to the most basic services.

#### D. Settlement activity

73. Throughout her visit the Special Rapporteur heard numerous complaints of discriminatory treatment by Israel in the implementation of the right to adequate housing of the Palestinian community in the OPT, based, to a great extent, on the differential and privileged treatment that is allegedly accorded to settlers in the territory.

74. The Special Rapporteur received information according to which: land with restrictions against use by Palestinians is made available for building and agricultural use by settlers; plans and planning processes involving settlers are, in practice, prepared with the participation of, and following meaningful consultation processes with, the settlers and approved within reasonable periods; the attribution, directly or indirectly, of substantial subsidies and incentives by the Government for settlers to build on and exploit the land in the OPT (and, particularly in the last few years, to expand existing settlements); the

<sup>59</sup> See OCHA-oPt, *How Dispossession Happens: The Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers*, Special Focus (March 2012); joint parallel report submitted by Al-Haq, Addameer Prisoner Support and Human Rights Association, BADIL Resource Center for Palestinian Residency and Refugee Rights and WCLAC to the Committee on the Elimination of Racial Discrimination at its eightieth session, paras. 97–103.

<sup>60</sup> OCHA-oPt, *The Monthly Humanitarian Monitor*, p. 4.

<sup>61</sup> Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation of the Jahalin Bedouin community in Khan al-Ahmar, Occupied Palestinian Territory (June 2012), pp. 2-3.

<sup>62</sup> Israeli Committee against Housing Demolitions, *Nowhere Left to Go: Arab al-Jahalin Bedouin Ethnic Displacement* (2011), third page.



provision of ample infrastructure for the exclusive use of settlers, who are often living in areas close to Palestinians who have no access to the infrastructure and live in extremely difficult conditions.

75. Additionally, it was alleged that, in stark contrast to the manner in which the authorities dealt with Palestinians found to be in contravention of building laws, illegal construction by settlers often leads to alternative solutions being sought and even, in some cases, the non-execution of eviction orders.

76. Settlement activities are ongoing, and the Government of Israel reportedly continues to plan for the expansion of settlements in the West Bank as well as East Jerusalem.<sup>63</sup> While there have been individual decisions to dismantle some settlement “outposts”, others have been formalized and thus have become legalized under Israeli, if not international, law.

77. According to the information received, the nature of the support provided by the Government to the settlements has varied over the years, with a temporary freeze being imposed on some types in 2010. However, such changes do not seem to have had any impact in reducing the settler population in the OPT or halting expansion and construction. A recent report by the Secretary-General notes that plans for construction in settlements in East Jerusalem continue to be submitted and approved and that the settler population (excluding that of East Jerusalem) has over the past decade grown at an average yearly rate of 5.3 per cent, compared to 1.8 percent in the Israeli population as whole (A/67/375, para. 7). In a recent 12-month period alone the settler population increased by 15,579 persons (ibid.).

## 1. West Bank

78. As at 2008, there were 121 official settlements and 100 outposts in Area C. In contrast, no new Palestinian cities had been created since 1967.<sup>64</sup>

79. In Area C, while little zoning and planning has been carried out for Palestinian communities, the Israeli Civil Administration has developed and approved detailed plans for almost all Israeli settlements in the West Bank, and Israeli settlers are able to participate in the planning process.

80. The 1971 Israeli military order modifying the Jordanian planning law created a separate planning framework for settlements, implemented by a special category of planning committee (a “special local planning committee”) in practice reserved for settlements.<sup>65</sup> Unlike the Palestinian community, settlers effectively participate in the planning process, notably through the Settlement Subcommittee, which formulates plans for settlements.

81. Israeli Local or Regional Councils are the local authorities that run the settlements. Some 39 per cent of the West Bank is currently under the jurisdiction of such councils. Most of this territory is land that has been declared “State land”, and is not allocated for Palestinian use. Almost all of the area in the Jordan Valley and Dead Sea area falls under the jurisdiction of two Regional Councils.<sup>66</sup>

82. The settlements are provided with generous infrastructure, including water, electricity and roads that are, for the most part, unavailable to Palestinians. The Special Rapporteur also notes particularly that inequality in the amounts of water made available to

<sup>63</sup> Report of the Secretary-General on the implementation of Human Rights Council resolution 19/17 (A/HRC/20/13), para. 3.

