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Amnesty International's updated assessment of Israeli and Palestinian investigations into the Gaza conflict

Introduction

This document presents Amnesty International's updated assessment of the Israeli and Palestinian investigations into allegations of crimes under international law committed during the 22-day conflict in Gaza and southern Israel between 27 December 2008 and 18 January 2009. It focuses on developments since Amnesty International's previous assessment of the investigations, released in September 2010.¹ It also analyses some of the flaws in Israel's system of investigations which are relevant to all the Israeli investigations conducted to date, including those concluded before September 2010. This analysis is offered to further explain Amnesty International's conclusion that both the Israeli government and the Hamas de facto administration have failed to conduct investigations that are credible, independent and in conformity with international law.² The Hamas de facto administration has completely failed to prosecute perpetrators of crimes under international law. As detailed below, Israel's Military Advocate General has indicted four soldiers on criminal charges in three different incidents relating to the 2008-2009 Gaza conflict. Given the scale and gravity of the Israeli violations identified in the report of the UN Fact-Finding Mission on the Gaza Conflict headed by Justice Richard Goldstone,³ Amnesty International concludes that two years after the conflict, the Israeli authorities have also failed to prosecute suspected perpetrators of crimes under international law.

Israeli investigations

Recent developments

The Israeli government's most recent report of its investigations into the conflict is *Gaza Operation Investigations: Second Update*, which it submitted to the UN Secretariat in July 2010.⁴ This document reported that 47 criminal investigations into incidents from the Gaza conflict had been opened by the Military Police Criminal Investigations Division (MPCID), part of the Israel Defense Forces (IDF).⁵ In addition to the MPCID investigations, the IDF has considered other incidents through operational debriefings, referred to as "command investigations" or "special command investigations" by the Israeli authorities. Israel's *Second Update* in July 2010 reported that over 100 operational debriefings had been or were being conducted.⁶ However, it only gave details on the conclusions of about 10 such debriefings, all of which found that the IDF actions considered were lawful, and did not reveal how many debriefings had been concluded and how many incidents were still under consideration.⁷ Since July 2010, the Israeli authorities have provided no further information on the progress or conclusions of the operational debriefings. As Amnesty International has previously noted,⁸ the army commanders conducting operational debriefings lack the training and expertise to conduct investigations into violations of international law.

The most recent Israeli comment on the investigations is an interview with Major Dorit Tuval, Deputy Military Advocate for Operational Affairs, published on the website of the IDF Military Advocate General (MAG) in March 2011, which notes that "five new MPCID investigations relating to the Gaza Operation have been initiated over the past few months, bringing the total number of criminal investigations to 52."⁹ She gives no details on the five new criminal investigations, and it is unclear from her statement how many of the 52 criminal investigations are still ongoing. The statement refers to three MPCID investigations that were concluded without leading to criminal proceedings or disciplinary charges,¹⁰ but in no way constitutes a

full accounting of the status of the 52 investigations initiated by the MPCID. Two of the investigations mentioned by Major Dorit Tuval were closed prior to July 2010, as they are covered in Israel's *Second Update*.¹¹

Amnesty International has previously noted that independent assessments of the Israeli military's operational debriefings on incidents from the Gaza conflict are impossible when the case is closed without being referred to a criminal investigation.¹² Palestinian and Israeli human rights groups have noted the paucity of criminal investigations initiated to date in light of the scale and gravity of violations committed by Israeli forces during the conflict, an assessment which Amnesty International shares.¹³ The lack of information released by the Israeli authorities over the past six months has made it impossible to monitor the progress of those cases in which criminal investigations *have* been initiated by the MPCID, or to evaluate decisions to close criminal investigations without proceeding to trial. Amnesty International recognizes that the IDF cannot report the results of investigations that are still under way, but believes that more than two years after the conflict, it is reasonable to expect a clear explanation of how many of the 52 MPCID investigations have been closed by the MAG without leading to criminal or disciplinary proceedings, and the rationale in each case. The lack of such an explanation means that Israel's investigations have failed to meet a minimum level of transparency, one of the principal criteria for investigations according to international standards.¹⁴

The Israeli authorities have also failed to communicate information on these investigations to organizations which have been providing legal representation for Palestinian victims and which filed the original complaints that formed the basis for some of the 52 MPCID investigations initiated. For example, the Palestinian Centre for Human Rights (PCHR) submitted 490 complaints to the military prosecutor, but received only 21 responses from the office of the MAG, 19 of which merely acknowledged receipt of the complaint. The PCHR notes that it learned from Israeli media reports that investigations on some of these cases were closed, but that it received no official communication of this from the MAG, and that it has received no updates on *any* of the criminal investigations initiated.¹⁵ Among the complaints filed by PCHR which the MAG acknowledged receiving are two cases that – according to Israel's *Second Update* and the interview with Major Dorit Tuval¹⁶ – were investigated and closed with no recommendation for criminal prosecutions: a case in which five members of the Abd al-Dayem family were killed by flechettes fired by an Israeli tank, and a case in which eight members of the Abu Halima family were killed.

