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

## **Report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9\***

### *Summary*

This report is submitted to the Human Rights Council pursuant to its resolution 15/6, which “renews and resumes” the mandate of the Committee established in Human Rights Council resolution 13/9. The Committee sought to assess investigations for compliance with international standards of independence, impartiality, effectiveness, thoroughness and promptness. In attempting to fulfill its renewed mandate, the Committee reviewed numerous documents, reports and articles submitted by non-governmental organizations, and held interviews with representatives of governmental and non-governmental organizations, as well as with Israeli and Palestinian victims and witnesses. The Committee undertook one field mission to Amman to interview relevant actors, including Government officials and human rights advocates. The Committee was not granted access to Israel, the West Bank, or Gaza.

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\* Late submission.

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## I. Introduction

1. The Human Rights Council, in resolution 13/9, decided, in the context of the follow-up to the report of the International Independent Fact-Finding Mission (hereinafter FFM report),<sup>1</sup> “to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards”. In accordance with this directive, the Committee of Independent Experts (hereinafter the Committee) submitted its first report to the Council on 23 September 2010.

2. Thereafter, in resolution 15/6, the Human Rights Council determined “to renew and resume the mandate of the Committee of independent experts, established pursuant to Council resolution 13/9”. The Council requested that the Committee submit its updated report to the Council at its sixteenth session.

3. The High Commissioner for Human Rights appointed Judge Mary McGowan Davis, former Justice of the Supreme Court of the State of New York and former federal prosecutor, as Chair of the Committee. The other member was Judge Lennart Aspegren, formerly a Judge at the Svea Court of Appeal, Director-General for Legal and International Affairs at different Swedish Ministries, Justice at the Supreme Social Insurance Court, and Judge at the United Nations International Criminal Tribunal for Rwanda.

4. The Office of the High Commissioner for Human Rights (OHCHR) established a Secretariat to support the Committee.

5. The present report is submitted to the Human Rights Council pursuant to its resolution 15/6.

## II. Mandate and methodology

### A. Mandate

6. The Committee, in its initial report to the Human Rights Council of 23 September 2010,<sup>2</sup> interpreted its mandate by reading Human Rights Council resolution 13/9 in conjunction with General Assembly resolution 64/254, in which the General Assembly reiterated its call upon the Government of Israel and the Palestinian side to conduct investigations “that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the [United Nations] Fact Finding Mission [on the Gaza conflict] towards assuring accountability and justice”. As set forth in that report, the Committee understood “domestic, legal or other proceedings” to refer to investigations, disciplinary proceedings and prosecutions undertaken by either military or civil justice systems in Israel and on the Palestinian side. Although the Committee’s primary focus was on proceedings related to the serious violations alleged in the FFM report, it determined that its mandate was not restricted to these events and that it could review proceedings pertaining to “any incident connected to the military operations in Gaza”. Thus, the Committee also looked into

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<sup>1</sup> A/HRC/12/48 of 25 September 2009.

<sup>2</sup> A/HRC/15/50 of 23 September 2010.

specific legal issues of institutional responsibility and reform processes relative to the legal regime of armed conflict in the aftermath of these operations, which Israel codenamed “Operation Cast Lead”.

7. Regarding the temporal scope of the mandate, the Committee considered that any proceedings initiated by Israel or the Palestinian side that commenced on or after 18 December 2008 were relevant to its task. For the current phase of its work, the Committee has focused in particular on identifying and analyzing relevant information issued or released since the filing of its first report in September 2010.

8. Taking into account that Human Rights Council resolution 15/6 “renews and resumes” the mandate of the Committee, the Committee understands its current mandate to be exactly as previously defined and reported to the Council.

## **B. Methodology**

9. Following the renewal of its mandate, the Committee updated its Terms of Reference in order to reflect its approach to the assignment given to it by the Council. The Committee further established its working methodology.

10. Specifically, the Committee sought to discharge its mandate by analyzing information in the public domain and by supplementing this information through consultations with identified stakeholders. As detailed below, the Committee consulted with relevant authorities, including diplomatic representatives from Israel and the Palestinian Authority, as well as with officials of the Palestinian Authority and the de facto authorities in Gaza.

11. The Committee also undertook a mission to Amman on 20-21 February 2011 to meet with Palestinian officials and NGOs. While the Committee had planned to carry out a separate mission to Gaza, it was unable to gain access to Gaza through Israel, due to the lack of authorization from the Government of Israel, or through Egypt, in view of the security situation prevailing there during the weeks preceding preparation of the present report.

12. The Committee continues to view the relevant government authorities as among the most important sources of information about the progress of investigations called for by the General Assembly and sought their cooperation from the initial stages of its work.

13. On 13 January 2011, the Committee wrote to the Permanent Representative of Israel seeking a meeting and met with him on 26 January 2011. Although the Permanent Representative received the Committee members most cordially, he explained that it was the Government of Israel’s policy to refuse to cooperate with any aspect of the “Goldstone process”. Further, he relayed his Government’s denial of the Committee’s request for permission to enter Israel in order to speak to government officials and victims of rocket attacks launched from Gaza, and to access the West Bank and Gaza through Israel to interview victims and relevant authorities with respect to the operations in Gaza. The Committee sent another letter to the Permanent Representative on 27 January 2010, expressing the hope that Israel would reconsider its stated policy of non-cooperation, including by providing access to official information related to ongoing and completed investigations undertaken by Israel in relation to the events described in the FFM report.

14. On 13 January 2011, the Committee wrote to the Permanent Representative of the Permanent Observer Mission of Palestine seeking a meeting and on 26 January 2011 the Committee met with him. With the assistance of the Permanent Observer Mission, the Committee held discussions in Amman with the Minister of Justice, the General Prosecutor, and the Chairman and two members of the Palestinian Independent Investigation

Commission (PIIC) established pursuant to the FFM report. As a follow-up to these discussions, on 3 March 2011, the Committee wrote to the General Prosecutor and the Minister of Justice requesting additional information. On 10 March 2011, the Minister of Justice submitted supplemental materials. Likewise, the General Prosecutor forwarded documents on 10 March 2011 related to criminal investigations undertaken by his office. The Committee also held a teleconference on 10 March 2011 with members of the Palestinian Independent Commission for Human Rights (hereinafter PICHHR).

15. The Committee is grateful to the Palestinian Authority for the extensive cooperation provided throughout its term.

16. Finally, to obtain the fullest information available on investigations undertaken by the Palestinian side, the Committee contacted the de facto authorities in Gaza on 24 February 2011 requesting specific information on investigations undertaken in response to the FFM report. On 8 March 2011, the de facto authorities asked the Committee for additional time in which to submit the information and the Committee agreed to extend the deadline. The de facto Gaza authorities sent a document on 13 March, with two annexes, in response to the Committee's detailed list of questions.

17. The experience of NGOs that have filed complaints and lawsuits on behalf of victims or have defended clients in Palestinian and Israeli civil, criminal and military courts offers an important perspective on the operation of investigative mechanisms. The Committee, therefore, met with a number of NGO representatives in Geneva on 27 January 2011 and in Amman on 20-21 February 2011. NGOs also made written submissions to the Committee and during teleconferences with the Committee members further documented incidents they had brought to the attention of authorities in Israel and on the Palestinian side.

18. The Committee also interviewed Israeli and Palestinian victims and witnesses. On 9 March 2011, the Committee held a video-teleconference with Israeli victims and witnesses, who provided information on the human and material damage suffered as a direct consequence of rocket attacks launched from the Gaza Strip. These individuals described their injuries and the continuing physical and psychological effects of living near the border in constant apprehension of further attacks. They also noted their complete inability to gain redress for these crimes. On 14 March, another Israeli victim spoke to members of the Committee by teleconference.

19. On 15 March 2011, the Committee held video-teleconferences with Palestinian victims, who recounted their first-hand experience with Israeli criminal investigations into incidents reported by the FFM. These witnesses detailed their frustration with the Israeli investigating authorities and gave articulate voice to their perception that Israeli justice mechanisms were completely ineffective and non-existent. Although these victims and witnesses had suffered serious injuries during Operation Cast Lead and had cooperated fully with investigators, after two years they have heard absolutely nothing with respect to the status of their cases – apart from one family that had learned in an official government report that the criminal investigation into the killing of their young children had been closed without elucidation of the circumstances that led to such a tragedy.

20. On 25 February 2011, the Committee held a teleconference with Mr. Noam Shalit, who reminded the Committee of the continuing isolation and captivity of his son, Gilad Shalit, who has had no communication with his family, nor has he been allowed visits by the International Committee of the Red Cross to monitor his detention conditions since he was captured and detained during an incursion into Israel in June 2006. Mr. Shalit expressed concern about the psychological and physical well-being of his son after five years in detention and appealed for his immediate release.

