

Distr.
GENERAL

الجمعية العامة



A/HRC/12/NI/5
4 September 2009

ARABIC
Original: ENGLISH

مجلس حقوق الإنسان
الدورة الثانية عشرة
البند ٧ من جدول الأعمال

حالة حقوق الإنسان في فلسطين
وفي الأراضي العربية المحتلة الأخرى

معلومات مقدمة من الهيئة الفلسطينية المستقلة لحقوق الإنسان*

مذكرة من الأمانة

تحيل أمانة مجلس حقوق الإنسان طيّه الرسالة المقدمة من الهيئة الفلسطينية المستقلة لحقوق الإنسان**، وهي مستنسخة أدناه وفقاً للمادة ٧(ب) من النظام الداخلي الوارد في المرفق بقرار المجلس ١/٥ التي تنص على مشاركة المؤسسات الوطنية لحقوق الإنسان في التحقق استناداً إلى ترتيبات وممارسات وافقت عليها لجنة حقوق الإنسان، بما في ذلك القرار ٧٤/٢٠٠٥ المؤرخ في ٢٠ نيسان/أبريل ٢٠٠٥.

* مؤسسات حقوق الإنسان الوطنية المعتمدة ضمن الفئة "ألف" من قبل اللجنة الدولية لتنسيق المؤسسات الوطنية لتعزيز وحماية حقوق الإنسان.

** مستنسخة في المرفق، كما وردت باللغة التي قدمت بها فقط.

ANNEX

Related to the report by the High Level Fact Finding Mission on the Gaza conflict

The Palestinian Independent Commission for Human Rights (ICHR) welcomes the resolution of the Human Rights Council A/HRC/S-9/L.1 of 12 January 2009 to form a Fact Finding Mission on the Gaza Conflict as well the anticipated report presenting the results of the various fact finding activities undertaken by the Mission. ICHR has worked in cooperation with the Fact Finding Mission, in the Gaza Strip, in Jordan and Geneva, to provide them with required information on the human rights violations which took place during Israeli aggression on the Gaza Strip from 27/12/2008 till 18/01/2009 in order for them to accomplish their mission. ICHR has also briefed the UN Fact Finding Mission on the status of human rights in the Occupied Palestinian Territory (OPT).

In the OPT the deep root problem of human rights is emerging from the continued Israeli military occupation of the Gaza Strip and the West Bank, including East Jerusalem and the Israeli systematic violations of human rights. The OPT is still experiencing violations of both Human Rights Law and International Humanitarian Law against its civilian population. The list is quite extensive: killings; shootings; assassination or targeted killings; bombardment; incursions into Palestinian cities; intensified blockades; closures, collective punishment; arbitrary arrests; continued "jewishizing" of Jerusalem; destruction of Palestinian infrastructure; home demolitions; the construction of the annexation wall and confiscation of land for that purpose; the ongoing settlement and settlers' attacks on Palestinian civilians and their properties; daily humiliation of Palestinians at checkpoints; and restriction of movements of people and goods.

The military aggression launched by Israeli occupation forces against the Gaza Strip resulted in the death of 1437 persons including 417 children, 108 women, 16 medical personnel and the injury of 5500 persons, many of them suffering permanent physical disabilities. Through the wide-scale air-raids by F16 planes, the Israeli occupation forces targeted civilian areas, tens of police and security agencies' headquarters, governmental institutions, and houses throughout all areas in the Gaza Strip and its populated civilian areas, as well as its mosques. These attacks reveal a blatant Israeli disregard of the basic human rights principles stipulated by the Fourth Geneva Convention of 1949 regarding the protection of civilians during times of war. The Convention should be considered the main legal framework for standards of human rights and humanitarian standards in the Occupied Territories, as it stipulates that: "The occupying force shall not be given the free hand in using power as it desires or procedures or policies in the administration of the occupied territories. The occupying force should preserve to the maximum the lives and interests of the civilian population and protect their properties and shall not change the legal status of these territories."

Israel, as an occupying power, has legal and humanitarian obligations towards the Palestinian civilian population in the OPT, including the Gaza Strip even after the Israeli unilateral withdrawal from the area in 2005. Israel has since maintained effective control and extensive security powers over the Gaza Strip in a manner that directly affects the civilian population. Furthermore, Israel maintains economic and military control over the air, sea, and land space of the Gaza Strip, full control over its crossing points, the management of the population register and the procedures of family reunion, the movement of goods in and out of the Strip, in addition to full control of the supply of fuel, electricity, and gas.

The Israeli aggression was accompanied by grave and unprecedented violations of Palestinian human rights, as civilians and properties protected in accordance with international humanitarian law were targeted. Israeli warplanes used destructive shells and internationally banned weapons, such as white

phosphorus, against civilian targets and residential areas, violating all international conventions and treaties, including the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, particularly article 147 based on which Israeli war operations in the Strip are considered war crimes since they led to the killing of Palestinian civilians in houses and mosques¹. They also violate article 33 of the Fourth Geneva Convention that prohibits collective punishment, and article 50 of the Hague Conventions Related to the Laws and Customs of War on Land of 18 October 1907, which stipulates that "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." The aggression violates articles 56, 25, and 27 of the same Convention that requires the protection of public properties, places of worship, and hospitals.²

In this way, ICHR holds the Occupying State fully responsible for the lives and safety of Palestinian civilians, particularly since the existence of armed resistance inside the Gaza Strip is by no means a justification for the use of excessive force in a manner that violates civilians under all circumstances, in accordance with the principle of proportionality.

