

Advance Edited Version

Distr.
GENERAL

A/HRC/13/54
17 March 2010

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Thirteenth session
Agenda item 7

HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

**The grave violations of human rights in the Occupied Palestinian
Territory, particularly due to the recent Israeli military attacks
against the occupied Gaza Strip**

**Report of the United Nations High Commissioner for Human Rights on
the implementation of Human Rights Council resolutions S-9/1 and S-12/1***

* Late submission.

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I. INTRODUCTION

1. This is the second periodic report submitted pursuant to Human Rights Council resolution S-9/1, in which the Council requested the High Commissioner to monitor, document and report on the violations of human rights of the Palestinian people. The report covers the period from 1 May 2009 to 3 February 2010.

2. The present report also contains information regarding the implementation of the recommendations of the first periodic report of the High Commissioner (A/HRC/12/37) and the situation in East Jerusalem, as requested by the Human Rights Council in resolution S-12/1.

II. FOLLOW-UP TO THE FIRST PERIODIC REPORT

3. During the reporting period the human rights situation in the Occupied Palestinian Territory (OPT) remained of serious concern. Recommendations made previously by the Secretary-General and the High Commissioner remain valid and need to be implemented as a matter of urgency.

4. Peace negotiations and intra-Palestinian reconciliation remained at a standstill. The occupation continued to be the main cause of widespread violations of Palestinians' civil, political, economic, social and cultural rights. While arbitrary detention, torture and other ill-treatment were perpetrated by all parties, Israeli settlements continued to expand in the West Bank, including in East Jerusalem, as did home demolitions and forced evictions of Palestinians by Israeli authorities.¹

5. Demonstrations against the wall continued, especially in the villages of Ni'lin and Bil'in. According to Yesh Din, an Israeli non-governmental organization, over the past six months 31 residents of Bil'in have been arrested by Israeli authorities, including 10 children. It is reported that 12 remain in custody.² Demonstrators are frequently responded to with excessive force by Israeli security forces (ISF).³ This includes the use of rubber-coated steel

¹ A/HRC/12/37, paras. 38, 42-45 and 50-56. A report recently published by the Public Committee against Torture in Israel notes that impunity for torture continues. See "Accountability denied: the absence of investigation and punishment of torture in Israel" (December 2009). Available from www.stoptorture.org.il/files/Accountability_Denied_Eng.pdf.

² Information obtained by the OHCHR-OPT directly from Yesh Din during a 15 December 2009 meeting in Tel Aviv.

³ The term Israeli security forces (ISF) is used in the present report when it is unclear which agency or body (police, security or military) is involved.

bullets and live ammunitions. During the reporting period, the Office of the High Commissioner for Human Rights in the OPT (OHCHR-OPT) recorded the death of one demonstrator due to excessive force by ISF.⁴

6. The fragmentation of the West Bank continued, as did the severing of the West Bank hinterland from East Jerusalem through a system of checkpoints and permits. Severe restrictions on the freedom of movement in the West Bank – as well as in Gaza through the blockade – persisted throughout the reporting period. While there were no further substantial efforts to construct the wall, its associated regime of checkpoints, bypass roads and related permits resulted in violations to a broad range of Palestinians' rights, in particular the rights to education, family, health, non-discrimination and work.⁵

7. An encouraging development, with respect to existing restrictions on the freedom of movement of Palestinians, relates to a recent judgment of the Israeli High Court of Justice regarding Route 443. This is one of the main thoroughfares that connect Jerusalem and Tel Aviv. Private Palestinian land was expropriated for the purpose of constructing Route 443. Yet in 1982 the High Court of Justice ruled that its construction was lawful since it would benefit the Palestinian population.⁶ Subsequently, in 2002, Palestinians were banned from using the road.⁷ On 29 December 2009 the Court ruled that this prohibition was “inconsistent with the rules of international law regarding a belligerent occupation.”⁸ The full implementation of this ruling would constitute a positive development in terms of respect for the right of Palestinians to freedom of movement.

8. The blockade of Gaza has become more severe since the conclusion of Operation Cast Lead. The population of Gaza has not received adequate assistance or support to recover from the impact of this operation. While the rights to health and water are given special attention

⁴ On 5 June 2009, Yousef Akil Srour, a Palestinian, was shot in the chest with 0.22 calibre live ammunition and pronounced dead upon arrival at the hospital. On the same day, four other demonstrators were injured by 0.22 calibre live ammunition. See B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), www.btselem.org/English/Firearms/20090618_Firing_live_ammunition_on_demonstrators.asp.

⁵ See, for example, B'Tselem, *A Wall in Jerusalem: Obstacles to Human Rights in the Holy City* (Jerusalem, 2006), which refers to the effects of the wall. Available from www.btselem.org/download/200607_A_Wall_in_Jerusalem.pdf.

⁶ See *Jami'at Ascan el-Malmun el-Mahdudeh el-Masauliyeh, Communal Society Registered at the Judea and Samaria Area Headquarters v. The Commander of IDF Forces in the Judea and Samaria Area*, HCJ 393/82.

⁷ See, for example, Association for Civil Rights in Israel, “Ban on Palestinian movement on Route 443: background information” (June 2009).

⁸ *Abu Safiya v Minister of Defence*, HCJ 2150/07 (official English synopsis).

below, the full range of human rights of the Gaza population continues to be violated on a regular basis, in particular as a consequence of the blockade.

9. Impunity for human rights violations remains a critical concern in the OPT. There is an urgent need to improve accountability for violations, with a view towards preventing future violations and ensuring justice for victims.

III. THE HUMAN RIGHTS SITUATION IN GAZA

A. Rule of law and accountability

10. Under international human rights law victims have the right to an effective remedy following substantive violations of their rights.⁹ The right to an effective remedy requires that the State carry out investigations promptly, thoroughly and impartially.¹⁰ It also requires that reparation be made to individuals whose rights (under the International Covenant on Civil and Political Rights) have been violated. The rights of victims to an effective remedy require urgent attention, since time is of the essence in meeting such obligations.

