

PRESS RELEASE

“Operation Cast Lead, one year later...”, return of a high level FIDH mission in Israel and the occupied Palestinian territories

Paris, 21 January, 2010:

1. One year after Operation “Cast Lead” in Gaza, FIDH (International Federation for Human Rights) sent a mission to Israel and Palestinian Territories from January 10th to January 18th, 2010. The mission was conducted by FIDH president Souhayr Belhassen, as well as Secretary General Driss El Yazami, Executive Director Antoine Bernard, and Stéphanie David, head of the Maghreb- Mashrek FIDH office.
2. The mission delegates held meetings in Tel-Aviv, Jerusalem, Haifa and Ramallah, with FIDH member organizations The Association for Civil Rights in Israel (ACRI), BT'selem, The Public Committee Against Torture in Israël (PCATI), Adalah, Al Haq, and partner organizations such as Hamoked, Yesh Gvul, the Committee of Forty, and The Israeli Committee against House Demolitions (ICAHD).
3. The mission delegates also held extensive talks with the heads and senior counselors of the political affairs, legal affairs and humanitarian departments of the Israeli Ministry of Foreign Affairs, as well as with consultants to Mahmoud Abbas, the president of the Palestinian Authority and Prime Minister Salam Fayad. FIDH would like to thank them for their time and the opportunity to meet.
4. Unfortunately, the delegation was refused access to Gaza at the Eretz entry point by the Israeli authorities in spite of having made the request one month prior to arrival and extensive communication with the authorities until the last minute. FIDH was therefore forced to call off important meetings that had been arranged by its Gaza affiliate organization, the Palestinian Center for Human Rights whose director, Raji Sourani is Vice-president of FIDH. FIDH maintains that the refusal was unjustified as well as counterproductive; it represents a serious and unacceptable hindrance to the ordinary activities of human rights defenders based in Gaza. This is the fourth time FIDH was refused entry to Gaza through the Eretz passage in one year, as similar requests were denied in January, February and April 2009. The consistency of these decisions seem to indicate the Israeli authorities' will to isolate the population of Gaza, an objective and practice whose legality is strongly contested by FIDH.
5. The mission was conducted four months after the release of Richard Goldstone's report for the UN fact-finding mission which he led on Operation Cast Lead at the request of the Human Rights Council, and nearly three months after the adoption of his report and recommendations by the United Nations General Assembly on November 5, 2009. The Fact-finding mission's report stated that a number of grave violations were perpetrated during the Israeli military operations in December 2008 and January 2009, as well as by the rockets fired by Palestinian armed groups, which may amount to war crimes and crimes against humanity. The “Goldstone Commission” stressed that the primary responsibility of national authorities is to conduct credible, effective and independent inquiries, and to begin if need be, the necessary legal proceedings to prosecute those responsible. In case of unwillingness or inability of the national authorities to assume these responsibilities, the Commission affirmed that it would be necessary to seek the intervention of international judges, including the International Criminal Court. Because of the seriousness of the situation, the General Assembly in its resolution of November 5, 2009, gave the Israeli and Palestinian authorities three months to carry out inquiries that are “credible, effective and meet international standards.”

6. Committed to a peaceful solution for the co-existence of the Israeli and Palestinian States with secure recognized borders, and highlighting the question of “accountability” for those committing international crimes as one of the main challenges for peace in this region as in the rest of the world, the goal of the FIDH mission was to follow up on the recommendations outlined in the Goldstone report and in the related Resolution of the UN General Assembly, to assist in implementing them and to bring together other bodies interested in the peace process.
7. The Israeli authorities have rejected the Goldstone report and the subsequent processes on the pretext of its selectivity and bias, and have demanded that the question of criminal responsibility be dealt with exclusively at the national level. During its meetings with representatives of the Israeli Ministry of Foreign Affairs, the FIDH mission was informed that the military was in the process of investigating 140 «specific incidents», out of which only 40 could result in criminal investigation before a military court. The representatives also said that an updated version of a report released in July 2009 should be published by the end of January to reflect the investigations currently being carried out. The FIDH delegates were assured by the Ministry officials: “impunity is not an option.”
8. FIDH, together with its member and partner organizations, believes that in order to be effective, credible and compliant with international standards, such investigations cannot be limited only to « incidents » but must imperatively delve into the wider policies that led to the unleashing of Operation “Cast Lead” and its methods of conduction. Only this type of investigation could shed light on the chain of command and therefore responsibility, which led to the events in question.
9. The request for the establishment of a national commission of inquiry is supported by most NGOs involved in defending human rights, who believe that this would allow for such an investigation. To date, this request has been rejected by the Israeli government.
10. The effectiveness, credibility and adherence to international standards of such an inquiry depend critically on the independence of the actors in charge of conducting it. Without being prejudicial to the current process, FIDH has serious concerns that the Israeli military body carrying out this investigation cannot uphold sufficient independence to guarantee these conditions. It is important to recall that violations of humanitarian law are not merely simple breaches of the military code of conduct, but very serious crimes; therefore, it is within the responsibility of ordinary jurisdictions to process them.
11. The quasi-systematic rejection by Israeli military jurisdictions of the many complaints brought forward in the last few years concerning humanitarian law violations, gives rise to concerns that the official Israeli process may result in the state not fulfilling its international obligations regarding allegations of serious crimes.
12. In addition, the marginalization in Israel – beyond activist circles and officials directly affected– of the debate around issues raised by the Goldstone report supports the theory that the action of the Israeli authorities as presented to the mission by the Ministry of foreign affairs would aim to reassure its partners, in particular Americans and Europeans, while trying to restore its somewhat tarnished image following Operation “Cast Lead”.
13. Some Israeli NGOs, in agreement with their Palestinian counterparts, argue that the Israeli authorities have already shown a clear lack of will to move forth with independent judicial inquiries into allegations of international crimes or serious international human rights violations and *a fortiori* press for prompt legal action. In light of the magnitude of the alleged crimes, these organizations are considering legitimate and valid under international law to refer the matter to external jurisdiction. Given the extremity of the crimes in question and its expertise in this area, FIDH supports this position. The unwillingness or the inability of national authorities to investigate, prosecute and judge