21. The totality of this information has provided the basis for the Committee's efforts to implement its mandate "to assess domestic, legal or other proceedings undertaken by Israel and the Palestinian side."

22. The Committee carried out its work under considerable challenges and constraints. In particular, given that the Committee did not travel to Israel, the West Bank or Gaza, it was unable to meet with a number of persons who could have supplied first-hand, updated information as to the status and impact of investigations and legal proceedings undertaken by the respective parties into the violations alleged in the FFM report. Moreover, the Committee worked under strict time limitations in order to meet the timeframe imposed on it by the Human Rights Council.

### **III. Applicable law and standards**

23. In its previous report to the Human Rights Council,<sup>3</sup> the Committee extensively analyzed the legal framework and standards applicable in the context of the Committee's mandate. In the Committee's view, that legal analysis remains valid and does not require further elaboration.

## **IV. The Government of Israel**

### **A. Investigations conducted**

#### **1. Military Operations in Gaza**

24. According to available information, the Government of Israel has conducted some 400 command investigations in relation to Operation Cast Lead. Reports indicate that the Israeli Military Advocate General (MAG) has opened 52 criminal investigations into allegations of wrongdoing.<sup>4</sup> Of these 52 investigations, thus far three cases have been submitted to prosecution; two have resulted in convictions, while the trial of one case is still ongoing.

25. Focusing on incidents discussed in the previous report, the Committee could ascertain significant changes in the status of only two cases since September 2010. The first change concerns the completed inquiry into the alleged shooting and killing of Matar Abu Halima Muhammad (aged 17) and Hekmat Abu Halima (aged 16), and the wounding of Omar Abu Halima, on 4 January 2009.<sup>5</sup> The incident reportedly occurred as the young men were transporting wounded family members to the hospital and after they had complied with soldiers' orders to stop.<sup>6</sup> Notwithstanding difficulties created by discrepancies in testimonies given by IDF soldiers, the MAG ultimately concluded that the soldiers "acted lawfully in light of a perceived threat".<sup>7</sup> In addition, an apparently extensive investigation into allegations that earlier on the same day the family home had been hit by a white phosphorous shell, killing five and injuring four – which included interviews with family members present at the time of the alleged shelling, consultations with technical experts,

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<sup>3</sup> A/HRC/15/50 of 23 September 2010.

<sup>4</sup> IDF, Interview with the Deputy Military Advocate for Operational Affairs, article dated 9 March 2011, available at <http://www.mag.idf.il/163-4544-en/patzar.aspx>, accessed on 14 March 2011.

<sup>5</sup> FFM report, paras. 788-801.

<sup>6</sup> FFM report, para. 800.

<sup>7</sup> IDF, Interview with the Deputy Military Advocate for Operational Affairs, article dated 9 March 2011, available at <http://www.mag.idf.il/163-4544-en/patzar.aspx>, accessed on 14 March 2011.

and review of medical records – ended with the determination that “it was unclear what ammunition had hit the house and who had launched it.”<sup>8</sup>

26. The second case refers to the killing of Majda and Rayya Hajaj.<sup>9</sup> The Committee learned that a soldier was indicted before a military court on charges of manslaughter in relation to the deliberate targeting of an individual waving a white flag, without orders or authorization to do so.<sup>10</sup> The indictment reportedly refers to the death of an unknown person, as the evidence gathered did not establish sufficient connections<sup>11</sup> between the information provided in Palestinian testimonies – that the shooting victims at Juhr ad Dik on January 4, 2009 were the two Hajaj women – and the admissions made by the soldier – which referred to the killing of a single man. According to media reports, the trial was opened on 1 August 2010 but the reading of the indictment was immediately postponed at the request of the defense,<sup>12</sup> which demanded that the trial be suspended while the Military Police pursue allegations that an IDF officer had attempted to block the investigation by not submitting the results of a probe into the incident to his superior officers and to the MAG.<sup>13</sup> The trial is currently in recess while the authorities investigate further.

27. The Committee does not have sufficient information to establish the current status of the on-going criminal investigations into the killings of Ateya and Ahmad Samouni, the attack on the Wa’el al-Samouni house and the shooting of Iyad Samouni. This is of considerable concern: reportedly 24 civilians were killed and 19 were injured in the related incidents on 4 and 5 January 2009.<sup>14</sup> Furthermore, the events may relate both to the actions and decisions of soldiers on the ground and of senior officers located in a war room, as well as to broader issues implicating the rules of engagement and the use of drones. There are also reports indicating that the MAG’s decision to investigate was opposed by the then Head of the IDF Southern Command.<sup>15</sup> Media reports further inform that a senior officer, who was questioned “under caution”<sup>16</sup> and had his promotion put on hold,<sup>17</sup> told investigators that he was not warned that civilians were at the location.<sup>18</sup> However, some of those civilians had been ordered there by IDF soldiers from that same officer’s unit and air

<sup>8</sup> FFM paras. 791 and 792. The FFM concluded that it could not “make any determination as to whether the shelling of the Abu Halima house was a direct attack against a civilian objective, an indiscriminate attack or a justifiable part of the broader military operation.”

<sup>9</sup> Killing of Majda and Rayya Hajaj, FFM report, paras. 764-769. This case relates to the alleged killing of two women, who were reportedly part of a group of people seeking to evacuate. The group was walking down a road with two white flags when they came under fire from soldiers approximately 120 metres away. The Hajaj family found the bodies of Majda and Rayya Hajaj under the rubble when they were able to return to Juhr ad-Dik on the evening of 18 January 2009.

<sup>10</sup> The Official Blog of the IDF, <http://idfspokesperson.com>, posted on 6 July 2010, accessed on 13 March 2011.

<sup>11</sup> The Official Blog of the IDF, <http://idfspokesperson.com>, posted on 6 July 2010, accessed on 13 March 2011.

<sup>12</sup> YNET, 1 August 2010, available at <http://www.ynetnews.com>, accessed on 13 March 2011.

<sup>13</sup> The Jerusalem Post, 18 Nov 2010, available at <http://www.jpost.com>, accessed on 13 March 2011.

<sup>14</sup> FFM report, paras. 706 to 744

<sup>15</sup> Israel colonel 'quizzed over deadly raid', 22 October 2010, available at <http://www.google.com/hostednews/afp/article/ALeqM5gZ9FAI2Hq2nuE7K0oapiunq-5Y5Q?docId=CNG.2f057538640f1e680daa7203d3609eff.521>, accessed on 17 March 2011.

<sup>16</sup> Ynet, 22 October 2010, IDF Commander questioned over Gaza killing, available at <http://www.ynetnews.com/articles/0,7340,L-3973310,00.html>, accessed on 20 January 2011.

<sup>17</sup> Ynet, 22 October, IDF Commander questioned over Gaza killing, available at <http://www.ynetnews.com/articles/0,7340,L-3973310,00.html>, accessed on 20 January 2011.

<sup>18</sup> Haaretz, 22 October 2010, IDF probes top officers on Gaza war strike that killed 21 family members, available at <http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>, accessed on 14 March 2011.

force officers reportedly informed him of the possible presence of civilians.<sup>19</sup> Despite allegedly being made aware of this information, the officer apparently approved air strikes<sup>20</sup> that killed 21 people and injured 19 gathered in the al-Samouni house. Media sources also report that the incident has been described as a legitimate interpretation of drone photographs portrayed on a screen<sup>21</sup> and that the special command investigation, initiated ten months after the incidents,<sup>22</sup> did not conclude that there had been anything out of the ordinary in the strike.<sup>23</sup> As of 24 October 2010, according to media reports, no decision had been made as to whether or not the officer would stand trial.<sup>24</sup> The same officer who assertedly called in the strike reportedly insisted that ambulances not enter the sector under his control, fearing attempts to kidnap soldiers.<sup>25</sup>

28. The Committee notes that the MAG is apparently reviewing the completed special command investigation into the treatment of Palestinian detainees and is evaluating whether criminal or disciplinary measures are necessary. The Committee understands that this command investigation examined broad issues related to the treatment of Palestinian detainees,<sup>26</sup> including those related to the Al-Atatra sandpit,<sup>27</sup> and that specific allegations of torture and ill-treatment remain under investigation by the Military Police.<sup>28</sup>

29. The Committee has discovered no information relating to four incidents referred to in the FFM report: incident AD/02;<sup>29</sup> incident AD/06;<sup>30</sup> the attack on the Al-Quds

<sup>19</sup> Haaretz, 22 October 2010, IDF probes top officers on Gaza war strike that killed 21 family members, available at <http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>, accessed on 14 March 2011.

<sup>20</sup> Ynet, 22 October 2010, IDF Commander questioned over Gaza killing, available at <http://www.ynetnews.com/articles/0,7340,L-3973310,00.html>, accessed on 20 January 2011.

