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THE ICJ CONCLUDES A SECOND HIGH LEVEL MISSION TO THE OCCUPIED PALESTINIAN TERRITORIES AND ISRAEL

The International Commission of Jurists (ICJ) today concluded its second high-level mission to Israel and the Occupied Palestinian Territories (OPT). ICJ Commissioners Professor Pedro Nikken and Professor Rajeev Dhavan led the mission. In the West Bank, they met with senior Palestinian officials, the Chief Justice of the Supreme Court, Mr. Issa Abu Sharar, the Public Prosecutor, Mr. Ahmed Maghni, and representatives of local NGOs and the legal community. They also visited illegal settlements and the wall of separation in the West Bank and Jerusalem. In Israel, the ICJ delegation held meetings with senior governmental officials and the Chief Justice of the Supreme Court of Israel, Ms. Dorit Beinisch.

This mission followed the first ICJ mission to Gaza, led by its Secretary-General in December 2007. The first mission met with representatives of the dismissed government of Hamas, senior judges, lawyers, local NGOs and representatives of the legal community. The mission visited refugee camps in Jabaliya, Dir Al Balah, Khan Younes, witnessing the devastating impact of the Israeli siege of Gaza on the humanitarian situation in these camps and the human rights of the civilian population in Gaza.

The purpose of the two missions was to assess the current human rights situation and the status of the rule of law in the OPT, and the impact of the siege of Gaza, the settlements, and the wall of separation. The ICJ also discussed with Israeli and Palestinian officials their obligations under international law applicable to the Israeli-Palestinian conflict.

MAIN FINDINGS AND CONCERNS

The Siege of Gaza

The ICJ witnessed the devastating human rights and humanitarian consequences the Israeli Government's siege has imposed on Gaza's civilian population. Freedom of movement into and out of Gaza is severely restricted. Gaza's civilians have been denied basic economic, social and cultural rights, including access to food, healthcare, education and adequate housing. They have also been deprived of other essential means of subsistence, such as fuel and electricity. By preventing civilians from having access these essentials items, Israel, as an occupying power exercising effective control over the Gaza Strip, is in violation of its obligation under international humanitarian law to protect civilians in occupied areas. Such Israeli practices amount to collective punishment of the Palestinian population. This is prohibited by Art. 33 of the 4th Geneva Convention, which states, "no person may be punished for an offence he or she has not personally committed. Collective punishments and likewise all measures of intimidation or of terrorism are prohibited."

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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Israeli officials have justified these practices by arguing that they are necessary to ensure the security of civilians in the south of Israel. They also argue that military incursions in Gaza are defensive operations aimed at preventing the launching of Qassam rockets at Israel and destroying the tunnels used by Palestinian armed groups for smuggling arms into the Gaza Strip from Egypt.

Indeed, indiscriminate rocket attacks conducted by Palestinian armed groups against civilians in the south of Israel, especially in Sderot, put Israeli civilians at risk and impose a state of permanent fear. Direct attacks against civilians are prohibited under international humanitarian law and constitute war crimes.

As the rockets are sometimes launched from civilian areas in Gaza, these attacks also put the lives of Palestinian civilians at risk from Israel Defense Forces (IDF) responses. However, these attacks do not justify Israel's disproportionate and excessive military response. The ICJ delegations met several families of civilians killed by the disproportionate and indiscriminate use of the force by the IDF.

The ICJ believes that the 4th Geneva Convention can not be interpreted so as to dilute the protection that this convention clearly provides for the civilian population. Individuals targeting civilians and carrying out or ordering war crimes must be held criminally responsible.

The ICJ also witnessed the devastating humanitarian crisis in the Jabaliya, Khan Younes, and Dir Al Balah Refugee Camps in Gaza. The siege had contributed to truly appalling living conditions in these camps. Refugees are still suffering from unbearable poverty, a public health crisis due to the lack of sanitation and clean water, and high unemployment. Refugees have been also denied their right to return and to reclaim their properties.

However, the ICJ believes that any peace process between Israel and Palestine should fully guarantee the rights of Palestinian refugees, in accordance with international law, to dignity, to reparation and to return.

