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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty

CONTENTS

	<i>Paragraphs Page</i>
I. INTRODUCTION	1 – 8
II. LEGAL FRAMEWORK	9 – 25
A. International humanitarian law	9 – 18
B. Human rights law	19 – 23
C. The continued application of human rights law during armed conflict	24 – 25
III. CONTRIBUTIONS BY INDIVIDUAL MANDATE-HOLDERS	26 – 98
A. Independent expert on the question of human rights and extreme poverty	26 – 36
B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	37 – 44
C. Special Rapporteur on the right to food	45 – 53
D. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	54 – 63
E. Special Rapporteur on the right to education	64 – 73
F. Special Rapporteur on violence against women, its causes and consequences	74 – 79
G. Representative of the Secretary-General on the human rights of internally displaced persons	80 – 88
H. Special Rapporteur on extrajudicial Summary or Arbitrary Executions	89 – 98
IV. RECOMMENDATIONS	99 – 105

Annex : Special report on Gaza and southern Israel prepared by the Special Representative of the secretary-General for Children and Armed Conflict.

Summary

The present report is submitted pursuant to Human Rights Council resolution S-9/1 of 12 January 2009 in which the Council requested all relevant special procedures mandate-holders, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, arbitrary or summary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty, to urgently seek and gather information on violations of the human rights of the Palestinian people and submit their reports to the Council at its next session.

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has submitted a separate report to the Council (A/HRC/10/20). The present report is submitted by the other above-mentioned mandate-holders, and includes individual sections submitted by each one as well as a joint introduction, legal analysis and set of recommendations. The section submitted by the Special Representative of the Secretary-General for Children and Armed Conflict.

I INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip.

2. In its resolution, the Council requested all relevant special procedures mandate-holders, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the independent expert on the question of human rights and extreme poverty, to urgently seek and gather information on violations of the human rights of the Palestinian people and submit their reports to the Council at its next session.

3. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has submitted a separate report to the Council (A/HRC/10/20). The present report is submitted by the other above-mentioned mandate-holders, and includes individual sections submitted by each one as well as a joint introduction, legal analysis and set of recommendations. The section submitted by the Special Representative of the Secretary-General for Children and Armed Conflict is annexed to the report. Following her visit to the Occupied Palestinian Territory and Southern Israel from 2 to 6 February 2009, the information submitted was compiled by the inter-agency working group on children and armed conflict on the ground, in accordance with Security Council resolution 1612 (2005)..

4. The mandate-holders solicited information from concerned parties, including relevant Governments, United Nations agencies and non-governmental organizations, and received a significant number of submissions. They extend their sincere thanks for the cooperation they

received in gathering information. In view of the extremely limited time available, brief report cannot do justice to the large volume of information received.

5. The special rapporteurs on violence against women, on the right to education, on the right to food, on the right to the highest attainable standard of health and the independent expert on extreme poverty requested to visit the Occupied Palestinian Territory, including Gaza, and to discuss with the relevant Israeli authorities the issues covered by their mandates.

6. The Occupied Palestinian Territory, particularly the Gaza Strip, has been affected by protracted conflict and occupation policies for decades. On 27 December 2008, the Israeli military launched a large-scale operation against Hamas in response to rockets fired at populated areas in Israeli territory. According to available estimates, a total of 1,453 people were killed. Of these, 1,440 were Palestinian, including 431 children and 114 women. A total of 13 were Israelis, including three civilians and six soldiers killed by Hamas, and four soldiers killed in friendly fire incidents.¹ This operation also resulted in a dramatic deterioration of the living conditions of the civilian population. At the onset of the recent military operation, the population of the Gaza Strip was already rendered vulnerable following a 20-month-long blockade, which severely restricted the movement of people and goods and the delivery of humanitarian and development assistance. In addition, the discriminatory legislation and policies of the occupying Power in, inter alia, access to housing, health care, food and water systems, have governed for decades the institutional set up in the Occupied Palestinian Territory, thus aggravating the situation of its residents. An estimated 80 per cent of the population in Gaza, particularly women and children, was already dependent on humanitarian assistance before the recent military operation.

7. Targeted and indiscriminate attacks on public facilities, including medical facilities, water and sanitation networks, Government and municipal buildings, electricity, gas, transportation, agriculture, fisheries and industries further eroded people's access to basic services and goods. Combined with the decreasing ability of the authorities to manage basic public services and the collapse of the local economy, the recent military operation exacerbated the situation of the 1.5 million Gaza residents whose rights, including the rights to education, food, health and housing

¹ In addition to the 1,440 killed, the Palestinian Ministry of Health lists 5,380 Palestinians injured, including 1,872 children and 800 women. In addition to the 13 killed, the Magen David Adom lists 518 Israelis injured, including 182 civilians and 336 soldiers. For additional data on children, see Annex. Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, Occupied Palestinian Territory, No. 33, January 2009.

and to be free from violence could not be protected. The conflict further exacerbated the desperate situation of those living in poverty in Gaza and pushed even more people into a life of poverty.

8. Even after the ceasefire was declared on 18 January 2009, restrictions on movement of people and goods as well as humanitarian assistance continued, thus hampering efforts for recovery and return to normalcy.

II LEGAL FRAMEWORK

A. International humanitarian law

9. The most relevant conventional international humanitarian law standards binding Israel are set out in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949. In addition, Israel is bound by the customary rules of international humanitarian law, which are applicable in the present context. The State's responsibilities in the Occupied Palestinian Territory as the Occupying Power are set out in this Convention as well as in the Hague Regulations, which have become part of customary international humanitarian law.² The International Court of Justice has concluded that the Fourth Geneva Convention is applicable in the Palestinian territories, which before the 1967 conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel. This is also the case for the Gaza Strip despite the unilateral withdrawal by Israel of its forces from the Strip in 2005, as the continuing occupation has been confirmed repeatedly since then by the General Assembly and the Security Council.³

10. Hamas and other armed Palestinian groups are bound by the obligations of Common Article 3 of the 1949 Geneva Conventions and by the applicable rules of customary international humanitarian law, concerning, inter alia, the conduct of hostilities and the treatment of civilians and other protected persons. In the text of the National Unity Government programme delivered by then Prime Minister Ismail Haniya before the Palestinian Legislative Council on 17 March

² In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories of 2004, the International Court of Justice recalled that, while Israel was not a party to the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention IV), to which the Hague Regulations are annexed, the provisions of the Hague Regulations had become part of customary international law.

³ See General Assembly resolutions 62/181, and 63/98, and Security Council resolution 1860 (2009).

2007, Hamas accepted that it was bound by as it has confirmed its commitment to respect international law and international humanitarian law.

11. The most relevant rules of customary international humanitarian law applicable to the conduct of hostilities in the present context relate to the principles of distinction, proportionality and precaution.⁴ These obligations are cumulative; an attack must comply with all of the rules in order to be lawful.

12. First, under the principle of distinction, the parties to a conflict must, at all times, distinguish between civilians and combatants; attacks may be directed only at military objectives, defined as those objects which, by their nature, location, purpose or use, make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time offers a definite military advantage. The only circumstance in which civilians may be targeted is for such time as they take a direct part in hostilities. Thus, attacks on civilian objects are unlawful unless at the time of the attack they were used for military purposes and their destruction offered a definite military advantage.

13. Indiscriminate attacks are similarly prohibited. They are those that (a) are not directed at a specific military objective; (b) employ a method or means of combat which cannot be directed at a specific military objective; or (c) employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. Attacks by bombardment which treat a number of clearly separated and distinct military objectives located in an urban area or rural village as a single military objective are prohibited. The prohibition of indiscriminate attacks must not only determine the strategy adopted for a particular military operation but also limit the use of certain weapons in situations where the civilian population will be affected.

14. Second, under the principle of proportionality, attacks on legitimate military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to

⁴ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, J-M. Henckaerts and L. Doswald-Beck (eds.), Cambridge University Press, 2005 ICRC Study). The study was prepared at the request of States at the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 and is based on an extensive analysis of State practice (e.g. military manuals) and documents expressing *opinio iuris*. Rules, 6-9, 11-13, 15-24, 97.

civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.

15. Third, the parties to a conflict must take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. This obligation is two-fold. Precautions must be taken when planning and conducting attacks. A number of specific precautionary measures are prescribed by humanitarian law, *inter alia*, the determination of the military character of the objective and the evaluation of compliance with the principle of proportionality. In addition, parties to a conflict are required to give effective advance warning of attacks, which may affect the civilian population, unless circumstances do not permit.

16. Parties to a conflict must also take precautions to protect civilians and civilian objects under its control from the effects of attacks; this includes avoiding placing military objectives within or near densely populated areas and keeping civilians away from military targets. The use of human shields is also prohibited. Contrary to the general principle of precautions against the effects of attacks, this prohibition must be understood to require the specific intent to use civilians to immunize otherwise legitimate military objectives from lawful attack.

17. A violation of the obligation to take precautionary measures *vis-à-vis* the civilian population or their use as human shields by one side to a conflict does not change the obligations incumbent on the other party to the conflict to evaluate what constitutes an excessive attack in relation to concrete and direct military advantage.⁵

18. With regard to the treatment of protected persons in the occupied territories, article 33 of the Fourth Geneva Convention forbids collective punishment of civilians for crimes they have not personally committed. The provision of assistance to protected persons and civilian property also benefit from specific protections. Article 53 of the Fourth Geneva Convention prohibits the destruction by the occupying Power of private or public property unless rendered absolutely necessary by military operations. In addition, articles 55 and 59 provide that the occupying Power shall ensure food and medical supplies of the population and at the very least agree to relief schemes on behalf of the population of an occupied territory, and shall facilitate them by all the means at its disposal, if the whole or part of this population is inadequately supplied. Articles 23

⁵ Article 28 of the Fourth Geneva Convention specifies that the presence of a protected person may not be used to render certain points or areas immune from military operations.

and 59 further provide that all contracting parties shall permit the free passage of these consignments and guarantee their protection.⁶

B. Human rights law

19. Israel is party to the major human rights treaties relevant to the current situation⁷.

20. As regards the territorial scope of application, article 2 of the International Covenant on Civil and Political Rights obliges each State party to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized within it.⁸ In particular, in relation to the responsibilities Israel under its international human rights treaty obligations with regard to the Occupied Palestinian Territory, in its advisory opinion on the Wall, the International Court of Justice concluded that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child were applicable.⁹ United Nations human rights treaty bodies also underscore that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction there.¹⁰ The International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women contain no provisions limiting their application to the territory of States parties. In this respect, the International Court of Justice also noted that the

⁶ In resolution 1860 (2009), the Security Council called for the unimpeded provision and distribution throughout Gaza of humanitarian assistance, including food, fuel and medical treatment.

