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Israel and the Occupied Territories: Israel must end its policy of assassinations

In the coming days the Israeli Supreme Court will examine a petition, brought by an Israeli and a Palestinian human rights organization, challenging Israel's policy of assassinating Palestinians whom they suspect of involvement in attacks against Israeli soldiers and civilians.

This document clarifies that the Israeli authorities' justifications for the policy of assassinations are neither born out by the facts nor supported by international law. Amnesty International considers that respect for the rule of law and the protection of the right to life require that the policy of assassinating those who do not pose an imminent threat to lives be ruled unlawful and be stopped.

Extrajudicial executions¹ are among the practices to which the Israeli army and security services have resorted for several years, without offering proof of guilt or right of defence. In addition to causing the death or injury of the targeted person, such attacks have resulted in the unlawful killing of scores and injury of hundreds of bystanders, including children. Amnesty International has repeatedly condemned these acts as unlawful and is gravely concerned at the increase of such practices in the past 32 months.²

UN bodies and mechanisms, as well as local and international human rights organizations have condemned these acts.³ Most recently on 10 June 2003 the UN Secretary-

¹ An extrajudicial execution is an unlawful and deliberate killing carried out by order of a government or with its acquiescence. Extrajudicial killings are killings which can reasonably be assumed to be the result of a policy at any level of government to eliminate specific individuals as an alternative to arresting them and bringing them to justice. These killings take place outside any judicial framework.

² See notably Amnesty International's report: *State Assassinations and Other Unlawful Killings*, issued on 21 February 2001 (AI Index: MDE 15/005/2001).

³ See for example the Conclusions and Recommendations of the Committee against Torture, 27th session, 12-23 November 2001 (*CAT/C/XXVII/Concl.5*), the Concluding Observations of the Committee on the Rights of the Child, 31st session, 4 October 2002 (*CRC/C/15/Add.195*), the Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967; 59th session, 17 December 2002 (*E/CN.4/2003/30*).

General expressed "serious concern at the attempted extra-judicial execution by the Israeli Defence Forces of a senior *Hamas* political leader in Gaza", and reiterated "his consistent opposition to such actions".⁴

Since November 2000, when the first extrajudicial execution is known to have been carried out in the context of the current Palestinian uprising or *intifada*, more than 100 Palestinians have been assassinated by members of the Israeli army and security services. In the course of such attacks, the IDF (Israeli Defense Forces) and security services have killed scores and injured hundreds of other Palestinian men, women and children bystanders.

Amnesty International has repeatedly condemned attacks against civilians by Palestinian armed groups.⁵ Since the beginning of the *intifada* some 750 Israelis, most of them civilians and including 93 children, have been killed in Israel and the Occupied Territories by Palestinian armed groups. In the same period more than 2,000 Palestinians, including some 380 children, have been killed by the Israeli army in the West Bank and Gaza Strip. The organization has continued to call for those who deliberately kill civilians to be brought to justice for their crimes.

Assassination policy violates international law

Amnesty International considers Israel's justification for these killings to be inconsistent with its obligations under international human rights and humanitarian law. Israel argues that in the current situation of "armed conflict short of war" their practice of assassinating Palestinians is permitted by the laws of war. It is important to note that Israel has repeatedly used such practices for many years prior to the outbreak of the current uprising/*intifada*.

The Israeli army and government authorities have repeatedly claimed that assassinations are "necessary" because it is not possible for Israel to arrest Palestinians in the areas which fall under Palestinian Authority jurisdiction according to the Oslo Agreements (known as Areas A in the West Bank and White Areas in the Gaza Strip). Another justification for extrajudicial executions offered by Israeli government and army officials is what they refer to as the "ticking bomb cases", that is people who are on their way to commit an attack.

In fact the Israeli army has not offered evidence that the Palestinians whom it has assassinated were about to, or on their way to, carry out attacks. Those who have been assassinated were in areas of the Occupied Territories removed from potential Israeli targets (such as settlements, settlers' roads or army positions).

⁴ See <http://www.un.org/apps/sg/sgstats.asp?nid=387>: Statement attributable to the Spokesman for the Secretary-General on the Middle East.

⁵ See notably Amnesty International's report: *Without distinction: Attacks on civilians by Palestinian armed groups*, 11 July 2002 (AI Index: MDE 02/003/2002).