One prominent case that was examined by the UN Fact-Finding Mission and various human rights groups and is the subject of an ongoing Israeli criminal investigation is the killing of some 21 members of the al-Sammouni family, who were sheltering in the home of Wa'el al-Sammouni when it was struck by missiles or shells on 5 January 2009.¹⁷ The Israeli military announced that an MPCID investigation had been opened into this incident on 6 July 2010.¹⁸ On 21 October 2010, Colonel Ilan Malka, who was commander of the Givati Brigade during Operation "Cast Lead" and was allegedly involved in approving the air strike which killed 21 members of the al-Sammouni family, was questioned under caution by military police. According to media reports, he claimed that he was unaware of the presence of civilians in the building when he approved the strike.¹⁹ The decision to approve the air strike was reportedly based on drone photographs of men from the al-Sammouni family breaking apart boards for firewood; the photographs were interpreted in the war room as Palestinians armed with rocket-propelled grenades. But at the time the photographs were received, the family had already been confined to the building and surrounded and observed by soldiers from the Givati Brigade in at least six different nearby outposts for more than 24 hours; at least some soldiers in these outposts would have known that the family were civilians since they themselves had ordered the family to gather in Wa'el al-Sammouni's home.²⁰ Some of these officers reportedly testified to the military investigators that they had warned Colonel Malka that there could be civilians in the area.²¹

Colonel Malka is currently Assistant Chief of Staff for Operations at IDF Central Command; his promotion to the rank of Brigadier-General was postponed due to the investigation.²² Senior military commanders, including Yoav Galant, former head of the IDF Southern Command, and the head of IDF Central Command, Avi Mizrahi, have reportedly opposed an MPCID investigation into the case, while others have praised Colonel Malka's professionalism and cautioned against turning him into a scapegoat.²³ Media reports have also cited recognition by unnamed Israeli military sources that the investigation is "explosive and highly sensitive material" which could open up a broader debate on the rules of engagement during Operation "Cast Lead" should an indictment be issued against Colonel Malka or others involved.²⁴ No such decision has yet been taken. Amnesty International is concerned that pressure from within the Israeli military could lead to further delays in the MPCID investigation or influence the MAG's decision on whether to press charges in the case.

The MAG has indicted four Israeli soldiers on criminal charges relating to Operation "Cast Lead" in three different incidents. One Israeli soldier from the Givati Brigade was convicted of credit card theft in November 2009; he was sentenced to seven and a half months' imprisonment and ordered to pay compensation.²⁵ Two other soldiers from the Givati Brigade indicted in a case relating to a nine-year-old Palestinian boy (Majed R.) who was ordered to open bags that the soldiers suspected were booby-trapped were convicted of "unbecoming conduct" and "exceeding authority" by a military court on 3 October 2010.²⁶ On 21 November 2010, they received three-month suspended sentences in the same court and were demoted from staff sergeant to private.²⁷ Neither the charges nor the sentences adequately reflected the gravity of the offences. The charge of "exceeding authority" carries a maximum prison sentence of three years; the military judges cited mitigating factors including "the personal circumstances of the defendants and their contribution to Israel's national security... their mental and physical fatigue at the time of the events, as well as the existential anxiety forming the background to the incident."²⁸

Amnesty International is concerned that pressure from within the Israeli military or groups supporting the soldiers may have unduly influenced the military court. Prominent Israeli military officials, including Major-General (Reserves) Uzi Dayan, who heads the National Security Council, made statements to the court supporting the soldiers, criticizing the military prosecution, and arguing that the military police should not investigate combat incidents, while public demonstrations of IDF soldiers and reservists wearing T-shirts saying "We are all Goldstone's victims" were held outside the court.²⁹ These demonstrations were noted by the Deputy Military Advocate for Operational Affairs, who stated that "the atmosphere surrounding the case... was highly emotional", and claimed that she was the target of graffiti with "demeaning and highly offensive remarks" at a prominent Tel Aviv intersection for her role in approving the indictment against the soldiers.³⁰

The Israeli authorities contend that military court proceedings are generally open to the public and Israeli media, and that many military court judgments are published online.³¹ In practice, lack of advance information on the dates and locations of the court hearings has sometimes prevented representatives from Israeli human rights organizations from attending these military trials, while the soldiers' supporters have reportedly packed the courtroom.³² Since the hearings take place in military bases inside Israel, representatives of human rights organizations based in Gaza are prevented from attending, even though they may have filed the complaints which led to the court case. Full transcripts of military court proceedings are not publicly available. The lack of human rights observers or full transcripts of the proceedings means that even though these military trials are open in theory, public scrutiny is in practice limited to media reports.

