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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

**The grave violations of human rights in the Occupied Palestinian Territory, particularly
due to the recent Israeli military attacks against the occupied Gaza Strip**

**Report of the United Nations High Commissioner for Human Rights on the implementation
of the Human Rights Council resolution S-9/1***

* Late submission.

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I. INTRODUCTION

1. The present report is submitted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to resolution S-9/1 adopted by the Council at its ninth special session held on 9 and 12 January 2009, convened following the launch of Israeli military operations in the Gaza Strip on 27 December 2008.
2. This is the first periodic report by the High Commissioner mandated by Council resolution S-9/1, in which the Council requested the High Commissioner “to report on the violations of human rights of the Palestinian people by the occupying Power, Israel, by ... submitting periodic reports to the Council” on the implementation of the resolution (para. 11). The present report focuses on some of the key concerns of OHCHR in the Occupied Palestinian Territory (OPT) covering the period of the Israeli military operations in Gaza codenamed “Cast Lead” to 10 April 2009.
3. As mandated by paragraphs 2 and 10 of the resolution, OHCHR will focus on the impact of military operations on civilians and on respect for the rules of international humanitarian law and international human rights law by all duty bearers. This report complements the other reports on the Gaza operations that were mandated by resolution S-9/1;¹ it also deals with the situation in the West Bank (reference to which in this report includes occupied East Jerusalem).
4. During the reporting period, the OHCHR Office in the OPT developed a human rights monitoring framework and has commenced with its implementation. Thus, OHCHR will include analysis based on monitoring of selected human rights cases in the OPT in future reporting.

II. LEGAL FRAMEWORK

¹ A/HRC/10/20 and A/HRC/10/22, which have already been presented to the Council, and a forthcoming report by the independent fact-finding mission headed by Justice Richard Goldstone. In addition, a summary of the report by the United Nations Headquarters Board of Inquiry into incidents in Gaza, mandated by the Secretary-General and led by Ian Martin, was shared with the President of the Security Council on 4 May 2009 (A/63/855-S/2009/250).

A. International human rights law

5. Israel, as a State party to many of the core international human rights conventions,² continues to bear responsibility for implementing its human rights obligations in the OPT.³
6. A situation of armed conflict or occupation does not release a State from its conventional human rights obligations. The International Court of Justice, United Nations human rights treaty bodies, successive High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, consistently have averred that international human rights law and international humanitarian law apply concurrently in all of the Occupied Palestinian Territory. Notably, in its Advisory Opinion on the Wall, the International Court of Justice pointed out that Israel remains bound by its obligations under several international human rights treaties.⁴ The Court also noted that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".⁵

² Israel is a party to six of the nine core international human rights treaties. Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979; and the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (CRC) on 3 October 1991.

³ An examination of the concluding observations of various United Nations treaty bodies, as well as the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion on the Wall) issued by the International Court of Justice on 9 July 2004, confirms this view. See A/HRC/8/17, para. 7; CAT/C/ISR/CO/4 para. 11; and footnote 5 below.

⁴ Advisory Opinion on the Wall, paras. 102-113, where the Court concluded that the protection offered by human rights conventions do not cease in cases of armed conflict and that ICCPR, ICESCR and CRC are applicable in respect of individuals within the jurisdiction of a State, even concerning those individuals under its jurisdiction outside its own territory.

⁵ Advisory Opinion on the Wall, para. 112.

7. The Palestinian Authority (PA), the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council (PLC) have made numerous statements and undertakings through which they have declared themselves bound by international human rights obligations.⁶ With respect to Hamas, it is worth recalling that non-State actors that exercise Government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.⁷ Hamas has also made public statements that it is committed to respect international human rights and humanitarian law.⁸

B. International humanitarian law

8. The cardinal principles of customary international humanitarian law concerning the protection of civilians in the conduct of hostilities – including the principles of distinction between civilians and combatants, between civilian objects and military objectives, proportionality and precautions in attack, humane treatment of those not or no longer taking part in hostilities but finding themselves in the power of a party to the conflict – are applicable to all parties of the conflict.
9. In addition, rules of international humanitarian law regarding military occupation, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time

⁶ See A/HRC/8/17, para 8.

⁷ By way of example, in the joint report on Lebanon and Israel, a group of four special rapporteurs concluded that “Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights... It is especially appropriate and feasible to call for an armed group to respect human rights norms when it ‘exercises significant control over territory and population and has an identifiable political structure’.” Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari (A/HRC/2/7), para. 19, citing the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7), para. 76. See also A/HRC/7/76, paras. 4-9, for a brief overview of relevant events leading up to Hamas’ takeover of the Gaza Strip.

⁸ See further A/HRC/8/17, paras. 8-9.

of War (Fourth Geneva Convention), must be applied by Israel, as the Occupying Power, in the West Bank and the Gaza Strip. Though Israel has put forward arguments disputing the application of this convention, the situation remains one of military occupation, as recognized by the Security Council, the General Assembly and the Human Rights Council.⁹ In addition to the applicability of the Fourth Geneva Convention, the Hague Regulations (annexed to the 1907 Convention respecting the Laws and Customs of War on Land), which are accepted as customary international law, apply to the OPT.

III. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW DURING THE GAZA MILITARY OPERATIONS

10. On 27 December 2008, Israel launched a large-scale aerial and naval offensive on the Gaza Strip, “Operation Cast Lead”. A ground offensive, which began on 3 January 2009, followed the air and naval strikes. The hostilities lasted 22 days, until Israel announced a unilateral cease fire on 17 January and put it in force on 18 January. Hamas and other Palestinian factions and groups (except the Popular Front for the Liberation of Palestine), which prior to and during Operation Cast Lead had fired rockets and mortars into Israel,¹⁰ also declared unilateral ceasefires on the same day. Israeli troops subsequently withdrew from the Gaza Strip, but, as at the time of writing of this report, no lasting agreement has been reached between the two sides, and the situation remains volatile.

11. Estimates vary as to the exact number of Palestinian civilians killed and injured during the operation: according to various sources, between approximately 1,200 and 1,400

⁹ See e.g. General Assembly resolutions 62/181 and 63/98, Security Council resolution 1860 (2009) and Human Rights Council resolution 10/18.

¹⁰ During the six-month truce between Israel and Hamas, the *tahdiya*, which started on 18 June and ended on 19 December 2008, a total of 223 rockets and 139 mortar shells were fired at Israel. See Ministry of Foreign Affairs of Israel, “The Hamas terror war against Israel”, 21 July 2009, at www.mfa.gov.il. During the 22 days of Operation Cast Lead, 571 rockets and 205 mortars landed in Israel, according to the Ministry. (“Operation Cast Lead: Israel strikes back against Hamas terror in Gaza, 21 January 2009, *ibid.*.)

civilians were killed and about 5,300 were injured.¹¹ According to PCHR, while 236 of those killed were reportedly combatants, an additional 255 were members of the civilian police force and the remaining 926 were civilians.¹² The Government of Israel, on the other hand, has stated¹³ that, according to the data gathered by the Research Department of IDF Intelligence, at least 709 were combatants, though this number reportedly includes police officers, who are classified as civilians under international law.¹⁴ The Government of Israel is further reported as having stated that a total of 295 Palestinian non-combatants died during the operation, 89 of them under the age of 16 and 49 of them women, the Army added.¹⁵

12. According to the Israeli Ministry of Foreign Affairs, 10 Israeli soldiers were killed in the course of the military operation, four of them in “friendly fire” incidents, and 336 were wounded. In southern Israel, during the operation, four Israeli civilians were killed and 182 were injured (ranging from serious injuries to those attributable to shock) due to rockets and mortar shells fired at Israel from Gaza.¹⁶

13. In a letter dated 4 May 2009, the Government of Israel provided OHCHR with information regarding five IDF investigations that had been conducted into the conduct of Israeli forces during the hostilities in Gaza, in connection with a number of specific

¹¹See Palestinian Centre for Human Rights (PCHR), press release, 12 March 2009, at www.pchrgaza.org/files/PressR/English/2008/press.html. See also Amnesty International, *Operation “Cast Lead”: 22 days of death and destruction*, 2 July 2009, p. 13; and Israeli Defense Forces (IDF) press release, “Vast majority of Palestinians killed in Operation Cast Lead terror operatives”, 26 March 2009, at dover.idf.il/IDF/English/Press+Releases/09/03/2601.htm.

