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### **HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES**

#### **Report of the United Nations Fact Finding Mission on the Gaza Conflict**

##### **Executive summary\***

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\* The present document is an advance translation and contains the executive summary only. The full report will be issued as A/HRC/12/48 in all languages according to translation capacity of the United Nations translation services.

## **A. Introduction**

1. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”

2. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland’s Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

3. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

4. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.

5. The Mission convened for the first time in Geneva between 4 and 8 May 2009. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission’s secretariat were deployed in Gaza from 22 May to 4 July 2009 to conduct field investigations.

6. Notes verbales were sent to all Member States of the United Nations and United Nations organs and bodies on 7 May 2009. On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate.

7. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

8. The Mission repeatedly sought to obtain the cooperation of the Government of Israel. After numerous attempts had failed, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter the Gaza Strip through the Rafah crossing.

9. The Mission has enjoyed the support and cooperation of the Palestinian Authority and of the Permanent Observer Mission of Palestine to the United Nations. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the Palestinian Authority in the West Bank. The Mission did, however, meet officials of the

Palestinian Authority, including a cabinet minister, in Amman. During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

10. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission is in contact with him and continues to monitor developments.

## **B. Methodology**

11. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

12. With regard to temporal scope, the Mission decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operations, up to 31 July 2009.

13. The Mission also analysed the historical context of the events that led to the military operations in Gaza between 27 December 2008 and 18 January 2009 and the links between these operations and overarching Israeli policies vis-à-vis the Occupied Palestinian Territory.

14. The Mission considered that the reference in its mandate to violations committed “in the context” of the December–January military operations required it to include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

15. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

16. This report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission's mandate. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. In Gaza, the Mission investigated 36 incidents.

17. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

18. The Mission adopted an inclusive approach to gathering information and seeking views. Information-gathering methods included: (a) the review of reports from different sources; (b)

interviews with victims, witnesses and other persons having relevant information; (c) site visits to specific locations in Gaza where incidents had occurred; (d) the analysis of video and photographic images, including satellite imagery; (e) the review of medical reports about injuries to victims; (f) the forensic analysis of weapons and ammunition remnants collected at incident sites; (g) meetings with a variety of interlocutors; (h) invitations to provide information relating to the Mission's investigation requirements; (i) the wide circulation of a public call for written submissions; (j) public hearings in Gaza and in Geneva.

19. The Mission conducted 188 individual interviews. It reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

20. By refusing to cooperate with the Mission, the Government of Israel prevented it from meeting Israeli Government officials, but also from travelling to Israel to meet Israeli victims and to the West Bank to meet Palestinian Authority representatives and Palestinian victims.

21. The Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons.

22. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission gave priority to the participation of victims and people from the affected communities. The 38 public testimonies covered facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

23. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

24. The Mission's final conclusions on the reliability of the information received were based on its own assessment of the credibility and reliability of the witnesses it met, verifying the sources and the methodology used in the reports and documents produced by others, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient credible and reliable information for the Mission to make a finding in fact.

25. On this basis, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events. The Mission has thus referred in many cases to the relevant fault

element (mens rea). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

26. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

### **C. Facts investigated by the Mission, factual and legal findings**

#### **The Occupied Palestinian Territory: the Gaza Strip**

##### **1. The blockade**

27. The Mission focused (chap. V) on the process of economic and political isolation imposed by Israel on the Gaza Strip, generally referred to as a blockade. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts in the provision of fuel and electricity. Gaza's economy is further severely affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and other public sectors to respond to the emergency created by the military operations.

28. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza Strip without qualification.

##### **2. Overview of Israel's military operations in the Gaza Strip and casualties**

29. Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead". The military operations in the Gaza Strip included two main phases, the air phase and the air-land phase, and lasted from 27 December 2008 to 18 January 2009. The Israeli offensive began with a week-long air attack, from 27 December until 3 January 2009. The air force continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009. The army was responsible for the ground invasion, which began on 3 January 2009, when ground troops entered Gaza from the north and the east. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. The navy was used in part to shell the Gaza coast during the operations. Chapter VI also locates the incidents investigated by the Mission, described in chapters VII to XV, in the context of the military operations.

30. Statistics about Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations place the overall number of persons killed between 1,387 and 1,417. The Gaza authorities report 1,444 fatalities. The Government of Israel provides a figure of 1,166. The data provided by non-governmental sources on the percentage of civilians among those killed are generally consistent and raise very serious concerns about the way Israel conducted the military operations in Gaza.

31. According to the Government of Israel, during the military operations there were four Israeli fatalities in southern Israel, of whom three were civilians and one a soldier. They were killed by rocket and mortar attacks by Palestinian armed groups. In addition, nine Israeli soldiers were killed during the fighting inside the Gaza strip, four of whom as a result of friendly fire.

### **3. Attacks by Israeli forces on government buildings and persons of the Gaza authorities, including police**

32. The Israeli armed forces launched numerous attacks against buildings and persons of the Gaza authorities. As far as attacks on buildings are concerned, the Mission examined the Israeli strikes against the Palestinian Legislative Council building and the Gaza main prison (chap. VII). Both buildings were destroyed and can no longer be used. Statements by Israeli Government and armed forces representatives justified the attacks arguing that political and administrative institutions in Gaza are part of the “Hamas terrorist infrastructure”. The Mission rejects this position. It finds that there is no evidence that the Legislative Council building and the Gaza main prison made an effective contribution to military action. On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives. These facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.

