



الهيئة المستقلة لحقوق الإنسان

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The Independent Commission for Human Rights



Israeli Aggression against the Gaza Strip: Unprecedented War Crimes and Collective Punishments under Blatant Arab and International Silence January 2009

The aggression launched by Israeli occupation forces on 27 December 2008 in the Gaza Strip continues for the thirteenth consecutive day, causing serious suffering among the Palestinian civilian population in the Gaza Strip. The aggressive offensive carried out by ground, naval, and air forces against the Palestinian civilian population and their property, has led to a massacre that constitutes one of the bloodiest massacres throughout 41 years of Israeli military occupation of the Palestinian Occupied Territory (OPT). The on-going Israeli shelling of civilian targets have led to the killing of hundreds of Palestinians¹, half of whom are women and children, and the wounding of thousands, including hundreds of women, children, and civilians, in addition to civilian police forces. These attacks, constituting heinous war crimes and crimes against humanity, took place under the cover of a blatant Arab and international silence and inaction that granted Israel the green light to intensify its siege and escalate its military operations and brutal shelling of the Gaza Strip. Meanwhile, its citizens are denied their basic human rights, as the suffering and humanitarian crisis they were already experiencing is worsening in light of the continued terrorizing of the population.

The military aggression launched by Israeli occupation forces against the Gaza Strip through the wide-scale air-raids by F16 planes targeted civilian areas, tens of police and security agencies' headquarters, governmental institutions, and houses throughout all areas in the Gaza Strip and its populated civilian areas, as well as its mosques. These attacks reveal a blatant Israeli disregard of the basic laws stipulated by the Fourth Geneva Convention of 1949 regarding the protection of civilians during times of war. The Convention should be considered the main legal framework for standards of human rights and humanitarian standards in the Occupied Territories, as it stipulates that: "the occupying force shall not be given the free hand in using power as it desires or procedures or policies in the administration of the occupied territories. The occupying force should preserve to the maximum the lives and interests of the civilian population and protect their properties and shall not change the legal status of these territories."

The Israeli aggression against the Gaza Strip is considered an illegitimate military action since it clearly and openly violates the provisions of the UN Charter. Through this aggression, the Israeli occupying authority is violating the Fourth Geneva Convention, which is a binding agreement that should be observed and respected by Israel as an occupying state in the OPT. Furthermore, it violates the body of international conventions and charters that regulate the provisions and rules of the international humanitarian law such as the Hague Conventions, including the section on Laws and Customs of War on Land of 1907, and the Additional Protocol to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts of 1977, as well as the international customary law, international jurisprudence, and previous courts decisions. The aforementioned body of legal texts is supported by many legal opinions and interpretations, the most recent of which was the advisory opinion of the International Court of Justice in the Hague regarding the Wall, issued on 9 July 2004, which confirmed that the provisions of the Fourth Geneva Convention of 1949 is applicable to the

¹ Until the publishing of this report over 700 persons were killed of which half are women and children and over 3100 persons were injured, and numbers are increasing regularly.

OPT . The OPT (the Gaza Strip and the West Bank including East Jerusalem) have been subjected to an on-going Israeli military occupation since 1967.

Israel, as an occupying power, has legal and humanitarian obligations towards the Palestinian civilian population in the OPT, including the Gaza Strip even after the Israeli unilateral withdrawal from the area in 2005. Israel has since maintained effective control and extensive security powers over the Gaza Strip in a manner that directly affects the civilian population. Furthermore, Israel maintains economic and military control over the air, sea, and land space of the Gaza Strip, full control over its crossing points, the management of the population register and the procedures of family reunion, the movement of goods in and out of the Strip, in addition to full control of the supply of fuel, electricity, and gas.