¹² PCHR, press release, 12 March 2009, www.pchrgaza.org.

¹³ IDF press release, op. cit.

¹⁴ Police officers may be regarded as combatants if they participate directly in hostilities. The information available to OHCHR indicates that most of the police officers were killed in the first day of air attacks, including as a result of an Israeli missile attack targeting the police headquarters in Gaza City during preparations for a graduation ceremony for regular civilian and traffic police, see e.g. Office for the Coordination of Humanitarian Affairs (OCHA) Protection of Civilians Weekly Report, 24-31 December 2008.

¹⁵ Communication by the IDF Spokesperson, 26 March 2009.

¹⁶ An additional 584 persons suffered from shock and anxiety syndrome. Israeli Ministry of Foreign Affairs, “Operation Cast Lead – Israel strikes back against Hamas terror in Gaza”, 21 July 2009. See also Amnesty International, *Operation “Cast Lead”*, p. 66.

incidents. In each of the investigations, it was concluded that IDF had operated in accordance with international law. Some of the investigations recommended a revision of existing methods and/or further examinations. The IDF Spokesperson's Unit has stated that there is also a central operational IDF investigation of the entire operation being conducted, which will be concluded by June 2009.¹⁷

A. Alleged breaches of the principle of distinction and indiscriminate attacks

Distinction between civilians and combatants

14. The reports of civilians being attacked by Israeli forces are numerous,¹⁸ and some of these have been reported previously by a number of special rapporteurs.¹⁹ The present report wishes to highlight, in particular, the following reported cases.
15. On 3 January, in the al Zaytoun area of Gaza City, Israeli soldiers approached a family house and ordered the male head of the household to come out. He did so, with both hands in the air and his identity documents in one hand. The soldiers shot him dead without warning, and then proceeded to fire indiscriminately into the house until everyone was on the floor, injuring the mother and four of the children, one of them fatally.²⁰
16. In one of the gravest incidents during the offensive, on 4 January, Israeli soldiers ordered over 100 Palestinians into a single house in the al Zaytoun area of Gaza City, allegedly warning them to stay indoors. Approximately 24 hours later, Israeli forces reportedly

¹⁷ Israeli Ministry of Foreign Affairs, "IDF: Conclusions of investigations into central claims and issues in Operation Cast Lead", 22 April 2009.

¹⁸ See, for instance, Amnesty International, *Operation "Cast Lead"; No Safe Place*, report of the Independent Fact Finding Committee on Gaza to the League of Arab States, 30 April 2009; B'Tselem: *Guidelines for Israel's Investigation into Operation Cast Lead*, position paper, February 2009; and Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles*, 30 June 2009.

¹⁹ See e.g. A/HRC/10/22.

²⁰ A/HRC/10/22, annex, para. 16.

shelled the house repeatedly, killing 23. Some of those who survived the attack walked 2 kilometres to a busy road in Gaza City, where they were able to find transportation in civilian vehicles to hospital.²¹

17. On 7 January, Israeli soldiers reportedly ordered an entire family out of their home in eastern Jabalia, a site of frequent Israeli incursions before the latest offensive. The six-member family allegedly walked out of the house carrying four white flags, and were told to stand in front of a tank. After approximately five minutes, a soldier allegedly suddenly opened fire, killing two of the children and two other family members. The family's home was subsequently demolished.²²

18. With regard to allegations of indiscriminate attacks by Palestinian militants, during the Israeli offensive, 571 rockets and 205 mortars landed in Israel.²³ As noted above, four Israeli civilians were killed and 182 injured due to rockets and mortar shells fired from Gaza during the offensive, in which no attempt was made to distinguish between military and non-military objects. In January 2009, as an increasing number of Palestinian rockets hit Ashkelon, Israeli officials reported that up to 40 per cent of the city's 122,000 inhabitants had felt forced to move to other parts of Israel. Sderot and villages in the area were similarly affected.²⁴ Indiscriminate rocket attacks continue as of the finalization of this report, endangering the right to life of individuals living in southern Israel.²⁵

19. OHCHR is not yet in a position to assess, in each and every individual instance, whether there has been a breach of international humanitarian law. However, in the above and

²¹ A/HRC/10/22, annex para. 13 and Amnesty International, *Operation "Cast Lead"*, p. 20.

²² National Lawyers Guild, "Onslaught; Israel's attack on Gaza and the rule of law", March 2009 and Amnesty International, *ibid.*, pp. 25-27.

²³ According to the Israeli Ministry of Foreign Affairs, "Operation Cast Lead: Israel strikes back against Hamas terror in Gaza", 21 January 2009.

²⁴ Amnesty International, *Document - Israel/OPT: Fuelling conflict: Foreign arms supplies to Israel/Gaza*, February 2009.

²⁵ See e.g. Israeli Ministry of Foreign Affairs, "Rockets hit home in Sderot, IAF targets terrorists sites in Gaza", 19 May 2009 and The Israel Project, "Rockets and mortars fired from Gaza from Jan-April-09", www.mfa.gov.il/MFA.

other cases, there is significant prima facie evidence of serious violations of international humanitarian law having been committed by the Israeli forces and Palestinian militants. Under international humanitarian law, parties to a conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives. Indiscriminate attacks are prohibited.

Distinction between civilian objects and military objectives

20. The Israeli military targeted and damaged numerous civilian administrative facilities, including buildings of the Palestinian Legislative Council, the Ministry of Foreign Affairs, the Ministry of Justice, prisons and police stations, despite its obligations under international humanitarian law to respect such facilities.²⁶ In addition, the Israeli military damaged a wide range of civilian constructions, including an estimated 21,000 private homes²⁷ hospitals, schools (including those operated by the United Nations), universities, factories, businesses and mosques.²⁸
21. By way of example, on 5 January 2009, Israeli forces bombed from the air the al-Raeiya medical centre near a large hospital in Gaza City. The centre was clearly marked as a medical facility, and there are no military or even governmental buildings in its vicinity.²⁹ The Al Quds medical centre, run by the Palestine Red Crescent Society in Gaza City, caught fire after it was hit, putting at risk the lives of around 100 patients and the medical staff caring for them.³⁰ According to the World Health Organization (WHO),

²⁶ Amnesty International, *Operation "Cast Lead"*, p. 60.

²⁷ OCHA Gaza Flash Appeal, p. 17. Amnesty International estimates that 20,000 homes were damaged and 3,000 destroyed; see *Operation "Cast Lead"*, p. 56. *No Safe Place*, estimates that over 3,000 homes were destroyed and over 11,000 damaged (para. 10).

