

Arab Commission for Human Rights & Al-Mezan Center for Human Rights

“ONE OF OUR BIGGEST SUCCESSES”

A report concerning the Israeli bombardment of
the Daraj district of Gaza City on
22 July 2002

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اللجنة العربية لحقوق الإنسان ومركز الميزان لحقوق الإنسان

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A report concerning the Israeli bombardment of the Daraj
district of Gaza City on

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Angela GAFF

**A report published by the Arab Commission for Human rights
& al-Mezan Center for Human Rights, Gaza.²**

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¹ The pronouncement that the operation of 22 July 2002, which killed 14 Palestinians, including nine children, and injured approximately 145 others, was made by Ariel Sharon in the hours following the attack. See Time.Com “Why Israel’s Air Strike Worries the US”, 23 July 2002.

² Thanks are also due to the West Bank human rights organization, LAW, the Palestinian Society for the Protection of Human Rights and the Environment, and in particular, Dianne Luping, for the statistics provided.

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Introduction:

On 22 July 2002, shortly before midnight, the Israeli occupying authority, using two F16 bombers, dropped a one ton bomb on a densely-populated neighbourhood in the Daraj area of Gaza City. The officially-stated intended target of this bomb was Salah Shehadeh, aged 50, a senior military leader of Hamas and founder of its military wing, 'Izz-al Din al Qassam. Shehadeh was indeed killed, but 15 others were killed with him, including his assistant, Zahir Salah Nasar. 145 people were injured and substantial damage to homes and property was sustained. This attack, which took place in the 21st month of the Al-Aqsa Intifada, was unprecedented in its reckless disregard for civilian life, as was reflected in the international condemnation, including on the part the US authorities, which it unleashed. The initially unapologetic statements issued by the Israeli authorities caused further consternation and were later tempered by statements of regret regarding the loss of civilian life which blamed the civilian casualties on faulty intelligence. There was, finally, an official statement to the effect that this attack had been a "mistake".

The bombardment of al-Daraj, which brought to 1728 the total number of Palestinians killed since the beginning of the Al-Aqsa Intifada in September 2000, was significant for the following reason: whilst American-supplied F16s had been used in the past, on only one occasion prior to 22 July, precisely eight days previously, F16s had been used on a residential dwelling in Khan Yunis, Gaza Strip. There is no information currently available in relation to the size of that bomb, but it is clear from Mezan's fieldwork that it was of a much smaller scale than that dropped on 22 July. Further, the area on which it was dropped was less densely-populated than the Daraj area; moreover, it was dropped in the middle of the day, as opposed to at night, when people were clearly going to be asleep at home. In fact, there were almost no casualties in that incident. The Daraj attack, coupled with what can only be described as the disingenuous Israeli statements which followed it, marks a sinister and inauspicious development in Israel's illegal policy of assassinations, which became established soon after the beginning of the current Intifada, which began in September 2000. As far as the political context of the attack is concerned, it is noteworthy that only hours prior to the attack, Hamas officials were said to have been considering agreeing to a cessation of suicide attacks on Israel in exchange for Israeli withdrawal from the West Bank and Gaza Strip. European diplomats had indicated that they were aware of a secret deal between the al-Aqsa Martyrs' Brigades and the Tanzim militia, both factions of Fatah. Xavier Solana said that:

"There were indications that a possible end to suicide bombings could be reached". This report, published under the aegis of the Arab Commission for Human Rights, and the Mezan Center for Human Rights, in Gaza, will set out the details of the attack, which it is asserted, is a crime against humanity, in the context of Israel's assassination policy, the loss of civilian life, bombardments, and the use of US-supplied F16s, and the destruction of property. The international human rights law implications of these violations will be discussed, together with possible avenues of redress.

The Daraj attack took place two months prior to the session in which Israel will be examined by the UN Committee on the Rights of the Child regarding its implementation of the Convention on the Rights of the Child 1989. The Daraj attack provides an eloquent and sinister illustration of the flagrant disregard on the part of the Israeli occupation forces of the rights of Palestinian children.

A: THE CIRCUMSTANCES OF THE ATTACK

1. The attack itself.

On 22 July 2002, Salah Shehadeh, a known Hamas leader and founder of its military wing, 'Izz-al-Din al-Qasam, was staying on the 1st floor of a two-storey building in the Daraj area of Gaza City. The Israeli forces, as a result of their 35-year occupation of the West Bank and Gaza Strip, have an intimate knowledge (as evinced by the accuracy of the bombing) of this and indeed all areas of the areas under occupation. They can accordingly be attributed with clear knowledge of the densely-populated nature of this area. It is a well-known fact that the Gaza Strip is one of the most densely-populated areas in the world, and that the birth-rate is indeed the highest in the world. Just before midnight, most residents were asleep. Most of those who lost their lives were killed in their sleep although Muhammad ash-Shawa (see Affidavit of his widow, Mahasin ash-Shawa, in Annex A) lost his life while visiting a neighbour. Only four of the 14 dead were in the targeted house. The 10 others who died were in neighbouring buildings.

