



The Right to Water in the Occupied Territories:

Legal Background

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Limited access to water is a major cause for concern for the Palestinian population in the West Bank, particularly for those living in Area C, which is under direct and full Israeli control. The water policy implemented by the Israeli army in Area C includes a refusal to connect Palestinian villages to the water system, restrictions on the development and maintenance of water infrastructure, demolition of water wells dug by Palestinians, and over-pumping of wells that damages other natural water resources.¹

The right to water under International Humanitarian Law:

1. As an occupying power, the State of Israel is obligated to the Geneva Convention provisions.² According to Article 55 of the Convention, an occupying power "has the duty of ensuring the food and medical supplies of the population." Article 43 of the regulations annexed to Fourth Hague Convention³ also obligates the occupying power to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety,

¹ For further information see:

Amnesty International, "Troubled Waters – Palestinians Denied Fair Access To Water", available at: <https://www.amnestyusa.org/pdf/mde150272009en.pdf>;

B'tzelem, "Thirsty for a solution" (July 2000), available at:

http://www.btselem.org/publications/summaries/200007_thirsty_for_a_solution;

NRC, "Construction and Rehabilitation of Water Sources in Area C: An overview of the applicable legal and permit regime" (March 2013), available at:

<http://www.nrc.no/arch/img/9197486.pdf>;

World bank report no. 47657-GZ, "West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development" (April 2009), available at:

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf> ;

² Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

³ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.



while respecting, unless absolutely prevented, the laws in force in the country."

2. The Israeli High Court of Justice, in interpreting Article 43 of the Convention, reiterated more than once that the state's obligation to ensure public order involves providing multiple services including health, education, welfare, transportation, and other needs "required for people in modern and civilized society."⁴
3. The ongoing occupation of the West Bank further broadens Israel's responsibility. In interpreting Article 43 of the Hague Regulations, the Israeli High Court of Justice made a distinction between short-term occupation and long-term occupation: "The needs of any territory, whether it is a territory under military control or not, are naturally in a constant change, especially as a result of economic development. As long as the occupation continues, the military governor is obligated to make adjustments in providing for the different types of needs."⁵
4. The abovementioned duty includes positive obligations, such as providing for services, alongside other negative aspects, i.e., obligations to refrain from certain measures. Article 55 states: "The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for the use of the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account." Article 54(2) of Protocol (I) of the Geneva Conventions refers explicitly to the prohibition to "attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as [...] drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian

⁴HCJ 393/82, *Jami'at Ascan et al., v. IDF Commander in Judea and Samaria et al.*, 37(4) PD, p. 785, 786 (1983); And see also HCJ 202/81 *Tabib v. Minister of Defense* (1981)

⁵ 493/81 *Abu Itta et al. v. Commander of Judea and Samaria et al.*, PD 37(2), 197, 313 (1983).



population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."⁶

5. This duty also can be inferred from Article 53 of the Geneva Convention, which forbids any destruction of private or public property, unless it is absolutely necessary for a military operation.

The right to water under International Human Rights Law:

6. The Israeli government's official position is that the various human rights conventions it has ratified do not apply outside of Israel's sovereign territory, and therefore are not part of Israel's responsibilities in the West Bank (yet do include annexed East Jerusalem). This viewpoint was rejected by UN Commissions responsible for implementing the provisions established in these conventions,⁷ as well as by the International Court of Justice in The Hague⁸.
7. Israel is a member of the International Covenant on Social, Economic and Cultural Rights (ICESCR). Article 11(1) of ICESCR states, that "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." The Covenant requires the states to guarantee that these rights "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
8. The UN Committee on Economic, Social and Cultural Rights which monitors the implementation of ICESCR, determined that the right to water is a basic right inferred from Article 11 of the Convention, and specified the standards

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

⁷ Orna Ben-Naftali and Yuval Shany, "Living in Denial: The Application of Human Rights in the Occupied Territories," *Israel Law Review* 37(1), p. 17-118 (2003-2004)

⁸ In the ICJ's advisory opinion regarding the Separation Fence. See: [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), advisory opinion of 9 July 2004, 43 I.L.M. 1009, paragraphs 108-111



for implementing this right. General Comment no. 15 states⁹: "Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights."

