

# AMNESTY INTERNATIONAL

## BRIEFING



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### **Israel/OPT: The International Criminal Court must investigate war crimes**

An International Criminal Court (ICC) investigation is essential to break the culture of impunity which perpetuates the commission of war crimes and crimes against humanity in Israel and the Occupied Palestinian Territories. The case for such action is made all the more compelling in the light of the ongoing serious violations of international humanitarian law being committed by all parties to the current hostilities in the Gaza Strip and Israel.

Amnesty International has documented war crimes and crimes against humanity by Israeli forces, Hamas and Palestinian armed groups over many years. The immense number of civilian deaths, as well as the destruction and displacement in the Gaza Strip, under intensive Israeli bombardment since 8 July 2014, on the one hand, and the continuing toll of indiscriminate rockets fired by Palestinian armed groups on civilians in Israel, on the other, only make ending this impunity more urgent. Neither the Israeli nor the Palestinian authorities have taken meaningful efforts to stop serious violations of international humanitarian law that are endemic during the cycles of conflict, or to bring those responsible to justice. Ending the systematic impunity for past crimes would serve as a deterrent against their repetition, and is thus a critical component to ensuring the protection of civilians on both sides in the long term.

This document sets out the measures that can and should be taken to establish the jurisdiction of the ICC. It also briefly describes the patterns of violations during the current hostilities, and points to some of the previous crimes which Amnesty International believes should potentially be investigated by the ICC.

#### **Initiative by the UN Human Rights Council**

Amnesty International welcomes the decision of the Human Rights Council to establish a commission of inquiry into violations committed “in the context of the military operations since 13 June 2014”, and notes that the language of the [resolution](#) allows the commission to examine violations and abuses by all parties. The commission’s report, due in March 2015, should include concrete recommendations to ensure justice for victims of the conflict and an end to the cycle of impunity.

#### **The ICC must address impunity to stem tide of egregious violations**

The ICC was established, among other reasons, to ensure that those who commit war crimes and crimes against humanity will, regardless of rank or status, face justice. The continuing failure by the Israeli and Palestinian authorities and the international community at large to ensure an end to the unlawful killing and wounding of civilians and the destruction of civilian property, as well as other crimes, is unconscionable.

The ICC must be enabled to exercise jurisdiction over the situation in Israel and Palestine. The Prosecutor of the ICC must promptly determine whether to initiate an investigation into the situation in order to bring to justice those responsible for committing war crimes and crimes against humanity. Doing so would send a strong message to all sides that such crimes can no longer be committed with impunity.

The ICC could exercise jurisdiction over war crimes and crimes against humanity committed by all parties in Israel and the Occupied Palestinian Territories if one or more of the following took the necessary action: the ICC Prosecutor, the Palestinian Authority, Israel, or the UN Security Council.

Different measures by these four main actors could establish the jurisdiction of the ICC. Given the dire situation at present, Amnesty International calls on each of these actors to pursue the respective measures outlined below fully and simultaneously in order to establish the ICC's jurisdiction as soon as possible. Once the ICC's jurisdiction is established, by any of the routes described below, Amnesty International urges the ICC Prosecutor to make a prompt determination on whether to open an investigation.

### **The ICC Prosecutor should seek a judicial determination regarding the validity of the Palestinian Authority's 2009 declaration**

At the end of January 2009, following Israel's Operation "Cast Lead" against the Gaza Strip, the Palestinian Authority issued a declaration under Article 12(3) of the Rome Statute of the ICC, accepting the ICC's jurisdiction over crimes committed on "the territory of Palestine since 1 July 2002".

If it were accepted by the Pre-Trial Chamber of the ICC, this declaration would give the ICC jurisdiction over crimes committed by both sides during Operation "Cast Lead" as well as other crimes that have been committed since 1 July 2002.

In response to the submission of the declaration, the ICC Prosecutor opened a preliminary examination. He focused first on whether Palestine was a state for the purposes of the Rome Statute – one of four criteria the Prosecutor considers in deciding whether to open an investigation. More than three years later, in April 2012, the Office of the Prosecutor controversially decided that the declaration was invalid and closed the preliminary examination. The decision was based on the fact that the status granted to Palestine by the UN General Assembly at the time the declaration was made was that of "observer" and not "non-member State". In view of the fact that UN member status is not determinative of statehood, Amnesty International criticized the Prosecutor's failure to refer the question of jurisdiction to the ICC judges in accordance with Article 19(3) of the Rome Statute for a thorough and transparent judicial determination. Palestine was recognized as a non-member observer state by the UN General Assembly on 29 November 2012.