Investigations carried out by Israel in connection with Operation Cast Lead

11. Information received by the High Commissioner as well as information that can be found in the public domain¹¹ indicate that approximately 150 incidents have been the subject of investigation by the Israeli armed forces.¹² A total of 36 incidents are or have been the subject of criminal investigations by the Military Police Criminal Investigations Division (MPCID),¹³ the rest have been the subject of command investigations. The report published by the Government of Israel in January 2010 indicates that all investigations begin with the

⁹ Art. 2, para. 3, of the International Covenant on Civil and Political Rights; see also Human Rights Committee general comment No. 31 (2004) (CCPR/C/21/Rev.1/Add.13).

¹⁰ See General Assembly resolution 60/147, annex, para. 3. The text was a statement of existing law (see preamble, p. 3). See also Human Rights Committee, general comment No. 20 (1992), para. 14; and Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions recommended by the Economic and Social Council in its resolution 1989/65 (1989), para. 9.

¹¹ There are five documents: (a) Israeli Defense Forces, "Conclusion of investigations into central claims and issues in Operation Cast Lead" (April 2009); (b) Israel (Ministry of Foreign Affairs), "Initial Response to the Fact-Finding Mission on Gaza pursuant to resolution S-9/1 of the Human Rights Council" (September 2009); (d) letter from the Permanent Mission of Israel to the United Nations Office and Specialized Institutions in Geneva to the High Commissioner for Human Rights (November 2009); and (e) Israel, "Gaza operation investigations: an update" (January 2010).

¹² The reports from the Government suggest that an investigation is taking place in respect of each incident. Therefore 150 investigations correlate to 150 incidents. There may be investigations that cover multiple incidents, but certainty is not possible on the basis of available information.

¹³ Seven of these were referred by the Military Advocate General at the conclusion of command investigations, according to information provided by the Government of Israel.

Military Advocate General (MAG), and may be referred either for a command investigation or a criminal investigation. The latter are carried out by the MPCID, trained in the exercise of criminal investigation, while the former are carried out by military officers with operational, rather than criminal investigation, expertise.

12. A total of 68 command investigations¹⁴ have concluded with the MAG determining that no criminal investigation is warranted. Seven criminal investigations have concluded that no prosecution is warranted. A total of 45 command investigations and 28 criminal investigations are ongoing. One case has resulted in the conviction of a soldier, in relation to the theft of a credit card. Investigations in relation to half of the above-mentioned 150 incidents therefore appear to have been concluded. No information has been provided indicating that any of the decisions not to proceed with investigations have been the subject of a request for judicial review or review by the Attorney General.

13. Effective investigations must be independent, thorough and prompt.¹⁵ All of the command investigations, special and ordinary, appear to rely predominantly if not exclusively on information provided by those potentially implicated in the violations. They do not appear to meet the standards required for practical independence.¹⁶

14. Ordinary command investigations appear to fall short of the required standard of hierarchical independence¹⁷ and carry with them a risk of a conflict of interest that cannot be overcome by the fact that the final decision lies with the MAG. More information is required to ascertain the degree of institutional independence of special command investigations.

15. The Government of Israel points out that the review by the MAG is central to the system, not the command investigation.¹⁸ However, the MAG relies on the information

¹⁴ See Israel, "Gaza operation investigations: an update" (2010), pp. 16-19.

¹⁵ See footnotes 12 and 13 above. See also, on procedural and institutional considerations, concluding observations of the Human Rights Committee: Lithuania (CCPR/CO/80/LTU), para. 10; and Committee against Torture communication No. 56/1996 (CAT/C/20/D/59/1996).

¹⁶ See *Finucane v. the United Kingdom* (2003) 22 EHRR 29, para. 68: "For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Ogur v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92). This means not only a lack of hierarchical or institutional connection but also practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, and the recent Northern Irish cases, for example, *McKerr v. the United Kingdom*, no. 28883/95, § 128, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, and *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, ECHR 2001-III)."

¹⁷ See for example *Finucane v. the United Kingdom* and *McKerr v. the United Kingdom*.

¹⁸ Israel, "Gaza operation investigations", para. 60.

provided by the command investigation.¹⁹ If there is reason to doubt the impartiality or independence of the evidence gathering process, this cannot be overcome by a subsequent reviewer, even if that reviewer can be considered independent.²⁰

16. United Nations treaty bodies consistently reiterate that investigations must be thorough and effective.²¹ There are at least three significant examples which on their own indicate a lack of thoroughness in the command investigations in relation to extremely serious allegations.²² The absence of substantive information on other investigations makes evaluation of their thoroughness difficult at this point.

17. As regards criminal investigations, the Government of Israel indicates that 36 criminal investigations, out of a total of 150 investigations, have been opened. Nineteen concern the alleged shooting towards civilians, while the remainder deal with allegations of the use of human shields, mistreatment of detainees or civilians, pillage or theft.²³

18. The degree to which MPCID and prosecutors to whom it presents its findings can be viewed as institutionally independent from those carrying out military operations cannot be assessed without more detailed information.

19. The High Commissioner is aware of reports and criticisms contending that the investigations of MPCID have consistently failed to lead to adequate prosecutions for offences allegedly committed by ISF, and that they have fostered a culture of impunity. In particular, B'Tselem and Yesh Din have catalogued criticisms related to investigative techniques and charging practices.²⁴

¹⁹ The Government states that command investigations “serve as a means of compiling an evidentiary record for the Military Advocate General, enabling him, from his central vantage point, to determine whether there is a factual basis to open a criminal investigation”. It is not clear how that point allows the MAG to consider the facts other than those presented by the command investigation.

²⁰ See *Finucane v. the United Kingdom*, paras. 68 and 69 and *McKerr v. the United Kingdom*, para. 128. Cited in footnote 19 above.

