

UN HUMAN RIGHTS COUNCIL
Thirteenth Session
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Joint written statement by Adalah - The Legal Centre for Arab Minority Rights in Israel; Addameer Prisoner Support and Human Rights Association; Al Mezan; AL-Dameer Association for Human Rights-Gaza; Al-Haq; Arab Association for Human Rights (HRA); Badil Resource Center for Palestinian Residency and Refugee Rights; International Committee of the National Lawyers Guild; Palestinian Center for Human Rights; Physicians for Human Rights-Israel; The Gaza Community Mental Health Program; The Israeli Committee Against House Demolitions; The National Center for Community Rehabilitation; Women's Center for Legal Aid and Counselling (WCLAC).

**More than One year after “Operation Cast Lead”: Distressing
Lack of Accountability and Justice for the Victims of the Conflict**

1. The UN Fact Finding Mission on the Gaza Conflict (the Mission), determined that Israel and Palestinian armed groups committed serious violations of international human rights and humanitarian law and possible war crimes and crimes against humanity. The UN called on both parties to take all steps to launch appropriate independent investigations in conformity with international standards. In resolution S-12/1, the HRC also stressed the urgent need to ensure accountability for all violations of international law to prevent further violations.
2. Under international law, proper investigations into suspected violations of international law must be independent, impartial, effective, transparent and prompt. However, the information and material available suggest that the domestic investigations carried out by the parties to the conflict have not met these standards.

I. The State of Israel

a. Lack of legal protection for Palestinians under the Israeli legal system

3. Since 2003, the Military Advocate General (MAG) has pursued a policy of not opening criminal investigations into the killing and injury of Palestinians civilians in the OPT. The same year this policy was challenged at the Israeli Supreme Court, yet the petition remains pending.¹ Available evidence indicates that the Israeli army maintains that violations of international humanitarian law and international crimes are restricted to cases of intentional attacks as opposed to reckless or negligent acts against civilians. This contradicts Israeli and international criminal law.²

¹ HCJ 9594/03, *B'Tselem v. The Military Advocate General (MAG)* (case pending).

² See The State of Israel, “The Operation in Gaza: Factual and Legal Aspects,” July 2009, and the state’s response to HCJ 9594/03, *B'Tselem, et al. v. MAG* (case pending); see also: Adalah, “*Israeli Military Probes and Investigations fail to meet international Standards or Ensure Accountability for Victims of the War on Gaza*,” Briefing Paper, January 2010.

4. Israel's Supreme Court upheld a 2005 law, which provides that no compensation is payable to "a citizen of an Enemy State and an activist or member of a Terrorist Organization" for damages caused during military operations since September 2000. This means that Palestinian civilians in the Gaza Strip remain barred from legal redress for the wrongdoings of Israeli soldiers during "Operation Cast Lead," and clearly violates international law.

b. Israel's Investigation

5. Israel's investigations are an internal military process, which suffer from lack of independence, impartiality, effectiveness and transparency. According to the State of Israel, 150 incidents have been examined, the majority of which are examined through so-called "operational debriefings." 36 have been referred for criminal investigation by the MAG, and many cases were closed allegedly on the basis of "lack of evidence."³
6. Operational debriefings are a tool to review incidents and operations that are conducted by soldiers together with a superior officer, without testimony from victims or witnesses being sought. Such debriefings are confidential and not designed to identify criminal liability, but only serve operational purposes.⁴ No criminal investigations have been opened in the vast majority of cases despite existing *prima facie* evidence that international crimes were committed.
7. While the majority of the serious violations of international law committed during "Cast Lead" were a result of questionable broader policies and orders, Israel's investigations merely address misconduct of individual soldiers, and treat all complaints as isolated incidents. To date, Israel has refused to investigate these broader policies, strategies, procedures, regulations and objectives, or the continuation of the blockade of the Gaza Strip, contrary to the Mission's explicit recommendations.
8. MAG and the Attorney General (AG) are responsible for making decisions regarding examinations and criminal investigations. MAG provided legal advice to the army during the planning stages of the operation in Gaza and throughout its execution.⁵ The AG also advised on "punitive collective sanctions." These facts call for carrying out an investigation of MAG and the AG, and should disqualify both from impartially investigating suspected violations of international law by the military.
9. Israel's investigations raise serious doubts about their credibility. For example, the Israeli claim that the only operating flour mill in the Gaza Strip was hit by Israeli

³ State of Israel, "Gaza Operation Investigations: An Update", January 2010.

