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宗教或信仰自由问题特别报告员阿斯玛·贾汗基尔的报告 \*

增 编

对以色列和被占巴勒斯坦领土的访问 \*\*

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\* 迟交。

\*\* 本报告的内容提要以所有正式语文分发，附件中所载报告本身只以提交时所用语文和阿拉伯语分发。

## 内容提要

宗教或信仰自由问题特别报告员从 2008 年 1 月 20 日至 27 日对以色列和被占领的巴勒斯坦领土进行了访问。在本报告中，她概述了涉及到宗教或信仰自由问题的国际法律标准和国内法律框架。她并提到了以色列和被占领巴勒斯坦领土内宗教信仰方面人口布局情况并有侧重地指出了宗教或信仰自由状况中的某些方面。报告员完全了解到当地局势的复杂以及业已加剧的紧张气氛和交战状态，她将注意力集中在以下所关注的一些问题之上：对进入礼拜场所的限制、宗教场地的维持和保护；官方的身份卡上表明宗教归属；涉及个人地位的事项、对犹太正教的优惠待遇、被剥夺自由者的宗教权、构成煽动歧视、敌意或暴力的鼓动宗教仇恨行为、宗教的皈依和传教活动、以及对被占领巴勒斯坦领土内状况的进一步关注。

在报告最后部分，特别报告员提出了她的结论和建议。她指出，以色列国和被占领的巴勒斯坦领土内蕴含了丰富的宗教或信仰多元性并且是世界各地信仰者所崇敬的宗教圣地的所在地。但是，通过现行的许可、签证、检查点和路障等制度，特别地针对巴勒斯坦穆斯林和基督教徒进入宗教礼拜场所的行动自由进行了限制。尽管以色列政府告诉特别报告员，这些限制出于安全理由是必要的，但是她强调指出，打击恐怖主义的任何措施都必须遵守国家按国际法所承担的责任。特别报告员提出了一些建议，其中尤其包括请所有各方(尤其是在可能的和平协议的框架内)在法律上对自己提出约束，承担保护宗教少数群体的权利，并特别关注采取平等和不因宗教或信仰实行歧视实行全面保障这一责任。此外，她建议以色列政府颁布一视同仁的条例，以便无歧视地保护和维持宗教圣地。其他一些建议涉及到官方文件、关系到个人地位的事项以及对警察、武装部队和监禁设施人员的培训。最后，无论在以色列国还是在被占领的巴勒斯坦领土上，任何构成煽动歧视、敌意或暴力的宗教仇恨方面的鼓动宣传都应当受到切实调查、审判和惩处。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION  
OR BELIEF, ASMA JAHANGIR, ON HER MISSION TO ISRAEL AND THE  
OCCUPIED PALESTINIAN TERRITORY (20-27 JANUARY 2008)**

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## I. INTRODUCTION

1. Following invitations by the Government of Israel and by the Palestinian Authority, the Special Rapporteur on freedom of religion or belief carried out a mission to Israel and the Occupied Palestinian Territory from 20 to 27 January 2008. During her visit, the Special Rapporteur met with Government officials and political leaders as well as representatives of religious or belief communities, members of civil society and academics. She travelled to Jerusalem, Tel Aviv, Daliyat al Carmel, Haifa, Nazareth, Ramallah, Bethlehem, Hebron, Nablus and Qalqilya.
2. The Special Rapporteur wishes to thank both the Government of Israel and the Palestinian Authority for the cooperation extended to her before, during and after the country visit. In Israel, the Special Rapporteur held talks, inter alia, with the Interior Minister, the Religious Affairs Minister, the Deputy Foreign Minister, the Deputy State Attorney for Special Affairs, the Chairman of the Constitution, Law and Justice Committee of the Knesset, a Supreme Court Justice, the Director General of the Head Rabbinate and the mayor of Daliyat al Carmel. In the Occupied Palestinian Territory, the Special Rapporteur met, inter alia, with the Chief of Staff of the President of the Palestinian Authority, the Director General for International Relations of the Palestinian Authority, the Governor of Nablus, the Director General and Commissioner General of the Palestinian Independent Commission for Citizens' Rights, the President of Al-Najah National University as well as representatives of the Islamic Waqf in East Jerusalem and Hebron.
3. During her visit, the Special Rapporteur talked with religious leaders and representatives of the Baha'is, Christians, Druze, Jews, Muslims and Samaritans. She is also grateful for the information she received from members of various domestic and international civil society organizations as well as from individual academics, journalists and lawyers.
4. Furthermore, the Special Rapporteur benefitted from meetings with the United Nations Special Co-ordinator and Deputy Special Co-ordinator for the Middle East Peace Process (UNSCO) as well as with representatives from the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Development Fund for Women (UNIFEM). She sincerely appreciates the outstanding logistical support provided by the Office of the High Commissioner for Human Rights in the Occupied Palestinian Territory.
5. The present report first outlines international legal standards and then gives an overview of the domestic legal framework on freedom of religion or belief. In the third part, the Special Rapporteur refers to the religious demography and highlights selected aspects of the status of freedom of religion or belief in Israel and the Occupied Palestinian Territory. In the last part, the Special Rapporteur presents her conclusions and recommendations.

## II. INTERNATIONAL LEGAL STANDARDS

6. The Special Rapporteur would like to refer to previous reports<sup>1</sup> with regard to the main international legal standards pertinent to her mandate. These include articles 2, 18-20 and 26-27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Apart from the latter, Israel has ratified all of the above-mentioned human rights treaties.

7. Upon ratification of the Convention on the Elimination of All Forms of Discrimination against Women, the State of Israel expressed its reservation with regard to article 7 (b) of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel and with regard to article 16 of the Convention to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article. Upon ratification of the International Covenant on Civil and Political Rights, the State of Israel reserved the right to apply the religious law of the parties concerned to the extent that such law is inconsistent with its obligations under the Covenant.

8. The Special Rapporteur is also guided in her mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including by the General Assembly, the Human Rights Committee, the former Commission on Human Rights and the Human Rights Council. Of these instruments, most relevant for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights as well as the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

9. The legal framework of her mandate also includes relevant provisions of international humanitarian law, in particular the four Geneva Conventions of 12 August 1949 and their Additional Protocols. As emphasized for example by the Human Rights Committee, the application of international humanitarian law and of international human rights law is not mutually exclusive, but is complementary.<sup>2</sup> With regard to the applicability in the Occupied

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<sup>1</sup> See E/CN.4/2005/61, paras. 15-20 and [E/CN.4/2006/5](#), annex, as well as the online digest of her framework for communications ([www2.ohchr.org/english/issues/religion/standards.htm](http://www2.ohchr.org/english/issues/religion/standards.htm)).