²¹ See General Assembly resolution 60/417, Human Rights Committee general comments Nos. 6, 7, 20 and 31, and Committee on Economic, Social and Cultural Rights general comment No. 16. See also *Finucane v the United Kingdom*, para. 69.

²² These include the alleged aerial missile attack on the Al-Maqadma Mosque, the incident alleged to have occurred at the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) compound, and the strike against the El-Bader flour mill.

²³ Israel, “Gaza operation investigations”, paras. 134 and 135.

²⁴ See A/HRC/12/48, paras. 1828-1831. See also Yesh Din, “Investigation of criminal offences by IDF soldiers against Palestinians and their property – Figures for 2000-2007”. Available from www.yesh-din.org/site/images/ds1eng.pdf, and B'Tselem, “Military investigations of harm to civilians in Operation Cast Lead are insufficient”. Available from

20. To be effective a remedy must also be provided promptly. While the standard for promptness will vary from case to case, the High Commissioner notes the frequent reference of treaty bodies to the need for prompt investigations, especially in cases of alleged unlawful killings.²⁵ In this regard she is concerned that it appears that the investigation into one of the most serious incidents of Operation Cast Lead – relating to the death of over 20 people in the Al Samouni family home in Zeitoun – was not opened until November 2009.²⁶

21. The High Commissioner notes that neither criminal nor command investigations are adequate to investigate whether policies, rules of engagement or orders that guided ISF during Operation Cast Lead were in violation of international law, or the responsibility of relevant senior officials – military or civilian. An independent inquiry into these matters is required, in addition to the investigation of specific incidents, for an effective right to remedy.

Palestinian initiatives

22. On 25 January 2010, the Palestinian Authority issued a decree²⁷ establishing a commission to follow up on the report of the United Nations Fact-Finding Mission. According to the decree, the commission is independent, is comprised of five members, is authorized to carry out investigations into the violations alleged in the report, will report to relevant authorities with respect to the outcomes of its activities, and is empowered to appoint experts and specialists to assist it to fulfil its duties.

23. The de facto authorities in Gaza state that two committees have been formed to follow up on the implementation of the recommendations in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The de facto authorities in Gaza also state that the committees are comprised of experts in international law and will immediately and independently follow up on the allegations of violations of international humanitarian law

www.btselem.org/English/Gaza_Strip/20091111_IMP_Investigations_of_Cast_Lead_Operation.asp. See also Human Rights Watch, “Promoting Impunity: The Israeli Military’s Failure to Investigate Wrongdoing” (June 2005).

²⁵ See Human Rights Committee communication No. 373/1989 (CCPR/C/55/D/373/1989), para. 9.2; See also communication No. 587/1994 (CCPR/C/59/D/587/1994) and communication No. 599/1994 (CCPR/C/57/D/599/1994), para. 9; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/2004/56), para. 39. See also *Cantoral Benavides v. Peru*, Judgment of 18 August 2000, Inter-American Court of Human Rights, (Ser. C) No.69 (2000); and concluding observations of the Committee against Torture: Egypt (CAT/C/CR/29/4), para. 5(b).

²⁶ Israel, “Gaza operation investigations”, paras. 124 and 125.

²⁷ Palestinian Authority, “Decree No. 0105 of 2010 concerning the formation of an independent commission to follow up the Goldstone Report.”.

contained in the Fact-Finding Mission report, in accordance with Palestinian laws and practices.

24. There is insufficient information available at this time to draw conclusions regarding the compliance of responsible Palestinian authorities with the obligation to provide effective remedies. The High Commissioner notes that, at this point, there is no indication of credible investigations having taken place. In addition, the late launching of these initiatives brings into question the commitment of responsible Palestinian authorities to satisfying the criterion that a remedy be prompt.

B. Implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict

25. The Secretary-General has submitted a report to the Human Rights Council on the status of implementation of paragraph 3 of Council resolution S-12/1 (A/HRC/13/55). The Secretary-General's report provides information on the implementation of the recommendations of the United Nations Fact Finding Mission.

C. General human rights situation in Gaza

26. Sporadic violence within the armed conflict between Israel and Palestinian armed groups continued during the reporting period, with Israel launching airstrikes on Gaza²⁸ and Palestinian armed groups firing rockets and mortar shells into Israel.²⁹ Since the end of Operation Cast Lead, 89 Palestinians and one Israeli have been killed, while 154 Palestinians and seven Israelis have been injured in such incidents.³⁰

27. The blockade of Gaza continues to further deprive the population. Denied basic supplies and services, 1.5 million persons are subjected to a worsening humanitarian crisis that disregards their human dignity. The blockade has had a devastating impact on a broad range of human rights of Gazans – more than half of whom are children – most notably impeding

²⁸ See, for example, "Israel air strike kills Gaza militants," BBC News, 10 January 2010. Available from http://news.bbc.co.uk/2/hi/middle_east/8450891.stm.

²⁹ Ambassador Aharon Leshno Yaar, Letters to the High Commissioner dated 9 November 2009, 26 November 2009, 14 December 2009, 5 January 2010, and 12 January 2010.

³⁰ Office for the Coordination of Humanitarian Affairs (OCHA), Protection of Civilians, weekly report (16–22 December 2009), p. 2. Available from www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2009_12_24_english.pdf.

the fulfilment of core human rights such as the rights to health, water, food, shelter, work and education.