International humanitarian law and human rights law

There are two sets of complementary legal frameworks that govern Israel's conduct in the Occupied Territories: international human rights law and international humanitarian law.

Israel is the "Occupying Power" in the "Occupied Territories" of the West Bank and the Gaza Strip captured during the 1967 war. Israel retains effective control of the Occupied Territories and the status of the West Bank and Gaza Strip as Occupied Territories and the status of the population as protected persons living under occupation has not been affected by the Oslo Agreement.⁶ The Palestinian population of the occupied West Bank and Gaza Strip are "Protected Persons" under the Fourth Geneva Convention, and are entitled to extensive protections under the law of belligerent occupation.

In its conduct as an occupying power Israel is bound by two major international instruments that relate to the treatment of civilians during war and in occupied territories: the 1907 Hague Regulations annexed to the Convention (IV) Respecting the Laws and Customs of War on Land, and the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Israel ratified the Geneva Conventions on 6 July 1951. Although Israel is not a party to Hague Convention (IV) the Israeli Supreme Court has ruled that the 1907 Hague Regulations are part of customary international law, and thus binding on all states, including those not party to the treaty.⁷

The Israeli army and government officials claim that the situation is one of "armed conflict short of war" and policing and law enforcement regulations/codes of conduct are no longer applicable in Gaza and the West Bank and have been replaced by laws of war. Israel favours certain provisions of the 1907 Hague regulations but it rejects the applicability of the Fourth Geneva Convention, a claim the international community has soundly rejected.⁸ Israel's claim that its obligations under key international human rights treaties and conventions which it has ratified do not extend to the West Bank and Gaza Strip has also been rejected by the relevant UN bodies.⁹

⁶ Article 7 of the Fourth Geneva Convention stipulates that "No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

⁷ *Suleiman Tawfiq Ayyub et al. v. Minister of Defense et al.*, Israeli Supreme Court Judgment 606/78.

⁸ Declaration of the Conference of the High Contracting Parties to the Fourth Geneva Convention in December 2001 which reaffirmed "The applicability of the [Fourth Geneva] Convention to the Occupied Palestinian Territory (including East Jerusalem)" and reiterated the need for full respect of its provisions. This position has been supported by numerous decisions of the UN Security Council. See, for example, UN Security Council Resolution 465 (1980) of 1 March 1980; UN Security Council Resolution 681 (1990) of 20 December 1990; UN Security Council Resolution 799 (1992) of 18 December 1992.

⁹ Concluding Observations of the Human Rights Committee: Israel, UN Doc: CCPR/C/79/Add.93 (18 August 1998) at para 10; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel, UN Doc: CERD/C/304/Add.45, (30 March 1998) at para 12; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN Doc: E/C.12/1/Add.90 (23 May 2003) at para 15.

The Israeli authorities' argument that the current conflict in the West Bank and Gaza Strip falls "somewhere in the middle" seeks to obfuscate Israel's legal obligations. In effect, the Israeli authorities have tried to place themselves in a situation in which they are free to choose which provisions of international human rights and humanitarian law to apply or disregard, without being bound by Israel's obligations as a State Party to the relevant treaties and conventions. These claims are untenable in law. Israel has concrete legal obligations under both regimes. Whenever the legal regime applying to a specific situation has not been clearly identified, it remains a fundamental principle that the legal regime favoured should enhance protection of the civilian population, not diminish it.

Article 4 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is a State Party, states that the right to life is one of the rights which may not be derogated from even "in time of public emergency which threatens the life of the nation".

The prohibition of targeting civilians and civilian objects is a basic rule of customary international law which applies to all parties and in all circumstances, including in armed conflict.

According to the Fourth Geneva Convention, Palestinian residents of the West Bank and Gaza Strip are protected persons. Armed Palestinians who directly participate in hostilities – by carrying out attacks against Israeli soldiers or civilians – lose their protected status for the duration of the attack. Article 51 (3) of Protocol I Additional to the Geneva Conventions of 12 August 1949 explains how civilian status can be temporarily lost: "Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take direct part in hostilities." Palestinians engaged in armed attacks against civilians or in clashes with Israeli forces are not combatants.¹⁰ They are civilians who lose their protected status for the duration of the armed engagement. They cannot be killed at any time other than while they are posing an imminent threat to lives. Proof or suspicion that a person participated in an armed attack at an earlier point does not justify, under international law, targeting them for death later on. Those who are not posing an imminent threat to lives may not be assassinated as punishment or as a preventive measure.

