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

Written statement* submitted by the Palestinian Centre for Human Rights, a non-governmental organization 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.

[24August 2012]

* This written statement is issued, unedited, in the language received from the submitting non-governmental organizations.

Update on the progress made in the implementation of the recommendations of the fact-finding mission on the Gaza conflict

In advance of the Secretary-General's report on the follow up to the Fact-Finding Mission on the Gaza Conflict, this submission will provide the Human Rights Council with an update on the progress made on the implementation of the recommendations of the Fact-Finding Mission. In particular, the Palestinian Centre for Human Rights (PCHR) will address the lack of accountability in Israel with respect to alleged violations of international law committed in the context of Operation 'Cast Lead,' Israel's 27 December 2008 – 18 January 2009 offensive on the Gaza Strip. PCHR hopes that its considerable experience and expertise in the field will supplement available information and help to facilitate a fully-informed discussion on the topic.

The information provided herein is based on PCHR's longstanding free-of-charge legal assistance to Palestinian civilians, and is focused on the status of civil (reparation) and criminal complaints submitted to the Israeli authorities in relation to alleged violations of international law committed in the context of Operation Cast Lead. PCHR wishes to express its willingness to cooperate with the Human Rights Council, and to provide any further information as required.

The right to an effective remedy

One of the principal recommendations made by the Fact-Finding Mission on the Gaza Conflict focused on the pursuit of accountability with respect to alleged violations of international law committed in Gaza. This is to be achieved, inter alia, by conducting proper investigations, prosecuting individuals that have been accused of violating the law and providing reparations. A central component in the pursuit of accountability is the creation of an atmosphere that prevents impunity. It is noted that the right to reparation is a fundamental component of the right to an effective remedy, and also constitutes a component of customary IHL.

To-date, and as documented by the two Commissions of Experts mandated by the Council, Israel has systematically failed to fulfill its obligations in this regard.

As part of PCHR's mandate, legal aid services are provided to victims of human rights violations, which include violations that occurred during the Gaza Conflict. This submission will now set out PCHR's analysis of Israel's investigations into the events that occurred during the Operation Cast Lead and the status of PCHR's civil and criminal complaints in the Israeli justice system.

Investigations

It is clear that, although Israel has a functioning justice system, it is not being utilized to properly investigate violations committed during Operation Cast Lead. Following Operation Cast Lead, PCHR published a report 'Genuinely Unwilling: An Update - The Failure of Israel's Investigative and Judicial System to Comply with the Requirements of International Law,' where it outlined Israel's judicial and investigative system, focusing in particular on post-Operation Cast Lead investigations.

In *Genuinely Unwilling: An Update*, PCHR discussed how Israel's investigative system precludes effective investigations, as evidenced by the systematic failure to open criminal investigations into the killing and injury of Palestinian civilians. Of particular concern is the centrality of the Israeli Military Advocate General (MAG) to the investigative process

(given that the MAG is implicated in a number of the allegations presented by the Fact-Finding Mission), the reliance on operational debriefings which fail to meet the requirements of an effective investigation, and the lack of genuine civilian judicial oversight.

This has raised several concerns, in particular with respect to the charge ultimately laid against soldiers, which was noted by the Fact-Finding Mission on the Gaza Conflict in its initial report. In the rare instances in which soldiers are indicted, they are not charged in a manner appropriate to the crime. For example, two soldiers accused of using a nine year old boy as a human shield were charged with ‘conduct unbecoming’, a charge which fails to reflect the gravity of the offence or the international nature of the crime. Furthermore, plea bargains may also reduce in further modifications of a charge.

On 12 August 2012, it was announced in the media that an Israeli soldier was sentenced to only 45 days in jail after he was able to plea bargain a manslaughter charge – itself unrepresentative of the gravity of the crime – down to ‘illegal use of weapons’. In this case, the soldier was accused of killing Raya Abu Hajaj (64) and her daughter Majdi (36) on 4 January 2009, who were shot while holding a white flag, as documented in the Report of the Fact-Finding Mission.

