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The Palestinian Centre for Human Rights

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## **Three Years of Israeli Violations of International Humanitarian Law in the Occupied Palestinian Territories: The Need for Accountability**

Memorandum to the High Contracting Parties to the Fourth Geneva Convention  
submitted by the Palestinian Centre for Human Rights, September 2003

### **The Palestinian Centre for Human Rights**

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# **Three Years of Israeli Violations of International Humanitarian Law in the Occupied Palestinian Territories: The Need for Accountability**

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## **Introduction**

As the Al-Aqsa Intifada enters its fourth year, the cycle of violence which began on 29 September 2000 has escalated to levels unprecedented since 1967. Israeli military attacks in the Occupied Palestinian Territories (OPTs), particularly during the large-scale and prolonged Israeli military incursions into Palestinian-controlled areas conducted in 2002, have been characterized by systematic violations of international human rights and humanitarian law, including war crimes; excessive and indiscriminate use of force; wilful killings and injuries; restrictions on freedom of movement of people and goods, including prolonged closures and curfews; demolition of civilian property, including infrastructure, educational and health facilities; appropriation of lands; destruction of crops and uprooting of trees; extrajudicial executions; mass arbitrary arrests and detention; torture and ill treatment. Over the last three years, Israeli military actions in the OPTs have resulted in almost total suffocation of economic, political and social life; the humanitarian crisis continues to deepen, including escalating unemployment, poverty and malnutrition rates; civilian infrastructure has been devastated and civil government is on the verge of collapse.

These systematic violations of international human rights and humanitarian law have been met with consistent inaction from the international community, particularly from the High Contracting Parties to the Fourth Geneva Convention. Total impunity for such violations, including war crimes, constitutes a breach of the clear legal obligations of the High Contracting Parties. Furthermore, the failure to heed the warnings of civil society; Palestinian, Israeli and international; regarding the consequences of this failure to act to ensure protection of the Palestinian civilian population perpetuates the current cycle of violence and may ultimately result in a state of total lawlessness in the region.

## ***Fourth Geneva Convention***

The Gaza Strip and West Bank, including East Jerusalem have been subject to an ongoing illegal belligerent occupation by Israel for the last 36 years. As such, the Geneva Convention Relative to Civilian Persons in Time of War 1949, (the Convention) is the primary legal framework governing activities in the Gaza Strip and West Bank, including East Jerusalem. As the Occupying Power, Israel is obligated to provide a wide-range of protections to the Palestinian civilian population living within these territories. The applicability of the Convention to all of these territories occupied by Israel since 1967 has been repeatedly reaffirmed by the High Contracting Parties to the Geneva Conventions, the International Committee of the Red Cross, and in UN resolutions. The latest such reaffirmation can be found in the concluding statement of the High Contracting Parties following their meeting of 5 December 2001. Israel, however, has continued to deny the *de jure* applicability of the Convention to the West Bank, including East Jerusalem, and the Gaza Strip<sup>1</sup>.

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<sup>1</sup> Israel has provided a number of inconsistent arguments in avoiding the issue of the Convention and the responsibilities which it imposes of Israel as the Occupying Power. On occasion Israel has announced that it would respect the "humanitarian" provisions of

However, the attitude of the state of Israel does not alter the *de jure* applicability of the Convention to the OPTs. Contrary to some claims by Israel, the implementation of the Oslo accords, including the establishment of an interim governing authority, the Palestinian Authority, also does not alter the status of the Convention. According to articles 7 and 47 of the Convention, no agreement between the belligerents shall deprive the protected persons of their rights as guaranteed in the Convention. The Convention remains applicable until the dismantlement of the ongoing military occupation. The Oslo accords, which were meant largely as a confidence-building measure to move the parties towards the end of the occupation with final status negotiations to have been completed by 4 May 1999, failed to take any account of the rights and protections afforded to Palestinians both individually and collectively under this Convention, and international humanitarian and human rights law in general. In reality, the Oslo agreements, rather than furthering the region towards a viable and fair solution for all parties, effectively permitted the deepening of Israeli military control over the OPTs, strengthening the apartheid segregation, including the 'bantustanisation' of Palestinian communities, and expediting the development of the settlement programme. The so-called "security fence" in the West Bank is just the most recent manifestation of Israel's colonial aspirations.

The eruption of the Al-Aqsa Intifada in September 2000 came in response to the continuing violations of the Convention and other international humanitarian and human rights law by the Israeli military in the OPTs. The ongoing perpetration of grave breaches of international humanitarian law had been identified as a catalyst for the Intifada by PCHR and other human rights organizations even before September 2000. Despite consistent pressure from PCHR and others to halt Israel's disregard for international humanitarian law in the OPTs, the High Contracting Parties to the Convention consistently ignored their legal obligations and failed to take any constructive action. A series of resolutions passed during the UN General Assembly emergency special session recommended the convening of a conference of the High Contracting Parties "on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect, in accordance with common article 1". However, the meeting of the High Contracting Parties which was then convened on 15 July 1999 was adjourned after only 15 minutes on the basis of "the improved atmosphere in the Middle East as a whole"<sup>2</sup>. This blatant politicization of international humanitarian law, despite the concerted cooperative efforts of global civil society, was particularly disappointing given the 50<sup>th</sup> anniversary of the Geneva Conventions in 1999.

Human rights organizations and other civil society groups continued the campaign for international action, particularly following the outbreak of the Intifada in September 2000. On 5 December 2001, the High Contracting Parties reconvened in Geneva but again failed to take any concrete action in respect of their obligations under the Convention. The conclusion of this second meeting was of particular concern given the context of the dramatic escalation in violations of the Convention, including grave breaches, perpetrated by the

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the Convention in its activities in the OPTs but continued to refuse to accept the *de jure* applicability. However, more recently, the State and the High Court both referred specifically to the Convention during a High Court review of an Israeli military order which permits the transfer of Palestinians from the West Bank to the Gaza Strip. This military order is based on article 78 of the Convention, permitting the Occupying Power to submit a protected person within its power to a period of "assigned residence" for "imperative reasons of security". In its judgment, the Israeli High Court stated that, "...for the purpose of the petitions before us we are assuming that humanitarian international law – as reflected in the Fourth Geneva Convention...applies in our case". HJC 7015/02 Ajuri v. IDF Commander.

<sup>2</sup> Final Statement of the Conference of the High Contracting Parties to the Fourth Geneva Convention, Geneva, 15 July 1999 see PCHR, *Politicisation of International Humanitarian Law: An Analytical, Critical Study of the Conference of the High Contracting Parties to the Fourth Geneva Convention*, Gaza, 2000. p.75.

Israeli military against the Palestinian civilian population at that time. The prevailing attitude of the participating High Contracting Parties contrasted starkly with the findings of UN and other investigations<sup>3</sup>, including that of then High Commissioner for Human Rights, Mary Robinson, which highlighted the consistent violations of international humanitarian law perpetrated by the Israeli military against Palestinian civilians. Thus, this meeting again illustrated a total disregard for the facts on the ground, including as presented by experts mandated by the international community to investigate the situation.

Following the December 2001 meeting, predictably, the region has witnessed further escalations in violence. The prolonged large-scale Israeli military incursions into the West Bank between late March and June 2002 represented perhaps the greatest escalation in violence against Palestinian civilians to date. However, as this memorandum seeks to demonstrate, the Israeli military has continued to perpetrate systematic grave breaches of the Convention against the Palestinian civilian population throughout the OPTs. Thus, on this, the third anniversary of the outbreak of the Al-Aqsa Intifada, this memorandum to the High Contracting Parties to the Convention serves to remind them of their legal obligations in respect of the enforcement of the Convention in the OPTs and to provide an updated summary of the pattern of Israel's disregard for the Convention in the OPTs over the last three years.

The Israeli military and other state agents continue to perpetrate a vast range of violations of the Fourth Geneva Convention in the OPTs. However for the purposes of brevity and because of the severity of the acts and the regularity with which they are committed, this memorandum will highlight certain of those grave breaches of the Convention, as defined in article 147, perpetrated against Palestinians civilians by the Israeli military in a widespread and systematic manner. This memorandum focuses on the period from 29 September 2000 until 28 September 2003.

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<sup>3</sup> See conclusions of the UN Human Rights Inquiry Commission, E/CN.4/2001/121, 16 March 2001; Report of the High Commissioner on Her Visit to the Occupied Palestinian Territories, Israel, Egypt and Jordan, E/CN.4/2001/114, 29 November 2000; Update to the mission report on Israel's violations of human rights in the Palestinian territories occupied since 1967, submitted by Giorgio Giacomelli, Special Rapporteur, to the Commission on Human Rights at its fifth special session, E/CN.4/2001/30, 21 March 2001.

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## **Grave Breaches of the Convention**

### **Wilful Killings**

Since the beginning of the Intifada, at least 2235 Palestinian civilians have been killed by the Israeli military and settlers in the OPTs<sup>4</sup> (949 in the Gaza Strip and 1286 in the West Bank). Civilian deaths have been characterized by the use of excessive and/or indiscriminate force, including in assassination attempts, military incursions, in demolition operations, during enforcement of curfews, in response to demonstrations, or as part of routine violence. Many of these deaths were targeted killings, including through use of sniper fire, often during times of quiet. The majority of deaths of Palestinian civilians have resulted from Israeli military actions and methods which disregard the distinction between combatant and civilian, failing to ensure limitations on civilian casualties.

#### ***Wilful Killings of Children***

Of particular concern are the increasing child casualties; to date, at least 432 Palestinian children have been killed in the OPTs (212 in the Gaza Strip and 220 in the West Bank). (Child deaths have continued to increase; in the last twelve months child deaths in the Gaza Strip alone have increased by 13% over the previous twelve months<sup>5</sup>. Child deaths have occurred in three main contexts; during demonstrations; during Israeli military incursions into Palestinian areas; during times of total quiet. It is this last category which has seen the most consistent increase; in the last twelve months, 41<sup>6</sup> children were killed outside the context of fighting, compared with 33<sup>7</sup> in the previous twelve months and compared with 12 in the twelve months before that<sup>8</sup>. Children have been killed in their homes, as they walk to school, inside schools, outside playing in the street. PCHR is concerned at the particular risk to Gazan children; children consistently constitute approximately 25% of the total Palestinian deaths in the Gaza Strip, compared with child deaths in the West Bank which constitute approximately 12% of the total Palestinian deaths in the West Bank.

