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HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 7**HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED
ARAB TERRITORIES****Human rights violations emanating from Israeli military attacks and
incursions in the Occupied Palestinian Territory, particularly in the
occupied Gaza Strip****Report of the High Commissioner for Human Rights on the
implementation of resolution S-6/1***

* The present report was submitted late in order to include the most recent information.

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I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution S-6/1 on human rights violations emanating from Israeli military attacks and incursions, in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its seventh session, on the progress made in the implementation of that resolution.

2. In its resolution S-6/1, the Council expressed grave concern at the repeated Israeli military attacks carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which resulted in loss of life and injuries among Palestinian civilians, including women and children; called for urgent international action to put an immediate end to the grave violations committed by the occupying Power, Israel, in the Occupied Palestinian Territory, including the series of incessant and repeated Israeli military attacks and incursions therein and the siege of the occupied Gaza Strip; demanded that the occupying Power, Israel, lift immediately the siege it had imposed on the occupied Gaza Strip, restore continued supply of fuel, food and medicine and reopen the border crossings; called for the immediate protection of the Palestinian civilians in the Occupied Palestinian Territory, in compliance with human rights law and international humanitarian law; and urged all parties concerned to respect the rules of human rights law and international humanitarian law and to refrain from violence against the civilian population.

3. In the present report, the High Commissioner assesses the implementation of the resolution for a one-month period, from the day that it was adopted on 24 January 2008. In accordance with resolution S-6/1, the High Commissioner provides the general context of the situation and focuses on the situation in and around Gaza, particularly in the context of its closure and of violence against the civilian population, during the period from 24 January to 24 February 2008. She also addresses the related issue of freedom of movement in the West Bank and provides recommendations to the Council.

II. CONTEXT

4. On 25 January 2006, elections for the Palestinian Legislative Council were held in the West Bank and Gaza. The Hamas movement won the elections over the Fatah movement, which had dominated the Palestinian institutions until then. Ismail Haniyeh of Hamas became Prime Minister of the Palestinian Authority. Shortly thereafter, the international community, supported by the Quartet, redirected international aid from the Palestinian Authority to the United Nations and humanitarian agencies. Israel imposed economic sanctions, including by withholding tax revenues it collected on imports, and introducing additional restrictions on the movement of goods to, from and within the Palestinian territory. Israel declared that sanctions would be lifted only when the new Palestinian Government renounced violence, recognized Israel and accepted previous agreements between Israel and the Palestinian Authority.

5. In March 2006, Fatah refused to join the new Palestinian Authority Government; later in 2006, supporters of the two groups clashed in both the Gaza Strip and the West Bank. However, on 8 February 2007, Hamas and Fatah signed the Mecca Agreement, sponsored by the Government of Saudi Arabia. After a short period of calm, armed clashes escalated between security forces and armed groups loyal to Hamas and Fatah throughout the period of March to May 2007, despite the Agreement. Some 350 people were reportedly killed and more than 2,000 injured in the first half of 2007 as a direct result of Palestinian internal armed clashes. "Occupied Palestinian Territories Torn Apart by Factional Strife". Amnesty International, October 2007. AI Index: MDE 21/020/2007.

6. By 14 June 2007, Hamas forces and armed groups attacked and seized Fatah-controlled Palestinian Authority security installations and government buildings in the Gaza Strip. After a

three-day siege, the security and military intelligence headquarters of the Palestinian Authority were taken over by Hamas. On 14 June, President Mahmud Abbas dismissed the Government of Prime Minister Haniyeh, declared a state of emergency, established an emergency government based in the West Bank and appointed Finance Minister Salam Fayyad as Prime Minister. Hamas refused to recognize the emergency government and set up a Hamas de facto administration in the Gaza Strip, whose legitimacy has never been recognized by the international community.

7. Following the Hamas takeover of the Gaza Strip, the West Bank-based cabinet formed by President Abbas gained widespread international support. The European Union and the United States of America normalized ties and resumed direct aid to the West Bank. Israel agreed to transfer hundreds of millions of dollars in tax revenues it had seized, while tightening the economic and trade blockade of the Gaza Strip.

8. The European Union suspended the few aid projects it still maintained in the Gaza Strip, while Israel prevented the European Union border assistance mission at the Rafah crossing from operating, citing security reasons, resulting in the Rafah crossing being mostly closed ever since. Egypt, Jordan and Saudi Arabia declared that the West Bank-based cabinet was the sole legitimate Palestinian Government.