<sup>2</sup> Human Rights Committee, general comment No. 31 (2004): “the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purpose of the interpretation of the Covenant rights, both spheres of law are complementary, not mutually exclusive”. See also the joint report on the situation of detainees at Guantánamo Bay (E/CN.4/2006/120, paras. 15-16), where the five Special Procedures mandate-holders refer to the International Court of Justice Advisory Opinions of 8 July 1996 (I.C.J. Reports 1996, page 240, para. 25) and of 9 July 2004 (I.C.J. Reports 2004, page 178, para. 106).

Palestinian Territory of certain rules of international humanitarian law and human rights instruments, the Special Rapporteur would like to refer to the Advisory Opinion of the International Court of Justice of 9 July 2004, where this issue is discussed in detail.<sup>3</sup>

### III. DOMESTIC LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF

10. Due to its history and various transition provisions, the domestic legal framework is characterised by a mosaic of applicable laws. In addition to laws enacted by the State of Israel during the past 60 years, the legal framework also includes laws from the Ottoman rule (1516-1917) and from the British mandate period (1920-1948) as well as religious laws and English laws, including the “substance of common law and the doctrines of equity in force in England”.<sup>4</sup>

11. Already the League of Nations’ Palestine Mandate of 24 July 1922 prohibited discrimination on religious grounds and addressed issues such as free access to the holy places, religious buildings and sites and the free exercise of worship. Furthermore, the 1922 Palestine Order-in-Council stipulated that all persons in Palestine shall enjoy full liberty of conscience and free exercise of their forms of worship subject only to the maintenance of public order and morals.

12. On 14 May 1948, Jewish communities of the dissolved British mandate of Palestine declared the establishment of a Jewish State, to be known as the State of Israel. This Declaration of the Establishment of the State of Israel also provides that the State of Israel “will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture; it will safeguard the Holy Places of all religions”.

13. The 1948 Law and Administration Ordinance No. 1 stipulates that the law which existed in Palestine on 14 May 1948 shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

14. The 1950 Law of Return provides that every Jew has the right to come to Israel as an *oleh* (immigrant to Israel). An *oleh*’s visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Interior is satisfied that the applicant is engaged in an activity directed against the Jewish people or is likely to endanger public health or the security of

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<sup>3</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, I.C.J. Reports 2004, pages 171-181, paras. 86-113.

<sup>4</sup> Article 46 of the 1922 Palestine Order-in-Council, which was later absorbed into the law of the State of Israel by section 11 of the 1948 Law and Administration Ordinance No. 1.

the State or is a person with a criminal past, likely to endanger public welfare. For the purposes of the 1950 Law of Return, “Jew” means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.

15. Furthermore, a law of 27 June 1967 protects the holy sites from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings towards those places.

16. Under section 173 of the Penal Law, a person who “publishes any print, writing, picture or effigy calculated to outrage the religious feelings or belief of other persons”, or who “utters in a public place and in the hearing of another person any word or sound calculated to outrage his religious feelings or belief” is liable to imprisonment of one year. Section 144D of the Penal Law prohibits incitement to an act of violence or terrorism and prohibits the possession of publications inciting to violence or terror. Furthermore, hostility based on religion or affiliation to a religious group is to be taken into account as an aggravating factor by the courts when adjudicating criminal offences according to section 144F of the Penal Law. Approval by the Deputy State Attorney (Special Functions) is required to initiate investigations into matters of great public sensitivity, for example concerning hate offences and incitement to violence.

17. According to the 1984 Basic Law “The Judiciary”, judicial power is vested in the Supreme Court, district courts, magistrate’s courts, religious courts and other courts designated by law. The Supreme Court sitting as a High Court of Justice is competent to order religious courts to hear a particular matter within their jurisdiction or to refrain from hearing or continue hearing a particular matter not within their jurisdiction. Moreover, section 1 of the 1992 Basic Law “Human Dignity and Liberty”, as amended, provides that fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

18. Some international agreements and treaties also refer to religious places and related questions of access. For example, in the Fundamental Agreement of 30 December 1993 between the Holy See and the State of Israel, both sides affirmed their continuing commitment to respect the status quo in the Christian holy places and the respective rights of the Christian communities (art. 4). Furthermore, the peace treaty of 26 October 1994 between Israel and Jordan stipulates that “each party will provide freedom of access to places of religious and historical significance” and that “Israel respects the present special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem” (art. 9).

19. With regard to the Occupied Palestinian Territory, the Palestinian Legislative Council ratified the Palestinian Basic Law on 29 May 2002, and further amendments were adopted in 2003 and 2005. Article 4 of the Palestinian Basic Law provides that Islam is the official religion in Palestine; that respect and sanctity of all other heavenly religions shall be maintained; and that the principles of Islamic Shari’a shall be the main source of legislation. All Palestinians are equal under the law and judiciary, without discrimination because of race, sex, colour, religion, political views or disability (art. 9). Furthermore, basic human rights and freedoms shall

be protected and respected and the Palestinian Authority shall work without delay to become a party to regional and international covenants and declarations that protect human rights (art. 10). According to article 18 of the Palestinian Basic Law, freedom of belief, worship and performance of religious rituals are guaranteed, provided that they do not violate public order or public morals. Moreover, Shari'a affairs and personal status matters shall be assumed by Shari'a and religious courts in accordance with law (art. 101).

20. For marriage, divorce and other personal status matters of Muslims in the Occupied Palestinian Territory, the 1976 Jordanian Law of Personal Status is applied in the West Bank, whereas Gazan Muslims are governed by the 1954 Law of Family Rights issued during the Egyptian administration of the Gaza Strip. In East Jerusalem, the personal status jurisdictions of Israeli, Jordanian and Palestinian authorities compete. Furthermore, recognised Christian communities in the Occupied Palestinian Territory apply their own personal status laws in their respective religious courts.

#### **IV. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORY**

##### **A. Religious demography**

21. According to official data from the Israel Central Bureau of Statistics, the population of Israel numbered 7,111,700 inhabitants as of 31 December 2006. The population of Israel is comprised of Jews (about 75.7 per cent), Muslims (about 16.6 per cent), Christians (about 1.7 per cent Arab Christians and 0.4 per cent non-Arab Christians) and Druze (about 1.6 per cent), while about 4 per cent of the population of Israel has not been classified by religion.

