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UNDER THE TOUGHEST CURFEW SINCE 1973, WEST BANK AND GAZA PALESTINIANS FACE GROWING HARDSHIP

MOST PALESTINIANS STILL UNPROTECTED FROM IRAQI MISSILE ATTACK, DESPITE ISRAELI COURT RULING

Middle East Watch has issued three newsletters on human rights violations stemming from Iraq's occupation of Kuwait. Since the outbreak of hostilities on January 17, Middle East Watch issued a news release outlining the laws of war to which all parties to the conflict must adhere, and has been monitoring human rights concerns related to the Gulf war in various countries of the Middle East. This is the first newsletter since that date.

On January 18, Middle East Watch condemned Iraq's Scud missile attacks on Tel Aviv. By firing indiscriminately into heavily populated areas in Israel and later in Saudi Arabia, Iraq has blatantly violated one of the fundamental tenets of the laws of war.

The missiles have killed one Israeli, reportedly caused three heart-attack deaths,¹ and injured more than one hundred. In addition, the missile attacks have severely disrupted everyday life in Israel, where a state of emergency has been in effect since January 17. Schools have been closed, many Israelis have stayed home from work, and residents of the Tel Aviv area have fled in droves to other parts of the country.

The life of Palestinians in the occupied territories has been no less disrupted by the outbreak of war. Although none of the missiles landed in the territories or killed any Palestinians, all of the West Bank has now been under a curfew since the morning of January 17, and the entire Gaza Strip has been under curfew since January 16. Residents of parts of annexed Arab Jerusalem have also been confined to their homes.

¹ An additional eight Israelis suffocated after putting on their gas masks improperly, Israel's Ministry of Health announced on January 25.

The curfew was imposed on the grounds that war in the Persian Gulf could provoke an escalation in unrest in the territories at a time when the Israel Defense Force (IDF) might become involved in the hostilities. After nearly two weeks, with no quick end to the war in sight, the IDF has not disclosed plans for lifting the curfew. While IDF spokesman Lt. Col. Arik Gordin claimed on January 25 that the army "is looking at ways to ease the burden on the population," many Palestinians fear that the army will maintain the curfew for the duration of the war in the Gulf.

The hardships inflicted by the curfew -- already the most extensive since 1973, if not 1967² -- may soon reach a critical stage. Middle East Watch's concerns, discussed below, include the impoverishment caused by the idling of workers, deteriorating medical conditions due to restrictions on the movement of patients and health-care workers, and impending shortages of basic necessities.

Middle East Watch is also concerned about the stern treatment of curfew violators. Many of those recently arrested for this offense have been subjected to "fast trials" in which their due process rights appear to have been violated. In addition, the IDF's threat to respond severely to any disturbances is cause for grave concern as the pressures build on a population forced to remain indoors.

Middle East Watch is also distressed that journalists have been forbidden to enter the West Bank or Gaza Strip, except under military escort, since the imposition of the curfew. At a time when there is a critical need for independent monitoring of conditions, authorities should permit all observers, including journalists and human rights workers, to gather information freely. While Israel can make a case for security censorship of reports on the exact location of Iraq's missile strikes inside Israel, there is no justification for barring journalists from traveling unescorted in the West Bank and Gaza Strip.

The occupied territories have remained relatively calm during the curfew so far, according to IDF officials and Palestinians reached by phone. The calm may be partly attributable to warnings issued by authorities that any unrest would be harshly suppressed. There have been few disturbances, although scores of curfew violators have been arrested. The only reported fatality was a young woman in Nablus who was shot by security forces on January 19. (Middle East Watch lacks adequate information on the circumstances of this killing.) Few if any Palestinians are reported to have suffered gunshot injuries since the start of the curfew.

The authority of the IDF in the West Bank to impose curfews comes from Article 89 of Military Order 378 (1970), which grants a military commander unrestricted powers to confine persons within a specified area to their homes. Similar legislation exists in the Gaza Strip. Israel has imposed curfews repeatedly during the three-year-old Palestinian uprising, or intifada, both in response to outbreaks of violence and in anticipation of them. The curfews have ranged in scope from a single neighborhood to all of the occupied territories. Local

² Longer curfews have been imposed on limited areas within the occupied territories, but not on all of the West Bank and the Gaza Strip at one time.

curfews have sometimes lasted for weeks at a time. A night-time curfew has been in effect for three years throughout the Gaza Strip.