28. Restrictions in place on the importation of construction materials into Gaza have left over 6,000 houses that were destroyed or seriously damaged during Operation Cast Lead unrepaired.³¹ This exacerbates the difficult living conditions of families still living in tents or makeshift shelters near the remains of their homes, in particular during the winter season.³² Moreover, winter will increase electricity needs, resulting in an expected electricity shortage of up to 35 per cent.³³

D. The right to water

29. The water and sanitation situation in Gaza is perilous. The United Nations Humanitarian Coordinator recently stated that “the deterioration and breakdown of water and sanitation facilities in Gaza is compounding an already severe and protracted denial of human dignity in the Gaza Strip. At the heart of this crisis is a steep decline in standards of living for the people of Gaza, characterized by erosion of livelihoods, destruction and degradation of basic infrastructure, and a marked downturn in the delivery and quality of vital services in health, water and sanitation.”³⁴ A September 2009 report by the United Nations Environment Programme (UNEP) warns that Gaza is on the verge of water and sanitation collapse. UNEP points to increased salinity from salt water intrusion caused by over-abstraction of ground water as a key concern, alongside pollution from sewage and agricultural runoff.³⁵ Reinforcing this assessment, Amnesty International reports that the water situation in Gaza has reached a crisis point and highlights that today 90-95 per cent of Gaza’s water is unfit for human consumption due to sewage and seawater infiltration.³⁶

30. The blockade has prevented the entry of materials necessary to repair, rehabilitate and maintain the water and sanitation infrastructure. Materials have been allowed in only on an

³¹ Humanitarian Coordinator for the Occupied Palestinian Territory and the Association of International Development Agencies (AIDA), press release on winter needs in Gaza (11 November 2009). Available from www.ochaopt.org/documents/ocha_opt_humanitarian_coordination_winterization_gaza_joint_statement.pdf.

³² OCHA, *The Humanitarian Monitor*, October 2009, p. 10.

³³ Ma’an News Agency, “Gaza power cuts up to 32 hours per week” 15 December 2009. Available from www.maannews.net/eng/ViewDetails.aspx?ID=246552.

³⁴ United Nations Humanitarian Coordinator and AIDA, press release, 3 September 2009. Available from http://ochaopt.org/documents/hc_aida_statement_gaza_watsan_20090803_english.pdf.

³⁵ UNEP, *Environmental Assessment of the Gaza Strip Following the Escalation of Hostilities in December 2008 – January 2009* (Nairobi, 2009), p. 56. Available from www.unep.org/PDF/dmb/UNEP_Gaza_EA.pdf.

³⁶ Amnesty International, *Troubled Waters – Palestinians Denied Fair Access to Water* (London, 2009).

exceptional basis. For example, construction of the North Gaza Emergency Sewage Treatment Plant has been slowed by the shortage of critical materials. Once completed the plant will treat the sewage of more than 500,000 people and filter the treated wastewater back into the ground aquifer.³⁷

31. The dire water situation is illustrated by the situation of Al Shoka municipality (estimated population of 15,000), which is located at the easternmost part of Rafah. Since residents of Al Shoka do not have access to water through the public water network, they must purchase water from private vendors for all their needs. Thus, the average daily consumption of water in the municipality is less than half the 100 litres per day recommended by the World Health Organization (WHO). One of the local staff of the United Nations Relief and Works Agency for Palestine Refugees in the Near East explained to OHCHR-OPT that he spends as much as 30 per cent of his salary purchasing water for his family. According to the chief municipal engineer, new wells are required. A project of the Coastal Municipalities Water Utility includes plans to dig three wells in Tel El Sultan and build a carrier line from these new wells to the existing networks, which would allow access to water for some 60,000 people, including the Al Shoka residents. Yet the blockade prevents the importation of materials needed to complete this project.

E. The right to health

32. The right to the highest attainable standard of physical and mental health is a fundamental human right.³⁸ This includes the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups. It also encompasses access to minimum essential food that is nutritionally adequate and safe, access to shelter, housing and sanitation and an adequate supply of safe drinking water, the provisions of essential drugs, and equitable distribution of all health facilities, goods and services.

33. The availability and quality of health care in Gaza has deteriorated over recent years because of political turmoil, Operation Cast Lead and the blockade.³⁹ The blockade hinders the effective functioning of the health care system on multiple levels, including by restricting

³⁷ OCHA, *The Humanitarian Monitor*, October 2009, p. 12.

³⁸ Art.12, para. 1, of the International Covenant on Economic, Social and Cultural Rights.

³⁹ As of 31 October 2009, the Gaza Central Drug Stores reported that 78 of the list of 480 essential drug items and 119 of the list of 700 essential disposable items were at zero stock level. Information communicated directly to OHCHR-OPT by WHO, 15 November 2009.

access to basic supplies, such as drugs and consumables, such as syringes, gloves; basic medical equipment, such as x-ray machines; other equipment, such as computers and printers; and supplies to rehabilitate hospitals, such as glass, cement and wood. At present, it is only possible to import a minimum of essential medical supplies and equipment.

34. During the reporting period, there continued to be enormous difficulties for patients from Gaza who required emergency medical care available in the West Bank, East Jerusalem, Israel or abroad. From February 2009 until the end of October 2009, 25 persons died due to being unable to access medical treatment outside Gaza.⁴⁰ Many applications to exit Gaza for medical treatment were delayed or denied by Israeli authorities.⁴¹

35. Patients applying for medical care outside of Gaza are typically summoned for questioning by ISF at the Erez checkpoint, in advance of obtaining an exit permit. This can be a difficult experience. For example, “K.”, a resident of Gaza, was referred by the Ministry of Health to Al-Makassed Hospital in East Jerusalem for back surgery. In July 2009 a permit request was sent to ISF to allow him into Israel. ISF called him for a meeting. During this meeting the security officer questioned him about the circumstances in which his son was killed, by ISF, in 2002, as well as about his other sons. The security officer reportedly stated that his sons were “terrorists” and told him to return to Gaza. In October 2009 a new referral for treatment was issued. With the help of a local non-governmental organization (NGO), K. again requested a permit. The permit was denied on “security grounds” and K.’s health continues to deteriorate. Without surgery K. risks paralysis.