⁷ They include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Optional Protocol thereto on the involvement of children in armed conflict.

⁸ The Human Rights Committee has clarified that “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party”. General comment No. 31 (CCPR/C/21/Rev.1/Add.13), para. 10.

⁹ In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories of 2004, the International Court of Justice recalled that, while Israel was not a party to the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention IV), to which the Hague Regulations are annexed, the provisions of the Hague Regulations had become part of customary international law.

¹⁰ An examination of the concluding observations of different United Nations treaty bodies confirms this view: In its concluding observations of 2003, the Human Rights Committee reiterated that the International Covenant on Civil and Political Rights provisions apply “to the benefit of the population of the Occupied Territories for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant”. Similarly, in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights reaffirmed its view that “the State party’s obligations under the Covenant apply to all territories and populations under its effective control” (E/C.12/1/Add.90). The Committee on the Elimination of Racial Discrimination drew a similar conclusion in its concluding observations of March 2007 (CERD/C/ISR/CO/13), para. 32.

obligations of Israel under the International Covenant on Economic, Social and Cultural Rights include an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities. The unilateral disengagement from the Gaza Strip by Israel, which was formally completed on 12 September 2005, does not dispense Israel from complying with its human rights obligations towards the population of that territory; Israel remains bound to the extent that the measures it adopts affect the enjoyment of human rights of the residents of the Gaza Strip.

21. The Palestinian Authority, as recognized in a number of public undertakings whereby the Palestinian Authority, the Palestinian Liberation Organization (PLO) and the Palestinian Legislative Council have declared their commitment to respect international human rights law, is also bound to abide by international human rights obligations.¹¹

22. With respect to Hamas, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.¹²

23. Although the full body of human rights law is applicable in the Occupied Palestinian Territory, the particular relevance of some human rights norms stands out in the current context, namely the right to life and freedom of movement, as well as a number of economic and social rights, particularly the right to an adequate standard of living, including the rights to food and to adequate housing, the rights to the enjoyment of the highest attainable standard of physical and mental health, the right to work, the rights to education and to the prohibition of discrimination as enshrined in the International Covenant on Economic, Social and Cultural Rights. These rights impose obligations on State parties: the obligations to respect protect and fulfil, which in turn incorporates both an obligation to facilitate and an obligation to provide.¹³

¹¹ PLO chairman Yasser Arafat repeatedly stated that he and his Government were committed to respecting to all international human rights standards, for instance, to representatives of Amnesty International on 2 October 1993 and 7 February 1996.

¹² For example, in a joint report on Lebanon and Israel, a group of four special rapporteurs concluded that: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights ... It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure." (A/HRC/2/7), para. 19.

¹³ Committee on Economic, Social and Cultural Rights, general comment No. 13 on the right to education.

C. The continued application of human rights law during armed conflict

24. Human rights law, which consists of the full range of economic, social and cultural rights as well as civil and political rights, does not cease to apply in times of war; only certain derogations which are in accordance with precise provisions relating to times of emergency are permissible.¹⁴

25. More specifically, the International Covenant on Civil and Political Rights and other international human rights instruments allow for the possibility, in circumstances that threaten the life of the nation, to derogate from some of its guarantees provided that the measures are strictly necessary and are lifted as soon as the public emergency or armed conflict ceases to exist.¹⁵ Certain guarantees, in particular the prohibition of torture and cruel, inhuman or degrading treatment or the right to life, are non-derogable¹⁶. Israel remains in the state of public emergency proclaimed on 19 May 1948, four days after its declaration of establishment.¹⁷ With regard to economic, social and cultural rights, the International Covenant on Economic, Social, and Cultural Rights does not explicitly allow for derogations in time of public emergency, but the guarantees of the Covenant may, in times of armed conflict, be limited in accordance with its articles 4 and 5 and because of the possible scarcity of available resources in the sense of article 2, paragraph 1.¹⁸

III. Contributions by individual mandate-holders

A. Independent expert on the question of human rights and extreme poverty

26. In situations of armed conflict, the poor always suffer disproportionately. In the specific case of Gaza, the recent conflict and, in particular, the impact that Israeli military operations have had on the infrastructure and the economy have pushed even more people below the poverty line. Poverty has been a long standing concern in Gaza. Even prior to the recent conflict, 78.9 per cent

¹⁴ International Court of Justice, “Legality of the Threat or Use of Nuclear Weapons”, advisory opinion of 8 July 1996, ICJ Reports 1996 (I), para. 25; advisory opinion on the Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory; para. 106; “Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)”, ICJ Reports 2005, para. 219 (finding substantive violations of human rights law during an armed conflict). See also concluding observations of the Human Rights Committee on the second periodic report of Israel, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40)*, vol. I, para. 11.

¹⁵ International Covenant on Civil and Political Rights, art. 4, para. 1: see also Human Rights Committee, general comment No. 29 (2001), para. 3.

¹⁶ International Covenant on Civil and Political Rights, art. 4, para. 2.

¹⁷ CCPR/C/ISR/2001/2, para. 71.

¹⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), paras. 28-29.

of Gaza residents were already living below the official poverty line.¹⁹ The recent conflict, the occupation and the 19-month blockade imposed by Israel on Gaza have exasperated this situation and had a devastating effect on the economy and the infrastructure and a profound pervasive impact on the lives of Palestinian people, particularly the poor.

27. While the blockade is the primary cause of poverty in Gaza, the situation has been further exacerbated by the limitation of aid in 2006, insufficient access for humanitarian organizations and the deterioration of the internal security situation owing to the escalation of intra-Palestinian violence. A full assessment is still under way. However, there is no doubt that the three-week military offensive by Israel has compounded the already catastrophic humanitarian situation of the Palestinian people and led to a range of human rights violations.

28. The military operation launched by Israel on 27 December 2008 has not only forced more people into a life of poverty, but also exacerbated the miserable situation of those already living in poverty by creating a need for urgent, massive humanitarian efforts to secure basic rights and minimum standards of living. The almost complete dependency on external aid and reliance on the informal market has further exposed the population to political manipulation affecting the poor disproportionately.

29. The independent expert expresses her grave concern at the fact that poverty in Gaza is a direct consequence of systematic violations of a wide range of civil, political, economic, social and cultural rights against Gazan residents, and that poverty in Gaza has also led to specific violations of human rights. Many of these violations are described in other sections of the present report and all are relevant to assessing the situation of the poor. In particular, the poor have suffered greatly from violations of the right to education, food, housing and health, which are described below in detail by other mandate-holders.

1. Cumulative and increasing destruction of livelihoods in Gaza

30. Reports received by the independent expert reveal that, over the years, the damage that the blockade and military incursions by Israel has inflicted upon the land, the environment and

¹⁹ The official poverty line is 2.3 USD per person per day, this rates reflects household income. World Bank, Palestinian Economic Prospects: Aid, Access and Reform, 22 September 2008, p.20. The figure set out here was recorded in 2007, no figures are available for 2008.

industrial infrastructure in Gaza has led to an escalation in unemployment and undermined the ability of the Palestinian people to find basic means of subsistence. The World Bank estimates that 98 per cent of Gaza industrial operations were inactive as a result of the closures. Up to 70,000 workers are reported to have lost their jobs since 2007.²⁰ In December 2008, the Office for the Coordination of Humanitarian Affairs estimated that 18 months of closures had caused a 50 per cent increase in unemployment. Women are particularly affected; the female participation in the Gaza job market was only 11.5 per cent in 2007, one of the lowest rates in the world.²¹

31. The lack of regular payment of salaries caused mainly by the suspension of financial aid and the discontinuation of the transfer of taxes and revenues as well as by the tensions between the different political parties controlling services to the Palestinian population had caused a steady deterioration in the living conditions of public sector employees that has left them vulnerable to poverty. Restrictions imposed by Israel on the transport of currency have resulted in a liquidity crisis. The lack of currency has seriously compromised the provision of basic social services, including the payment of social allowances, thereby making the poorest to a fully dependent on aid and informal arrangements to survive.

2. Impact of the recent military operation on the poor

32. Preliminary assessments indicate that, during the recent military operations, health facilities, water and sanitation infrastructure, land and cellular communication networks, schools, universities, mosques, residential buildings, factories commercial enterprises and farms were deliberately attacked and damaged as a result of fighting.²² This has had a disastrous impact on the economy, the infrastructure and the enjoyment of human rights by the poorest Palestinian people.

33. It is reported that during the military intervention Israel deliberately obstructed the work of humanitarian personnel leaving the poor without basic medical, food and other services in violation of both international humanitarian and human rights law.²³ After the cessation of hostilities, reports suggest that the authorities in Gaza have also obstructed the distribution of

²⁰ Ibid.

²¹ United Nations Development Programme (UNDP), Programme of Assistance to the Palestinian People Mid-term Strategic Framework for the period 2008-2011 (2008)

²² See UNRWA News, 16 January 2009; the Statement by Commissioner General Karen AbuZayd, 27 January 2009; International Committee of the Red Cross, Operational Update of 25 January 2009; Field update on Gaza from the Humanitarian Coordinator, 24-26 January 2009; Centre on Housing Rights and Evictions, "The collapse of Gaza's water and waste water sector. Grave breaches of international humanitarian Law and serious violations of international human rights law", 2009, sections B, C and E.

