



Amnesty International's written statement to the 28th session of the UN Human Rights Council: Accountability is the only way to prevent further war crimes in Israel and the Occupied Palestinian Territories

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Six years ago, the UN Fact-Finding Mission on the Gaza Conflict was mandated by the Human Rights Council (HRC) to investigate violations of international law committed in the context of the military operations in Gaza during the period from 27 December 2008 to 18 January 2009. Its September 2009 report rightly stressed that long-standing impunity had been “a key factor in the perpetuation of violence in the region and in the reoccurrence of violations.” Among other recommendations, the Fact-Finding Mission urged the Security Council to refer the situation in Gaza to the Prosecutor of the International Criminal Court (ICC) after six months if the Israeli and Palestinian authorities did not conduct independent investigations meeting international standards into the serious violations, including war crimes and crimes against humanity, which it documented.

Both the Israeli authorities and the Hamas de facto administration in the Gaza Strip failed to conduct investigations that were independent, impartial and effective in identifying those responsible. Some 1,400 Palestinians, the majority of them civilians, were killed during that 22-day conflict. The Israeli military opened 52 criminal investigations, but the vast majority were closed without any indictments, and only four Israeli soldiers of relatively low rank were eventually charged. The most severe sentence was given to a soldier convicted of credit card theft, not the two soldiers who effectively used a nine-year-old boy as a “human shield”, or the soldier charged in relation to the killing of two women walking in a group carrying white flags. The Hamas administration in the Gaza Strip failed to conduct investigations into the firing of indiscriminate rockets towards civilian areas in Israel, a war crime, and did not hold anyone accountable for the abductions, unlawful killings, and torture of alleged Palestinian “collaborators” and others during and after the conflict. Despite the clear failure of the domestic authorities to provide justice, truth and reparation to victims on either side, the Security Council failed to act.

Since the Fact-Finding Mission's report was submitted to the HRC, there have been two additional major conflicts in Gaza and Israel, in November 2012 and July-August 2014. There is prima facie evidence that during both conflicts Israeli forces and Palestinian armed groups again committed serious violations of international humanitarian law, including war crimes. Following both conflicts, the domestic authorities have either completely failed to investigate alleged violations or, in Israel's case, the investigations have been conducted by the Israeli military itself. Key decisions in Israel's system of military investigations, including whether to open a criminal investigation and whether to file charges, continue to rest with Israel's Military Advocate General (MAG), who is also responsible for legal advice during military operations, including all three recent Gaza/Israel conflicts. To date no one on either side has been held accountable for violations during either the November 2012 or the July/August 2014 conflicts, although the MAG reportedly plans to indict several soldiers for incidents of looting during the most recent conflict. Indeed, after the November 2012 conflict, in which Israeli forces killed more than 100 Palestinian civilians and committed attacks Amnesty International believes

should have been independently investigated as possible war crimes, the Israeli military did not open a single criminal investigation.

The scale of destruction, death and injury wrought by Israeli forces in the Gaza Strip during the 50-day conflict in 2014 was unprecedented, even in comparison with previous conflicts. According to UN figures, more than 2,250 people were killed in the Gaza Strip, including over 530 children and some 1,000 other civilians, while over 11,000 people were injured. An estimated 117,000 people were left homeless, and over 100,000 other housing units were damaged. Six months after the ceasefire, reconstruction has barely begun, due to Israel's continuing restrictions on imports and unfulfilled funding pledges. Palestinian armed groups fired thousands of indiscriminate rockets and mortars into civilian areas of Israel during the conflict. Six Israeli civilians, including a child, were killed by rockets or mortars fired from Gaza, dozens were injured by shrapnel, and civilian property in Israel was damaged. Sixty-six Israeli soldiers were also killed.

During the 2014 conflict and afterwards, the Israeli authorities have consistently denied access to the Gaza Strip to independent human rights researchers, including Amnesty International and the UN Independent Commission of Inquiry on the 2014 Gaza Conflict, mandated by the HRC. Israel's non-co-operation with the HRC and UN human rights mechanisms extends well beyond the Commission of Inquiry; indeed, Israel recently denied access to the UN Special Rapporteur on violence against women, who was invited by the Palestinian authorities to help strengthen their capacity to promote and protect women's rights. Amnesty International urges the Council to insist that the Israeli and Egyptian authorities provide unimpeded access to the Gaza Strip for human rights investigators. Furthermore, the Council must insist that Israel facilitate imports of desperately needed construction materials and completely lift its blockade of the Gaza Strip, now in its eighth devastating year. As noted by the Fact-Finding Mission in 2009, the blockade and the policies comprising it not only violate the Fourth Geneva Convention by collectively punishing Gaza's entire population of 1.8 million, but could also constitute persecution, a crime against humanity. The blockade must not be allowed to continue, and Israeli decision-makers responsible for continuing it should be held criminally accountable.

