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Human rights situation in Palestine and other
occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Summary

The present report is the High Commissioner's fourth periodic report on the human rights situation in the Occupied Palestinian Territory submitted in the light of Human Rights Council resolutions S-9/1 and S-12/1.

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I. Introduction

1. The present report is the fourth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights. It covers the period from 1 December 2010 to 15 November 2011.
2. The information in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-OPT). Monitoring activities are implemented within the framework of General Assembly resolution 48/141 of 1994 and in consideration of Human Rights Council resolutions S-9/1 and S-12/1 of 2009, in which the High Commissioner was requested to monitor, document and report on human rights violations in the Occupied Palestinian Territory, particularly in Gaza and East Jerusalem, and report periodically to the Human Rights Council.
3. In the present report, the High Commissioner highlights issues of concern with regard to each of the three main duty-bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed in the report are far from exhaustive of all human rights concerns in the Occupied Palestinian Territory. While issues of concern highlighted in previous reports of the High Commissioner remain valid, the present report focuses on a number of areas requiring priority attention by duty-bearers and which OHCHR-OPT intends to focus its work on in the coming months.
4. The report is organized in four main sections. Following this introductory section, section II makes a brief reference to the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37), which provided an analysis of the applicable legal framework in the Occupied Palestinian Territory that remains valid. Section III addresses a number of human rights concerns and is organized into three subsections according to duty-bearer. That section also suggests steps that could be taken by the duty-bearers in fulfilling their obligations under international law. Section IV presents some conclusions and provides a number of recommendations for each duty-bearer.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. The High Commissioner's first periodic report on the situation of human rights in the occupied Palestinian territory contains a detailed analysis of the legal framework applicable and the basis for the obligations of the different duty-bearers in the Occupied Palestinian Territory, namely the State of Israel as the Occupying Power, the Palestinian Authority and the de facto authorities in Gaza (A/HRC/12/37, paras. 5-9). This analysis remains valid.

III. Human rights violations by all duty-bearers

A. The de facto authorities in Gaza and Palestinian armed groups

1. Violations in the context of hostilities

6. Palestinian armed groups continued firing rockets and mortar shells at Israel. A total of 499 rockets, including homemade rockets, Grad rockets, and rocket propelled grenades, and 328 mortar shells, were fired during the reporting period.¹ While it was confirmed that some of these projectiles were directed at military objectives, the indiscriminate nature of the vast majority of these projectiles makes it impossible to determine the intended targets of the remaining ones. A significant number of these rockets and mortar shells landed in civilian areas within Israeli territory.

7. During the reporting period three Israeli civilians were killed by rockets fired from Gaza. On 7 April 2011, a guided anti-tank missile was fired from Gaza and hit a school bus driving near Sha'ar Hanegev Regional Council, southern Israel, leaving two Israelis wounded. A 16-year-old boy subsequently died as a result of injuries suffered from this attack.² Hamas claimed responsibility for the attack, saying that it was in revenge to the killing of three of its militant leaders on 2 April.³ It stressed that its militants did not know that the bus was carrying schoolchildren.⁴ On 20 August 2011, a 38-year-old civilian was killed in Be'er Sheva when a Grad rocket struck the area he was in.⁵ On 29 October 2011, a 56-year-old resident of Ashkelon was killed by shrapnel from a Grad rocket, while driving near his home.⁶

8. Indiscriminate attacks, such as the firing of these rockets, is contrary to the rules of international humanitarian law prohibiting the targeting of civilians, the use of inherently indiscriminate weapons and acts aimed at spreading terror in the civilian population.⁷ In addition, it has been alleged by the Government of Israel that such rockets and mortars are often located in and fired from densely populated areas. Should this be the case, it would also contravene customary international humanitarian law.⁸

¹ Information obtained from the United Nations Department of Safety and Security.

² Israel, Ministry of Foreign Affairs, "Two wounded in anti-tank missile attack on school bus". Available from www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Two-injured-in-anti-tank-missile-attack-on-school-bus-7-Apr-2011.htm.

³ CNN Wire Staff, "Hamas claims responsibility for missile strike on bus that wounded boy", CNN, 7 April 2011. Available from <http://edition.cnn.com/2011/WORLD/meast/04/07/israel.gaza.violence/index.html>.

⁴ "Hamas says didn't mean to target Israeli schoolbus", Reuters, 9 April 2011. Available from www.reuters.com/article/2011/04/09/palestinians-israel-hamas-idUSLDE73807X20110409.

⁵ B'Tselem, Israeli civilians killed by Palestinians in Israel, 19.1.2009-31.10.2011. Available from http://old.btselem.org/statistics/english/Casualties_Data.asp?Category=6®ion=ISRAEL&sD=19&sM=01&sY=2009&filterby=event&oferet_stat=after

⁶ Israel, Ministry of Foreign Affairs. See www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Memorial/2011/Victims/Moshe_Ami.htm.

⁷ These rules are identified in International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rules 1, 2, 11 and 71.

⁸ *Ibid.*, rule 23.

9. The Palestinian armed groups that fire these rockets and mortars are responsible for the related violations of international humanitarian law. As noted above, Hamas claimed direct responsibility for one of these attacks during the reporting period. In addition, the de facto authorities in Gaza failed to take measures to ensure that other such attacks were not carried out. Yet it appears that the de facto authorities have some capacity to stop or reduce the number of indiscriminate rocket attacks launched by other Palestinian armed groups. This can be inferred from the fact that during the reporting period there have been significant periods of time during which no single rocket was launched in the direction of Israeli territory from Gaza. This was the case, for example, in the period following the reconciliation agreement between Fatah and Hamas in May 2011 and in the period preceding the conclusion of the prisoner swap agreement in October 2011.