²⁸ See, for instance, *No Safe Place*, para. 496, which reports destruction and damage to 45 mosques, 58 hospitals and primary health care centres, 178 schools, 17 universities, 215 factories, 700 businesses as well as to 80 per cent of Gaza's agricultural land.

²⁹ Amnesty International, *The conflict in Gaza: A briefing on applicable law, investigations and accountability*, January 2009, p. 14.

³⁰ International Committee of the Red Cross (ICRC), "Gaza: Wounded at risk as Al-Quds Hospital is hit", 15 January 2009.

15 of Gaza's 27 hospitals suffered damage, among them Al-Wafa rehabilitation hospital, which is Gaza's only rehabilitation hospital.³¹

22. Even facilities marked clearly as being operated by the United Nations were damaged, including schools run by the United Nations Relief and World Agency for Palestine Refugees in the Near East (UNRWA), some of which were serving as emergency shelters, and health centres. On 5 January 2009, the Asma Elementary School run by UNRWA was hit by Israeli shelling, resulting in the death of three persons.³² On 6 January, another UNRWA school, the Jabalia Preparatory Boys School, was hit, resulting in the death of an estimated 30-40 persons.³³ On 15 January, the main UNRWA compound in Gaza was hit by Israeli shells, resulting in the destruction of vehicles, foodstuffs and other humanitarian supplies, and approximately 6,500 square metres of warehouse space. Approximately 700 Palestinians fleeing Israeli attacks had been receiving shelter in this compound.³⁴ The Israeli Defence Minister reportedly stated that Hamas militants had opened fire at Israeli Armed Forces from areas adjacent to the United Nations facilities, and that the shelling was in self-defence.³⁵ Subsequently, however, he reportedly apologized for the attack, calling it a "grave mistake".³⁶

23. On 11 February 2009 the Secretary-General appointed a United Nations Headquarters Board of Inquiry to review and investigate nine incidents that occurred between 27 December 2008 and 18 January 2009 at United Nations premises in Gaza causing death, injury, or damage. Of the nine incidents it investigated, the Board of Inquiry found IDF responsible for casualties and damages in seven incidents. In one incident it determined

³¹ WHO situation report, 4 February 2009,

www.who.int/hac/crises/international/wbgs/sitreps/gaza_4feb2009/en/index.html.

³² Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 (A/63/855-S/2009/250), paras. 10-17

³³ *Ibid.*, paras 18-28.

³⁴ UNRWA, Refugee Stories: "Attacks against the UN in Gaza must be investigated", January 2009.

³⁵ *Ibid.*

³⁶ Associated Press, 15 January 2009.

that the most serious damage was caused by a Palestinian rocket most likely fired by Hamas, and in the final incident it said it was unable to reach a conclusion as to which party was responsible.³⁷

24. Israel has alleged that civilians and civilian infrastructure were impermissibly used by combatants in Gaza on a wide scale during the conflict,³⁸ and at least one IDF report contains a photograph of weapons apparently stored in a mosque in Gaza.³⁹ This conclusion has been challenged by international human rights organizations, whose investigations have concluded that either there was no large-scale abuse of civilians and civilian object by combatants, or that civilians deaths could not be explained as resulting from the presence of fighters in civilian areas.⁴⁰

25. Any civilian object becomes a legitimate military objective only if, by its nature, location, purpose or use, it makes an effective contribution to military action, and if its total or partial destruction in the circumstances ruling at the time offers a definite military advantage. Yet, even if an object loses its essentially civilian character, the attacker must still refrain from any attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Moreover, article 53 of the Fourth Geneva Convention prohibits, unless absolutely necessary by military operations, “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations”.

26. Israel asserts that it took measures to warn the civilian population of Gaza of imminent attacks, including through the dropping of leaflets, recorded telephone calls and text

³⁷ See A/63/855-S/2009/250, para. 9

³⁸ Israeli Ministry of Foreign Affairs, “Hamas exploitation of civilians”, 13 January 2009.

³⁹ See report issued by the Israeli Intelligence Heritage and Commemoration Center, available through a link on the home page of the Israeli Foreign Ministry Internet website.

⁴⁰ Amnesty International, *Operation “Cast Lead”*, pp. 4 and 75; Human Rights Watch, *Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza*, 25 March 2009, p. 5.

messages to mobile phones during the conflict. The accuracy and general effectiveness of these warnings have been called into question.⁴¹ In any event, the use of such warnings does not discharge Israel of the duty to consider the proportionality of any attack on a target which may include civilians.

Alleged use of white phosphorous

27. IDF used white phosphorous, a substance with a highly incendiary effect, in densely populated, built-up areas of Gaza City.⁴² The use of munitions containing phosphorous is not, as such, prohibited under international law, in particular for marking and smokescreen purposes. However, the use of white phosphorus in airburst method over densely populated areas is inevitably indiscriminate, in so far as its wide dispersal means that it is impossible to direct it towards only military targets.

B. Reported failure to protect medical personnel and to evacuate the wounded

28. There are reports of failures on the part of the Israeli military to meet its obligation under international humanitarian law to protect medical personnel and to care for and evacuate the wounded.⁴³ Following Israeli shelling in the al Zaytoun neighbourhood of Gaza City, the Israeli military not only refrained from assisting the wounded, but also hindered ICRC and the Palestine Red Crescent from doing so for several days. The ICRC considered the delay in allowing rescue services access unacceptable.⁴⁴ International humanitarian law is clear in that the protection of hospitals and medical teams shall not

⁴¹ Amnesty International, *Operation 'Cast Lead'*, op. it., p. 50- 51 and B'Tselem, "Guidelines for Israel's Investigation into Operation Cast Lead", p. 10-11.

⁴² See Amnesty International, *Israel/OPT: Fuelling conflict*, p. 11; Human Rights Watch, *Rain of Fire*, p. 1-2, 31, 58. A delegation from Amnesty International reported finding white phosphorous still burning in residential areas in several parts of Gaza days after the hostilities stopped on 18 January. See also *No Safe Place*, paras. 478 and 487-489.

⁴³ ICRC news release 09/04, "Gaza: ICRC demands urgent access to wounded as Israeli army fails to assist wounded Palestinians", 8 January 2009.

⁴⁴ Ibid.

cease “unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy”.⁴⁵ ICRC made it clear during the conflict that it must be possible to evacuate wounded at all times.⁴⁶

C. Border closure

29. Apart from limited openings, including to facilitate medical evacuation of seriously injured persons, all borders of Gaza remained closed during the military operation, preventing any persons from fleeing the area. The 1.5 million people of Gaza were therefore trapped in 360 square kilometres, caught in a major military operation with no possibility of fleeing to safety. Had the closure of the border not been maintained, civilian deaths may have been far lower. It is an established principle that civilians need to be able to flee from hostilities, including from indiscriminate attacks that affect civilians. Under the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own, and to return to his country (art. 13, para. 2⁴⁷), and everyone has the right to seek asylum (art. 14, para. 1). During the height of the conflict, the United Nations High Commissioner for Refugees reminded neighbouring States of their obligation to respect the universal right of those fleeing war to seek safety in other states and asked that all borders and access routes be kept open and safe.⁴⁸ However, such calls were ignored, and the borders of the Gaza Strip remained closed throughout the conflict.

