

Request to file in South Africa charges against Israelis suspected of war crimes and crimes against humanity

STATEMENT BY RONNIE KASRILS

FORMER MINISTER OF INTELLIGENCE

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REQUEST TO FILE CHARGES IN SOUTH AFRICA AGAINST SUSPECTS ACCUSED OF WAR CRIMES AND CRIMES AGAINST HUMANITY DURING OPERATION CAST LEAD

I would like to extend my gratitude to the distinguished members of the press and others present here today.

Our presentation at this press conference symbolises an important milestone in pursuit of human rights and humanitarian law. It also highlights the leading role that South Africa may play in ensuring that individuals guilty of international crimes are not able to act with impunity.

The request to file charges of war crimes and crimes against humanity against Israeli and other suspects arising from Israel's practices reflects similar initiatives taking place elsewhere in the world such as in Britain, Spain, France, New Zealand, Morocco and Belgium. The governments of Bolivia and Venezuela are preparing their own cases and in this context, it is important that South Africa, with its experience of apartheid criminality, should afford this issue immediate attention.

A joint request was made on Monday this week to the National Director of Public Prosecutions and the Directorate for Priority Crimes Investigation and six organs of state including the Office of the State President, the Ministry of Police, the Ministry of International Relations and Cooperation, the Ministry of Justice and Constitutional Development, the Office of the Director General in the Ministry of Justice and Constitutional Development, the Ministry of Safety and Security, and the Office of the Commissioner of Police.

The request appeals to the authorities to investigate and if appropriate, prosecute in South Africa individuals involved in war crimes and crimes against humanity during Israel's Operation Cast Lead.

The request is supported by overwhelming evidence, including reports from internationally respected organisations like Human Rights Watch, and affidavits in excess of 3500 pages to seek the investigation of perpetrators of war crimes and crimes against humanity during the December-January 2008/9 brutal military onslaught on Gaza by the Israeli Defence Force. This followed an 18-month siege and blockade which saw an occupied population experience starvation, deprivation, displacement and ongoing trauma on a horrendous scale that has shocked humanity.

The Gaza onslaught resulted in the deaths of 1400 Palestinians, the majority of whom were civilians. Of these approximately 40 % were women and children. More than 5400 Palestinians were seriously injured, many with the most horrific wounds, burns and amputations and countless others are psychologically, physically and mentally

traumatised. This is in comparison to 10 Israeli soldiers killed (four by own fire and 2 Israeli citizens).

These acts of barbarity did not spare the innocent lives of a besieged occupied people. It is common knowledge that Israel attacked and destroyed schools, places of worship (mosques), shelters, hospitals and United Nations installations, such as the UNWRA school and relief aid warehouses. Israel's offensive destroyed about 22,000 buildings and is estimated to have caused 1.9-billion US dollars worth of destruction. The actions are abhorrent and profoundly in breach of international humanitarian law and constitute evidence of international crimes.

The Israeli attack and bombardment of Gaza has been extensively documented and horrific scenes of death, injury and destruction of the civilian population were televised to the world. Evidence collected from eye-witnesses and those injured as well as United Nations and other investigative reports, including the testimony of Israeli combat soldiers and physicians (including South Africans) provide compelling proof that suggests Israelis have committed war crimes and crimes against humanity. Israel's refusal to allow access to the United Nations investigative team under the leadership of former South African Justice of the Constitutional Court, Richard Goldstone, constitutes further proof of their intention to conceal their crimes.

The request has been brought by two South African non-governmental organisations, the Palestinian Solidarity Alliance and the Media Review Network. It incorporates intensive research and evidence collated over the last few months. The request covers three key areas:

1. The commission of war crimes and crimes against humanity;
2. The crime of apartheid;
3. The investigation of foreign and local individuals who have participated in the commission of these crimes during Operation Cast Lead.

The complainants have retained legal counsel in the form of respected international jurists, Professor John Dugard and Professor Max du Plessis.

War crimes and crimes against humanity

On the issue of war crimes and crimes against humanity, the complaint provides compelling and comprehensive evidence which justifies the investigation of certain named individuals for international crimes under South Africa's International Criminal Court Act 2002. While I am not at liberty to disclose the names of the suspects, what makes these crimes of particular concern to South Africa is that they appear to be committed within a greater political context of apartheid and colonialism.