36. According to WHO, from January to November 2009 ISF summoned approximately 590 patients to Erez for such interrogations.⁴² In May 2009 Physicians for Human Rights-Israel (PHR-Israel) presented data to the Committee against Torture regarding new measures employed by ISF during the interrogation of patients at Erez. New measures reportedly include photographing patients against their will; detaining patients for undisclosed periods of time; harassing, accusing, cursing and intimidating patients; and forcing uncooperative

⁴⁰ OCHA, *The Humanitarian Monitor*, October 2009, p. 12.

⁴¹ *Ibid.* In October 2009, the Israeli District Liaison Office for Erez Crossing approved 71.4 per cent of applications to exit Gaza for medical treatment, 25.5 percent were delayed and 2.9 percent were denied. Of those delayed, 83 patients were asked to be questioned by Israeli security forces before approval of their application, of which 51 did not go to the interview, 29 were asked to submit new applications and one was approved after the interview.

⁴² Information communicated directly to OHCHR-OPT by WHO, 1 December 2009.

patients to return to Gaza without receiving a permit to exit.⁴³ PHR-Israel has informed OHCHR-OPT that these practices have increased since November 2009, often resulting in patients missing medical appointments. In two cases, patients summoned for interrogation were immediately detained and transferred to the Shikma prison in Ashkelon, where they remained for approximately 20 days before being released.⁴⁴ While before June 2009 PHR-Israel's mobile clinic was allowed into Gaza on three occasions (out of six requests), after June 2009 all 10 of its requests were refused.⁴⁵

IV. EAST JERUSALEM

37. Palestinians who live or work in East Jerusalem face distinct challenges to the enjoyment of their human rights. Those who live in East Jerusalem are issued different identity documents than residents of the West Bank, with the former being more difficult to obtain and more easily revoked.⁴⁶ East Jerusalemites can lose their right to live in the city if they reside outside Israel or East Jerusalem for seven consecutive years, or if they obtain citizenship or permanent residency in another country. The information available to OHCHR-OPT indicates that this policy has been implemented by the Ministry of Interior of Israel since December 1995.⁴⁷ However, in 2008, the last year for which data is available, Israel revoked the residency permits of 4,577 East Jerusalemites. This is reported to be 21 times the average of each of the previous 40 years.⁴⁸

38. Palestinians with West Bank or Gaza identity papers must apply for a permit to enter East Jerusalem. Even for those who are regularly employed in East Jerusalem, entry permits must be renewed every three or six months. West Bank identity-paper holders who are granted permits to enter Jerusalem are generally subject to a number of conditions, such as a time limit on the hours they can spend in Jerusalem and/or bans on driving or staying

⁴³ PHR-Israel, "New data about GSS (Shabac) unorthodox methods at Erez Crossing", press release, 4 May 2009. Available from www.phr.org.il/default.asp?PageID=190&ItemID=269.

⁴⁴ Information on these two cases gathered from PHR-Israel and Al-Mezan, on file with OHCHR-OPT.

⁴⁵ These 10 consecutive refusals follow the publication by PHR-Israel of two reports on Operation Cast Lead: "Ill Morals," March 2009 and "Report of an independent fact-finding mission of medical experts", April 2009.

⁴⁶ See Civic Coalition to Defend Palestinian rights in Jerusalem at www.ccdprj.ps/en/?page_id=89.

⁴⁷ This policy has its roots in the judgment in the *Mubarak Awad* case of the High Court of Justice delivered in 1988, which decided that the status of Palestinian residents should be regulated in accordance with the Entry in Israel Law, which is immigration legislation. See, for example, Hamoked and B'Tselem, "The quiet deportation", April 1997 and "The quiet deportation continues", September 1998, p. 7 and *Mubarak Awad v Yitzhak Shamir et al.*, HCJ 282/88.

⁴⁸ Nir Hasson, "Israel stripped thousands of Jerusalem Arabs of residency in 2008", Haaretz.com, last update 2 December 2009. Available from www.haaretz.com/hasen/spages/1132170.html. Information confirmed by OHCHR-OPT during meeting with Hamoked.

overnight. Restrictions on travel are often imposed, often during Israeli holidays, thereby preventing even permit holders from entering East Jerusalem. The extremely restrictive permit system impedes the freedom of movement of Palestinians between East Jerusalem, West Bank and Gaza.⁴⁹

39. In addition, persons with East Jerusalem identification whose spouses hold West Bank identification (or are not Palestinian) are required to either surrender their residency and live in the West Bank, or apply for a family unification permit for the non-resident spouse.⁵⁰ The challenges of family unification are illustrated by the following case documented by OHCHR-OPT. “S.”, living in the Silwan area of East Jerusalem and a holder of West Bank papers, married a Palestinian woman with East Jerusalem residency. While he had managed to obtain a permit to stay in East Jerusalem since his marriage, his permit was revoked after his house was demolished in December 2008. Since then Israeli authorities have refused to renew his permit, citing unspecified “security reasons.” In 2009, upon the expiration of his permit, he was arrested and detained for over three weeks. While now released, he remains without a permit and “illegally” in East Jerusalem with his wife, living in fear of being arrested again. Israeli authorities have also refused to issue a “certificate of good conduct” (no criminal record) for his wife, making it difficult for her to find employment.

A. Home demolitions

40. Israel’s obligations under international humanitarian law prohibit it from destroying private or public property, or from forcibly displacing the civilian population, except as required for reasons of military necessity.⁵¹ The Committee on the Elimination of Racial Discrimination has expressed serious concerns regarding house evictions and home demolitions in the OPT, including in East Jerusalem.⁵² Furthermore, such home demolitions amount to forced evictions and are in violation of the right to adequate housing.⁵³

41. Often the justification given by the Israeli authorities for home demolitions, particularly in East Jerusalem, is that Palestinian residents erect structures without building permits. Yet

⁴⁹ Such concerns were also raised by the Human Rights Committee in its concluding observations for Israel (CCPR/C/79/Add.93), para. 22.

⁵⁰ See Jerusalem Centre for Social and Economic Rights, “Residency Rights”, 23 April 2009. Available from www.jcser.org/index.php?option=com_content&view=article&id=12&Itemid=15.

