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**DROITS ÉCONOMIQUES, SOCIAUX ET CULTURELS**

**Le droit à l'alimentation**

**Rapport du Rapporteur spécial, M. Jean Ziegler**

**Additif**

**Mission dans les territoires palestiniens occupés\***

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue où il a été présenté et en arabe uniquement.

## Résumé

Les territoires palestiniens occupés sont au bord d'une catastrophe humanitaire due largement aux mesures de sécurité extrêmement dures imposées par les forces d'occupation israéliennes depuis le déclenchement de la deuxième Intifada, en septembre 2000.

Le Rapporteur spécial sur le droit à l'alimentation a effectué une mission dans les territoires palestiniens occupés du 3 au 12 juillet 2003, conformément à son mandat et face aux nombreuses préoccupations suscitées par une crise humanitaire naissante. De nombreux rapports récents de l'Organisation des Nations Unies ont mis en lumière cette crise grandissante, notamment des rapports de la Banque mondiale, de la Conférence des Nations Unies sur le commerce et le développement, de l'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient, du Bureau du Coordonnateur spécial des Nations Unies dans les territoires occupés et du Bureau de la coordination des affaires humanitaires, et aussi de l'Envoyée personnelle du Secrétaire général chargée d'examiner la situation et les besoins humanitaires du peuple palestinien dont la mission dans les territoires palestiniens occupés, effectuée en août 2002, avait pour but d'obtenir d'Israël des engagements précis de faciliter l'accès de l'aide humanitaire aux Palestiniens, s'agissant en particulier des aliments et de l'eau.

Le Rapporteur spécial exprime sa compassion et sa sympathie profondes tant pour les Israéliens que les Palestiniens qui vivent une horrible tragédie, mais ne peut ignorer la terrible situation de malnutrition créée aujourd'hui dans les territoires palestiniens occupés.

D'après une étude financée par l'Agence des États-Unis pour le développement international (USAID), «les territoires palestiniens, en particulier la bande de Gaza, sont menacés par une situation d'urgence humanitaire liée à la malnutrition». Le rapport de l'Envoyée personnelle du Secrétaire général annonce également une crise humanitaire. Plus de 22 % des enfants âgés de moins de 5 ans souffrent maintenant de malnutrition et 15,6 % d'anémie aiguë, dont beaucoup garderont des séquelles permanentes touchant leur développement physique et mental. Plus de la moitié des familles palestiniennes ne mangent qu'une fois par jour. La Banque mondiale indique que la consommation alimentaire a diminué de plus de 25 % par habitant. Des pénuries alimentaires, notamment en sources de protéines, ont été largement signalées. La Banque mondiale a également annoncé une crise économique dans les territoires palestiniens occupés. L'économie, autrefois prospère, s'est quasiment effondrée et le nombre de personnes extrêmement pauvres a triplé depuis septembre 2000. Environ 60 % des Palestiniens vivent aujourd'hui dans la grande pauvreté (75 % à Gaza et 50 % sur la Rive occidentale). Même lorsque des aliments sont disponibles, de nombreux Palestiniens n'ont pas les moyens d'en acheter à cause de la montée rapide du chômage. Plus de 50 % des Palestiniens dépendent totalement de l'aide alimentaire alors que l'aide humanitaire est soumise fréquemment à des restrictions d'accès.

Le Rapporteur spécial a constaté que le Gouvernement israélien, qui est pourtant tenu juridiquement, en vertu du droit international et en tant que puissance occupant les territoires d'assurer le respect du droit à l'alimentation de la population civile palestinienne, n'assume pas cette responsabilité. Des mesures de sécurité, notamment des couvre-feux, des barrages routiers, des systèmes de permis et des postes de contrôle sécuritaire, restreignent rigoureusement la circulation des personnes et les échanges économiques, empêchant l'accès physique et

économique aux aliments et à l'eau et causant un naufrage économique. La confiscation et la destruction continues des ressources en terres et en eau palestiniennes réduisent également la capacité des Palestiniens de se nourrir et contribuent à la dépossession progressive du peuple palestinien. La construction de la clôture de sécurité du mur d'apartheid à travers des terres palestiniennes constitue également une menace pour le droit à l'alimentation de milliers de Palestiniens, car elle entraîne que de nombreux Palestiniens sont séparés de leurs terres ou emprisonnés dans les sinuosités de la clôture/du mur ou dans la zone militaire fermée longeant la clôture/le mur.

Le Rapporteur spécial ne met pas en cause les besoins de sécurité d'Israël et comprend les risques quotidiens auxquels sont exposés les citoyens israéliens. Toutefois, il est d'avis que les mesures de sécurité qui sont mises en œuvre sont totalement démesurées et contre-productives car elles causent la faim et la malnutrition parmi les civils palestiniens, notamment les femmes et enfants innocents, d'une manière qui représente une punition collective de la société palestinienne. Le droit international interdit de punir toute une population pour les actes de quelques-uns de ses membres. En outre, le Rapporteur spécial est particulièrement préoccupé par les confiscations systématiques de terres qui, selon nombre d'intellectuels israéliens et palestiniens et d'organisations non gouvernementales, sont inspirées par une stratégie sous-jacente de «bantoustanisation». La construction de la clôture de sécurité/du mur d'apartheid est considérée par nombre de personnes comme une manifestation concrète de cette stratégie qui, en divisant les territoires palestiniens occupés en cinq unités territoriales à peine contiguës et dépourvues de frontières internationales, menace l'existence potentielle d'un futur État palestinien viable et doté d'une économie opérationnelle, qui soit en mesure de réaliser le droit à l'alimentation de sa propre population.

Il est recommandé au Gouvernement israélien d'améliorer l'accès des secours humanitaires, de prendre des mesures immédiates pour inverser la crise humanitaire, de lever les barrages mis en place dans les territoires et de mettre un terme à la confiscation et à la destruction disproportionnées de terres, de ressources en eau et d'autres ressources palestiniennes. Le Gouvernement israélien devrait arrêter le programme de «bantoustanisation», cesser la construction de la clôture/du mur et améliorer le respect du droit à l'alimentation conformément à la législation internationale relative aux droits de l'homme et au droit international humanitaire. Il convient de réfléchir sérieusement à la viabilité d'un futur État palestinien doté de moyens durables d'accès à ses propres ressources de nourriture et d'eau et de contrôle de ces ressources. Enfin, comme l'a affirmé Ilan Pappé, de l'Institut de recherche pour la paix, «Il reste cette vérité, aussi lassante et rebattue soit-elle, que les actes de violence de toutes sortes (y compris la violence aveugle à l'encontre d'innocents) ne finiront qu'avec la fin de l'Occupation».

**Annex**

**Report of the Special Rapporteur on the right to  
food, Jean Ziegler, on his mission to THE OCCUPIED  
PALESTINIAN TERRITORIES (3-12 JULY 2003)**

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## Introduction

1. The Special Rapporteur carried out a mission to the Occupied Palestinian Territories (OPT) from 3 to 12 July 2003. The mission was welcomed by the Government of Israel in a letter dated 23 May 2003. The mission was carried out during a moment of hope when negotiations for the “road map” were making progress and the ceasefire was holding. The road map process, an outline for peace in which the United Nations has played a vital role as a participant in the Quartet, holds the promise of bringing an end to the terrible suffering of both Israelis and Palestinians. The Special Rapporteur expresses his deep sympathy and compassion for all those killed and injured in the current violence. Both the Palestinian and the Israeli populations are living through a horrifying tragedy. Israelis live under the threat of suicide attacks by Palestinian bombers. Palestinians also live in fear as women and children are often killed in their homes or in crowded streets by Israeli military operations targeting Palestinian leaders. Since the start of the second intifada in September 2000, 820 Israelis and 2,518 Palestinians have been killed, many of them innocent women and children.<sup>1</sup> Thousands of Israeli and Palestinian civilians have been severely injured.

