



Human Rights Watch advocacy document for the sixth special session of the U.N. Human Rights Council addressing the human rights situation in Gaza and West Bank town of Nablus.

January 2008

To Human Rights Council Members:

The sixth special session of the Human Rights Council has been called for January 23 to address the situation in Gaza and West Bank town of Nablus. Human Rights Watch urges the Council to press the various parties to take urgent and concrete steps to improve Gaza's dire humanitarian and human rights conditions.

Even though it withdrew its permanent military forces and settlers in 2005, Israel remains an occupying power in Gaza under international law because it continues to exercise effective day-to-day control over important aspects of Gazan life. Israel has the obligation to protect its population from rocket attacks from Gaza, but it also must ensure the safety and well-being of the Gazan population under its occupation.

Since mid-2007, to pressure Hamas to stop the attacks, Israel has sharply restricted the flow of people and goods into and out of Gaza, violating the international humanitarian law prohibition against collective punishment against the civilian population and causing a humanitarian crisis. It has cut fuel supplies and is threatening to reduce electricity, also in violation of international humanitarian law.

At the same time, Palestinian armed groups in Gaza continue to violate international humanitarian law by indiscriminately firing rockets into Israel, wounding at least 82 Israeli civilians over the past six months. The Hamas authorities have not stopped these attacks. Additionally, Hamas-controlled security forces have engaged in torture and other mistreatment of persons in custody.

Egypt too has contributed to the deteriorating humanitarian conditions in Gaza by largely keeping closed its border with Gaza at Rafah.

Human Rights Watch calls on the Council during the special session to urge the various parties to take concrete measures to address the following concerns:

Israel

1. Improve the Flow of People and Goods

Since the Hamas takeover of Gaza in June 2007, Israel has made it exceedingly difficult for Gazans to leave the territory. Israel is arbitrarily blocking, delaying and harassing people with emergency medical problems who need to leave Gaza for urgent care, and some patients have died. Approximately 6,000 people with foreign citizenship, permanent residency, work permits, student visas or university admissions abroad, have been trapped inside the territory, denied exit permits for unspecified “security reasons.”

Israel only allows basic food and medicines into Gaza. Even basic items are in short supply and the prices of many items have dramatically increased. The local economy is suffering considerable damage from an export ban, and 80 percent of Gazan families now receive humanitarian aid.

Israeli restrictions on the transfer of individuals and goods into and out of Gaza – aimed at putting pressure on Hamas – are a form of collective punishment against the civilian population in violation of international humanitarian law.

Under the Fourth Geneva Convention, Israel as the occupying power is obliged to ensure the provision of food and medical supplies to the civilian population to the fullest extent possible.

International human rights law, including the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified in 1992, applies in Israel and wherever Israel maintains “effective control.” Arbitrarily prohibiting students, medical patients and others from traveling abroad constitutes an unlawful infringement on the right to freedom of movement, guaranteed under article 12 of the ICCPR. This includes the right to leave one’s own country. The ICCPR permits restrictions on freedom of movement for security reasons, but the restrictions must have a clear legal basis, be limited to what is necessary, and be proportionate to the threat.

2. Do Not Restrict Electricity or Fuel

In response to continued rocket attacks by Palestinian armed groups, on October 28, 2007, Israel began limiting supplies of fuel into Gaza, including a decrease in regular diesel, industrial diesel, and benzene. In November, the Israeli Supreme Court approved the fuel cuts but ordered the state to halt proposed electricity cuts until it could prove that such cuts would not harm services essential to the civilian population.

Intended to pressure Hamas to take action against armed groups, the fuel cuts are having a direct impact on the well-being of the civilian population. Gaza residents are suffering increasingly serious disruptions to their daily lives from power cuts. The limited fuel supplies impact essential services, such as drinking water, sewage pumps and hospitals.

