

ב'תסלם

B' T S E L E M

מרכז המידע הישראלי לזכויות האדם בשטחים [ע.ר.]
بتسيلم - مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة

B'TSELEM - The Israeli Information Center for
Human Rights in the Occupied Territories

February 2002



Policy of Destruction

House Demolitions and Destruction
of Agricultural Land in the Gaza Strip



Information sheet February 2002

Israel's Policy of House Demolitions and Destruction of Agricultural Land in the Gaza Strip

8 Hata'asiya St. (4th Floor), Jerusalem 93420

Tel. 02-6735599 Fax. 02-6749111

E-mail: mail@btselem.org

Website: www.btselem.org

B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories was founded in 1989 by a group of lawyers, authors, academics, journalists, and Members of Knesset. B'Tselem documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.

Introduction

On 10 January 2002, IDF forces demolished sixty houses, and partially demolished four more, in the Rafah refugee camp, near the Egyptian border. The action left more than six hundred Palestinians homeless. The media in Israel and throughout the world published pictures of the residents and their demolished homes, and for several days, the demolition was at the heart of the Israeli public debate.

The debate focussed primarily on how many houses the IDF demolished and whether the houses were occupied at the time. The IDF steadfastly maintained that only twenty-two houses had been demolished and that they had been abandoned for many months. The residents, human rights organizations, and humanitarian organizations contended that the number of houses that were demolished was much higher, and that at least some residents were living in the houses when the IDF began its demolition. The public debate rarely addressed the question of whether the house demolitions were justified.

The reporting on the house-demolition action in Rafah gave the impression that it was a one-time act that was executed in response to the killing of four soldiers the day before. However, since the beginning of the al-Aqsa intifada, Israel has demolished hundreds of houses, uprooted thousands of trees, and destroyed thousands of acres of land in the Gaza Strip. In almost all the cases of demolition, the houses were occupied and the residents fled when the bulldozers appeared at their doorsteps. The IDF implemented this policy primarily in the Gaza Strip, near the Israeli settlements, bypass roads, and army posts.

Israel does not deny these acts, but claims that they are legal under international humanitarian law. Officials justify the policy on the grounds of “pressing military necessity,” as a result of the fact that Palestinians conceal themselves in houses and orchards, from which they commit attacks. The officials contend that, because it is difficult for the IDF to protect Israeli civilians and soldiers from



Palestinian farmer in vineyard that the IDF destroyed, near the Netzarim settlement, 24 May 2001 (Ahmad Jadallah, Reuters)

such attacks, it is necessary to perform “clearing actions” on the land to prevent future attacks.

Israel calls this policy “clearing,” a name that conceals the destructive and long-term consequences for the Palestinian residents in the Gaza Strip. Thousands of people have been made homeless and thousands have lost their sole source of income for many years to come. Israel caused this damage to people although it did not contend that they themselves were involved in attacks, or

attempted attacks, against Israeli civilians or security forces.

This report examines Israel’s policy of house demolitions, uprooting of trees, and destruction of agricultural land in the Gaza Strip. The report does not discuss the similar, although less extensive, actions carried out by the IDF in the West Bank. The first part of the report describes the IDF policy. The second part criticizes the policy, based on the relevant provisions of international humanitarian law.

The Policy

Since the beginning of the al-Aqsa intifada, Israel has employed a policy of house demolition, uprooting of trees, and destruction of agricultural areas in the Gaza Strip. The policy is implemented in areas near the Israeli settlements, on both sides of the bypass roads along which the settlers travel, and near army positions, primarily along the Egyptian border. The IDF Spokesperson explained the policy as follows:

The roads in Judea and Samaria and in Gaza constitute one of the main friction centers where intensive combat events have taken place in the last few months. The IDF is, of course, required to deal with these combat events and to provide protection to these who use the said roads, both soldiers and civilians.

The vegetation and the fences on the sides of the roads often serve as hiding place to commit terror attacks, and make it difficult for the IDF soldiers to protect from bombs and shootings at Israelis who drive these roads. The security means that the IDF uses in order to provide a solution for this security need is, among others, exposing the areas on the sides of the roads, including

flattening of the area, removing trees and destroying fences.¹

Several residents of the Gaza Strip whose property was destroyed and the Palestinian Center for Human Rights, in Gaza, petitioned the High Court of Justice against the actions. Two of the petitions dealt with the army's demolitions near the Netzarim settlement, alongside the road joining the Netzarim junction and the settlement. The third petition dealt with the uprooting of orchards and destruction of greenhouses near the Kfar Darom settlement. The state's responses to these petitions were similar to the IDF Spokesperson's response cited above:

4. Among the major focal points of intensive combat in the Gaza Strip were the roads leading to the Israeli settlements (the Karni-Netzarim road and the Kisufim-Gush Qatif road)... In this combat, the IDF had to protect the users of these roads, soldiers and civilians alike, from the acts of terror on these roads, both from attacks by people hiding on the sides of the roads, and those concealed in the groves and trees, and also from roadside explosive charges...

1. Response of the IDF Spokesperson to B'Tselem's report *Civilians Under Siege: Restrictions on Freedom of Movement as Collective Punishment*, January 2001, paragraphs 29 and 30.

5.
6. In these incidents, the vegetation on the side of the roads often hid the terrorists and made it very difficult for the army units to protect the road against the laying of explosives and against firing at people driving along the road...
7. Following the said incident, the IDF decided to initiate various operations to protect the road, among them IDF patrols, observation posts, and the like. In addition, as part of these acts, it was decided to clear away areas to increase the visibility of the soldiers in the observation posts, and to prevent terrorists from infiltrating close to the road to lay explosives or open fire, and the like.²

These comments indicate that this policy is part of Israel's defense strategy in the Gaza Strip. The Chief of Staff had good reason when he stated that, "the D-9 [bulldozer] is a strategic weapon here."³ Part of this strategy is the creation of "security strips" around places where Israeli civilians or security forces are situated. Various Israeli officials explicitly admitted that this protection against Palestinian attacks is the purpose underlying the

demolition of dozens of houses in the Rafah refugee camp, near the Egyptian border. Following the extensive demolition of houses in January 2002, the former OC Southern Command, Yom Tov Samiah, contended that, "These houses should have been demolished and evacuated a long time ago, because the Rafah border is not a natural border, it cannot be defended... Three hundred meters of the Strip along the two sides of the border must be evacuated... Three hundred meters, no matter how many houses, period."⁴ Regarding the same action, Prime Minister Ariel Sharon stated:

In Rafah, the system is to smuggle through tunnels, and these tunnels are deep - from twelve to eighteen meters. Israel has to take all the necessary steps to stop the smuggling of weapons... No doubt the narrow corridor that we have there does not allow us to stop it.⁵

The report will next present data that demonstrate the consequences of Israel's policy in the Gaza Strip. The data will be followed by a description of the way Israel implements its policy. At the end of this section, the report will present several testimonies of residents whose property was damaged by IDF forces.

2. Response of the state in HCJ 9252/00, *Zalah Shuqri Ahmad al-Saqa et al. v. State of Israel*. Identical arguments were also raised in the state's response in HCJ 9515/00, *'Ali Faiz al Wahidi et al. v. State of Israel and in HCJ 3848/01, Mahmud Muhammad 'Abd 'al-'Aziz Bashir v. State of Israel*.

3. Amos Harel, "This Time, the Chief of Staff Keeps His Lips Sealed," *Ha'aretz*, 28 December 2000.

4. "Another Matter," *Voice of Israel*, 16 January 2002.

5. The comments were made in response to a journalist's question on the demolition of houses in Rafah. See the Foreign Ministry's Web site (www.mfa.gov.il): "PM Sharon on the IDF Action in Rafah: Effort to Stop Smuggling of Weapons by the Palestinians," 13 January 2002.

Data

It is impossible to determine precisely the scope of Israel's destruction in the Gaza Strip. In some of the areas that the IDF destroyed, primarily near the settlements, entry is prohibited. Therefore, B'Tselem researchers are unable to examine the consequences of the IDF actions, and even the residents themselves are unable to estimate the scope of the damage they suffered. In February 2001, the IDF Spokesperson informed B'Tselem that, "The IDF does not have a precise estimate of the number of trees or the size of the area that was cleared."⁶

Another letter that B'Tselem sent to the IDF Spokesperson requesting such data has not been answered despite repeated follow-up requests.⁷

However, some assessment of the consequences of the policy exists. According to UNRWA, since the beginning of the intifada, the IDF has demolished 655 houses in the refugee camps in the Gaza Strip, in which 5,124 people lived.⁸ In addition, the IDF partially demolished⁹ seventeen houses, in which 155 people lived. The International Committee of the Red

Cross [ICRC] published similar figures: from the beginning of the intifada to December 2001, the organization assisted more than 5,200 residents whose houses had been demolished. In comparison, Defense Minister Binyamin Ben-Eliezer stated that, "The total number of Palestinian structures that were demolished in the Gaza Strip stands at about three hundred. This figure includes structures used for residential purposes, farming, and walls. In addition, some 175 greenhouses were destroyed."¹⁰

Regarding the number of trees and fields that were destroyed, Ben-Eliezer contended that, "In total, some 5,500 dunam of orchards of all kinds on the Palestinian side were uprooted and 4,500 dunam of planted fields and uncultivated land were destroyed."¹¹ The figures reported by the Palestinian Center for Human Rights, in Gaza, were much higher: from the beginning of the intifada to the end of July 2001, some 13,500 dunam of agricultural land, constituting some seven percent of the agricultural land in the Gaza Strip, were destroyed.¹²

B'Tselem conducted detailed research on some of the areas in which the army's demolition actions took place.