2. This mission was undertaken in accordance with the mandate of the Special Rapporteur and in response to the emergence of a humanitarian crisis in the OPT. The objectives of the mission were to gain a greater understanding of the reasons for the emerging food crisis in the Territories, a crisis which seems absurd in a land so fertile. The mission aimed to examine the malnutrition amongst the Palestinians from the perspective of the right to food. It was not within the mandate of the mission to examine malnutrition in Israel, as while malnutrition does exist amongst the poorest Israelis, it is not currently at crisis levels.<sup>2</sup>

3. The Special Rapporteur was received by officials of the Government of Israel in Tel Aviv and Jerusalem. He met with the Deputy Director-General of the Ministry for Foreign Affairs and with officials from the Ministry of Defence, including the Deputy Coordinator of Civil Activities in the Gaza Strip and the West Bank, Mr. Camil Abu Rukun. He also met with Mr. Yossef C. Dreizin, Director of the Water Planning Division of the Water Commission. The Special Rapporteur also had the opportunity to meet distinguished opposition party leaders in the Israeli parliament. However, while granted these meetings, the Special Rapporteur was not granted free movement in the West Bank and Gaza Strip and was frequently held up at military checkpoints, despite advance coordination of all travel. At a checkpoint in Qualqilya, an Israeli soldier deliberately took aim with his weapon at very short range at the Special Rapporteur’s vehicle. Fortunately, the soldier did not fire his weapon, but the Special Rapporteur would note that these types of incidents are occurring far too frequently.

4. The Special Rapporteur was received by the Palestinian National Authority in the West Bank and the Gaza Strip, including the Chairman of the Palestinian National Authority, Yasir Arafat, and Chief Palestinian Negotiator, Saeb Erekat, as well as the Ministers of Health, Housing and Agriculture. He also met with representatives from the Ministry of Labour, the Palestinian Water Authority and the Negotiation Unit of the Palestine Liberation Organization and with distinguished members of the Palestinian Legislative Council. The mission also met with Dr. Said Zeidani, Director of the Palestinian Independent Commission for Citizens’ Rights. In the different areas of the West Bank and the Gaza Strip, the mission met with local authority leaders, village and town mayors, unionists and academics.

5. In Jerusalem, he greatly appreciated meetings with senior representatives of the Office of the United Nations Special Coordinator in the Occupied Territories (UNSCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Food and Agriculture Organization of the United Nations (FAO), the World Food Programme (WFP), the United Nations Development Programme (UNDP), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children's Fund (UNICEF), the United Nations Fund for Population Activities (UNFPA), the United Nations Security Coordinator (UNSECOORD) and the World Bank, and thanks UNRWA Commissioner General Peter Hansen for meeting with him in Geneva. He expresses his appreciation to these agencies for their cooperation, and to the Office of the High Commissioner for Human Rights (OHCHR) particularly its field office, for its efficiency and competence in supporting his mission. The Special Rapporteur also appreciated meeting Dr. Ernst Iten, Ambassador of Switzerland in Tel Aviv, and Mr. Jean Jacques Joris, representative of Switzerland to the Palestinian Authority.

6. The Special Rapporteur also appreciated his meetings with international, Israeli and Palestinian non-governmental organizations in Tel Aviv, Jerusalem, the West Bank and the Gaza Strip. He extends his appreciation to Mr. Michel Dufour, chief delegate of the International Committee of the Red Cross (ICRC), and commends the courageous work of all organizations working to promote human rights. He met with international organizations, including Action Against Hunger, Oxfam, Care International, Save the Children, Terre des Hommes, Physicians for Human Rights and Habitat International Coalition, working to relieve the crisis in the OPT. He also met with Israeli and Palestinian organizations, including B'Tselem, Rabbis for Human Rights, the Mandela Institute, LAW, the Public Committee against Torture, the Palestinian Hydrology Group, the Palestinian Agricultural Relief Committees and the Applied Research Institute-Jerusalem. He also met with important intellectuals, including Mr. Michael Warshawski of the Alternative Information Centre. It is these non-governmental organizations that bring hope, as it is mainly through their work that vital bridges are being built between Israelis and Palestinians.

7. The mission team travelled in the West Bank and the Gaza Strip, the territories that together make up the OPT, occupied and under Israeli military administration since 1967. They have an area of around 5,800 km<sup>2</sup> in which more than 3.5 million Palestinians live. The Gaza Strip is one of the most crowded places on earth with one of the highest population densities: 1.3 million people in an area of 360 km<sup>2</sup>, 83 per cent of whom live in refugee camps. The mission travelled in the Gaza strip, visiting Beit Hanoun, Jabalia, Khan Younis and the border areas of Rafah. The mission also travelled widely in the West Bank, visiting, among other places, Jerusalem, Bethlehem, Ramallah, Jericho, Qalquilya and Tulkarem, where the huge fence/wall (called the "security fence" by the Israelis and the "apartheid wall" by the Israeli opposition and Palestinian activists), is currently being built. The mission also visited Meggido prison, an Israeli institution holding Palestinian detainees, and a Palestinian prison holding Palestinian detainees in Jericho. During these trips, the Special Rapporteur had the opportunity to speak with a wide variety of Palestinian men and women, including Palestinian farmers, merchants, and academics.

## **I. MALNUTRITION AND FOOD INSECURITY IN THE OCCUPIED PALESTINIAN TERRITORIES**

### **A. On the verge of humanitarian catastrophe**

8. The OPT is on the verge of humanitarian catastrophe, as the result of extremely harsh military measures that the occupying Israeli military forces have imposed in response to the outbreak of the second intifada in September 2000.

9. Malnutrition levels amongst Palestinians have increased rapidly since September 2000. A study by John Hopkins University/Al-Quds University, funded by the United States Agency for International Development (USAID), reports that “the Palestinian Territories, and especially the Gaza Strip, face a distinct humanitarian emergency in regard to acute moderate and severe malnutrition”.<sup>3</sup> The report of the Personal Humanitarian Envoy of the Secretary-General, Catherine Bertini (2002) also regards the increase in malnutrition as an indicator of a growing humanitarian crisis.<sup>4</sup> Over 22 per cent of children under 5 were suffering from malnutrition (9.3 per cent suffering from acute malnutrition and 13.2 per cent suffering from chronic malnutrition) in 2002.<sup>5</sup> Around 15.6 per cent of children under 5 suffered from acute anaemia,<sup>6</sup> which for many will have permanent negative effects on their physical and mental development. Severe malnutrition reported in Gaza is now equivalent to levels found in poor sub-Saharan countries, an absurd situation as Palestine was formerly a middle-income economy. Food consumption has fallen by 25-30 per cent per capita. This has been attributed largely to job losses (65 per cent) and curfews (33 per cent).<sup>7</sup> Food shortages, particularly of proteins, have been widely reported.<sup>8</sup> More than half of Palestinian households now eat only once per day.<sup>9</sup> Many Palestinians who the Special Rapporteur met spoke of trying to subsist on little more than bread and tea.

10. A 2003 World Bank report points to economic crisis in the OPT.<sup>10</sup> The economy has almost collapsed and the numbers of the extreme poor have tripled. Around 60 per cent of Palestinians now live in acute poverty (75 per cent in Gaza and 50 per cent in the West Bank). Gross national income per capita has fallen to nearly half of what it was two years ago.<sup>11</sup> Even when food is available, many Palestinians cannot afford to buy it. Around 50 per cent of Palestinians have been forced into debt to buy food<sup>12</sup> and over 50 per cent of Palestinians are now completely dependent on food aid, yet humanitarian access remains problematic.

