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**ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Report of the Special Rapporteur on adequate housing as a component of the  
right to an adequate standard of living, Mr. Miloon Kothari**

**Addendum**

**Visit to the occupied Palestinian territories\*  
(5-10 January 2002)**

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\* The content of this report was originally introduced orally by the Special Rapporteur on 9 April 2002 during the fifty-eighth session of the Commission (E/CN.4/2002/SR.32). In a letter addressed to the Chairperson of the Commission on 26 April 2002, the Special Rapporteur requested that the report “be processed under item 10, in accordance with applicable rules and procedures of the Commission on Human Rights”.

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## Introduction

1. The Special Rapporteur visited Israel and the occupied Palestinian territories from 5 to 10 January 2002, at the invitation of Ben Gurion University and Adalah: Legal Center for Arab Minority Rights in Israel. The Special Rapporteur availed himself of the opportunity to meet with a group of non-governmental organizations, United Nations and intergovernmental agencies and Palestinian authorities, in order to collect information necessary pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000, in which the Special Rapporteur, along with several other thematic rapporteurs, was requested to “carry out immediate missions to the occupied Palestinian territories and to report the findings to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session”.
2. Unfortunately, the Special Rapporteur was not able to fulfil this request immediately owing to Israeli visa requirements. On 6 December 2000, he sent a letter to the Permanent Representative of Israel to the United Nations Office at Geneva requesting an invitation, to which the Government responded that it “would not cooperate in the implementation of the operative part of this resolution”. On 27 June 2001, at the annual meeting of special rapporteurs and independent experts, he once again requested an invitation from the Government, together with other thematic rapporteurs mentioned in the resolution. To date, there has been no reply from the Government. Prior to undertaking the visit, the Special Rapporteur informed the Permanent Representative of Israel to the United Nations Office at Geneva, in a letter dated 3 January 2002, of his intention to use the opportunity of the visit to gather information with a view to reporting to the Commission as requested in resolution S-5/1.
3. To assess the situation of housing during the visit, the Special Rapporteur met with Palestinian and Israeli non-governmental organizations, United Nations and other international agencies in the region and members of the Palestinian authority, including from the Ministries of Housing, Planning and International Cooperation, and Health. The Special Rapporteur visited East Jerusalem including the “walled city” and Shu’fat refugee camp, Bethlehem, Beit Jala, Ramallah and the Gaza Strip, including the refugee camps of Khan Younis and Rafah.
4. In carrying out his assessment, the Special Rapporteur was guided by the mandate given to him by the Commission and his interpretation of the mandate as outlined in his first two reports to the Commission (E/CN.4/2001/51 and E/CN.4/2002/59). Keeping in view the indivisibility of all human rights, this approach sees the right to housing as including dimensions of land rights, forced evictions, population transfer, the right to a safe environment and the right to water. The Palestinian people’s deep historical understanding of the right to housing (including through a particular affinity with their land) and its widespread violation in the occupied Palestinian territories validates the approach adopted by the Special Rapporteur. A number of congruent rights take on a particular, if tragic, meaning in the occupied Palestinian territories: the right to life; the right to an adequate standard of living; the right to freedom of movement and residence; the right to popular participation; the right not to be subjected to arbitrary interference with one’s privacy, family and home; and the right not to be subjected to cruel, inhuman and degrading treatment or punishment.

5. The principle features of the condition of housing rights in the occupied Palestinian territories arise from breaches of the laws of war and humanitarian law. These include not only violations of the Geneva Convention, relative to the Protection of Civilian Persons in Time of War, on which Israel has reneged, but even more basic prohibitions of the Hague Regulations of 1907, which the Israeli judiciary and military have formally accepted as applying.<sup>1</sup>

6. Since the massacre of Palestinian civilians at the Noble Sanctuary and the emergent wave of Palestinian resistance in September 2000, the Israeli military forces have targeted Palestinian homes with unprecedented use of destructive force. On January 2002, during the visit of the Special Rapporteur, Israeli forces carried out a night attack on the refugee camp at Rafah (Gaza Strip), destroying at least 58 Palestinian refugee family homes. The serial destruction of Palestinian households, property and patrimony is a continuous process that has culminated dramatically in the current phase of the conflict over Palestine. The number of Palestinian homes destroyed by Israeli administrative and military acts climbs almost daily.

7. Before the Noble Sanctuary massacre, Israel's occupation authorities had ordered 10,000 Palestinian homes demolished in Arab East Jerusalem and the West Bank. Human rights organizations assert that actually some 28,000 Palestinian homes in Jerusalem alone are threatened with demolition by Israel. The occupation imposes spatial restrictions on Palestinian physical development by imposing planning criteria and supplanting local codes in violation of the international laws of war and humanitarian provisions applying to occupied territories. Israel favours illegal settlers with generous land allotments, subsidies, impunity for violent criminal activity, State-sponsored and private financing, and all manner of services at the expense of the indigenous Palestinian host population and international peace and security. Essentially, the institutions, laws and practices that Israel had developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967, the actual focus of this report.

8. A number of special rapporteurs, the Commission of Inquiry and the United Nations High Commissioner for Human Rights have also examined the state of house demolition and its devastating effects on the population in the occupied Palestinian territories. In his most recent report to the Commission (E/CN.4/2002/32), Mr. John Dugard, the current Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, devoted a separate section to the issue of demolition of houses and destruction of property; he did the same in his report to the General Assembly (A/56/440). The High Commissioner for Human Rights, during her visit to Rafah refugee camp in November 2000, inspected a number of private houses and apartments that had been heavily damaged (E/CN.4/2001/114, paras. 39-40). The Commission of Inquiry also examined this issue in detail and concluded that such demolition "has caused untold human suffering to persons unconnected with present violence" (E/CN.4/2001/121, para. 50). Both Mr. Dugard and the Commission of Inquiry point out that the demolition of houses and destruction of properties, as well as the restriction on movement, constitute a violation of the right to an adequate standard of

living, including the right to adequate housing, under article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights (*ibid.*, para. 94). The previous Special Rapporteur, Mr. Giorgio Giacomelli, also stated that measures of collective punishment such as closures and house demolitions have caused disruption on the fabric of society, with particularly serious effects on the family, including children (see E/CN.4/2001/30, para. 13 and E/CN.4/2000/25, paras. 38, 43 and 62).

9. Following the above, this analysis of housing rights in the occupied Palestinian territories addresses State behaviour on two levels: (a) through the continuum of dispossession by administrative means as a constant feature of the occupation; and (b) the upsurge of Israeli military action against Palestinian civilians' homes and habitat since the September 2000 Noble Sanctuary massacre and the ensuing al-Aqsa intifada. The latter is the principal focus of the present report; however, it would be a disservice to the Commission not also to remind it of Israel's long record of depopulation and demographic manipulation by way of expulsion, destruction of homes and villages, and implantation of settlers prior to and since its establishment as a State.

## I. THE RIGHT TO LAND

10. Land, as a housing resource, is an essential element of the right to housing. This is most conspicuous in the breach of individual and collective land tenure rights, as seen in the practice of ethnic cleansing and expulsion of land-based people and communities, as has historically been the case in Palestine.<sup>2</sup> It should be recalled that population transfer constitutes a particularly grave violation of human rights and humanitarian law that, regrettably, persists in the recent and ongoing conflicts. In this connection, the Special Rapporteur notes the increase in forced eviction of Palestinians and implantation of settlers in the territories and period covered by this review.

11. Israel's confiscation of land and properties belonging privately and collectively to the Palestinians in the occupied Palestinian territories is a dominant feature of the occupation and an essential component of Israel's population transfer programme. This practice violates the long-established public law principle of the unacceptability of the acquisition of territory by force, as well as specific resolutions concerning Israel's confiscation of land and settlement activities.<sup>3</sup> Since 1967, Israel has confiscated land for public, semi-public and private (Jewish) use in order to create Israeli military zones, Jewish settlements, industrial areas, elaborate "bypass" roads, nature reserves, "green areas" and quarries, as well as to hold "State lands" for exclusive use by Israeli citizens and others whom Israeli law entitles with the status of "Jewish nationality".<sup>4</sup>

12. The land confiscation complement to population transfer, including the implantation of settlers, has actually escalated during the political process following the Oslo Agreements. This "Oslo Phase of Occupation", as it has become known, has witnessed Israel's confiscation of hundreds of thousands of dunams (one thousand square metres).