6. Letter from the IDF Spokesperson, 14 February 2001.

7. B'Tselem sent its letter to the IDF Spokesperson on 25 October 2001.

8. Zvi Barel and Danny Rubenstein, "UNRWA: IDF Demolished 655 Houses since the Beginning of the Intifada," *Ha'aretz*, 18 January 2002.

9. "Activities in Israel, the Occupied Territories and the Autonomous Territories - ICRC Update," 12 December 2001.

10. The Defense Minister made these comments in a letter of 29 November 2001 to MK Ran Cohen.

11. *Ibid.* 4 dunam = 1 acre.

12. The Center sent these figures to B'Tselem in a letter of 9 September 2001.

The research provided the following information:

- Rafah-Egyptian border - The Egyptian border area is densely populated, and Rafah's refugee camps lie along the border, which contains Israeli army posts. The IDF demolished houses and destroyed agricultural land along a 16.5 kilometer strip near the border. The destruction in the populated areas was less than that on the agricultural land. In some locations, the destruction covered a 350-500 meter-wide strip. In other places, the destruction covered a 100-150 meter-wide strip. In certain locations, the destruction was less, comprising a 40-50 meter-wide strip.
- Netzarim – Around the border of the settlement, the IDF destroyed a 500-700 meter-wide strip of land. Agricultural land north of the settlement, in the center of which a mosque is located, was not destroyed, but the army prohibited access to the mosque. Along 700 meters of the road leading from the settlement to the sea, the IDF destroyed a 400-meter strip on both sides of the road. The IDF also built a one-and-a-half kilometer road for the settlers that goes directly to Karni. On both sides of this road, the army uprooted trees and destroyed crops along a strip of 250-300 meters.
- Morag - An army post is located two kilometers east of the settlement. From both sides of the road that joins this post with the Morag junction, the army built dirt terraces, placed concrete blocks, and demolished land along a strip of two hundred meters. On a 200 meter-wide strip of land located between the settlement and the Salah a-Din road, the army uprooted trees and destroyed crops. It also destroyed more than 600 dunam of land stretching from the settlement to the main roads surrounding it.
- Kfar Darom - The army destroyed two hundred dunam of agricultural land surrounding the settlement. In addition, it destroyed a 200-300 stretch of land on both sides of the roads leading to the settlement. In some locations, the strip extended to about four hundred meters.

Implementation

The decision-making process relating to demolition of houses and destruction of agricultural land is not clear. In his letter to MK Ran Cohen, Defense Minister Ben-Eliezer contended that the division commander makes the decision to demolish houses, and that, regarding uprooting of trees, the brigade commander also has the power to make the decision, according to the planned scope.¹³ However, the head of the Civil Administration, Brig. Gen. Dov Zadka, stated that commanders' demolition requests reach his desk: "It isn't as if everyone gets up, chops, demolishes, and breaks. The request comes to me. I check whether it is justified, pass it on to the legal advisor, and only then do we recommend to the major general that he approve such an action."¹⁴

The demolitions generally take place in the middle of the night without any warning being given to the residents. In areas in which there were exchanges of fire between Palestinians and IDF soldiers, some of the residents, primarily women and children, had previously abandoned the houses for safer locations.

However, in most cases, several of the residents remained in their homes, primarily to protect their property. The dozens of Palestinian testimonies given to B'Tselem indicate that, in many instances, these residents had to flee from their homes after they were awakened by the noise of tanks and bulldozers that were already at their doorstep. Some of their property was buried under the ruins.

On 10 July 2001, IDF forces demolished houses in the Rafah refugee camp. Eighteen were completely destroyed and one was partially demolished. The army also demolished six shops. The action left 272 people homeless. The IDF Spokesperson contended that the demolitions were carried out "following the increase in terrorist attacks in recent days" and because of "the immediate security need to protect soldiers moving along the road." In this case, like in the house demolition carried out in January 2002, the IDF Spokesperson contended that the houses were abandoned."¹⁵ However, testimonies given to B'Tselem indicated that some of the houses were occupied. Mithqal Abu Taha, 37, married and the father of two children, described the IDF action:

13. *Supra*, footnote 10.

14. Guy Zakhm, "Zadka under Fire," *B'Mabaneh*, 28 December 2001.

15. IDF Spokesperson's statement of 10 July 2001. For IDF releases, see www.idf.il.

Yesterday, there was no Palestinian gunfire at the Salah a-Din gate. My married brothers and their families and my family and I spent the night at home, and it was quiet when we went to sleep. Around 12:40 A.M., I woke up to the sound of gunfire and shelling and the noise of bulldozers and tanks that we hear on a daily basis. We did not expect them to demolish houses in our area. Neither the Palestinian nor the Israeli side gave us any warning to vacate our houses. We thought that the bulldozers were on their way to some other place. We are used to leaving the houses when the gunfire and shelling intensifies. We would flee to safer areas in the camp and stay there until the situation calms down.

Suddenly, one of the children screamed, "Get out, the Jews are demolishing the houses," and began to throw stones at the neighbors' doors to wake them up. He was sobbing and shouting. I was startled and went outside to see what had happened. I saw elderly people and women and men carrying their children, leaving their homes and going toward the northern part of the camp. I saw our neighbor Anwar Kalub, whose house is about two meters from the border, removing his children and his flock. Then I understood that they [the IDF] were demolishing the houses in our area.

I rushed to wake up my three brothers and their wives and children, and we went outside without taking anything with us. About a half an hour later, one of my sisters-in-law yelled that she couldn't find her son, Hussein Abu Taha, 13. She began to scream: "My son is in the house." We couldn't get to the house because the gunfire was so intense. After a while, we saw him running toward us. I asked where he had been, and he said, "I was sleeping and when I awoke I saw that they were demolishing my uncle's house. I saw the tin roof fall." When the child fled from the house, a fragment struck him in the neck.¹⁶

On 15 November 2001, IDF forces demolished twenty-eight houses in the Khan Yunis area, near the Tofah junction. At least 125 people lived in the houses. The IDF Spokesperson stated that the action followed firing at the Neve Dekalim settlement and at IDF posts in the area, and was intended "to eliminate the threat of gunfire."¹⁷ Osama Abu Amuneh, 40, who lived with his wife and seven children in one of the houses, told B'Tselem how the army demolished the houses:

On Wednesday [14 November 2001], at 11:00 P.M., we woke up to the sound of shelling. The shelling also woke the children. We were frightened because we didn't know

16. The testimony was given to Nabil Mekherez on 10 July 2001

17. IDF Spokesperson's statement of 15 November 2001.

what happened. The children and my wife screamed and cried every time a shell was fired. We didn't know what to do. After half an hour of non-stop shelling, some young men from the neighborhood came and told me to leave the house. They said the Israeli army had entered the area and was demolishing houses without checking if people were inside. We didn't get any warning [from the Israelis] to leave the house. I couldn't leave because we have many children, and the shooting outside was still intense.

At 11:45 P.M., the sound of shelling increased, and we heard tanks coming from the Tofah checkpoint. The tanks were moving westward and were about seventy meters from my house. We heard two more enormous explosions. The same young men came back and took the children from the house without getting my consent. The children were crying and screaming, and my boys asked me to go with them, but I refused. We also evacuated everyone from the house. I was the only one who remained. I stayed to protect it and to see what happens.

Ten minutes later, the tanks approached the house. I also heard the sound of bulldozers. I was on the southern side of the house, the side that does not face the main road. I

heard the bulldozers destroying the house. I didn't dare approach or peek outside, because the tanks were firing long bursts of gunfire in all directions and were shelling the area. When I saw that thick dust was filling the house and that the electricity had been cut off, I went outside through the southern gate so that the Israeli soldiers wouldn't see me.¹⁹

The army also did not give warning of its intention to destroy fields and uproot orchards. Such warning would, at least, have enabled the Palestinians to remove the irrigation pipes and other objects from the fields. After returning from duty in Gaza, Captain Rami Kaplan, deputy battalion commander in the reserves, described the situation well: "We usually surprise them, entering the area aggressively with engineering implements and tanks for protection. The Palestinians leave the depressing tin huts carrying baskets, run to the trees at the far end of the grove, and somehow manage to pick some last oranges."¹⁹

In some cases, the uprooting caused long-term damage, and in some instances even irreversible damage. In late April 2001, IDF forces destroyed agricultural land near the Kisufim junction. It destroyed fifteen dunam of crops and uprooted about 120 olive trees. Khaled Taher, a landowner, described how the army uprooted trees: "The bulldozer

18. The testimony was given to Nabil Mekherez on 15 November 2001.

19. Avihaï Becker, "The Black List of Captain Kaplan," *Ha'aretz*, 27 April 2001.

uprooted a tree and then drove over it and crushed it. After it uprooted and crushed all the trees in the field, the bulldozer dug a big hole, put the trees in, and covered it with dirt. Then it flattened the land and moved on to the adjacent field.”²⁰

Following the Palestinian attack on Aley Sinai, in October 2001, which killed Assaf Yitzhaki and Lior Herpaz, a soldier, the IDF conducted extensive acts of destruction in the northern Gaza Strip area of Beit Lahiyeh. According to the IDF Spokesperson, the operation “was intended to remove the Palestinian terror threat from the area’s communities.”²¹ ‘Abdullah Abu Hiley, 26, married with three children and a resident of Beit Lahiyeh, described the IDF action:

Yesterday [4 October 2001], at 4:00 P.M., I was picking guavas when I saw three bulldozers accompanied by a tank and an armored vehicle coming from the direction of the Dugit settlement. They stopped about three hundred meters from my house. I immediately stopped what I was doing and went into my house. Within less than an hour, I heard the sound of moving bulldozers. I went outside and saw that the bulldozers had entered the guava orchard and were uprooting the trees. I stayed in the house, which is in the area

under Israel’s control, until 7:00 P.M., when the bulldozers finished uprooting all the guava trees and flattening the ground. Then they moved eastward, passing by my house.