While humanitarian law does not specifically mention curfews, the 1907 Hague Convention gives the occupying power the authority to take appropriate steps to "restore, and ensure, as far as possible, public order and safety." However, the occupying power must always consider the steps it takes in light of its duty to attend to the welfare of the protected population.

During a prolonged curfew, Israeli military authorities are obliged to ensure that the population has access to essential goods. Article 39 of the Fourth Geneva Convention states, in part,

Where a party to the conflict applies to a protected person methods of control which result in his being unable to support himself and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.

Article 55 of the convention states, in part,

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

In comparison with some local curfews in the past, when round-the-clock confinement caused hunger and great suffering, the current curfew appears so far to have been better coordinated, although conditions vary from one place to another. The hardship was blunted initially by the stockpiling many families carried out in anticipation of a curfew. In most areas, food and medicines have been available, although not all items are to be found in sufficient quantities. Authorities have given temporary curfew passes to some suppliers and retailers to ensure that stores and markets are stocked when people are permitted to shop.

Authorities have lifted the curfew at least once, for one or more hours, in every area of the territories, in a rotating fashion, to allow people to run essential errands. In Ramallah, the curfew has been lifted once every three days on average. In parts of the Gaza Strip, the curfew has been lifted only once, and then only women have been allowed out.

The United Nations Relief and Works Agency (UNRWA) has generally been able to distribute staple items to the refugee camps during the curfew, but has had to cut back some of its medical and relief services because not all of its employees have obtained curfew passes. On the other hand, the field staff of the International Committee of the Red Cross (ICRC) has been able to travel about, including to prisons, without hindrance.

With each passing day, however, the burden of the curfew mounts. Reports of food shortages have increased in recent days, due partly to the idling of local farming and food industries. Equally critical is the loss of income to the working population. An official of

Israel's Finance Ministry announced that Israel lost \$1 billion when its economy shut down for four days last week; for the occupied territories, the shutdown has been even more debilitating, if not in dollar terms. Unless Palestinians are allowed to resume work soon, many will be unable to feed their families.

Students are also suffering. As high school students in Israel returned to school today for the first time since the state of emergency was declared, there is no word yet on when West Bank and Gaza schools may be permitted to reopen.

Medical Concerns

Curfews impose a special hardship on the sick and infirm, since they must find a means of leaving home to reach a clinic or hospital. Those with telephones can call for ambulances, which have in general not been obstructed during this curfew. But those without phones must contact a neighbor or walk out of their homes and try to talk their way past soldiers. Women, children and the elderly reportedly fare better than do young men in persuading soldiers to let them pass.

Non-acute health care has been hit the hardest. Preventive treatment has all but stopped, and people have resorted increasingly to consulting with doctors by phone in lieu of traveling to their offices.

According to Dr. Haidar Abdel Shafi, head of Gaza's Red Crescent Society, a charitable health organization, most hospital employees in the Gaza Strip have received curfew passes and have been able to work. Ambulances move about, and the hospitals are not facing shortages of supplies at present. Local clinics, however, have had to reduce services because some employees could not obtain passes.

Dr. Abdel Shafi said that military authorities had so far provided the Red Crescent five gas masks for its doctors, nurses and drivers. Yesterday, UNRWA spokesman Hashem Abu Sido reported that Israel had furnished a total of 2,000 masks to health-care workers and UNRWA staff in the Gaza Strip. The government of Sweden has pledged to provide 25,000 masks to Gaza, he added.

Dr. Rustom Nammari of al-Maqassid hospital, a private institution in East Jerusalem, said that the hospital has not experienced shortages in supplies related to the curfew. However, al-Maqassid faced manpower difficulties because three quarters of its employees live in the West Bank and many have been unable to obtain curfew passes. Some staff members have slept in the hospital or in nearby hotels to ensure an adequate level of staffing.

While some doctors at al-Maqassid have obtained curfew passes enabling them to drive to and from work, few of the nurses, support staff, and paramedics have received them. The hospital has tried to arrange for employees to be escorted to and from work by representatives of the International Committee of the Red Cross, in order to get past army checkpoints.

