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人权理事会  
第五届会议  
议程项目 2

大会 2006 年 3 月 15 日题为“人权理事会”的  
第 60/251 号决议的执行情况

根据第 S-3/1 号决议设立的  
赴贝特哈农高级别实况调查团的报告<sup>\*</sup>

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<sup>\*</sup> 附件不译，原文照发。

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## 导 言

1. 以色列 2006 年 11 月 8 日前后在被占领巴勒斯坦领土加沙的贝特哈农镇采取军事行动后，理事会 2006 年 11 月 15 日举行第三届特别会议，通过了第 S-3/1 号决议，其中要求成立高级别实况调查团(下称“高级别调查团”)，前往该地区访问。调查团的任务主要是评估受害者情况，满足幸存者的需求，并就如何保护巴勒斯坦平民免受以色列进一步攻击的方式和手段提出建议。

2. 理事会主席任命南非德斯蒙德·图图大主教为高级别实况调查团团长，任命大不列颠及北爱尔兰联合王国的克里斯汀·钦肯教授为成员。根据该决议，秘书长和联合国人权事务高级专员将提供一切必要的行政、基础和后勤协助，使实况调查团能够立即有效地完成任务。

### 一、第一次试图前往贝特哈农

3. 调查团成员于 2006 年 12 月初在日内瓦会面，请求以色列政府给予合作，协助他们完成任务，特别是为调查团(包括秘书处工作人员)进入以色列发放必要签证。在等待答复的过程中，高级别调查团利用一周时间与有关机构举行了磋商，并听取了联合国和在被占巴勒斯坦领土加沙特别是在贝特哈农执行任务的其他组织的情况介绍。这一周举行的会议和情况介绍会见本报告附件一。高级别调查团在以色列和加沙的会晤安排见附件二。

4. 12 月 4 日，星期一，图图大主教会晤了以色列常驻联合国日内瓦办事处代表。会晤中，图图大主教表示高级别调查团希望会见巴勒斯坦和以色列官员以及非政府组织，以便听取所有各方的意见。大主教还指出，调查团最迟需要于 2006 年 12 月 10 日星期天离开日内瓦，使他在 12 月 16 日之前能够返回开普敦处理以前安排的事务。迟于这一日期启程前往以色列，调查团将无法有效地完成任务。与常驻代表会面后，调查团提出了进入以色列的签证申请，抵达以色列的日期是 12 月 10 日。以色列当局对调查团的签证申请没有给予正式答复(迄今也没有收到正式答复)，代表团认定是拒绝发放签证。为此，旅行计划被迫放弃。图图大主教 2006 年 12 月 11 日致信理事会(A/HRC/4/113)，概述了这一动态，并请主席提请理事会成员注意这一动态。

5. 在 2006 年 12 日高级别调查团显然无法获准经由以色列前往贝特哈农后，高级别调查团讨论了如何以最适当办法执行理事会所赋予任务的问题。对此，调查团考虑了包括以下因素在内的许多因素：

- (a) 由于 2006 年 11 月初在加沙特别是在贝特哈农发生的事件，需要调查以色列可能严重侵犯人权的行为。理事会决定派出高级别调查团前往贝特哈农，表明它深为关切以色列国防军杀戮和伤害平民的确实报告。调查团 12 月初在情况介绍会上了解的情况证实了形势的严重性和紧迫性。
- (b) 高级别调查团的授权不仅明确要求它“前往贝农哈农”，而且要求它评估“受害者状况”和“满足幸存者需求”。所有这些规定都需要高级别调查团与贝农哈农和其他地方的受害者、幸存者和目击者见面。
- (c) 高级别调查团认真研究了前往以色列和加沙之外治疗伤员的地点，以便评估受害者和幸存者状况的可能性。调查显示，在贝农哈农事件中受伤的 51 人中，除 6 人外其他人都在被占领土加沙接受治疗。在离开加沙的 6 人中，有 3 人在以色列住院，有 3 人在埃及。显然，有些受害者没有包括在死者和伤者之中，如死者的家属。对这些人来说，离开加沙的可能性微乎其微。公平地说，对加沙的继续军事占领是阻碍访问的最大因素，使贝特哈农事件的受害者无法离开加沙，也使调查团无法进入加沙。因此，为会见受害者，评估他们的状况和满足幸存者的需求，调查团没有别的选择，只能前往被占巴勒斯坦领土加沙。
- (d) 经由埃及和拉法口岸进入加沙和贝特哈农是可能的，这样做也就不需要获得进入以色列的正式签证。高级别代表团认真探讨了这一可能性，并向埃及和以色列常设日内瓦代表以及驻加沙的联合国机构和联合国安全官员提出了这一问题。最后，调查团被迫承认出于各种原因经由拉法口岸进入加沙是不可行的；

