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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

**Human rights violations emanating from Israeli military attacks and
incursions in the Occupied Palestinian Territory, particularly the
recent ones in the occupied Gaza Strip**

**Report of the High Commissioner for Human Rights on the
implementation of Human Rights Council resolution 7/1***

* Late submission. The footnotes to the present report are circulated as received, in the language of submission only.

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Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 7/1 of 6 March 2008 on human rights violations emanating from Israeli military attacks and incursions, in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its eighth session, on the progress made in the implementation of that resolution.
2. In its resolution 7/1, the Council “condemns the persistent Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip, which resulted in the loss of more than 125 lives and hundreds of injuries among Palestinian civilians, including women, children and infants; expresses its shock at the Israeli bombardment of Palestinian homes and the killing of civilians therein and at the Israeli policy of inflicting collective punishment against the civilian population, which is contrary to international humanitarian law, and calls for bringing the perpetrators to justice; calls for the immediate cessation of all Israeli military attacks throughout the Occupied Palestinian Territory and the firing of crude rockets, which resulted in the loss of two civilian lives and some injuries in southern Israel; also calls for urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip; reiterates its calls for immediate protection of the Palestinian people in the Occupied Palestinian Territory in compliance with international human rights law and international humanitarian law”; and “urges all parties concerned to respect the rules of international human rights law and international humanitarian law and to refrain from violence against civilian populations”.
3. The present report assesses the progress made in the implementation of the resolution for a two-month period (25 February to 25 April 2008), from the end of the reporting period of the previous report on human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip (A/HRC/7/76). In accordance with Council resolution 7/1, the present report primarily focuses on the situation in and around Gaza (particularly in the context of its closure) and on violence against the civilian populations. It also addresses other actions taken by the parties during the reporting period which affect the human rights situation in the Occupied Palestinian Territory (OPT), sets out briefly the legal obligations of all parties under international human rights law and international humanitarian law and provides recommendations to the Council.

I. LEGAL CONTEXT: OBLIGATIONS OF THE PARTIES TO RESPECT THE RULES OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

4. Human Rights Council resolution 7/1 calls on all parties concerned to respect the rules of international human rights law and international humanitarian law. As set out briefly below, both Israel and the Palestinian Authority, as well as Hamas in Gaza, carry obligations under international humanitarian law and international human rights law vis-à-vis the civilian populations in both Israel and the OPT.

A. International humanitarian law

5. The most relevant international humanitarian law standards concerning Israel's responsibilities in the OPT as the Occupying Power are set out in The Hague Regulations and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (hereinafter the "Wall Opinion"), the International Court of Justice (ICJ) recalled that while Israel is not a party to The Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention IV), to which The Hague Regulations are annexed, the provisions of The Hague Regulations have become part of customary international law. It also concluded that the Fourth Geneva Convention is applicable in the Palestinian territories which before the 1967 conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel.¹

6. In relation to the Palestinian Authority (PA), the Palestinian Liberation Organization (PLO) made a unilateral undertaking, by a declaration on 7 June 1982, to apply the Fourth Geneva Convention and the Protocol Additional thereto relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Switzerland, as depositary State, considered that unilateral undertaking valid.² In 1989, the PLO made an additional written undertaking to "adhere to the four Geneva Conventions of 12 August 1949 and the two Protocols Additional thereto". Concerning Hamas, it is bound by international humanitarian law obligations concerning, inter alia, the conduct of hostilities and the rights of civilians and other protected persons. In addition, Hamas has confirmed its commitment to respect "international law and international humanitarian law insofar as they conform with our character, customs and original traditions".³

¹ This fact has not been altered by Israel's 2005 unilateral withdrawal of its forces from the strip, as confirmed repeatedly since then by the General Assembly (most recently in its resolution 62/107 of 17 December 2007) and by the United Nations Secretary-General (notably in this message to the United Nations Seminar on Assistance to the Palestinian People, Amman, Jordan, 19 February 2008; and in his message to the opening of the 2008 session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York, 14 February 2008).

² ICJ Wall Opinion, para 9.

³ Text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council, 17 March 2007.
<http://www.islamicnews.net/Document/ShowDoc09.asp?DocID=91477&TypeID=9&TabIndex=2>.

B. International human rights law

7. In relation to Israel's responsibilities under its international human rights treaty obligations with regard to the OPT, in its Advisory Opinion on the Wall, they concluded that the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) are applicable.⁴ The position of United Nations human rights treaty bodies mirrors that of the ICJ, namely that as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the OPT, to the extent that it continues to exercise jurisdiction in those territories.⁵ The ICJ 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".⁶

8. The Palestinian Authority, as recognized in a number of public undertakings whereby the PA, the PLO and the Palestinian Legislative Council (PLC) have declared their commitment to respect international human rights law, is also bound to abide by international human rights obligations.⁷ These undertakings have included assurances, decrees and declarations and various agreements under the Oslo Accords signed with Israel, which stated that both parties would exercise their powers and responsibilities with "due regard to internationally accepted norms and principles of human rights and the rule of law". Similarly, article XIV of the 1994 agreement on the Gaza Strip and the Jericho Area provides for both Israel and Palestine to respect human

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

⁵ An examination of the concluding observations of different United Nations treaty bodies confirms this view: In its concluding observations of 2003, the Human Rights Committee (HRC) reiterated that the ICCPR provisions apply "to the benefit of the population of the Occupied Territories for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant...". Similarly in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control" (E/C.12/1/Add.90) The Committee on the Elimination of Racial Discrimination (CERD) drew a similar conclusion in its concluding observations of March 2007 (CERD/C/ISR/CO/13, para. 32).