<sup>21</sup> Haaretz, 24 October 2010, What led to IDF bombing of house full of civilians during the Gaza war?, available at <http://www.haaretz.com/news/diplomacy-defense/what-led-to-idf-bombing-house-full-of-civilians-during-gaza-war-1.320816>, accessed on 14 March 2010

<sup>22</sup> "Gaza operations investigations: an update, January 2010" (A/64/651, annex I), paragraph 124, page 26. This command investigation was initiated to assess certain allegations in the FFM report.

<sup>23</sup> Haaretz, 22 October 2010, IDF probes top officers on Gaza war strike that killed 21 family members, available at <http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>, accessed on 14 March 2011.

<sup>24</sup> Haaretz, 24 October 2010, What led to IDF bombing of house full of civilians during the Gaza war?, available at <http://www.haaretz.com/news/diplomacy-defense/what-led-to-idf-bombing-house-full-of-civilians-during-gaza-war-1.320816>, accessed on 14 March 2010

<sup>25</sup> Haaretz, 24 October 2010, What led to IDF bombing of house full of civilians during the Gaza war?, available at <http://www.haaretz.com/news/diplomacy-defense/what-led-to-idf-bombing-house-full-of-civilians-during-gaza-war-1.320816>, accessed on 14 March 2010

<sup>26</sup> The command investigation reportedly makes recommendations to improve the way the IDF manages issues related to detainees including detention conditions, questioning of detainees and the documentation of related operations.

<sup>27</sup> FFM report, paras. 1112-1176. This incident refers to a series of alleged violations related to the detention of a group of Palestinians in Gaza and Israel, including torture, cruel, inhuman and degrading treatment and denial of due process. The FFM reports that a group men, women and children were detained in Al-Atatra on 5 January and held in three trenches dug in a pit surrounded by barbed wire and sand about three metres high. Tanks were inside the pit, one firing occasionally. On 8 January 2009 the women and children were released and the men taken to a pit at Izokim barracks. On 9 January 2009, the detainees from Al-Atatra, possibly as many as 65, were taken to prison in Israel. Reportedly all were eventually released.

<sup>28</sup> IDF, Interview with the Deputy Military Advocate for Operational Affairs, 9 March 2011, available at <http://www.mag.idf.il/163-4544-en/patzar.aspx>, accessed on 14 March 2011.

<sup>29</sup> FFM report, paras. 1127-1142.

<sup>30</sup> FFM report, para. 1107.

hospital;<sup>31</sup> and the attack on the Al-Wafa hospital.<sup>32</sup> Nor has the Committee uncovered updated information concerning the status of the criminal investigations into the death of Mohammed Hajji and the shooting of Shahd Hajji and Ola Masood Arafat;<sup>33</sup> and the shooting of Ibrahim Juha.<sup>34</sup> Accordingly, the Committee remains unable to determine whether any investigation has been carried out in relation to those incidents.

30. The Committee also conducted an assessment of specific inquiries into the use of human shields that were not explicitly mentioned in the FFM report. The Committee recalls that the Government of Israel reported that the MAG has directly referred for criminal investigation all allegations that civilians were used as human shields or compelled to take part in military operations.<sup>35</sup> In his April 2010 report on children and armed conflict, the Secretary-General noted that the MAG was investigating reports of seven Palestinian children used by Israeli soldiers as human shields in three separate incidents during the Gaza conflict.<sup>36</sup> The outcome of the investigations into two of these incidents is unknown. The other investigation was opened in June 2009 on the instructions of the MAG following a complaint by Defence for Children International.<sup>37</sup> According to media reports, two soldiers forced a boy to search bags suspected of being booby trapped and were convicted of offenses including inappropriate behavior and overstepping authority.<sup>38</sup> Both soldiers were demoted and received suspended sentences of three months each.<sup>39</sup>

31. It should be noted that while some media reports described the conviction as a credit to the IDF, a former IDF deputy chief of staff reportedly said that the soldiers' criminal records should be cleared and that such events should be probed inside the units and not in interrogation rooms.<sup>40</sup> The boy's mother apparently indicated her disappointment over the decision to suspend the prison terms and expressed concern at the message that such a lenient sentence would send to IDF soldiers.<sup>41</sup> Reportedly, in the ruling, the actions of the soldiers were condemned by the judges, but they also gave weight to issues such as the contribution of the soldiers to Israel's security and their personal circumstances, as well as to their fatigue at the time, the unprecedented nature of the case, and that the soldiers did not seek to degrade or humiliate the boy. Evidently the court also indicated that any future such incidents would be dealt with more severely.<sup>42</sup>

32. The Committee does not have sufficient information to comment definitively on this judgment, although it is hard to square the apparent finding that the soldiers "did not seek to degrade or humiliate the boy" with evidence that they intended to put him directly in

<sup>31</sup> FFM report, paras. 596-629.

<sup>32</sup> FFM report, paras. 630-652.

<sup>33</sup> FFM report, paras. 745-754.

<sup>34</sup> FFM report, paras. 755-763. According to the report, Ibrahim Juha, 15 years old, was allegedly shot in the chest on 5 January 2009 by soldiers and died 6 hours later, whilst trying to walk to safety with his family and others, a group of approximately 70 people waving a white flag.

<sup>35</sup> Government of Israel, July 2010, para. 37, page 9.

<sup>36</sup> Report of the Secretary General on Children and Armed Conflict, A/64/742S/2010/181, para. 101.

<sup>37</sup> Press Release posted on the official blog of the IDF on 11 March 2010.

<sup>38</sup> Haaretz, Soldiers convicted of using boy, 11, as human shield during Cast Lead, 4 October 2010, available at <http://www.haaretz.com/print-edition/news/soldiers-convicted-of-using-boy-11-as-human-shield-during-cast-lead-1.317008>, accessed on 13 March 2011.

<sup>39</sup> Haaretz, IDF soldiers demoted after convicted of Gaza war misconduct, 21 November 2010, available at <http://www.haaretz.com/news/diplomacy-defense/idf-soldiers-demoted-after-convicted-of-gaza-war-misconduct-1.325850>, accessed on 13 March 2011.

<sup>40</sup> Available at [www.ynetnews.com](http://www.ynetnews.com), 21 November 2010, accessed on 13 March 2011.

<sup>41</sup> Available at [www.ynetnews.com](http://www.ynetnews.com), 21 November 2010, accessed on 13 March 2011.

<sup>42</sup> IDF, Interview with the Deputy Military Advocate for Operational Affairs, 9 March 2011, available at <http://www.mag.idf.il/163-4544-en/patzar.aspx>, accessed on 14 March 2011.

harm's way at grave risk to his life. The Committee is likewise mindful of other judicial decisions, such as the case of the soldier who was sentenced to a prison term of seven and a half months for stealing a credit card during the operation in Gaza, where a harsher penalty was imposed for acts that did not entail danger to the life or physical integrity of a civilian, much less to a nine year old child.

## 2. West Bank

33. The FFM analyzed the general situation in the West Bank and pointed to a series of incidents that were not directly related to the military operations in Gaza but nonetheless required investigation by Israel.<sup>43</sup> In its previous report, the Committee indicated that the record before it was silent as to whether or not Israel had conducted investigations into allegations of human rights violations in the West Bank, including in relation to the alleged use of force during demonstrations and violence by settlers at the time of the events in Gaza. Recent information indicates that Israel has in fact investigated fourteen such incidents, eleven of which were referred to in the FFM report.<sup>44</sup> Of those fourteen investigations, two criminal indictments have been filed, six investigations are ongoing, and six cases were closed without charges.

34. The first indictment refers to the alleged killing of ten year old Ahmed Husam Yusef Mousa in Ni'lin on 29 July 2008 by a member of the Israeli Border Police.<sup>45</sup> A second criminal indictment was filed in relation to an incident in which three members of the al-Matariyeh family were allegedly shot and injured by an Israeli settler in Hebron in December 2008.<sup>46</sup> However, the indictment was withdrawn in light of a Supreme Court decision requiring that the Prosecutor disclose information classified for national security reasons. The Prosecutor reportedly decided to withdraw the case after the defendant's attorney requested that the Court order that the information be revealed.

35. Concerning ongoing investigations, the Military Police and the Israeli police are carrying out parallel criminal investigations into the killing of Basam Abu Rahma on 17 April 2009 in Bi'lin.<sup>47</sup> He was allegedly killed by a high velocity tear gas canister shot at his chest during a peaceful demonstration against the Wall.<sup>48</sup> This incident was filmed and Mr. Rahma is reportedly seen standing on a small hill, clearly visible and not armed or otherwise posing a threat.<sup>49</sup> The Committee learned that the MAG ordered a criminal investigation after representations from the family's attorney that the issue would be raised with the Supreme Court and taking into account expert opinion based on viewing a film of the incident. An earlier decision not to launch a criminal investigation was apparently based on statements given by soldiers in the operational de-briefing.<sup>50</sup> According to media

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<sup>43</sup> FFM report, paras. 1381-1440.