"For 40 years the political organs of the United Nations, states and individuals have accused Israel of consistent, systematic and gross violation of human rights and humanitarian law in the occupied Palestinian territories. In 2004 the International Court of Justice, in its advisory opinion, affirmed that Israel's actions in the then occupied territory, did indeed violate fundamental norms of human rights and humanitarian law and cannot be justified on grounds of self defence or necessity.

Apartheid

One of the questions raised in the complaint is whether individuals are guilty of the crime of "Apartheid" and that question accordingly requires the authorities to consider the

nature of Israel's belligerent occupation of the occupied Palestinian territories and to assess whether Israel is practising a form of colonialism or apartheid in its treatment of the Palestinian people.

Numerous experts, organisations and investigations have concluded that Israel practices systematic oppression and domination.

Our own Human Sciences Research Council of South Africa (HSRC) has released findings that Israel is practicing both colonialism and apartheid in the Occupied Palestinian Territories (OPT). The study represents 15 months of research by a team of experts in international law from South Africa, the United Kingdom, Israel and the West Bank.

With regard to "Apartheid", the team found that Israel's laws and policies in the OPT fit the definition of apartheid in the International Convention on the Suppression and Punishment of the Crime of Apartheid.

The HSRC report affirms the belief of many that Israel is responsible for the crime of apartheid and that there is no doubt that it is an institutionalised regime of systematic oppression and domination by one racial group over others.

Lieutenant Colonel David Benjamin

An obviously urgent and relevant aspect of the request today is for the South African authorities to facilitate the immediate investigation of Lieutenant Colonel David Benjamin, born in South Africa, but who has worked for the Israeli Occupation Forces for the past 17 years. According to recent reports, Benjamin served in the Military Advocates Corps as a legal adviser during Operation Cast Lead.

I have already mentioned that there is mounting and publicly available evidence that the Israeli Defence Force committed international crimes during Operation Cast Lead. These crimes include the deliberate disproportionate use of massive force, including the use of white phosphorous, against the essentially trapped civilian population; the use of prohibited weapons in areas densely populated by civilians; the targeting of children, women and civilians during the military assault, and the denial of humanitarian assistance to the wounded and dead.

Benjamin is reported to have said that the Gaza "campaign was a long time in the works and we [the Military Advocates Corps] were intimately involved in the planning...". He is also reported to have said that "Approval of targets which can be attacked, methods of warfare – it all has gone through us."

In these words, Benjamin appears to have associated himself with the planning and commission of war crimes and crimes against humanity committed during Operation Cast Lead.

On the question of the other South African perpetrators of international crimes, there is sufficient evidence in the GAZA DOCKET to justify a full and proper investigation by the National Director of Public Prosecutions and the Directorate for Priority Crimes Investigation with a view to their prosecution before a specially designated South African court for crimes against humanity and war crimes.

The request to the South African authorities follows years of failed efforts to obtain justice through the Israeli judicial system.

The complainants are seeking to bring war crimes suspects to justice outside Israel in accordance with legal principles of universal jurisdiction now codified by our Parliament in South Africa's International Criminal Court Act 27 of 2002.

The Act ensures an open and fair trial system of war crime suspects, both for foreigners who visit our country, and for suspects that are South African citizens or permanent residents. The allegations must be heard by an independent court, applying international standards.

The complainants seek the prosecution of those responsible for international crimes as South Africa's contribution to upholding standards of justice and humanity and to combat the culture of impunity in Israel which similarly prevailed during the darkest days of apartheid in South Africa.

We, as South Africans see this as our moral duty and responsibility and we are hopeful that justice will prevail.

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MEDIA REVIEW NETWORK

Tel: + 27 (0) 12 374 6987

Fax: + 27 (0) 12 374 2073

E-Mail: webmaster@mediareviewnet.com

Website: www.mediareviewnet.com

PALESTINE SOLIDARITY ALLIANCE

Tel2 336 6711 / 084 786 8937

E-Mail: palestinasa@gmail.com

Website: www.endoccupation.org.za