



Palestinian Centre for Human Rights (PCHR)

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## A Demand for International Criminal Justice

For decades impunity has prevailed – and been allowed to prevail – in Israel and the occupied Palestinian territory (oPt). Despite significant evidence indicating the widespread perpetration of international crimes, not once has a senior military or government official been investigated and prosecuted in accordance with the obligations of international law. This pervasive impunity has resulted in systematic violations of international law, and the continuing suffering of civilian populations.

Israel's 27 December 2008 – 18 January 2009 offensive on the Gaza Strip is testament to this reality. During the 23 day offensive, international humanitarian law (IHL) was systematically violated and civilians and civilian infrastructure were directly targeted; 83% of the dead were civilians, the so-called 'protected persons' of international humanitarian law.

The Report of the UN Fact Finding Mission on the Gaza Conflict acknowledged this reality, noting that "the prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action." To this end, and in keeping with the requirements of international law, the Mission's recommendations focused on the pressing necessity of criminal accountability.

To-date, effective investigations – conducted in accordance with the requirements of international law – have not been conducted either by Israel or the Palestinian authorities. This conclusion was recently confirmed by the UN Committee of Independent Experts. In particular the Committee noted that that no criminal procedures had been initiated on the Palestinian side, and that "there is no indication that Israel has opened an investigation into the actions of those who designed, planned, ordered and oversaw "Operation Cast Lead"."

Procedures on the Israeli side have been characterised by an unwillingness to conduct genuine investigations and prosecutions. The Israeli investigative system suffers from fundamental flaws which render the effective pursuit of justice impossible. Of particular concern is: the reliance placed on 'operational debriefings'; the excessively narrow scope of investigations; the decisive role of the Military Advocate General (who is implicated in a number of the alleged crimes) in the decision to open or close an investigation; and the lack of adequate civilian supervision (characterised by the margin of appreciation awarded by the Supreme Court to the decisions of the Military Advocate General, and the Attorney General).

Only 47 military police investigations – subject to the abovementioned flaws – have been opened. These have resulted in only one conviction for the theft of a credit card, and the further indictment

of three individuals. While those opened investigations fail to meet international requirements, the overwhelming majority of allegations have simply been ignored. In violation of its obligations under customary international humanitarian law, Israel has proven itself unwilling to conduct genuine investigations and prosecutions; it must be unequivocally concluded that no effective mechanisms are available on the Israeli side.

Palestinian procedures have not resulted in any form of accountability, and have failed to ensure victims' legitimate right to an effective judicial remedy, in violation of General Assembly Resolution A/Res/64/10. In light of the reality of procedures initiated to date and the practicalities of the situation (including a divided judicial and political system) it must be unequivocally concluded that no effective mechanisms are available on the Palestinian side.

Based on our organisation experience we believe that this failure is not an anomaly, but rather is in keeping with longstanding previous experiences. Effective domestic investigations and prosecutions are an impossibility. All Parties are unwilling or unable to fulfil the obligations of customary international law, and General Assembly Resolution A/Res/64/10.

Justice is unattainable within these systems.

Given this reality, and as recommended in the Report of the UN Fact Finding Mission, it is imperative that immediate urgent recourse be had to mechanisms of international criminal justice. Those suspected of committing the most serious crimes of the international community cannot continue to be granted impunity. Victims' rights cannot continue to be denied.

This is an international responsibility: "To deny modes of accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community." This tarnished credibility is evident consequent to the UN Secretary-General's repeated failure to fulfil his duty to report on the status of domestic investigations, "with a view to the consideration of further action".

As representatives of Palestinian and Israeli civil society we state clearly that political processes cannot continue to be allowed to displace the rule of international law and fundamental human rights, and:

- Condemn the failure to initiate effective investigations and prosecutions into all alleged violations of international humanitarian law and international human rights law;
- Request that the UN Security Council, acting under Chapter VII of the UN Charter, ensure accountability through the legal or other tools available to the international community, including referring the situation in Israel and the occupied Palestinian territory to the International Criminal Court;
- Remind all States of their *obligation* to investigate and prosecute *all* those suspected of perpetrating grave breaches of the Geneva Conventions, in accordance with the principle of universal jurisdiction;
- Request that the Government of Switzerland, as depository to the Geneva Conventions of 1949, urgently convene a conference of the High Contracting Parties with the aim of ensuring respect for the Conventions in Israel and the oPt, in keeping with, *inter alia*, General Assembly Resolution A/Res/64/10.