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January 25, 2010

To:

Mr Benjamin Netanyahu
Prime Minister
Jerusalem

As human rights organizations in Israel, we reissue our call to the Government of Israel to establish, without delay, an independent and impartial investigation mechanism to thoroughly examine the allegations raised regarding violations of international law during Operation Cast Lead. We do so once again, despite the negative responses we have received to date, because we believe this is an essential issue at the heart of Israeli society. A year has passed since the conclusion of the military operation, and soon deliberations will begin in UN institutions regarding implementation, by both parties, of the recommendations of the Goldstone Commission Report. One of the primary recommendations was for an independent Israeli investigation of the allegations regarding violations of international law.

Recently, the Military Advocate-General stated that to date 27 investigations have been opened by the Criminal Investigation Division of the Military Police regarding different incidents. The rest of the allegations are being investigated through “operational debriefings.”

However, these debriefings and Military Police investigations do not fulfill Israel's investigative duty nor do they achieve its goals. Firstly, criminal investigations by the Military Police examine deviations from orders issued. As such, they are only suitable for cases where the allegation is that acts were committed that contravened military orders. On the other hand, significant information has come to light thus far, including through research conducted by Israeli and international organizations, alleging that most of the harm to civilians, property and civilian buildings during Operation Cast Lead was a result of policies determined at the senior government and army levels, with the approval of the Military Advocate-General. Therefore, the investigation must include an examination of the orders and instructions given prior to the operation and throughout its duration. In order to investigate the allegations that illegal orders were given, or that the combat strategy violated international humanitarian law, it is necessary to appoint someone or some mechanism that is not subordinate to decision-makers and which was not involved in the formulation of the orders and instructions prior to the launch of the offensive.

Secondly, most of the allegations are being investigated, as noted, through “operational debriefings” only. This refers to debriefings conducted by senior officers, which are forwarded to the Military Advocate-General for review. This system of inquiry is flawed in three major ways:

1. **Lack of Independence** – It involves inquiries conducted by “interested parties” who are not impartial but rather are the people whose decisions and actions are supposed to be under investigation. This is particularly the case when the Military Advocate-General, who was involved in making the decisions prior to the launch

of the operation and throughout its duration, is the same official who is now the primary adjudicator on the matter;

2. **Lack of Transparency** – Operational debriefings are closed matters and there is no possibility of monitoring them. As a consequence, as an investigative process there is no real way to supervise them for credibility or seriousness;
3. **Lack of Effectiveness** – Those conducting the debriefings are not professional investigators, and the goal of the investigations is not to uncover violations of the law but rather to identify operational failures. Therefore, in addition to the fact this process is not independent and not transparent, it is clear that the investigation process via these debriefings cannot lead to objective findings regarding accountability for actions in any reasonable manner.

Indeed, the UN Commission headed by Justice Goldstone noted the inadequacy of the operational debriefings and Military Police investigations as a tool for appropriate investigation. It emphasized the State of Israel's obligation to facilitate an independent and effective inquiry, which would not have the flaws of these two investigative mechanisms. Because the investigative proceedings initiated by Israel subsequent to the publication of the Goldstone Commission Report are no different from those that preceded its publication, we understand that the problems noted by the UN Commission remain unaddressed today.

In light of the above, we call on you to establish, without further delay, an impartial investigative body which will conduct independent and effective investigations of incidents regarding which allegations have been raised that Israel violated the provisions of international law during Operation Cast Lead. We believe that a foreign expert on international humanitarian law, who will add credibility and weight to the investigation, should be a part of this process. The investigation should examine Israel's conduct during Operation Cast Lead, including an examination of accountability on the political and command level. Likewise, the investigative body should be charged with preparing the legal groundwork for future military conduct to ensure that orders and instructions given will be consistent with Israel's obligations under international law.

We are approaching the deadline set by the Goldstone Commission Report for both sides to hold independent investigations, before the investigation of the allegations is transferred to international and foreign forums. The State of Israel's refusal to hold an independent investigation will expose military officers and members of the previous government to investigation and legal proceedings likely to take place outside Israel.

The extent of damage to the civilian population during the operation was unprecedented. This population is still subject to the closure policy and collective punishment, which is preventing reconstruction and normal life even after the fighting ended. The allegations raised regarding the army's conduct are serious and grave. The Israeli public has the right to an explanation of the actions taken in its name in the Gaza Strip.

Signed:

Hagai El-Ad
Executive Director
The Association for Civil Rights in Israel

Jessica Montell

Executive Director
B'Tselem

Adv. Sari Bashi
Executive Director
Gisha - Legal Center for Freedom of Movement

Dr. Ishai Menuchin
Executive Director
Public Committee Against Torture in Israel

Roi Maor
Executive Director
Yesh Din

Dalia Kerstein
Executive Director
HaMoked: Center for the Defence of the Individual

Adv. Hassan Jabareen
General Director
Adalah: The Legal Center for Arab Minority Rights in Israel

Hadas Ziv
Executive Director
Physicians for Human Rights – Israel

Rabbi Arik W. Ascherman
Executive Director
Rabbis for Human Rights