### **B. Causes of the food crisis**

#### **1. Closures and movement restrictions**

11. An unprecedented level of restrictions on the movements of Palestinians inside the Occupied Territories is depriving Palestinians not only of their freedom of movement, but also of their right to food. The extensive imposition of curfews, road closures, permit systems, security checkpoints and “back-to-back” truck off-loading systems, which require that most trucks be off-loaded on one side of a checkpoint and reloaded onto another truck on the other side, imposed by the occupying military forces are producing the humanitarian crisis. The USAID-funded study argues that “The onset of the Intifada in September 2000 and the subsequent Israeli military incursions, closure and curfews have devastated the Palestinian economy and undermined those systems the Palestinian civilian population relies on for basic

needs, including food and health”.<sup>13</sup> The World Bank agrees that “the proximate cause of the Palestinian economic crisis is closure”.<sup>14</sup> Restrictions on movement mean that many Palestinians cannot feed themselves: they cannot go to work, go to harvest their fields or go to buy food. For many Palestinians, the inability to feed their families is leading to a loss of human dignity, often heightened by bullying and humiliation at checkpoints.<sup>15</sup>

12. Closures prevent movement between the Palestinian areas and Israel, but also within the OPT. Roads are arbitrarily closed between nearly every village and town in the OPT, using checkpoints manned by soldiers or by physical barriers such as concrete blocks and deep trenches. Journeys that would have taken a few minutes now take several hours or days. The Special Rapporteur saw that it is sometimes possible, in going from one place to another, to take a long way around through mountains if one is fit and able to walk, but not if one is old, weak, hungry or sick. The movement of goods is controlled by the back-to-back off-loading system. With numerous checkpoints, this dramatically increases the cost of transporting food and agricultural produce.<sup>16</sup> Permission to cross at checkpoints for agricultural produce and other food can be refused for days without explanation. At various checkpoints in the West Bank, the Special Rapporteur saw truckloads of fruit and vegetables rotting under the sun.

13. Every Palestinian has to have a permit to travel any long distance or to work in Israel. At the outbreak of the intifada, permits were revoked and more than 100,000 Palestinians lost jobs in Israel, severely affecting economic access to food. The Government of Israel has taken steps to reissue 32,000 permits, but movement restrictions make it difficult for Palestinians even when they have permits.<sup>17</sup> Palestinians are required to apply for permits to travel from one West Bank town to another, but permits are frequently refused without explanation, making it difficult to find work even in the OPT.<sup>18</sup> Curfews, sometimes imposed for days at a time, have kept populations of whole towns inside their homes under virtual house arrest.<sup>19</sup> These measures make life unbearable and are seriously threatening the food security of all Palestinians. Non-governmental organizations (Israeli, Palestinian and international) suggest that these military measures are not serving their security purpose but are being imposed as a form of collective punishment. They do not target specific people who may pose a threat, but rather affect the food security of most of the Palestinian population.

14. Water shortages in the OPT are also very serious. With the system of checkpoints and road closures in place, water tankers cannot always reach villages or are not permitted to cross checkpoints, leaving communities without water for days at a time.<sup>20</sup> The situation is most serious for the approximately 280 rural communities in the OPT that have no access to wells or running water and are completely dependent on water delivered by municipal and private water tankers that frequently has to be purchased from the Israeli water company, Mekorot. The price of such water has risen by up to 80 per cent since September 2000 as a result of the increase in transport costs due to closures. The quality of most water brought in by tanker no longer meets World Health Organization drinking water standards<sup>21</sup> and reports of water-borne diseases continue to rise as a result of increased dependence on poor quality water resources.<sup>22</sup>

## **2. Destruction, expropriation and confiscation of Palestinian land**

15. Since the outbreak of the second intifada, an unprecedented level of destruction and confiscation of Palestinian land, water, infrastructure and other resources is also depriving many Palestinians of their right to food and water. The tearing up of farms wells and wide swathes of



agricultural field has contributed to the collapse of agriculture. In Beit Hanoun in the Gaza Strip, the Special Rapporteur saw the devastating destruction of agricultural infrastructure, and farm buildings and the razing of hundreds of olive and citrus trees after a military incursion. He saw the destruction of homes and livelihoods in Khan Younis and in Rafah. He saw the bulldozers of the occupying forces still at work in Rafah in the place where Rachel Corrie, the American peace activist, was killed by an armoured bulldozer whilst trying to save a Palestinian home from destruction in March 2003.<sup>23</sup>

16. The expropriation and confiscation of vast swathes of Palestinian agricultural land and water sources is also threatening the right to food. Land is being confiscated to build the security fence/apartheid wall on the western side of the OPT (see below) and in Jerusalem, including the sections that bisect towns such as Abu Dis and Sawahreh. Gideon Levy writes that the wall that cuts Abu Dis in half amounts to “collective abuse bearing no relation to its declared purpose”. The soldiers allow people to climb over the wall if they can. “An entire town scales the wall to get to school, to the grocery store, to work - day after day, evening after evening: old folks, young folks, women and children.”<sup>24</sup>

17. Land is also confiscated for the extension of settlements, the building of settler-only roads and the building of security buffers around the settlements. On 21 May 2003, for example, the Housing Ministry advertised a tender for the construction of 502 new apartments in Maale Adumim.<sup>25</sup> The occupying force is gradually taking greater control over more Palestinian land, following the planned map of settlement and the by-pass road construction which aim at ensuring the continuous rule of Israel, both directly over the confiscated land which was declared “State land”, and indirectly by encircling almost every single Palestinian community by settlements and “fire areas” or military training grounds.<sup>26</sup> Settler-only roads cut through Palestinian territories, slicing the area up and operating as another form of closure which prevents movement of Palestinians. Many international, Israeli and Palestinian NGOs argue that the ongoing confiscation of Palestinian land amounts to a slow dispossession of the Palestinian people, depriving them of their means of subsistence.

### **3. The strategy of “Bantustanization”**

18. For many Israeli and Palestinian commentators, the policy of land confiscation is inspired by an underlying strategy of gradually isolating Palestinian communities into separate territorial areas or “Bantustans”. Michael Warschawski has pointed to a conscious policy of “Bantustanization” of the OPT.<sup>27</sup> A senior Israeli commentator, Akiv Eldar, has written about the explicit use of the Bantustan concept by Israeli Prime Minister Sharon, who once “explained at length that the Bantustan model was the most appropriate solution to the conflict”.<sup>28</sup> The term “Bantustan” historically refers to the separate territorial areas designated as homelands under the South African apartheid State. Creating such “Bantustans” would deprive a future Palestinian State of any coherent land base and international borders, and prevent the building of a Palestinian nation with the capacity to realize the right to food for its people.