²³ See "WFP launches Operation Lifeline Gaza to get food to the hungry", 10 January 2009; Zarocostas, J. "Agencies call for health workers in Gaza to be respected", *British Medical Journal*, 7 January 2009 and "The Conflict in Gaza", *AI report*, January 2009, section D.

humanitarian aid to Gaza and imposed restrictions on the work of civil society organizations and human rights defenders.²⁴

34. For Gaza's economy to revive (offering opportunities to people to pull themselves out of poverty) all of Gaza's entry points must be opened to ensure freedom of movement for all, the free inflow of industrial and agricultural inputs and cash and the export of products from Gaza²⁵. There is also an urgent need to ensure that there are sufficient quantities of fuel, spare parts for the damaged infrastructure (e.g. the power plant) as well as cement, sand and other construction materials.

35. Recovery will also require that Palestinians be provided with income-generating and work opportunities, including access to work in Israel. Furthermore, Palestinians require access to education at all levels and students and professionals, such as doctors and teachers, must be able to receive education abroad. Special attention must also be paid to people who have been seriously wounded or disabled; they must be provided with rehabilitation services and have the means to live a dignified life and enjoying an adequate standard of living.

36. In addition to the above-mentioned measures, the independent expert stresses that, to improve the lives of those living in poverty, psychosocial support for those in need, in particular children, is urgently needed. The rights of the victims of human rights violations to have access to remedy and reparations must also be respected.

B. Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

37. Disregard for the right to adequate housing in the Occupied Palestinian Territory far predates the recent military offensive. Overcrowding, lack of sanitation and other difficult living conditions have been not only the result of demolitions and destruction of homes in the present and previous military offensives, but a permanent urban condition that prevents the people of Gaza from having

²⁴ See Palestinian Centre for Human Rights, *Special Reports*, (February 2009), "Inter-Palestinian Human Rights Violations in the Gaza Strip", 3 February 2009

²⁵ On 12 February, a single truck with nearly 50,000 flowers was reportedly allowed to cross out of Gaza through Kerem Shalom for export. According to the same source, it was the first time since 18 January 2008 that Israel had allowed any exports from Gaza; however, it remains unclear as to whether further exports will be allowed. The Office for the Coordination of Humanitarian Affairs reported that, on 6 February, Israel allowed, for the first time since mid December 2008, the transfer of NIS 170 million (\$ 42 million) from banks in the West Bank to banks in the Gaza Strip. The new supply would enable the Palestinian Authority to pay the salaries of some 70,000 Gaza-based employees. The Office for the Coordination of Humanitarian Affairs, Situation Report, No. 21, February 2009.

access to the acceptable minimal standards of adequate housing.

38. The Special Rapporteur on adequate housing has received reports from numerous sources concerning the extensive destruction of homes and civilian property during the Israeli military offensive in Gaza from 27 December 2008 to 24 January 2009. Initial estimates indicate that more than 4,240 residences were destroyed and 44,306 were damaged, most of them rendered uninhabitable without considerable rehabilitation.²⁶ An estimated 2.6 per cent of homes in Gaza were completely destroyed, an additional 20 per cent sustained serious damage,²⁷ reportedly forcibly evicting an estimated 80,000 to 90,000 people who have been rendered homeless, many forced to live in open space.²⁸ For buildings that are apparently still intact, it is unclear how much of their internal structure was damaged, which may cause problems in the long term, including collapse or fragility in the event of natural disaster.

39. The massive destruction and damage caused by the Israeli offensive to homes and infrastructure, including roads, water stations and electrical facilities, and the continued restrictions imposed on the urgent transport of reconstruction materials into Gaza could constitute grave violations of the right to adequate housing and are the cause of a severe humanitarian crisis.

40. Reports indicate that Israeli attacks have not always complied with the principle of distinction between civilians and combatants, and that some of the houses and properties attacked did not meet the definition of military objectives.

41. Countless communities in Gaza have been rendered virtually uninhabitable. In urban areas and several refugee camps in the northern part of Gaza, entire neighborhoods have been flattened. These acts seem to be contrary to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, in particular Article 53.²⁹

42. The extensive damage to basic social services and infrastructures has severely eroded the

²⁶ Rapid Shelter/NFI assessment, 11 February 2009.

²⁷ United Nations, Gaza Flash Appeal, January 2009; and Palestinian Central Bureau of Statistics.

²⁸ Centre on Housing Rights and Evictions "European governments and citizens hold the key to imposing accountability on Israel", 12 January 2009; and Emergency Architects, information flash: "The foundation of Emergency Architects helps with emergency re-housing in Gaza", 18 February 2009.

²⁹ "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations".

ability of the people of Gaza to live according to the acceptable minimal standards of adequate housing. Many water tanks used by individual homes were also damaged,³⁰ causing 500,000 people to have no access to running water, and the rest of the population only sporadic access during the hostilities.³¹ Thousands of people have been affected by damaged sewage networks and pumping stations, owing to both repeated bombing and the scarcity of fuel supplies resulting from the closure of the border.²⁷ Unexploded ordinance has been discovered by civilians in residential areas; property and water supplies have been contaminated by sewage spills and reports allege further contamination by toxic remnants from munitions.³²

43. At a time when international support for the reconstruction and rehabilitation of homes and neighbourhoods is urgently needed, the Special Rapporteur is deeply concerned about persisting impediments to the entry of reconstruction materials into Gaza, either through their outright prohibition or protracted administrative delays. In addition, she recalls that, according to the Palestinian Central Bureau of Statistics, destruction of infrastructure and houses resulted in the waste of approximately \$1.9 billion in international aid dollars given by donors and the international community.

44. The recent attacks have worsened the living conditions of the people of Gaza, who have been confined for decades to a small territory, in overcrowded conditions, with poor housing and sanitation conditions, problems that have been poorly managed to date. The Special Rapporteur is particularly concerned that the scale of destruction bringing further destitution and the hardship endured by the people of Gaza will only add to the cycle of violence.

C. Special Rapporteur on the right to food

45. The right to food is realized when every man, woman and child has physical and economic access at all times to adequate food or the means for its procurement. This right is violated on a large scale, and on a routine basis, in the Gaza Strip, owing to both recent events and long-standing trends. The breakdown of the food system in Gaza and the lasting damage, that has been inflicted on the Gaza food production infrastructure, resulting in the loss of jobs and incomes for many families, further aggravate a situation which, even before the recent military operation of

³⁰ Aid Worker Diary: part 15, July 14 2009.

³¹ *New York Times*, "Israel and Hamas: Conflict in Gaza" 11 July 2009

³² *IPS* "Unexploded bombs hold more deaths", 24 January 2009.

December 2008-January 2009, was intolerable. The chronic restrictions on the movements of goods and people have also had a major impact on the right to food of the people living in Gaza.

1. Destruction of property and means of subsistence

46. According to the Palestinian Centre for the Human Rights and the Integrated Regional Information Network, farmland and greenhouses were bombed extensively in Gaza, which has had a devastating impact on the ability of people to produce food for subsistence or trade purposes. The Palestinian Central Bureau of Statistics estimated that 80 per cent of agricultural land and crops was damaged during the recent hostilities, as evidenced by 395 impact craters resulting from shelling.³³ Arable land has been contaminated by spills of sewage and toxic munitions.³⁴ The Office for the Coordination of Humanitarian Affairs reported that extensive destruction debilitated commercial enterprises and public infrastructure, including the largest flour mill and food processing plants in Gaza. The Special Rapporteur considers that this constitutes a serious violation of customary international humanitarian law, which prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.³⁵

2. Closures and restrictions to free movement of goods, including food aid

47. Even before the recent conflict, recurrent closure of border crossings and other security measures had impeded the passage and delivery of food assistance and of traded foodstuffs. The consequences have been dramatic; for example, the closure of the Karni border crossing for over 46 days in the first quarter of 2006 resulted in severe shortages of food and the depletion of food reserves, and most bakeries in the Gaza Strip were forced to close owing to shortages of flour and fuel, leading to the rationing of bread. The prohibition of the export of agricultural products from Gaza at the height of the harvesting season reportedly led to the waste of hundreds of tons of tomatoes, peppers, cucumbers and strawberries and a loss of millions of dollars.³⁶ Restrictions on the entry of supplies essential for food production, such as fuel, fertilizers, plastics and seeds, have also been imposed over the years by the Israeli blockade.

48. The complete closure of Gaza's borders during the recent armed conflict affected both family-level food production and public and commercial centres. In a situation report from the

³³ UNOSAT damage assessment, 20 January

³⁴ *The Observer*, "Gaza desperately short of food after Israel destroys farmland", 3 February 2009.

³⁵ ICRC study, rule 54.

³⁶ A/HRC/4/30/Add.1, para. 37.

Humanitarian Coordinator, the Office for the Coordination of Humanitarian Affairs reported that in early January, only nine bakeries remained operational, causing many people to wait from five to six hours a day just to purchase a day's supply of bread. According to the Food and Agriculture Organization of the United Nations, shortages of nutritious and affordable food have further eroded food security for people in Gaza; meat and many vegetables are scarce and cost three times their regular price.

49. According to the Palestine Monitor Factsheet of 18 December 2008, even before the hostilities, approximately 80 per cent of families in Gaza relied on humanitarian food aid in order to survive,³⁶ this number had reached approximately 91 per cent by early February 2009.³⁷ In this context, obstacles to the delivery of urgently needed food aid during the recent hostilities caused by fuel shortages and the closure of the borders resulted in violations of the right to food on a large scale. The continuous bombing of civilian areas further impeded aid agencies from having access to hungry people, who were unable, or too afraid, to meet aid convoys;²³ the number of hungry people without access to basic food necessary for their survival soared as a result. Normal caseloads from the World Food Programme and the United Nations Relief and Works Agency for Palestine Refugees in the Near East UNRWA normal caseloads have therefore increased, bringing the total number of people dependent on food aid from both organizations to 1,275,300.³⁸

50. Even after the cessation of the hostilities, humanitarian aid convoys still met restrictions on providing for the urgent food and nutritional needs of the population of Gaza, a violation of the obligations of Israel as the occupying Power of the Gaza Strip.³⁹ These obstacles to food aid were further exacerbated by incidents of confiscation of food parcels destined for distribution to beneficiary families reportedly by Hamas police personnel.⁴⁰ While noting that these food parcels were returned, the Special Rapporteur would like to recall that respecting the right to food entails, inter alia, refraining from taking any measures that result in preventing people's access to food.