22. Certain religious communities have the status of being a "recognized" religion or religious community, some of them already since Ottoman rule or the British Mandate period. The religious courts of these communities are granted jurisdiction in matters of personal status, such as marriage and divorce. The following religions and denominations have been officially recognized so far: Armenian Catholic, Armenian Orthodox, Baha'i, Chaldaic (Catholic), Druze, Evangelical Episcopal (Anglican), Jewish, Maronite, Muslim, Greek Catholic, Greek Orthodox, Latin (Roman Catholic), Syrian Catholic and Syrian Orthodox. The applications for State recognition of the Ethiopian Orthodox, the Coptic Orthodox and the United Churches Council of Israel are pending. Further religious communities, such as the Baptists, Lutherans, Quaker and Samaritans, operate in Israel without the status as "recognized" religions.

23. With regard to the population in the West Bank and Gaza Strip, the 2007 census by the Palestinian Central Bureau of Statistics indicates a total population of 3,761,646 individuals. No disaggregated official data seems to be available concerning the religious demography in the Occupied Palestinian Territory. It is estimated that about 98 per cent of Palestinian residents of the Occupied Palestinian Territory are Sunni Muslims and less than 2 per cent are Christians. Furthermore, the small Samaritan religious community counts around 700 members, half of them living on Mount Gerizim near the West Bank city of Nablus and the other half living near the Israeli city of Tel Aviv.



## **B. Issues of concern**

24. The Special Rapporteur would like to highlight selected aspects of the status of freedom of religion or belief in Israel and the Occupied Palestinian Territory. She is well aware of the complex situation and the heightened atmosphere of tension and militancy. The Special Rapporteur will focus on the following issues of concern: (1) restricted access to places of worship; (2) preservation and protection of religious sites; (3) indication of religious affiliation on official identity cards; (4) matters of personal status; (5) preferential treatment of Orthodox Judaism; (6) religious rights of persons deprived of their liberty; (7) advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; (8) conversions and missionary activities; and (9) further concerns within the Occupied Palestinian Territory.

### **1. Restricted access to places of worship**

25. A major issue of concern for the Special Rapporteur's mandate are restrictions on the access of believers to places of worship in Israel and the Occupied Palestinian Territory. Many of their shrines are located next to each other and some are sacred to believers from different religions.

#### **(a) Situation of Muslims and Christians**

26. The Israeli authorities control and restrict Palestinian movement through a system of permits, checkpoints, curfews, visas and the Barrier.<sup>5</sup> Due to this elaborate system, millions of Muslims and Christians have reportedly been impeded since 1993 from worshipping at some of the sites they consider to be their most holy places in the world, especially in Jerusalem.<sup>6</sup> This applies, for example, to Palestinians who want to attend religious services at the Al-Aqsa mosque or the Church of the Holy Sepulcher in Jerusalem. Their movement is also restricted within the Occupied Palestinian Territory, e.g. concerning access to the Ibrahimi mosque/Tomb of the Patriarchs in Hebron or the Church of the Nativity in Bethlehem. The United Nations Office for the Coordination of Humanitarian Affairs reported that in April 2008 there were a total of 607 closure obstacles in the West Bank, such as checkpoints, earth mounds, road blocks, trenches and road gates.<sup>7</sup>

27. The closure regime caused difficulties especially during the religious holiday of Ramadan in 2007, when due to the long queues at checkpoints many Muslims could not observe their prayers and break the fast at the mosque of their choice. There may also be an adverse social and psychological impact, for example when Palestinian applicants do not receive travel permits for the celebration of religious festivals, marriages or funeral ceremonies with their family members who live in different cities.

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<sup>5</sup> See the *Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 6/19* (A/HRC/8/18, paras. 14-39).

<sup>6</sup> OCHA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities – East Jerusalem, Update No. 7*, p. 37 ([www.ochaopt.org/documents/Jerusalem-30July2007.pdf](http://www.ochaopt.org/documents/Jerusalem-30July2007.pdf)).

<sup>7</sup> OCHA, *Closure Update May 2008* ([www.ochaopt.org/documents/UpdateMay2008.pdf](http://www.ochaopt.org/documents/UpdateMay2008.pdf)).

28. Furthermore, on several occasions age restrictions have been imposed by the Government of Israel on the access to al-Haram al-Sharif/Temple Mount in Jerusalem. During Ramadan in 2007, for example, sometimes only Palestinians over the age of 45 were allowed entrance and at other times only Jerusalem identity cardholders or only residents of the old city over the age of 50 were permitted. On some Fridays, children were allowed to cross Israeli checkpoints with older relatives but on the last Friday of Ramadan in 2007 even young children were reportedly turned back. On 21 September 2007, no access was permitted for Palestinians from the West Bank since all checkpoints were closed for the Jewish holiday of Yom Kippur.<sup>8</sup>

29. The Special Rapporteur's predecessor had also transmitted a communication on 10 June 2004 to the Government of Israel concerning allegations that the renewal of visas for Christian clergy was obstructed by Israeli authorities (E/CN.4/2005/61/Add.1, para. 148). Visas for priests, religious men and women as well as seminarians were allegedly denied or were renewed with severe limitations, including with regard to their validity and the number of permitted entries. The new practice of issuing only single entry visas reportedly hindered the clergy's ability to carry out their pastoral ministry in an effective way. The Latin Patriarchate of Jerusalem for example includes Palestine, Israel and Jordan and it is feared that these different areas will be disconnected if Jordanian clergy are not allowed to move between Jordan and Israel or the Occupied Palestinian Territory. Similarly, the dioceses of several other Christian communities also cover Cyprus, Jordan, Lebanon or Syria. Since a majority of clergy and seminarians is Jordanian, many parishes might ultimately be left without priests and seminaries might be closed. Furthermore, religiously motivated visits for believers living abroad, including pilgrimages to the religious sites in Bethlehem and Jerusalem, are adversely affected by the Barrier which has created a concrete separation between these cities.