19. The building of the security fence/apartheid wall is seen as a concrete manifestation of this “Bantustanization”, as is the extension and building of new settlements and settler roads, which are cutting up the West Bank and the Gaza Strip into barely contiguous territorial units. Looking at detailed maps of the actual and future direction of the security fence/apartheid wall and settlements,<sup>29</sup> which the Israeli and Palestinian authorities, as well as NGOs, provided to the

Special Rapporteur, it seems that this strategy is in the process of being realized. According to Jeff Halper, Coordinator of the Israeli Committee against House Demolitions, the road map offers hope, explicitly referring to the “end of the Occupation”, yet it comes at a time “when Israel is putting the finishing touches on its 35-year campaign to render the Occupation irreversible”.<sup>30</sup>

#### **4. Impeding humanitarian aid**

20. The Government of Israel has an obligation under international law to ensure the basic food and water needs of the occupied population and to provide assistance when necessary. Nonetheless, at present, it is the United Nations and other international and non-governmental agencies that are having to step in to provide food aid to the Palestinians. At the time of the mission, UNRWA was providing food aid to 127,000 families in Gaza and 90,000 refugee families in the West Bank.<sup>31</sup> The World Food Programme (WFP) is providing emergency support to half a million Palestinians in cooperation with the ICRC, which had exceptionally extended its food aid programme. The Government of Israel informed the Special Rapporteur that efforts were being made to assure humanitarian access for food and water. The August 2002 visit of Catherine Bertini, the Secretary-General’s Personal Humanitarian Envoy, was intended to secure specific commitments from the Government of Israel to facilitate access to humanitarian aid. However, many humanitarian organizations stated that their access was frequently restricted or denied through checkpoints, closures and the back-to-back truck off-loading system. Although the Bertini visit had resulted in some improvements in humanitarian access, the commitments made by the Government of Israel to Catherine Bertini (the “Bertini commitments”) were still far from being fully respected.<sup>32</sup>

## **II. LEGAL FRAMEWORK GOVERNING THE RIGHT TO FOOD IN THE OCCUPIED PALESTINIAN TERRITORIES**

21. Under international human rights and humanitarian law, the Government of Israel, as occupying Power, has the responsibility to ensure the basic needs of the civilian Palestinian population and to avoid violating the right to food. The right to food is primarily the right to be able to feed oneself through physical and economic access to food, as defined in general comment No. 12 of the Committee on Economic, Social and Cultural Rights. The Special Rapporteur summarizes the right to food as “the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear” (E/CN.4/2001/53, para. 14). The right to food includes access to drinking water and irrigation water necessary for subsistence agricultural production (see A/56/210; E/CN.4/2003/54), as underlined in general comment No. 15.

### **A. International law status of the Occupied Palestinian Territories**

22. Under international law, the West Bank, East Jerusalem and the Gaza Strip are defined as “occupied territory”, and Israel as the “occupying Power”, as confirmed by the United Nations Security Council (resolution 471 (1980)). The Oslo process has not changed the status of the Occupied Territories, as the Security Council (resolution 1322 (2000)), the General Assembly, the ICRC and the High Contracting Parties to the Fourth Geneva Convention have reaffirmed.

23. Both international human rights and humanitarian law are applicable in the OPT, although the Government of Israel contests this. Israel contests the (de jure) application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (but agrees nonetheless to apply its humanitarian provisions de facto) and of human rights law.

24. However, most countries and United Nations bodies have agreed that international humanitarian law does apply. The Security Council, the General Assembly, the ICRC, High Contracting Parties to the Geneva Convention, as well as the Commission on Human Rights have repeatedly reiterated that the Fourth Geneva Convention applies de jure to the situation of the OPT. According to the Israeli High Court,<sup>33</sup> the only regulations that apply are the Regulations concerning the Laws and Customs of War on Land annexed to the Hague Convention No. IV of 1907 of which articles 42-56 relate to occupied territory, as these are part of customary international law. However, the Fourth Geneva Convention also forms part of customary international law, as confirmed by the International Court of Justice<sup>34</sup> and the Security Council, as does the Geneva Convention relative to the Treatment of Prisoners of War.<sup>35</sup>

25. United Nations bodies have also repeatedly reaffirmed the applicability of human rights law in the OPT, including the Security Council (resolution 237 (1967)), Special Rapporteur of the Commission on Human Rights on the situation of human rights in the OPT, John Dugard (see E/CN.4/2002/32) the Committee on Economic, Social and Cultural Rights and other treaty bodies. This is also reaffirmed in the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (art. XIX). The General Assembly has repeatedly reaffirmed the Palestinian people's right to self-determination,<sup>36</sup> which means that Palestinians should be able to freely dispose of their natural wealth and natural resources, and in no case be deprived of their means of subsistence.<sup>37</sup>

## **B. Obligations of the Government of Israel**

26. The Government of Israel is the occupying Power with certain defined obligations under international humanitarian law. As the Special Rapporteur has outlined in his previous reports (A/56/210; E/CN.4/2002/58), humanitarian law aims to ensure access to adequate food and water in times of conflict and for occupied populations.

27. The first obligation of Israel as the occupying Power is to respect access to food and drinking water of the Palestinian population. According to humanitarian law, private property cannot be confiscated (The Hague Regulations, article 46), collective punishment and annexation are prohibited (Fourth Geneva Convention, articles 33, 47), requisitions cannot be demanded, except for military needs (The Hague Regulations, article 52), and any destruction of property belonging to individuals or collectively to private persons, or to the State, is prohibited (Fourth Geneva Convention, article 53) unless such destruction is rendered absolutely necessary for military operations.

28. As the occupying Power, the Government of Israel also has the obligation to provide food and water if the resources in the Territories are inadequate. The occupying Power should assure the food and water supplies of the population and bring in necessary foodstuffs (ibid. art. 55). If this is not possible, then the occupying Power must allow access for impartial humanitarian organizations (ibid. arts. 23 and 59), but this does not in any way reduce the obligations of the occupying Power (ibid. art. 60).

29. Humanitarian law does take military necessities into account. The occupying Power is not prohibited from taking measures - military or administrative - to ensure the security of its military forces and civilian administration in the occupied territory, as long as the measures taken are absolutely necessary for military operations, are proportional, and do not prevent the occupying Power from respecting its obligations, including the obligation to assure the basic needs of the inhabitants of the occupied territory. On the other hand, according to humanitarian law, the occupying Power does not automatically have the right to take measures related to the security of its civilians living in settlements in the occupied territory, because the establishment of settlements is in itself illegal, as outlined under the sixth paragraph of article 49 of the Fourth Geneva Convention. This has been reaffirmed repeatedly by the United Nations General Assembly, the ICRC, the High Contracting Parties to the Geneva Conventions and the Security Council.

30. The State of Israel has ratified all the principal instruments for the protection of human rights that protect the right to food, including the International Covenant on Economic, Social and Cultural Rights (art. 11), without reservations on the applicability of these conventions in the occupied territories. It should also respect the Universal Declaration of Human Rights (art. 25), which in many respects has become part of customary international law. The Committee on Economic, Social and Cultural Rights, along with other treaty bodies and legal experts, has insisted on the facts that Israel's "obligations ... apply to all territories and populations under its effective control" (E/C.12/1/Add 90, para. 31). A State is also accountable for the actions of its authorities in territories outside of its *de jure* jurisdiction, including in occupied territories (see E/CN.4/1992/26 and CCPR/CO/78/ISR, and the International Covenant on Economic, Social and Cultural Rights does not include a territorial limitation clause. As noted above, the Covenant states that "[i]n no case may a people be deprived of its own means of subsistence" (art. 1).

31. Under the Oslo Accords, an important part of the responsibilities of the Government of Israel in the OPT was transferred to the Palestinian Authority.<sup>38</sup> However, the situation has evolved since September 2000, and the occupying forces have retaken control over most of the OPT within these areas. The vast majority of the OPT is under the effective control of the occupying army, as is entry and exit to areas under Palestinian administration, as the Special Rapporteur witnessed during visits to the Gaza Strip, Ramallah, Bethlehem, Jericho, Qalqilya and Tulkarem. Israel therefore has the primary obligation to respect, protect and fulfil the right to food of the Palestinian population in the OPT, without discrimination (see A/56/210).

### **C. Obligations of the Palestinian Authority**

32. The Palestinian Authority is committed through the Oslo process to respect human rights, including the right to food.<sup>39</sup> Under the Oslo process, certain responsibilities were transferred to the Palestinian Authority in Areas A and B in March 2000, including questions relating to food and water. However, given that since September 2000 the occupying Power has regained effective control of most of the OPT, including Areas A and B, the Palestinian Authority does not have the obligation to respect, protect and fulfil the right to food for the Palestinian population living in Areas A and B, except in the few areas where it exercises effective control and to the extent that resources are available.