⁴ See article 539A of the Military Justice Law – 1955. See also Adalah case: HCJ 2366/05, *Al-Nebari v. The Chief of Staff of the Israeli Army* (decision delivered on 29 June 2008), paras. 6-10 of Justice Arbel's ruling.

⁵ See Yotam Feldman and Uri Blau, "How IDF legal experts legitimized strikes involving Gaza civilians," *Haaretz*, 23 January 2009; The State of Israel, "The Operation in Gaza", July 2009

ground shells is inconsistent with documented evidence that supports the Mission's findings that aerial bombardment caused its destruction.⁶

10. Only one criminal investigation has thus far led to prosecution and conviction of a soldier – and this dealing with a case for theft of a credit card. The only other disciplinary cases involved two officers who fired explosive shells into populated areas, in violation of orders from superiors. However, the Israeli Army has denied this.

c. The Blockade

11. The longstanding Israeli blockade of the Gaza Strip is designed to achieve political objectives, including compelling the Gaza population to not support Hamas. The blockade deprives the Gazan population (66% of whom are refugees) from sustenance, employment, health care, housing and water, and denies them freedom of movement and the right to leave and enter one's country, as well as limits access to courts of law and effective remedy.⁷ The Mission has noted that the above could amount to persecution, a crime against humanity.⁸
12. HRC has acknowledged that the siege imposed on the Gaza Strip, including its closure of border crossings and cutting means of subsistence, constitutes *collective punishment*,⁹ and urged Israel to lift the blockade.¹⁰ Nevertheless, Israel continues to tighten the siege and disregard its legal obligations under international law, and HRC's resolutions.

II. The Palestinian Authorities

13. Information available on the investigations carried out by the Palestinian authorities provides no evidence of compliance with required international standards. The *de facto* government in Gaza issued a statement asserting that rocket attacks against Israel were directed only at military targets, a claim disproved by all available evidence. In the West Bank, the responsible Palestinian authority has equally failed to comply with the requirements of the recommendations of the Report, its action to date being limited to the appointment of an investigatory committee.

III. The Role of the UN and International Community

14. Mechanisms listed in the Mission's recommendations call attention to the responsibilities of the parties to the conflict as well as to those of other actors, such as UN bodies and States. In resolution S-12/1, HRC called upon all concerned parties, including UN bodies, to ensure implementation of the Mission's report in accordance with their respective mandates.

⁶ See also: HRW, "Israel: Military Investigations Fail Gaza War Victims", Press Release, 7 February 2010.

⁷ *Report of the UN Fact-Finding Mission on the Gaza Conflict*, A/HRC/12/48, 15 September 2009.

⁸ *Ibid*, para.75.

⁹ UNHRC, *The Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/RES/S-12/1, 16 October 2009.

¹⁰ UNHRC, *The Report of the Working Group on the Universal Periodic Review – Israel*, A/HRC/WG.6/3/L.8, 9 December 2008.

15. Nevertheless, the UN and international community have failed in exerting effective pressure on the parties to achieve accountability and justice for the victims. This is demonstrated by the failure of the domestic investigations; the reluctance of the Security-Council to address the Report and establish an independent committee of experts to monitor investigations; the disinclination of the Secretary-General to assess the implementation of the Mission's report by the parties to the conflict;¹¹ and the non-establishment of an escrow fund by the UNGA for Palestinian victims.¹²

In light of the above, we urge the HRC to:

- 1. Call on Israel to immediately lift the blockade on the occupied Gaza Strip;**
- 2. Use all means at the HRC's disposal to hasten the process of accountability and achieve justice for the victims as indicated in the Mission's Report;**
- 3. Call upon the GA to establish an independent committee of experts on international law and criminal investigations to monitor and assess the effectiveness and genuineness of domestic investigations carried out by the parties to the conflict;**
- 4. Call upon the GA to establish an escrow fund for Palestinian victims;**
- 5. Continue to review the implementation of the Mission's Report;**
- 6. Recommend the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (GCIV), to promptly undertake necessary steps to reconvene the Conference for the High Contracting Parties on measures to enforce the GCIV in the OPT.**

¹¹ UNGA, *Follow-up to the report of the UN Fact-Finding Mission on the Gaza Conflict*, A/64/651, 4 February 2010.

¹² UNGA Resolution A/64/L.11, 5 November 2009.