13. In the period leading up to Oslo, when Ariel Sharon served as Minister of Housing, Israel (in collaboration with the World Zionist Organization/Jewish Agency) launched a settlement campaign in the construction of the "Seven Stars" colonies straddling the Green Line. More

recently, Israel's military closure of Bayt Sira, Qattana and Midia villages in the West Bank has actually moved the Green Line demarcation points, adding Palestinian land to Israel. In the case of Midia village, Israeli authorities ordered five houses, 500 metres from new line, to be demolished and confiscated 2,200 dunams of village land. This case remains a subject of litigation.

14. One example of land confiscation during the recent period was marked by the announcement by then Prime Minister Ehud Barak and Israeli Defense Forces (IDF) Deputy Chief of Staff Moshe Allon, on the same day as the Sharm al-Sheikh Agreements were signed, that the Israeli Government had newly confiscated 250,000 dunams of Palestinian land. The Wye River negotiations extracted a Palestinian non-contestation of Israel's construction of bypass roads serving the settler colonies. This resulted in the confiscation of a further 1.54 per cent of West Bank land, and the roads served as scissors cutting the Palestinian geographical body into 64 pieces.<sup>5</sup>

15. Estimates place the proportion of Palestinian land confiscated by Israel at more than 70 per cent of the West Bank and 33 per cent of the Gaza Strip; at least 32.5 km<sup>2</sup>, or approximately 33 per cent, of Palestinian land in East Jerusalem has been confiscated,<sup>6</sup> and all but 7 to 8 per cent of the area has been closed to Palestinian construction.<sup>7</sup>

## **II. BANNING PALESTINIAN CONSTRUCTION**

16. In the occupied Palestinian territories, planning since 1967 has been assumed by the military authorities and, for instance, continues to be carried out for Areas B and C in the West Bank by the civil Israeli administration based in the Jewish settlement of Bayt El. Immediately after seizing East Jerusalem, the West Bank and Gaza Strip in 1967, Israel disbanded the regional councils that were legally responsible for physical planning. Thus, the Israeli occupation forces have dismissed those legally responsible for planning in favour of the occupiers' military and demographic imperatives. This practice violates the Hague Regulations (1907), which prohibit an occupying Power from altering the legal system in occupied territories (art. 43).<sup>8</sup> Israeli domestic laws, including Basic Laws, military orders and planning regulations, are applied with discrimination against, and disadvantage to the Palestinian population.

17. These planning regulations are legally invalid and discriminatory by nature. Israel simultaneously grants vast areas of land for the planning of illegal Jewish settlements on Palestinian territories, in addition to the facilities and services Israeli institutions provide to them. (See discussion of settlement implantation below.) The consequences for the indigenous Palestinian population involve, among other things, increased housing density, acute land shortage, depletion of water resources and exorbitant land prices.

## **III. ADMINISTRATIVE HOUSE DEMOLITIONS**

18. While applying very tight restrictions and granting very few building permits, Israeli occupation forces frequently carry out punitive and violent demolitions of Palestinian homes for lack of licence. Interlocutors reported myriad difficulties confronting and discrimination

practised against Palestinians seeking to obtain building permits and information about imposed master plans. Sometimes the punishment is retroactive to the establishment or public disclosure of a master plan. This practice leaves Palestinian families underhoused, and those whose houses Israel demolishes are left homeless and often impoverished. Since 1987, at least 16,700 Palestinians (including 7,300 children) have lost their homes under this policy.

19. The rate of Israel's demolition of Palestinian homes in the West Bank and East Jerusalem has not fallen since 1993, and has remained at a high level. In fact, although the number of Palestinians living under constant and direct Israel civilian control and the areas where they live are smaller (jurisdictional Areas C), the average yearly demolition of Palestinian homes showed an increase throughout 1995-1999.<sup>9</sup> Since September 2000, Israel's administrative actions against Palestinian homes in East Jerusalem alone have destroyed at least 70 housing units.<sup>10</sup> In the past year, the municipality of Jerusalem has targeted multifamily residences built by local contractors, with devastating consequences for businesses in the construction sector.<sup>11</sup> These demolitions in Jerusalem alone have left 405 evictees, including 238 children, and destroyed three water wells.<sup>12</sup> During his visit to the occupied Palestinian territories, the Special Rapporteur learned of eight demolition orders in Jerusalem that became known on 6 January 2002. Some 28,000 Palestinian homes in Jerusalem remain under threat of administrative demolition by the municipality of Jerusalem. The Special Rapporteur is aware of 57 current demolition orders against Palestinian families' homes in al-Khalil/Hebron (mixed jurisdiction, West Bank). Some 50 are pending in the West Bank (in Areas C), where demolition orders are most common near settler colonies and their adjacent bypass roads.<sup>13</sup>

20. The 23 demolition orders carried out against Shu'fat homes came in response to complaints from settlers at Pisgat Ze'ev.<sup>14</sup> In addition, there are six current orders known against Palestinian homes near the Har Homa colony on Jabal Abu Ghunaym.

21. The Special Rapporteur visited the demolished home of Salim Shuwamira, in Shu'fat refugee camp, Jerusalem. There the Special Rapporteur witnessed the scale of destruction and loss to poor families, collateral damage to neighbours' homes and the residual suffering and quiet anger that naturally follows. He observed also that, whatever the pretext in terms of builders breaking administrative norms, such destruction and suffering cannot be justifiable under the principles of necessity and proportionality in the State's use of force in the application of civil law.

22. Israel's administrative housing destruction as a punitive action does not comply with the norms of the rule of law with a view to ensuring human rights. The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature. Orders are often issued without specifying the affected home(s), without indicating the date of the order or demolition, and without sufficient warning to inhabitants. Some administrative demolitions are carried out with no orders at all. In most cases of demolition for lack of permit, authorities wait until construction is complete before coming to destroy the home, inflicting the heaviest possible material loss to the victim. With regard to the arbitrary, disproportionate and discriminatory nature of this form of Israeli punishment, housing rights defenders note that even the Israeli assassin of former Prime Minister Yitzhak Rabin was not subjected to the demolition of his family's home, the common collective punishment for Palestinians merely suspected of a real or potential act of resistance.

23. Israel's demolition policies have been a subject of discussion at the meetings of the United Nations treaty bodies each time a report of the State party is examined. The Committee on Economic, Social and Cultural Rights (CESCR) has been seized with the issue since its review of Israel's implementation of the Covenant in 1998, deploring "the continuing practices ... of home demolitions, land confiscations and restrictions on family reunification and residency rights, and its adoption of policies [which] result in substandard housing and living conditions, including extreme overcrowding and lack of services ...".<sup>15</sup> Most recently, the Committee against Torture (CAT) expressed concern that "Israeli policies on house demolitions ... may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment".<sup>16</sup>

24. The Human Rights Committee, examining Israel's report on its implementation of the International Covenant on Civil and Political Rights, stated in 1998 that it "deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of 'illegally' constructed Arab homes ... The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (article 17), the freedom to choose one's residence (article 12) and equality of all persons before the law and equal protection of the law (article 26)" (CCPR/C/79/Add.93, para. 24).

#### IV. MILITARY DESTRUCTION OF HOUSING

25. Israeli military shelling has heavily damaged and/or destroyed 7,571 Palestinian homes.<sup>17</sup> In the week preceding the Special Rapporteur's visit, Israeli military forces destroyed four Palestinian homes without any known security or military purpose. In the course of militarily destroying Palestinian housing, Israel has killed at least 136 people (mostly civilians) by shelling from land and air at Bethlehem, Ramallah, Khalil and Jenin.<sup>18</sup> In addition to the toll on homes and human life, Israel has shelled public buildings, demolishing at least 73 Palestinian National Authority (PNA) buildings, 49 educational institutions, 22 religious buildings and 7 health facilities.

26. Often, the pattern shows no military objective, rather the fulfilment of settler colony designs. As in the typical case of Abu 'Ajlin, in the Dayr al-Balah area of the Gaza Strip, Palestinian residents have been sandwiched between the Kissufim and Gush Qatif settler colonies, which continuously expand towards them from both sides. In a move that seeks to implement the planned contiguity of the settler colonies by eliminating the indigenous population and their land tenure, the Israeli army surrounded a cluster of Abu 'Ajlin homes in the early morning of Tuesday, 19 February and announced that the residents had until that afternoon to evacuate. The Israeli occupation forces began their bulldozing at 10.30 a.m., destroying 1 home and threatening 18 more. In this case, human rights organizations were able to obtain an order nisi (temporary injunction) to ward off the remaining demolitions.