33. The Mission examined the attacks against six police facilities, four of them during the first minutes of the military operations on 27 December 2008, resulting in the death of 99 policemen and nine members of the public. Overall, the approximately 240 policemen killed by Israeli forces constitute more than one sixth of the Palestinian casualties. The circumstances of the attacks seem to indicate, and the Government of Israel’s July 2009 report on the military operations confirm, that the policemen were deliberately targeted and killed on the ground that the police, as an institution or a large part of the policemen individually, are, in the Government of Israel’s view, part of the Palestinian military forces in Gaza.

34. To examine whether the attacks against the police were compatible with the principle of distinction between civilian and military objects and persons, the Mission analysed the institutional development of the Gaza police since Hamas took complete control of Gaza in July 2007 and merged the Gaza police with the “Executive Force” it had created after its election victory. The Mission finds that, while a great number of the Gaza policemen were recruited among Hamas supporters or members of Palestinian armed groups, the Gaza police were a civilian law-enforcement agency. The Mission also concludes that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities and thus did not lose their civilian immunity from direct attack as civilians on this basis. The Mission accepts that there may be individual members of the Gaza police that were at the same time members of

Palestinian armed groups and thus combatants. It concludes, however, that the attacks against the police facilities on the first day of the armed operations failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity), and therefore violated international humanitarian law.

**4. Obligation on Palestinian armed groups in Gaza to take feasible precautions to protect the civilian population and civilian objects**

35. The Mission examined whether and to what extent the Palestinian armed groups violated their obligation to exercise care and take all feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations (chap. VIII). The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups. On the basis of the information gathered, the Mission found that Palestinian armed groups were present in urban areas during the military operations and launched rockets from urban areas. It may be that the Palestinian combatants did not at all times adequately distinguish themselves from the civilian population. The Mission found no evidence, however, to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks.

36. Although the incidents investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, it cannot exclude that this might have occurred in other cases. The Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes. On the basis of its own investigations and the statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot, however, discount the possibility that Palestinian armed groups were active in the vicinity of such United Nations facilities and hospitals. While the conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law, Palestinian armed groups, where they launched attacks close to civilian or protected buildings, unnecessarily exposed the civilian population of Gaza to danger.

**5. Obligation on Israel to take feasible precautions to protect the civilian population and civilian objects in Gaza**

37. The Mission examined how the Israeli armed forces discharged their obligation to take all feasible precautions to protect the civilian population of Gaza, including particularly the obligation to give effective advance warning of attacks (chap. IX). The Mission acknowledges the significant efforts made by Israel to issue warnings through telephone calls, leaflets and radio broadcasts, and accepts that in some cases, particularly when the warnings were sufficiently specific, they encouraged residents to leave an area and get out of harm's way. However, the Mission also notes factors that significantly undermined the effectiveness of the warnings issued. These include the lack of specificity and thus credibility of many pre-recorded phone messages and leaflets. The credibility of instructions to move to city centres for safety was also diminished by the fact that the city centres themselves had been the subject of intense attacks during the air

phase of the military operations. The Mission also examined the practice of dropping lighter explosives on roofs (so-called roof knocking). It concludes that this technique is not effective as a warning and constitutes a form of attack against the civilians inhabiting the building. Finally, the Mission stresses that the fact that a warning was issued does not relieve commanders and their subordinates of taking all other feasible measures to distinguish between civilians and combatants.

38. The Mission also examined the precautions taken by the Israeli armed forces in the context of three specific attacks they launched. On 15 January 2009, the field office compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Gaza City came under shelling with high explosive and white phosphorous munitions. The Mission notes that the attack was extremely dangerous, as the compound offered shelter to between 600 and 700 civilians and contained a huge fuel depot. The Israeli armed forces continued their attack over several hours despite having been fully alerted to the risks they created. The Mission concludes that the Israeli armed forces violated the requirement under customary international law to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects.

39. The Mission also finds that, on the same day, the Israeli armed forces directly and intentionally attacked al-Quds hospital in Gaza City and the adjacent ambulance depot with white phosphorous shells. The attack caused fires which took a whole day to extinguish and caused panic among the sick and wounded who had to be evacuated. The Mission finds that no warning was given at any point of an imminent strike. On the basis of its investigation, the Mission rejects the allegation that fire was directed at the Israeli armed forces from within the hospital.

40. The Mission also examined the intense artillery attacks, again including white phosphorous munitions, on al-Wafa hospital in eastern Gaza City, a facility for patients receiving long-term care and suffering from particularly serious injuries. On the basis of the information gathered, the Mission found a violation of the prohibition of attacks on civilian hospitals in both cases. The Mission also highlights that the warnings given by leaflets and pre-recorded phone messages in the case of al-Wafa hospital demonstrate the complete ineffectiveness of certain kinds of routine and generic warnings.

