

Oral Presentation of 2 July 2012 to HRC by the Special Rapporteur (Richard Falk) on the situation of human rights in the Palestinian territories:

1. Let me begin by noting that since the beginning of my tenure in May 2008, despite repeated conciliatory efforts, there has not been any alteration of Israel's refusal to cooperate with this mandate. Still, I have made every effort to represent Israel's positions fairly, in relation to alleged Israeli violations of human rights related to its occupation of Palestinian territories since 1967.
2. This report reflects a mission undertaken between 9 and 21 February 2012. Its principal purpose was to assess efforts to realize the Palestinian right of self-determination, including in relation to refugees in neighboring countries. I believe that it is important to assess to what degree refugee rights in the Palestinian diaspora were relevant to any negotiated peace arrangement reached between Israel and the governmental representatives of the Palestinian people. The intention of the mission was to also visit the Gaza Strip, and also to include visits to refugee camps in Jordan, Syria, and Lebanon. However, conditions gave rise to a number of impediments that did not allow this.
3. I wish to acknowledge the friendly assistance received from the Palestine Authority, the Governments of Egypt and Jordan, the Arab League, and representatives of Palestinian and Israeli NGOs.
4. Several general conclusions emerged from the mission:
 - (1) widespread disillusionment with the so-called 'peace process' as a path to the realization of Palestinian self-determination;
 - (2) equal disillusionment with the roles played by the Quartet and the United Nations, as well as the Roadmap, with respect to the protection of the fundamental human rights of the Palestinian people;
 - (3) rejection of armed resistance as the means by which to achieve positive progress toward realization of rights, past armed resistance having led to an intensification of hardships and suffering associated with life under Israeli occupation;
 - (4) widespread support for reliance on various forms of nonviolence as the most effective way to move the Palestinian struggle forward and, in this regard, significant support for civil society movements leading such initiatives, including reliance on the Boycott, Divestment, and Sanctions Campaign, pursuit of judicial remedies under universal jurisdiction in relation to alleged international crimes of Israeli political and military leaders, and efforts of humanitarian NGOs to challenge the blockade of Gaza;
 - (5) short-term pessimism about the achievement of Palestinian rights due to Israeli policies, especially expansion of settlements and the purported annexation of East Jerusalem;
 - (6) long-term optimism among Palestinians arising from regional developments, especially the impacts of Arab uprisings and its demonstration of the transformative potentialities of mobilized popular resistance;

(7) the importance of including representatives of Palestinian refugee communities in all future moves to reach a sustainable resolution of the core Israel/Palestine conflict;

(8) widespread skepticism about the 'land for peace' formula that is perceived to over-territorialize the conflict;

(9) growing appreciation that the Israeli military occupation that has continued for 45 years requires a special or ad hoc legal regime that takes account of long-term occupation and recognizes the humanitarian need to protect the civilian population by way of a rigorously adhered to rule of law and by the civil governance of institutions, policies and practices; and

(10) uncertainty pertaining to the future, if any, of the unresolved 'statehood bid' by the Palestinian Authority formally presented to the UN General Assembly on 25 September 2011, followed by admission of Palestine as a member of UNESCO.

6. I will briefly discuss three main areas of urgent concern: Israel's frequent use of administrative detention and the recent phenomenon of hunger strikes by Palestinian prisoners; targeted killings by Israel in the Gaza Strip; and Israeli settlements and related violence by Israeli settlers against Palestinians in the West Bank, including East Jerusalem.

7. The urgency emerging on the issue of Palestinians detained by Israel under administrative detention was unanticipated. In such cases, evidence is held in secret, no charges are filed, and no trials held. The number of detainees in administrative detention rose from 286 in September 2011 to 309 in January 2012. The practice appears to be used to imprison innocent persons who are prisoners of conscience, opponents of policy, or organizers of non-violent protests.

8. Israel's reliance on administrative detention is highly controversial due to frequent use and prolonged confinement of people who do not appear to be linked to violent activities; exceedingly harsh treatment amounting to cruel and unusual punishment accompanying arrest, interrogation, and detention in violation of established international legal standards; and conflict with fundamental obligations of an occupying power to protect the wellbeing and normalcy of the civilian population.