- (一) 第一，拉法口岸主要用于巴勒斯坦的货物贸易，不对行人开放。从 2006 年 6 月 1 日至 2006 年 12 月 11 日，该口岸仅开放 23 次；2006 年 11 月，仅开放两天；

- (二) 第二，进出拉法口岸，也需要以色列当局的合作，鉴于以色列常驻代表对调查团的表态，合作几乎是不可能的；
- (三) 第三，当时出于安全考虑，联合国安全部门不允许各联合国特派团经由拉法口岸进入；
- (四) 最后，经由埃及进入加沙可能使高级别调查团会见以色列官员和组织的愿望落空。

6. 以色列常驻代表提出，高级别调查团的成员可以以个人身份而不是以人权理事会组成的调查团成员身份进入以色列。出于各种原因，特别是以下原因，调查团拒绝了这一提议：

- (a) 第一，这一提议实际上否认了高级别调查团的授权和理事会的权威；
- (b) 第二，无法保证能够进入贝特哈农，因为进入加沙仍然需要得到以色列当局的合作；
- (c) 第三，可能拒绝秘书处工作人员进入，而理事会决议要求秘书处向高级别调查团提供必要的援助。

7. 令高级别调查组当时和现在严重关切的是，由于有关政府在发放签证方面的不合作，经人权理事会合法授权成立的调查组却无法前往有关地点处理紧急人权情况。高级别调查团成员以最明确的语言在 2006 年 12 月 11 日日内瓦记者招待会上表示了它的关切。

8. 2007 年 3 月 22 日，钦肯教授在人权理事会第四届会议上发言，报告了高级别调查团执行该决议的进展情况。概述以上情况的发言，见本报告之后的附件(附件三)。

## 二、第二次试图前往贝特哈农

9. 在钦肯教授 2007 年 3 月 22 日在理事会发言后，理事会 2007 年 3 月 27 日未经表决通过了第 4/2 号决议。该决议除其他外，遗憾地注意到占领国以色列阻止高级别实况调查团的访问，要求执行第 S-3/号决议，包括接受紧急实况调查团的访问。

10. 2007 年 5 月 4 日，图图大主教写信给以色列常驻代表，指出高级别实况调查团可以在 2007 年 6 月 10 日至 14 日前往贝特哈农，并告诉他，高级别调查团

需要最迟在 2007 年 5 月 25 日星期五之前知道以色列政府是否可以为经由以色列访问贝特哈农提供便利。大主教还问道以色列国防军总参谋长宣布对贝特哈农事件的调查是否已经结束，如果结束，可否送给高级别调查团一份报告副本。他重申，他仍然希望前往贝特哈农，并访问以色列，会见以色列官员和其他组织。在 2007 年 6 月 1 日的信中，以色列常驻代表向图图大主教作了答复，大意是以色列政府不会向高级别调查团提供必要合作。对请求获得以色列国防军调查报告副本的信迄今没有作复。

11. 赴贝特哈农的计划再次取消。之后，参考以上第 5 和 6 段所述因素，探讨了执行任务的其他选择，但这些因素在以后的六个月中没有大的变化，一个新增重要因素是 2007 年上半年加沙的安全情况严重恶化。

### 三、结论和建议

12. 高级别调查团成员以最强烈的言辞重申他们的担忧，由于某相关政府不予合作，本理事会合法授权的任务已经并且正在受到阻扰，无法解决一起危急的人权状况。以色列政府拒绝合作的理由是声称理事会发出的几项决议对以色列存在歧视。高级别调查团没有资格评判以色列政府的声明，不论是从专业知识还是任务授权角度都无法评判。高级调查团从一开始就以最清楚的言辞表达了自己的愿望，希望能够与以色列政府、非政府组织和以色列国内人士会晤，了解各方的情况和立场。但显然，以色列国防军在 2006 年 11 月 8 日及前后几天开展的活动已导致贝特哈农发生严重侵犯人权的事件。这些事件必须经过一个独立、公正和透明的流程来调查，最好是全国范围的调查。高级别调查团的任务——以受害者和幸存者的需求为重点——正是为了应对这些侵犯人权的事件。