Later, the bulldozers and the accompanying tank returned and entered another plot, where I grow eggplant. They destroyed the crops and cleared out the area, which was six and a half dunam. Then the bulldozers turned eastward to land belonging to ‘Atallah a-Tarzi, and uprooted two rows of citrus trees that were about three hundred meters long. At 9:00 P.M. or so, the bulldozers returned to the army encampment.

At nine o’clock this morning, the bulldozers returned to ‘Atallah a-Tarzi’s grove and uprooted the remaining citrus trees. The Israelis destroyed a total of twenty-one dunam of his land, leaving him only six dunam of greenhouses for growing flowers, and a well. Then the bulldozers went into a twenty-seven-dunam citrus grove field belonging to his brother ‘Abdullah. They uprooted all the trees, and left the well. They went to a thirty-dunam field of Yasser Zindah and began to uproot the

20. The testimony was given to Nabil Mekherez on 17 June 2001.

21. IDF Spokesperson’s statement of 3 October 2001.

vineyards there. In the afternoon, I went to pray while the bulldozers continued to destroy the crops.²²

In some cases, IDF soldiers did not allow residents to enter the sites where their property had been destroyed, and fired at residents to keep them away from the area. On 11 May 2001, in Dir-al-Balah, the army demolished the house of Saleh Abu Huli, 44, married with six children. After the army completed the demolition, Huli tried to go to the site of his destroyed house to save some of his possessions. He described to B'Tselem what happened then:

Later on, we went to the houses that had been destroyed. We saw that they had been totally demolished along with everything that had been inside. Some of the people lost money, gold jewelry, and identity cards. When we got close to the houses, soldiers opened heavy fire at us even though journalists were present. We hid among the ruins, and the drivers who passed on the road stopped and hid behind their cars for about fifteen minutes.²³

On 23 June 2001, the IDF destroyed houses and crops in the Barhameh neighborhood in the Rafah refugee camp. 'Atta Barhum told B'Tselem that, "Several times, we tried to remove the rubble to find money that was lost there and to take our possessions, but the tanks always came. Sometimes they were on this side of the border, and sometimes on the other."²⁴ Similarly, after the demolition that took place in Rafah in July 2001, the soldiers did not let the residents of the houses approach the area. Khaled 'Abd al-'Ael, 37, married with seven children, described the situation:

The events ended at 4:30 A.M. Immediately afterwards, our neighbors and I went to the houses. We saw that the area had been totally demolished. Around 6:30 A.M., while we were in the area of the demolished houses, the soldiers at the Salah a-Din army post fired at us. We fled into the camp's narrow alleyways.²⁵

22. The testimony was given to Nabil Mekherez on 5 October 2001.

23. The testimony was given to Nabil Mekherez on 16 May 2001.

24. The testimony was given to Nabil Mekherez on 23 June 2001.

25. The testimony was given to Nabil Mekherez on 10 July 2001.

Sample Cases

Khan Yunis Refugee Camp, April 2001

On 10 April 2001, the IDF destroyed houses in the Khan Yunis refugee camp on land facing the Neve Dekalim settlement in Gush Qatif. The IDF Spokesperson stated that, "Following recent repeated gunfire attacks in the area of Neve Dekalim, including mortar shelling, IDF troops last night demolished Palestinian structures from which the firing took place. The objective was to prevent further terrorist acts against civilians and soldiers."²⁶

The IDF operation resulted in the total demolition of twenty-four houses and the partial demolition of three houses, leaving 192 people homeless. During the action, there was an exchange of fire between Palestinians and the soldiers who demolished the houses. Two Palestinians were killed - Hani Musa Abu Raze1, 25, and Elias Sma'an 'Eid, 50, a member of the Palestinian security forces.

*Testimony of Jalal Khalil Muhammad Abu Luz, 39, married with eight children*²⁷

On Tuesday, 10 April 2001, I got home at 3:30 P.M. and ate lunch. About an hour later, I heard heavy vehicles moving from the direction of the Tofah

checkpoint. I went outside and saw two tanks and a crane with three armed soldiers on it near the checkpoint. I went back into the house and asked the others to go outside. My small children were frightened and cried while my wife dressed them.

The sun was setting when we left the house. I saw some of our neighbors leaving their houses, while others stayed. I took my family to the house of a relative, Nimer Abu 'Obeida, that is located about 120 meters from our house. Then I went to pray at the Shaf'i mosque. When I left the mosque, I walked along the main road with my cousin Radi Abu Zaqaq. We heard a tank approaching the camp and hid on the side of the road. Every once in a while we peeked out at the Tofah checkpoint to see if the tanks were approaching. By about 11:00 P.M., it was quiet in the camp, and I went to visit my family.

At about 11:30 P.M., we heard people shouting "Allah Akbar." Tanks and bulldozers entered the camp. I, along with many other residents, left our houses and moved to the side streets because it was dangerous on the main road. Suddenly, soldiers in the tanks and at positions surrounding the camp and the Neve Dekalim industrial area opened heavy fire at the camp. The firing continued non-stop. I was standing next to the Shaf'i mosque. I saw a tank near

26. IDF Spokesperson's statement of 11 April 2001.

27. The testimony was given to Nabil Mekherez on 24 April 2001.

the dirt roadblock and two bulldozers approach my two houses, which were situated next to each other.

One of the houses was 250 square meters. It had four rooms, a kitchen and bathroom, and contains all our possessions. The yard had three date trees, a lemon tree, a prune tree, a guava tree, and an olive tree. The other house was still under construction. The first of six planned floors had been completed.

While the gunfire continued, one of the bulldozers began to demolish the house under construction. Palestinians fired back from far away. I asked the young men standing nearby if the bulldozers were also going to demolish my other house, where we lived, and they said “no.” I went to look at what was going on from a different location. From there, I saw that the bulldozers were demolishing my other house and also the houses of my brother Jihad, my mother, and my cousin, which are near each other. I was in shock. I tried to approach my house despite the firing and the shelling, but some of the people standing nearby held me back.

After a while, people began to flee with their children, under fire, from the houses. They ran in the direction of the hospital and medical clinic. Some people stood near the Shaf’i mosque. There were calls from the mosques’ loudspeakers to go to al-Qatatwah neighborhood, which is in the western camp, and to defend the residents there. Ambulances evacuated the wounded from the main street. The

bulldozers continued to demolish the houses adjacent to mine.

After a few hours, the tanks began to leave the camp. While they were moving out, one of the tanks fired a shell at my brother’s house and hit the two bottom floors. I wanted to get to my house, but I saw that a bulldozer was still next to it. Around 5:00 A.M., the Israeli soldiers shot and wounded three people who tried to reach their demolished houses. One of them, Hani Musa Abu Razeq, was killed on the spot. His donkey, which was standing on the road, was also shot and killed.

Later, I walked toward the house. I was shocked at the destruction and devastation. I was hysterical, and began to cry and scream. I ran all around, but nobody was in the area. I went to where my wife and children were to make sure they were all right, but nobody was in the house. I returned to the ruins of my house and sat on a pile of stones and dirt and started to cry again. People came to comfort me. My neighbors were also in shock. The women screamed and tried in vain to remove possessions from under the piles of stone.

The sun was coming up. Thousands of residents, and also journalists, came to the site. My wife and children came home and saw that the house had turned into a pile of stones. My wife fainted, and the neighbors took her to the hospital. The children started to cry. I was still in shock and couldn’t do anything, not even

go to the hospital to be with my wife. My wife was treated and returned to the site about three hours later. My children, who had been wandering around among the thousands of people, came to sit with us on the pile of stones, and we all cried until one o'clock in the afternoon. Some neighbors felt bad about what had happened to us and brought us food. We ate while sitting on the pile of stones.

We slept at a relative's house. We all stayed in one room and spent the whole night there. The next day, we returned to the ruins of our house and stayed there all day. For two days, the children did not go to school because all their books and notebooks were buried among the ruins.

On Thursday [12 April] afternoon, the Red Cross began to distribute tents and blankets to the residents. We received a tent and ten blankets. We put the tent on the stone pile. We sat in the tent throughout the day and at night went to sleep with my relative because we were afraid that the army would fire at the tent to prevent us from returning to live on the site.

The next day, some good people came and gave every schoolchild a small bag with notebooks, colored pens, and a game. On Sunday, the Palestinian Ministry of Education gave all the children whose houses had been destroyed a bag and

fifty dollars. My children went to school, but their behavior changed. They wet the beds at the relative's house, and screamed in their sleep because of their nightmares. The incident also destroyed my relations with my wife.

Five days ago, I went to the Palestinian Ministry of Housing to find out if I was entitled to receive an apartment. They told me that I was entitled to an apartment in the neighborhood next to Nasser Hospital. I received keys to the apartment and went to see it. It was a two room, ground-floor apartment without a kitchen, bathroom, living room, or furniture. I took my wife and children and some items that some people and Islamic organizations gave us. We cleaned up the apartment, and put four mattresses and some kitchen utensils inside.

Since Monday [23 April], we have been living in an unfurnished apartment. It has no refrigerator, washing machine, television, cabinets, or table for the kids to write on. We do not have money to buy the things we need. This neighborhood is also dangerous. Every night, the Israeli army opens heavy fire at the area, and we can't leave the house.