Another private hospital in East Jerusalem, Augusta Victoria, has also been hampered by insufficient curfew passes for its staff. According to Ramallah attorney Mona Rishmawi, who intervened with authorities to obtain passes for employees, the responsiveness of authorities varies from one local office of the Civil Administration to the next. Employees applying in Bethlehem have had more difficulty than those in Ramallah, for example.

Employees of West Bank and Gaza hospitals that are run by the Israeli government have been issued curfew passes more promptly, according to Dr. Nammari. Meanwhile, the staff of local Palestinian-run clinics have gotten fewer passes, forcing a cutback in services.

Private hospitals have received some gas masks, but not enough for all staff and patients. As of Thursday, Dr. Nammari said, al-Maqassid hospital had received 170 masks for use among staff and patients. By yesterday, Augusta Victoria hospital had received 100 masks, according to attorney Rishmawi. Neither figure covered the total number of staff and patients, even when added to the number already in the hands of employees and patients who reside in Jerusalem.

The Use of Force

To date, Israeli troops have largely refrained from opening fire at violators of the curfew. However, there is concern that as the pressures of forced confinement grow, some event -- either local or international -- may provoke Palestinians to burst out of their homes in defiance of the curfew, thereby triggering an excessive response by troops. When disturbances erupted during curfews in the past, the results were often bloody. For example, soldiers shot and killed five residents of the Shaboura Camp in Gaza, during a clash on May 19, 1989, when residents, who had been confined to their homes for two weeks, poured outside in a spontaneous protest over an action taken by soldiers in the camp. (Accounts of what set off the incident are conflicting.)

A few days before January 15, Defense Minister Arens warned that any increase in disturbances in the territories related to a war in the Gulf would be met in a manner "appropriate to a situation of war." During the curfew, loudspeakers mounted on jeeps patrolling the streets have warned that curfew violators would be "risking their lives." The IDF spokesman's office, when asked for elaboration, denied that the open-fire regulations had been revised, and said only that troops were being instructed to enforce the curfew strictly. However, Defense Minister Arens' threat to treat disturbances in a manner "appropriate to a situation of war," with its possible implication that participants in unrest may be treated as combatants rather than as civilians suspected of offenses, is ominous and in need of urgent clarification.

In the view of Middle East Watch, the IDF's standing orders on opening fire in the occupied territories are already too permissive.³ They permit soldiers to fire lethal ammunition at certain categories of suspected offenders who are posing no imminent threat to life, and, "as a last resort" at fleeing persons suspected of committing "a terrorist activity or any other serious felony." Since breaking a curfew cannot by itself be considered a felony, Middle East Watch

³ See Middle East Watch's report, *The Israeli Army and the Intifada: Policies That Contribute to Killings*, August 1990.

would strongly condemn the use of lethal force to apprehend or to punish curfew breakers, and urges the IDF to refrain from using lethal force except in life-threatening situations where lesser means are not sufficient to counter the danger.

"Fast Trials" for Curfew Violators

During the present curfew, soldiers stopping Palestinians outside their homes have responded in one of three ways: they have ordered the person to return home, accepted his reasons for being outside, or placed the person under arrest. Over 200 have been arrested in the West Bank alone.

Authorities in the West Bank and Gaza Strip have announced that arrested curfew breakers would have the option of a fast trial, a procedure that has been used during the intifada and earlier for some defendants charged with stone-throwing and certain other offenses. Under this procedure, the defendant is brought before a judge within a few days and -- usually without the benefit of legal counsel -- offered an opportunity to plead guilty. Past experience has led Palestinians to understand that an immediate guilty plea will probably result in a lighter penalty than if they pursue their case and are ultimately convicted.

In theory, when defendants reject the offer by pleading innocent or insisting on contacting a lawyer, the military judge will adjourn their cases. However, Palestinian defendants who do so are almost sure to be denied bail and returned to jail. Consequently, despite the merits of one's case and the liability of a conviction on one's record, the incentives to plead guilty in a fast trial are considerable, especially if doing so is likely to secure his immediate release.

On January 24, the IDF's Assistant Legal Advisor for the West Bank, Captain Amos Giora, said that approximately 200 West Bank residents have been arrested for violating the curfew since January 17; most violators who were stopped by soldiers, he said, were simply sent home rather than arrested. He said that the IDF's policy in fast trials has been to ask for a suspended sentence and a fine unless the person is suspected of additional offenses. However, Palestinian lawyers in both the West Bank and Gaza said they have heard of curfew violators being sentenced to actual time in prison.