2. Detention and treatment of prisoners

10. Reports of arbitrary detention and ill-treatment of detainees and alleged enforced disappearances committed by different branches of the de facto authorities' security forces, including the internal security apparatus and the anti-drug police, continued during the reporting period. OHCHR monitored at least 10 cases of ill-treatment in detention, including a number of cases of torture. In most cases the detainees were subject to "shabeh"⁹ and beatings. In a number of cases persons suspected of sympathizing with Fatah were ill-treated and forced to sign an oath by which they commit not to participate in Fatah activities. In one case, following a dispute between Fatah- and Hamas-affiliated students at a university in Gaza, at least three students were repeatedly summoned for interviews over a period of a week by the internal security apparatus. Each time they were detained for several hours, subjected to shabeh and beaten. During the last interview they were asked to sign an oath not to participate in Fatah activities.

11. Some cases of detention and ill-treatment of former members of the Palestinian Authority security forces were reported. On 1 January 2011, a former member of the Palestinian Preventive Security Service (PSS) was detained in his home, together with a neighbour, by the de facto authorities' security forces. During their transfer to the Beit Lahia police station, they were beaten and once at the station they were subject to shabeh and beaten and interrogated in relation to the alleged firing of fireworks on the occasion of the anniversary of the Fatah movement.¹⁰ They were released the following morning. OHCHR received information concerning the alleged detention and disappearance of a 43-year-old woman by the de facto authorities' security forces in April 2011. She is a Palestinian Authority police officer and an active member of Fatah. Since her detention her family has not received information concerning her whereabouts.

12. Cases of death in custody were reported. In one of the three cases monitored by OHCHR, a 23-year-old man was detained by anti-drug police on 3 June 2011, and brought to a detention centre on Salah El Din street in Deir El Balah, where he was subject to shabeh and beaten for four hours. He was admitted to the intensive care unit of the local hospital suffering from cerebral

⁹ The practice of "shabah" is understood to include stress positions, sensory isolation, sleep deprivation and infliction of pain, and often one or a combination of these methods for prolonged periods.

¹⁰ Case monitored by OHCHR.

bleeding. He went into a coma and died on 12 June 2011. In another case a man was detained by the internal security apparatus on 14 April 2011. He died in detention on 19 April. At the time of death the Ministry of Interior of the de facto authorities indicated there would be an autopsy. Later the same day the authorities announced that he had died of natural causes despite the fact that his body showed signs of bruises on the head and his ribs were broken.

3. Civil rights, including freedom of expression

13. The de facto authorities continued to curtail freedom of expression, opinion and assembly. In several cases, individuals participating in academic conferences or workshops outside of Gaza were detained or summoned for interrogation following their return to Gaza and in some cases threatened or ill-treated.¹¹ Public assemblies were also targeted. During the reporting period the de facto authorities' security forces used excessive force to disperse several peaceful assemblies. On 11 February 2011, following Friday prayers, several hundred people gathered in Khan Younis protesting against social injustice and calling for an end to the internal political rift. The de facto authorities' security forces, both uniformed and in civilian clothing, intervened. They beat several participants, detained those who had photographed their intervention, including a journalist, and confiscated their equipment or deleted their photographs.¹² In another incident on 15 March 2011, a public assembly in support of Palestinian unity was violently dispersed. At least 100 participants and observers were beaten, tents were destroyed and some 50 persons were detained. In the following days, other smaller demonstrations in support of Palestinian unity were violently dispersed, including one at Al Quds Open University.¹³

14. The work of journalists continued to be disrupted by the de facto authorities' security forces. Journalists present at the public assemblies mentioned above had their cameras confiscated and in some cases were arrested and beaten. A few days after the 15 March protest, 12 de facto authorities' security personnel raided the offices of Reuters, destroyed equipment, beat two employees and confiscated a camera. In this case the de facto authorities announced that they had arrested four suspects and were initiating an investigation. In another case a journalist received a call from someone identifying himself as the head of the internal security apparatus in Khan Younis, who accused him of incitement against the de facto authorities and referred to a number of his articles as "provocative". On 17 February 2011, the journalist was summoned for an interview with the internal security apparatus during which he was coerced to sign a document by which he made a commitment to act professionally and to refrain from acts of incitement against the government.

4. The death penalty

15. The de facto authorities continued to carry out executions and to issue death sentences. While international human rights law does not prohibit capital punishment, it limits it to the most serious crimes, which is interpreted to mean those where there was an intention to kill and which resulted in loss of life. Death sentences should only be issued following a trial in a court that offers the

¹¹ OHCHR monitored at least two incidents, each involving several people.

¹² Case monitored by OHCHR.

¹³ Case monitored by OHCHR.

defendant all procedural guarantees of a fair trial, including the right to appeal the conviction and the sentence.

16. During the reporting period the de facto authorities carried out three executions. All were carried out without the ratification of the death sentences by the President of the Palestinian Authority, which is a requirement under the Palestinian Basic Law. On 26 July 2011, the de facto authorities carried out two death sentences by hanging Mahmud Abu Qenas and Rami Abu Qenas. The two had been found guilty in 2004 of murder and collaboration with Israel. On 4 May 2011, Abd al-Karim Mohammed Abed Shrair was executed by firing squad, having been found guilty of collaborating with Israel.¹⁴ The common use by de facto authorities' security forces of torture and ill-treatment before and during interrogation and the use of military tribunals to try civilians cast serious doubt on the respect of fair trial guarantees in cases in which the death penalty is imposed in Gaza.