30. The Government of Israel informed the Special Rapporteur that all of these restrictions to movement are necessary for security reasons. One of her official interlocutors in Israel stated, from a military perspective, that "before you can guarantee quality of life you have to save lives". The Special Rapporteur would like to reiterate that the State's obligation to protect and promote human rights, including every human being's inherent right to life, requires it to take effective measures to combat terrorism. Several special procedures mandate-holders have publicly shared in the unequivocal condemnation of terrorism but have at the same time voiced their profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism which affect negatively the enjoyment of virtually all human rights.<sup>9</sup> The Special Rapporteur would like to emphasize that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights and humanitarian law as detailed further below.

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<sup>8</sup> OCHA, *The Humanitarian Monitor No. 17, September 2007*, p. 11 ([www.ochaopt.org/documents/HM\\_Sep07.pdf](http://www.ochaopt.org/documents/HM_Sep07.pdf)).

<sup>9</sup> See for example the joint statement by participants of the tenth annual meeting of special procedures mandate-holders in June 2003 (E/CN.4/2004/4, annex I).

**(b) International legal standards**

31. With regard to international human rights law, the State must guarantee, inter alia, freedom of religion or belief as well as liberty of movement and must respect the principle of non-discrimination. The importance of the freedom of religion or belief is underlined by article 4 (2) of the International Covenant on Civil and Political Rights which stipulates that, even in time of public emergency or war, no derogation from article 18 of the Covenant is permissible.<sup>10</sup> Furthermore, freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. This list of permissible limitation grounds does not include the protection of "national security", unlike for example in articles 12 (3), 19 (3) or 21 of the Covenant. A comparison with the text of these articles also reveals that article 18 (3) does not allow restrictions on freedom of religion or belief "for all of the reasons stemming from the concept of *ordre public* under French civil law but rather only to avoid disturbances to public order in the narrow sense".<sup>11</sup> Furthermore, laws imposing limitations on the freedom to manifest one's religion or belief should not be arbitrary or unreasonable and any assessment as to the necessity of a limitation should be made on objective considerations. In addition, the burden of justifying a limitation upon a right guaranteed under the Covenant lies with the State. Consequently, it seems difficult to argue that the practice of imposing age limits for access to some religious places on specific occasions would pass these tests.

32. While the right to liberty of movement according to article 12 of Covenant may be subject to restrictions which are provided by law and are necessary to protect, for example, national security, such restrictions must also be consistent with the other rights recognized in the Covenant. Consequently, freedom of religion or belief and the prohibition of discrimination may be decisive in the evaluation of whether a restriction on the liberty of movement is permissible or not.<sup>12</sup> With regard to multiple forms of discrimination based on grounds such as religion, race or ethnic origin, the Special Rapporteur's predecessor has already emphasized that the identity of many minorities, or even large groups of people, is defined by both racial and religious aspects and that many instances of discrimination are aggravated by the effects of multiple identities (A/CONF.189/PC.1/7, para. 6). The Human Rights Committee emphasized in its general comment No. 27 that it would be a clear violation of the Covenant if the liberty of movement was restricted by making distinctions of any kind, such as on the basis of race or religion.

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<sup>10</sup> The Human Rights Committee has addressed the issues of derogations and the state of emergency in Israel in its concluding observations (CCPR/CO/78/ISR, para. 12 and CCPR/C/79/Add.93, para. 11).

<sup>11</sup> See Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein (2nd edition, 2005), art. 18, para. 39.

<sup>12</sup> *Ibid.*, art. 12, para. 32.

33. Furthermore, the principle of proportionality requires that restrictive measures must be appropriate to achieve their protective function, must be the least intrusive instrument amongst those which might achieve the desired result, and must be proportionate to the interest to be protected. The various restrictions imposed on the access of Palestinians to religious sites - as documented in the High Commissioner's report on the implementation of Human Rights Council resolution 6/19 (see A/HRC/8/18, paras. 14-39) - appear to be disproportionate to their aim as well as discriminatory and arbitrary in their application.

34. Moreover, international humanitarian law also protects the freedom to practise one's religion through religious observances, services and rites. With regard to the rights of the civilian population in a period of occupation, the Fourth Geneva Convention provides that the protected persons are entitled, in all circumstances, to respect for "their religious convictions, and practices and their manners and customs" (art. 27). They must be able to practise their religion freely, without any restrictions other than those necessary for the maintenance of public law and morals. According to article 58 of the Fourth Geneva Convention, the "Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities". Referring to international humanitarian law, the High Commissioner concluded in her recent report (see A/HRC/8/18, para. 59) that 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.

### **(c) Situation of Jews**

35. In the Occupied Palestinian Territory, there have been incidents and problems of safe access to religious sites revered by Jews, such as Joseph's Tomb in Nablus or Shalom Al Israel synagogue in Jericho. The Special Rapporteur would like to remind that these two places in the West Bank have been designated as Jewish holy sites according to Annex I of the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. According to its article 5, "Joint Mobile Units" should ensure free, unimpeded and secure access to these sites as well as ensure the peaceful use of such sites, prevent any potential instances of disorder and respond to any incident.

36. Furthermore, the Special Rapporteur was informed that, according to decisions of the Government of Israel and several court rulings, Jews are not allowed to pray in any overt manner on the al-Haram al-Sharif/Temple Mount. In addition, the Chief Rabbinate of Israel has enunciated a prohibition under Jewish law against entering this area and has placed a sign to that effect at the entrance of the pedestrian pathway indicating that "according to the Torah it is forbidden to enter the area of the Temple Mount due to its sacredness". Some rabbis, however, argue that Jewish law permits access of Jews to certain parts of the al-Haram al-Sharif/Temple Mount.

## **2. Preservation and protection of Muslim and Christian religious sites**

37. Several legal provisions in Israel (see paras. 15-16 above) aim to safeguard and preserve sacred places from desecration and stipulate criminal sanctions for the violation of a holy site. The Religious Affairs Minister is charged with the implementation of the 1967 Protection of Holy Sites Law and may issue regulations as to any matter relating to such implementation. However, all the 136 places which have been designated as holy sites until the end of 2007 are

Jewish and the Government of Israel has so far only issued implementing regulations for Jewish holy sites.<sup>13</sup> This approach may ultimately have discriminatory effects for the preservation of non-Jewish places and related budgetary allocations since the determination of holy sites also provides state funding to institutions which protect the sanctity of these places and preserve them from damage. Reportedly, there is an urgent need to preserve and protect Muslim and Christian religious sites, many of which have been made inaccessible or neglected since decades. In some cases, such religious sites have been converted into bars, night clubs or stores, which may also offend religious sensitivities.