The final case in which criminal proceedings have been initiated concerns the killing of two women, 64-year-old Rayya Abu Hajjaj and her 35-year-old daughter, Majda Abu Hajjaj, on 4 January 2009 while they were walking with a group carrying white flags after being ordered by Israeli forces to leave their home in the Juhur al-Dik neighbourhood of Gaza City.³³ A brief review of the Israeli investigation into this case is illustrative. On 14 May 2009, B'Tselem

wrote to the MAG requesting an investigation into the killings, the responsibility of the command echelon and the orders given to the soldiers,³⁴ and a criminal investigation was subsequently initiated by the MPCID. According to media reports, the investigation suggested that Staff Sergeant S. had opened fire without receiving orders to do so from the senior officer on the scene; the IDF called the case “problematic” and the soldier was subsequently removed from his post in the Givati Brigade.³⁵ As later admitted by the Deputy Military Advocate for Operational Affairs, “at some point... although the investigation remained open, it had exhausted all possible avenues and could not go any further until subsequent information was brought to our attention that enabled further investigation.”³⁶

This information likely included the testimony of four Palestinian witnesses given to Israeli investigators on 8 October 2009 after this was arranged by B’Tselem, along with additional documentation provided by the Israeli NGO.³⁷ It may also have included a letter to the MAG reportedly sent in December 2009 by a reserve officer some eight months after he discovered that the fatal incident in question had not been reported to the IDF Southern Command at the time as required by military regulations.³⁸ Staff Sergeant S. was only questioned by the military police in 2010, and reportedly claimed that the lives of the Israeli soldiers present had been threatened, and that he had only “fired at the victims’ lower body.”³⁹ As described by Major Dorit Tuval: “According to the new findings, it appeared that an IDF soldier discharged his firearm in a manner inconsistent with the orders given to him by his superior officer resulting in the death of a civilian. However, the investigators could not make a positive identification of the civilian killed. The MAG thus ordered the indictment of the soldier on the charge of manslaughter of an unknown civilian.”⁴⁰ Given that only two women – Rayya and Majda Abu Hajjaj – were killed in the incident, and the extensive documentation and assistance provided by B’Tselem, which was acknowledged by the MAG,⁴¹ it is unclear why a “positive identification” of the civilian allegedly killed by Staff Sergeant S. could not be made.

The IDF’s announcement in July 2010 that an indictment for manslaughter had been filed in connection with the case noted gaps between the testimonies of Palestinian witnesses that two women had been killed, and soldiers’ testimony that a man had been shot and killed in the incident;⁴² in deciding on the charges, the MAG seems to have relied on soldiers’ testimony and disregarded that of the Palestinian witnesses. The discrepancy between the reported findings of the MPCID investigation and the facts established by B’Tselem and the UN Fact-Finding Mission call into question the likelihood that this process will result in truth, justice and reparations for the family of Rayya and Majda Abu Hajjaj. The case is still pending. An initial court hearing was held on 1 August 2010, but the trial was then suspended at the request of the defence,⁴³ which demanded an investigation into the delay in submitting the results of the initial probe after the incident to the IDF Southern Command and the MAG. No further court sessions have been held to date. In November 2010, the MAG announced a probe into why the Givati Brigade had not originally informed the IDF command of the incident; the battalion commander is reportedly being probed for “obstructing an investigation.”⁴⁴

Analysis: Israel’s flawed system of investigations

On 19 December 2010, the MAG submitted a position paper on “the system for examining and investigating allegations of misconduct and violations of the Laws of Armed Conflict” by the IDF to an Israeli investigatory body, the Public Commission to Examine the Maritime Incident of 31 May 2010 (chaired by Justice Jacob Turkel, and known as the Turkel Commission).⁴⁵ The paper defends the IDF’s investigation systems and procedures as meeting the standards of international humanitarian law, and argues that only international humanitarian law (and not international human rights law) applies to the “ongoing armed conflict between Israel and the Palestinian terrorist organizations, including the Hamas regime in Gaza.” It also contends that Israel’s military justice system is sufficiently independent, and has sufficient civilian oversight, to carry out credible investigations that comply with Israel’s obligations under international humanitarian law. This section analyses the systemic flaws in

Israel's investigations, in light of the MAG position paper submitted to the Turkel Commission and previous Israeli documents.⁴⁶