**Number of buildings damaged in the West Bank, by building use,  
28 September 2000-3 September 2001**

Use of building								
Residential	Commercial	Educational	Government	Charities	Health	Religious	Tourism	Total
4 994	51	269	21	12	24	65	4	5 440

Source: Ministry of Housing of the Palestinian Authority, "Damages to public and private buildings and infrastructure facilities, 28/9/2000-3/9/2001".

27. These figures are already out of date, but demonstrate the pattern of Israeli destruction of an overwhelming number and proportion of residential structures. During the Special Rapporteur's visit, from 10 to 12 January, Israeli forces in Gaza destroyed, severely damaged or made uninhabitable an additional 211 Palestinian homes.<sup>19</sup> On 10 January,<sup>20</sup> Israeli forces at Block "O" along the Rafah border with Egypt demolished at least 58 homes in a night blitz that set sleeping families running for their lives and rendering 614 people homeless. The next morning, Israeli forces demolished another 18 homes in the al-Barama section of Rafah Refugee Camp.<sup>21</sup> As relief workers were scrambling to rehouse these evictees in tents, the news was still reverberating in the press and among the public of the burning death of five children from the Hunaydiq family, when cooking oil set alight their International Committee of the Red Cross relief tent on 6 January; Israeli settlers shelling their homes had forced them to take refuge east of Khan Yunis, where unforeseen, secondary hazards awaited.

28. In addition to the cost to life and limb during Israel's destructive actions against Palestinian homes, negative psychological effects are in evidence. The violent and abrupt loss of one's home has a collective dimension for Palestinians.<sup>22</sup> It invokes the long history of Israel's forcible transfer and dispossession, which adds feelings of humiliation to the personal sense of loss.

29. Social science research has highlighted the psychological effects of house demolitions for both victims and witnesses. These include high levels of compound mental anxiety manifesting as dread of the occupation army, diminished concentration, constant weeping and re-experiencing the traumatic event. Witnesses shared the effects in the form of dread of the occupation army, bouts of volatility, and night terror.<sup>23</sup> In addition to the other causes of stress and trauma, the experience of house demolition has had enduring psychological consequences for the victims. Women have been shown to have longer and more severe bouts of depression - in both the loss and witness groups - as they cope with the hardship. Children tend to suffer disproportionately the violent loss of homes, shelter and possessions.<sup>24</sup>

30. Former Commander of the IDF Southern Command General Yom-Tov Samia in a September 2001 radio interview summarized the strategic rationale for military demolition of Palestinian homes:

"The IDF must raze all the houses [in the Rafah Refugee Camp adjacent to the Egyptian border] within a strip of 300 to 400 metres in width ... Arafat must be punished, and after each incident another two to three rows of houses must be razed ... We must apply this extreme instrument; it is workable ... and I am happy it is being used. Sadly, in steps which are too small. It must be done in one big operation."<sup>25</sup>

31. Israel's active military command has rationalized house demolitions and the use of lethal force on the pretext that it is operating a combat zone, and that the Hague Regulations therefore apply as a justification for measures taken under its own criteria for "security" and "necessities of war", including civilian house demolitions, and crop and agricultural land destruction (e.g. by bulldozing away topsoil).<sup>26</sup>

32. In Areas C, Palestinian farmers, their homes, property and crops are often the targets of Israel's military tactic of economic devastation of Palestine. Since the massacre at al-Aqsa mosque, farmers have lost an estimated US\$ 431 million from destruction. The occupation army has destroyed 150 agricultural roads. Infamous is the Israeli practice of extirpating productive fruit and olive orchards. One example among many is the Israeli army and settlers' destruction of thousands of 60- to 70-year-old olive trees at 'Abud village.<sup>27</sup>

33. Settlers also have resorted to rustling livestock belonging to rural Palestinians, such as the case of 61 head of sheep that Israeli settlers stole from 'Awarta village.<sup>28</sup> Israeli military operations and property destruction have concentrated on potential Palestinian tourism zones, such as Bethlehem, occupying hotel and other tourism facilities, militarizing religious sites (see E/CN.4/2001/30) and stifling an important Palestinian economic sector. The physical damage to structures alone has been estimated at US\$ 135-165 million from October 2000 to June 2001;<sup>29</sup> over 70 per cent account for agricultural losses and nearly 28 per cent are losses from damaging or destroying private buildings. From figures covering only through June 2001, out of the US\$ 27.7 million in destruction, US\$ 19.7 million was to residential buildings.<sup>30</sup>

34. New estimates from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) indicate that a value of no less than US\$ 3.8 million was lost in structures in Israel's operation against the refugee camps and Gaza City in March 2002. This includes the destruction of at least 141 refugee shelters valued at US\$ 2.3 million alone.<sup>31</sup>

## V. IMPLANTATION OF SETTLEMENTS AND SETTLERS

35. The Special Rapporteur can only add his confirmation to the conclusion that Israeli settlements in the occupied territories are an obstacle to peace. As stated above, the implantation of settlements and settlers is also, *prima facie*, a violation of the basic principles of international humanitarian law<sup>32</sup> and also has been recognized as a violation of human rights norms, particularly economic, social and cultural rights.<sup>33</sup> Illegal settlement activity is a significant factor in Israel's confiscation of more than 70 per cent of the West Bank and 33 per cent of the Gaza Strip and East Jerusalem.

36. At the beginning of 2001, Israel maintained 19 Jewish settlements in the Gaza Strip that occupy 23,000 dunams of confiscated Palestinian land, surrounded by more than 23,000 additional dunams of confiscated land. In the West Bank, Israel maintains some 205 Jewish settlements, including some 16 Jewish settlements in occupied Jerusalem. In addition, Israel established 74 outposts (habitations built that are non-contiguous with the established settlements) after signing the Oslo Accords.<sup>34</sup>

37. According to the Yesha Council for settlers, the total settler population currently numbers 227,000, excluding the settlers in West Jerusalem (since 1948) and East Jerusalem (since 1967).<sup>35</sup> Since the current Israeli Government came to power in February 2001, Israel has set up an additional 34 settlements in the occupied Palestinian territories.<sup>36</sup>

38. In January 2002, the Special Rapporteur witnessed the continued construction of some 6,500 housing units for the new Jabal Abu Ghunaym/Har Homa settlement on 2,056 dunams of confiscated Palestinian land, completing the circle of Jewish settlements around occupied Jerusalem. He also visited areas of new construction in the West Bank and Gaza Strip settlement.

39. Israel has built 6,000-8,000 housing units for settler colonies in occupied Palestinian territories between 1967 and 1998. While Israel maintains that this reflects “natural” population growth, the 11-12 per cent annual increase in settler numbers far exceeds the 2 per cent population growth inside Israel.<sup>37</sup> The active and sustained implantation of Jewish settler colonies serves the geostrategic purpose of acquiring territory and natural resources and limiting the living space of the Palestinian host population. By contrast, Israeli planning authorities assign jurisdictional areas to Jewish settlements in vast disproportion to the restricted land use for comparable Palestinian population centres in the occupied Palestinian territories.<sup>38</sup> Illustrative of this is Migilot settler colony in the Judean desert. Israeli settlement planners have attributed 700,000 dunams of land to its settler population of 900.

40. Colonial settlements implanted near Palestinian built-up areas impose a 500-metre “buffer zone”, removing Palestinian homes and buildings within that distance from the settlement’s edge. In addition, the ganglia of settler bypass roads also impose the demolition of structures and closure of over 150 m of Palestinian lands to each side. Israel claims that the closure of these areas to their Palestinian owners and destruction of Palestinian properties there conform to local law and planning regulations. However, at the base of these practices is a breach of international law of treaties, as pointed out above.<sup>39</sup>

41. Since the advent of the Ariel Sharon (Likud) Government, local residents report an increase in settler paramilitary activity, notably in the confiscation of lands (as well as crops, farm equipment and livestock). In that context, Jewish settlers, already favoured by the Israeli-controlled physical planning regime, since September 2000 are imposing their own boundaries and using physical force and death threats to intimidate Palestinian land holders, as in the case of settler colonies at ‘Ayn Yubrid (West Bank).<sup>40</sup>

42. In addition to the 34 new settler colonies, Prime Minister Sharon’s Government has approved 14 new settlement plans. For the 2002 budget of Israel, US\$ 154 million were proposed for infrastructure projects, industrial investment grants, housing, agricultural programmes and educational subsidies for the illegal settlements in 2002. This is in addition to private and other sources of settlement funding, including that allotted by the Jewish National Fund and World Zionist Organization/Jewish Agency. The Israeli Government finances 50 per cent of settlement costs in the occupied Palestinian territories, while it finances 25 per cent of housing inside the Green Line. Illegal Jewish settlers in the occupied Palestinian territories, who recorded the highest per capita income of Israelis in the 1990s, receive

US\$ 520.22 per capita in subsidies from the budgets publicly disclosed, while, in the communities of Arab citizens of Israel, the most disadvantaged, individuals receive the equivalent of US\$ 234.83 in public benefits.<sup>41</sup>

## **VI. VIOLENCE AGAINST PALESTINIAN RESIDENTIAL COMMUNITIES**

43. The Israeli occupation army frequently imposes curfews on Palestinian towns and villages in the occupied Palestinian territories. Typically, residents are allowed only four hours (between 10.00 a.m. and 2.00 p.m.) to move from their homes to carry out their daily business. There have been cases in which Jewish settlers have destroyed and confiscated Palestinian property while these communities are under curfew. Since September 2000, settlers have used firearms and other forms of violence under Israeli army and police cover, killing 18 Palestinians to date.<sup>42</sup>

44. In an apparently positive development, on 27 February 2002, the Israeli High Court agreed to accept for consideration a petition requesting the Minister of Police, represented by the State Attorney's Office, the Attorney-General and the Commander of the Hebron police to respond to numerous requests for information regarding criminal complaints filed by Palestinian victims of violence committed by Israeli settlers.