38. One example for the sensitive issue of religious sites and their preservation is the controversy about excavation works in Jerusalem on the pathway leading from the Western Wall Plaza to the Mughrabi Gate of al-Haram al-Sharif/Temple Mount. In February 2007, the UNESCO Director-General decided to dispatch a technical mission to the Old City of Jerusalem. The technical mission recommended in its report that the Government of Israel should be asked to stop immediately the archaeological excavations, to engage immediately a consultation process with all concerned parties and to agree upon a plan of action before taking any further action and decision thereon.<sup>14</sup> In March 2007, the Committee on the Elimination of Racial Discrimination expressed its concerns about the excavations beneath and around Al-Aqsa Mosque and urged the State of Israel to ensure that the excavations in no way endanger the mosque and impede access to it (CERD/C/ISR/CO/13, para. 36). Another recent excavation project in the area of the Arab neighbourhood of Silwan, which is located a few hundred metres from al-Haram al-Sharif/Temple Mount, elicited protests and on 18 March 2008 the Israeli High Court of Justice ordered a halt to the excavations in Silwan (A/HRC/8/18, para. 41).

39. The Special Rapporteur would like to reiterate that places of worship, religious sites and cemeteries have more than a material significance for the religious community attached to them. General Assembly resolution 55/254 calls upon all States to exert their utmost efforts to ensure that religious sites are fully respected and protected as well as to adopt adequate measures aimed at preventing such acts or threats of violence. Furthermore, the General Assembly encourages all States, relevant intergovernmental and non-governmental organizations and the media to promote a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind. The Special Rapporteur would like to emphasize that the concept of collective heritage of humankind could be used more prominently when addressing on a case-by-case basis the intricate questions of how to preserve and protect religious sites.

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<sup>13</sup> US Department of State, *International Religious Freedom Report 2008: Israel and the Occupied Territories* ([www.state.gov/g/drl/rls/irf/2008/108484.htm](http://www.state.gov/g/drl/rls/irf/2008/108484.htm)).

<sup>14</sup> Report of the UNESCO technical mission to the Old City of Jerusalem (176 EX/Special Plenary Meeting/INF.1, paras. 49 and 51).

### 3. Indication of religious affiliation on official identity cards

40. Every permanent resident of Israel and the Occupied Palestinian Territory above the age of 16, whether a citizen or not, is required by law to carry an official identity card. There are four kinds of identity cards: Israeli, West Bank Palestinian, Gaza Palestinian and Jerusalem Palestinian identity cards. The Government of Israel started issuing identity cards to Palestinian residents of the West Bank and the Gaza Strip following their occupation in 1967. Subsequent to the Oslo Declaration of Principles on Interim Self-Government Arrangements, the Palestinian Authority issues its residents with Palestinian identity cards; however, Israeli authorities control the population registry and identity cards of Palestinians are issued on the basis of this registry.

41. The approach with regard to indicating the holders' religious affiliation is different with the four kinds of identity cards. Since 2005, identity cards of Israeli citizens no longer state the holder's ethnic affiliation; however, it can still be determined whether a citizen is Jewish or not when the birth date of Jews are indicated in Hebrew letters according to the Jewish calendar while listing that of others according to the Gregorian calendar. Identity cards of Palestinians with West Bank or Gaza identity cards show whether the cardholder is Muslim or Christian. No other options of religious affiliation are allowed and consequently those who are not believers are classified the same way as their parents. Palestinians holding Jerusalem identity cards were listed until 2002 as "Arab" on their identity card but this approach has been discontinued.

42. The degree of somebody's ability to move in and out of Jerusalem or within the Occupied Palestinian Territory reportedly depends on which type of identity card he or she holds. The Special Rapporteur would like to reiterate that indicating the religious affiliation on official identity cards carries a serious risk of abuse or subsequent discrimination based on religion or belief, which has to be weighed against the possible reasons for disclosing the holder's religion. In case the State wishes to include on official documents an indication of religious affiliation, it would be discriminatory to provide only the possibility to choose from a limited number of officially recognized religions. In addition, any indication of one's religious affiliation on official documents should in general be on a voluntary basis (A/63/161, para. 73).

43. Furthermore, terrorist-profiling practices based on stereotypical assumptions that persons of a certain religion or ethnic origin are particularly likely to commit attacks may lead to practices that are incompatible with the principle of non-discrimination.<sup>15</sup> Consequently, it seems advisable to have no direct or indirect reference to the individual's religious or ethnic affiliation on official identity cards and in related application forms (A/63/161, para. 76).

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<sup>15</sup> Concerning terrorist-profiling based on ethnic origin and religion, see the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26, paras. 32-62 and 83-89).

#### **4. Matters of personal status**

44. In matters of personal status, such as marriage, divorce and, to some extent, maintenance, guardianship and the adoption of minors, jurisdiction is vested in the judicial institutions of the respective religious communities. Problems may arise when the parties to a legal proceeding in matters of personal status belong to different religious communities or when it is not clear if the dispute falls within the jurisdiction of any religious court based on the substantive law of each denomination.

##### **(a) Marriage**

45. Under domestic law, more than 250,000 Israeli citizens and residents are currently barred from marrying in Israel. These include people who are unmarriageable according to Jewish law, immigrants who are not recognized by the Orthodox Rabbinate as certain to be Jewish, and Israeli citizens who have no officially recognized religion. The Special Rapporteur was informed that more than 7,000 Israelis married abroad in 2002, which represents about 8 per cent of all Israelis who married in Israel and abroad that year. In a judgment of 21 November 2006, the Supreme Court of Israel confirmed that civil marriages which have taken place between Jewish Israeli residents and citizens outside of Israel are indeed valid in Israel.

46. The Special Rapporteur would like to emphasize that freedom of religion or belief also includes theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. In order to prevent any discrimination based on religion or belief, the State should provide a civil alternative for those who are currently ineligible for marriage in Israel. In this regard, during the British Mandate period, article 65 A was added to the Palestine-Order-in-Council in 1939, according to which “provision may be made by ordinance for the celebration, dissolution and annulment of marriages of persons neither of whom is a Muslim or a member of a religious community and for the granting by the courts of orders or decrees in connection with the marriages of such persons, their dissolution or annulment”. However, the Mandate authorities never enacted implementing legislation and since 1948 the State of Israel has maintained religious law in matters of personal status and communal jurisdiction. The Government of Israel decided in September 2007 to resume consular marriages for Israeli residents abroad, but this decision only applies when neither partner belongs to a recognized religious community in Israel and if one or both of them are nationals of the country of the consulate in question. Consequently, there is still no domestic solution available for those who are ineligible to marry in Israel as detailed above.

