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Executive Summary

I. Establishment of the Independent Palestinian Committee of Investigation into the Goldstone Report

1. On 27 December 2008, the Israeli occupying authority launched a 23-day military offensive on the Gaza Strip, ending on 18 January 2009. During the offensive, code-named “Operation Cast Lead”, thousands of Palestinians were killed and wounded. The offensive also caused mass destruction and damage to infrastructure as well as public and private buildings.
2. On 8 January 2009, the United Nations (UN) Security Council issued forth Resolution 1860, in which it expressed its “grave concern at the escalation of violence and the deterioration of the situation, in particular the resulting heavy civilian casualties”. Accordingly, the Security Council “[s]tresses the urgency of and *calls for* an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza”. However, the Israeli offensive lasted for an additional 10 days after the Security Council Resolution had been passed.
3. In response to the grave violations committed during the war, the UN Human Rights Council established, on 3 April 2009, the UN Fact Finding Mission on the Gaza Conflict and assigned it to “investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”
4. The Report of the UN Fact Finding Mission on the Gaza Conflict was submitted to the UN Human Rights Council, which adopted and presented it to the UN General Assembly. On 5 November 2009, the UN General Assembly issued forth Resolution A/64/10, in which it “[u]rges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.”
5. On 25 January 2010, Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organisation and President of the Palestinian National Authority (PNA), promulgated a Presidential Decree providing for

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the establishment of an independent Palestinian committee to investigate claims of violations of the international human rights law and international humanitarian law in the West Bank and Gaza Strip in accordance with the aforesaid UN General Assembly Resolution.

6. The Palestinian Committee was established. Chaired by Justice 'Isa Abu Sharar, former Presiding Judge of the High Court of Justice and Chairman of the High Judicial Council, the Committee comprised members, including Judge Zuheir as Sourani, former Presiding Judge of the High Court of Justice and Chairman of the High Judicial Council; Dr. Ghassan Faramand, Professor of Law at Birzeit University; Dr. Yasser al 'Amouri, Professor of International Law at Birzeit University; and Advocate Nasser ar Rayyes, Expert on International Human Rights Law and International Humanitarian Law. Mr. Ar Rayyes, however, abandoned his membership on the Committee for impartiality reasons, as he worked as a legal advisor to AL-HAQ, a Palestinian human rights organisation that monitored and documented violations covered by the Committee's jurisdiction.

II. The Committee's Function Approach

7. Immediately after the Presidential Decree was promulgated, the Committee commenced its functions. To conduct the investigation, it carried out administrative and logistic preparations; contracted a team of researchers and advisors; and contacted civil society institutions and organisations active in the area of human rights in order to obtain available reports and information on the status of human rights and freedoms as well as on relevant violations, which were monitored or documented during the Israeli offensive on the Gaza Strip.
8. In order to regulate its functions, the Committee drafted and adopted a respective bylaw on 7 February 2010. Accordingly, the Committee restricted its jurisdiction to the investigation of Palestinian contraventions and violations as highlighted by the Report of the UN Fact Finding Mission on the Gaza Conflict, headed by Justice Richard Goldstone. The Committee's territorial jurisdiction would cover all the occupied Palestinian territory.

The Committee applied its temporal jurisdiction to investigating alleged violations committed by the Palestinian side during the period preceding and ensuing the Israeli

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offensive on the Gaza Strip. In this way the Committee could reach an opinion and conviction about the status of human rights at this stage.

9. In order that the Committee performs its functions ideally, the Bylaw prescribes that the Committee shall be entitled to collect information, evidence and data pertinent to its tasks; receive claims or complaints on human rights violations in relation to issues that fall within its jurisdiction; and hold hearing sessions with complainants, including both victims and eyewitnesses, as well as human rights organisations and official bodies.

In addition, the Bylaw emphasises that the Committee should refer in the investigation process to principles and norms of the international human rights law, international humanitarian law, and Palestine's unilateral obligations arising from its declaration to respect the four Geneva Conventions of 1949 and compliance with the Universal Declaration of Human Rights.

10. The Investigation Committee's Bylaw confirms full independence of respective members to ensure a professional and impartial investigation, which will be in conformity with international standards. The course of investigation will not be subject to any influences or interventions by any entity whatsoever. The Committee preserved the secrecy of complaints and other information pertaining to its operation. It also took care to provide protection to complainants, including both victims and eyewitnesses.

11. In the West Bank – i.e. the territory under the PNA jurisdiction and control, infringements that fall under the Investigation Committee's jurisdiction include arbitrary detention, torture, violation of the freedom to compose associations, interference with freedom of expression, information and peaceful assembly, and discrimination in public employment on grounds of political affiliation. In the Gaza Strip – i.e. the territory under control of the Islamic Resistance Movement (Hamas), the Committee's mandate covers violations arising from killings, arbitrary detention, torture and cruel treatment.

