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### **HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES**

**Religious and cultural rights in the Occupied Palestinian Territory,  
including East Jerusalem**

**Report of the High Commissioner for Human Rights on the implementation  
of Human Rights Council resolution 6/19\***

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\* Late submission. The footnotes to the present report are circulated as received, in the language of submission only.

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## I. INTRODUCTION

1. The present report is submitted pursuant to Human Rights Council resolution 6/19 on religious and cultural rights in the Occupied Palestinian Territory, including East Jerusalem, in which the Council requested the United Nations High Commissioner for Human Rights to report to the Council, at its next session, on the implementation of that resolution.

2. In its resolution 6/19, the Council stressed that all policies and measures taken by Israel, the Occupying Power, to limit access of Palestinians to their holy sites, particularly in Occupied East Jerusalem, on the basis of national origin, religion, birth, sex or any other status were in violation of a number of human rights standards and resolutions and therefore should cease immediately. It also called upon Israel, the Occupying Power, to respect the religious and cultural rights enumerated in the Universal Declaration of Human Rights in the Occupied Palestinian Territory, including East Jerusalem, and to allow Palestinian worshippers unfettered access to their religious sites.

3. In accordance with resolution 6/19, the present report assesses legislative and policy measures taken by Israel that have had an adverse impact on the enjoyment of religious and cultural rights in the Occupied Palestinian Territory. It focuses in particular on those measures that have limited the access of Palestinian residents in the Occupied Palestinian Territory (both Christians and Muslims) to religious sites located in the Territory, including East Jerusalem. The present report is not mandated to deal with the situation of religious and cultural rights in Israel or the issue of access of Palestinians to religious sites located in Israel. Nor does resolution 6/19 cover the issue of access of Israeli citizens to Jewish holy sites located in the Occupied Palestinian Territory. A note setting out the scope of the report was submitted to the Council at its seventh session in March 2008.<sup>1</sup>

4. On 28 February 2008, in view of the preparation of the present report, notes verbales were sent to the Permanent Mission of Israel and the Permanent Observer Mission of Palestine by the Office of the United Nations High Commissioner for Human Rights (OHCHR), seeking comments and observations on the resolution by 4 April. The Permanent Observer Mission of Palestine submitted its reply on 2 April. Reference to the reply is included in the present report. No reply was received from the Permanent Mission of Israel.

## II. LEGAL FRAMEWORK

### A. Context

5. The international legal framework applicable to the exercise of religious and cultural rights in the Occupied Palestinian Territory referred to in resolution 6/19 includes the following international instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

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<sup>1</sup> A/HRC/7/77.

**B. Freedom of religion or belief under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights**

6. The Universal Declaration of Human Rights outlines the main elements of the exercise of freedom of religion or belief. Article 18 provides that everyone has the right “either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”. According to article 18 (1) of the International Covenant on Civil and Political Rights, the freedom to manifest one’s religion includes freedom of “worship, observance, practice and teaching”,<sup>2</sup> which could be exercised “either individually or in community with others and in public or private”.

7. The freedom to manifest one’s religion may be subject to certain limitations, envisaged in paragraph 18 (3) of the International Covenant on Civil and Political Rights. Such limitations must be “prescribed by law” and “necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others”. The Human Rights Committee has emphasized that limitations imposed must not be applied in a manner that would vitiate the rights guaranteed in article 18. According to the Committee, paragraph 3 of article 18 is to be strictly interpreted: 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.<sup>3</sup>

8. Freedom of movement, as set out in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights, is an important precondition for the exercise of many rights and freedoms, including the freedom to manifest one’s religion. According to article 12, paragraph 3, freedom of movement may be subject to certain restrictions; however these must be “consistent with the other rights recognized in the Covenant”.

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<sup>2</sup> See Human Rights Committee, general comment 22, paragraph 4: “The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”

<sup>3</sup> Human Rights Committee, general comment 22, paragraph 8.

### **C. Cultural rights under the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights**

9. Article 27 of the Universal Declaration of Human Rights stipulates that everyone “has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”. Article 15 of the International Covenant on Economic, Social and Cultural Rights includes the rights (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; and (c) to benefit from the protection of the moral and material interests. Furthermore, under paragraph 3 of article 15, States parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity. Under paragraph 4 of the same article, they recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields. Through its reporting guidelines, the Committee on Economic, Social and Cultural Rights has provided further clarification of the content of article 15 of the Covenant.<sup>4</sup>

### **D. Protection of religious freedom under the Fourth Geneva Convention**

10. With regard to the rights of the civilian population during a period of occupation, article 27 of the Fourth Geneva Convention provides that the protected persons are entitled to respect for “their religious convictions and practices, and their manners and customs”. According to the authoritative commentary of the International Committee of the Red Cross (ICRC) to that article, “religious freedom is closely connected with the idea of freedom to practice religion through religious observances, services and rites. Protected persons [...] in the occupied territory must be able to practise their religion freely, without any restrictions other than those necessary for the maintenance of public law and morals”.<sup>5</sup> The ICRC interpretation of the article further states that