2. The victims of the attack and the damage sustained

The following Palestinians lost their lives as a result of the bombing on 22 July 2002.

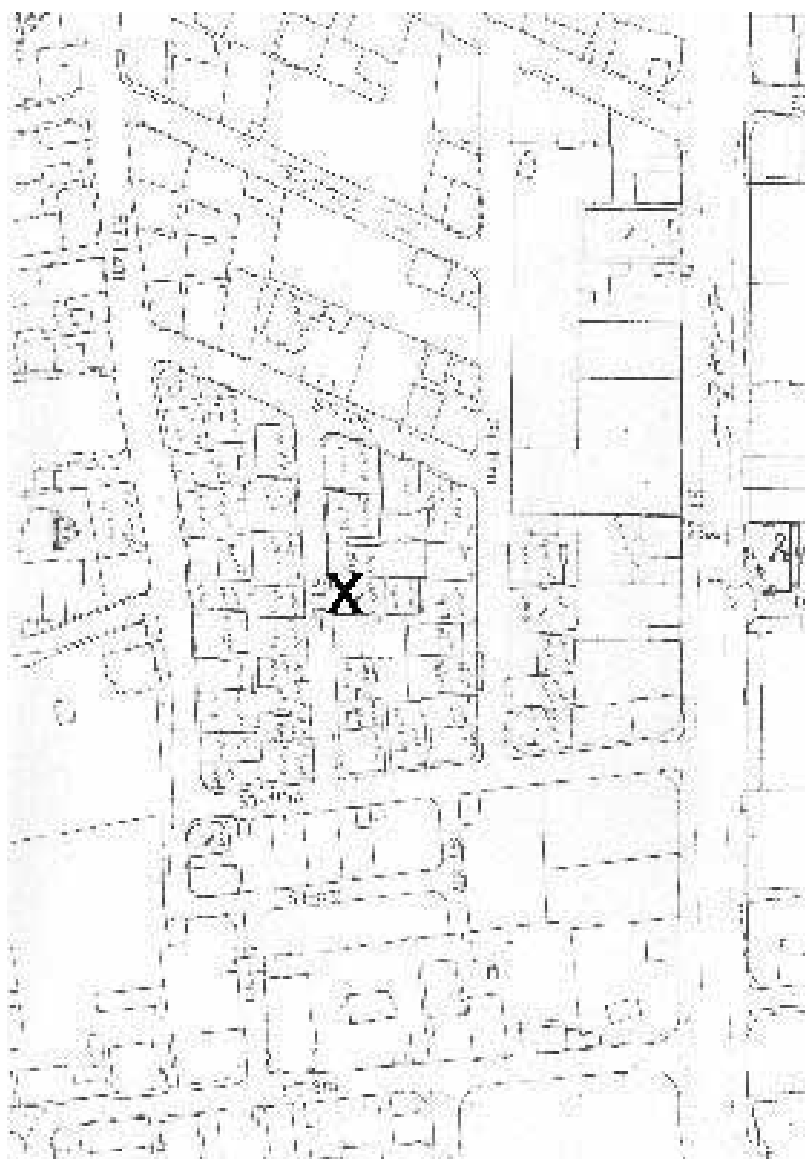
1. Alaa Muhammad Matar, aged 11
2. Iman Hasan Matar, aged 25
3. Ayman Raid Matar, aged 18 months
4. Dalia Raid Matar, aged 5
5. Muhammad Raid Matar, aged 3.
6. Yusuf Subhi ash-Shawa, aged 42
7. Mona al-Hwiti, aged 34
8. Sobhi al-Hwiti, aged 4
9. Muhammad al-Hwiti, aged 5
10. Salah Shehadeh, aged 50
11. Leila Shehadeh, aged 41
12. Iman Salah Shehadeh, aged 14
13. Dina Rami Matar, aged two months.
14. Zahir, Salah Nasar, aged 37.
15. Meriam Ibrahim Matar, aged 70.
16. Khadir Mahmoud al-Sa'idi, aged 67

The following photos show civilians murdered and wounded at Shifa Hospital in Gaza City and the location of the Daraj bombardment. Photos by Al Mezan fieldworkers.





A map of part of Gaza City shows the location of the Daraj bombardment. See (x).



Included in Annex A are statements of the next of kin of some of the martyrs in question.