The Report of the Independent Palestinian Investigation Committee does not claim to be comprehensive and inclusive of all violations that affected human rights and freedoms throughout the occupied Palestinian territory because the Committee's jurisdiction is limited to the abovementioned violations.

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12. In relation to the investigation time frame, the Committee decided to focus primarily on the events, circumstances or processes that took place during the period preceding and ensuing the Israeli offensive on the Gaza Strip. By analysing the historical context of the events that gave rise to human rights violations in the occupied Palestinian territory, the Committee could come up with an opinion and conviction of the status of human rights at that stage.

13. Subsequently, the Committee commenced collection and documentation of information related to the status of human rights in the occupied Palestinian territory. In the course of collecting and validating information, the Committee relied on the following:
 - A. Reviewing studies, reports and situation papers released by Palestinian human rights organisations, as well as reviewing reports developed by international organisations on the status of human rights in the Palestinian territory during the Committee's term.
 - B. Conducting interviews with victims, eyewitnesses and other persons who had information relating to the violations in question.
 - C. Holding meetings with Palestinian human rights organisations, Palestinian prominent figures and representatives of parliamentary blocks.
 - D. Dispatching public appeals through audiovisual and written media outlets, calling aggrieved persons to file complaints or submit information about violations allegedly committed by Palestinian bodies in the West Bank and Gaza Strip.

14. Having received complaints, the Committee held 105 individual interviews in the West Bank as well as in the Gaza Strip via videoconference. The Committee also reviewed all reports issued by Palestinian human rights organisations concerned with the Committee's sphere of activity. These organisations having had already released appeals, data, interventions, affidavits and sworn statements made by victims of reported violations.

Furthermore, the Committee met with representatives of human rights organisations and heard their statements and observations about the status of human rights and freedoms, as well as the nature of violations, which said organisations believed to have occurred in the Palestinian territory.

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15. In the process of compiling conclusions, the Committee has primarily and where possible sought to rely on firsthand information. However, information submitted by other bodies, including reports and hearing sessions held with human rights organisations and parliamentary blocks, were used as additional evidence.

III. Predicaments and challenges that prevented full exercise of the Committee's jurisdiction

16. The committee encountered significant impediments and challenges as a direct response to its beginning to exercise jurisdiction in conducting independent, credible investigations. These investigations conformed with international standards of investigation into serious violations of international humanitarian and international human rights law. Most significantly, the Committee was incapable of accessing the Gaza Strip in order to investigate violations of international humanitarian law, which were ostensibly committed by armed Palestinian groups. In particular, these included the firing of homemade rockets on southern Israel.

17. Another difficulty that affected the Committee's investigation into human rights violations committed by the Palestinian side was the denial of access to the Gaza Strip in order to conduct field enquiries and hear testimonies and statements of victims or eyewitnesses of reported violations. Notwithstanding this predicament, the Committee managed to organise hearing sessions via videoconference with approximately 28 complainants and victims.

IV. Violations ascribed to armed Palestinian groups in relation to launching rockets and mortar shells on southern Israel

18. The Report of the UN Fact Finding Mission on the Gaza Conflict quotes Israeli sources, claiming that as many as 3,455 rockets and 3,742 mortar shells had been fired on Israel between 2001 and mid June 2008. The Report, however, does not identify the sites where these projectiles landed.¹ As mentioned above, the Fact Finding Mission could not validate any of the Israeli claims, which were regularly reported on media outlets and which the Report cited, because Israel refused to cooperate with the Mission.

19. Correctness of any of these estimated figures was not validated in an independent and neutral manner. The Independent Palestinian Committee was not in a position that would

¹ The Report of the UN Fact Finding Mission on the Gaza Conflict, Paragraph 183. See Paragraph 1 above.

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render it capable of investigating how accurate any of these figures was. Additionally, the Committee could not address this issue in a more detailed fashion in this Report.