13. 高级别调查团未能实现前往贝特哈农考察的任务。这在很大程度上导致调查团三项实质性任务有两项无力完成，即评估受害者情况以及满足幸存者的需求。尽管如此，在高级别调查团筹备试图开展的任务过程中，各类可靠的相关方为其提供了大量信息，基于这些信息，高级别调查团觉得能够——而且理应——得出一些结论，提供一些建议。鉴于当地局势的复杂性，高级别调查团更应该做到这一点。这些结论和建议是基于高级别调查团有提出此类建议的任务，并且基于调查团成员的

共同愿望，他们希望能够在占领发生后整整 40 年的今天，为这个硝烟弥漫的地区重建和平的努力作出贡献。

14. 现有信息显示，2006 年 11 月，以色列在贝特哈农及其周边地区的军事行动严重侵犯人权。根据人权法和国际人道主义法，平民伤亡将带来法律后果。除了以色列国防军广泛开展的所谓“秋云行动”，2006 年 11 月 8 日凌晨 5 点 35 分，还轰炸了贝特哈农，导致 19 人丧生(其中包括 7 名儿童)，另有 51 人受伤，多处房屋被毁。轰炸毁坏了基础设施，使贝特哈农的局势在以方开展了一周的军事行动后进一步恶化。据联合国称，轰炸发生时，城内大部分地区都已经断电断水，基础设施毁坏严重，基本医疗服务已不复存在，18 处住房彻底被毁，另有 150 处住房被损坏。除了侵犯生命权、适足住房权和适足健康权以外，一些可靠报道还将以色列的行动与侵犯人权的行爲联系起来，尤其是侵犯到行动自由、粮食权和教育权。

15. 高级别调查团充分认识到这样一个事实：贝特哈农的轰炸事件发生在整个地区冲突、侵犯人权和政治僵局的大背景下。高级别调查团意识到这起事件已经发生了一段时间，此后加沙地区发生的事件似乎已成为主导局势。但高级别调查团认为，贝特哈农事件及事后产生的影响反映了一个极端暴力和侵犯公民权、文化权、经济权、政治权和社会权的无休止的恶性循环。因此，高级调查团仍有存在的必要。高级调查团希望借这次机会，像此前其他调查团一样强调指出，实现和平的进程必须在国际法的框架下展开，必须遵守《联合国宪章》、国际人权法和国际人道主义法。

16. 轰炸贝特哈农导致了平民伤亡，因此提出了在武装冲突中保护平民的问题。高级别调查团重申了这样一个立场：必须依照国际法尤其是《1949 年 8 月 12 日关于战时保护平民之日内瓦公约》为加沙地区的人民提供保护。以色列国防军在制定有关巴勒斯坦被占领土的决策和行动时，必须首先考虑到对平民使用武力的后果。这就包括在加沙这类人口密集地区动用炮火。

17. 以色列政府声称，贝特哈农轰炸事件之所以会发生，是因为“以色列军用瞄准设备或雷达的技术故障”，并对平民丧生表示遗憾。高级别调查团建议以色列在理事会第六届会议召开之前，公开表示该国采取了哪些步骤来确保诸如轰炸贝特哈农之类的事件不再发生。

18. 问责和有罪不罚问题是诸如轰炸贝特哈农等类似事件的核心问题。不论贝特哈农的人员伤亡是因为失误、鲁莽和刑事疏忽所导致还是蓄意所为，责任者必须承担相应的责任。

19. 巴方那些向以色列平民地区肆无忌惮地发射卡萨姆火箭的人没有承担相应的责任，而以方在加沙的军事行动导致平民死亡后也没有承担相应的责任，这就导致巴以双方形成了一种有罪不罚的文化。跟世界上其他许多地方一样，这种有罪不罚的文化会进一步引发侵犯人权的行为。高级别调查团呼吁以色列和巴勒斯坦当局确保依法惩治犯罪行为、侵犯人权行为和违反国际人道主义法的行为。调查所有事件必须做到及时、透明和独立，被指控的罪犯必须起诉，被定罪的犯人必须受到惩罚，同时为受害者提供适当的补救渠道，帮助受害者获得适足的补救。首先必须对贝特哈农轰炸事件展开独立、公正、公开的调查，并在遇有人员身亡、丧失生活来源、负伤和财产损失等情况时给予赔偿。同理，还必须建立一个机制，将那些曾向以色列城镇发射火箭弹的行为者绳之以法。