⁶ ICJ Advisory Opinion, para. 112.

⁷ PLO chairman Yasser Arafat repeatedly stated that he and his Government were committed to respecting to all international human rights standards, for instance, to representatives of Amnesty International on 2 Oct 1993 and 7 Feb 1996.

rights.⁸ Moreover, the Palestinian Basic Law⁹ contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments (the relevant articles came into force on 7 July 2002 and were amended in 2003). Article 10 of the Basic Law states that “basic human rights and liberties shall be protected and respected” and that the “Palestinian National Authority shall work without delay to become a party to regional and international covenants and declarations that protect human rights”. Its title two on “public rights and liberties” (arts. 9-33) guarantee a range of civil rights to all persons (such as freedom from unlawful arrest, the right to fair trial, prohibition of torture and collective punishment, freedom of expression, freedom of religion, etc.) as well as the main economic and social rights. The setting up of the Palestinian Independent Commission for Citizens’ Rights (PICCR) in 1993 through a Presidential Decree issued by the late President Yasser Arafat represented another step in the direction of respect of human rights.¹⁰ Moreover, under the Protocol Concerning Redeployment of the Interim Agreement of 28 September 1995, the PA also undertook that its police would exercise powers and responsibilities with due regard to internationally accepted human rights and the rule of law, and that it would be guided by the need to protect the public, respect human dignity, and avoid harassment.¹¹

9. 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

⁸ In addition, the PA has undertaken to respect specific human rights obligations in the context of its membership of the Euro Mediterranean partnership, which was established in November 1995 with the adoption of Barcelona Declaration and which contains a human rights component, stating that members should respect fundamental human rights and freedom, and act in accordance with United Nations Charter and UDHR, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party (Barcelona Declaration, 27-28 November 1995; http://ec.europa.eu/external_relations/euromed/bd.htm).

⁹ <http://www.palestinianbasiclaw.org/2002-basic-law>.

¹⁰ Furthermore, article 31 of the Palestinian Basic Law provides for the establishment by law of an independent commission for human rights. In May 2005, PICCR submitted before the PLC a draft law for discussion and approval. This draft law confirms PICCR as the National Human Rights Commission in Palestine with Ombudsman function at its core.

¹¹ Article XIX; The Israel-Palestinian Interim Agreement on the West Bank and the Gaza Strip.

norms when their conduct affects the human rights of the individuals under their control.¹² Moreover, Hamas has indicated that it “is determined (...) to promote the rule of law, the respect for the judiciary, the separation of powers, the respect for human rights, the equality among citizens; to fight all forms of discrimination; to protect public liberties, including the freedom of the press and opinion ...”.¹³ Hamas has also confirmed its commitment to “respect (...) public liberties; to strengthen the establishment of democracy; to protect human rights (...); and its respect for international law and international humanitarian law insofar as they conform with our character, customs and original traditions”.¹⁴ It has further declared that “rights and public liberties are sacred to us, and that the respect for the law is a firm principle that we do not breach”.¹⁵

II. PROGRESS IN THE IMPLEMENTATION OF THE RESOLUTION

A. Closure of Gaza

General situation

10. During the reporting period, the Gaza Strip remained closed to the outside world, with the exception of limited humanitarian imports and movements of a small number of international visitors, patients requiring emergency care and Palestinians who received exit permits from Israel. The crossing with Egypt at Rafah was exceptionally opened for medical cases between 2 and 12 March 2008. The Karni crossing opened sporadically and only for grain and animal

¹² 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. See A/HRC/6/76, paras 4-9 for a brief overview of relevant events leading up to Hamas’ takeover of the Gaza strip.

¹³ Speech delivered by Prime Minister Isma’il Haniya at the conference organized by the PCHR on “The New Government and the Agenda for Human Rights”. Gaza, June 2006.

¹⁴ Text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council, 17 March 2007.
<http://www.islamicnews.net/Document/ShowDoc09.asp?DocID=91477&TypeID=9&TabIndex=2>.

¹⁵ Letter to PCHR by Isma’il Haniya on 01 October 2007.

feed and the Erez crossing was opened for a limited number of Palestinian traders, aid workers and medical cases who were granted special permits.¹⁶ Between 20 February and 25 April, the Sufa crossing was opened for 38 days letting 2,424 truckloads inside Gaza, whereas the Kerem Shalom crossing was opened for 33 days letting 875 truckloads inside Gaza. The total amount of humanitarian supplies allowed into Gaza during the same period was 521 truckloads.¹⁷

11. Fuel shortages (exacerbated by the already existing electricity shortage in Gaza that resulted from the destruction of some of Gaza's electricity transformers in June 2006) had a profound effect on all aspects of life in Gaza during the reporting period, as private reserves were depleted and the needs of the harvest and fishing season increased demand. According to the Office for the Coordination of Humanitarian Affairs, in March, the supply of diesel and gasoline by Israel was 57 per cent and 80 per cent less, respectively, compared to the same period in 2007.¹⁸

12. Following an attack by Palestinian militants on the crossing point of Nahal Oz on 9 April, in which two Israeli civilians were killed, Israel further curtailed the passage of fuel into Gaza. Gaza's residents are completely dependent on fuel delivered via the Nahal Oz crossing - as Israel does not permit Gaza residents to receive fuel from any other source or by any other means. In the weeks following the attack, Israel reduced the quantity of petrol that Gazans were allowed to receive by around 80 per cent and the amount of diesel fuel by 43 per cent.