## **6. Indiscriminate attacks by Israeli forces resulting in the loss of life and injury to civilians**

41. The Mission examined the mortar shelling of al-Fakhura junction in Jabaliyah next to a UNRWA school, which, at the time, was sheltering more than 1,300 people (chap. X). The Israeli armed forces launched at least four mortar shells. One landed in the courtyard of a family home, killing 11 people assembled there. Three other shells landed on al-Fakhura Street, killing at least a further 24 people and injuring as many as 40. The Mission examined in detail statements by Israeli Government representatives alleging that the attack was launched in response to a mortar attack from an armed Palestinian group. While the Mission does not exclude that this may have been the case, it considers the credibility of Israel's position damaged by the series of inconsistencies, contradictions and factual inaccuracies in the statements justifying the attack.

42. In drawing its legal conclusions on the attack on al-Fakhura junction, the Mission recognizes that, for all armies, decisions on proportionality, weighing the military advantage to be gained against the risk of killing civilians, will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case. The firing of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought. The Mission thus considers the attack to have been indiscriminate, in violation of international law, and to have violated the right to life of the Palestinian civilians killed in these incidents.

## **7. Deliberate attacks against the civilian population**

43. The Mission investigated 11 incidents in which the Israeli armed forces launched direct attacks against civilians with lethal outcome (chap. XI). The facts in all bar one of the attacks indicate no justifiable military objective. The first two are attacks on houses in the al-Samouni neighbourhood south of Gaza City, including the shelling of a house in which Palestinian civilians had been forced to assemble by the Israeli armed forces. The following group of seven incidents concern the shooting of civilians while they were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli forces to do so. The facts gathered by the Mission indicate that all the attacks occurred under circumstances in which the Israeli armed forces were in control of the area and had previously entered into contact with or had at least observed the persons they subsequently attacked, so that they must have been aware of their civilian status. In the majority of these incidents, the consequences of the Israeli attacks against civilians were aggravated by their subsequent refusal to allow the evacuation of the wounded or to permit access to ambulances.

44. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend in the testimonies of Israeli soldiers collected in two publications it reviewed.

45. The Mission further examined an incident in which a mosque was targeted with a missile during early evening prayers, resulting in the death of 15 people, and an attack with flechette munitions on a crowd of family and neighbours at a condolence tent, killing five. The Mission finds that both attacks constitute intentional attacks against the civilian population and civilian objects.

46. From the facts ascertained in all the above cases, the Mission finds that the conduct of the Israeli armed forces constitutes grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and, as such, give rise to individual criminal responsibility. It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation of the right to life.

47. The last incident concerns the bombing of a house resulting in the killing of 22 family members. Israel's position in this case is that there was an "operational error" and that the intended target was a neighbouring house storing weapons. On the basis of its investigation, the Mission expresses significant doubts about the Israeli authorities' account of the incident. The

Mission concludes that, if a mistake was indeed made, there could not be said to be a case of wilful killing. State responsibility of Israel for an internationally wrongful act would, however, remain.

## **8. The use of certain weapons**

48. Based on its investigation of incidents involving the use of certain weapons such as white phosphorous and flechette missiles, the Mission, while accepting that white phosphorous is not at this stage proscribed under international law, finds that the Israeli armed forces were systematically reckless in determining its use in built-up areas. Moreover, doctors who treated patients with white phosphorous wounds spoke about the severity and sometimes untreatable nature of the burns caused by the substance. The Mission believes that serious consideration should be given to banning the use of white phosphorous in built-up areas. As to flechettes, the Mission notes that they are an area weapon incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

49. While the Mission is not in a position to state with certainty that so-called dense inert metal explosive (DIME) munitions were used by the Israeli armed forces, it did receive reports from Palestinian and foreign doctors who had operated in Gaza during the military operations of a high percentage of patients with injuries compatible with their impact. DIME weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands, but do raise specific health concerns. Finally, the Mission received allegations that depleted and non-depleted uranium were used by the Israeli armed forces in Gaza. These allegations were not further investigated by the Mission.

## **9. Attacks on the foundations of civilian life in Gaza: destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing**

50. The Mission investigated several incidents involving the destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing (chap. XIII). Already at the beginning of the military operations, el-Bader flour mill was the only flour mill in the Gaza Strip still operating. The flour mill was hit by a series of air strikes on 9 January 2009, after several false warnings had been issued on previous days. The Mission finds that its destruction had no military justification. The nature of the strikes, in particular the precise targeting of crucial machinery, suggests that the intention was to disable the factory's productive capacity. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity amounts to a war crime. The Mission also finds that the destruction of the mill was carried out to deny sustenance to the civilian population, which is a violation of customary international law and may constitute a war crime. The strike on the flour mill furthermore constitutes a violation of the right to adequate food and means of subsistence.

51. The chicken farms of Mr. Sameh Sawafeary in the Zeytoun neighbourhood south of Gaza City reportedly supplied over 10 per cent of the Gaza egg market. Armoured bulldozers of the Israeli armed forces systematically flattened the chicken coops, killing all 31,000 chickens inside, and destroyed the plant and material necessary for the business. The Mission concludes

that this was a deliberate act of wanton destruction not justified by any military necessity and draws the same legal conclusions as in the case of the destruction of the flour mill.

