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BACKGROUND AND FRAMEWORK

The Palestinian Centre for Human Rights is an independent non-profit legal agency based in Gaza City. The Centre was established in April 1995 by a group of Palestinian lawyers and human rights activists in order to protect human rights and promote the rule of law in accordance with international standards, and create and develop democratic institutions and an active civil society in Palestine in accordance with internationally accepted standards and practices and support all efforts aimed at enabling the Palestinian people to exercise their inalienable rights according to international law. The Centre enjoys Consultative Status with the ECOSOC of the United Nations. The Centre also has wide relationships with human rights and civil society organizations throughout the world, and is an affiliate of 5 international and Arab human rights organizations, who are active in the international arena.

EXECUTIVE SUMMARY

1. As the Occupying Power in the Gaza Strip, the State of Israel has specific obligations with respect to the care and protection of the occupied Palestinian population. This responsibility arises consequent to the degree of effective control exercised by Israel, and the fundamental impact this has on the lives of the civilian population. However, in violation of these obligations Israel has, *inter alia*, compounded the humanitarian problem in Gaza by implementing measures that create poverty and deteriorate health conditions, and engaged in a policy of illegal attacks on civilians near the 'buffer zone,' which results in a significant number of injuries and deaths. These actions carry no legal consequences as Israel's judicial system has, to-date, failed to ensure justice by properly processing reparations complaints based on the damage, injuries and deaths that occurred in Operation Cast Lead. Israel must take accountability for its actions and fulfil its obligations under international humanitarian and human rights law.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Border Closure

2. In 2006, in spite of the Agreement on Movement and Access, which entered into force on 25 November 2005,¹ Israel continued to tighten its restrictions on the movement of people and

¹ Agreement on Movement and Access, 15 November 2005.

goods from and to the Gaza Strip, further developing a closure policy first begun in 1991. This policy escalated to a total closure in mid-June 2007, and for five years this most extreme form of closure has been continuously applied to the Gaza Strip, cutting off 1.7 million individuals from the outside world.

3. As part of the closure policy, Palestinians are prevented from entering or leaving the Gaza Strip through Israel's border crossings, while severe restrictions have been placed on the import and export of goods, including fuel, food, construction materials and medical supplies. The results include: severe shortages of essential items and materials; increasing unemployment, poverty, and aid dependency; and the de-development of the Gaza Strip.
4. Prior to the June 2007 escalation of the closure, there were 5 border crossings operating. Although numbers on the combined capacity of all border crossings for goods are not available, the Karni crossing used to facilitate 75% of the Gaza Strip's needs through imports and exports. As of the end of June 2012, only 2 of these border crossings are operating – one for goods (Karm abu Salem) and one for pedestrians (Erez).² The closing of 3 crossings has seriously restricted the potential amount of goods that can cross the border in a single day. Israel's authorities have further restricted the number of trucks allowed to cross.
5. Prior to the escalation of the closure, approximately 570 truckloads per day were needed to meet the basic needs of the population. In April 2012, only 149 trucks per day were allowed to pass through the border crossing, bringing approximately 26% of necessary goods. On average, only 20% of the number of trucks carrying necessary goods that were allowed to enter the Gaza Strip prior to June 2007 is now allowed to enter Gaza.³
6. Israel also restricts the number of agricultural exports that are allowed to leave the Gaza Strip. The numbers of agricultural exports allowed fluctuates from month to month, but remains at miniscule levels. At the height of the flower and strawberry season, 3% of the truckloads that were previously allowed to leave Gaza are exported.⁴ This number drops to approximately 1% for the rest of the year.⁵ Israel does not permit any other types of exports.
7. International law holds the Occupying Power responsible for all branches of public order and civil life, including health. The significant reduction in imports and exports has resulted in increasingly high levels of food and aid dependency and health problems associated with malnutrition. Further, water and sewage infrastructure was destroyed during Operation Cast Lead⁶ and, despite the fact that it has been 3 years, this infrastructure has not been repaired due to the restrictions placed by Israel on the importation of construction and other materials.⁷ In addition, 90% of the water in Gaza is unfit for human consumption,⁸ since Israel does not allow the import of equipment to repair Gaza's water system. This has

² PCHR, State of the Gaza Strip's Border Crossings – 01-30 April 2012.

³ PCHR, Closure Fact Sheet – April 2012.

⁴ PCHR, State of the Gaza Strip's Border Crossings – 01-30 January 2012.

⁵ PCHR, Closure Fact Sheet – April 2012.

⁶ PCHR, The Impact of the Israeli offensive (27 December 2008 – 18 January 2009) on the Water and Sewage Sectors in the Gaza Strip, 14 July 2009.

⁷ See PCHR, State of the Gaza Strip's Border Crossings 01 – 31 May 2012; EWASH, "Down the drain: Israeli restrictions on the WASH sector in the Occupied Palestinian Territory and their impact on vulnerable communities," February 2012.

