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Addameer Statement

Ramallah, 1 October 2009

On 29 September 2009, the UN Human Rights Council met to begin to debate the action it will take regarding the 575 page report issued by the United Nations Fact Finding Mission on the Gaza Conflict on 15 September 2009.

Commissioned by the UN Human Rights Council in April 2009, the Mission was tasked with investigating the 27 December 2008 – 18 January 2009 Israeli aggression into Gaza that killed more than 1,400 Palestinians and injured 4,000. Thirteen Israelis, including three civilians and ten soldiers, were also killed. The Mission was led by Judge Richard Goldstone, an internationally respected South African jurist who later served as chief prosecutor at the UN war crimes tribunals for Rwanda and the former Yugoslavia.

The report determined that both Israel and Hamas committed serious violations of the laws of war during last winter's 23-day conflict, some amounting to war crimes and possible crimes against humanity. Neither party, the report said, has conducted adequate, impartial criminal investigations of alleged laws of war violations by its forces. The Mission has recommended that various UN bodies take measures to ensure such accountability should either side now fail to do so within the next six months.

As the Human Rights Council debates its response to the Mission's report, Addameer urges all parties to take careful note of the valuable information gathered by Judge Goldstone and his team, and to sift the facts gathered by them out of the unfounded allegations and other detritus generated by the Mission's few but vocal detractors.

Important Observations Regarding the Israeli Detention of Palestinian Prisoners

The report addresses a number of Addameer's key concerns regarding the treatment of Palestinians held in Israeli detention, including:

· **Detention of political leaders:** The report observed the alarming practice of arrest and lengthy detention of democratically-elected Palestinian Legislative Council members, "which appears to be a deliberate act to interrupt the democratic functioning and self-governance of Palestinians". The Mission found that such practice, insofar as it is done in response to political events unrelated to the

individual legislators, violates articles 9(1), 25 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and may amount to 'collective punishment' contrary to Article 33 of the Fourth Geneva Convention. (See paragraphs 1524, 1526, 1527 and 1539)

·**Use of human shields:** The Mission documented different types of human shields used by Israel, including: for cover when conducting a military operation, as in the case of Palestinian men blindfolded and handcuffed and forced at gunpoint to enter houses ahead of the Israeli military; by holding Palestinian detainees in a military area subject to active conflict; and by forcing civilians to remain in an area for the purpose of sheltering the area or Israeli forces from attack. The report concluded that Israel's use of human shields constitutes cruel and inhuman treatment and is also a war crime, in violation of article 28 of the Fourth Geneva Convention. (See paragraphs 55, 1093)

·**Death of those in military custody or under military supervision:** The Mission documented cases where the Israeli army ordered civilians into a home and then, later, opened fire onto it, killing 21 members of the al-Samouni family. It also reported cases where Israeli forces shot and killed civilians who had been instructed by the soldiers to evacuate an area and were under "complete control" of the Israeli armed forces, as well as instances where civilians were killed trying to move to safer places holding white flags after being advised by the army to evacuate the area for their own safety. (See paragraphs 710-714, 740, 748, 758)

·**Civilians detained in degrading conditions:** The report found that "civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention". The Gazans detained by Israeli forces in sandpits were subjected to collective punishments, outrages on personal dignity, humiliating and degrading treatment and torture. (See paragraphs 57, 1169-1173)

·**Torture and ill-treatment against detainees:** The Mission also expressed concern by the reports of coercion and torture during interrogations, trials based on coerced confessions or secret evidence, and the reportedly systematic and institutionalized ill-treatment in prisons. (See paragraph 1536)

·**Arrest and detention of children:** The report documented with particular alarm the rise in child detention during and after the Israeli military operations in Gaza, including the detention of large numbers of children involved in demonstrations against the conflict. It also cited the failure of Israel to provide the special treatment due to minors held in detention, particularly those aged 16-17. To the contrary, according to the report, "The ill-treatment described to the Mission received by children and adults is disturbing in its seemingly deliberate cruelty" and, in some cases, constituted violations of the Convention on the Rights of the Child and other international human rights conventions. (See paragraphs 1528, 1529 and 1537)

