



المركز الفلسطيني لحقوق الإنسان

PALESTINIAN CENTRE FOR HUMAN RIGHTS

From: The Palestinian Centre for Human Rights
To: Olara Otunnu, Special Representative of the Secretary General for Children and Armed Conflict
Terje Roed-Larsen, United Nations Special Coordinator
John Dugard, Special Rapporteur for Human Rights in the Occupied Arab Territories, including Palestine
Re: Urgent Need for Investigation and Protection
Date: 26 November 2001

In light of the killing of five Palestinian children last week by an explosive device planted by Israeli occupation forces in the Gaza strip, PCHR appeals for your immediate and public support and advocacy for a comprehensive international investigation of the killing of Palestinian children in the Occupied Palestinian Territories (OPT), as well as for viable and effective international protection for Palestinian civilians. Both would contribute to the implementation of international humanitarian law in the OPT, and both would fall under the obligations of the High Contracting Parties of the Fourth Geneva Convention to ensure respect for the Convention.

1. Death of five Palestinian children draws attention to lack of protection for civilians

On 22 November, five Palestinian children were killed by an exploding device while walking to school. The incident took place at approximately 07.30, on a sandy path in al-Satar al-Gharbi area of Khan Yunis in the Gaza strip, some 150m away from an Israeli military outpost. The five children, two sets of brothers and one cousin, were identified by their school bags. They were:

1. Akram Na'im 'Abdel-Karim al-Astal, 6
2. Mohammed Na'im 'Abdel-Karim al-Astal, 14
3. 'Omar Idris al-Astal, 13
4. Anis Idris al-Astal, 11
5. Mohammed Salman al-Astal, 11

The evidence strongly suggests that the device was planted by Israeli occupying forces as a booby trap for Palestinian fighters who occasionally fire at the nearby Israeli military outpost from that area at night. As the path is too narrow for a tank or other vehicle, the idea that the explosive was planted by Palestinians as a trap for Israeli forces is extremely unlikely.

The incident generated considerable attention in both Israeli and international media, prompting Israeli Defence Minister Benyamin Ben-Eliezer to promise an investigation into the incident. Two days after the killing, on 24 November, an Israeli military spokesman expressed condolences for the deaths of the five children and admitted that Israeli forces may have been responsible. The spokesman claimed, inaccurately, that the explosion took place in "open terrain, outside of the residential area." The explosion occurred on a path that rings an agricultural area, with several



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houses barely 100m away. According to relatives of the victims and local residents, the boys met at that spot every day before going to school, and the path was regularly used by the community.

Although one cannot diminish the magnitude of this tragedy, it is important to underscore that it was not an isolated incident and that Palestinian civilians, especially children, are exposed to lethal force, to say nothing of deprivation and humiliation, on a regular basis by Israeli occupation forces. This case, therefore, highlights the necessity for broader action: namely, to investigate this incident and similar ones (including possible war crimes), and to take immediate action to provide international protection to Palestinian civilians.

2. Comprehensive international investigation into killings of Palestinian children

There are several compelling reasons to doubt that the investigation allegedly being conducted by the Israeli army will yield satisfactory results:

First, the findings will be presented to Defence Minister Ben-Eliezer personally. No investigating body outside the Israeli army will be involved; how and whether the results will be disseminated will be at the discretion of the Defence Minister. Second, the Israeli army failed to acknowledge even the possibility that it may have been responsible for the explosion until two days after the incident, indicating the possibility of a cover-up. Third, and most importantly, Israel's past record in responding to such violations is dismal. It must be borne in mind that although these killings have generated widespread attention, at least 177 Palestinian children age 18 or under have been killed by Israeli occupying forces or settlers in the OPT since 28 September 2000. Most were killed as a result of excessive and disproportionate use of force during protests or as a result of indiscriminate shooting and shelling of residential areas. Only a handful of these cases have been investigated, and none have resulted in either imprisonment of military personnel or compensation for victims. It must also be noted that Israel is the only High Contracting Party to the Fourth Geneva Convention that refuses to recognise the Convention's de jure applicability in the OPT, leaving virtually no recourse under the Israeli legal system for Palestinians living in the OPT.

For the reasons listed above, PCHR asserts that an impartial and comprehensive international investigation is necessary to determine the circumstances and responsibility not only of the killing of the al-Astal children, but of the hundreds of other minors killed by Israeli occupying forces over the past 14 months. Such an investigation could contribute to a firm evidentiary record available for use in future judicial proceedings under Article 146 of the Convention, which ensures penal accountability for those who commit grave breaches of the Convention.

3. International protection for Palestinian civilians in the OPT

Although PCHR urges a thorough investigation into the killing of al-Astal children and other Palestinian minors, it asserts that Israel's systematic violations of the Fourth Geneva Convention



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have already been firmly established and recognised.¹ Therefore, there now exists an urgent need for viable and effective international protection for Palestinian civilians in the OPT.

Not only does Israel refuse to recognise the applicability of the Fourth Convention in the OPT, but it has systematically committed violations and grave breaches of the Convention since the start of the occupation in 1967. The establishment of settlements in occupied territory, the attempted annexation of east Jerusalem, wanton destruction of property and confiscation of land, deportation, closure, and torture are among the many Israeli government practices that violate the Convention. Attacks on civilians have escalated dramatically since 28 September 2000, leading to an unprecedented deterioration in the humanitarian and human rights situation. The killing of the al-Astal children and the flaws of the ensuing investigation are both indicative of Israel's 34-year refusal to apply appropriate international humanitarian law.

Under common Article 1 of the Geneva Conventions, the High Contracting Parties undertake not only to respect the Convention but to ensure respect for it in all circumstances. In a case where one High Contracting Party consistently violates the Convention and shows no sign of changing its behaviour, responsibility for enforcing the Convention is the obligation of other High Contracting Parties. Thus, in accordance with a number of UN General Assembly resolutions², the High Contracting Parties are long overdue in taking concrete and practical steps to secure Israel's application of the Convention and to compel its acceptance of an international protection mechanism. Such steps, taken by individually, bilaterally, or jointly by states, could include any of the sanctions permitted under the Charter of the United Nations that are normally employed against states that violate treaty obligations.

¹ See E/CN.4/2001/114 (29 November 2000), E/CN.4/2001/121 (16 March 2001), E/CN.4/2001/140 (21 March 2001).

² A/RES/ES-10/6, para. 6 (9 February 1999). Also see A/RES/ES-10/5, para. 3 (17 March 1998); A/RES/ES-10/4, para. 4 (13 November 1997); A/RES/ES-10/3, para. 10 (15 July 1997).