⁵¹ Arts. 49 and 53 of the Fourth Geneva Convention of 1949.

⁵² See CERD/C/ISR/CO/13, para. 35.

⁵³ Art. 11, para 1, International Covenant on Economic, Social and Cultural Rights..

in practice Palestinians lack meaningful access to such permits. Palestinians applying for building permits face an unnecessarily stringent and costly process to demonstrate land ownership.⁵⁴ Furthermore, it is important to note that only 13 per cent of the annexed East Jerusalem land area is currently zoned for Palestinian construction, and much of this land is already dense with construction.

42. While the Municipality of Jerusalem announced that 70 per cent of home demolitions in East Jerusalem would desist,⁵⁵ forced evictions and home demolitions have continued unabated. The Office for the Coordination of Humanitarian Affairs determined that, from 16 May to 18 November 2009, at least 214 persons, including 103 children, were displaced due to home demolitions or forced evictions. The Israeli Committee against Home Demolitions estimates that demolitions from 1 January to 18 November 2009 displaced at least 333 persons, including 157 children. It is estimated that there are more than 1,500 outstanding demolition orders in East Jerusalem alone. If these orders are implemented, as many as 60,000 further Palestinians would be displaced.⁵⁶

43. Some cases documented by OHCHR-OPT indicate that Palestinian families being evicted are often not allowed to remove their belongings. On 26 October 2009 Israeli authorities demolished the home of four Palestinian families in the Al Ghezayel area of Sur Bahir, in the process displacing 15 persons, including 6 children. Persons in the house were separated into three different rooms and were not allowed to contact anyone by telephone. At 7 a.m. ISF arrived and the demolition began, with the families given little time to remove their belongings. OHCHR-OPT observed that items such as kitchenware and furniture were still in the house when it was demolished. Another home was demolished on 27 October 2009, with ISF arriving at 5 a.m. and immediately ordering all residents to exit. The four families residing in the house were forced to wait in the cold until workers arrived at 7 a.m. The workers proceeded to clear the house of its furniture and belongings for approximately 30 minutes, until bulldozers arrived and demolished the house with the remaining belongings still inside. In all cases documented by OHCHR-OPT, victims stated that workers who

⁵⁴ OHCHR-OPT press release of 1 May 2009 issued on the occasion of the publication of the OCHA Special Focus Report: The Planning Crisis in East Jerusalem.

⁵⁵ See, for example, Israeli Committee against Home Demolitions, "Jerusalem municipality plans to freeze 70% of home demolitions in East Jerusalem: a step forward?", 29 June 2009; "After U.S. pressure, Barkat to halt 70% of East Jerusalem demolitions," Haaretz.com, 29 June 2009.

⁵⁶ OCHA, "Overview of the situation in East Jerusalem with regard to forced evictions, house demolitions and displacement: update for donor briefing", 11 November 2009.

cleared their homes hurled furniture out the windows and caused further damage to their belongings.

44. With respect to Israel's continuing policy and practice of carrying out home demolitions in East Jerusalem, it is recalled that on 3 November 2009 the Secretary-General issued a statement in which he declared that he was "dismayed at continued Israeli actions in occupied East Jerusalem, including the demolition of Palestinian homes, the eviction of Palestinian families and the insertion of settlers into Palestinian neighbourhoods".⁵⁷ In a 1 December 2009 statement, the Special Coordinator for the Middle East Peace Process reiterated the call of the Secretary-General for such actions to cease immediately.

B. Freedom of religion

45. During Ramadan Israeli authorities customarily allow Palestinians with West Bank identity papers to enter East Jerusalem to attend Friday prayers at the Al-Aqsa Mosque. However, in 2009 access for holders of West Bank identification was restricted to men over 50 years of age, women over 45, and boys and girls under 12.⁵⁸ On 16 September 2009 OHCHR-OPT sent a communication to the head of the Civil Administration of the West Bank, requesting that he take measures to "ensure that the many Palestinians wishing to access religious sites in East Jerusalem are able to exercise their right to manifest their religion in an orderly and secure manner." No response was received.

46. Restrictions on Palestinians accessing Al-Aqsa Mosque raise concerns under article 18 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of thought, conscience, and religion, including freedom to manifest one's religion, be it individually or in community with others, in public or private.⁵⁹ On 27 September 2009 restrictions of Palestinians accessing Al-Aqsa Mosque led to clashes, which spread from the

⁵⁷ "'Dismayed' by continued settlement activity in occupied East Jerusalem, Secretary-General calls on Israel to cease such 'provocative actions,'" statement of the Secretary-General, 3 November 2009.

⁵⁸ OCHA, *The Humanitarian Monitor*, September 2009, p. 7.

⁵⁹ In para. 8 of its general comment No. 22 (1993) on this article, the Human Rights Committee stated that the article "permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. ... In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."

Old City into other parts of East Jerusalem. By the end of October 2009, 102 Palestinians and 31 Israelis had been injured, mostly due to clashes relating to access to the Al-Aqsa Mosque and anti-wall demonstrations. The situation turned tense on 25 October 2009, when Jewish clerics called on their followers to perform rituals inside the Al-Aqsa compound.⁶⁰

V. SETTLEMENTS AND RELATED VIOLENCE

47. Settlement activity in the OPT, including in East Jerusalem, violates international human rights and international humanitarian law. Article 49 of the Fourth Geneva Convention stipulates that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.⁶¹ As of late November 2009 the number of settlers in the West Bank is approximately 300,000, which includes approximately 200,000 in East Jerusalem.⁶² Settlement activity equally has an impact on the rights to life, property and basic services.

48. A related issue is that of settlements that are unauthorized under Israeli law, commonly known as “outposts”. Unlike settlements that are established and maintained as a matter of policy by the Government of Israel, outposts are established by groups of settlers and are illegal under Israeli law. Irrespective of authorization under Israeli law, all settlements in the OPT, including in East Jerusalem, are illegal under international law.