Amnesty International continues to have serious concerns that the Israeli investigations – carried out by IDF commanders or the MPCID as directed by the MAG – lack independence, impartiality, transparency, appropriate expertise, and sufficient investigatory powers. The International Law Department, part of the MAG Corps, provides the IDF with legal advice for its military operations, including “the legality of targeting, the legality of various means and methods of warfare and the formulating of rules of engagement.”⁴⁷ The department was intimately involved in the planning and execution of Operation “Cast Lead.”⁴⁸ But the MAG Corps is also responsible for reviewing complaints, deciding whether to refer complaints for a “command investigation” (an operational debriefing) or a criminal investigation by the MPCID, reviewing the results of command investigations and recommending disciplinary action, and – through its Prosecutorial Division under the Chief Military Prosecutor – reviewing the results of criminal investigations and determining whether to proceed with a military prosecution.⁴⁹ This creates a clear conflict of interest for the MAG Corps as the key decision-making body in Israel's system of military investigations, and for the Military Advocate General, Major-General Avihai Mandelblit, who oversees the different departments within it. This assessment is shared by key Israeli and Palestinian human rights organizations which deal directly with the MAG.⁵⁰ The central role of the MAG, and the fact that *all* the Israeli investigations into the Gaza conflict have been conducted by military bodies, means that the Israeli investigations into alleged violations clearly fail to meet the key criteria of independence and impartiality.

Under Israel's military justice system, both command and criminal investigations can only be initiated into specific incidents, and the criteria for initiating a criminal investigation are quite restrictive. This makes it extremely difficult for these investigations to consider the policy decisions taken by senior military officials (often based on advice received from the MAG), and precludes the possibility of examining the decisions of civilian policy-makers. Yet the scale and gravity of Israeli violations during Operation “Cast Lead” indicate that the IDF's unlawful conduct during the conflict was the result of policy decisions, and not merely violations committed by individual soldiers.⁵¹ Amnesty International concurs with Palestinian and Israeli human rights organizations that the Israeli investigations fail to examine the legality of policy decisions such as the legitimacy of different categories of targets, weapons permitted, interpretation of the principle of proportionality, and rules of engagement, and are thus fundamentally flawed and insufficient.⁵²

The fact that after over two years, only four Israeli soldiers of relatively low rank have been indicted for violations during the conflict is not surprising in light of these structural flaws. Nor is the fact that the indictments in two of the three cases failed to reflect the gravity of the crimes committed. As described above, the two Givati Brigade soldiers who forced a nine-year-old boy to open bags they suspected of being booby-trapped, effectively using him as a “human shield”, in violation of international humanitarian law, were charged with “exceeding authority” and “engaging in unauthorised conduct.”⁵³ Staff Sergeant S., who allegedly shot and killed a civilian in a group that been ordered to evacuate by Israeli forces and were carrying white flags, was charged with manslaughter rather than wilful killing.⁵⁴

Finally, Israel's lack of transparency on the status of the investigations impedes the ability of local and international human rights groups to monitor and scrutinise the investigations, and casts doubt on the credibility of the investigations themselves. Amnesty International concurs with the Committee of Independent Experts that transparency regarding both the process and results of the investigations is critical.⁵⁵ More than two years after the conflict, the MAG continues to maintain that a significant number of criminal investigations into cases of “unique complexity” are ongoing,⁵⁶ but Palestinian victims and the organizations representing them have consistently been denied information on the progress of these military investigations. The Israeli authorities have not reported transparently on the status of the different investigations or explained the rationale for decisions made in many of those that have concluded. The lack of accountability to victims and independent monitors concerning

the investigation processes severely undermines the potential of those investigations that are still ongoing to ensure accountability or justice for Palestinian victims of the conflict.

Hamas investigations

The Hamas de facto administration previously submitted two reports on its investigations to the Office of the High Commissioner for Human Rights (OHCHR) in Gaza: a report entitled *Status of the implementation of the recommendations of the International Fact-Finding Mission Report on the Israeli aggression on Gaza 12/2008-1/2009*, submitted on 2 February 2010,⁵⁷ and another document entitled *Report on the implementation of the recommendations of the UN Fact-Finding Mission on the situation in Gaza*, submitted on 28 July 2010.⁵⁸ The latter was prepared by the Independent Committee to Follow up the Implementation of the Recommendations of the Report of the United Nations Fact-Finding Mission on the Gaza Conflict (the “Gaza Committee”), an external six-person committee established by the Hamas de facto administration.