13. Meanwhile, Israel allowed Gaza's power plant to receive 2.2 million litres of industrial diesel per week, which allowed the plant to produce electricity at only around two thirds of its normal capacity of 80 megawatts.¹⁹ Consequently, Gaza experienced a deficit of up to 20 per cent in electricity supply during peak periods, causing power outages which stood at four to six hours per day.²⁰ Limited deliveries of industrial gasoline for the Gaza Power Plant and cooking gas resumed on 16 April.

¹⁶ OCHA, Report No. 61 Implementation of the Agreement on Movement and Access (5-18 March 2008).

¹⁷ OCHA, Implementation of the Agreement on Movement and Access, Reports 60 and 61, covering the period between 20 February and 25 April. Also, Israeli Ministry of Defense, Unit of Coordination of Government Activities in the Territories (COGAT), from 1 April to 23 April 2008.

¹⁸ OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

¹⁹ Gaza Fuel Restrictions: Walking Toward Crisis, Gisha-Legal Centre for Freedom of Movement, 17 April 2008.

²⁰ Ibid.

14. On 11 April, the Israeli defence forces and Palestinian Authority officials alleged that Hamas was seizing half of the quantity of fuel that Israel transfers weekly to the Strip for its military purposes.²¹

15. The activities of the United Nations agencies working in the Gaza Strip were also seriously hampered by the fuel shortage. In a joint statement issued on 15 April, United Nations agencies called for the cessation of all acts of violence, such as attacks on the Nahal Oz crossing, and for the immediate resumption of flow and distribution of fuel supplies. On 23 April, the Assistant Secretary-General for Political Affairs, Ms. Angela Kane, in a briefing to the Security Council stated that UNRWA's fuel supplies "will be exhausted on 24 April", and unless petrol is allowed in, "UNRWA will discontinue its food assistance to 650,000 refugees as well as its garbage collection services benefiting 500,000 Gazans".²²

Impact on the enjoyment of human rights

16. During the reporting period, the above-mentioned restrictions on the movement of people and goods (notably fuel) had a negative effect on the Gaza Strip population's enjoyment of a wide range of their human rights, particularly their economic, social and cultural rights, but also the rights to life, human dignity and freedom of movement.

17. In relation to the right to water, fuel shortages and the absence of spare parts and equipment continued to paralyse the water and sewage networks. Around 30 per cent of Gazan households had access to water for only a few hours every second day. The Gaza sewage system was forced to dump around 30,000-50,000 cubic metres of partially treated waste water and 20,000 cubic metres of raw sewage in the sea on a daily basis, compromising the enjoyment of the right to health and to an adequate standard of living.²³ Some other 10,000-30,000 cubic metres of partially treated sewage ended up in the ground, in some cases reaching the aquifer, polluting Gaza's already poor drinking water resources.²⁴

18. Fuel shortages, unpaid wages and the lack of spare parts also caused the suspension of garbage collection for the 600,000 inhabitants of Gaza City since the beginning of April.²⁵ Gaza produces 1,200 metric tons of solid waste per day. UNRWA collected 200 tons of solid waste per day and provided 53,850 litres of fuel in March to municipalities to assist in their rubbish collection. Nonetheless, garbage was piling up in the streets, creating additional risks for public health.²⁶

²¹ Haaretz, 11 April 2008, <http://www.haaretz.com/hasen/spages/974043.html>.

²² Briefing to the Security Council on the situation of the Middle East, 23 April 2008.

²³ IRIN/OCHA OPT: Gaza's Sewage System in Crisis, 25 March 2008.

²⁴ Ibid.

²⁵ OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

²⁶ Ibid.

19. In regard to the right to food, the cost of the basic food basket in Gaza (wheat flour, rice, pulses, vegetable oil, olive oil, sugar and milk powder) increased by 31 per cent since June 2007.²⁷ A group of British aid organizations reported that, as a result of severe restrictions on the movement of goods and people, food prices were rising and wheat flour, baby milk, and rice, among other essential goods, were increasingly scarce. Some 80 per cent of Gaza Strip's population was relying on aid assistance, with official unemployment rates close to 40 per cent and set to rise to 50 per cent.²⁸ It should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself through an adequate livelihood.

20. The closure on Gaza impacted also on the right to health, negatively affecting access to health care as well as the availability of medicines in the Gaza Strip. According to WHO, should the situation deteriorate further, threats to health such as increased risks of maternal, infant and under-5 deaths, of waterborne disease and of trauma and depression could follow.²⁹ WHO reported that 55 of the 416 essential drugs and 142 of the 596 essential medical supplies were not available in March due to the lack of financial resources.³⁰

21. The closure also impacted on patients' access to health care outside the Gaza Strip. Following the complicated referral process, in March, four patients died after being denied permits to cross Erez: a 12-month female infant with a liver disease died on 2 March; a 54-year-old male with lung cancer died on 14 March; a 48-year-old male with cardiac problems died on 20 March; and a 58-year-old woman with liver cancer died on 22 March.³¹ Meanwhile, according to WHO, a total of 257 patients were evacuated through the Rafah border crossing between 1-12 March.

22. Israeli human rights organizations condemned the Israeli security service for its lengthy procedures for issuing permits to cancer and heart patients to receive treatment in Israel or to cross Israel for treatment in Jordan or Egypt. According to Physicians for Human Rights (PHR), from the beginning of April until 21 April, 12 additional cancer patients were prevented from receiving life-saving treatment in Israel.³² In response to the criticism received, the Israeli

²⁷ Ibid.

²⁸ The Gaza Strip: A Humanitarian Implosion, 6 March 2008, Catholic Agency for Overseas Development, Amnesty International, CARE International UK, Christian Aid, Médecins du Monde UK, Oxfam, Save the Children UK and Trocaire.