9. Many Palestinian prisoners have highlighted their objections by engaging in open-ended hunger strikes, which have received widespread international attention. It should be appreciated that to embark upon a hunger strike of long duration is an extreme form of nonviolent protest. Several members of Irish Republican Army imprisoned in the Maze Prison of Northern Ireland embarked on hunger strikes. Ten of these IRA hunger strikers died in prison. This Irish experience is mentioned to give a political context to these hunger strikes, as part of a broader Palestinian shift in tactics from armed resistance to non-violent tactics associated with popular resistance.

10. The first of a series of long hunger strikes was undertaken by Khader Adnan in December 2011, and immediately afterwards, by Hana Shalabi. Both attracted widespread attention among Palestinians, and eventually led to agreements with Israeli authorities that resulted in their release. Both started the strikes to protest multiple impositions of administrative detention, as well as abusive arrest and

interrogation procedures. Both were close to death according to independent medical examinations. These strikes inspired others, including a much-publicized strike by Mahmoud Sarsak, who had been held in administrative detention since 2009 and was a member of the Palestine National Football team. As many as 1600 Palestinian ordinary prisoners also started hunger strikes to protest prison conditions.

There are two conclusions to be drawn:

(1) the hunger strikes did call attention to arrest procedures, administrative detention, and prison conditions, raising a series of human rights concerns;

(2) these hunger strikes, and other expressions of Palestinian nonviolent resistance, received no high profile attention within Western media coverage. This contributes to a false understanding of Palestinian tactics of opposition and sends the unfortunate signal that only violent protests will be noticed internationally.

11. There have been a series of incidents of violence across the border of the Gaza Strip. Almost all of the injuries and deaths are on the Palestinian side of the border. Israel continues to meet any provocation from Gaza with disproportionate responses. As Gaza continues to be subject to a blockade and its population to the ordeal of confinement that has now entered its sixth year, it is essential that normalcy be established as a matter of urgency. The health system is under great pressure, and the basic needs of the population are not being met.

12. There are several conclusions to be drawn in relation to this continued troubled relationship between Israel and the occupied Gaza Strip:

(1) targeted killing is both a violation of international law and understood to be a provocation leading to an escalation of lethal violence;

(2) the de facto authorities in Gaza do not themselves generally engage in retaliation, seek to maintain an effective ceasefire, but seemingly permit or are unable to prevent militant factions in Gaza from firing rockets in response to a prior Israeli attack;

(3) Israel continues to rely on excessive or disproportionate use of force in Gaza, thereby continuing to implement what the Goldstone Report identified as the Dahiya Doctrine; comparative casualty figures bear out this line of reasoning;

(4) there is speculation regarding a planned second massive Israeli attack on the Gaza Strip, which would likely be larger in scale than Operation Cast Lead.

13. Israeli settlement expansion has accelerated. At least 3,500 units total were under construction in 2011, and 1,850 buildings were being built for housing units. This figure does not even include Israeli settlement construction in East Jerusalem. Settler violence also spread terror in the West Bank, especially around Hebron and Nablus.

14. There are ongoing manoeuvres involving the Israeli Supreme Court regarding the removal of settlement 'outposts,' which are unlawful even under Israeli law. Such manoeuvres lead to major expansions of existing settlements blocs. The most prominent example is the removal of structures and evacuation of the Ulpana outpost and the resultant expansion of the Beit El settlement by 300 housing units, as well as a further enlargement of settlements by 850 units elsewhere in the West Bank. It should be recalled that all settlements are not only illegal under international law; their continued expansion flagrantly violates Israel's obligations under the Road Map, as endorsed by the Security Council.

15. In summary, the report's main recommendations include:

(1) A resolution of censure should be adopted by the Human Rights Council, and a special body be mandated to prepare a study on Israel's use of administrative detention;

(2) The Human Rights Council should commission a study of the adequacy of international humanitarian law to cover the situations of prolonged occupation and provide Israel and the international community with appropriate recommendations;

(3) The International Court of Justice should be requested to provide an Advisory Opinion on the Israeli practice of transferring detained Palestinians to prisons in Israel, denying normal visitation rights, possibly joined to a request for legal clarification of the special character of prolonged belligerent occupation;

(4) The Human Rights Council should give increased attention to Israel's refusal to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur for Palestinian Territories Occupied since 1967.

16. Thank you. I look forward to our interactive dialogue.