persons who have committed such crimes in a manner that satisfies international standards puts the issue within the competency of extra-territorial jurisdictions, including the International Criminal Court.

14. In contrast to the Israeli government which rejects the Goldstone report, the Palestinian Authority showed some willingness to follow-up on the report.
15. According to the Palestinian Authority (PA), a national commission of inquiry comprising international experts and representatives of the Palestinian civil society will soon be established.

In this regard, the Secretary General of the Arab League has been asked to mediate in order to involve Hamas in the process initiated by the PA. Nevertheless the PA has expressed it is otherwise committed to undertake an investigation on serious human rights violations carried out by the security forces under its control.

The practice of torture may appear to be contained for now, unlike arbitrary arrests and detentions estimated by Palestinian NGOs to be about 600 cases. The mission has demanded the unconditional release of all persons who are arbitrarily detained or for the respect of their right to a fair trial before an independent jurisdiction.

16. Palestinian NGOs have just formally asked « Presidents Abbas and Hanyeh » to « conduct serious and credible inquiries that meet international standards and the recommendations of the United Nations mission, on the operations of internal security forces ». This request is an addition to those previously made which are strongly supported by FIDH.

17. In light of the extent and seriousness of the crimes committed, it is imperative that national authorities assume responsibility, in accordance with their international obligations to implement independent judicial inquiries, to carry out subsequent prosecutions and trials, to ensure that victims have the right to redress and to take necessary measures that guarantee the crimes will not be repeated.

18. However, one year after the end of Operation “Cast Lead”, and almost three months after the adoption on November 5, 2009 of the Goldstone report by the United Nations General Assembly, FIDH has not obtained any convincing information that would allow it to assert that as claimed, impunity would indeed not be an option. This comment concerns in particular the authorities of Israel that undoubtedly possess the capacity to carry out investigations that are credible, effective and in conformity with international standards.

19. It would be most unfortunate if the international partners of Israel and the PA are not particularly mobilized at the coming UN General Assembly in February and Human Rights Council in March, in light of the progress review for the implementation of the recommendations in the Goldstone report. Effectively, they risk supporting impunity as an option for the governments and contribute to maintaining conditions that lead to the repetition of the sort of crimes and serious human rights violations such as those witnessed in the context of Operation “Cast Lead”.

20. The responsibility of the States which claim to support the peace process, particularly the European Union and the United States, is proportional to their economic and political influence on the national authorities in question. Their responsibility is also enshrined in the 1949 Geneva Conventions which provide that States have the obligation to respect the Conventions and to have the Conventions respected. In this regard FIDH reiterates the request of the United Nations calling for the convening of a special meeting of the Assembly of the States Parties to the Conventions. FIDH encourages the Swiss authorities, depositories of the Conventions, to take the appropriate actions without delay.

21. Through various field visits, the mission has observed that the expulsion of Palestinians from East Jerusalem continues at a frightening pace in violation of their basic rights. The

city is one large construction site – an occupation site – and follows a visible urban plan based on encircling and "zoning". The number of demolitions of Palestinian houses built since 1967 based on the allegation that they possess no "permits" from the Israeli authorities increased from 84 in 2008 to 103 in 2009. A significant increase of canceled residence permits for Palestinians in East Jerusalem was also noted by the mission. There were 8,500 between 1967 and 2007, and these cancellations reached 4,500 in one year in 2008, according to a recent Hamoked study.