⁸ United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, Five years of Blockade: The Humanitarian Situation in the Gaza Strip, June 2012.

resulted in a serious health situation for the most vulnerable members of society, in particular children.⁹

8. The absence of exports has created a stagnated economy, with unemployment rates of 34%, and youth unemployment over 50%. Poverty in Gaza remains unacceptably high and compounds other problems, in particular health; 44% of Gazans are food insecure and over 80% receive food aid.¹⁰
9. The Government of Israel has stated that it is enacting the closure the Gaza Strip as a form of economic warfare: “damaging the enemy’s economy is in and of itself a legitimate means in warfare and a relevant consideration even while deciding to allow the entry of relief consignments.”¹¹ This collective punishment of the civilian population is illegal.¹²

Recommendations

10. Israel must end the collective punishment of Gaza’s population by lifting its illegal closure policy, in particular the border restrictions imposed on imports, exports and the movement of people.

Bufferzone

11. In 2009, Israel announced the establishment of a ‘buffer zone’ - an area denied to Palestinians - along the land borders of the Gaza Strip. This area was initially announced as extending 300 meters into Gaza; however, in reality, this illegitimate restriction can extend as far as 1,500 meters.¹³ The variable limits of the buffer zone are often enforced using live fire, which results in the loss of lives and damage to land and property. The data provided by PCHR is reflective of incidents that occur in the extended buffer zone.
12. Attacks in the extended buffer zone take the form of land incursions, often using bulldozers, or aerial bombardments. Israel made 66 land incursions into the extended buffer zone in 2009, 137 land incursions in 2010 and 31 land incursions in 2011. From January – June 2012, Israel has made 35 incursions into the extended buffer zone. Israel conducted 43 aerial bombardments on the extended buffer zone in 2009, 34 aerial bombardments in 2010 and 56 aerial bombardments in 2011. From January - June, 2012 Israel has conducted 30 aerial bombardments on the extended buffer zone.¹⁴
13. In 2009, 39 people were injured in the extended buffer zone, of which 34 were civilians, 4 were women and 12 were children. A further 139 were injured in 2010, of which 133 were civilian, 2 were women and 34 were children. These numbers increased even further in 2011, with 199 injuries reported, of which 186 were civilians, 5 were women and 57 were children. From January – June 2012 there have been 15 injuries, of which 12 were civilians and 2 were women. With respect to killings in the buffer zone, there were 33 deaths recorded in 2009, of which 17 were civilians, including 1 woman and 4 children. These numbers nearly doubled in 2010 with 59 deaths, of which 16 were civilians, including 1 woman and 5 children. A further 24 deaths occurred in 2011, of which 18 were civilians, including 5 children. From January – June 2012, there have already been 10 deaths, of

⁹ Save the Children and MAP, “Gaza’s Children: Falling Behind,” 20 June 2012.

¹⁰ United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, Five years of Blockade: The Humanitarian Situation in the Gaza Strip, June 2012.

¹¹ *Al-Bassiouni v. The Prime Minister*, H CJ 9132/07 (not published), 30 January 2008, from the State’s response from 1 November 2007, para. 44.

¹² Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 33.

¹³ PCHR considers this area extending up to 1,500 meters to be part of an extended buffer zone.

¹⁴ All numbers provided on the buffer zone, unless otherwise stated, are extracted from PCHR’s extensive database, which is created by a PCHR’s fieldworkers who carefully document and investigate every incident in the Gaza Strip.

which 6 were civilians, including 1 child. To-date, no one is being held responsible for these acts.

14. These attacks have a number of separate effects on the people of Gaza. For example, land incursions and attacks often result in destroyed wells and farm buildings. The cost of replacing such items from 2005-2010 came to 15,644,000 USD,¹⁵ placing a significant – often insurmountable – burden on a population in poverty. This cost is in addition to the cost of replacing other types of property in the extended buffer zone, which is estimated to be 308,000,000 USD.¹⁶ However, this number does not include the cost of replacing crops lost due to levelling and access restrictions, which in 2010 were estimated to be 50,240,000 USD.¹⁷
15. In addition, in 2010 it was estimated that there was approximately 4,400 in educational institutions in the extended buffer zone.¹⁸ Although they are civilians, students in the buffer zone have been subject to attack; in 2010 alone, 6 schools in the extended buffer zone were either destroyed or damaged by attacks from Israel.¹⁹
16. Israel, as an Occupying Power, is prohibited from targeting civilians and civilian property.²⁰ Israel's attacks on the extended buffer zone are, therefore, clearly a violation of their obligations under international humanitarian law.

Recommendations

17. PCHR strongly condemns Israel's use, and continued extension, of the unlawful buffer zone. All illegal attacks and incursions against civilians and civilian property within the buffer zone, including the extended buffer zone, must be ceased.