17. According to information collected by OHCHR, the de facto authorities' courts delivered at least seven death sentences since the beginning of 2011. All of these sentences were handed down by military courts.¹⁵ On 11 October, the High Military Court in Gaza sentenced to death Rebhi Ahmed Rebhi Badawi, a 35-year-old man, after conviction on charges of spying for the Israeli Defence Forces (IDF). On 12 October, two more death sentences were issued by the High Military Court, against Belal Sa'ady Al Masri (22), from Beit Lahia, and Jehad Abdullah As Sabea' (23), from the town of Ash Sheikh Zayed. The three were reportedly sentenced to death after being convicted of having been involved in the detonation of an explosive device that led to the killing of one person and the injury of several others on 5 February 2009. These sentences can still be appealed.¹⁶

B. The Government of Israel

1. Law enforcement in the West Bank including East Jerusalem and the right to life

18. During the reporting period, the Office for the Coordination of Humanitarian Affairs (OCHA) reported 3,745 search and arrest operations by IDF in the West Bank, during which 2,748 Palestinians were arrested and/or detained. A number of cases documented by OHCHR indicate that IDF often use live ammunition against unarmed Palestinians. The resort to the use of live ammunition in IDF search and arrest operations resulted in the death of four unarmed Palestinian civilians.

¹⁴ Human Rights Watch, "Gaza: Hamas should stop executions", 1 August 2001. Available from www.hrw.org/news/2011/08/01/gaza-hamas-should-stop-executions.

¹⁵ Palestinian Centre for Human Rights, "Military court in Gaza issues three new death sentences", 13 October 2011. Available from www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7784:military-court-in-gaza-issues-three-new-death-sentences-&catid=36:pchrpressreleases&Itemid=194

¹⁶ Al Mezan Center for Human Rights, "High military court sentences three persons to death and one person to four years' imprisonment in two separate cases", press release, 12 October 2011. Available from www.mezan.org/en/details.php?id=12779&ddname=excution&id_dept=3&id2=9&p=center. See also Palestinian Centre for Human Rights, "Military Court".

19. On 7 January 2011 at approximately 3.30 a.m., a large number of IDF troops surrounded a house in Hebron, silently broke into the second floor of the house and immediately rushed for the bedroom. Three soldiers entered the bedroom and immediately opened fire at close range on Omar Qawasmeh, a 66-year-old man who was asleep in his bed. Approximately 14 bullets were fired at him. According to accounts collected by OHCHR, when the soldiers realized that they had targeted the wrong floor they proceeded to the first floor of the house where they arrested the intended target of the raid. IDF announced that it would investigate the killing and on 19 January, announced that it would terminate the career of one of the soldiers involved in the operation.¹⁷

20. On 13 July 2011, at around 5 a.m., 21-year-old Ibrahim Omar Sarhan from el-Far'a refugee camp was shot in the leg by an IDF soldier and subsequently bled to death. According to the account collected by OHCHR, the victim and his cousin had finished dawn prayers at a mosque in el-Fa'ra camp and were walking home. A number of IDF soldiers appeared at the end of the narrow alley where the victim and his cousin were walking. The cousin was quickly physically immobilized by some of the soldiers while the victim turned around and started running away. An IDF soldier fired in the direction of the victim, who was hit in the thigh but continued running away until he reached a neighbor's place. IDF entered the house where the victim was lying, almost unconscious, and started providing first aid to the victim. An ambulance arrived at the scene and took the victim to al-Rafidiya hospital in Nablus where, upon arrival, the victim was pronounced dead. The accounts collected by OHCHR and the circumstances of the incident indicate that the victim was not involved in any violent act against IDF during their operation in the camp.

21. On 1 August 2011, at approximately 2:30 a.m., IDF troops entered Qalandia refugee camp to conduct a search and arrest operation targeting three teenagers accused of stone throwing, arson and destruction of property. Some camp residents, alerted to the presence of IDF in the camp, had gathered on the adjacent roofs and started throwing stones at the soldiers. This lasted approximately 30 minutes. The soldiers then left the courtyard, firing several hundred rounds in many directions, while advancing toward the road that leads out of the camp. At the same time in an adjacent street, in which the situation was calm and no stone throwing was taking place, another group of soldiers was making its way towards the group of stranded soldiers, when they came face to face with five unarmed young men. According to the accounts collected by OHCHR, one of the soldiers immediately opened fire in the direction of the young men, killing 25-year-old Ali Hasan Abed Khaleefah and 22-year-old Mo'atasim Essa Othman Odwan and wounding another.

22. On 23 September 2011, in Qusra, in the northern West Bank, an unarmed Palestinian civilian was shot dead by IDF following clashes between settlers and Palestinians. Clashes erupted after IDF refused to remove a group of settlers who had trespassed into privately owned Palestinian land. The soldiers focused their efforts instead on removing the Palestinians. Eyewitness accounts collected by OHCHR indicate that the soldiers formed a line and stood in between the settlers, some of whom were armed, and the Palestinians. IDF used tear gas to disperse the Palestinians, then resorted to rubber bullets against the Palestinians and

¹⁷ IDF, "IDF terminates military career of soldier involved in Hebron incident", press release, 19 January 2011.

finally used live fire, which led to the death of 36-year-old Essam Kamal Badran Oudeh, a father of seven children. The use of live fire by IDF was confirmed by its spokesperson.¹⁸ It was subsequently reported in the media that the commander of the IDF unit involved in the death of the Palestinian civilian was relieved from his post but remained in the IDF.¹⁹

23. The use of live ammunition by IDF at checkpoints in the Occupied Palestinian Territory against unarmed individuals is also cause for concern. For example, on 2 January 2011 an unarmed man crossing the Al-Hamra checkpoint was shot and killed. The man was passing through the security check and had handed over his identification to an Israeli soldier. When he was about to clear the checkpoint, a female soldier who stood behind a concrete block started to shout at him in Hebrew and shot him in the leg. The man fell to the ground. He then got up with his hands up; at this point other soldiers at the checkpoint opened fire. One bullet hit him in the chest. At the arrival of the ambulance crew he was pronounced dead. IDF announced three weeks later that an operational investigation had concluded that the soldiers had acted in conformity with rules of engagement.²⁰