9. While the Hamas Government in the Gaza Strip faced international diplomatic and economic isolation, efforts by the international community, in particular the Quartet, to support and strengthen the West Bank cabinet led, on 27 November, to the organization of the Annapolis Conference. At the Conference, President Abbas and Israeli Prime Minister Ehud Olmert agreed to resume negotiations by the end of 2007. In addition, the two sides agreed to work continuously to reach a two-State solution by the end of 2008, a commitment that was repeated on the occasion of United States President George Bush's visit to Jerusalem on 9 January 2008. The visit was preceded by an agreement between the Israeli Prime Minister and the Palestinian President to create negotiation teams to address the five core issues of the conflict: settlements, Jerusalem, refugees, security and borders.

10. In the section below, the High Commissioner examines violations committed by three actors: the State of Israel as the occupying Power; the Palestinian Authority; and the de facto authorities of the Gaza Strip under the effective control of Hamas.

III. Progress in the implementation of the resolution

A. Closure of Gaza

General situation

11. Following the Hamas takeover of the Gaza Strip in June 2007, Israel closed its borders with Gaza to exports and severely limited imports. The declaration of Israel of Gaza as a "hostile territory", on 19 September 2007, resulted in a further reduction of the supply of fuel and electricity to the Strip. Israel has explained the declaration and its decision to restrict the movement of people and goods (notably fuel and electricity) by referring to the duty of the Government of Israel to protect the lives of its citizens, declaring that no Government could be expected to fail to react when its towns and cities were subjected to deliberate bombardment from a neighbouring territory. "Security cabinet declares Gaza hostile territory", 19 September 2007, and "Behind the headlines: Israel designates Gaza a 'hostile territory'", 24 September 2007, available from the website of the Ministry of Foreign Affairs of Israel at www.mfa.gov.il.

12. As a result of the restrictions, all six crossings into the Gaza Strip have been opened only

sporadically since June 2007. All crossings were completely closed on 18 January. During the reporting period, the Sufa crossing was opened on average five days per week, but only 40 to 50 truck loads per day were allowed through. The Karni crossing was open on average one day per week, but only one of 34 lanes was operating to allow the passage of animal feed and grains. Erez remained open for international humanitarian workers and medical evacuations. Nahal Oz was open on average six days per week to allow the passage of limited quantities of fuel. No goods crossed Kerem Shalom from 24 January onwards. See Humanitarian Weekly Briefing Notes, 13-19 February 2008, of the Office for the Coordination of Humanitarian Affairs at www.ochaopt.org. Rafah, on the border with Egypt, has been almost completely closed since June 2007. On 23 January, Palestinian militants destroyed several parts of the wall dividing Gaza and Egypt in the town of Rafah. Hundreds of thousands of Gazans crossed the border seeking food and supplies. Egyptian President Hosni Mubarak ordered his troops to allow the Palestinians in, but to ensure that they did not take weapons back. The border was resealed on 3 February.

13. With few exceptions, all legitimate trade with Gaza virtually came to a halt as a result of the closure of the crossings into Gaza, which had devastating effects on the economy and on livelihoods before and during the reporting period. The isolation of Gaza, the regular military incursions and the lack of effective coordination between the Palestinian Authority in Ramallah and Hamas authorities in Gaza resulted in shortages of food, medical and relief items, spare parts for critical health and water sanitation installations, materials for humanitarian projects and raw materials for commerce and industry in Gaza. According to the Under-Secretary-General for Humanitarian Affairs, only 10 per cent of the amount of goods that entered Gaza a year ago were being permitted to enter by 15 February 2008. As a result, the Gaza Strip was on the brink of a humanitarian disaster. Visiting Ramallah, United Nations Humanitarian Chief Voices Solidarity with Suffering People, at www.un.org/news.

14. With regard to access to fuel and electricity, several factors prior to the reporting period led to a significant reduction in the availability of electricity, including the bombing, on 28 June 2006, of the six transformers of the Gaza Strip power plant and the restrictions of fuel supplies to Gaza, which began on 28 October 2007 in the context of sanctions designed to pressure Palestinian militants into stopping launching rockets and mortars from Gaza into Israel. The situation became more critical on 19 January, when Israel decided to impose a total cut on fuel supplies to the Strip in response to a series of rocket attacks by Palestinian militants against southern Israel over several days. On 20 January, the main power plant in Gaza completely shut down. On 22 January, Israel once again allowed fuel and medical supplies into Gaza. The Humanitarian Monitor, January 2008. See www.ochaopt.org/documents/Humanitarian_Monitor_Jan_08.pdf.