##### **(b) Dissolution of marriage**

47. With regard to the dissolution of marriages where the spouses have different religious affiliations or no religious affiliation at all, the 1969 law on Matters of Dissolution of Marriage (Jurisdiction in Special Cases) was amended in July 2005. Spouses with different religious backgrounds wishing to dissolve their marriage no longer need to first apply to the president of the Supreme Court for a determination of jurisdiction but may apply directly to a Family Matters Court. This court can seek the consul of the relevant religious court to determine whether it is necessary to dissolve the marriage according to the religious laws of either spouse for the purpose of remarriage.

48. While the Special Rapporteur welcomes the recent amendments, she notes that the law does not apply to spouses who are both Jews, Muslims, Druzes or members of the same recognized Christian community unless one or both of them are foreigners. Consequently, matters of divorce of such couples have been left in the hands of the religious courts of their respective communities.

**(c) Religious courts**

49. The 1955 Religious Judges Law and the 1962 Druze Courts Law have been interpreted by Jewish, Muslim and Druze religious leaders to mean that judges in these courts must be male. The Special Rapporteur was informed that no women serve as judges in the religious courts of the various recognized religions and only a small number of municipal religious councils include women. She would like to refer to the concluding comments of the Committee on the Elimination of Discrimination Against Women (CEDAW/C/ISR/CO/3, para. 25), in which the Committee expressed its concerns at the State party's statement that the reservations to articles 7 (b) and 16 of the CEDAW are "unavoidable at this point in time" and its position that laws based on religious values cannot be reformed. It is important to apply a gender perspective and to ensure that women are not discriminated against, including in matters of personal status.

**5. Preferential treatment of Orthodox Judaism**

50. The State of Israel confers certain powers upon the Chief Rabbinate, which is organized under law and supported by public funding. Concerns have been voiced that preferential treatment is given to the Orthodox Rabbinate to the detriment not only of other religious or belief communities but also of non-Orthodox Jewish groups, such as Reform or Conservative branches. Non-Orthodox Jewish institutions do not have official status and consequently their rabbis cannot officiate at marriages in Israel. Allocations of state resources reportedly favour Orthodox Jewish institutions. Secular or non-observant Jews may also encounter problems if they do not want to be subject to Orthodox religious norms, for example with regard to dietary or burial provisions. The Government of Israel in its initial report to the Human Rights Committee acknowledged that it seems difficult to claim that "freedom from religion" is fully protected, particularly for the Jewish population, due to the interpenetration of religion and Government in several forms, for example by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population (see CCPR/C/81/Add.13, para. 532).

51. The Supreme Court of Israel has ruled on related issues, especially with regard to the recognition of conversions. In 1995, it decided that the Ministry of Interior had no authority to refuse to recognize non-Orthodox conversions to Judaism performed inside Israel for purposes of recognition under the Law of Return. In another decision of 2005, it held that non-Jews living legally in Israel would be able to convert to Judaism by Reform and Conservative religious courts abroad and that State authorities would register their conversion. However, in applying Jewish religious law in matters of personal status, the Orthodox Rabbinical Courts do not recognize persons converted by a non-Orthodox body as Jews which leads to problems as explained above for persons deemed to be unmarriageable in Israel.



## **6. Religious rights of persons deprived of their liberty**

52. Although the Government of Israel confirmed that all detainees must be given the opportunity, to the extent practicable, to observe the commandments of their religion (see CCPR/C/81/Add.13, para. 331), the Special Rapporteur has received reports that the religious rights of detainees are not fully respected. While there are places for prayer for Jewish detainees and rabbis have been appointed for detention facilities, there are no or few religious representatives for Muslim and Christian detainees. The Special Rapporteur would like to reiterate rule 41 of the Standard Minimum Rules for the Treatment of Prisoners (see A/60/399, para. 81) which provides that a qualified representative of a religion should be appointed or approved if the institution contains a sufficient number of prisoners of the same religion and that the arrangement should be on a full-time basis if the number of prisoners justifies it and conditions permit.

53. Furthermore, Muslim detainees do not necessarily have access to books of religious observance and instruction of their denomination. Reportedly, collective prayers for Muslims are allowed in detention centres only on some Fridays. With regard to Christian detainees, the Special Rapporteur was informed that members of the prison pastoral team of the Latin Patriarchate of Jerusalem have been visiting foreign detainees in different Israeli prisons for several years and were allowed to celebrate the religious feasts of Christmas and Easter together. While detainees are in principle allowed to receive a special diet on religious grounds, there are reportedly problems also for some Jewish prisoners with regard to the type of kosher meals or threats of harassments based on their religious beliefs.

54. During her mission, the Special Rapporteur visited Hasharon prison on 23 January 2008. While she was given the authorization to speak with detainees, she regrets to report that she could not have “confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty”, as stipulated in the terms of reference for fact-finding missions by Special Rapporteurs (see E/CN.4/1998/45, appendix V). Since some of her female interlocutors were visibly frightened to speak openly and as the accompanying prison personnel would not let the Special Rapporteur and her security officer talk alone to the detainees, she ultimately decided to cut her visit to Hasharon prison short. The Special Rapporteur suggested to the Government of Israel that a visit of independent non-governmental organizations to the women’s section of Hasharon prison should be organised as a follow-up.

## **7. Advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence**

55. The Special Rapporteur was informed about tendencies in Israel and the Occupied Palestinian Territory towards increased radicalization and serious examples for advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.

56. In its Third Periodic Report concerning the implementation of the International Covenant on Civil and Political Rights, the Government of Israel provided several examples of recent indictments and judgments concerning cases of incitement to racism against the Arab population or hate crimes (see CCPR/C/ISR/3, paras. 337-339). However, the Special Rapporteur also received reports about incidents where advocacy of religious hatred or acts of violence by Jewish settlers against Muslims have not been adequately investigated.

