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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the Secretary-General*

**Follow-up on the implementation of the recommendations contained
in the report of the high-level fact-finding mission to Beit Hanoun
established under Human Rights Council resolution S-3/1**

* Late submission.

I. INTRODUCTION

1. Following the Israeli military operations in Beit Hanoun on 8 November 2006, the Human Rights Council, in its resolution S-3/1, decided to dispatch urgently a high-level fact-finding mission, led by Archbishop Desmond Tutu and joined by Professor Christine Chinkin, duly appointed by the President of the Council. The mission travelled to Beit Hanoun in May 2008 via Egypt, after three previous failed attempts owing to the refusal of the Government of Israel to cooperate with the mission to facilitate its transit through Israel to reach Beit Hanoun.

2. Upon completing its mandate, the mission presented its report to the Council at its ninth session, in September 2008 (A/HRC/9/26). An interim report (A/HRC/5/20) had been submitted to the Council in June 2007. The Council, in its resolution 9/18, welcomed the report and called upon all concerned parties to ensure the full and immediate implementation of the recommendations contained in the report. It also recommended that the General Assembly consider the report with the participation of the members of the mission.¹

3. In resolution 9/18, the Council requested the Secretary-General to report to the Council at its next session on the implementation of the recommendations contained in the report of the mission. The present report is submitted pursuant to that resolution and covers developments since 1 September 2008.

II. RECENT DEVELOPMENTS IN THE OCCUPIED PALESTINIAN TERRITORY

4. At the outset, it should be noted that, on 27 December 2008, Israel launched Operation Cast Lead, a large-scale aerial and naval offensive, in the Gaza Strip. A ground offensive, which began on 3 January 2009, followed the air and naval strikes, when Israeli ground forces entered Beit Hanoun in the early hours of 4 January. According to Israel, the offensive was launched as a response to the firing of rockets into Israel by Palestinian militants. Israel declared a unilateral ceasefire on 18 January, after more than three weeks of attacks. Shortly thereafter, on the same day, Hamas and other Palestinian factions and groups, with the exception of the Popular Front for the Liberation of Palestine, also declared a week-long ceasefire to allow Israeli forces to withdraw. On 20 January, Israel announced the withdrawal of all its troops from the Gaza Strip. It is uncertain whether the ceasefire will hold.

5. The Office for the Coordination of Humanitarian Affairs reported that, according to the Palestinian Ministry of Health, from 27 December 2008 to 18 January 2009, the military operation in the Gaza Strip resulted in 1,440 Palestinians dead and 5,380 wounded, the majority of whom were civilians, women and children. During the same period, 3 Israeli civilians were killed and 182 injured. The Office also reported that 10 Israeli soldiers had been killed (4 in a “friendly fire” incident) and 336 wounded. The Israeli attacks damaged and destroyed civilian infrastructure across the Gaza Strip, including homes, schools, mosques, hospitals, roads, public services and political institutions. United Nations and other humanitarian installations, supplies, vehicles and personnel also suffered multiple strikes by the Israeli forces.

¹ The General Assembly has not yet pronounced itself on this recommendation.

6. The humanitarian and human rights situation was already critical in Gaza prior to the commencement of Operation Cast Lead, owing to the blockade applied by Israel for the previous 19 months to the Gaza Strip, which had brought Gazan society to the brink of collapse, with widespread erosion of livelihoods and the breakdown of infrastructure and essential services.²

III. IMPLEMENTATION OF RECOMMENDATIONS

7. The recommendations of the high-level mission can be grouped into three categories: protection of the human rights of civilians; remedies and redress for victims and survivors; and accountability and the rule of law.

A. Protection of the human rights of civilians

8. The mission recommended that, with regard to the protection of the human rights of civilians, the people of Gaza be afforded protection in compliance with international law, above all the Fourth Geneva Convention; the Israeli military place at the centre of its decision-making and activities the consequences of the use of force on civilians; the firing of rockets on the civilian population in Israel be ceased; and the issue of the ongoing closure of the Gaza Strip be addressed.

9. The above-mentioned recommendations have not been implemented, as evidenced, *inter alia*, by the Israeli military incursion into the Gaza Strip in November, which killed six Palestinians; the subsequent escalation of tensions, with Palestinian militants firing rockets into Southern Israel; and the recent Israeli military offensive in the Gaza Strip on 27 December 2008 during which over 6,700 Palestinians were killed or injured. Indeed, many of the victims of the Beit Hanoun shelling were re-victimized as a result of Operation Cast Lead; for example, a member of the Al-Athamna family, who lost 18 family members in the 2006 Beit Hanoun shelling, moved to Izbet Abed Raboo after his house sustained damages in the Beit Hanoun shelling because of concerns for the safety of his family, only to see the new house he had built for his family in Izbet Abed Raboo destroyed during Operation Cast Lead.

10. As at January 2009, the Israeli blockade of the Gaza Strip has not yet been lifted. Israel continues to restrict the flow of goods and supplies into the Gaza Strip, including humanitarian supplies and fuel. In brief, since Israel imposed the closure of Gaza in June 2007, the Karni crossing, the largest commercial crossing, has been completely closed; all exports and most industrial and non-humanitarian imports have been suspended and the amount of fuel allowed entry has been severely restricted; a ban on the movement of Palestinians through Erez, the sole passenger crossing with Israel and the West Bank, has been introduced (except for emergency medical and humanitarian cases); the Rafah terminal, the only passenger crossing into Egypt, has been almost totally closed; and the sea area accessible to Palestinian fishermen has been further reduced.