45. Isolated villages and historical urban centres suffer especially. Access and movement are restricted, especially in those areas near Jewish settlements, suppressing livelihood activities and rendering impossible the maintenance and supply of households. Israel's land grabbing and a lack of ability to upgrade construction have led Palestinian communities to opt to build low-grade structures in the historical heritage areas. Gaza City, with virtually no vestige of its three millennia of urban heritage, exemplifies this phenomenon. Assaults by Jewish settlers and uniformed Israeli military have harassed and forced many Palestinian residents of al-Khalil/Hebron to leave their recently renovated homes.

46. The Special Rapporteur interviewed Ms. Na'ila al-Zaru, who was evicted twice from her historic home in the Old City of Jerusalem. The first time, she had regained her right to remain in her house following litigation brought by Israeli settlers who had squatted in her home and stolen all of her family's possessions, under Israeli police protection, while she was attending to her ailing mother in Amman, Jordan, in June 1985. Then, during the term of former Prime Minister Benjamin Netanyahu - who had pledged to occupy more Palestinian homes in the Old City - settlers brought a new case in the Jerusalem Central Court. On the morning of 25 May 1998, Israeli army and police violently evicted the widowed Ms. al-Zaru and her two children following a politicized trial in which the Israeli judge ruled on the basis of settler ideology, rather than law. Since that date, the al-Zarus have lived in a converted space in the Red Crescent Society clinic, without adequate housing or tenure. That Ms. al-Zaru owed the occupation authority-imposed "arnona" tax was used as a pretext in the original attempt to evict her from her ancestral home, to which she had title. This is one administrative device that Israel uses to carry out forced evictions and supplant the indigenous residents of the Old City with privileged Jewish settlers.<sup>43</sup>

## VII. GENERAL HOUSING CONDITIONS

47. Among the most common complaints of Palestinians, when asked about their housing rights, is the palpable and constant problem of high housing density. Palestinian families and communities crave space to live in and develop, as is natural for indigenous people in their own country. However, the Israeli occupation forecloses such a choice by imposing domination by a colonizing population.

48. As explained above, population transfer, confiscation of land and the combined effect of other Israeli measures have concentrated the majority of the remaining Palestinians into refugee camps, dilapidated historic city centres, high-density villages and slums. Forty per cent of the 3 million Palestinians in the occupied Palestinian territories live in housing that is inadequate by any definition.<sup>44</sup> Refugees are the most consistently and gravely affected victims of the *rekuz* (“concentration”) pattern of living preferred by Israeli planners for Palestinians, but additional thousands of non-refugee residents share comparably squalid living conditions. Under present conditions, the proportion and numbers of Palestinians underhoused in the occupied territories are expected to burgeon.

49. The combined factors of the conflict over the past 18 months have caused impoverished families whose houses have been demolished to camp with relatives and neighbours, sharing rents and space, and the economically destitute to seek inadequate temporary housing. This leads to further concentration of people in an already overcrowded space. The Special Rapporteur heard testimony about 16 families living on one floor in Betunia/al-Tirah (West Bank). Social and health problems naturally arise from such high density and cause secondary forms of suffering for the displaced. That all of these problems have become worse in the currently depressed economic conditions is obvious in both villages and cities, including East Jerusalem.

## VIII. CLOSURE, IMPOSED ECONOMIC DEPRESSION AND HOUSING

50. Closure of the occupied Palestinian territories has remained a standard practice since 1993, in what is locally known as the “Oslo Phase of Occupation”. During the period under review (from October 2000 to September 2001), the main Gaza crossings were closed to Palestinians 74 per cent of the time. However, nominal openings meant that only 20 per cent of the previously restricted level of 29,000 passages were allowed. Only the Karni/Muntar (commercial) crossing in Gaza remained closed for 8 per cent of the time, while others (Erez/Bayt Hanun and Sufa/Qarara) remained completely closed for 61 per cent of the time.<sup>45</sup>

51. In the West Bank, the 90,000-100,000 daily passages dropped in the last quarter of 2000 to approximately 20,000 crossings, with some increase in 2001. However, an unknown number of people were entering clandestinely.

52. The Israeli occupation forces closed the international border with Egypt at Rafah 55 per cent of the time, and sealed the borders with Jordan for 56 per cent of the time. Gaza airport remained closed 98 per cent of the time, and Israeli shelling and bombing have damaged and completely closed it.<sup>46</sup> In addition to the military closures of the occupied Palestinian territories, Palestinian access to Israeli ports has been restricted by arbitrary and administrative obstructions that have multiplied the costs of processing and storage, as well as by arbitrarily imposed duties and fees.

53. In the Israel-PNA negotiation process between Oslo I and Oslo II, Palestinians lost two of the three safe passage roads originally agreed upon. The only remaining "safe passage" that Israel allowed open was closed on 6 October 2000, and has remained closed ever since.

54. The closure has had devastating effects on the housing sector, including needed construction, as it has become impossible to build in the absence of free movement of personnel and materials. Consequently, investment has decreased and capital has withdrawn from the housing market, while investment resources are being spent to subsidize losses and cover dearer, more immediate needs in terms of dwellings.

55. The manufacture of construction material has fallen to 65 per cent of capacity in the occupied Palestinian territories, owing to transport, storage, raw material and other cost increases. Profits drop and clients with plunging incomes have difficulty paying, so that greater portions of company assets are tied up in accounts receivable, leading to liquidity shortages. The delays and inflation in the Israeli-controlled cement market alone amounted to a US\$ 230 million loss for Palestinian companies.<sup>47</sup>

56. Under present conditions, the Palestinian Legislative Council cannot function and there are other constraints on legal infrastructure redevelopment; the contractual environment is hazardous and repels risk-averse investors, including the banking sector. The Israeli military attacks on and attempts to engage the civil police as if they were "combatants" have weakened law enforcement capacity further coupled with low investor and public confidence in court-based dispute resolution and the general rule of law. Building has declined which causes fiscal crises in many Palestinian municipalities, such as Bethlehem and Jerusalem, that rely not on utilities-use collections, but on building permit fees for revenue to fund local services.

57. Much of donor assistance has been repackaged as "emergency assistance", or shifted to basic food and other survival services and has shifted away from labour-intensive activities, including construction (which is often a large part of a project).<sup>48</sup> With incomes dropping, as many as 50 per cent of families in a recent survey reported delaying payment of an average of three utility bills.<sup>49</sup>

58. The secondary impacts of the closure have meant a 25 per cent drop in employment in the West Bank in the first quarter of the current uprising period (October 2001). Some later improvement was attributed to emergency donor infusions.<sup>50</sup> In certain blighted areas, as in the southern Gaza Strip, as much as 72 per cent of Palestinians are living under the poverty line. The closure has forced many Palestinian residents of the southern Gaza Strip to remain permanently in Gaza City, since they can no longer commute to their source of livelihood. As a result, the increased demand has boosted minimum Gaza City monthly rents to US\$ 250. Many

local Palestinians seeking housing cannot afford available rental units, and some local Palestinian governmental and non-governmental institutions have provided emergency grants and loans to those hardest hit.

59. The movement of construction materials and personnel has been nearly impossible for international and United Nations redevelopment efforts as well. The closure has inflated the costs of donor-supported projects through the loss of productive time, inflated transportation costs, and road closures and damage, among other factors. The losses measured in either capital stocks or revenue flows reveal a scenario of plummeting resources for livelihood, but these indicators (emerging through available methods) tell only part of the story.

