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Human rights situation in Palestine and other occupied Arab territories

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

[17 May 2010]

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

Israeli Military Orders for the Deportation and Forcible Transfer of People from the Occupied Palestinian Territory

At the Human Rights Council's universal periodic review of Israel's human rights record in 2008, Israel's failure to meet its international obligations to respect international human rights and humanitarian law in the Occupied Palestinian Territory was repeatedly noted and condemned by Council members.

During the intervening period, Israel's policies and practices in the OPT have continued to be characterized by blatant disregard for international law and massive violations of Palestinian human rights.

Israel's assault on Palestinian rights assumes many guises and at this critical point Al-Haq wishes to bring to the Council's attention a recent manifestation of Israeli practices, vividly illustrating the consequences of the prevailing culture of impunity.

Military Orders

On 13 April 2010, military orders 1649 'Order regarding Security provisions' and 1650 'Order regarding Prevention of Infiltration', issued by the Israeli Occupation Force's Central Command, entered into force.

Military order 1650 radically widens the definition of 'infiltration' to include all who (i) enter the West Bank 'unlawfully' and (ii) are present in the West Bank without lawfully holding a permit. Israel has not provided any clarification as to what constitutes a permit. The term 'infiltration' is also ambiguous, but a literal reading includes all persons present in the West Bank, including Palestinians who were born and are legally resident here. Israeli spokespersons have stated that the orders shall not be applied against Israeli settlers. The concept of infiltration will therefore be applied on a discriminatory basis, excluding the population of Israeli settlements.

Various groups are likely to be the primary targets of the military orders, and subjected to the penalties of imprisonment, transfer, and deportation. These include thousands of Palestinians living in the West Bank but registered in the Palestinian population registry with Gazan addresses. Many were born in the West Bank or have lived there for decades with their families. The orders effectively serve to formalise the process, already begun, of transferring Palestinians registered with Gazan addresses from the West Bank to Gaza.

Also vulnerable are foreign passport-holding spouses of West Bank Palestinians. Since 2000 Israel has frozen the processing of all family reunifications applications and as a result, thousands of persons are unable to regularise their status in the West Bank, leaving them at increased risk of removal.

The orders serve Israel's strategy of ensuring that foreign employees of international organisations as well as human rights defenders are unable to enter or remain in the West Bank. The restriction on internationals, particularly those who support the Palestinian civilian population through cultural, legal, and development work, to visit the West Bank deeply affects the ability of Palestinian civil society to effectively oppose the occupation and to maintain and develop its relations with the outside world. Such relations are, in the context of prolonged military occupation, vital for the survival of the population.

The mechanisms available to challenge deportation are grossly inadequate. The military orders create a committee which will oversee deportations, but individuals may be deported without any opportunity to challenge the deportation before the committee. The committee is comprised of military judges appointed by the commander of the Israeli Occupation Forces – the same authority ordering deportations in the first place.

Grave Breaches of the Fourth Geneva Convention, War Crimes, and Crimes Against Humanity

The military orders provide for the forcible deportation and transfer of ‘protected persons’ in occupied territory, a practice clearly prohibited under international human rights and humanitarian law. Article 49 of the Fourth Geneva Convention, which is binding on Israel, prohibits ‘individual or mass forcible transfers, as well as deportations of protected persons from occupied territory...regardless of their motive.’

The criminal nature of the orders is illustrated by reference to Article 7(1)d of the Rome Statute of the International Criminal Court whereby deportation or forcible transfer of persons, when committed as part of a widespread or systematic attack directed against a civilian population constitutes a crime against humanity. Similarly, Article 8(2)vii of the Rome Statute, provides that ‘unlawful deportation or transfer’ constitutes a war crime, ‘in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes’.

As such, Israel’s military orders effectively legislate for the commission of war crimes. Those responsible for issuing or authorising the orders, as well as those that plan and carry out forcible transfer or deportations in accordance with the orders, would be responsible for the commission of grave breaches of the Fourth Geneva Convention.

