

## EXECUTIVE SUMMARY

We, the Jerusalem Institute of Justice, have filed a communication with the Office of the Prosecutor to the International Criminal Court concerning Hamas's actions during the 2014 Gaza war. On January 16, 2015, the Prosecutor began a preliminary examination into the "situation in Palestine" in order to determine whether a full investigation should be opened for crimes committed within the Palestinian territories. In the communication filed, we argue that a full investigation should be pursued, and a case should eventually be lodged, against Ismail Haniyeh for his role in the commission of war crimes during the 2014 conflict with Israel.

Haniyeh is the longtime leader of Hamas within Gaza, and was Hamas's local leader during the 2014 conflict. He has played a pivotal role in Hamas's extremist ideology and its consistent violation of the human rights of the Gazan civilian population. Not only did he not prevent the human rights violations of Hamas militants during the 2014 war, he actively encouraged and funded their unlawful acts.

There were two primary war crimes committed by Hamas militants during the war within the Gaza strip. First, they consistently used civilians for military protection and purposes, placing the Gazan population in grave danger as "human shields." This was done by firing rockets and mortars from densely populated areas, by encouraging (and sometimes forcing) civilians to remain in potential military targets, and by storing rockets in schools, hospitals, mosques, and other civilian structures. Second, the rockets Hamas used during the war are inherently indiscriminate under international law, and were therefore unlawful to use. These rockets are unable to be controlled, and therefore could not accurately be fired at lawful military targets, particularly from within civilian areas.

Haniyeh played a significant role in these crimes as the head of Hamas's interconnected structure. He personally, and his government more generally, urged Gazan civilians to remain in the vicinity of their homes despite Israeli warnings. The government, along with its al-Qassam military wing, also established a curfew that would ensure civilians remained in their homes, with some militant groups forcibly confining Gazans when they tried to disobey the curfew. The funding for the military wing, which was responsible for the indiscriminate firing of over 4,000 rockets and mortars, also came directly from foreign aid given to Hamas's political and social wings. Despite knowing of these acts being commonly committed within its territory, Haniyeh's political wing did nothing to prevent them being carried out. Not surprisingly, the Hamas run-and-created Gazan courts have also done nothing to punish those who played a direct role in committing these crimes.

These crimes had devastating consequences. Over 2,100 Gazans were killed during the conflict, with these crimes playing a direct and significant role in causing the high number of fatalities. The strain these crimes put on civilians by placing them in the path of danger and cutting off all potential avenues to safety cannot be overstated. Moreover, the indifference with

which Hamas sacrificed Gazans for military protection and an advantageous narrative is the precise manner of crime the International Criminal Court was established to combat.

For these reasons, we filed a communication urging the Prosecutor to launch a full investigation into Haniyeh and Hamas. The Court was created to bring to justice the individuals responsible for the worst sorts of crimes, and Haniyeh is an individual who was particularly responsible for a prime example of these crimes being broadly committed.