15. On 30 January 2008, the Israeli High Court of Justice rejected a petition against the Israeli plan to reduce the supply of electricity and fuel to the Gaza Strip, which had already been in force for several months. While the Court confirmed that the State of Israel was obligated to act against terrorist organizations in the framework of the law and in accordance with the provisions of international law, and to refrain from intentionally harming the civilian population of the Gaza Strip, it found that, “in light of all the information presented before [the Court] with regard to the supply of electricity to the Gaza Strip, we are of the opinion that the amount of industrial diesel that the State declared that it intends to supply, as well as the electricity supplied on an ongoing basis through the electrical lines from Israel, are sufficient to meet the essential humanitarian needs of the Gaza Strip at this time”, High Court ruling 9132/07, para. 22. (Unofficial translation into English by Gisha-Legal Center for Freedom of Movement.) Following the Israeli High Court ruling, on 7 February, the Ministry of Defense ordered the Israel Electricity Company to reduce its supply to Gaza by around 0.5 megawatts per day. The cut was less than the 1.5 megawatts originally proposed, but still compounded the existing shortfall of 60 megawatts per day.

16. According to the Israeli Ministry of Defense, electricity cuts to Gaza were made in response to the continued and indiscriminate firing of rockets from Gaza into Israel. The Ministry also declared

that the economic sanctions were part of a policy of “economic warfare as a life-saving alternative to large-scale ground operations”. The Ministry further argued that the only obligation of Israel to the civilian population in Gaza was to avoid a humanitarian crisis, and that it was up to the authorities in Gaza to prioritize the distribution of electricity, with priority to humanitarian needs. According to the Ministry of Defense, the authorities in Gaza could ensure that electricity reached homes and hospitals but not workshops, where rockets were produced. See also the website of the Gisha Legal Center for Freedom of Movement at www.gisha.org.

Impact on the enjoyment of human rights

17. During the reporting period, the above-mentioned restrictions on the movement of people and goods had a negative effect on the Gaza Strip population’s enjoyment of a wide range of their human rights, notably their economic, social and cultural rights, but also the rights to life and human dignity and their freedom of movement.

18. The electricity shortages had a significant effect on the Gazans’ right to an adequate standard of living during the reporting period. According to the Office for the Coordination of Humanitarian Affairs, in the period from 18 to 24 January, power cuts, which were frequent prior to 19 January, were extended in duration to 12 hours per day everywhere in Gaza, except Rafah. OCHA “Gaza closure: situation report”, 18-24 January 2008. Access to electricity is an important component of the rights to adequate housing and an adequate standard of living, and also has a serious impact on other rights such as the right to water, food and an adequate standard of health.

19. As concerns the right to water, during the second half of January almost half of the population of Gaza of 1.4 million had no access to running water. The right to water is essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. The right to water is also inextricably linked to the right to the highest attainable standard of health and rights to adequate housing and food. See general comment No. 15 of the Committee on Economic, Social and Cultural Rights, para. 3.

20. With regard to the right to food, as a result of the closure and restrictions, during the reporting period, the Office for the Coordination of Humanitarian Affairs estimated that 80 per cent of Gazans lived beneath the poverty line and depended on food aid from international organizations. In January 2008, the World Food Programme (WFP) was unable to provide any food to 10,000 of its beneficiaries and a further 50,000 received only a part of their monthly allocation. While 1.1 million Gazans are provided with food by WFP and the United Nations Relief and Works Agency for Palestine and Refugees in the Near East, only 7.6 per cent of them received 100 per cent of their calorie requirements; the rest relied on the commercial market to supplement their diets. However, the lockdown of Gaza led to a further reduction of stocks in the commercial sector, and meat, frozen fish and vegetables were rarely available in shops. Office for the Coordination of Humanitarian Affairs, Gaza Strip Humanitarian Fact Sheet, January 2008. It should be noted that the right to food is not primarily about food aid; it is rather about being able to feed oneself through an adequate livelihood.

21. Regarding the right to the enjoyment of the highest attainable standard of physical and mental health, the World Health Organization highlighted, in January, a serious shortage of essential drugs and increasing difficulties for patients requiring emergency care not available in Gaza to leave the Strip, sometimes resulting in the death of the patients concerned. A Palestinian human rights organization documented four cases of patients who died between 29 January and 19 February as a result of not being able to travel abroad to seek needed medical attention or owing to their referral for treatment outside the Gaza Strip being delayed or denied. “Patient dies due to inability to reach a hospital” (17 February 2008) and “Further Deterioration to Health Conditions in the Gaza Strip: 3 Patients Die and Ambulances Stopped Operation Due to the Lack of Fuels” (21 February 2008), Palestinian Center for Human Rights.