² The United Nations High Commissioner for Human Rights will report more extensively on the human rights situation in Gaza prior to, during and subsequent to Operation Cast Lead in her report to the Human Rights Council requested by the Council in its resolution S-9.

B. Remedies and redress for victims and survivors

11. The mission recommended that Israel, with regard to remedies and redress for victims and survivors, remove obstacles to judicial remedies; pay victims adequate compensation to individuals without delay and the Beit Hanoun community reparation in the form of a memorial to the victims; and facilitate access to health services.

12. As at January 2009, obstacles confronting victims and survivors to seek judicial remedies³ had not been removed. Furthermore, no compensation had been paid and reparations had not been made to the victims and survivors of the shelling of Beit Hanoun.

13. The ongoing closure of the Gaza Strip has had a negative impact on peoples' access to health services, including physiotherapy services. The Israeli restrictions on the flow of medical goods and personnel into the Gaza Strip as well as those on the access of victims to health care elsewhere has continued. The status of essential drug stocks is just one indicator of the impact of the closure; the World Health Organization (WHO) classifies 416 drugs as essential by international standards, yet the Gaza Strip continues to suffer from critical shortages of these drugs on account of the closure. The Ministry of Health in Gaza has reported that 105 drugs on the essential drug list were at zero stock level at the central drug store, even before Operation Cast Lead.

14. Another indicator of the impact of the closure is the referral abroad of patients seeking health services otherwise not available in the Gaza Strip. Between 1 October 2007 and 1 December 2008 - even before the recent attacks - WHO confirmed the deaths of 59 patients who were waiting to leave Gaza to reach specialized referral health services outside. In October 2008, three patients died, one of kidney failure at the Erez crossing while waiting to enter Israel. WHO has reported that, since 25 December 2008, the Ministry of Health has requested approval from the Israeli authorities for 21 patients to leave Gaza to seek medical care in Israeli or West Bank hospitals; of those, only 7 were allowed to leave. Erez has been closed for patient referrals since 27 December 2008.

15. Since Operation Cast Lead, the health-care system in Gaza has been overwhelmed by the sheer influx of injured people. The ability of the Gaza health-care system, already depleted and fragile, to cope with the constant arrival of wounded people has been stretched to the limit, and medical personnel have been under severe strain. Moreover, the Office for the Coordination of Humanitarian Affairs has reported that 34 health facilities were damaged, 16 health personnel were killed and 22 wounded while on duty during Operation Cast Lead.

C. Accountability and the rule of law

16. The mission had recommended, with regard to accountability and the rule of law, that an independent, impartial and transparent investigation be conducted into the Beit Hanoun shelling, and that Israeli and Palestinian authorities create a joint monitoring mechanism on the human rights situation of civilians in conflict.

³ A/HRC/9/26, paras. 67-71.

17. As at January 2009, no action had been taken with regard to the above-mentioned recommendations.

18. The mission also recommended that the international community fulfil its role in respect of the suffering of the Gazan population. The ongoing closure of the Gaza Strip and the recent attacks during Operation Cast Lead raise questions of the legal responsibilities of third-party States. Third-party legal obligations arise under the provisions of the Geneva Conventions. As stipulated in common article 1, High Contracting Parties have an obligation to ensure respect for the provisions contained therein. According to article 146 of the Fourth Geneva Convention, High Contracting Parties also have a responsibility to effectively search for and bring before their courts persons committing, or ordering to be committed grave breaches of the Fourth Geneva Convention, such as the wilful killing of civilians, and extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly. Moreover, while States have a primary responsibility to protect all persons under their jurisdiction or control from war crimes, crimes against humanity, genocide and ethnic cleansing, under the doctrine reaffirmed in the 2005 World Summit Outcome,⁴ the international community in its entirety shares the responsibility for protecting civilians, in particular where and when the authorities concerned are unable or unwilling to do so. Finally, as concerns accountability, the international system provides options for accountability at the international level, including through action by the International Criminal Court, the establishment of ad hoc tribunals and the exercise of universal jurisdiction in third-party courts. Thus, the people of Beit Hanoun and Gaza look legitimately to the international community to respond with urgency and with appropriate measures to their desperate and still worsening situation.

IV. CONCLUSIONS

19. **As at January 2009, none of the recommendations made by the high-level mission had been implemented. Indeed, the critical human rights situation in Beit Hanoun described by the mission had significantly worsened since the adoption of Council resolution 9/18 as a result of the 19-month blockade of Gaza by Israel and its large-scale military operation in Gaza from 27 December 2008 to 18 January 2009. The victims of the shelling of Beit Hanoun of 8 November 2006 remain without effective protection, meaningful reparation and any independent, impartial and transparent mechanism that could secure accountability.**

20. **If no action is taken by Israeli authorities or by the international community to demonstrate that human rights are protected by the rule of law, greater numbers in the population are likely to embrace those who resort to militant means of seeking redress. Accountability is not only a legal obligation but also an imperative for peace.**

⁴ General Assembly resolution 60/1.