60. Based on the indicators available, it is expected that the general economy would recover to its pre-crisis level in two years only if Israel were immediately to lift all economic constraints from the occupied Palestinian territories and commerce were to develop unimpeded for that biennium.<sup>51</sup> The alternative is economic implosion and hardships yet unseen.

61. The emerging situation is what the World Bank asserts that “all rational participants wish to avoid”. The continuing conditions “would not [be] a sustainable scenario in any conventional sense, and would lead in all probability to a functional collapse of normal civil governance within a year, a reversion from any semblance [of] modern business activity into barter trade and subsistence farming, and a growing dependence on donor food aid, as under such conditions a monetized economy can scarcely function (thus dampening the impact of further conventional donor contributions). Unemployment could climb to about 40 per cent by the end of 2002, poverty rates could reach 60 per cent of the population, and [gross national income] per capita could fall a further 30 per cent, leaving GNP per capita at only half the pre-intifada level.”<sup>52</sup>

## IX. REFUGEES

62. Palestinian refugees made homeless as a consequence of war (principally in 1948 and 1967) and interim expulsions remain inadequately housed since their displacement. They are victims of land, home and other property confiscation and large-scale demolition of their villages by Israel. Currently, at least 1,460,396 Palestinian registered refugees and other holders of the right of return (as well as compensation and/or restitution) reside in the territories.<sup>53</sup> The majority of these refugees still live in 30 camps created after the 1948 war (8 in Gaza and 22 in the West Bank, including Jerusalem).

63. The Special Rapporteur found the continuing violation of the right of return to be a vivid issue in his meetings with communities, human rights organizations and service providers during his visit. Refugees feel that they are the subjects of continuing violation, while serving as potentially expendable bargaining chips for political purposes outside the rule of law. Although the international community continues to provide services for Palestinian refugees, the refugees and their defenders emphasize also that there is a lack of adequate protection because they do not fall under the 1951 Convention relating to the Status of Refugees, and because the United Nations institution theoretically responsible for protection and restitution (the Palestine

Conciliation Commission) is defunct. While it is arguable that the United Nations (and, particularly, the Member State of Israel) also bear a responsibility to provide protection for these civilians, the present suffering of Palestinian refugee victims of house demolitions emphatically demonstrates the failure of the international community to offer Palestinian refugees the minimum rights to which they are entitled.

64. Israel is the primary duty holder for the implementation of the right of return without delay,<sup>54</sup> but has demonstrated no will to do so. The Commission and the international community must respond practically within a human rights framework, noting that violations of the right of return increase with the number of rights holders and the values of their potential compensation and restitution claims. It is not a dilemma that will soon recede. In fact, the political and logistical tasks of implementation are made more complicated and difficult with the passing of time and changing demographic conditions.

## X. MISUSE AND HOARDING OF WATER RESOURCES

65. In addition to land, access to safe and sufficient water - including drinking water - is an essential element of adequate housing. Patterns of land use and consumption indicate severe discrimination against Palestinians in access to water throughout the occupied Palestinian territories, and lavish consumption by the occupying population.<sup>55</sup> Water is not only an essential human need, but its place in human rights lies at the confluence of human rights and housing, health and food.

66. The Special Rapporteur observed six principle methods of institutionalized Israeli violations of the Palestinian people's right to water affecting housing and habitat in the occupied Palestinian territories. These involve:

- (a) Destruction by military and paramilitary (settlers) of Palestinian water sources, pumps, wells and distribution infrastructure;
- (b) Non-provision of water infrastructure, including networks and facilities for local solutions;
- (c) Lack of proper maintenance of existing infrastructure so as to prevent leakage and water loss;
- (d) Outright prevention of Palestinians from drilling and constructing water-delivery facilities, most notably in areas of Jewish settler colonies;
- (e) Discriminatory distribution and insufficient water supply to Palestinians in areas that the Israeli water utility (*Mekorot*) controls; and
- (f) Pollution and contamination of Palestinian aquifers through the combined dumping of lethal waste, hazardous use of chemical fertilizers and overpumping, leading to salinization.



67. The Palestinian use of the Jordan River before 1967 involved the use of some 140 pumping units. Israel either confiscated or destroyed all of those facilities. In addition, Israel closed as military zones the large, irrigated areas of the Jordan Valley used by Palestinians that later were transferred to Jewish settlers.

68. Palestinian entitlements to water include the West Bank and Gaza aquifers, in addition to their rightful shares as riparians of the Jordan River. The West Bank's hydrological system includes three major aquifers: the western, north-eastern and eastern basins. The annual renewable freshwater yield of this aquifer ranges from 600 million cubic metres (MCM) to 650 MCM.

69. At present, Israel extracts more than 85 per cent of the Palestinian water from the West Bank aquifers, accounting for about 25 per cent of Israel's water use. As a result of Israeli-imposed restrictions, under typical circumstances (before the intifada), Palestinians use 246 MCM of the water resources to supply nearly 3 million Palestinians in both the West Bank and Gaza Strip with their domestic, industrial and agricultural needs. This compares with Israel's use of 1,959 MCM for its population of approximately 6 million. That translates into a per capita water consumption by Palestinians of 82 m<sup>3</sup> as compared with 326.5 m<sup>3</sup> for Israeli citizens and settlers. Figures for daily per capita water use indicate that Israelis - at 350 litres - use five times more than Palestinians (70 litres). In the water-scarce Gaza Strip, Israeli settlers consume 584 litres per day, or about sevenfold the Palestinian per capita consumption there.<sup>56</sup> Owing to leakage from undermaintained networks, the actual Palestinian per capita consumption is assumed to be lower than this indicator.<sup>57</sup> Both the United States Agency for International Development (USAID) and the World Health Organization (WHO) recommend 100 litres per capita for minimum daily consumption.<sup>58</sup>

70. By contrast, Israel provides its illegal Jewish settlers with a continuous and plentiful water supply, largely from Palestinian water resources. Much of the administration and distribution of water for urban consumption in the occupied Palestinian territories remains controlled by Israel, especially in the West Bank (56 per cent).<sup>59</sup> The supply to Palestinians is intermittent, especially during summer months. At present, over 150 Palestinian villages (population 215,000), and perhaps as many as 282 communities in the West Bank have no direct access to a public water-distribution system.<sup>60</sup> When Israel nominally turned over the maintenance of the water sector to the PNA, 20 per cent of the Palestinian residents of the occupied Palestinian territories were not connected to a water network. These factors conspired to raise costs for Palestinians and reportedly have led to a black market in water in the occupied Palestinian territories.

71. Some communities, such as Burin (population 2,002), south-west of Nablus (West Bank), have no independent water supply. The closures and movement restrictions have cut them off completely from any water source. Settlers and uniformed Israeli military destroy cisterns and contaminate collection tanks and damage pumps. Under the pretext of retaliating for resistance, Israeli soldiers have destroyed water supplies of refugee camp families by shooting holes in rooftop cisterns.<sup>61</sup>

72. Aerial photos show the Gaza border as demarcating a land deprived of water. The only significant green area in the northern Gaza Strip east of Bayt Hanun has been the site where the Israeli army recently razed some 26,000 trees.<sup>62</sup> Other green areas, such as Mawasi on the south Gaza coast, is one of the sites of intense settler activity and the current subject of Israeli military siege and comprehensive curfew, where adequate housing is one of the gamut of human rights denied to 15,000 Palestinian citizens.

73. The institutionalized nature of the Israeli occupation of Palestinian water resources was further entrenched in the Interim Arrangements with the Palestinian National Authority. Israel has retained the power to veto any water project through the mechanism of the Joint Water Committee and its "Civil Administration". Although this constitutes a violation of international law with regard to State responsibility, the principle concern of this review is the violation of the right to housing, of which access to safe, clean water is an integral element.

## XI. ENVIRONMENTAL ISSUES

74. The "right to a safe place to live in peace and dignity" cannot be realized without also realizing the right to a safe and clean environment. In the occupied Palestinian territories, however, Israelis dump solid waste without restriction on Palestinian land, fields and side roads. The solid waste generated in West Jerusalem, for example, is transferred to the unsanitary dumping site east of Abu Dis, adjacent to the area where Israel has dumped the serially displaced Jahhalin Bedouin. That site in the West Bank overlays the infiltration area of the eastern sector of the water aquifer, and is adjacent to the area where Israel has forcibly evicted the Jahhalin Bedouin (originally evicted from the Negev, inside the Green Line, in 1979-1980) to transfer their commonly held lands to the sprawling Ma'ale Adumim settler colony. Also, the settler colonies of Ari'el, Innab, Homesh Alon Morieh, Qarna Shamron, Kadumim and others dispose of their solid waste in the West Bank, as do military camps and Israeli settler colonies inside the Green Line.