<sup>44</sup> Israel Ministry of Foreign Affairs, Israel's investigations of alleged incidents of misconduct in the West Bank, available at <http://www.mfa.gov.il/NR/rdonlyres/0FA91C66-9A2D-4149-9B99-8D346442E697/0/IsraelsinvestigationsofallegedincidentsofmisconductintheWestBank.pdf>, accessed on 14 March 2011.

<sup>45</sup> See FFM report, para. 1388.

<sup>46</sup> See FFM report, para. 1385.

<sup>47</sup> Israel Ministry of Foreign Affairs, Israel's investigations of alleged incidents of misconduct in the West Bank, available at <http://www.mfa.gov.il/NR/rdonlyres/0FA91C66-9A2D-4149-9B99-8D346442E697/0/IsraelsinvestigationsofallegedincidentsofmisconductintheWestBank.pdf>, accessed on 14 March 2011.

<sup>48</sup> See FFM report, para. 1395

<sup>49</sup> Ibid.

<sup>50</sup> B'tselem Press Release, 12 July 2010, available at [http://www.btselem.org/english/press\\_releases/20100712.asp](http://www.btselem.org/english/press_releases/20100712.asp), accessed on 13 March 2011.

reports the decision to open a criminal investigation was announced in July 2010, more than one year after the incident.<sup>51</sup>

36. A criminal investigation is also reportedly being conducted into the killing of 'Iz a-Din Radwan Radwan al-Jamal on 13 February 2009 in Hebron. He was allegedly shot by soldiers as he was throwing stones at soldiers at a checkpoint from the roof of a house.<sup>52</sup> According to reports, the criminal investigation was opened following the finalization of a command investigation.<sup>53</sup>

37. Finally, an investigation by the military police was conducted into the alleged killing of Yasser Tmeizi by the IDF at Tarqumiyah checkpoint on 13 January 2009. The results of the investigation were apparently sent to the MAG in August 2009.<sup>54</sup> Reports indicate that, after almost two years, the results of the investigation are still under review by the MAG.

### 3. Other investigations

38. As the Committee indicated in its previous report,<sup>55</sup> the Government of Israel established a public commission – known as the Turkel Commission – to examine the maritime incident of 31 May 2010. The Commission – which includes two international observers – was mandated, inter alia, to examine the question whether the “mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, (...) conform with the obligations of the State of Israel under the rules of international law”.<sup>56</sup>

39. The Committee considers that the work of the Turkel Commission is relevant to its own mandate, because it is evidence that Israel does have a mechanism for carrying out inquiries into decisions and policies adopted by high-level officials. The Committee has focused on the process and methodology adopted by the Turkel Commission, not on the substance of its analysis and conclusions. It notes that Commission members interviewed and actively questioned the Prime Minister, the Defense Minister, the Chief of General Staff, the Chief Military Advocate, members of Parliament, the Director General of the Ministry of Foreign Affairs, the Coordinator of Government Activities in the Territories, as well as representatives of human rights organizations. An analysis of the transcripts of the public hearings demonstrates that the Commission members – with active participation from the international observers – thoroughly examined the controversial legal and political issues presented for their consideration. The Turkel Commission issued Part I of its report, which dealt with the investigation into the flotilla incident, on 21 January 2011. Part II of the report, which will address the effectiveness of Israel’s mechanism for investigations, will be issued later this year.

<sup>51</sup> Haaretz, IDF to probe death of Palestinian protester at West Bank rally, 12 July 2010, available at <http://www.haaretz.com/news/diplomacy-defense/idf-to-probe-death-of-palestinian-protester-at-west-bank-rally-1.301484>, accessed on 13 March 2011.

<sup>52</sup> Report available at <http://www.btselem.org>, accessed on 13 March 2011.

<sup>53</sup> Israel Ministry of Foreign Affairs, Israel’s investigations of alleged incidents of misconduct in the West Bank, available at <http://www.mfa.gov.il/NR/rdonlyres/0FA91C66-9A2D-4149-9B99-8D346442E697/0/IsraelsinvestigationsofallegedincidentsofmisconductintheWestBank.pdf>, accessed on 14 March 2011.

<sup>54</sup> B’Tselem, “Void of Responsibility Israeli military policy not to investigate killings of Palestinians by soldiers”, October 2010, p. 20.

<sup>55</sup> Paras. 36-38.

<sup>56</sup> Government Resolution of 14.6.2010, quoted in the Report of the Public Commission to Examine the Maritime Incident of 31 May 2010 (The Turkel Commission), part one, January 2011, p. 17.

## **B. Assessment**

### **1. Independence and impartiality**

40. The Committee noted in its previous report that Israel's military justice system provides for mechanisms to ensure its independence, in particular the fact that the MAG is not hierarchically subordinate to the Chief of General Staff and that his decisions are subject to review by the Attorney General and by the Supreme Court. The Committee has not received any new evidence that challenges this finding.

41. The Committee further noted that notwithstanding the built-in structural guarantees to ensure the MAG's independence, his dual responsibilities as legal advisor to the Chief of Staff and other military authorities, and his role as supervisor of criminal investigations within the military, raise concerns in the present context given allegations in the FFM report that those who designed, planned, ordered, and oversaw the operation in Gaza were complicit in international humanitarian law and international human rights law violations. It is notable that the MAG himself, in his testimony to the Turkel Commission, pointed out that the military investigations system he heads is not a viable mechanism to investigate and assess high-level policy decisions. When questioned by commission members about his "dual hat" and whether his position at the apex of legal advisory and prosecutorial power can present a conflict of interest under certain circumstances, he stated that "the mechanism is calibrated for the inspection of individual incidents, complaints of war crimes in individual incidents (...). This is not a mechanism for policy. True, it is not suitable for this."<sup>57</sup> Therefore, the Committee remains of the view that an independent public commission – and not the MAG's office – is the appropriate mechanism for carrying out an independent and impartial analysis, as called for in the FFM report, into allegations that high-level decision-making related to the Gaza conflict violated international law.

### **2. Promptness<sup>58</sup>**

42. In its report of 23 September 2010, the Committee expressed strong reservations as to whether Israel's investigations into allegations of misconduct were sufficiently prompt. In particular, the Committee expressed concern about the fact that unnecessary delays in carrying out such investigations may have resulted in evidence being lost or compromised, or have led to the type of conflicting testimony that characterizes the investigations into the killings of Majda and Raayya Hajaj<sup>59</sup> and the inconclusive findings reported with respect to the tragic deaths of Souad and Amal Abd Rabbo and the grave wounding of Samar Abd Rabbo and their grandmother Souad.<sup>60</sup>

43. The Committee is fully aware of the difficulties involved in investigating alleged violations that occurred in a situation of combat, in particular when it comes to the collection of evidence, interviewing witnesses and victims, and the accurate establishment of the facts, often in the absence of sufficient forensic tools. Yet, while acknowledging the

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<sup>57</sup> Testimony of the Chief Military Advocate General, Avichai Mandelblit, to the Turkel Commission, Session Number Four, 26 August 2010.

<sup>58</sup> In its previous report the Committee noted that as a general rule an investigation should commence and progress with reasonable expedition. Determining whether an investigation has met this standard of reasonableness depends on the specific circumstances of the case. The Committee against Torture suggests that the requirement to undertake a prompt investigation means that an investigation should be initiated immediately when there is a suspicion of torture or ill-treatment, namely, within hours or days. When examining the progress of investigations, frequent and unexplained adjournments can unacceptably compound delay. A/HRC/15/50 of 23 September 2010, para. 25.

<sup>59</sup> A/HRC/15/50 of 23 September 2010, para. 51.

<sup>60</sup> FFM report, paras. 770-779.

complexity and difficulty of the challenges presented to investigators in the wake of the numerous allegations of wrongdoing by IDF soldiers during the Gaza conflict, it is worth noting that out of 36 incidents related to Gaza referred to in the Committee's previous report, more than one-third remain unresolved or with an unclear status two years after the events took place. That situation raises serious concern as to whether the existing mechanisms are capable of insuring that investigations are conducted in a prompt manner. Presumably this is an issue that is under careful review by the Turkel Commission and will be addressed in Part II of its report.

44. The promptness of an investigation is closely linked to the notion of effectiveness. An effective investigation is one in which all the relevant evidence is identified and collected, is analyzed, and leads to conclusions establishing the cause of the alleged violation and identifying those responsible. In that respect, the Committee is concerned about the fact that the duration of the ongoing investigations into the allegations contained in the FFM report – over two years since the end of the Gaza operation – may seriously impair their effectiveness and, therefore, the prospects of achieving accountability and justice.