57. There have also been worrying reports from the Occupied Palestinian Territory on cases of incitement to religious hatred vis-à-vis Jews. One shocking example brought to the attention of the Special Rapporteur was a broadcast in March 2007, in which the interviewer from Al-Aqsa TV in Gaza asked the two young children of a Palestinian suicide bomber “how many Jews” their mother had killed and if they wanted to join her in paradise. Furthermore, some Palestinian schoolbooks allegedly continue to idealize martyrdom and glorify the aspiration to seek a violent death in the name of religion. The Special Rapporteur would like to recall article 20 (2) of the Covenant which requires that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

### **8. Conversions and missionary activities**

58. In Israel, the 1977 Penal Law Amendment (Enticement to Change Religion) Law stipulates that whosoever gives or promises to a person money, money’s worth or some other material benefit in order to induce that person’s conversion is liable to imprisonment for five years or a fine. Furthermore, it is also punishable to receive such benefits in return for a promise to change one’s religion or to cause another person to convert.

59. Religious conversion of children is regulated by the Guardianship and Legal Capacity Law 1962. Children who have not yet reached the age of ten may be converted if both of their parents agree to conversion or if the court approves conversion upon the application of one of the parents. The religious conversion of children who have reached ten years of age requires both an application by their parents and the consent of the children. In this regard, the Special Rapporteur would like to reiterate that the choice of religion is restricted by the parents’ rights to determine their child’s religion up to an age where the child is capable of doing so on his or her own. Such a case-by-case approach is also supported by article 12 (1) of the Convention on the Rights of the Child, which requests States parties to “assure to the child who is capable of forming his or her own views to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

60. Some small religious communities in Israel have voluntarily refrained from proselytizing or from having a local Israeli community. For example, the founder of the Baha’i faith established the practice that conversion to the Baha’i faith in Israel is neither sought nor accepted. Furthermore, the Baha’is have not established a religious court in Israel although the Baha’i faith is one of the officially recognized religions in Israel. Moreover, the Church of Jesus Christ of Latter-day Saints reportedly refrains from domestic proselytizing under an agreement with the Government of Israel.

61. In the Occupied Palestinian Territory, the few conversions which have taken place, particularly when involving interfaith relationships, have been followed by serious tensions. Suspected incidents of proselytism have even led to violence. For example, on 6 October 2007, the manager of the only Christian bookstore in Gaza city, Rami Khader Ayyad, was kidnapped and subsequently killed. Prior to the kidnapping, his bookstore had been firebombed and the victim had been the target of several death threats. The question of whether Mr. Ayyad was engaging in missionary activities or not is entirely irrelevant since his kidnapping and killing

were hideous crimes and also a violation of his right to manifest his religion or belief. With regard to missionary activities and propagation of one's religion, the Special Rapporteur would like to refer to the relevant chapter in her report to the 60th session of the General Assembly (see A/60/399, paras. 55-68).

62. Furthermore, the approximately 2,000 Christians in the Gaza Strip have been openly warned by militants that after June 2007, no missionary activity will be tolerated any longer and that those suspected of trying to convert local Muslims to Christianity will be harshly punished. There are also reports of forced conversions to Islam by Palestinian groups in the Gaza Strip. For example, in August 2007, militants allegedly forced a female professor at Palestine University in Gaza City to convert from Christianity to Islam.

### **9. Further concerns within the Occupied Palestinian Territory**

63. The Special Rapporteur was informed that religious minorities and women face several forms of pressure or violence within the Occupied Palestinian Territory.<sup>16</sup>

#### **(a) Honour killings and social pressure on women**

64. Women seem to be in a particularly vulnerable situation and bear the brunt of religious zeal. The Special Rapporteur was informed about cases of honour killings carried out in the name of religion with impunity in the Occupied Palestinian Territory. Reportedly some women in Gaza have recently felt coerced into covering their heads not out of religious conviction but out of fear. These are worrying allegations and the Special Rapporteur would like to emphasize that nobody should be subject to coercion which would impair the freedom to have, or to adopt, a religion or belief of his or her choice. It is vital to safeguard both the positive freedom of religion or belief as manifested in observance and practice and also the negative freedom from being forced to wear or display religious symbols (see E/CN.4/2006/5, paras. 36-60).

#### **(b) Situation of religious minorities in the Occupied Palestinian Territory**

65. Further apprehensions concerning the situation in the Occupied Palestinian Territory have been expressed by minority communities, including some small Christian groups, who fear a rising level of religious intolerance. The Special Rapporteur was informed of a significant decrease in recent years in the number of Christians living in the Occupied Palestinian Territory. For example, the Christian proportion of Bethlehem's population has reportedly dropped from 85 per cent (in 1948) and 62 per cent (in 1995) to currently about 15 per cent. Safety concerns, contacts abroad and a relatively high level of education were cited to be the main reasons for the trend of emigration of many Christian families.

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<sup>16</sup> In relation to the obligations of the parties - Government of Israel, Palestinian Authority and Hamas - to respect the rules of international human rights law and international humanitarian law, see *Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1* (A/HRC/8/17, paras. 4-9).

66. Some of her Christian interlocutors in the Occupied Palestinian Territory expressed that they were living between two fires. They emphasized that they were particularly vulnerable as a “minority within a minority”, suffering both from the effects of occupation and from significant pressure within the Palestinian population. Allegedly, Christians have been harassed or intimidated by militants and the local judiciary has failed to adjudicate seizures of Christians’ property by criminal gangs. There have been several cases of attacks on Christian churches and violence against priests or individuals in Gaza and the West Bank.

67. The Special Rapporteur would like to emphasize that both General Assembly resolution 61/161 and Human Rights Council resolution 6/37 urges States to take “all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities”.

## V. CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

68. The State of Israel and the Occupied Palestinian Territory are home to a rich diversity of religions or beliefs and host religious sites revered by believers from all over the world. Yet, this very diversity, which should have been a blessing, tragically has polarized people on the lines of religion. The conflict has an adverse impact on the right of individuals and communities to worship freely and to attend religious services at their respective holy places. Liberty of movement, including access to places of worship, is restricted in particular for Palestinian Muslims and Christians through the existing system of permits, visas, checkpoints and the Barrier. While the Government of Israel informed the Special Rapporteur that these restrictions are necessary for security reasons, she would like to emphasize that any measure taken to combat terrorism must comply with the State’s obligations under international law. Taking into account the individuals’ freedom of religion or belief and liberty of movement as well as the principles of non-discrimination and international humanitarian law, the intrusive restrictions seem to be disproportionate to their aim as well as discriminatory and arbitrary in their application.

69. The Special Rapporteur’s interlocutors from religious minorities living in Israel have by and large acknowledged that there is no religious persecution by the State. Within the Israeli democracy, she would like to emphasize the important role that the Supreme Court has played in the past and can continue to play for safeguarding freedom of religion or belief. However, groups within the Christian, Jewish and Muslim faiths have experienced different forms of discrimination in the State of Israel, for example with regard to the preservation of religious sites or allocation of public funding.

