

**Cour
Pénale
Internationale**



**International
Criminal
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PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc , Presiding Judge
Judge Reine Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN PALESTINE

Public Document

Amicus Curiae Brief

Source: Palestinian association for Human Rights (Witness)

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Amicus Curiae Brief

In Support of the Investigation into Alleged Crimes in the State of Palestine

From

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Introduction

This brief is submitted by the Palestinian Association for Human Rights (Witness) in support of the International Criminal Court's investigation into the alleged violations in the State of Palestine that constitute war crimes, crimes against humanity, and acts of genocide. The primary aim of this brief is to provide factual and legal input and insights that serve in supporting the outcome of the case before the ICC.

The brief provides detailed arguments regarding the alleged crimes and the humanitarian impact on the civilian population in Palestine.

By addressing these critical matters, this brief reinforces the significant role of the ICC and its mandate in delivering justice and upholding the principles of international law.

Statement of Interest

Given that the Palestinian Association for Human Rights (Witness) has been operating for over 26 years to monitor the situation of the Palestinian people, possessing legal means, expertise, and qualifications that qualify it to act as an *amicus curiae*. It monitors, through local, regional, and international experts, the legal status of the Palestinian state in international law and maintains a team dedicated to monitoring and documenting violations and crimes committed against civilians in the occupied Palestinian territories, particularly within the framework of systematic ethnic cleansing, involving war crimes, crimes against humanity, and genocide.

Considering the current situation in Palestine and the ongoing violations which have profound effects on the lives of its residents, jeopardizing Palestinians' right to remain on their lands and exercise their right to self-determination under severe humanitarian crimes, the Palestinian Association for Human Rights (Witness) emphasizes the jurisdiction of the court and its importance in ensuring accountability for those responsible for violating principles of international law and the Rome Statute and submits the following *amicus curiae* observations in accordance with Rule 103 of the Rules of Procedure and Evidence.

Legal Framework

The Rome Statute entered into force for The State of Palestine on 1 April 2015. Following what the Government of The State of Palestine lodged on 1 January 2015, of a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On 2

January 2015, The State of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General.

Thus, the ICC exercises its jurisdiction on the territorial scope of the State of Palestine including Gaza and the West Bank, including East Jerusalem.

Although not party to the Rome Statute, the violations of international law committed by Israeli personnel on the Palestinian territory compromise for the jurisdiction of the court concerning the alleged violations. The scope of this mandate arises from Article 12 of the Rome Statute that confers the territorial jurisdiction of the court if the conduct in question occurred on the territory of a State party to the Statute, whether the criminal conduct by nationals of a state party to the statute or not.

International humanitarian law applies to the Palestinian territories since the occupation is part of international armed conflicts, specifically the Fourth Geneva Convention, which is dedicated to the protection of civilians in the occupied territories, applies.

The series of international resolutions adopted by the Security Council (resolution 242 in 1967, resolution 465 in 1980, resolution 2334 in 2016), and resolutions of the United Nations General Assembly (resolution 194 (1948), resolution 3236 (1974), resolution 67/19 (2012)) affirmed their condemnation of the occupation and the applicability of the crime of ethnic cleansing in the occupied Palestinian territories.

The criminal conduct committed by Israel and its personnel extends far beyond the current war and is part of systematic occupation of the land of Palestine by the power

of armed force since 1948. Forced evictions, mass destruction of civilian property and infrastructure, ethnic cleansing, arbitrary detention, and annexation and the unlawful settlements; all committed by an apartheid occupying state determined the current situation in Palestine.

On the 19th of July, the ICJ issued an advisory opinion on the legal consequences of Israeli occupation of Palestinian territories since 1967 following an 18-month process including public hearings where more than 50 states, including Palestine, and three international organizations participated. In this regard, the court declared that “the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful”. As such, Israel is required to put an end to the illegal presence of the State of Israel on the Palestinian territories and cease all new settlement activities. As an occupying power, Israel is liable under international law for the safety of civilian in the oPt.

Factual Background

The Palestinian Association for Human Rights (Witness) monitored the accumulated and complex procedures carried out by the Israeli occupation authorities under the order of direct officials in the occupied Palestinian territories through the commission of fragmented crimes aimed at systematic ethnic cleansing. This is evident through the legal legislation enacted by the Israeli Knesset and the practical measures that target the Palestinians and everything related to them, as Palestinians face challenges in various aspects of their daily lives for many years to forcibly displace them according to the data of the United Nations Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territories.

- Documentation by the United Nations Office for Humanitarian Affairs (OCHA),

the United Nations Relief and Works Agency (UNRWA), many international resolutions and the International Court of Justice have shown the grave human rights situation in the occupied Palestinian territory, especially in Gaza Strip, where there are organized policies to implement ethnic cleansing and war crimes, and Genocide described by the occupation authorities that harness all capabilities.

We can see this through the results contained in the following document on the results of the Israeli policy aimed at imposing this new reality.¹

- War on Gaza (2023-present):

- War on Gaza (2023-present): Israel's measures aimed at forcing as many Palestinians as possible to forcibly emigrate, organized settlements, and commit full-fledged war crimes and crimes against humanity constitute an organized crime of ethnic cleansing that the occupation has been leading for years and is implementing today through the killing of more than 39,495 Palestinians in Gaza Strip. Since October 7, 2023. Intensified Israeli military

¹ This data is issued by the United Nations Office for the Coordination of Humanitarian Affairs in the occupied

Palestinian territory. For more information, the statistics are from 2014 to 2024. For more, see the link. see the

link, <https://www.ochaopt.org/data/casualties>

Casualties Deaths More than 50 thousand

Wounded 158628

House demolition West Bank 6827

Gaza strip %80

Jerusalem 1725

Number of people who have West Bank 9645

migrated Gaza strip 1.9 million

Jerusalem 3367

operations have led to significant civilian casualties and widespread destruction of infrastructure, with indiscriminate attacks and grave violations of international law.

