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**Accountability regarding the conflict in Gaza and southern Israel:
Amnesty International written statement to the Human Rights Council,
Thirteenth session, 1-26 March 2010**

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Written Statement

SECTION I:

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Written statement submitted by Amnesty International, a non-governmental organization in special consultative status

SECTION V:

Title: Accountability regarding the conflict in Gaza and southern Israel

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Agenda Item 7

Amnesty International wishes to address the issue of accountability regarding alleged war crimes and other serious violations of international humanitarian and human rights law committed during the 22-day conflict in Gaza and southern Israel in December 2008 and January 2009.

We note that the following submissions have been made to UN bodies in relation to the findings and recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict (the Goldstone Report) (A/HRC/12/48), the Human Rights Council's endorsement of this report on 16 October 2009 (A/HRC/S-12/1), and calls made to the government of Israel and the Palestinian side in the UN General Assembly resolution of 5 November 2009 (A/RES/64/10):

- 29 January 2010: the Permanent Mission of Israel submitted a document on behalf of the State of Israel entitled *Gaza Operation Investigations: An Update*;¹
- 29 January 2010: the Permanent Observer Mission of Palestine submitted a *note verbale* conveying a letter from Prime Minister Salam Fayyad of the Palestinian Authority;²
- 2 February 2010: the Ministry of Justice of the Hamas de facto administration in Gaza submitted three documents to a UN official from the Office of the High Commissioner for Human Rights in Gaza.³

The report of the Secretary-General to the General Assembly dated 4 February 2010 refers only to the submissions made via the UN missions. As the recommendation by the UN Fact-Finding Mission asked for investigations by the government of Israel and the “relevant authorities in Gaza” to be monitored, Amnesty International has considered all three responses.

The response of the government of Israel: summary of concerns

Israel’s 46-page *Update* states that the army has opened investigations into 150 incidents involving alleged violations of the laws of war by its forces during Operation “Cast Lead”, its 22-day military offensive in Gaza.

Amnesty International is concerned that the independence and impartiality of these investigations is severely compromised by the fact that all these investigations have been carried out by army commanders or by the military police. In addition, these inquiries are overseen by the Military Advocate General, whose office cannot be considered a disinterested party as it provided legal advice to Israeli forces on their choice of targets and tactics during Operation “Cast Lead”.

Only 36 incidents are under criminal investigation by the military police. The others are being considered in operational debriefings (referred to as “command investigations” in the *Update*). The army commanders conducting these debriefings do not have the necessary professional training for conducting investigations into violations of international law, and cannot be considered independent. Also, problematically, these debriefings are confidential – if they are referred to a criminal investigation, self-incriminatory evidence given by soldiers in the debriefing is not admissible in court. If the debriefings are closed without being referred to a criminal investigation it is not possible to examine the proceedings or the evidence behind the decision not to open a criminal investigation.

The *Update* states that a number of military inquiries have concluded that there is no basis for criminal investigations; some of these relate to serious incidents which Amnesty International maintains warrant effective, independent investigation. These include Israeli attacks on UN facilities, civilian property and infrastructure, attacks on medical facilities and personnel, and incidents in which large numbers of civilians were killed by Israeli forces.

Despite enduring concerns expressed by Amnesty International over Israel’s extensive use of white phosphorus in Gaza, the *Update* contends that there are “no grounds to take disciplinary or other measures for the IDF’s use of weapons containing phosphorus”. During Operation “Cast Lead” Israeli forces often launched artillery shells containing white phosphorus into densely populated residential areas, causing death and injuries to civilians. Other Israeli attacks which resulted in civilian injuries and deaths are dismissed as “operational errors” although the *Update* acknowledges “some instances” in which Israeli soldiers and officers “violated the rules of engagement”.

¹ Annex 1 of UN document A/64/651, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/651>

² Annex 2 of UN document A/64/651, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/651>

³ Available at: http://www.gmo.ps/ar/?page=news_det&id=3159

The military investigations also preclude the possibility of examining decisions taken by civilian officials, who are also alleged to be responsible for serious violations.

Research by Amnesty International into Operation “Cast Lead” showed elements of reckless conduct, disregard for civilian lives and property and a consistent failure on the part of Israeli forces to distinguish between military targets and civilians and civilian objects. Israeli forces continued to employ tactics and weapons that resulted in growing numbers of civilian casualties for the entire duration of the military offensive. This was despite Israeli officials knowing from the first days of the military offensive that civilians were being killed and wounded in significant numbers.

