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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.

[4 June 2012]

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

The right to a remedy: Pursuit of reparations in response to violations of international law

This submission addresses the right to reparation in the context of Operation ‘Cast Lead,’ Israel’s 27 December 2008 – 18 January 2009 offensive on the Gaza Strip, and is presented with the intention of updating the Human Rights Council on civil proceedings in Israel; it is submitted as a follow up to the 18 March 2011 Committee of Experts Report.¹ While Cast Lead related proceedings provide an important focal point, particularly in light of the dramatic scale of international law violations, it is noted that PCHR’s experience with respect to these cases is consistent with, and illustrative of, the organizations longstanding experience in the field.

The information provided herein is based on PCHR’s longstanding free-of-charge legal assistance to Palestinian civilians, and is solely focused on the status of civil (reparation) 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.

Civil complaints

The right to reparation is a fundamental component of the right to an effective remedy, and also constitutes a component of customary IHL: A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.²

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; this initial complaint is made via a standardised form. Dependent upon the filing of this initial complaint, a tort case may be filed before the Israeli civil courts; however, this must be done within two years of the incident.³ It is noted that the 60 day requirement is often difficult to meet, particularly in the context of large scale offensives. If the initial complaint is not submitted within this time limit, the victims’ right to reparation is forfeit.

Within this 60 day limit, PCHR submitted 1,046 requests for reparation on behalf of 1,046 victims of Operation ‘Cast Lead’ to the Compensation Officer at the Israeli Ministry of Defense.⁴

PCHR has received virtually no response from the Compensation Office at the Ministry of Defence. With respect to the 1,046 compensation applications filed, responses have been received in relation to only 27 applications (18 responses total) to-date. 24 of these

¹ Human Rights Council, Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, Sixteenth session, A/HRC/16/24, 18 March 2011.

² See, for example, Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1: Rules (ICRC, 2005), Rule 150; International Law Commission, Report of the International Law Commission on the work of its fifty-third session, Responsibility of States for Internationally Wrongful Acts, 2001, Article 31.

³ PCHR has submitted a petition to the Israeli High Court of Justice challenging the applicability of the two year statute of limitations, given the current reality in the Gaza Strip, consequent to, inter alia, the Israeli imposed closure.

⁴ The last complaint was submitted in March 2009.

responses were interlocutory, one noted that a case had been filed before the Israeli civil courts and two refused compensation on the grounds that the incident occurred during a 'military operation.' Absolutely no communication – even acknowledging the receipt of a complaint – has been received from the Israeli authorities in the overwhelming majority of the cases. PCHR routinely submits letters to the relevant authorities requesting further information.

PCHR emphasizes that, of 1,046 submitted complaints, 1,020 have been ignored, while 24 have only been addressed in an interlocutory manner.

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, Raya Abu Hajjaj and Majeda Abu Hajjaj, who were killed in a 'white flag' attack. A settlement of 500,000NIS (approximately US\$147,000) was awarded.

As a result of the failure to respond to the overwhelming majority of reparation requests, PCHR filed 100 tort cases before Israeli civil courts, relating to the interests of approximately 626 victims, and paid the initial court fees. These cases were submitted prior to the expiration of the 2 year statute of limitations in December 2010 – January 2011. However due to financial burdens discussed below, PCHR was unable to file complaints on behalf of the remainder of the victims.

Financial constraints

The Israeli authorities impose two fees with respect to civil complaints. The first is a routine court fee, which is applied in each case (approximately 1,600NIS). The imposition of this fee may prove an unsurpassable financial burden when a large number of complaints are filed simultaneously. In this regard, PCHR was forced to return over 400 Operation Cast Lead compensation files to victims, as PCHR was unable to cover the initial court expenses due to resource constraints.

The second financial constraint is a court guarantee, or insurance fee, 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 10,000NIS per case.

With respect to those Cast Lead related reparations cases in which a response has been received, however, Israeli courts have begun to impose a 20,000NIS (approximately US\$5,300) court guarantee per claimant in each case; as noted, previously these guarantees related to the overall case, and was not dependent upon the number of individual claimants. The court guarantee is prohibitively high, and serves as an effective barrier to justice, bearing in mind that over 80% of the population of the Gaza Strip is aid dependent.

The imposition of this guarantee per claimant represents an insurmountable barrier to justice. Significantly, the greater the alleged violation, the greater the monetary barrier. For example, in the case of the 'Abdul Dayem family, the 22 complainants were required to pay a total of 440,000 NIS (approximately US\$115,072) before the case could proceed. This claim related to an incident in which a flechette shell was fired at a condolence tent near to Izbet Beit Hanoun. 5 people were killed, including a child, and 17 others, including 2 children and a woman, were wounded. Similarly, in the case of the Al-Samouni family, the court imposed a guarantee for all 62 victims claiming compensation (62 x 20,000 = NIS 1,240,000, approximately US\$329,800).

Whenever a guarantee is requested, if this amount is not paid within 120 days, further proceedings are barred and the right to reparation is irredeemably lost.

A number of other barriers to justice exist, in particular with respect to lawyers', victims' and witnesses' access to court. As a result of the illegal closure imposed on the Gaza Strip,

all court orders requesting the presence of victims and witnesses from the Gaza Strip have been refused since 2006.

PCHR highlights that the imposition of excessively high court guarantees on a per claimant basis constitute an insurmountable barrier to justice.

To-date, three and a half years after the cessation of hostilities, the victims of Operation Cast Lead have been comprehensively denied their right to both civil and criminal remedy. The aftermath of the offensive has been characterized by systematic impunity.

It is essential that the Human Rights Council continue to pursue justice, and ensure respect for the rule of international law. It is imperative that recourse must be had to mechanisms of international justice, and in this light, the Human Rights Council must reinforce its recommendation contained in HRC 16/32, that the General Assembly submit the report of the UN Fact-Finding Mission on the Gaza Conflict to the Security Council for its consideration and appropriate action.

In light of the reality of the situation, 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.