Rafah Refugee Camp, June 2001

On 23 June 2001, the IDF conducted an extensive action in the Rafah refugee camp. The IDF Spokesperson said that,

Following the numerous cases of grenades being thrown and shots being fired at IDF troops along the Israeli-Egyptian border near Rafah in recent days, and the immediate military necessity to protect the soldiers moving along the route, the IDF last night performed an operational engineering action in territory that is under Israel's complete security control.²⁸

In the action, the IDF completely demolished seventeen houses and partially demolished one house. One hundred and seventeen persons lived in these houses.

*Testimony of 'Adnan 'Abd al-Qarim Suliman Barhum, married with six children*²⁹

On Saturday, at 1:30 A.M., I woke to the sound of tanks and bulldozers. I couldn't tell which direction the sound came from. I heard a loud sound of cannon explosions. I opened the window on the eastern side of the house and saw a large army bulldozer about thirty meters away. The bulldozer demolished an irrigation pool and two water-pump sheds belonging to my cousin 'Atta

Barhum and me. At that moment, my brother Suliman came to my house. He had fled from his house. He told me that the tanks had entered the property of our neighbor, which is west of our house.

While the shelling continued, I took my disabled mother, who requires a wheelchair, and told my wife and children to get out of the house. They were all frightened and hysterical. Throughout the neighborhood there were screams of little children, and adults asking, "Where is my son? Where is my brother? Did they get out?"

When I left the house, I saw a yellow-green beam of light coming from the army tower at Tel-Zo'arub, around eight hundred meters west, directed at all the houses in the area. I left my mother alone on the main road and went to see where my children, my wife, and other relatives were. When I got close to the house, I saw the beam of light shining each time on a different house, and the bulldozer demolishing the house on which the beam was shining.

The Israeli army did not inform us, either before or during the action, of its intention to demolish our house, so we didn't have time to remove our possessions. It was the same for our neighbors. The army closed off the area from 1:30 A.M. with tanks. There were about five tanks and two bulldozers.

28. IDF Spokesperson's statement of 23 June 2001.

29. The testimony was given to Nabil Mekherez on 27 June 2001.

At 2:00 A.M., the bulldozers began to demolish the houses. Twenty-four families were there, and they all fled. Some of them stayed close to the concrete fence along the border, and some moved about one hundred meters to the north.

At approximately 5:30 A.M., it ended. The army left the area, and I looked for my wife and children. My sister Hanan told me that my wife, who is pregnant, was on the main road and couldn't stand on her feet out of fear and because of the horrible sight of the demolished houses. I went to her and asked what happened. She said that she was bleeding, a result of the fear and the running from the house. I put her into an UNRWA ambulance that was at the site, and it took her to European Hospital, which is located between Rafah and Khan Yunis. She was hospitalized for four days. She came home this afternoon. The doctors said that she needs complete rest and should have the fetus checked weekly.

Now I rent a house in a safer area. Like our neighbors, I was unable to save any possessions from our house. I live with my wife and children, my sister, and my parents in a small, three-room house.

Our house that was destroyed had six rooms, two kitchens and bathrooms. It totalled about three hundred square meters. The army also demolished my

irrigation pool, the shed with motors and pumps, and a one-hundred-square-meter sheep pen. The pen had six sheep and one of them was killed during the demolition. The bulldozer also uprooted six olive trees that were forty years old.

Khan Yunis, October 2001

Over the course of two days, 6-7 October 2001, the IDF destroyed agricultural area in Khan Yunis that was located several dozen meters from the Gush Qatif settlement of Ganei Tal. The IDF Spokesperson did not comment about this action.

*Testimony of Nahed 'Abd al-Hamid Muhammad al-Astel, 36, married with ten children*³⁰

We own a fifty-dunam plot of land. The plot had date trees and squash, eggplant, and maluhiya [a kind of greens] were also planted there. For two hundred meters, the western edge of the field faces the Ganei Tal settlement. The distance from the field to the settlement varies from twenty to fifty meters.

On Saturday morning [6 October], I was working in the field. At 7:30 A.M., six army jeeps appeared on the dirt road separating our land from the settlement. The jeeps parked and remained for about an hour, and the soldiers examined the area. There was also a tank, which had

30. The testimony was given to Nabil Mekherez on 8 October 2001.

arrived previously. The jeeps had come from the southern post, which is located opposite the Amal neighborhood. At 8:30, the jeeps and tank left and proceeded south.

At about noon, about five army jeeps, two border police jeeps, and another jeep, which was white, appeared. I also saw a large vehicle filled with soldiers. The soldiers got out and stayed for a bit. This time, too, they observed the area. After an hour or an hour and a half, the jeeps and soldiers left, also going south.

About 3:00 P.M., approximately ten army jeeps and a tank arrived. The jeeps and soldiers spread out over the dirt road and the area between my land and the settlement. Several soldiers took up positions in the Ganei Tal greenhouses. A large army bulldozer also accompanied the jeeps. About fifteen minutes after they reached the site, the bulldozer started flattening the dirt road and the area between our land and the settlement. It pushed piles of dirt that had been lying along the road onto our land, and lifted the debris and the wrecked frames of cars and dumped them on my irrigation system and date trees. This continued for two hours, during which the soldiers protected the bulldozer. At about 5:00 P.M., the bulldozer and army jeeps left and proceeded south.

Then my brother and I went to the site. We saw that the irrigation system for the date trees was no longer usable because it was buried under a pile of stones, debris, dirt, car frames, and large pieces of metal. Ten date trees that were about ten years old were destroyed and buried. The darkness and soldiers' gunfire made it impossible for us to free any of the irrigation pipes, so we decided to stop and come back the next day.

The following day [7 October], around 1:30 P.M., the bulldozer appeared once again. It was accompanied by several jeeps and tanks. It began to clear the northern part of the field, the area that it had not cleared the day before. It pushed all the debris onto our land. My three younger brothers went there and managed to save close to four hundred meters of piping before it was covered with debris. They fled when the bulldozer approached them. The bulldozer also cleared the dirt road and dumped the dirt onto our land.

About an hour and a half later, the bulldozer and the tanks left and drove along the northern dirt road, which leads to al-Qarareh. As it moved, the bulldozer cleared the road and pushed the dirt onto the agricultural fields alongside the road. I am concerned that the bulldozer is liable to show up again and further damage the field. At the moment, I can't go to our field

because it is exposed to the army post alongside us.

Al-Qarareh, October 2001

Over the course of two days, 24-25 October 2001, IDF troops destroyed agricultural fields in al-Qarareh, Khan Yunis District, in the area near the fence of Gush Qatif settlements. In this case as well, the IDF Spokesperson did not comment on the action.

*Testimony of A'adi Jabber 'Ali 'Abid, 43, married with ten children*³¹

I own a garage where we take apart cars for spare parts. It was located west of my house, near the eastern fence of the Netzer Hazani settlement. The garage was about 950 square meters, which included a 120-square-meter structure containing three rooms, kitchen, and bathroom. Surrounding the garage was a fence that was two meters high and ninety meters long. On a plot enclosed by a fence, we grew about twelve olive trees that yielded fruit for seven years, four fig trees that were five years old, four guava trees that were also five years old, three palm trees that were three years old, and a seven-year-old sycamore tree. We also had ornamental trees and a pigeon coop.

Unlike other areas, it has been quiet where we live, and there have not

been any confrontations with the Israeli army. There is an army post opposite the garage, about thirty meters west of the border with the settlement. As of yesterday [24 October], the garage had three cars dating from the 1990s that were in working order, some thirty that were not in working order and were to be dissembled, and another twenty or so cars. There were thousands of spare parts. Some of the cars were outside the garage due to the lack of space inside.

I was at the garage yesterday with my two sons and the employees. At about 4:00 P.M., an Israeli tank and a gigantic army bulldozer approached from the north along the fence of the settlement. When they reached the garage, the bulldozer began to remove the cars that were outside the fence and pushed them into the garage area. We fled in the direction of the main road. The soldiers gave us no warning and did not tell us to leave. We were afraid that they would shoot us. After some forty-five minutes, when the bulldozer had already left, I went to the garage and saw that all the cars that were outside had been squashed by the bulldozer and put into a big pile.

That night, I was asleep at home, and at midnight or so, my son 'Ala, 21, woke me up and told me that the bulldozers had returned and were destroying the garage. I was surprised because I thought that they had been satisfied with the

31. The testimony was given to Nabil Mekherez on 25 October 2001.

damage that they had done in the afternoon. Everybody in the house woke up, and I went outside. The residents of the neighborhood were standing in the side streets watching what was going on. I saw a bulldozer accompanied by a tank. The bulldozer destroyed the garage and squashed the cars. At the same time, another bulldozer with a tank alongside drove along al-Bahar Street, proceeded about seven hundred meters, destroyed part of the road, and dug a deep pit in it.

Then the bulldozer turned around and destroyed a fence marking the land belonging to Khalil al-Astel, which was about 120 meters long. It then uprooted close to forty olive trees and date trees that were on the plot of land.

The bulldozer drove westward and uprooted about sixty olive trees that were on three dunam belonging to Hamadeh al-Astel. Then it continued to a three-dunam plot belonging to his brother Yunis al-Astel and uprooted about sixty olive trees. The bulldozer then turned to fields on the southern side of the road and destroyed a three-dunam patch on which he grew vegetables, some thirty olive trees, and about ten fig trees.

When it finished, the bulldozer crossed to the northern side of the road and joined the other bulldozer in destroying the garage and the house situated there.