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<sup>4</sup> Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights E/C.12/1991/1. In particular, States are requested to provide information on (a) availability of funds for the promotion of cultural development and popular participation in cultural life; (b) the institutional infrastructure established for the implementation of policies to promote popular participation in culture; (c) promotion of cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions; (d) promotion of awareness and enjoyment of the cultural heritage of national ethnic groups and minorities and of indigenous peoples; (e) Role of mass media and communications media in promoting participation in cultural life; (f) Preservation and presentation of mankind’s cultural heritage; (g) legislation protecting the freedom of artistic creation and performance; (h) professional education in the field of culture and art; and (i) other measures taken for the conservation, development and diffusion of culture. States are also required to report on measures taken to realize the right of everyone to enjoy the benefits of scientific progress and its applications, including those aimed at the preservation of mankind’s natural heritage and those taken to promote the diffusion of information on scientific progress. On the issue of international contacts and co-operation in the scientific and cultural fields, States are to report on measures taken for, i.a., participation by scientists, writers, artists and others involved in scientific research or creative activity, in international scientific and cultural conferences, seminars, symposiums, etc.

<sup>5</sup> <http://www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument>.

the measures of constraint should not affect the fundamental rights of the persons concerned.<sup>6</sup> It also underlines that these fundamental rights must be respected, even when measures of control are justified. Furthermore, article 58 of the Fourth Geneva Convention provides that the “Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities”.

**E. Applicability of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Fourth Geneva Convention with regard to actions by Israel in the Occupied Palestinian Territory**

11. With regard to the responsibilities of Israel under its international human rights treaty obligations with regard to the Occupied Palestinian Territory, the International Court of Justice, in its 2004 advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, concluded that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were applicable.<sup>7</sup> The position of United Nations human rights treaty bodies mirrors that of the International Court of Justice, and affirms that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction in those territories.<sup>8</sup> The International Court of Justice also noted that the obligations of Israel under the International Covenant on Economic, Social and Cultural Rights included “an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities”.<sup>9</sup>

12. With regard to the responsibilities of Israel in the Occupied Palestinian Territory as the Occupying Power under the Fourth Geneva Convention Concerning the Protection of Civilian

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<sup>6</sup> Ibid.

<sup>7</sup> ICJ Advisory Opinion paragraphs 102-113 (where ICJ concluded that the protection offered by human rights conventions do not cease in cases of armed conflict and that the ICCPR, the ICESCR and the CRC are applicable in respect of individuals within its jurisdiction, even concerning those individuals under its jurisdiction outside its own territory).

<sup>8</sup> An examination of the Concluding Observations of different UN treaty bodies confirms this view: In its Concluding Observations of 2003, the Human Rights Committee (HRC) reiterated that the ICCPR provisions apply “to the benefit of the population of the Occupied Territories for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant...”. Similarly in its 2003 Concluding Observations, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirmed its view that “the State party’s obligations under the Covenant apply to all territories and populations under its effective control” (E/C.12/1/Add.90) CERD drew a similar conclusion in its Concluding Observations of March 2007 (CERD/C/ISR/CO/13, paragraph 32).

<sup>9</sup> ICJ Advisory Opinion, paragraph 112.

Persons in Time of War, in its advisory opinion, the International Court of Justice concluded that the Fourth Geneva Convention was applicable in the Palestinian territories, which before the conflict in 1967 lay to the east of the Green Line and which, during that conflict, were occupied by Israel.<sup>10</sup>

### **III. PROGRESS IN THE IMPLEMENTATION OF RESOLUTION 6/19**

#### **A. Observance of religious rights by Israel in the Occupied Palestinian Territory**

##### **1. Religious demography**

13. The total number of Palestinians living in the Occupied Palestinian Territory is approximately 3.8 million.<sup>11</sup> Islam is the religion of around 97 per cent of the Palestinian population, while Palestinian Christians in the West Bank, including East Jerusalem, and the Gaza Strip are estimated to range between 1.5 and 3 per cent.<sup>12</sup> The Occupied Palestinian Territory is also home to the small Samaritan religious community.

##### **2. Access of Palestinians to religious sites in the Occupied Palestinian Territory**

###### **Closure regime**

14. The elaborate Israeli regime of closures in the West Bank before and during the reporting period included the designation of roads as reserved primarily for Israeli nationals; settlements, many of which were constructed within areas with a traditionally high Palestinian population; and a system of physical obstacles, such as checkpoints, closed areas, road barriers, earth walls, roadblocks and trenches, etc.<sup>13</sup> These physical obstacles, combined with the Wall, flying

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<sup>10</sup> This fact has not been altered by Israel's 2005 unilateral withdrawal of its forces from the strip, as confirmed repeatedly since then by the United Nations General Assembly (most recently in its resolution 62/107 of 17 December 2007) and the United Nations Secretary General (notably in the Secretary-General's message to the United Nations Seminar on Assistance to the Palestinian People, Amman, Jordan, 19 February 2008; and in the Secretary-General's message to the opening of the 2008 session of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, New York, 14 February 2008).

<sup>11</sup> Palestinian Bureau of Statistic, Preliminary results, 2007 Population, Housing and Establishment Census.

<sup>12</sup> Historically the number of the Palestinian Christian population has been higher however. According to British mandate census in 1931, Christian Palestinians were 9 per cent of the total population.