Targeting Civilians and Protected Properties²:

Collective Punishment and War Crimes

The Israeli aggression was accompanied by grave and unprecedented violations of Palestinian human rights, as civilians and properties protected in accordance with international humanitarian law were targeted. Israeli warplanes used destructive shells against civilian targets and residential areas, violating all international conventions and treaties, including the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949, particularly article 147 based on which Israeli war operations in the Strip are considered war crimes since they led to the killing of Palestinian civilians in houses and mosques³. They also violate article 33 of the Fourth Geneva Convention that prohibits collective punishment, and article 50 of the Hague Conventions Related to the Laws and Customs of War on Land of 18 October 1907, which stipulates that "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." The aggression violates articles 56, 25, and 27 of the same Convention that requires the protection of public properties, places of worship, and hospitals.⁴

² The Fourth Geneva Convention states that "No protected person (civilians including women, children and elderly, members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause) may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited"

³ Art. 147 of the Fourth Geneva Convention stipulates that "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

⁴ Article 56 stipulates that "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings. " Article 27 stipulates "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand. "

Israeli crimes against Palestinians in Gaza constitute crimes against humanity in addition to being war crimes. Crimes against humanity are crimes that are committed in the context of a systematic aggression against civilians, a pre-condition that applies to Israel's behaviour ever since it imposed a siege on the Gaza Strip, strangling its population, followed by intensive air and land raids against an area characterized as one of the highest densely populated regions in the world.⁵

ICHR confirms that Israeli occupation forces have committed war crimes and crimes against humanity, and that they focus their shelling against civilian constructions not only in complete disregard to the lives of civilians but rather intentionally targeting them, leading to deaths and injuries amidst their ranks. **In this context, it is possible to highlight the violations of the provisions of the Fourth Geneva Convention and other international humanitarian law conventions, as well as the grave breaches against persons and properties protected by the agreements and considered war crimes⁶ that were committed by Israeli occupation forces in a blatant manner during its aggression in the following manner:**

Targeting civilians and wilful killing

Facts on the ground and observations by ICHR's field researchers confirmed that all civilian residents of the Gaza Strip are unsafe and within the target circle of Israeli war planes. Willful killings and actions that intentionally inflict conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population are considered "crimes against humanity" if committed in the framework of a large-scale or systematic offensive against any group of civilian population pursuant to, or in furtherance of, a State policy to commit such attack⁷, which Israel has practiced since the beginning of 2006. Furthermore, Israel intentionally directed attacks against civilian objects which are not military objectives during its aggression, which amounts to a war crime.

⁵ "Crime against humanity" is referred to as acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, such as stated in article 7 of the Rome Statute of the International Criminal Court

⁶ Article 8 of the Rome Statute of the International Criminal Court adopted by the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998. Elements of war crimes are established once grave breaches of the Geneva Conventions take place through attacks against civilians and their properties and include:

"1- Willful killing

2- Torture or inhuman treatment, including biological experiments

3- Willfully causing great suffering or serious injury to body or health

4- Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. "

It is also established if serious violations of laws and customs applicable in international armed conflict take place against persons or properties protected by the relevant provisions of the Geneva Convention, including *inter alia*: "1-intentionally directing attacks against civilian objects, that is, objects which are not military objectives, 2- intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; 3- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives."

⁷ Article 7 of the Rome Statute of the International Criminal Law adopted by adopted by the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998.

"Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law" shall be considered a "crime against humanity".

As they carried out their war operations, Israeli occupation forces intentionally killed and injured the largest possible number of Palestinian civilians, targeting official police and security headquarters located within residential areas that are overcrowded with residents, and surrounded by schools at the time when students were scheduled to leave their schools. Tens of UNRWA schools were damaged and the brutal and random attacks that completely disregard the lives of civilians led to hundreds of casualties, both deaths and injuries, particularly amongst children, women, and the elderly. The attacks spread terror amidst tens of thousands of citizens, with the number of victims increasing regularly.

Israeli occupation forces used excessive lethal force throughout the Gaza Strip, firing tens of missiles from air and sea against residences, civilian constructions and buildings, as well as mosques located amidst overcrowded neighborhoods. Examples of this excessive use of force include the killing and injury of 22 Palestinian children inside their homes during the night of 28 December until the morning of 29 December 2008, during which five sisters from the Ba'lousheh family were killed in the Jabalia refugee camp, located north of the Gaza Strip, while sleeping inside their house. Three brothers in the Rafah refugee camp faced the same fate, as well as a ninth girl from the city of Gaza. All the children were killed while sleeping in their homes.

The Fourth Geneva Convention accorded women, children, and the elderly special protection. Article 17 of the Convention stipulates that "The Parties to the conflict shall endeavor to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas." Children were accorded special protection in time of armed conflict as stipulated by the Convention on the Rights of the Child of 1989, to which Israel is a signatory, particularly article 38 of the Convention, which addresses cases of armed conflict, and stipulates inter alia that:"1 - States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 4 - In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."⁸ The Israeli practices in this context constitute a blatant violation of the Convention and of Israel's legal obligations under international law.