Residents gathered in the side streets, and the soldiers in the tanks began to fire bullets and stun grenades. The soldiers at the observation post on the crane did the same. The bullets struck the western windows and walls of my house. They also hit the window of the house of my neighbor Kamel al-'Udi and destroyed his television. Shards from his window fell and struck his Mercedes, breaking its rear window. When the firing started, all of us fled to a safer location so that the bullets wouldn't hit us.

When the two bulldozers finished demolishing the garage, they proceeded east. One of them destroyed the fence of Nazir Farawneh's house, uprooted olive trees in the yard, and knocked down two rooms with a slate roof. The other bulldozer destroyed Wasim al-Habil's house, which was located around fifty meters east of the garage, and two rooms that nobody lived in.

At 2:00 A.M. or so, the two bulldozers and the two tanks drove north, and two other tanks proceeded south. Many residents and I wanted to go to the scene, but soldiers opened fire from opposite the garage. All of us fled.

Later in the morning, I went to the site and saw piles of stones, pieces of metal, and cars. The bulldozer had shoved most of it into a wadi [dry river bed] north of the garage. I am still stunned by what

happened even though I don't give the appearance of being angry or frustrated.

Rafah Refugee Camp, January 2002

On 10 January 2002, Israel completely demolished sixty houses in the Rafah refugee camp. Six hundred and fourteen Palestinians lived in these houses. It also partially demolished four houses, which were home to at least twenty-four people.

The official reason for the demolitions is unclear. The OC Southern Command, Major General Doron Almog, claimed that the houses were destroyed because, "From these houses, people fired at IDF troops. In the past three months, five explosive charges were fired from them."³² Prime Minister Ariel Sharon, on the other hand, justified the house demolitions on the grounds that tunnels had been dug inside the buildings, through which the Palestinians smuggle weapons.³³ The IDF Spokesperson preferred not to choose between these two versions, contending that, "The houses that were demolished served as shelter for Palestinians who fired at IDF patrols in the area. In addition, there was a suspicion that tunnels had been dug among the houses, through which materiel was being smuggled from Egypt into Palestinian Authority territory."³⁴

Israeli officials continued to contend that the demolished houses had been abandoned for a long time as a result of the gunfire in the area. However, the following testimony, like other testimonies given to B'Tselem by the residents, clearly indicate that in this case, as in previous cases, at least some of the houses were occupied.

*Testimony of Saleh Hussein Mustafa al-Babli, 47, married with ten children*³⁵

My house is in the Rafah refugee camp, one meter from the Egyptian border, and west of the Israeli army post at Salah-a-Din Gate. I live with my family of fourteen.

On Thursday [10 January], I was woken at about 2:00 A.M. by the sound of tanks and bulldozers that had come from the direction of the Israeli army post. I got out of bed and saw that my sons had also woken up. The bulldozers were approaching the house and we decided to leave immediately. We woke up the others and got out. We managed to proceed a few meters when three bulldozers reached the house. Immediately, one of them started to demolish the house. I stood in the rain for a few moments, unable to believe that I wouldn't ever see my house again.

32. Amos Harel, "Major General Doron Almog: The Houses Demolished in Rafah - Abandoned," *Ha'aretz*, 13 January 2002.

33. *Supra*, footnote 5.

34. Amos Harel, "IDF: The Houses Demolished in Rafah Used as Shelter for Palestinians who Fired at Soldiers," *Ha'aretz*, 11 January 2002.

35. The testimony was given to Haeder Ghanem on 12 January 2002.

The children were screaming, and one of them asked me to run away because he was afraid I would get hurt. We fled to the adjacent street. I stood there with my wife, children, grandchildren and others in my family and watched for ten minutes as the bulldozer destroyed our house.

Two bulldozers went to the houses adjacent to ours. The children and women screamed and the bulldozers made a lot of noise. All the camp's residents gathered and tried to help the families. We saw people running from their homes. They were dressed in their sleeping garments and were carrying children. The sight was terrifying. The residents gathered in the adjacent street and remained there for about two hours. About thirty minutes before the Israelis finished the demolition work, the soldiers opened heavy fire at the residents who had gathered in the street, and we had to

move to narrow side streets to hide. The streets were full of puddles and it was raining all the time.

Then some armed Palestinians arrived. They tried to force the Israelis away, and gunfire ensued for about half an hour. At about 4:00 A.M., the Israeli troops began to withdraw, and I returned to my house to try to save what I could. When I got there, I saw that my house had been completely demolished. I was unable to find the inhaler that I use for my asthma and the medication that I take from time to time. I get these medications from the clinic of the International Medical Assistance Agency.

My family and I are now left without shelter. We have been wearing the same clothes that we were wearing the night of the demolition because all our clothes, as well as our furniture, were buried among the ruins.

Criticism

Israel's policy, described above, flagrantly violates international humanitarian law. The demolition of houses and the destruction of agricultural land causes extensive damage to the civilian population, which will bear the consequences for many years to come. Injury of this kind to the civilian population cannot be justified on the grounds of "pressing military necessity," as Israeli officials contend.

Because these Palestinians were not involved in the combat against Israel - even according to IDF officials - Israel's actions constitute collective punishment. Despite these violations of international humanitarian law, Israel refuses to compensate the Palestinians whose property it damaged in these actions.

Three international entities - the ICRC, the delegation from the UN Human Rights Commission, and the Mitchell Committee - harshly criticized Israel's extensive destruction in the Gaza Strip. They all determined that the policy violates international humanitarian law and called on Israel to cease implementation of the policy immediately.³⁶

36. ICRC's House Destruction Relief Programme in Gaza, Press Release, 14 March 2001; Report of the Human Rights Inquiry Commission, Established Pursuant to Commission Resolution S-5/1 of 19 October 2000, E/CN.4/2001/121, March 2001, art. V(7); Report of the Sharm El-Sheikh Fact Finding Committee, April 30, 2001, p. 30.

37. "Statement by the International Committee of the Red Cross," Geneva, 5 December 2001, par. 2 (hereafter: ICRC Statement).

International Humanitarian Law

Even following the transfer of parts of the West Bank and the Gaza Strip to the Palestinian Authority as part of the Oslo Accords, Israel remains the occupier of the Occupied Territories. As the occupier, it must comply with the duties of an occupying state and act in accordance with the laws of occupation.

Hostilities are taking place in the Occupied Territories, but these events do not justify Israel's avoidance of its duties as the occupier, as if the occupation had ended. The ICRC explicitly stated that, "in the current context of violence," the Fourth Geneva Convention remains fully applicable, and Israel is also bound by "other rules relating to occupation, expressed in the Regulations annexed to the Hague Convention Respecting the Laws and Customs of War on Land, of 18 October 1907."³⁷

Every occupying army is obligated to protect the local population and ensure its safety and well-being. It is certainly permissible to derogate from this duty in the case of military necessity, but then,

too, the welfare of the local population must be the primary consideration.³⁸ On this point, the ICRC stated:

In general terms, the Fourth Geneva Convention protects the civilian population of occupied territories against abuses on the part of an Occupying Power, in particular by ensuring that it is not discriminated against, that it is protected against all forms of violence, and that despite occupation and war, it is allowed to live as normal a life as possible, in accordance with its own laws, culture and traditions. While humanitarian law confers certain rights on the Occupying Power, it also imposes limits on the scope of its powers.... [The Occupying Power] must ensure the protection, security and welfare of the population living under occupation.³⁹

The occupying state must also protect the civilian population's property. Article 46 of the Hague Regulations provides that private property must be respected and that it cannot be confiscated. Article 53 of the Fourth Geneva Convention provides that the destruction of property by the occupying state is forbidden, "except where such destruction is rendered absolutely necessary by military operations." Because the occupier has

special obligations toward the civilian population, it bears an extremely heavy burden of proof that the injury was necessary. Article 147 of the Convention provides that, "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" is a grave breach of the Convention.

Israeli officials use article 23(g) of the Hague Regulations to justify the demolition of houses and destruction of agricultural land. This article states that it is forbidden "to destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war." Israeli officials argue that protecting security forces and settlers from Palestinian gunfire, and combating the digging of tunnels intended for smuggling weapons, are pressing military necessities that justify the demolition of property pursuant to article 23(g). For example, the state argued before the High Court of Justice that, in the cases before the court, "there was pressing and immediate military necessity for the clearing action, because of the actual and continuing threat of injury to life and property of travellers on the road, soldiers and civilians alike."⁴⁰

There is no significant difference between article 23(g) of the Hague Regulations,

38. Hague Regulations Attached to the Hague Convention Respecting the Laws and Customs of War on Land, of 1907, art. 43; Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949, art. 27.

39. ICRC Statement, *supra*, footnote 37, par. 3.

40. Response of the state in HCJ 9252/00, *supra*, footnote 2, par. 23. An identical claim was raised in the IDF Spokesperson's letter of 14 February 2001 to B'Tselem.

on which Israel relies, and article 53 of the Fourth Geneva Convention, and the articles complement each other.⁴¹ The reason that Israel referred to the Hague Regulations is twofold: it seeks to emphasize that an armed conflict is currently being waged in the Occupied Territories, and that the Fourth Geneva Convention does not apply in the Occupied Territories, an argument it has made continuously since 1967, contrary to the position of the international community.⁴²

Even in the case of military necessity, which can provide an exception to the sweeping prohibition on destruction of property, the occupier must comply with the other provisions of international humanitarian law. Indeed, jurists and international tribunals have firmly rejected the argument that military necessity prevails over every other consideration and nullifies application of these other provisions. Every act must comply with international humanitarian law, and the parties are not free to choose the ways and means to wage combat.⁴³

To ensure that the exception set forth in article 23(g) of the Hague Regulations and article 53 of the Fourth Geneva

Convention is not broadly construed, international humanitarian law provides, *inter alia*, that it is forbidden to damage property as a preventive means where the danger has not yet been realized.