### **3. Transparency**

45. The issue of the transparency of Israel's investigations is a concern that has been highlighted by a number of different sources and appears to be a matter of some dispute. Thus, in his testimony to the Turkel Commission, the MAG indicated that his office, as a matter of practice, regularly informs claimants and their attorneys about its decisions with respect to the outcome of an investigation. He emphasized that his office advises the complainants and their lawyers of the reasons why his office determines not to pursue a criminal investigation and makes available relevant evidence for their examination in case they wish to file a petition with the Supreme Court. The MAG concluded that from the standpoint of transparency, "despite the fact that there is no obligation according to the rules of warfare we in practice update, both the families as well as the applicants, the attorneys without superfluous delays."<sup>61</sup>

46. The Committee notes, however, that consistent reports from NGOs, victims and their legal representatives reflect that only on rare occasions do they actually receive information from the MAG concerning the status of investigations into their complaints. A number of organizations have informed the Committee that they often found out about the results of inquiries into cases they have filed on behalf of alleged victims either through the press or in the public reports issued by the Government of Israel. Indeed, the Committee received detailed, case-specific information concerning requests for information by different organizations – the great majority of which have gone unanswered. This situation raises serious questions concerning the effective implementation of the MAG's reported policy to assure transparency into the investigation process. Indeed, as pointed out by the MAG himself, such transparency is important to insure that victims have effective access to existing judicial mechanisms, in the form of petitions to the Supreme Court.

### **C. Allegations not investigated**

47. The information available to the Committee suggests that not all allegations of violations identified in the FFM report have been adequately investigated. These include allegations related to higher level decisions about the design and implementation of the

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<sup>61</sup> Testimony of the Chief Military Advocate General, Avichai Mandelblit, to the Turkel Commission, Session Number Four, 26 August 2010.

Gaza operation, including those related to the nature, objectives and targets of the Israeli military in that conflict.<sup>62</sup> The Committee has no new information leading it to change its view that Israel does not appear to have conducted a general review of doctrine regarding military targets. However, it has been informed of media reports suggesting that if criminal charges are brought as a result of the investigation into the al-Samouni case, it is possible that there will be deliberations on the broader question of the rules of engagement that obtained during Operation Cast Lead.<sup>63</sup>

48. Nor has the Committee uncovered information concerning investigations into certain alleged human rights violations committed in the West Bank, including allegations of torture, discrimination, lack of access to effective remedies, unlawful detention, violations of the rights to freedom of expression and to peaceful assembly, or alleged violations related to the removal of residency status from Palestinians.

## **V. The Palestinian side**

### **A. The Palestinian authority**

#### **1. Investigations conducted**

49. The Committee noted in its previous report that the Palestinian Authority established the Palestinian Independent Investigation Commission (PIIC) to follow-up on the implementation of the recommendations of the FFM report. The PIIC submitted its report to the Secretary-General in July 2010.<sup>64</sup> On 13 February 2011, the PIIC made a written submission to the Committee, in which it explained the measures taken since September 2010 to follow-up on its July 2010 report. In particular, the PIIC referred to its efforts to establish contacts with the Government of Israel and the de facto authorities in Gaza so as to have access to witnesses and victims and to inspect the sites of rocket attacks on Israeli territory. The PIIC indicated that it had not received a positive response either from Israel or from the de facto Gaza authorities. The PIIC, therefore, concluded that in light of the lack of access it was not in a position to provide any further update to its July 2010 report with respect to the rocket attacks on Israel launched from Gaza.

50. The Committee was advised that on 18 October 2010, the Council of Ministers of the Palestinian Authority established a Ministerial Committee to follow-up on the PIIC recommendations. The Ministerial Committee was mandated to issue recommendations to the Council of Ministers for the implementation of the PIIC report and submitted its report – a copy of which was made available to this Committee – to the Council of Ministers in February 2011.

51. The Ministerial Committee recommended a number of short-term strategies – which are to be implemented within two months of the adoption of the report. In particular, it called on the General Prosecutor to investigate any allegation of torture or ill-treatment in detention centers;<sup>65</sup> it recommended the immediate abolition of the protocol of cooperation between the Office of the Public Prosecutor and the Office of the Military Prosecutor,

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<sup>62</sup> FFM report, Section C, paras. 1880-1895.

<sup>63</sup> Haaretz, IDF probes top officers on Gaza war strike that killed 21 family members, 21 October 2010, available at <http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>, accessed on 14 March 2011.

<sup>64</sup> A/64/890 of 11 August 2010.

<sup>65</sup> The report further refers to decision 149 (2009) of the Ministry of Interior prohibiting the use of torture or ill-treatment by security services.

which authorizes the Military Prosecutor to conduct criminal investigations into offenses provided for in the Penal Code; it specified that civilians should not be subject to detention by the military justice system, but that all civilian detainees should be transferred to the ordinary civilian justice system; it urged the General Prosecutor to prosecute any official who refuses to implement a court decision, and that any such official should be dismissed from his functions; and it recommended that the Prime Minister issue clear directives instructing all relevant officials that clearance by security services is not a legal requirement for employment in the civil service. Instead, applicants may be requested to certify only that they have no criminal record.

52. With respect to long-term strategies, the Ministerial Committee proposed six recommendations: a) to establish a Constitutional Court to address issues related to conflicts of jurisdiction; b) to adopt an administrative courts act creating first and second instance administrative courts, with a view to insuring adequate access to justice and an effective remedy; c) to amend the prisons act to allow systematic oversight and monitoring by the Ministry of Justice; d) to enact the Palestinian criminal code; e) to amend the Palestinian code of criminal procedures to separate investigating functions from prosecution functions; and f) to adopt legislation to regulate the functioning of the military justice system, criminal offenses, criminal procedure and other issues related to jurisdictional scope of military justice.

## 2. Assessment

53. In its previous report, the Committee noted that the PIIC had undertaken independent and impartial investigations in a comprehensive manner. The Committee has received no new evidence to challenge this finding. Rather, to the contrary, the PIIC has persevered in attempting to investigate the rocket attacks on Israeli territory, as well as other violations allegedly committed in the Gaza Strip, but has not been provided access to interview the victims or to inspect the scene. Such limitation seriously hampers the adequate fulfillment of its mandate.

54. The Committee finds that since the adoption of the PIIC's report, implementation of the PIIC'S recommendations, in particular those related to the obligation to investigate and prosecute allegations of arbitrary detention, torture and ill-treatment, and extra-judicial killings,<sup>66</sup> has been limited. The General Prosecutor informed the Committee of specific examples of criminal investigations dating from 2008 and 2009 into suspected deaths of individuals detained by Palestinian security forces. He provided documentary evidence of one case in particular, in which five security officers were charged with the murder of an individual detained by the Palestinian security services. In the judgment, the military court acquitted the defendants of all charges in view of the fact that it could not clearly identify the actual perpetrator, but it determined that, at a minimum, the death had resulted from negligence on the part of the security services and, therefore, ordered the payment of compensation to the family of the deceased.

55. Despite this example, the Committee has received no information respecting the opening of criminal investigations or of prosecutions underway relating to incidents outlined in the FFM or in the PIIC report, since January 2010. For instance, the General Prosecutor provided a list of 326 criminal investigations carried out between 7 January 2010 and 7 March 2011. While this list reflects commendable efforts on the part of the Palestinian Authority to investigate criminal cases, these inquiries appear to be unrelated to the allegations in the FFM report. Accordingly, further efforts should be expended to systematically investigate allegations of extra-judicial killings, of torture and ill-treatment,

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<sup>66</sup> See A/64/890 of 11 August 2010, paras. 464-465, at p. 173.

of unlawful detention, and re-arrests, and of the lack of implementation of Court orders directing the release of unlawfully detained individuals.

56. Notwithstanding the problems listed above, the Committee underscores that the establishment of the Ministerial Committee is a very welcome development. The Ministerial Committee's report lays down a road-map of short-term and long-term strategies that go squarely in the direction of implementing the PIIC's recommendations. Indeed, some positive developments have already taken place. For instance, information provided by the Minister of Justice indicates that on 15 January, 2011 a decision was made by the General Prosecutor, the Military Prosecutor and Palestinian security services to transfer all cases of civilians being tried before military courts to domestic criminal courts for prosecution. This change in policy was confirmed by the Palestinian Independent Human Rights Commission (PIHRC). The PIHRC represented to the Committee on 10 March 2011, that since 15 January 2011, no new cases against civilians have been brought before military courts, but it noted that the transfer of existing cases before military courts to civilian courts has still not been fully implemented.

57. Moreover, the General Prosecutor has adopted new rules relating to the monitoring of places of detention by his office.<sup>67</sup>

58. To underscore the importance of these changes and assure that they are implemented throughout the West Bank, the Ministerial Committee recommended that the Palestinian President and the Prime Minister should issue timely and clearly defined instructions to all security, judicial and executive services ordering the strict observance of the existing legal framework so that changes that have been accomplished at the policy level actually have consequences in practice. The Committee notes with concern that, according to the PIHRC monthly reports, allegations of torture and ill-treatment remained at the same level in the West Bank throughout 2010 and the beginning of 2011. Therefore, much more needs to be done to effectively implement the necessary measures indicated above.