Examples of such intentional killings include the targeting and destruction of the house of Raed Al Attar, one of the leaders of Al Qassam Brigades, in Rafah on 1 January 2009, killing three children from the neighboring Al Absi family. The three children are: Sudqi Ziyad Al Absi - 4 years old, and his two brothers Ahmad 13, and Mohammad 14 years old. The attack wounded 7 other members of the family. Another example involves the horrendous extra-judicial killing of Dr. Nizar Ar Rayyan, a member of the Hamas movement leadership, which killed all his family members, namely his four wives in addition to 11 of his children, when Israeli warplanes raided his house on the evening of 1 January 2009.

The intentional and systematic Israeli practices constitute grave breaches of the principles of international humanitarian law, particularly principles of special protection granted to children and women under the Fourth Geneva Convention of 1949. Furthermore, the UN Security Council Resolution number 1325 of 2000 has also consolidated a concept and a clear international work plan to ensure protection of women during armed conflicts and to reinforce women's participation in preventing the outbreak of such conflicts. Article 9 of the resolution demanded that all Parties of an armed conflict fully respect international law applicable to the rights and protection of women and girls, and to particularly consider them as civilians, especially the obligations applicable to all parties in accordance with the Geneva Conventions of 1949 and its additional Protocol of 1977, as well as

⁸ Convention on the Rights of the Child, article 38, paragraphs 1 and 4.

other international agreements, taking into consideration the relevant provisions from the Rome Statute of the International Criminal Court.

According to field reports, on 4 January 2009, Israeli occupation forces exterminated a whole Palestinian family in cold blood in the Azzaytoun neighborhood after firing tens of missiles against the family until all its 70 members were either killed or injured. The incident was discovered the next morning. One of the family survivors of the massacre said that the Israeli forces that moved into the eastern part of the Azzaytoun neighborhood had assembled tens of the As Sammouni family in one house, 180 square meters in size, and started to shell them for ten minutes until all of the family members were either killed or injured in the home, which was transformed into a pool of blood. Some of the family members died instantly, while some were injured and struggled to survive only to die hours later. The witness added that the Israeli occupation forces prevented ambulances from reaching the targeted family members, despite numerous pleadings and requests by the International Committee of the Red Cross, leaving them to bleed for long hours before ambulances were able to reach them on the following morning and evacuate them to A-Shifa' hospital, which could not accommodate all the victims.

On 5 January 2009, seven members of the Abu Eisheh family were killed, north of the Ashati refugee camp. Medical sources at Ashifa' hospital confirmed that the parents and five of their children were killed when their house was shelled by Israeli warships destroying the house completely over its residents. Houses that had opened for receiving condolences were not spared from the shelling, and four Palestinians were killed in the targeting of one such house.

Israeli occupation forces are using their full military arsenal from warplanes, artillery, machine guns, and warships in shelling whole neighborhoods destroying them over the heads of their residents. Victims among the ranks of Palestinian civilians continue to rise daily with the continuation of the aggression, in addition to the destruction of their civilian properties. More than 90% of the victims over the past three days were unarmed civilians, with children and women forming a large percentage of these victims. Israeli soldiers intentionally targeted civilians, including medical staff operating in the field, as all areas in the Gaza Strip are considered to be within the range of fire, including UNRWA shelter centers. The number of Palestinians killed in the raid by Israeli warplanes on the Al Fakhoura UNRWA School in the Jabalia refugee camp north of the Gaza Strip on the evening of 6 January 2009, reached 43, with scores of injured, being mostly children. The shelled school accommodated Palestinian families whose houses were destroyed by Israeli forces during the on-going and escalating aggression against the Gaza Strip. The raid took place despite the fact that UNRWA had specifically informed Israeli occupation forces that it had opened more than 23 of its locations to shelter displaced civilians forced out of their homes, to provide them with protection, and had hoisted the UN flags over those specific buildings. The Az Zayytoun neighborhood was also subject to aggressive attacks leading to deaths and injuries among civilians who were buried under the rubble of their homes without the ability for any party to reach them.