20. Nothing mentioned above should be construed as to mean that this Report neglects, undervalues or underestimates impacts and consequences of the firing of rockets and mortar shells on the civilian population, or denies responsibility of the persons who might have deliberately targeted civilians. The objective of this section of the Report is to shed light on the inaccurate and unreliable Israeli information as well as Israel's abstention from investigating it in an objective, professional and impartial manner.
21. In this regard, it has been proved on the basis of facts that a number of rockets and mortar shells had been fired over the period between 27 December 2008 and 18 January 2009. These being carried out by armed Palestinian resistance groups in Gaza, which is not subject to the PNA control in light of the political fragmentation between the West Bank and Gaza Strip. These rockets and mortars landed in Israel, allegedly causing three Israeli civilian deaths, in addition to ostensibly destroying some civilian properties, the nature and volume of which were not disclosed.²
22. It is crucial to recognise that a most salient feature of the conflict which the Palestinian armed resistance in Gaza wages against the Israeli occupying state is its disproportionate nature. The enormous discrepancy in the size of military capacities of both parties is self-evident such that it does not need to be proved. The capability of the Palestinian resistance to respond to Israel's air force, combat helicopters, tanks, artillery, and strong land forces is limited to launching, at intervals, "primitive rockets" and mortar shells.

On the other hand, the Israeli occupying forces possess technologically advanced combat tools that render them capable of accurately identifying targets and easily distinguishing between civilian and military objects. Hence, indiscriminate targeting by the Israeli occupying forces of Palestinian civilians is absolutely a violation of international humanitarian law and international human rights law.

23. Nonetheless, and as a matter of principle, international humanitarian law provides for the right to reparation for damage caused to properties and persons affected by such attacks –

² See Paragraph 17 above.

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a position which the Independent Palestinian Investigation Committee supports and believes that the PNA would agree to as part of an agreement, according to which both parties would deliver compensations to Palestinians and Israelis who were affected by the military operations that took place between 27 December 2008 and 18 January 2009. This would also be applicable to victims of any other impingements on international humanitarian law and international human rights law, which were committed by the Israeli army or armed Palestinian resistance groups in Gaza.³

24. The Committee is of the opinion that recognition of the Palestinians' right to resist the occupation and confirmation of their lawful struggle derives its legitimate status from the international law norms and principles, right of peoples to self-determination, right of lawful self-defence, and UN General Assembly Resolutions, which include but are not limited to Resolutions 26/2787 of 6 December 1971; 28/3070 of 30 November 1973; 25/2621 of 12 October 1970; 29/3236; 2625; 3103; and hundreds others.
25. The Committee further confirms that acquiring legitimacy of international law as well as international recognition of the lawful Palestinian struggle necessitates that Palestinians duly fulfil their legal obligations, which arise from international law norms, particularly those pertinent to observing and respecting controls and conduct of combatants during hostile operations. These also require that Palestinians hold accountable those who impinge on and derogate from provisions of the law.

V. Detention and torture in the West Bank

26. In cases of arrests and detentions, the Committee received from Palestinian human rights organisations, parliamentary blocks, detainees' families and released detainees approximately 165 complaints of human rights violations, which Palestinian law

³ See UN General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly Resolution 147, UN Doc. A/RES/60/147 (21 March 2006). See also Mahmoud Sharif Basiouni, "International Recognition of Victims' Rights", Vol. 6, *Review of Human Rights Law* (2006), pp. 79-203. It should be noted that the Islamic religion enshrines the concept of 'victim reparation' or *diyah* [blood money] in detail and sets forth relevant, clear provisions and conditions. According to the Noble Quran, "O ye who believe! The law of equality is prescribed to you in cases of murder; the free for the free the slave for the slave the woman for the woman. But if any remission is made by the brother of the slain then grant any reasonable demand, and compensate him with handsome gratitude, This is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. In the law of Equality there is (saving of) life to you O ye men of understanding! that ye may restrain yourselves." Verses 178-9 of *Surat Al Baqarah*.

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enforcement officials and security agencies committed in the West Bank. The Committee also directly received 85 personal complaints from individuals in the West Bank.⁴

27. In addition to statements made by individuals in hearing sessions, data obtained by the Committee, from human rights organisations, makes clear that many arrests involved, derogations from and violation of, controls and guarantees that should be respected and applied in cases of arrests or detentions by law enforcement agencies. It also appeared to the Investigation Committee that certain security bodies in the West Bank inflicted torture and other forms of cruel, inhuman or degrading treatment on detained persons.
28. The Committee confirms that the arrest and detention of civilians by the Military Prosecution and Military Justice Authority is a grave usurpation of the jurisdiction of the civil judicial system. It further deprives civilian persons from the right to appear before their natural judge – a right safeguarded and enshrined in Article 30 under the Palestinian Basic Law: “Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek redress in the judicial system...”
29. Intervention by the Military Prosecution and Military Justice Authority and exercise of the power to hear cases subject to the jurisdiction of the civil judicial system as well as [application of the military justice jurisdiction to] persons, the disputes, conflicts and offences of whom the civil judiciary is competent of adjudicating, in contravention of the Palestinian Basic Law is a flagrant impingement on individuals’ rights and freedoms. Through the High Court of Justice – the highest judicial authority, the Palestinian judiciary reiterated in dozens of rulings that the detention and trial of Palestinian civilians by the Military Prosecution and Military Justice Authority is neither permissible nor lawful.
30. The Committee holds the view that the arrest of persons affiliated with Hamas and others by security agencies in the West Bank was a reaction to the political dispute between the Palestine National Liberation Movement (Fatah) and Hamas. The majority of reported arrests were based on considerations and grounds of political affiliation, characterising them as unlawful arbitrary political detention.