49. Incidents of settler violence continued throughout the West Bank with impunity. During the reporting period there were an average of 29 settler-related incidents of violence per month, and an average of 13 Palestinians a month injured in such incidents.⁶³

50. The olive harvest has for many years been the flashpoint for tension between settlers and Palestinian farmers living in communities near settlements. For example, the village of Burin is frequently subjected to settler violence and related destruction of property.

⁶⁰ OCHA, The Humanitarian Monitor, October 2009, p. 3.

⁶¹ Art. 55 of the Hague Regulations (annexed to the 1907 Convention respecting the Laws and Customs of War on Land) states that the “occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates”.

⁶² According to Peace Now estimates provided to OHCHR-OPT. OCHA estimates that, as of December 2008, there were approximately 290,000 in the West Bank and 195,000 in East Jerusalem. See OCHA, “West Bank movement and access update”, May 2009, p. 13. In July 2009, an Israeli newspaper cited a military report stating that the settler population had increased to 304,000 in the West Bank. See “More than 300,000 settlers live in the West Bank”, Haaretz.com, 27 July 2009.

⁶³ OCHA, The Humanitarian Monitor, October 2009, p. 4.

Information provided to OHCHR-OPT indicates that over 1,500 olive trees had been burnt or destroyed by settlers from January through October 2009.

51. OHCHR-OPT is also aware of cases where ISF, present on the scene of settler violence, did nothing to prevent attacks. A woman and her family living in the Tel Rumeida area of the old city of Hebron, reported that she and her family are subject to severe movement restrictions by ISF and harassment and violence by settlers. On 11 April 2009 this woman, who is 70 years old and requires regular medical attention, was returning from the hospital and had received special permission from ISF to approach her home using the paved front way in the ambulance, as opposed to the usual restriction against using the front entrance and the prohibition from driving vehicles to their homes. The ambulance was stopped by ISF troops near her home. As ISF examined their identity documents, a group of settlers gathered around the ambulance. The crowd insulted the passengers and hurled large stones through the ambulance's back window, the first of which sent shattering glass throughout the ambulance. Throughout this time, the troops present did nothing to prevent the attacks or disperse the settlers, and eventually turned the ambulance back, where it was again attacked by settlers.

52. In another incident, on 13 July 2009, a 16-year-old boy was stopped by ISF approximately 150 metres from his home. The troops took him to a military camp, where he was handcuffed, blindfolded and placed in a chair in a concrete cubicle. The troops allowed a group of settlers to beat him until he was unconscious. It was only after members of his family, accompanied by a field worker from B'Tselem with a video camera, arrived at the scene that the beating ended. The boy was released and taken to the hospital. His family presented a complaint regarding this incident to the Israeli police on 8 June 2009. They have received no information regarding an investigation.

53. There are few cases where settlers have been prosecuted by Israeli authorities for crimes against Palestinians. In September 2009 the trial of a settler who refused to give the police the names of persons suspected of assaulting and beating Palestinian shepherds in March 2008 commenced.⁶⁴ However, the prevailing situation is one of impunity. With the announcement

⁶⁴ Chaim Levinson, "Settler rabbi faces trial for not naming names to police", Haaretz.com, 16 September 2009. As of the finalization of this report, no information is available regarding the outcome of this trial.

in the end of November of a 10-month settlement freeze in the West Bank,⁶⁵ settler protests and related violent incidents are likely to increase.

VI. VIOLENCE AND DISCRIMINATION AGAINST WOMEN

54. As Palestinians under occupation and as a group subject to a patriarchal value system, women in the OPT face multiple layers of violence and discrimination. Moreover, the current political, economic and humanitarian crisis has contributed to an increase in domestic violence.⁶⁶

55. Palestinian NGOs report that violence against Palestinian women is widespread, and that women are discouraged from reporting abuses. Only 2 per cent of women victims of domestic violence seek legal assistance.⁶⁷ For example, “Y.” explained how difficult it is for her to file a complaint with the Palestinian Authority police against her husband, who beats and verbally abuses her. She stated that filing a complaint the police would disgrace her community, and that she would likely suffer stigmatization. She fears that filing a complaint would also mean that her husband would not allow her to see their children.⁶⁸

56. One challenge in relation to violence against women is the lack of information-gathering by official institutions. In particular, there are no reliable statistics on so-called “honour crimes.” Yet NGOs and other observers report that “honour killings” take place in the OPT and, as a matter of practice, are not investigated. It is believed that such crimes are not investigated due either to a lack of willingness on the part of family and community members to cooperate with law enforcement authorities, or a lack of willingness of law enforcement authorities to rigorously investigate such crimes.⁶⁹

57. Information collected by the Palestinian Independent Commission for Human Rights in Gaza indicates that the majority of “honour killings” in Gaza were committed by immediate relatives in the families’ homes, though the bodies of some victims were discarded away

⁶⁵ This freeze does not include East Jerusalem, ongoing construction, or so-called “natural growth”.

⁶⁶ As communicated to OHCHR-OPT by the United Nations Development Fund for Women (UNIFEM).

⁶⁷ United Nations Inter-Agency Gender Task Force and UNIFEM, *Voicing the Needs of Women and Men in Gaza. Beyond the Aftermath of the 23 day Israeli Military Operations* (2009), p. 61.

⁶⁸ Case documented by OHCHR-OPT on 26 October 2009.

⁶⁹ According to the Palestinian Independent Commission for Human Rights, 10 Palestinian women were killed in the West Bank during 2008, 1 on grounds of “honour” and 7 in similar circumstances. During 2009 one case of a woman killed in relation to “honour” was reported in the West Bank.

from the home. Palestinian Authority police do not seem to have achieved any progress in investigating these crimes.