Further to the Palestinian Authority's 2009 declaration, reports indicate that, last week, a lawyer submitted a complaint to the ICC Prosecutor on behalf of Palestinian Minister of Justice Saleem al-Saqqa regarding allegations of crimes committed prior to and during Operation "Protective Edge", launched by Israeli forces on 8 July 2014.

Amnesty International calls on the Office of the Prosecutor to immediately review its decision that the 2009 declaration is invalid and refer the matter to the Pre-Trial Chamber for an urgent ruling.

### **The Palestinian Authority should issue another declaration accepting the ICC's jurisdiction over crimes committed since 1 July 2002, accede to the ICC's Statute**

In view of the different contentions regarding the legal effects of the 2009 declaration, the Palestinian Authority should lodge another declaration with the Registrar of the ICC. In the new declaration, the Palestinian Authority should accept the ICC's jurisdiction over crimes committed since 1 July 2002. It should also simultaneously submit with the UN Secretary General instruments acceding to the Rome Statute. In recent days senior officials have indicated that the Palestinian Authority has decided to accede to the Rome Statute, but no accession has yet been deposited.

With 1.8 million Palestinians in the Gaza Strip currently enduring the third major Israeli military operation in under six years and the massive destruction it has wrought, and with a list of possible war

crimes that demand investigation growing by the day, the Palestinian Authority must issue a further declaration and accede to the Rome Statute without delay.

Although Amnesty International considers that the Prosecutor should in any case refer the 2009 declaration to the Pre-Trial Chamber for its decision on admissibility and jurisdiction, a new declaration would directly bring the question before the Prosecutor again. This would also allow the Prosecutor to consider developments since 2009 which may serve to confirm Palestine's ability to deposit a valid declaration and accede to the Rome Statute. In particular, on 29 November 2012, the UN General Assembly adopted a resolution confirming Palestine as a non-member observer state. Furthermore, on 2 April 2014 Palestine deposited instruments of accession to the Geneva Conventions and 15 multilateral treaties, including key human rights treaties, which have been accepted by the relevant depositaries. To date, only three of the 193 UN member states – Canada, Israel and the USA – have objected to these accessions.

### **Israel should accede to the Rome Statute and issue a declaration accepting the ICC's jurisdiction since 1 July 2002**

Historically, Israel has supported efforts to develop international justice mechanisms, including universal jurisdiction and early efforts towards establishing an international court, in part out of a recognition that ad hoc tribunals such as the Nuremberg and Tokyo tribunals established after World War II would not serve as an effective deterrent to prevent future genocide, crimes against humanity and war crimes. Israel signed the Rome Statute of the ICC on 31 December 2000. However, in August 2002 Israel unsigned the Statute, stating that it did not intend to become a party to the treaty.

Amnesty International urges Israel to reconsider its opposition to the ICC and to commit to the rule of law by acceding to the Rome Statute. The ICC represents an avenue towards justice for Israeli victims of crimes under international law committed by Palestinian armed groups.

In addition, Amnesty International urges Israel to make a declaration accepting the jurisdiction of the ICC since 1 July 2002, in accordance with Article 12(3) of the Rome Statute, in order to give the ICC jurisdiction over past war crimes and crimes against humanity.

Israel's opposition to the ICC and international justice mechanisms has shielded perpetrators of crimes under international law, but it does not serve the interests of Israeli victims, who have the right to effective remedies, or of ordinary Israelis, who continue to live under the threat of indiscriminate rockets.

### **The UN Security Council should refer the situation to the ICC Prosecutor**

The UN Security Council can also trigger the ICC's jurisdiction by referring the situation to the ICC Prosecutor. In September 2009, the report of the UN Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, recommended that the Security Council should refer the situation to the ICC Prosecutor if, within six months, the domestic authorities had not undertaken good faith independent investigations into war crimes and crimes against humanity which the Fact-Finding Mission had documented. Almost five years later, despite overwhelming evidence that investigations meeting international standards have not been conducted, the Security Council has failed to act. Members of the Security Council, and in particular the permanent members, should set aside their geopolitical interests and act in the interests of Palestinian and Israeli victims of crimes under international law.