IV. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN GAZA

⁴⁵ Article 19, Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949.

⁴⁶ ICRC, news release 09/05, “Gaza: life-saving ambulances must be given unrestricted access to the wounded”, 8 January 2009.

⁴⁷ The freedom to leave any country, including one's own, is also protected in ICCPR, art. 12, para. 2. In order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. See Human Rights Committee, general comment No. 27 (1999) (CCPR/C/21/Rev.1/Add.9),

⁴⁸ UNHCR briefing notes, “Gaza: the only conflict in the world where people aren't even allowed to flee”, 6 January 2009.

A. Blockade

30. During the reporting period, Israel continued its blockade⁴⁹ of the border crossings into Gaza, restricting severely all imports and exports. In so far as it constitutes collective punishment of all persons in Gaza, including the civilian population, the blockade is itself a violation of international humanitarian law.⁵⁰ The military operation and the continued blockade have had severe cumulative effects on the realization of a wide range of economic, social and cultural rights, as well as civil and political rights of the Gaza population.
31. Though most international attention has focused on the restrictions on imports into Gaza, it should be noted that the Government of Israel has also prohibited exports from Gaza. Since June 2007, the Government of Israel had permitted only a total of 13 truckloads of

⁴⁹ In the period prior to Operation Cast Lead, imports into Gaza remained constrained to very basic food items and limited amounts of fuel, animal feed, and medical and hygiene supplies. See OCHA, *The Humanitarian Monitor*, No. 32, December 2008, p. 4. During Operation Cast Lead, a daily three-hour suspension of hostilities was introduced which temporarily eased the situation of the civilian population but which was not sufficient (OCHA, *Protection of Civilians Report 1-8 January 2009* and UNICEF, “During short ceasefire, some life-saving supplies delivered in Gaza”, 7 January 2009).

⁵⁰ Article 33 of the Fourth Geneva Convention states that “[n]o protected person may be punished for an offence he or she has not personally committed. Collective penalties ... are prohibited.” Article 50 of the Convention respecting the Laws and Customs of War on Land (The Hague IV) of 18 October 1907 states that “[n]o 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.” When Israel imposed the blockade on Gaza, it justified the blockade on security grounds, stating that in the absence of security personnel loyal to the PA on the Gaza side of the crossings, it could not permit the opening of the Karni or Rafah crossings (letter from Asaf Barhel, Coordination for Government Activities in the Territories (IDF) to Noam Peleg of the Israeli non-governmental organization (NGO) Gisha in relation to the High Court Proceeding, 15 July 2007; see Gisha, “Gaza Closure Defined: Collective Punishment”, (December 2008). However, in September 2007 Israel’s Security Cabinet declared Gaza a “hostile territory”, and as a result decided that sanctions would be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip; reduce the supply of fuel and electricity; and restrict the movement of people to and from the Gaza Strip. (“Security Cabinet declares Gaza hostile territory”, 19 September 2007, available at www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm).

cut flowers to be exported from Gaza. Exports from Gaza have been banned since Hamas took power in Gaza in June 2007,⁵¹ with no justification,

32. The prohibition of exports has devastated the economy in Gaza and has prevented people from working to sustain their livelihoods and to realize their right to an adequate standard of living, as provided for in article 11 of ICESCR. According to OCHA, 65 per cent of Gazans live below the poverty line, with 37 per cent living in extreme poverty.⁵²
33. The nearly total prohibition of exports from Gaza continues to be accompanied by severe import restrictions, which prevent economic recovery and reconstruction in Gaza.⁵³ Among the many human rights negatively affected by these restrictions are the rights to adequate food, adequate housing, and the highest attainable standard of physical and mental health (articles 11 and 12 of the ICESCR).
34. The supply of food in Gaza continues to be highly volatile, resulting in substantial price increases for basic necessities such as sugar, rice, poultry and cooking oil.⁵⁴ This situation is not an inevitable result of armed conflict; there is no shortage of humanitarian aid waiting to be delivered to Gaza. Rather, the situation is a direct result of the severe restrictions on the import of foodstuffs imposed by the Government of Israel, restrictions that have been described by OCHA as “unclear and often inconsistent”.⁵⁵ On 22 March, the Government of Israel announced that it will lift all restrictions on the entry of foodstuffs, provided that the source of the shipments has been approved by the Government of Israel. As of the writing of this report, it did not appear that this decision had been implemented. It should be stressed that the right to food is not primarily about the ability to receive food aid; rather, it is a requirement that persons be enabled to feed themselves and to sustain an adequate livelihood.

⁵¹ OCHA, Weekly Report on the Protection of Civilians 18-24 March.

⁵² OCHA, Field update on Gaza from the Humanitarian Coordinator, 10-16 March 2009.

⁵³ OCHA, The Humanitarian Monitor, March 2009.

⁵⁴ OCHA, Field Update on Gaza 17-23 March.

⁵⁵ OCHA, Weekly Report on the Protection of Civilians 18-24 March.

35. The realization of the right to adequate housing is continuously frustrated by the blockade on the Gaza Strip. The import of cement, for example, has been blocked consistently since November 2008, as it is feared by Israeli authorities that it could serve a “dual purpose”. However, cement is urgently needed in Gaza for the reconstruction of destroyed homes and buildings. It is also needed urgently for the reconstruction of water pipes that were destroyed during the Israeli offensive.
36. The right of Gazans to the enjoyment of the highest attainable standard of physical and mental health was negatively affected already before and during the Gaza military operation.⁵⁶ Subsequent to the hostilities, intra-Palestinian disputes between the ministries of health in Ramallah and Gaza resulted in a temporary halt of the Referral Abroad Department (responsible for processing patients who require medical treatment outside of the Gaza Strip), further hindering the provision of medical aid abroad. This issue has since been resolved through the establishment of a joint national referral committee.⁵⁷ The right to health of children, set out in article 24 of CRC, is of particular concern in Gaza. United Nations agencies, Ministry of Health officials and health NGOs report that rising poverty, unemployment and food insecurity, compounded by the conflict, have increased the threat of child malnutrition.⁵⁸ In January, UNICEF said that 10.3 per cent of Gazan children under five were stunted.
37. During Operation Cast Lead, affected individuals and NGOs filed two petitions with the Supreme Court of Israel.⁵⁹ The petitions sought orders for (a) IDF to be restrained from causing delays in evacuating the wounded in Gaza to hospitals (including through halting IDF attacks on ambulances and medical personnel); and (b) the blockage in the supply of electricity due to combat operations to be lifted to allow hospitals, clinics, the water

⁵⁶ See paras. 20 and 21 above.

⁵⁷ Joint OCHA and WHO statement, “Concern over halting of Gaza medical patients referrals”, 30 March 2009.

⁵⁸ WHO Health Action in Crises (HAC) Highlights for the week 20 to 26 April 2009.