²⁹ WHO, Health Action in Crises at <http://www.who.int/hac/>.

³⁰ OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

³¹ Ibid.

³² Physicians for Human Rights, 21 April 2008, at <http://www.phr.org.il/phr/article.asp?articleid=566&catid=55&pcat=-1&lang=ENG>.

Internal Security Service reported that there had been an increase in the exploitation of Israel's humanitarian policy by way of Gazan doctors issuing fraudulent medical permits in return for bribes, claiming that requests of "terrorist activists" to enter Israel for medical treatment had increased the danger to State security.³³

23. Moreover, according to the Palestinian Ministry of Health in Ramallah, on 21 April most ambulances in Gaza stopped working due to the lack of fuel. According to the Ministry, fuel shortages and the constant electricity outages also resulted in a diminished ability to sterilize medical equipment, and in non-operational medical equipment. The Ministry also stressed that back-up generators used to maintain the function of life-sustaining medical equipment only had capacity to operate for a very limited period of time.³⁴

24. In relation to the right of everyone to the enjoyment of the highest attainable standard of mental health, the closure and the frequent military incursions had a negative effect on the psychosocial well-being of Gazans. During the first two weeks of March, UNRWA's Community Mental Health Programme screened 39,000 students from UNRWA schools in the north of Gaza to determine the extent of exposure and reaction to the military incursions in February and March 2008. UNRWA found that 790 students were exposed to traumatic events, including 281 who had a relative killed, 199 who saw mutilated bodies and 101 whose homes were damaged.³⁵ During the same period, UNRWA counsellors provided group and individual counselling to these 790 children, 94 per cent of whom showed significant post-traumatic reactions and potential for developing Post-Traumatic Stress Disorder. A study conducted by the Islamic University Psychology Department on 244 families of the Gaza Strip in February 2008, showed behavioural changes and increased psychosocial problems among children: fears (61 per cent), anxiety (63 per cent), anger (45 per cent), sleeping difficulties (43 per cent), school absenteeism (40 per cent), lack of concentration at school (50 per cent), difficulties completing homework (47 per cent) and no desire to engage in recreational or educational activities (51 per cent).³⁶

25. Regarding access to education, the fuel shortages resulting from the restrictions on the quantities of fuel available to Gaza residents, the strike declared by the Gaza Petrol and Gas Station Owners Association, and the continued closure of the Nahal Oz crossing to supplies of petrol and diesel, almost entirely paralysed Gaza's transportation system.³⁷ According to

³³ Jerusalem Post, 21 April 2008, <http://www.jpost.com/servlet/Satellite?cid=1208422652388&pagename=JPost%2FJPArticle%2FshowFull>.

³⁴ Ministry of Health press release, 21 April 2008.

³⁵ OCHA, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

³⁶ Ibid.

³⁷ Gaza Fuel Restrictions: Walking Toward Crisis, Gisha-Legal Centre for Freedom of Movement, 17 April 2008. See also PCHR, Press Release, 14 April 2008.

Palestinian human rights organizations, 50 per cent of the Gaza educational sector was paralysed as students and teachers could not reach schools. Absenteeism in schools and universities varied from 20 to 50 per cent, compromising the full enjoyment of the right to education.³⁸

26. The closure of Gaza also impacted on the residents' freedom of religion or belief by preventing them from worshipping at some of the most sacred Muslim and Christian sites, such as the Al-Aqsa Mosque and the Church of the Holy Sepulchre in Jerusalem and the Church of the Nativity in Bethlehem.

27. The closure also affected negatively the situation of detainees both before and during the reporting period. Following the Hamas takeover of the Gaza Strip in June 2007, the Israeli security forces decided to suspend family visits for Palestinian detainees from the Gaza Strip. By April 2008, 760 detainees from Gaza (including 4 women) were affected by this decision. In addition, the International Committee of the Red Cross visits programme, running since 1968, stopped shortly before the Hamas takeover in June 2007, during a period of intense violence. Since then, Israel has not agreed to resume the system, through which the ICRC coordinates and facilitates the visits of close relations to the imprisoned Gazans. Since June 2007, communication between detainees and their families has been reduced to letters from prison, which take about six weeks to arrive in Gaza. The ICRC stated that before June, it relayed only about 10 messages a month between prisoners and their families, but now that number had risen to up to 300 a month - stressing that these short messages, subject to military censors, are hardly ideal.³⁹

28. The negative effects on the enjoyment of human rights resulting from the Israeli closure of Gaza were reportedly in some cases exacerbated by interferences with the humanitarian work of a number of aid agencies and developmental organizations operating in the Gaza Strip, who lamented that political pressure not to collaborate with Hamas officials in Gaza hampered their effectiveness.

B. Violence against the civilian populations

Background

29. According to the Office for the Coordination of Humanitarian Affairs, in the period between 25 February and 25 April 2008, 221 Palestinians were killed as a result of the international armed Israeli-Palestinian conflict in the Occupied Palestinian Territory (19 in the West Bank, 202 in Gaza). In addition, approximately 160 Palestinians were injured in the West Bank and 300 in the Gaza Strip. During the same period, 10 Israeli civilians were killed and around 25 injured. The Israeli air force conducted at least 75 air strikes on different targets within the Gaza Strip during the reporting period.

³⁸ Palestinian Centre for Human Rights, Press Release, 14 April 2008.

³⁹ IRIN/OCHA, 22 April 2008, <http://www.irinnews.org/Report.aspx?ReportId=77862>.