It further provides that destruction of property is forbidden unless alternative, less injurious, means are not available to achieve the objective. In addition, it is expressly forbidden to destroy property with the intent to deter, terrify, or take revenge against the civilian population. Injury to property intended to cause permanent or prolonged damage is also forbidden.⁴⁴

Even though the claim that some cases of destruction entailed military necessity cannot be outright rejected, there is strong reason to believe that many cases involved considerations that were extraneous to the narrow definition of military necessity. However, this report will not examine the question of whether military necessity indeed existed in the Gaza Strip to justify the exception to the prohibition on damaging private property. For even if military necessity exists, Israel's policy flagrantly violates other rules of international humanitarian

41. Jean S. Pictet (ed.) *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 615; Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, vol. II, (London: Stevens & Sons Ltd., 1968), p. 257; Morris Greenspan, *The Modern Law of Land Warfare* (Berkeley and Los Angeles: University of California Press, 1959), p. 287.

42. On the application of the Fourth Geneva Convention in the Occupied Territories, see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects*, March 1997, pp. 9-15.

43. L.C. Green, *The Contemporary Law of Armed Conflict* (Manchester: Manchester University Press, 2000), p. 123; A.P. Rogers, *Law on the Battlefield* (Manchester: Manchester University Press, 1996), p. 4.

44. Gerhard Von Glahn, *The Occupation of Enemy Territory - A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: The University of Minnesota Press, 1975), pp. 226-227; Ingrid Detter, *The Law of War* (Cambridge: Cambridge University Press, 2000), p. 398; Yoram Dinstein, "Military Necessity," *Encyclopedia on Public International Law*, vol. 3, 1982, p. 275. See also Greenspan, *supra*, footnote 41, p. 286.

law, the violation of which are sufficient to make the policy illegal.

In the past, too, Israel relied extensively on a broad construction of the “military necessity” exception. Israel claimed “pressing military necessity” to justify the house demolitions committed pursuant to section 119 of the Emergency Defense Regulations.⁴⁵ Israel made its claim even though it had declared that the demolitions were intended to punish persons suspected of attacks against Israel and to deter other Palestinians from performing similar acts. The prohibition on destruction of property set forth in international humanitarian law is intended precisely to prevent using such reasons to justify damage to property.

Principle of Proportionality

One of the fundamental principles of international humanitarian law is the principle of proportionality, which prohibits acts that will cause excessive injury, in relation to the military advantage anticipated from the acts, to people who are not taking part in the hostilities and to their property. Thus, to prevent unnecessary injury to civilians on the other side, the parties must minimize the use of force necessary to achieve the military objective.⁴⁶

This principle also applies to Israel’s policy discussed in this report. According to the commentary published by the ICRC on article 53 of the Fourth Geneva Convention, destruction of property is illegal if the occupier does not “try to keep a sense of proportion in comparing the military advantages to be gained with the damage done.”⁴⁷ This prohibition applies even in a situation of military necessity.

Israeli officials are well aware of this principle, and take care to argue that the IDF acted in full compliance. Minister of Defense Binyamin Ben-Eliezer contended that the authority to damage property “can be exercised when military necessity requires action against infrastructure, and when there is a reasonable proportion between the necessity of executing the measure and the potential injury to the civilian population, in the absence of an alternative that meets the military necessity while causing minimal damage to individuals.”⁴⁸ In its responses to the High Court of Justice, the state explained that, “in any event, the injury was proportional, the military commander having made sure to uproot only several rows of the grove, near the road, and in accordance with military necessity.”⁴⁹ The IDF Spokesperson contended that,

45. Meir Shamgar, “The Observance of International Law in the Administered Territories,” 1 *Israel Yearbook of Human Rights*, 1971, p. 262, at 276; Amnon Straschnov, *Justice under Fire* (Tel-Aviv: Yediot Abaronot Books, 1994), p. 78. On this policy, see B’Tselem, *Demolition and Sealing of Houses as Punishment in the West Bank and Gaza Strip during the Intifada*, September 1989.

46. Articles 55(5)(b) and 57(2)(b) of the First Additional Protocol to the Geneva Conventions of 12 August 1949, of 1977.

47. Pictet, *supra*, footnote 41, p. 302.

48. *Supra*, footnote 10.

49. Response of the state in HCJ 9252/00, *supra*, footnote 2, par. 11.

“The military authorities are also directed to try to minimize the damage to individuals, as much as possible under the circumstances, while meeting the concrete military needs in each particular case.”⁵⁰

Examination of the circumstances in which Israel implemented its policy - the extreme magnitude of the house demolitions, the uprooting of trees, the destruction of agricultural fields, and the manner in which Israel chose to implement its policy - clearly and unequivocally indicate that these contentions are baseless. The injury to the civilian population was excessive in proportion to the military advantage that Israel ostensibly sought to achieve by implementing this policy.

One of the primary requirements of proportionality states that actions that will injure civilians may be taken only after alternative acts, whose resultant injury would be less, are considered and then rejected because they will not achieve the necessary military advantage. Israel ignores this rule and uses means whose injury to civilians is extremely severe. Furthermore, Israel declares that destruction of the agricultural land and demolition of houses constitute a future policy. For example, following the destruction of agricultural land and houses on the road leading from the Kisufim junction to Gush Qatif, it

was reported that, “The forces in the [Gaza] Strip were ordered to continue this policy in every case of shooting at Israeli vehicles, military or civilian, in the Strip.”⁵¹ Declaring these acts a policy indicates the lack of an intention to consider alternatives before carrying out the acts of destruction.

The IDF forces destroyed entire residential neighborhoods, claiming that, under some of the houses, tunnels had been dug through which weapons were being smuggled. In other cases, the army destroyed dozens of houses on the grounds that Palestinians were firing from the area at IDF soldiers. The demolition of houses based on this claim cannot be deemed to meet the conditions required by the principle of proportionality.

Israel destroyed crops and agricultural land, and uprooted fruit trees on the grounds that from these fields Palestinians fired at soldiers and settlers. In some of the cases, the IDF forces destroyed tomato and squash fields, in which people could not hide. The army’s actions caused long-term, and in some instances irreversible, damage to the land, and affected the income of thousands of people for many years to come. Destruction of this kind certainly cannot be considered to be in accordance with the principle of proportionality.

50. IDF Spokesperson’s letter of 14 February 2001 to B’Tselem.

51. Amos Harel, “One Hundred Palestinian Claims against IDF for Destruction of Property in the Gaza Strip,” *Ha’aretz*, 31 December 2000.

Israel's sweeping restrictions on the movement of Palestinians since the beginning of the intifada has created an unprecedented economic depression among residents of the Occupied Territories. Because of the severe prohibition on Palestinians from working in Israel and on Palestinian movement within the Occupied Territories, the agricultural sector has become one of the few sources of income for many Palestinians. As a result, damaging the agricultural sector at this time causes especially grave harm.⁵²

In its response in the High Court of Justice, the state sought to justify the uprooting of trees on the grounds that pruning would be insufficient for two reasons: "First, pruning part of the area that is the subject of the petition would still enable the laying of explosive charges and provide concealment for the terrorists. Second, all the time that the clearing action is taking place, there is firing at the bulldozer doing the work. This fact did not enable the work in a manner that provides protection without endangering human life."⁵³

These arguments do not justify the uprooting of trees. The first argument does not justify the uprooting and burying of the trees and destroying the land in a manner that makes future cultivation impossible. The second

argument must also be rejected because the excessive injury to private property cannot be justified on the grounds that the only way to protect soldiers involved in an initiated action is to increase the injury to the civilian population. It is fair to assume that, if Israel were interested in reducing the injury, it would have found ways to protect the lives of the soldiers while they prune the trees.

The argument that Israel breached the principle of proportionality when it implemented its policy in the Gaza Strip is supported by the comments made by Brigadier General Dov Zadka, head of the Civil Administration. In his response to a question from a reporter from *B'Mahaneh* [the IDF magazine] whether Israel did not overdo the demolitions that it carried out in the Occupied Territories, Zadka stated:

In Gaza - very much so. I think they did several things that were excessive. After the events in Aley Sinai and Dugit, they executed an extremely massive clearance in what they called "the northern sector." They uprooted hundreds of dunam of strawberries and orchards and greenhouses, and I think that wasn't right... In Judea and Samaria, too, there are places that we haven't acted properly. Sometimes I approve a specific scope of clearing, but when I go to the

52. On the issue of restrictions on movement and its consequences, see B'Tselem, *Civilians Under Siege*, *supra*, footnote 1.

53. Response of the state in HCJ 9515/00, *supra*, footnote 2, par. 13.

field I find a degree of hyper-activity by the troops... Did we overdo it in certain places? To tell the truth - yes. For sure. You approve the removal of thirty trees, and the next day you see that they removed sixty trees. The soldier or the company commander on the site got carried away. There have been such cases, and we must not ignore them.⁵⁴

In his interview with *Ha'aretz*, Captain Rami Kaplan, the deputy battalion commander who served in Gaza and was mentioned above, made similar comments:

I always "think big" and perform my tasks in the best and most efficient way, but this time, excellence entailed razing as much citrus or olive groves as possible, regardless of whether it was necessary. It had nothing to do with problematic areas that were examined following analysis of the area and the history of the sector - the uprooting was total, taking place along the entire border and at maximum tempo... I totally agree that there are situations in which uprooting is required, but I get the impression that this matter doesn't bother anybody, which results in the intolerable nonchalance in which the clearing actions take place...