As Amnesty International has previously noted,⁵⁹ neither of these reports dealt substantively with the violations committed by Palestinian armed groups during the conflict, particularly the indiscriminate firing of rockets into southern Israel. The UN Fact-Finding Mission concluded: “these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and... 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.”⁶⁰ Despite the claims of the Hamas authorities that the Gaza Committee was an independent body, Amnesty International found no evidence from the two reports submitted to the OHCHR, or subsequent media reports, that it had conducted credible, independent investigations meeting international standards into the serious violations committed by Palestinian armed groups during the conflict. Furthermore, the Hamas authorities have made no moves to prosecute suspected perpetrators of crimes under international law, specifically those responsible for the firing of indiscriminate rockets into southern Israel, which has continued periodically during 2010 and 2011, though to a far lesser degree than during the 2008-2009 conflict.⁶¹ In September 2010, Amnesty International thus concluded that the Hamas de facto administration had failed to fulfil its obligation to conduct credible, independent investigations, and failed to prosecute suspected perpetrators of crimes under international law.⁶²

Amnesty International has not changed this assessment, but notes that according to a recent statement on the website of the Ministry of Justice of the Hamas de facto administration, Minister of Justice Mohammed Faraj Al-Ghoul submitted a new report prepared by the Gaza Committee to the Committee of Independent Experts for a deadline of 14 March 2011.⁶³ This report is not public and Amnesty International has not been able to review it.

Palestinian Authority investigations

The Palestinian Independent Investigation Commission, the body established by the Palestinian Authority to follow up on the report of the UN Fact-Finding Mission, submitted its report to the UN Secretariat in July 2010.⁶⁴ Because the Commission lacked access to the Gaza Strip, it was not able to investigate allegations of serious violations by Palestinian armed groups during the conflict, including the firing of indiscriminate rockets into southern Israel. Nevertheless, as noted previously by Amnesty International,⁶⁵ the Commission undertook serious investigations into violations of human rights law in both the West Bank and the Gaza Strip. In the West Bank, the Commission examined detention and torture, violations of what it termed “the right to assume public office”, violations of press freedom, violations of the freedom to form associations, and violations of the freedom to assemble peacefully. In Gaza, it examined, to the extent that it was able, detention and torture, and violations of the right to life. It also made detailed recommendations to the Palestinian Authority and recommended that criminal prosecutions be initiated against suspected perpetrators of violations.

However, since the submission of the report in July 2010, no prosecutions against Palestinian Authority officials for violations such as arbitrary detention, torture, and ill-treatment – which continue to be reported all too frequently by organizations such as the Independent Human Rights Commission – have been initiated to Amnesty International's knowledge. Eight months after publication of the Palestinian Independent Investigation Commission's report, action to implement its recommendations remains limited. The Palestinian Authority must initiate prosecutions against suspected perpetrators of violations, and take concrete steps to implement the report's more systemic recommendations, in order to ensure accountability for serious violations by its security forces and government officials.

Conclusions

More than two years since Operation "Cast Lead", Palestinian and Israeli victims are still waiting for justice, and it is evident that the domestic authorities are unable or unwilling to provide it. The Israeli government and the Hamas de facto administration have failed to conduct investigations that are credible, independent and in conformity with international law, and failed to prosecute perpetrators of violations of international law, including war crimes and possible crimes against humanity, identified by the UN Fact-Finding Mission on the Gaza Conflict in its September 2009 report. The failure to implement the recommendations of the UN Fact-Finding Mission and the continuing impunity for violations committed during the 2008-2009 Gaza conflict has reinforced the impunity for ongoing violations committed by Israel, the Palestinian Authority, and the Hamas de facto administration. This cycle of injustice and impunity perpetuated by the domestic authorities will not be broken without recourse to international justice mechanisms.

Recommendations

To the Human Rights Council

Amnesty International calls on the Human Rights Council to adopt a resolution at its 16th session that:

- condemns the failure of the Israeli authorities and Hamas de facto administration to conduct credible, independent investigations or prosecute perpetrators of violations;
- refers the September 2010 report and the March 2011 report of the Committee of Independent Experts to the UN General Assembly, and urges the General Assembly to call on the UN Security Council to refer the situation in Gaza to the International Criminal Court (ICC);
- notes that the ICC Prosecutor has yet to request a determination from the Pre-Trial Chamber on whether the ICC has jurisdiction to investigate war crimes committed during the Gaza conflict, pursuant to a declaration accepting ICC jurisdiction submitted by the Palestinian Authority in January 2009, and requests him to do so urgently; and
- calls on states to fulfil their duty to investigate and prosecute crimes committed during the conflict before their national courts by exercising universal jurisdiction.

To the Prosecutor of the ICC

Amnesty International calls on the Prosecutor of the ICC to urgently seek a determination from the Pre-Trial Chamber on whether the Court has jurisdiction to act pursuant to the declaration of the Palestinian Authority issued on 22 January 2009.