Although most lawyers in both the West Bank and Gaza Strip have received temporary curfew passes during the past five days, many defendants have already undergone fast trials without the benefit of legal counsel. The Arab Bar Association in the West Bank last week asked the Military Court in Ramallah to postpone the fast trials until adequate representation could be ensured, according to Association head Ali Ghozlan.

The injustice of the fast trial procedure is illustrated by the case of Ali Ibrahim Abu Qteish, a Ramallah El-Bireh resident in his early thirties. On the afternoon of January 21, he walked out of his house after receiving a phone call that his family's tile factory had been burglarized. Soldiers arrested him in a nearby field.

The same afternoon, attorney Mona Rishmawi phoned the Israeli civil administration to announce that she was acting on his behalf and asked to be informed of any legal proceedings. Without a curfew pass, however, Rishmawi could not reach the Ramallah jail to confer with her client. During the next two days, Rishmawi phoned the Civil Administration but could get no information about the case. On January 23, she learned that Abu Qteish had pled guilty to violating the curfew and been fined 500 shekels (U.S. \$250).

The curfew in the territories and the state of emergency inside Israel have disrupted the schedule of ordinary trials in the military courts of the West Bank and Gaza. For both the ordinary and the fast trials, protection of the defendants' rights requires prompt access to lawyers. For this reason, authorities should ensure that all Palestinian lawyers receive curfew passes, and that they remain valid for the duration of the curfew.

MOST PALESTINIANS STILL UNPROTECTED FROM IRAQI MISSILE ATTACK

While the threat of Iraqi missiles continues to endanger the population of Israel, the government has failed to protect Palestinians in the occupied territories from attacks to the same degree that it is protecting its own citizens. Despite an order from Israel's High Court of Justice, military authorities have been slow to distribute gas masks to Palestinians; moreover, the network of air raid sirens that warns Israelis of possible missile attacks is virtually nonexistent in the West Bank and Gaza Strip.

The casualties caused by the Scud missile attacks on Tel Aviv and on Riyadh, Saudi Arabia are a reminder that the Patriot anti-missile missiles are not foolproof. And although Iraq has so far fired only missiles with conventional payloads, Israeli authorities are treating each missile as potentially bearing chemical weapons, and instructing all people in the country to respond by putting on gas masks, entering sealed rooms, and following instructions on the radio. The failure to enable Palestinians in the occupied territories to follow the same procedures, when Israelis living nearby are given protection, is inexcusable.

Israeli authorities have been preparing civil defense measures against a possible chemical-weapons attack since shortly after the invasion of Kuwait, in response to long-standing threats by Iraqi President Saddam Hussein to attack Israel. In October, the IDF began distributing free gas masks and chemical-warfare defense kits to Israeli citizens, but announced that Palestinian residents of the occupied West Bank and Gaza Strip would have to buy gas masks if they wanted them, on the grounds that they were not covered by the national insurance plan. Meanwhile, authorities said that hotels would receive masks for tourists.

As the UN Security Council deadline of January 15 approached for Iraq's withdrawal from Kuwait, the bulk of Israel's population had received the equipment as well as instructions on its use. Arab citizens of Israel, including residents of annexed East Jerusalem, were included in the preparations. However, West Bank and Gaza Palestinians were excluded.

The decision not to distribute masks to Palestinians was appealed to Israel's High Court of Justice, which on January 14 ordered the IDF to begin distributing the masks immediately to the entire population of the occupied territories. The High Court called the IDF policy on masks a "scandal" and "patent discrimination." (Many of the 100,000 Israeli settlers on the West Bank had received masks while their Palestinian neighbors had not.)

Since January 14, the IDF has been slow to comply with the order. Working on the assumption that the most likely missile targets would be Jewish population centers, the IDF has concentrated its distribution efforts in the areas of the West Bank that are closest to Jerusalem and greater Tel Aviv. But even in those areas only a portion of Palestinians have received gas masks.

At the time of the High Court decision, the IDF said it possessed only 173,000 adult masks for the 1.5 million residents of the territories, and none for children. On January 25, an IDF spokesman said that Israel's security establishment was working on purchasing the needed equipment, but few details have been provided.

