

Les points clefs du rapport Goldstone - Centre palestinien pour les droits de l'Homme (en anglais)

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In light of the media debate and confusion triggered by Justice Richard Goldstone's 1 April opinion piece in the Washington Post, the Palestinian Centre for Human Rights (PCHR) wishes to highlight a few key issues regarding the current status of the UN Fact-Finding Mission's Report, and the search for accountability in the aftermath of Israel's 27 December 2008 - 18 January 2009 offensive on the Gaza Strip.

PCHR represent 1,046 victims of the offensive, and have submitted 490 criminal complaints to the Israeli authorities on behalf of these individuals.

As noted by Justice Goldstone, the UN Fact-Finding Mission was not a judicial body. Rather, it was a fact-finding mission mandated to conduct initial investigations on the ground, and to make recommendations on this basis. The Mission found sufficient evidence to indicate the widespread commission of war crimes, and possible crimes against humanity. This finding was consistent with the result of investigations conducted by other organisations, including PCHR, Amnesty International, Human Rights Watch, the UN Board of Inquiry, and the Fact-Finding Mission of the Arab League.

Appropriately, and consistent with the requirements of international law, the Fact-Finding Mission recommended that these allegations be investigated. The Mission noted that if domestic authorities failed to conduct effective investigations, the International Criminal Court became the most appropriate forum to investigate these serious charges. Responsibility would thus fall on the Security Council to activate the

jurisdiction of the International Criminal Court, in accordance with Article 13(b) of the Court's statute. According to the timeline established by the Mission, this referral should have taken place approximately one year ago. The Security Council took such action most recently with respect to the current situation in Libya.

The most serious allegations regarding Israel's conduct of hostilities during the offensive relate to the direct targeting of civilians, widespread indiscriminate attacks, the choice of targets and methods of combat, and the extensive destruction of public and private infrastructure, including the total or partial (rendered uninhabitable) destruction of 7,872 civilian housing units. A few significant cases in this regard include the attack on UNRWA headquarters, the attack on Fakhoura school, the Abdul Dayem case, the Al-Daia case, the Abu Halima case, and the attack on Arafat Police compound. Policies including those related the conduct of hostilities, the choice

of targets, the use of white phosphorous, and the artillery bombardment of civilian areas may also give rise to individual criminal responsibility. None of these cases have been effectively addressed, and have not been 'reconsidered' by Justice Goldstone.

International law clearly requires that allegations of international crimes, as detailed in the Fact-Finding Mission's Report and elsewhere, must be subject to genuine investigation, and if appropriate, those responsible prosecuted.

International jurisprudence has consistently identified four components essential to conducting a genuine investigation.[1] An investigation must be : effective (capable of leading "to the identification and punishment of those responsible"[2], and "undertaken in a serious manner and not as a mere formality preordained to be ineffective"[3]) ; independent (based on, inter alia, "the existence of guarantees against outside pressures",[4] specifically "the persons responsible for the injuries and those conducting the investigations should be independent of anyone implicated in the events"[5]) ; prompt ;[6] and involve an element of public scrutiny.[7] Significantly, the whole operation must also be analysed, and not merely the immediate specifics of any one incident ; the overall plan and its implementation must be analysed.[8]

In the over two years that have passed since the offensive, all parties have failed to conduct investigations complying with these standards. Most recently, the UN Committee of Independent Experts mandated to monitor Israel and the Palestinians' domestic investigations found that "there is no indication that Israel has opened investigations into those who designed, planned, ordered and oversaw 'Operation Cast Lead'." The Committee also noted significant problems with respect to the role of the Military Advocate General.

The overwhelming majority of investigative procedures initiated by Israel have been closed on reaching the IDF's apparently preordained conclusion that : "[t]hroughout the fighting in Gaza, the IDF operated in accordance with international law."

In the over two years since Operation Cast Lead one Israeli soldier has served 7.5 months in jail for the theft of a credit card and two others received three month suspended sentences for using a child as a human shield. These three convictions, and the ongoing trial of a fourth soldier, have been the only concrete judicial outcomes from Israeli investigations. It is noted that these indictments fail to reflect the gravity of the actual crimes committed, as does the exceptionally lenient sentence in the human shields case.

PCHR have concluded that the Israeli investigative system as a whole, including as this relates to civilian supervision, is flawed, either in law, in practice, or both.

In light of the domestic systems now proven inability and unwillingness to conduct genuine investigations, it is imperative and appropriate that these allegations be investigated by the International Criminal Court.

On 25 March 2011, the Human Rights Council made precisely this recommendation, recommending that the General Assembly submit the UN Fact-Finding Mission's Report to the Security Council, to consider referring the situation in the occupied Palestinian territory to the International Criminal Court

The current debate must focus on the relevant core issues. Significant evidence indicates that widespread war crimes were committed in the context of Operation Cast Lead. These have not been subject to genuine judicial scrutiny. This situation must be remedied by a referral to the International Criminal Court.

All political considerations must be put aside, and the rule of international law upheld. There is no basis to retract or reconsider the Report of the UN Fact-Finding Mission on the Gaza Conflict. The equal application of the law is the very least that victims on all sides deserve. Justice Goldstone will hopefully join the call of the Human Rights Council, supported by human rights NGOs globally, in asking the Security Council to refer the situation in Israel and the Occupied Palestinian Territory to the International Criminal Court.

All parties to the events in the region must be held to universal standards so that the law proves capable of protecting civilians from future atrocities, and so that those victims of past crimes can finally achieve accountability and justice.

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