⁵⁹ *Physicians for Human Rights and others v. Prime Minister of Israel and others*, HCJ 201/09 and *Gisha: Legal Centre for Freedom of Movement and others v. Minister of Defence*, HCJ 248/09.

system and the sewage system to function properly. The Court denied both petitions. In doing so it accepted explanations provided by IDF of the sufficiency of mechanisms it had recently established to facilitate transfers of wounded to Israel and efforts to repair electricity infrastructure and the provision of diesel oil. The Court concluded that

[i]n view of the establishment and enhancement of the humanitarian mechanisms, which it may be assumed will prove their effectiveness, in view of the statement made to us that a serious effort will be made to improve the evacuation and treatment of the wounded, in view of the setting up of a clinic in the vicinity of the Erez crossing (and to the extent that the Palestinian side will also agree to the transfer of the wounded to Israel for treatment), it is to be hoped that the humanitarian mechanisms will operate properly in accordance with the obligations of the State of Israel. In these circumstances, we see no further reason to grant relief in the form of an order nisi at this time.⁶⁰

B. Extrajudicial executions

38. Reports indicate that the security forces of Hamas have conducted a large number of extrajudicial executions, beatings, torture and ill-treatment against alleged collaborators with Israeli forces, former PA security personnel and Fatah supporters, during and after the Israeli operation in Gaza. Most of the victims were reportedly abducted from their homes and later found dead or injured in isolated areas, or were found dead in the morgue of Gaza's hospitals.⁶¹ At least 32 Palestinians have allegedly been extrajudicially executed by the security forces of Hamas and unidentified gunmen after having being accused of collaboration with Israel,⁶² 18 of whom were extrajudicially executed during the Israeli offensive.⁶³ Hamas has reportedly announced that investigations are under way in at least some of the reported killings.⁶⁴

⁶⁰ Ibid., paragraph 23.

⁶¹ Amnesty International. press release. 12 February 2009.

⁶² PCHR, Special Report, Inter-Palestinian Human Rights Violations in the Gaza Strip, February 2009, p.

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⁶³ Human Rights Watch, "Under cover of war; Hamas political violence in Gaza", April 2009, p. 1.

⁶⁴ See e.g. Al Jazeera English, "Hamas accused of killing rivals", 21 April 2009

V. REPORTED VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN THE WEST BANK, INCLUDING OCCUPIED EAST JERUSALEM

39. During the reporting period, the human rights situation in the West Bank continued to be critical, primarily as a result of reported violations committed by Israel, but also due to a rise in alleged violations of rights of political opponents, committed in a context of continued political separation between PA and Hamas.

A. Alleged arbitrary detentions, torture, extrajudicial executions and ill-treatment

40. During the reporting period, Israeli forces continued to conduct military operations in the West Bank, with the purpose of detaining persons suspected of involvement in activities against Israeli security as per an Israeli military order.⁶⁵ This military order has been criticized for its vagueness at different levels.⁶⁶ In the month of March alone, more than 120 operations of this nature took place, resulting in the arrest of more than 300 Palestinians.⁶⁷ Individuals are generally detained in Israel including under administrative detention orders. Administrative detention in Israel is conducted on the basis of an administrative order issued by a military commander, as opposed to a judicial decision, and there is no indictment or trial. There are often strict restrictions on access to counsel, and usually neither the detainees nor their counsels are allowed to examine the evidence against them. This being the case, it cannot be said that administrative detainees have a meaningful opportunity to challenge their detention.⁶⁸ Israel justifies administrative detention based on article 78 of the Fourth Geneva Convention.

⁶⁵ Israeli Military Order No. 1229, of 1988

⁶⁶ See B'Tselem regular updates on administrative detention, at www.btselem.org/english/Administrative_Detention/Israeli_Law.asp.

⁶⁷ Information compiled by the OHCHR Office in the OPT.

⁶⁸ See B'Tselem, *Human Rights in the Occupied Territories: 2008 Annual Report*.

41. In the OPT, the Israeli military order allowing administrative detention states that persons can be detained for up to six months, with the possibility of indefinite extension (to be decided by the military commander in the region) where there is a “reasonable basis for believing that the security of the region or public safety” so requires.⁶⁹ In a letter to an Israeli NGO dated 21 January 2009, the Government of Israel stated that there were 546 Palestinians being detained under administrative detention provisions. Of those 546, 42 had been detained for more than two years.⁷⁰ The number of administrative detainees declined steadily throughout 2008, from 813 in January to the aforementioned 546 in December.⁷¹ By 31 March 2009, there were 506 administrative detainees in Israeli prisons, including 2 children, out of a total of 7,884 Palestinians detained in Israel, of which 408 were children,⁷²

42. The Israeli practice of administrative detention as described above is in violation of several provisions of article 9 of ICCPR, which prohibits arbitrary detention and states, inter alia, that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest” and that “[a]nyone arrested or detained on a criminal charge shall be ... entitled to trial within a reasonable time or to release”. Although Israel has notified other States parties of its derogation from article 9 due to the existence of a state of emergency, the Human Rights Committee has expressed concern that the derogation limits the effectiveness of judicial review, thus endangering protection of other, non-derogable provisions of the Covenant.⁷³ More recently, in May 2009, the Committee against Torture reiterated its concern that administrative detention as practised by the

⁶⁹ Ibid.

⁷⁰ http://www.btselem.org/English/Press_Releases/20090205.asp

⁷¹ IDF Spokesperson's Office's letter to B'Tselem, 21 January 2009 and B'Tselem, published at www.btselem.org/English/Administrative_Detention/Statistics.asp.

⁷² B'Tselem, http://www.btselem.org/english/statistics/Detainees_and_Prisoners.asp and http://www.btselem.org/english/statistics/Minors_in_Custody.asp. This figure does not include those held in IDF facilities.

⁷³ Concluding observations of the Human Rights Committee on the second periodic report of Israel (CCPR/CO/78/ISR), para. 12. In its third periodic report to the Human Rights Committee, submitted in July 2008, the Government of Israel said that a state of emergency may be declared by the Knesset (the Israeli parliament) for a period of one year, a state which has been renewed annually since 1997 (CCPR/C/ISR/3, para. 157), and that the Government and the Knesset are working jointly to complete the needed legislative procedures required to end the state of emergency (ibid., para. 159).

Government of Israel does not conform to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it “deprives detainees of basic safeguards including the right to challenge the evidence which is the basis for the detention, warrants are not required, and the detainee may be de facto in incommunicado detention for an extended period, subject to renewal”.⁷⁴ The Human Rights Committee, in its general comment No. 5 (1981) on derogations, has stated that measures taken under article 4 should be of an “exceptional and temporary nature and may last only as long as the life of the nation concerned is threatened”.⁷⁵

43. Furthermore, international humanitarian law, in particular the Fourth Geneva Convention, applies in the West Bank. Article 76 of the Convention states clearly that civilians “accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein”. Article 5 of the Convention also states that persons accused of offences, even those “engaged in activities hostile to the security of the State ... shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention”.⁷⁶

44. Cases of alleged torture of Palestinian detainees in Israeli prisons continue to be reported by human rights NGOs. These reports indicate that various methods of torture are used, including preventing access to toilet facilities, physical violence, binding in painful positions, and humiliation and threats. In addition, a large number of detainees are not able to receive visits from family members living in the West Bank and Gaza, who are refused entry into Israel.⁷⁷

⁷⁴ Concluding observations of the Committee against Torture on the fourth periodic report of Israel (CAT/C/ISR/CO/4), para. 17.

⁷⁵ Paragraph 3. See HRI/GEN/1/Rev.9 (vol. I), chap. II.

⁷⁶ See Israeli Military Order No. 1229/1988.

⁷⁷ CAT/C/ISR/CO/4, para. 19, The Association for Civil Rights in Israel, “The State of Human Rights in Israel and the Occupied Territories: 2008 Report” and The United Against Torture Coalition, *Torture & Ill-Treatment In Israel & the occupied Palestinian territory: An Analysis of Israel’s compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Annual Report 2008*.