33. For areas where it does have control, the Palestinian Authority is developing a National Food Security Strategy and is carrying out various social programmes, including supporting 36,000 families under the Special Hardship Cases programme of the Ministry of Social Affairs. The Special Rapporteur was concerned about numerous allegations of corruption in the use of the resources of the Palestinian Authority made by numerous Israeli and Palestinian commentators.<sup>40</sup> Nonetheless, with respect to the programme for Special Hardship Cases, the World Bank has stated that it is effectively managed and that there is little leakage of benefits.<sup>41</sup> The World Bank states that the Palestinian Authority is undergoing reform and has managed as well as it could have to deliver social services under the difficult circumstances of restrictions on the movement of staff and of its ministers.<sup>42</sup> However, the Special Rapporteur was concerned at reports, confirmed by NGOs, that numerous detainees in Palestinian prisons complained of having received insufficient food. He would emphasize that the Palestinian Authority has the obligation to respect the right to food of the prisoners it detains, as outlined in the commitments made under the Interim Agreement (art. XI (1)) and the Wye River Memorandum (art II (c) (4)).

#### **D. Other key laws and institutions**

34. The law governing the situation in the OPT is complex and includes elements of Ottoman law, the law under the British Mandate, Jordanian law in the West Bank and Egyptian law in the Gaza Strip, Israeli military orders, as well as more recent Palestinian laws and international law.

35. According to the Emergency Regulations instituted by the Government of Israel in 1967, the Military Commander of the occupying Power has the competence to issue military orders that apply to the OPT. Using military orders, the occupying Power has taken control over water resources and thousands of acres of land throughout the West Bank and the Gaza Strip. The following four methods are used to take control of the land: (i) declaration and registration of land as "State land", and of water resources as State property; (ii) requisitions for military needs; (iii) declaration of land as abandoned property and expropriation of wells used for irrigation; and (iv) confiscation of land for public needs. However, article 43 of The Hague Regulations prohibits the occupying Power from altering the legal system in the occupied territory. The Special Rapporteur insists that all seizure of land for the establishment of settlements in the OPT is a violation of the Fourth Geneva Convention, which prohibits the establishment of settlements, and that any confiscation of private property in the OPT is a violation of The Hague Regulations. Moreover, the seizure of any property or resource of the Palestinian population or of the Palestinian Authority is a violation of the right of the Palestinian people to freely dispose of its natural wealth and natural resources, in accordance with its right to self-determination.

36. The Security Council in its resolution 465 (1980) determined that "all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the [Fourth Geneva Convention] and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East" (para. 5).

37. The Oslo Accords are also important for understanding the land- water- and settlement-related issues in the OPT. In terms of water issues, for example, the Government of Israel recognized Palestinian water rights in the West Bank and a Joint Water Committee was

established to deal with water- and sewage-related issues there.<sup>43</sup> All decisions of the Joint Water Committee must be reached by consensus, but in practice, NGOs suggested, the Government of Israel has vetoed the building of most new water drilling and sewage projects in the West Bank.<sup>44</sup>

### **III. MAIN FINDINGS AND CONCERNS**

#### **A. The humanitarian crisis**

38. The Special Rapporteur is gravely concerned at the rapid increase in the malnutrition and poverty levels in the OPT. The growing dependence of the Palestinian population on food aid, at the same time as restrictions on humanitarian access remain in force, is heightening the vulnerability of the Palestinian population. In discussions with the Special Rapporteur, the Israeli authorities recognized that there was a humanitarian crisis in the OPT. They did not dispute the statistics of increasing malnutrition and poverty of the Palestinians. However, they saw them as the regrettable, but inevitable, consequences of security measures that were necessary to prevent attacks on Israelis. The Special Rapporteur would not question the security needs of Israel, and he understands the daily risks run by Israeli citizens. However, in the view of the Special Rapporteur, the measures currently being taken are totally disproportionate because they are causing hunger and malnutrition among Palestinian civilians in a way that amounts to collective punishment of Palestinian society.

39. The Israeli Ministry of Defence and the Civil Administration officials informed the Special Rapporteur that they were taking measures in some circumstances to alleviate the humanitarian consequences of military action. The web site of the Israeli Defence Forces lists such actions undertaken.<sup>45</sup> Nonetheless, the Special Rapporteur observed that these isolated measures seem to have had limited effects on alleviating the impacts of military measures. He believes that only by lifting the closure regime can the humanitarian catastrophe be averted. The Special Rapporteur was also gravely concerned at the continued destruction and confiscation of Palestinian land, water tanks and wells and other resources, as this will foreclose the possibility of an independent Palestinian State that can sustain a viable economy and agricultural sector.

#### **B. Violations of the right to food**

40. The Special Rapporteur was also concerned at numerous specific violations of the different obligations entailed under the right to food. As outlined in general comment No. 12, these obligations include the obligation to respect, protect and fulfil the right to food.

##### **1. Obligations to respect the right to food**

41. The obligation to respect the right to food means that the occupying Power must not disrupt or destroy the Palestinians' existing access to food. It is an immediate (not progressive) obligation and requires the occupying Power to avoid negatively affecting existing availability and physical or economic access to adequate food and water.

##### **Closures and curfews**

42. The extensive imposition of closures, curfews and permit systems constitutes a violation of the obligation to respect the right to food, as it threatens the physical and economic access to

food, as well as food availability. The United Nations reported in June 2003 that “due to movement restrictions, the distribution and marketing of food produce has been severely affected, thereby disrupting food supply stability and seriously affecting the economy of farmers/rural population.”<sup>46</sup> According to the USAID study, “market disruptions from curfews, closures, military incursions, border closures and checkpoints affected [the availability] of key high protein foods, especially meat and poultry and dairy products, and in particular infant formula and powdered milk”.<sup>47</sup> Curfews have been a primary reason in the West Bank why people are eating less food, notably in Nablus, which was under curfew for 1,797 hours from 21 June-6 September 2002, and in Tulkarem, which was under curfew for 1,486 hours during the same period, with Ramallah and Bethlehem also severely affected.<sup>48</sup> In discussions with UNRWA, the Special Rapporteur learned that despite a good harvest of 35,000 tonnes of olive oil in 2002, the Palestinians were only able to sell 200 tonnes, owing to restrictions on trade. External closures and the control by Israel over the import and export of Palestinian goods severely affect their access to international trade and therefore their ability to import food supplies when necessary.

43. Closures have also caused water shortages. Communities such as Burin, south-west of Nablus, have no independent water supply and are therefore completely dependent on water deliveries, which are severely disrupted by closures.<sup>49</sup> The village of Beit Furik, 10 km south-east of Nablus, received no water for at least nine consecutive days since no water tankers were allowed into the village.<sup>50</sup> A survey by the Palestinian Hydrology Group showed that 24 out of 27 villages surveyed experienced water problems as a result of curfews and closures.<sup>51</sup>

### **Destruction of Palestinian land, water and other resources**

44. The direct destruction of livelihoods of Palestinians also amounts to a violation of the obligation to respect the right to food. Humanitarian and human rights provisions prohibit the destruction of objects necessary to the survival of the civilian population, such as water tanks, crops and agricultural infrastructure, as well as the broader economic and social infrastructure.

