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Report of the UN Fact Finding Mission on the Gaza Conflict: The ICJ urges end to impunity

The International Commission of Jurists welcomed today the release of the report by the Fact Finding Mission on the Gaza conflict presented to the Human Rights Council pursuant its resolution S-9/1 (A/HRC/12/48). Its report comprehensively assesses the major violations of international law and incidents allegedly including war crimes and crimes against humanity committed during the war in Gaza by Israel, and to some extent also by the Palestinian armed groups.

„Time has come for the accountability for gross violations of human rights and international crimes committed during the recent Gaza conflict. For too many years both Israelis and Palestinians have failed to investigate, prosecute and bring to justice the alleged perpetrators of these crimes, in a systematic, consistent and fair way. This failure is resulting in a permanent impunity operation,” says Wilder Tayler, Acting Secretary-General of the International Commission of Jurists.

“The international community cannot any longer remain passive in the face of the atrocities of the crimes committed, thereby condoning their impunity. The enforcement of the rule of law to address gross violations of human rights and international crimes is required. The international community has the means to prepare the ground for the investigation and possible prosecution of military and political leaders as well as other persons responsible for gross violations of international law”, Tayler adds. *“Accountability should be exercised by instituting the proceedings by the International Criminal Court, action by the UN Security Council under Chapter VII of the Charter and by invoking universal jurisdiction, as victims’ access to justice cannot be delayed by yet another expert investigation.”*

The Fact Finding Mission was mandated to investigate all violations of international human rights law and international humanitarian law that might have been committed by the Israel Defence Forces (IDF) and Hamas and other Palestinian armed groups at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

The Mission’s report concludes – as does the separate report of the High Commissioner for Human Rights on the implementation of Human Rights Council’s resolution S-9/1 – that the domestic investigation by the Israeli military into the possible war crimes and crimes against humanity allegedly committed by the Israeli Defence Forces have been largely ineffective as they lacked safeguards of independence and impartiality. Nor have the investigations of the crimes committed by the Palestinian armed groups been effective.

Given the 60 years of impunity for gross violations of human rights and for international crimes committed in the region by all parties involved, and the complex legal situation, it is the duty of each state and of the international community as a whole to put an end to impunity of perpetrators of all violations of international law, in particular of the international crimes committed during this painful conflict.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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The ICJ therefore calls on the Council to forward the report to the UN Security Council, which should act under Chapter VII of the UN Charter and refer the situation to the Court's Prosecutor to ensure compliance by Israel and the Palestinian authorities and groups with the Fact Finding Mission's recommendations and the observance of international law.

In parallel, the ICJ urges the International Criminal Court's Prosecutor to seek the Court's ruling under the Rome Statute on whether it would establish its territorial jurisdiction over the Occupied Palestinian Territories should the Court decide to apply the Rome Statute in relation to the signature of the Rome Statute by the Palestinian Authorities.

Finally, recalling the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, the ICJ reminds the State Parties to the Geneva Conventions of their duty to investigate and bring to justice the alleged perpetrators of war crimes, including by invoking universal jurisdiction. In addition, under customary international law, States have the right to prosecute and bring before national criminal tribunals the alleged perpetrators of crimes against humanity, irrespective of who and where the alleged perpetrators or the victims are, their nationalities or where the crimes was committed.

"This situation of permanent denial of justice and impunity cannot continue, as it undermines the system of international accountability and justice and hampers the need for redress of the civilian population", Wilder Tayler concludes.

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