<sup>13</sup> The relevant reporting period is 28 September 2007 (the day of the adoption of Human Rights Council resolution 6/19) to 4 April 2008. In its reply to the OHCHR request to provide comments and observations on resolution 6/19, the Permanent Observer Mission of Palestine included detailed information regarding the road and settlement constructions around the city of Jerusalem which disrupt "the fabric of life of more than 250,000 Palestinians".

checkpoints and a complex system of permits, formed an integrated, multifaceted system that restricted the movement of around 2.4 million Palestinians in the West Bank. According to the Office for the Coordination of Humanitarian Affairs, approximately 38 per cent of the West Bank territory has been subsumed in Israeli settlements, outposts,<sup>14</sup> “closed areas” west of the Wall, closed military areas, Israeli-declared nature reserves or other Israeli infrastructure. As a result, the West Bank has been fragmented into a series of Palestinian enclaves.

15. The number of closures increased considerably prior to and during the reporting period. The Office for the Coordination of Humanitarian Affairs reported 367 closures in the West Bank in August 2005. In October 2007, there were 561 closures;<sup>15</sup> by 18 March 2008, the closures had increased to 612.<sup>16</sup>

16. Curfews introduced by the Israeli security forces also impeded freedom of movement. The total number of hours under curfew in the West Bank increased during the reporting period. While the total hours under curfew in 2006 and 2007 amounted to 696 and 873, respectively, in the period from January to March 2008, the total number of hours under curfew amounted to 776.<sup>17</sup>

17. The Gaza Strip remained isolated during the reporting period, with the exception of limited humanitarian imports and the movement of a small number of international visitors, patients and Israeli-approved Palestinians.<sup>18</sup>

18. During the period under review, travel in the West Bank was generally time-consuming, unpredictable and at times costly as a result of impediments imposed by the closure regime. These included permit restrictions, the requirement of travel by indirect routes, hours spent waiting at checkpoints and humiliating searches. Travellers were also often required to change their means of transport en route owing to obstacles blocking the road, such as earth mounds. This situation posed a significant challenge to inhabitants of the West Bank who wished to attend religious services in the Occupied Palestinian Territory. The closure regime especially caused difficulties during the religious holidays of Ramadan and Christmas in 2007, when the number of people wishing to pass the checkpoints in order to attend religious services increased manifold. The delays and congestion experienced as a result of the closures were particularly detrimental for Muslims during Ramadan, who were frequently unable to reach their destination in time to

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<sup>14</sup> An outpost is a settlement, which has been set up without proper authorization by the Government of Israel.

<sup>15</sup> OCHA closure update, October 2007.

<sup>16</sup> OCHA Report No. 61 Implementation of the Agreement on Movement and Access (5-18 March 2008) and OCHA Access and Movement Report (19 March-1 April 2008).

<sup>17</sup> OCHA-OPT: Protection of Civilians. Summary Data Tables. Reports to the End of March 2008, p. 15.

<sup>18</sup> OCHA Gaza Strip interagency humanitarian fact sheet, March 2008.

break the fast and observe the special Ramadan prayers in the mosque of their choice. Owing to the long queues, many people were obliged to offer their prayers and break the fast at checkpoints.<sup>19</sup>

19. Meanwhile in Gaza, the closure prevented the inhabitants from worshipping at sacred sites such as al-Haram al-Sharif/Temple Mount, the Ibrahimi mosque/Tomb of the Patriarchs, the Church of the Holy Sepulchre, the Church of Nativity and other holy places in Jerusalem and the West Bank.

## **The Wall**

20. In 2001, the Government of Israel announced its intention to build a barrier to separate Israel from the West Bank. The current planned length of the most recently approved route of the Wall is approximately 723 kilometres. As at March 2008, approximately 57 per cent of the planned route had been constructed.

21. When completed, some 80 per cent of the Wall's length will run inside the West Bank. Approximately 250,000 Palestinians reside in villages and towns that will be totally or partially surrounded by the Wall, and about 9.5 per cent of West Bank land will be isolated by it.<sup>20</sup> For Palestinians living in the closed area between the Wall and the Green Line, the Wall not only restricted their access to places of worship, but also affected their social relations, since family and friends on the "Palestinian side" required visitor permits to enter the closed areas, a fact which entailed significant distress for the population during times of particular religious and social importance, such as the Eid festivals, marriages and funerals.

22. Furthermore, prior to and during the reporting period, the construction of the Wall prevented access to, and endangered the preservation of, religious and cultural sites along its route or close by.<sup>21</sup> The Wall also further separated Jerusalem from the rest of the West Bank. Only West Bank residents with special permits could pass on foot through the four main checkpoints open for Palestinians. Thus, access to holy sites in Jerusalem for both Muslims and Christians residing in the West Bank and Gaza Strip became increasingly problematic.<sup>22</sup>

23. In its advisory opinion, the International Court of Justice concluded that the Wall gravely infringed a number of fundamental rights of Palestinians residing in the Occupied Palestinian Territory that could not be justified by military exigencies or by the requirements of national

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<sup>19</sup> OCHA, East Jerusalem, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, January 2008, p. 38.

<sup>20</sup> OCHA: *Consolidated Appeal 2008, Occupied Palestinian Territory*, p. 15.

<sup>21</sup> See paragraph 55 below and "Monitoring Israeli Colonizing activities in the Palestinian West Bank and Gaza", a joint project between the Applied Research Institute in Jerusalem (ARIJ) and the Land Research Center (LRC), funded by the European Union, 9 June 2005, [http://www.poica.org/editor/case\\_studies/view.php?recordID=604](http://www.poica.org/editor/case_studies/view.php?recordID=604).