58. In May 2009 a Palestine Authority inter-ministerial committee drafted a presidential decree to amend existing legislation that discriminates against women. According to the decree, the killing of a spouse (male or female) suspected of or found to have committed adultery would be treated as murder and would be sentenced accordingly. The decree abolishes the exemption from punishment for killings committed in the name of “honour.” This decree, which has already been adopted by the legal working group of the Legislative Council, is currently with the president for signature.

59. An encouraging development is the signature by President Abbas of a decree accepting the applicability of the Convention on the Elimination of All Forms of Discrimination against Women. This decree offers Palestinians a point of reference to advocate for gender equality in all social and economic areas, constitutes a tool in the fight to end violence against women and girls, promises accountability for violations of women’s rights, and provides for the responsibility of the Palestinian Authority to fulfil the principles and measures enshrined in the Convention.⁷⁰

VII. CONCLUSIONS AND RECOMMENDATIONS

60. **The human rights situation between 1 May 2009 and 3 February 2010 remained of serious concern. A wide range of serious human rights violations occurred with disturbing frequency. The most critical violations that took place include a lack of respect for the right to life; arbitrary detention; impediments to the right to freedom of religion; obstacles to the fulfilment of the right to health; restrictions on freedom of movement; torture and other cruel, inhuman, or degrading treatment or punishment; a lack of remedy and redress for abuses and violations; and violence against women and children, in both the public and private spheres.**

61. **The recommendations contained in reports by the Secretary-General and the High Commissioner for Human Rights on the human rights situation in the OPT remain valid and need to be implemented as a matter of the highest urgency.**

⁷⁰ See Joint Statement by OHCHR, UNICEF, UNIFEM, UNRWA in the OPT on Human Rights Day of 9 December 2009.

62. **The blockade of Gaza results in grave and widespread human rights violations, including in relation to the fulfilment of the right to health and the right to adequate safe drinking water. Furthermore, Israel's blockade impedes the reconstruction or repair of thousands of home destroyed or damaged during Operation Cast Lead, resulting in violations to the right to adequate housing.**

63. **Israel still has not fully complied with the International Court of Justice's Advisory Opinion on the wall. The continued expansion and establishment of settlements has further fragmented the West Bank. Notwithstanding a slight reduction in the number of Israeli checkpoints, severe restrictions on the movement of Palestinians within the West Bank and between East Jerusalem and the West Bank, in particular due to permit requirements, negatively affect a wide range of human rights on a daily basis. The extent of the fragmentation of the West Bank and the increasing separation of East Jerusalem from the rest of the West Bank brings into question the ability of Palestinians to effectively exercise their right to self-determination.**

64. **The situation in and around Jerusalem is particularly insecure. A dramatic increase in the revocation of Jerusalem residency permits for Palestinians in East Jerusalem was noted over the past year. Many Palestinian families in East Jerusalem and Area C of the West Bank were forcibly displaced, due to evictions and demolitions carried out by Israeli authorities.**

65. **Impunity for violations of human rights and international humanitarian law remains widespread, and needs to be addressed by all parties as a matter of the highest urgency. Investigations launched by the Government of Israel into alleged violations related to the military operations in Gaza of December 2008-January 2009 remain inadequate to provide effective remedies. While the processes put in place by responsible Palestinian authorities are recent and not much information is available, there is at this point no indication of credible investigations having taken place with regard to allegations of violations by Palestinian armed groups.**

66. **Taking into account the findings of this report, the High Commissioner recommends that the Government of Israel:**

(a) Abide by its obligations under its Basic Law: Human Dignity and Liberty (1992) and under the international instruments to which Israel is a party;

(b) Investigate without further delay, impartially and independently, in conformity with international standards, allegations of human rights violations committed by Israelis in the OPT. Bring those responsible for any violations to justice and provide effective redress to victims of violations;

(c) Immediately lift the blockade of Gaza;

(d) Fulfil its obligations under the Fourth Geneva Convention, as an occupying power, related to maintaining the normal life of the civilian population in Gaza;

(e) Ensure the supply of all essential humanitarian materials to Gaza;

(f) Ensure that all essential medicines, material and equipment necessary for the full functioning of the health care system can be delivered to Gaza;

(g) Immediately allow all necessary reconstruction materials to be delivered to Gaza, in order to reconstruct or repair homes that were destroyed or damaged during Operation Cast Lead;

(h) Immediately allow all material and equipment necessary for the construction and repair of water and sanitation facilities in Gaza, including the quantities of fuel necessary to operate such equipment;

(i) Seek to fulfil the right of Palestinians to freedom of movement, in particular in the West Bank, including by, as an initial measure, dismantling portions of the wall that were built beyond the Green Line, in accordance with the Advisory Opinion of the International Court of Justice;

(j) Ensure that Palestinians can fully realize their right to freely practice their religion, including by removing restrictions on freedom of movement;

(k) Desist from carrying out evictions or demolitions of Palestinian homes;

(l) Issue viable zoning plans and institute a less cumbersome, non-discriminatory process for obtaining building permits for East Jerusalem and Area C;

(m) Dismantle all Israeli settlements in the West Bank and East Jerusalem, in accordance with international law, and stop any and all illegal construction activity, including in East Jerusalem;

(n) Take immediate, effective measures to prevent violence against Palestinians by settlers, and bring those responsible for any such violence to justice.

67. The High Commissioner recommends that the Palestinian Authority:

(a) Fulfil its obligations under the Palestinian Basic Law, international human rights law and international humanitarian law;

(b) Investigate without further delay, impartially and independently, in conformity with international standards, all allegations of human rights violations in the OPT committed by any of its forces or agents, and that it bring those responsible for any such violations to justice and provide effective redress to victims;

(c) Immediately address patterns of violence against women, including violence committed in the private sphere, and put in place legislative mechanisms to appropriately sanction crimes committed in the name of “honour”;

(d) Carry out, in partnership with international organizations present in the OPT (including OHCHR), a campaign to raise awareness and prevent crimes committed in the name of “honour.”