PCHR has also recorded a number of instances in which Palestinian children have been targeted for death by the Israeli military; in one particularly chilling example, on 1 March 2002 7 year-old Mahmoud Al-Talalqa was shot dead by an Israeli soldier positioned inside an Israeli tank near a mosque in Beit Layhia in the northern Gaza Strip. The soldier beckoned Mahmoud and several of his friends to approach the tank, smiling and gesturing to them. As the children approached, the soldier opened fire, killing Mahmoud.

Despite such killings, there has been widespread impunity for individual soldiers responsible for civilian deaths.

The Israeli authorities have consistently failed to hold individuals accountable for unlawful killings of Palestinian civilians. In respect of the Israeli military, the response to such unlawful actions has been typified by a failure to conduct full and public investigations in the events and a general denial of responsibility for the incident. According to an article published in Israeli newspaper, Yediot Ahoronot, since the Israeli military

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<sup>4</sup> PCHR statistics include only the deaths of Palestinian civilians who were not engaged in any act hostile to the state of Israel at the time of their death. The statistics also only include incidents in which responsibility for the death is clear. Palestine Red Crescent Society estimate the current number of deaths at 2480 – see [www.palestinercs.org](http://www.palestinercs.org).

<sup>5</sup> PCHR documented 76 child deaths in the Gaza Strip between 30/09/2002 and 29/09/2003 compared with 67 child deaths in the Gaza Strip between 30/09/2001 and 29/09/2002.

<sup>6</sup> 2003/09/27-2002/09/29

<sup>7</sup> 2002/09/28 -2001/09/29

<sup>8</sup> 2001/09/28 - 2000/09/29

offensive, Operation Defensive Shield in Spring 2002, only 6 indictments had been issued against individual Israeli soldiers in cases in which shooting incidents had resulted in civilian deaths<sup>9</sup>.

### ***State Assassination Policy***

Whilst condemning all wilful killings of civilians, PCHR wishes to particularly highlight the increasing reliance of the Israeli government and military on the policy of state assassination. This government-sanctioned policy is used to eliminate Palestinians whom the Israeli authorities claim have ordered, facilitated, or carried out attacks against Israeli targets. Since June 2003, the policy has been escalated and the target group has been focused predominantly on political leaders of Palestinian opposition groups, in particular the Islamic group, Hamas. Deaths resulting from this policy constitute 13% of all killings of civilians by the Israeli military in the OPTs. These assassinations have been carried out in different ways, but are generally conducted as aerial attacks against moving vehicles in which the targeted individual is traveling, or against residential buildings or offices. Some assassinations have also been conducted using explosives, sniper fire, tank shells, and armed ambushes.

The policy itself constitutes a grave breach of the Convention, and a violation of international law in general, including in respect of the right to life and the rights to a fair and regular trial. The Convention specifically provides for measures which can be taken against civilians who take up arms and engage in activities hostile to the Occupying Power. As a general principle of customary international law, and as reflected in the Convention, civilians who take up arms against the Occupying Power relinquish their protected status only for the duration of the hostile activity. Unlike combatants, civilians who engage in hostilities can be arrested and prosecuted for their activities in accordance with the law but they cannot be made the subject of an attack outside the duration of their hostile activities. As Antonio Cassese qualified in a recent Expert Opinion submitted in *The Public Committee Against Torture et al. v. Government of Israel et al.*, civilians can only be made the subject of attack for the duration of their direct engagement in hostilities and when "*engaging in a military deployment preceding the launching of an attack in which he is to participate, ...in so far as he carries arms openly during the military deployment...In no other circumstances may a civilian be targeted*".<sup>10</sup> As he further clarifies, "*...A civilian who, after carrying out military operations, is in his house or is going to a private home or to a market, may not be the object of attack...*". In respect of those civilians who have indirectly participated in activities hostile to the Occupying Power, such as involvement in preparation of such activities, the principle remains the same. As Cassese clearly summarises "*...for a belligerent lawfully to fire at a civilian it is necessary that such civilian carry arms openly before and during an armed action; if it were not so, belligerents would be authorized to shoot at any civilian, on the mere suspicion of their being potential or actual unlawful combatants*". Of course it is generally accepted also that a civilian who may have taken direct part in hostilities but is sick, wounded or otherwise *hors de combat*, may also not be made the object of an attack.

In contrast, the Israeli state assassination policy has been implemented against Palestinian civilians who are not at the time of the assassination attack directly engaged in hostilities against Israeli targets. Whether these individuals may have, in the past, participated directly in hostile activities, or whether they are indirectly participating in hostile activities, including preparation of such activities, but were not openly carrying arms at the time at which they were subject to attack, cannot legitimize in law attacks against them. Furthermore, in

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<sup>9</sup> "Since Operation Defensive Shield, 6 Bills of Indictment have been Submitted Against Israeli Soldiers for Shooting", published in Arabic on Arabynet, the Arabic website of Yediot Ahronot, 23 June 2003.

<sup>10</sup> Cassese, Antonio, *Expert Opinion on Whether Israel's Targeted Killings of Palestinian Terrorists is Consonant with International Humanitarian Law*, p.7 (available on [www.law-society.org](http://www.law-society.org)).

many instances, the individual targeted for assassination could in fact have been arrested and detained as provided for in the Convention. In one such example, Dr Thabet Thabet, a dentist and a member of Fatah, was assassinated by the Israeli military on 31 December 2000 at his home in Tulkarem. Thabet Thabet, who was exiting his home on his way to work at the time of the shooting attack, regularly crossed Israeli checkpoints entering Israeli-controlled areas around Tulkarem where he could have been arrested at any time.

Clearly, this policy is by its nature inconsistent with the principles of international humanitarian law, and as a wilful killing of a protected person (a civilian not actively engaged in hostilities at the time of the attack) constitutes a grave breach of the Convention.

Moreover, this policy also constitutes a grave breach in respect of the disproportionate and indiscriminate nature of some of the attacks. Indiscriminate attacks "...any attack which 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"<sup>11</sup>, also constitute grave breaches of the Convention as clarified in article 85, 3 (b) of Protocol Additional I to the Geneva Conventions<sup>12</sup>. The nature, timing and location of the assassination attacks; aerial attacks, often in the daytime, targeting moving vehicles or buildings located in densely populated civilian areas; display an increasing disregard for civilian life. PCHR statistics collated in respect of the Israeli state assassination policy clearly evidence the threat of these attacks to non-targeted civilians. Between 29 September and 31 December 2000, PCHR documented 9 cases of assassination which resulted in 9 killings of targeted individuals and 6 killings of non-targeted civilians. In 2001, PCHR documented 44 assassination attacks which resulted in deaths of 43 targeted individuals and deaths of 17 non-targeted individuals. In 2002, PCHR documented 59 assassination attacks, killing 75 targeted individuals and 45 bystanders. As of 25 September, in 2003 PCHR recorded 45 assassination attacks which killed 66 targeted individuals. At least 47 non-targeted civilians were also killed in these attacks. Thus, of the total number of Palestinians killed in the context of this policy (308 Palestinians) at least 38% (115 Palestinians) were non-targeted civilian bystanders. Perhaps the clearest example of this failure to protect civilian life in the implementation of this policy, is the case of the al-Daraj bombing in July 2002. This attack, which was an assassination attempt on Hamas activist, Salah Shehada, left 14 civilians dead, including 8 children. This aerial attack launched a one-ton missile from an Israeli F-16 fighter jet into a two-storey building in the crowded residential neighbourhood of al-Daraj in central Gaza city. The missile, which was launched around midnight, struck the targeted building, totally demolishing it. The explosion also destroyed neighbouring apartment buildings and other property<sup>13</sup>. It is clear that in planning this attack, the Israeli military authorities must have been aware that the impact of such a large missile fired into such a densely populated residential area, would have resulted in excessive civilian casualties.

More recently, the Israeli military has stepped up its use of aerial assassination attacks. Between 10 and 13 June 2003, the Israeli military conducted 6 aerial assassination attacks in the Gaza Strip, killing 6 targeted

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<sup>11</sup> Article 57, 2 (a) (iii), Protocol Additional I to the Geneva Conventions.

<sup>12</sup> "In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed willfully, in violation of the relevant provisions of this Protocol and causing death or serious injury to body or health:...launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects..."

<sup>13</sup> See PCHR press release, *Killing Protected Civilians with Impunity 24*, July 2002 at [www.pchrgaza.org](http://www.pchrgaza.org). PCHR has submitted a number of complaints on behalf of the victims of this incident to the Israeli authorities, requesting an investigation, prosecution of those responsible and compensation for the victims and their families. To date, the victims of this incident have not received any form of reparation from the Israeli authorities.

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persons and 21 non-targeted civilians<sup>14</sup>. At least 133 bystanders were injured. Again, between 21 August and 1 September 2003, the Israeli military conducted 6 aerial assassination attacks in the Gaza Strip, killing 8 targeted individuals. At least 8 non-targeted civilians were killed and more than 76 non-targeted civilians were injured in these attacks<sup>15</sup>. Again, this type of assassination attack; aerial bombardment targeting moving vehicles or residential buildings in heavily populated civilian areas; displays a wilful disregard for the civilian population.

### ***Wilful Killings of Internationals***

In this memorandum, PCHR also wishes to highlight its dismay at the ongoing impunity for the apparent wilful killings of internationals by the Israeli military in the OPTs. To date, 5 internationals have been killed in the West Bank and Gaza Strip by the Israeli military<sup>16</sup>. These have included British, American, German and Italian nationals. In addition to the effective failure of the Israeli authorities to hold those responsible for such killings accountable in accordance with international legal standards<sup>17</sup>, PCHR does not have any information to suggest that High Contracting Parties have taken effective proceedings, including legal, against the Israeli government or individual Israelis in respect of the possible willful killing of their own nationals.

## **Torture or Inhuman Treatment**

PCHR notes with grave concern the ongoing prevalence of torture and ill treatment of Palestinian detainees in Israeli custody. Particularly since early 2002, PCHR has received increased reports regarding various methods of interrogation used against Palestinian detainees, including minors, held in Israeli jails and detentions centres both inside Israel and in the OPTs, which constitute torture and ill treatment as defined both in this Convention and in the Convention Against Torture and other international instruments.