In parallel to the destructive war carried out by the Israeli occupation against the Gaza Strip, Israeli forces are using psychological warfare against its population in the form of phone calls made to numerous citizens, in addition to pamphlets thrown by Israeli warplanes demanding the citizens evacuate their homes because they are targeted by air raids. Many citizens confirmed that they received phone calls from the Israeli army on their cellular phones and land lines, instructing them to evacuate their homes. Some houses were shelled directly after the phone call, such as the house of Nizar Rayyan, a senior Hamas leader, but not other houses. Given the large population density in Gaza and the narrow distance between the houses, the shelling led to several cases of panic among the people who received such phone calls and their neighbors. Additionally, the Israeli army attempted to spread terror among the population by controlling satellite waves and channels to broadcast messages instructing them to evacuate their homes and throwing pamphlets from warplanes.

Some citizens evacuated their homes and remained in the streets for long hours under the extreme danger of intensive air-raids. Some of them took refuge in the homes of their relatives, seeking a non-existing sense of safety, while others gathered on the roofs of their homes in an attempt to prevent the shelling and shield it with their own bodies. Other citizens took refuge in UNRWA schools seeking safety since these schools raise the United Nations flag.

In another context of violations of Palestinian human rights and war crimes practiced by the occupying state, extreme damage is inflicted upon civilians, as tens of families in the Gaza Strip had evacuated their apartments on high floors of residential buildings and towers, following the shattering of their windows and damages resulting from shrapnel from explosions. Engineer Subhi A. Nimreh stated to ICHR that his family was forced to leave their apartment on the last floor of the "Sahafiyeen" tower in the Tal Al Hawa area after missile shrapnel penetrated the roof of their house leading to the shattering of the glass, which caused a state of panic and extreme fear among his family members.

The Israeli occupation forces have targeted, in a clear violation of the provisions of the Fourth Geneva Convention, medical teams working in the Gaza Strip and killed Dr. Ihab Al Madhoun, the paramedic Mohammad Abu Haseera, and the ambulance driver Hishmat Ajjour during the performance of their humanitarian duty. The three martyrs were on their way to rescue civilians who had been injured in an Israeli air-raid in the Jabalia area. The numbers of doctors and paramedics killed and injured has reached 12 and 27 respectively.

Tens of ambulances and 50 Civil Defense vehicles suffered damages as a result of the Israeli shelling, forcing them out of operations due to the lack of spare parts to repair them. Civil Defense drivers were forced to evacuate their original locations for fear of shelling, and moved their center of operations to an alternative open space near Ashifa' hospital. This has created an extra burden to Civil Defense personnel and citizens who are in need of their services. Article 20 of the Fourth Geneva Convention stipulates that "persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected."

The number of Palestinian martyrs in the Gaza Strip has escalated as a result of the use of excessive force and the disrespect by Israel of the principle of proportionality. Israeli occupation forces used missiles and all war weapons against Palestinian locations in a manner that is considered a flagrant violation of the basic principles of the international humanitarian law, which prohibits the use of weapons and fighting instruments that inflict unjustified losses or excessive suffering. The right of parties to a conflict and their armed forces to use force is not an absolute right, and distinction should be made, at all times, between civilians and combatants, treating civilians and people who are unable to fight humanely and without any adverse distinction.

Large-scale and arbitrary destruction of property

Facts on the grounds confirmed that all civilian constructions are within the targets of Israeli warplanes, revealing a pure Israeli intention to eliminate all the assets of the Palestinian people in the Gaza Strip, and destroy their infrastructure, foundations of their existence, and public properties. This comes despite the fact that principles of humanitarian international law have accorded some public properties the status of private properties to grant them additional and special protection. Article 56 of the Statutes Related to the Laws and Customs of War on Land, the Hague 18 October 1907, stipulates that "the property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property shall be treated as private

property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

Extensive destruction of property not justified by military necessity, and carried out unlawfully and wantonly is considered a grave breach according to article 147 of the Fourth Geneva Convention. Yet, Israeli air raids have targeted public and private properties of the Palestinian people and the basic foundations of its existence in a systematic manner. For example, the air-raids targeted the headquarters of the Palestinian Legislative Council, the Ministry of Education, and the Ministry of Justice which are not considered the property of the Hamas movement or any specific political party, but rather the property of all the Palestinian people. The destruction of these public institutions will lead to severe and long-term damage to the rights and assets of the Palestinian people. The Israeli air-raids targeted the headquarters of Palestinian civil police in the Gaza Strip as well as the headquarters of the homeland security agency, including the Arafat City for police, near a number of UNRWA schools. The raids led to scores of deaths and injuries among trainees, and killed Brigadier Tawfiq Jaber, director general of police in Gaza governorates, and Ismaeel Al Jab'ari head of the security and safety department within the Palestinian police force.

