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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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Issues Related to UNOCHA's "Protection Cluster" Regarding Gaza

The NGO Protection Cluster framework that has operated during the 2014 Gaza conflict, like similar "clusters" in other regions, is linked to the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory (OCHA-OPT). The details regarding civilian casualties, including the questions of military necessity and proportionality in complex urban environments such as Gaza, are central to judgments regarding potential human rights violations and international legal requirements related to LOAC and IHL. In this context, OCHA's statements and statistics are frequently cited as authoritative in media accounts and by policy makers, including UN officials such as the Secretary General. As a result, major errors in these publications have significant consequences.

Within this framework, a number of NGOs were designated by OCHA to provide data on civilian casualties in Gaza. These NGOs include B'Tselem (based in Israel), Al-Mezan Center for Human Rights (based in Gaza), and the Palestinian Center for Human Rights (PCHR – also based in Gaza). OCHA then acts as a "humanitarian coordination mechanism" and "consolidates" and publicizes this information.¹

However, in producing and publishing these casualty statistics, the NGOs in OCHA's "Protection Cluster" as well as OCHA itself are largely dependent on the Palestinian Ministry of Health in Gaza, which is under the control of Hamas. As a result, any claims to independent analysis are highly problematic.

In particular, B'Tselem has no independent sources of information in Gaza, and as an Israeli organization, is unable to verify information, particularly during major conflicts. On July 14, Executive Director Hagai El-Ad claimed that B'Tselem was "issuing unequivocal public statements according to the information we have gathered". This included unverifiable statistics regarding civilian casualties, subjective allegations of "unlawful" Israeli military actions (for which B'Tselem does not possess the required expertise), and unverifiable and emotive "testimonies" (irrelevant for analyzing the legal dimensions).

However, on July 27, in response to questions regarding credibility, B'Tselem posted a "Note concerning testimonies about the 'Protective Edge' campaign" acknowledging that "With the current military campaign ongoing, B'Tselem is taking testimony from Gaza residents, mainly by telephone. B'Tselem verifies, to the best of its ability, the reliability and precision of the information reported; nevertheless, in these circumstances, reports may be incomplete or contain errors. Given the urgency of informing the public about events in Gaza, B'Tselem has decided to publish the information now available. When the military campaign ends, B'Tselem will supplement these reports as needed." Thus, this NGO's primary source of independent information is from telephone interviews with Gaza residents, whose claims cannot be verified.

PCHR and Al-Mezan are political organizations, based in Gaza, without credible methodologies for analysis of casualty claims, as shown in the January 2009 conflict. They claim to distinguish between civilians or combatants by visiting Gaza hospitals and morgues. If there is no clear evidence (i.e., casualties with weapons), these NGOs claim to quiz family or organizations (Hamas, Palestinian Islamic Jihad, etc.) on whether individuals were affiliated.

¹ These activities are supported and funded in part by the Norwegian Refugee Council (NRC). "As part of the Protection Cluster, NRC co-chairs the Legal Taskforce in both the West Bank and Gaza. This brings together domestic legal aid NGOs and international stakeholders on a monthly basis to share legal information and co-ordinate legal assistance, research and court monitoring." (<http://www.nrc.no/?aid=9147817>) (The NRC and its partners – UK and EU – are highly secretive, and Freedom of Information requests have been denied.)

These NGOs also do not conduct background investigations.² When the names of alleged civilian casualties were examined by the Terror Information Center in Israel, many were shown to be members of terrorist groups. UNOCHA, however, has failed to respond to the analysis published by this Israeli NGO, magnifying questions regarding the reliability of OCHA's allegations regarding civilian casualties.³

In addition, the inclusion of Gaza civilian casualties killed by hundreds of misfired rockets from within this territory, including any that hit hospitals and playgrounds, is unclear. Gazan civilians have also reportedly been killed by Hamas in fights at a food line, and media sources reported that Hamas has executed tens of alleged collaborators. OCHA, PCHR, and Al Mezan omitted any reference to these details in their reports, and it is not clear if they include the dead from these incidents in their lists, and whether they are listed as civilians "killed by Israel". People who die from natural causes might also be listed as "killed by Israel".

The lack of verifiability in PCHR and Al Mezan casualty analyses is enhanced by their politicized agenda, including accusations that the IDF ("Israeli Occupation Forces") is responsible for "massacres," "war crimes," and "disproportionate" and "criminal" attacks against civilians. Their allegations were a central component of the 2009 report on the Gaza conflict. In that case, PCHR's civilian casualty claims were very similar to those provided by Hamas (via the Gaza Health Ministry), and later shown to be entirely unreliable. At the time, PCHR claimed that Gaza casualties were "1,167 non-combatants (82.2%) and 252 resistance activists (17.8%)". In fact, more than half of the total were combatants.

These NGOs fail to condemn Hamas policies of systematically placing civilians in close proximity to combatants and related facilities. In February 2012, PCHR stated that an Israeli "warplane fired a missile at a training site used by Izz Addin al-Qassam Brigades, the military wing of Hamas, in Yafa Street...The bombardment resulted in damages to the neighboring establishments, especially Gaza Martyrs Boys Basic School." Yet, Israel, not Hamas, was condemned. PCHR and Al Mezan also fail to condemn indiscriminate rocket attacks against Israeli civilians, calling them "military actions."

In conclusion, and based on the examination of the lack of appropriate methodologies and independent verifiability regarding the claims of the three key NGOs, the civilian casualty statistics and claims produced by the OCHA Protection Cluster framework must be considered unreliable.

² The New Republic, "Numbers Game," May 6, 2009, <http://www.newrepublic.com/article/politics/numbers-game>

³ See, e.g., Meir Amit Terrorism & Intelligence Information Center, "Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge and analysis of the ratio between terrorist operatives and non-involved civilians killed in error," July 28, 2014, http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14_1121292827.pdf