Despite Israel's clear legal obligations in respect of the prohibition on torture as both a *jus cogens* norm of international law, as a High Contracting Party to this Convention, and as a State party to the Convention Against Torture and other international human rights treaty law, Israel has consistently failed to outlaw torture and ill treatment. In concluding reviews of Israel's implementation of the Convention Against Torture, and the International Covenant on Civil and Political Rights, the UN Committee Against Torture and the UN Human Rights Committee respectively, reiterated the concerns of human rights organizations that unlawful practices of physical and psychological pressure continue to be used by members of Israel's General Security Services (now referred to as Israel Security Agency or ISA) against detainees<sup>18</sup>. A ruling of the Israeli High Court of Justice in 1999 failed to outlaw all forms of torture and ill treatment and in fact contradicted the absolute nature of the prohibition on torture in stating that “[i]f the State wishes to enable GSS investigators to utilize physical means in interrogations, it must seek the enactment of legislation for this purpose.” The ruling, as highlighted by the UN Human Rights Committee, also further allowed for the use of the "necessity defence" argument as a

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<sup>14</sup> For further details see PCHR weekly reports no. 23/2003 and 24/2003 available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>15</sup> For further details see PCHR weekly reports no. 32/2003 and 33/2003 available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>16</sup> A sixth international, Thomas Hurndall was also critically injured after being shot by Israeli soldiers in Rafah, in the Gaza Strip, on 11 April 2003.

<sup>17</sup> See PCHR *Impunity for US Peace Activist's Death* 30, June 2003, available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>18</sup> Conclusions and Recommendations of the Committee Against Torture: Israel (23/11/2001), UN doc. CAT/C/XXVII/Concl.5 and Concluding Observations of the Human Rights Committee: Israel (05/08/2003) UN doc. CCPR/CO/78/ISR.

justification for actions taken by GSS interrogators. This argument has been consistently accepted by the Attorney General in investigations conducted into complaints from detainees. Despite claims to the contrary by Israeli officials, the failure of the High Court in this instance served to support a state-sanctioned policy of ill treatment of Palestinian detainees in which torture is endemic.

According to statistics recently compiled by the Public Committee Against Torture in Israel (PCATI), during the first six months of 2003, approximately 58% of Palestinians detained by Israel were exposed to direct physical violence. PCATI further found that 52% of detainees were subjected to sleep deprivation and 79% were subjected to verbal abuse, threats and humiliation<sup>19</sup>. Torture and ill treatment of detainees has invariably included beatings; slappings; shackling in painful positions; kicking; breaking of toes; prolonged blind-folding and cuffing; denial of access to medical care and supplies; inadequate provision of water; inadequate provision of food, including rotten or insufficiently nutritious foods; overcrowding; exposure to extreme temperatures; blacked out cells; inadequate hygiene facilities and supplies, including lack of toilets/insufficient access to toilets<sup>20</sup>.

The case of Detention Facility 1391 in particular illustrates the ongoing Israeli policy of torture and ill treatment of Palestinians in detention. Detention Facility 1391 is a secret Israeli detention facility which has been used to detain and interrogate Palestinians for many years. However, its existence was not publicly acknowledged by the Israeli Minister of Defence until April 2002 following the investigative efforts of human rights organization, Hamoked, which submitted a petition regarding its existence and the practices implemented against Palestinians held in detention there to the Israeli High Court. Statements taken from former detainees revealed that Palestinians detained in this facility had been routinely subject to inhuman conditions and methods of interrogation, both physical and psychological, which constitute torture. Inhuman conditions of detention included airless cells with the windows blacked out, cells measuring only 1 metre by 1.5 metres with no toilet facilities, being blindfolded for many hours. Interrogation methods and other treatment from Israeli military guards and GSS personnel included beatings and other physical and verbal abuse. Palestinians detained in this facility were effectively "disappeared"; requests to the Israeli authorities for notification of the whereabouts of detainees arrested and sent to this facility were refused, the facility's existence was denied, access to legal counsel and to the International Committee of the Red Cross was also refused. Human rights organizations are currently campaigning for this facility to be closed<sup>21</sup>.

The continuing prevalence of torture and inhuman treatment by the Israeli authorities, including the use of methods of interrogation which constitute torture and other ill treatment as defined in international law, the failure to promulgate an absolute prohibition in domestic law, and the failure to investigate and prosecute those responsible for such acts in accordance with international law, constitutes a grave breach of this Convention.

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<sup>19</sup> Public Committee Against Torture in Israel (PCATI), *Four years after the High Court of Justice ruling prohibiting torture in interrogation there is considerable use of means of torture and ill treatment in GSS interrogation 4*, September 2003, available at [www.stoptorture.org.il](http://www.stoptorture.org.il).

<sup>20</sup> For a detailed analysis of the practice of torture and ill treatment see PCATI, *Back to a Routine of Torture: Torture and Ill treatment of Palestinian Detainees during Arrest, Detention and Interrogation – September 2001 to April 2003*, April 2003 available at [www.stoptorture.org.il](http://www.stoptorture.org.il).

<sup>21</sup> See press release from the Public Committee Against Torture in Israel (PCATI), *Shut Down the Secret Detention Facility 1391 4*, September 2003 at [www.stoptorture.org.il](http://www.stoptorture.org.il).

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## **Wilfully Causing Great Suffering or Serious Injury to Body or Health**

Since the beginning of the current Intifada in September 2000, the Israeli military and other government institutions have pursued a number of policies in the OPTs which have resulted in great suffering to the wider Palestinian population. As the Occupying Power, Israel's actions in the OPTs, including those in the name of "security" must always be limited by the principle of proportionality. However, whilst these policies are invariably justified by Israeli officials as a "legitimate" response to "terrorist" actions of armed Palestinian groups, as the UN Special Rapporteur, John Dugard, asserts in his latest report, "...it may be that Israel's response to terror is so disproportionate, so remote from the interests of security, that it assumes the character of reprisal, punishment and humiliation"<sup>22</sup>. The ongoing large-scale military operations, assassination attacks, aerial bombardment have all brought ongoing suffering to Palestinian civilians in the Gaza Strip and West Bank, including East Jerusalem. However, the Israeli policies of house demolition and closure perhaps illustrate most clearly this absence of proportionality, and the intentional infliction of suffering on the wider civilian population. Pictet's Commentary clarifies that "great suffering" within the meaning of article 147 includes physical suffering but also non-physical suffering, including moral suffering. Pictet also asserts that this grave breach refers to great suffering "...inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism." PCHR asserts that in this context the Israeli military policies of house demolition and closures in particular, have inflicted a level of suffering on the Palestinian civilian population which falls within the scope of article 147.

### ***House Demolitions***

Destruction to civilian property has been a prominent feature of Israeli military campaigns in the OPTs and elsewhere for many years. In the last three years, the demolition of civilian homes, commercial properties, and education and health facilities has become a routine occurrence throughout the OPTs. To date, at least 1260 civilian homes have been totally destroyed in the Gaza Strip alone, leaving approximately 10000 Palestinians homeless. At least 1067 more homes have been damaged. The context of home demolitions varies throughout the OPTs but is in most instances related to the expansion of Israeli control over areas in the OPTs, for annexationist purposes, or for shorter-term gains during military operations. It has also been used as a declared method of punishment and deterrence.

The implementation of this policy in the Gaza Strip in particular has steadily increased over the past three years; between September and December 31 2000, 114 homes were totally demolished; 291 were demolished in 2001; 376 homes were demolished in 2002. As of 24 September, 485 homes were totally demolished. Thus, the average annual increase in homes demolished by the Israeli military in the Gaza Strip is approximately 30%. In the Gaza Strip, the house demolition policy has been focused largely in areas surrounding Israeli settlements and along border areas. This policy affects mostly the refugee communities in the OPTs, rendering entire families homeless for the second or even third time<sup>23</sup>. Rafah town and refugee camp, located along the Israeli-controlled border with Egypt, has been most affected by this policy. Home demolitions in Rafah

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<sup>22</sup> Report of the Special Rapporteur of the Commission on Human Rights, Mr John Dugard, on the situation of human rights in the Palestinian Territories occupied by Israel since 1967, submitted in accordance with Commission resolutions 1993/2 A and 2002/8. UN doc. E/CN.4/2003/30, 17 December 2002.

<sup>23</sup> The Abu Hussein family home, located in the Rafah refugee camp near the border with Egypt, was destroyed on 2 May 2002 along with 11 other houses in an Israeli military operation. The family then moved into a relative's property in the same area of Rafah refugee camp. On the night of 3 August 2002, the Israeli military using tanks and bulldozers, moved into the area again and began demolishing the second family home. No warning was given and the family was sleeping inside when the demolition began. As a result nine members of the family were wounded. The Israeli military also fired upon neighbours who tried to rescue the family, including the injured.

constitute more than half of the total demolitions in the Gaza Strip in the last three years; as of 14 August 2003 at least 620 Palestinian homes in Rafah have been totally demolished by the Israeli military, leaving approximately 6000 Palestinians homeless.

Clearly the extent of house demolitions reflects a policy of extensive destruction within the meaning of article 147 of this Convention (see following section on Extensive Destruction to Property). However, in addition, the house demolition policy also inflicts great suffering on the civilian population in respect of the manner in which they are conducted and the longer term humanitarian consequences; demolition operations are often conducted in large-scale military operations carried out using military bulldozers, tanks, and other armoured vehicles. Live ammunition is often used and the operations are very often conducted late at night whilst the residents are sleeping. The inhabitants are rarely given any prior warning of the demolition and are often only aware of the impending demolition of their home when they hear the military vehicles approaching. Increasing numbers of residents have been injured or killed in such operations<sup>24</sup>. The excessive force used and the failure to provide warning maximize the emotional and physical trauma of the demolition on the communities targeted. Those made homeless are generally given emergency assistance by UNRWA or the ICRC, often consisting of a tent and some basic provisions. Few have been re-housed in adequate accommodation<sup>25</sup>; many families remain split between different relatives. Almost all of the families subject to home demolitions lost all their possessions. As most recently noted by the UN Committee Against Torture, the manner in which these house demolitions generally take place is also in violation of international prohibitions on ill treatment<sup>26</sup>.

