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Justice for victims of Gaza conflict hangs in balance

One year to the day after a United Nations fact-finding mission concluded that both Israeli forces and Palestinian armed groups committed war crimes, possible crimes against humanity and other grave violations of international law during the 2008-09 conflict in Gaza and southern Israel, Amnesty International condemned the continuing absence of accountability and warned that the victims' hopes for justice now hang in the balance.

During its current session, which started on Monday, the UN Human Rights Council is due to consider the report of a Committee of Experts it appointed in March 2010 to examine what steps the Israeli and Palestinian sides have taken to investigate the crimes allegedly committed by their forces, and the extent and effectiveness of these investigations.

Amnesty International believes that the Council must also consider whether the time has now come to seek an international justice solution especially if, as seems inevitable according to Amnesty International's own assessment of the investigations, the Committee of Experts reports that neither of the two sides has conducted adequate investigations or taken steps to ensure justice and accountability for crimes their forces committed.

The report of the United Nations Fact-Finding Mission on the Gaza Conflict, headed by Judge Richard Goldstone, recommended that the government of Israel and the relevant authorities in the Gaza Strip should be allowed six months to conduct good-faith investigations. In response, the UN Human Rights Council and the General Assembly called on both Israeli and Palestinian authorities to carry out investigations which are independent, credible and meet international standards.

On the basis of the information currently available to it, Amnesty International's assessment is that both the Israeli authorities and the Hamas de facto administration have failed to fulfil their obligation to carry out such investigations and to demonstrate a commitment to prosecuting perpetrators of crimes under international law. If this is confirmed by the Committee of Experts, the Human Rights Council must conclude that the two authorities have missed their opportunity to ensure accountability for the victims of the conflict through domestic means and support international justice solutions, including the potential involvement of the International Criminal Court (ICC).

Although neither Israel nor the Palestinian Authority have ratified the Rome Statute of the ICC, on 22 January 2009, the Palestinian Minister of Justice on behalf of the Palestinian National Authority submitted a declaration to the ICC accepting its jurisdiction over crimes "committed on the territory of Palestine since 1 July 2002." The declaration would potentially cover all crimes documented in the Fact-Finding Mission report.

A number of leading international law experts have expressed the view that, although the status of Palestine as a state is disputed, the Palestinian Authority is entitled to make such a declaration.

If the Committee of Experts' report confirms that the local authorities are unable or unwilling to investigate and prosecute the crimes genuinely, the Prosecutor of the ICC should seek an

official judicial determination on whether the ICC has jurisdiction. If it does, the Prosecutor should request the ICC Pre-Trial Chamber to authorize an investigation without delay. If the Pre-Trial Chamber determines that the ICC Prosecutor is unable to act on the Palestinian Authority's declaration, the UN Security Council has the ability to refer the situation to the ICC Prosecutor.

Furthermore, irrespective of the findings of the Committee of Experts and the status of the ICC's investigation, Amnesty International notes that under international law all states can exercise universal jurisdiction over crimes under international law committed during the conflict. Consequently, individuals against whom there is evidence of involvement in committing war crimes or other serious violations of international law should be arrested and tried if they enter states exercising universal jurisdiction.

Background

Between 27 December 2008 and the 18 January 2009, around 1,400 Palestinians and 13 Israelis were killed during the 22-day conflict; three of the Israelis and hundreds of the Palestinian fatalities were civilians.

Issued on 15 September 2009, the report of the Fact-Finding Mission, which was led by the distinguished South African jurist Judge Richard Goldstone, documented a series of grave violations by Israeli forces that included attacks on UN facilities, civilian property and infrastructure, and medical facilities and personnel, as well as incidents in which large numbers of civilians were killed and injured as a result of reckless conduct, disregard for civilian lives and failure to distinguish between military targets and civilians. It also said that the firing of indiscriminate rockets from Gaza into southern Israel by Hamas and other Palestinian armed groups constituted a war crime.

Resolution 13/9, adopted by the Human Rights Council on 25 March 2010, requested that the UN Secretary-General present a comprehensive report to the Council at its 15th session (13 September to 1 October 2010) on the progress made in implementing the recommendations of the Fact-Finding Mission by all concerned parties. In August 2010 the Secretary-General requested that the High Commissioner for Human Rights transmit the documents received concerning domestic investigations from the Israeli and Palestinian UN missions to the Council's Committee of Experts. The Secretary-General's Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict did not include material from the Hamas de facto administration, nor did it provide a substantive assessment on the adequacy of the Israeli and Palestinian investigations.

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