If the Pre-Trial Chamber determines that the declaration triggers the ICC's jurisdiction, Amnesty International urges the Prosecutor to seek authorization to open an investigation into crimes committed by both sides during the Gaza conflict, without delay.

To all states

Amnesty International notes that under international law all states can and should exercise universal jurisdiction to investigate and prosecute war crimes committed during the conflict before their national courts.

- ¹ Amnesty International, *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010 (<http://www.amnesty.org/en/library/info/MDE15/022/2010/en>).
- ² The investigations carried out by the Israeli and Hamas authorities fail to meet the principal criteria (independence, impartiality, thoroughness, effectiveness and promptness) identified by a Committee of Independent Experts established by the UN Human Rights Council on the basis of international standards (see UN document A/HRC/15/50, 21 September 2010, para. 21), nor the criteria outlined by Amnesty International (*Credible, Independent and Conforming to International Standards: Criteria for domestic investigations into violations relating to the conflict in Gaza and southern Israel*, 22 December 2009, <http://www.amnesty.org/en/library/info/MDE15/032/2009/en>).
- ³ *Report of the UN Fact-Finding Mission on the Gaza Conflict*, UN document A/HRC/12/48, 25 September 2009, (available at <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>).
- ⁴ The report is available at <http://www.mfa.gov.il/NR/rdonlyres/1483B296-7439-4217-933C-653CD19CE859/0/GazaUpdateJuly2010.pdf>, and also in UN document A/64/890, Annex 1.
- ⁵ *Gaza Operation Investigations: Second Update*, p. 6.
- ⁶ *Gaza Operation Investigations: Second Update*, p. 5, which states that "Israel has launched over 150 military investigations, including both MPCID criminal investigations and command investigations."
- ⁷ Two operational debriefings led to disciplinary action (but not criminal charges) against an IDF officer for his involvement in the Israeli attack on the Ibrahim al-Maqadma Mosque in Beit Lahiya on 3 January 2009, and against a Brigadier General and a Colonel in relation to the Israeli attack on the UNRWA field office in Tel al-Hawa on 15 January 2009. For details see *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010, p. 4-5, (<http://www.amnesty.org/en/library/info/MDE15/022/2010/en>).
- ⁸ *Ibid*, p. 3.
- ⁹ "Investigating the Gaza Operation: 101 with the Deputy Military Advocate for Operational Affairs", 9 March 2011 (<http://www.law.idf.il/163-4544-en/Patzar.aspx?pos=1>).
- ¹⁰ *Ibid*. The three closed investigations mentioned are into "the alleged shooting of four Palestinian civilians on 7 January 2009 in the neighbourhood of Izbat Abd Rabbo"; into the use of white phosphorus and the "close-range shooting of evacuating civilians" from the Abu Halima family on 4 January 2009; and into the killing of five members of the Abd al-Dayem family in Beit Hanoun on 5 January 2009 after an Israeli tank fired flechettes at the condolence tents where they were mourning relatives killed previously. In all three cases, the MAG concluded that there was no basis to initiate criminal proceedings. The statement says that following the al-Dayem investigation, the MAG recommended that the IDF "revise the standing orders on the use of flechette munitions" and that this recommendation was "fully accepted and implemented", but it does not give details on how the standing orders were revised.
- ¹¹ See: *Gaza Operation Investigations: Second Update*, p. 24 on the shooting in Izbat Abd Rabbo, and p. 25-26 on the Abd al-Dayem family.
- ¹² *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010, p. 3. Operational debriefings are also problematic as a means of investigating serious violations because they are designed to elicit lessons towards improving future military performance rather than to identify criminal behaviour or potential criminal responsibility, and evidence given by soldiers in these debriefings is confidential and not subject to external review. For further information on operational debriefings, see Palestinian Centre for Human Rights (PCHR), *Genuinely Unwilling: An Update, The Failure of Israel's Investigative and Judicial System to Comply with the Requirements of International Law, with particular regard to the Crimes Committed during the Offensive on the Gaza Strip*, August 2010, p. 43-47.
- ¹³ *Ibid*, p. 62; PCHR et al, "Joint written statement submitted by the Palestinian Centre for Human Rights, Fédération Internationale des Droits de l'homme (FIDH), BADIL Resource Center for Palestinian Residency and Refugee Rights, Al-Haq, Law in the Service of Man, non-governmental organizations in special consultative status", UN document A/HRC/16/NGO/68, p. 3; B'Tselem, "Better late than never: even two years since Operation Cast Lead, an independent Israeli investigation is crucial to achieve accountability and prevent future violations", 18 January 2011 (http://www.btselem.org/English/Press_Releases/20110118.asp).
- ¹⁴ See: *Report of the Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in light of General Assembly resolution 64/254*, UN document A/HRC/15/50, 21 September 2010, para. 21; Amnesty International, *Credible, Independent and Conforming to International Standards: Criteria for domestic investigations into violations relating to the conflict in Gaza and southern Israel*, 22 December 2009 (<http://www.amnesty.org/en/library/info/MDE15/032/2009/en>).
- ¹⁵ "Memorandum on the Status of Domestic Investigations Conducted into Alleged Violations of International Law committed in the Context of Operation 'Cast Lead'", made public on 3 March 2011 (<http://pchgaza.org/files/2011/PCHR%20Memorandum.pdf>).
- ¹⁶ *Gaza Operation Investigations: Second Update*, p. 25-26; "Investigating the Gaza Operation: 101 with the Deputy Military Advocate for Operational Affairs", 9 March 2011 (<http://www.law.idf.il/163-4544-en/Patzar.aspx?pos=1>).
- ¹⁷ See Amnesty International, *Israel/Gaza: Operation 'Cast Lead': 22 Days of Death and Destruction*, July 2009 (Index: MDE 15/015/2009), p. 20-22; *Report of the UN Fact-Finding Mission on the Gaza Conflict*, UN document A/HRC/12/48, 25 September 2009, para. 712-716, 723-730.
- ¹⁸ "IDF Military Advocate General Takes Disciplinary Action, Indicts Soldiers Following Investigations into Incidents during Operation Cast Lead", 6 July 2010 (<http://dover.idf.il/IDF/English/Press+Releases/10/07/0601.htm>).
- ¹⁹ Hanan Greenberg, "IDF commander questioned over Gaza killing", YNet, 22 October 2010 (<http://www.ynetnews.com/articles/0,7340,L-3973310,00.html>); Amos Harel and Anshel Pfeffer, "IDF probes top officers