I have no doubt that the clearing actions have an element of tactical value, but the question is, where do we draw the line? According to that logic, what prevents us from destroying Gaza? If a tactical solution is involved, why don't we turn the entire Gaza Strip into an island of ruins and finally put an end to the story?...

There was a moment that the prime minister objected to the uprooting and an order was about to be given to enable only pruning the tree tops. The battalion's response was to concentrate its efforts and do as much as possible before they stop us.⁵⁵

Collective Punishment

Article 33 of the Fourth Geneva Convention forbids collective punishment and states that a person shall not be punished for an offense he or she has not personally committed. This article explicitly relates to administrative punishment imposed on persons or groups because of acts that they did not personally commit. Article 50 of the Hague Regulations states a comparable prohibition.

The IDF Spokesperson contended that, "The purpose of these exposing acts is not to punish the Palestinian

54. Zakham, *supra*, footnote 14. The Chief of Staff did not deny these comments and agreed in essence. See Akiva Eldar, "What the Head of the Civil Administration Really Thinks about the Occupation," *Ha'aretz*, 17 January 2002.

55. Avihai Becker, *supra*, footnote 19.

populations, but rather to provide a solution for a specific and defined security need.”⁵⁶ In light of the extensive use of the policy and its horrendous consequences for the civilian population, this argument cannot be accepted.

The houses and the orchards destroyed by the soldiers belonged to Palestinians whom even Israel does not contend were involved in any way in attacks on Israeli civilians or security forces. Despite this, these Palestinians lost, as a result of the IDF acts, their homes and livelihood. Furthermore, they were not even given the opportunity to be heard by any official and were not compensated at all for their losses (on this issue, see below). The IDF is likely very aware of these consequences of its policy. Therefore, its argument that it does not seek to punish the Palestinian population is meaningless.

In some of the cases, the IDF's destruction of property took place immediately after Palestinians attacked Israeli civilians or security forces. In other cases, the IDF destroyed property in locations other than where the Palestinian attack occurred. This phenomenon raises the concern that the objective of these acts was to punish the Palestinians for the attack and to

deter others from committing similar acts. Destruction of property as an act of revenge or punishment is absolutely forbidden. The commentary published by the ICRC on article 33 of the Fourth Geneva Convention states that the purpose of the article is to prevent precisely those acts that are intended to forestall breaches of the law by the civilian population.⁵⁷

A policy that harms thousands of innocent people and whose consequences are so horrendous and long lasting constitutes collective punishment, which is forbidden by international humanitarian law.

Since the beginning of the occupation, Israel has made extensive use of means that constitute collective punishment. Among these are sweeping restrictions on freedom of movement in the Occupied Territories, closure of educational institutions, and demolition of houses as punishment.⁵⁸ Israel currently employs these means as an integral part of its policy in the Occupied Territories. Demolition of houses and destruction of agricultural land, which are discussed in this report, are a direct continuation of this policy.

56. *Supra*, footnote 1, par. 32.

57. Pictet, *supra*, footnote 41, p. 225-226.

58. On the issue of collective punishment, see B'Tselem, *Collective Punishment in the West Bank and the Gaza Strip*, November 1990. See also, B'Tselem, *Civilians Under Siege*, *supra*, footnote 1.

Denying the Right to be Heard

In its response before the High Court of Justice, the state argued that it is not required to give Palestinians an opportunity to be heard before any official prior before the army destroys their property.

International law does not explicitly relate to this right, and its source is found in Israeli administrative law. However, this right is not absolute, but relative, and it may be restricted and even nullified where there are significant pressing security interests such as appear also in our case...

The right to be heard is not granted as stated, because granting an opportunity to be heard as stated is liable to endanger IDF soldiers, frustrate execution of the said action, and even lead to an escalation of hostilities.⁵⁹

The right to be heard is surely not an absolute right, and the existence of “significant, pressing security interests” might justify denial of this right.

However, the manner in which Israel implements its policy undermines the argument that the military necessity is

pressing, thus justifying denial of the right to be heard.

Firstly, according to the comments of the head of the Civil Administration, Brigadier General Dov Zadka, presented above, the decision to destroy certain property is made only after a lengthy process and after several officials examined the matter.⁶⁰ Clearly, if the military needs were indeed pressing, it was unnecessary to employ such a process.

Secondly, the testimonies given to B’Tselem indicate that, in some of the cases, the IDF forces went to the areas intended to be destroyed to examine the site, left, and later returned to destroy the crops and uproot trees. In some of the cases, the IDF forces left the area in the midst of carrying out the destruction and returned a day later to complete the action.⁶¹

Thirdly, in some of the cases, the IDF Spokesperson himself contended that the actions were planned long before they were implemented. For example, the demolition of the houses in the Khan Yunis refugee camp on 10 April 2001 were planned a month earlier. The IDF Spokesperson also contended that “the

59. Response of the state in HCJ 3848/01, *supra*, footnote 2, paragraphs 23 and 24.

60. Guy Zakham, *supra*, footnote 14.

61. See the testimonies of Nahed al-Astel and S’adi ‘Abid, presented above.

62. Amos Harel, Amira Hass, and Nitzan Horowitz, “Coordination Meeting between Israel and Palestinians; Mortar Fire Continues,” *Ha’aretz*, 12 April 2001; Amos Harel and Amira Hass, “IDF Acted Again in Area A: Destroyed Structures in Rafah,” *Ha’aretz*, 15 April 2001.

IDF held back for a long time, until it acted.”⁶² The demolition of houses in the Rafah refugee camp on 10 January 2002 were also planned more than a month before, but the approval to implement it was only given after the killing of the four Israeli soldiers.⁶³

Even according to the state’s argument that there is insufficient time for a hearing prior to carrying out the destruction, the state still must, at least, enable the people to leave their houses and remove their property before the houses are demolished. Gunfire in the middle of the night at houses in which civilians, among them small children, are living, cannot be deemed an acceptable way to remove people from their homes.

Regarding the contention that the right to be heard would endanger IDF soldiers, in many instances in which the IDF destroyed property in the Gaza Strip, Palestinians fired at the soldiers involved in the action. Despite the gunfire, the soldiers continued the action. Furthermore, protection of soldiers in an action initiated by the IDF cannot justify exacerbating the injury to the civilian population.

Granting the right to be heard is also important to enable public and judicial oversight of IDF actions. The army has almost never offered evidence supporting

its contention that Palestinians fired from the houses that were demolished or from the orchards that were destroyed. When the army is exempt from proving that the injury to property is absolutely necessary and that alternative actions did not achieve the objective, it is reasonable to surmise that the property damage was excessive. This conjecture is supported by the testimonies and data presented above.

In these circumstances, where gross violation of a person’s rights is involved, the authorities must enable the individual whom they intend to harm to be heard. In this context, the Supreme Court held:

Demolition of a structure is, everyone would agree, a harsh and severe means of punishment, and its deterrent value does not lessen its nature as described. One of its primary features is that it is irreversible, i.e., it is not subject to subsequent repair; thus, a hearing after execution of the order is always of very limited practical import. According to our legal conception, there is, therefore, importance for the person involved to be able to lay out his objections before the commander prior to the demolition, to inform him of facts and considerations of which he may not have been aware. This court

63. Zvi Barel, Danny Rubenstein, and Amos Harel, “The Testimonies Prove: Some of the Houses Demolished in Rafah were Occupied,” *Ha’aretz*, 18 January 2002.

accepts the proposition that holding fair-hearing rules in an individual's matter is reflected, in part, by a person who is expected to suffer severe injury to his person or property being given prior notice of such and the opportunity to raise his objections in this matter.⁶⁴

who suffer losses as a result of these unlawful acts.

Israeli law exempts the state from the duty to pay compensation for acts that are performed during the course of "acts of warfare."⁶⁷ The Supreme Court has narrowly construed this term. Justice Haim Cohen ruled as follows:

Denial of the Right to Compensation

The IDF Spokesperson contended that, "In accordance with international law, damage caused to private property during combat and resulting from combat events are not entitled to compensation."⁶⁵

These comments are valid unless international humanitarian law was violated. Where there has been a breach, the state responsible for the breach must compensate the injured. This duty is a customary principle incorporated within international humanitarian law, including the Hague Convention, on which Israel relies to justify the acts of destruction.⁶⁶

Because the demolition of houses and destruction of agricultural land that Israel carries out in the Gaza Strip, as described in this report, constitute a violation of international humanitarian law, Israel is obligated to compensate the Palestinians

To free the state of liability, the act must be an act of warfare of the Israel Defense Force, that is, a military act that an army generally does not perform except at the time of combat. Even in a state such as ours, surrounded by enemies and people who conspire against us, both active and potential, and even in a place and time where rioting is common - an act of protection should not, in my opinion, be considered an act of warfare. The reason is not because it is an act that occurs daily, even at times of peace and quiet, but because, by its nature and character, it does not contain an element of combat. And although war is impossible without it, it is only an auxiliary act or an accompanying act, like quartermaster's acts or medical assistance, without which a war cannot be conducted, but which are not necessarily acts of warfare ...

64. HCJ 358/88, *The Association for Civil Rights in Israel et al., v. OC Central Command et al.*, *Piskei Din* 40 (2) 43, par. 7.

65. IDF Spokesperson's letter of 14 February 2001 to B'Tselem.

66. Article 3 of the Hague Convention, article 148 of the Fourth Geneva Convention, article 91 of the First Additional Protocol to the Geneva Conventions of 1949.

