



Palestinian Centre for Human Rights

**Status of Reparation Complaints submitted to the Israeli Authorities by PCHR
on behalf of Palestinian Victims of Operation 'Cast Lead'**

**Memorandum presented to the UN Special Rapporteur for the Promotion of Truth, Justice,
Reparation and Guarantees of Non-Recurrence**

April 2012

Introduction

1. This memorandum is presented to the UN Special Rapporteur for the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Pablo De Greiff, on the commencement of his mandate.
2. PCHR believes the situation in the occupied Palestinian territory (oPt) to be particularly relevant to the Rapporteur's mandate, and wishes to highlight a number of issues that require attention.
3. This submission will address the right to reparation in the context of Operation 'Cast Lead,' Israel's 27 December 2008 – 18 January 2009 offensive on the Gaza Strip. However, it is noted that PCHR's experience in this regard is symptomatic of the wider reality.
4. The information provided herein is based on PCHR's long-standing and free-of-charge legal assistance to Palestinian civilians, and is strictly focused on the status of civil (reparation) complaints submitted to the competent Israeli authorities for alleged violations of international law committed in the context of Operation 'Cast Lead.' PCHR wishes to express its willingness to cooperate with the Rapporteur, and to provide any further information as required.

Civil complaints

5. PCHR submitted **1,046 requests for reparation on behalf of 1,046 victims** of Operation 'Cast Lead' to the Compensation Officer at the Israeli Ministry of Defense. Indeed, it should be noted that the right to reparation is a fundamental component of the right to an effective remedy, and also constitutes a component of customary IHL: A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.¹
6. According to Israeli law, compensation requests must be submitted to the Compensation Office at the Israeli Ministry of Defence **within 60 days of the incident;**² this initial complaint is made via a standardised form. Dependent upon the filing of this initial complaint, a tort case may be filed before the Israeli civil courts; however, this must be done **within two years of the incident.**³
7. PCHR has received virtually no response from the Compensation Office at the Ministry of Defence. **With respect to the 1,046 compensation applications filed, responses have been received in relation to 26 applications** (17 responses total) to-date. 24 of these responses were interlocutory, one noted that a case had been filed before the Israeli civil courts and one refused compensation on the grounds that the incident occurred during a 'military operation.' **Absolutely no communication – even acknowledging the receipt of a complaint – has been received from the Israeli authorities in the overwhelming majority**

¹ See, for example, Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1: Rules (ICRC, 2005), Rule 150.

² Clearly, this is a difficult requirement to meet, given the scale of work generated during large scale incursions.

³ PCHR has submitted a petition to the Israeli High Court of Justice challenging the applicability of the two year statute of limitations, given the current reality in the Gaza Strip, consequent to, *inter alia*, the Israeli imposed closure.

of the cases. PCHR routinely submits letters to the relevant authorities requesting information.

8. PCHR emphasizes that, **of 1,046 submitted complaints, 1,020 have been ignored, while 24 have only been addressed in an interlocutory manner.**
9. As a result of the failure to respond to these reparation requests, PCHR filed **100 tort cases** before Israeli civil courts, relating to the interests of approximately 626 victims, and paid the initial court fees. These cases were submitted prior to the expiration of the 2 year statute of limitations in December 2010 – January 2011. Due to financial burdens, discussed below, PCHR was unable to file complaints on behalf of the remainder of the victims.
10. PCHR has secured an out of court settlement with respect to the family of two victims, Raya Abu Hajjaj and Majeda Abu Hajjaj, who were killed in a ‘white flag’ attack. A settlement of 500,000NIS (approximately US\$147,000) was awarded.