on Gaza war strike that killed 21 family members”, *Ha’aretz*, 22 October 2010 (<http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>).

²⁰ Amira Hass, “What led to IDF bombing house full of civilians during Gaza war?”, *Ha’aretz*, 24 October 2010 (<http://www.haaretz.com/print-edition/features/what-led-to-idf-bombing-house-full-of-civilians-during-gaza-war-1.320816>). Hass utilized testimony by soldiers from the Givati Brigade to Israeli NGO Breaking the Silence, as well as testimony by Palestinian witnesses, in preparing this report.

²¹ Harel and Pfeffer, 22 October 2010, (<http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>).

²² Greenberg, 22 October 2010 (<http://www.ynetnews.com/articles/0.7340.L-3973310.00.html>). Colonel Malka was also disciplined for authorizing the shelling of the UNRWA field office in Tel al-Hawa with shells containing white phosphorus on 15 January 2009. See B’Tselem, “Cover-up of phosphorous shelling in Gaza proves army cannot investigate itself”, 1 February 2010 (http://www.btselem.org/English/Press_Releases/20100201.asp). To Amnesty International’s knowledge, the IDF has still not explained the decision for a disciplinary hearing rather than criminal proceedings in this case.

²³ Harel and Pfeffer, 22 October 2010 (<http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>); Greenberg, 22 October 2010 (<http://www.ynetnews.com/articles/0.7340.L-3973310.00.html>).

²⁴ Harel and Pfeffer, 22 October 2010 (<http://www.haaretz.com/print-edition/news/idf-probes-top-officers-on-gaza-war-strike-that-killed-21-family-members-1.320505>).

²⁵ “Soldier who stole credit card during Gaza op jailed”, YNet, 8 November 2009, (<http://www.ynetnews.com/articles/0.7340.L-3760488.00.html>).

²⁶ Roi Mandel, “Court: Soldiers endangered Palestinian boy”, YNet, 3 October 2010, (<http://www.ynetnews.com/articles/0.7340.L-3963116.00.html>).

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³⁴ Ibid.

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⁴³ “Israeli soldier in court over Gaza war deaths”, *The Jordan Times*, 2 August 2010 (<http://www.jordantimes.com/?news=28842>).

⁴⁴ Pfeffer, *Ha’aretz*, 18 November 2010 (<http://www.haaretz.com/news/diplomacy-defense/idf-officer-suspected-of-blocking-probe-into-gaza-civilian-death-1.325391>).