As a legal aid agency, PCHR has submitted a number of complaints to the Israeli authorities regarding house demolitions, including requests for investigations, prosecution of those responsible and compensation for the victims of this policy. To date, PCHR is not aware of any instance in which the Israeli authorities have provided any form of reparation to Palestinian victims of the Israeli military policy of house demolition.

Justifications for house demolitions are invariably given as "security". However, the location, extent and the manner in which these demolitions are conducted evidences the disproportionate nature of the policy and further indicates that the demolitions are conducted as a form of collective punishment against Palestinian civilian communities and for the purposes of expanding Israeli control in the OPTs (see section on Extensive Destruction of Property).

In particular, the escalating policy of demolishing the family homes of Palestinians suspected of involvement in attacks against Israeli targets, raises serious concerns under both this Convention and international humanitarian and human rights law in general. The deterrent, and thereby inherent punitive nature of these demolitions in particular has been espoused by Israeli officials; in reference to arguments surrounding the use of forcible transfers of Palestinians, Shai Nitzan, head of Security Matters at the Attorney General's Office stated, *"We believe the deterrent factor is legitimate...There is no question that the deterrent factor has been accepted as legitimate in some matters, such as house demolitions. The army carries out other deterrent measures such as*

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<sup>24</sup>Nuha Sabri Swidan al-Maqadma, 40, who was 9 months pregnant, was killed when her house collapsed during an Israeli military demolition operation in al-Bureij Refugee camp on 3 March 2003. See PCHR press release, *8 civilians, including a pregnant woman, killed, 14 houses and a mosque destroyed in Israeli incursion into al-Boreij camp*, no. 30/2003, 3 March 2003 at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>25</sup> See UNRWA *New Shelters for Khan Younis Homeless* 15, September 2003. UNRWA provides such assistance only to those families who are registered refugees.

<sup>26</sup> The UN Committee Against Torture ruled in November 2001 that Israel's house demolition policy may, in certain circumstances, constitute cruel, inhumane or degrading treatment or punishment in violation of article 16 of the Convention Against Torture. See Conclusions and Recommendations of the Committee Against Torture: Israel. 23/11/2001 (CAT/C/XXVII/Concl.5.).

*bombing empty Palestinian security buildings*<sup>27</sup>. As the Human Rights Committee most recently noted, as a declared punishment and deterrent, such demolitions, and the manner in which they are implemented, constitute a violation of the international prohibition on torture and ill treatment<sup>28</sup>. As of 1 September 2003, at least 272 such demolitions have been conducted in the OPTs, leaving approximately 2000 Palestinians homeless. Clearly, in respect of its nature, the extent of its use and its impact on civilians, this government-sanctioned policy of punishment<sup>29</sup> constitutes a violation of article 147 of this Convention on several counts, including as a form of torture and inhuman treatment, willfully causing great suffering, and as extensive destruction of civilian property carried out wantonly and unlawfully.

### ***Closures and Curfews***

Again, the Israeli authorities have implemented a policy of movement restrictions on the Palestinian civilian population in the OPTs for a number of years. However, this policy has escalated to unprecedented levels since September 2000. The network of restrictions on movement of people and goods has effectively rendered any semblance of normal life impossible. The system of military checkpoints, road barriers, fences, trenches, travel permits, patrols, and closure of external borders have effectively imprisoned the wider population of the OPTs in their immediate locales. The regular imposition of curfews in many areas has further effectively placed thousands of Palestinians under house arrest. These ongoing restrictions on movement of people and goods have crippled the economy, halted family, social, cultural and political life and have directly precipitated a humanitarian crisis with rising unemployment and increasing impoverishment of the Palestinian people. Figures for February 2002 supplied by the Palestinian Central Bureau of Statistics estimate that 84.6% of households in the Gaza Strip are living below the internationally-recognized poverty line of \$2 per day. Unemployment has reached as high as 80% in some areas. In addition, the rising poverty levels, and restrictions on movement of goods, have necessarily impacted on access to food – according to a survey conducted by Care International and USAID, 17.5% of the children in the Gaza Strip are suffering from moderate to severe malnutrition and 7.9% in the West Bank<sup>30</sup>. This survey was conducted in 2002; in light of the ongoing closures and military attacks throughout the OPTs, and the resulting ongoing economic decline, it is appropriate to assume that this figure has continued to increase.

The impact of movement restrictions on access to health has been particularly disastrous; road closures, passage through checkpoints and long periods of curfew prevent access to hospitals, clinics, and general medical services. Many patients have been denied or delayed access through checkpoints to hospitals, including for emergency treatment. At least 63 Palestinians have died at checkpoints or elsewhere following denied or delayed access to medical care because of closures or curfews since 29 September 2000<sup>31</sup>; this number continues to increase. Emergency cases, including women in labor, and infants, are especially vulnerable to these delays. During this Intifada, in the Gaza Strip alone dozens of women have been forced to give birth in vehicles or elsewhere due to obstructed access through checkpoints to hospitals and clinics. Closures and curfews have also resulted in scarcity of medical supplies. As the casualties from the ongoing violence perpetrated by the Israeli military against Palestinian civilians has continued, accessibility of effective medical supplies and equipment has conversely declined due to the ongoing closures and curfews.

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<sup>27</sup> As quoted in Jerusalem Post, 'High Court hears Palestinian's petitions against expulsions', 26/08/2002.

<sup>28</sup> Concluding Observations of the Human Rights Committee: Israel (05/08/2003) UN doc. CCPR/CO/78/ISR.

<sup>29</sup> See state response in Ajouri case as described in High Court ruling, H CJ 7015/02 Ajuri v. IDF Commander.

<sup>30</sup> see Preliminary Findings of the Nutritional Assessment and Sentinel Surveillance System for West Bank and Gaza Strip, 5 August 2002, Care International, funded by USAID, p.5.

<sup>31</sup> As of 22 June 2003 – according to PCHR documentation.

### ***Access for International Humanitarian Agencies***

Closures and curfews have also impacted on the services provided by the International Committee of the Red Cross and other humanitarian agencies. The consistent access restrictions imposed on staff members of the International Committee of the Red Cross raises particular concerns in relation to their special status as the guardians of the Geneva Conventions<sup>32</sup>. In addition, UN agencies, government humanitarian programmes and non-governmental humanitarian agencies have all been affected. The deliberate obstruction of movement of international and local staff of these organizations, has severely impacted on the quality and quantity of humanitarian services provided, including distribution of basic foodstuffs, medical supplies, and other humanitarian services. Such obstructions are particularly grave in light of the increasing dependence of Palestinian civilians (approximately 30% of the population of the OPTs are entirely dependent on aid from international humanitarian organizations). Obstructions on access for these organizations is not only limited to denial of access through checkpoints. Both staff and equipment have regularly reported being shot at or physical or verbally threatened by Israeli soldiers. In the worst case, an international staff member of the UN Relief and Works Agency (UNRWA) was shot and killed by an Israeli sniper in Jenin refugee camp on 22 November 2002<sup>33</sup>.

These arbitrary restrictions on movement are imposed by Israeli soldiers at the more than 200 permanent checkpoints, and additional temporary or roaming road blocks located throughout the OPTs. Passage through checkpoints has been characterized by harassment, physical and verbal abuse<sup>34</sup>, killings, humiliation, arbitrary arrest and detention, prolonged and unnecessary delays.

Closures have also been specifically identified by various international agencies as being the primary cause of the ongoing humanitarian crisis in the OPTs. In March 2003, the World Bank concluded that "*The proximate cause of Palestinian economic crisis is closure – the Government of Israel's imposition of restrictions on the movement of Palestinian goods and people across borders and within the West Bank and Gaza*"<sup>35</sup>. The UN Office for the Coordination of Humanitarian Affairs asserted in December 2002 that "...*the humanitarian crisis in the West Bank and Gaza is a crisis of access and mobility....*". Information regarding the impact of closures on the humanitarian situation and on wider economic development has been widely distributed, repeatedly updated, and specifically provided to the Israeli government, military and public.

Closures as a policy are claimed necessary to improve Israel's security. However, the methods of implementation and the results of these measures indicate that any security justifications for closures and curfews are relatively baseless; attacks against Israeli targets both inside Israel and in the OPTs have continued; individuals intent on attacking Israeli targets are able to circumvent checkpoints, use fake identification papers. Indeed, the ongoing use of closures has conversely fuelled hostility and anger towards Israel through impoverishment, humiliation and death. PCHR asserts that these factors indicate intent to cause suffering, and that the suffering inflicted reaches a level of severity which falls within the scope of the prohibition provided in article 147 of the Convention.

### ***Unlawful Confinement***

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<sup>32</sup> See [www.icrc.org](http://www.icrc.org).

<sup>33</sup> See UNRWA, *Death of a UN Worker* 22 November 2002, available at [www.unrwa.org](http://www.unrwa.org).

<sup>34</sup> In one example, on 10 February 2003, a Palestinian woman resident in the Mawasi area in the southern Gaza Strip, was forced at gunpoint by Israeli soldiers stationed at the Tuffah checkpoint, to drink a toxic chemical liquid.

<sup>35</sup> "Two Years of Intifada, Closures and Palestinian Economic Crisis – An Assessment", The World Bank, Summary report, March 5, 2003

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The extent to which the Israeli military has sought to control the freedom of movement of Palestinians in the OPTs may also raise issues under the prohibition of unlawful confinement of a protected person, defined as a grave breach of this Convention in article 147. As detailed above, the network of controls on movement have resulted in the effective imprisonment of Palestinians within their immediate locales. The curfews, usually enforced by shooting at Palestinians who break the curfew for whatever reason, have further effectively placed thousands of Palestinians under house arrest for periods of up to 3 months. These movement restrictions are almost entirely arbitrary. Curfews in particular are implemented without warning on whole communities. In some instances, 24-hour curfews are lifted for a period of 2-3 hours only once a week and have continued for months; between June and September 2002, the town of Nablus was placed under 24 hour military curfew for at least 70 days. Many communities throughout the OPTs have been subjected to nightly curfews since the beginning of the current Intifada. Individuals who fail to observe the curfew, including those who have sought emergency medical attention, have been shot and killed. Commonly, when the curfew is lifted for a short period to obtain basic supplies the Israeli military have re-imposed the curfew earlier than stated. PCHR therefore asserts that the extent of these movement controls, particularly the widespread and prolonged use of curfews, may constitute deprivation of liberty to an extent which falls within the scope of article 147.

