

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: MDE 15/021/2010
23 September 2010

Time for international justice solution for Gaza conflict victims

As the Human Rights Council prepares to consider next Monday, 27 September, a report by a UN Committee of Independent Experts into domestic investigations into the 22-day conflict in Gaza and southern Israel which ended on 18 January 2009, Amnesty International calls on the UN body to seek an international justice solution for the victims.

The report issued earlier this week supports Amnesty International's evaluation that the domestic investigations carried out by both the Israeli government and the Hamas de facto administration in Gaza into alleged violations of international law committed by both sides have failed to meet the required international standards of independence, impartiality, thoroughness, effectiveness and promptness.

Israel's investigations, undertaken and overseen by the military, including some involved in the military operation in Gaza, have lacked independence, appropriate expertise and transparency. At least 65 military probes have been closed without opening criminal investigations; they include probes into Israeli attacks on UN facilities, civilian property and infrastructure, medical facilities and personnel, attacks using white phosphorus and other attacks in which many civilians were killed and injured.

In Gaza, the Hamas de facto administration has failed to mount credible investigations into alleged violations by its forces and other Palestinian armed groups, including the firing of indiscriminate rockets into Israel that killed three civilians and injured others during the conflict.

More than one year has passed since the UN Fact-Finding Mission on the Gaza Conflict, headed by Judge Richard Goldstone, identified allegations of grave violations of international law, including war crimes and possible crimes against humanity, committed by both sides and recommended that the government of Israel and the relevant authorities in the Gaza Strip be given six months to undertake good faith investigations.

Amnesty International considers that the domestic authorities have been given more than adequate time and opportunity to ensure justice for victims. Their failure to do so requires an international justice solution.

Although neither Israel nor the Palestinian Authority have ratified the Rome Statute of the International Criminal Court (ICC), on 22 January 2009, the Palestinian Minister of Justice on behalf of the Palestinian Authority (PA) 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 in both Gaza and Israel.

Irrespective of the status of the ICC's jurisdiction, Amnesty International notes that under international law all states can and should investigate and prosecute crimes committed during the conflict before their national courts by exercising universal jurisdiction over crimes under international law.

Amnesty International is therefore calling on the Human Rights Council to:

- recognize the failure of the investigations conducted by Israel and the Hamas de facto administration to comply with international standards;
- call on the ICC Prosecutor urgently to seek a determination by the Pre-Trial Chamber on whether the ICC has jurisdiction over the Gaza conflict;
- call on states to investigate and prosecute crimes committed by both sides during the conflict before their national courts by exercising universal jurisdiction;
- refer the Committee's report to the Council's parent body, the General Assembly; and
- request that the UN Secretary-General place the report before the Security Council.

Background

The UN Committee of Independent Experts was established by Human Rights Council resolution 13/9 adopted on 25 March 2010. It was chaired by Professor Christian Tomuschat, an international jurist and expert on international human rights and international humanitarian law, and also included Judge Mary McGowan David, a former justice of the Supreme Court of the State of New York and consultant for the ICC and the International Criminal Tribunal for Rwanda, and Param Cumaraswamy, a jurist and human rights expert. The Committee met Palestinian bodies charged with carrying out investigations in both the West Bank and Gaza, but the government of Israel refused to co-operate with it.

On 21 September 2010 the Committee of Independent Experts released an advanced version of their report (available at:

http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.50_AEV.pdf).

Christian Tomuschat summarized the report's finding by saying that the investigations by the Israelis and Palestinians "remain incomplete in some cases or fall significantly short of meeting international standards in others"

The Committee challenged both the impartiality and transparency of the Israeli investigations. It was not clear to the Committee how many of the 36 specific incidents documented in the UN Fact-Finding Mission's report of September 2009, including some alleged to involve war crimes, Israel had actually investigated. The Committee also noted that, to date, the Israeli investigations had resulted in just one conviction (relating to credit card fraud) and three indictments, all of which involve low-ranking soldiers. In addition, the Committee concluded that Israel had not conducted investigations into decision-making at the highest levels about the design and implementation of the Gaza operations.

The Committee also robustly criticized the investigations undertaken by the Hamas de facto administration in Gaza noting that these did not seriously address the recommendations of the UN Fact-Finding Mission and dealt inadequately with the firing of indiscriminate weapons into southern Israel by Palestinian armed groups.

Finally, the Committee made a generally positive evaluation of investigations conducted by the Independent Investigation Commission established by the PA into violations of international human rights law by public officials in the West Bank, but noted that these had yet to result in any criminal proceedings. The PA was not a party to the 22-day conflict and the Commission was not able to investigate the firing of indiscriminate weapons into southern Israel by Palestinian armed groups in Gaza.

According to the Rome Statute, the ICC has the power to exercise its jurisdiction over persons for the most serious crimes of international concern, including war crimes and crimes against humanity. If the ICC determines that it is unable to act on the PA's declaration, the UN Security Council has the ability to refer the situation to the ICC Prosecutor.

On 26 February 2010 the UN General Assembly called on the Secretary-General to report to it within a period of five months on the Israeli and Palestinian investigations. However, neither of the reports released by the Secretary-General on 26 July and 11 August constituted a substantive assessment of the domestic investigations.