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**Human rights situation in Palestine
and other occupied Arab territories**

Joint written statement* submitted by Al-Haq, BADIL- Resource Center for Palestinian Residency and Refugee Rights and Defence for Children International, non- governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The continuing responsibility of the Human Rights Council in ensuring accountability for victims of ‘Operation cast lead’¹

A year has passed since Israel, the Occupying Power launched its devastating offensive attack, code-named ‘Operation Cast Lead’, against the Palestinian people in the occupied Gaza Strip. In less than three weeks, the Occupying Power killed more than 1,400 Palestinians, over 83 percent of which were civilians, including 342 children, and wounded more than 5,000.² Meanwhile, the occupying authorities reported the killing of 13 Israelis, including ten soldiers.³ The large-scale loss of civilian lives was coupled with extensive property destruction. Al-Haq documented the destruction or damage of 11,154 civilian homes during the offensive, affecting more than 100,000 Palestinian residents, half of which are children.⁴ The foundations of civilian life were impaired by the destruction of food and industrial facilities and public utilities,⁵ in addition to civilian buildings including six police facilities.⁶

Operation Cast Lead’ occurred in the midst of an already dire humanitarian crisis in the Gaza Strip caused by the relentless blockade forced upon the Palestinian people by the Occupying Power. The blockade is today in its third year, and thus far, no endeavors have been made to lift it. The Israeli offensive has exacerbated the effects of the blockade on the people of the Gaza Strip, resulting in the acute need for enforcement of international humanitarian and human rights law in the Occupied Palestinian Territory (OPT).

An initial response to the large-scale devastation in the Gaza Strip from the international community was the establishment of the UN Fact-Finding Mission on the Gaza Conflict (Mission) by the Human Rights Council. The Mission’s report, which has been endorsed by the General Assembly, concluded that the Occupying Power, and Palestinian armed groups, had committed war crimes and possibly crimes against humanity, including the crime of persecution, in addition to violations of international humanitarian and human rights law. The Mission’s report concurred with similar findings by the UN High Commissioner for Human Rights and the Arab League’s Independent Fact Finding Committee on Gaza.

The findings of violations of international humanitarian and human rights law reflect a prevailing ‘culture of impunity in the region [which] has existed for too long’⁷. The Occupying Power, with the tacit consent of third state parties, has been allowed to continuously disregard its legal obligations, resulting in grave violations of Palestinians’

¹ Addameer Prisoner Support and Human Rights Association, Arab Association for Human Rights – HRA, The Israeli Committee Against House Demolitions, and Women’s Centre for Legal Aid and Counselling also share the views expressed in this statement.

² Al-Haq, ‘‘Operation Cast Lead’: A Statistical Analysis’’, August 2009, page. 3, available at <http://www.alhaq.org/pdfs/gaza-operation-cast-Lead-statistical-analysis%20.pdf> (accessed 10 February 2010); see also Human Rights in Palestine and other, occupied Arab territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, (hereafter ‘Goldstone Report’), (A/HRC/12/48), 25 September 2009, page. 17, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed 10 February 2010).

³ Goldstone Report., page. 17.

⁴ Al-Haq, ‘‘Operation Cast Lead’: A Statistical Analysis’’, page. 8.

⁵ Goldstone Report, pages. 21- 22.

⁶ Goldstone Report, page. 17.

⁷ Statement by Richard Goldstone on behalf of the Members of the United Nations Fact Finding Mission on the Gaza Conflict before the Human Rights Council, 29 September 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm> (accessed 10 February 2010).

rights to which no effective remedy is afforded. This extends to the Israeli High Court which refuses to accept that the Occupying Power is under an obligation to comply with the Fourth Geneva Convention, and limits the application of international law to the occupied Gaza Strip by re-affirming that “the State of Israel is not under a general obligation to care for the well-being of the residents of the Strip [...] under the laws of occupation in international law”⁸. This conclusion does not comply with the findings of the Human Rights Council.⁹

In the case of non-compliance, perpetrators of crimes must be held accountable, regardless of their rank or nationality. Third state parties also have an obligation under customary international law to hold perpetrators of any nationality accountable for grave breaches of the Fourth Geneva Convention. Accountability for international crimes is essential for upholding the rule of law and respect for human rights, without which there can be no justice or sustainable peace.

The GA Resolution adopted on 5 November 2009 recognised that an opportunity should be given to the Occupying Power and the Palestinian side to carry out domestic investigations into alleged crimes of international humanitarian and human rights law, which must be carried out in an independent and credible manner, in compliance with international standards. The international standards agreed upon by United Nations are those of independence, effectiveness, transparency and promptness.¹⁰

The occupying power

The undersigned recognize that the Occupying Power has carried out domestic investigations into some incidents during ‘Operation Cast Lead’. However, these investigations do not meet the international standards that the Occupying Power must adhere to.

It should be noted that since 2003, Israel’s Military Advocate General (MAG), responsible for reviewing and transmitting complaints to either command or criminal investigations,¹¹ has pursued a policy of not opening criminal investigations into the killing and injury of Palestinians residing in the OPT, including the Gaza Strip.¹² This policy is reflected in the domestic investigations undertaken into violations of international humanitarian and human rights law committed during the offensive on Gaza. To date, of 150 investigations opened, a

⁸ HCI 5268/08 and HCI 5399/08.; *see also* HCI 9132/07, *Al-Basyouni Ahmed v. Prime Minister*.