52. The Israeli armed forces also carried out a strike against a wall of one of the raw sewage lagoons of the Gaza wastewater treatment plant, which caused the outflow of more than 200,000 cubic metres of raw sewage onto neighbouring farmland. The circumstances of the strike suggest that it was deliberate and premeditated. The Namar wells complex in Jabaliyah consisted of two water wells, pumping machines, a generator, fuel storage, a reservoir chlorination unit, buildings and related equipment. All were destroyed by multiple air strikes on the first day of the Israeli aerial attack. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error. It found no grounds to suggest that there was any military advantage to be had by hitting the wells and noted that there was no suggestion that Palestinian armed groups had used the wells for any purpose. Considering that the right to drinking water is part of the right to adequate food, the Mission makes the same legal findings as in the case of the el-Bader flour mill.

53. During its visits to the Gaza Strip, the Mission witnessed the extent of the destruction of residential housing caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. In some cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In others, the facts gathered by the Mission strongly suggest that the destruction of housing was carried out in the absence of any link to combat engagements with Palestinian armed groups or any other effective contribution to military action. Combining the results of its own fact-finding on the ground with UNOSAT satellite imagery and the published testimonies of Israeli soldiers, the Mission concludes that, in addition to the extensive destruction of housing for so-called operational necessity during their advance, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings during the last three days of their presence in Gaza, aware of their imminent withdrawal. The conduct of the Israeli armed forces in this respect violated the principle of distinction between civilian and military objects and amounted to the grave breach of “extensive destruction... of property, not justified by military necessity and carried out unlawfully and wantonly”. The Israeli armed forces furthermore violated the right to adequate housing of the families concerned.

54. The attacks on industrial facilities, food production and water infrastructure investigated by the Mission are part of a broader pattern of destruction, which includes the destruction of the only cement-packaging plant in Gaza (the Atta Abu Jubbah plant), the Abu Eida factories for ready-mix concrete, further chicken farms and the al-Wadiyah Group’s food and drinks factories. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations.

## **10. The use of Palestinian civilians as human shields**

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations (chap. XIV). The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite

clear orders from Israel's High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime. The Palestinian men used as human shields were questioned under threat of death or injury to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law.

#### **11. Deprivation of liberty: Gazans detained during the Israeli military operations of 27 December 2008 to 18 January 2009**

56. During the military operations, the Israeli armed forces rounded up large numbers of civilians and detained them in houses and open spaces in Gaza and, in the case of many Palestinian men, also took them to detention facilities in Israel. In the cases investigated by the Mission, the facts gathered indicate that none of the civilians was armed or posed any apparent threat to the Israeli soldiers. Chapter XV of the report is based on the Mission's interviews with Palestinian men who were detained, as well as on its review of other relevant material, including interviews with relatives and statements from other victims submitted to it.

57. From the facts gathered, the Mission finds that numerous violations of international humanitarian law and human rights law were committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.

58. In the al-Atatra area in north-western Gaza, Israeli troops had dug out sandpits in which Palestinian men, women and children were detained. Israeli tanks and artillery positions were located inside the sandpits and around them and fired from next to the detainees.

59. The Palestinian men who were taken to detention facilities in Israel were subjected to degrading conditions of detention, harsh interrogation, beatings and other physical and mental abuse. Some of them were charged with being unlawful combatants. Those interviewed by the Mission were released after the proceedings against them had apparently been discontinued.

60. In addition to arbitrary deprivation of liberty and violation of due process rights, the cases of the detained Palestinian civilians highlight a common thread of the interaction between Israeli soldiers and Palestinian civilians which also emerged clearly in many cases discussed elsewhere in the report: continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment contrary to fundamental principles of international humanitarian law and human rights law. The Mission concludes that this treatment constitutes the infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.

## **12. Objectives and strategy of Israel's military operations in Gaza**

61. The Mission reviewed available information on the planning of the Israeli military operations in Gaza, on the advanced military technology available to the Israeli armed forces and on their training in international humanitarian law (chap. XVI). According to official Government information, the Israeli armed forces have an elaborate legal advice and training system in place, which seeks to ensure knowledge of the relevant legal obligations and support to commanders for compliance in the field. The Israeli armed forces possess very advanced hardware and are also a market leader in the production of some of the most advanced pieces of military technology available, including unmanned aviation vehicles (UAVs). They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions.

62. The tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.

63. In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas' "supporting infrastructure" is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets. Statements by Israeli political and military leaders prior to and during the military operations in Gaza indicate that the Israeli military conception of what was necessary in a war with Hamas viewed disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve not only military but also political goals.

64. Statements by Israeli leaders to the effect that the destruction of civilian objects would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired") indicate the possibility of resorting to reprisals. The Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

## **13. The impact of the military operations and of the blockade on the people of Gaza and their human rights**

65. The Mission examined the combined impact of the military operations and of the blockade on the Gaza population and its enjoyment of human rights. The economy, employment opportunities and family livelihoods were already severely affected by the blockade when the Israeli offensive began. Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty or deep poverty were rising.

66. In this precarious situation, the military operations destroyed a substantial part of the economic infrastructure. As many factories were targeted and destroyed or damaged, poverty, unemployment and food insecurity further increased dramatically. The agricultural sector similarly suffered from the destruction of farmland, water wells and fishing boats during the military operations. The continuation of the blockade impedes the reconstruction of the economic infrastructure that was destroyed.