⁴ All these complaints are documented by the Committee. Lists of these complaints are enclosed with this Report.

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31. The Committee is of the opinion that lacking effective, serious mechanisms to hold accountable security officers who perpetrated torture crimes and infringed on rules and controls of arrests and detentions, as well as respective procedural rules approved by the legislation in force in the Palestinian territory, has contributed to exacerbating and encouraging the continual perpetration of reported atrocities. Therefore, the Committee holds that official bodies should rejuvenate and implement their responsibilities for holding accountable and prosecuting persons who violated provisions of the law, including in relation to abusive, illegal detention or torture crimes and other forms of cruel, inhuman and degrading treatment.

VI. Infringement on the right to occupy public functions in the West Bank

32. The Committee received more than 140 complaints from Palestinian human rights organisations and parliamentary blocks in respect of dismissal from the civil service. The Committee also directly received approximately 61 personal complaints from individuals in the West Bank.⁵

33. Having reviewed and scrutinised the content and attachments to these complaints as well as hearing sessions held with human rights organisations, parliamentary blocks and complainants,⁶ the Investigation Committee has found evidence corroborating claims on violations of citizens' right to occupy public functions in the West Bank.

34. The Committee is of the opinion that official authorities in the West Bank have evidently impinged on Palestinians' right to public employment. It also believes that decisions made by the West Bank security bodies to revoke and suspend the procedures of appointing employees in public functions were grounded on considerations of these employees' political affiliation. It was clear to the Investigation Committee that the majority of cases, in which appointments were annulled, targeted individuals affiliated with or close to Hamas. Such practices were also applicable to persons affiliated with the Islamic Jihad Movement.

35. It appeared to the Investigation Committee that since 9 September 2007 the Ministry of Education and government bodies in the West Bank have stipulated that an employee should obtain the approval of the security agencies or fulfil security vetting requirements

⁵ All these complaints are documented by the Committee. Lists are enclosed with this Report.

⁶ The Committee heard testimonies of 51 persons in relation to complaints on dismissal from the civil service.

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as a justification for employment. The said process, however, contravenes the Palestinian Law of Civil Service and Basic Law, which emphasise equality between citizens and prohibit discrimination on racial, political or any other grounds.

36. The Committee holds the view that reversal of the infringements arising from the security vetting processes, as well as resultant violations of citizens' fundamental rights and freedoms, require the Palestinian Council of Ministers to revoke all decisions on the annulment of employees' recruitment, reemploy all affected persons, and repair damages caused to them. In pursuance of Article 32 under the Palestinian Basic Law, "[a]ny violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage."
37. Despite the fact that its jurisdiction in relation to the right to occupy public functions is restricted to investigation in the West Bank (i.e. in the territory under the PNA's control and management), the Committee holds that reference should also be made to how the *de facto* authority in the Gaza Strip violated the said right as well. It appeared to the Committee that most, if not all, civil service appointments in Gaza were based on the political affiliation of persons. Like those in the West Bank, security agencies of the Gaza *de facto* authority played a similar role in applying security vetting or screening to appointments. Gaza security bodies also controlled and determined the persons admitted and permitted to occupy advertised public positions. They also possessed the power to intervene, suspend and annul appointments or terminate persons' service.
38. The Committee is of the view that the right to work and occupy public functions is of utmost importance as a component of the set of economic, social and cultural rights safeguarded and enshrined by human rights conventions. Moreover, such rights are a canopy, as well as a legal and material basis, which ensure that individuals effectively enjoy the whole set of social, economic, cultural and other civil and political rights and freedoms.

To deprive certain Palestinians of the right to occupy public functions does not only deny their right to work and to a livelihood, but it also results in revoking and absencing other

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rights, including the right to social security, appropriate housing, health care, marriage and family life, decent standard of living, dignity, education, etc.

To lose the source of income will definitely drive affected persons into harsh living conditions, which will in turn force them to cede many rights that they cannot exercise or enjoy as their income is cut off.

