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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Joint written statement* submitted by the Palestinian Centre for Human Rights (PCHR), the BADIL Resource Centre for Palestinian Residency and Refugee Rights, Al-Haq Law in the Service of Man, Ittijah: Union of Arab Community Based Associations, Defence for Children International (DCI), Adalah – Legal Center for Arab Minority Rights in Israel, the International Federation of Human Rights Leagues (FIDH), 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.

[14 October 2009]

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

Victims' Rights Must be Upheld: Call for the Implementation of the UN Fact Finding Mission's Recommendations and an End to the Illegal Annexation of East Jerusalem, including interference with cultural and religious sites*

The need for the full endorsement of the Report by the Fact Finding Mission

On 1 October 2009, the Human Rights Council decided to defer consideration of the report by the UN Fact Finding Mission on the Gaza Conflict ('Fact Finding Mission') until its thirteenth session in March 2010. This decision represented a failure of the Human Rights Council to act within the full extent of its mandate to promote "universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner" and to "address situations of violations of human rights, including gross and systematic violations".¹

The deferral was a blow to the victims of violations of international human rights and humanitarian law, for whom justice delayed is justice denied in the truest sense of the words. Palestinians within the Occupied Palestinian Territory ('OPT') have no resort to effective judicial remedies within Israel's domestic legal system. The right to effective judicial remedies is affirmed in Article 2 of the International Covenant on Civil and Political Rights, whilst Article 26 affirms the entitlement of protection of the law. The flawed nature of Israel's investigatory apparatus, and Israel's unwillingness to genuinely investigate allegations of criminal misconduct, have been extensively documented and were highlighted in the report of the Fact Finding Mission. This unwillingness to pursue justice is illustrated by Prime Minister Netanyahu's public statement on 12 October 2009, vowing that Israeli soldiers and leaders will not stand trial for war crimes committed during the Israeli offensive 'Operation Cast Lead'.²

Evidence indicates that Israeli forces may have committed crimes against humanity in the Gaza Strip; the crime against humanity of persecution, manifested, *inter alia*, by the illegal blockade of the Gaza Strip, continues to this day. These findings have been confirmed by investigations conducted by a diverse range of bodies, including Amnesty International, Human Rights Watch, the UN Board of Inquiry, the Independent Fact Finding Mission of the Arab League, the Office of the High Commissioner for Human Rights, and now the Human Rights Council-mandated Goldstone Report.

Yet despite the documentation of such crimes, neither the State of Israel nor individuals suspected of committing war crimes have been held to account. It has been almost ten months since the offensive and despite significant levels of international attention no effective domestic investigations have been conducted.

* Al-Mezan Center for Human Rights, Addameer Prisoner Support and Human Rights Association, Aldameer Association for Human Rights – Gaza, North South 21 and the Jerusalem Civic Coalition also share the views expressed in this statement

¹ General Assembly Resolution 60/251 Human Rights Council (A/RES/60/251) 3 April 2006, paras. 2 and 4.

² See Joseph Federman, "Netanyahu: No war crimes trials for Israelis", The Washington Times, 12 October 2009, available at: <http://www.washingtontimes.com/news/2009/oct/12/netanyahu-no-war-crimes-trials-israelis/> (accessed 14 October 2009); see also "Netanyahu vows never to let Israelis be tried for war crimes", Haaretz, 12 October 2009, available at: <http://www.haaretz.com/hasen/spages/1120498.html> (accessed 14 October 2009).

In the evident absence of domestic judicial remedy, recourse must be had to international mechanisms. The undersigned fully endorse the Fact Finding Mission's recommendations that the report be submitted to the UN Security Council, if after a period of six months, effective domestic judicial proceedings are not forthcoming. At that point acting under Chapter VII of the UN Charter, the Security Council must refer the situation to the Prosecutor of the International Criminal Court, pursuant to article 13(b) of the Statute of the International Criminal Court. Should the Security Council prove unable to discharge its responsibilities on behalf of all Member States, then the General Assembly should consider its responsibility for maintaining international peace and security and take all appropriate actions to ensure international criminal investigation.

