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**Statement by Judge Mary McGowan Davis
Chairperson Committee of Independent Experts pursuant to HRC
resolution 13/9**

Human Rights Council, 16th session, item 7

21 March 2011
Geneva

Mr. President,
Madam High Commissioner,
Distinguished Members of the Human Rights Council,
Excellencies,
Ladies and Gentlemen.

The report in front of you is the outcome of the work of the Committee of Independent Experts pursuant to Human Rights Council resolution 13/9. The Committee was mandated "to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, "including the independence, effectiveness, genuineness of these investigations and their conformity with international standards". After the Committee presented its first report to the Human Rights Council on 27 September 2010, the Council decided in resolution 15/6 to "renew and resume the mandate of the Committee" and requested the Committee to submit its report to the Council at its sixteenth session. We have done so and our conclusions were arrived at unanimously.

The members of our Committee are Judge Lennart Aspegren, formerly a Judge at the United Nations International Criminal Tribunal for Rwanda; and myself, Mary McGowan Davis, formerly a Justice of the Supreme Court of the State of New York.

We carried out our work under considerable challenges and constraints. In particular, given that we did not travel to Israel, the West Bank or Gaza, we were unable to meet with a number of people who could have supplied first-hand, updated information as to the status and impact of investigations and legal proceedings undertaken by the respective parties into the violations alleged in the report of the Fact-Finding Mission on the Gaza Conflict – which we refer to as the FFM report. Moreover, we worked under very strict time limitations in order to meet the timeframe imposed by the Human Rights Council.

We requested the cooperation of the Government of Israel so that we could travel to Israel, the West Bank and Gaza to meet with relevant government officials, with civil society organizations, and with victims and witnesses. We were informed, however, that it was the Government of Israel's policy to refuse to cooperate with any aspect of what it called the "Goldstone process".

We also sought the assistance of the Palestinian Authority. We did travel to Amman, where we met with the Minister of Justice, the General Prosecutor, and the Chairman and two members of the Palestinian Independent Investigation Commission, or PIIC, which was established in January 2010 to follow up on the FFM report. We received detailed information from the General Prosecutor and the Minister of Justice and discussed current issues relating to implementation of the PICC's recommendations with them and later, by teleconference, with members of the Palestinian Independent Commission for Human Rights.

We are grateful to the Palestinian Authority for the extensive cooperation provided throughout our term.

In addition, we contacted the de facto authorities in Gaza and obtained from them written information responding to detailed questions we had posed about the status of investigations in Gaza.

We also met with a number of representatives of NGOs in Geneva and in Amman, we received copious written submissions from them, and we held teleconferences to inquire further into specific incidents NGOs had brought to the attention of authorities in Israel and on the Palestinian side.

Most importantly, we also interviewed victims and witnesses. Israeli victims provided information on the human and material damage suffered as a direct consequence of rocket attacks launched from the Gaza Strip and noted their complete inability to seek redress for these crimes. Palestinian victims described their lack of confidence in Israeli investigations and emphasized their frustrations that after two years, they have received no compensation for their claims and in most cases are unaware of the status of the investigations.

After careful consideration of all the available information, we have reached the following conclusions:

First, with respect to Israel, we determined that Israel has dedicated significant resources to investigating over 400 allegations of operational misconduct in Gaza, but that given the scale of this undertaking much remains to be accomplished. We noted that a number of investigations reportedly remain open.

We further concluded that there is no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw Operation Cast Lead, as called for by the FFM report. We considered that a public commission of inquiry – modeled along the lines of the Turkel Commission, which includes international participants – constitutes one of the mechanisms that Israel could use to assess high-level operational and legal decisions concerning the execution of the military operation in Gaza. We emphasize that our report's reference to the Turkel Commission in no way suggests that we endorse the substance of its analysis or agree with its conclusions; we only examined the Commission's procedures and methodology as they directly relate to our own mandate.

Further, we believe that the concerns expressed in our previous report relating to transparency and the participation of victims and witnesses in investigations continue to be relevant. NGOs, victims and their legal representatives persist in having difficulty accessing information about progress in investigations and uniformly report that the majority of their requests for information go unanswered.

We also expressed strong reservations respecting the promptness of some investigations of individual incidents referred to by the Fact-Finding Mission. Indeed, the status of investigations into more than one-third of the 36 incidents that featured in the FFM report is still unresolved or unclear.

Finally, we expressed concern about the fact that the duration of the ongoing investigations – over two years since the end of the Gaza operation – could seriously impair their effectiveness and, therefore, the prospect of ultimately achieving accountability and justice.

Turning now to the Palestinian Authority, we noted the efforts of the Palestinian Independent Investigation Commission or PIIC to fulfill its mandate by investigating rocket and mortar attacks against Israel and other human rights violations in the Gaza Strip. We were told that the PIIC had been unable to complete its task, as it had not received positive responses to requests for access from either Israel or the de facto authorities in Gaza.

Further, we were informed that the Council of Ministers of the Palestinian Authority has established a Ministerial Committee with a mandate to issue recommendations about implementation of the PIIC report. The report of the Ministerial Committee details strategies for significant institutional change over the next nine months, which include a recommendation that the General Prosecutor investigate incidents in which officials have allegedly refused to implement court decisions. We have also learned that a decision has been taken to transfer cases from military to civilian courts and that the office of the General Prosecutor now conducts regular monitoring visits to military and civilian detention facilities.

These proposals and changes represent important developments. Nonetheless, we remain concerned that criminal accountability mechanisms have not yet been duly activated in relation to many of the allegations of serious violations by PA authorities reported by the Fact-Finding Mission.

Finally, with respect to the de facto authorities in Gaza, we acknowledged that they have made efforts to provide specific information concerning criminal investigations into alleged human rights violations committed by their security forces. Nevertheless, we remain extremely concerned by indications that the de facto authorities have not conducted any investigations into the launching of rocket and mortar attacks against Israel. We concluded that the de facto authorities should make serious efforts to conduct criminal inquiries into all the allegations of grave violations of international law implicated by these attacks.

To conclude, Mr. President, we consider that, for as long as victims – in Israel and in Gaza – continue to lack confidence in the investigative processes, and continue to live in difficult and unsafe conditions, without hope of remedy, there will be no genuine accountability and no justice.

Thank you, Mr. President.