Israeli air-raids targeted several civilian constructions including blacksmith workshops, residential houses, and warehouses for medicine, as well as 11 mosques. Israeli warships shelled "Al Muntada" – the headquarters of the Palestinian presidency - west of the Gaza Strip, and on the first day of the aggression, shelled the old Saraya building - that includes the complex of governmental agencies - established since the British mandate.⁹ Israeli warplanes fired missiles on the headquarters of the Ministry of Interior of the deposed government in the Tal Al Hawa area, and shelled medicine storage houses and civil defense headquarters in several areas in the Gaza Strip. The successive raids led to total and partial severe damage to thousands of houses and apartments, as well as severe damage to tens of governmental and UNRWA schools, clinics, headquarters of municipalities, governorates, private vehicles and roads.

Israeli warplanes destroyed the upper floors of the Rafah municipality building. They also fired four successive missiles destroying the scientific laboratories building of the Islamic University in the Tal Al Hawa area south of Gaza city. Furthermore, Israeli warplanes caused extensive damages to Gaza sea port, as F16 planes targeted it with several missiles.

Air-raids targeted various civil constructions such as water wells, communication switches, industrial workshops, and offices of organizations. The guard of the water well and three employees of the Palestinian Telecommunication Company were killed in the attacks targeting the complex of the "civil administration" and its vicinity north of Gaza. Palestinians were killed when shelling targeted the Al Borno mosque opposite Ashifa' hospital, causing severe material damages to the hospital as a result of the shelling, during which the glass of the

⁹Article 4 of the Hague Convention for the Protection of Cultural Property in the event of Armed Conflict of 14 May 1954 stipulates that "1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property. 2. The obligations mentioned in paragraph I of the present Article may be waived only in cases where military necessity imperatively requires such a waiver. 3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall, refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party. 4. They shall refrain from any act directed by way of reprisals against cultural property. 5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3."

windows shattered and panic spread among the wounded and the patients. Prisons and correction centers were also shelled.

The majority of the targeted sites and headquarters are located within civilian residential areas, causing severe damages to tens of neighboring residential buildings. The raids and the shelling clearly indicate Israeli forces' disregard to the lives and safety of civilians, evident in the number of civilian victims (deaths and injuries).

Targeting mosques: the Israeli warplanes destroyed the Imad Aqel Mosque in Jabalia, leaving at least seven Palestinians dead, who were pulled out from under the rubble. The Abu Baker as Saddiq mosque in Jabalia refugee camp north of the Gaza Strip was also shelled. Citizens living in the vicinity of mosques in the Gaza Strip rushed to evacuate their homes out of fear for their lives as concrete and metal blocks were falling off mosques, which were shelled by Israeli occupation warplanes at night. Five children from the Ba'lousheh family were killed in the northern part of the Gaza Strip when their house collapsed as a result of the shelling of the neighboring Imad Aqel mosque. The mosque was destroyed during the first three days of the aggression against the Gaza Strip.

Targeting the land and cellular communication network: The land and cellular phone networks in the Gaza Strip suffered severe damages as a result of the Israeli shelling of the network's switch in Salah Eddeen Street in the northern part of the Gaza Strip. This shelling led to the interruption of phone networks in large areas in the northern part of the Gaza Strip. The Communication Company's teams found the bodies of three employees operating the network's switch that was targeted. It became difficult to use cellular phones as the network failed to accommodate the extensive pressures on it as a result of the continuous calls made by the citizens during shelling hours, the extensive calls made to hospitals and emergency centers, as well as the use of phones for media purposes. The permanent electricity outage impaired the proper functioning of communication enhancement stations spread throughout the Gaza Strip governorates, thus worsening the humanitarian and psychological crisis.

Targeting water wells: two water wells were destroyed during the first three days of the aggression. The first well was located on Salah Eddeen Street (civil administration in the past). The attack killed the employee responsible for operating the well and dismembered him. The second well was located in the Sheikh Ajleen area. The two wells operate at a water distribution rate for a number of citizens ranging between 5000 and 20,000. A land invasion of the Strip threatens to destroy the water networks and cannot be repaired given the fact that spare parts have not been available for 6 months. The water company will be obliged, in such a case, to operate mobile vehicles to deliver water to residents of affected areas.