<sup>64</sup> Bimkom, *The Prohibited Zone*, p. 17.

<sup>65</sup> Ibid., p. 40.

<sup>66</sup> OCHA-oPt, *Restricting Space*, pp. 5-6.

the Israeli settlements and those made available to the Palestinian population was visible, since neighbouring settlements and villages had entirely different patterns of water supply.

83. Settlement activity is also a regular source of violence and permanent tension. In Hebron, for example, the Special Rapporteur received testimonies from several persons of attacks by settlers on infrastructure, such as water tanks, and other violence against the Palestinian population. The heavy presence of soldiers in the heart of the city to protect the settlers contributes to a climate of fear and mistrust.

## 2. East Jerusalem

84. Since 1967, Israel has confiscated approximately 35 per cent of the territory in East Jerusalem and its surrounding area and 12 settlements have been constructed on this land. These settlements are some of the largest, with some 200,000 inhabitants. Israel considers these settlements in East Jerusalem (including annexed areas of the West Bank) as part of Israel rather than as settlements.

85. During the mission, information was collected on how settlements, which have been built both within the municipality and in the surrounding areas of East Jerusalem, have led to a decrease in the amount of land and resources available to Palestinians. More than one third of the area of East Jerusalem has been expropriated for construction of Israeli settlements.<sup>67</sup> The Special Rapporteur visited the neighbourhood of Sheikh Jarrah, where over 60 residents, including 24 children, were forcibly evicted from their homes, which are now occupied by settlers, and a further 25 families are at risk of eviction based on ownership claims dating back to the period prior to the 1948 founding of Israel.<sup>68</sup> Settlement activity is at times carried out by private settler groups or companies that enjoy the support of the Government of Israel, but who are not held accountable in the same manner as the Government. Palestinian residents are rarely engaged in the planning process.

## E. Gaza

86. An almost complete physical and political isolation, combined with successive military operations, has deeply affected the housing situation in Gaza. While Israel withdrew its settlers and military from inside the Gaza Strip in 2005, it remains in control of the borders, including the entry and exit of people and goods, as well as the air space and access to the sea.

87. Since June 2007, the Gaza Strip has been subject to an intensified blockade, with severe restrictions on the movement of people, goods and services, resulting in severe shortages of electricity, fuel and consumer products. The Gaza Strip's isolation and the continued hostilities also have a profound impact in the urban infrastructure. It is estimated that only 10 per cent of the water in the Gaza Strip is safe for human consumption. Severe fuel and electricity shortages result in regular power outages.<sup>69</sup>

88. Housing conditions have been significantly affected by military operations. During the Israeli offensive codenamed "Cast Lead" alone, more than 20,000 homes were

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<sup>67</sup> OCHA-oPt, *East Jerusalem*, p. 2.

<sup>68</sup> Norwegian Refugee Council and Columbia University School of Law Human Rights Institute, individual complaint submitted to the Special Rapporteur on adequate housing on the situation in the Sheikh Jarrah area in East Jerusalem (June 2012), pp. 1-2.

<sup>69</sup> OCHA-oPt, "Five years of blockade: the humanitarian situation in the Gaza Strip", fact sheet (June 2012), first page.

destroyed or severely damaged.<sup>70</sup> It is estimated that approximately 71,000 new housing units are required to cover current housing needs.<sup>71</sup>

89. The Special Rapporteur was gravely concerned by information received from representatives of international humanitarian assistance agencies that a large proportion of the projects aimed at improving housing and vital services in Gaza that have been submitted for approval by the international community have not been approved by the Israeli authorities or had suffered from disproportional delays. In the Ezbet Abed Rabbo community (Northern Gaza), for example, the Special Rapporteur visited an area which had been severely damaged during the offensive of 2008/09 and remains in dire need of reconstruction, as international organizations have yet to obtain the necessary authorization from Israeli authorities to import construction materials.