Settlements, Wall of Separation and Human Rights under Occupation

In the West Bank and East Jerusalem, the ICJ witnessed how, through the establishment of settlements in which hundreds of thousands of Israeli civilians now live, Israel continues to seize Palestinian land, isolate communities from one another and destroy livelihoods. The ICJ was deeply struck by the situation in Hebron as a result of the establishment of Israeli settlements in and around the old city, where Israeli military and security forces impose a regime of separation between Israeli settlers and Palestinians. This regime severely restricts the right of Palestinians to freedom of movement, and prevents them from having access to their own homes, work, school, health facilities, and sources of livelihood.

The announcement by the Israeli housing minister Zeev Boim of the construction of more than 1,000 new homes for settlers in East Jerusalem's Abu Ghneim/Har Homa Settlement violates Israel's obligations under international law, in particular Article 49 of the 4th Geneva Convention, which states, "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

The ICJ also observed the continuing construction of the wall of separation in the West Bank and Jerusalem. The wall cuts through Palestinian territory, allowing for the seizure of large areas of Palestinian land. The immediate impact of the separation wall on the human rights of the Palestinian people is to violate their right to freedom of movement, which in turn impacts other fundamental rights, including the rights to work, food, health, and education. Furthermore, the wall completely encircles the city of Qalqilya, separates Palestinian villages from Jerusalem, and, in Abu Dis, cuts through Palestinian communities, separating neighbours and families.

In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice stated that "Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the

structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.”

Together with the settlements, the rigid Israeli permit system enforced by an increasing number of checkpoints and roadblocks, and the construction of Israeli-only bypass roads, the wall prevents the emergence of a viable independent Palestinian State. Israeli officials have justified the construction of the wall by claiming it will help ensure the security of Israelis.

In addition, while article 76 of the Fourth Geneva Convention requires persons from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein, the ICJ notes that some 11,000 Palestinian convicted prisoners and administrative detainees are held in Israeli jails. The ICJ is deeply concerned by the continuing practice of administrative detention in the occupied Palestinian Territories, as arrests and detentions are often based on secret evidence, to which neither administrative detainees nor their counsel may have access. Administrative detention orders do not specify any maximum cumulative period of administrative detention, and the detaining authority can repeatedly extend the initial period without showing any cause.

The ICJ was told that security detainees were often ill-treated and sometimes even tortured during their interrogation and detention, and in many cases were held in isolation in remote detention centres, making regular contact with their lawyers and families difficult. This seriously violates Israel’s obligations under both international humanitarian law and international human rights law.

Rule of law in the OPT

The ICJ is concerned by persistent reports of the use of torture and arbitrary detention by the Palestinian authorities in the West Bank, in particular the Palestinian General Intelligence Service and the Preventive Security Forces.

Palestinian officials recognize the existence of some human rights violations committed by Palestinian law enforcement officers, but said that these violations did not reflect government policy. Regardless, the Palestinian Authority must take immediate measures to end impunity for those responsible for these human rights violations. Investigations into all allegations of human rights violations committed by members of the security services, including torture and illegal detention, must be conducted promptly and effectively.

The ICJ expresses deep concern about the disruption of the legal system in Gaza, including reported cases of interference with the judiciary. The August 2007 decision of the dismissed Government of Hamas to suspend the Attorney General, to form a “Higher Justice Council” under its control, and to appoint new judges to replace those who refused to cooperate with the Hamas Executive, violate the Palestinian Basic and Judicial laws.

The ICJ also expresses its concern about continuing attacks on the rule of law and human rights in the OPT, especially in regard to last summer’s fighting between Hamas and Fatah in Gaza. In June 2007, the events that accompanied Hamas’ seizure of power resulted in many civilian deaths and serious human rights violations, including extra-judicial, summary and arbitrary executions. Despite the severity of the violations, the perpetrators continue to enjoy impunity.

After several meetings with senior officials and representatives of the legal community in both Gaza and the West Bank, the ICJ mission believes that the establishment of two separate and conflicting legal systems in the OPT, one under the control of dismissed Government of Hamas in Gaza, the other under the control of the emergency Government in the West Bank, risks becoming a reality. If this were to occur, it would endanger the rights of Palestinians and seriously impede the emergence of a democratic, viable and independent Palestinian State.

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