Israel's decision to limit fuel, and potentially electricity, to Gaza in retaliation for rocket attacks amounts to collective punishment against the civilian population and will worsen the humanitarian crisis. It violates a basic principle of international humanitarian law, which prohibits a government with effective control over a territory from attacking or withholding objects that are essential to the survival of the civilian population. It also violates Israel's duty to safeguard the health and welfare of the population under occupation.

Human Rights Watch calls upon the Council to:

- Urge Israel to lift its restrictions on the flow into Gaza of medicines, food and other supplies essential for the well-being of the civilian population;
- Urge Israel to cease all measures that amount to collective punishment of the civilian population, including disruptions to the electricity supply and fuel cuts;
- Urge Israel to respect the right to freedom of movement, especially for those who need to travel for reasons of health or education;
- Request Israel to report at the March session of the HRC regarding the steps taken to implement these recommendations;
- Request the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to undertake an urgent mission to Gaza to assess the current state of the health system and the impact of the Gaza closures on the health of the civilian population.

Hamas and Palestinian Armed Groups

1. Cease Unlawful Rocket Attacks

According to the United Nations, from mid-June 2007 to December 25, 2007, armed Palestinian groups in Gaza fired 632 "Qassam" rockets and 921 mortar bombs into Israel, injuring 82 Israeli citizens.

The rockets fired by Palestinian armed groups violate the international humanitarian law prohibition on indiscriminate attacks because they are highly inaccurate and cannot be directed at a specific military target. Where there is no intended military target and the rockets are fired into a civilian area, such as the Israeli town of Sderot, they constitute deliberate attacks against civilians. Because Hamas exercises power inside Gaza, it is responsible for stopping unlawful attacks even when carried out by other groups.

2. Stop Arbitrary Detention and Torture

Since forcibly taking over Gaza in June, Hamas has assumed control of the security services and judicial bodies. Hamas has been carrying out arrests and running detention centers, although it is not a law enforcement agency nor is it empowered by law to exercise these functions. Hamas-run security forces – the Qassam Brigades and Executive Force – have engaged in torture and inhumane and degrading treatment of detainees during interrogation, frequently members or supporters of Fatah.

On November 12, 2007, Hamas-run forces apparently used excessive lethal force against pro-Fatah demonstrators in Gaza City, killing seven and wounding more than 90. Hamas announced the creation of an “honest, fair and transparent” commission to investigate the violence, but it remains unclear if the commission has begun to function.

Human Rights Watch calls upon the Council to:

- Urge Palestinian armed groups to end their unlawful rocket attacks on civilians in Israel;
- Urge Hamas to exert its authority to end these attacks;
- Urge Hamas to cease the torture and ill-treatment of detainees by the Qassam Brigades and Executive Force and bring to justice those responsible for abuses;
- Urge Hamas to ensure that the commission created to investigate the killings of November 12, 2007 publicly reports as quickly as possible and that Hamas brings to justice those who violated the law.

Egypt

1. Open Rafah Crossing

The southern crossing from Gaza to Egypt at Rafah has been closed since June 9, 2007, at Israel's insistence. Under the terms of the 2005 Agreement on Movement and Access, reopening the crossing requires the participation of Israel, Egypt, and the Palestinian Authority, Israel has declared its opposition to reopening Rafah; neither Egypt nor the Palestinian Authority have called for it to be reopened.

Egypt says it cannot open the border, but it has on at least one occasion allowed individuals to travel into and out of Gaza, demonstrating its control over the border. In December 2007, Egypt allowed up to 3,000 pilgrims out of Gaza through Rafah for the Hajj in Saudi Arabia. Two weeks later, after some delay, Egypt allowed the pilgrims to reenter Gaza through Rafah.

Human Rights Watch calls upon the Council to:

- Urge Egypt to open the Rafah crossing for humanitarian purposes, ensuring that arms and other military material that Palestinian armed groups might use against civilians are not allowed to pass.
- Request Egypt to report to the March session of the HRC regarding its implementation of this recommendation.