Approximately 145 persons were seriously injured. Furthermore, 73 houses, 11 shops and two workshops were destroyed in the attack. Six motor vehicles were also destroyed. It should be borne in mind that residents in Gaza are generally not insured against such damage to their property.

According to Mezan's statistics, these killings bring the number of persons killed in the current Intifada in Gaza to 672, of whom 182 were children. The destruction of homes in the attack brings to 572 the total number of Gazan homes destroyed since the inception of the current Intifada.

3. Israel's use of F16 bombers

Only eight days prior to the Daraj attack, F16 warplanes were used for the first time against a residential dwelling. Prior to that, F16s had only been used on non-

residential buildings. The Mezan Center has documented 13 days when F16s have been used in the Gaza Strip alone; and during these incidents, and on one occasion, 30 buildings were targeted in one day. On Sunday 14 July 2002, Israeli warplanes bombarded a house in the Rabwat al-Ghrbia area, west of Khan Yunis. Two missiles struck the house and destroyed both that house and the one next to it. The house was owned by Yusuf Abdul Rahman Abdul Wahab. There were no fatalities, although Abdul Wahab's mother and sister-in-law were injured. It is thought that the Israeli forces suspected that wanted persons were present in the house, but in fact, this was not the case. As is indicated above, the attack was smaller in scale than the Daraj attack, and since it took place at 1.20 pm, there were less people present in the houses which were affected. And furthermore, the area is reported to be less densely-populated than the Daraj area.

4. Israeli statements following the attack:

The initial response of Ariel Sharon was that the attack was "one of our greatest successes" and this statement was made despite the knowledge of the civilian deaths, including those of children. However, suggestions were then made by the Prime Minister and the Defense Minister that there had been faulty intelligence, and that had the Israeli occupation forces known of the presence of civilians, they would not have continued with the operation. As indicated above, the accuracy of the bombing is itself an indication of the Israel authority's intimate knowledge of the area in question, which is not consistent with its statements of purported ignorance about the character of the neighbourhood and its inhabitants. There were also indications that the operation had been cancelled either seven or eight times, for fear of civilian loss of life. However, the decision to proceed was made by Ariel Sharon himself, Defence Minister Benjamin Ben-Eliezer, and Foreign Minister, Shimon Peres. It is very clear, as indicated above that, given the fact that the Israelis have occupied the Gaza Strip since 1967, and knew the area very well, that they were well aware of the fact that the neighbourhood in question was densely populated and hence the grave risk posed by such an attack to civilians living in the area. The statements to the effect that faulty intelligence is to be blamed can only therefore be regarded as disingenuous.

The Israeli Foreign Minister, Shimon Peres, said that:

"What happened is really regrettable. It wasn't done intentionally....."

1. Israel's assassination policy:

Members of the Israeli government confirmed early on in the al-Aqsa Intifada, that the extra-judicial killings constitute a deliberate policy, implemented under the aegis of government orders. Furthermore, the Israeli Attorney General has himself indicated that the killings are justifiable. Whilst previously, extra-judicial killings had been carried out systematically by the occupation forces, including by undercover units, the Israeli authorities had declined to acknowledge that this constituted a policy. Accordingly, as far as extra-judicial killings are concerned, the Israeli position during the Al-Aqsa Intifada which started in September 2000, is substantively different from that which it adopted in the first Intifada (1988 to 1993).

The Israeli High Court has dismissed two petitions regarding state assassinations, on the basis that "the court does not usually render rulings on security matters". The petition named the prime minister, Ariel Sharon, the defence minister, Benjamin Ben-Eliezer and the chief of staff, Moshe Yaalon. As at 3 August, there had been no response to that petition. At the time of publication of this report, a further joint petition has been submitted, by LAW, the Palestinian Society for the Protection of

Human Rights and the Public Committee against Torture (PCATI) and written responses from the Israeli government are awaited in that connection.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions emphasize that extrajudicial executions are at no stage permitted, even in situations of war. Principle 1 provides as follows:

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, internal political instability or any other public emergency may not be invoked as a justification of such executions.

The 1996 report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions points out that no abuses of human rights by armed groups can excuse the practice of extra-judicial executions. The report went on to provide that:

Governments must respect the right to life of all persons, including members of armed groups and even when they demonstrate a total disregard for the lives of others.

This report will discuss below the claims by the Israeli occupation forces to the effect that the current conflict can to some extent be characterized as an armed conflict. This characterization, it is asserted by the Israeli authorities, might justify the assassination of “unlawful combatants”. However, international law is clear in its prohibition of extra-judicial executions in any circumstances, as indicated above.

Since the commencement of the current Intifada, there have been 71 documented assassination operations in Gaza and the West Bank . In those operations, 95 wanted persons have been killed, and 47 persons killed, who were not wanted. Of the 47, 24 were children. The cost in terms of loss of life of persons who are not wanted is very high.

