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

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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 February 2011]

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

Palestinians must be fully included in the United Nation's "Era of Accountability"**

In his address to the General Assembly in January 2011, Secretary-General Ban Ki-moon highlighted accountability as a key priority issue for the United Nations this year and declared the organisation's commitment to safeguarding human rights and advancing humanitarian law. As Palestinian human rights organisations, we welcome the Secretary-General's statement and fully expect that the United Nation's proclaimed commitment to an "era of accountability" will include Palestinian victims within its scope. The culture of impunity in which Palestinians have been trapped for over 40 years cannot be further permitted.

Over two years have passed since the end of Israel's offensive on the Gaza Strip, code-named "Operation Cast Lead," and justice for victims has yet to be addressed. The Report of the UN Fact-Finding Mission on the Gaza Conflict (the Report), published in September 2009, presents strong evidence that war crimes and possibly crimes against humanity were committed during the offensive. The Report, endorsed by both the United Nations Human Rights Council and the General Assembly, provides a clear framework to ensure justice for victims in accordance with international law: any failure by the responsible parties to use domestic mechanisms to pursue accountability and provide effective legal redress for victims would result in recourse to international legal mechanisms. The Report outlines several specific justice mechanisms including a United Nations Security Council Chapter VII referral to the International Criminal Court and the exercise of universal jurisdiction by individual States.

Member States of the Human Rights Council, through their endorsement of the Report, agreed to a six-month time limit for domestic investigations to be effectively carried out. More than one year has passed since its endorsement and neither Israeli nor Palestinian legal systems have succeeded in carrying out effective criminal investigations. The Committee of Independent Experts, mandated by this Council to monitor and assess domestic proceedings, confirmed the responsible parties' failure to initiate any effective prosecution of alleged perpetrators, including military and political leaders.

Until now, the international community of States has abdicated its responsibility to ensure justice for international crimes. Member States of the Human Rights Council have refused to move the process forward by failing to condemn the inadequacy of domestic proceedings, thereby obstructing access to mechanisms of international justice. Furthermore, Palestinian political representatives, entrusted to uphold the interests of the Palestinian people before the United Nations and the diplomatic community, have undermined the Report's recommendations by capitulating to external political pressures, including threats by Israel to turn the West Bank into a "second Gaza."¹ For political expediency, Palestinian political leaders and member States of the Human Rights Council have persisted in according more time to continue the façade of domestic investigations. Such procrastination cannot be allowed to continue to the detriment of victims of

** Addameer Prisoner Support and Human Rights Association, Aldameer Association for Human Rights, The Civic Coalition for Defending Palestinians' Rights in Jerusalem, Defence for Children International – Palestine Section, Ensan Center for Human Rights and Democracy, Jerusalem Legal Aid and Human Rights Center, Ramallah Center for Human Rights Studies, NGOs without consultative status, also share the views expressed in this statement.

¹ Akiva Elder, 'Diskin to Abbas: Defer UN vote on Goldstone or face 'second Gaza'', Ha'aretz, 17 January 2010, available at: <http://www.haaretz.com/print-edition/news/diskin-to-abbas-defer-un-vote-on-goldstone-or-face-second-gaza-1.261541>.

international crimes. Member States must acknowledge that the responsible parties have failed to deliver justice.

As the implementation of the Report's recommendations is being delayed, Israel's closure policy continues to collectively punish 1.5 million people in the Gaza Strip, where incursions have been intensifying. Rubble collectors and farmers attempting to pursue a livelihood near the undefined "no-go" zone are routinely injured and killed by Israeli fire. Denial of the right to freedom of movement prevents most people from leaving the Gaza Strip for medical treatment, work or study, and keeps many families divided. In 2010, at least five Palestinians died after being denied timely access to life-saving medical treatment. Since the end of "Operation Cast Lead", there has been little sign of recovery or reconstruction and public health and sewage treatment facilities remain crippled as Israel prohibits the entry of essential building materials. Israel's illegal policies are resulting in the steady impoverishment of an increasingly aid-dependent population.

Compounding the denial of justice for victims of "Operation Cast Lead" are Israel's illegal policies in the rest of the OPT, where violations of international law have been continuing unabated since 1967. In the West Bank, including East Jerusalem, settlement expansion, land confiscation and demolitions of villages and water wells are resulting in a deteriorating human rights situation and in the forcible transfer of Palestinians from their land. Incidents of settler violence, having increased in recent months with the killing of two Palestinian teenagers, are left unpunished. Israeli soldiers are routinely shielded from criminal prosecution, as corroborated by three recent cases of killings. A case in point is the death of 65-year-old Umar Qawasmi, who was shot to death while sleeping in his bed; although the Israeli military admitted its mistake in killing Umar, no criminal charges were brought against the soldiers involved in the operation and no recognition of the right of the victims to reparation was made.

The international community's failure to uphold its obligations to ensure respect for international humanitarian law is undermining the value of the law itself and has reassured Israel that the same can be done at domestic level, leaving Palestinians without any legal protection. In this climate of prevailing impunity, the Report represents a tangible hope for genuine accountability not only for the victims of "Operation Cast Lead", but for all Palestinians. We believe that the member States of the Human Rights Council fully appreciate the pivotal role that justice plays in ensuring peace. We emphasise that the continued immunity Israel enjoys for its persistent violations of international law seriously undermines the United Nations' mandate of maintaining international peace and security. By adopting another toothless resolution, this Council will fail in promoting accountability as a deterrent for further violations and will weaken the foundations of the international legal order.

Time is of the essence for the victims of "Operation Cast Lead," as further delays in the implementation of the Report's recommendations will seriously affect criminal investigations. Immediate steps must be taken to advance the cause of justice starting with the acknowledgement of the victimhood of those who were harmed during the operation. As the High Commissioner for Human Rights highlighted during her recent visit to the region, it is a matter of great concern that "the politics of conflict, peace and security are constantly leading to the downgrading, or setting aside, of the importance of binding international human rights and humanitarian law."² The continued prioritisation of politics over justice will confirm to the victims that international law cannot provide them with any

² "Human Rights chief concludes visit to Israel and the Occupied Palestinian Territory", Office of the High Commissioner for Human Rights, 11 February 2011, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/HCConcludesVisitIsraelOPT.aspx>.

effective remedy; left with no hope, they will seek recourse through other means, as demonstrated by the current developments in the region.

For international law to be respected and victims protected, the Human Rights Council cannot allow the responsible parties more time to continue the pretence of domestic remedies. This Council must seize the opportunity to put into practice its declared commitment to human rights by enforcing the Report's recommendations, which will allow for recourse to international justice mechanisms, without further delay.

Conclusion

As the United Nations body responsible for protecting and promoting universal human rights and for addressing systematic violations of international law, we urge the member States of the Human Rights Council to:

1. Condemn the responsible parties for their failure to comply with the obligation to carry out investigations in accordance with international standards;
2. Transmit the findings of the Committee of Independent Experts, established by the Human Rights Council through Resolution 13/9, to the United Nations General Assembly and to the Secretary-General for immediate action;
3. Recommend to the United Nations General Assembly to urge the Security Council to act under Chapter VII of the United Nations Charter to transfer the matter to the International Criminal Court for adjudication;
4. Encourage the High Contracting Parties to comply with their legal obligations, including the exercise of universal jurisdiction, with respect to grave breaches as set forth in the Geneva Conventions of 1949; and
5. Promote the establishment of an escrow fund for Palestinian victims of "Operation Cast Lead" and request the High Commissioner for Human Rights to report on any pending issues regarding its implementation.