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

Written statement* submitted by the Amuta for NGO Responsibility, 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.

[25 August 2014]

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

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HRC Gaza Inquiry Must Conform to International Fact-Finding Standards

For more than 65 years, the State of Israel has been subjected to violence, warfare, and a relentless campaign of terror attacks deliberately targeting its civilians. Thousands have been murdered and injured in suicide bombings, mass shootings, stabbings, rocket attacks, car bombings, kidnappings, and hijackings. Today, these attacks are spearheaded by states including Iran and Syria, and terror organizations – Hamas, Islamic Jihad, Hezbollah, Fatah’s Al Aksa Martyrs Brigade, the PFLP, and even Al Qaeda. They not only outwardly reject the existence of a nation-state for the Jewish people, regardless of borders, but their ideology reflects overt antisemitism and calls for genocide. Many so-called Palestinian moderates and supporters refuse to recognize the right of self-determination for the Jewish people. Instead, they seek to reverse the 29 November 1947 UN resolution (UNGA 181) calling for two states, which was accepted by the Jewish leadership and rejected by the Arabs.

This “hard power” terror war has been bolstered by a corresponding “soft power” political war aimed at delegitimizing and demonizing the State of Israel. This “soft power” war has reinforced Arab rejectionism in order to prevent circumvent avoid progress in negotiations and to avoid the difficult compromises necessary for a peaceful resolution to the Arab-Israeli conflict.

Non-governmental organizations (NGOs) that claim the mantle of universal human rights and humanitarian goals often play a central role in soft power warfare and demonization. Many powerful organizations such as Amnesty International, Human Rights Watch (HRW), and Oxfam, have joined this effort, with large budgets and influence that rival those of large multinational corporations.

Tragically, the co-opting of UN frameworks and other international institutions has been central to this strategy. In the 1970s, by exploiting Cold War politics and in alliance with the Soviet Union, Palestinians and their supporters launched several efforts at the UN to undermine Israel’s legitimacy and eliminate Jewish self-determination. These initiatives included numerous declarations and resolutions adopted by the Security Council and the General Assembly, the establishment of several committees and legal commissions, as well as actions by the UN human rights and treaty bodies. In 1975, the Arab and Islamic blocs gained passage of the infamous 1975 UN General Assembly “Zionism is Racism” declaration. The UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, one of the primary vehicles for Israeli demonization, was also created on the same day.

This exploitation of UN institutions has been most evident within the framework of the Human Rights Council, and its predecessor, the Commission on Human Rights. The Commission was responsible for the disastrous NGO Forum of the 2001 World Conference against Racism in which 1,500 NGOs gathered in Durban, South Africa adopted a final declaration that singled-out Israel and launched the political war.

Since 2002, the HRC (and its predecessor) has appointed at least seven “fact-finding” committees targeting Israel, including Jenin (2002), Lebanon War (2006), Beit Hanoun (2008), Gaza (2009), the IHH Flotilla (2010), settlements (2012), and Gaza again (2014) – more than directed at any other country.

Many prominent scholars have analyzed these previous initiatives and have demonstrated that they have been marred by bias, double standards, factual inaccuracies, a lack of transparency and independence, and a failure to adhere to ethical standards including impartiality, non-selectivity, transparency, and accountability.¹

¹ See, e.g., Moshe Halbertal, “The Goldstone Illusion,” *The New Republic*, 6 November 2009, available at <http://www.tnr.com/article/world/the-goldstone-illusion>; Report of an Expert Meeting which Assessed Procedural Criticisms made of the U.N. Fact-finding Mission on the Gaza Conflict (The Goldstone Report), Chatham House, (27 November 2009), available at http://www.chathamhouse.org.uk/files/15572_il271109summary.pdf; Ed Morgan, “The UN Book of Judges,” *Global Governance*, April-June 2010, available at

These principles are key standards for any fact-finding mission. In 2009, the Human Rights Institute of the International Bar Association issued the [Lund-London Guidelines](#) on international Human Rights Fact Finding Visits. According to these guidelines:

- Reports must be clearly objective and properly sourced, and the conclusions in them reached in a transparent manner. ... In making their findings the delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.
- The terms of reference must not reflect any predetermined conclusions about the situation under investigation.
- The mission's delegation must comprise individuals who are and are seen to be unbiased. The NGO should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the terms of reference.²

Unfortunately, the evidence suggests that absence of fact-finding standards that plagued previous HRC inquiries is likely to be repeated in the 2014 Gaza inquiry. For instance, the mission is already tainted with bias by the selection of William Schabas, a known partisan on the Arab-Israel conflict, to head the inquiry.