The Palestinian Authority has been consistently pressured by the USA and Israel, which are not parties to the ICC Statute, not to take any steps that would give the ICC jurisdiction. In addition, several states which are parties to the Rome Statute and claim to support the ICC, including Canada, the UK, and other EU member states, have also opposed Palestinian accession to the ICC or other measures that would give it jurisdiction over crimes under international law. For the UK and other EU member states, such opposition to action towards accountability for war crimes in Israel and the Occupied Palestinian

Territories contradicts their stated policy of supporting the ICC as a key mechanism to end impunity. Some of these countries have previously threatened to condition financial or diplomatic support for the Palestinian Authority on the latter renouncing accountability mechanisms, or at least delaying substantive measures that would give the ICC jurisdiction, on the grounds that such moves would be detrimental to Israeli-Palestinian negotiations sponsored by the USA. The Palestinian Authority is heavily dependent on international assistance from donor states, including for the provision of essential health services, education, and infrastructure.

Amnesty International is opposed to any attempts to prevent the Palestinian Authority from lodging a declaration or acceding to the Rome Statute. These efforts entrench impunity for crimes under international law committed in Israel and the Occupied Palestinian Territories, and prevent both Palestinian and Israeli victims from accessing justice through the ICC. Instead, all states – including the USA, Canada and EU member states – should publicly call on the Palestinian Authority and Israel to accede to the ICC. At a minimum, all states providing assistance to the Palestinian Authority should publicly state that their assistance, as well as diplomatic support, would not be negatively affected by its accession to the ICC.

In March 2011, both the USA and UK voted against a Human Rights Council resolution calling on the UN General Assembly to submit the 2009 report of the UN Fact-Finding Mission on the Gaza Conflict to the Security Council so that the latter could consider referring the situation to the ICC. The Human Rights Council adopted this resolution after the Fact-Finding Mission report had determined that both Israeli forces and Hamas committed war crimes during the 2008-2009 Israel/Gaza conflict, and after two reports by a committee of independent experts highlighted the failure of the Israeli authorities and the Hamas de facto administration to conduct credible and effective investigations. Amnesty International and many other human rights organizations had also documented the failure of Israel and the Hamas de facto administration in the Gaza Strip to investigate the crimes. The February 2013 report of the government-appointed Turkel Commission in Israel found serious flaws in Israel's system of investigating violations by its military. The Commission made 18 recommendations to address these failings, but almost none of them have been implemented, as far as Amnesty International is aware.

At this juncture, more than three years after the Human Rights Council resolution mentioned above, when the General Assembly has still taken no substantive action on the 2009 report of the Fact-Finding Mission, and civilians in Gaza and Israel are living through yet another deadly conflict, Amnesty International urges the UN Security Council to step in and provide the ICC with jurisdiction.

This time, the UN Security Council must take decisive action by referring the situation in Israel and the Occupied Palestinian Territories since 1 July 2002 to the ICC Prosecutor and demanding that all states co-operate fully with the ICC.

Amnesty International calls on all permanent veto-holding members of the Security Council, including the USA and UK, not to block the referral. The organization recalls that both the USA and UK strongly criticized the decision by Russia and China to veto a resolution in May 2014 that would have referred the situation in Syria to the ICC Prosecutor. It urges them not to adopt a blatant double standard by rejecting a referral in this very serious situation to protect their own geo-political interests.

Amnesty International notes that experience has demonstrated that ending impunity and ensuring respect for human rights and international humanitarian law is absolutely essential in order to achieve a just and sustainable peace in Israel and the Occupied Palestinian Territories.

### **Violations of international humanitarian law during the current Israel/Gaza conflict**

Since Israel launched Operation “Protective Edge” on 8 July 2014, more than 1,400 Palestinians in the Gaza Strip have been killed, approximately three quarters of them civilians, according to initial UN documentation, and well over 8,000 have been injured, many of them seriously. Israeli forces have carried out indiscriminate attacks in densely populated areas and direct attacks on civilian homes and other civilian objects, violating international humanitarian law and, predictably, killing and injuring

many civilians across the Gaza Strip; some of these attacks are likely to be war crimes. Medical and humanitarian supplies and assistance have been hugely disrupted and, in some cases, attacked, and critical water, sanitation and electricity infrastructure has been badly damaged.

Thousands of homes across the Gaza Strip, at least 23 medical facilities, governmental buildings, media offices, and water and sanitation infrastructure across the Strip have been destroyed or badly damaged. All 1.8 million people in the Gaza Strip are living with minimal supplies of unsafe water; in some areas, water has been cut off for days due to continued attacks. On 29 July, Israeli forces struck Gaza's only power plant, knocking it out of commission and destroying Gaza's primary electricity source, in an attack that very likely constituted a war crime and the collective punishment of Gaza's entire population. Hospitals, already overwhelmed, targeted, and lacking essential medicines and equipment due to the seven-year blockade on the Gaza Strip, are now facing additional fuel and power shortages as scores of casualties continue to stream in.

