

AMNESTY INTERNATIONAL

Open Letter

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Israel/OT: Open letter to President George W. Bush

George W. Bush
The President
The White House
Office of the President
1600 Pennsylvania Avenue
Washington DC 20500

29 April 2004

Dear Mr President,

As you know, Amnesty International has repeatedly condemned and called for an end to human rights abuses committed by Israeli security forces and by Palestinian security forces and Palestinian armed groups. Today, I am writing to express our deep concern about a number of issues related to human rights contained in your recent letter to Mr Ariel Sharon, Prime Minister of Israel, and in your statement to the press of 14 April 2004, on the occasion of your meeting with Mr Sharon. We note that some of these positions are contrary to international law and appear to be at variance with previous United States (US) government policy. We fear that these statements may contribute to a further deterioration of the human rights situation in Israel and the Occupied Territories.

We are particularly concerned about your support for:

Israel's decision to maintain and expand Israeli settlements on occupied territory in the West Bank, including East Jerusalem;
Israel's denial of the right to return to Palestinian refugees, that is those who were expelled or fled their homes in the war which followed the establishment of the state of Israel, and their descendents;
Israel's construction of the fence/wall inside the West Bank;
Israel's policy of extrajudicially executing wanted Palestinians who could be arrested and brought to justice.

1. Israeli settlements in the Occupied Territories

In your letter to Prime Minister Sharon you stated that: "*In light of new realities on the ground,*

including already existing major Israeli populations centres, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949...".

The establishment by Israel of civilian Israeli settlements in the Occupied Territories, including East Jerusalem, violates international humanitarian law. Article 49 of the Fourth Geneva Convention states categorically: "...*The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies.*" Article 55 of the Hague Regulations forbids the occupying State from changing the character and nature of state property, except for security needs or for the benefit of the local population. Israel's building of settlements, roads and related infrastructure for Israeli civilians in the West Bank and the Gaza Strip does not meet these two exceptional criteria. These settlements were established for ideological reasons. See notably the 1979 Supreme Court case: HCJ 390/79, Dweikat et al. v. Government of Israel et al., Piskei Din 34(1) 1 (Elon Moreh). - not security needs, and they have caused damage - not benefit, to the local Palestinian population.

The Rome Statute of the International Criminal Court, in force since 1 July 2002, includes among the war crimes within the jurisdiction of the court the "*transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies...*" "when committed as part of a plan or policy or a part of a large scale commission of such crimes" (Article 8 (2) (b) (viii)). This crime is further defined in the Elements of Crimes, a supplementary instrument to the Rome Statute adopted in September 2002.

As well as violating international humanitarian law *per se*, Israel's settlement policy in the Occupied Territories violates fundamental human rights provisions, including the prohibition of discrimination - a fundamental principle of human rights enshrined in treaties to which Israel is a State Party, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Discrimination on grounds of nationality, ethnicity and religion is the dominant feature of Israel's settlement policy in the Occupied Territories. These settlements also deprive Palestinians of key natural resources such as land and water, which constitute a key means of survival.

In your letter you stated that: "*It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities*". Such a position would appear to reward unlawful actions taken by Israel in transferring part of its own population into occupied territory, in violation of international law, and in defiance of the UN Security Council resolutions.

In resolution 465 of 1 March 1980, the United Nations Security Council called on Israel: "*to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem...*". Successive US administrations have expressed concern at Israel's policy of establishing Israeli civilian settlements in the Occupied Territories. The international community has long recognized the illegality of the Israeli settlements in the Occupied Territories.

It is incumbent on the Israeli authorities to take measures to evacuate Israeli civilians living in settlements in the Occupied Territories, in such a manner as to ensure the human rights of Palestinians are respected, in particular their rights to free movement and to an adequate standard of living. Such measures should also include respect for the rights of the Israeli citizens evacuated, including adequate compensation.

2. The right to return for Palestinian refugees

In your letter you also stated that: "*...an agreed, just, fair and realistic framework for a solution to the Palestinian refugee issue will need to be found through the establishment of a Palestinian state, and the settling of Palestinian refugees there, rather than in Israel.*" US stated policy had hitherto been that the Palestinian refugee issue would be addressed in the context of final status negotiations. As far as we know, this is the first time that the US has explicitly rejected the right to return for Palestinian refugees *a priori*.

Amnesty International calls for the respect worldwide of the right of those who are forcibly exiled to return to their country. Forcible exile violates international law; the right to return to one's own country is based in international law, and is the most obvious way to redress the situation of those who are in exile. Among the key human rights principles enshrined in the Universal Declaration of Human Rights (UDHR) is the right to return: *Everyone has the right to leave any country, including his own, and to return to his country.*" (Article 13)

The International Covenant on Civil and Political Rights (ICCPR), the treaty which gives legal force to many of the rights proclaimed in the UDHR, codifies the right to return in Article 12.4: *"No one shall be arbitrarily deprived of the right to enter his own country."*

The Human Rights Committee, which monitors implementation of the ICCPR, has given authoritative interpretation to the meaning of the phrase "own country", which clarifies who is entitled to exercise the right to return. The Committee asserts that the right applies even in relation to disputed territories, or territories that have changed hands. In its General Comment 27 (1999, paragraph 20) the Human Rights Committee determined: *"The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them."*

Amnesty International believes that the right to return applies not just to those who were directly expelled and their immediate families, but also to those of their descendants who have maintained what the Human Rights Committee defines as having a "*close and enduring connections*" with the area. The organization supports the right of exiles to return to their own homes or the vicinity of their own homes, where this is feasible. Exiles who choose not to return are entitled to compensation for lost property and those returning should also be compensated for lost property. The rights of innocent third parties, who may be living in the homes or on the lands of the exiles, should also be taken into account.