Operations of Palestinian militants during the period from 25 February to 25 April 2008

30. On 6 March 2008, 8 Israeli civilians were killed and 11 wounded when a Palestinian gunman opened fire inside a Jewish religious school in West Jerusalem.⁴⁰ An Orthodox Rabbi was stabbed near Damascus Gate of Jerusalem's old city on 18 March. A militant Palestinian group based inside Israel, *Ahrar Al-Jalil*, claimed responsibility for this attack.⁴¹

31. In Gaza, on 8 April, two Israeli civilians and one soldier were killed during an operation by Palestinian militants into Nahal Oz, one of Gaza's crossing points. A number of organizations claimed responsibility for the military operation, including Islamic Jihad and the Popular Front for the Liberation of Palestine (PFLP) military wing. The operation was allegedly aimed at abducting Israeli soldiers.

32. It is estimated that during the reporting period, Palestinian militants fired around 640 mortar shells and 450 rockets, the majority of which were of the *Qassam* type, from Gaza into southern Israel including the cities of Sderot and Ashkelon. Though most of the rocket and mortar attacks carried out by Palestinian militants were indiscriminate, some of the short-distance mortar shells reportedly targeted Israeli military installations or personnel located just across the border. Some 12 Israelis sustained injuries as a result of rockets and mortar shells fired by Palestinian militants and many residents of Sderot and other localities in southern Israel, including children, suffered from shock. Rockets also caused damage to buildings, including homes and other installations.

33. In addition, in the West Bank, two Israeli security guards were killed on the night of 25 April in a shooting attack at the Nitzanei Shalom industrial zone, near the city of Tulkarm. A third guard managed to flee after the gunman opened fire.

Israeli military operations during the period from 25 February to 25 April 2008

34. During the reporting period, Israeli security forces conducted at least 30 military incursions into Gaza and 348 into various locations of the West Bank. Although the number of incursions in the West Bank was considerably higher than in Gaza, the number of injuries and deaths were significantly less in the West Bank than in Gaza. This could be attributed to the nature of the methods and weaponry used in the relevant operations.

35. In total, some 221 Palestinians, including 7 women and 51 children, were reportedly killed due to the international armed Israeli-Palestinian conflict. The number of wounded

⁴⁰ Haaretz, 7 March 2008, <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=961767>.

⁴¹ Israel National News, 18 March 2008, <http://www.israelnationalnews.com/News/News.aspx/125596>.

also increased; approximately 460 Palestinians, including 145 children and 20 women, were injured as a result of operations by Israeli security forces in the Gaza Strip and the West Bank.

36. The Israeli policy of targeted killings of Palestinian militants and security personnel continued. According to Palestinian human rights organizations, a total of 16 Palestinian militants and security personnel were killed while they were not directly taking part in hostilities during the reporting period. Of these, 10 were allegedly killed in Gaza and 6 in the West Bank. In addition, at least 12 Palestinian civilians, including 2 children and a disabled person, were allegedly injured as an indirect result of such operations. On 12 March, four wanted Palestinian militants were killed by Israeli Special Forces in Bethlehem. An Israeli NGO called for a criminal investigation into the killings, as well as for an investigation into the alleged demolition by the Israeli security forces of one of the four victims' houses. Allegedly, the house was not demolished in the context of operational needs, but in order to punish the victim's wife and seven children.⁴²

37. The vast majority of the Palestinians killed died during an Israeli military wide-scale operation inside Gaza between 27 February and 3 March. As a result of this operation, 120 Palestinians were killed while 269 were injured.⁴³ In this single military operation 34 minors and 6 women were killed. Palestinian organizations affirmed that seven of the children were reportedly killed while inside their house. Five children were below the age of 12, including a 6-month-old baby. According to Palestinian human rights organizations, four of these children may have been involved in combat activities.⁴⁴ In addition, two West Bank children (from Hebron and Ramallah respectively) were killed while participating in protests against Israel's military operations in Gaza.

38. Furthermore, large-scale destruction of land, infrastructure and buildings, as well as of religious and educational institutions was reported to have taken place during the 27 February to 3 March operation. Reportedly, 21 homes were completely destroyed, leaving 147 Palestinians homeless. Eighty-eight homes were severely or partially damaged, affecting an additional 616 people.⁴⁵ On 28 February, a missile attack by Israeli warplanes directed at the Palestinian General Federation of the Trade Unions, located in a large residential area of Jabalia, in the north Gaza Strip, caused the total destruction of a five-story building (which Israel claimed was used by Hamas to store weapons) and the partial damage of tens of other houses in the vicinity. Forty-four people, including 12 children and 6 women, were injured in this attack.

⁴² B'Tselem, Press Release, 27 March 2008, at http://www.btselem.org/english/Press_Releases/20080327.asp.

⁴³ OCHA, Protection of Civilians Weekly Report, 27 February-4 March 2008, at http://www.ochaopt.org/documents/Weekly_Briefing_Notes_249_English.pdf.

⁴⁴ Defence for Children International/Palestine Section, 6 March 2008, at <http://www.dci-pal.org/english/display.cfm?DocId=696&CategoryId=16>.