90. The Special Rapporteur raised her concerns with the Israeli authorities, who claimed not to be responsible for all delays and informed her of upcoming measures to ease the entry of goods and construction materials. The Special Rapporteur remains however concerned at the serious and disproportionate impact of the Israel blockade on Palestinians' right to housing and basic services in the Gaza Strip.

91. At the same time, the Special Rapporteur was impressed by the degree of active engagement of Gaza inhabitants in undertaking the reconstructions and amelioration of their living conditions, mobilizing all the means and resources available to them. In this context, recent strategies of self-help reconstruction, making available direct funds to the households to rebuild demolished houses, have a very positive impact. However, the Special Rapporteur also noted her concern that these self-help schemes are available only to those with registered legal titles to the land, so that the most needy, those who are squatting on public land, are left with no alternative other than to wait for the completion of public housing projects, funded by international donors.

92. As noted in the report of the Special Rapporteur focused on the right to adequate housing in post-disaster and post-conflict situations, humanitarian agencies and donors have gained an acute awareness of the long-term impact of hastened early recovery efforts in the past decades (A/HRC/16/42, para. 57). Especially in the area of the right to adequate housing, this awareness must translate into interventions based on community consultations, if not designed by the affected communities themselves, and marked by accountability to the beneficiaries.

#### **IV. Concluding remarks and recommendations**

93. **The provision of housing has been central to efforts by Israel to integrate successive waves of Jewish immigrants. This policy was based on a highly centralized Government planning and intervention model, which in a number of cases ignored cultural differences and confined marginalized groups to the peripheries of the State.**

94. **Since the 1990s, the Government of Israel has increasingly disengaged from the housing sector, relying mostly on market incentives. Privatization, deregulation and commercialization of public assets seem to have further undermined the declared foundational goal to provide a safe and adequate home for all *Yishuv*, regardless of nationality or income level. The massive protests in 2011 highlighted the public frustration with increasing costs of living and in particular with regard to housing.**

<sup>70</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/10/20), para. 8.

<sup>71</sup> OCHA-oPt, "Five years of blockade", first page.

95. Nonetheless, even after the signing of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Israel has continuously dedicated important public financial and technical resources to promote the expansion of settlements in the Occupied Palestinian Territory. The State engagement in the settlement enterprise not only violates international law and seriously worsens the living conditions of Palestinians under occupation, but also ends up depriving Israeli nationals of important resources that could be used to promote access to adequate housing within the internationally recognized boundaries of the country.

96. Throughout her visit the Special Rapporteur witnessed a development model that systematically excludes, discriminates against and displaces minorities in Israel and which has been replicated in the occupied territory since 1967. In very different legal and geographical contexts, from Galilee and the Negev to the West Bank, she received multiple similar complaints from Palestinians, notably concerning a lack of or discriminatory planning, which seriously hampers the urban and rural development of these communities. As a consequence, a disproportionate number of members of such communities live and sometimes work in structures that are “unauthorized” or “illegal” and liable to eviction and demolition.

97. It is estimated that, since 1948, nearly 1,100 Jewish urban and rural communities have been built between the Jordan river and the Mediterranean Sea. At the same time, over 400 Arab villages have reportedly been destroyed and Arabs have been forbidden to build in new localities. The only exception has been the often forced urbanization of Bedouins in the Negev and Galilee.<sup>72</sup>

98. Thus, the recent plans for relocating Bedouins in the Negev—inside Israel—as well as decades of promotion of Jewish settlements in the West Bank, including in East Jerusalem, are the new expressions of dispossession of traditional inhabitants and control of the territory.<sup>73</sup> In this same context, the barrier and the blockade of Gaza are the most visible expressions of a process of de facto segregation that seems to be silently pursued in longstanding planning and zoning strategies both within Israel as well as in the occupied territory.

99. It is also important to underline that the spatial strategy of Israel has also been heavily shaped by security concerns, given the belligerent, conflictive nature of Israel-Palestine relations, marked by waves of violence and terror. But certainly the non-democratic elements in Israeli spatial planning and urban development strategies appear to contribute to the deepening of the conflict, rather than promote peace.