Article 53 of the Fourth Geneva Convention relevant to the military necessity stipulates that "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, to the State, to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." Israel violates this article on a daily basis in a completely unresponsive manner to calls for ending the aggression, and respecting the Fourth Geneva Convention regarding the protection of civilians at time of war of 1949.

Deterioration of the Humanitarian Situation in the Gaza Strip

Furthermore, the Israeli attacks led to the deterioration of the already bad humanitarian conditions, resulting from the strangling systematic siege that Israel imposed upon the Gaza Strip, isolating it from the external world and its natural extension and interaction with the West Bank. Continuing to impose the siege under the on-going air and land war operations is considered a collective punishment against the one and a half million people

constituting the Gaza Strip population. The siege is a permanent hurdle confronting the distribution of basic humanitarian and medical supplies needed for the relief of civilian victims and to transfer the wounded to hospitals to receive treatment. The siege leads to the deprivation of the Gaza Strip's population of food, medicine, and fuel supplies, in addition to the worsening of the crisis of potable water, the lack of cooking gas, and the severe shortage of basic food supplies, particularly bread. The siege deprives hospitals from medicine, medical supplies and electricity, thus increasing the Gaza Strip hospitals' incapacity to accommodate the hundreds of wounded Palestinians.

Medical sources in the Ministry of Health within the deposed government informed the Commission about a state of paralysis within the Gaza Strip hospitals, particularly the Ashifa' hospital, as well the great inability to receive the large and excessive numbers of wounded. Additionally, there are 105 types of medicines that are completely lacking from the Strip's hospitals, in addition to the lack of 225 types of important medical consumables including gauze, bandages, medical strapping and plasters. It is important to mention here that Ashifa hospital residents suffered from severe cold since all the glass of the hospitals' windows were shattered as a result of flying concrete shrapnel, following the shelling by Israeli warplanes of Ashifa mosque opposite the hospital.

The Commission received the following information regarding the severe shortage of medication and medical consumables, leaving the Gaza Strip hospitals unable to provide medical services to citizens whether regular patients, or of those wounded during the current aggression against Gaza, thus leading to a gross violation of the right to health in the Gaza Strip:

Lack of medication for 80 children with lung diseases, lack of all medication for cancer patients, inability of 220 properly functioning major medical apparatus needed for dialysis, the lack of nitrate gas needed for anesthesia prior to surgical operation, 50% of ambulance cars are not operating, the complete malfunction of the central oxygen station, equipment for cardiac catheterization, and equipment for sterilizing the milk for premature babies in the children's hospital. Furthermore, the hospitals suffer from frequent interruptions in the functioning of the alternative electricity generators due to extreme pressure and demand on them and their continuous operation for more than 18 consecutive hours per day. Power outages resulting from malfunctioning generators lead to the spoiling of vaccinations inside fridges.

More than 1.5 million Palestinians spent the first night of the 2009 New Year in severe cold following electricity outages lasting for more than five days throughout Gaza and the northern governorates, and to a lesser extent in the southern governorates. Prohibition of entry of fuel into the Gaza Strip and destruction of electricity cables as a result of the shelling, led to a culmination of the crisis, rendering catastrophic living conditions of the people in the Strip, particularly given the lack of reserve fuel supplies which are smuggled through tunnels from Egypt, as a result of the stopping of alternative generators in bakeries, hospitals, and houses in the Gaza Strip.

Israeli Claims of “Self-Defense”

Israel claims that its aggression against the Gaza Strip is carried out in “self defense”, at a time when Israeli occupation forces have used unjustified excessive force against the Gaza Strip. Despite Israeli claims that operation "Cast Lead" aims at stopping Qassam rockets fired out of the Gaza Strip against bordering Israeli cities, the impact of these rockets cannot be compared in any way to the Israeli war crimes being committed against unarmed civilians in Gaza in response to these rockets. Israeli occupation forces are targeting densely populated residential areas in a narrow and limited geographical area considered to have one of the highest population densities in the world, especially in its overcrowded refugee camps. These claims come at a time when educational and civilian institutions, houses of worship, health institutions, and headquarters of civilian police are being targeted, in an attempt to spread chaos in the Gaza Strip, causing panic and fear amidst its population who

experience constant shock and terrorizing. The timing of the shelling, selected at peak hours when students leave their schools and target civilian constructions and police headquarters, blatantly indicates an intention to cause the largest number of deaths, and extensive destruction and damages to civilian constructions. These acts confirm that the crimes being committed can be classified as war crimes.