67. The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anaemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. The destruction of water and sanitation infrastructure (such as the destruction of the Namar wells and the attack against the water treatment plant described in chapter XIII) aggravated the pre-existing situation. Even before the military operations, 80 per cent of the water supplied in Gaza did not meet the World Health Organization's standards for drinking water. The discharge of untreated or partially treated wastewater into the sea is a further health hazard worsened by the military operations.

68. The military operations and resulting casualties subjected the beleaguered Gaza health sector to additional strain. Hospitals and ambulances were targeted by Israeli attacks. Patients with chronic health conditions could not be given priority in hospitals faced with an influx of patients with life-threatening injuries. Patients injured during the hostilities were often discharged quickly to free beds. The long-term health impact of these early discharges, as well as of weapons containing substances such as tungsten and white phosphorous, remains a source of concern. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.

69. The number of persons suffering from mental health problems is also bound to increase. The Mission investigated a number of incidents in which adults and children witnessed the killing of loved ones. Doctors of the Gaza Community Mental Health Programme gave information to the Mission on psychosomatic disorders, on a widespread state of alienation in the population and on "numbness" as a result of severe loss. They told the Mission that these conditions were in turn likely to increase the readiness to embrace violence and extremism. They also told the Mission that 20 per cent of children in the Gaza Strip suffer from post-traumatic stress disorders.

70. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.

71. The Mission's attention was also drawn to the particular manner in which women were affected by the military operations. The cases of women interviewed by the Mission in Gaza dramatically illustrate the suffering caused by the feeling of inability to provide children with the care and security they need. Women's responsibility for the household and the children often forces them to conceal their own sufferings, resulting in their issues remaining unaddressed. The number of women who are the sole breadwinners increased, but their employment opportunities remain significantly inferior to men's. The military operations and increased poverty add to the potential for conflicts in the family and between widows and their in-laws.

72. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations was, however, insufficient to meet the needs of the population even before hostilities started, and has again decreased since the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations which it has as the occupying Power and which are spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

73. The Mission also concludes that in the destruction by the Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing. The Mission, moreover, finds violations of specific human rights provisions protecting children, particularly those who are victims of armed conflict, women and the disabled.

74. The conditions of life in Gaza, resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

75. Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

#### **14. The continuing detention of Israeli soldier Gilad Shalit**

76. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by a Palestinian armed group. In reaction to his capture, the Israeli Government ordered a number of attacks against infrastructure in the Gaza Strip and Palestinian

Authority offices as well as the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council. The Mission heard testimonies indicating that, during the military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.

77. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. The International Committee of the Red Cross (ICRC) should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

78. The Mission is concerned by declarations made by various Israeli officials who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

#### **15. Internal violence and targeting of Fatah affiliates by security services under the control of the Gaza authorities**

79. The Mission obtained information about violence against political opponents by the security services that report to the Gaza authorities. These included the killing of a number of Gaza residents between the beginning of the Israeli military operations and 27 February. Among these were some detainees who had been at al-Saraya detention facility on 28 December and who had fled following the Israeli aerial attack. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest. According to the Gaza authorities, arrests were made only after the end of the Israeli military operations and only in relation to criminal acts and to restore public order.

80. The Mission gathered first-hand information on five cases of Fatah affiliates detained, killed or subject to physical abuse by members of the security forces or armed groups in Gaza. In most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters. The Mission finds that such actions constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law.

## **The Occupied Palestinian Territory: the West Bank, including East Jerusalem**

81. The Mission considered developments in Gaza and the West Bank as closely interrelated, and analysed both to reach an informed understanding of and to report on issues within its mandate.

82. A consequence of Israel's non-cooperation with the Mission was that the Mission was unable to visit the West Bank to investigate alleged violations of international law there. However, the Mission has received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission has met representatives of human rights organizations, members of the Palestinian legislature and community leaders. It heard experts, witnesses and victims at the public hearings, interviewed affected individuals and witnesses, and reviewed video and photographic material.

### **1. Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations**

83. Various witnesses and experts informed the Mission of a sharp rise in the use of force by the Israeli security forces against Palestinians in the West Bank from the beginning of the Israeli operations in Gaza (chap. XX). A number of protestors were killed by Israeli forces during Palestinian demonstrations, including in support of the Gaza population under attack, and scores were injured. The level of violence used in the West Bank during the time of the operation in Gaza was sustained also after the operation.

84. Of particular concern to the Mission were allegations of the use of unnecessary, lethal force by Israeli security forces, the use of live ammunitions, and the provision in the Israeli armed forces "open fire regulations" of different rules to deal with disturbances where only Palestinians are present and those where Israelis are present. This raises serious concern with regard to discriminatory policies vis-à-vis Palestinians. Eyewitnesses also reported to the Mission on the use of sniper fire in the context of crowd control. Witnesses spoke of the markedly different atmosphere they encountered in the confrontation with the soldiers and border police during demonstrations in which all checks and balances had been removed. Several witnesses told the Mission that during the operation in Gaza, the sense in the West Bank was one of a "free for all", where anything was permitted.

85. Little if any action is taken by the Israeli authorities to investigate, prosecute and punish violence against Palestinians, including killings, by settlers and members of the security forces, resulting in a situation of impunity. The Mission concludes that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law.