VII. Impingement on the press freedom in the West Bank

39. The Committee received a number of complaints concerning violations of the right to freedom of the press. Having reviewed and examined the content and attachments to these complaints as well as the hearing sessions involving complainants and representatives of relevant human rights organisations,⁷ the Investigation Committee has found evidence supporting these allegations of violations by official authorities in the West Bank.
40. In addition to the information and interventions released by institutions concerned with monitoring and documenting the press freedom and exercise of the freedom of opinion and expression, all reports confirm that the freedom of press was, indeed, violated in the West Bank. These included the arrest, detention and interrogation of journalists by the Palestinian security agencies on grounds of their media activity, political affiliation or publication of written or audio or visual press materials.⁸
41. It appeared to the Investigation Committee that certain journalists were arrested and detained by security agencies on grounds of their media activity. In addition to being detained, others were prevented from involvement in the press profession and their equipment was confiscated. Other journalists were subjected to threats and intimidation.
42. According to their statements, it was clear to the Investigation Committee that all affected journalists were detained by the PNA security bodies in the West Bank for political purposes and objectives. Journalists were detained on grounds of political affiliation or

⁷ On 20, 25 and 26 May 2010, the Committee held hearing sessions and heard statements of AL-HAQ, Independent Commission for Human Rights (ICHR), Palestinian Network of Nongovernmental Organisations (PNGO), and Jerusalem Legal Aid and Human Rights Centre (JLAC).

⁸ Affidavit documented by the Committee, # M/S – 40/2010.

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personal opinions, not on grounds of committing any actions that violated the respective code of professional conduct, which would have necessitated that they be held accountable.

VIII. Violation of the right to constitute associations in the West Bank

43. The Committee received four complaints concerning the infringement of the right to constitute associations by the PNA Ministry of Interior and security agencies.⁹ Having reviewed and examined the content and attachments to these complaints as well as the hearing sessions held with complainants and representatives of relevant human rights organisations,¹⁰ the Investigation Committee has come across evidence supporting these allegations of violations to the right to form associations, by official authorities in the West Bank.

44. In relation to the right of composing associations, the fact that official Palestinian authorities impinged on provisions of the Law on Charitable Associations and Civil Society Organisations and the respective Bylaw was made clear to the Investigation Committee. This realisation came in the wake of hearing sessions held with complainants and human rights organisations concerned with such rights, official hearing sessions with the Director General of Public Relations and Associations at the Ministry of Interior,¹¹ and meeting between the Head of Investigation Committee and Minister of Interior. In contravention of the said Law, the Ministry of Interior appointed temporary preparatory committees for certain associations.

45. Also in further violation of the provisions of the Law on Charitable Associations and Civil Society Organisations, security agencies closed down offices of certain societies. Infringements were also manifested by stipulation that applicants wishing to compose associations must obtain security agencies' approval of founding members in order for the official authorities to register an association.

46. It was made clear to the Investigation Committee that official bodies did not execute rulings entered by the Palestinian High Court of Justice on the revocation of decisions to

⁹ All these complaints are documented by the Committee. Lists are attached to this Report.

¹⁰ On 20, 25 and 26 May 2010, the Committee held hearing sessions and heard statements of AL-HAQ, ICHR, PNGO and JLAC.

¹¹ Affidavit documented by the Committee, # J/D – 31/2010.

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appoint temporary committees for associations. Furthermore, Palestinian security agencies prevented certain associations from exercising their activities and threatened board members with detention in case they contravened said decisions.

47. To enable Palestinians to enjoy and exercise the right to compose societies demands that the Ministry of Interior rectifies reported impingements by abstaining from exercising any procedure or action that falls beyond its jurisdiction or violates the Law on Charitable Associations and Civil Society Organisations and the relevant Bylaw.

IX. Right to peaceful assembly

48. Because it received only one complaint about the right to peaceful assembly, the Committee relied in building its opinion and conviction on statements made by representatives of human rights organisations, who highlighted individual activities and violations committed by security officers during peaceful assembly. However, the Committee emphasises that Palestinian official authorities should adhere to respecting the freedom of assembly as well as facilitating and enabling individuals to exercise this freedom in line with controls and procedural rules approved by the law.
49. The Committee affirms that official bodies and security officers should observe and comply with the fact that the right to peaceful assembly is a fundamental right and freedom, requiring security agencies to protect and facilitate access to those who organise them, not restricting and preventing them from doing so. Denial, restriction or obstruction of the exercise of the said right by official bodies through illegal constraints and processes is deemed to be a transgression and violation of the freedom of peaceful assembly.

X. Detention and Torture in the Gaza Strip

50. After Hamas took over power and government on 14 June 2007, the Gaza Strip has been subjected to the control and administration of Hamas as well as affiliated armed forces and groups, particularly the 'Izz ad Din al Qassam Brigades. Over the first months of Hamas' attempt to consolidate its control over Gaza, the 'Izz ad Din al Qassam Brigades played a pivotal security role. As it was the central tool and force of law enforcement, it implemented tasks of detention, interrogation, prosecution and accountability. Over the

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reported period, Al Qassam Brigades also managed a number of arrest and detention facilities.

