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Report of the United Nations High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints

* Late submission.

1. In its decision 2/102, the Human Rights Council requested the Secretary-General and the United Nations High Commissioner for Human Rights to "continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies". In its resolution 2005/7, the Commission on Human Rights requested the High Commissioner to report on "the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals".
2. The present report to the Council addresses the developments that have occurred since the last report on this issue was submitted to the Council at its tenth session (A/HRC/10/35).
3. On 12 November 2009, the Office of the High Commissioner for Human Rights (OHCHR) addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which it indicated that it would appreciate receiving comments or observations on the basis of Commission resolution 2005/7 and the most recent report submitted by the High Commissioner on the issue of Palestinian pregnant women giving birth at Israeli checkpoints.
4. At the time of finalization of this report, no reply had been received from either Mission.
5. In order to gather information on the issue, OHCHR also wrote on 12 November 2009 to the following United Nations entities and specialized agencies represented in the occupied Palestinian territory: the Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO).
6. Replies were received on 20 November 2009 from UNICEF, on 23 November 2009 from UNIFEM and on 24 November 2009 from UNFPA.
7. The United Nations does not maintain a specific monitoring and reporting mechanism on the issue of Palestinian women giving birth at Israeli checkpoints. The most recent known case was that of a 25-year-old woman from Al A'sawiya (Jerusalem) in January 2009, reported on by OHCHR in its last report on this issue.¹
8. According to information provided by UNFPA, it was the assessment of the Palestinian Ministry of Health (MOH) that the absence of births at checkpoints since January 2009 was due to recent measures taken by the Palestinian Authority, including the opening of three new maternity clinics at Qalqiliya, Salfit and Yatha, as well as the training of midwives to assist births in hard-to-reach places in cases of emergency. The MOH also stated that it did not collect information regarding delays suffered at checkpoints by ambulances (or private vehicles) transporting women in labour.
9. The Permanent Mission of Israel has indicated that the absence of births at checkpoints was due to measures that the Israeli authorities have taken to resolve the issue of women giving birth at checkpoints. OHCHR has no independent confirmation of what measures were put in place.
10. In its response provided to OHCHR, UNIFEM expressed deep concern regarding women living in villages where difficulties in accessing medical facilities are more acute due to both the higher number of checkpoints separating villages from hospitals and the lack of hospitals in nearby rural areas. Even if a village is only a few kilometres from town, the journey can take hours due to the large number of checkpoints, the lack of public transportation and the inadequate

conditions of the roads, which make such a journey impossible should labour occur at night.

11. The village of Azzun 'Atma, which was highlighted in a report issued in 2009 by OCHA, illustrates the problem. It is a community of 2,000 residents located between the Wall and the Green Line in the Qalqiliya governorate and thus located in the so-called "seam area". The only method of access to the rest of the West Bank is through a checkpoint controlled by the Israeli Defense Forces (IDF), which closes daily from 10 p.m. to 6 a.m. The opening hours are clearly inadequate for expectant mothers in labour. OCHA notes that, "On average, 50 babies are born in Azzun 'Atma annually. There is no hospital or 24-hour medical service available, only a basic primary health-care clinic which operates for 2 hours a day, twice a week. To ensure access to proper medical care, most women leave the village a month before delivery and relocate to relatives' homes outside the community, often returning during the day to look after their families. Between January and early June 2009, 33 babies were born: 20 were delivered outside Azzun 'Atma. The remaining 13 babies were delivered at home, none attended by a trained midwife or a doctor."²

12. UNIFEM cites information received from MOH stating that the amount of time Palestinians spend waiting at border crossings has increased dramatically since the beginning of the second intifada, and that in many cases women are forced, when the delivery approaches, whenever possible and with the support of the extended family, to move to the town closest to the hospital.

13. The Wall and its associated regime significantly restrict the freedom of movement of Palestinians within the West Bank as well as between East Jerusalem and the West Bank. More detailed information on the restrictions on freedom of movement of Palestinians in the West Bank and East Jerusalem is presented in the report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem.³ That report includes information about travel on hundreds of kilometres of roads in the West Bank which continues to be prohibited or sharply curtailed for Palestinians (with no prohibition for vehicles with Israeli license plates). According to information compiled by OCHA, while some "movement obstacles" (primarily earth mounds) were removed in the West Bank during September 2009, at the beginning of November 2009, there were a total of 579 closure obstacles in the West Bank, including 69 permanently staffed checkpoints, 21 "partial checkpoints" (staffed on an ad hoc basis), and 488 unstaffed obstacles (not including 8 Green Line checkpoints).⁴