45. According to the World Bank, damage inflicted on agriculture has reached US\$ 217 million and physical damage to the water and wastewater sector of about US\$ 140 million.<sup>52</sup> The Palestinian National Information Center (PNIC) suggests that between 29 September 2000 and 31 May 2003, the occupying forces uprooted hundreds of thousands of olive, citrus and other fruit trees, destroyed 806 wells and 296 agricultural warehouses, tore up 2,000 roads and blocked thousands of others with concrete and dirt mounds.<sup>53</sup> The Palestinian Hydrology Group recorded the total or partial destruction between June 2002 and February 2003 of 42 water tankers and 9,128 Palestinian roof-top water tanks. OCHA recorded, in Abu Nejeim, in the Bethlehem area, the severing of the water connections by the occupying army by digging up and destroying the pipes.<sup>54</sup> According to the Governorate of Northern Gaza, 3,684 dunums of land were bulldozed with 95,000 olive and citrus trees, five water wells were destroyed, and many people were killed and houses destroyed during the incursions of the occupying forces between May and June 2003. The ministries and building of the Palestinian Authority have also been particular targets, making the delivery of social support difficult. The World Bank stated that damage to public infrastructure by the occupying forces amounted to US\$ 251 million, including the “widespread ransacking of Palestinian Authority ministry buildings and municipal offices”.<sup>55</sup>

### **Expropriation of Palestinian land, water and other resources**

46. Expropriation of Palestinian land in the OPT constitutes a violation of the obligation to respect the right to food when it deprives Palestinians of their means of existence and when it is for the establishment of settlements, as these are illegal under international law. Although the takeover of land is unilaterally legalized under Israeli military orders applied in the OPT, it still remains a violation of international law, including article 43 of the Hague Regulations.

47. NGOs point out that in 1999, 44 new settlements or outposts were built in the West Bank. In 2001, 34 settlements were established and 14 further settlements approved by the Government of Israel. According to the non-governmental organization ARIJ, the total area that has been confiscated or designated military zones in the Gaza Strip amounts to 165.04 km<sup>2</sup>, or 45 per cent of the Gaza territory. In the Gaza Strip, there are reportedly 6,429 Israeli settlers who use this 45 per cent of the land, compared with over 1 million Palestinians on the remaining 55 per cent of the land. This results in a population density for the Palestinians that is one of the highest in the world, and almost 100 times greater than that of the Israelis.

48. Although three very important fresh water aquifers are located beneath the OPT, there is an extremely inequitable distribution of water resources. The Palestinian entitlements to water include the West Bank (western, north-eastern and eastern) and Gaza aquifers, and the Jordan River. However, statistics for daily per capita water consumption suggest that Israelis receive and use five times more water than Palestinians.<sup>56</sup> In the year 2002, Palestinians used 70 litres, compared to 350 litres for Israelis in Israel and in the settlements. According to Oxfam, the occupying Power extracts more than 85 per cent of the water from the West Bank aquifers. Irrigated farmland along the Jordan River has been declared a closed military area which Palestinians cannot use. In discussions with the Water Commission of Israel, officials informed the Special Rapporteur that the Government of Israel had offered the Palestinians access to a desalinization plant to take water from the Mediterranean. However, in the view of the Special Rapporteur, it does not appear to be economically viable to bring water from the sea, when aquifers and surface water already exist in the Palestinian Territories. The transport of water would be extremely expensive and physically difficult, particularly given movement restrictions and the construction of the security fence/apartheid wall.

### **The security fence/apartheid wall**

49. The security fence/apartheid wall is a huge barrier, sometimes a fence, sometimes a concrete wall, over 8 m high (around Qualqilya). The building of the security fence/apartheid wall constitutes a violation of the obligation to respect the right to food because it cuts off Palestinians from their agricultural lands, wells and means of subsistence. As the fence/wall does not follow the 1967 border between Israel and the OPT, but cuts through Palestinian lands in the West Bank, it effectively annexes Palestinian land (see E/CN.4/2004/6).

50. According to the Israeli human rights organization B'Tselem, 36 communities (72,200 Palestinians) will be separated from their lands that lie west of the barrier; 19 communities (128,500 people) will be almost completely imprisoned by the winding route of the wall, including 40,000 people who will be trapped in Qualqilya; 13 communities (11,700 people) will be trapped in the land defined as a closed military zone between the wall and the Green Line, cut off from the OPT but forbidden from



entering Israel.<sup>57</sup> The Special Rapporteur visited a village of 3,500 inhabitants situated in the hills of Qualqilya, in the region of Tulkarem. The mayor's office overlooks the fields of olive and citrus trees and tomato greenhouses, but all these now lie on the other side of the fence/wall. Although one gate has been built in the wall, it has not been possible to use it. The mayor recounted that "the families have tried numerous times to reach their olive fields, but the soldiers set dogs on them, fired shots and beat young women and men, so that now no one tries to risk it".

51. The first phase of the fence/wall will confiscate 2,875 acres of land just for the "footprint".<sup>58</sup> The land confiscated is some of the most fertile land in the OPT. By constructing the fence Israel will also effectively annex most of the western aquifer system (which provides 51 per cent of the West Bank's water resources). With the fence/wall cutting communities off from their land and water without other means of subsistence, many of the Palestinians living in these areas will be forced to leave. It is estimated that 6,000 to 8,000 people have already left the area of Qualqilya. The Government of Israel informed the Special Rapporteur that legal procedures in place allow every owner of land to file an objection to the requisition of their land. Yet, according to a report requested by the international donor community on the socio-economic impacts of the fence/wall, every appeal against the requisitioning of land (numbering in the hundreds) made to the military Appeals Committee has been rejected, although in some cases the amount of land taken has been reduced.<sup>59</sup> The speed with which the occupying Power is building the wall (24 hours a day) makes it difficult to allow for proper judicial process.

52. The planned second phase of the fence/wall, as outlined in official Israeli documents, will cut right through the middle of the West Bank, from Salem to Bet-Shean.<sup>60</sup> If this section of the fence/wall is built, it would be a de facto annexation of the whole of the Jordan Valley by Israel. As described in the Israeli newspaper *Yediot Ahronot* in March 2003 and cited in *Between the Lines*, this wall will bite off almost half of the area remaining for the future Palestinian State and will thus eliminate all reasonable options for a settlement of the conflict in the coming years.<sup>61</sup> This would amount to a structural negation of the right to food, as it will effectively forestall the possibility of a viable Palestinian state.

## **2. Obligation to protect the right to food**

53. The obligation to protect the right to food means that the responsible State must protect the civilian population in occupied areas from third parties attempting to restrict, deny or destroy people's existing access to food and water. Violations of this obligation to protect include, in the present case, persistent impunity for settlers who shoot at Palestinians in their fields for harvesting. The Israeli non-governmental organization the Alternative Information Centre makes regular reports on frequent settler violence against Palestinians and their right to food.<sup>62</sup> In 2002, four Palestinian farmers were killed by settlers and many others injured in their olive fields. Amnesty International has also recorded instances of violence that have not been investigated.<sup>63</sup>

## **3. Obligation to fulfil the right to food**

54. The obligation to fulfil the right to food entails the obligation to facilitate people's capacity to feed themselves and, as a last resort, to provide food assistance to people who cannot feed themselves for reasons beyond their own control. As the occupying Power, the State of Israel

bears a treaty obligation to facilitate and ensure the access to food of the civilian Palestinian population and to facilitate humanitarian access for impartial organizations providing emergency assistance.