Although the MAG originally laid the charge of manslaughter, and despite the ample evidence that was presented, it was determined that a connection could not be made between the Israeli soldier and the death of these two Palestinian women because the soldiers testimony was different than that of the eyewitnesses. This recent incident reinforces the conclusion that Israel is not conducting appropriate investigations or prosecutions for violations of law committed during Operation Cast Lead.

Civil complaints

Since 2009, PCHR has submitted 1,046 requests for reparation on behalf of 1,046 victims of Operation Cast Lead to the Compensation Officer of the Israeli Ministry of Defence. According to Israeli law, compensation requests must be submitted to the Compensation Office at the Israeli Ministry of Defence within 60 days of the incident. Dependent upon filing of this request, a tort case may be filed before the Israeli civil courts, but this must be done within two years of the incident.

With respect to the 1,046 compensation applications filed, responses have been received in relation to only 26 applications (17 responses total) to-date. 24 of these responses were interlocutory, one noted that a case had been filed before the Israeli civil courts and one refused compensation on the grounds that the incident occurred during a ‘military operation.’ Absolutely no communication has been received from the Israeli authorities in the overwhelming majority of the cases. PCHR routinely submits letters to the relevant authorities requesting information. Please note that no additional responses have been received since PCHR’s submission to the Human Rights Council 20th Session.

PCHR would again like to raise the issue of the Israeli authority’s two court fees, which create difficulties for accessing justice in Israel. First, a routine court fee is applied in each case (approximately 1,600 NIS), and a court guarantee is imposed on a discretionary basis by the court. This guarantee must be paid before the case can proceed; previously this amount stood at a minimum of approximately 10,000 NIS per case. With respect to Operation Cast Lead cases, Israeli courts have begun to impose a 20,000 NIS (approximately 5,300 USD) court guarantee per claimant in each case. The imposition of these fees can also be an unsurpassable financial burden given income and poverty levels in the Gaza Strip. Whenever a guarantee is requested, if this amount is not paid within 120 days, further proceedings are barred and the right to reparation is irremediably lost.

Only one civil complaint has resulted in any form of remedy: PCHR has secured an out-of-court settlement with respect to the family of two victims of a white flag killing, Raya and Majdi Abu Hajaj. A settlement of 500,000 NIS (approximately 147,000 USD) was awarded.

Criminal complaints

PCHR has submitted 490 criminal complaints, on behalf of 1,046 victims, to the Israeli Military Prosecutor requesting the opening of a criminal investigation. PCHR has received responses with respect to 23 cases: 19 responses indicating that the complaint has been received, that it will be checked, and PCHR will be informed of the result; 1 response indicating that the case was closed as the witness would not travel to Erez crossing for interview; 1 response indicating that a soldier had been charged; and 2 responses stating that the investigation had been closed without providing reasons. One of the investigations that were closed is the Samouni case, which involved the wilful killing of 27 civilians and injury of 35 civilians.

PCHR notes that external sources, such as the Israeli media, have reported that a number of cases relating to PCHR's clients have ostensibly been closed. However, PCHR has only received notification that a file was closed in 3 instances.

The one instance of a soldier being charged as a result of PCHR's criminal complaints related to the theft of a stolen credit card, for which a soldier was convicted and served seven and a half months in prison.

Conclusion

An analysis of Israel's investigative system and the absolute lack of accountability engendered by this system lead to the unequivocal conclusion that the recommendations set out in the UN Fact-Finding Mission on the Gaza Conflict to the Security Council have not been implemented. Israel has created an atmosphere where impunity exists, preventing the victims of Operation Cast Lead from receiving justice, and has systematically failed to fulfill its concrete obligations under international law.

In light of the reality of the situation, PCHR suggests again that a Chapter VII Security Council referral of the situation in Israel and Palestine to the International Criminal Court is the most appropriate course of action.