⁹ See for example Human Rights Council Resolution A/HRC/S-9/L.1, The grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, 12 January 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm> (accessed 12 February 2010).

¹⁰ See UN Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions; UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; see also Concluding Observations of the Committee against Torture of May 2009, para. 29, CAT/C/ISR/CO/4; General Comment 31 of the Human Rights Committee, CCPR/C/21/Rev.1/Add.13.

¹¹ Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, Report of the Secretary General (‘Secretary General Report’), A/64/651, 4 February 2010, page. 22.

¹² Adalah, Israeli Military Probes and Investigations fail to meet International Standards or Ensure Accountability for Victims of the War on Gaza (‘Adalah Briefing Paper’), January 2010, page. 2, available at <http://adalah.org/newsletter/ara/jan10/paper.pdf> (accessed 11 February 2010).

mere 36 incidents have been referred for criminal investigation.¹³ Moreover, to date, only one criminal investigation has resulted in the prosecution of one soldier, who was sentenced to seven and a half months imprisonment after confessing to having stolen a credit card.¹⁴

Moreover, allegations are often filtered through “operational debriefings” conducted by senior officers before they may be transmitted for review by the MAG. The majority of investigations are only conducted as operational debriefings. This process is problematic with respect to transparency: the debriefings are confidential with no possibility of external monitoring. Furthermore, operational debriefings are ineffective as they are not conducted by legal experts and their aim is to identify operational failures rather than to uncover violations of the law.¹⁵ In essence, the military is conducting domestic investigations into its own actions, contrary to the principle of independence.¹⁶

Regardless, the MAG and Attorney General’s (AG) involvement in the domestic investigations render them inadequate due to a lack of independence. The MAG provided legal advice to the military throughout ‘Operation Cast Lead’, and the AG advised on ‘punitive collective sanctions’ against the Palestinian population in the Gaza Strip, which was subsequently approved by the Israeli Supreme Court.¹⁷

Furthermore, the Israeli investigations cannot be considered effective since the Occupying Power has failed to investigate the policies behind the incidents and has treated the complaints as isolated incidents. The Occupying Power has also failed to investigate actions and decision taken by those “who designed, planned, ordered and oversaw the operations” and with whom principal responsibility lies.¹⁸

The Palestinian side

To date, domestic investigations by the Palestinian side fall short of complying with international standards. The Palestinian National Authority, on 25 January 2010, by means of Presidential Decree, established an independent commission with the mandate to “undertake the investigative duties and responsibilities required of it pursuant to the Goldstone report”¹⁹. The commission, still in its early stages, has yet to identify any cases for review. The de facto Hamas Government of the Gaza Strip has concluded that Palestinian armed groups only targeted military objectives, and the civilian casualties were unintended.²⁰ These findings run contrary to the available evidence that missiles were launched into civilian areas in Israel.

¹³ Secretary General Report, page. 7.

¹⁴ Ibid., page. 49 and footnote 112.

¹⁵ Adalah, Association for Civil Rights in Israel, B’Tselem, Gisha et al., Letter sent to Prime Minister Benjamin Netanyahu by human rights organizations based in Israel calling for an independent and impartial investigation mechanism by Israel, January 25 2010, available at <http://adalah.org/newsletter/ara/jan10/paper.pdf> (accessed 13 February 2010).

¹⁶ Human Rights Watch, Promoting Impunity, The Israeli Military’s Failure to Investigate Wrongdoing, June 2005, available at <http://www.hrw.org/en/reports/2005/06/21/promoting-impunity> (accessed 11 February 2010).

¹⁷ Adalah Briefing Paper, page. 2.

¹⁸ Goldstone Report, para. 1895.

¹⁹ Secretary General Report, Annex II, Attachment I, page 65.

²⁰ See for example Human Rights Watch, Gaza: Hamas Report Whitewashes War Crimes, 28 January 2010, available at <http://www.hrw.org/en/news/2010/01/28/gaza-hamas-report-whitewashes-war-crimes> (accessed 12 February 2010).

Conclusions

The Palestinian people depend on the international community to ensure respect for international law and pursue peace and justice. It is evident that Palestinian victims are not afforded effective domestic remedies for violations of international humanitarian and human rights law to which they have been, and continue to be, subjected to. As such, the undersigned urge the Human Rights Council to ensure that accountability is achieved through the implementation of the Mission's report, as well as to encourage the General Assembly and the Security Council to act. In particular due to the reluctance of the Secretary-General to assess the implementation of the recommendations of the Mission's report by the responsible parties, the continued involvement of the Human Rights Council throughout the accountability-seeking process is pivotal.

In light of the aforementioned, the undersigned hence call upon the Human Rights Council to carry out the following;

- Call upon the Occupying Power to end the illegal blockade on the occupied Gaza Strip;
- Recommend that the General Assembly establish an expert committee composed of international experts on international law and criminal investigations, mandated with the task of monitoring and evaluating domestic investigations that are carried out, or the lack thereof;
- In case the General Assembly fails to establish an expert committee, the Human Rights Council should establish one on the basis of their mandate; and
- To transmit to the General Assembly any and all relevant material, in particular reports provided to it regarding the implementation of the Mission's report and information on domestic investigations by the responsible parties.