45. The PA security forces in the West Bank also reportedly continued to carry out arbitrary detention of persons accused of being supporters of Hamas or of collaborating with Israel⁷⁸ Several senior political figures allegedly affiliated with Hamas were arrested in early March. According to the Palestinian Independent Commission for Human Rights (ICHR), such incidents are increasing. Numerous cases have been documented of detainees tortured while in PA custody, sometimes resulting in death. ICHR reports that from December 2008 through February 2009, 60 complaints were received from Palestinians claiming that they were subjected to torture in PA detention, and that in February alone, four deaths in PA custody, apparently due to torture, were documented.⁷⁹ It is further worrisome that courts in Hebron and Gaza issued 7 death sentences (five in the Gaza Strip and two in the West Bank) during the reporting period.⁸⁰

B. Freedom of expression, assembly and association in the oPt

46. During the military offensive in Gaza, mass demonstrations took place in nearly every district of the West Bank, resulting in a large number of clashes with Israeli forces. On several occasions during the reporting period Israeli soldiers used rubber-coated metal bullets, sound bombs and tear gas canisters, resulting in the death of a total of five Palestinian demonstrators (3 in December 2008 and 2 in January 2009) as well as the injury of numerous others. In another incident in March 2009, one demonstrator was reportedly critically injured after having sustained a head injury by one such bullet.⁸¹

47. On 20 March 2009, Israeli law enforcement authorities reportedly prevented peaceful events marking the designation by the League of Arab States of East Jerusalem as the Capital of Arab Culture 2009. Israeli police officers dispersed crowds and confiscated flags, and arrested at least 10 persons.⁸²

⁷⁸ See, for instance, CAT/C/ISR/CO/4 at para. 34.

⁷⁹ ICHR, December 2008 Monthly Report, January 2009 Monthly Report .

⁸⁰ ICHR monthly reports covering the period December 2008 - March 2009.

⁸¹ OCHA, Protection of Civilians Weekly Report 18-24 March 2009.

⁸² OCHA, Protection of Civilians Weekly Report 18-24 March 2009.

48. Journalists in both the West Bank and the Gaza Strip perceived as being partial to the opposing party were reportedly subjected to various degrees of harassment, including arbitrary detention, according to a report released in January.⁸³ Several newspapers were allegedly prevented by PA from being printed and/or distributed in the West Bank, including two Gaza-based publications that had been banned by PA in 2007 on the grounds that they favoured Hamas.⁸⁴ In Gaza, there were several incidents in 2008 of Hamas authorities preventing several West Bank newspapers from being brought into the area.⁸⁵
49. During December 2008 and January 2009, nine peaceful demonstrations organized in various parts of the West Bank were halted by PA (in the West Bank cities of Berzeit, Hebron and Ramallah). For example, on 28 December 2008, PA security forces reportedly used excessive force to prevent a demonstration that took place in the city of Hebron, resulting in the injury of several Palestinian demonstrators. On the same day, PA forces arrested 10 Palestinian protestors during a peaceful demonstration organized in Ramallah⁸⁶.

C. Forced evictions and home demolitions

50. Forced evictions and building demolitions continued in the West Bank, including East Jerusalem and Area C.⁸⁷ From January through the end of April 2009, a total of 72 structures were either demolished or sealed off and rendered unusable; 296 persons were

⁸³ Committee to Protect Journalists, "West Bank, TV correspondents, cameraman detained", 27 January 2009.

⁸⁴ Committee to Protect Journalists, *Attacks on the Press 2008*.

⁸⁵ ICHR, *Annual Report 2008*.

⁸⁶ ICHR December 2008 Monthly Report.

⁸⁷ Israel controls both security matters and civil affairs, including planning and construction, in Area C, which comprises almost 61 per cent of the West Bank. Given the interrelationship between Areas A and B, both of which are fragmented and surrounded by Area C, and Area C, the Israeli control of the latter affects not only the Palestinians whose homes are within it; it also affects the development prospects of every community in the West Bank and the interaction between these communities.

consequently displaced and another 192 were affected in other ways, including through the loss of their main means of livelihood.⁸⁸

51. East Jerusalem in particular is faced with a wave of new demolition orders. Since 1967, Israel has failed to provide Palestinian residents of East Jerusalem with adequate planning to meet natural population growth. While Palestinians face significant obstacles to legally build on the 13 per cent of East Jerusalem designated for Palestinian construction, Israeli settlements have flourished on the 35 per cent of land expropriated for them, in contravention of international law. This situation has resulted in a housing crisis for the Palestinian population characterized by a shortage in housing, widespread “illegal” construction in East Jerusalem and ensuing demolition by Israel of “illegal” Palestinian construction.⁸⁹

52. Due to limitations of time and space this report will highlight only one of many urgent demolition threats, namely in the Silwan area of East Jerusalem, where the Jerusalem municipality has stated it wants to press forward with a plan to demolish some 90 Palestinian homes, reportedly to make way for an archaeological park. As a result, well over 1,000 persons would be forcibly displaced.⁹⁰

53. The justification given by the Israeli authorities for home demolitions, particularly in East Jerusalem, is that the Palestinian residents had erected structures without building permits. Though neutral at first glance, there is ample evidence that the policy has a disproportionate effect on the Palestinian population, both in its formulation and its implementation. In its review of Israel’s report in 2007, the Committee on the Elimination of Racial Discrimination expressed concern regarding the “disproportionate targeting of Palestinians in house demolitions” and “[reiterated] its call for a halt to the

⁸⁸ According to OCHA internal data, updated as of May 2009. Additional information available in OCHA Special Focus Report: The Planning Crisis in East Jerusalem, April 2009, at www.ochaopt.org.

⁸⁹ OCHA Special Focus Report: The Planning Crisis in East Jerusalem, and OHCHR-OPT press release of 1 May 2009 issued in occasion of the publication of the OCHA report.

⁹⁰ Ibid.

demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner”.⁹¹ It should also be noted that the Committee on Economic, Social, and Cultural Rights has stated that “instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law”.⁹² The Commission on Human Rights also adopted a resolution in 1993 in which it stated that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing.”⁹³

54. There are numerous other cases of threatened evictions or demolitions and OHCHR will be returning to this important issue in future reporting.

D. Settlements and settler violence

55. The question of forced evictions and home demolitions cannot be examined without due regard to the question of ongoing settlement activity.

56. On 27 January 2009, an Israeli NGO, Peace Now, released a report which confirmed that the number of new structures in the West Bank settlements and outposts had increased by 60 per cent in 2008, compared to 2007.⁹⁴ According to OCHA, at the end of 2008, approximately 485,000 settlers were residing in 121 settlements in the West Bank, including 195,000 in 12 settlements in East Jerusalem.⁹⁵

57. Settlement activity in the West Bank amounts to violations of numerous humanitarian law provisions. Article 55 of the Hague Regulations states that the “occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate,

⁹¹ CERD/C/ISR/CO/13, para. 35.

⁹² General comment No. 4 (1991) on the right to adequate housing, para. 18. See HRI/GEN/1/Rev.9 (vol. I).

⁹³ Resolution 1993/77 on forced evictions.

⁹⁴ Peace Now, “Summary of construction in the West Bank”, January 2009.

⁹⁵ OCHA, “West Bank movement and access update”, May 2009, p. 13.

forests, and agricultural estates”. Furthermore, article 49 of the Fourth Geneva Convention stipulates specifically that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. Israel’s continued settlement activity is in flagrant violation of this provision.

