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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Human Rights Now, 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.

[22 August 2013]

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

A call for immediate actions to end grave violations of human rights in the Occupied Palestinian territories

1 Human Rights Now (HRN), a Tokyo based international human rights NGO, expresses grave concern over the lack of progress seeking justice for and protecting the rights of civilians, where violations of international humanitarian and human rights law have taken place in Israel and the Occupied Palestinian territories (OPT). In particular, HRN urges appropriate United Nations bodies to ensure that Israel immediately assume their obligations under international law.

Several United Nations missions have submitted reports to the United Nations Human Rights Council; yet despite this, HRN is deeply concerned with the lack of progress implementing recommendations, taking concrete steps to realize justice, ensuring reparations for victims and stopping impunity.

2 During the Gaza War, a 22 day conflict that occurred between 27th December 2008 - 18th January 2009 in Gaza and Southern Israel, it's estimated that more than 1400 Palestinians and 13 Israelis were killed. Most of the victims were civilians. The UNHRC subsequently commissioned a fact finding mission to investigate all violations of international human rights law and international humanitarian law during the conflict. The mission produced the Goldstone Report, which was submitted to the UNHRC on September 15th 2009.

The report detailed the investigation and documented allegations of conduct by both the Israeli Defence Forces (IDF) and Palestinian militants violated international law. The report concluded there is evidence indicating serious violations of international human rights and humanitarian law committed by Israel during the Gaza conflict which amount to war crimes, and possibly crimes against humanity. The Report also concludes there is also evidence that Palestinian armed groups committed war crimes.

In the Report, the Mission recommended that the UN Security Council require Israel to report to it, within six months, on investigations and prosecutions which Israel should carry out with regard to the violations identified in the Report. The Mission further recommends that the Security Council set up a body of independent experts to report to it on the progress of the Israeli investigations and prosecutions. If the expert body's reports indicate within six months that no good faith, independent proceedings have been taking place, the Council should refer the situation in Gaza to the Prosecutor of the International Criminal Court (ICC).

HRN expresses concern with the lack of progress implementing recommendations in the report. To date, violations of international law identified within the report have yet to be satisfactorily investigated by both domestic authorities and international bodies.

Despite a 2009 United Nations General Assembly resolution giving domestic authorities 3 months to conduct 'independent credible investigations', those undertaken by both Palestine and Israel have to date been unsatisfactory, failing to conform to international standards.

To prevent impunity, accountability for serious violations of international law must be properly investigated and international justice mechanisms must be employed.

3 In January 2009, Palestinian Authorities lodged a declaration to the ICC under article 12 (3) of the Rome Statute accepting jurisdiction of the ICC in an attempt to determine if the ICC could investigate crimes committed during the Gaza conflict.

After 3 years, on April 3rd 2012, the Office of the Prosecutor (OTP) at the ICC came to the decision that it did not have the jurisdiction to determine Palestine a state under the terms of the Rome Statute and is therefore unable to investigate or prosecute for these crimes unless other United Nations bodies or the ICC Assembly of State Parties decide that Palestine qualifies as a state for the purpose of acceding to the Rome Statute.

However, following these events, on the 29th November 2012, United Nations General Assembly resolution 67/19 upgraded Palestine to non-member observer state status within the United Nations. HRN therefore urges the OTP to reconsider its April 3rd 2012 decision not to investigate suspected war crimes and possible crimes against humanity. Resolution of these legal issues is a priority as the longer it remains unresolved, the longer victims are denied the right to justice.

4 Israel's violation of international human rights and humanitarian law is not limited to the above Gaza conflict, but has continued for decades.

Despite several UN resolutions declaring settlements on Occupied Palestinian Territory such as the West Bank, East Jerusalem and the area known as the Golan Heights illegal, expansion of settlements, development planning and sustainment of existing settlements continues, along with the construction of new buildings.

By significantly altering the demographic composition of the local population, settlements impede the right of Palestinian people in occupied territories to exercise the right to self-determination. Civilian settlements in occupied territories are considered illegal under international law, in violation of the Geneva Conventions.

A 2004 advisory opinion of International Court of Justice concluded that establishment of settlements in Occupied Palestinian Territory is contrary to the terms of Article 49 paragraph 6 and thus in breach of international law¹.

On March 2012, Human Rights Council resolution 19/17 established an independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people throughout the OPT.

On March 2013, the fact-finding mission submitted a first report to the 22nd Council relating to OPT which concluded that the resettlements violate international human rights laws and international humanitarian law, and recommended that *"Israel must cease all settlement activities without preconditions..."* *"In addition it must immediately initiate a process of withdrawal of all settlers from the OPT."*²

The conclusion was endorsed by Human Rights Council Resolution 22/29.

However, the resettlement policy has not yet changed. On August 18, 2013, the day before peace talks commenced, Israel announced its approval of building nearly 1,200 more settlement homes.

Resolving the resettlement issue in conformity with international law is essential to solve the conflict as a whole.

5 Moreover, despite the recent release of 26 Palestinian prisoners by the Israel authority, there are still around 4800 Palestinians in Israeli custody. A long list of concerns regarding the treatment of detainees and prisoners by Israel has been raised by the UN Special Rapporteur and other human rights bodies.

These include arbitrary detention, torture and ill, inhumane and humiliating treatment, coerced confessions, solitary confinement, denial of family visits or visits by humanitarian organizations such as the International Committee of the Red Cross, denial of access to legal representation, concern over poor condition of prisons and detention centres, lack of access to health care and education. Concerns also surround the detention of children, including the use of solitary confinement and lack of access to education. The UN Special Rapporteur on the situation of human rights in the Palestine territories since 1967 reported on this issue to the General Assembly in September 2011, and a 2013 UNICEF report also noted that the practice violates the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The blockade of the Palestinian controlled Gaza Strip has been intensified since mid-2007, and despite a current ceasefire agreement and some lifting of restrictions, the blockade remains.

The blockade denies Palestinian people freedom of movement and has resulted in incidents including injury and deaths due to live firing. Closing of borders and crossings that are used to transport essential items such as food and basic supplies leads to subsequent shortages with adverse effects upon health, education, sanitation and other essential services. The overall effect of the blockade is detrimental to economic

¹ 9 July 2004, ICJ Advisory Opinion "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para 120

² Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

development. The blockade infringes upon the economic and social rights of the whole population of Gaza. This amounts to collective punishment, in violation of Israel's obligations as an occupying power under the 4th Geneva Convention.

Furthermore, Israel has demonstrated a consistent policy of refusing to cooperate or engage with UN Special Procedures, including refusal to cooperate with the UN fact-finding mission that led to publication of the 2009 Goldstone Report on the Gaza War and more recently, refusal to cooperate with UN investigators during the work that led to a 2012 report on settlements.

6 States have an obligation to respect and ensure respect for international law. All parties involved in conflict should take all necessary steps to protect civilians from harm. Failure to investigate and seek justice for victims of serious violations of international law such as breach of the 4th Geneva Convention, war crimes and crimes against humanity need to be addressed.

HRN urges that immediate steps be taken by the international community to ensure justice and accountability of those violations.

HRN recognizes that the root cause of the Israel-Palestine conflict is the continuing human rights violations in contrary to international law and the prevailing impunity of these violations.

While recognizing the recent effort of peace talks between Israel and Palestine, HRN emphasizes that the breaches of international law and violations of human rights outlined above must be solved as an essential condition of resolution of the conflict and must not be compromised.