³⁷ Save the Children, children of the Gaza crisis, Fact Sheet, 27 January 2009.

³⁸ *Ibid.*, 9 February 2009.

³⁹ "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate" Fourth Geneva Convention, art. 55.

⁴⁰ *UN News*, "UN suspends aid operation after second Hamas-Linked theft of supplies", 6 February 2009.

3. Impact on the right to food

51. According to the Palestine Monitor Factsheet of 18 December 2008, rates of food insecurity rose from 34 percent in 2006 to 38 per cent in 2008, as 75 per cent of Palestinians reduced the quantity of food purchased and 89 per cent switched to less nutritious diets in 2006 and 2007. This has had a particularly severe impact on children, who are often the first victims of malnutrition.⁴¹ The Palestine Monitor estimates that, in 2009, the rate of chronic malnutrition of Palestinian children under two has reached 10 per cent.⁴² Close to half of children of that age group suffer from anaemia. Two thirds of all children reportedly suffer from a lack of vitamin A.⁴³ One in 10 girls and boys under the age of five evidence stunted growth in Gaza.⁴⁴

52. Global food price increases have further driven the cost of food in Gaza far beyond the purchasing power of most of the population. According to the Palestine Monitor Factsheet, the end of 2008, food cost on average 23 per cent more than in 2007. The Office for the Coordination of Humanitarian Affairs reports that shops and markets continue to provide limited food supplies at exorbitantly high prices. Shortage of currency further undermines access to food. Because agricultural inputs are prohibitively expensive, many farmers have been unable to invest in the 2009 agricultural cycle. Livestock owners have reportedly been reducing their flock size. Fishing has declined dramatically. The ability of these groups to feed themselves and their families is seriously jeopardized.⁴⁵

53. The destruction of food production capabilities, mounting scarcities and rising costs together with obstructions to the delivery of aid constitute grave threats to the right to food. The ability of the people of Gaza to provide for their food and nutritional needs is essential to overcoming the underlying causes of conflict in the region and to ensuring a life of dignity.

⁴¹ The Office for the Coordination of Humanitarian Affairs, Gaza Strip Inter-Agency Humanitarian Fact Sheet, March 2008.

⁴² "Why the Gaza disaster is not three weeks old and has not stopped along with the bombs", 22 January 2009. See www.palestinemonitor.org

⁴³ See the United Nations Children's Fund (UNICEF), "Aid for Gaza's Children," 11 January 2009, and Richard Falk, "The Siege of Gaza," 22 December 2008.

⁴⁴ See Save the Children, West Bank and Gaza at www.savethechildren.org

⁴⁵ See the FAO and emergencies page dedicated to the West Bank and the Gaza Strip at the FAO website (www.fao.org)

D. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

54. The long-standing Israeli-Palestinian conflict and the Israeli military offensive launched on 27 December 2008 resulted in grave violations of the right to the highest attainable standard of health in Gaza. According to article 24 of the Convention on the Rights on the Child, the right to health encompasses not only access to health care, but also the underlining determinants of health, such as access to clean water and sanitation, food and nutrition, adequate housing and a healthy environment.

55. The prolonged conflict has seriously damaged the health infrastructure in Gaza, which has greatly undermined public health and service delivery throughout the affected area. The health situation has been further aggravated by the long-standing blockade imposed by Israel since June 2007. The blockade has prevented the passage of basic goods, including medical supplies, spare parts and fuel necessary for the normal functioning of medical facilities.

56. The conflict and its exacerbation by the blockade and consequent lack of fuel has resulted in severe electricity shortages. Hospitals were running on back-up generators, and medical personnel worked under tremendous strain, as many of them worked consecutive 12 to 24 hour shifts to attend to medical emergencies.²³ The number of hospital beds has been insufficient to cope with the mounting number of injured civilians, causing many health centres to have to send gravely ill and wounded people home before completing the necessary treatment.

57. The lack of fuel has also affected water supplies, which left approximately a million people without access to safe and potable water.⁴⁶ Waste water pumps repeatedly stopped working, threatening to cause grave environmental hazards. Monitoring and surveillance of water quality has been suspended since the closure of the central public health laboratory on 3 January 2009, thus seriously affecting an already deteriorating public health system. Additionally, the lack of access to clean water and the closure of waste water pumping stations has resulted in exposure to numerous diseases. Farmland and urban areas have been flooded with sewage, and the remains of

⁴⁶ World Health Organization, *Health Action Crisis*, Highlights No. 245, 2-8 February 2009.

a number of unrecovered bodies in advanced stages of decomposition has further exacerbated the grave risks to public health in the Gaza Strip.

58. The obstacles faced by humanitarian medical efforts have particularly affected the most vulnerable groups among the civilian population, namely children and women. The discontinuation of preventive health care, including vaccination of children, has further threatened the long-term health of the population in Gaza, rendering the population vulnerable to outbreaks of highly infectious diseases such as measles, polio and hepatitis.⁴⁷

59. Mental health represents an integral part of the right to the highest attainable standard of health. The prolonged conflict, and in particular the latest offensive, has affected the psychosocial well-being of the population and has been particularly challenging for women, children and disabled persons. The state of mental health of the population in Gaza has also been evidenced by a dramatic increase in drug abuse, estimated to affect almost 10 per cent of the young population in the region. Signs of extreme psychosocial distress and related psychosocial conditions have also increased.⁴⁸

60. The denial of access to medical treatment outside of Gaza Strip for seriously ill Palestinian patients is a long-standing issue (see A/HRC/4/28/Add.1). There are indications of a worsening trend in the denial of access to healthcare, as evidenced by the decline in the percentage of requests approved for medical permits for patients referred for treatment outside Gaza Strip, from 80 per cent in 2007 to 66 per cent in the first half of 2008.⁴⁷

61. The Special Rapporteur notes that under international humanitarian law, all medical personnel and facilities must be protected at all times.⁴⁹

62. The Special Rapporteur strongly condemns the targeting of medical facilities and workers by Israeli forces. For example, 16 medical workers were killed and 25 injured while on duty. Furthermore, 15 hospitals, 43 primary health centres and 29 ambulances were destroyed. In early February 2009, only 44 of 56 primary health care centres were functioning. Use of primary

⁴⁷ WHO, Health Situation in the Gaza Strip, 7 January 2009.

⁴⁸ Integrated Regional Information Network, "Drug abuse on the Rise in Gaza – specialists", 16 January 2009 at the website www.irinnews.org

⁴⁹ Fourth Geneva Convention, art. 20, and the International Committee of the Red Cross study, rules, 25, 28 and 29,

health-care facilities has significantly declined since the military offensive; WHO estimates that 40 per cent of chronically ill patients no longer turn to public health-care centres for care.

63. The material damages caused by the recent hostilities, the border closures resulting in the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute grave violations of the right to the highest attainable standard of health.

E. Special Rapporteur on the right to education

64. The blockade on Gaza imposed in June 2007 and the resulting restrictions on movement and goods have resulted in serious violations of the right to education, which was further exacerbated by the Israeli offensive on Gaza that began on 27 December 2008. Consequently, educational facilities have suffered extensive damage and destruction, their repair and reconstruction has been obstructed and students have experienced significant psychosocial distress, all of which pose great challenges to the creation of an environment conducive to the realization of the right to education.

65. The Special Rapporteur on the right to education received numerous reports of Israeli strikes on schools in Gaza, leading to major damage to seven public schools and partial damage to an additional 236 schools (public, private and kindergarten) and to 36 UNRWA schools.⁵⁰ Israeli shells are reported to have hit two UNRWA schools and landed close to another, al-Fakhura school in Jabaliya refugee camp, which were sheltering displaced families. According to the Save the Children Alliance and UNICEF, these incidents resulted in the killing of 47 people, including 15 children. On 17 January, the American International School of Gaza near the northern town of Beit Lahiya was destroyed by aerial bombing, leaving its 220 students without a place to continue their schooling. Warplanes also hit the science and engineering laboratories of the Islamic University in Gaza City, the territory's oldest and biggest facility for higher education, affecting over 20,000 students.⁵¹

66. The Special Rapporteur deplores the targeting of schools during wartime, an act that provided the schools are not military objectives- is explicitly prohibited under customary

⁵⁰ OCHA, Rapid Needs Assessment Report (Education Cluster) 30 January 2009

⁵¹ *Associated Press*, "Israel-Hamas war deals blow to schools in Gaza", 3 February, 2009

international law,⁵² and notes that such an attack has been qualified as a war crime by the Rome Statute of the International Criminal Court which, has been ratified by 108 States.