⁴⁵ Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

39. Media and human rights organizations reported that medical crews and ambulances were also targeted. Reportedly, in three different incidents, ambulances and medical personnel were fired at while trying to reach the wounded, resulting in the death of the injured. Also, a paramedic was seriously wounded when the Israeli military fired on ambulances on their way to reach the wounded at the site of a helicopter rocket attack.⁴⁶

40. Israeli security forces claimed that Palestinian militants exploited the Palestinian population for their purposes, namely that militants deliberately launched rockets from populated areas; used civilian homes to hide arms and explosives manufacturing facilities; and that they used civilians as human shields against anticipated air strikes.⁴⁷ Israeli security forces also reported that in order to avoid civilian casualties, they send warning messages before attacking targets advising civilians to leave.⁴⁸

41. Following the 27 February to 3 March 2008 operation, a relative calm prevailed for a few weeks, with no large-scale Israeli military offensive or air strikes on Gaza, and a lesser number of rockets and mortar shells fired by Palestinian militants into Israel. On 8 April, however, after two Israeli civilian drivers were killed by Palestinian militants at the Nahal Oz gas terminal, the Israeli Defense Force renewed its incursions into the northern and eastern parts of the Gaza Strip, killing 7 Palestinians (including one 16-year-old from Gaza City) and injuring 15 others.

42. On 16 April, after an ambush opposite Kibbutz Be'eri near the border with Gaza in which three Israeli soldiers were killed, the Israeli security forces carried out attacks on Gaza that killed an estimated 18 Palestinians, 13 of whom were allegedly non-combatants. In one of the strikes, a Reuters cameraman and three other persons, two of whom were minors,⁴⁹ were killed by a tank shell (the first while filming the tank and two while cycling nearby the journalists' car, which was clearly marked with a "Press" sign). Human rights organizations alleged, based on

⁴⁶ Al-Mezan Centre for Human Rights: Report on IOF's Operation Warm Winter in the Gaza Strip (27 February-3 March, 2008), March 2008.

⁴⁷ <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Hamas+exploitation+of+civilians+as+human+shields+-+Photographic+evidence.htm>.

⁴⁸ A similar conduct of hostilities was witnessed during the war in Lebanon in 2006. As the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in the report following the mission to Lebanon, "Israel's responsibility to distinguish between combatants and civilians is in no way discharged by warning civilians that they will be targeted. Warnings are required for the benefit of civilians, but civilians are not obligated to comply with them. A decision to stay put - freely taken or due to limited options - in no way diminishes a civilian's legal protections. It is categorically and absolutely prohibited to target civilians not taking a direct part in hostilities".(A/HRC/2/7), para. 41, p. 10.

⁴⁹ PCHR identified them as Ahmed 'Aaref Farajallah, 14, Ghassan Khaled Abu 'Otaiwi, 17, and Khalil Isma'il Dughmush, 22.

on-site investigations, that the Israeli tank crew fired recklessly or deliberately at the journalist's team. Human rights organizations also gathered evidence showing that the tank fired a flechette shell, which unleashes hundreds of dart-like projectiles before the shell hits the ground. Human rights groups in Israel and Palestine have long urged the Israeli military to stop using flechette shells in Gaza because they spread over a wide area and are thus more likely to indiscriminately hit civilians.⁵⁰ On 20 April, the Israeli Army announced that it will be conducting an official investigation into the circumstances surrounding the death of the Reuters cameraman.

43. In the West Bank, some 100 Palestinians were reportedly injured due to Israeli security forces firing in connection to widespread demonstrations and protests against Israeli military operations in Gaza. Three Palestinians were killed, including two children, and 13 other civilians injured during protests and incursions in the West Bank. On 16 April, the naked and mutilated body of a 15-year-old male was found in lands under the control of settlers inhabiting Al-Hamra settlement, near Nablus in the northern West Bank. An investigation by the Israeli Police has already been initiated.⁵¹

44. One Palestinian was killed and six injured in separate shooting incidents with Israeli settlers. On 31 March 2008, an Israeli settler shot dead a Palestinian university student while he was waiting for a taxi on route 60. The victim was attacked by two Israeli settlers waiting at a bus station near the entrance of "Shilu" settlement north of Ramallah City.⁵² On 9 April, two Israeli settlers attacked a Palestinian vehicle near Nablus City, and two women were injured as a result.⁵³ Attacks by Israeli settlers reportedly also took place in March near Qalqilia: settlers allegedly threw stones at Palestinian vehicles carrying civilians.⁵⁴ On 14 April, at least 40 Israeli settlers from the Gilad settlement, south-west of Nablus, uprooted some 30 almond trees belonging to Palestinians in the village of Til.⁵⁵ A number of Israeli human rights NGOs as well

⁵⁰ Human Rights Watch Press Release, 20 April 2008.

⁵¹ It was reported that, based on the interviews with many people in the area, that the 15 year old had tried to return home via the Al-Hamra checkpoint, but was refused passage through as being only 15 years old, he had no identification (IDs are only issued to Palestinians aged 16 years and over). It appears that he was then forced to walk around the long way home and there probably "abducted" on 15 April. Reference: <http://sabbah.biz/mt/archives/2008/04/19/body-palestinian-boy-found-mutilated-israeli-settlement/>.

⁵² PCHR Weekly Report No. 14/2008. http://www.pchrgaza.org/files/W_report/English/2008/03-04-2008.htm. Israeli sources claimed that the victim attempted to attack the two settlers using a knife.

⁵³ PCHR Weekly Report No. 15/2008. http://www.pchrgaza.org/files/W_report/English/2008/10-04-2008.htm.

⁵⁴ For instance, on 14 April on the Nablus- Qalqilia Road, bypassing the Qedumim settlement.

⁵⁵ PCHR Weekly Report No.: 16/2008. http://www.pchrgaza.org/files/W_report/English/2008/17-04-2008.htm.

as international NGOs approached the village council and documented the incident. The head of the village council reported that he was unaware of any investigations initiated by the Israeli Police at the time of writing.