22. According to an Israeli human rights organization, on 27 January, a patient who had obtained an exit permit to be treated in an Israeli facility was arrested at the Erez crossing. On 30 January, another patient was released by Israeli security after a 10-hour-long incommunicado interrogation. Physicians for Human Rights Israel, "January 2008 in Gaza; no justice, no hope for patients", 1 February 2008.

23. Moreover, power cuts forced hospitals to suspend operations in order to ensure emergency services; children, who make up 56 per cent of the population in Gaza, were at risk of health problems related to contaminated water and non-functioning sanitation and heating systems. During the reporting period, hospitals relied on emergency generators to maintain normal services. As at 4 February, all 12 hospitals of the Palestinian Ministry of Health were functioning at full capacity; however, none of the primary health-care facilities had received any fuel. The provision of diagnostic and dental services was interrupted in primary health-care facilities, which had no functioning generators during hours of electricity outage. The facilities that provide immunization services and did not have generators transferred vaccines to other facilities with functioning generators to prevent breaking the cold chain of the vaccines. According to Ministry of Health officials, 49 of 57 ambulances from the emergency department stopped working owing to the lack of fuel during the third week of February. Without fuel, hospital generators and vital equipment such as incubators would have to shut down.

24. The Office for the Coordination of Humanitarian Affairs reported that, without power, the Coastal Municipalities Water Utility, the Gaza water authority, could not pump and distribute water nor process sewage; for that reason, it had no choice but to release waste water into the sea at a rate of 40 million litres per day. According to the Office for the Coordination of Humanitarian Affairs, from 18 to 24 January, 30 million litres of raw sewage water were released into the sea per day, creating risks for both public health and the environment.

25. During the reporting period, schools in Gaza reopened after the winter break, although the scarcity of fuel and power forced many institutions to operate without heating and electricity. Students also lacked basic materials, including chalk and textbooks, as a result of the restrictions on the entry of goods, negatively affecting their right to education.

26. According to academic and media sources, corroborated by Palestinian mental health practitioners during the period, a large proportion of the population in the Gaza Strip suffered from various levels of permanent anxiety, fear and tension, or showed symptoms of post-traumatic stress disorders. Evidence showed that a large percentage of children in the Gaza Strip were no longer able to perform their school and family duties; moreover, many suffered from psychosomatic pain. Signs of fear, anger, anxiety and sleeping disorders were also apparent among the children.

27. The closure of Gaza also affected the inhabitants' freedom of religion or belief by preventing them from worshipping at some of the most sacred Muslim and Christian sites, such as the Al-Aqsa Mosque and the Church of the Holy Sepulchre in Jerusalem and the Church of the Nativity in Bethlehem.

28. Under article 33 of the Fourth Geneva Convention, collective punishment of civilians under occupation is categorically prohibited: "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." The International Committee of the Red Cross has clarified in its authoritative commentary on article 33 of the Fourth Geneva Convention that "the concept of collective punishment must be understood in the broadest sense: it covers not only legal sentences but sanctions and harassment of any sort".

29. The blockade of Gaza by Israel was recently condemned by the international community and humanitarian agencies as constituting collective punishment. On 19 February 2008, the Secretary-

General stated that it was vital that Israel cease actions of collective punishment and allow all legitimate and necessary humanitarian and commercial supplies to reach the population. Message to the United Nations Seminar on Assistance to the Palestinian People, Amman, 19-20 February 2008 (SG/SM/11429; PAL/2098).

30. The negative effects on the enjoyment of human rights resulting from the Israeli closure of Gaza were in some cases exacerbated by actions by other parties. On 7 February, at least 10 trucks with humanitarian aid sent to the Gaza Strip by the Jordanian Red Crescent Society were confiscated by Hamas security forces allegedly because the aid was addressed to the rival Fatah party. A similar incident took place on 10 February in the West Bank, when Palestinian security forces prevented the distribution of humanitarian assistance through a civil society organization allegedly affiliated to Hamas. At least in this last case, the humanitarian agency was able to negotiate with Palestinian Authority officials the release of the goods and the resumption of distribution to its beneficiaries. International humanitarian law requires that humanitarian relief personnel and objects used for humanitarian relief operations be protected. Passage of humanitarian relief must be allowed and facilitated by the parties to the conflict.