67. As often occurs during emergencies, educational activities ceased during the weeks of heavy bombing and ground fire and the pervasive insecurity across the Gaza strip, causing 540,000 students of all educational levels to miss almost one month of classes²⁷. Following the ceasefire, there were delays to the restoration of regular schooling, as insecurity persisted, reconstruction was been impeded and numerous people continued to seek shelter in school buildings after being displaced by the fighting.⁵³

68. Continued restrictions on the entry of reconstruction materials into Gaza have also posed serious threats to the right to education for Gaza children and youth, as construction materials have repeatedly been denied entry into the region, and Israeli authorities have insisted on case-by-case approval of all reconstruction projects affecting schools, resulting in long administrative delays.⁵⁴

69. In addition to the particular violations of the right to education caused by the hostilities that began on 27 December 2008, access to safe and adequate educational conditions in Gaza has faced long-standing obstacles that far pre date recent events. Overcrowding in the schools in Gaza had already caused a restriction in the hours of schooling, in order to allow for morning and afternoon shifts to accommodate the region's 450,000 students⁵¹; this problem has particularly affected the schooling of some 200,000 refugee children in Gaza, who have attended UNRWA schools in the past year.⁵⁵ Efforts by UNRWA to continue the regular school feeding programme have been hampered by repeated restrictions on the entry of supplies. According to UNICEF, power shortages owing to restrictions on the entry of fuel caused students to gather in classrooms that lacked heating and electricity, as well as light bulbs and other basic supplies, such as paper, chalk and essential equipment for teaching, such as printers and overhead projectors. Higher education

⁵² The targeting of civilian objects such as schools is prohibited by the general principle of distinction between civilian objects and military objectives (see sec. II); in addition, customary law prescribes that special care must be taken in military operations to avoid damage to buildings dedicated to education. ICRC study, rule 38.

⁵³ "Displaced Gazans seek shelter from the cold", at www.irinnews.org

⁵⁴ Briefing by staff of the Office for the Coordination of Humanitarian Affairs based in Jerusalem, Inter-Agency Consultation on Gaza, United Nations Office at Geneva, 21 January 2009.

⁵⁵ "United Nations moves to counter deteriorating Gaza education levels", 17 September 2007 at www.irinnews.org

has also been affected, illustrated by the denial by Israel, in November 2007, of permission for 670 Palestinian scholars to leave Gaza in order to study abroad, including six Fulbright scholars.⁵⁶

70. Another concern is the fact that, in August 2008, Gaza lost around half of its teachers in Ministry of Education schools after they were fired for striking. Although new teachers have been recruited and trained, public schools were still lacking maths, science and Arabic teachers for all levels, resulting in fewer hours of teaching in these essential subjects. It is estimated that 250,000 students, more than half of Gaza's student population, in 381 schools were affected by the strike at that time.⁵⁷

71. The Special Rapporteur notes with concern a 5.6 per cent decline in enrolment rates for school grades 1 to 10 between 2000-2001 and 2006-2007.⁵⁸ In September 2007, UNRWA reported a failure rate of 80 per cent for grades 4 to 9, with rates of failure as high as 90 per cent in mathematics. The protracted collapse of the economy of Gaza and mounting food insecurity has further impeded the enjoyment of the right to education, as hundreds of children have been forced to search for work in order to contribute to the basic needs of their families at the expense of their schooling.⁵⁹

72. The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gaza educational infrastructure, constitute violations of the right to education. The Special Rapporteur recalls that, while education is often interrupted in times of conflict, its restoration is an urgent priority. It is essential to generating a culture of mutual respect, breaking the cycle of hatred and prejudice between the peoples of the region and establishing a lasting peace.

73. As pointed out in the Special Rapporteur's first report, military occupations are an appreciable curb on the human right to education, and the most egregious example is that of the Israeli-Palestinian conflict (E/CN.4/20005/50, para. 124). The recent events in Gaza provide an even stronger illustration of the violations of the right to education in a conflict situation.

⁵⁶ Human Rights Watch, "Israel Blocks 670 students from studies abroad", 20 November 2007.

⁵⁷ See Tamer Institute for Community Education, Fact Sheet August-October 2008, and Office of the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report No. 276, September 2008.

⁵⁸ Agence France Press, "Gaza blockade threatens education crisis: UNICEF", 1 February 2008.

⁵⁹ Save the Children, "Crisis Deepens for the Children of Gaza", 30 December 2008 and Oxfam America, "Escalating Humanitarian Crisis in Gaza," 11 March 2008.

F. Special Rapporteur on violence against women, its causes and consequences

74. The Special Rapporteur on violence against women, its causes and consequences, expresses her grave concern at the violations of human rights and international humanitarian law witnessed during the recent Israeli military attacks against the Gaza strip. The scale of civilian deaths, injuries and destruction during the offensive was unprecedented by all accounts. Among the casualties, it is estimated that 114 women were killed and 800 suffered injuries.

75. The Palestinian Centre for Human Rights stated that women suffered critical injuries from bombs, artillery shells, rockets and live ammunition as well as from bombs believed to have contained white phosphorous. The Special Rapporteur is particularly concerned by reports of women being killed while inside their own homes trying to protect their children or attempting to escape bombardment, sometimes after having been ordered to leave their houses by the Israel Defense Forces.²⁴ Some of the injuries sustained by women resulted in maiming, including amputations conducted in inadequate medical facilities.

76. The denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling constitutes a grave violation of human rights. In a press release dated 14 January 2009, the United Nations Population Fund (UNFPA) warned that the continuing violence and displacement presented serious risks to more than 40,000 pregnant women in Gaza, and reported on many cases of premature labour and delivery resulting from shock and trauma from continuous bombing, and the exposure of premature and newborn infants to hypothermia owing to the lack of electricity. UNFPA findings for the period during the crisis showed a 40 per cent increase in cases of miscarriage admitted to maternities, a 50 per cent increase in neonatal deaths and an important increase in the number of premature deliveries. For example, on 10 January 2009, Wafa al-Masrai, 40 years old and nine months pregnant, left her home in Beit Lahia in north Gaza with her sister, Rada, and attempted to reach her local hospital. While en route to the hospital, she was struck by an Israeli rocket and critically injured. She gave birth to a healthy baby after having one of her legs amputated.²⁴ Given the primary role of women as caregivers, such a disability will not only adversely reflect on the level and quality of care of children and the family but it will also seriously undermine a woman's "value" in society as a whole.

77. The Palestinian Centre for Human Rights reported that women and children that had taken shelter inside schools administered by UNRWA suffered shell attacks inside those protected areas. The Special Rapporteur received alarming reports of entire families being hit by Israeli shelling.⁶⁰

78. In addition, the worsening food insecurity in Gaza following the military operation led to a further deterioration in the health and nutritional status of the majority of Gazans, in particular women and children, many of whom are already largely dependent on meagre humanitarian assistance. In addition, the Special Rapporteur would like to highlight the disproportionate effects of house demolitions on women, children and the elderly (see also sections A, C and D above).

79. In 2005, following her visit to the Occupied Palestinian Territory, the Special Rapporteur concluded that the protracted conflict and occupation had contributed to creating an integrated system of violence that had a profound impact on Palestinian women. This situation has been aggravated by the recent military attacks. A UNFPA survey of 8 February 2009 on the situation of women in Gaza highlighted the immediate psychological problems endured by women, such as extreme feelings of fear and insecurity, depression and sadness, the debilitating effects of which often made them unable to fulfil their vital role as care-givers. The extent of the destruction in the latest military campaign, which took place in the wake of over a year and a half of severe blockade that brought the Gaza economy to the brink of collapse and has yet again debilitated the coping mechanisms of an already impoverished and traumatized population, will further increase the degree and extent of oppression of the occupation. Without a lifting of the blockade, women will continue to be prevented from having access to vital, sometimes life-saving medical treatment in Israel or neighbouring countries, owing to restrictions on their freedom of movement and denial of travel permits. In addition, women will continue to endure the burden of chronic shortages of basic supplies such as food, fuel, electricity and safe drinking water, when having to provide for their children and families. As highlighted in the Special Rapporteur's mission report, this particularly precarious and traumatic environment is likely to heighten women's vulnerability to violence in the private sphere as well.

⁶⁰ In one case, 22 members of the Al-Sammoni family, including nine children and seven women, were killed in Zaytoun, east of Gaza city on 4 and 5 January 2009. The majority of the victims were killed while sheltering inside a house that collapsed after having been struck by three missiles launched by the Israel Defense Forces, see Office for the Coordination of Humanitarian Affairs, Protection of Civilians Weekly Report, 16-20 January 2009.

**G. Representative of the Secretary-General on the human rights of
internally displaced persons**

80. The occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in large-scale forced displacement of Palestinians within the Occupied Palestinian Territory, even before the Israeli military incursion into Gaza that began on 27 December 2008.⁶¹ Displacement is often caused by incursions and military clearing operations, evictions and land appropriation, the illegal expansion of settlements on occupied territory and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, violence and harassment by settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions.⁶² Forced displacement is also caused by a system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that make life untenable for many residents in Palestinian enclaves and force them to leave.

81. The Israeli military incursion into Gaza resulted in further massive forced displacement of Palestinians inside Gaza. On 14 January 2009, at the height of the crisis, the Under-Secretary-General for the Humanitarian Affairs and Emergency Relief Coordinator estimated that up to 100,000 Palestinians could be displaced. The preliminary report of a shelter / Intern Development Programme joint rapid needs assessment, conducted in 45 localities in Gaza several days after the ceasefire of 18 January 2008, indicated that 71,657 displaced persons were staying with host families.⁶³

82. As border crossings into Egypt and Israel were closed, large numbers of civilians tried to find refuge in other parts or sites of Gaza. At the height of the conflict, more than 50,000 displaced persons sought refuge in UNRWA schools. Many were also displaced because their homes had

⁶¹ Estimates on the displaced population vary owing to differences in definitions and available date. The non-governmental organization Badi Resource Centre for Palestinian Residency and Refugee Rights estimated in a survey of September 2007 that 115,000 Palestinians were displaced between 1967 and 2006.

⁶² The International Court of Justice, in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory found that the route of the wall in the West Bank and its associated regime of permits and restrictions was contrary to international law, including applicable norms of international humanitarian law and human rights law. The court also reaffirmed that, Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) had been established in breach of international law. See also note 2.

⁶³ Office for the Coordination of Humanitarian Affairs, Field Update on Gaza from the Humanitarian Coordinator, 30 January-2 February 2009.

been destroyed or become uninhabitable, especially in rural areas.⁶⁴ On a number of occasions, the Israel Defense Forces also warned or ordered the civilian population to flee areas or sites, which were often attacked shortly thereafter.