The Israeli aggression against the Gaza Strip raises serious questions regarding the respect of the principle of proportionality in attacks, given the large number of civilian casualties and the extent of damage inflicted upon the Palestinian basic infrastructure in the Gaza Strip, compared to the losses on the Israeli side. Distinction between protected civilians and civilian objectives on one hand, and military objectives on the other, is considered the essence and spirit of the international humanitarian law that should be observed under all circumstances. The destruction of necessary means of living for the citizens is also considered a war crime, which is currently being committed by Israel in Gaza, and should therefore be investigated.

The two Additional Protocols of 1977 annexed to the Four Geneva Conventions have stressed the need to respect the principle of proportionality and distinction (article 48 of the First Protocol, and article 13 of the Second Protocol). International humanitarian law aims at establishing a balance between two conflicting interests, the first relates to military requirements and considerations, while the second relates to humanitarian requirements. Article two of the Code of Conduct Regarding the Use of Force and Firearms by Law Enforcement Officials stipulates that "In the context of performing their duties, Law Enforcement Officials should respect and safeguard the human dignity and preserve and protect human rights of all individuals." ¹⁰

Regarding the principle of proportionality and military necessity, article 51 of the additional Protocol to the Fourth Geneva Convention stipulates that "indiscriminate attacks are, among others, a.) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and b.) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated".

Article 57(b) of the Protocol stipulates that "an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." These provisions have not been observed by Israel but rather, were blatantly violated during its aggression against the Strip as seen by the Commission since it targeted helpless, unarmed civilians and civilian objects.

Article 51 of the UN Charter guarantees the right of states to self-defense, yet this right was limited to the extent of responding to the aggression only without expanding actions to target other objectives. Therefore, Israel's non-proportional reaction against Hamas rockets, characterized by limited effectiveness and impact, and the continuation of its aggression against the Gaza Strip, expose that Israel has blatantly, by far, exceeded the right to self-defense. The targeting by Israeli warplanes on 27 December 2008 of 120 locations simultaneously, leaving hundreds dead and wounded, is evidence that current operations are carried out beyond the principle of self-defense but rather to target a large number of civilian victims, when Israel owns what is considered the largest military arsenal in the Middle East. In this way, Israel is launching a disproportionate military aggression, critically endangering a civilian population who is protected by international humanitarian law, against a group that does not have the strength or military power of the Occupier.

¹⁰Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly decision number 34/169 of 17 January 1979.

Conclusion

- 1- **ICHR** rejects Israel's false claims aiming at giving legitimacy to war crimes committed by it against Palestinian citizens in the Gaza Strip (according to article 8 of the Rome Statutes for the International Criminal Court and article 147 of the Fourth Geneva Convention on war crimes, that are accompanied by policies of collective punishments against the Palestinian people according to article 33 of the Fourth Geneva Convention). The Commission rejects Israel's claim that it has launched this aggression in self-defense and to protect Israeli civilians against rocket attacks by the armed wing of the Hamas movement in the Gaza Strip. **ICHR** reiterates principles of international humanitarian law that prohibit punitive measures against protected persons and their properties.
- 2- **ICHR** stresses the need to always distinguish between civilians and non-civilians. **ICHR** holds the Occupying State fully responsible for the lives and safety of Palestinian civilians, particularly since the existence of armed resistance inside the Gaza Strip is by no means a justification for the use of excessive force in a manner that violates civilians under all circumstances, in accordance with principles of international humanitarian law, and the principle of proportionality.
- 3- **ICHR** reiterates that the aggression launched by Israeli occupation forces reflects the highest degree of disregard of the lives of Palestinian citizens, and is also considered an act of revenge and a collective punishment against them in violation of article 33 of the Fourth Geneva Convention of 1949, regarding the Protection of Civilians in Time of War. The Commission views the Israeli aggression against the Gaza Strip as an attempt to break the will of the Palestinian people in realizing its national rights, independence, and right to self-determination. There is no legal basis to justify Israel's strangulation of more than 1.5 million Palestinians in the Gaza Strip inside a large prison, prohibiting the entry of medical, food, and humanitarian supplies as a collective punishment, and as a crime against humanity that violates all international human rights charters, conventions and norms. Therefore, **ICHR** stresses that Israeli occupation's practices are a clear violation of the Fourth Geneva Convention and are considered war crimes *par excellence*.
- 4- **ICHR** sees that the escalation of Israeli military operations and their expansion in the form of a ground offensive against the Gaza Strip is threatening the lives of more unarmed Palestinian civilians. **ICHR** stresses that Israel's targeting of the public properties of the Palestinian people and their assets, which are protected in accordance with the international humanitarian law that granted these public properties the status of private properties to ensure their protection, such as the Legislative Council, the schools, and the cultural centers, or the targeting of infrastructure such as water and electricity networks, roads and others, would have long-term negative implications to Palestinian human rights, and would adversely impact the services provided to Palestinians and their right to self-determination.
- 5- **ICHR** reiterates that police stations and their officers who are assigned the task of law enforcement are classified as civilians according to the principles of international humanitarian law. Therefore, targeting the police headquarters and the civilian police at a time when the police forces were not engaged in any military operations or fighting, is prohibited by the international humanitarian law.
- 6- **ICHR** sees in the Israeli systematic policies against the Gaza Strip isolating it from the rest of the OPT a continuation of its occupation policies in the West Bank under which Israeli occupation forces continue to impose stringent siege measures against it, turning its cities, towns, and villages into isolated cantons.

