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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Al Mezan 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.

[31 May 2019]

* Issued as received, in the language(s) of submission only.

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Complete impunity five years from operation “Protective Edge”: Zero prosecutions or legal remedy for killing and serious injury regarding full-scale bombardments and other Military attacks

On 16 May 2019, the Office of the Military Advocate for Operational Affairs notified Al Mezan Centre for Human Rights of the closure of the investigation into the killing of Ibrahim Abu Thuraya, 29. The double amputee had been protesting the United States of America embassy move to Jerusalem in eastern Gaza City when he was shot by Israeli soldiers on 15 December 2017. Abu Thuraya was unarmed and did not pose a threat to the soldiers. On 17 December 2017, Al Mezan filed a complaint to the Israeli Military Advocate General (MAG) and shared compelling evidence from the documentation of the shooting. In the notification of closure sent to Al Mezan, the MAG did not cite a reason for dismissing the case without charges.

Al Mezan’s engagement with the Israeli legal system demonstrates the system’s failure to investigate and/or criminally prosecute those responsible for serious violations of international law against Palestinian civilians like Abu Thuraya. The lack of accountability for the killing of Palestinian civilians in Gaza is evident both from times of hostilities in Gaza, and regarding serious violations of international law perpetrated during protests, including the Great March of Return (GMR).

The 51-day military bombardment termed “Operation Protective Edge” (OPE) was launched five years ago; at least 2,219 Palestinians in Gaza were killed by Israeli forces—approximately 70 percent of whom were civilians and 48 percent of whom were killed in their homes. Of 500 criminal complaints to the MAG concerning incidents during OPE, not one has resulted in an indictment being issued for the killing and injuring of Palestinian civilians or the targeting of civilian objects.

The repeated, unjustified delays in proceedings effectively stall proceedings for years on end. Of the 122 criminal complaints submitted by Al Mezan (in some cases jointly with Adalah – The Legal Center for Arab Minority Rights in Israel) to the MAG regarding OPE, unjustified delays in fact-finding assessments left 67 of the cases under examination for at least two years. In the case of the Al-Aqsa Hospital attack, Al Mezan was notified of the start of the assessment in June 2016. Since then, there has been no reported progress, despite the fact that the examination has been open for nearly three years. Cases also languish for years under criminal investigation. In the case of the Jabalia UNRWA shelter attack, the criminal investigation was opened in March 2015; however, there has been no reported progress in over four years.

It is suggested that the intent behind the unjustified delays is two-fold: 1) the authorities go through the motion of proceedings in order to establish points of reference that support their arguments of having met international investigation standards, however, with no intention of holding individuals to account for serious crimes—as evidenced by the zero serious prosecutions in five years since OPE and over one year from the GMR, and 2) to wait until international attention is diverted in order to quietly and without scrutiny dismiss the files.

Since April 2018, Al Mezan has submitted 45 complaints to the MAG regarding the killing and/or injury of unarmed protesters during the GMR. Five criminal investigations were opened. Al Mezan has received no substantive response in relation to six complaints and not one of the 45 complaints has resulted in criminal charges or prosecution.

Numerous legislative barriers and procedural hurdles within the Israeli courts also mean that effective civil remedies and reparation for damages have been kept out of reach for all Palestinian claimants from Gaza.¹ In the case of Attiya Nabaheen, who was shot at age 15 in the front yard of his family home on 16 November 2014, an Israeli court ruled that the state is not liable for damages because Palestinians in Gaza, beings residents of an “enemy entity”,

¹ Al Mezan and Adalah, "Israel gives itself immunity from all damage claims filed by Gazans harmed by Israeli troops; Adalah, Al Mezan appeal to Supreme Court," 10 February 2019. Available at: <http://mezan.org/en/post/23370>

are not eligible for compensation. Nabaheen was returning from school, he was not armed and was not involved in any violence and, as a result of the shooting is paralyzed and confined to a wheelchair for the rest of his life.

In the five years since OPE and over one year since the start of the GMR, Israel's military investigatory system has repeatedly made clear that the state is unwilling to conduct investigations into suspected crimes in accordance with international standards and in view of holding those responsible to account. The Israeli civil courts have also continued to shield the State from liability using legislative amendments to prevent Palestinian claimants from accessing reparations and legal remedy.

Along with the ICC, the UN Commission of Inquiry (CoI) on the 2018 protests in the Occupied Palestinian Territory's report is yet a new impartial attempt to ensure accountability and justice in view of the failure of domestic remedies, the gravity of the violations, and the fact that they are still ongoing.

In March 2019, the CoI found that hundreds of unarmed protesters, journalists and paramedics had been unlawfully targeted by the Israeli military with lethal and other excessive force in the marches. The same use of force policy continues to be implemented today. Unarmed civilian demonstrators who do not pose a threat to life or injury of Israeli soldiers or civilians continue to be shot with live ammunition and by sharpshooters, in violation of international human rights law.

Al Mezan's documentation shows that from the start of the demonstrations on 30 March 2018, Israeli forces have killed 206 Palestinians at the protests, including 44 children, three paramedics, two journalists, and nine persons with disability. At least another 16,675 persons have been wounded, including 3,845 children, 193 paramedics, and 169 journalists. Of the wounded, 8,448 were wounded from live fire, including 1,670 children.

The protesters continue to demand an end to the illegal closure of Gaza that has resulted in devastating and inhumane living conditions. The 12-year closure of Gaza has led to extreme poverty, to the highest levels of unemployment in the world, daily blackouts and severe pollution. The Israeli authorities restrict the fishing zone, with fishermen at risk of violent attack, arrest and confiscation of their boats even in the permitted fishing zone. Medical patients seeking treatment outside of Gaza, due to lack of availability of treatment in Gaza, face enormous obstacles, which often determine life and death.²

The CoI highlighted its lack of confidence in the Israeli justice system and the system's ability to conduct investigations to international law standards and recommended that "States [...] carry out their duty to exercise criminal jurisdiction and arrest persons alleged to have committed, or who ordered to have committed, the international crimes described in [their] report".³

Al Mezan calls on UN Member States to ensure accountability for violations of human rights and commission of international crimes, in view of upholding the rights of victims and survivors. UN Member States must take steps to establish a deterrent to the continued perpetration of serious crimes and consider diplomatic, legal and financial measures against individuals who are identified as responsible for or complicit in the commission of war crimes and crimes against humanity, including during the course of the GMR, as established by the findings of the Commission.

The International Criminal Court must promptly request access to the dossier of the 2018 CoI in the interests of justice.

² Al Mezan, "Gaza's Patients under Severe Pressure on World Cancer Day", 4 Feb 2019. Available at: <http://mezan.org/en/post/23365>

³ Report of the UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, paragraphs 917, 995