20. 贝特哈农轰炸事件的后果提出了这样一个问题：即受害者负伤应有权获得紧急医疗护理。高级别调查团注意到有关加沙地区医疗状况恶劣的报道。贝特哈农等地遭到袭击给当地已经超负荷运转的医疗体系造成了更大的压力，严重影响了当地人民享受健康权。高级调查团希望引起各界的关注，重视受害者获得长期治疗的权利，其中包括获得心理咨询服务的权利。

21. 高级别调查团曾希望能够评估女性受害者的情况并评估女性幸存者的需求，据调查团成员了解，正因为她们是女性，某些侵犯人权的事件和冲突局势造成的其他后果才会发生在她们身上。高级别调查团建议，负责保障加沙地区人权和负责补救侵权情况的所有人员应特别关注女性受害者和幸存者的状况。

22. 侵犯人权的行为无休止地发生，这种恶性循环似乎无法打破，影响了成千上万巴勒斯坦和以色列平民的日常生活，令处理这一状况高级别调查团深感担忧。为此，高级别调查团建议，应建立一个机制，一方面借鉴以往许多举措的经验，另一方面重点确保人人享有人权，努力建立信心和信任。这样一个机制的大致“轮廓”可以是：

- (a) 独立评估和监测加沙被占领土及周边以色列地区的平民在冲突中享受人权的情况；



- (b) 公开报告监测和评估情况，从而促进问责，并最终做到更好地遵守国际人权法和人道主义法；
- (c) 建立在联合监测和评估的原则基础上。为此，可成立一个由两名高级别人员组成的委员会，其中一人代表巴勒斯坦，另一人代表以色列；
- (d) 建立在监测侵犯人权行为的现有工作基础上(并填补这方面工作的缺口)；
- (e) 确保能够进入被占领土和以色列。

23. 高级别调查团成员希望在本报告结尾谈一谈以色列和巴勒斯坦的总体局势。同为人类，我们本是一家人。在孤立和排斥的状态下，安全就无从谈起。我们个人的安全和自由与我们之间的相互尊重密切相关。我们的经验显示，安全不是枪膛里打出来的。只有我们认可并尊重大家的人权，安全才能实现。

24. 高级别调查团成员要感谢那些为本次任务提供信息和支持的组织及个人。他们还要对高级别调查团秘书处和人权事务高级专员办事处所提供的支持表示深深的感谢。最后，调查团成员要对那些在艰苦条件下与冲突中的平民并肩奋战的人们表示崇高的敬意。

## **ANNEXES**

### **Annex 1**

#### **Meetings of the HLFFM in Geneva, December 2006**

- Permanent Representative of Israel
- Permanent Representative of Egypt
- Permanent Observer of Palestine
- High Commissioner for Human Rights
- President of the Human Rights Council
- World Health Organization
- UNCTAD
- UNWRA
- International Committee of the Red Cross
- OCHA
- Office of the United Nations High Commissioner for Human Rights
- United Nations Department of Safety and Security
- Human Rights Watch

