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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB
TERRITORIES, INCLUDING PALESTINE**

**Joint written statement* submitted by Al-Haq, the Palestinian Centre for Human Rights
and the International Federation for Human Rights, non-governmental organizations in
special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Al-Haq, the Palestinian Centre for Human Rights (PCHR), and the International Federation for Human Rights (FIDH) express deep concern over the continued deterioration of the human rights situation in the Occupied Palestinian Territories (OPT). Such Israeli policies as extensive house demolitions, severe restrictions on Palestinians' freedom of movement, and excessive use of force, are in flagrant disregard of international legal norms.

House Demolitions

In 2004, the Israeli military completely demolished 1,173 houses in the Gaza Strip. During May in Rafah alone, a total of 298 buildings, housing 710 families, were demolished. According to the UN Special Rapporteur on the Situation of Human Rights in the OPT, since the beginning of the *intifada* 4,170 Palestinian homes have been demolished. Land confiscation also occurs on a daily basis. Such actions are a breach of Israeli obligations to guarantee the right of Palestinians to adequate housing and to refrain from unlawful interference with their homes, as upheld in Articles 11(1) of the International Covenant on Economic, Social and Cultural Rights and 17 of the International Covenant on Civil and Political Rights (ICCPR). The Committee on Economic, Social and Cultural Rights (CESCR) has established that States must ensure that persons forcibly evicted must not be rendered homeless, and be given reasonable notice of eviction. States must also explore all feasible alternatives before resorting to eviction.

The Special Rapporteur has noted that "clearing operations" to meet Israel's alleged military and security needs have resulted in the demolition of the homes of 23,900 people since the outbreak of the current *intifada*. In addition, 1,042 houses have been demolished for being built without a permit. A further 441 houses in the West Bank have been demolished in openly punitive measures. Such measures have been declared by the CESCR to be "inconsistent with the norms of the Covenant." Further, Article 53 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War prohibits the destruction of civilian property not made "absolutely necessary by military operations."

Movement Restrictions

During November 2004 the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA) recorded 719 physical barriers to movement in the West Bank, separating the territory into isolated geographical areas. Palestinians wishing to travel between these areas must obtain special permits; this permit system has been described by the Special Rapporteur as "arbitrary and capricious." While travel within the Gaza Strip is not limited by permits, the territory is regularly separated by checkpoints into two or three areas, with travel between these areas heavily restricted or totally prohibited. In July 2004, 154 physical barriers to movement were recorded by OCHA therein.

Freedom of movement is clearly protected under international human rights law. Article 12 of the ICCPR guarantees, "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement..." As stated by the Human Rights Committee (HRC), movement may be restricted if the restrictions are prescribed

by law, necessary and proportionate, both in terms of the measures adopted and the interest protected. However, it added that while movement may be restricted under certain conditions, "These conditions would not be met, for example...if an individual were prevented from travelling internally without a specific permit."

Movement restrictions imposed by the Israeli authorities within, to and from the OPT, prevent Palestinians from realising their essential rights to work, family, health, education, and an adequate standard of living. This has had a severely detrimental on the social and economic conditions under which Palestinians in the OPT live, exacerbating an already difficult humanitarian situation. Palestinians in East Jerusalem have been particularly vulnerable to such restrictions, as they frequently live in Jerusalem but work or have family elsewhere in the OPT; such restrictions will be aggravated after 1 July 2005, when a new law will enter into force requiring Jerusalemite Palestinians to obtain a permit to enter Ramallah and other towns in the OPT. The World Bank estimated that 1.8 million Palestinians, or 47% of the population, currently live below the poverty line. It further estimates that if movement restrictions remain in place at the 2004 level, this percentage will rise to 55% of the overall population in 2006, reaching 70% in Gaza.

Under the Fourth Geneva Convention, an Occupying Power must protect the social and physical well-being of the civilian population under its control. However, Israeli authorities regularly impose severe movement restrictions without regard for the humanitarian consequences thereof. The gravity of the result was seen in December 2004, when in response to an armed attack on the crossing, the Rafah border point to Egypt was closed for a period of 35 days, trapping more than 20,000 Palestinians on the Egyptian side of the border.

Excessive Use of Force

Throughout 2004, Israeli military in the OPT have systematically demonstrated excessive and indiscriminate use of force, arbitrarily killing hundreds of Palestinians. Tank shelling, air strikes and heavy machine-gun fire have often been used in populated urban areas. In October, a sustained military operation in Jabalyia Refugee Camp, one of the most densely populated areas of land on the planet, killed 114 Palestinians and injured 431. Many of those killed were civilians, including 34 children. During 2004, a total of 446 Palestinian civilians were extra-judicially, summarily or arbitrarily killed, including 38 children.

Regrettably, the excessive use of force is tacitly encouraged by Israeli authorities through the lack of accountability for soldiers and their commanding officers. Iman al-Hams, a 13-year-old Gazan schoolgirl who was shot and wounded near a military post on the outskirts of Rafah, was then approached by a post Captain and shot multiple times at close range. The initial investigation into the incident concluded that the Captain had "not acted unethically." A subsequent investigation has led to the Captain being charged with illegal use of his weapon, conduct unbecoming of an officer and other relatively minor offences. Such impunity is not unusual: despite the high number of civilian casualties, during the first four years of the *intifada* only 88 investigations have been opened regarding the death or injury of Palestinians by Israeli forces, resulting in no more than 22 indictments.

Israeli and International Obligations

The HRC has clearly stated that Israel must “respect and ensure the rights laid down in the [ICCPR] to anyone within the power or effective control of that State Party.” The requirement to “respect and ensure” entails negative and positive obligations: Israel must refrain from actions that would violate the right guaranteed, and take proactive measures to ensure these rights are realised. Further, all actions taken by the Israeli authorities must be governed by the principles of proportionality and necessity.

Palestinian civilians are “protected persons” under the Fourth Geneva Convention. The wilful killing of Palestinian civilians, causing them great suffering or serious injury, and the extensive destruction of their property, not justified by military necessity and carried out unlawfully and wantonly, constitutes grave breaches thereof. Israel must extradite or prosecute the perpetrators of such unlawful acts. Further, contrary to Article 33 of the Convention, many Israeli measures are clearly imposed as collective penalties on individuals for offences they did not personally commit.

The prospects of a change in Israeli policy that appears to be endorsed at the highest political and military levels are not encouraging. The continuing construction of the Annexation Wall and the recent announcement of plans to build a trench to prevent tunnelling from Egypt to Gaza, potentially requiring the demolition of 200-3,000 houses, suggest that Israeli policy in the OPT is driven by political strategic concerns and not by military necessity. Destroying thousands of homes, restricting the movement of an entire population, and killing hundreds of civilians can hardly be viewed as proportionate or necessary when the purported objective, increased security for Israel, could be achieved by targeted and other less severe measures.

Despite the widespread hope for a peaceful resolution to the Israeli/Palestinian conflict brought about by recent changes in the Palestinian political landscape, Al-Haq, PCHR and FIDH take sobering note of Israel's systematic breaches of international law, and remain concerned that such violations will prevent the realisation of this hope. We remind the Commission of its role in promoting the observance of human rights, and the international community as a whole of its obligation under international law to protect the Palestinian civilian population under military occupation.

Al-Haq, PCHR and FIDH request that the Commission adopt a resolution :

- Ensuring that Israel respects its obligations under international humanitarian law towards the Palestinian population in the OPT.
- Ensuring that Israel implements its international legal obligations set forth in the Advisory Opinion of the ICJ.
- Expanding the mandate of the Office of the High Commissioner for Human Rights in the OPT to include human rights monitoring as well as training.

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