Article 12 of the Covenant on Civil and Political Rights guarantees the right of persons lawfully present within a territory to freely choose their residence. The only exceptions permitted are those necessary to protect national security, public order, public health or morals, and the rights and freedoms of others. The military orders violate this right since, without any legitimate justification provided by Israel, Palestinians are prevented from being able to choose to reside in the West Bank.

To deport foreign passport holders would constitute a violation of Article 13 of the Covenant, whereby a state may only expel aliens lawfully present within its jurisdiction pursuant to a decision made in accordance with the law. This presupposes the existence of just laws regulating the presence of aliens in a territory, and due process for those facing deportation. As described above, neither the arbitrary nature of the military orders, nor the military committee which is meant to oversee the deportations, can be understood as satisfying the requirement that deportations be ‘in accordance with the law.’

The Ongoing Blockade of Gaza

Al-Haq’s analysis of the policy behind the military orders concludes that Israel aims to consolidate its wider policy of frustrating Palestinian efforts at exercising self-determination by separating Gaza and its inhabitants from the West Bank. Days following Israel’s last UPR Israel launched an unprecedented military assault on Gaza. In less than three weeks, during ‘Operation Cast Lead’ the Occupying Power killed more than 1,400 Palestinians, over 83 percent of which were civilians, including 342 children, and wounded more than 5,000. Al-Haq documented the destruction or damage of 11,154 civilian homes, affecting more than 100,000 Palestinians, half of which are children. The foundations of civilian life were crushed by the destruction of food and industrial facilities and public utilities including six police facilities.

‘Operation Cast Lead’ occurred in the context of an already dire humanitarian crisis in Gaza, caused by Israel’s relentless blockade on the region, in blatant disregard of its international legal obligations as the occupying power. The blockade is now in its third year with Israel showing no intention of lifting it.

Implementation of the new military orders will compound the humanitarian crisis by unlawfully transferring Palestinians from the West Bank to Gaza. Al-Haq has already

documented such cases. In addition to the violation of individual rights through the commission of grave breaches of the Fourth Geneva Convention, forcible population transfer will severely frustrate the Palestinian right of self-determination.

Conclusion

The humanitarian crisis caused by Israel's blockade of Gaza has been tolerated by the international community. This is within a context where Israel's violations of international humanitarian and human rights law have been accepted as reflecting a prevailing 'culture of impunity in the region [which] has existed for too long'. The Occupying Power, with the tacit consent of third state parties, has been allowed to continuously disregard its legal obligations, resulting in grave violations of Palestinians' rights to which no effective remedy is afforded. The Palestinian people depend on the international community to ensure respect for international law and pursue peace and justice. It is evident that Palestinian victims are not afforded effective domestic remedies for violations of international humanitarian and human rights law to which they have been, and continue to be, subjected to. It is imperative that the international community acts immediately to ensure that the prevalence of impunity cannot permit Israel to undertake the forcible transfer or deportation of Palestinians from the West Bank. As a nation repeatedly subject to the Occupying Power's sustained and repeated violations of international law Palestinians must be afforded the protection by the international community that is their right.

In light of the aforementioned, Al-Haq calls upon the Council to carry out the following:

- Call upon Israel as the Occupying Power to end the illegal blockade of the occupied Gaza Strip;
- Call upon Israel as the Occupying Power to rescind the new military orders on the basis that they legislate for the commission of grave breaches of the Geneva Conventions;
- Call upon Israel to abide by its international obligations, including those under the international bill of rights and those under the Fourth Geneva Convention;
- Call upon Israel to take urgent and immediate steps to end its occupation of all Palestinian and Arab Territories since 1967 in order for Palestinians to exercise their right to self-determination;
- Call upon Israel to implement all Human Rights Council, General Assembly and Security Council resolutions with regard to the Occupied Palestinian Territory.