



December 1, 2009

VIA ELECTRONIC MAIL

Assistant Secretary Michael Posner
 US State Department
 Washington, D.C.

Dear Assistant Secretary Posner:

We are international human rights attorneys and advocates and nongovernmental organizations working for the advancement of human rights in the world and in Palestine/Israel. We understand that your office is mandated under the Foreign Assistance Act to prepare annual reports to Congress on the human rights record of all countries receiving foreign assistance from the US government. We were gratified to learn that someone with your human rights advocacy record has taken the helm of this important section of the State Department. We share your personal and professional commitment to ensuring that all recipients of US military and economic assistance comply with internationally recognized human rights standards. It is because of this concern that we write to you in advance of your office's preparation of the Human Rights Country Report for Israel.

Over the years and particularly during the prior administration, we have noted with dismay that Israel's Human Rights Country Report has been incomplete in certain respects and has failed to provide the specific information required under the Foreign Assistance Act. As you know, the report must include information regarding whether a country has “consistently violated internationally recognized human rights” and findings of international organizations that indicate whether a country has committed war crimes or crimes against humanity. In addition, the report must provide information on whether the country receiving US aid has attempted to prevent investigations into its human rights abuses.

The main deficiencies of the human rights report on Israel in the past have been the following:

- there is less and less information on root causes and historical context that would establish the systematic, consistent, and long-term nature of the human rights abuses perpetrated against Palestinians;
- findings and concluding observations from UN human rights treaty-bodies and UN special

mandate holders on serious violations of human rights including the deprivation of the right to life and liberty, racial discrimination, and torture, is completely missing (though information from UN agencies concerned with humanitarian affairs, e.g., OCHA and UNRWA, is included);

- Israel's policy of not cooperating with and its practice of denying entry to UN special rapporteurs is not mentioned;
- the findings and recommendations of the International Court of Justice in its advisory opinion on the separation wall, including its recommendation for third party states to not provide material assistance to Israel for the construction of the wall and the maintenance of its associated regime (e.g., its settlement construction and segregated road system), are barely mentioned;
- there is no reference to Palestinian refugees from 1948 and 1967 and Israel's obligations under international law to permit their return and to provide them with reparations;
- Israel's human rights abuses are presented in an incidental format woven in between Palestinian-on-Palestinian human rights abuses so that it is difficult to ascertain whether the abuses taking place are part of a consistent pattern of human rights violations or whether it is an unintended consequence of the low intensity warfare being waged between Palestinian militia groups and the Israeli military, i.e., a function of the "fog of war;" and
- findings of nongovernmental organizations and human rights organizations indicating that Israel has or may have committed war crimes or crimes against humanity are not included, instead, the report merely aggregates certain data from a select group of nongovernmental organizations.

During the 2009 reporting cycle, there have been very well-documented reports of massive gross violations of human rights constituting war crimes and possibly crimes against humanity. Of particular note is the report of the UN Fact-Finding Mission on Gaza ("FFMG") which derived its mandate from the UN Human Rights Council. The head of the FFMG, a former judge of the South African constitutional court and former prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda, has made clear that what distinguishes Israel's conduct during its offensive in Gaza, dubbed "Operation Cast Lead," was the fact that, in at least 11 separate incidents, civilian deaths were not "collateral damage" resulting from Israel's attempt to hit legitimate military targets. Rather, Judge Goldstone and the FFMG found that the killing of civilians appears to have been the direct objective of the Israeli military in these incidents. The FFMG also found that the operation was in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas. The FFMG's findings are corroborated by investigative reports prepared by other nongovernmental organizations including the National Lawyers Guild, Human Rights Watch, Amnesty International, and Physicians for Human Rights, as well as by reports from Palestinian and Israeli organizations.

Because Congress must rely on the State Department's reports on human rights to determine whether countries may, consistent with federal law, continue to receive US military and economic aid, it is essential that the report accurately reflect the human rights situation in countries around the world. Therefore, we respectfully request that your office provide all due attention in the preparation of its 2009 report on Israel to the findings of the FFMG and to the reports and findings of other nongovernmental organizations and UN bodies that have been documenting and reporting on the human rights situation of Palestinian citizens of Israel, Palestinians living as refugees outside of Israel, and those living in the territories occupied by Israel since 1967. Each one of the organizations signing this letter is prepared to provide your office with any information you need in the preparation of your report. We look forward to working with and supporting the work of your office in the future.

Sincerely,

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