·**Administrative detention:** The Mission observed that the Israeli legal instruments allowing for the indefinite detention of "unlawful combatants", as well as enshrining the deficient due process regimes, the differential treatment of Palestinian and Israeli prisoners (including the differential definition of a "child"), and the exemptions *de facto* allowing for enhanced interrogation techniques raise concerns about the legal system being a part of this practice, rendering the practice deliberate and systematic. (See paragraph 1538)

·**Palestinian protests and demonstrations:** The Mission noted with concern the arrest and detention of Palestinians from both the OPT and the 1948 territory in conjunction with protests and demonstrations against the conflict in Gaza. It also found that use of firearms resulting in the death of

demonstrators protesting against the conflict constituted a violation of article 6 of the ICCPR, and the delay in the provision of medical aid to the injured violated the Fourth Geneva Convention. (See paragraphs 111-116, 1424)

General detention issues: The Mission expressed concern “about the detention of children and adults on political grounds, in poor conditions, and outside the occupied territory in violation of international humanitarian law”. It also noted “the very high number of Palestinians who have been detained since the beginning of the occupation (amounting to 40% of the adult male population of the OPT) according to a practice that appears to aim at exercising control, humiliating, instilling fear, deterring political activity and serving political interests”. (See paragraph 1535)

Action by International Community is Necessary Now to Silence Critics, Correct Decades of Impunity Enjoyed by Israel

In a joint statement issued on 16 September 2009 by Addameer and twelve other Palestinian organizations, the group welcomed the report’s comprehensive findings and encouraged the Human Rights Council to implement all the recommendations issued by the Mission.

However, Addameer remains alarmed by the consistent disregard shown by Israel towards its obligations under international law as well as virtually all UN resolutions calling for Israeli accountability in its forty-plus years of occupation over Palestinian territory. We fear that the light shed by this report onto the heavy, terrible toll of the war in Gaza and its ramifications throughout the occupied Palestinian territory will be undermined by the dangerous and uninformed allegations of the report’s critics – including the United Kingdom and the United States, who, over the years, have been instrumental in perpetrating the impunity Israel has enjoyed regarding its ongoing violations of international human rights and humanitarian law. In opposing the report’s recommendations before the Council on Tuesday, the US Assistant Secretary of State for Democracy, Human Rights, and Labor, Michael Posner, labeled the report “deeply flawed,” but provided no real facts to support those allegations. As a member of both the UN Security Council and the European Union, the UK, along with France and Germany, has similarly disregarded its responsibilities to uphold international law and justice for civilian victims of unlawful armed conflict. The European Union, in a statement delivered by Swedish ambassador Hans Dalgren, recognized the importance of the report but failed to officially endorse its conclusions or recommendations.

Recommendations

Addameer urges support for a resolution at the UN Human Rights Council that endorses the report in its entirety, including the recommendations that it be forwarded to other UN bodies, including the Security Council, for further measures should they be necessary.

Addameer further contends that a failure by Hamas or other groups to respect their obligations under international law does not excuse a similar failure by Israel. Addameer therefore strongly urges all parties to conduct a meaningful and independent investigation of its own into violations of international law as soon as possible.

However, Addameer shares the Mission’s deep skepticism that Israel would be willing or able to carry out genuine investigations in an impartial, independent, prompt and effective way as required by

international law. Israel's current investigations undertaken by the military show little sign of being either effective or impartial, and the inherently discriminatory nature of every aspect of the Israeli-administered justice system for Palestinians has been well documented by Addameer and other organizations for many years.

Finally, Addameer urges the Palestinian Authority in Ramallah not to resume permanent status negotiations with the government of Israel until an independent investigation into Israel's violation of international law is conducted and adequate mechanisms are set in place for Palestinian victims to seek accountability and compensation.

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