24. On 11 November 2011, an Israeli citizen was driving in the Hebron Governorate. IDF, having received information about a suspicious vehicle, had set up a temporary checkpoint. The vehicle driven by the victim failed to stop at the checkpoint as signalled by the soldiers. One of the soldiers then opened fire in the direction of the vehicle, killing its driver and injuring two passengers. In a press statement IDF indicated that the soldier felt that his life was threatened. IDF ordered an investigation.²¹

25. As emphasized by the Secretary-General in his report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (A/66/356), “the use of firearms against unarmed persons raises serious concerns with regard to the open-fire regulations and training received by the Israeli security forces. In the West Bank, occupying forces act in a law-enforcement capacity. They are bound by article 6 of the International Covenant on Civil and Political Rights and should act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” (para. 15). The use of firearms is authorized in extremely limited circumstances, namely self-defence or defence of others against imminent threat of death or serious injury and only if less extreme means are insufficient.²² The Secretary-General added that “thorough, prompt, independent and impartial investigations of the use of firearms by law enforcement officials, and the taking of appropriate judicial and disciplinary sanctions when necessary, are essential to ensure the accountability of security forces” (para. 17). The

¹⁸ IDF, “Events following violent riot near Qusra”, 23 September 2011. Available from <http://idfspokesperson.com/2011/09/23/events-following-violent-riot-near-qusra/>.

¹⁹ Harriet Sherwood, “Israeli officer loses command, a month after death of protester”, *Guardian*, 24 October 2011. Available from www.guardian.co.uk/world/2011/oct/24/israeli-commander-dismissed-death-protester.

²⁰ IDF, “Investigation of ‘Bekaot’ crossing incidents concluded”, press release, 24 January 2011. Available from <http://dover.idf.il/IDF/English/Press+Releases/2011/01/2401.htm>.

²¹ IDF, “Central Command Chief orders investigation of shooting incident”, press release, 11 November 2011. Available from www.idf.il/1283-13798-en/Dover.aspx.

²² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, principle 9.

circumstances of the killings mentioned above indicate the necessity for Israeli security forces to reassess open-fire regulations with a view to preventing such incidents. Furthermore, the issue of lack of accountability remains a serious concern.

2. Discriminatory practices underlying settlement expansion and impunity for settler violence

26. Despite the illegality of settlements under international law, Israeli settlement expansion continued in the West Bank, including East Jerusalem, and was accompanied by a regime of policies detrimental to the rights of Palestinians. About half a million Israeli settlers live in the West Bank, including East Jerusalem.²³ Throughout the reporting period the Government of Israel continuously announced plans for new construction and the expansion of existing settlements in the occupied West Bank, including in East Jerusalem.²⁴ Moreover, Israeli-imposed restrictions specifically targeting Palestinian construction are blatantly discriminatory (A/66/364, para. 8).

27. While Israeli settlement expansion continues, Palestinians throughout the West Bank, particularly in Area C and in East Jerusalem, continue to face significant restrictions on construction, which severely affects their needs and rights. As noted by the Secretary-General, Israel continues “to impose restrictions on land allocation and planning for Palestinian construction. Israel’s discriminatory planning restrictions result in the lack of building permits for the Palestinian population in the West Bank forcing them to build without building permits and live under the constant threat of eviction and demolition” (A/66/364, para. 10).²⁵ According to OCHA, the total number of Palestinian structures demolished by Israeli authorities during the reporting period is 574, including 203 residential structures, which led to the displacement of at least 957 Palestinians. In its consideration of Israel, the Human Rights Committee concluded that the planning regimes in the West Bank, in particular in Area C and in East Jerusalem, are discriminatory and disproportionately favour the Israeli population of those areas (CCPR/C/ISR/CO/3, para. 17).

28. Violence perpetrated by Israeli settlers continued to be reported throughout the West Bank, including East Jerusalem. Attacks by settlers against Palestinians and their property take various forms, including attacks with live ammunition and baseball bats, the cutting of trees, stone throwing and the vandalizing and torching of mosques, in addition to other various types of assault. According to OCHA, the weekly average of settler attacks against Palestinian communities resulting in Palestinian injuries and property damage increased by 40 per cent in 2011 in comparison to 2010 and by more than 165

²³ Peace Now, West Bank and Jerusalem Map, January 2011. Available from www.peacenow.org.il/eng/content/west-bank-and-jerusalem-map-2011.

²⁴ In October 2011 the Government of Israel announced plans for the construction of Givat Hamatos, a new settlement. Chris McGreal, “Israel plans new settlement of 2,600 that will isolate Arab East Jerusalem”, *Guardian*, 16 October 2011. Available from www.guardian.co.uk/world/2011/oct/16/israel-settlement-isolate-arab-jerusalem. See also Peace Now, “Givat Hamatos - a new Israeli neighborhood in East Jerusalem”, 13 October 2011. Available from www.peacenow.org.il/eng/GivatHamatosEng.