Amnesty International recognizes that the resolution of protracted conflicts involving the displacement of populations may require durable solutions alternative to the exercise of the right to return, such as integration into the host country and resettlement in a third country. However, the decision to exercise the right to return or to avail themselves of alternative solutions must be the free and informed decision of the individuals concerned. The right to return is an individual human right, and as such it cannot be waived by any of the parties involved in negotiating a settlement.

The same principles apply to Israeli citizens and to Jewish citizens of other countries who were once citizens of Arab or other countries and who fled or were expelled from such countries. If they wish to return, they should be allowed to do so and they should also be

entitled to compensation for any lost property.

3. The construction of the fence/wall in the West Bank

In your letter to Prime Minister Sharon you noted the Israeli government's assertion that the fence/wall currently being built in the West Bank "*...should be a security rather than political barrier, should be temporary rather than permanent, and therefore not prejudice any final status issues including final borders, and its route should take into account, consistent with security needs, its impact on Palestinians not engaged in terrorist activities*".

As you are no doubt aware, even though according to the Israeli authorities the fence/wall is "*a defensive measure, designed to block the passage of terrorists, weapons and explosives into the State of Israel...*", (Israeli Ministry of Defence on 31 July 2003: <http://www.seamzone.mod.gov.il/Pages/ENG/news.htm>) most of the fence/wall is not being constructed *between* Israel and the West Bank but rather *inside* the West Bank. Close to 90% of the route of the fence/wall is on Palestinian land inside the West Bank, encircling Palestinian towns and villages and cutting off communities and families from each other, separating farmers from their land and Palestinians from their places of work, education and health care facilities and other essential services. The total route of the fence/wall runs for more than 600 kilometres, more than double the length of the Green Line, and includes a complex of barriers with an average width of 60 to 80 meters, including barbed wire, ditches, large trace paths and tank patrol lanes on each sides of the fence/wall, as well as additional buffer zones/no-go areas of varying depths. The assertions that this fence/wall is a temporary rather than permanent structure are not supported by the facts on the ground, notably the scale and cost of the project. The destruction of large areas of cultivated land and the uprooting of tens of thousands of trees to make way for the fence/wall and its accessory structures are for the most part irreversible measures. In the past year the US had repeatedly expressed concern about the fact that the fence/wall being constructed inside the West Bank. On 19 November 2003, during a visit to London, you urged Israel "not to prejudice final peace talks by erecting walls and fences".

In its present configuration, the fence/wall violates Israel's obligations under international humanitarian law. The route of the fence/wall has been designed so as to create direct territorial contiguity with Israel for some 65 Israeli settlements in the West Bank, including East Jerusalem, in which live more than 320,000 Israeli settlers, that is approximately 80% of the settlers living in the Occupied Territories. This has resulted in unlawful destruction and appropriation of Palestinian property and other violations of Palestinian rights.

In his letter addressed to you, Prime Minister Sharon stated that Israel also plans "*to accelerate construction of the Security Fence*". In spite of repeated assurances by the Israeli authorities that in setting the route of the fence/wall due consideration is given to the impact on the local Palestinian population, to date only very minor adjustments to the route of the fence/wall have been made and the vast majority of the route remains *inside* the West Bank. The sections of the fence/wall which have already been constructed have contributed to serious violations of the human rights of the Palestinian population of the West Bank, especially those living and working in areas close to the fence/wall. The result has been a deterioration of the social and economic situation, already seriously affected by increasingly stringent restrictions imposed by the Israeli army on the movement of Palestinians within the Occupied Territories in the past three and a half years.

Extrajudicial executions

In his Disengagement Plan, Prime Minister Sharon states that: "*Israel reserves for itself the basic right of self-defence, including taking preventive steps...*". The Prime Minister and numerous other Israeli government and military officials have repeatedly described as "preventive actions" the extrajudicial executions of Palestinians known or suspected of involvement in attacks against Israeli civilians and soldiers in Israel and in the Occupied Territories.

Extrajudicial executions 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.

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).

Alternative, lawful means to address threats posed by Palestinians known or suspected of planning or of 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.

In the past three and a half 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 in towns, villages and refugee camps throughout the West Bank and Gaza Strip. Those arrested have been apprehended individually or in groups, in 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. While the majority of the Palestinians arrested by the Israeli army have been subsequently released without charge or trial, thousands have been charged with criminal offences including committing, participating in or planning suicide bombings and other attacks against civilians or soldiers.

Extrajudicial executions of Palestinians by the Israeli army have been widely condemned by the international community, including by United Nations bodies and mechanisms. Most recently, on 17 April, UN Secretary-General Kofi Annan condemned the assassination of *Hamas* leader Abdelaziz Rantissi, reiterating that "*extrajudicial killings are violations of international law*" and calling on the Israeli government "*to immediately end this practice*".

Amnesty International is concerned that your statement, in your letter to Prime Minister Sharon, that: "*Israel will retain its right to defend itself against terrorism, including to take actions against terrorist organizations*", and the absence of any condemnation by yourself or by the US administration of Israel's frequent extrajudicial executions of Palestinians may be interpreted by the Israeli authorities as an encouragement to pursue such actions.

Amnesty International urges you to review your position with regard to the concerns raised in this letter and to convey a message to Prime Minister Sharon and to the Israeli government that, while Israel has a right to take measures to protect the security of its citizens and its borders from Palestinian attacks, such measures must be necessary and proportionate, in accordance with international law.

I trust that you will give due consideration to the concerns raised in this letter.

Yours sincerely,

Irene Khan
Secretary General

cc The Honorable Colin Powell, Secretary of State

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