83. International law prohibits arbitrary displacement, a notion that includes displacement in situations of armed conflict that is incompatible with international humanitarian law because it is not warranted by the security of the civilians involved or imperative military reasons⁶⁵.

84. The conduct of the hostilities exacerbated forced displacement within Gaza. The Israel Defense Forces resorted to aerial bombardment and artillery shelling in densely populated areas of Gaza, reportedly disregarding the above-mentioned standards and the general rules of international humanitarian law concerning the targeting of objects (see para. 102 below). Incidents of Palestinian combatants placing military installations close to civilians or civilian objects, thereby increasing the dangers for the civilian population and triggering their displacement, were also reported.

85. Displaced persons also became victims as a consequence of military attacks. On 6 January 2009, Israeli shelling is reported to have killed 37 persons and injured 55 outside a UNRWA school in Jabalya that sheltered a large number of displaced persons at the time (see annex).

86. When the present report was finalized, thousands of persons remained homeless because their homes had been destroyed or damaged during the fighting; the total number of displaced was unknown. Most displaced persons are staying in poor, overcrowded living conditions with host families who are already overstretched and face shortages of food, non-food items (such as mattresses and blankets), water and electricity. Continuing an 19-month blockade of Gaza, which had created a serious humanitarian crisis even before the military incursion began, Israel still restricts access to Gaza for goods urgently required to address emergency humanitarian needs and to permit rehabilitation and reconstruction efforts. On 9 February 2009, the Office for the Coordination of Humanitarian Affairs, in a field update, reported that international agencies had faced unprecedented denial of access to Gaza since 5 November 2008.

⁶⁴ Initial estimates indicate that over 4,240 residences were destroyed and 44,306 were damaged, most of them rendered inhabitable without considerable rehabilitation.

⁶⁵ Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 6, restating articles 12 of the International Covenant on Civil and Political Rights and customary international humanitarian law (ICRC study, rules 24 and 129 – 131). See also chap. II.

87. Some of the recently displaced persons inside Gaza, especially in rural areas, are Palestinians belonging to families from Gaza, the West Bank and East Jerusalem. The remainder are Palestinian refugees, who fled or were driven from their homes on the territory inside the State of Israel or their descendants. The renewed displacement of Palestinian refugees inside Gaza creates additional vulnerabilities for them.

88. The Representative underscores the fact that being displaced in one's own country or country of habitual residence is a factual state, that neither confers a special legal status under international law nor alters a pre-existing special status. Palestinian refugees who suffered secondary displacement inside Gaza retain all rights under international law, including the right of return as reaffirmed by the General Assembly in its resolution 194 (III). Israel, as occupying Power, and the Palestinian Authority must address the specific assistance and protection needs of all recently displaced persons, whether they are internally displaced in the sense of the description provided by the Guiding Principles on Internal Displacement or secondary displaced Palestinian refugees.

H. Special Rapporteur on extrajudicial, summary or arbitrary executions

89. All killings during the Gaza conflict that violated applicable human rights and humanitarian law norms come within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions. For that reason, the major focus is on the principle of accountability.

90. According to available estimates, a total of 1,440 people were killed (see paras. 1-8). The principal dispute concerns the proportion of the Palestinian men killed who can be classified as civilians or combatants. Israel has estimated that at least 700 Hamas fighters were among the dead, while the estimate of the Palestinian Centre for Human Rights is closer to 300. The difference relates in part to the status of those members of the civilian police force in Gaza whom were not engaged in fighting, and who Israel apparently intentionally targeted.

91. There are strong and credible reports of war crimes and other violations of international norms. On the basis of the extensive information available, the great majority of observers have concluded that systematic and impartial war crimes investigations must be undertaken. To date, as

described below, there is no indication of any credible moves in this direction at the national level; on the contrary, all developments point in the opposite direction.

92. There are, however, also some who have sought to refute or discredit the information gathered and the conclusions drawn in those reports. To take but one example, a group called NGO Monitor in a report entitled “The NGO front in the Gaza war: the Durban strategy continues” of February 2009, called “entirely unfounded” a claim that Israel had committed indiscriminate attacks against civilians, a claim that it attributed to Human Rights Watch, the Palestinian Centre for Human Rights, Amnesty International, Al Mezan and a range of other groups. This refutation is based on the argument that the Israel Defense Forces had ‘legal advisors embedded with combat units making analyses prior to any military action.’ The assumption is that indiscriminate attacks could never occur given the role of these advisers. Moreover, the Non-Governmental Organization levelling these charges are said not to “possess military expertise, detailed information on the dispersal of weapons by Hamas”, nor to be “privy to Israeli targeting decisions”. As a result, the report argues that they can make no “credible evaluation”.

93. This exchange goes to the heart of the issue. No amount of legal input into decision-making by lawyers can render post hoc accountability unnecessary. Indeed, such assiduous conduct should make a party more willing to be subject to scrutiny. Similarly, the suggestion that international monitors lack the expertise or the information required to evaluate compliance precisely begs the question. If accepted, such a critique would undermine the entire concept of international accountability and leave States and others as the only ones qualified to judge their own compliance. Rather than the rule of law, this would be the law of the jungle.

94. While the Israeli military operation in Gaza was but one episode in a long-standing, complex and highly contentious conflict, these characteristics make it more, rather than less, imperative that there be full accountability in relation to alleged violations. The alternative is de facto impunity, which mocks the international legal order, makes hollow the international obligations undertaken and reaffirmed by the parties, increases the likelihood of more flagrant violations in the future, and poisons the prospects for an eventual solution to the conflict.

95. The accountability record to date of both sides should give the Council cause for deep concern. The Special Rapporteur has been requesting an invitation to visit the Occupied

Palestinian Territory since June 2006. In that year, the Palestinian Authority issued an invitation but Israel has not done so, despite a series of follow-ups. Specific incidents raised in the context of communications from the Special Rapporteur addressed to Israel have generally drawn either no response or an unsatisfactory one.

96. The responses at the national level to calls for accountability have also been disappointing. Hamas, for its part, has given no indication of its willingness to investigate or respond to allegations directed at it. Israel has announced several inquiries into specific incidents but these are being undertaken by the military authorities themselves, and the track record of the many such inquiries launched in the past is consistently problematic. During the conflict, Israel refused entry to Gaza to journalists and representatives of international Non-governmental Organizations seeking to monitor the conduct of hostilities. At the end of the invasion, the Prime Minister of Israel, Ehud Olmert, was widely quoted as having promised to provide “state protection” to military personnel who might face foreign war crimes prosecutions, starting that Israel would assist them on that front and defend them. Foreign prosecutions would, however, be both unnecessary and unsustainable if Israel were to honour its obligations to undertake credible investigations and, where appropriate, undertake domestic prosecutions.

97. Several issues of concern that need thorough investigation were brought to the attention of the Special Rapporteur. These include, inter alia, violations of the principles of conduct of hostilities, the targeting of Palestinian police and members of the Hamas political wing not taking part in hostilities, and the questionable use of certain weapons in densely populated areas, including white phosphorous shells, 155 mm shells and flechette shells. He is also concerned by credible reports of extrajudicial executions of Palestinians attributed to Hamas security forces during the conflict.

98. The above developments highlight the imperative need for the Israeli authorities and those of Hamas to cooperate fully with international endeavours to establish accountability in relation to the conflict. Recognition of such accountability should also include facilitating a visit by the appropriate special rapporteurs.

IV. RECOMMENDATIONS

99. **The recommendations formulated by the mandates whose submissions are included above have been compiled and merged in the section below.**

100. **The protection of civilians requires immediate action by all parties and the international community.**

101. **All parties to the conflict should cease all actions violating international human rights and humanitarian law. In particular, the occupying Power should:**

- (a) End the blockade on Gaza negatively affecting civilians;**
- (b) Allow unimpeded and safe passage and access to Gaza of humanitarian assistance, including food aid;**
- (c) Allow the unrestricted imports of medical supplies, foodstuffs and agricultural inputs, fuel and construction materials;**
- (d) Grant prompt permission for patients with medical referrals for treatment outside Gaza, especially for expectant and nursing mothers;**
- (e) Ensure the free and unimpeded movement of civilians between Gaza and other parts of the Occupied Palestinian Territory.**

102. **All parties should establish accountability mechanisms providing for law-based, independent, impartial, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law in accordance with their respective obligations. Such investigations must hold perpetrators to account and provide redress to victims where violations are found to have occurred. Investigations should address, inter alia the following issues:**

- (a) Violations of the principles of distinction, proportionality and precaution: a significant number of incidents have occurred where the circumstances and the large number of civilians killed in a single attack raise prima facie concerns that the attacks were carried out without respect for these principles;**
- (b) Targeting of Palestinian civilian police and members of the Hamas political wing: Israel is accused of having intentionally targeted civilians and civilian objects considered connected to Hamas, but not taking direct part in hostilities;**

- (c) Use of human shields and placing civilians at risk: there are credible reports of both Israel and Hamas co-locating military targets near civilians and civilian objects. There are specific reports that Hamas fired rockets and conducted other military offensives from residential areas, and that Israeli soldiers took sniper positions from within Palestinian homes, endangering the lives of residents;**
- (d) Extrajudicial executions by Hamas of Palestinian civilians;**
- (e) Unlawful use of incendiary weapons (white phosphorous artillery shells): the use of white phosphorous during a military offensive may be permissible where it is intended to provide cover for troop movements. There are, however, reports that Israel used such weapons in densely populated civilian areas, with severe consequences for residents. Unlawful use of artillery shells (155 mm): there is reliable evidence that artillery shells, which can have a casualty radius of up to 300 metres, were also used in densely populated civilian areas. Unlawful use of flechettes (4 cm darts): Israel is reported to have used 120 mm shells packed with flechettes in populated residential areas;**
- (f) Attacks on medical personnel and ambulances as well as hospitals and denial of medical treatment and access to treatment offered by the ICRC and the Palestinian Red Crescent Society;**
- (g) Attacks on schools;**
- (h) Destruction of vital civilian infrastructure;**
- (i) Interference with the provision of humanitarian aid.**

103. All parties must implement their obligations to respect, protect and fulfil human rights, including, where necessary, by taking any measures needed to:

- (a) Ensuring the protection of medical workers and facilities and facilitate rehabilitation for seriously wounded patients, as well as psychosocial health support and treatment, especially for children and youth;**
- (b) Enable the immediate resumption of regular educational activities, make schools zones of peace and ensure that schools are protected from military attacks and from seizure or use as centres for recruitment;⁶⁶**
- (c) Promote education as a means to reduce psychosocial stress and build the conditions for lasting peace;**

⁶⁶ See also the “Minimum standards for education in emergencies, chronic crises and early reconstruction,” published by the Inter-Agency Network for Education in Emergencies in 2004.