The failure to install air raid sirens throughout most of the occupied territories also violates the spirit of the court decision, which rejected discrimination in civil-defense measures. While in Israel air raid sirens alert most citizens as soon as a missile is detected, residents of the West Bank and Gaza Strip must stay tuned around the clock to the Hebrew or Arabic service of Israeli radio or television if they wish to learn of incoming missiles. Authorities have announced no plans for providing the territories with a public alert system. (Inside Israel, there are also some outlying areas where the sound of the sirens is faint and people depend on radios for warnings.)

The disparity in protection provided to the two populations is most glaring with regard to Palestinian security prisoners. Several thousand inmates are held in tents surrounded by fences in IDF-run detention camps in the West Bank, Gaza Strip and Israel, where they are entirely exposed to the elements. The largest such facility, Ketsiot, is located in the Negev desert and holds approximately 6000 Palestinian security prisoners. According to IDF spokesman Lt. Col. Arik Gordin, gas masks have not yet been allocated to Ketsiot inmates because "we don't anticipate problems there because it's so far removed from population centers." Yet, as a Ketsiot inmate stated in an affidavit given to Israeli attorney Lea Tsemel, during a recent missile alert the guards donned their gas masks and ordered the prisoners over the loudspeaker system to enter their tents and stay there until told they could go out again.

The High Court has pending before it petitions demanding that prisoners have access to gas masks and structures with sealed rooms in the event of a chemical-weapon attack. In the meantime, the IDF has begun to distribute gas masks to some facilities located near Israeli population centers, including Ramallah prison and Ofir (Beitounia) and Megiddo detention centers. However, most prisoners in detention camps remain without any form of protection.

Israel's failure to protect the population of the West Bank and Gaza Strip from missile attacks is arguably a violation of Articles 55 and 56 of the Fourth Geneva Convention.⁴ Article 55 states, in part,

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

Article 56 states, in part,

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.

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Middle East Watch urges Israel to:

- * Lift the curfew at the earliest possible moment;
- * Provide, until the curfew is lifted, passes to all health care workers and lawyers; and ensure that the population under curfew has the means to obtain food and medical care, and has more frequent opportunities to go outside than it has had thus far;
- * Publicly dispel, in light of recent threats to treat severely any curfew violation or disturbance, the impression that the open-fire regulations for soldiers in the occupied territories have recently been liberalized;
- * Immediately lift the ban on journalists entering and moving about the area without military escort. Human rights observers should enjoy the same freedom;
- * Comply with the order of the High Court of Justice by providing immediately to all Palestinian residents of the occupied territories the same forms of protection against missile attacks that are given to Israelis, especially those living in areas adjacent to probable targets of the missiles.

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⁴ Israel has ratified the Fourth Geneva Convention but maintains that it is not applicable to the territories it occupied in 1967. Virtually the entire international community, including the UN Security Council, the United States, and the ICRC, maintains that Israel is obliged to comply with the convention in its administration of the occupied territories.

Middle East Watch was created in 1989 to monitor human rights practices in the Middle East and North Africa and to promote respect for internationally recognized standards. The chairman of Middle East Watch is Gary Sick, the vice chairs are Lisa Anderson and Bruce Rabb, the executive director is Andrew Whitley, the research director is Eric Goldstein, and the associate director is Virginia N. Sherry.

Middle East Watch is a component of Human Rights Watch, a non-governmental organization which is also composed of Africa Watch, Americas Watch, Asia Watch, and Helsinki Watch. The chairman of Human Rights Watch is Robert L. Bernstein, the vice chairman is Adrian W. DeWind, the executive director is Aryeh Neier, the deputy director is Kenneth Roth, and the Washington director is Holly J. Burkhalter.

Recent newsletters of Middle East Watch include:

"Middle East Watch Urges All Parties to the Conflict to Obey Rules of Law Protecting Civilians" (January 18, 1991)

"Kuwait: Deteriorating Human Rights Conditions Since the Early Occupation" (November 16, 1990)

"Egypt: Election Concerns" (November 15, 1990)

"The Conduct of Iraqi Troops in Kuwait toward Kuwaitis and Non-Westerners" (September 1990)

"Middle East Watch Condemns Iraq's Practices toward Foreigners under Its Control and Reminds Embargo Participants of Their Humanitarian Obligations" (August 29, 1990)

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