14. As reported by OCHA, "... the area between the Barrier and the Green Line was declared closed by military order in October 2003. Approximately 10,000 Palestinians in 15 communities, and a number of isolated families, reside in the closed area. Those aged 16 and above require permanent resident permits from the Israeli authorities to continue to live in the closed area. Israeli citizens and the settlers living in the area, tourists, or persons of Jewish origin are exempt from this regulation ... few health and education services are available between the Barrier and the Green Line ... Children, patients and workers have to pass through the Barrier checkpoints to reach schools, medical facilities and workplaces and to maintain family and social relations."⁵ Because of the long delays and closure at night in Barta'a enclave, Nazlat Issa, Sheika, Khirbet Jubara, Arab al Ramadin al Shamali, Alfie Menashe Enclave, Azzun 'Atma, N'aman and Beit Yatir, pregnant women often leave these closed areas before delivery.⁶

15. In a press release on 15 January 2009, UNFPA stated that, during the Israeli operation "Cast Lead" in the Gaza Strip, continuing violence and displacement presented serious risks to more than 40,000 pregnant women in Gaza. UNFPA stated that a "lack of access to critical health services, including emergency obstetric care, could mean the difference between life and death for many women and their babies. In normal circumstances, hundreds of pregnant women require care by qualified health-care providers every day in Gaza and 30 women on average undergo a Caesarean section — a procedure not readily available because of the conflict. Stress, trauma and poor nutrition could also result in life-threatening complications for the estimated 41,000 women who are likely to be pregnant at any time in Gaza."

16. Particularly relevant to the issue of pregnant women at checkpoints are the obligations set out in the Fourth Geneva Convention calling for Parties to guarantee special protection to pregnant women and mothers of small children, who, according to article 38 (5), "shall benefit by any preferential treatment to the same extent as the nationals of the State concerned" and, according to article 16, "... expectant mothers, shall be the object of particular protection and respect". The Convention on the Elimination of All Forms of Discrimination against Women, in article 12, paragraph 2, also calls on States parties to ensure access for women to appropriate services in connection with pregnancy.

17. In its concluding observations regarding the fourth periodic report of Israel on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture stated that it was "seriously concerned at the many allegations provided to the Committee from non-governmental sources on degrading treatment at checkpoints, undue delays and denial of entry, including for persons with urgent health needs. The State party should ensure that such controls are conducted in accordance with the Convention."⁷

Conclusions and recommendations

18. As pointed out in the previous report to the Council on this issue, limiting the scope of this report to births at checkpoints fails to take into account the consequences of the entire closure regime imposed on the Occupied Palestinian Territory (OPT). The issue is best examined in the broader context of the severe restrictions on freedom of movement imposed by Israel on Palestinians in the OPT, and the wide range of rights that Palestinians are unable to exercise due to these restrictions.

19. OHCHR submitted its first periodic report on the implementation of resolution S-9/1, on the grave violations of human rights in the Occupied Palestinian Territory, to the Council at its twelfth regular session,⁸ and a further report on the follow-up to the ninth and twelfth special sessions of the Human Rights Council to the current session of the Council.⁹ Both reports contain detailed information on the restrictions on freedom of movement and the human rights violations that stem from these restrictions.

20. The number of reported cases of births at checkpoints appears to have declined in recent years, to the extent that there has been no case reported since January 2009.

21. OHCHR had previously interpreted decision 2/102 as extending previous Commission of Human Rights reports and providing for an annual reporting cycle. This interpretation had not received any objections to date, and the Office's interpretation was thus deemed to have received the tacit approval of Member States. However, an objection has been placed on the record this year, and in the context of this specific report. OHCHR has thus further reviewed the said decision, and concludes that with it, the Human Rights Council sought to fill a technical gap by ensuring that reports which were deemed to be submitted to the 62nd session of the Human Rights Commission would be extended by one year, to be submitted to the subsequent substantive Human Rights Council session. With this transition period over, and the objection now on the record to the previous interpretation of annual reporting cycles, if the Human Rights Council wishes to see a continuation of this reporting mandate, a new Human Rights Council resolution or decision on the matter should be tabled. Pending any such resolution, OHCHR will not file any further reports specific to this matter, save that it will cover the issue in its periodic reports.

Endnotes

¹A/HRC/10/35, para. 13.

²OHCHA, *Five Years After the International Court of Justice Advisory Opinion, a Summary of the Humanitarian Impact of the Barrier*, July 2009, p. 17. See http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

³A/64/517, paras. 21–28.

⁴OCHA notes that this number is down from 619 at the end of August 2009. OCHA, *The Humanitarian Monitor*, September 2009, p. 6, and October 2009, p. 7.

⁵Five years after the International Court of Justice Advisory Opinion, a summary, OHCHA-oPt, July 2009, p. 16. http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

⁶Ibid., p. 19.

⁷CAT/C/ISR/CO/4, para. 31.

⁸A/HRC/12/37.

⁹A/HRC/13/54.