- (d) Facilitate the prompt repair of greenhouses, farms and centres of food production;**
- (e) Enable the repair of water and pumping stations;**
- (f) Enable the import of reconstruction materials needed to build or repair vital infrastructure and housing, and facilitate the full reintegration in dignity and security of the recently displaced (without prejudice to the right of return of Palestinian refugees);**
- (g) Ensure access to liquidity and financial and other resources needed so that people may resume normal livelihoods;**
- (h) Take carefully into account the needs of particular groups, including children, women, persons with disabilities, refugees and those displaced by the recent violence.**

104. **United Nations entities should continue to assess the needs of the Palestinian people with a view to contributing to the wide-scale reconstruction efforts of the international community in the Occupied Palestinian Territory, including by continuing its damage assessment by compiling satellite imagery and other detailed data on destruction in Gaza.**

105. **The international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures. In this respect, the mandate-holders recall the obligation of States to cooperate to bring to an end through lawful means to any serious breach of an obligation arising from a peremptory norm of general international law. They also recall the obligation of all States to ensure respect for the provisions of international humanitarian law.**

Annex*

Special report on Gaza and southern Israel prepared by the Special Representative of the Secretary-General for Children and Armed Conflict

1. From the launch of “Operation Cast Lead” on 27 December 2008 until the ceasefire of 17 January 2009, the extensive Israeli Defence Forces (IDF) led air and ground operations within Gaza 1,440 people were reported killed, including at least 314 children, as verified by the inter-agency working group, and 5,380 injured, including 1,872 children; up to 200,000 people, including 112,000 children, displaced and movement for the majority of the population severely restricted. In the closely built-up areas of Gaza it became increasingly difficult to obtain accurate and updated information. At times during the 22 days of bombardment, international and local media broadcasts were the only information available to humanitarian or human rights agencies. In periods when there was a lull in air or ground attacks, there were some opportunities for staff of human rights agencies to verify information being received. Since the ceasefire, capacity to verify information has improved and this report is compiled from reliable reports provided by the inter-agency Working Group member organisations. In Southern Israel it is reported that 3 Israelis were killed and 182 people injured, although specific information on children is currently unavailable.
2. Civilian targets, particularly homes and their occupants appear to have taken the brunt of the attacks, but schools and medical facilities have also been hit. This is despite the fact that, in the case of UNWRA schools, GPS coordinates were provided to the IDF by UNWRA.
3. The intensity of Operation Cast Lead has resulted in many psychosocial difficulties for children; so much so that UNICEF has made psycho-social support one of its emergency priorities in Gaza. This is also true in southern Israel, where the days of conflict resulted in a high incidence of psycho-social complaints on the part of children there.

Children killed and injured

4. 56 percent of the 1.5 million population, of Gaza, are under the age of 18 years; the latest conflict and preceding 18 months of almost total blockade has had a massive impact on a

* Owing to time constraints, the annex is circulated as received.

generation of young people. The Palestinian Authority (PA) Ministry of Health (MoH) reports that at least 431 Palestinian children have been killed since 27 December 2008; independent monitors from the inter-agency working group have verified 314 cases of children killed to date. Work continues to verify final numbers.

5. Many children have been injured during the period of fighting and the PA MoH reports 1,855 children injured while independent monitors report at least 860 children have sustained injuries. Handicap International estimates that up to 50 percent of people injured have sustained severe injuries that, without proper rehabilitation, could result in permanent disability.
6. During this period, the Magen David Adom, the national emergency medical, disaster, ambulance and blood bank service, reported that three Israelis were killed in Southern Israel and 182 people were injured by rocket fire from Gaza. The Inter-agency working group (working group) have been unable to verify this. The lack of greater casualties is most likely attributable to a very effective program of security awareness training in schools and an early warning system by the Israeli authorities.
7. Violations were reported on a daily basis, too numerous to list: below are just a few examples of the hundreds of incidents that have been documented and verified by the working group:
8. On 3 January, during an IDF operation in Gaza City at 6.30 AM a tank shell landed near a family's house; a father and his two young sons, both aged under 11 years, emerged to survey the situation. As they exited their home, IDF soldiers shot and killed them (at the entrance to their house), with the daughter witnessing. The IDF ordered the mother and daughter to leave the house, refusing the request of the girl to move the bodies. Bulldozers commenced destroying the house with the woman and child still inside; as they exited from the house the woman sustained a broken hip. The mother and child then watched as their home was destroyed; rubble and bodies being bulldozed together. Days later, the child was still in shock and only moving her eyes; the mother has lost the ability to speak

9. On 7 January, after several days of requesting safe passage to the above-mentioned area of Gaza city, during a three-hour lull in hostilities, an ICRC/Palestinian Red Crescent Society⁶⁷ medical team was allowed on foot (without ambulances) into the closed military area to evacuate any remaining survivors. According to the ICRC, in one house, the team found four small children next to their dead mothers who were too weak to stand up on their own. Due to the limited time allowed, the ICRC/PRCS team was not able to reach all houses in the area. In all, ICRC/PRCS evacuated by donkey cart 30 Palestinians including 18 wounded. The IDF restricted further access to the area, prompting the ICRC to issue a public statement demanding urgent access and charging the Israeli army with failing to assist wounded Palestinians.

10. On 15 January, as IDF tanks moved into Tal Al Hawa, south-west of Gaza City, families moved from their apartments to the ground floor of the building, bringing bags or personal belongings with them. IDF soldiers entered the building. A number of young people had their wrists tied and eyes covered and were ordered to stand aside. Other children and older women were made to stand on the other side of the room. One of the boys (aged 11 years) was told to open the bags one by one; one of the bags had a lock which a soldier shot at as the child struggled with it, although the boy was uninjured. The boy was then made to accompany the IDF for a number of hours during a period of intense operations. As the group of soldiers moved through the town the boy was made to walk in front. When they entered the building of the Palestinian Red Crescent Society the 11 year old boy was made to enter first, in front of the soldiers. Later while moving through the town the IDF met with resistance and were shot at, the boy remained in front of the group. On arrival at the Al Quds Hospital the boy was at the front but they released him at the entrance to the hospital. This appears to be in direct contravention to a 2005 Israeli High Court ruling on the illegality of the use of human shields and a violation of international law.

⁶⁷ The Palestinian Red Crescent Society is the Red Crescent Movement in Gaza and is an internationally recognized organization with medical functions. It is the operational partner of the International

11. There have also been allegations of Hamas effectively using civilians as human shields. In addition there have been reports of Hamas firing from densely populated places and near protected areas. The working group is currently investigating these reports.
12. On Monday 29 December 2008, at about 1:00am, an IDF missile struck Imad Aqel Mosque in the centre of the densely crowded Jabalia camp, damaging the surrounding houses. A family house was hit, and five sisters aged 4 - 17 years were killed in their sleep when their bedroom was completely destroyed. Four children, aged 2 – 16 years, were injured in the same attack.
13. On 4 January, IIDF foot-soldiers moved members of one extended family, from different houses, into a single residence, ordering them to stay inside. There were over 100 Palestinian civilian family members in the house. Approximately twenty-four hours later, IDF forces shelled the home, killing twenty-three, including nine children aged 8 months - 17 years, and seven women. Those who survived and were able walked two kilometres to Salah Ed Din road before being transported to the hospital. An additional seven members of the same family, including three children, were killed in the same area in separate incidents during the military operation.
14. On 28 December 2008, one family was sitting around a fire in farmland near their home in al-Zaitun village. The head of household asked his 7 year old daughter to fetch tea in their home and, as soon as the girl entered the house, it was hit by a missile and reduced to rubble. Family members outside all sustained shrapnel wounds and were transferred to Al-Shifa hospital to be treated for broken bones, cuts and bruises. The young girl's body was found only the next morning, when rescue workers finished clearing the rubble.
15. On 2 January 2009, one 8-year-old boy, his brother (11), and a member of the extended family (11) went to pick some sugar cane from an adjacent property in Al-Qarara. North of Khan Younis, in southern Gaza. Upon returning from the field, they were struck by a missile fired from an Israeli drone aircraft. Two of the boys died at the scene, while the third boy died on the way to hospital.
16. On 3 January 2009, Israeli soldiers entered a family house in the Zeitoun neighbourhood of Gaza city. Standing at the doorstep, they asked the male head of the household to come out

and shot him dead, without warning, while he was holding his ID, hands raised up in the air, and then started to fire indiscriminately and without warning into the room where the rest of the family was huddled together. The eldest son was shouting in vain the word “children” in Hebrew to warn the soldiers. The shooting did not stop until everyone was lying on the floor. The mother and four of the brothers, aged 2 - 12 years, had been wounded, one of them, aged four, fatally.

17. On 18 January, the IDF fired artillery shells that hit a house located on Salah Ad-Din Street in Jabalia Refugee Camp. The shelling killed 3 children, aged 14 - 17 years, and injured two others from the same family.