Financial Constraints

11. The Israeli authorities impose two fees with respect to civil complaints. The first is a routine court fee, which is applied in each case (approximately 1,600NIS). The imposition of this fee can also prove an unsurpassable financial burden when a large number of complaints are being filed simultaneously. In this regard, PCHR was forced to return over 400 Operation Cast Lead compensation files to victims, as PCHR was unable to cover the initial court expenses due to resource constraints.
12. The second is a court guarantee, or insurance fee, imposed on a discretionary basis by the court. This guarantee must be paid before the case can proceed; previously this amount stood at a minimum of 10,000NIS per case.
13. With respect to those Cast Lead related reparations cases in which a response has been received, however, **Israeli courts have begun to impose a 20,000NIS (approximately US\$5,300) court guarantee per claimant in each case;** as noted, previously these guarantees related to the overall case, and not the individual claimants. As a single expense, this court guarantee is often prohibitively high, bearing in mind that over 80% of the population of the Gaza Strip is aid dependent.
14. The imposition of this guarantee per claimant represents an insurmountable barrier to justice. Significantly, the greater the alleged violation, the greater the monetary barrier. For example, in the case of the ‘Abdul Dayem family, the 22 complainants were required to pay a total of 440,000 NIS (approximately 19,461USD) before the case could proceed. This claim related to an incident in which a flechette shell was fired at a condolence tent near to Izbat Beit Hanoun. 5 people were killed, including a child, and 17 others, including 2 children and a woman, were wounded. Similarly, in the case of the Al-Samouni family, the court imposed a guarantee for all 62 victims claiming compensation (62 x 20,000 = NIS 1,240,000, about USD 329,800).
15. Whenever a guarantee is requested, if this amount is not paid within 120 days, further proceedings are barred and the right to reparation is irremediably lost.

16. A number of other barriers to justice exist, in particular with respect to lawyers', victims' and witnesses' access to court. As a result of the illegal closure imposed on the Gaza Strip, all court orders requesting the presence of individuals from the Gaza Strip have been refused since 2006.

Conclusion

17. Three years after PCHR initiated legal actions on behalf of Palestinian civilian victims of Operation 'Cast Lead,' it is evident that any meaningful justice, including reparation, is unavailable within the Israeli legal system. This reality is reflected in the status of both criminal and civil complaints - the latter being the subject of this memorandum - submitted to the Israeli authorities by Gaza claimants. In particular, the physical and monetary barriers imposed by Israeli authorities fundamentally deny victims their legitimate right to reparation.
18. This reality has recently been acknowledged by the UN High Commissioner for Human Rights, Ms. Navanethem Pillay, in her 2012 report on the human rights situation in the oPt to the UN Human Rights Council,⁴ addressing the lack of accountability in the Gaza Strip and the physical and monetary obstacles to justice for Gazans (para 40), calling on Israel to duly investigate and compensate victims (para 53), without discrimination in regard to justice (para 56). Likewise, the UN Committee on the Elimination of Racial Discrimination (CERD), which has expressed "concern at the monetary and physical obstacles faced by Palestinians seeking compensation before Israeli tribunals for loss suffered, in particular as a consequence of the IDF Operation Cast Lead in the Gaza Strip (Articles 3, 5 and 6 of the Convention)."⁵
19. Considered in combination with other human rights violations committed in the context of Israel's illegal closure of the Gaza Strip, this may constitute the crime against humanity of persecution, as recognized by the UN Fact-Finding Mission on the Gaza Conflict.⁶
20. PCHR believes that this issue demands the Rapporteur's further attention, and reaffirms its willingness to cooperate fully in this regard.

Further Information

21. Further information on these topics is presented in *Genuinely Unwilling: An Update, The Failure of Israel's Investigative and Judicial System to Comply with the Requirements of International Law, with particular regard to the Crimes Committed during the Offensive on the Gaza Strip (27 December 2008 – 18 January 2009)*, and *Memorandum on the Status Domestic Investigations Conducted into Alleged Violations of International Law committed in the Context of Operation "Cast Lead"*.⁷ These documents were prepared to assist the work of the UN

⁴ Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, Doc. No. A/HRC/19/20, 13 December 2011, available at: http://www.pchrgaza.org/files/2012/A-HRC-19-20_en.pdf.

⁵ *Concluding Observations* on Israel's state reports 14th to 16th, Doc. No. CERD/C/ISR/CO/14-16, 9 March 2012, § 27, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>.

⁶ Report of the UN Fact Finding Mission on the Gaza Conflict, Doc. No. A/HRC/12/48, 25 September, 2009, § 75.

⁷ These documents are annexed to this memorandum.

Commission of Experts, established consequent to the Report of the UN Fact-Finding Mission on the Gaza Conflict.

22. PCHR's *Submission to the UN Committee on the Elimination of Racial Discrimination*, prepared on the occasion of Israel's last periodic review in February 2012, is opportune as it is exclusively centered upon Israel's discriminatory practices and policies towards the Palestinian people's right to justice.

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