<sup>22</sup> OCHA. East Jerusalem. *The Humanitarian Impact ...*, p. 38.

security and order.<sup>23</sup> 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. No steps were taken by Israel towards the fulfilment of these obligations during the reporting period.

### **Permit regime**

24. The permit system imposed in the early 1990s continued to be applied to all Palestinian identity cardholders within the Occupied Palestinian Territory during the reporting period. Palestinian identity cardholders required a permit to enter East Jerusalem and Israel. The procedure for issuing permits was unclear, time-consuming and lacked transparency. For Palestinian residents of the Gaza Strip, permits to enter Israel (and hence to travel to East Jerusalem or the West Bank) were very difficult to obtain, except in rare circumstances. Consequently, the permit system constituted a substantial impediment to access by Palestinian Muslims and Christians to their holy sites.<sup>24</sup>

25. On religious holidays, special permits were issued by the Israeli authorities. However, the number of worshippers declined dramatically before and during the reporting period. During Ramadan in 2005, some 150,000 worshippers were expected to attend the important last Friday of Ramadan prayer, but only 50,000 were permitted to do so. During Ramadan of 2006, attendance at Friday prayers showed a further sharp decrease compared to previous years.<sup>25</sup> During Ramadan in 2007, access was hampered to both the al-Aqsa mosque in Jerusalem and the Ibrahimi mosque in Hebron. No Palestinians were permitted to attend the Friday prayers at the al-Aqsa mosque on the second Friday of Ramadan and access to the three other Friday communal prayers was restricted to Palestinian men over the age of 50 and women over 45. On one occasion during the second week of Ramadan, Israeli border police stationed at the Ibrahimi mosque closed the entrance, trapping several worshippers inside for two hours. At Lailat al-Qader, Israeli settlers threw rubbish at Palestinians who were trying to reach the Ibrahimi mosque to pray. Members of the Israel Defense Forces fired sound bombs inside the mosque grounds, interrupting prayers and creating chaos among the worshippers.<sup>26</sup>

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<sup>23</sup> As concerns access to Christian, Jewish and Islamic Holy Places, the Court said the account also had to be taken of specific guarantees of access made in a number of instruments, dating from the Treaty of Berlin of 13 July 1878 to the 1994 Peace Treaty between Israel and Jordan, article 9, paragraph 1 of which provides that “Each party will provide freedom of access to places of religious and historical significance.” ICJ advisory opinion paragraph 129.

<sup>24</sup> B’Tselem, *Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank* (August 2007), p. 24-27.

<sup>25</sup> OCHA, *East Jerusalem. The Humanitarian Impact*, January 2008, p. 38.

<sup>26</sup> OCHA *Humanitarian Monitor*, September 2007.

26. In general, restrictions on entrance to al-Haram al-Sharif/Temple Mount varied during the reporting period. Sometimes only Palestinians over the age of 45 were permitted; at other times, only Jerusalem identity cardholders over the age of 50 were allowed entrance. At other times, restrictions permitted only residents of the Old City over the age of 50 to enter al-Haram al-Sharif/Temple Mount.

27. Many Christian churches also experienced a significant decline in the number of worshippers attending services, as Palestinian Christians tended to avoid travelling because of the burdensome permit system and long waits experienced at checkpoints. While permits were often granted for special Christian holidays, it was generally difficult to obtain permits to attend regular services. Jerusalem was frequently closed, even to permit holders. In 2007, 37 days of closure were reported.<sup>27</sup> Holders of permits for specific Christian holidays were usually allowed access to Jerusalem, even when access to the city was restricted to holders of work permits.

28. Palestinian Christian clergy and religious staff experienced increasing difficulties in serving their parishes owing to the obstacles connected with travelling between various religious locations, both before and during the reporting period. At times, religious congregations reportedly preferred to appoint a foreign priest to serve their communities, as foreign nationals were generally not subject to the same travel restrictions as Palestinian clergy. However, Christian foreign clergy working in Gaza and the West Bank (including East Jerusalem) encountered difficulties in obtaining or renewing their Israeli visas. In October 2007, the Ministry of the Interior of Israel reportedly declared that it had cancelled all re-entry visas for Christian clergy in the Occupied Palestinian Territory. Those who wished to return to their parishes in the Occupied Palestinian Territory were required to apply for new entry visas in Israeli consulates abroad, which often entailed a lengthy waiting time. Some clergy refused to leave the Occupied Palestinian Territory, fearing that they might not be allowed back; others who did leave were turned back by border officials. It was further reported that there was a usual practice of granting 90-day tourist visas to priests and nuns, thus compelling the clergy to travel to neighbouring countries and re-apply for a new tourist visa at regular intervals, thereby interrupting their work. This created considerable obstacles for the Christian clergy in serving their often scattered communities and in performing their religious duties.<sup>28</sup>

29. Regarding the opportunity to travel abroad for religious or other purposes, West Bank and Gaza Palestinians were generally not allowed to use the Israeli airport in Tel Aviv. In order to perform *Hajj*, they had to obtain a Saudi Hajj visa and travel by land to Amman (for West Bank residents) and to Egypt (for Gaza residents).