Politicized NGOs asserting legal and factual claims will also undoubtedly play a central role in the mission. Judging by the practices of previous HRC fact-finding initiatives, large portions of the final report will simply be “cut and pasted” from NGO submissions. These same NGOs will likely assist in the preparation of the mission's agenda and selection of incidents (as Amnesty International did during the 2009 Goldstone mission), provide written materials, serve as “witnesses” for the committee, and lobby for acceptance of the report within which they will be cited dozens of times.

As in the past, the materials that the NGOs provide are expected to provide will obscure or remove the context of terrorism, provide incomplete statistics and images, and disseminate gross distortions of the humanitarian and human rights dimensions of the 2014 Hamas war in particular, and of the Arab-Israeli conflict, in general. Violations of human rights and international humanitarian law committed by Palestinian actors or terror groups will be ignored or minimized. NGOs such as B'Tselem, Al Mezan, and the Palestinian Center for Human Rights will again claim that the vast majority of Gaza casualties are civilians killed in areas where no combat was taking place. These claims will likely be credited without verification, even though independent review of this data has shown serious methodological problems and false information.

In addition, reports from groups like HRW and Amnesty will make allegations based solely upon interviews with Gazans, even though as Amnesty's own head of field investigations, Donatella Rovera, has acknowledged, “In Gaza, I received partial or inaccurate information by relatives of civilians accidentally killed in accidental explosions or by rockets launched by Palestinian armed groups towards Israel that had malfunctioned and of civilians killed by Israeli strikes on nearby Palestinian armed groups' positions. When confronted with other evidence obtained separately, some

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622307; Nigel S. Rodley, “Assessing the Goldstone Report,” *Global Governance*, April-June 2010, available at

http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content;coll1; Laurie Blank, “The Application of IHL in the Goldstone Report: A Critical Commentary,” 12 *Y.B. of Int'l Hum. L.* (2009); Peter Berkowitz, “The Goldstone Report and International Law,” *Stanford University Hoover Institution*, 1 August 2010, available at <http://www.hoover.org/publications/policy-review/article/43281>; Avi Bell, “A Critique of the Goldstone Report and its Treatment of International Humanitarian Law,” *American Society of International Law Proceedings*, Vol. 104, March 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1581533; Trevor Norwitz, “Open Letter to Judge Goldstone,” 19 October 2009, available at <http://www.goldstonereport.org/pro-and-con/critics/316-trevor-norvitz-open-letter-to-judge-goldstone-191009>.

² London-Lund Guidelines, www.factfindingguidelines.org

said they feared reprisals by the armed groups.”³

Compounding the lack of objectivity, politicization, and inaccuracy is the lack of transparency surrounding the process, particularly the role played by the OHCHR. OHCHR staffers were heavily involved in all aspects of the work of the 2009 Gaza commission, including logistics, witness selection, information collection and evaluation, and drafting the mission’s report. Yet these staffers are not identified, and the nature of their assistance was not disclosed.

Past inquiries have also refused to disclose the witness selection process, a list of meetings related to the inquiry, documents provided to the mission, and all NGO submissions. This secrecy makes it impossible for outside sources to independently evaluate whether individuals working on the inquiry and organizations assisting in the process are objective, free from conflicts of interest, and have the requisite expertise.

NGOs are extremely influential within the HRC framework and particularly in the fact-finding missions. Accumulated power, however, must be balanced by appropriate checks, lest it be abused. The continued failure by the HRC and fact-finding mechanisms to employ clear benchmarks for ethical standards vis-à-vis its relations with NGOs, as well as its failure to adhere to the principles of objectivity, non-selectivity, and transparency, are among the reasons for the HRC’s failures during its first five years and the sweeping criticism of the Goldstone mission, among other initiatives.

Based on this assessment of the evidence, we conclude that at a minimum, the Mission must strictly adhere to the principles of impartiality and objectivity, identify all individuals involved in its work, adopt transparency standards governing all interactions with NGOs, and implement guidelines as to how the credibility and factual claims of NGOs will be assessed.

³ Donatella Rovera, PHAP, “Challenges of monitoring, reporting, and fact finding, during and after armed conflict,” April 28, 2014, <http://phap.org/thematic-notes/2014/april/challenges-monitoring-reporting-and-fact-finding-during-and-after-armed-co>