### **2. Detention of Palestinians in Israeli prisons**

86. It is estimated that, since the beginning of the occupation, approximately 700,000 Palestinian men, women and children have been detained by Israel. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and 390 children. Most of these detainees are charged or convicted

by the Israeli military court system that operates for Palestinians in the West Bank and under which due process rights for Palestinians are severely limited. Many are held in administrative detention and some under the Israeli “Unlawful Combatants Law”.

87. The Mission focused on a number of issues in relation to Palestinian detainees that in its view are linked to the December-January Israeli military operations in Gaza or their context.

88. Legal measures since Israel’s disengagement from Gaza in 2005 have resulted in differential treatment for Gazan detainees. A 2006 law altered due process guarantees and is applied only to Palestinian suspects, the overwhelming majority of whom are from Gaza, according to Israeli Government sources. The ICRC Family Visits Programme in the Gaza Strip was suspended in 2007, barring all means of communication between Gazan prisoners and the outside world.

89. During the Israeli military operations in Gaza, the number of children detained by Israel was higher than in the same period in 2008. Many children were reportedly arrested on the street and/or during demonstrations in the West Bank. The number of child detainees continued to be high in the months following the end of the operations, accompanied by reports of abuses by Israeli security forces.

90. A feature of Israel’s detention practice vis-à-vis the Palestinians since 2005 has been the arrest of Hamas affiliates. A few months before the elections for the Palestinian Legislative Council in 2005, Israel arrested numerous persons who had been involved in municipal or Legislative Council elections. Following the capture by Palestinian armed groups of Israeli soldier Gilad Shalit in June 2006, the Israeli armed forces arrested some 65 members of the Legislative Council, mayors and ministers, mostly Hamas members. All were held at least two years, generally in inadequate conditions. Further arrests of Hamas leaders were conducted during the military operations in Gaza. The detention of members of the Legislative Council has meant that it has been unable to function and exercise its legislative and oversight function over the Palestinian executive.

91. The Mission finds that these practices have resulted in violations of international human rights and humanitarian law, including the prohibition of arbitrary detention, the right to equal protection under the law and not to be discriminated based on political beliefs and the special protections to which children are entitled. The Mission also finds that the detention of members of the Legislative Council may amount to collective punishment contrary to international humanitarian law.

### **3. Restrictions on freedom of movement in the West Bank**

92. In the West Bank, Israel has long imposed a system of restrictions on movement. Movement is restricted by a combination of physical obstacles, such as roadblocks, checkpoints and the Wall, and administrative measures, such as identity cards, permits, assigned residence, laws on family reunification, and policies on the right to enter from abroad and the right of return for refugees. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements, buffer zones, military bases and military training zones, and the roads built to connect these places. Many of these roads are “Israeli only” and forbidden for Palestinian use. Tens of thousands of Palestinians today are subject to a travel ban imposed

by Israel, preventing them from travelling abroad. A number of witnesses and experts invited by the Mission to meet in Amman and participate in the hearings in Geneva could not meet the Mission owing to this travel ban.

93. The Mission has received reports that, during the Israeli offensive in Gaza, restrictions on movement in the West Bank were tightened. Israel imposed a “closure” on the West Bank for several days. In addition, there were more checkpoints in the West Bank, including in East Jerusalem, for the duration of the operation. Most of these were so-called flying checkpoints. In January 2009, several areas of the West Bank between the Wall and the Green Line were declared “closed military areas”.

94. During and following the operations in Gaza, Israel tightened its hold on the West Bank by increasing expropriations, house demolitions and demolition orders, granting more permits for homes built in settlements and intensifying the exploitation of the natural resources in the West Bank. Following the operations in Gaza, Israel has amended the regulations which determine the ability of persons with “Gaza ID” to move to the West Bank and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

95. Israel’s Ministry of Housing and Planning is planning a further 73,000 settlement homes in the West Bank. The building of 15,000 of these homes has already been approved and, if all the plans are realized, the number of settlers in the Occupied Palestinian Territory will double.

96. The Mission believes that the restrictions on movement and access to which Palestinians in the West Bank are subject, in general, and the tighter restrictions during and, to some extent, after the military operations in Gaza, in particular, are disproportionate to any military objective served . In addition, the Mission is concerned about the steps taken recently to formalize the separation between Gaza and the West Bank, and as such between two parts of the Occupied Palestinian Territory.

#### **4. Internal violence and targeting of Hamas supporters by the Palestinian Authority, restrictions on freedom of expression and assembly**

97. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the security services, including unlawful arrest and detention. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority security forces in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. There have been a number of deaths in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused. Complaints of such practices have not been investigated.

98. Allegations were also received about the use of excessive force and the suppression of demonstrations by Palestinian security services – particularly those in support of the population of Gaza during the Israeli military operations. On these occasions Palestinian Authority security services have allegedly arrested many individuals and prevented the media from covering the events. The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views.

99. The disabling of the Palestinian Legislative Council following the arrest and detention by Israel of several of its members has effectively curtailed parliamentary oversight over the Palestinian Authority executive. The executive has passed decrees and regulations to enable it to continue its day-to-day operations.

100. Other allegations include the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups or the revocation and non-renewal of their licences, the forcible replacement of board members of Islamic schools and other institutions, and the dismissal of Hamas-affiliated teachers.

