



المركز الفلسطيني لحقوق الإنسان

PALESTINIAN CENTRE FOR HUMAN RIGHTS

Submission to the Assembly of States Parties to the International Criminal Court by the Palestinian Centre for Human Rights

November 2012

Mrs. President, Your Excellencies, Ladies and Gentlemen

This year we celebrated the 10 year anniversary of the International Criminal Court, the institution that was created in order to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole.

It took more than 50 years of negotiations and preliminary works in order to see the birth of this institution, which represents a true revolution in international justice.

As affirmed in the Preamble, the drafters of the Rome Statute were conscious that “all people are united by common bonds, their cultures pieced together in a shared heritage” and that “this delicate mosaic may be shattered at any time”. The values that form the Court are indeed universal, building as they do upon the rights that have been recognised and proclaimed by the General Assembly in the 1948 Universal Declaration of Human Rights. Article 2 of the Declaration provides that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to



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which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

As beautiful as these words may sound, today, 64 years after that solemn declaration, we are facing a completely different reality. Countless populations are still discriminated against on the basis of their race, colour, sex, language, religion, or political or other opinion, and on this basis are denied their fundamental human rights, including the right to life.

Moreover, major distinctions are made because of the political, jurisdictional or international status of the land into which individuals are born.

The plight of the Palestinian people is of course illustrative of the different standards that are applied in the protection of even the most basic human rights. Contrary to the landmark principles affirmed in the Universal Declaration of Human Rights in 1948, the Palestinian people have subsequently and consistently been discriminated against precisely because of the lack of independence in their territory and the limitation of sovereignty imposed on them since the creation of the State of Israel – that very same year.

The human rights situation in the occupied Palestinian territory is characterised by regression. The right to self-determination, or the end of the military occupation that is subjugating the Palestinian territory, appear as lofty ideals *vis-à-vis* the reality of the situation on the ground.



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We are forced today to demand the basic building blocks of survival: freedom of movement, the right to food, the right to health, the right to education, the right to work, and even the right to life.

The situation in the West Bank and in Jerusalem is deteriorating under occupation, and expanding settlements, with the entire world as a witness. Institutionalized racial segregation and oppression seem like atrocities from the previous century, lessons in history books. However, in occupied Palestine these acts still form the daily reality.

Equally, in the Gaza Strip, Israel is subjecting 1.7 million people to a heinous form of collective punishment, where civilians are effectively cut off from the outside world and subjected to forced de-development and poverty.

These same people, protected persons of international humanitarian law, are subjected to relentless attacks. During the three weeks of Operation Cast Lead, it was the civilian population who was in the eye of the storm. Over 80% of all casualties were civilians, and the civilian population was denied even the possibility to flee.

Massive damage and destruction was inflicted on the civilian infrastructure across the entire Gaza Strip, causing serious disruption to the lives of Palestinian civilians. Main roads and side streets were bulldozed while infrastructure of basic services, including primary and secondary water networks, medical facilities, schools, high pressure power transformers, high and low pressure power networks, as well as communications networks and facilities were bombed and bulldozed.



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All this happened under the eyes of the international community. This did not happen without your knowledge, in a remote region of the world. Millions of individuals watched live on TV as white phosphorous fell on Gaza City.

Indeed all international human rights organizations, international observers and agencies immediately denounced the commission of grave crimes, including the widespread indiscriminate attack of civilians. The UN Human Rights Council promptly reacted by setting up a Fact Finding Mission, whose findings are well known to all of you. Not only did the Mission conclude that war crimes and possibly crimes against humanity had been committed. Most importantly, the Report outlined a detailed mechanism of accountability at the national and, in case of failure by the national authorities, the international level.

The conclusions and recommendations of the Fact Finding Mission were endorsed by the General Assembly and follow up mechanisms were set up; notably a Committee of Experts was mandated by the UN HRC to monitor the investigations at the domestic level, by the Israeli and Palestinian Authorities.

It is a fact that nearly 4 years afterwards, we still have not seen any proper investigation at the national level. The few military probes that were set up in Israel have only resulted in a cover up or deflection of responsibility, especially with respect to the upper echelons. It was indeed one of the conclusions both of the Goldstone Report and of the Committee of Experts (and I quote) that the “systematic and deliberate nature of the destruction in Gaza left the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations” and that “those alleged serious violations go beyond individual criminal responsibility at the



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level of combatants and even commanders. And include allegations aimed at decision makers higher up in the chain of command" (par. 64 First Committee of Experts Report).

The conclusion was that "the official inquiry must be conducted by a truly independent body, given the obvious conflict inherent in the military's examining its own role in designing and executing 'Operation Cast Lead'" (ibid).

Now, I ask you, who shall be this independent body if not the International Criminal Court?

It was in January 2009 when the Government of Palestine lodged its declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the Court.

36 months later, in April 2012, the result of the preliminary examination of the Prosecutor and his Office's alleged extensive consultation was a deceptive 2 page decision, the argumentation of which was unclear if not contradictory.

The only conclusion for the victims is that the Prosecutor abused his power and the faith placed in his office by virtue of the Statute, for political purposes.

Despite how shameful this decision has been, it must be noted that it did not completely close the door of the ICC. Indeed, as the initiative undertaken by professors Dugard and Schabas shows, international law leaves the door firmly open with respect to ICC jurisdiction over Palestine.



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As States that have ratified the Rome Statute, you have stated your commitment to the rule of international law as the basis of global society. All we ask is for the uniform application of the procedure utilised by the UN.

You, the representatives of States that sit in the Assembly of States Parties of the International Criminal Court now have the power to open the door of the Court to Palestine and finally put an end to impunity for the widespread and systematic crimes committed in our territory.

We are not asking for a twist of the law: on the contrary, we are asking for the law to be properly applied, for the end to the rule of the jungle.

We are only asking, on behalf of the victims we represent, that our rights be respected. That the so-called universal application of international law be applied to Palestine, as the fathers of the Universal Declaration of Human Rights solemnly affirmed 64 years ago.

The reality of life in occupied Palestine and in Israel is a self-continuing cycle of violence, war crimes, violations of international law, and impunity for these violations. The consequence of this impunity crisis is an ever increasing disrespect for international law.

There can be no exception to the rule of international law, leaving people without the protection they are entitled to. For the sake of political interests dictatorial regimes in our region have been allowed to carry on crimes against their own people for decades. Now that courageous people throughout the region, deprived of freedom for so long, have started liberating themselves from oppression, they deserve no less than global



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support in their struggle for justice and accountability. The people of Syria, Libya, Bahrain, Yemen, and all others that faced and are still facing brutal attacks, need to be able to count on you for upholding the principles of international law.

All violations of international law and the associated impunity must be addressed. Not only for the sake of past and future victims, but for the very credibility of international law, and of this institution, the International Criminal Court itself.