The Israeli occupation forces have a clear “liquidation” policy. The Head of the IDF’s International Law Branch, Colonel Daniel Reisner, publicly announced the existence of a “liquidation” policy in November 2000.

As indicated above, there have been 18 assassination operations in Gaza since the beginning of the current Intifada. It should be noted that in these operations, 53 persons were killed. Of those persons who were not wanted, 18 were children.

B. APPLICABLE PRINCIPLES OF INTERNATIONAL LAW

1. Humanitarian law:

By dint of Israel’s 35-year occupation of the West Bank, which includes East Jerusalem, and the Gaza Strip, Israel, as an occupying power, is obliged to observe the provisions of two instruments: the 1907 Hague Regulations and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949. As regards the former, despite the fact that Israel has not ratified the Regulations, Israeli High Court jurisprudence affirms that they are binding upon Israel as customary international law.

As far as the Fourth Geneva Convention is concerned, Israel has advanced many legal arguments to the effect that this is not binding upon Israel. Such arguments have been rehearsed at length elsewhere . Suffice it to say that the entire international community, the UN Security Council, and the International Committee of the Red Cross take the view that the Fourth Geneva Convention is applicable to Israel’s occupation. Furthermore, a conference of the High Contracting Parties to the Convention, which took place in Geneva in July 1999 (boycotted by Israel) reaffirmed the applicability of the Convention to Israel. The statement of common

understanding which was adopted by the High Contracting Parties “reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem” and “the need for full respect for the provisions of the said Convention in that Territory”. Common Article 1 of the Geneva Conventions requires High Contracting Parties “to respect and to ensure respect for the present Convention in all circumstances”, a requirement that includes the duty to endeavour to bring another High Contracting party to respect the Geneva Conventions when it is responsible for breaches”.

On the basis that the Fourth Geneva Convention is without doubt applicable to the Occupied Palestinian Territories, civilians have the status of “protected persons”. Willful killings, together with, inter alia, torture, deportation and causing serious injury, are in fact “grave breaches” of the Convention, and as such, create an obligation on the part of the High Contracting Parties, to prosecute those responsible in their own courts or to extradite them to another court. Grave breaches of the Geneva Conventions are also included in the definition of war crimes over which the International Criminal Court will have jurisdiction, as set out in Article 8 of the Rome Statute. Israel is clearly culpable of grave breaches as a result of its bombardment of Daraj area.

As indicated below, in Section C, Palestinians are currently unable to avail themselves of the International Criminal Court, as a result of the fact that Israel has not ratified the Statute of Rome.

2. Human rights standards:

Notwithstanding the application of humanitarian law to occupied territory, human rights standards also apply. Human rights law and humanitarian law are distinct, but nevertheless, interrelated bodies of law, both of which proscribe, inter alia, torture, and extra-judicial killing.

Applicable human rights standards include those set out in the International Covenant on Civil and Political Rights, Article 6 of which sets out the right to life. By dint of Article 4(1), the right to life is non-derogable “even in time of public emergency which threatens the life of the nation”. Also applicable are the obligations of Israel pursuant to the Convention against Torture and all Cruel, Inhuman and Degrading Treatment and Punishment 1984, the Convention on the Rights of the Child 1989, and the Convention on the Elimination of all Forms of Discrimination against Women 1979.

The Daraj bombardment is a most eloquent demonstration of the grave disregard for the rights of Palestinian children demonstrated by the Israeli occupation forces, notwithstanding its obligations under the Convention on the Rights of the Child. A separate discussion of children’s rights will appear in section 4 below.

Also pertinent are provisions contained in various bodies of “soft” law, notably, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Code of Conduct for Law Enforcement Officials apply. Whilst these rules are not legally binding, they provide authoritative guidance and reflect a high level of consensus regarding the use of firearms. In particular, Principle 9 of the Basic Principles provides that:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, 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.

The Basic Principles provide that law enforcement officials shall “as far as possible, apply non-violent means before resorting to the use of force and firearms (Principle 4). The Basic Principles also insist upon proportionality as regards the degree of force used. Moreover, Principle 7 provides that “arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under ... law”.

3. Does the present situation constitute an armed conflict?

The Israeli occupation forces have advanced statements to the effect that the current conflict can be characterized, to some extent, as an armed conflict. Statements have been made by Israeli spokespersons to the effect that the situation is “somewhere in the middle”; thus purportedly allowing Israel to select, arbitrarily, whichever provisions from the two relevant legal regimes, it wishes to apply. Such an, albeit partial, characterization of the conflict as being an armed conflict, should be resisted, since legally, it could justify a lesser degree of protection to Palestinians in the Occupied Palestinian Territories.