59. Finally, the Committee is of the view that the strengthening of the PIHRC proposed by the Ministerial Committee could indeed contribute to insuring the effective monitoring and implementation of the PIIC's and the Ministerial Committee's recommendations within the established timeframe.

## **B. The de facto Gaza authorities**

60. The Committee requested updated information from the de facto Gaza authorities with respect to measures they have taken in response to the FFM report since September 2010.

61. In their response, the de facto authorities informed the Committee that their officials did not have access to persons involved in the launching of rockets and mortars into Israel, nor to the sites and victims that had been affected by the rockets. The de facto authorities also indicated that since 30 October 2008 all political prisoners have been released. In an annex, the de facto authorities provided a list of 32 names of political prisoners that have reportedly been liberated. The de facto authorities stated that all persons currently under detention are under criminal investigation or have been sentenced to prison terms.

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<sup>67</sup> The Committee was informed by the General Prosecutor that his office now conducts regular visits to both civilian and military detention facilities to monitor the treatment of detainees and the conditions of detention.

62. Finally, the de facto authorities provided a list of seven cases related to investigations into allegations of torture, injuries or extra-judicial killings. According to the information, four out of those seven cases were discontinued at the request of the victim.<sup>68</sup> Of the remaining three cases, one investigation into ill-treatment is still ongoing and two prison sentences were imposed in relation to killings. The de facto authorities provided a detailed list of those cases, including each victim's name, the name of the alleged perpetrator, the description of the charges, the date of commencement of the inquiry, the status of the investigation, and the description of the penalties imposed.

63. The Committee acknowledges the de facto authorities' effort to provide specific information related to criminal investigations into alleged human rights violations committed by their security forces. The Committee is aware of the fact that it is not uncommon for such cases to be resolved to the satisfaction of the families through out-of-court settlements. Nevertheless, the Committee remains concerned that no investigations have been carried out into the launching of rocket attacks against Israel. It considers that the de facto authorities should make genuine efforts to conduct criminal inquiries and to hold accountable those who have allegedly engaged in serious violations of international humanitarian law by firing these rockets.

## VI. Other issues of concern

64. After nine months of working with the question of the implementation of the FFM report by Israel and the Palestinian side, the Committee considers it opportune to discuss several issues of concern that it has encountered in the implementation of its mandate and that directly relate to the FFM report's allegation that there is a "justice crisis" that warrants action.<sup>69</sup>

### The current context

65. First, it should be noted that the current situation in Israel and the West Bank and Gaza remains tense. The Committee was informed that during the period between 10 December 2010 and 10 March 2011, 78 rockets and 96 mortars were launched against southern Israel, with the vast majority of these attacks taking place during the afternoon hours.<sup>70</sup> While this report was being prepared, a ship bound for the Gaza Strip bearing arms was intercepted by Israel<sup>71</sup> and a family in the West Bank was brutally murdered while asleep.<sup>72</sup> Palestinian civilians continue to be injured and killed by Israeli soldiers, and a 66 year old Palestinian man was killed "by mistake" as he slept in his bed in Hebron in January.<sup>73</sup> Meanwhile, Palestinian children are routinely arrested in the middle of the night

<sup>68</sup> Of those four cases, two referred to alleged ill-treatment and two to shooting incidents.

<sup>69</sup> FFM report, Chapter XXX, paras. 1874-1966.

<sup>70</sup> Letter to the Committee by the International Association of Jewish Lawyers and Jurists, dated 15 March 2011.

<sup>71</sup> Haaretz, Commandos stop boatload of arms headed for Gaza, 16 March 2011, available at <http://www.haaretz.com/print-edition/news/commandos-stop-boatload-of-arms-headed-for-gaza-1.349438>, accessed 17 March 2011.

<sup>72</sup> Human Rights Watch, West Bank: No excuse for murder of settler family, 12 March 2011, available at <http://www.hrw.org/en/news/2011/03/12/west-bank-no-excuse-murder-settler-family>

<sup>73</sup> Haaretz, IDF kills 65-year-old Palestinian man during raid on Hamas cell in Hebron, 7 January 2011, available at <http://www.haaretz.com/news/diplomacy-defense/idf-kills-65-year-old-palestinian-man-during-raid-on-hamas-cell-in-hebron-1.335713>

and taken off to military detention.<sup>74</sup> Settler violence against Palestinians and Palestinian violence against Israeli civilians continues in the West Bank. The harsh conditions imposed on Palestinians at checkpoints and border controls, often in humiliating circumstances, feeds the feeling of injustice among the civilian population.<sup>75</sup> As recently reported by the High Commissioner for Human Rights in her report covering the period 4 February to 30 November 2010, the situation is of profound concern and serious violations “occur on a widespread and persistent basis”.<sup>76</sup> As stressed by the General Assembly in its resolution 64/254, there is a “need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace”.<sup>77</sup> The Committee believes that significant and sustained efforts from the parties concerned are required to insure accountability and justice.

### **Human rights defenders**

66. Second, the Committee is keenly aware that human rights organizations play a vital role in any system of investigating and prosecuting allegations of violations of international law. The Government of Israel has acknowledged that the MAG himself considers the information provided by human rights defenders as an important part of his deliberations about incidents. It has further represented that the Military Police actively seek the help of human rights organizations and Israeli lawyers representing complainants in order to facilitate meetings between Israeli investigators and Gaza residents.<sup>78</sup> Other investigation mechanisms, such as the Turkel Commission, have also sought to obtain information from human rights organizations with respect to evaluating the humanitarian situation in the Gaza Strip. Similarly, both the PIIC and the de facto Gaza authorities report receiving valuable information from human rights organizations. The PIIC engages consultations with human rights and other civil society organizations and national figures in relation to its methods of work, potential difficulties, and how to resolve them.<sup>79</sup> The Committee itself has obtained invaluable information from NGOs in Israel, the West Bank, Gaza, Geneva, London and New York.

67. The FFM expressed concerns about allegations of hostile retaliatory actions directed at civil society organizations for criticism of the Israeli authorities and for exposing alleged violations of international human rights and humanitarian law during the military operations – concerns that appear to be increasingly valid.<sup>80</sup> The Committee has heard a constant refrain from NGOs about the deteriorating climate for human rights defenders in Israel and that this has had a negative impact on their ability to pursue their work. Specifically, the Committee has been informed about an initiative in the Knesset to launch a parliamentary inquiry probing human rights organizations, notwithstanding the Attorney

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<sup>74</sup> In their own Words: A report on the situation facing Palestinian children detained in occupied East Jerusalem”, Defence for Children International – Palestine Section, 3 February 2011.

<sup>75</sup> Haaretz, Machsom Watch activist: removing checkpoints doesn’t remove the occupation, 15 February 2011, available at <http://www.haaretz.com/print-edition/features/machsom-watch-activist-removing-checkpoints-doesn-t-remove-the-occupation-1.343471#send-friend-popup>, accessed on 15 March 2011.

<sup>76</sup> A/HRC/16/71 of 3 March 2011, para. 55.

<sup>77</sup> A/RES/64/254 25 March 2010.

<sup>78</sup> Government of Israel, Gaza Operation Investigations: Second Update, July 2010.

<sup>79</sup> A/64/890, Annex II

<sup>80</sup> FFM report, para. 1767.

General's warning that such an inquiry could violate fundamental human rights.<sup>81</sup> Similarly, a bill to punish individuals who call for academic or economic boycotts against Israel was reportedly adopted in its first reading by the Knesset,<sup>82</sup> and there are efforts underway as well to discourage organizations that seek to hold IDF soldiers accountable for war crimes in international courts.<sup>83</sup>

68. The FFM also reported allegations that the security services of the Palestinian Authority had interfered with the work of journalists.<sup>84</sup> Further, the Committee has received information that the de facto authorities in Gaza, while generally tolerant of local human rights organizations,<sup>85</sup> have recently stated that the PIHRC is not legally qualified to work in Gaza.

69. Equally distressing are reports that victims who travel to Erez to meet with Israeli military investigators have been summoned for questioning about these contacts by the de facto authorities in Gaza.

70. Given this situation, the Committee wishes to remind all parties that the ability of human rights organizations to function freely and independently is crucial for the improvement of the domestic human rights situation in general, and for the effective functioning of accountability mechanisms in particular. Indeed, a democratic society based on the rule of law relies to some extent on the independent contribution that human rights defenders make.