### ***Serious Injury to Body or Health***

Over the last three years, approximately 23,630<sup>36</sup> Palestinians have been injured in Israeli military actions conducted in civilian areas. Many of these wounded have sustained long-term and even permanent injuries as a result. Like wilful killings, injuries to civilians have been sustained in the context of disproportionate and indiscriminate use of force by the Israeli military in the OPTs. Palestinian civilians have been injured in demonstrations, during Israeli military incursions, during house demolition operations, at checkpoints, during times of complete quiet, and during assassination attacks. Again, it is this last category which raises particular concerns, illustrating an increasing disregard for the principles of proportionality and civilian life. The total number of Palestinians injured in assassination attacks since the beginning of the Intifada is at least 626. Of these, only 32 were targeted persons. The remaining 95%, or 594 Palestinians injured were non-targeted civilians, passing by. The numbers of injuries are increasing; in 2001, 40 non-targeted civilians were injured in 44 assassination attacks; in 2002, 210 non-targeted civilians were injured in 59 assassination attacks; and to date in 2003, 331 non-targeted Palestinian civilians have been injured in 45 assassination attacks by the Israeli military. It is the facts regarding injuries to Palestinian civilians, including during assassination attempts, which perhaps most clearly illustrate this consistent pattern of the use of increasingly excessive and indiscriminate force by the Israeli military.

Injuries, particularly those which impact on long-term health, have serious consequences not only for the individual, but also for the family, and for the community. The economic and social impact of a long-term injury to a main income-provider in the family, particularly the father, can be especially serious, placing additional financial and other burdens on families already impoverished in the ongoing wider economic and social breakdown in Palestinian society. Rehabilitation of injured civilians is hampered by the impact of closures on availability and sustainability of medical supplies and services. The increasingly large percentage of the population whose health has been permanently impaired by such injuries will impact on future sustainable development, including in respect of the size of the workforce, and the costs of necessary provision of welfare and long-term medical services.

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<sup>36</sup> See [www.palestinercs.org](http://www.palestinercs.org) for regular updates on injuries.

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Again, to date, and despite repeated complaints to the Israeli military and government, PCHR is unaware of any case in which a Palestinian civilian, injured by the Israeli military, has received full and fair reparation, including compensation.

The impact of the increasing violence on mental health of Palestinian civilians, particularly children, also raises concerns. Aside from physical injuries, there has been increased prevalence of mental health problems within the wider Palestinian community. Areas that are subjected to routine violence by the Israeli military, such as the refugee communities in Rafah and Khan Younis in the Gaza Strip, have seen a particularly high instance of mental health problems. These areas witness daily artillery attacks by the Israeli military located in nearby settlements and military posts. These communities have been ravaged by repeated Israeli military incursions, hundreds of homes have been damaged, civilians have been killed and injured, infrastructure has been destroyed and any efforts to rebuild the area or supply essential services are obstructed by the routine violence of the Israeli military in the areas.

According to a survey conducted by the Gaza Community Mental Health Programme amongst children in the Tuffah area of Khan Younis and in the Salah al-Din Gate area in Rafah, 34.5% of children had begun to display **medium** Post-Traumatic Stress Disorder symptoms and 54.6% of children had begun to develop symptoms of **acute** Post-Traumatic Stress Disorders. Again, considering the ongoing closure policy imposed on the Gaza Strip and its impact on health services, treatment for children and adults suffering from mental illness, and other psychological problems, is, and will continue to be, insufficient. Such widespread mental health problems, which in many instances receive inadequate or no assistance at all, again raise serious concerns for future development of Palestinian society.

### **Unlawful Deportation or Transfer**

PCHR is concerned at the increasing use of deportation and transfer of Palestinians by the Israeli authorities. In 2002, the Israeli authorities resumed a policy of deportation and transfer of Palestinians which had been dormant for many years<sup>37</sup>. In May 2002, following negotiations to end the siege of the Church of the Nativity in Bethlehem, and in agreement with the Palestinian Authority, 13 Palestinians were deported to various European states and a further 26 were transferred to the Gaza Strip. The acquiescence of those transferred or deported does not negate the illegality of this measure; the deportation and transfer of these individuals remains a violation of international humanitarian and human rights law, including article 147 of this Convention.

However, PCHR is particularly concerned about the Israeli policy of "assigned residence" which essentially allows the Israeli military to forcibly and unlawfully transfer Palestinian civilians from the West Bank to the Gaza Strip. This policy is provided for in Security Provisions (Judea and Samaria) Order no.510, Amendment no. 84, empowering the Military Commander of the West Bank to assign residence to Palestinians alleged to pose a threat to "security". The first implementation of this order occurred in September 2002 when the brother and sister of a Palestinian whom Israel alleges was involved in attacks against Israeli targets, were transferred from detention in the West Bank to the Gaza Strip. The assigned residence order imposed was for a two-year

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<sup>37</sup> Israeli military order no.1086, issued on 16 December 1992, permitted the deportation of approximately 400 Palestinians from the OPTs, including 165 from the Gaza Strip.

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period with reviews to determine whether there was an ongoing security threat scheduled every six months<sup>38</sup>. To date, three such reviews have been conducted but the order has not been rescinded. Throughout this process, the defense was denied access to information submitted to the Israeli military, the Military Appeals Committee and the Israeli High Court, by the General Security Services (GSS). This information formed the basis of the original order and was the basis for the refusal of both appeals.

In 2003, there have been at least two further instances of unlawful transfer of Palestinians within the OPTs; on 13 May 2003, a registered Palestinian resident of the Mawasi area in the southern Gaza Strip, was issued with a military order signed by Maj. Gen. Doron Almog, GOC of the Southern Command, demanding he leave the area (the Mawasi) within 24 hours. The order was valid for a six month period. Appeals were submitted to the Israeli High Court and rejected. The individual was then transferred out of the Mawasi on 21 May 2003. In the second case, on 18 May 2003, a Palestinian resident of Jenin was transferred to the Gaza Strip under an Israeli military "*assigned residence*" order for a period of two years. The individual was first arrested on 19 June 2002, and was being detained under an Israeli military administrative detention order when the assigned residence order was issued.

In a third case, in May 2003 the Israeli Military Commander of the Central Command, Major General Moshe Kaplinski, ordered 5 Palestinians, who were at the time held in administrative detention, to be "*assigned residence*" to the Gaza Strip from the West Bank for a period of two years. The "*assigned residence*" order was challenged before a Military Appeals Committee but before a final decision was reached the order was rescinded.

In addition to the use of military orders to facilitate transfers, PCHR has documented a number of cases in which Palestinians registered as resident in the West Bank were arbitrarily transferred to the Gaza Strip by the Israeli military without issuance of a military order, often following periods of detention. In one such case, a Palestinian registered to the West Bank was transferred to the Gaza Strip on 12 August 2003. The individual was arrested in Jaffa for failing to have obtained a permit to enter Israel. He was fined by Israeli police and then handed over to the Israeli military who then transferred him to the Erez crossing.

PCHR remains concerned that this policy of transferring Palestinians to the Gaza Strip, both with and in the absence of an Israeli military order, will continue.

### **Unlawful Confinement of a Protected Person...Wilfully Depriving a Protected Person of the Rights of Fair and Regular Trial**

The Convention regulates the lawful detention of civilians by the Occupying Power. Powers of arrest and detention are subject to internationally-standard limitations that seek to prohibit torture and ill treatment, arbitrary arrests and detentions, and guarantee detainees' rights. The Convention provides that the Occupying Power may arrest and detain, to intern and to assign residence to civilians in the territories it occupies<sup>39</sup>. Each

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<sup>38</sup> See PCHR position paper on unlawful transfers available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>39</sup> See article 68 regarding imprisonment or internment, and article 78 regarding assigned residence and internment as administrative measures .

of these measures is subject to specific conditions, including reviews and appeals, access to legal counsel, rules of evidence, proportionality of penalties, and non-retroactivity<sup>40</sup>.

In contrast, the Israeli military and security services have continued to subject thousands of Palestinians, including minors<sup>41</sup>, to arbitrary arrest and detention in violation of these fundamental provisions of the Convention. The last three years have seen a massive increase in the number of arrests and detentions of Palestinians by the Israeli military and security services in the OPTs. In particular, during the Israeli military offensives, Operation Defensive Shield and Operation Determined Path, as many as 8000 Palestinians were detained in mass arrests campaigns. Most of these Palestinians were arrested on the basis of gender, nationality and age. Many were detained in Israeli military posts for periods of up to ten days before being released. However, hundreds were transferred to detention facilities in Israel where they were, and in some cases continue to be, held without charge or trial, denied access to legal counsel. Many of these detainees reported varying forms of torture and ill treatment in detention.

The year 2002 in particular witnessed an unprecedented increase in the use of administrative detention orders against Palestinians in the OPTs. As of the end of 1999, 13 Palestinians remained in administrative detention in Israeli detention facilities. Accurate figures for current administrative detainees are difficult to collate but human rights organizations estimate the number of Palestinians currently held by the Israeli military under administrative detention orders at 1150. Administrative detention orders are imposed by the Israeli military commanders for terms of up to six months which are renewable indefinitely. Palestinians subjected to administrative detention orders have been detained without charge or trial, access to legal counsel and family, and without access to effective appeals. As highlighted by the UN Human Rights Committee in August 2003, prolonged detention without access to legal counsel or others also raises serious concerns under the international prohibition on torture and ill treatment.

### ***Fair Trials***

Palestinians in the OPTs continue to be subject to the jurisdiction of the Israeli military court system. Article 66 of the Convention provides for the establishment of "*properly constituted, non-political military courts* that sit in the occupied territory. As Pictet clarifies, these courts are to be established in "*accordance with the recognized principles governing the administration of justice*". The requirement of being "*non-political*" is included to preclude the use of courts as "*an instrument of political or racial persecution*".<sup>42</sup> For many years, international, Palestinian and Israeli human rights organizations have argued that the Israeli military court system fails to meet minimum international standards on rights to a fair and regular trial. Dominant issues of concern regarding military court procedures include:

- Failure or delays in notifying legal counsel of the location, date and timing of court hearings
- Refusal to submit the bill of indictment to the defendant or defence counsel
- Delays and postponements of hearings without reasonable justification
- Holding court sessions in the absence of the defendant or defence counsel
- Inadequate or absence of translation services (Hebrew-Arabic-Hebrew)

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<sup>40</sup> See articles 64-78.