55. Although the Government of Israel has improved levels of humanitarian access in some cases since the August 2002 visit by Catherine Bertini, substantial difficulties for humanitarian agencies remain. UNRWA reported in June 2003, 231 instances of excessive delay or denial of passage at checkpoints (186 incidents of delay, 41 incidents where access was denied and 4 incidents in which staff members were detained).<sup>64</sup> In December 2002, the occupying army exploded a warehouse being used by WFP, destroying 537 tonnes of food aid largely financed by the European Commission.<sup>65</sup> In April 2003 full closure was imposed on Gaza from 16 to 27 April and access for WFP and UNRWA was denied.<sup>66</sup> In its June 2003 monthly monitoring report on the Bertini commitments, OCHA reported that no unmanned barriers had been removed to facilitate movement of water tankers into villages and towns, but additional barriers of earth and concrete had been put up in Ramallah and Nablus governorates, as well as in Balta camp.<sup>67</sup>

56. The lack of provision of adequate food and water to Palestinians detained by the Government of Israel also constitutes a violation of the obligation to fulfil the right to food. Over 5,000 Palestinians are currently being detained, most without official charge or adequate judicial process, without adequate food and water. The Israeli non-governmental organization the Mandela Institute, which monitors prison conditions, presented the Special Rapporteur with information about insufficient, poor quality food at Hawara camp, Qadumin, Kfar Atzen and Bet El. During the Special Rapporteur's visit to Meggido prison, he noted that prisoners had to supplement their often insufficient portions of food by purchasing food from prison shops or by relying on family visits.

#### **IV. Conclusions and recommendations**

**57. The humanitarian catastrophe emerging in the Occupied Palestinian Territories must be reversed. While the Special Rapporteur recognizes that the Government of Israel must protect the security of its own citizens, the consequences of the ways in which current security measures are applied in the OPT are entirely disproportionate in the sense that they jeopardize the food and water security of the great majority of the Palestinians and thus amount to collective punishment. As Amnesty International has noted, it is not permissible to punish the whole population for the actions of a few of its members.<sup>68</sup>**

**58. The Special Rapporteur agrees with Catherine Bertini that the current humanitarian crisis is a man-made crisis. It is absurd that in what can be a comparatively wealthy economy given its fertile lands, Palestinian men, women and children should be going hungry. As the occupying Power, the Government of Israel has obligations to ensure the right to food of the Palestinian people. The Special Rapporteur believes that the actions being taken in the OPT by the occupying forces violate the right to food. The level**

of restrictions on humanitarian access for the United Nations and non-governmental organizations, which limit the amount of food aid and water that can reach the Palestinian communities, also amounts to a violation of the right to food under international humanitarian law.

59. The effective “imprisonment” of certain communities, such as Qalqilya, by the new security fence/apartheid wall must be halted immediately. As Ethan Bronner wrote in the *International Herald Tribune*, “Qalqilya is not only blocked off from Israel to its west. It is entirely surrounded by the barrier so it will be isolated from West Bank Jewish settlements to its east. The result for Qalqilya is that it has become - there is no other word for it - a ghetto, a term with chilling resonance for Jews whose forebears were restricted to such areas across Europe not many generations ago.”<sup>69</sup> Confining the Palestinians into “ghettos” or “Bantustans” will induce greater hunger and misery among the Palestinian population, which is most likely to be counterproductive to achieving the security objective.

60. The confiscation of land, extension of settlements and settler-only roads, and the building of the security fence/apartheid wall, where this deprives thousands of Palestinians of their lands, homes, crops and means of subsistence, is a violation of the right to food. The right to food requires the respect of article 49 of the Fourth Geneva Convention which prohibits settlement, given that settlements by their nature lead to the confiscation of Palestinian lands and other resources.<sup>70</sup> If there were no settlements, then there would be no need for the harsh internal closures that restrict movement inside the OPT. Avraham Burg, the distinguished former speaker of the Knesset, writes “There is no middle path. We must remove all the settlements - all of them - and draw an internationally recognized border between the Jewish national home and the Palestinian national home.”<sup>71</sup>

61. In the short term, it is essential that access for food and water supplies be improved and humanitarian assistance not be blocked, restricted or harmed, but the Palestinian capacity for self-sufficiency must be protected to avoid complete dependence on food aid. Over the longer term, within the context of the road map and a two-State solution, serious consideration must be given to the viability of a future Palestinian State, to ensure that Palestinians are not left dependent on food aid forever. At present, Palestinians are largely dependent on Israel for access to food and water and for international trade, which leaves them in a situation of extreme vulnerability every time political relations deteriorate. There is an urgent need to consider ways in which a future Palestinian State could have sustainable access to, and independent control over, its own food and water supplies. A viable Palestinian State will require a capacity to produce and to trade in order to create a viable economy and stable employment and thereby realize the right to food itself. This will require a land area that is not cut up into separate territorial areas and within which movement is not restricted. It will also require international borders to facilitate international trade.

62. In summary, the Special Rapporteur would recommend that the Government of Israel respect its de jure obligations under international human rights and humanitarian law. The Special Rapporteur specifically recommends that the Government of Israel:

**(a) Take immediate action to end restrictions on humanitarian access. The Government of Israel should fully abide by the Bertini commitments, which should be made binding under the road map process. The Government of Israel should also ensure appropriate status for United Nations and NGO staff to enable access and allow humanitarian organizations to operate without excessive constraints on their movement or access to Palestinian populations;**

**(b) Take immediate action to ease the humanitarian crisis by ending the regime of closures and curfews where these are causing an increase in the malnutrition and poverty levels of the civilian Palestinian population;**

**(c) Immediately lift internal closures within the OPT, which restrict movement and inhibit the Palestinian civilian population's physical and economic access to food. It is imperative that the OPT not be reduced to complete dependence on international food aid;**

**(d) End the disproportionate destruction of Palestinian lands, wells and other resources, including the infrastructure for social services of the Palestinian Authority;**

**(e) Immediately stop the building of the security fence/apartheid wall, in particular that encircling communities in Qalquilya and Tulkarem. The security fence should not be used as a mechanism for separating Palestinians from their land;**

**(f) Review the permit system and allow an increased number of Palestinians to return to their employment in Israel;**

**(g) Stop building settlements and recognize article 49 of the Fourth Geneva Convention, given that, in the absence of settlements, there would not be a need for such harsh security measures and the confiscation of land, which threaten the right to food and water of the Palestinian population;**

**(h) Halt the current movement towards a "Bantustanization" of the OPT and therefore halt the confiscation and expropriation of land that is being used for the building of the security fence/apartheid wall, settler-only roads, security buffers and the extension of settlements;**

**(i) Prosecute all criminal acts committed by settlers against Palestinians, in particular where they prevent or impede harvesting of crops, in order to ensure that a culture of impunity is not perpetuated;**

**(j) The Israeli High Court should recognize the Fourth Geneva Convention as part of customary international law, which should be justiciable, as are The Hague Regulations of 1907;**

**(k) Ensure the provision of adequate food and water for all prisoners and detainees in all detention facilities; detainees should not be detained for lengthy periods without charge;**

**(l) Review, with the Palestinian National Authority, the operation of the Joint Water Authority in order to ensure the fair sharing of the water resources under the OPT, in accordance with international law;**

**(m) Encourage international monitoring of the road map obligations by all members of the Quartet that drafted the road map - including the United Nations and the European Union - to ensure that the Government of Israel and the Palestinian Authority abide by their commitments. Monitoring should include a human rights mechanism charged with receiving, investigating and reporting on alleged violations of international human rights and humanitarian law, including the right to food.**

**63. Under the road map process, an urgent review must be undertaken of the potential for a viable Palestinian State. It must be ensured that the future State of Palestine has a viable territory and control over its own resources, so that it has the capacity to realize the right to food for the Palestinian population. It must also retain international borders in order to facilitate trade, especially the import and export of food products.**

**64. The Government of Israel should continue to cooperate with the United Nations Special Rapporteur on the right to food in the future by making a commitment to monitor violations of the right to food and the implementation of these recommendations over the long term. The Special Rapporteur also encourages the Government of Israel to receive the visits of other special rapporteurs.**

**65. Finally, as most of the violations of the right to food stem from the occupation by the Government of Israel of the OPT, the occupation should be ended. As Ilan Pappé, Academic Director of the Research Institute for Peace and senior lecturer at Haifa University, has pointed out, “The tedious and hackneyed truth remains that the end to violence of all kinds (including indiscriminate violence against the innocent) will come only with the end of the Occupation.”<sup>72</sup>**

Notes

<sup>1</sup> As of 15 August 2003. Sources: Palestinian Independent Commission for Citizens Rights ([www.piccr.org](http://www.piccr.org)), Israeli Defence Forces ([www.idf.il](http://www.idf.il)).