51. Hamas' takeover of the Gaza Strip resulted in ceasing the operation of PNA military and civil institutions as well as transferring their powers to Hamas-affiliated agencies, Executive Force and Internal Security forces, which were constituted under a new organisational structure and administration. In the wake of the takeover, Hamas established a new leadership of the Police, severed the working relationship with the official leadership in the West Bank, dismissed senior officers, and replaced them with others affiliated with Hamas. In line with its particular desires and trends, Hamas reformed civil service institutions and structures. To replace the PNA High Judicial Council, Hamas created a new terms of reference of the Palestinian Judicial Authority by establishing the High Justice Council and assigned it to manage and operate the judicial apparatus, supervise appointments and promotions, replace officially-appointed judges with others affiliated with Hamas, and appoint a presiding judge of the High Court of Justice in Gaza. Accordingly, the Movement has rendered its judicial system independent of the Palestinian Judicial Authority, which enjoys a legal, legitimate status.
52. In cases of arrests and detentions, the Committee received from Palestinian human rights organisations, parliamentary blocks, detainees' families and released detainees, a number of complaints of human rights violations, which law enforcement officials and security agencies committed in the Gaza Strip. The Committee also directly received 11 personal complaints from individuals in Gaza.¹²
53. Having reviewed and examined the content and attachments to these complaints, the Investigation Committee has found evidence supporting allegations of violations of human rights and freedoms in the cases of arrests and detentions by law enforcement bodies in the Gaza Strip. Statements made by persons, whom the Committee heard via videoconference,¹³ confirmed that assigned Gaza agencies violated the law in processes of arrest and detention.
54. Based on hearing sessions held and reports and documents delivered, the Committee is of the opinion that arresting persons affiliated with Fatah and other organisations by security

¹² All these complaints are documented by the Committee. Lists are enclosed.

¹³ In relation to arrests and detentions, the Committee heard testimonies by 11 persons.

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agencies of the *de facto* authority in the Gaza Strip took place as a reaction to the political dispute between Fatah and Hamas. The majority of reported arrests were based on considerations and on the grounds of political affiliation, characterising them as unlawful, arbitrary political detention.

55. It appeared to the Investigation Committee that detained persons were tortured, abused, maltreated, beaten and humiliated from the moment they were arrested. In addition to using force and violence, security agencies of the *de facto* authority in the Gaza Strip carried out innumerable arrests in a humiliating and degrading manner. According to affidavits the Committee received from detained persons or their families, security bodies the Gaza *de facto* authority impinged on arrest-warranted rules and standards, particularly those in relation to good treatment and avoidance of beating, humiliation or use of violence.
56. It was clear that violation of human dignity and cruel treatment during arrests, as well as beating, verbal abuse, humiliation, and subjection to physical and mental pressure to obtain information, confessions or approval of alleged charges transcended an individualised conduct at detention and interrogation centres of the Internal Security of the Gaza *de facto* authority.
57. Lacking effective oversight of detention facilities promoted a widespread trend of torture in the Gaza Strip. The Committee is of the view that absent effective accountability of perpetrators of torture crimes and security officers, who contravened arrest and detention norms and procedural rules approved by operative legislation, contributed to escalating such transgressions and promoted their perpetration.

Therefore, the Committee believes that *de facto* authorities in the Gaza Strip should rejuvenate and implement their responsibilities for prosecuting and holding accountable persons who violate provisions of the Law in relation to unlawful, arbitrary detention or torture and other forms of cruel, inhuman and degrading treatment.

58. It was made clear to the Investigation Committee that law enforcement officials of the Internal Security agency did not identify themselves. Masked as they were, they carried out raids, searches and arrests as well as detained persons in places other than those

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prescribed by law. Some persons were detained in mosques and others held and interrogated at hospitals, houses or unidentified locations.

59. Security agencies in the Gaza Strip did not produce reasoned judicial warrants in the cases of arrests and house entry or searches. Many houses were raided and searched without presenting any judicial orders, gravely violating sanctity of these houses.

XI. Violation of the right to life in the Gaza Strip

60. Having reviewed and scrutinised the content and attachments to complaints as well as the hearing sessions held with families of fallen persons in the Gaza Strip,¹⁴ the Investigation Committee has come across evidence supporting claims of violations of citizens' right to life by security agencies of the Gaza *de facto* government. Statements made by persons via videoconference confirmed that the Gaza security agencies, 'Izz ad Din al Qassam Brigades and other armed groups of the *de facto* authority violated the right to life.