- Operation Military (2014): Military operation resulting in significant civilian casualties and destruction of infrastructure. This war destroyed a third of the Gaza Strip, displaced thousands of families, wiped out entire neighborhoods, and killed more than 2,000 people.

- Great March of Return (2018-2019): Protests along Gaza-Israel border, where the use of lethal force by Israeli forces led to numerous deaths and injuries among Palestinian demonstrators. Despite the peaceful nature of the protests, Israeli occupation forces continue to target Palestinian civilians participating in the non-violent demonstrations along the eastern border of Gaza Strip. They have persistently employed excessive and deadly force. The use of live ammunition and excessive force has resulted in the deaths of over 115 Palestinians during the Great Return March on the eastern border of Gaza, with 13,300 injuries caused by direct targeting of peaceful protesters by the occupation forces, including 330 serious injuries.

- Annexation of West Bank lands: The Israeli authorities seek to annex 50% of Area C, which represents 30% of the West Bank, to their sovereignty. The goal of the occupation is to have one million Israelis live in the West Bank.

On April 5, 2022, the construction of 4,000 settlement units in the West Bank

was approved, in parallel with the Supreme Court's approval of the displacement of hundreds of Palestinians in Hebron

- Blockade of Gaza (2007-present): Ongoing blockade by Israel, severely restricting the movement of people and goods. In 2015, the United Nations body responsible for development and trade warned that Gaza Strip could become "unlivable by the year 2020." The economic experts in the report at that time emphasized that the area had been subjected to several wars and was under an Israeli blockade since 2006. "2014 experienced the third conflict in six years, marked by a large-scale military operation," following several years "of economic blockade." The wars and blockade have continued since then up to the present day.
- The annual report of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), entitled "Humanitarian Overview 2015, Fragmented Lives," concludes that humanitarian needs in the Palestinian territory continue to persist "due to the practices of the prolonged Israeli occupation and the ongoing conflict." "The report (Fragmented Lives) clearly shows the devastating impact of this ongoing situation, particularly on the 4.8 million Palestinians who are increasingly vulnerable due to violations of international human rights and humanitarian law," says David Carden, Head of OCHA in the occupied Palestinian territory (oPt).
- Settlement Expansion: In 2023, violations by settlers escalated to levels that constitute war crimes and crimes against humanity, reflecting worst forms of collective punishment and retaliatory measures. Hundreds of Israeli settlers attacked the town of Hawara, the village of Urif south of Nablus, and the town

of Turmus'ayya northeast of Ramallah, setting fire to several homes and vehicles, all under the protection of Israeli occupation forces through widespread assaults.

"On April 10, 2023, thousands of Israelis, led by at least seven ministers including the Minister of Finance and the Minister of National Security, along with at least 20 Knesset members, organized a march in support of Israeli settlement in the occupied Palestinian territories, calling for the acceleration of settlement construction despite international opposition and legal violations."

- "As of October 7, there are 4,900 detainees in Israeli prisons, including 31 women and 160 minors, with more than 1,000 administrative detainees, including 6 minors and 2 women."

- Legal Arguments:

(Witness) considers the applicability of the crime of genocide by having its elements, which are provided in Article 6 (a) of the Rome Statute of the International Criminal Court, in particular genocide by murder, by inflicting bodily or moral harm,

by imposing living conditions intended to deliberately cause material destruction.

1. The perpetrator killed one or more persons.

2. The person or persons belong to a particular national, ethnic, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that national, ethnic, racial

or religious group as such.

4. Such conduct is carried out in the context of a clear pattern of similar conduct directed against that group or the conduct itself would cause such destruction.

According to content of Articles VII and VIII of the Rome Statute "Occupation practices war crimes and crimes against humanity involving starvation of civilians, intentional causing severe suffering, serious harm to body or health, cruel treatment, intentional killing, intentional attacks against the civilian population, extermination and/or intentional killing, including death resulting from starvation, as a crime against humanity.

Conclusion

The Palestinian Association for Human Rights (Witness) has been monitoring the violations faced by Palestinians over the years, identifying these violations as systematic and aimed at ethnic cleansing. These include forced displacement, illegal settlement activities, arbitrary detention, field killings, and the commission of crimes of aggression resulting in the deaths of thousands through military assaults on Gaza, constituting war crimes, crimes against humanity, and genocide.

Therefore, (Witness) asserts that the International Criminal Court (ICC) has authority over crimes committed in Palestine since 2015, based on various international resolutions and legal rulings that condemn the Israeli occupation.

Witness calls for immediate and urgent actions to prosecute those responsible for these crimes, particularly the Israeli Prime Minister, Minister of Defense, military officials, and anyone revealed by investigations.

Recommendations

- Calling on the international community to immediately stop the ongoing Israeli crimes in Gaza Strip, because calls for freedom, human dignity and safe living must

have an impact in Gaza Strip.

Emphasizing the right of the Palestinian people to hold the occupation accountable for its crimes, especially since the State of Palestine is a signatory to the Rome Statute and the International Criminal Court.

Holding the High Contracting Parties to the Fourth Geneva Convention accountable for their responsibilities and ensuring they fulfil their obligations by pursuing those accused of committing grave violations.

- issue urgent arrest warrants against the leaders of the occupation and the perpetrators of the humanitarian crimes in accordance with the Rome Statute.
- Expedite the implementation of legal measures to prevent impunity and curb the cycle of killing and committing crimes.

Dr. Mahmoud El hanafi
on behalf of
palestinian association for human rights (witness)



Dated this 13.08.2024

At Beirut, Lebanon