Israel's Judicial System

18. Following Operation Cast Lead, PCHR sought to obtain justice for victims of Israel's illegal attacks by filing compensation claims and criminal complaints in Israel's judicial system on behalf of the victims of Operation Cast Lead. The right to reparation is a fundamental component of the right to an effective remedy, and also constitutes a component of customary IHL. However, Israel's judicial system has not provided justice for the victims of Operation Cast Lead.

Civil Reparations

19. Since 2009, PCHR has submitted 1,046 requests for reparation on behalf of 1,046 victims of Operation Cast Lead to the Compensation Officer of the Israeli Ministry of Defence. According to Israeli law, compensation requests must be submitted to the Compensation Office at the Israeli Ministry of Defence within 60 days of the incident. Dependent upon filing of this request, a tort case may be filed before the Israeli civil courts, but this must be done within two years of the incident.
20. With respect to the 1,046 compensation applications filed, responses have been received in relation to only 26 applications (17 responses total) to-date. 24 of these responses were interlocutory, one noted that a case had been filed before the Israeli civil courts and one refused compensation on the grounds that the incident occurred during a 'military operation.' Absolutely no communication has been received from the Israeli authorities in

¹⁵ OCHA and WFP, *Between the Fence and a Hard Place*, August 2010, pg. 19.

Please note that this report includes the extended buffer zone area as part of their figures.

¹⁶ OHCHR, *Update: Access Restricted Areas in the Gaza Strip, 2007-2010*.

¹⁷ OCHA and WFP, *Between the Fence and a Hard Place*, August 2010, pg. 23.

¹⁸ OCHA and WFP, *Between the Fence and a Hard Place*, August 2010, pg. 26.

¹⁹ OCHA and WFP, *Between the Fence and a Hard Place*, August 2010, pg. 19.

²⁰ Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, Article 54, 147.

the overwhelming majority of the cases. PCHR routinely submits letters to the relevant authorities requesting information.

21. The Israeli authorities impose two fees with respect to civil complaints. A routine court fee, which is applied in each case (approximately 1,600 NIS), and a court guarantee imposed on a discretionary basis by the court. This guarantee must be paid before the case can proceed; previously this amount stood at a minimum of approximately 10,000 NIS per case. With respect to Cast Lead reparations cases, Israeli courts have begun to impose a 20,000 NIS (approximately 5,300 USD) court guarantee per claimant in each case. The imposition of these fees can also be an unsurpassable financial burden given income and poverty levels in the Gaza Strip. Whenever a guarantee is requested, if this amount is not paid within 120 days, further proceedings are barred and the right to reparation is irremediably lost.
22. For example, in the case of the ‘Abdul Dayem family, the 22 complainants were required to pay a total of 440,000 NIS (approximately 115,072 USD) before the case could proceed. This claim related to an incident in which a flechette shell was fired at a condolence tent near to Izbet Beit Hanoun. Similarly, in the case of the Al-Samouni family, the court imposed a guarantee for all 62 victims claiming compensation (62 x 20,000 = 1,240,000 NIS, approximately 329,800 USD).
23. Only one civil complaint has resulted in any form of remedy: PCHR has secured an out-of-court settlement with respect to the family of two victims. A settlement of 500,000 NIS (approximately 147,000 USD) was awarded.
24. A number of other barriers to justice exist, in particular with respect to lawyers’, victims’ and witnesses’ access to court. All court orders requesting the presence of victims and witnesses from the Gaza Strip have been refused since 2006.

Criminal Complaints

25. PCHR submitted 490 criminal complaints, on behalf of 1,046 victims, to the Israeli Military Prosecutor requesting the opening of a criminal investigation. In response to these 490 complaints, PCHR has received responses with respect to 23 cases. 19 responses indicating that the complaint has been received, that it will be checked, and PCHR will be informed of the result; 1 response indicating that the case was closed as the witness would not travel to Erez crossing for interview; 1 response indicating that a soldier had been charged; and 2 responses stating that the investigation had been closed without providing reasons. One of the investigations that were closed is the Samouni case, which involved the wilful killing of 27 civilians and injury of 35 civilians.
26. PCHR notes that a number of cases relating to PCHR’s clients have ostensibly been closed, as reported, *inter alia*, by the Israeli media. However, PCHR has only received notification that a file was closed in 3 instances.

Recommendations

27. PCHR strongly suggests that Israel stop the imposition of prohibitive court fees and other barriers to justice, including the denial of lawyers, witnesses and complainants access to Israel.
28. PCHR asks that Israel complies with its legal obligation to ensure a transparent legal system that keeps victims apprised of the developments of their claims and complainants.
29. Israel must comply with its requirements under international law and effectively address the currently filed complaints, as well as complaints that may be filed in the future, and ensure that proper and timely justice is served.