B. Violence against the civilian population

Background

31. Israeli security forces continued military incursions into Gaza and the West Bank throughout 2007. According to the Office for the Coordination of Humanitarian Affairs, 392 Palestinians were killed in the Israeli-Palestinian conflict in the Occupied Palestinian Territory (91 in the West Bank, 301 in Gaza); in addition, 1,180 Palestinians were injured in the West Bank and 661 in the Gaza Strip. During the same period, 13 Israelis were killed and 322 injured. The Office also reported that, from mid-June to 25 December, 632 Qassam rockets and 921 mortar shells were fired from Gaza. Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, December 2007; see www.ochaopt.org.

32. In January 2008, the situation escalated: as at midday 22 January, as hostilities continued, around 70 Palestinians and 1 Ecuadorean kibbutz worker had been reported killed, 23 on 15 and 16 January alone. On 15 and 16 January, in Gaza, five Palestinian civilians were killed during operations of the Israeli army and another three died when an Israeli aircraft fired a missile at their car, an incident that Israel declared was a mistake. On 18 January, a Palestinian civilian woman was killed and around 30 civilians injured, including several children, when an Israeli air strike targeted an empty building of the Ministry of the Interior. Israeli military operations also continued in the West Bank. From the beginning of the year until midday 22 January, Palestinian militants fired around 230 mortar shells and 110 rockets into the northern Negev, including the cities of Sderot and Ashkelon.

Operations of Palestinian militants during the period from 24 January to 24 February 2008

33. During the reporting period, one Israeli was killed due to the Israeli-Palestinian conflict. On 4 February, a suicide bomb attack took place in a shopping mall in the southern Israeli city of Dimona; one civilian woman was killed and several other people sustained injuries. While condemned by the Palestinian Authority, a number of Palestinian factions hailed the attack and responsibility for the bombing was claimed by various Palestinian military groups. The armed wing of Hamas claimed responsibility for a Palestinian suicide bombing. The Al-Aqsa Martyrs Brigade and the Popular Front for the Liberation of Palestine also claimed responsibility for the attack. *Haaretz*, 4 February 2008.

34. At the time of writing, reliable statistics had not been published for the period from 24 January to 24 February 2008. It is however estimated that Palestinian militants fired hundreds of mortar shells and around 210 rockets, the majority of which of the *Qassam* type, into the western Negev, including the cities of Sderot and Ashkelon. Though most of the rocket and mortar attacks carried out by

Palestinian militants were indiscriminate, some of the short-distance mortar shells reportedly targeted Israeli military installations or personnel located just across the border. Some 10 Israelis sustained injuries as a result of rockets and mortar shells fired by Palestinian militants and many Israeli residents of Sderot and the western Negev, including children, suffered from shock. On 8 and 9 February, more than 40 rockets were fired at the western Negev. One of the rockets landed in central Sderot, seriously injuring two brothers, one of whom, an eight-year old boy, lost a limb in the attack.

35. The firing of rockets and mortars by Palestinian militants against Israeli civilian targets is a clear violation of international humanitarian law.

Israeli military operations during the period from 24 January to 24 February 2008

36. During the reporting period, Israeli security forces conducted at least 9 military incursions into Gaza and 106 into various locations of the West Bank.

37. Some 41 Palestinians, including two children, were reportedly killed due to the Israeli-Palestinian conflict, a decrease when compared to the first three weeks of 2008.

38. The number of wounded also decreased; approximately 88 Palestinians, including 12 children and 11 women, were injured as result of operations by Israeli security forces in the Gaza Strip and the West Bank.

39. Palestinian human rights organizations documented several cases of Israeli military operations that resulted in the death of civilians. On 7 February, an Israeli ground-to-ground missile landed in the courtyard of an agricultural school in Beit Hanoun in the Gaza Strip. The missile hit the structure when teachers and students were entering the school; one teacher was killed and two students were injured. An Israeli human rights organization called for an investigation into the death on 7 February of a mentally disabled Palestinian man who had been wounded by the Israeli Defence Forces during an arrest operation in the West Bank town of Qabatiya. According to Palestinian health sources, on 17 February, a civilian was killed and several others were injured during clashes between Palestinian militants and undercover troops of the Israeli Defence Forces backed by aircraft and tanks in the southern Gaza Strip. On 18 February, a 10-year old boy was shot and killed during armed clashes between Palestinian militants and the Israeli Defence Forces near Deir el-Balah, inside the Gaza Strip.