61. Following analysis of the overall conclusions of hearing sessions held with families of killed citizens, the Committee is of the view that law enforcement bodies in the Gaza Strip committed extra-judicial killings on a large scale during the Israeli offensive on the Gaza Strip.

It was noted that law enforcement agencies and Hamas-affiliated armed groups in the Gaza Strip murdered and extra-judicially killed a number of persons charged with committing certain actions or convicted by military and civil courts.

62. Having reviewed cases of murdering many individuals in the Gaza Strip, it was clear that the security bodies of the Gaza *de facto* authority and members of 'Izz ad Din al Qassam Brigades killed persons convicted and detained by the *de facto* authority's security agencies. These atrocities also targeted persons charged by the *de facto* authority of perpetrating offences or certain acts. Killings also targeted persons affiliated with political opponents of the Gaza *de facto* authority – that is, members of the Fatah Movement.

¹⁴ The Committee held 17 hearing session with families of killed persons.

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63. According to a review of this violation, it appeared to the Investigation Committee that the Gaza *de facto* authority failed to prosecute and hold accountable persons who carried out extra-judicial killings. It was clear that an effective accountability of the perpetrators of these atrocities was deliberately absented.
64. Therefore, the Committee confirms that Hamas' seizure of control over the Gaza Strip does not exempt respective members and affiliate armed groups from the obligation to respect human rights and freedoms, particularly the right to life and inalienable execution of any punishment against any persons without a fair trial. Moreover, members of Hamas and other organisations should avoid prejudicing individuals' dignity and humanity, nor subject them to torture or other forms of cruel, inhuman or degrading treatment.

XII. Conclusions and Recommendations

65. Based on reviewing the status of human rights and freedoms in the Palestinian territory; having heard statements of Palestinian human rights organisations that documented violations and monitored the status of human rights in the West Bank and Gaza Strip; and after finalising the process of investigating all relevant parties about encroachments, the perpetration of which was alleged by the UN Fact Finding Mission on the Gaza Conflict, the Committee has reached a set of conclusions, including:
66. Violation of human rights and freedoms in the Palestinian territory – West Bank and Gaza Strip – is intertwined with the prevalent political situation. The Committee is of the opinion that the majority of impingements on fundamental human rights and freedoms were a consequence of the political fragmentation and existence of two authorities in the West Bank and Gaza Strip. In most cases monitored in the West Bank, violation of human rights and freedoms was limited to persons affiliated with or close to the Hamas Movement, Hamas proponents, and other persons affiliated with political powers or organisations that were affiliated with or supported Hamas. In the majority of cases monitored in the Gaza Strip, violations of human rights and freedoms likewise targeted persons affiliated with or close to Fatah, Fatah proponents, and other persons affiliated with political powers or organisations that were affiliated with or supported Fatah.

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67. In both the West Bank and the Gaza Strip, perpetrators of violations affecting human rights and freedoms were not prosecuted or held accountable.
68. Resolving these atrocities is linked to the political resolution of the Palestinian political division. However, this predicament must not constitute a pretext or justification to be used by any party to derogate from and encroach on human rights and freedoms or neglect prosecuting and holding accountable persons violating these rights and freedoms.
69. Adjustment of abused rights and freedoms requires that the PNA and Gaza *de facto* authority release all detained persons, who were not presented to any judicial body. Serious intervention should also be in place to prohibit torture and other forms of cruel, inhuman and degrading treatment during interrogations and investigations.
70. Official authorities should bear their responsibilities for prosecuting and hold accountable those who violate provisions of the law, including in relation to abusive, illegal detention or torture crimes and other forms of cruel, inhuman and degrading treatment. The Committee is convinced that an absent effective accountability of perpetrators of torture crimes and security officers, who contravened arrest and detention norms and procedural rules approved by operative legislation, has contributed to escalating transgressions and promoted their perpetration.
71. The situation of all civil servants who were dismissed from their functions should be reinstated. They should restore their jobs in both the West Bank and the Gaza Strip. Affected civil servants should receive reparation for damages caused to them since dismissals were in contravention of the provisions of operative laws and invoked on grounds of political affiliation, not for professional or competent reasons.
72. The PNA and Gaza *de facto* authority must respect the principle of impunity. Perpetrators of murders and extra-judicial killings should be prosecuted and held accountable.
73. The PNA and Gaza *de facto* authority must compensate and provide remedies to all victims of violations of human rights and freedoms regardless of how grave these violations were.