### **Identity cards**

30. Four kinds of identity cards are issued by the Israeli authorities to Palestinians over 16 years of age: (a) for West Bank residents; (b) for Gaza residents; (c) for Jerusalem residents; and (d) for Israeli citizens. Palestinian holders of Jerusalem identity cards are

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<sup>27</sup> OCHA, Humanitarian Monitor, January 2008, February 2008.

<sup>28</sup> Ha'aretz, 26 October 2007.

permanent residents of Israel. Holders of West Bank and Gaza resident identity cards require a permit to enter Jerusalem. The permits indicate the length of stay, the duration of the permit and, in many cases, specify the checkpoint through which the bearer is permitted to cross. Since 2000, these permits have become increasingly difficult to obtain. It is further estimated that some 50,000 Palestinians do not hold any identification at all.<sup>29</sup> They are therefore regarded by the Israeli authorities as illegally staying in the Occupied Palestinian Territory and consequently are not authorized to visit holy places in the Territory or abroad.

31. The West Bank and Gaza identity cards indicate whether the cardholder is Muslim or Christian, with no possible alternatives. The identity cards of those who are not believers, for example, indicate that they have the same religion as their parents; in contrast, cards of Jerusalem residents and Israeli citizens do not contain information about religion. Following her visit to Israel and the Occupied Palestinian Territory in January 2008, the Special Rapporteur on freedom of religion or belief stated that, in her opinion, “to indicate the religious affiliation on official identity cards carries a serious risk of abuse, which has to be weighed against the possible reasons for disclosing the holder’s religion”.<sup>30</sup>

### **Consequences of the closure regime for access to religious sites, notably in Hebron and Nablus**

32. The above-mentioned closure regime created a serious impediment to travel for Palestinians, and consequently denied the majority of inhabitants of all religions of the Occupied Palestinian Territory access to many places of worship. The difficulties facing Palestinians in their attempt to have access to religious sites in the Occupied Palestinian Territory were of a particularly severe nature in the cities of Hebron and Nablus during the reporting period.

33. Hebron, the second largest city in the West Bank, is the location of the Ibrahimi mosque/Tomb of the Patriarchs - considered to be the burial place of Abraham/Ibrahim, Isaac, and Jacob and their wives Sarah, Rebecca and Leah - and is of great significance for many Muslims, Jews and Christians.

34. Since 1967, more than 24 Israeli settlements have been established in the Hebron governorate, creating a ring around its urban centre and fragmenting the outlying lands. Between 1979 and 1983, Israeli settlers established four settlements inside the Old City of

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<sup>29</sup> In terms of the reasons for the situation, some have had their IDs revoked by Israeli authorities; others have been refused family reunification applications since 2000, with the exception of a few thousand that have been issued in the last couple of years (OCHA, East Jerusalem, January 2008, p. 23).

<sup>30</sup>

<http://www.unhchr.ch/huricane/hurricane.nsf/view01/7581E47DA4564001C12573DE0038E551?opendocument>.

Hebron itself. Some 600 settlers live there protected by 1,500 soldiers of the Israel Defense Forces, entailing severe restrictions on the freedom of movement of the city's 165,000 Palestinian inhabitants. This situation has had an enormous economic impact on the city centre and has induced many Palestinians to abandon the Old City.<sup>31</sup>

35. During the reporting period, Israeli authorities left only one entrance only for local residents and visitors of at least six main routes that lead to the section of the Ibrahimi mosque/Tomb of the Patriarchs reserved for Muslim prayers. This entrance is a checkpoint for the Israel Defense Forces, equipped with a metal detector. Muslims who wished to attend religious services in the mosque had to approach from the Kasaba area of the Old City. Therefore, even inhabitants who lived close to the mosque in the city were forced to travel a distance between 1 and 15 kilometres in order to pass through this entrance. Driving a Palestinian vehicle into the Old City was prohibited (except for ambulances, fire engines or municipality vehicles which needed prior coordination to have access to it). In addition, there were three checkpoints along the way leading to the entrance of the mosque, in the form of rotating metal bars, metal detectors and physical checks. Thus, attending prayer in the mosque implied, for most Hebron residents, a long trip, a subsequent walk on foot and passage through three to five checkpoints (depending on the route taken), which tended to be a time-consuming and degrading process.

36. Muslim worshippers were prevented from entering the grounds surrounding the Ibrahimi mosque/Tombs of the Patriarchs except for 10 days each year; on all other days, the area was reserved for the settlers. At the time of writing, the Israeli authorities had reserved 60 per cent of the Ibrahimi mosque/Tomb of the Patriarchs for Jewish worshippers and 40 per cent for Muslims. During Jewish holidays, the Israel Defense Forces closed it completely to Muslims. The Israeli authorities also regularly prevented the call to prayer (especially the *Maghreb* and *Isha* prayers) when Jews were praying in their section. Waqf authorities reported that the call to prayer was prevented on an average of 50 to 60 times per month. They also voiced their concern over the fact that the settlers regularly use the yards of the Ibrahimi mosque/Tomb of the Patriarchs for celebrations, such as weddings or Bar Mitzvahs).

37. Nablus, located 65 kilometres from Jerusalem, is the largest Palestinian city in the West Bank. Its population is predominantly Muslim, with Christian and Samaritan minorities. The Old City is replete with major religious sites, including 9 historic mosques, 19 Islamic monuments and a seventeenth-century church.<sup>32</sup> Christian, Jewish and Muslim holy places, such as Jacob's Well and Joseph's Tomb, are also situated there.