75. Israeli settler colonies in the West Bank and Jerusalem are typically placed on high ground, serving to enhance strategic domination over, and intimidation of the lower-lying Palestinian towns and villages. While wastewater from many settler colonies is collected and discharged into the nearby valleys without treatment, this also facilitates the settler colonies' pollution of Palestinian lands. The Special Rapporteur observed that the Kfar Darom Israeli settler colony in the Gaza Strip releases its sewage and chemical waste from the industrial plants into the Palestinian Al-Saqa Valley in the central part of the Gaza Strip.

76. Industrial, chemical and human waste are dumped in the West Bank and Gaza (e.g. near Salfit). A German-funded treatment plant for Salfit was planned in Area C, west of Salfit, and the municipality obtained a permit from the civil authority, but only on the condition that the plant be used for the Ariel settler colony's sewage treatment.<sup>63</sup>

77. The Israeli Government has constructed at least seven industrial zones in the West Bank and one major centre in Gaza (Erez). The West Bank examples occupy a total area of approximately 302 hectares, located mainly on hilltops, from which they dump industrial wastewater onto adjacent Palestinian lands. Information as to the nature of the enterprises in the Israeli industrial zones is not accessible to the Palestinians. They can only guess on the basis of

the liquid waste flowing from the industrial area and from the solid waste found in nearby areas. Palestinian sources estimate that at least 200 Israeli factories operate in the West Bank. Some of the products are identifiable. The aluminum, leather tanning, textile dyeing, battery manufacture, fiberglass, plastics and chemicals industries are among those known to exist within these Jewish settler colonies, but detailed information on quantities produced, and waste generated is not available.

78. The Barqan industrial zone in the West Bank is a clear example of environment pollution. Aluminum, fiberglass, plastics, electroplating and military industries are known to operate inside Barqan. The industrial wastewater flows untreated to the nearby valley and damages agricultural land belonging to the neighbouring Palestinian villages of Sarta, Kafr al-Dik, and Burqin, polluting the groundwater with heavy metals. Access and resource problems are leading to deteriorating solid waste collection and disposal, with clear public health consequences.

## **XII. CONCLUSIONS AND RECOMMENDATIONS**

79. This attempt by the Special Rapporteur to appraise the cumulative damage to the Palestinian home and land validates the assessment of the international community, including the Commission on Human Rights and the United Nations treaty bodies, that Israeli occupation has had a devastating impact on the Palestinians' housing and living conditions and that Israel bears legal responsibility. The policies of belligerent occupation and collective punishment have been marked by land confiscations, punitive house demolitions, implantation of settlements and settlers, the dismemberment of the Palestinian territories through the building of bypass roads and other infrastructure to serve illegal settlers, and the control or theft of water and other natural resources in the occupied territories. All of these have had the result of consolidating occupation on the lands occupied by force in 1967.

80. The Special Rapporteur commends the work of many local PNA institutions, non-governmental organizations and international agencies that have monitored, informed, defended and sought to remedy housing rights violations and improve the living conditions of the Palestinian civilian population in the occupied Palestinian territories under the harshest possible conditions. By no means the least of such efforts have been carried out by all of the United Nations implementing agencies, including UNDP and UNRWA, as well as the World Bank and the European Commission programmes to alleviate poverty and mitigate the impact of Israel's military occupation. The Special Rapporteur notes, however, that Israel continues to impede the United Nations and other international development operations by closing off access to the United Nations personnel and other international staff, imposing arbitrary restrictions on the movement of materials, unlawful searches and detentions, and even assaults on United Nations staff and vehicles.

81. It is ironic that the methods used to consolidate occupation have accelerated under the guise of the Oslo Peace Accords. Since the massacre of Palestinian civilians at the Noble Sanctuary, however, and the resultant Palestinian resistance marked by the second intifada, the

violence of occupation has assumed unprecedented proportions. A particularly destructive strategy has involved the use of missiles, tanks and the Israeli army's practice of "walking through the walls" used to serially damage homes in the February-March 2002 attacks on the Palestinian refugee camps.

82. The Special Rapporteur therefore concludes that Israel has:

(a) Failed to fulfil its obligations under the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child;<sup>64</sup>

(b) Manipulated the ethnic character of the West Bank (including Jerusalem) and the Gaza Strip through the illegal implantation of settlers and settlements, and denied residency status and family unification to Palestinian Jerusalemites; and

(c) Impeded development activities, including those of the United Nations and other international agencies, aimed at fulfilling housing rights and building infrastructure for the Palestinian community.

83. It is in light of these effects of Israeli occupation that the international community of States remains duty bound to intervene to protect the Palestinian community, their homes and lands from further destruction and to ensure that the occupying Power is held to account for breaches of humanitarian law and other treaty obligations so as to ensure restitution of the Palestinian's human right to housing, including their public and private lands and other natural resources. The Special Rapporteur, therefore, presents the following practical recommendations for the Commission's consideration:

(a) Fulfilment of the right to adequate housing and all other economic, social and cultural rights should constitute a framework for any political initiatives and negotiations towards a resolution of the conflict in Israel and the occupied Palestinian territories and the preservation of regional peace and security;

(b) In order to restore peace and order, it is imperative that an international protection force (under the jurisdiction of the United Nations) be dispatched to the occupied territories on an urgent basis. Such a force must have as a priority the protection of Palestinian homes and lands from further incursions by Israeli authorities and the safe and unimpeded conduct of the United Nations and other international development efforts within the provisions of international law;<sup>65</sup>

(c) The occupation should end completely including:

(i) Dismantling of all illegal settlements, including an immediate halt to new Jewish settlement and other outpost planning and construction, expansion of existing settlements and outposts, and planning and construction of bypass roads and tunnels;

- (ii) A moratorium on land confiscations and house demolitions for any purpose, and the cancellation of all existing demolition orders;
- (iii) A halt to further construction of bypass roads, tunnels and other infrastructure for Jewish settlements;
- (iv) Restoration of public and private Palestinian land and properties to their rightful owners;
- (v) A complete halt to, and diligent prosecution of all criminal acts by settlers, particularly the use of firearms, other forms of violence, occupation, theft and damage to homes, lands and infrastructure; and
- (vi) The prompt and complete withdrawal of all Israeli forces and agents from all areas occupied in 1967, in accordance with binding Security Council resolutions;

(d) Immediate respect for and restoration of the economic, social and cultural rights of Palestinians, including their rights to housing, through international cooperation with the Palestinian National Authority and implementation of the Palestinian National Human Rights Plan of Action. International cooperation may also include active involvement of the United Nations Housing Rights Programme, and its lead agencies (OHCHR and UN-HABITAT) to address the grave housing crisis in the occupied Palestinian territories;

(e) Reparations<sup>66</sup> for the material losses of Palestinian civilian victims based on replacement value, loss of livelihood/income, unauthorized use of property, as well as adequate compensation for non-material losses, including the physical and psychological impact of home demolitions and land confiscations and the resulting displacements, including the creation of refugees;

(f) The Special Rapporteur suggests that he should continue consulting with official and non-governmental institutions concerned with monitoring the right to housing and, particularly, to work with international and local partners to develop and apply a common methodology for quantifying the losses and costs in cases of housing rights violations.<sup>67</sup> This would serve to understand more clearly the consequences, reconstruction priorities and terms of adequate compensation;

(g) The Special Rapporteur requests that the Commission call for an assessment of the United Nations operations in the occupied Palestinian territories with a view to providing local capacity in legal affairs to respond to military and other obstacles to civil projects, particularly in view of the fact that it is the Israeli Military Government that controls areas of the occupied Palestinian territories where the United Nations agencies operate, and Israeli breaches of international law require a specialized response beyond the administrative capacity of the United Nations field operations;

(h) The Special Rapporteur requests the Commission to authorize another mission to the occupied Palestinian territories that would allow him to continue his monitoring activities on the housing rights situation in the occupied Palestinian territories and report to the Commission and to comply with the Commission's call in resolution S-5/1 for up-to-date information to be presented to the General Assembly;

(i) In light of the grave situation regarding a range of economic, civil, cultural, social and political rights in the occupied Palestinian territories, the Commission may wish to reiterate its request to all relevant thematic special rapporteurs urgently to conduct visits to the occupied Palestinian territories and report to the Commission and to the General Assembly.