#### **The victims' right to justice and accountability**

71. Third, and most importantly, the Committee recalls that General Assembly resolution 64/254 reiterates its call upon the Government of Israel and the Palestinian side to conduct investigations that are independent, credible and in conformity with international standards towards insuring accountability and justice.<sup>86</sup> During its work, the Committee was struck by the testimony of victims on both sides that justice has not been done, and their lack of confidence that it is ever likely to be done. For example, a Palestinian resident in Gaza told the Committee that investigations into Cast Lead Operation incidents "were superficial, not significant, and misleading to the international community. Despite our belief that the investigation was not serious we decided to appear and deliver testimony, out of a belief that we are civilians and innocent. But we also believed that in the end, we will end up with nothing. We were correct; the investigation carried out by Israel is just a game, nothing more."<sup>87</sup>

<sup>81</sup> Haaretz, Israel's Attorney General: Probing leftist NGOs infringes on human rights, 21 February 2011, available at <http://www.haaretz.com/print-edition/news/israel-s-attorney-general-probing-leftist-ngos-infringes-on-human-rights-1.344684>, accessed on 15 March 2011.

<sup>82</sup> Jerusalem Post, Anti-Boycott bill passes first reading in Knesset, 7 March 2011, available at <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?ID=211188&R=R1>, accessed on 15 March 2011; Haaretz, Israel's Attorney General: Probing leftist NGOs infringes on human rights, 7 March 2011, available at <http://www.haaretz.com/news/national/bill-to-punish-anti-israel-boycotters-passes-first-knesset-hurdle-1.347734>, accessed on 15 March 2011.

<sup>83</sup> See for example information available at <http://www.acri.org.il/en/?p=1639>, accessed on 17 March 2011.

<sup>84</sup> FFM report, para 1551.

<sup>85</sup> The Committee has also received information that the de facto authorities have taken measures against a broad range of civil society organizations, allegedly for involvement in Fatah affiliated political activities or immoral conduct.

<sup>86</sup> A/RES/64/254 of 25 March 2010.

<sup>87</sup> Video-conference of 15 March 2011.

72. One Israeli victim of rocket attacks expressed her frustration at the lack of justice and said, “I have no Court, no one to represent me, no one to sue. Is that real justice?”<sup>88</sup> She also articulated her disappointment with the international community: “I was disappointed [by the FFM] and found myself feeling more humiliated than ever before in my life because it seemed to me there was no mention of Israeli victims who, like me, have suffered for more than eight years the rockets and mortars, it seemed to me that no one wanted to issue a strong condemnation of terror coming from Gaza. Since that time I have lost faith in the international committees, especially the United Nations, as it seems no one is asking if I have a right to live.”<sup>89</sup>

73. The Committee heard the respective parties’ claims that their systems have established mechanisms to ensure accountability and justice. Yet, after listening to victims, witnesses and human rights organizations, it is clear that the needs of victims are not being adequately addressed. For example, while the Israeli system allows for Palestinian victims to file civil claims with the Supreme Court, the reality for Gaza residents is that, given existing restrictions preventing entry into Israel, their right to a remedy and reparation is limited in such a way as to render it virtually ineffective. A petition filed by a human rights organization points out that the existing two-year statute of limitations, and the number of obstacles to accessing Israel, effectively undermine any real prospect of obtaining justice.<sup>90</sup>

74. Similarly, victims on both sides continue to raise the question whether their right to obtain reparation will be adequately respected. This is not just a matter of law; this is, in the view of the Committee, a matter of the most basic principles of justice. When harm has been done, irrespective of the reasons and justifications for it, victims should be given the opportunity to be compensated for the damages suffered, whether physical, psychological, or patrimonial. The Committee notes the increasing practice of Member States carrying out military operations in different parts of the world to offer ex-gratia payments when direct or indirect damage is caused to civilians. Such practice is commendable and should, in the near future, constitute the norm rather than the exception.<sup>91</sup>

75. But above all, listening to the testimony, the Committee apprehended that many people continue to feel insecure, they carry the burden of injuries and disabilities, and struggle to live in difficult conditions. The Committee heard testimonies from mothers on both sides who are raising children suffering from post-traumatic stress disorder and who have to consider where they can run for shelter to protect their families.<sup>92</sup> The Committee

<sup>88</sup> Teleconference of 14 March 2011.

<sup>89</sup> Teleconference of 14 March 2011.

<sup>90</sup> See Palestinian Centre for Human Rights, *Israel Effectively Denies Palestinian Victims of Operation Cast Lead Access to Justice: PCHR files petition to Israeli High Court of Justice*, 12 December 2010, available at

[http://www.pchrgaza.org/portal/en/index.php?option=com\\_content&view=article&id=7167:israel-effectively-denies-palestinian-victims-of-operation-cast-lead-access-to-justice-pchr-files-petition-to-israeli-supreme-court&catid=36:pchrpressreleases&Itemid=194](http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7167:israel-effectively-denies-palestinian-victims-of-operation-cast-lead-access-to-justice-pchr-files-petition-to-israeli-supreme-court&catid=36:pchrpressreleases&Itemid=194), accessed on 16 March 2011.

<sup>91</sup> According to reports, for example, between 1 April 2009 and 31 March 2010 the Canadian military issued 272 ex-gratia payments - more than five per week. See the Canadian Encyclopedia, *Canadian military payments for death and destruction in Afghanistan*, 17 January 2011, available at <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=M1ARTM0013580>, accessed on 16 March 2011. See also reports that Germany has made ex-gratia payments to victims in Afghanistan, at <http://freeinternetpress.com/story.php?sid=26575>, accessed on 16 March 2011. For the United States’ use of solatia and condolence payments see “The Department of Defense Use of Solatia and Condolence Payments in Iraq and Afghanistan”, available at <http://www.gao.gov/new.items/d07699.pdf>, accessed on 16 March 2011.

<sup>92</sup> Teleconference Palestinian victims, 15 March 2011; teleconference with Israeli victims, 14 March 2011.

also received requests to assist people to rebuild in Gaza and is mindful of submissions it received about the destruction of environmental health related infrastructure there and the need for material to be allowed in to enable the civilian population to repair damage to wells and household water and sanitation systems.<sup>93</sup> The Committee considers that, for as long as victims – in Israel and in Gaza -- continue to lack confidence in the investigative processes, and continue to live in difficult and unsafe conditions, without remedy, there will be no genuine accountability and no justice.

## **VII. Conclusions**

### **A. General conclusion**

76. **The Committee, in the course of its work since the adoption of Human Rights Council resolution 13/9, has monitored and assessed the different proceedings undertaken by the Government of Israel and the Palestinian side on the basis of available public information, contributions from government authorities, NGOs and other actors, and accounts from victims and witnesses. It considers that the analysis presented in this report completes and concludes its examination of the issues it was requested to address in resolution 13/9.**

### **B. Israel**

77. **Although the Committee was able to access official information detailing the progress of some investigations by the Israeli authorities since September 2010, it relied largely on media reports and other secondary sources to inform its deliberations. The Israeli authorities' refusal to allow the Committee access to Israel and the West Bank, and access to Gaza through Israel, significantly constrained the Committee's ability to engage with key interlocutors.**

78. **That said, the Committee finds that Israel has dedicated significant resources to investigate over 400 allegations of operational misconduct in Gaza reported by the FFM and others. Given the scale of this undertaking, it is unsurprising that in 2011, much remains to be accomplished. The Committee is able to report that, to the best of its knowledge, nineteen investigations into the serious violations of international humanitarian law and international human rights law reported by the FFM have been completed by the Israeli authorities with findings that no violations were committed. Two inquiries were discontinued for different reasons. Three investigations led to disciplinary action. Six investigations reportedly remain open, including one in which criminal charges have been brought against an Israeli soldier. The status of possible investigations into six additional incidents remains unclear.**

78. **Furthermore, Israel has launched fourteen investigations into incidents related to alleged violations in the West Bank. Of those, two criminal indictments have been filed, six investigations are ongoing and six cases were closed without charges. The Committee did not receive any information concerning any other investigation of alleged violations committed in the West Bank, nor to investigations related to persons detained in Israel.**

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<sup>93</sup> Written submission by the Emergency Water, Sanitation and Hygiene group (EWASH) for the Occupied Palestinian Territory (OPT), March 2011.

79. The Committee reiterates the conclusion of its previous report that there is no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw Operation Cast Lead.

80. However, the Committee notes the work of the Turkel Commission and its probing of some decisions and policies adopted by high-level officials in Israel. The Commission was able to interview and actively question high-level officials, including the Prime Minister, the Defense Minister, the Chief of General Staff, and the Chief Military Advocate, and examined questions related to the legality and the enforcement of the blockade on Gaza, as well as the question of whether the impact of the land crossings policy constitutes collective punishment. The Committee concludes that a public commission constitutes one of the mechanisms that Israel could use to assess high-level operational and legal decisions concerning the execution of the military operation in Gaza.