## Annex II

### High-Level Fact-Finding Mission to Beit Hanoun

10-15 December 2006

#### Tentative schedule of appointments and visits

<b>Sunday, 10 December</b>				
	AM	07:55	Departure to Tel Aviv	Geneva
	AM	14:30	Arrival in Tel Aviv	Tel Aviv
	AM	16:30	Arrival in Jerusalem	American Colony Hotel, Jerusalem
	PM	17:30 20:00	Meeting with Irene Khan, Amnesty International SG OHCHR Briefing	American Colony Hotel, Jerusalem
Overnight in Jerusalem, American Colony Hotel				
<b>Monday, 11 December</b>				
	AM	08:00	Travel to Gaza	
	AM	09:30	Arrival at Erez Crossing	Gaza Strip
	AM	10:30	Meeting with Palestinian President Mahmoud Abbas	Gaza City
	AM	11:30	Visit to Beit Hanoun including members of families affected by violence and witnesses to the recent military operations	Beit Hanoun
	PM	16:00	Return to Gaza City	Gaza City
	PM	19:30	Dinner with Palestinian Center for Human Rights, Gaza Community Mental Health Programme, Palestinian Committee for Human Rights, Dameer Association	Hotel, Gaza City
Overnight in Gaza, Al-Daira Hotel				
<b>Tuesday, 12 December</b>				
	AM	09:30	Meeting with PRCS Representative in Gaza	Gaza City
	AM			
	AM	11:30	Visit to hospitalized survivors and medical practitioners in Jabaliya and Beit Lahia	Jabaliya and Beit Lahia
	PM	13:00	Follow-up visits to Beit Hanoun	Beit Hanoun
	PM	16:00	Departure to Jerusalem	Erez
	PM	18:00	Arrival in Jerusalem	American Colony Hotel
Overnight in Jerusalem, American Colony Hotel				

Wednesday, 13 December				
	AM	09:30	Meeting with WHO Representative	WHO
	AM	11:00	Meeting with ICRC: Head of Mission; Protection Coordinator	Jerusalem
	PM	13:30	Lunch with <i>Btselem</i> Research Director	Jerusalem, American Colony
	PM	15:30	Meeting at OCHA and Palestinian NGOs	Jerusalem, Old City
	PM	17:30	Visit to hospitalized survivors and medical practitioners in Jerusalem or Tel Aviv	Jerusalem or Tel Aviv
Overnight in Jerusalem, American Colony Hotel				
Thursday, 14 December				
	AM	09:30	Meeting Mr. Alvaro de Soto UN Special Coordinator for the Middle East Peace Process	UNRWA, Jerusalem
	AM	11:00	Meeting with Mr. Kevin Kennedy, UN Humanitarian Coordinator	UN House, Jerusalem
	PM	13:00	Meeting with Karen Koning AbuZayd, UNRWA Commissioner General	Jerusalem
	PM	15:00	Meeting with HRW representative	Jerusalem
	PM	17:00	Meeting with Amnesty International Representative	Jerusalem
Overnight in Jerusalem, American Colony Hotel				
Friday, 15 December				
	AM	10:00	Departure to Tel Aviv	Jerusalem
	AM	11:30	Meeting with Physicians for Human Rights	Tel Aviv
	PM	12:30	Departure to airport	Tel Aviv
	PM	15:50	Departure to Geneva	Tel Aviv
	PM	21:10	Arrival to Geneva	Geneva

Annex III

**CHECK AGAINST DELIVERY**

Human Rights Council High-Level Fact-Finding Mission  
Established Under Resolution S-3/1

**Statement of  
Professor Christine Chinkin  
member of the High-Level Fact-Finding Mission,  
to the Fourth Session of  
the United Nations Human Rights Council**

**Geneva, 22 March 2007**

*Mr. President*

*Excellencies*

*Ladies and gentlemen*

1. Thank you for the opportunity to update the Council on the efforts of the High-Level Fact-Finding Mission established under Council Resolution S-3/1 to discharge its mandate. This update is provided on behalf of myself as a member of the Mission, and Archbishop Desmond Tutu, the Leader of the Mission. Archbishop Tutu sends his apologies for his inability to be with us today.
2. The High-Level Fact-Finding Mission was established by Resolution S-3/1 adopted on 15 November 2006 with a mandate to travel to the town of Beit Hanoun in the occupied Palestinian territory of Gaza following Israeli military operations carried out there around the 8<sup>th</sup> of November 2006. The Mission was mandated to, inter alia:
  - a. Assess the situation of victims;
  - b. Address the needs of survivors; and
  - c. Make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults.
3. We were asked to report to the Council no later than the middle of December 2006 on progress made towards the fulfilment of its mandate.
4. The Council has before it a letter from Archbishop Tutu to the President of the Council dated 11 December 2006. This letter sets out the events surrounding the appointment of the members of the High-Level Fact-Finding Mission, its work in Geneva prior to 11 December 2006, and the ultimate failure of Israel to provide the Mission with the necessary official visas for it to carry out its mandate.
5. The members of the Mission would like to reiterate here four points made in that letter.
  - a. First, Archbishop Tutu immediately made it clear to Israeli authorities that he wished the mission to visit both Gaza and Israel in order to meet with both Palestinian and Israeli officials and non-governmental organizations to hear the views of all;
  - b. Second, the Archbishop indicated from the outset to all parties that he was obliged to return to Cape Town by the 16<sup>th</sup> of December at the latest, and that travel to Beit Hanoun would thus have to commence on the Sunday the 10<sup>th</sup> of December at the latest. The deadline for receiving visas was thus communicated as being 4 p.m. on Friday the 8<sup>th</sup> December 2006;