### Notes

<sup>1</sup> Since the Beit El case (High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al*, Piskei Din 33 (2)), the High Court of Justice has ruled that the Hague Regulations (1907) are customary law, therefore automatically part of municipal law and judiciable in Israel.

<sup>2</sup> Under its article 20 (a) (vii), the International Law Commission's Draft Code of Crimes against the Peace and Security of Mankind sets forth that unlawful deportation or transfer of a population constitutes a war crime. Populations transfer, once considered a bygone feature of war, has returned alarmingly to several cases of armed conflict in the past decade. In other areas, it remains an aspect of standard policy and practice for the purpose of demographic manipulation. Owing to the grave human consequences of the practice in history, humanitarian law norms, notably the Fourth Geneva Convention (art. 49) prohibits forcible population transfer and the Rome Statute of the International Criminal Court, defines "forcible transfer of population" (art. 7.2 (d)) and identifies it as a crime against humanity (art. 7.1 (d)), and therefore a war crime, a grave breach of the Fourth Geneva Convention (art. 8.2 (a) (vii)) and a serious violation of international law (art. 8.2 (b) (viii)). The United Nations Special Rapporteurs on the human rights dimensions of population transfer identified population transfer (E/CN.4/Sub.2/1993/17) as a prima facie violation of international law, and the International Law Commission also identified it as a crime against humanity in its Draft Code of Crimes against the Peace and Security of Mankind (art. 18 (g)).

<sup>3</sup> General Assembly resolution 51/190 "Permanent sovereignty of the Palestinian people in the occupied Palestinian territories, including Jerusalem, and of the Arab population in the Syrian Golan over their natural resources", of 16 December 1996; and Security Council resolutions 446 (1979) of 22 March 1979, 452 (1979) of 20 July 1979, 465 (1980) of 1 March 1980, 471 (1980) of 5 June 1980, and 904 (1994) of 18 March 1994; and Security Council resolutions concerning Jerusalem: 252 (1968) of 21 May 1968, 267 (1969) of 3 March 1969, 298 (1971) of 25 September 1971, 476 (1980) of 30 June 1980, and 478 (1980) of 20 August 1980.

<sup>4</sup> Under Israeli law, anyone considered eligible for “Jewish nationality” can obtain this preferential status on the basis of (a) a claim to profess the Jewish religion and (b) arrival in the country. By contrast, a citizen of the State of Israel who is not bona fide as Jewish can never hold this status, even if s/he is born there. In the case of *George Tamarin v. the State of Israel* (1971), a Jewish Israeli petitioned the High Court of Israel unsuccessfully to have the official registration of his nationality changed from “Jewish” to “Israeli.” The High Court ruled that “there is no Israeli nation separate from the Jewish nation ... composed not only of those residing in Israel but also of Diaspora Jewry”. Then President of the High Court Justice Shimon Agranat explained that acknowledging a uniform Israeli nationality “would negate the very foundation upon which the State of Israel was formed”, *New York Times*, 21 January 1972, p. 14; cited in Oscar Kraines, *The Impossible Dilemma: Who is a Jew in the State of Israel* (New York: Bloch Publishing, 1976). Nationality status in Israel is not linked to origin from, or residence in a territory, as is the norm in international law. Rather, the basic theocratic character of the Israeli legal system establishes ethnic criteria as the grounds for the enjoyment of full rights. The Israeli Citizenship Law (*ezrahut*), officially mistranslated as “Nationality Law”, establishes a civil status distinct from “Jewish nationality”.

<sup>5</sup> Since the signing of the Wye River Accord, an estimated 27,385 dunams have so far been confiscated: 12,238 dunams up to the end of 1998 and a further 15,147 dunams in the first three months of 1999. The expropriated land will be used for the construction of bypass roads, settlement expansion and construction of industrial zones, among other purposes. According to field work by the LAW Society for Human Rights and the Environment, Israeli authorities have confiscated 3,459 dunams to construct gas stations and industrial zones on the Palestinian village lands of Kufur Qaddum, Asamou, Jab’a, Tal Mariam, Bayt Sira and Athahiriah. The land confiscations in the first three months of 1999 took place in: Ramallah (2,395 dunams), Hebron (1,558 dunams), Bethlehem (580 dunams), Jenin (558 dunams), Salfit and Nablus (3,290 dunams), Tulkarem (200 dunams), Qalqilya (450 dunams), Jerusalem (4,019 dunams), Gaza (17 dunams), Rafah (50 dunams) Khan Yunis (30 dunams), and Jericho and the northern Jordan Valley (2,000 dunams).

<sup>6</sup> “Greater Jerusalem” (Washington: Foundation for Middle East Peace, Summer 1997). As of May 1999, the source indicated, Israel had confiscated 5,845 acres (23,380 dunams): “Israel’s Uncertain Victory in Jerusalem” (Washington: Foundation for Middle East Peace, Spring 1999). This does not account for the Palestinian lands, villages, homes and other properties Israel seized in the conquest of West Jerusalem in 1948, and continues to possess.

<sup>7</sup> 7.3 per cent cited on <http://www.badil.org>; 8 per cent cited in Department of International Relations, Orient House, “Forced Eviction and Dispossession of Palestinians in Occupied Jerusalem by Current Israeli Policies” (February 2000), p. 13.

<sup>8</sup> The Hague Convention of 18 October 1907 and Annexed Regulations concerning the Laws and Customs of War on Land (Convention No. IV of 1907). Article 43 reads: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

<sup>9</sup> Amnesty International, "Israel and the Occupied Territories - Demolition and dispossession: the destruction of Palestinian homes" (London: Amnesty International, December 1999).

<sup>10</sup> In Shu'fat, Bayt Hanina, Ashqariya and Qaddum/Silwan. Land and Housing Research Centre, "Annual statistical report on house demolition in Jerusalem", 10 January 2002.

<sup>11</sup> For example, occupation forces demolished 11 housing units belonging to Jerusalem contractor Ibrahim Julani on 20 August 2001.

<sup>12</sup> These numbers do not include the homes families are forced, under court order, to demolish by themselves.

<sup>13</sup> Meeting with Land and Housing Research Center (Jerusalem), 6 January 2002.

<sup>14</sup> Land and Housing Research Center, "Israel destroys 23 houses in Jerusalem on one day" (July 2001).

<sup>15</sup> E/C.12/1/Add.27 of 4 December 1998, para. 22. See also paras. 11, 12, 22, 28 and 41, in which CESCR addressed the practice of demolishing Palestinian homes and policies leading to declining living conditions on both sides of the Green Line (Israel's 1948 border). CESCR reiterated its concern in its subsequent letter to the Permanent Representative of Israel to the United Nations Office at Geneva, of 1 December 2000, its letter to the Economic and Social Council of 4 May 2001, and in its concluding observations of 31 August 2001 (E/C.12/1/Add.69).

<sup>16</sup> Under article 16 of the Convention. See conclusions and recommendations of CAT CAT/C/XVII/Concl.5 of 23 November 2001, para. 6 (j).

<sup>17</sup> According to data collected by al-Haq: Law in the Service of Man (Ramallah). Special Rapporteur's meeting with Sha'wan Jabareen, al-Haq, Ramallah, 6 January 2002.

<sup>18</sup> According to data collected by the LAW Society for Human Rights and the Environment (Jerusalem). Special Rapporteur's meeting with Hasib Nashashibi, LAW, Ramallah, 6 January 2002.

<sup>19</sup> Facsimile letter from Raji Sourani, Director, Palestinian Centre for Human Rights, to the Special Rapporteur, 15 January 2002.

<sup>20</sup> While operating under the 16 December 2001 ceasefire.

<sup>21</sup> Palestinian Centre for Human Rights, Press Release 4/2001, 12 January 2002.



<sup>22</sup> E. El-Sarraj, A.A. Tawahina and F. Abu Hein, “The Story of Uprooting”, presented at the first International Conference on the Mental Health and Psychological Well-being of Refugees and Displaced Persons, Stockholm, 6-11 October 1991, cited in S. Quota, Raija-Leena Punamäki and E. El-Sarraj, “House Demolition and Mental Health: Victims and Witnesses”, *Journal of Social Distress and the Homeless*, vol. 6, No. 3, 1997, p. 210.

<sup>23</sup> A study of the mental health effects on victims of Israel’s demolition of Palestinian homes at al-Ammal and Bayt Labia (Gaza) in February 1993 records the experiences of a loss group, witness group and control group. See Quota, Punamäki and El-Sarraj, *op. cit.*

<sup>24</sup> See for example, “The First GCMHP Study on the Psychosocial Effects of the Al-Aqsa Intifada: Significant Increase in Mental Disorders and Symptoms of PTSD among Children and Women”, forthcoming (2002) from the Gaza Center Mental Health Programme (GCMHP).