<sup>41</sup> Defence for Children International – Palestine Section estimate that approximately 350 Palestinian children are currently detained in Israeli detention facilities in the OPTs and Israel. Many of these children are held in appalling conditions of detention, held with adult detainees, and many reported being subjected to torture and other forms of ill treatment by interrogators and wardens. See Child Prisoners Briefings at [www.dci-pal.org](http://www.dci-pal.org).

<sup>42</sup>Pictet, Jean ed., *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, International Committee of the Red Cross, 1958, p.340, article 66.

- Use of confessions obtained through torture
- Refusal to submit prosecution evidence to the defendant or defence counsel for review
- Reliance on evidence presented by the prosecution but to which the defence is denied any access
- Lack of an effective appeals process

The Convention specifically provides for procedures regarding trials; article 72 in particular details the requirements of access to defence counsel of choice, right to interpretation services, the right to call and examine witnesses and, for defense counsel, *"the necessary facilities for preparing the defense"*. As Pictet's commentary further clarifies, the *"defense counsel must be given by the judicial authorities concerned all the facilities and freedom of action necessary for preparing the defence. Above all, he must be allowed to study the written evidence in the case, to visit the accused and interview him without witnesses and to get in touch with persons summoned as witnesses"*<sup>43</sup>.

### ***Access to Defense Counsel***

Access to defense counsel as provided for in the Convention presents one of the greatest problems of the Israeli military courts system. Firstly, since 1995 and the establishment of the Palestinian Authority, Palestinian lawyers have not been granted permission to visit clients detained by the Israeli authorities, nor to represent them in Israeli military courts. Only those lawyers who have qualified under the Israeli Bar are permitted to make representations before the Israeli military and civil courts. Since Palestinians from the Gaza Strip have no access to the Israeli legal training system they cannot qualify under the Israeli Bar and are therefore effectively denied access to Israeli military courts. This is also the case for West Bank Palestinian lawyers.

Secondly, even for those lawyers who are able to make representations in the Israeli military courts, access to clients detained by the Israeli military and security services is extremely restricted. Israeli military order no.1500, issued on 5 April 2002 and effective retroactively from 29 March 2002, permits *"an IDF officer of the rank of at least Captain or a police officer of the equivalent rank to "order in writing the holding of a detainee in detention, for a period of not more than 18 days"*. The order permits the denial of access to legal counsel for the period of 18 days. At the end of the 18 day period, the detainee must be brought before a judge who can effectively extend the period of detention and impose an order further prohibiting access to legal counsel. The existing military order no. 378, permits the renewal of this order for a period of up to 90 days. In May 2002, the Israeli military further issued an additional three military orders (no.1501, 1502, 1503) permitting further extensions to the prohibition on detainees' access to legal counsel. Petitions submitted to the Israeli High Court of Justice by human rights organisations challenging the legality of these orders have been rejected.

### ***Israeli High Court of Justice***

In addition, over the last three years, the qualification of the Israeli High Court as an effective appeals body, as an essential component of the right to a fair and regular trial, has been called into question. Final appeals against rulings of the Israeli military courts have been regularly challenged by petition to the Israeli High Court. In the last three years, the Israeli High Court has been asked to rule on the legality of a number of policies implemented by the Israeli military, including use of flechette tanks shells<sup>44</sup>, human shields, house demolitions,

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<sup>43</sup> Ibid p.356, article 72.

<sup>44</sup> A tank shell filled with dart-like projectiles which are dispersed over a wide area. This is an indiscriminate weapon which cannot be directed at specific target and therefore cannot ensure a distinction between combatant and civilian. Its use in civilian areas therefore constitutes a violation of the Convention. The Israeli military have used flechettes in the Gaza Strip since the beginning of the Intifada in September 2000. At least 21 Palestinian civilians have been killed by flechette tank shells. PCHR together with Physicians for Human

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access to legal counsel during detention<sup>45</sup>, and state assassinations. However, to date, the Israeli High Court has not acceded to requests from petitioners to rule on the legality of Israeli military methods and policies. Invariably the High Court has relied on an argument that "*choosing military means the defendant [the Israeli military] uses to prevent lethal terrorist attacks before they occur is not a subject that this court can consider.*"<sup>46</sup> This ongoing failure to hold the Israeli military and state accountable according to its obligations under both customary international law and as a State party to international treaty law, including this Convention, raises serious doubts regarding the independence of the Israeli High Court and its qualification as an effective appeals body within the meaning of international law, including article 73 of this Convention.

### **Extensive Destruction and Appropriation of Property not Justified by Military Necessity and Carried out Wantonly and Unlawfully**

#### ***Destruction of Civilian Property***

As detailed above, the Israeli military have pursued a policy of destruction of civilian property for many years, but since September 2000 destruction to civilian homes, businesses, agricultural land, educational and health facilities, civilian infrastructure, civil government property has reached an unprecedented level. This extensive destruction to civilian property has been carried out in various contexts throughout the OPTs. Perhaps the most intensive large-scale destruction of civilian property took place during the Israeli military offensives, Operation Defensive Shield and Operation Determined Path, conducted largely in the West Bank in 2002. Between March and June 2002, the Israeli military systematically damaged or destroyed civilian homes; commercial properties; educational institutions; hospitals, clinics, medical vehicles throughout the West Bank. This period also saw widespread and targeted destruction to civilian infrastructure including electrical, water, communications and sewage networks. The town and refugee camps of Nablus, Ramallah and Jenin were particularly affected. In Jenin refugee camp alone, approximately 169 Palestinian homes, totaling 374 apartment units and affecting 800 families<sup>47</sup>, were totally destroyed by the Israeli military during their prolonged siege of the refugee camp and town in April 2002.

In the Gaza Strip, such targeted attacks on civilian property have devastated many areas. In Rafah and Khan Younis the systematic targeted destruction of civilian homes in particular has left at least 8000 Palestinians homeless. In a more recent Israeli military incursion into the northern town of Beit Hanoun which took place in May and June 2003, the Israeli military repeatedly targeted the civilian infrastructure, including electricity and water networks, roads and bridges. Repairs conducted on electricity and water networks damaged by the Israeli military were again destroyed by Israeli soldiers and other attempts to repair the infrastructure were blocked by

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Rights – Israel, petitioned the Israeli High Court on the use of flechettes, demanding that they be outlawed as an indiscriminate weapon; see press release, 21 October 2002 at [www.pchrgaza.org](http://www.pchrgaza.org). The High Court rejected the petition on 27 April 2003.

<sup>45</sup> Of 124 petitions submitted to the Israeli High Court of Justice by the Public Committee Against Torture in Israel (PCATI) regarding denial of access to legal counsel during interrogation, none were accepted by the High Court. See PCATI press release, *Four years after the High Court of Justice ruling prohibiting torture in interrogation there is considerable use of means of torture and ill treatment in GSS interrogation*, 4 September 2003, available at [www.stoptorture.org.il](http://www.stoptorture.org.il).

<sup>46</sup> Petition 5872/2001, *Baraka v. Prime Minister*, as quoted in Petition 8990/2002, *PHR-Israel and PCHR v. Head of IDF Southern Command and the State of Israel*.

<sup>47</sup> Statistics provided by UNRWA, as quoted in Amnesty International, *Israel and the Occupied Territories, Shielded from Scrutiny: IDF Violations in Jenin and Nablus* 4, November 2002.

Israeli soldiers on the ground<sup>48</sup>. Commercial properties have also been targeted; as of 30 June 2003, at least 371 commercial properties were destroyed in the Gaza Strip alone.

Of particular concern has been the widespread destruction to agricultural land and crops. Since the beginning of the current Intifada, the Israeli military have systematically razed large areas of Palestinian agricultural land, uprooted trees, including olive and citrus groves, destroyed crops, agricultural equipment, wells and water irrigation networks. In the Gaza Strip, approximately 20868 dunums of Palestinian agricultural land has been razed by the Israeli military; this constitutes approximately 12% of the total agricultural land in the Gaza Strip. Areas particularly affected are located along the eastern border with Israel, and al-Sayafa in the northern Gaza Strip. Al-Sayafa, in which the Israeli settlements of Dugit and Eli Sinai are located, has been subjected to intensive land-razing operations since 2000. Since the beginning of the Intifada, at least 65% of the area of al-Sayafa, not including land expropriated prior to 2000 for the construction of the two settlements of Eli Sinai and Dugit, has been razed by the Israeli military<sup>49</sup>.

In most instances, destruction to civilian property is conducted without prior warning. Even in those instances where formal notification has been made, the timeframe has provided no opportunity for effective appeal against the order. PCHR has submitted a number of complaints regarding various forms of civilian property destruction, including homes, commercial properties, agricultural land, to the Israeli authorities. However, in those cases in which a response has been received, the Israeli authorities have relied on an incorrect interpretation of international law, specifically article 23 of the Hague Convention IV 1907<sup>50</sup>, to the effect that the State does not bear responsibility for the incidents and that the complainant does not have a right to demand reparation, including compensation.

### ***Appropriation of Civilian Property***

Perhaps the most sinister of all the grave breaches perpetrated by the Israeli military and government against the Palestinian civilian population in the OPTs, is the appropriation of Palestinian land and property. The state of Israel has pursued a policy of territorial expansion in the OPTs since the beginning of the occupation in 1967. As stated by Miloon Kothari, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Israel has a "...long record of depopulation and demographic manipulation by way of expulsion, destruction of homes and villages, and implantation of settlers prior to and since its establishment as a State"<sup>51</sup>. This long term policy has indeed been primarily implemented through the ongoing expansion of the illegal settlement programme. There are currently at least 143<sup>52</sup> illegal Israeli settlements in the Gaza Strip and West Bank, including East Jerusalem. These settlements are further used to facilitate expansion of control over the OPTs by the network of roads, access routes and military posts and checkpoints established ostensibly to facilitate "safe" movement of settlers around the OPTs, and back and forth into Israel.

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<sup>48</sup> See PCHR report, *Violations of International Human Rights and Humanitarian Law by the Israeli Military in Beit Hanoun, 15 May 30 – June 2003*, available at [www.pchrgaza.org](http://www.pchrgaza.org).