100. It would appear therefore that the Israeli planning, development and land system violates the right to adequate housing not only of Palestinians under Israeli control, but also of low-income persons of all identities, who find it increasingly difficult to obtain adequate and affordable housing under current policies. Both aspects of this discriminatory system should be changed to allow all those living under the control of the Israeli authorities to enjoy the most basic human right to adequate housing, within the framework of dignity and equality.

101. Accordingly, the Special Rapporteur presents the following recommendations to the State of Israel:

(a) Revise and reform the Israeli legal framework relevant to the right to adequate housing:

<sup>72</sup> Oren Yiftachel, “Epilogue: Studying Naqab/Negev Bedouins—toward a colonial paradigm?” *Hagar Studies in Culture, Polity and Identities*, vol. 8, No. 2 (2009), p. 88.

<sup>73</sup> See Oren Yiftachel, “‘Ethnocracy’: the politics of Judaizing Israel/Palestine”, *Constellations*, vol. 6, No. 3 (September 1999).

- (i) **Revise and reform the laws of Israel in order to: (a) guarantee the protection of the right to adequate housing in all its elements; and (b) repeal all legislation and regulations relevant to the right to adequate housing that, in their application, do not comply with the principle of non-discrimination as provided in the international human rights instruments to which Israel is a party;**
- (ii) **Revise zoning and planning legislation and processes so as to ensure, at a minimum, meaningful consultation with affected populations throughout the planning process. This implies: dissemination by the authorities of relevant information in advance; a reasonable time period for public review of, comments on, and/or objection to the proposed plan; opportunities to propose alternatives; and a decision-making process that is transparent;**
- (iii) **In accordance with general comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights, take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in active and meaningful consultation with affected persons and groups (para. 8 (a));**
- (iv) **Review legislation and procedures regarding evictions to bring them into conformity with international human rights norms and standards, in particular to ensure opportunity for genuine consultation with those affected, that alternative solutions and relief for those affected are considered and that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available;<sup>74</sup>**
- (v) **Revise legislation regulating private rental in order to ensure adequate protection of private tenants against unreasonable rent levels or rent increases;**
- (vi) **Recognize the specific rights of the Bedouin community as indigenous peoples as per the United Nations Declaration on the Rights of Indigenous Peoples, and revise all relevant policies and laws on this basis, ensuring respect for their land ownership and their cultural traditions;**
- (b) Revise public policies for the housing sector within Israel:**
- (i) **Adopt a comprehensive national strategy and a plan of action on adequate housing, paying particular attention to the situation of groups living in poverty and historically marginalized groups, such as minorities;**
- (ii) **Increase investment in the provision of social housing units and rental assistance schemes in order to meet the unserved demand for affordable housing;**
- (iii) **Revise all existing criteria for the provision of land or economic support for housing in order to repeal the unfair exclusions and ensure priority assistance for the most marginalized groups. Ensure transparency and participation in the design and implementation of all housing policies;**
- (iv) **Adopt and adequately fund a targeted housing strategy in order to assist Palestinian minorities, both in rural and urban areas, ensuring that these are**

<sup>74</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions, paras. 15 and 16.

designed, implemented and evaluated through meaningfully participatory processes and are culturally acceptable;

(c) Respect, protect and fulfil the right to housing of Palestinians living under occupation:

(i) Stop immediately all home demolitions and evictions, both in the West Bank and in East Jerusalem, and explore all possible alternatives prior to evictions; consult with the affected persons; and provide effective remedies to those affected by evictions;

(ii) Stop, as a first step, the construction and expansion of all settlements and outposts, and develop a strategy to reverse the development of settlements;

(iii) Lift immediately the blockade of Gaza for all imports of construction materials and facilitate the work of international donors promoting reconstruction.

102. The Special Rapporteur also makes additional recommendations to the Palestinian National Authority and international aid agents:

(a) The Palestinian National Authority must devise and implement a strategy to progressively protect the right to adequate housing of its inhabitants;

(b) The international community must ensure flexibility in reconstruction strategies vis-à-vis ownership documentation, giving priority to those in extreme poverty situations;

(c) International donors should continue to provide the Palestinian National Authority with direct budget support to enable it to fulfil its mandate.

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