81. Concerns related to transparency and the participation of victims and witnesses in investigations reported by the Committee in its previous report continue to be relevant. NGOs, victims and their legal representatives have difficulty accessing information about progress in investigations. They report that the majority of their requests for information go unanswered. The Committee is of the view that transparency and participation help build the confidence of victims and other interested parties in the investigation process, including fostering a sense that credible and genuine investigations are taking place.

82. The Committee has strong reservations respecting the promptness of some investigations of individual incidents referred to by the FFM. More than one-third of the 36 incidents in Gaza are still unresolved or unclear. The status of investigations into incidents in Israel and the West Bank is also unclear. Presumably this serious issue respecting the ability of the military justice system promptly to investigate allegations of wrongdoing during military operations is under careful review by the Turkel Commission.

83. Finally, the Committee is concerned about the fact that the duration of the ongoing investigations into the allegations contained in the FFM report -- over two years since the end of the Gaza operation -- could seriously impair their effectiveness and, therefore, the prospects of ultimately achieving accountability and justice.

## **C. The Palestinian side**

### **1. The Palestinian Authority**

84. In September the Committee reported that the investigation carried out by the PIIC conformed to international standards and could be considered credible and genuine. More recently the PIIC has sought to complete its mandate by investigating rocket and mortar attacks against Israel and other human rights violations in the Gaza Strip. The Committee was informed that the PIIC had been unable to do so, as it had not received positive responses to requests for access from either Israel or the de facto authorities in Gaza.

85. Nonetheless, the work of the PIIC did provide a solid basis for proceeding against perpetrators and developing other measures. In October 2010, the Council of Ministers of the Palestinian Authority established a Ministerial Committee with a mandate to issue recommendations to the Council of Ministers about implementation of the PIIC report. The report of the Ministerial Committee details strategies for significant institutional change over the next nine months, including the establishment of a Constitutional Court. The report also urges that the Prime Minister issue a directive that employment in the civil service not be dependent on security clearances, and that an ad hoc committee review past administrative decisions that led to dismissals. The Ministerial Committee further recommended that the General Prosecutor conduct criminal investigations into allegations

of extra-judicial killings in Gaza, and of incidents in which officials allegedly refuse to implement court decisions.

86. The Committee was also informed that a decision has been taken to transfer cases from military to civilian courts and that the office of the General Prosecutor now conducts regular monitoring visits to military and civilian detention facilities.

87. These proposals and changes are important developments. Nonetheless, the Committee is concerned that criminal accountability mechanisms have not yet been duly activated in relation to many of the allegations of serious violations in the FFM report.

## **2. The de facto Gaza authorities**

88. In September 2010, the Committee stated it had been unable to substantiate reports that the de facto Gaza authorities had released all political prisoners or conducted criminal prosecutions, in response to the FFM report. The Committee also reported that two committees of inquiry had been established. However, one committee focused on allegations directed at Israel rather than on allegations directed at the de facto authorities. The other reported on measures to redress alleged violations but the information presented was not substantiated.

89. The Committee acknowledges that the de facto authorities have now made efforts to provide specific information concerning criminal investigations into alleged human rights violations committed by their security forces. The Committee is aware of the fact that it is not uncommon for such cases to be resolved to the satisfaction of the families through out-of-court settlements.

90. Nevertheless, the Committee remains extremely concerned by the fact that the de facto authorities have not conducted any investigations into the launching of rocket and mortar attacks against Israel. It considers that the de facto authorities should make serious efforts to conduct criminal inquiries into all the allegations of grave violations of international law implicated by these attacks.

## Annex I

### List of stakeholders consulted<sup>94</sup>

#### Diplomatic missions

Permanent Mission of the Arab Republic of Egypt to the United Nations in Geneva

Permanent Mission of Israel to the United Nations in Geneva

Permanent Mission of the Hashemite Kingdom of Jordan to the United Nations in Geneva

Permanent Observer Mission of Palestine to the United Nations in Geneva

#### Domestic authorities

Mr. Muhammad Abed	De facto authorities, Gaza
Judge Issa Abu Sharar	Palestinian Independent Investigation Commission
Dr. Mamdouh Aker	Palestinian Independent Human Rights Commission
Mr. Gandhi Aldube	Palestinian Independent Human Rights Commission
Mr. Muhammad Faraj al-Ghoul	De facto authorities, Gaza
Dr. Ali Kashan	Minister of Justice, Palestinian National Authority
Mr. Ahmed Mughani	General Prosecutor, Palestinian National Authority
Ms. Randa Siniora	Palestinian Independent Human Rights Commission

#### Non-governmental organizations

Adalah, Al-Haq, Al-Mezan, Amnesty International, Badil, B'Tselem, Cairo Institute for Human Rights, Defense for Children International, EWASH, Human Rights Watch, International Association of Jewish Lawyers and Jurists, Public Committee against Torture in Israel, Palestinian Centre for Human Rights, Physicians for Human Rights, UN Watch.

In addition, the Committee received submissions from: Al-Haq, Adalah, B'Tselem, EWASH, Hamoked, the Palestinian Centre for Human Rights, NGO Monitor.

#### International organizations

Office of the United Nations High Commissioner for Human Rights

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<sup>94</sup> In light of the Committee's confidentiality policy, it should be noted that inclusion in this list was done on the basis of explicit authorization by the relevant party. Therefore, the list is not exhaustive and includes only those persons and organizations that authorized the Committee to be mentioned in the report.

## Annex II

**Table: Incidents in the report of the UN Fact-Finding Mission on the Gaza Conflict**

<i>Indiscriminate or deliberate killings</i>			
<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
1. The killing of Ateya Samouni and his son Ahmad	706-735	Sixth special command investigation; MPCID	Ongoing
2. Attack on the Wa'el al-Samouni house	706-735	Sixth special command investigation; MPCID	Ongoing
3. Al Faqura Street massacre/al Deeb family	653-703	Special command investigation	No violation
4. Shooting of Iyad Samouni	736-744	Sixth special command investigation; MPCID	Ongoing
5. Death of Mohammed Hajji and shooting of Shahd Hajji and Ola Masood Arafat	745-754	MPCID	Ongoing
6. Shooting of Ibrahim Juha	755-763	MPCID	Ongoing
7. Killing of Majda and Rayya Hajaj	764-769	MPCID; military court	Ongoing
8. Khalid Abed Rabbo's daughters	770-779	MPCID	No violation
9. Shooting of Rouhiya al-Najjar	780-787	Command investigation; MPCID	No violation
10. Abu Halima family	788-801	MPCID	No violation
11. Attack on Al Maqadmah Mosque	822-843	Two special command investigations (January 2009 and November 2009)	Disciplinary action
12. Attack on Al Daya Family	844-866	Special command investigation	No violation
13. Attack on the Abd al-Dayem condolence tents	867-885	Command investigation; MPCID	No violation

*Attacks on government infrastructure*

<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
14. Israeli air strikes on the Gaza main prison	366-392	Command investigation	No violation
15. Strikes on the Palestinian Legislative Council building	366-392	Unclear	Unclear
16. Arafat City police HQ	393-438	Command investigation	No violation
17. Deir Al Balah police attacks	393-438	Command investigation	No violation
18. Abbas police Station	393-438	Command investigation	No violation
19. Zeytoun police Stations	393-438	Command investigation	No violation
20. Al Shejaeyah and al-Tuffah police station	393-438	Command investigation	No violation

*Use of Palestinians as human shields*

<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
21. Abbas Ahmed Ibrahim Halawa	1064-1075	MPCID	No violation
22. Majdi Abed Rabbo	1033-1063	MPCID	Disciplinary action
22. Mahmoud Abd Rabbo Al-Ajrami	1076-1085	MPCID	No violation
24. AD/03	1086-1088	MPCID	Discontinued insufficient evidence

*Arbitrary detention*

<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
25. Al Atatra incident	1112-1126	Sixth special command investigation	Under review by MAG
26. AD/02	1127-1142	MPCID	Unclear
27. AD/03	1143-1164	MPCID	Discontinued insufficient evidence
28. AD/06	1107	Unclear	Unclear

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*Use of harmful weapons*

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<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
29. Al Quds Hospital	596-629	Special command investigation	Unclear Possible disciplinary action
30. Al Wafa hospital	630-652	Special command investigation	Unclear Possible disciplinary action
31. UNRWA	543-595	Special command investigation	Apology, disciplinary action, compensation

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*Attacks on infrastructure and food production*

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<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
32. El Bader flour mill	913-941	Command investigation	No violation
33. Sawafeary chicken farm	942-961	Command investigation	No violation
34. Abu Jubba cement company	1012-1017	Command investigation	No violation

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*Attacks on water and sewage installations*

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<i>Incident</i>	<i>Paragraphs FFM report</i>	<i>Investigation body</i>	<i>Status</i>
35. Gaza wastewater treatment plant	962-974	Command investigation	No violation
36. Namar wells group	975-986	Command investigation	No violation

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