- ⁴⁵ The full paper has only been issued in Hebrew (available at http://www.mag.idf.il/SIP_STORAGE/files/9/949.pdf). A brief English summary is also available (<http://www.mag.idf.il/163-4505-en/patzar.aspx>). In addition to its mandate to examine Israel's naval blockade on the Gaza Strip and the Israeli raid of 31 May 2010 on the flotilla, the Turkel Commission was asked to examine "whether the examination and investigation process for complaints and allegations raised with regard to violations of the law of combat, as generally practiced in Israel and as implemented with regard to the incident under consideration, is consistent with the obligations of the State of Israel pursuant to the rules of international law", (The Turkel Commission, *Report; Part One*, p. 17). The Commission will present its analysis on the IDF's system of investigations in the second part of its report, which has yet to be released.
- ⁴⁶ *Gaza Operation Investigations: An Update*, January 2010; *Gaza Operation Investigations: Second Update*, July 2010.
- ⁴⁷ See "International Law Department", <http://www.law.idf.il/456-en/Patzar.aspx>.
- ⁴⁸ B'Tselem, "Israel's report to the UN misstates the truth", 4 February 2010 (http://www.btselem.org/English/Gaza_Strip/20100204_Israels_Report_to_UN.asp).
- ⁴⁹ *Gaza Operation Investigations: An Update*, January 2010, p. 12-13; see also "Criminal proceedings in the military courts" (<http://www.law.idf.il/647-2350-en/Patzar.aspx>), and "Military Prosecution Service" (<http://www.mag.idf.il/452-en/Patzar.aspx>).
- ⁵⁰ PCHR, *Genuinely Unwilling*, p. 30-31; B'Tselem, "Israel's report to the UN misstates the truth", 4 February 2010.
- ⁵¹ Ibid; *Report of the UN Fact-Finding Mission on the Gaza Conflict*, UN document A/HRC/12/48, 25 September 2009, para. 1213-1215.
- ⁵² B'Tselem, "Israel's report to the UN misstates the truth"; PCHR, *Genuinely Unwilling*, p. 40.
- ⁵³ "Military Prosecution Indicts Two IDF Staff Sergeants for Engaging in Unauthorized Conduct During Operation Cast Lead", 11 March 2010 (<http://dover.idf.il/IDF/English/Press+Releases/10/03/1102.htm>).
- ⁵⁴ PCHR, *Genuinely Unwilling*, p. 64; "Following B'Tselem's action, prosecution of soldier appears likely on charges of killing Majda and Riyeh Abu Hajaj", 16 June 2010 (http://www.btselem.org/english/Gaza_Strip/20100616_Soldier_to_be_charged_with_killing_two_Gazan_women.asp).
- ⁵⁵ *Report of the Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in light of General Assembly resolution 64/254*, A/HRC/15/50, 21 September 2010, para. 21.
- ⁵⁶ "Investigating the Gaza Operation: 101 with the Deputy Military Advocate for Operational Affairs", 9 March 2011 (<http://www.law.idf.il/163-4544-en/Patzar.aspx?pos=1>).
- ⁵⁷ This report, in Arabic, is available online (<http://www.gmo.ps/ar/upload/uploads/files/Minfo-11188536.pdf>).
- ⁵⁸ This report, also in Arabic, was previously available on the Hamas de facto administration's Ministry of Justice website, www.moj.ps; Amnesty International has a copy.
- ⁵⁹ Amnesty International, *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010 (<http://www.amnesty.org/en/library/info/MDE15/022/2010/en>).
- ⁶⁰ *Report of the UN Fact-Finding Mission on the Gaza Conflict*, UN document A/HRC/12/48, 25 September 2009, para. 108.
- ⁶¹ The decrease in rocket fire since Operation "Cast Lead" is confirmed by Israeli governmental and military sources. See: "Rocket Attacks Towards Israel" (<http://idfspokesperson.com/facts-figures/rocket-attacks-toward-israel>) and "Palestinian ceasefire violations since the end of Operation Cast Lead" (<http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Palestinian ceasefire violations since end Operation Cast Lead.htm>).
- ⁶² Amnesty International, *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010 (<http://www.amnesty.org/en/library/info/MDE15/022/2010/en>).
- ⁶³ See: "Special committee in the Ministry of Justice prepares a report answering the questions of the Committee of Independent Experts established by the UN Human Rights Council", in Arabic (http://www.moj.ps/ar/index.php?option=com_content&view=article&id=634:2011-03-16-09-36-09&catid=31:2010-01-03-07-48-26&Itemid=44).
- ⁶⁴ The report is Annex 2 of UN document A/64/890 (available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/890>). The website of the Palestinian Independent Investigation Commission is <http://www.picigr.ps>
- ⁶⁵ Amnesty International, *Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict*, 27 September 2010 (<http://www.amnesty.org/en/library/info/MDE15/022/2010/en>).