22. In addition, the mission noticed, during its travel to Haifa and the North of Galilee, that a strategy of demographic and land control is evident, which is centered on the repossession and sale of properties of Palestinians who have taken refuge in neighboring countries since 1948: "the absentees". The Israel Lands Administration (ILA), has published bids for the sale of "absentees" properties detained by development Authorities of municipalities such as Nazareth, Haifa, Lod (Lod), Akko (Acre), Rosh Pina and Beit She'an in Israel. In 2007, ILA published bids for 96 properties, 106 in 2008, and will probably record more than 100 in 2009, since 80 were already published by June. This strategy of misappropriation of Palestinian land also manifests itself in absence of legal recognition by the Israeli administration of around one-hundred villages (deemed "unrecognized"), where Palestinian families who may have lived in these villages for two centuries are threatened with expulsion and their homes the targets of demolition.

23. The mission was also reminded of the tragic effects of the widely-denounced Citizenship Law which, because of their nationality, does not permit family re-unification of Israeli Palestinians with Palestinians from Gaza, West Bank or countries considered "enemies". This policy remains condemned by all international human rights bodies.

As recalled by FIDH member organization Adalah, the Citizenship Law represents yet another discriminatory act against the Arab minority in Israel. On one hand, members of the Arab minority cannot start a family with the person of their choice and on the other hand, they risk losing their citizenship if they choose to live with their partner in countries considered to be Israel's "enemies".

Recommendations

As a consequence of its latest mission and propelled by existing facts, FIDH makes the following recommendations:

1. To the Israeli Authorities:

- Promptly carry out inquiries on Operation "Cast Lead" and its context that are credible, effective and in keeping with international standards;
- Pay heed to the recommendations made by human rights organizations in Israel and Palestinian Territories that all emphasize the imperative of fighting impunity for perpetrators of grave crimes;
- Ratify the Rome Status of the International Criminal Court as recommended by Judge Aaron Barak, former President of Israel's Supreme Court in early January 2010;

Although it was unable to see for itself the extent of the humanitarian crisis which prevails in Gaza due to the categorical denial of access levied by the Israeli authorities, the mission refers to the many independent sources to recall that the territory remains under a quasi-impenetrable lock down. This lock down constitutes a serious infraction to the 1949 Geneva Conventions, and may qualify as an international crime under contemporary interpretations of international criminal law.

FIDH strongly reiterates its call to end the siege on Gaza and to fully respect the rights of the civilian population there.

2. To the Palestinian Authorities:

- Promptly carry out inquiries on Operation "Cast Lead" and its context that are credible, effective

FIDH is a federation of 155 non-governmental human rights organizations operating in more than 100 countries. FIDH has a consultative status before the United Nations, UNESCO, and the Council of Europe, and observer status before the African Commission on Human and Peoples' Rights.

and in keeping with international standards;

- Proceed with the unconditional release of all persons who were arbitrarily arrested or detained during and in the aftermath of Operation Cast Lead and guarantee the respect of their right to a fair trial before an independent body.

3.To the General Assembly in February 2010 :

- Undertake an in-depth examination of the actions carried out by the relevant authorities,
- to transmit its conclusions previously made to the Security Council including in view of the referral of the situation to the International Criminal Court in case of an unwillingness or inability of the concerned authorities to investigate, prosecute and judge in a credible, effective and independent manner.

FIDH and its member and partner organizations in Israel and the Occupied Palestinian Territories also support the request submitted to the Helvetic Confederation by the United Nations General Assembly to convene without delay a special meeting of the Assembly of states parties to the 1949 Geneva Conventions

4.To partners of the Israeli and Palestinian authorities:

- Support the implementation of the Goldstone recommendations and the General Assembly resolution concerning Operation Cast Lead, in particular during the GA meeting in February 2010 .

5.To the European Union:

- Maintain the suspension of negotiations on the upgrade EU/Israel relations contingent upon the cancellation of Israeli settlement plans in East Jerusalem and the implementation of the General Assembly resolution on the Goldstone report;
- Convene special meetings of Human Rights working groups as recommended by the EU/Israel Accord to follow up these questions consistently.

As it was denied entry to Gaza the mission was unable to meet with its affiliate members and partners there, nor was it able to meet representatives of Hamas. It thus supports the recommendations made by its affiliate, the Palestinian Center for Human Rights and its partners in Gaza, with regards to the obligation of these authorities to comply with international norms on human rights and humanitarian law, including the implementation of the recommendations of the Goldstone report and of the UN General Assembly.