Additionally, Israel continues its judaization measures against the occupied city of Jerusalem, isolating it fully from its geographical environment, continuing the settlement expansion and the construction of the Separation Wall inside the West Bank, restricting the freedom of movement, continuing incursions into most of the West Bank cities and towns, entering homes and arresting thousands of Palestinians including tens of Legislative Council Members, in addition to the continuation of killings and systematic political assassination, as well as other collective punishments.

- 7- **ICHR** stresses that protection of Palestinian human rights and ensuring the enjoyment of the minimum level of human rights and ending the violations can only take place through the immediate ending of the Israeli aggression against the Gaza Strip, and the complete ending of Israeli occupation of all Palestinian Territory occupied in 1967.

Therefore, the Independent Commission for Human Rights demands immediate action to:

- 1- End the Israeli aggression against the Gaza Strip, protect civilians, and provide all means for living and steadfastness of its citizens.
- 2- Call upon the international community and international organizations to immediately intervene to stop the unprecedented deterioration in the status of human rights in the Gaza Strip, and put pressure upon Israel to end the aggression.
- 3- End the stringent Israeli siege imposed upon the Gaza Strip and open all crossing points immediately, including the Rafah and Erez crossing points allowing the flow of medical and humanitarian supplies, including the entry of voluntary medical personnel and donated field hospitals.
- 4- Call upon the High Contracting Parties to the Fourth Geneva Convention to abide by their obligations in article one of the Convention, according to which these Parties pledge to respect the Convention, uphold it, and guarantee its respect at all times, as well as their obligations according to article 146 of the Convention to pursue legally all parties accused of committing grave breaches of the Convention.
- 5- Consolidate efforts at the national and international level to monitor, document and collect well verified evidence of war crimes committed by the Israeli military officials, with an attempt to bring all those who have committed and/or ordered the commission of war crimes to justice and make them accountable for the crimes they have committed in the Gaza Strip against the protected Palestinian civilian population.
- 6- Call upon all national human rights organizations to exert pressures on their government to mobilize and end the aggression, protect the civilian population in the Gaza Strip, and call on their governments that are parties to the Fourth Geneva Convention to respect their legal obligation and abide with their commitments stipulated by the Convention.
- 7- Reiterate the unity of the OPT as one geographical unit, and impose on Israel the obligation to open a secure and safe passage between the West Bank and Gaza Strip, which is considered a pure Palestinian entitlement.

8- Work toward ending Israeli prolonged belligerent occupation of the OPT since 1967 and realize that the occupation is the deep rooted cause of the problem. Find a just and durable solution to the Israeli-Palestinian conflict by allowing Palestinians to practice their right to self determination and the establishment of their independent state on all Palestinian territory occupied in 1967, and that only through ending occupation, and the enjoyment of the Palestinians of their rights can a sustainable solution be established.

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