38. At the time of writing, Nablus was encircled by 14 Israeli settlements and 26 settlement outposts. The settlements were connected to each other by a series of roads, used primarily by

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<sup>31</sup> OCHA - The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 96, and Ghost town: Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron, May 2007, B'tselem and Association for Civil Rights in Israel (ACRI).

<sup>32</sup> Costs of conflict. Nablus after five years of conflict, OCHA, December 2005, p. 1.

settlers, that stretch around the city and across the Nablus governorate. The roads are in turn linked to 10 checkpoints, including 7 encircling Nablus city. All Palestinians going in and out of Nablus were required to cross these checkpoints. In addition, more than 70 obstacles installed by the Israel Defense Forces blocked the road junctions and physically prevented Palestinian traffic from reaching the roads that were used primarily by the settlers.<sup>33</sup>

39. In April 2007, only 10 per cent of Nablus buses (22 of 220) and 7 per cent of Nablus taxis (150 of 2,250) had permits to use the checkpoints around the city. Only 50 private Palestinian cars were permitted to use the checkpoints.<sup>34</sup> The heavy restrictions on the freedom of movement in the reporting period had a serious impact on the capacity of the Nablus population to have access to places of worship situated within the governorate and in Jerusalem.

### 3. Preservation of religious sites

40. A number of events affecting the preservation of religious sites in the Occupied Palestinian Territory were reported during the period.

41. An excavation project in the area of the Arab neighbourhood of Silwan in occupied East Jerusalem, a few hundred metres away from al-Haram al-Sharif/Temple Mount, raised concern among the Palestinian population and archaeological experts that this major religious site might be damaged.<sup>35</sup> Although Israeli authorities claimed that the excavation would take place at a certain distance from the compound, residents erected a protest tent nearby and filed a lawsuit, expressing fears for the stability of the buildings above and arguing they had not been consulted on a dig which they alleged ran beneath their homes. On 18 March 2008, an Israeli court ordered a halt to the project while it considered the case.<sup>36</sup> At the time of writing, the case was still pending before the court.

42. During the night of 1 January 2008, the historic mosque of al-Hamadiyya in the town of al-Khader near Bethlehem was set alight, allegedly by Israeli settlers.<sup>37</sup> Reportedly, settlers

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<sup>33</sup> OCHA. The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 90.

<sup>34</sup> OCHA. The Humanitarian Impact on Palestinians of Israeli settlements and other infrastructure in the West Bank, July 2007, p. 90.

<sup>35</sup> National Geographic, 12 February 2007, Violence Sparked by Archaeological Projects in Jerusalem <http://news.nationalgeographic.com/news/2007/02/070212-jerusalem.html> and reply of the Permanent Observer Mission of Palestine of 2 April 2008.

<sup>36</sup> International Middle East Media Center, 18 March 2008, <http://www.imemc.org/article/53566>. Ha'aretz, 16 March 2008, <http://www.haaretz.com/hasen/spages/821774.html>.

<sup>37</sup> 17 March 2007, Alternative Information Center (AIC), <http://www.alternativenews.org/news/english/settler-violence-report-for-february-2008-20080317.html>.

had been attempting to seize land around al-Khader for the expansion of their settlements.<sup>38</sup> The remains of the original mosque building are believed to be 700 years old. An Israeli investigation had opened but no charges had been brought against any suspect at the time of writing.<sup>39</sup>

43. The decision of the Israeli authorities to demolish the al-Omari mosque in Umm Tuba, a small village 4 kilometres south-west of Jerusalem, in February 2008, provoked protests. The Grand Mufti of Jerusalem condemned the decision, as did the Islamic Educational, Scientific and Cultural Organization.<sup>40</sup>

44. Furthermore, both before and during the reporting period, the Israeli authorities reportedly raised bureaucratic obstacles to the efforts of the Waqf authorities to carry out even minor repair and maintenance works in al-Haram al-Sharif/Temple Mount related to the normal usage of the premises.

#### **4. Religious, charitable or humanitarian institutions or schools**

45. As noted above, the freedom to manifest one's religion as set out in article 18 (1) of the International Covenant on Civil and Political Rights includes the freedom to establish seminaries or religious schools.<sup>41</sup> In the Occupied Palestinian Territory, several Islamic charitable institutions and schools intended to assist the most needy Palestinian individuals and families. Run as non-profit organizations, they were independent from Government authority and relied on donations or voluntary assistance to carry out their work.

46. In February 2008, the Israel Defense Forces raided a number of buildings and schools run by Hebron Islamic Charity, one of the largest charity bodies in the Occupied Palestinian Territory, and handed over military orders for their closure and confiscation of property. These actions risked depriving thousands of orphans and other children in need of the education and shelter provided by Hebron Islamic Charity.<sup>42</sup> Israeli authorities claimed that

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<sup>38</sup> [http://www.poica.org/editor/case\\_studies/view.php?recordID=1323](http://www.poica.org/editor/case_studies/view.php?recordID=1323).

<sup>39</sup> Al Haq sworn statement, 12 January 2008.

<sup>40</sup> <http://www.maannews.net/en/index.php?opr=ShowDetails&ID=27566> and <http://www.isesco.org.ma/english/news/news.php?id=273>.