Israeli forces have instructed hundreds of thousands of residents of entire areas of the Gaza Strip to move to shelters or other areas, leading to mass displacement of Palestinian civilians. The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported an estimated 250,000 internally displaced people as of 31 July 2014, sheltering in schools run by the UN Relief and Works Agency (UNRWA) or Ministry of Education, or government or public buildings. Up to 200,000 other displaced people are staying with relatives or in private homes. At least six UNRWA schools have been struck directly, in some cases killing and injuring civilians who had fled to the schools hoping to find refuge. Some 137 schools across the Gaza Strip have been damaged during the hostilities. There are no bomb shelters in Gaza, and repeated attacks on UNRWA schools serving as shelters have proven that nowhere in Gaza is safe for civilians.

Statements by the Israeli military and politicians that they consider the homes of people associated with Hamas, including the homes of political leaders, to be legitimate targets indicate that Israel has adopted targeting rules that do not conform to international humanitarian law, and could be evidence that at least some of the attacks on civilian homes are deliberate policy. Although the Israeli authorities claim to be warning civilians in Gaza, a consistent pattern has emerged that their actions do not constitute an "effective warning" under international humanitarian law. Increasing reports that medics trying to evacuate dead or injured civilians, workers trying to repair damaged water and sanitation infrastructure, and journalists are coming under fire, killing and injuring some of them, are another very serious concern. Direct attacks on civilians and civilian objects, as well as indiscriminate and disproportionate attacks that are intentional and kill or injure civilians, are war crimes.

Throughout the three-week conflict, Hamas' military wing and other Palestinian armed groups have fired over 2,900 indiscriminate rockets and mortars into Israel. The rockets and mortars cannot be aimed accurately at military targets, which means that firing them is in itself a war crime, but statements by Hamas and Palestinian armed groups also indicate that some of the attacks have intended to kill or injure civilians. Three civilians in Israel have been killed, and at least 29 others, including children, have been wounded by shrapnel and shattered glass, according to Israel's emergency medical service, which has also treated hundreds of other people for light injuries (mostly shock) since the beginning of Operation "Protective Edge". (In addition, at least 61 Israeli soldiers have been killed since the Israeli military ground operation began on 17 July 2014.) Homes and other civilian properties in Israel have also been damaged. People in a large part of Israel need to run to shelters multiple times each day, and many people from towns and cities in southern Israel have left their homes. In other Israeli communities, such as the "unrecognized" Bedouin villages in the Negev/Naqab, there are no bomb shelters, and civilians are completely unprotected from indiscriminate attacks.

Palestinian armed groups in the Gaza Strip are also violating international humanitarian law by launching rockets from residential areas, in some cases very close to civilian buildings, and storing munitions in residential areas, in some cases inside civilian buildings. This endangers Palestinian civilians in Gaza and violates the obligation to take all feasible precautions to protect civilians in the areas they control from the effects of attacks.

## **Impunity for previous war crimes, crimes against humanity, and other serious violations of international law**

Prior to the current hostilities in Gaza and Israel, Amnesty International has documented war crimes, crimes against humanity, and other persistent violations of international law by Israel, Hamas, and Palestinian armed groups over many years.

During an eight-day conflict between the Israeli military and Palestinian armed groups in the Gaza Strip in November 2012, codenamed Operation “Pillar of Defense” by Israel, more than 165 Palestinians were killed, including more than 30 children and some 70 other civilians. Amnesty International documented some 18 missile strikes in which civilians who were not directly participating in the hostilities were killed, as well as other types of indiscriminate and disproportionate attacks, including attacks on media offices. Four Israeli civilians were killed by indiscriminate rockets fired from Gaza. Israel’s Military Advocate General has not opened any criminal investigations into any alleged violations from this offensive to Amnesty International’s knowledge. Nor did the Hamas de facto administration conduct effective investigations into violations by Palestinian armed groups in the Gaza Strip during the conflict, including the firing of indiscriminate rockets and the summary killings of seven Palestinians detained for alleged “collaboration” with Israel.

