



مركز الميزان لحقوق الإنسان
Al Mezan Center for Human Rights



International Criminal Court: Palestinian Human Rights Organisations Call for Investigation into Situation in the State of Palestine

Date 11 December 2020

In December 2019, the Office of the Prosecutor concluded the preliminary examination into the Situation in the State of Palestine, setting in motion the concomitant Article 19(3) process on territorial jurisdiction before the Pre Trial Chamber (PTC) of the International Criminal Court (ICC). The Office had taken five years to conclude the preliminary examination which found ‘a reasonable basis’ to believe that ‘war crimes have been or are being committed in the West Bank, including East Jerusalem and the Gaza Strip’. It is now one year since the Prosecutor closed the preliminary examination and referred the question on territorial jurisdiction to the PTC. It is now six years since the preliminary examination was first opened. Al-Haq, Al-Mezan Center for Human Rights, Palestinian Centre for Human Rights and Aldameer stress that there is an urgent and impending need to proceed to investigation – justice cannot be delayed any further.

International Crimes Continue in the Occupied Palestinian Territory

This impact of continued inaction and delay and impunity for grave breaches of international law is evident on the ground. Since January 2020, Israel, with the sponsorship of the United States government under the unilateral Trump ‘Peace to Prosperity’ plan, has taken significant and far-reaching steps to implement an annexationist policy with the intention of permanently exercising sovereignty over and entrenching an apartheid regime in the occupied Palestinian territory. In response, in a joint statement 47 UN Special Rapporteurs collectively warned that “this is a vision of 21st century apartheid”.

The Israeli Occupying Forces (IOF) continue to carry out acts of land appropriation and settlement expansion, forcible transfer, house demolitions, demolition of Covid-19 quarantine centres, residency revocations, and the killings of civilians including the killing of persons with disabilities, even escalating house demolitions throughout the Covid-19 pandemic. In the Gaza Strip, the healthcare system is now days from becoming overwhelmed, while the unlawful siege and closure persists - a closure which UN Special Rapporteur Michael Lynk recently reaffirmed to be collective punishment.

Independent Expert Review

We remain concerned with the proposals of the Independent Expert Review, which, in stating that “The greatest concern [...] relates to the increasing number of situations before the OTP and its insufficiency of resources”, suggests that the Court should engage in fewer situations,

by requiring a higher threshold of human rights violations (of gravity) be present before proceedings can commence. Two strategies proposed by the Review include:

- (i) narrowing the standards for admissibility by applying a higher threshold for gravity,
- (ii) and: taking feasibility considerations into account during situation selection.

Questions around the feasibility of opening an investigation, including difficulties pertaining to problems of access, of lack of cooperation, and of funds, have already been the subject of criticism in the Afghanistan Situation, where the Appeals Chamber held that such considerations should not be used as a justification for not opening investigations. Serious and significant disputes between the Office of the Prosecutor and Chambers as to the gravity of identified war crimes in the Comoros Situation have also proven difficult.

We therefore urge States Parties to approve, as a minimum, the budget requested by the ICC, and the minimal requested increase made by the OTP to support its work on ongoing and upcoming preliminary examinations, investigations and prosecutions. Our organisations fundamentally believe the Court must be provided with all the necessary resources for it to fulfil its mandate, rather than its mandate being compromised to fit a limited budget.

Chronic Uncertainty and Delays in the Situation in the State of Palestine

We are deeply concerned with the delay in opening a formal investigation into the Situation in Palestine, exacerbated by the uncertainty as to whether and when the Pre-Trial Chamber might respond to the Prosecutor's Article 19(3) request of January 2020. In concluding the preliminary examination, the Prosecutor should have opened an investigation directly. There was no legal requirement to submit a request to clarify the territorial jurisdiction of the court. Presently, there is no clarity or certainty as to when, or even whether, the Pre-Trial Chamber will respond. Neither is there any clarity or certainty as to whether it will address jurisdictional issues around for example Palestine's Exclusive Economic Zone, or even whether the Pre-Trial Chamber is bound to respond at all to the Prosecutor's Request.

The ongoing delays to the opening of a formal investigation into the Situation in Palestine is aggravating the significant uncertainty that has characterised the prolonged Preliminary Investigations of 2009-12 and 2015-19. Notably, in the decade between 2009 and 2019, the UN Office for the Coordination of Humanitarian Affairs documented the killing of 3,602 Palestinians and the injury of over 100,000 by Israeli forces.

The Independent Expert Review had noted that the Pre-Trial Chamber in the Bangladesh/Myanmar, and in the Comoros, Situations, has emphasised that 'preliminary examinations must be concluded within a reasonable time'. Against the background of consistent criminality, the entrenchment of an apartheid regime in Palestine, and the Israeli government's clear and publicly stated goals of unlawful annexation, it is imperative that the Court's mandate must be exercised in a fair and effective process.

In closing the most recent Preliminary Examination, the Prosecutor found that the standard of proof for the commission of war crimes had been met, and that opening the investigation was appropriate and in the interest of justice. Since then, attacks on the Court as an institution have increased. Confronted by a deluge of politically-motivated accusations, the ICC need not sink to the level of its detractors. Its founding treaty, the Rome Statute, requires the court

to stand for justice, ‘determined to put an end to impunity for the perpetrators’ of international crimes. The continuing delays to opening an investigation in the Situation in Palestine can no longer be justified.

In the face of the consolidated, ongoing, and internationalised assault on the right of the Palestinian people to dignity and to self-determination, it is imperative for a formal investigation to be opened. Regardless of the Article 19 process currently underway, and with due respect to the Prosecutor’s Office, and to the Pre-Trial Chamber, as we await the threat of annexation it is now imperative that a formal investigation be opened without any further delay. Such delays and uncertainty as we are now experiencing does not reflect well on the basic premise of the rule of law. Abandoned by the international community, unable to access any Israeli, foreign or international tribunal, and subjected to a cruel occupation, the fate of the Palestinian people is now more than ever tied to that of the ICC.