<sup>41</sup> Furthermore, according to the United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the right to freedom of thought, conscience, religion or belief shall include the right to establish and maintain appropriate charitable or humanitarian institutions. Moreover, the Human Rights Council in its resolution 6/37 of 14 December 2007 urged all States to “ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected” (paragraph 9 (h)).

<sup>42</sup> Christian Peacemaker Teams, <http://www.cpt.org/node/6968>.

Hebron Islamic Charity was affiliated with Hamas. However, the relevant Israel Defense Forces orders reportedly contained no mention of the charitable institution being involved in any illegal activity.

## **B. Observance of cultural rights by Israel in the Occupied Palestinian Territory**

### **1. Effects of the closure regime on the enjoyment of cultural rights**

47. During the reporting period, the above-mentioned restrictions on freedom of movement limited the possibilities for Palestinians to enjoy the right to participate freely in the cultural life of the community and to enjoy the arts, as provided for in article 15 of the Universal Declaration of Human Rights. The steps to be taken by the States Parties to the International Covenant on Economic, Social and Cultural Rights to fully realizing the right of everyone to take part in cultural life “shall include those necessary for the conservation, the development and the diffusion of science and culture” (article 15 (2) of the Covenant).

48. Without access to cultural and artistic institutions and communication between members of a community, aspects of cultural practice and tradition can be lost or severely impaired. Many cultural and social activities take place away from the local area. For culture to thrive and develop, there must be unhindered communication between, and the involvement of, all groups and individuals in society. The closure regime restricted the access of Palestinians to places of cultural significance and locations where cultural events were held. If Palestinian cultural events were to be organized, they needed to be held separately in the West Bank, Gaza and East Jerusalem.

49. As a consequence, all forms of cultural and educational contacts and exchange, such as theatre, cinema, fine arts and music, were limited inside the Occupied Palestinian Territory. This included cultural exchanges with the countries of the region, as restrictions on the right of Palestinians to leave and re-enter the Occupied Palestinian Territory hampered their participation in cultural events organized in other States. Similarly, owing to visa restrictions for citizens of Arab countries, faculties of fine arts, music and other cultural educational institutions in the Occupied Palestinian Territory were unable to invite visiting scholars, lecturers and art performers from neighbouring countries to benefit from their common cultural heritage and language.

50. The importation of Arabic language books was subject to restrictions. Several copies of each book had to be provided for review by the Israeli authorities in order to obtain import approval. This procedure impeded especially the import of specialized literature used by a limited number of readers. The traditional Ramallah Arab book fair, which had been discontinued since 2000, was held again for the first time in 2005, but owing to the burdensome importing procedure, the organizers indicated that they did not intend to repeat the event in the future.

51. Another implication of the restrictions on freedom of movement for Palestinians in the West Bank and Gaza was the lack of access to their historic and cultural heritage. Palestinians, notably the younger generation, were prevented from visiting renowned places of historical or cultural interest in the Occupied Palestinian Territory, although they were accessible to international visitors.

52. At their regular meeting, in November 2007, the ministers of culture of the League of Arab States declared Jerusalem the Capital of Arab Culture for 2009, a title awarded annually to an Arab capital city. On 25 March 2008, Palestinian organizers planned to hold an event at the Palestinian National Theatre in East Jerusalem to announce the winner of an art contest for designing a logo for the cultural campaign. When they arrived, the doors were locked and the Israeli police were standing outside, reportedly with a warrant from the Ministry of Internal Security banning the event.<sup>43</sup>

## **2. Preservation of cultural heritage**

53. Inside the Occupied Palestinian Territory there are reportedly an estimated 10,000 archaeological sites and features dating from a number of different civilizations.<sup>44</sup> This extraordinary cultural diversity requires careful maintenance so that its unique character is preserved.

54. The Palestinians have, however, been deprived of the right to manage, take proper care of and benefit from this rich historic and cultural heritage. According to UNESCO, territorial fragmentation and restricted mobility has impaired the capacity of the Palestinian Authority to control and monitor the condition of cultural sites across the Occupied Palestinian Territory. Furthermore, the reliance on international donors for heritage conservation has not contributed to the establishment of a stable and sustainable conservation sector, which could be invaluable to the future socio-economic life of Palestinians.<sup>45</sup> In addition, it was reported that, during the period under review, no positive action was taken by Israeli authorities to ensure the preservation of archaeological and historical sites and objects in East Jerusalem and in the areas of the West Bank under Israeli administrative jurisdiction.

55. Since 1967, Israel has undertaken numerous activities that have had a negative impact on religious and historic sites in the Occupied Palestinian Territory, ranging from demolitions and excavations to road construction and the building of new structures.<sup>46</sup> By a military order dated 18 September 2007, Palestinian lands of the al-Khader and Artas villages were appropriated for the ongoing construction of the Wall. According to media reports and as

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<sup>43</sup> International Herald Tribune, March 25, 2008, <http://www.iht.com/articles/ap/2008/03/25/africa/ME-GEN-Israel-Palestinians-Culture-Clash.php>.

<sup>44</sup> Riwaq's Registry of the historic buildings of Palestine, 2006, p. 12.

<sup>45</sup> Giovanni Fontana Antonelli. UNESCO Ramallah office, presentation at the Jericho Conference on Conservation and Enhancement of the Cultural Heritage, 26-27 March 2008.