²⁵ For a detailed description of the restrictions and concerns for East Jerusalem see the report of the Secretary-General A/66/364, paras. 13-18; for Area C of the West Bank, see paras. 19 and 20.

per cent compared to 2009.²⁶ In 2011, almost 10,000 Palestinian-owned trees, mainly olive trees, were damaged or uprooted by Israeli settlers, severely affecting the livelihood of hundreds of Palestinian families.²⁷

29. During the reporting period, OHCHR closely monitored the situation in the village of Qusra, in the northern West Bank, which witnessed a spike in settler violence during 2011 and particularly during September. The attacks took various forms and are emblematic of the phenomenon of settler violence throughout the West Bank. On 6 October 2011, at least 200 trees belonging to four Palestinian families were uprooted and/or damaged in Qusra. On 23 September 2011, as noted above, following clashes between Palestinians and settlers, an unarmed Palestinian civilian was shot dead with live ammunition by IDF. During the same incident, two minors were detained by IDF for two hours in a tent located between the village and the Esh Kodesh outpost, during which they were beaten by both IDF soldiers and settlers and insulted. On 16 September 2011, one unarmed Palestinian was injured with live fire by a settler after armed settlers trespassed onto his land. During the same incident, one minor was injured in his leg when the settlers released their dog on the minor. On 5 September 2011, a mosque in the village was vandalized and torched. Insulting graffiti was sprayed on its walls. On 26 August 2011, a Palestinian minor was injured by live ammunition used by IDF following clashes between settlers and Palestinians. On 7 March 2011, at least 12 Palestinians sustained serious injuries as a result of live fire shot by both IDF and armed settlers. During this incident, accounts collected by OHCHR indicate that the injured Palestinians were assaulted simultaneously by both IDF and armed settlers (A/66/364, para. 24).

30. The failure of IDF to protect Palestinians and their property from violence by Israeli civilians continues to be a growing concern. The lack of accountability for these violent acts, which is exacerbated by the existence of a dual legal system - civil courts for Israeli civilians and a less protective military justice system for Palestinians suspected of involvement in crimes - contributes to increased tension between Palestinians and Israelis (*ibid.*, para. 31). OHCHR documented several cases where IDF appeared to provide direct support to settlers when they attacked Palestinian communities and focused their efforts in dispersing Palestinians or removing them from their lands rather than preventing Israeli settlers from trespassing onto private Palestinian land and attacking Palestinians and their property. Reports of the Government of Israel suggest that this failure may in some instances be a result of the insufficient knowledge of some IDF soldiers about their duty to protect Palestinians (*ibid.*, para. 30). At the same time, it should be noted that IDF in many contexts does successfully act to prevent incidents and to ensure accountability, which suggests that the required capacity is available.

31. Filing a complaint against settlers or IDF is often a complicated and intimidating process for many Palestinians. Many refrain from filing complaints and limit themselves to reporting the case to the Palestinian authorities. However, Palestinian authorities have no jurisdiction with regard to settlers and can only document the damages and/or injuries and send written complaints to

²⁶ OCHA, *Israeli Settler Violence in the West Bank*, fact sheet, November 2011. Available from www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf.

²⁷ *Ibid.*

their Israeli counterparts (A/66/364, para. 29). Israeli authorities in the West Bank have the sole responsibility, capacity and jurisdiction to ensure effective prevention and accountability for settler violence in the West Bank.

3. The Wall and the case of Al-Walaja

32. In the advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004 issued upon the request of the General Assembly, the International Court of Justice concluded that the construction of the Wall in the Occupied Palestinian Territory and its associated regime contravene international law (para. 42). The Court also concluded that Israel is obligated to cease construction of the Wall inside the Occupied Palestinian Territory, to dismantle the existing portions which lie inside the Occupied Palestinian Territory, and to make reparations for damages caused by the construction of the Wall (paras. 150-153). As of July 2011, the total length of the Wall was approximately 708 km, which is more than twice the length of the 320-km Green Line (the 1949 Armistice Line) between the West Bank and Israel. According to OCHA, when completed as per the planned route, 85 per cent of the Wall will run inside the West Bank. Almost 62 per cent of the Wall is now completed.²⁸ Israel has not complied with the advisory opinion of the International Court of Justice.

33. The situation of the village of Al-Walaja illustrates the situation of many communities affected by the Wall. Al-Walaja is located 9 km south-west of the Old City of Jerusalem and has a population of about 2,200 people. In 2006, the Israeli authorities confirmed to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) the plan of Israel to encircle the village with the Wall, effectively isolating it as an enclave between Jerusalem and the Etzion settlement block.²⁹ Construction of the Wall resumed in 2010, after years of inactivity, and hundreds of trees of different types were uprooted to make way for the Wall, depriving dozens of families from an important source of income. Since July 2011, the Israeli authorities uprooted at least 90 olive trees and at least 100 trees of different types from the lands of the village of Al-Walaja, directly affecting the livelihoods of many Palestinian families.³⁰ The community of the village continues to challenge the legality and the effects of the Wall by petitioning the Israeli High Court, so far in vain.

4. The situation of Bedouin communities

34. Pressure levied by the Israeli authorities on Bedouin communities living in Area C of the West Bank increased during the reporting period. The Secretary-General recently noted that “over the last 30 years the Bedouin community has experienced gradual, systematic dispossession of its land. Today Bedouins face constant attempts to displace them from their homes and increasingly restricted access to natural resources” (A/66/356 para. 44). Recent plans announced by the Israeli authorities targeting the transfer of 20 Bedouin communities, including a total of 2,300 people, from the Jerusalem periphery are of immediate concern.

²⁸ OCHA, *Barrier Update*, Special Focus, July 2011, p. 3. Available from www.ochaopt.org/documents/ocha_opt_barrier_update_july_2011_english.pdf.

²⁹ UNRWA, *Al-Walaja: An Analysis under International Law*, May 2011, third page. Available from www.unrwa.org/userfiles/2011081763638.pdf.

³⁰ UNRWA, *Al-Walaja: Community at Risk of a Second Forced Displacement*, October 2011.