In concert with these efforts, States Parties to the Geneva Conventions of 1949 remain under a legal obligation to initiate investigations in their national courts, in accordance with the principle of universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions.³ As recommended by the Fact Finding Mission, "[w]here so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognised standards of justice." The undersigned stress the fundamental importance of universal jurisdiction with respect to the maintenance of the rule of law, and upholding individuals' legitimate rights. In the absence of effective international mechanisms, universal jurisdiction is the only mechanism through which victims' rights can be upheld and those responsible for international crimes held to account.

The Report of the Fact Finding Mission also highlighted the reparations owed to the people of the Gaza Strip by Israel. Israel is responsible for the internationally wrongful acts it committed; its victims are entitled to reparation. This reparation will not erase the reality of the acts committed, but it will help to rebuild lives and livelihoods. Today, almost ten months after the end of the offensive, the Gaza Strip remains as it did on 18 January. Reconstruction is impossible as a result of the Israeli-imposed illegal blockade, a form of collective punishment which indiscriminately affects each of Gaza's 1.5 million inhabitants, frustrates any semblance of 'normal' life and fundamentally undermines basic human dignity.

Israel, the Occupying Power, must accept responsibility for its internationally wrongful acts; it "is under an obligation to make full reparation"⁴ for any injury caused by its wrongful actions. In light of its legal obligations, Israel must first acknowledge its financial obligations with respect to reparations, and second ensure the provision of all necessary reconstruction materials and equipment. In this regard, the undersigned call for the lifting of the illegal blockade, and support the Fact Finding Mission's recommendation that an escrow fund be established by the General Assembly to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to the State of Israel.

All civilians are legitimately entitled to the full protection of the rule of law, without discrimination. All those suspected of being involved in the perpetration of war crimes, grave breaches of the Geneva Conventions or crimes against humanity, whether Israeli or Palestinian, must be investigated and prosecuted in accordance with international law; victims' rights to an effective judicial remedy must be upheld. The significance of access to justice and appropriate

³ Inter alia, Articles 1 and 146 Fourth Geneva Convention (1949).

⁴ Article 31, International Law Commission Articles on State Responsibility for Internationally Wrongful Acts

international action in this regard is not restricted to the Palestinian and Israeli peoples. Human rights and the rule of law are universal. In order to retain their fundamental significance and relevance they must be applied without discrimination or political bias.

The context of Operation Cast Lead: Israel's Occupation of the OPT

Operation Cast Lead occurred in the context of Israel's longstanding occupation of Palestinian land. The illegal Israeli blockade on the Gaza Strip has not been lifted, resulting in the non-entry of necessary food supplies, medical and hospital objects as well as severe restrictions on the movement of Palestinians. In the West Bank, the unlawful activities of the occupation are intensifying in the form of the continuing illegal annexation of East Jerusalem by means of 'administrative' demolitions of Palestinian homes and the systematic policy of denying Palestinians in East Jerusalem building permits. Furthermore, current illegal settlements are expanding and new ones are being constructed in the OPT, resulting in the illegal seizure of Palestinian land and settler violence which necessarily undermine Palestinians' self-determination.

Neither the sanctity of Holy sites nor cultural heritage sites in East Jerusalem have escaped the negative effects of the occupation. Relentlessly, Israel digs and excavates under the holy site of the Al-Aqsa Mosque and violates the freedom of religion by restricting Palestinians' access to their Holy sites.

The Human Rights Council must yet again remind Israel of its obligations under international humanitarian and human rights law, which Israel continue to violate systematically. The Human Rights Council must vigorously ensure the protection and respect of international humanitarian and human rights law by putting forward recommendations to the UN General Assembly to ensure lasting compliance with international law. The endorsement by the Human Rights Council of the entirety of the report by the Fact Finding Mission can also serve as authoritative statement that accountability cannot be negotiated on and that impunity is no longer tolerated.

Furthermore, the report is an authoritative document which demands practical implementation, and the Human Rights Council must take all necessary steps in this regard. International law must be the foundation for any peaceful resolution of the conflict in the region. It is our firm belief that implementation of the report's recommendations and its demand for justice through accountability facilitates the attainment of a fair, genuine and sustainable peace: there can be no peace without justice.

For the sake of providing justice for all victims, we urge the Member States of the Human Rights Council and the international community as a whole to set aside political agendas and reaffirm their commitment to the universal applicability of international humanitarian and human rights law.

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