International human rights standards, including the UN Code of Conduct for Law Enforcement Officials (Code of Conduct); the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, are particularly relevant.

Article 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states:

¹⁰ See also the expert opinion of Judge Antonio Cassese (judge and President of the UN International Criminal Tribunal for the former Yugoslavia, 1993 – 2000): "Expert Opinion On Whether Israel's Targeted Killings of Palestinian Terrorists is Consonant with International Humanitarian Law"; *The Public Committee Against Torture et al. v. The Government of Israel et al.*, June 2003.

“Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.”

Principle 9 of the Basic Principles states:

“Law enforcement officials shall not use firearms against persons except in self-defence or in defence of others against the imminent threat of death or serious injury... and only when less extreme means are insufficient to achieve these objectives... In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

Alternative lawful means to extrajudicial executions

Alternative, lawful means to address threats posed by persons suspected of planning or having participated in attacks against Israelis exist. The Israeli army has proved that it can and does exercise full and effective control over the Occupied Territories, including the areas which fall under the Palestinian Authority jurisdiction.¹¹

In the past two years the Israeli army and security services have arrested tens of thousands of Palestinians whom they accuse of having perpetrated, participated in or planned attacks against Israeli soldiers or civilians. Such arrests continue daily throughout the Occupied Territories. Those arrested have been apprehended individually or in groups, in

¹¹ In addition to carrying out arrests throughout the West Bank and Gaza Strip as detailed herein, the Israeli army has often raided and destroyed thousands of Palestinian properties, including homes, factories, workshops and warehouses, which it alleges had been used to store or produce weapons, munitions or explosives, or to carry out attacks against Israeli civilians or soldiers. The destruction of these properties has often been carried out *in situ*, with bulldozers or by placing explosive charges inside the properties. Inhabited Palestinian houses in towns, villages or refugee camps throughout the West Bank and Gaza Strip have also often been taken over by Israeli soldiers, in many cases for prolonged periods of time. The Israeli army and security forces also exercise control throughout the West Bank and Gaza Strip through a variety of other means including curfews, closures, checkpoints and patrols around and within towns, villages and refugee camps. The above-mentioned and other activities are another indication that the Israeli army does exercise its control over the West Bank and Gaza Strip.

their homes or other private houses, in universities or student dormitories, at their work place or at checkpoints, when moving around openly or while in hiding. On several occasions, in refugee camps or other areas, the Israeli army temporarily detained all males in a certain age bracket (typically between 15-16 and 45-55), in order to check their identities and establish if any of them were wanted. At times Palestinians have been detained by special undercover units operating in Palestinian towns, villages and refugee camps.

While the majority of the Palestinians arrested by the Israeli army have been subsequently released without charge or trial, more than 3,000 have been charged with criminal offences including committing murders and other attacks against civilians or soldiers, participating in, assisting, and planning such crimes. Of the latter, some have been convicted and sentenced and others are awaiting trial. More than 2,000 others have been held in administrative detention without charge or trial for periods ranging from one or two months to over a year. Of these, more than 1,000 remain in administrative detention. According to the Israeli army and government authorities, the use of administrative detention is a preventive – not punitive – measure against those who are deemed to pose a threat to security and who cannot be brought to justice because this would require disclosing and possibly endangering sources of information.

Palestinians who were alleged to have been on their way to carry out suicide bombings or other attacks have been arrested by the Israeli army and security forces, in the West Bank and Gaza Strip, inside Israel, at checkpoints and as they were attempting to cross the borders in other areas to avoid checkpoints. According to the Israeli State Comptroller's report, published in July 2002: "IDF documents indicate that most of the suicide terrorists and the car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks."¹² The report indicates that it would be possible for Israel to take measures to improve the effective control of people and vehicles crossing from the Occupied Territories into Israel.

In light of the above Amnesty International believes that Israel's claims that it only resorts to assassinations in response to an immediate security threat which cannot be otherwise dealt with, are not credible and that such practices cannot be justified. In most cases Israel has not provided evidence that those who were assassinated by the Israeli army posed an imminent threat to lives which could not be met by other means. In fact there is ample evidence to the contrary. Israel has repeatedly proved that it does have other means at its disposal to deal with such cases, notably by arresting and bringing to justice those suspected of involvement in perpetrating or planning attacks against Israeli civilians or soldiers.