Other incidents, including intra-Palestinian violence, during the period from 25 February to 24 April 2008

45. During the reporting period, around 30 Palestinians, of whom allegedly 9 were civilians (including 5 children), were killed, and approximately 26 others injured in intra-Palestinian violence, according to Palestinian human rights organizations.

46. Several incidents were reported involving unidentified armed groups in Gaza while law and order continued to deteriorate. Incidents of intra-clan fighting, abductions, attacks on public institutions and civil freedoms, prevailed to claim further fatalities among civilians. According to Palestinian human rights organizations, 28 Palestinians were killed in Gaza as a result of these incidents.⁵⁶

47. Among the incidents in Gaza the following are noteworthy: on 2 March 2008, unknown gunmen assaulted the Director of the Gaza Community Mental Health Programme, in Deir el Balah town in the central Gaza Strip. The circumstances of the incident remain unclear.⁵⁷ On 19 March, local newspapers reported that Hamas security forces arrested the director of the Nasser Hospital in Khan Younis and removed the Deputy Minister of Transportation from his position, before taking over his office and confiscating his car.⁵⁸ On 23 March, the police in Gaza arrested a member of the PFLP politburo.⁵⁹ On 13 April, unknown gunmen abducted a former officer of the Palestinian General Intelligence, and took him to an unknown destination. On 15 April, the police informed his family that his body had been found in the Sheikh Ejlin area south-west of Gaza City. According to local human rights organizations, clear signs of physical abuse were found on his body. In a statement published by local newspapers on 17 April, Fatah blamed Hamas for his death, and called for a fair and objective investigation into the incident. The authorities in Gaza announced that the incident will be investigated, the findings made public, and legal measures to redress abuses and bring perpetrators to justice will be taken. Local newspapers reported that a parliamentary committee was also set up to investigate the death of the former intelligence officer. Moreover, local human rights organizations recorded a total of 10 attacks on public institutions and peaceful assemblies in the Gaza Strip over the reporting period.

⁵⁶ Interview with Al-Mezan Centre for Human Rights, Gaza, April 2008.]

⁵⁷ See, Al-Mezan Centre for Human Rights, Press Release, 6 March 2008.

⁵⁸ Ibid. 19 March 2008.

⁵⁹ Al-Hayat Al-Jadida on 24 March 2008.

48. In the West Bank, intra-Palestinian violence also prevailed to claim further fatalities and injuries. According to different sources, PA security forces arrested six Hamas members in the West Bank on 3 March 2008,⁶⁰ two others were arrested on 18 March.⁶¹ On 28 March, at least three Palestinians were killed in violent incidents in the village of Kufur Thuluth, south-east of the West Bank city of Qalqilya. On 12 April, clashes erupted between students affiliated with Fatah and Hamas in the campus of Hebron University, after Hamas-affiliated students distributed leaflets accusing the PA security forces of arresting four of their colleagues. Several students were injured while university assets were damaged during the clashes. On 8 April, an exchange of fire erupted between PA security forces and several members of the Al-Aqsa Martyrs Brigades who escaped from the Jneid prison in Nablus, where they had been held after turning themselves in as part of an amnesty deal. A total of five Palestinian security personnel, one member of the Al-Aqsa Martyrs Brigades, and two civilians (a mother and her son) were wounded. On 13 April, Palestinian gunmen attacked the car of Nablus' governor, with no fatalities or injuries.

C. Other actions taken by the parties which affect the human rights situation in the Occupied Palestinian Territory

49. In relation to the freedom to manifest one's religion⁶² and the right to education, between 26 February and 6 March 2008, the Israeli Defence Forces ordered the closure and confiscation of establishments owned by the Islamic Charitable Society in the city of Hebron, alleging links with Hamas. The establishments affected include a school under construction for 1,500 girls, the Al Huda market building, which includes a children's library, eight shops, a physiotherapy centre, a dental and a cardiology clinic, three NGOs, including the Muslim Youth Society, the Islamic Charitable Society's warehouse, a restaurant and two bakeries. The charitable society employs close to 550 staff, including teachers and counsellors, and it also runs two orphanages.

50. Although no written orders were issued by the IDF relating to these orphanages, the IDF issued oral instructions to close these institutions and to evict their residents. These instructions were allegedly followed by two raids on the orphanages. In one of these raids (on 6 March) the IDF apparently confiscated all the clothing, food, stationary and other supplies of the children. A second raid was reportedly carried out in the middle of the night within a week after the first one, causing harassment and fear among the children. These orphanages accommodate and care for 3,192 children, out of whom 95 cannot return home due to severe economic hardship and

⁶⁰ Ma'an News, 4 March 2008 at <http://www.maannews.net/en/index.php?opr=ShowDetails&Do=Print&ID=28147>.

⁶¹ Ma'an News, 18 March 2008 at <http://www.maannews.net/en/index.php?opr=ShowDetails&Do=Print&ID=28351>.

⁶² The freedom to manifest one's religion includes the freedom to establish seminaries or religious schools, as set out in the Human Rights Committee's general comment No. 22 (1993), para. 4.

55 have no family at all. The remaining 3,042 children have either one single parent or only extended family. At the time of the writing of the present report, the Hebron Islamic Charitable Society has no contingency plans for shelter or humanitarian assistance for these children, should they be forcibly evicted. On 7 April, the Israeli High Court of Justice temporarily suspended the implementation of the order until further hearing and gave the Israeli security forces an indefinite time to provide a legal justification for closure. Given the vulnerability of the affected persons, most of whom are children, the humanitarian and human rights implications of the charity's closure could be particularly severe.