<sup>2</sup> The malnutrition rate in Israel is 6-7 per cent of children under 5.

<sup>3</sup> Johns Hopkins University/Al-Quds University, "Nutritional Assessment of the West Bank and Gaza Strip", study financed by USAID through CARE International, September 2002.

<sup>4</sup> Ms. Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General, Mission Report, 11-19 August 2002 (no symbol), paras. 53-54.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> World Bank, *Twenty-Seven Months - Intifada, Closures and the Palestinian Economic Crisis: An Assessment*, Jerusalem, May 2003, p. 36; Riccardo Bocco, Matthias Brunner, Isabelle Daneels et al., *Palestinian Public Perceptions on Their Living Conditions*, Geneva, December 2002, p. 51.

<sup>8</sup> John Hopkins University, op. cit.

<sup>9</sup> World Bank, op. cit.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Johns Hopkins University, op. cit., p. 59.

<sup>13</sup> Ibid.

<sup>14</sup> World Bank, op. cit., p. xii.

<sup>15</sup> See Gideon Levy, "There's a wall in the way", *Ha'aretz* (Jerusalem) 8 September 2003; Avraham Burg, "The end of Zionism? A failed Israeli society is collapsing", *International Herald Tribune*, 6 September 2003.

<sup>16</sup> World Bank, op. cit., pp.2-3 and 26.

<sup>17</sup> Ibid, p.3.

<sup>18</sup> Amnesty International, "Surviving under siege: The impact of movement restrictions on the right to work", 7 September 2003.

<sup>19</sup> Ibid.

- <sup>20</sup> Bertini, op. cit.
- <sup>21</sup> World Bank, op. cit., p. 47.
- <sup>22</sup> Bertini, op. cit.
- <sup>23</sup> BBC, 17 March 2003 at [http://news.bbc.co.uk/2/hi/middle\\_east/2856433.stm](http://news.bbc.co.uk/2/hi/middle_east/2856433.stm).
- <sup>24</sup> Levy, op. cit.
- <sup>25</sup> Tikva Honig-Parnass, “All’s Clear for Full-Scale War against the Palestinians”, *Between the Lines*, June 2003, p. 6.
- <sup>26</sup> Ibid.
- <sup>27</sup> Michael Warschawski, “The Arab World and the Middle East”, *News from Within*, Alternative Information Centre, February 2003.
- <sup>28</sup> Akiva Eldar, “Sharon’s Bantustans are far from Copenhagen’s hope”, *Ha’aretz*, 13 May 2003.
- <sup>29</sup> [http://www.monde-diplomatique.fr/2003/07/ALGAZI/IMG/pdf/cisjordanie\\_jui03.pdf](http://www.monde-diplomatique.fr/2003/07/ALGAZI/IMG/pdf/cisjordanie_jui03.pdf);  
Gadi AlGazi, “Un mur pour enfermer les Palestiniens”, *Le Monde Diplomatique*, July 2003, at <http://www.monde-diplomatique.fr/2003/07/ALGAZI/10248>.
- <sup>30</sup> Jeff Halper, “The Middle East ‘Roadmap’: Time to Engage?” *News from Within*, Alternative Information Centre, June 2003, p.18.
- <sup>31</sup> <http://www.un.org/unrwa/emergency/appeals/6th-appeal.pdf>.
- <sup>32</sup> OCHA, Humanitarian Monitoring Report on the “Bertini Commitments” - June 2003.
- <sup>33</sup> *Beit-El* case. High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al.*
- <sup>34</sup> ICJ, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996.
- <sup>35</sup> Ibid.
- <sup>36</sup> For example, in resolution 56/204 of 21 December 2001.
- <sup>37</sup> International Covenants on Human Rights, common article 1.
- <sup>38</sup> As defined in the 1995 Interim Agreement, article XI.
- <sup>39</sup> Ibid., article XIX; Declaration of Independence of 15 November 1988.
- <sup>40</sup> See, for example, Mohanned Abdel Hamid, “Why Fatah doesn’t participate in the Morass of Reform”, *Between the Lines*, August 2002.

- <sup>41</sup> World Bank, op. cit., p. 46.
- <sup>42</sup> Ibid., p. 42
- <sup>43</sup> 1995 Interim Agreement, annex III, appendix I, article 40.
- <sup>44</sup> B'Tselem, "Thirsty for a solution?", position paper, 2000.
- <sup>45</sup> <http://www.idf.il/newsite/english/humanitarianarchive.stm>.
- <sup>46</sup> *Humanitarian Plan of Action 2003: Occupied Palestinian Territory*, United Nations, New York and Geneva, November 2002, p. 22.
- <sup>47</sup> Johns Hopkins, op. cit., p. 51.
- <sup>48</sup> *Ibid*, p. 60.
- <sup>49</sup> B'Tselem, "Not even a drop: the water crisis in Palestinian villages without a water network", Jerusalem, 2001.
- <sup>50</sup> Bertini, op. cit. para. 46.
- <sup>51</sup> Ibid, para. 45.
- <sup>52</sup> World Bank, op. cit., p. 46.
- <sup>53</sup> Palestinian National Information Center (PNIC), "Palestinian Economic Losses due the Israeli Siege, Closures and Aggressions (Sept. 29, 2000 to May 31, 2003)".  
[http://www.ipc.gov.ps/ipc\\_e/ipc\\_e-1/e\\_News%20Reports/2003/reports-012.html](http://www.ipc.gov.ps/ipc_e/ipc_e-1/e_News%20Reports/2003/reports-012.html).
- <sup>54</sup> OCHA, Monitoring Report, op. cit.
- <sup>55</sup> World Bank, op. cit., p.19.
- <sup>56</sup> B'Tselem, "Thirsty for a Solution", op. cit.
- <sup>57</sup> B'Tselem "Behind the barrier: human rights violations as a result of Israel's separation barrier", summary position paper, April 2003.
- <sup>58</sup> *The Impact Of Israel's Separation Barrier On Affected West Bank Communities*, A follow-up report to the Humanitarian and Emergency Policy Group (HEPG) and the Local Aid Coordination Committee (LACC), update No. 2, 30 September 2003.
- <sup>59</sup> Ibid.
- <sup>60</sup> Document prepared by the Ministry of Defence and given to the Special Rapporteur at his meeting with the Chief Engineer.



<sup>61</sup> “The Eastern Wall: the last remaining steps for completing Plan Bantustan”, *Between the Lines*, June 2003, p. 9.

<sup>62</sup> *News from Within*, June 2003, p. 8.

<sup>63</sup> Amnesty International, op. cit.

<sup>64</sup> OCHA, op. cit.

<sup>65</sup> *Le Monde*, 6 December 2002.

<sup>66</sup> OCHA Occupied Palestinian Territory (OCHA OPT) Humanitarian Update, 4-21 April 2003.

<sup>67</sup> OCHA, op. cit.

<sup>68</sup> Amnesty International, op. cit.

<sup>69</sup> Ethan Bronner, “Israel’s barrier stokes conflict”, *International Herald Tribune*, 9 August 2003.

<sup>70</sup> Statement by the ICRC, 2001, paragraph 5.

<sup>71</sup> Burg, op. cit.

<sup>72</sup> Ilan Pappé, “The Language of Hypocrisy” in *News from Within*, June 2003.

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