67. Torts (State Liability) Law, 5712 - 1952, section 5.

A strict interpretation of the exception that the state will not bear responsibility for an act of warfare of the Israel Defense Force brings us to the limitation of the exception to those acts that are both acts of warfare by their nature and whose place and occurrence are known only during warfare.⁶⁸

In another case, the Supreme Court held that it refers to “an actual act of war, in the narrow and simple meaning, such as convening battle forces, combative attacks, exchanges of fire, and explosions.”⁶⁹

Because Israel’s acts of destruction in the Gaza Strip are not among these exceptions, it is clear that the statute does not exempt it from its obligation to pay compensation. Therefore, Israel also breaches Israeli law by refusing to compensate Palestinians whose property it damaged.

It should be noted that, in the past, in situations where Israel demolished houses on the grounds of pressing military necessity, it compensated the residents of the houses who were not suspected of having committed any offense. On 20 September 1990, Sergeant Amnon Pomerantz was stoned and burned to death in the al-Burej refugee camp, in the Gaza Strip. In response, Israel sought

to demolish the houses in the area in which he was killed, for “clear reasons of security and military necessity.” The state offered compensation to those who suffered loss, and the defense minister at the time, Moshe Arens, stated that, “Those people who were removed from their houses will receive proper substitute housing so that they won’t be thrown into the street.”⁷⁰

The Knesset’s Constitution, Justice, and Law Committee is now debating the government’s proposed bill that would provide a special law for compensation claims arising from acts of the security forces in the Occupied Territories.⁷¹

Under the proposed law, the vast majority of IDF acts in the Occupied Territories would come within the rubric of “act of warfare,” thus exempting the state from liability by law. Typical IDF actions in the Occupied Territories - patrols, setting up and staffing checkpoints, apprehending suspects, conducting searches, coping with demonstrators and stone throwers, and the like - would be deemed acts of warfare, and the state would not be obligated to pay compensation even where the victims were innocent and the security forces were negligent. In addition, the proposed law provides new rules regarding the handling of these claims. These new rules are intended to block the few claims that would reach a court hearing.

68. Civ. App. 311/59. 317/59, *Tractors Factory Shop Ltd. et al. v. Yoram Ben Hayat et al.*, *Piskei Din* 14, 1609, 1613-1614.

69. Civ. App. 623/83, *Levy v. State of Israel*, *Piskei Din* 40 (1) 477, 279.

70. Straschnov, *supra*, footnote 45, pp. 128-129.

71. Proposed Torts (State Liability) (Amendment - Claims Arising from Actions by the Security Forces in Judea and Samaria and the Gaza Strip) Law, 5761 - 2001.

The proposed law severely violates numerous fundamental human rights. The attempt to provide immunity to security forces is a dangerous effort that effectively places them above the law. In practice, the proposed law revokes the caution that security forces are obligated to employ towards the civilian population in the Occupied Territories. By doing this, the state removes one of the primary duties that the legislature has imposed on the security forces - protection of the individual's fundamental right to his or her life and property.

The duty to pay compensation grounded in international humanitarian law is intended to ensure that states meet their obligation to comply with the law. Paying compensation is a sanction for breaching the law. It supplements the criminal sanctions that the states are supposed to take against those responsible for the breach. The exemption from paying compensation in effect endorses the damage to the property of residents of the Occupied Territories, whose welfare is the responsibility of Israel as the occupier in the Occupied Territories.



Conclusions

Since the beginning of the al-Aqsa intifada, Israel has demolished hundreds of houses and destroyed thousands of acres of agricultural land in the Gaza Strip. These acts have left thousands of residents homeless and harmed the livelihood of thousands. The house demolitions took place mostly at night and without any warning given to the residents of the houses. Some were forced to flee from their homes when the bulldozers were at their doorstep, and could not remove their possessions. The IDF uprooted trees and destroyed crops in a manner that severely damaged the land. In some cases, it will be impossible to replant trees on the land for many years to come.

Israel justifies its policy on the grounds of “pressing military necessity.” However, even if this necessity exists, Israel is still obligated to comply with international humanitarian law. By implementing its policy, Israel flagrantly violated the relevant provisions of international humanitarian law.

The destruction of thousands of acres of agricultural land based on the claim that Palestinians fired from these lands and the demolition of entire residential neighborhoods on the charge that some of them contained tunnels constitute excessive injury to the civilian

population. This injury is illegal. Israel’s policy, which is carried out against people whom Israel does not contend were involved in attacks on Israeli civilians or security forces, constitutes collective punishment. Despite these violations of international humanitarian law, Israel refuses to compensate Palestinians whose property was damaged in these actions.

Israel’s reliance on military necessity to justify the extensive damage it causes to Palestinian property in the Gaza Strip completely ignores the developments that have taken place in international humanitarian law over the past one hundred years.

Israel remains the occupier in the Occupied Territories. In this capacity, it must protect the safety and well-being of the Palestinian population and take Palestinian needs into account. Israel must, of course, protect Israeli civilians and soldiers, but it is not allowed to do that by causing such extensive harm to the Palestinian population.

One of the arguments Israel has raised in support of the policy of destruction is its effectiveness: “Following the clearing actions, the terror attacks on vehicles using the road declined, and there was appreciable improvement in the IDF’s ability to cope with the danger of

roadside terror attacks.”⁷² The policy’s effectiveness is in dispute. In any event, effectiveness is irrelevant in determining the legality of the policy. Israel, which signed international humanitarian law conventions and undertook to act in accordance with their principles, is not allowed to ignore them on the grounds that they prevent it from achieving its objectives.

Article 53 of the Fourth Geneva Convention provides that destruction of property is prohibited, except where it is rendered absolutely necessary by military operations. Regarding the exception of absolute military necessity, the commentary published by the ICRC states that,

It is therefore to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous

recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention.⁷³

Unfortunately, this concern has become a reality in Israel’s case. Israel’s policy is based entirely on a narrow exception that was set forth in international humanitarian law, while completely disregarding all its other principles.

Therefore, B’Tselem urges the Israeli government to immediately cease the destruction of houses, the uprooting of trees, and the destruction of agricultural land. In addition, Israel must compensate every Palestinian who suffered as a consequence of Israel’s policy of destruction.

72. Response of the state in HCJ 9252/00, *supra*, footnote 2, par. 12. A similar contention was made in the response of the IDF Spokesperson to B’Tselem’s report, *Civilians Under Siege*, *supra*, footnote 1.

73. Pictet, *supra*, footnote 41, p. 302.

Response of the IDF Spokesperson

Israel	Defense	Forces
The	I.D.F	Spokesperson
Public	Relations	Branch
Itamar	Ben	Avi st.
Tel Aviv	code:	63476
Tel:	972-3-6080339/40	
fax:	972-3-6080334	
30	January,	2002



To
B'Tselem

Re: IDF Spokesperson's Response to the B'Tselem Repo

We received your request for an IDF Spokesperson's response to the B'Tselem report on "the policy of demolition and destruction of agricultural lands in the Gaza Strip".

The following is our response:

As is well known, fighting has been raging in the West Bank and the Gaza Strip over a year, and IDF forces are compelled to confront this situation every hour every day. The fighting is characterized by shooting attacks on Israeli civilians and IDF soldiers, the placing of roadside bombs near traveling routes, the firing of rockets and bombs on towns, villages and military installations, large-scale civil disturbances and terrorist attacks of many kinds in the territories and inside Israel. The lives of civilians and IDF soldiers are consequently at constant risk as is their security.

In the framework of this current fighting, IDF forces are compelled every so often to deal with the aforementioned dangers—to harm private property and

The source of authority for the IDF to harm private property during times of fighting and due to military needs is part of the laws of war, which are part of the international law. Specifically, it refers to regulation 23 (g) of the Hague Convention of 1907 which permits destruction of property in cases in which “such destruction be imperatively demanded **by the necessities of war...**”

As mentioned in the body of the Report, a number of petitions have been submitted to the Israel High Court of Justice during the current round of fighting, against IDF combat operations that damaged Palestinian private property in the area of the Gaza Strip.

It should be emphasized at this point all every petitions submitted thus far have been rejected. It seems peculiar that nowhere in your Report, despite the extensively detailed claims brought forth by your Report, you did not find it fit to mention this important fact.

An example is the Israel High Court of Justice 9252/00 Al Saka et al. Vs the State of Israel (not yet published), and HCJ 9515/00 Al Wahidi et al. Vs the State of Israel (not yet published), which petitioned, among others, against the clearing of groves and the paving of roads on their land plots. The petitions were rejected, and the Judges determined that they reviewed the authority of the IDF regarding each one of the operations mentioned in the petitions. They were satisfied that “under the circumstances the operations were carried out within the bounds of authority and there was no deviation from proportions.” (emphasis not in the original).

We would also like to call your attention to HCJ 8927/01 Bashir Vs the State of Israel et al. (not yet published) on the IDF’s intention to raze private greenhouses in the Gaza Strip for urgent military needs. The petition was rejected in this case as well.

It must be clarified, as it also appears in the State of Israel's response to the I during a discussion on the aforementioned petitions, that harm to private prop only for reasons of security necessity and not as a means of punishment or d

On this occasion we would like to reiterate that according to the regulations (international law, damage caused to private property during fighting and as a fighting do not merit compensation. We would also like to add that the milit authorities are directed to try and minimize damage caused to the individual as possible, under the given restrictions, while providing a response to the co military needs in every given situation.

Updated statistics on events and casualties can be found on the IDF website www.idf.il.