40. The Israeli policy of targeted killings of Palestinian militants and security personnel continued. According to Palestinian human rights organizations, a total of 18 Palestinian militants and security personnel were killed while they were not directly taking part in hostilities; of these, 16 were allegedly killed in Gaza and 2 in the West Bank. In different incidents, on 5 February, seven police officers of the de facto Hamas authorities in Gaza were killed and eight others injured when a ground-to-ground missile was fired at their station in Abassan village in the Gaza Strip. On 23 February, three Palestinians were killed in an Israeli army missile strike in the northern Gaza Strip. No militant group immediately claimed them as members. An Israeli army spokesman stated that ground forces had attacked a squad that was on its way to fire mortar shells into Israel. Palestinian Centre for Human Rights, 24 February 2008, press release ref. 12/2008. During the reporting period, at least three Palestinian civilians were allegedly killed as an indirect result of such operations.

41. According to Israeli media sources, the Government of Israel was working towards the establishment of a panel to investigate targeted killing operations that involved the death of civilians. The same sources reported that that decision was in line with the Israeli High Court ruling of December 2006, which called on the Government of Israel to investigate any incident leading to the death of civilians, under the condition that the incidents occurred after the date of the ruling. In spite of this, the Israeli State Prosecutor's Office and the Military Advocate General recently rejected a

request by an Israeli human rights organization to investigate six such incidents in the Gaza Strip in the past two years. See *Haaretz* on 20 January 2008, at www.haaretz.com.

42. With regard to Israeli military operations, it should be noted that, while Israel has a right to defend itself, disproportionate use of force is prohibited under international humanitarian law. Israel, as the occupying Power, bears a special responsibility under international human rights and humanitarian law to protect the civilian population and civilian installations in Gaza.

Other incidents, including intra-Palestinian violence, during the period from 24 January to 24 February 2008

43. The violence in the Israeli-Palestinian conflict added to the already critical situation in both the Gaza Strip and West Bank that had resulted from the closure imposed by Israel and the breakdown of law and order. Several incidents were reported involving unidentified armed groups in Gaza. The state of institutions continued to deteriorate, especially in Gaza, as the population increasingly relied on informal mechanisms of dispute resolution. Local clans and families have formed militias and vigilante squads to protect their affiliates.

44. On 3 February, a 16-year-old Palestinian was killed by a stray bullet while he was travelling with his father in Gaza City. On 15 February, unidentified militants broke into the building of the Young Men's Christian Association in the centre of Gaza City. The militants damaged the administration office and blew up the library. According to different sources, as at mid-February, 23 violent incidents had been recorded during operations by the Palestinian security forces against Hamas affiliates in the West Bank. One incident resulted in the death of one person. On 24 February, Hamas security forces entered the Prisoners Association in Deir El Balah, in the Gaza Strip, confiscating official documents and assets. One Palestinian was killed during clashes with the Egyptian border police at the Rafah crossing.

45. According to a number of witnesses, on 15 February, a powerful blast went off in the home of a senior Jihad military leader in Bureij Camp in the Gaza Strip. The militant was killed along with his wife, three of his sons and three neighbours. According to an official from the Palestinian Ministry of Health, as result of the explosion, at least 40 people were wounded, 12 of them critically, including one of the militant's daughters. The house was totally destroyed and six nearby homes were also badly damaged. The cause of the blast was still undetermined at the time of writing. Two Palestinian human rights organizations have called for an investigation into the incident.

46. On 22 February, a Hamas affiliate died in the custody of the Palestinian intelligence service in Ramallah. Members of his family, citing reports from fellow detainees, alleged that he had been tortured. The Hamas affiliate had been arrested a week earlier. The Palestinian President and the Palestinian Legislative Council announced two separate investigations into the death, which came among repeated complaints by Hamas-affiliated detainees of ill-treatment by the Palestinian Authority security forces. In a statement published in Palestinian newspapers, the Palestinian Authority intelligence service said that the Hamas affiliate had complained of chest and abdominal pains and had been examined by a hospital doctor two days before his death.