¹² State Comptroller's report, p. 35, as quoted by the Israeli human rights organization B'Tselem in its report "Behind The Barrier: Human Rights Violations As a Result of Israel's Separation Barrier", published in April 2003.

Death and injury of bystanders

Israeli government and military officials have repeatedly stated that all care is taken not to cause harm to other Palestinians when they carry out such assassinations. The facts, however, indicate otherwise. Scores of men, women and children bystanders have been killed and hundreds have been injured in the course of assassinations or attempted assassinations of Palestinians by the Israeli army.

On 24 June 2003 Israeli Air Force Commander Major General Dan Halutz said on Israeli army radio that in the assassination of Salah Shehadeh “we fired knowing his wife would be near him”. On the night of 22 July 2002 the Israeli army dropped a one-ton bomb from an F16 fighter jet on a densely populated neighbourhood of Gaza City, killing *Hamas* activist Salah Shehadeh, the target of the attack, and 16 civilians, nine of them children. His wife and daughter were among the victims. Some 70 others were injured in the attack and six nearby houses were also destroyed. Amnesty International delegates visited the site of the attack and interviewed neighbours shortly after the attack. The following day Prime Minister Ariel Sharon publicly referred to the attack as “one of the most successful operations”.

In his press briefing Major General Halutz also said that “from time to time, non-combatants are hit in our raids. This comes with the layout of the operations. It is also sometimes the result of errors in our estimations despite the precision of our weapons”.

On 31 July 2001, six-year-old Ashraf Khader and his 11-year-old brother Bilal were killed when the Israeli army launched a rocket attack on an apartment building in a busy residential area in Nablus. The attack targeted and killed two *Hamas* leaders, Jamal Mansur and Jamal Salim, as well as four others; 15 people were wounded. The children were playing in the street outside the building targeted by the IDF strike, waiting for their mother while she visited a clinic in the same building.

On 10 December 2001, three-year-old Burhan al-Himuni and 13-year-old Shadi Ahmad >Arafe were killed in Hebron in a failed assassination attempt on a suspected Islamic *Jihad* activist. The target of the attack jumped clear of his car moments before two missiles fired by the Israeli army from helicopter gunships slammed into a busy intersection of the town. Burhan al-Himuni and his father Muhammad were trapped inside the car; the child was decapitated. The other child, Shadi 'Arafe, was travelling in a taxi behind the targeted car; the taxi and a third vehicle were destroyed.

In recent weeks several civilian bystanders were killed and dozens, including children, were injured in a series of assassinations and attempted assassinations, most of them in the Gaza Strip. In two separate such attacks carried out on 10 June 2003, the targets of the assassination – *Hamas* leader ‘Abd al-‘Aziz Rantissi in one attack and two *Hamas* militants in the other attack – were wounded while five bystanders were killed and dozens injured, including several children. In the following two days more bystanders were killed when Israeli helicopter gunship launched several rockets at cars travelling in the centre of Gaza City.

On 11 June 2003 two *Hamas* militants were killed as were six passers-by, and dozens of other passers-by, including more than 10 children, were injured. On 12 June seven Palestinians, including an infant, were killed when an Israeli helicopter gunship launched

several rockets at a car travelling in the centre of Gaza City, killing Yasser Mohammed 'Ali Taha, the target of the attack, his pregnant wife, and their baby daughter aged 18 months. Four other bystanders were also killed and some 20 wounded, including several children. One of the rockets also hit a nearby house, without causing casualties. The Israeli army had previously raided Yasser Mohammed 'Ali Taha's family home in March 2003 and arrested his father and three of his brothers.

On 25 June 2003 driver Akram 'Ali Farhan and a 19-year woman, Nivin Abu Rujaila, who was travelling in the taxi with three other passengers, were killed in another IDF helicopter gunship attack. The target of the strike was travelling in another car and was injured in the attack.

The above are only illustrative examples of a widespread and increasingly entrenched pattern of killings and injury of bystanders in the pursuit of a policy of assassinations, themselves unlawful. Claims that efforts are made not to harm bystanders are inconsistent with the practice of carrying out attacks on busy roads and densely populated areas, knowing that it would be virtually impossible not to hurt bystanders. Such practices violate Israel's obligations under both international human rights and humanitarian law.

Respect for the rule of law and protection of the right to life requires that the Government of Israel immediately put an end to the policy and practice of assassinating Palestinians.