

# **Credible, Independent and Conforming to International Standards: Criteria for domestic investigations into violations relating to the conflict in Gaza and southern Israel**

## **Introduction**

The United Nations Fact Finding Mission on the Gaza Conflict concluded that both Israeli forces and Palestinian armed groups had committed grave violations of international law, including war crimes and possible crimes against humanity, during the 22-day conflict in Gaza and southern Israel that began on 27 December 2008.<sup>1</sup>

Both the UN General Assembly and the Human Rights Council have endorsed the recommendations set out in the Report of the Fact Finding Mission on the Gaza Conflict (also known as the Goldstone Report), published on 15 September 2009. The UN General Assembly has specifically called upon both the Government of Israel and the Palestinian side, within a period of three months, to undertake 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” (General Assembly Resolution A/Res/64/10 of 2 November 2009).<sup>2</sup>

The General Assembly also requested the UN Secretary-General to report to the General Assembly on the implementation of the resolution “with a view to considering further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council”.<sup>3</sup>

Amnesty International urged the UN Secretary-General in November to assess the credibility of Israeli and Palestinian investigations in his forthcoming report to the General Assembly and recommended that he calls on UN and, if necessary,

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<sup>1</sup> See Report of the UN Fact Finding Mission on the Gaza Conflict (2009), UN Doc. A/HRC/12/48, paragraphs 1732, 1747, 1765

<sup>2</sup> Follow-up of the Report of the United Nations Fact Finding Mission on the Gaza Conflict (Goldstone report) (2009), UN Doc. A/RES/64/10, paragraph 4

<sup>3</sup> A/RES/64/10, paragraph 6

additional experts in international human rights and humanitarian law, as well as those with specific knowledge of the situation in Israel and the Occupied Palestinian Territories, to assist him in assessing the adequacy of the investigations by both sides in respect of international standards.<sup>4</sup>

In September 2009, following the publication of the Report of the UN Fact Finding Mission on the Gaza Conflict, the Israeli authorities released a number of statements asserting that internal investigations into allegations had been opened. These investigations have lacked the necessary independence as they have been carried out by army colonels and officers in the military police, reporting to the Military Advocate General and subordinate to the Chief of Staff. In addition, these processes have not been transparent. Hamas officials have also stated that the de facto authority in Gaza will carry out internal investigations but have taken no significant public steps to initiate investigations. To date, neither side appears to have met the international standards required by the General Assembly.

Amnesty International urges the Israel authorities and the Hamas de facto administration in Gaza to ensure that their investigations meet the standards of independence, credibility and conformity with international standards.<sup>5</sup> Where the capacity to conduct credible and independent investigations as required by the General Assembly is limited, the party should seek technical assistance from the international community.

## I. Investigating body: impartiality, competence, expertise and independence

Those carrying out the investigation should be chosen for their recognized impartiality, competence and expertise as individuals.

Each person involved in the investigations should be independent of any institution, agency or person that may be the subject of, or otherwise involved in, the incidents under investigation. As such, they should neither be a member of the government nor of the military or armed forces that were party to the conflict.

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<sup>4</sup> Amnesty International, *UN Secretary-General needs to ensure Gaza conflict investigations are credible* (Index: MDE 15/030/2009)

<sup>5</sup> See among others, UN Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions; UN 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. See also Concluding Observations of the Committee against Torture, May 2009, UN Doc. CAT/C/ISR/CO/4, paragraph 29; General Comment 31 of the Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.13. Furthermore, with regard to Israel, the Judgment of the High Court of Justice of Israel in the case of PCATI v Government of Israel and Others (HCJ 769/02), paragraph 40, should be noted, which states: “after an attack on a civilian suspected of taking an active part, at such time, in hostilities, a thorough investigation regarding the precision of the identification of the target and the circumstances of the attack upon him is to be performed (retroactively). That investigation must be independent”.

The investigating body must include members with proven expertise, knowledge and experience. Given the range of human rights abuses and complexity of the factual and legal issues involved, members of the investigation teams should be sufficiently equipped and supported to enable them to carry out a thorough and authoritative investigation. Among other things the body should include adequate numbers of: experts in both international humanitarian and human rights law; military and criminal justice investigators; weapons and ballistic experts; forensic experts; and experts in the protection of victims and witnesses, including women and children.

## II. Scope of investigations and time frame

### A. Alleged violations to be investigated

The subject of domestic investigations by Israel and the Palestinian side should be the serious violations of international human rights and humanitarian law alleged to have been committed by their own forces between 27 December 2008 and 19 January 2009.

In the case of Israel, this should include not only those incidents documented in the report of the Fact Finding Mission but also other incidents, such as the attacks on UN buildings which were the subject of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, established by the UN Secretary-General, which reached conclusions on nine incidents.<sup>6</sup>

Both the government of Israel and the Palestinian side should assess the information collected in light of the relevant provisions of international law, including the law of armed conflict.

Each investigation should aim to identify individuals reasonably suspected as responsible for violations of national or international law.

### B. Time frame

The investigations must be both prompt and thorough.

The UN General Assembly called for appropriate steps to be taken to investigate within three months, that is, by 2 February 2010.

## III. Powers

### A. Broad investigatory powers

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<sup>6</sup> Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, (2009), A/63/855-S/2009/250, paragraphs 87, 88, 89 and 90

The investigations should have access to all relevant information and persons. This should include the power to compel attendance and co-operation of people, including state officials, while fully safeguarding their rights; and to order the production of documents, including government and other records.

The authorities must protect complainants, witnesses, those conducting the investigation and their families from any reprisals or any forms of intimidation.

The investigating body/bodies should also have the power to refer instances of non-compliance with such orders to courts to compel compliance.

#### **B. Ensuring accountability**

Israel, like all states, has an obligation to prosecute and punish perpetrators of crimes under international law. As a party to the armed conflict, the Hamas de facto administration is bound to ensure accountability for violations of international humanitarian law. In addition, individual commanders and superiors may be criminally responsible as a result of the conduct of their subordinates.

The investigation should reaffirm the parties' obligations to combat impunity.

### **IV. Operations and procedures**

#### **A. Collection of evidence**

In collecting information, the investigators should seek the co-operation of the widest possible range of sectors of society, paying special attention to information and testimonies provided by victims and their families, local and international human rights organizations and earlier investigations, including the UN Board of Inquiry into incidents in Gaza and the Goldstone Report.

Victims and witnesses must be protected from reprisals of any kind.

#### **B. Transparent investigations**

The scope, methods and findings of the investigations should be made public. Victims and their families must be regularly informed about the progress of the investigation.

### **V. Reporting, recommendations and dissemination**

Amnesty International recommends that periodic and the final reports of the investigating bodies should be made public and widely circulated without undue delay, and presented to the UN Secretary-General for assessment, response and action.

The final reports of the investigating body/bodies must provide details of all aspects of their work, including the scope, methods and findings, including

recommendations for prosecution. The final reports by the Israeli and the Palestinian bodies should set out:

- their mandates and terms of reference;
- their procedures and methods for evaluating evidence, as well as the law upon which it relied;
- their findings of fact and a list of documents and other evidence upon which such findings are based;
- their conclusions based upon applicable law and findings of fact, including a critical analysis of institutional structures, policies and practices, and other factors which allowed the unlawful killings and other violations to take place;
- a list of all victims (except those whose identities are withheld for protection); and
- their recommendations including those relating to the prosecution of individuals reasonably suspected of violations of domestic or international law.