C. Situation in the West Bank

47. The section below focuses on the issue of freedom of movement. Restrictions on the movement of Palestinians continued in the West Bank, where measures associated with the Wall, As concerns the issue whether to use the term "wall", "barrier", or "security fence", the present report uses "wall", which is the term used by the International Court of Justice, which in its advisory opinion stated that "the 'wall' in question is a complex construction, so that that term cannot be understood in a limited physical sense. However, the other terms used, either by Israel ("fence") or by the Secretary-General ("barrier"), are no more accurate if understood in the physical sense. In this

opinion, the Court has therefore chosen to use the terminology employed by the General Assembly.” International Court of Justice advisory opinion, para. 67. the Israeli checkpoints established within the West Bank and the extended curfews severely limited freedom of movement. The route of the Wall, the settlements, the closure regime and associated controls severely damaged the social and economic structures of the West Bank, contributed to increased aid reliance, poverty and unemployment and had a serious impact on the enjoyment of civil, political, economic, social and cultural rights of the population both before and during the reporting period.

48. Since 2002, the Government of Israel has been constructing the Wall, which it states is a security measure to protect Israeli civilians from Palestinian militant attacks. It consists of 8-metre-high concrete walls, ditches, trenches, wire fences, patrol roads and barbed wire. The Wall does not follow the 1949 armistice line - “the Green Line” - but significantly veers eastwards into the heart of the West Bank. In January 2008, 57 per cent of the total length of the projected barrier (723 km) was completed. It is estimated that, when the structure is finalized, around 80 per cent of it will be inside West Bank territory. This has created closed areas: 10.1 per cent of West Bank and East Jerusalem land lies between the Wall and the Green Line. Once the Wall is completed, a total of 49,400 West Bank Palestinians living in 38 villages will be included in these areas.

49. Coupled with the difficulty of movement caused by checkpoints and the requirement of permits and identity cards, the construction of the Wall in the West Bank affected thousands of Palestinians both before and during the reporting period. Owing to the Wall, agricultural land, houses, water sources, schools, and health-care clinics that belong to Palestinians had either been confiscated or are now out of reach for their owners.

50. In its advisory opinion, the International Court of Justice concluded that the Wall severely impeded the exercise by the Palestinian people of their right to self-determination, and was therefore a breach of the obligation of Israel to respect that right. International Court of Justice advisory opinion on the Wall of 9 July 2004, paras. 115-122. It also found that the Wall deprived a significant number of Palestinians of the freedom to choose their residence and that it impeded the liberty of movement of the inhabitants of the Occupied Palestinian Territory. *Ibid.*, paras. 123-137, International Covenant on Civil and Political Rights, para. 12. The Wall and its associated regime were also found to impede the exercise by the persons concerned of the rights to work, health, education and an adequate standard of living, as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. Moreover, the International Court of Justice found a violation of articles 49 and 53 of the Fourth Geneva Convention. In sum, according to the Court, the Wall gravely infringed a number of rights of Palestinians residing in the Occupied Palestinian Territory that could not be justified by military exigencies or by the requirements of national security and order. *Ibid.*, paras. 123-137. The Court therefore concluded that Israel was obliged to put an end to the violation of its international obligations and that it should therefore dismantle the parts of the Wall situated within the Occupied Palestinian Territory. It also concluded that Israel had the obligation to make reparation for the damage caused to all natural and legal persons concerned. *Ibid.*, paras. 149-154. No steps towards the fulfilment of these obligations were taken by Israel during the reporting period.

51. During the reporting period, over 560 blockages of various sorts prevented ordinary Palestinians from enjoying their right to freedom of movement within the West Bank. According to a Palestinian human rights organization, on 13 February, the Israeli Defence Forces closed dozens of roads and agricultural roads with large boulders and earth barriers. Checkpoints were erected or re-established on main roads, especially in the northern West Bank and around Nablus. According to the organization, very strict measures were implemented at the checkpoints, including banning people under 35 years of age from the northern West Bank from moving between governorates, and occasionally inside the same governorate.

52. On 14 February, international humanitarian organizations reported that the village of Beit

Ummar in the South Hebron region had been under curfew of the Israeli Defence Forces for several days and that the army had declared it a closed military zone. According to the same organizations, the Israeli Defence Forces distributed leaflets stating that a week-long curfew was to be enforced. Seven streets inside the village were closed off during the curfew, and a store at the entrance of the village, adjacent to a military watchtower, was demolished. On the same day, a 5-day curfew of the northern West Bank town of Azzoun, near Qalqilyah, came to an end. Although town residents were allowed to walk in the streets, roadblocks barring movement to a neighbouring Palestinian village and to a major road remained in place. According to United Nations sources, the Israeli Defence Forces distributed leaflets in Azzoun threatening village residents that, if youngsters did not stop throwing stones at Israeli settler vehicles travelling near the village, they would carry out arrests, close the main entrance to the village, close the shops and open fire on stone throwers. Following further incidents of stone throwing, the Israeli Defence Forces reimposed the curfew for one day on 16 February. On 18 February, the main entrance of the village was closed with earth mounds and wires.