<sup>25</sup> Jeff Halper, “Rafah: Holding Israel Accountable”, at <http://www.mediamonitors.net/halper7.html>.

<sup>26</sup> Submission by the Executive Assistant to Israeli State Prosecutor Yehuda Shaefer, 17 January 2001.

<sup>27</sup> Randy Engel, “The Bishops’ Collective: A Report and Commentary on the NCCB/USCC [National Conference of Catholic Bishops/United States Catholic Conference] Atlanta Meeting, 14-16 June 2001”, at <http://www.catholictradition.org/cfn-bishops.htm>; also testimony of Palestinian Agricultural Relief Committee (PARC). Special Rapporteur’s meeting with Jawda Abdalla, PARC, Ramallah, 6 January 2002.

<sup>28</sup> Testimony of a West Bank NGO in meeting with the Special Rapporteur, Ramallah, 6 January 2002.

<sup>29</sup> See World Bank, “One Year of *Intifada*”, Jerusalem, February 2002, p. 23. The price of cement increased from NIS 330 to NIS 650 per ton, according to a Ministry of Planning and International Cooperation (MoPIC) assessment.

<sup>30</sup> US\$ 11.38 million in Gaza and US\$ 8.28 million in the West Bank. “One Year of *Intifada*”, *ibid.*, Sectoral Damage Tables, pp. 87-89. See also Ministry of Housing Table (in the text), also reflecting similarly high proportions of residential building destruction.

<sup>31</sup> “Israeli attacks on the camps imposes heavy costs on UNRWA”, UNRWA press release, 20 March 2002, at <http://www.un.org/unrwa/arabic/news-ar/>.

<sup>32</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 49.

<sup>33</sup> See *supra* note 15.

<sup>34</sup> Special Technical Unit (STU), MoPIC, January 2000, at <http://www.palestinemonitor.org/factsheet/settlement.html>.

<sup>35</sup> Ibid. The combined figures indicate more than 403,249 settlers in the West Bank, 211,788 of whom live in East Jerusalem.

<sup>36</sup> Figures as of 19 March 2002, reported by Settlement Watch Project of Peace Now, at <http://www.peacenow.org.il/English.asp?Redirect=4&CategoryID=45&ReportID=236>.

<sup>37</sup> As of figures for December 1999 released by the Council for Jewish Communities in Judea, Samaria and Gaza and compared with Israeli Central Bureau of Statistics counts in December 1998. Nadav Shragai, "Number of Jews in settlements skyrockets", *Ha'aretz*, 21 February 2000.

<sup>38</sup> According to findings of B'Tselem (Jerusalem). Special Rapporteur's meeting with Ezekiel Lein and Jessica Montell (B'Tselem), 7 January 2002, and subject of a forthcoming B'Tselem study, "Land grab: Israel's settlement policy in the West Bank", at <http://www.btselem.org>.

<sup>39</sup> In addition to references supra, the Vienna Convention on the Law of Treaties (art. 27) provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

<sup>40</sup> Testimony of Isa Samandar, Land Defence Committee, in meeting with Special Rapporteur, Ramallah, 6 January 2002.

<sup>41</sup> Based on exchange rate of 4.45 new Israeli shekels to the US dollar. Figures provided in the Adva Center, "Governmental Funding of the Israeli Settlements in the West Bank, Gaza Strip and Golan Heights in the 1990s of Local Governments, Home Construction, and Road Building", 27 January 2002, summarized in Nehemia Strasler, "Every settler a king", *Ha'aretz Daily*, 1 February 2002.

<sup>42</sup> See detailed list in Palestinian Human Rights Monitoring Group, "Summary of Palestinian Fatalities from 29/9/2001 till 18/3/2002", at [www.phrmg.org/aqsa/settlers.htm](http://www.phrmg.org/aqsa/settlers.htm).

<sup>43</sup> See also Jerusalem Center for Women, "Settler attacks: in the eyes of the women of Jerusalem", November 2001.

<sup>44</sup> Viktoria Waltz, "A Social Orientated Housing Program and Policy for Palestine" (Ministry of Housing, 10 November 1999).

<sup>45</sup> World Bank, op. cit., pp. 9-11.

<sup>46</sup> Ibid., pp. 10-11.

<sup>47</sup> Ibid., p. 93.

<sup>48</sup> Ibid., p. 71 and note 95. As much as 66 per cent is typically spent on construction. Construction projects can have a labour content of 45 per cent.

<sup>49</sup> Ibid., p. 41.

<sup>50</sup> Ibid., p. 19.

<sup>51</sup> Ibid., p. 17 and chap. 5.

<sup>52</sup> Ibid., p. 80.

<sup>53</sup> UNRWA figures as of 30 June 2001, including Jerusalem. "UNRWA in Figures" (Gaza: UNRWA Public Information Office, June 2000). The figures are considered to be a "guideline", as true numbers are likely greater.

<sup>54</sup> Under General Assembly resolution 194 (III) of 10 October 1948, para. 11; 2963 (XXVII) D of 13 December 1972; 3089 (XXVIII) of 7 December 1973 and 3236 (XXIX) of 22 November 1974, esp. para. 2; and Security Council resolution 237 (1967) of 14 June 1967.

<sup>55</sup> See CESCR concluding observations E/C.12/1/Add.27, op. cit., paras. 10, 24, 32, 41 and E/C.12/1/Add.69, op. cit., paras. 42, 20, 23 and 26.

<sup>56</sup> B'Tselem, *Thirsty for a Solution*, position paper (Jerusalem: B'Tselem, 2000), p. 6.

<sup>57</sup> Loss could be as much as 25-36 per cent, as explained in *ibid.*, pp. 53-54.

<sup>58</sup> United States Agency for International Development, "Report of the West Bank and Gaza Mission" (Washington: USAID, 1999), at <http://www.usaid-wbg.org/water.html> and WHO, "Guidelines for Drinking Water Quality" (Geneva: WHO, 1998), at [http://www.who.int/water\\_sanitation\\_health/GDWQ](http://www.who.int/water_sanitation_health/GDWQ).

<sup>59</sup> "Palestinian Water Consumption" in B'Tselem, op. cit.

<sup>60</sup> B'Tselem, op. cit., cites 150, while the Palestinian Ministry of Planning and International Cooperation (MoPIC) counts 282. MoPIC, *Regional Plan for the West Bank Governorates Water and Waste Water Existing Situation* (Gaza: PNA, 1998), at [http://planning.pna/wastewater/water\\_wastewater.html](http://planning.pna/wastewater/water_wastewater.html).

<sup>61</sup> See E/CN.4/2001/30 and B'Tselem, "Not Even a Drop: The Water Crisis in Palestinian Villages without a Water Network" (Jerusalem: B'Tselem, 2001), p. 9.

<sup>62</sup> The World Bank counts 23,000 by early November 2001. See "One Year of *Intifada*" op. cit., p. 92. Subsequent figures are taken from the Applied Research Institute of Jerusalem-ARIJ (Bethlehem). Special Rapporteur's meeting with Jad Isaac (ARIJ), Bethlehem, 7 January 2002 .

<sup>63</sup> ARIJ, *ibid.*

<sup>64</sup> See concluding observations (Israel) of the Committee on the Elimination of Racial Discrimination, CERD/C/304/Add.45; concluding observations (Israel) of the Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.27 of 4 December 1998, with particular reference to the obligations to uphold the right to housing, paras. 10, 21-28 and 41 and concluding observations (Israel), E/C.12/1/Add.69 of 31 August 2001, with reference to housing rights, para. 15; report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/S-5/3 of 17 October 2000), para. 6.

<sup>65</sup> With particular reference to the full implementation of the Convention on the Privileges and Immunities of the United Nations (1946) and the Convention on the Privileges and Immunities of the Specialized Agencies (1947).

<sup>66</sup> See, in this context, the Basic principles and guidelines on the right to reparation for victims of [gross] violations of international human rights and humanitarian law, prepared by Mr. Theo van Boven, former Special Rapporteur of the Sub-Commission (E/CN.4/1997/104, annex) and subsequently revised (“Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”) by Mr. Cherif Bassiouni, independent expert of the Commission (E/CN.4/2000/62, annex) for consideration by the Commission.

<sup>67</sup> The Special Rapporteur notes, in particular, the “housing rights barometer/tool kit” developed by the Habitat International Coalition (available at <http://www.hic-mena.org>).

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