The principal benefit to the Israeli occupation forces of characterizing the current conflict as, to some extent, an “armed conflict” is that this purportedly allows the Israeli forces to assassinate “unlawful combatants”. Furthermore, the IDF has indicated that the existence of a situation of armed conflict means that the usual obligation to investigate killings does not apply. International standards ordinarily require a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...”. However, the Israeli forces use the argument that to some extent, a state of war obtains, in order to justify an absence of investigations. For example, in January 2001, in a meeting with Amnesty International, Colonel Daniel Reisner, Head of the Legal Department of the IDF, stated that “no army carries out investigations in warfare”. Any definition of the current conflict as an “armed conflict” should be resisted, since the protections afforded to the population of the Occupied Palestinian Territories under such a definition would thus be compromised. The investigation which took place, such as it was, into the killings stemming from the Daraj bombardment, was secret and apparently perfunctory.

In the event that the current situation is an armed conflict as is sometimes claimed by the Israeli forces, (which definition should be resisted) then the fundamental principle of the laws of war requires that combatants be distinguished from non-combatants, and that military objectives be distinguished from protected property or protected places. Parties to a conflict must direct their operations only against military objectives (including combatants). Article 51(4) of Protocol 1 of the Four Geneva Conventions provides that indiscriminate attacks are prohibited. Despite the fact that Israel has not ratified Protocol 1, this is considered to be binding, as a result of the fact that prohibitions of indiscriminate warfare are considered to be norms of customary international law. Indiscriminate attacks are those which are “not directed against a military objective” “or those which employ a method or means of combat the effects of which cannot be limited as required by the Protocol”, “and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction”. Military objectives are defined as “those objects which by their nature, location, purpose or use make an effective contribution to military action”. Included amongst attacks defined as indiscriminate are: “an attack which may be expected to cause incidental loss of civilian life, injury

to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated". And furthermore, "attacks against the civilian population" are prohibited.

Article 57 of Protocol 1 defines a positive duty to "do everything feasible to verify that the objectives to be attacked are neither civilians or civilian objects" and to "take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects".

The principle of proportionality places a duty on combatants to choose means of attack which avoids or minimizes damage to citizens. In the ICRC Commentary to Article 57 of Protocol 1, it is stated that: "What is required is to take the necessary identification measures in good time to spare the population as far as possible". It is manifest that the Daraj attack was disproportionate in the forced implemented.

4. Israel's particular obligations to children in the Occupied Palestinian Territories
As indicated above, general human rights standards apply to Israel's occupation, notwithstanding the simultaneous application of humanitarian law. Israel's obligations under the Convention on the Rights of the Child 1989 bear some particular examination here. As indicated above, it is hoped that the Committee on the Rights of the Child will consider this report at the session at which it considers Israel's compliance with its obligations under the Convention on the Rights of the Child (CRC), on 18 September 2002.

Israel owes a special duty of protection to children. Israel ratified the Convention on the Rights of the Child, 1989, in 1991. The Convention came into force on 2 November 1991. The CRC does not have the status of binding law in Israel, since essential enabling legislation has not been enacted. That notwithstanding, the Convention has been cited as a legal source. Its first state report, which was actually due two years after ratification, ie in 1993, was actually filed in February 2001. The UN Committee on the Rights of the Child is due to examine Israel's first report on 18 September 2002.

It is noteworthy that Israel's report makes no reference whatsoever to children in the Occupied Palestinian Territories, despite Article 2 which states that CRC applies to all children "within their jurisdiction". There is, for example, no information as to how the Israeli forces construe the right to life of Palestinian children in the light of the death toll which has been reported. Defence of Children International, Israel branch, in its report to the Committee on the Rights of the Child, asserts that a sensible interpretation of "jurisdiction" is "under the State Party's effective control", which definition is consistent with the concept of State responsibility.

In a similar vein, the Association for Civil Rights in Israel, in its report in response to Israel's state report regarding its implementation of the International Covenant on Civil and Political Rights said, in 1998, that:

Israel's report to the Human Rights Committee completely ignores the occupied territories. This in spite of the clear applicability of the ICCPR... Israel's most egregious violations of the Covenant have taken place in the occupied territories. The conspicuous absence of an account on the extent to which Israel has implemented the substantive obligations of the Covenant in the occupied territories constitutes a serious breach of Israel's duty to report to this committee.

Article 6 of CRC provides that:

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

As indicated above, the Gaza-Strip has the highest birth-rate in the world and accordingly, Israel's action in dropping a one ton bomb on a two-storey building in a densely-populated area, shows marked recklessness in relation to the lives of the children in question. Such recklessness may well be construed as tantamount to intention. The Committee on the Rights of the Child is urged to question the representatives of the State of Israel in relation to the recklessness regarding the lives of children, as displayed by the Israeli forces.

