

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

Index: MDE 15/021/2011

25 March 2011

### **UN resolution must be translated into international justice for Gaza conflict victims**

Today's UN Human Rights Council resolution on the 2008-2009 conflict in Gaza and southern Israel, although flawed in some respects, creates a crucial opportunity for international justice for victims if the UN General Assembly acts decisively.

The resolution urges the UN General Assembly to address the continuing impunity for war crimes and possible crimes against humanity committed in the 2008-2009 Gaza conflict by calling on the UN Security Council to refer the situation to the Prosecutor of the International Criminal Court (ICC). Amnesty International is urging the General Assembly to move the process towards international justice forward as swiftly as possible.

Palestinian and Israeli victims of the 22-day conflict in Gaza and southern Israel have been waiting for justice for more than two years, and the domestic authorities have shown that they are unable or unwilling to provide it. Amnesty International has been calling for international justice solutions to end the cycle of injustice and impunity. The General Assembly must now ensure that the issue is placed on the Security Council's agenda in a way that facilitates meaningful action, in particular referral to the ICC.

Today's resolution was drafted by the Palestinian Authority and adopted by the Human Rights Council with 27 states voting in favour, three against, and 16 abstentions. It follows the second report of a Committee of Independent Experts, established to monitor the domestic investigations into violations committed during the conflict, which was submitted to the Human Rights Council on 18 March 2011. The report concurred with Amnesty International's assessment that – more than 18 months since the UN Fact-Finding Mission on the Gaza Conflict documented crimes under international law committed by both sides – the Israeli authorities and the Hamas de facto administration have failed to conduct investigations meeting the required international standards of independence, impartiality, thoroughness, effectiveness and promptness.

The September 2009 report of the UN Fact-Finding Mission, led by Justice Richard Goldstone, concluded that both the Israeli military and Palestinian armed groups had committed war crimes and possibly crimes against humanity during the conflict. It recommended that if the authorities failed to conduct credible, independent investigations meeting international standards within six months, the Security Council should refer the issue to the ICC. Today's resolution adopted by the Human Rights Council recommends that the General Assembly reconsider the UN Fact-Finding Mission report at its 66<sup>th</sup> session, which begins in September 2011, and refer the report to the Security Council, which has not yet considered it.

The General Assembly has already twice called on the domestic authorities to conduct credible, independent investigations into the serious violations of international humanitarian and international human rights law documented by the UN Fact-Finding Mission, in resolutions adopted in November 2009 and February 2010. Those calls have clearly been ignored, and the General Assembly must submit the issue to the Security Council without delay. In doing so, the General Assembly should also ensure that the two reports of the Committee of Independent Experts are brought before the Security Council, despite the fact that today's Human Rights Council resolution failed to refer these reports to the General Assembly.

Meanwhile, Amnesty International notes that the ICC Prosecutor has yet to seek a determination from the judges of the Pre-Trial Chamber on whether he can open an investigation into crimes committed during the conflict on the basis of a declaration issued by the Palestinian Authority in January 2009. That declaration accepted the jurisdiction of the ICC over crimes “committed on the territory of Palestine since 1 July 2002.” Legal experts dispute whether the Palestinian Authority is a “state” capable of making such a declaration under the Rome Statute. If the judges were to determine that the ICC could act on the declaration, a referral by the Security Council would not be required for the ICC to open an investigation. Amnesty International continues to urge the ICC Prosecutor to seek this determination as soon as possible.

In the face of overwhelming evidence that the domestic authorities are denying justice to both Palestinian and Israeli victims, Amnesty International also continues to urge all states to investigate and prosecute crimes under international law committed during the conflict before their national courts by exercising universal jurisdiction.

Since January 2011, Amnesty International has collected almost 109,000 petition signatures from its members and supporters around the world calling on the Human Rights Council – which failed to take meaningful action at its 15<sup>th</sup> session in September 2010 – to support international justice for the victims.

### **Background**

Operation “Cast Lead”, Israel’s 22-day military offensive on the Gaza Strip which ended on 18 January 2009, killed 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 violated international humanitarian law. 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. Hamas’ military wing and other Palestinian armed groups launched indiscriminate rocket and mortar attacks on southern Israel.

Today’s Human Rights Council resolution, drafted and proposed by the Palestinian Authority, does not include a direct reference to violations committed by Palestinian armed groups during the conflict, or to the Hamas authorities’ failure to conduct adequate investigations. It also fails to refer the two reports of the Committee of Independent Experts to the General Assembly. Amnesty International has criticized the draft resolution on both counts (see <http://livewire.amnesty.org/2011/03/21/un-body-can-help-bring-international-justice-for-gaza-conflict-victims/#more-3189>). The USA, the UK and Slovakia voted against the resolution, while European Union members abstained, as did a number of other countries.

The report of the UN Fact-Finding Mission on the Gaza Conflict of September 2009 is available at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>

Amnesty International’s updated assessment of the Israeli and Palestinian investigations is available at: <http://www.amnesty.org/en/library/info/MDE15/018/2011/en>

The reports of the Committee of Independent Experts are available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.50\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.50_en.pdf) and [http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24\\_AUV.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.24_AUV.pdf)