58. Besides the fact that settlements are in and of themselves a violation of Israel’s obligations under international humanitarian law, violent acts by settlers against the Palestinian population of the OPT continue, usually with impunity. These acts increased in 2008, with OCHA noting that, since 2006, a “significant majority” of such violent acts have been carried out by groups of settlers, as opposed to individuals, as had generally been the case before 2006.⁹⁶ An Israeli human rights organization has documented 429 cases of settler violence against Palestinians and their property in 2008, a 75 per cent increase over 2007.⁹⁷ Israeli settlers living in many areas have a special dispensation regarding the owning and carrying of firearms.

59. There have been incidents of violence where large groups of settlers, sometimes more than 100, have attacked Palestinian individuals in the West Bank. In some widely reported instances,⁹⁸ the attacks were extensive and prolonged, lasting hours. Despite this trend, Israel’s security forces in most cases fail to prevent such attacks and in most cases, settlers do not face prosecution or even investigation.

60. There are instances where settlers are prosecuted for having committed violent acts towards Palestinians. In December 2008, a resident of the Yitav settlement in the northeast West Bank was sentenced to 16 months of imprisonment after having shot and paralyzed for life an unarmed Palestinian civilian for no apparent reason.⁹⁹ While

⁹⁶ OCHA, “Unprotected: Israeli settler violence against Palestinian civilians and their property”, December 2008.

⁹⁷ According to HRW, Israel/Occupied Palestinian Territories (OPT), <http://www.hrw.org/en/node/79235>.

⁹⁸ See e.g. OCHA, “Unprotected: Israeli settler violence against Palestinian civilians and their property”, December 2008.

⁹⁹ B’Tselem, “Settler gets 16 months in jail for shooting and paralyzing Palestinian”, 22 December 2008.

OHCHR is not aware of any comprehensive statistics on settler violence-related prosecutions, such prosecutions appear, to be exceptions to the prevailing impunity.

61. In addition to the fact that settler violence generally takes place with impunity, OHCHR is concerned that there are instances where IDF acquiesce or even cooperate with settlers in committing violent acts against Palestinians.

E. Case study: attacks on Safa village

62. Recent events in the village of Safa, near Hebron, are indicative of violations in the OPT related to settler violence and the involvement of IDF in settler violence:
63. The village of Safa, 12 kilometres north of Hebron, is bordered by the Israeli settlement of Bat Ayin in the north and the settlement of Gush Etzion in the north-east. On 2 April 2009, 13-year-old Shlomo Nativ was killed and Yair Gamliel, aged seven, was injured, allegedly by a resident of Safa, in the centre of Bat Ayin settlement.
64. According to information gathered by OHCHR in Safa village, shortly following the incident in Bat Ayin, Israeli forces entered the village. Troops temporarily occupied three homes, declaring them military outposts, and bulldozers blocked off entrances to the village, isolating it from farmlands and neighbouring villages. A complete curfew was imposed on the residents of the village for 24 hours as Israeli troops raided homes, searching for the perpetrator of the murder. On 2 April, IDF arrested three men from Safa.
65. On Saturday, 3 April 2009, at about 10 p.m., dozens of IDF troops entered the village from different directions, some in military vehicles. Troops then used megaphones ordering all men in the village to exit their homes and come out to the street. The Abu Dayyeh family, with 13 members in Safa, left their home as ordered. All family members were out on the street except Mohammad and his sister Jamila, who are both mentally disabled. The soldiers instructed the family members to sit down on the street in front of

the house. Hatem (34 years of age) and Mahmoud (23), were taken aside by soldiers and their identity papers were checked. They were handcuffed, blindfolded, and forced to stand face to the wall. The troops then proceeded to beat Hatem on the face with their hands and on various parts of his body with the butts of their rifles. Mahmoud started to cry out while his eldest brother was beaten; then one soldier kicked Mahmoud several times and hit his head against the wall of the house. Mohammad, who exited the house at this point, was immediately beaten by several soldiers for several minutes, and then literally dragged to the spot where his other two brothers were detained (approximately 6 metres away from the rest of the family).

66. After questioning Hatem and Mahmoud for some minutes, the soldiers entered the family house and searched it, throwing family possessions to the ground and damaging furniture in the process. They then left the village at approximately 12.15 a.m., taking Mohammad and Mahmoud. Family members were reportedly able to confirm later that day that Mahmoud had been detained in an interrogation centre in Jerusalem while Mohammad was taken to Shikma prison in Israel. Mohammad was released on 7 April, with scars from apparent beatings while in detention. Mahmoud was released from detention on bail on 27 April.

67. On 6 April, IDF arrested two more people from Safa village, increasing the number of Palestinians who were arrested from Safa to seven in total. On the same day, dozens of Israeli settlers tried to attack the village from the northern side, at approximately 10.30 p.m.; however, hundreds of Palestinians from Safa as well as from the nearby town of Beit Ummar congregated to prevent them from entering the village, and after a brief standoff, the settlers were forced by IDF to return to the settlement.

68. On 8 April, settlers from both settlements, escorted by IDF troops, gathered to the north and east of Safa. Many of the settlers were armed, and they opened fire at Palestinian civilians who gathered to protect themselves and their property. The settlers and IDF used firearms, sound bombs and tear gas canisters against Palestinian civilians, who in

response threw stones. IDF brought reinforcements to the area and declared it a closed military zone. These attacks continued for 90 minutes, and peaked when IDF broke into the village and raided houses. As a result of these attacks, nine Palestinian civilians were wounded by gunshots, six by shots fired by IDF soldiers and three who were shot by settlers. Additionally, 26 civilians suffered from teargas inhalation.

69. These events raise a number of human rights concerns. As occupying Power, Israel has the obligation to ensure order in the OPT; specifically to ensure that Palestinians are not targeted by Israeli settlers (or vice versa). Far from carrying out this duty, it appears that, in this instance, IDF were directly involved in settler violence, by escorting settlers to Safa and openly assisting them in attacking the village.

70. In addition, IDF subjected persons to ill-treatment during their search of the village. All IDF operations in the West Bank must be in strict compliance with international human rights standards. In particular, force should be used only as a last resort, and only to the minimum extent necessary. It appears that these standards were not followed. It is also, as noted above, a violation of international humanitarian law that persons detained in the course of such operations are detained in Israel, and not in the West Bank.