101. The Palestinian Authority continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of “non-adherence to the legitimate authority” or “non-obtainment of security approval” on their appointments, which has become a pre-requirement for enrolment in public service. In effect, this measure excludes Hamas supporters or affiliates from public sector employment.

102. The Mission is of the view that the reported measures are inconsistent with the Palestinian Authority’s obligations deriving from the Universal Declaration of Human Rights and the Palestinian Basic Law.

## **Israel**

### **1. Impact on civilians of rocket and mortar attacks by Palestinian armed groups on southern Israel**

103. Palestinian armed groups have launched about 8000 rockets and mortars into southern Israel since 2001 (chap. XXIV). While communities such as Sderot and Nir Am kibbutz have been within the range of rocket and mortar fire since the beginning, the range of rocket fire increased to nearly 40 kilometres from the Gaza border, encompassing towns as far north as Ashdod, during the Israeli military operations in Gaza.

104. Between 18 June 2008 and 18 January 2009, rockets fired by Palestinian armed groups in Gaza have killed three civilians inside Israel and two civilians in Gaza when a rocket landed short of the border on 26 December 2008. Reportedly, over 1000 civilians inside Israel were physically injured as a result of rocket and mortar attacks, 918 of whom were injured during the time of the Israeli military operations in Gaza.

105. The Mission has taken particular note of the high level of psychological trauma suffered by the civilian population inside Israel. Data gathered by an Israeli organization in October 2007 found that 28.4 per cent of adults and 72–94 per cent of children in Sderot suffered from post-traumatic stress disorder. During the military operations in Gaza 1596 people were reportedly treated for stress-related injuries while afterwards over 500 people were treated.

106. Rockets and mortars have damaged houses, schools and cars in southern Israel. On 5 March 2009, a rocket struck a synagogue in Netivot. The rocket and mortar fire has adversely affected the right to education of children and adults living in southern Israel. This is a result of school closures and interruptions to classes by alerts and moving to shelters but also the

diminished ability to learn that is witnessed in individuals experiencing symptoms of psychological trauma.

107. The rocket and mortar fire has also had an adverse impact on the economic and social life of the affected communities. For communities such as Ashdod, Yavne, Beersheba, which experienced rocket strikes for the first time during the Israeli military operations in Gaza, there was a brief interruption to their economic and cultural activities brought about by the temporary displacement of some residents. For towns closer to the Gaza border, which have been under rocket and mortar fire since 2001, the recent escalation has added to the exodus of residents.

108. The Mission has determined that the rockets and, to a lesser extent, the mortars fired by the Palestinian armed groups are incapable of being directed towards specific military objectives and have been fired into areas where civilian populations are based. The Mission has further determined that these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity. Given the seeming inability of the Palestinian armed groups to direct the rockets and mortars towards specific targets and given that the attacks have caused very little damage to Israeli military assets, the Mission finds that there is significant evidence to suggest that one of the primary purposes of the rocket and mortar attacks is to spread terror among the Israeli civilian population, a violation of international law.

109. Noting that some of the Palestinian armed groups, among them Hamas, have publicly expressed their intention to target civilians in reprisal for the civilian fatalities in Gaza as a result of Israeli military operations, the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

110. The Mission notes that the relatively few casualties sustained by civilians inside Israel is due in large part to the precautions put into place by Israel. This includes an early warning system, the provision of public shelters and fortifications of schools and other public buildings at great financial cost – a projected US\$ 460 million between 2005 and 2011 – to the Government of Israel. The Mission is greatly concerned, however, about the lack of an early warning system and a lack of public shelters and fortifications for the Palestinian Israeli communities living in unrecognized and in some of the recognized villages that are within the range of rocket and mortars being fired by Palestinian armed groups in Gaza.

## **2. Repression of dissent in Israel, the right of access to information and treatment of human rights defenders**

111. The Mission received reports that individuals and groups, viewed as sources of criticism of Israel's military operations were subjected to repression or attempted repression by the Government of Israel. Amidst a high level of support for the Israeli military operations in Gaza from the Israeli Jewish population, there were also widespread protests against the military operations inside Israel. Hundreds of thousands – mainly, but not exclusively, Palestinian citizens of Israel – protested. While, in the main, the protests were permitted to take place, there were occasions when, reportedly, protesters had difficulty in obtaining permits – particularly in areas populated mainly by Palestinian Israelis. In Israel and in occupied East Jerusalem 715

people were arrested during the protests. There appear to have been no arrests of counter-protesters and 34 per cent of those arrested were under 18 years of age. The Mission notes that a relatively small proportion of those protesting were arrested. The Mission urges the Government of Israel to ensure that the police authorities respect the rights of all its citizens, without discrimination, including freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

112. The Mission notes with concern the reported instances of physical violence committed by members of the police against protesters, including the beating of protesters and other inappropriate conduct such as subjecting Palestinian citizens of Israel who were arrested to racial abuse and making sexual comments about female members of their families. Article 10 of the Covenant requires that those deprived of their liberty be treated with humanity and respect for the inherent dignity of the human person.

113. Of the protesters brought before the Israeli courts, the Palestinian Israelis were disproportionately held in detention pending trial. The element of discrimination and differential treatment between Palestinian and Jewish citizens of Israel by the judicial authorities, as indicated in the reports received, is a substantial cause for concern.