The Israeli practice of liquidation/assassination poses a grave risk to the safety of Palestinian children. 182 Palestinian children have lost their lives in Gaza since the beginning of the current Intifada. And of those, 24 children have lost their lives in assassination attempts. Certain assassination operations bear some examination as regards the concomitant loss of life to Palestinian children. For example, in an attempt to assassinate Hussein Abu-Kweik, a suspected Hamas leader, the Israeli forces, using helicopter gunfire against a motor vehicle, whilst not succeeding to kill Abu-Kweik himself, killed his wife, his three children and two other children. On 24 February 2002, the Israeli occupation forces used helicopters to attack a motor vehicle carrying Abu-Kweik. His wife, Bushra al Nimr Abu-Kweik, aged 38, his children Aziza Hussein Abu Kweik, aged 17, Baraa' Hussein Abu Kweik, aged 14 and Muhammad Hussein Abu Kweik, aged eight. Further, two children in a separate motor vehicle were also killed: these were Arafat Ibrahim al-Masr, aged 16, and Shaima' al-Masri, aged four.

Another example of an assassination operation attempt which claimed the lives of Palestinian children is the attack on a research centre in Nablus. The research centre was in fact housed in a residential building. Eight Palestinians were killed in the incident, including two men thought to be political leaders in Hamas, namely Jamal Abdul-Rahman Mansour, aged 42 from el-Ein refugee camp near Nablus, Jamal Ibrahim Saleem, aged 43, from Balata Refugee Camp near Nablus, and four journalists, namely Fahim Ibrahim Dawabsheh, aged 32 from Nablus, the manager of the research centre, Mansour's guard Omar Mansour, aged 27, from Nablus, two photographers from the Nablus Journalism Centre, namely Uthman Abdul-Qadir Qatanani, aged 25, and Muhammad Abdul-Karim al-Bishawi, aged 26. The two children who died were brothers, namely Ashraf Abdul Minim Abu Khadir, aged six, and Bilal Abdul Minim Abu Khadir, aged nine.

The Israeli occupation forces have displayed generally an egregious disregard for the lives of Palestinian children. For example, on 22 November 2001, at about 7.30 am, a suspicious object exploded in the Rabwat al-Gharbiya area of Khan Yunis.

Eyewitnesses indicated that the Israeli occupation forces had entered the area the previous night. Furthermore, the site of the explosion is 150 metres from the settlement of Gani Tal. The road upon which the explosion took place is used by school-children on their way to school – at the Abdullah Syam Basic School, in the Amal area. The children who died are:

1. Muhammad Na'im Abdul Karim al-Astal, aged 13.
2. Akram Na'im Abdul Karim al-Astal, aged six
3. Anis Idris Muhammad al-Astal, aged 10
4. Umar Idress Muhammad al-Astal, aged 12
5. Muhammad Sultan Muhammad al-Astal, aged 11.

Following the attack, the IDF spokesperson acknowledged that the IDF had been responsible for this attack and said that it had been a “mistake” to kill the children in question. Given the proximity of the site of the explosion of the device in question to the school, the actions of the Israeli forces must be regarded as at best reckless vis-à-vis the lives of the children in question.

A similar flagrant disregard for the lives of Palestinian children is demonstrated in the attack on the Preventive Security Building in ash-Shaikh Radwan area of Gaza, on 4 December 2001. Israeli jets and helicopters shelled the site, situated in a densely-populated area, killing at least two people, namely Muhammad Ahmad Mahmud Syam, aged 23, a member of the civil staff, and a 15-year old schoolboy, Muhammad Mahmud Abu Marasa. 150 people were injured, including 60 school-children. The Israeli forces, by virtue of the intimate knowledge of Gaza that they have acquired during their 35-year occupation, understand that at 11.30 am, in the area of the attack, there will inevitably many school-children in the street.

As indicated above, 61 houses were damaged in the attack. According to al-Mezan, 193 children were rendered homeless by the attack in question. And this brings to a total of 6817 the number of children rendered homeless by house demolitions and bombardments since the commencement of the current Intifada. If so, we should say. On 6 August 2002, The Israeli Supreme Court inauspiciously allowed the IDF to carry out 42 house demolitions without the occupiers of the houses having any right of appeal.

The right to housing is guaranteed by Article 27 of the Convention on the Rights of the Child. Again, given the Israeli forces’ intimate knowledge of the area in question, they were clearly able to anticipate the damage in question.