F. The Wall and restrictions on the freedom of movement

71. The Wall enclosing, and in many areas encroaching into, the West Bank, remained throughout the reporting period. As of August 2008, the last date for which comprehensive data are available, approximately 57 per cent of the Wall's planned route of 723 kilometres had been completed. Approximately 86 per cent of the route of the Wall is actually in the West Bank, and not along the Green Line (the armistice line between Israel and the Jordanian-controlled West Bank), and will effectively annex large parts of the West Bank to Israel. Almost 12 per cent of the land of the West Bank (including East Jerusalem) will remain either west of the Wall or in enclaves created by the route. Approximately 35,000 Palestinians holding West Bank identity documents in 35 communities will be located between the Green Line and the Wall; 125,000

Palestinians will be surrounded by the Wall on three sides and 26,000 on four sides. Over 80 per cent of the Israeli settlers in the West Bank will be connected to Israel, whereas Palestinians will be separated from land, livelihoods and services, with access dependent on an extremely restrictive permit regime.¹⁰⁰

72. As noted above, the Wall has been found by the International Court of Justice to be in contravention of Israel's obligations under international law, in so far as it departs from the Green Line. In its advisory opinion, the Court stated that the construction of the Wall in the OPT should cease and the portions already built in occupied territory dismantled. It is of grave concern that as of the present time Israel has chosen not to comply with this advisory opinion. However, it should be stressed that the Wall is but one element of the extreme restrictions on the movement of Palestinians within the West Bank, including permanent checkpoints where Palestinians are usually subjected to checks that cause prolonged delays. As of March 2009, OCHA observed 634 closure obstacles blocking Palestinian movement within the West Bank, including 93 staffed checkpoints.¹⁰¹ In addition, the Army operates 39 permanent checkpoints that control travel between the West Bank and Israeli territory. Israel maintains that checkpoints are vital for security. However, most of these checkpoints are located well inside the West Bank, up to several kilometres from the Green Line.¹⁰²

73. The Wall itself has, as of March 2009, 66 gates. Only half of them are open to Palestinian use, and then only for holders of a special permit from the Israeli forces. The gates available for Palestinian use are open only part of the day. In addition to staffed checkpoints, the army has erected hundreds of physical obstructions (dirt piles, concrete blocks, boulders, trenches, fences and iron gates) to block access to main roads and

¹⁰⁰ OCHA, "The humanitarian impact of the barrier", August 2008.

¹⁰¹ OCHA, "West Bank movement and access update", May 2009.

¹⁰² B'tselem, "Restrictions on movement",
www.btselem.org/english/Freedom_of_Movement/Statistics.asp.

channel Palestinian traffic to staffed checkpoints. In recent years, the number of these obstructions has gradually risen.¹⁰³

74. Travel on hundreds of kilometres of roads in the West Bank is restricted or prohibited outright for Palestinians, whereas Israelis are allowed to travel on them freely. As of March 2009, travel of all Palestinians (apart from East Jerusalem residents, who carry special identity papers and are entitled to purchase cars with Israeli-issued number plates) is restricted or prohibited outright on 430 kilometres of roads in the West Bank, while Israelis are allowed to travel these sections freely. On 137 of the 430 kilometres, the Army prohibits Palestinian travel completely; on the remainder of the forbidden roads, only Palestinians with permits are allowed to travel.¹⁰⁴

75. In addition, about one third of the West Bank, including occupied East Jerusalem, is completely prohibited to Palestinians without a special permit issued by the Israeli military. Even with a special permit, entering these restricted areas with a Palestinian car (i.e. a car with a Palestinian-issued number plate) is prohibited under all circumstances. On the occasion of Jewish holidays from 9 through 11 March 2009, the Government of Israel imposed a three-day closure on the West Bank, prohibiting Palestinians from entering Israel and occupied East Jerusalem. A similar ban was enforced from 6 through 18 April, again for Jewish holidays.

76. It is difficult to adequately express the wide scope of human rights violations that these extreme restrictions impose on the Palestinian population. These severe restrictions themselves amount not only to a violation of the right to freedom of movement,¹⁰⁵ but also result in situations where Palestinians are effectively prevented from exercising other rights, including the right to work (article 6 of ICESCR), the right to an adequate standard of living (article 11), the right to health (article 12), and the right to education

¹⁰³ Ibid.

¹⁰⁴ B'Tselem, 2008 Annual Report, p. 13

¹⁰⁵ Article 12 of ICCPR states that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right of liberty of movement”.

(article 13). Though comprehensive data do not exist, thousands of people are effectively prevented on a daily basis from accessing workplaces, schools and health care facilities, from purchasing necessary goods and from visiting family members and friends. As noted above, the International Court of Justice has found that both ICCPR and ICESCR remain applicable in the West Bank, and the entire regime restricting the freedom of movement of the Palestinian population is in violation of Israel's international obligations under these treaties.

VI. CONCLUSIONS AND RECOMMENDATIONS: THE NEED FOR ACCOUNTABILITY

77. During the reporting period, the already critical human rights situation in the OPT deteriorated further. The recommendations made by the United Nations Secretary-General and the High Commissioner for Human Rights in recent reports on the human rights situation¹⁰⁶ have not been implemented. All recommendations made previously by the Secretary-General and the High Commissioner, addressed to all duty bearers, remain valid and urgently need to be implemented by the parties. In particular, the High Commissioner remains gravely concerned that Israel has not yet complied with the Advisory Opinion on the Wall of the International Court of Justice, and that the severe restrictions on movement of Palestinian persons in the West Bank continue.

78. As reported above, significant prima facie evidence indicates that serious violations of international humanitarian law as well as gross human rights violations occurred during the military operations of 27 December 2008 to 18 January 2009, which were compounded by the blockade that the population of Gaza endured in the months prior to Operation Cast Lead and which continues.

¹⁰⁶ Including A/63/518, A/63/519, A/HRC/7/76, A/HRC/8/17 and A/HRC/8/18.

79. **Across the OPT, reported human rights violations during the reporting period include arbitrary detentions; torture and ill-treatment; extrajudicial executions; forced evictions and home demolitions; settlement expansion and related violence; as well as restrictions on freedom of movement and freedom of expression. While these violations are of deep concern in their own right, the nearly total impunity that persists for such violations (regardless of the responsible duty bearer) is of grave concern, and constitutes a root cause for their persistence.**

80. **In this context, the High Commissioner makes the following recommendations:**

- **The blockade of Gaza and the restrictions on the entry and exit of people and goods in the West Bank, as well as inside the West Bank, amount to collective punishment under article 33 of the Fourth Geneva Convention. The High Commissioner reiterates her call for the immediate easing of restrictions with a view to the complete lifting of the blockade and other restrictions;**
- **All allegations of violations of international humanitarian law and human rights violations during the Gaza military operations must be investigated by credible, independent and transparent accountability mechanisms, taking fully into account international standards on due process of law. Equally crucial is upholding the right of victims to reparation. All parties concerned, as well as States and the international community as a whole, should render full support and cooperation to all such accountability efforts. The High Commissioner stresses in particular the need for full cooperation with and support to the ongoing work of the independent fact-finding mission mandated by the Human Rights Council and headed by Justice Richard Goldstone;**
- **In the wider OPT context, addressing the persisting impunity for human rights and international humanitarian law violations committed by all parties is vital for preventing a further deterioration of the human rights situation. In**

particular, reported instances of arbitrary detentions, torture and ill-treatment and extrajudicial executions should be investigated. A key obstacle in this regard is the widespread recourse to military justice systems, which do not meet international standards of due process, by all parties. This should be curtailed;

- **The Government of Israel must stop its expansion of settlements, which are illegal. It should also issue viable zoning plans and a less cumbersome process for issuing building permits in a non-discriminatory manner for all, in East Jerusalem and other places in the West Bank. Until such time, the High Commissioner calls for an immediate halt to evictions and demolitions of Palestinian homes. The Government of Israel also needs to address, as a matter of urgency, the persisting impunity for settler violence, while providing effective protection for all, in particular the vulnerable groups most affected by such acts;**

- **In its efforts to promote a much-needed political solution to the over-40-year-old conflict, the international community should ensure that such a long-awaited outcome is anchored in international law, in particular international human rights and humanitarian law, including the advisory opinion of the International Court of Justice. There can be no lasting peace without respect for human rights and without accountability for human rights violations.**
