

August 1, 2014

**Joint Statement for August 1, 2014 United States' Universal Periodic Review
Consultation with Civil Society**

As organizations with histories advocating to the U.S. government on human rights issues in Israel and Palestine, two of which engaged in the 2010 Universal Periodic Review (UPR) of the United States, we are writing in advance of the White House UPR Consultation with Civil Society scheduled for August 1, 2014 with renewed urgency given the human rights crisis in Gaza. Given reports of possible war crimes committed by Israel, we write with grave concern regarding the U.S. diplomatic, financial and military support for the Israeli military. This support disregards U.S. law, such as the Leahy Law, of which Recommendation 227 specifically urged application. We also continue to be deeply troubled by the lack of any U.S. action to implement its obligations under international humanitarian law (IHL) vis-à-vis the Palestinian people, as recommended by the Human Rights Council in Recommendation 52.

Since the beginning of Operation Protective Edge on July 7, 2014, at least 1,432 Palestinians have been killed, of whom 1219 were civilians and 345 were children. 6,511 Palestinians have been wounded, mostly civilians, including 1,786 children. Hundreds of Palestinian houses have been destroyed. Over 219,000 Palestinians have sought shelter with the United Nations Relief and Works Agency (UNRWA) and up to 200,000 more Palestinians may be displaced and sheltered with family or elsewhere. In addition to the large number of houses, civilian infrastructure - such as Gaza's only power plant, multiple hospitals, ambulances, and tens of mosques, and UNRWA shelters - has been hit by Israeli strikes. As you are aware, the targeting of civilians or use of force which is indiscriminate or disproportionate is forbidden under international humanitarian law (IHL), as is collective punishment.

It is our understanding that Recommendation 52 refers to a state's duty under IHL to ensure respect for the law of war and provide accountability for grave breaches. Common Article 1 of the Geneva Conventions, to which the U.S. is a party, is a foundational element of IHL which requires parties "ensure respect" for the Convention "in all circumstances." This applies to Israel's actions in the occupied Palestinian territory. Specifically, the United Nations Security Council (UNSC) has unanimously called upon parties to the Fourth Geneva Convention to abide by Article 1 and "ensure respect by Israel, the occupying Power, for its obligations under the convention" in UNSC Resolution 681. The UN General Assembly similarly has affirmed this duty in relation to the conflict and in 2009 called for a Conference of the High Contracting Parties to pursue enforcement of the Convention.¹ In 2001, the High Contracting Parties of the Fourth Geneva Convention called upon all parties "directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions."²

¹ U.N. Doc. A/Res/64/10, 5 November 2009, ¶ 5, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/Res/64/10.

² Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration ¶ 4, Geneva, 5 December 2001, available at <http://www.icrc.org/eng/resources/documents/misc/5fldpj.htm>.

The recent U.S. sale of an undisclosed amount of mortar rounds and ammunition for grenade launchers in the midst of the current Israel offensive offers evidence that U.S. is not ensuring respect for and taking measures necessary for the prevention and suppression of breaches of the Conventions with regards to Israel. To the contrary, this arms transfer is just the latest U.S. failure to fulfill its duty under IHL to ensure respect for the law of war, and is also potentially aiding and abetting war crimes and mass killing of civilians in Gaza by knowingly supplying the ammunition to do so.

In addition to the obligations the United States holds under Article 1, the Fourth Geneva Convention's Article 146 requires High Contracting Parties, like the U.S., to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts," or in the alternative send the defendant for trial in the courts of another High Contracting Party. At the very least, the Human Rights and Special Prosecutions Section (HRSP) of the Department of Justice that prosecutes human rights violators should be open to investigating Israeli officials in the U.S. who are alleged to have committed war crimes, as is its role.

Regarding Recommendation 227, the Leahy Law bars the U.S. from funding foreign military units and individuals where there is credible information that they took part in gross human rights violations.

We are concerned about the Leahy Law's application to Israel, which is the recipient of over \$3 billion in military assistance annually (comprising 55% of total U.S. foreign military funding), as well as multiple training programs. This funding and other assistance has continued despite the reports of widespread human rights abuses and war crimes well documented and condemned by the international community.

According to meetings some of our groups have had with the Department of State, no Israeli units have ever been sanctioned by the Leahy Laws. According to the Department of State, the US does not currently employ any mechanisms to track which Israeli units are receiving US military assistance. So while there seems to be a mechanism for vetting Israeli units or individuals that are submitted as candidates for training, the Department of State does not have any system in place to vet units receiving US military assistance.

As you know, the Department of State has utilized a computerized system called the International Vetting and Security Tracking (INVEST) system, which has facilitated a major increase in the number of individuals and units vetted since 2010. We were informed by the Department of State they are engaged in discussions with the Department of Defense aiming to upgrade the INVEST system in the upcoming months.

Transparency is necessary for civil society to be engaged with the entire process, and the Leahy Law can have the greatest impact when government action is assisted by the efforts of civil society. Human rights defenders are often the best suited to provide information on the units which may be responsible; however this interaction should not end at the reporting stage. Without more transparency throughout the process, especially pertaining to the ongoing upgrade of INVEST, it is impossible for civil society to know whether the U.S. is effectively applying the Leahy Law with respect to all countries, as the Recommendation urges.

The lack of a tracking mechanism for US military assistance to Israel indicates a disregard for the principles behind the Leahy Law, if not a violation of the law itself. Without increased transparency in the Leahy process, it is challenging, if not impossible to effectively hold the U.S. accountable for its apparent failure to enforce the law.

Further, as you know, the Leahy Law in the Foreign Assistance Act requires that the Department of State “make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished.” The list of units should be made readily available for the public, and to further transparency, all units which have been *approved* for funding should be public as well. Releasing a comprehensive list of which units or countries have been examined and the result of the review would assist human rights defenders in supporting the efficacy of the Leahy Law’s implementation. The U.S. statement regarding Recommendation 227 suggests that the government is unable to provide information about implementation of the Leahy Law because the process may consider information from classified sources. We note that over-classification can be used as a tool to hide U.S. complicity in the exact crimes it is entrusted with preventing, or to shield others from prosecution. Even if some information is properly classified, important steps can be taken to ensure greater transparency. Information that is not classified as well as Department of State decisions regarding Leahy implementation should be made public.

We appreciate the White House’s efforts to respond to and implement these recommendations from the Human Rights Council, which have grown more urgent in recent weeks with the continued devastating violence in Gaza and accompanying widespread reports of violations of IHL. Particularly in light of this crisis and the upcoming Defense appropriations, we urge you to take swift action to ensure the U.S. is meeting its responsibilities under IHL and domestic law asserted in Recommendations 52 and 227.

Signed,

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US Campaign to End the Israeli Occupation