- c. Third, the Permanent Representative of Israel made it clear to the Mission on a number of occasions that while the position of his Government was not to cooperate with the Mission, the members of the Mission would not be barred from entering Israel. This position was reiterated in a number of comments to the media by Israeli officials;
  - d. Fourth, the mission did not travel to Beit Hanoun as mandated because Israeli authorities failed to provide the necessary official visas.
6. Let me reiterate that the decision of the Mission to abandon attempts to travel to Beit Hanoun for want of visas was not taken lightly. The Mission was led to believe - by official and media statements - that visas would be granted. Indeed despite visas not being issued by 4 p.m. on Friday the 8<sup>th</sup> of December, the Mission continued to wait for a response until the evening of Saturday the 9<sup>th</sup> of December, when airline and other arrangements - including those for the very full schedule of planned interviews in both Israel and Gaza - were finally cancelled.

*Mr. President, distinguished delegates*

7. It was - and remains - a matter of grave concern to us that a duly-mandated mission of this Council would be prevented from addressing a critical human rights situation due to the non-cooperation of a concerned Government in respect of issuing visas. We expressed this concern in the clearest possible terms during a press conference held in Geneva on Monday the 11<sup>th</sup> of December.
8. Once it became clear that the Mission would not be permitted to travel to Beit Hanoun via Israel on the 10<sup>th</sup> of December as planned, I and Archbishop Tutu considered the most appropriate means of giving effect to our mandate. In doing so, we took into account a number of factors, including the following:
- a. The events of early November 2006 in Gaza, and in Beit Hanoun in particular, required an investigation into possible serious human rights violations by Israel. This Council's decision to dispatch the Mission to Beit Hanoun reflected its deep concern at the corroborated reports of the killing and injuring of civilians by Israeli armed forces. The information presented to the Mission during its briefings in Geneva confirmed the gravity and urgency of the situation;
  - b. The mandate of the Mission not only explicitly required that it "travel to Beit Hanoun" but that it "assess the situation of victims" and "address the needs of survivors". Each of these elements required that the Mission have access to victims, survivors and witnesses in Beit Hanoun and elsewhere;
  - c. The Mission carefully investigated the possibility of assessing the situation of victims and survivors by visiting places outside Israel and Gaza where those individuals may have been removed for medical treatment. Our investigations revealed that of 51 individuals injured in the incident at Beit Hanoun, all except 6 were treated in the occupied territory of Gaza. Of those six who were removed for treatment, three were

hospitalized in Israel and three in Egypt. Of course some of the victims of the attack were not among the dead or injured, for example, family members of those killed. For these individuals, the possibility of them leaving Gaza was extremely limited. It is fair to say, at this point, that the continued military occupation of Gaza itself was the greatest factor frustrating the Mission, preventing as it did victims of the Beit Hanoun incident from leaving the territory, and preventing the Mission from entering Gaza. Thus, to meet with and assess the situation of victims and to address the needs of survivors, the Mission had no choice but to travel to the occupied Palestinian territory of Gaza;