70. With regard to the situation in the Occupied Palestinian Territory, the Special Rapporteur is concerned about reports of the rising level of religious intolerance and the vulnerability of religious minorities, including some small Christian communities, against the background of a deficient rule of law.

71. Personal status questions in both Israel and the Occupied Palestinian Territory show the delicate relationship between State and religion. Even though the various religious courts for historical reasons have the jurisdiction for issues such as marriage and divorce, this does not absolve the authorities from their responsibility to ensure equal treatment and the implementation of human rights for all individuals.

72. The Special Rapporteur was deeply impressed by the guided tour through the Yad Vashem Holocaust Memorial Museum. She would like to emphasize the importance of documenting the history, preserving the memory of the victims and educating future generations. In her press statement of 27 January 2008, the Special Rapporteur referred to the International Day of Commemoration in memory of the victims of the Holocaust and joined the United Nations Secretary-General in remembering those whose rights were brutally desecrated at Auschwitz and elsewhere as well as in genocides and atrocities since.

73. The Special Rapporteur is encouraged by the engagement of many Israeli and Palestinian civil society organisations which have demonstrated that - despite conflict and religious polarization - people belonging to different religions and beliefs are able to extend respect and tolerance to each other. There also have been promising approaches of inter-faith and intra-faith dialogue on various levels. At the same time, the Special Rapporteur is concerned that many individuals she met during her visit in Israel and the Occupied Palestinian Territory bear deep resentments against other religions and their adherents.

74. A major challenge, which needs to be addressed immediately in order to avoid a further deterioration of the situation, is to effectively sanction any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. However, impunity for such acts of incitement is a concern both in the State of Israel and in the Occupied Palestinian Territory. Furthermore, the persistence of violence committed in the name of religion is disturbing, for example with regard to violent acts perpetrated by zealous settlers or even worse in the form of suicide bombings by militant Islamists.

75. It is particularly worrying when children are being incited to express hatred toward those with a different religious affiliation. Education for tolerance, respect and recognition of diversity seems vital to get out of a vicious circle of discrimination, hostility and violence. In addition, long-term confidence building measures are required on all sides and at various levels. The Special Rapporteur would like to refer to the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination, in which both the Government of Israel and the Palestinian Authority actively participated. The Madrid Final Document (E/CN.4/2002/73, appendix), which was adopted by consensus on 25 November 2001, emphasizes that the young generation should be brought up in a spirit of peace, tolerance, mutual understanding and respect for human rights - especially for the respect of freedom of religion or belief - and that it should be protected against all forms of discrimination and intolerance based on religion or belief. Appropriate measures should be taken against such forms of intolerance and discrimination which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including the Internet. Furthermore, teachers and students should be provided with voluntary opportunities for meetings with their counterparts of different religions or beliefs.

## **Recommendations**

76. **The Special Rapporteur recommends that all parties - especially in the framework of a possible peace agreement - bind themselves legally to protect the rights of religious minorities. Particular attention should be paid to include comprehensive guarantees for equality and non-discrimination on grounds of religion or belief as well as for the preservation and peaceful access to all religious sites. Existing rights in respect of these religious sites should not be denied or impaired and freedom of worship should be safeguarded in conformity with existing rights. Any commitments, especially those which may affect human rights and fundamental freedoms, must be implemented and monitored in an effective and independent manner.**

77. **With regard to the protection and preservation of religious sites, the Special Rapporteur recommends that the Government of Israel issue as soon as possible non-selective regulations and designate holy sites on a non-discriminatory basis. The unique spiritual and religious dimension of the holy sites and their importance for believers in the whole world need to be appropriately taken into account. Furthermore, Israeli authorities should avoid delays in issuing visas for clergy or seminarians and should not impose limitations which might unduly hinder their ability to carry out religious activities in an effective manner.**

78. **The relevant authorities in Israel and the Occupied Palestinian Territory should consider discontinuing the indication of the religious affiliation on those official identity cards where this is still the case. In the meantime, the authorities should provide the possibility to indicate “other religion” or “no religion” on identity cards as well as the possibility not to divulge the religious beliefs of the cardholder at all in the application process.**

79. **Staff members of the police and military forces should be provided with adequate training in order to raise their awareness of multiple forms of discrimination based on grounds such as religion, race or ethnic origin and to enhance sensitivity about their duty to promote and respect international human rights standards, including freedom of religion or belief.**

80. **The Special Rapporteur recommends that the freedom of religion or belief receive more emphasis in the training of personnel of detention facilities and that the Standard Minimum Rules for the Treatment of Prisoners, especially rules 41 and 42, be applied to every prisoner, regardless of his or her religion or belief.**

81. **Concerning the allocation of public funding for religious bodies, the Special Rapporteur recommends that regulations and criteria for funding be published and applied to all religious groups on an equal and equitable basis.**

82. **Since the application of religious law to determine matters of personal status and the absence of provision for civil marriage effectively denies a large number of persons the right to marry in Israel, the Government of Israel should consider introducing legal provisions which allow for civil marriages in Israel. Similar concerns with regard to matters of personal status apply to the Occupied Palestinian Territory.**

83. Concerning the Government of Israel's reservations on the appointment of female judges of religious courts and concerning religious laws on personal status matters, the Special Rapporteur would like to reiterate the recommendation by the Committee on the Elimination of Discrimination Against Women, which urged the State of Israel to consider withdrawing its reservations to articles 7 (b) and 16 because these were contrary to the object and purpose of the Convention on the Elimination of Discrimination Against Women.

84. Both in the State of Israel and in the Occupied Palestinian Territory, any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence should be effectively investigated, prosecuted and punished. Similarly, any related violent acts should be investigated in a prompt, transparent and independent manner, the perpetrators should be prosecuted and sentenced, and avenues for redress and protection should be offered to the victims.

85. In terms of prevention activities, the Special Rapporteur encourages the Government of Israel and the Palestinian Authority to promote the principles, objectives and recommendations of the Madrid Final Document. One possible example could be support for, and funding of, voluntary school exchange programmes between pupils and teachers from Israel and the Occupied Palestinian Territory. In addition, concrete initiatives of inter-religious and intra-religious dialogue, especially at the grass-roots level, should be fostered and encouraged in order to bridge the divides along religious lines.

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