The response of the Hamas de facto administration in Gaza: summary of concerns

The main document submitted by the Hamas de facto administration to the UN was a report entitled *Status of implementation of the recommendations of the International Fact Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009* (an executive summary of the report and a document entitled *Photo Documentation of the Israeli War crimes on Gaza, 2008-2009* were also submitted). The report states that the Hamas de facto administration has:

- 1) established a twelve-person governmental committee (headed by the Hamas de facto Minister of Justice) to monitor the implementation of the recommendations of the Goldstone Report;
- 2) established a three-person independent international committee of experts in international law to guarantee the transparency and impartiality of the steps taken by the government;
- 3) commissioned the public prosecutor to investigate all alleged violations of international law reported to him.

Amnesty International considers that it is clear from this response by the Hamas de facto administration that it has failed to mount any credible investigations into serious violations alleged to have been committed by its forces. In particular, the documents submitted by Hamas fail to address adequately the firing of indiscriminate rockets by Palestinian armed groups into southern Israel.

The Goldstone Report found that “these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity” (A/HRC/12/48, paragraph 108).

In respect to the firing of indiscriminate rockets and mortars, the response states: “All Palestinian armed groups have published declarations that they did not target civilians but rather that they targeted military targets but tried to avoid civilian targets”.⁴ This contradicts statements made by armed groups, including Hamas’ military wing, before and during the conflict in which they claimed responsibility for rocket attacks, which they stated were directed at civilian towns and which killed or injured civilians and damaged civilian homes.

Armed groups have an obligation to respect applicable international humanitarian law. The firing of indiscriminate rockets by Palestinian armed groups into Israel during Operation “Cast Lead” killed three Israeli civilians and caused further civilian injuries and damage to civilian property. Whether these attacks were intended to hit military or civilian objects, the use of unguided projectiles which could not be directed at specific targets, placed the civilian population at risk.

The response of the Palestinian Authority in the West Bank: summary of concerns

⁴ *Status of implementation of the recommendations of the International Fact Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009*, page 35

The submissions made by the Permanent Observer Mission of Palestine consisted of: a presidential decree issued on 25 January 2010 concerning the formation of an independent commission to follow up the Goldstone Report; and a two-page document entitled *Report of meeting of the Independent Investigation Commission that was established pursuant to General Assembly resolution 64/10*.

These documents do not detail the specific incidents that will be investigated. Noting that the Palestinian Authority in the West Bank was not a party to the conflict in Gaza and southern Israel, that it was not then, and is not now, in a position of effective control over Gaza, and the poor relationship between the Palestinian Authority and the Hamas de facto administration in Gaza, it is unclear to what extent the committee will be able to effectively investigate allegations of serious violations by Palestinians, such as the firing of indiscriminate rockets from Gaza into southern Israel, which was identified as a key concern in the Goldstone Report.

Conclusion

Having considered all of these documents, Amnesty International is both surprised and disappointed that, according to the Secretary-General's 4 February 2010 report,⁵ he is unable to determine whether the government of Israel and the Palestinian side are complying with the UN General Assembly resolution 64/10 that urged both sides to carry out investigations "that are independent, credible and in conformity with international standards".

In the assessment of Amnesty International, the responses presented to the UN demonstrate that none of the relevant parties has taken the necessary steps to conduct investigations "that are independent, credible and in conformity with international standards".

While the Secretary-General explained his lack of action by the fact that "processes initiated" by the Israeli and Palestinian authorities were "ongoing", Amnesty International considers that the information received by the UN was sufficient to show that the steps taken to date by the parties to the conflict are clearly inadequate, and that this message should have been conveyed to the Israeli and Palestinian authorities clearly and unambiguously in the Secretary-General's report.

Amnesty International encourages the UN Secretary-General to remedy this situation by immediately preparing an independent assessment of the steps being taken by Israel and the Palestinian side to address accountability, including by requesting the assistance of the UN High Commissioner for Human Rights and other independent experts in international humanitarian and human rights law. Amnesty International calls on the Human Rights Council to support this call for an independent assessment.

The results of this assessment should be made available to the General Assembly and the Security Council in the coming months and the assessment should be conducted in such a way as to provide a solid basis for decisions on further action that are necessary to secure accountability for both sides. Such action may include an eventual referral of the situation in Gaza by the UN Security Council to the International Criminal Court.

⁵ *Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, Report of the Secretary General*, UN document A/64/651, available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/651>