Half of the communities in question live along road No. 1, which connects Jerusalem with the Jordan Valley and the northern Dead Sea, and the other half live inside and on the outskirts of the “E1” area planned for the expansion of the settlement of Ma’ale Adumim.³¹

35. Some reports indicate that this plan may be implemented as early as January 2012 and that it is the first step of a larger plan to transfer up to 27,000 Bedouins from their communities in Area C.³² OHCHR met with representatives of some Bedouin communities in September 2011. The communities expressed their concerns with the implications of the planned transfer. More than 80 per cent of the members of these communities are already refugees. The communities have already lost land in the past due to settlement expansion and most have pending demolition orders against their homes. Currently, none have access to electricity networks and just about half are connected to water networks. The communities have clearly expressed to OHCHR that the Israeli Civil Administration has not consulted them for this transfer plan. The communities fear the transfer will lead to a further deterioration of their living conditions, loss of livelihood, loss of tribal cohesion and erosion of their traditional lifestyles. Furthermore, according to OCHA, the proposed transfer site is situated close to the municipal dumping site and is likely to pose health hazards to the communities.³³

36. If the proposed plan to transfer 20 Bedouin communities is not desired by the vast majority of these communities it would, if implemented, constitute forced transfer of population, which is strictly prohibited under international humanitarian law. Elements of this also raise a number of human rights concerns enshrined in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Should some communities be willing to be transferred, they should be involved in genuine consultations, alternatives should be discussed, and their way of life, livelihood and culture must be preserved. Their informed consent (in a language they understand), obtained without coercion or pressure, is required. In any case, consent of the communities to be moved by no means justifies the expansion of settlements or related activities which remain illegal under international law.

5. Gaza

37. The Israeli blockade, now in its fifth year, continued to significantly impact the human rights situation in Gaza. Severe restrictions on the movement of people and goods, on land and sea, remain in place. The effects of such measures include: increased poverty and unemployment, a decline in infrastructure and the quality of services, such as health care, education, water and sanitation, and serious erosion of the coping mechanisms of families and communities.³⁴ Restrictions on exports continued, as did limitations on imports

³¹ B’Tselem, “Civil Administration plans to expel tens of thousands of Bedouins from Area C”, 10 October 2011. Available from www.btselem.org/settlements/20111010_forced_eviction_of_bedouins.

³² Ibid.

³³ OCHA, Bedouin Relocation: Threat of Displacement in Jerusalem Periphery, fact sheet, September 2011, first page. Available from www.ochaopt.org/documents/ocha_opt_bedouin_FactSheet_October_2011_english.pdf.

³⁴ Protection concern identified by the Protection Cluster Working Group as reflected in the Consolidated Appeals Process 2012 (forthcoming, December 2012).

of certain materials qualified by Israel as “dual-use” items, impeding reconstruction, maintenance and expansion of civilian infrastructure destroyed during Operation Cast Lead and as a result of ongoing military operations.³⁵ There was also a delay in the construction of three wastewater treatment plants. The inability to build new schools/classrooms due to the lack of construction material in combination with the growing population has led to a double- and triple-shift system of holding classes, which negatively affects the quality of education that children receive. About 85 per cent of schools in Gaza run on the system of double or triple shifts, leading to a reduction in class time and the elimination of extracurricular activities.³⁶ The unemployment rates continue to increase, with an estimated 26 per cent of the people, including 38 per cent of the youth, being unemployed.³⁷ Due to ongoing restrictions on the import of construction materials, the lack of alternative employment opportunities, and huge housing and infrastructure needs, the tunnel economy continues to grow.

38. Palestinians continued to face serious threats to life, liberty and security on a regular basis as a result of various forms of violence, including conflict-related violence (such as incursions, bombardments/air strikes and levelling operations by Israeli security forces) and the use of live ammunition to enforce the access to restricted areas on land and at sea. Such acts, which usually take place with impunity, have resulted in death, injury, displacement, disability and/or psychological trauma, as well as extensive damage to civilian infrastructure³⁸ and Palestinian land and property.

39. In some cases, IDF failed to take precautions to avoid the loss of civilian life. It has also failed to observe the principles of proportionality and distinction. OHCHR investigated four cases of civilians killed by IDF in Gaza where necessary measures to prevent the casualties were not taken. On 22 March 2011, an Israeli mortar shell struck a civilian residence in Al-Tufah neighbourhood, eastern Gaza city, killing four civilians, including two children, and wounding 12 others. Earlier that day three mortar shells targeting IDF stationed at the Green Line had been launched from the area.³⁹ The shells had caused no physical injuries or damage. While IDF seems to have been responding to the earlier attack from the area, it is alleged it did so several hours later. This time frame should have allowed IDF to use all means at its disposal to properly assess whether a military objective was still present in the area so long after the initial attack as well as the risk to civilians in the targeted area and allowed it to choose weapons which could have minimized this risk. On 8 April 2011, an IDF missile struck a house in Abassan Al Kabira in Khan Younis, killing a mother (40 years old) and her daughter (19 years old), and injuring two children who were sitting in the courtyard. Witnesses interviewed by OHCHR noted that no mortar shell or rocket attacks at Israeli targets had taken place from that area on the day of the strike or before.

³⁵ OCHA, *Monthly Humanitarian Monitor*, July 2011, pp. 8-9.

³⁶ UNICEF oPt monthly update, July-August 2011, p. 1.

³⁷ OCHA, *Humanitarian Situation in the Gaza Strip*, fact sheet, October 2011, first page. Available from www.ochaopt.org/documents/ocha_opt_Gaza_FactSheet_October_2011_english.pdf.

³⁸ For example, a well and nine water tanks were destroyed during an Israeli air strike in Beit Hanoun on 17 July 2011.

³⁹ According to the United Nations Department of Safety and Security, communication dated 26 June 2011.