<sup>46</sup> Buildings of historical, cultural and religious value have been damaged or destroyed in for instance Nablus, Hebron, Bethlehem and East Jerusalem. The destruction and damage caused to the cultural heritage in the Occupied Palestinian Territory was unanimously deplored by the World Heritage Committee in 2002 (26COM 6.1 - Protection of the Cultural Heritage in the Palestinian Territories, adopted by the World Heritage Committee at its 26th session on 24-29 June 2002).

indicated in the map of the military order, the area where the new section will be constructed might also lead to the demolition of Kherbet ‘Alia (‘Alia Hamlet), a site that features the remains of a Roman town, mosaic flooring, water channels and rock-carved tombs, located in Artas village.<sup>47</sup> During the reporting period, Israeli authorities still refused to grant permission to the Hebron Rehabilitation Committee to renovate 44 houses in the Old City of Hebron, reportedly because of their close proximity to Israeli settlements.

56. The unique cultural, architectural and historic sites of the Gaza Strip, which include Roman mosaics, a seventh-century Islamic mosque and a fifth-century Greek Orthodox church, were also at risk of natural decay owing to lack of conservation and preservation efforts and to damage caused during violent clashes. Reportedly, many objects of archaeological value were kept in private houses in an attempt to ensure better protection, however this practice may further increase the risk of damage or permanent loss.

57. On a positive note, a working group of some 50 Israeli and Palestinian archaeologists is reportedly preparing an agreement on Israeli-Palestinian cultural heritage. The agreement would reportedly be based on the assumption of a two-State solution and peaceful interaction. The archaeological professionals on both sides have agreed that the national territories of Israel and Palestine constitute a unified archaeological landscape divided by political borders. Bearing in mind the fact that archaeological resources are not renewable, the members of the working group share the opinion that both sides hold a special responsibility for the preservation of local archaeological heritage, as its significance extends far beyond national borders.<sup>48</sup>

#### IV. CONCLUSIONS

58. During the reporting period, the measures adopted by the Government of Israel to restrict freedom of movement of both people and goods in the Occupied Palestinian Territory severely impeded the population’s access to religious sites, notably in Jerusalem, cultural exchanges and events. The justification for the closure regime repeatedly cited by the Israeli authorities was the need to provide security and protection to all people within its jurisdiction.<sup>49</sup> While the security of the population is undoubtedly an important consideration, the relevant measures should be

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<sup>47</sup> 17 September 2007, Alternative Information Center (AIC), [http://www.poica.org/editor/case\\_studies/view.php?recordID=1164](http://www.poica.org/editor/case_studies/view.php?recordID=1164).

<sup>48</sup> Ha’aretz, 17 April 2008, <http://www.haaretz.com/hasen/spages/973870.html>.

<sup>49</sup> See for instance Israeli Foreign Minister Tzipi Livni’s address to the AHLC Donors’ Conference in London (<http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/FM+Livni+addresses+AHLC+donors+conference+2-May-2008.htm>) and B’Tselem, *Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank* (August 2007) p. 92.

proportionate to that aim and non-discriminatory in their application.<sup>50</sup> A considerable part of the restrictions were introduced to ensure and ease freedom of movement for the inhabitants of Israeli settlements, which have been established in breach of international law,<sup>51</sup> creating intolerable hardship for hundreds of thousands of Palestinians attempting to exercise their right to freedom of movement inside the Occupied Palestinian Territory.

59. International humanitarian law requires that the Occupying Power permit ministers of religion to give spiritual assistance to their religious communities. In this regard, Israel should take the necessary measures to ease existing restrictions on local and foreign clergy and allow unhampered movement and access for spiritual leaders to communicate with members of their faith.

60. The existing rules governing the importation of Arabic literature to the Occupied Palestinian Territory limit the capacity of Palestinians to exercise their right to take part in cultural life by effectively restricting the opportunity to exchange knowledge and experiences and take part in the cultural achievements of other peoples of the region with whom they share language and culture. The Government of Israel should consider revisiting these rules to assess their proportionality.

61. The freedom to establish seminaries or religious schools and religious, charitable or humanitarian institutions should be fully respected and protected. While restrictions on such institutions might be introduced when necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others, any such restrictions must be prescribed by law, applied only for those purposes for which they were prescribed and be directly related and proportionate to the specific need for which they are predicated.

62. As Occupying Power, Israel bears responsibility for the preservation of the cultural and religious heritage in the Occupied Palestinian Territory under international law, and should take positive measures to preserve this heritage and refrain from action which could negatively affect the sites.

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<sup>50</sup> As stated by Ms. Asma Jahangir, the Special Rapporteur on freedom of religion or belief of the United Nations Human Rights Council, on 27 January in Jerusalem at the end of her visit to Israel and the OPT (20-27 January 2008): “A major issue of concern for my mandate is the restricted access to holy places. Muslims and Christians are impeded from worshipping at some of their most holy places in the world due to an elaborate system of permits, visas, checkpoints and the Barrier. While the Israeli Government informed me that these restrictions are necessary for security reasons, I would like to emphasize that any measure taken to combat terrorism must comply with the States’ obligations under international law, including freedom of religion or belief. These intrusive restrictions strike me as disproportionate to their aim as well as discriminatory and arbitrary in their implementation.”

<sup>51</sup> ICJ, paragraph 120, referring to article 49 (6) of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War.