9. The Israeli High Court of Justice adopted this interpretation of Article 11 in the case of **Abu Massa'ed vs. Water Commissioner**,¹⁰ which dealt with the right to water of Arab Bedouin citizens of Israel living in the Negev.
10. The UN Committee clarified that the right to water carries both positive and negative aspects. The negative aspect sets the obligation of "refraining from engaging in any practice or activity that denies or limits equal access to adequate water" (article 21). The positive aspect requires ensuring each person "sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses" (article 2).
11. According to General Comment no. 15, "No household should be denied the right to water on the grounds of their housing or land status". This statement is very important in the context of the West Bank, because Israel's main justification for their refusal to connect Palestinian villages to water is that these villages are not "authorized" as they don't have the necessary building permits, which the Israeli military issues.

In the concluding observations of the UN Committee from 2011 regarding the implementation of the convention in Israel, the Committee paid special attention to the limited access to sufficient and safe drinking water and adequate sanitation in the West Bank. The Committee urged Israel to take urgent steps to facilitate the

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment no.15: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights; The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) U.N. Doc. E/C. (26 November, 2002)

¹⁰ Civil Appeal 9535/06 **Abu Massa'ed vs. Water Commissioner** (5 June 2011)



restoration of water infrastructure in the West Bank that was affected by the destruction of wells, water tanks, and other water and irrigation facilities.¹¹

Case Study: The right to water in the village Al-Aqabah

12. On January 25, 2016 ACRI, together with residents of the Palestinian village of Al-Aqabah and Bimkom-Planners for Human Rights, submitted a petition to the High Court of Justice, demanding that the Al-Aqabah village be connected to the water supply¹².
13. Al-Aqabah is a West Bank village located in the northern part of the Jordan Valley, with a population of approximately 200 people. According to the Oslo Agreement it is considered part of Area C, which is under full Israeli control.
14. The military's Civil Administration has refused Al-Aqabah's request to be connected to the water system time and time again; arguing that only a village that has a "planning prospect" should be connected to the water system. However, since 1967 the residents of Al-Aqabah have repeatedly submitted master plans to authorize and regulate the building and development of the village. Each one of these attempts has failed and the army refused to approve the plans. Instead, the Civil Administration repeatedly issued demolition orders for homes and structures in Al-Aqabah. Relatively few demolition orders were executed.
15. The military's refusal to authorize a plan for the village is still used as a pretext for not connecting the village to the water system. In light of the military's ongoing refusal, Al-Aqabah's residents attempted to create a pool for storing rainwater, which was then demolished by the army. In contrast, nearby Israeli settlements – as well as Israeli outposts in the area that are considered illegal by the Israeli authorities themselves – are all connected to

¹¹ The Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel, E/C.12/ISR/CO/3, 16 December 2011, Sec. 29

¹² HJC full petition (Hebrew): <http://www.acri.org.il/en/wp-content/uploads/2016/01/%D7%91%D7%92%D7%A5-650-16-%D7%A6%D7%90%D7%93%D7%A7-%D7%A0%D7%92%D7%93-%D7%A9%D7%A8-%D7%94%D7%91%D7%98%D7%97%D7%95%D7%9F.pdf>



the water system. The residents enjoy large amounts of water at subsidized prices, which enables agriculture to prosper in these settlements.

16. Without a connection to the water system, each family in Al-Aqabah needs to create their own water supply and storage, mainly relying on water purchased from nearby Palestinian villages. The water is bought at a price three times higher than its original cost, to cover additional expenses such as pumping and driving. The high water prices force residents to limit their water consumption to a standard that is much lower than that recommend by the World Health Organization. Living with such limited water supply violates the residents' right to live in dignity, and harms their health and livelihood. A water expert who recently examined the water used in Al-Aqabah concluded that it was not safe for drinking, and was particularly harmful to children.
17. The military's refusal to connect Al-Aqabah to water violates the residents' basic rights, and contradicts the occupying power's obligations to the protected people living under occupation.