The Committee on the Rights of the Child is urged, on 18 September 2002, to question the representatives of the Government of Israel as to the effect that assassination attempts, bombardments and house demolitions have had on children and to question Israel’s representatives generally about Israel’s obligations towards Palestinian children living in the West Bank and the Gaza Strip.

5. Israel’s duty to investigate:

The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions state:

There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Whilst there have been references in press releases to an “investigation”, there has been no evidence of any investigation that might be considered impartial and thorough. The relatives of the victims of the bombardment have, for instance, had no access to any process of investigation. No aspect of any investigation has been made accessible to the Palestinian public. As indicated above, claims have been made by the Israeli authorities to the extent that investigations into such extra-judicial killings are not obligatory as a result of the fact that a situation of armed conflict obtains. Mezan and the Arab Commission for Human Rights reject such an argument and stress the importance of a proper investigation in such situations of extra-judicial killing.

C. POSSIBLE AVENUES OF REDRESS

1. International criminal law remedies:

i. The International Criminal Court: Despite many references to the newly-formed International Criminal Court, it is not possible for a case to be brought before that

court in relation to this incident, since, without a reference by the UN Security Council (which would require the consent of the US), the Court can only exercise jurisdiction over crimes occurring in the territory of a state party, or crimes involving an accused who is a national of a state party. Israel is not a party to the Rome Statute, though it has signed the treaty, and Palestine has not yet been recognized as a state and is thus not able to ratify human rights treaties.

ii. Universal jurisdiction: Despite the fact that it would not be possible for a case to be taken to the International Criminal Court, Palestinians do have alternative judicial avenues and the possibility of invoking the jurisdiction of national courts has been underscored by dint of the application for the extradition of General Pinochet by the Spanish courts, by the recent petition against Ariel Sharon, to the Belgian Courts, regarding the massacre in Shabra and Shatila in 1982, and by the case against the former Congolese Foreign Minister Yverodia Ndomasi. The case against Sharon in the Belgian Courts has been discharged on the grounds that Sharon was not present in Belgium.

The principle of universal jurisdiction, enshrined in the Fourth Geneva Conventions, and the 1984 Convention on Torture is based on customary law and a consensus that there are some crimes so egregious that they threaten the entire human race.

Accordingly, the jurisdiction for the prosecution of these crimes must be universal and not simply territorial. The Geneva Conventions specifically state that all signatories have a duty to either prosecute or extradite individuals guilty of war crimes, crimes against humanity and genocide.

At the time of the publication of this report, it remains to be seen whether a case might be taken against the state of Israel in relation to the 22 July 2002 bombing in Daraj district of Gaza, or indeed in relation to any of the other such heinous episodes.

2. Remedies pursuant to human rights mechanisms

Israel has ratified the International Covenant on Civil and Political Rights, but has not recognized the competence of the Human Rights Committee to adjudicate individual complaints. Accordingly, a valuable avenue of redress is not available to Palestinians from the Occupied Palestinian Territories. As far as the Convention on the Rights of the Child is concerned, there is no available individual petition. Accordingly, Palestinians rely solely on the reporting mechanism discussed above.

Annex A: Statements by relatives of some of the victims of the bombardment.

1, Raid Muhammad Ibrahim Matar, currently without any home, 28-years-old, will say as follows:

I am married (now widowed) and did have three children. I used to work as a metalworker. Until 22 July 2002, I lived with my family in a building which is owned by my father. The building had two completed floors. My parents and my siblings lived on the ground floor, I had one flat, and one of my brothers also had a flat. The family were in the process of building another floor – but this was not yet completed. The building is now a shell, for the reasons which I will set out below. We have been told that it is beyond repair – it would have to be rebuilt, and the cost would be \$100,000.

At approximately 11 P.M on Monday 22 July 2002, I took my three children from my father's flat, in the ground floor, to my flat in the first floor of our building (which is owned by my family) with my wife. We were tired and fell asleep after we finished a birthday party for my son, Muhammad. I woke up feeling severe pain all over my body, as if I had been beaten very hard. I do not remember hearing any sound before I woke up and I had the feeling that the house had been destroyed. It was dark, since

the electricity had been cut off. I tried to find my way to the kitchen to bring light. On my way I fell down to the ground floor, I knocked on my father's door, which is located in the western part of the building. My sister, Haia, opened the door screaming and asking for help. She said that the house collapsed. I entered the flat and saw my parents removing rubble from the child, Ibrahim. I helped them for a while. Then I went upstairs to look for my wife and children, but I could not find any of them. I returned to my parents' flat and my mother asked where my children were. I said I did not know. This was the last thing I remember as I lost consciousness. When I regained consciousness in I was told that my wife and three children had been killed. The body of my wife was recovered, but there was huge confusion about various body parts belonging to children. They could not be identified. The Shifa Hospital in Gaza does not have the DNA technology to identify body parts. So the bodies were not recovered. About three days after the bombing, the bodies of my three children were found in the space next to our house. They had obviously fallen down, with the force of the explosion. It was very upsetting to me to hear, via other people, that the bodies had been found. But at least I was able to bury the bodies of my children. Not only have I lost my wife and all three children, but I have also lost my 11-year-old sister, Alaa, together with my two month old niece, Dana. My parents have lost all of their four grandchildren.