51. In relation to the right to an adequate standard of living, notably adequate housing, a number of house demolitions and evictions across the West Bank occurred during the reporting period. In March, the Israeli Defence Forces destroyed residential and animal structures as well as farm equipment in the Jordan Valley, Qalqilya, Jericho, Hebron and Jerusalem districts, leaving a total of 131 people homeless. The affected communities include: al-Hadidiya and Frush Beit Dajan in the Jordan Valley; Al-Jiftlik in Jericho; Arab ar-Ramadin⁶³ and Izbit At-Tabib⁶⁴ in Qalqilia; Ad Deirat, Umm Lasafa, Qaqawia and Imneizel settlement in Hebron; and finally Hizma, Al Jib and Anata in Jerusalem. In April, one house was demolished in the village of Anata in the Jerusalem area. The house, which was home to a family of 12 members, including 5 children, had been demolished in December 2005, and was rebuilt by international volunteers in 2007.

52. In relation to the prohibition of torture, on 26 February 2008, Palestinian human rights organizations⁶⁵ and the Palestinian Independent Commission for Citizens' Rights (PICCR) called for independent investigations into the death of Sheikh Majid 'Abdul 'Aziz Mustafa al-Barghouti, a 44-year-old, who died on 22 February, while being detained by the Palestinian Authority's General Intelligence Service (GIS) in Ramallah. Reportedly, he had been arrested on 14 February, by four masked men when he emerged from a local mosque. The forensic medical report, ordered by the Palestinian Attorney General, called the sudden death "natural" and listed the cause of death as heart failure, due to an abnormally enlarged heart. It was alleged that there was evidence "including photographs" indicating that prior to his death, he had been subjected to torture and ill-treatment, and that he might also have been a victim of medical negligence during his detention. On 3 April 2008, a fact-finding mission formed by the Palestinian Legislative

⁶³ See also: OCHA Weekly Report (12-18 March 2008), <http://www.ochaopt.org/documents/WBN251.pdf>.

⁶⁴ Stop The Wall, Briefing: 12.03.08, Continuous demolitions in Jordan Valley and Qalqilia district require international action.

⁶⁵ Report, United Against Torture Coalition, 3 March 2008; Al Haq: the findings of the PLC investigating the death of Majd abdel Aziz Bhargouthi must be implemented, 10 April 2008, <http://www.alhaq.org/etemplate.php?id=360>; PCHR, 26 February 2008, <http://www.emhrn.net/pages/512/news/focus/51380>.

Council to investigate the death of Majid al-Barghouti, released a report⁶⁶ which concluded that there were indications that torture and beatings had taken place and that there was no evidence that the deceased suffered from any pre-existing illness before detention; adding that the medical services that had been offered to the prisoner were not adequate. Based on this report, Palestinian President Mahmoud Abbas, requested an internal investigation to clarify any violation occurring in relation to the detention of al-Barghouti. He also called for the perpetrators to be punished and for the general prosecutor's office to step up inspections of all places of detention.⁶⁷

53. Regarding freedom of expression and opinion and the right of peaceful assembly, the following incidents were reported: on 4 March 2008, the Ministry of the Interior in Gaza decided to prevent correspondents of Palestine TV from working in Gaza.⁶⁸ On 5 March, the Popular Struggle Front, a PLO faction, alleged that Hamas police banned a popular demonstration against Israeli aggressions in the Gaza Strip.⁶⁹ On 10 March, the Fatah Youth Organization alleged that Hamas police banned a Fatah-organized youth meeting in Gaza City and threatened to arrest the attendees.⁷⁰ On 12 March, a number of Preventive Security Forces personnel in Ramallah stormed the headquarters of Ramttan Press Agency, before arresting one of its editors, confiscating his computer and some of his belongings.⁷¹ He was released the following day (through mediation).

54. Regarding freedom of movement, the restrictions on the movement of Palestinians between the West Bank, Gaza and East Jerusalem as well as within the West Bank itself continued and even increased.⁷² During the reporting period, over 600 closures of various sorts prevented Palestinians from enjoying their right to freedom of movement within the West Bank. The route of the Wall, settlements, curfews, the closure regime and associated controls severely damaged the social and economic structures of the West Bank, contributed to increased aid reliance, poverty and unemployment and had a serious impact on the enjoyment of civil, political, economic, social and cultural rights of the population.

⁶⁶ Unofficial translation of PLC committee findings: <http://www.unitedagainsttorture.org/more.asp?NewsID=39>.

⁶⁷ Al Quds (in Arabic), 18 March 2008, <http://www.alquds.com/node/18544>.

⁶⁸ Palestinian Centre for Human Rights, Press Release. 5 March 2008.

⁶⁹ Maan News Agency, 5 March 2008. <http://www.maannews.net/ar/index.php?opr=ShowDetails&Do=Print&ID=103500>.

⁷⁰ Maan News Agency. 11 March 2008. <http://www.maannews.net/ar/index.php?opr=ShowDetails&Do=Print&ID=28249>.

⁷¹ Palestinian Centre for Human Rights, Press Release, 13 March 2008.

⁷² A more detailed description of these restrictions was included in A/HRC/7/76.

III. CONCLUSION

55. The human rights situation in the Occupied Palestinian Territory remains grave, particularly in Gaza. The recommendations made by the High Commissioner for Human Rights in her most recent report⁷³ on human rights violations in the Occupied Palestinian Territory, notably concerning the establishment of accountability mechanisms and the closure of Gaza, have not been implemented. On the contrary, during the reporting period, actions taken by the parties continued to violate international human rights and humanitarian law. Against this background, all previous recommendations made by the High Commissioner remain valid and should be urgently implemented by the parties.

⁷³ A/HRC/7/76, paras. 56-62.