40. Major obstacles continue to prevent most Palestinians from seeking accountability. The statute of limitations under Israeli law requires that a complaint for civil damages must be brought within two years of the date of the incident, or the right to compensation is lost. The restrictions on movement and the large number of victims have meant that victims are often unable to submit their cases within the required time frame. Restrictions on movement have also meant that victims or witnesses have been unable to appear in court (when needed) or access legal counsel in Israel, while requests by lawyers to enter Gaza have also been consistently denied. Reports indicate that since July 2007, no individuals from Gaza have been allowed to travel to appear before the court. In addition, the setting of a high court fee and a court insurance/guarantee before the case can begin, and its application only to Palestinian claimants, serves to limit, and ultimately deny, access to justice. Few victims can afford to pay the court insurance, an estimated NIS 10,000 (US\$ 2,800), which has led to cases being dismissed and closed.⁴⁰

C. The Palestinian Authority

1. Detention and treatment in detention

41. According to the Palestinian Independent Commission for Human Rights (ICHR), the Palestinian General Intelligence Agency announced that it would stop trying Palestinian civilians before military courts. The decision, which entered into effect on 16 January 2011, also puts an end to the practice of detaining persons without a warrant from the Office of the Public Prosecutor, a practice that contravened the Palestinian Code of Criminal Procedure.⁴¹ In a meeting with PSS in February 2011, OHCHR was informed that on 31 December 2010, the decision to stop the use of military courts had entered into force. All detainees would be tried by civil courts with the exception of people held prior to that date. After a review of the files of persons held in Juneid Prison in Nablus, PSS released 19 detainees and six detainees were referred to civil courts in Nablus. OHCHR was also informed that PSS had issued strict instructions on the treatment of detainees. Accounts collected by OHCHR from detainees in Juneid Prison indicate that treatment of detainees in that prison had generally improved.

42. Despite these positive developments, OHCHR continued to receive reports of arbitrary detention and ill-treatment in detention by security services of the Palestinian Authority in the West Bank. ICHR received a total of 398 complaints by Palestinians who claimed that they were deprived of their freedom and were arbitrarily detained by members of the security agencies operating in the West Bank between January and April 2011.⁴² In the meantime, several orders of release issued by the Palestinian High Court of Justice due to illegality of detention were not implemented by the executive authorities in the West Bank

⁴⁰ See Palestinian Centre for Human Rights, "Genuinely unwilling: an update - the failure of Israel's investigative and judicial system to comply with the requirements of international law, with particular regard to the crimes committed during the offensive on the Gaza Strip", August 2010, p. 73.

⁴¹ ICHR, "The General Intelligence Agency issues a decision to refrain from bringing civilians before military courts". Available from www.ichr.ps/etemplate.php?id=239.

⁴² See ICHR Monthly Reports January – April 2011: <http://home.ichr.ps/en/2/5/604/monthly-reports-2011-monthly-reports-2011.htm>.

in violation of Palestinian Basic Law (art. 106). In August 2011, ICHR documented 17 complaints regarding the non-implementation of decisions issued by both the Palestinian High Court of Justice and the Court of First Instance in the West Bank.⁴³ In some cases, although Palestinian Authority security agencies implement the High Court's decisions on the release of detainees, they frequently nullify the practical effects by detaining released persons under the pretext of other charges. Therefore, release orders are implemented, but affected persons are summoned and detained again. Although arbitrary detention in the West Bank is outlawed by the Palestinian Basic Law and the Law of Penal Procedure No. 3 of 2001,⁴⁴ the situation on the ground is different. Executive authorities need to take effective measures against arbitrary detention.

2. Civil rights, including freedoms of expression, association and assembly

43. Freedom of opinion and expression is guaranteed by the Palestinian Basic Law. However, during the reporting period some Palestinian actors took action in some cases to curtail this right. Palestinian security services in the West Bank curtailed the freedom of journalists and media professionals. Announcements in April 2011 on possible Fatah and Hamas reconciliation had a positive impact on journalists' freedom to exercise their profession. This also allowed for the return of journalists and other personnel of Palestine TV to the Gaza Strip, and of Al-Aqsa TV to the West Bank.

44. During the protests calling for national unity that were organized in March 2011 in different cities and towns in the West Bank, violations by PSS and the General Intelligence Agency against journalists in the West Bank were reported. On 15 March, a group of unidentified persons attacked journalists in plain sight of security services personnel stationed near the protest tent at Al-Manara Square in Ramallah. Based on the complaints received by ICHR from two journalists (one foreign and one Palestinian), the Palestinian Authority policemen did not try to protect them. The Palestinian Centre for Development and Media Freedoms (MADA), with which OHCHR met, reported that attacks on journalists "continued to hinder their work and endanger their lives".

45. In August 2011, the Prosecutor-General of the Palestinian Authority decided to stop airing a Palestine TV show called *Watan ala Watar* (Homeland on a String). Palestine TV was ordered to stop airing the satirical programme as it allegedly offended and humiliated a large number of Palestinians. In the same month, Professor Abdel Sattar Qassem was arrested and held in custody following the publishing of an article. He was later released following a personal appeal to the President of the Palestinian Authority.

46. The Islamic Liberation Party (Hizb al-Tahrir) annually commemorates the fall of the Islamic Caliphate. The commemoration usually takes the form of a series of lectures ending with a central conference and a march in Ramallah. The intervention of Palestinian Authority security forces this year resulted in clashes with members of the party. In June 2011 the party received confirmation by relevant authorities of the Palestinian Authority that they had no objection to the demonstration planned for 2 July 2011. On the appointed day, members of the

⁴³ ICHR August Monthly Report: <http://home.ichr.ps/en/2/5/612/August-Report-on-violations-of-HR-August-Report-on-violations-of-HR.htm>.