2, Muhammad Ibrahim Muhammad Matar, 48 years old, and currently of no fixed abode, will say as follows:

I live in Ad-Daraj area in Gaza City. I own the building, which comprises two completed floors and one further floor that we were in the process of constructing. I lived on the ground floor with my wife and children. My two married sons and their families were living in flats on the first floor, and we were in the process of building two more flat – on another floor. This was not complete.

At about midnight on Monday 22 July 2002, and at that time, everyone in the house was asleep. In my flat on the ground floor, I was asleep with my wife and children: my mother and a visitor from Rafah.

We woke up with the house collapsing around us. A cupboard fell on me, but I managed to remove it and stood up. I saw one of my sons and my wife under the rubble. I helped them to get out from under the rubble. I must have then lost consciousness. I woke up and found myself at ash-Shifa Hospital in Gaza, and knew that my right eye was bleeding, my right hand fingers were broken and that I had bruises in my chest and legs. I also knew that my sons and daughters were wounded. After four days, I was informed that one of my daughters, Alaa, aged 11, my daughter-in-law and all four of my grandchildren were killed. Our family building is now just a shell. I was understand that it would have to be completely rebuilt, and that this would cost \$100,000.

3, Mahmud Al Hwiti, of Daraj district in Gaza, will say as follows:

I live in Ad-Daraj area in Gaza City. I am unemployed. I am married and have six children. At about 9 P.M. on Monday 22 July 2002, I went to bed after supper; the children were watching TV. I was woken at midnight by the sound of an explosion and found myself lying under rubble in my bedroom. I stood up and went to look for my wife and children. There was rubble all over the floor. I went out to the living room and heard my daughter calling me asking for help. I went to help her, but after I picked up one brick, I felt unable to move and recognized that I was injured. I shouted out, asking for my neighbours' help. Many neighbours came quickly and took my daughter and me to an ambulance. At the hospital, I looked everywhere, trying to find

the rest of my family. I had seen my wife at the reception ward before they took me to the surgical ward and then to the X-ray department. Once they finished stitching the cuts in my body, I hurried to look for my children. I found my injured sons. My son Jihad, aged 12, had shrapnel in both legs. My son, Tariq, aged 13, had shrapnel in his back, in the back of the head. I also found my baby who was not injured. I looked for my wife and my other two children. I felt acute anxiety and feared that they were dead. They took me back to a ward upstairs and took care of my wounds. They talked to me, trying to tell me about the deaths as kindly as possible. They first of all told me about the death of my wife. I then asked them to tell me about the two children, and when they told me that they died, I could not bear the shock.

4. My name is Mahasin Ali Hasan Ash-Shawa and I am 40 years old. I live in the Gargash neighborhood of the Daraj area in Gaza City. At around midnight Monday 22 July 2002, I was watching TV with my children when we heard a huge thudding sound. I thought it must have been an earthquake. My children were frightened and screaming, saying that the house was collapsing. I tried to calm them down, but when I looked out of the window, I saw that there was dust covering the whole area. The children were shouting and calling for their father. I told them to keep calm and that I was going to look for my husband, Abu Muhammad, who had gone to see his friend, Abu Zainu, in the neighbourhood. It was very dark and I used a lighter I always keep with me at night, to light the way. The children went out and hurried to Abu Zainu's home, where their father was supposed to be. My son, Shadi, climbed the stairs and saw Abu Zainu in a pool of his blood. He also saw part of his father's shirt under the rubble. He tried to take his father out, but he could not. Shadi was so scared, crying and shouting for help. Neighbours hurried to the place and took my husband and his friend to an ambulance. I walked, unaware where I was going, and met Shadi, who told me that his father was dead. I did not believe him. I then saw my husband's friend, Abu Wahid Jaarur, and told him that I could not find my husband at the hospital. He took me in his car to Ash-Shifa Hospital, but he was not among the wounded, so we went to Al Quds Hospital, but he was not there either. So, we returned to Ash-Shifa Hospital, where I was told that he was dead and that his body was in the morgue. I could not believe that and went to the morgue. A person there asked me my husband's name and I said it was Yusif Subhi Ali Ash-Shawa. He just opened the first drawer and I saw his body. I was shocked and was escorted out of the war