- d. Access to Gaza and to Beit Hanoun might have been possible via Egypt and the Rafah Crossing, thus obviating the need for official visas to enter Israel. The Mission investigated this possibility closely, and raised the issue with the Permanent Representatives of Egypt and Israel in Geneva, with United Nations actors in Gaza and with United Nations security officials. Ultimately the Mission reluctantly accepted that entry via the Rafah Crossing was not feasible for a number of reasons:
  - i. First, the Rafah Crossing was only open to Palestinian trade and not pedestrians. Further, from the 1<sup>st</sup> of June 2006 until the 11<sup>th</sup> of December 2006, the Crossing had only opened 23 times, and in the month of November 2006 had only opened on 2 days;
  - ii. Second, crossing at Rafah required the cooperation of Israeli authorities, which may not have been forthcoming in light of the statements to the Mission by the Permanent Representative of Israel mentioned earlier;
  - iii. Third, at the time, the United Nations Department of Safety and Security did not authorize United Nations missions to make the crossing at Rafah for security reasons;
  - iv. Finally, entering Gaza via Egypt would frustrate the Mission's desire to meet with Israeli officials and organizations.
- e. The Permanent Representative of Israel proposed that myself and Archbishop Tutu enter Israel in our personal capacities rather than as members of a Mission constituted by the Human Rights Council. This proposal was immediately rejected for a number of reasons, principal among them being the following:
  - i. First, it would have effectively denied the mandate of the Mission and the authority of this Council;
  - ii. Second, it would not have guaranteed access to Beit Hanoun, as the cooperation of Israeli authorities would still be required to enter Gaza; and
  - iii. Third, it would have denied access to Secretariat staff, whose crucial assistance to the Mission was mandated by the Council in its resolution.



9. Let me say here that the Mission was aware that another fact-finding mission in relation to the incidents at Beit Hanoun had been established by the General Assembly on the 17<sup>th</sup> of November 2006. Informal consultations were held at the Secretariat level to ensure that the two Missions' visits to Beit Hanoun did not occur on the same days. We understand that the General Assembly Mission was also not provided with the necessary cooperation of Israel, and consequently did not travel to Beit Hanoun nor has it produced a report.

*Mr. President*

10. In light of these factors, the Mission concluded that the failure by Israel to issue the necessary official visas frustrated the very core of our mandate. Without travelling to Beit Hanoun and meeting the victims and survivors, the Mission would not be in a position to independently assess their situation nor to formulate recommendations for protection in the future. The option of interviewing victims in third countries was not feasible for - as I have noted earlier - only six of the victims were hospitalized outside Gaza and only three of those outside Israel.
11. Although a significant amount of information on the Beit Hanoun situation was provided to the Mission in Geneva, the Archbishop and I concluded that a substantive report relying on second-hand information and insights was not envisaged in the clear wording of Resolution S-3/1, which explicitly asked the mission to travel to Beit Hanoun, meet with victims and survivors, undertake assessments and make recommendations on the basis of these.
12. That said, the information provided suggests that the Israeli military operations in and around Beit Hanoun in November 2006 resulted in grave human rights violations. The documented loss of life and injuries to civilians have consequences not only under human rights law but also under international humanitarian law. Apart from the broader so-called "Autumn Rains" operation of the Israeli Defence Force, the shelling of Beit Hanoun around 5.35 a.m. on the 8<sup>th</sup> of November 2006 resulted in the deaths of 19 people (including 7 children) and injury to 51. Sixteen of those killed were members of the same family. Beyond possible violations of the right to life, numerous credible reports link Israeli action to violations of human rights relating to health, food, housing and education. The damage to physical infrastructure from the shelling of Beit Hanoun compounded the worsening situation in the town after a week of Israeli military operations. According to United Nations sources, at the time of the shelling most areas of the town were without electricity and water and there had been extensive infrastructure damage, primary health-care services had ceased to exist, and 18 homes had been demolished, with a further 150 damaged.

*Mr. President*

*Distinguished delegates*

13. The seriousness of the allegations relating to Israeli military activity in and around Beit Hanoun last November should not be understated. In order to ascertain what happened and to assess the situation of those affected, the international community - through the Human Rights Council - decided to send an independent fact-finding mission to the town. To date this has not been possible. Despite the passing of time and the consequent possible loss of evidence, the members of the Mission feel strongly that the need remains for an investigation as requested by the Council with a view to formulating recommendations for the protection of the human rights of individuals in the area.
14. On behalf of Archbishop Tutu, I would like to express our appreciation to those individuals and organizations who provided us with briefings on the situation in Beit Hanoun, as well as those who had agreed to assist and meet with us in Gaza and in Israel.

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