<sup>49</sup> The total area of greater al-Sayafa, including the two settlements Eli Sinai and Dugit which were constructed in 1982 and 1990, is approximately 8000 dunums.

<sup>50</sup> As stated in the response of the State Prosecutor to a PCHR petition to the High Court regarding land-confiscation. See HCJ 9252/2000, HCJ 9515/2000 and HCJ 3848/2001 – Sakar, Wahedi and Bashir v. State of Israel.

<sup>51</sup> UN doc E/CN.4/2003/5/Add.1, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari. 12 June 2002, para.9.

<sup>52</sup> As of 1997, according to Israeli Ministry of Interior and the Israeli Central Bureau of Statistics as quoted in Haaretz, *New Year Supplement: The Price of Settlements 27*, September 2003, available at [www.haaretz.com](http://www.haaretz.com).

The settlement programme continues to expand through increased investment from the state<sup>53</sup>. There are increasing numbers of new settlements, establishment of settlement "outposts", construction of new roads and access routes, as well as expansion of existing settlements, including population, services, residential and other properties located inside settlements. This settlement expansion has been facilitated in particular by the Israeli military policies of house demolition and land razing. These policies, as discussed earlier, are generally focused in areas around settlements, and settlement roads.

In the Gaza Strip, Palestinian agricultural land located adjacent to settlements or settlement roads is often razed by the Israeli military, using bulldozers and heavy military vehicles to flatten crops, uproot trees and demolish agricultural buildings. The Israeli military often cite various reasons for these operations, including claims that foliage in the area provides cover for Palestinian gunmen seeking to attack the settlements. These areas of land are then gradually incorporated into the settlements, either by the establishment of fences around the property or, more often, by the *de facto* incorporation of the land into the settlement's existing territory by denying the Palestinian owners or workers access to the land. This prohibition on access is largely enforced by the threat of sniper-fire, arrest or detention of those Palestinians who approach the land, including the land owners.

In the West Bank, new settlements and settlement outposts are established regularly through transplant of caravans or other temporary structures, water towers and other basic infrastructure to new locations, which are then gradually built upon to include permanent structures. In the Gaza Strip, the processes are slightly different; the settlement programme in the Gaza Strip includes primarily expansion of existing settlements, including agricultural lands and construction of new properties inside existing settlements, with far fewer new settlements being established. More commonly Israeli territorial expansion in the Gaza Strip involves *de facto* incorporation of land within the boundaries of existing settlements (either fenced in or closed off by use of sniper fire) for the purpose of so-called "buffer zones". The incorporation of these lands then increases the distance between the settlers' buildings, and Palestinians. Few new properties have been built on this land; instead it is used as a "buffer zone", between the two communities, but controlled by settlers and the Israeli military. Thus, the areas controlled by the Israeli military, including through snipers positioned in towers inside the settlements, can extend to up to 2 kilometres from the settlement properties. This procedure is also followed to distance Palestinians from settler roads. Attempts to access these areas, or even proximity to the edge of these areas, is generally responded to by sniper fire. A number of Palestinians have been shot and killed in these areas in the Gaza Strip.

Settlement expansion in the Gaza Strip has also been characterized by expansion of settlement infrastructure, primarily roads and access routes. Substantial investment in permanent settlement infrastructure indicates a long-term planning process of permanent territorial expansion in the Gaza Strip. Again, these infrastructure projects are invariably claimed necessary for the security of Israel and the settlements whilst "minimizing" the impact on Palestinians. This argument has also been used over past months in Israeli arguments regarding the "security fence" in the West Bank (see below). However, the following example demonstrates the insincerity of such arguments. Over the last three years, the Israeli military has pursued a large-scale land-clearing operation in the central Gaza Strip to the east of the Gush Katif settlement block. This operation has cleared more than 300 dunums of prime Palestinian agricultural land and several homes to facilitate the construction of a motor-way bridge over Salah al Din Street, enabling settlers residing in Gush Katif to travel to Israel without

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<sup>53</sup> According to recent media reports, the Israeli government has spent 2.5 billion NIS annually on the settlement programme in the OPTs. This figure does not include military expenditure but rather includes investments in roads, housing, income tax benefits, water and electricity infrastructure, health services for settler communities. These investments are estimated at more than 10,000 NIS per settler. See Bassok, Moti, *Settlements cost NIS 2.5 bn a year in non-military outlays*, Haaretz, 23 September 2003 available at [www.haaretz.com](http://www.haaretz.com).

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having to cross this main Palestinian road at ground level. According to the Israeli government<sup>54</sup>, the bridge was allegedly intended to provide secure access for the settlers whilst easing the situation for Palestinians whose passage along Salah al Din Street was severely restricted by an Israeli military checkpoint placed to secure settlers passage across the road. The State asserted that once the bridge was completed, the checkpoint would become unnecessary and could be dismantled. Despite the completion of the bridge in Autumn 2002, the checkpoint, which has been expanded to include armoured military positions and traffic lights, continues to be used to impose daily restrictions on the passage of Palestinians between the north and south of the Gaza Strip.

### *Israel's "Security Fence"*

Whilst the settlement programme has been the traditional manifestation of Israel's colonial policies, in the last year in particular the processes of territorial expansion have taken a different form. Israel's "security fence" in the West Bank is the most recent, and the most blatant manifestation of the consistent government policy of territorial expansion. The "fence" which is currently being constructed again in the name of "security" is being constructed not on the Green Line, along the 1967 border with Israel, but rather largely on Palestinian land within the occupied West Bank.

Thus, the construction of the "security fence" itself constitutes a violation of international humanitarian law in that it seeks to effectively alter the territorial integrity of the West Bank, and more seriously constitutes the *de facto* annexation to Israel of occupied Palestinian territory. Recent estimates put the total area of Palestinian lands to be expropriated at approximately 55 % of the total area of the occupied West Bank<sup>55</sup>.

The main justification for the "security fence" is that it will physically separate Israel from Palestinian areas enabling the total control of Palestinian access to Israeli communities, particularly in light of attacks conducted inside Israel by armed Palestinians. However, the "security fence" also serves to maintain Israeli control over the remainder of the OPTs and actually furthers the apartheid-style *bantustanisation* of Palestinian communities; the "security fence" will further segregate Palestinians from Israel and Palestinian lands west of the "fence", whilst the remaining Israeli settlements east of the "fence" will continue to facilitate the isolation of Palestinian communities within the West Bank from one another.

Additionally, the methods employed by the Israeli military in the construction of the "security fence" also constitute violations of this Convention, and international humanitarian and human rights law in general. The large-scale expropriation of Palestinian lands and extensive destruction to civilian property including homes, commercial properties, and civilian infrastructure fall within the scope of article 147 of this Convention. By June 2003, 30 km of Phase One of the construction, which runs for 145 km southwards from Jenin, Qalqiliya and Tulkarem, had been completed. This part of the fence runs up to 6 km inside the West Bank. As of June 2003, 30 km of water infrastructure and 25 water wells have been destroyed; approximately 102,320 trees have been uprooted; 85 privately-owned commercial buildings have been demolished; 14,680 dunums of land belonging to 51 Palestinian villages and towns have been confiscated and leveled; 65 Palestinian communities, comprising of over 206,000 people have been affected. In addition, 100,615 dunums of Palestinian cultivated land has

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<sup>54</sup> Case Number: 3081/01 (Abu Houli v. State of Israel). PCHR represented two relatives of the Abu Houli family whose land had been confiscated in the Abu Houli area in central Gaza, south of Deir el Balah. PCHR's lawyers submitted a petition to the Israeli High Court. The above comments were taken from the State response to the petition.

<sup>55</sup> Statistics provided by ARIJ. See [www.arj.org](http://www.arj.org). For further information regarding Israel's "security fence" also see Palestinian Environmental NGOs Network, *The Wall in Palestine; Facts, Testimonies, Analysis and Call to Action*, June 2003.

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been left on the western side of the "fence" and out of 51 communities isolated from their lands by the "fence", 25 reported that residents had no access to their land, 4 communities reported restricted access to their lands and 13 communities reported still having regular access to their lands. In addition, Palestinian communities have been denied access to at least 50 ground-water wells, 200 cisterns and wells ranging from 10 to 500 m which are now located west of the "security fence". These figures<sup>56</sup> are devastating, yet they refer only to part of Phase One.

These facts also undermine various Israeli claims regarding the "security fence". Israeli officials have stated that Palestinian farmers will be granted normal access to lands located to the west of the "fence" through specially constructed gates. However, the above details illustrate that already many communities have been totally denied access to their lands. The term "security fence" itself is misleading; in many areas, such as around Qalqiliya, the "fence" is an 8m high concrete wall coupled with additional barriers, roads and fences. For most of its length, the "fence" consists of several parallel wire fences, including electrified fences, as well as any combination of trenches, roads, barbed wire barriers, cameras, trace paths for footprints, military posts and buffer zones. The "fence" will span a width of 70-100m.

Current discussions underway in Israel surround the re-routing of the fence to circumvent larger Israeli settlements, such as Ariel, Immanuel and Kidumin. Inclusion of these settlements to the west of the "fence" would re-route the trajectory up to 16km within the West Bank territory. As such discussions continue, the impact of the "security fence", including the immediate humanitarian consequences, and the longer term impact on sustainable development and the viability of the future Palestinian state, continues to broaden. The economic, social and political consequences in the long-term affect the wider population of the OPTs, as well as those in the communities along the fence's trajectory. Thus the "fence" also reflects a wider policy of "voluntary transfer"; implementing a range of military and political measures and activities which collectively render normal life in the OPTs impossible, thereby "encouraging" Palestinians, primarily those with the resources to do so, to leave the area.