Israeli crimes against Palestinians in Gaza constitute crimes against humanity in addition to being war crimes. Crimes against humanity are crimes that are committed in the context of a systematic aggression against civilians, a pre-condition that applies to Israel's behaviour ever since it imposed a siege on the Gaza Strip, strangling its population, followed by intensive air and land raids against an area characterized as one of the highest densely populated regions in the world.³

The Fourth Geneva Convention accorded women, children, and the elderly special protection. Article 17 of the Convention stipulates that "The Parties to the conflict shall endeavor to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas." Children were accorded special protection in time of armed conflict as stipulated by the Convention on the Rights of the Child of 1989, to which Israel is a signatory, particularly article 38 of the Convention, which addresses cases of armed conflict, and stipulates *inter alia* that: "1 - States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 4 - In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children

¹ Art. 147 of the Fourth Geneva Convention stipulates that "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

²Article 56 stipulates that "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings. " Article 27 stipulates "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand. "

³ "Crime against humanity" is referred to as acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, such as stated in article 7 of the Rome Statute of the International Criminal Court

who are affected by an armed conflict."⁴ The Israeli practices in this context constitute a blatant violation of the Convention and of Israel's legal obligations under international law.

Facts on the grounds confirmed that all civilian constructions are within the targets of Israeli warplanes, revealing a pure Israeli intention to eliminate all the assets of the Palestinian people in the Gaza Strip, and destroy their infrastructure, foundations of their existence, and public properties. This comes despite the fact that principles of humanitarian international law have accorded some public properties the status of private properties to grant them additional and special protection. Article 56 of the Statutes Related to the Laws and Customs of War on Land, the Hague 18 October 1907, stipulates that "the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

Extensive destruction of property not justified by military necessity, and carried out unlawfully and wantonly is considered a grave breach according to article 147 of the Fourth Geneva Convention. Yet, Israeli air raids have targeted public and private properties of the Palestinian people and the basic foundations of its existence in a systematic manner. For example, the air-raids targeted the headquarters of the Palestinian Legislative Council, the Ministry of Education, and the Ministry of Justice which are not considered the property of the Hamas movement or any specific political party, but rather the property of all the Palestinian people. The destruction of these public institutions will lead to severe and long-term damage to the rights and assets of the Palestinian people.

It is worth mentioning that ICHR documented internal violations of human rights during the Israeli aggression on the Gaza Strip in addition to Israeli violations, as priority was given to documenting human rights violations that Palestinian citizens endured no matter who the perpetrator of these violations was. In this way, under the cover of the Israeli aggression on the Gaza Strip, several internal human rights violations were committed by the *De facto* authority, such as killings and torture. The majority of citizens killed had been detained or serving their imprisonment sentences in prisons targeted by the Israeli occupying forces during the offensive aggression on the Gaza Strip.

Conclusion

ICHR views the Israeli aggression against the Gaza Strip as an attempt to break the will of the Palestinian people in realizing its national rights, independence, and right to self-determination. There is no legal basis to justify Israel's strangulation of more than 1.5 million Palestinians in the Gaza Strip inside a large prison, prohibiting the entry of medical, food, and humanitarian supplies as a collective punishment, and as a crime against humanity that violates all international human rights charters, conventions and norms. Therefore, **ICHR** stresses that Israeli occupation's practices are a clear violation of the Fourth Geneva Convention and are considered war crimes *par excellence*.

ICHR stresses that protection of Palestinian human rights and ensuring the enjoyment of the minimum level of human rights and ending the violations can only take place through the complete ending of Israeli occupation of all Palestinian Territory occupied in 1967.

⁴ Convention on the Rights of the Child, article 38, paragraphs 1 and 4.

ICHR calls on the international community to consider the following points:

1- Acknowledging the importance of the Fact Finding mission, it is important that its recommendations are seriously taken into account by the UN Security Council and General Assembly and other United Nations bodies and High Contracting Parties to the Geneva Convention in order to implement these recommendations by defined measures, to demonstrate that the state of Israel is no longer a state above the law.

2- End the stringent Israeli siege imposed upon the Gaza Strip and open all crossing points immediately, including the Rafah and Erez crossing points.

3- Call upon the High Contracting Parties to the Fourth Geneva Convention to abide by their obligations in article one of the Convention, according to which these Parties pledge to respect the Convention, uphold it, and guarantee its respect at all times, as well as their obligations according to article 146 of the Convention to pursue legally all parties accused of committing grave breaches of the Convention.

4- Work toward ending Israeli prolonged belligerent occupation of the OPT since 1967 and realize that the occupation is the deep rooted cause of the problem. Find a just and durable solution to the Israeli-Palestinian conflict by allowing Palestinians to practice their right to self determination and the establishment of their independent state on all Palestinian territory occupied in 1967, and that only through ending occupation, and the enjoyment of the Palestinians of their rights can a sustainable solution be established.

5- The formation of a special tribunal to hold Israel accountable of the war crimes which its army committed during the Aggression on the Gaza Strip, such as was the case with Al Hariri case, or the Rwanda tribunal.