⁴⁴ Penal Procedure Law No. 3 of 2001: www.courts.gov.ps/pdf/Law%203%202001%20Penal%20Procedures.pdf.

party gathered in several towns of the West Bank to hold peaceful marches commemorating the ninetieth anniversary of the fall of the Islamic Caliphate. Despite having submitted a written notice of the march in Ramallah, Palestinian Authority security forces violently dispersed it, along with several other marches in a number of West Bank towns. One of the victims of these incidents in Hebron city informed OHCHR that he was severely beaten by 10 to 12 members of Palestinian Authority security forces before being apprehended.

IV. Conclusion and recommendations

47. **The human rights situation in the Occupied Palestinian Territory remains of concern. Serious violations of international law by all duty-bearers continue to occur. All duty-bearers have an obligation to respect international human rights and international humanitarian law. The violations highlighted in the present report can be addressed through direct corrective action by the duty-bearers in the present context. OHCHR notes with appreciation that the Palestinian Authority is willing to cooperate with OHCHR to address shortcomings and continue to build its human rights capacity. With regard to the Government of Israel, OHCHR notes with appreciation indications of willingness to engage in a dialogue on its human rights responsibilities, and stresses the need for this dialogue to significantly develop over the coming months.**

A. Recommendations to the de facto authorities in Gaza

48. **The de facto authorities must ensure respect for international humanitarian law by members of its armed groups and groups under its control, in particular in relation to the prohibition of targeting civilians, civilian objects and civilian areas and to ending the use of indiscriminate weapons. The de facto authorities must avoid locating military assets in densely populated areas and seek to remove those already in place.**

49. **Clear and unambiguous orders must be issued to all the security forces in Gaza prohibiting the use of torture and/or cruel, inhuman or degrading treatment, and the de facto authorities must ensure that members of the security forces respect these orders by investigating promptly, thoroughly and impartially all allegations of ill-treatment and by imposing appropriate disciplinary and penal sanctions against those found responsible.**

50. **The freedoms of opinion, expression and assembly of residents of Gaza, including journalists, must be respected.**

51. **The de facto authorities must cease the use of military tribunals to try civilians and should positively consider imposing an immediate moratorium on the use of the death penalty with a view to its ultimate abolishment.**

B. Recommendations to the Government of Israel

52. **The Government of Israel must take all necessary measures to prevent further incidents of excessive use of force during law enforcement operations by its security forces, including during search and arrest operations. This should include a comprehensive review of regulations on**

the use of live ammunition in law enforcement operations carried out by all Israeli security forces, including the Israeli Defence Forces (IDF) so as to ensure that these regulations are in line with the international legal obligations of Israel.

53. The Government of Israel must ensure the accountability of the members of its security forces, in particular by conducting investigations that meet international standards of promptness, independence, impartiality, and thoroughness into all credible allegations of violations, and taking appropriate disciplinary and penal sanctions against those deemed responsible. Victims of such violations need to be adequately compensated.

54. The Government of Israel must fulfil its obligations under international human rights and international humanitarian law and immediately cease the transfer of its civilian population into occupied territory. The Government should cease its discriminatory policies and practices affecting Palestinians, including those that violate Palestinians' right to adequate housing.

55. The Government of Israel must take all necessary measures to prevent attacks by Israeli settlers against Palestinian civilians and their property in the West Bank, including East Jerusalem. Attacks by settlers and Israeli security forces against Palestinian civilians and their property in the West Bank must be duly investigated by the Israeli authorities and those responsible held accountable. Victims also have to be appropriately compensated.

56. The Government of Israel must take all necessary measures to ensure that Palestinian victims of alleged crimes by Israeli settlers can file and follow up on complaints. They must be able to do so in complete safety. The Government must ensure that the principle that all persons are equal before the law and entitled without discrimination to the equal protection of the law is fully enforced in all its practices. Israeli police stations should be easily accessible to Palestinians. An adequate and efficient complaint-filing system should be set up between the Israeli authorities and the Palestinian Authority in cases where Palestinians are not able to access Israeli police stations.

57. The Government of Israel must fully comply with the advisory opinion of the International Court of Justice with regard to the Wall.

58. The Government of Israel should cancel any plans to transfer Bedouin communities from the West Bank that may amount to forced transfer and/or forced evictions. Any attempts to carry out a transfer should be carried out only with the free, prior and informed consent of the communities and in conformity with international human rights and international humanitarian law.

59. Methods used by IDF to enforce access restrictions on land and sea in Gaza need to be reviewed. These methods need to be in line with the international legal obligations of Israel and should never include the use of live ammunition against civilians.

60. The Government of Israel should ensure that any attack by IDF fully respects international humanitarian law, in particular the principles of distinction, proportionality and precautions.

61. The Government of Israel must fully lift the blockade of Gaza, with due regard to legitimate security concerns. This should include measures to facilitate the movement of people to and from Gaza, permitting goods to be exported from Gaza, and ensuring that materials for reconstruction can be delivered to Gaza.

C. Recommendations to the Palestinian Authority

62. The Palestinian Authority must ensure that all its law enforcement agencies/security services adhere to international standards and refrain from arbitrarily arresting persons, including without a warrant from the Office of the Public Prosecutor. Files currently in the hands of the military judicial authorities need to be referred to the competent civil authorities. The Palestinian Authority must also ensure that conditions and treatment in its detention facilities are in conformity with international standards.

63. The Palestinian Authority must ensure that civil society organizations, human rights defenders and journalists can carry out their work in a safe and secure environment in accordance with applicable international human rights standards. The freedoms of expression, association and assembly are a central cornerstone in a free and open society, and the Palestinian Authority should take all necessary measures to protect and respect these freedoms.