114. The interviews of political activists by the Israeli General Security Services were cited as the actions contributing most significantly to a climate of repression inside Israel. The Mission is concerned about activists being compelled to attend interviews with Shabak (also known as Shin Bet), without there being any legal obligation on them to do so, and in general at the alleged interrogation of political activists about their political activities.

115. The Mission received reports concerning the investigation by the Government of Israel into New Profile on allegations that it was inciting draft-dodging, a criminal offence, and reports that the Government was seeking to terminate funding from foreign Governments for Breaking the Silence, following its publication of testimonies of Israeli soldiers concerning the conduct of the Israeli armed forces in Gaza in December 2008 and January 2009. The Mission is concerned that the Government of Israel's action with regard to these organizations may have an intimidating effect on other Israeli human rights organizations. The so-called United Nations Declaration on Human Rights Defenders guarantees the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". If motivated by reaction to the organization's exercise of its freedom of expression, lobbying foreign Governments to terminate funding would be contrary to the spirit of the Declaration.

116. The Government of Israel imposed a ban on media access to Gaza following 5 November 2008. Furthermore, access was denied to human rights organizations and the ban continues for some international and Israeli organizations. The Mission can find no justification for this. The presence of journalists and international human rights monitors aids the investigation and wide public reporting of the conduct of the parties to the conflict, and can inhibit misconduct. The Mission observes that Israel, in its actions against political activists, non-governmental organizations and the media, has attempted to reduce public scrutiny of both its conduct during its military operations in Gaza and the consequences that these operations had for the residents of Gaza, possibly seeking to prevent investigation and public reporting thereon.

## D. Accountability

### **1. Proceedings and responses by Israel to allegations of violations by its armed forces against Palestinians**

117. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

118. The Mission reviewed public information and reports from the Government of Israel concerning actions taken to discharge its obligation to investigate alleged violations (chap. XXVI). It addressed to Israel a number of questions on this issue, but it did not receive a reply.

119. In response to allegations of serious violations of human rights law and international humanitarian law, the Military Advocate General ordered some criminal investigations that were closed two weeks later concluding that allegations "were based on hearsay". The Israeli armed forces also released the results of five special investigations carried out by high-ranking military officers, which concluded that "throughout the fighting in Gaza, the IDF operated in accordance with international law", but the investigations reportedly revealed a very small number of errors. On 30 July 2009 the media reported that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out of nearly 100 complaints of criminal conduct by soldiers. No details were offered.

120. The Mission reviewed the Israeli internal system of investigation and prosecution according to its national legislation and in the light of practice. The system comprises: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special investigations, performed by a senior officer at the request of the chief of staff; and (d) military police investigations, carried out by the Criminal Investigation Division of the military police. At the heart of the system lies the so-called operational debriefing. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes.

121. International human rights law and humanitarian law require States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel. International law has also established that such investigations should comply with standards of impartiality, independence, promptness and effectiveness. The Mission holds that the Israeli system of investigation does not comply with all those principles. In relation to the "operational debriefing" used by the Israeli armed forces as an investigative tool, the Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of impartiality and promptness in investigations. The fact that proper criminal investigations can start only after the "operational debriefing" is over is a major flaw in the Israeli system of investigation.

122. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult.

## **2. Proceedings by Palestinian authorities**

### **(a) Proceedings related to actions in the Gaza Strip**

123. The Mission found no evidence of any system of public monitoring or accountability for serious violations of international humanitarian law and human rights law set up by the Gaza authorities. The Mission is concerned with the consistent disregard for international humanitarian law with which armed groups in the Gaza Strip conduct their armed activities, through rocket and mortar fire, directed against Israel. Despite some media reports, the Mission remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of international humanitarian law in the conduct of armed activities by militant groups in the Gaza Strip.

124. Notwithstanding statements by the Gaza authorities and any action that they may have taken, of which the Mission is unaware, the Mission also considers that allegations of killings, torture and mistreatment within the Gaza Strip have gone largely without investigation.

### **(b) Proceedings related to actions in the West Bank**

125. With regard to relevant violations identified in the West Bank, it appears that, with few exceptions, there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration.

126. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment

## **3. Universal jurisdiction**

127. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of the grave breach provisions of the Geneva Conventions of 1949, prevent impunity and promote international accountability (chap. XXVIII).

## **4. Reparations**

128. International law also establishes that, whenever a violation of an international obligation occurs, an obligation to provide reparation arises. It is the view of the Mission that the current

constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide for an additional or alternative mechanism of compensation for damage or loss incurred by Palestinian civilians during the military operations (chap. XXIX).

#### **E. Conclusions and recommendations**

129. The Mission draws general conclusions on its investigations in chapter XXX, which also includes a summary of its legal findings.

130. The Mission then makes recommendations to a number of United Nations bodies, Israel, the responsible Palestinian authorities and the international community on: (a) accountability for serious violations of international humanitarian law; (b) reparations; (c) serious violations of human rights law; (d) the blockade and reconstruction; (e) the use of weapons and military procedures; (f) the protection of human rights organizations and defenders ; (g) follow-up to the Mission's recommendations. The recommendations are detailed in chapter XXXI.

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