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74. Orders should be dispatched to the Military Prosecution and Military Justice Authority to cease implementation of decisions on arresting and detaining civilians. Military courts should refrain from trying civilians. All civilian persons detained and convicted by the Military Justice Authority should be referred to competent civil courts.
75. The Protocol on Cooperation and Understanding between the Military and Public Prosecution Agencies, which was concluded on 28 June 2006, should be annulled. According to the Protocol, the Attorney General allows the Military Prosecutor General to exercise his jurisdiction and powers in relation to initiating and proceeding with public actions in offences provided under the Penal Laws in force in the West Bank and Gaza Strip.
76. The PNA security agencies should respect the powers of arrest and detention and not execute any detentions without having obtained a prior arrest warrant. Security agencies should also comply with the periods of detention prescribed under the Law of Penal Procedure; refrain from carrying out any detention or confinement in places other than those designated by law; and respect the sanctity of houses and private places, not entering or searching them without reasoned judicial orders. Additionally, competent Palestinian authorities must prevent the Military Intelligence agency from applying the power of arrest and detention to non-military persons.
77. The arrest and detention of civilian persons by the Military Prosecution and Military Justice Authority should be halted as it is a clear, grave usurpation of the jurisdiction of the civil judicial system. It further deprives civilian persons from the right to appear before their natural judge – a right guaranteed and enshrined in national legislation and international human rights conventions.
78. All forms of torture, beating and cruel treatment during interrogation and inquiry must come to an end. It was proven to the Committee that security agencies deliberately use torture and other forms of cruel, inhuman and degrading treatment throughout detention phases in order to obtain information and force detained persons to confess the charges ascribed to them or to others.

Unedited translation

79. It is demanded that the PNA is to investigate all murder and extra-judicial killing crimes, which were perpetrated in the Gaza Strip, to ensure the prosecution and holding accountable of persons who ordered, instigated and committed these crimes. Accordingly, perpetrators will not enjoy impunity and will be subject to accountability.
80. The Gaza *de facto* authority should take expedient legal measures to put an end to raids, searches and arrests carried out by masked individuals, who operate in contravention of the law. It is also obliged to intervene and end the detention of persons in places other than those prescribed by law.
81. Security agencies of the Gaza *de facto* authority should abide by provisions of the Palestinian Penal Procedure Law. Accordingly, they are not permitted to execute any arrest without a prior arrest warrant. In addition to complying with the periods of detention provided for under the Law of Penal Procedure, security agencies should respect the sanctity of houses and private places and not enter or search them without reasoned judicial orders.
82. The requirement stipulated by government bodies in the West Bank and Gaza Strip as to obtain approval of security agencies as a condition for appointment in the civil service must be revoked. This is an unlawful procedure and a grave derogation from provisions of the Palestinian Basic Law and Law of Civil Service in force.
83. Security agencies in the West Bank and Gaza Strip should cease prosecuting, arresting and interrogating journalists on grounds of their press profession. Security agencies may not prevent or obstruct journalists' activities. Such acts flagrantly encroach on the freedom of opinion and expression as well as the freedom of the press which is safeguarded by national and international regulations.
84. The PNA Ministry of Interior should cease interference with the operation of civil society organisations by appointing temporary committees for these organisations. In violation of the provisions of the Law on Charitable Associations and Civil Society Organisations, the committee comprises persons, other than board members, who would manage affected associations.

Unedited translation

85. The PNA security agencies should respect the operation of civil society organisations and put an end to interference in their affairs. They may not close or search these organisations or seize their assets without legal justifications.

86. Competent Palestinian bodies must address the deficient penal legislation in terms of handling and criminalising torture and other forms of cruel, inhuman and degrading treatment. Regulations that clearly incriminate such practices and impose penalties that match their gravity should be adopted. Hence, the Committee holds the view that Palestinian laws should conform to provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987 inasmuch as it is a peremptory legal term of reference, which should be respected and implemented by the subjects of international law.

87. To attain their lawful right to self-determination, Palestinian combatants must respect in their armed struggle the approved norms and principles of international humanitarian law and public international law, which prescribe controls regulating combatants' conduct in the course of hostile operations. They should also completely abide by guarantees and principles on the protection of civilians in international armed conflicts.

88. The United Nations should bear its legal responsibility for materialising the Palestinian people's right to self-determination, freedom and emancipation from the Israeli hegemony and occupation. In addition to denying the Palestinian people's collective rights, the continued Israeli subjugation of the Palestinian territory has wasted and absented Palestinian's human rights and freedoms. Each moment, Palestinians' dignity and humanity are violated by the Israeli occupying power's actions and practices, including murder, torture, deportation, confiscation of property, restriction of movement and access, unjust siege imposed on the Gaza Strip, and so forth.