### ***Funding the Fence?***

The "security fence" and its impact on Palestinian communities, particularly in respect of the humanitarian consequences, have been much discussed within the international community, the diplomatic community and the United Nations, and other humanitarian agencies. Many existing donors are re-evaluating their contributions to the OPTs to include specific assistance for the communities directly affected by the "security fence", allocating millions of dollars for assistance and development projects in these areas. However, this massive focus on provision of humanitarian assistance in these affected areas raises again the question of the donor community funding the Israeli occupation and its expansion<sup>57</sup>. Whilst these recent donations are essential to alleviate the immediate humanitarian impact of the "security fence", they are merely temporary measures which do not constitute a long-term solution to the situation. The provision of these humanitarian services by the international community, in particular by the High Contracting Parties to the Convention, cannot in anyway replace the clear legal obligation on the High Contracting Parties to intervene to end the violations of the Convention perpetrated by Israel, including the construction of the "security fence" in its current trajectory. The priority for the High Contracting Parties must be the enforcement of the Convention, and therefore the immediate dismantlement of the "security fence", and a halt to the violations, including grave breaches of the Convention, perpetrated both in the context of the construction of the "fence" and in general

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<sup>56</sup> Palestinian Environmental NGOs Network, *The Wall in Palestine; Facts, Testimonies, Analysis and Call to Action*, June 2003.

<sup>57</sup> See UN doc. E/CN.4/2003/30, 17 December 2002.

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throughout the OPTs. Humanitarian assistance is essential and must continue, but without simultaneous concrete action to halt the violations which cause the deteriorating humanitarian situation, such measures may prove largely counterproductive.

***Manipulation of Borders in the Gaza Strip***

This expansion of territory through manipulation of internationally-recognised borders is not new; the "security fence" in the West Bank is a larger-scale version of a model already employed in the Gaza Strip. The Israeli military initially constructed a system of fences and walls along the border between the Gaza Strip prior to the Intifada. This fencing, ostensibly constructed on security grounds to restrict movement from the Gaza Strip into Israel, was largely constructed on the 1967 border with Israel. However, since its establishment and particularly since the beginning of the current Intifada, the Israeli military has continued to raze large areas of land all along the Gaza side of this fence to establish a "buffer zone" to increase "security" along the fence. Access to this land, mostly agricultural land, has since been denied to Palestinians through sniper-fire or arrest and detention, and thus has been *de facto* expropriated by the Israeli military. These no-go areas extend from between 200-500 meters from the 1967 border into the Gaza Strip for the length of the border from Beit Hanoun in the north to Rafah in the south. Thus, the 1967 border with Israel has effectively been pushed back into the Gaza Strip by up to 500 meters. In addition, since the beginning of the current Intifada a concrete wall has been constructed along the southern border with Egypt which is controlled by the Israeli military. Again, the construction of this wall has been accompanied by large-scale clearing of Palestinian homes on the Gaza side of the wall. The construction of this new wall and its "buffer zone" has pushed the *de facto* border back into Gazan territory by up to 500 meters.

Territorial expansion through appropriation of Palestinian homes and land is clearly a long-term policy. However, the broadening of its implementation has significantly escalated the progression of this policy in the last three years. Through the land-razing and property destruction policies; the construction of Israel's "security fence"; the expansion of settlement road networks and existing settlement boundaries, as well as the establishment of new settlements; the territorial contiguity, and therefore viability, of any future state of Palestine is being gradually and permanently eroded.

## Impunity

Despite the ongoing systematic and widespread violations of this Convention and other international treaty and customary international law, by which Israel is bound, instances of accountability for those responsible for violations are rare. As detailed earlier, the Israeli High Court of Justice has consistently failed to hold the state and the military accountable under international law. At lower levels, investigations by the Israeli authorities into complaints submitted on behalf of Palestinian and other victims of unlawful actions by the Israeli military and other state and non-state agents, are also rare and generally fail to reach international standards on thoroughness and impartiality. Furthermore, despite repeated complaints submitted on behalf of Palestinian victims by PCHR, including in respect of unlawful killings and injuries, property destruction, unlawful arrest and detention, torture and ill treatment, no victim in these cases has been granted effective reparation, including investigations, prosecution of those responsible and compensation, in accordance with international legal standards.

However, in this memorandum PCHR wishes to express its particular dismay at the continuing impunity afforded to the Israeli government and military by the High Contracting Parties to this Convention. All of the High Contracting Parties, including those not directly involved in the current conflict, have both general and specific obligations with respect to the implementation and enforcement of the Convention. As discussed below, the ongoing failure to act, to hold Israel accountable according to its own obligations as the Occupying Power, constitutes a breach of these obligations.

### ***The Article 1 Obligation***

Common article 1 of the Geneva Conventions confers not a right to "*respect and ensure respect...in all circumstances*", but an absolute obligation<sup>58</sup>. As Pictet's Commentary clarifies, "*...in the event of a Power failing to fulfill its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavour to bring it back to an attitude of respect for the Convention*" and that "*The proper working of the system of protection provided by the Convention demands in fact that the Contracting Parties should not be confined merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian provisions underlying the Conventions are universally applied*". The provision, "*in all circumstances*" also serves to eliminate any pretext for refusal to respect the Convention based on the character of the conflict, including as an occupation.

The article 1 obligation can be separated into the obligation to "respect" the Convention and the obligation to "ensure respect" of the Convention. This first obligation corresponds to the specific responsibilities conferred directly on the High Contracting Parties, as non-parties to the conflict, such as the obligation to search for and prosecute those responsible for grave breaches of the Convention contained in article 146 (see below). The second category would include the responsibility to ensure that the Convention is respected by others. In this context, the Convention does not provide further detail but the obligation should be interpreted to prohibit not only *active* participation or encouragement of violations of the Convention<sup>59</sup>, but also *inaction* on the part of the High Contracting Parties. Article 1 therefore imposes an obligation to *actively* ensure respect for the

<sup>58</sup> The obligatory nature of common article 1 was also reaffirmed by the 1986 ruling of the International Court of Justice in *Nicaragua v. US*. The ruling further affirmed that the obligation stems not only from article 1 itself but also as a general principle of customary international law. See *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v. US, Merits, [1986] ICJ Rep. 14 at para. 220*.

<sup>59</sup> In *Nicaragua v. US*<sup>59</sup>, the International Court of Justice ruled the US in breach of the customary article 1 obligation for encouraging violations of the Convention.

Convention in all circumstances, thereby rendering a failure to act a breach of the obligation. Thus, article 1 makes the protection of civilians the responsibility of all states, irrespective of their participation or non-participation in the conflict.

Clearly, Israel has unequivocally and consistently failed to adhere to its obligations as the Occupying Power *vis a vis* the Palestinian civilian population. This situation has prevailed for the last 36 years but has been particularly acute since September 2000. The High Contracting Parties are fully aware of these facts, including through provision of information by PCHR and other human rights organizations operating in the region, as well as UN agencies and other governmental organisations. In the full knowledge of Israel's consistent disregard for the Convention, responsibility for ensuring Israel's implementation of the Convention falls with the remaining High Contracting Parties.

### ***Enforcement Mechanisms***

It is on the basis of article 1 that PCHR has consistently called for the re-convening of a conference of the High Contracting Parties to decide upon measures for securing Israel's respect for the Convention in the OPTs. The absence of a specific enforcement measure in the Convention does not detract from the obligation itself. Within the context of article 1, PCHR considers that in actively ensuring Israel's respect for the Convention the High Contracting Parties have a range of measures available. Clearly, all measures taken must be within the framework of international law and must not be arbitrary. Measures should be taken in a gradual and graduated manner with each step evaluated for its effectiveness in relation to the goal of ensuring Israel's respect for the Convention. In the context of Israel, the following measures are particularly pertinent, and could be implemented in a graduated manner; non-renewal of trade privileges or agreements; reduction of suspension of public aid to the offending state; restrictions and/or ban on arms trade, military technology and scientific cooperation; restrictions on exports and/or imports to and from the offending state; investment freeze<sup>60</sup>.

The most consistent call from Palestinians in the context of enforcement mechanisms has been the demand for an international protection force. PCHR reiterates this demand, and calls for an international protection presence with a clear mandate to oversee the enforcement of the Convention in the OPTs and, in the longer-term, to also oversee the implementation of the various UN resolutions<sup>61</sup> regarding the withdrawal of the occupation forces and the dismantlement of the occupation. In light of the escalating violence perpetrated against Palestinian civilians by the Israeli military throughout the OPTs, such a protection presence has become evermore necessary.

All of these measures have been highlighted for consideration before but none have as yet been implemented. PCHR asserts that the consistent failure of the High Contracting Parties to take action to "ensure" Israel's respect of the Convention constitutes a breach of this article 1 obligation.

### ***Article 146 Obligations***

Article 146 confers specific obligations on High Contracting Parties in respect of accountability for grave breaches; High Contracting Parties are specifically required to enact domestic legislation to provide effective penal sanctions for those responsible for grave breaches; to search for and to prosecute "*persons alleged to have committed, or to have ordered to be committed*" grave breaches, or to hand the individuals over to another High

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<sup>60</sup> See Palwankar, *Measures available to states for fulfilling their obligation to ensure respect for international humanitarian law*, (January-February 1994), 298 Int. Rev. Red Cross 9.

<sup>61</sup> See in particular UN Security Council Resolution 242) adopted on 22 November 1967) which calls for the withdrawal of Israeli troops from the territories it occupied during the course of the 1967 war.

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Contracting Party for prosecution. The High Contracting Parties are also obligated *"to take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following article [article 147]."*

The second part of article 146 reiterates the obligation contained in article 1. Again no specific mechanism is defined, but rather the High Contracting Parties are obligated to take **necessary** measures to suppress all other violations of the Convention. However, to date, despite a number of complaints submitted to the other High Contracting Parties in respect of alleged grave breaches perpetrated by the Israeli military against the Palestinian civilian population in the OPTs, no High Contracting Party has as yet effectively fulfilled the obligations detailed in article 146 specific to both search for and prosecute those responsible for grave breaches or for the suppression of other violations of the Convention.

This ongoing failure of the High Contracting Parties to fulfill their legal obligations, including in respect of articles 1 and 146, not only constitutes an infringement of the Convention itself, but, as PCHR has repeatedly stated, the ongoing impunity afforded to Israel serves also to encourage further violations of the Convention, including grave breaches.

PCHR therefore calls upon the High Contracting Parties to:

- Immediately convene a Conference to discuss options to enforce Israel's respect of the Convention.
- Immediately dispatch an international protection force, with a mandate to oversee implementation of the Convention and other international law relating to the withdrawal of the occupation.
- Take further graduated steps to ensure Israel's compliance with the Convention and international humanitarian and human rights law in general.
- Comply with the obligations detailed in article 146 of the Convention to actively search for and prosecute, in accordance with international legal standards, those responsible for grave breaches of the Convention.