Alleged use of white phosphorous weapons in civilians areas by the Israel Defense Forces

18. There have been allegations of white phosphorous being used during the IDF attacks in Gaza. The use of weapons is governed by the general principles on the conduct of hostilities, ie. the principles of distinction, proportionality and precaution, as outlined in the legal framework section. In addition, although not specifically banned in any treaty, the use of incendiary weapons is limited by Protocol III⁶⁸ of the 1980 Geneva Convention.⁶⁹

19. The following are two reports on incidents that have been verified:

In Jabalia, on 10 January 2009, white phosphorous shells hit a family house which is located west of the (former) Civil Administration building. Two children were seriously injured from burns (two 16 year old boys). The first boy is in Shaifa Hospital and the other who is suffering from third degree burns has been transferred to a hospital in Egypt.

⁶⁸ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980.

⁶⁹ Israel did not ratify the Third Protocol but its military manuals reflect restrictions on white phosphorus use (A 1998 Israeli military manual states: “Incendiary arms are not banned. Nevertheless, because of their wide range of cover, this protocol of the CCW is meant to protect civilians and forbids making a population center a target for an incendiary weapon attack. Furthermore, it is forbidden to attack a military objective situated within a population center employing incendiary weapons. The protocol does not ban the use of these arms during combat (for instance, in flushing out bunkers).”

20. At 6:30am 18 January 2009, the IDF fired several shells – some of which appeared to be white phosphorus– which landed in and around the UNRWA Beit Lahia Elem School that sheltered displaced civilians. One shell struck a classroom, where civilians were sheltered. The shell broke through the roof and exploded on the ground, spreading its shrapnel into classrooms. Two children (5 and 7) were killed and their mother was injured. Total number of injuries from this incident was 14. Four of the injured indicated phosphorous burns (including one child) UNWRA has stated that they have evidence of white phosphorous having being fired into their installations, including the UNWRA school in Beit Lahia. This is also supported by video footage of phosphorous shells being used⁷⁰.
21. The aftermath of the conflict has left many risks for children in the form of unexploded ordinance, small arms and possible contaminated shrapnel which has already resulted in deaths to children. On 20 January two children were killed by unexploded ordinance in Az-Zaitoun, in the eastern part of Gaza City. The boy (10) and girl (11) were playing in an area from which the IDF had recently withdrawn.

Attacks on schools and health facilities

22. Seven Ministry of Education schools were destroyed and 157 schools were damaged by air strikes and related bombardment in Gaza, in addition damage to 36 UNWRA schools. In an area where many Gazan schools already operate a double shift system, the provision of education to children will be under exceptional strain.
23. On 6 January 2009, three shells landed outside the UNRWA Jabalia Prep C Boys School, resulting in at least 37 fatalities, including 14 children (three aged 10, three aged 13, three aged 15 and one each of 3, 11,14, 16 and 17 years of age). There were at least 55 injuries (including 15 children) of which 15 are reported to be in critical condition. Further investigation is required to determine the exact location of where children were injured and killed. The school was being used as a shelter for people fleeing hostilities.

⁷⁰ Statement from the Times: The Israeli army has, however, launched an internal inquiry into whether white phosphorus was used in some cases in built-up areas, having eventually admitted that it did use the incendiary substance, which is not illegal as a battlefield smokescreen but is banned from being used in civilian areas. Camera footage from one such attack shows what appears to be white phosphorous raining down on a UN school in Beit Lahiya, where Red Crescent ambulances and their crews were stationed.

24. In the same period, two schools in Ashkelon, southern Israel were damaged by rocket fire from Gaza. One “Grad” rocket hit the Tzvia school, a religious girl’s school and another hit at the entrance to the Neue Dkalm school. Due to preparations made in both schools there were no casualties.
25. During the fighting, damage was reported in 14 of the 27 hospitals in Gaza and at least 38 clinics were damaged by IDF fire. Fata and Al-Wafa rehabilitation hospitals, managed by NGOs, are the only rehabilitation hospitals in Gaza and both were severely damaged. Additionally eight UNRWA health centres sustained light damage. Of the 148 ambulances in Gaza, at least 29 have been damaged or destroyed. Two ambulance stations (Gaza and Jabalia) were also destroyed.
26. Al-Quds Palestinian Red Crescent Society Hospital in south Gaza City, was hit by direct IDF fire. Soldiers surrounded the hospital during the early hours of 15 January and opened fire on the hospital compound. The administrative building and pharmacy adjacent to the hospital were hit and caught fire. Fearing an imminent explosion or the spread of the fire, hospital authorities evacuated all patients to the hospital's ground floor and prepared for a complete evacuation. At least 50 patients, 20 of whom were confined to their beds, waited several hours to be evacuated. Fire-fighters and ambulances were prevented from evacuating the patients for about five hours. Between 27 December and 19 January, 16 health personnel were reported to have been killed while on duty, and an additional 22 injured.

Denial of humanitarian access

27. The 20-month blockade of Gaza had already resulted in a scarcity of many goods and an insufficiency of basic support services. This has impacted upon children in the decreased availability of nourishing foods, and the compromised ability to provide essential services such as health and education. The blockage of basic provisions has not changed since the crisis and continues to limit not only the normal development of children but now recovery from the immense impact of the 22-day conflict.
28. Approximately 91 percent of Gaza’s population — some 1,275,300 people including 714,168 children — are now dependent on food assistance. Despite the severity of the attacks and the

immense humanitarian need, there have been no significant changes to access restrictions in Gaza prior to that of 26 December 2008. From 27 December to 21 January 2009, the total number of trucks that entered was an average 95 per day through Kerem Shalom and 56 through Karni, for a total average of 151 per day. Aid experts cite that a minimum of 400 trucks per day are needed to satisfy critical humanitarian needs in Gaza, while emergency reconstruction efforts would necessitate at least 1,500 trucks per day.

29. Without construction materials being allowed into Gaza there can be no significant recovery for the communities. The IDF continues to block the delivery of pipes and fittings, which is having a deleterious impact on the access to safe drinking water. On 25 January UNICEF was informed that a solar refrigerator for vaccines destined for North Gaza was denied entry; this is having a direct impact on children and pregnant women who are unable to receive vaccination at their local Primary Health Clinic.
30. An estimated 3,300 babies were born during the conflict, during which there were reports of premature labour and delivery due to the lack of access to healthcare. Also, primary health care services were reported to have declined by about 90 percent, and many programmes such as vaccination schemes and neonatal care stopped completely for significant periods.
31. Water, sewer, electricity and education infrastructure and services were also extensively damaged and interrupted; almost certainly compounding obstacles to recovery and rehabilitation for displaced children and their families. For example, at the height of the conflict, nearly all of Gaza's population --including 793,520 children were without electricity, and at any given time during the conflict, some 500,000 people were without water. _Around 30,000 babies — or three quarters of Gaza's infants under 6 months of age — are not exclusively breastfed, exposing them to a high risk of infection or malnutrition from using breast milk substitutes prepared with potentially contaminated water.
32. At least 2,200,000 litres of sewage have leaked out of Gaza's waste water system due to damage from shelling, affecting at least 91,727 people, including 51,367 children, this now poses serious health risks, and the impact on children has the potential to be significant.

33. Until the Government of Israel allows an increased range of supplies into Gaza, including construction materials, there can be no meaningful recovery for the children of Gaza. School and health facilities have been badly affected by the attacks. The education system was already under severe strain and now an increased number of schools are without adequate resources to provide education for children. In addition to construction materials, schools need paper for text books, school stationary supplies, recreation and sports kits – all of which have been denied access by the IDF since the end of the 22-day conflict.

Displacement

34. It has been estimated that 200,000 people were displaced, among them 112,000 children, at some point during the conflict. At the peak of displacement on 17 January, UNRWA was accommodating, 50,896 displaced persons in 50 UNRWA shelters. As of 25 January 2009, 510 people (88 families) remained housed in UNRWA run emergency shelters in community based organisation and of the areas so far surveyed 66,000 people are living with host families for a total of 66,510 people.

35. For example, on 04 January 2009 at 15.00hrs, fighting between militants and the IDF in Al Zatioun resulted in approximately 5,000 persons fleeing their houses and taking refuge into another area. In another incident, on 05 January 2009 at 06:00 hrs, IDF armoured vehicles advanced into the Customs Junction in Beit Hanoun and opened fire repeatedly into the nearby neighbourhoods. About 80 households were forced to evacuate their homes, owing to the IDF offensive, and take refuge in schools which UNRWA had opened to shelter them. Among them were about 150 children. Later, Israeli troops advanced into the aforementioned area and destroyed approximately 20 houses.

36. The situation for many families is now extremely difficult, with at least 4,100 residential structures destroyed and another 17,000 severely damaged; forcing many of the residents, among them thousands of children, to seek shelter elsewhere. The long term impact on children of being homeless increases their vulnerability and decreases their capacity to recover from the ordeal of the 22 days of attacks.

Arrests and detention

37. Reports have been received that children under the age of 18 years have been arrested for security offences along with adults by Israeli security forces in Gaza during the course of Operation Cast Lead. To date the working group has not been possible to verify this.
38. During the period of attacks in Gaza, lawyers have observed that the number of children arrested in the West Bank increased and the number of children brought to the Israeli Military Courts in pre-trial hearings in the first two weeks of January was twice as high as in the same period in 2008. During the first two weeks of January alone, DCI-Palestine's legal department received 10 new cases of children for legal representation in the Military Courts compared with a monthly average of 10-15 new cases. Out of these 10 cases, eight were arrested from the street or during demonstrations against the Gaza attacks. DCI-Palestine has not yet been able to take statements from the children nor confirm if they were actively participating in demonstrations.
39. From 19 – 29 January, six cases of children aged 12-13 arrested for throwing stones at the Wall or in demonstrations, and taken to the Israeli Military Courts have been recorded. Lawyers were unable to obtain their release. These six children are awaiting trial and are likely to be sentenced and imprisoned. Under Israeli Military Order 378, stone-throwing carries a maximum sentence of 20 years, for adults and children. However, children usually serve 3-6 months in prison for throwing stones.