Despite the denial of access, Amnesty International documented prime facie evidence of serious violations, including war crimes, by Israeli forces and Palestinian armed groups during the most recent conflict. Throughout the conflict, the Israeli military attacked inhabited civilian homes in the Gaza Strip, in some cases killing entire families in their homes without warning. Intentionally directing attacks against civilians not directly participating in hostilities, or against civilian objects such as homes, is a war crime. In the last days of the conflict, Israeli aerial attacks destroyed multistorey landmark buildings in Gaza. Although residents were warned in advance of those attacks, statements by Israeli officials indicate that they were carried out deliberately and without military necessity, which would constitute a war crime. Israeli forces also attacked ambulances, hospitals, and medical workers during the conflict, in some cases targeting them directly.

Amnesty International has collected dozens of testimonies on cases in which Israeli forces appear to have committed similarly grave violations of international humanitarian law, including war crimes, especially during military operations in Khuza'a between 22 July and 4 August, and in Rafah between 1 and 4 August 2014.

The Israeli military has announced a limited number of criminal investigations into cases from the 2014 conflict, but criminal investigations have not been opened into the vast majority of cases documented by Amnesty International and other human rights organizations. An update issued by the MAG on 7 December 2014 stated that eight criminal investigations were opened into cases where the alleged violations indicated prima-facie grounds for a reasonable suspicion of misconduct, five of which were incidents of looting. Two investigations concern

incidents documented by Amnesty International of civilians being used by the Israeli military as “human shields” and a civilian killed while carrying a white flag.

According to the same update, approximately 100 other incidents have been referred to the General Staff Mechanism for Fact-Finding Assessments, established by the Israeli military to examine what it described as “exceptional incidents” during the conflict. About 50 of these cases have been referred back to the MAG for a decision. Of those, the MAG has ordered a criminal investigation into only five cases to date: the attack on the Abu Jame’ family home in Khan Younis on 20 July 2014, which killed 25 members of the extended family; the killings of paramedics Mohammed al-‘Abadlah near Khan Younis and A’ed Bor’I near Beit Hanoun, both on 25 July 2014; an attack on an UNRWA school in Beit Hanoun on 24 July 2014, which killed displaced civilians sheltering there; and an attack on 16 July 2014 which killed four children playing on the beach in Gaza City. Most of these attacks were documented by Amnesty International; all could be war crimes. Israel’s past military investigations do not provide grounds for optimism that its current criminal investigations will lead to prosecution of suspects, particularly military and civilian commanders, or that if cases do proceed and lead to convictions, sentences imposed will correspond to the gravity of the alleged crimes.

During the July-August 2014 conflict, Palestinian armed groups fired thousands of indiscriminate rockets and mortars – which cannot be aimed accurately – into Israel. Statements by Hamas and Palestinian armed groups indicate that some of these attacks were intended to kill or injure civilians. Hamas forces also summarily killed at least 23 people in the Gaza Strip who allegedly “collaborated” with Israel. These acts must be investigated as war crimes, Amnesty International has no information indicating that either the Palestinian national consensus government, formed under President Mahmoud Abbas on 2 June 2014, or the Hamas authorities, who still run Palestinian governmental institutions in the Gaza Strip, have conducted credible investigations meeting international standards into these crimes.

The climate of impunity in Israel and the Occupied Palestinian Territories extends well beyond the armed conflict violations outlined above and perpetuates other types of systematic violations. In particular, Amnesty International would like to highlight Israel’s continuing expansion of illegal settlements in the occupied West Bank, and the concomitant forced displacement of Palestinians, both of which could be examined as crimes under international law, and the increasing number of unlawful killings in the West Bank by Israeli forces.

Amnesty International welcomed Palestine’s accession to the ICC and its declaration accepting the Court’s jurisdiction from 13 June 2014, under Article 12(3) of the Rome Statute, as important steps towards justice for victims on both sides, and welcomed the Prosecutor’s announcement of a preliminary examination following the declaration. The HRC, its members and observer states must oppose any retaliation against the Palestinian authorities for acceding to the ICC, and encourage all parties to co-operate with the ICC Prosecutor. However, Amnesty International notes that Palestine’s declaration accepting ICC jurisdiction over crimes committed since 13 June 2014 will not allow the Prosecutor to consider crimes committed in the 2008-2009 or November 2012 conflicts. For this reason, Amnesty International has called on Palestine to reissue a declaration along the lines of its January 2009 one, which accepts the ICC’s jurisdiction over crimes committed on “the territory of Palestine since 1 July 2002”.

In its September 2009 report, the Fact-Finding Mission recommended that the HRC request that the Secretary-General bring its report to the attention of the Security Council under Article 99 of the UN Charter, as well as formally submitting the report to the ICC Prosecutor. The HRC could still take both of those actions, and should do so without further delay, as well as pressing for implementation of the 2009 Fact-Finding Mission’s recommendations. The HRC must give the Commission of Inquiry’s findings and recommendations serious consideration, refrain from politicizing the Commission’s report, and take all appropriate measures to ensure accountability. To this end, the HRC should submit the Commission of Inquiry’s report to the General Assembly and recommend that it transfer the report to the Security Council; request that the Secretary-General bring the report

directly to the attention of the Security Council; and formally submit the report to the ICC Prosecutor. The HRC should establish a follow-up mechanism to the Commission of Inquiry, and insist that Israel and the Palestinian authorities co-operate with it. Finally, the HRC must ensure that all avenues towards justice for victims remain open, including by encouraging all states to fulfil their obligation to exercise universal jurisdiction over crimes under international law.