53. In relation to the right to the enjoyment of the highest attainable standard of physical and mental health, according to medical sources, on 14 February, a Palestinian woman who was refused access to an ambulance at an Israeli checkpoint died in her village in the West Bank. Local witnesses said that the husband of the woman pleaded with soldiers at the Jarushiya checkpoint near the town of Tulkarem to let his wife get to an ambulance waiting to take her to a Palestinian hospital but was ignored. A source of the Israeli Defence Forces said that the soldiers at the checkpoint were unaware of the woman's circumstances because her family had not informed the local military coordination office for humanitarian cases of the ambulance's arrival.

54. On 27 January, following her recent visit to Israel and the Occupied Palestinian Territory, the Special Rapporteur on freedom of religion or belief expressed her concern over the fact that Muslims and Christians were impeded from worshipping at some of their most holy sites because of an elaborate system of permits, visas, checkpoints and the Wall, declaring that the intrusive restrictions were disproportionate to their aim and discriminatory and arbitrary in their implementation. Statement by the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Jerusalem, 27 January 2008. The International Court of Justice also noted that Israel must ensure freedom of access to the holy places that came under its control following the 1967 war; see International Court of Justice advisory opinion on the Wall, paras. 149-154. In addition to impeding access to places of worship, the restrictions also prevented a number of Palestinians from gathering during marriages and funerals, which constitute important religious events for both Muslims and Christians.

55. In 2007, the Committee on the Elimination of Racial Discrimination also expressed its deep concern at the Wall, checkpoints, restricted roads and permit systems, which targeted a particular national or ethnic group, and which have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their right to freedom of movement, family life, work, education and health. CERD/C/ISR/CO/13, para. 34.

IV. Recommendations to the Human Rights Council

A. Accountability

56. In view of the grave and worsening human rights situation in the Occupied Palestinian Territory, the protection of both Palestinian and Israeli civilians requires immediate action by all parties and the international community.

57. First, all parties to the conflict should immediately cease all actions violating international human rights and humanitarian law.

58. **Second, Israel, the Palestinian Authority and the de facto Government of the Gaza Strip under the effective control of Hamas should establish accountability mechanisms providing for law-based, independent, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law in accordance with their respective obligations. Such investigations must hold perpetrators to account and provide redress to victims where violations of law are found to have occurred. Existing mechanisms which lack impartiality, accessibility or transparency should be replaced by accountability mechanisms that meet international standards. In order to bring about a change in approach in the use of force, and thus ensure compliance with international law, such an effective system of accountability, the inclusion of personal accountability where negligence, recklessness or intent is established is indispensable. Such investigations should be established urgently and without delay, in particular to address allegations of grave breaches of international humanitarian law and serious violations of international human rights law, such as indiscriminate attacks and incursions, indiscriminate firing of rockets or mortars, suicide bombings, targeted killings and torture.**

59. **Third, the international community should actively promote the implementation of the decisions, resolutions and recommendations of international accountability mechanisms such as the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special rapporteurs.**

B. Closure of Gaza

60. **The 1.4 million people of Gaza live under the most abhorrent conditions. The current human rights crisis in Gaza is man-made, and urgent action by all parties is required to end the closure and the suffering which has resulted from the deprivation of their human rights.**

61. **Israel must cease all action violating international human rights and humanitarian law obligations and in particular the prohibition of collective punishment. The de facto Government in Gaza under the effective control of Hamas should take all measures within its power to minimize the negative effects of the siege on the enjoyment of human rights by Gazans, and ensure that all action which violates the rights of both Palestinian and Israeli civilians ceases, notably the indiscriminate firing of rockets into Israel. The Palestinian Authority should take all measures in its power to alleviate the situation.**

C. Peace process

62. **Throughout negotiations on final status issues, full account should be taken of international legal obligations, as well as General Assembly and Security Council resolutions and the advisory opinion of the International Court of Justice on the Wall. International human rights and humanitarian obligations cannot, as a matter of principle and in practice, be subject to political negotiations. The international community should take action to ensure that all such standards and decisions are met and implemented.**

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