Operation “Cast Lead”, Israel’s 22-day military offensive on the Gaza Strip which ended on 18 January 2009, killed some 1,400 Palestinians, a majority of whom were civilians, and destroyed large areas of the Gaza Strip. Thirteen Israelis, including three civilians, were killed during the conflict. Both sides committed serious violations of international humanitarian law, including war crimes. Israeli forces killed civilians using precision weaponry, launched indiscriminate attacks which failed to distinguish legitimate military targets from civilians, and attacked civilian property and infrastructure, UN facilities, and medical facilities and personnel. Israeli forces also used weapons in ways which constituted indiscriminate attacks, such as air-bursting white phosphorus in densely populated civilian areas. Hamas’ military wing and other Palestinian armed groups launched indiscriminate rocket and mortar attacks on southern Israel. Both the Israeli government and the Hamas de facto administration failed to conduct credible, independent investigations meeting international standards. The Hamas de facto administration completely failed to prosecute perpetrators of crimes under international law, while Israel’s Military Advocate General eventually indicted only four soldiers on criminal charges in three different incidents.

The period between the beginning of the second Intifada in September 2000 and the 2008-2009 war – particularly its first five years – was characterized by mass violations of human rights and international humanitarian law, including war crimes and crimes against humanity.

During this period, Israeli forces killed some 4,000 Palestinians, most of them unarmed civilians and including some 800 children. Many were killed in air strikes, artillery shelling and other attacks against refugee camps and densely populated residential areas throughout the Occupied Palestinian Territories. Others were extrajudicially executed in attacks which killed scores of bystanders. Israel detained thousands of Palestinians for prolonged periods as administrative detainees, without charge or trial, and subjected many detainees to torture and other ill-treatment. Israel also carried out unlawful home demolitions on a mass scale in the Gaza Strip and the West Bank. It built the 700-kilometre fence/wall through the West Bank and through parts of Jerusalem, causing massive long-term damage to Palestinian life and undermining the ability of those living in scores of villages and communities to realise a wide range of their human rights, and continued to establish and expand unlawful settlements. All of these unlawful policies and actions persist until today.

In the same period, Palestinian armed groups killed more than 1,100 Israelis, some 750 of them civilians and including 120 children, in suicide bombings and shooting attacks in buses, restaurants, shopping malls and other areas frequented by civilians.

**For Amnesty International statements on the current hostilities:**

[Israel/Gaza: Attack on UN school in Gaza a potential war crime that must be investigated](#) (30 July 2014)

[Israel/Gaza conflict: Questions and Answers](#) (25 July 2014)

[Statement to the UN Human Rights Council: The human rights situation in the Occupied Palestinian Territory, including East Jerusalem](#) (23 July 2014)

[Israel/Gaza: Attacks on medical facilities and civilians add to war crime allegations](#) (21 July 2014)

[Israel/Gaza: Prevent further war crimes after Israeli ground assault](#) (18 July 2014)

[Israel/Gaza: UN must impose arms embargo and mandate an international investigation as civilian death toll rises](#) (11 July 2014)

[Israel/Gaza: All sides must protect civilians as conflict escalates](#) (8 July 2014)

**For Amnesty International documents on the November 2012 Israel/Gaza conflict:**

[A year on from deadly Israel/Gaza conflict, the nightmare continues](#) (14 November 2013)

[Israel's military investigations into Gaza conflict violations strengthen impunity](#) (17 April 2013)

[Israel/Gaza conflict: UN must impose arms embargo, send international monitors immediately](#) (19 November 2012)

**For Amnesty International reports on the 2008-2009 Israel/Gaza conflict:**

[Operation "Cast Lead": 22 Days of Death and Destruction](#) (1 July 2009)

[Fuelling Conflict: Foreign arms supplies to Israel/Gaza](#) (23 February 2009)

[The conflict in Gaza: A briefing on applicable law, investigations and accountability](#) (19 January 2009)

**For Amnesty International documents on Israel's system of military investigations:**

[Amnesty International's updated assessment of Israeli and Palestinian investigations into the Gaza conflict](#) (18 March 2011)

[Amnesty International's assessment of Israeli and Palestinian investigations into Gaza conflict](#) (26 September 2010)

**For other Amnesty International reports documenting crimes under international law in Israel and the Occupied Palestinian Territories since July 2002:**

[Trigger-happy: Israel's use of excessive force in the West Bank](#) (27 February 2014)

[Torn apart by factional strife](#) (24 October 2007)

[Enduring occupation: Palestinians under siege in the West Bank](#) (4 June 2007)

[Road to nowhere](#) (1 December 2006)

[Under the rubble: House demolition and destruction of land and property](#) (17 May 2004)

[Israel must end its policy of assassinations](#) (4 July 2003)

[Shielded from scrutiny: IDF violations in Jenin and Nablus](#) (4 November 2002)

[Without distinction - attacks on civilians by Palestinian armed groups](#) (10 July 2002)