



Iranian Center for International Criminal Law Requests the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, to issue a preventive statement in relation to the escalating violence in the Situation in Palestine

Dear Sir/Madam,

2 April 2018,

1. On 30 March 2018, the Israeli forces, allegedly, killed 16 Palestinian civilians in Gaza.¹ The day quickly turned into the bloodiest day in Gaza since the 2014 war.² Palestinians have, reportedly, planned to run a six-week protest demanding, *inter alia*, the right of return for refugees.³ This bloody start increases the risk in the reoccurrence of violence during the demonstration.

2. Palestine is a member State of the Rome Statute, and the ICC has jurisdiction over those core crimes committed within the territory of Palestine, including the Gaza Strip, since 13 June 2014. The situation in Palestine has been under an ongoing preliminary examination.⁴ The 30 March massacre seems to have high potentiality to fall within the International Criminal Court's jurisdiction, and it requires the Prosecution to give due consideration to the recent event in conducting the preliminary examination of the situation in Palestine.

¹ BBC, Gaza-Israel violence: Israel warns of action inside Gaza, 30 March 2018, Accessible at: <http://www.bbc.com/news/world-middle-east-43603199>.

² CNN, Diplomats: US blocks UN statement for independent inquiry into Gaza violence , 1 April 2018, Accessible at <https://edition.cnn.com/2018/03/31/middleeast/gaza-protests-un-intl/index.html>.

³ The Guardian, Palestinians say over a dozen killed in Gaza border protest , 31 March 2018, Accessible at: <https://www.theguardian.com/world/2018/mar/30/palestinians-march-to-gaza-border-for-start-of-six-week-protest-israel>.

⁴ ICC, OTP, Report Preliminary Examination Activities, 2017.



3. United Nations Secretary-General, Antonio Guterres, has called for an independent inquiry into Friday's violence.⁵ The EU has followed the UN and called for a probe into the deaths of Palestinian protesters in Gaza.⁶ These worldwide reactions refer to the gravity of the recent incident. As the Pre-Trial Chamber in its decision on the situation of the registered vessels of Comoros states, the attention and concern that an event attracts from the international community should be taken into account as a factor in determining the gravity of a situation.⁷

4. In the Policy Paper on Gender-Based and Sexual Crimes, issued in 2014, the your office insists that where it has jurisdiction, "it may also issue preventive statements to deter the escalation of violence and the further commission of crimes, to put perpetrator on notice and to promote national proceedings". This initiative is consistent with one of the constituent goal of the Court as referred to in the Preamble of the Rome Statute, namely the prevention of crimes. For a long time, the Prosecution has followed this precedent. For example, the then ICC Deputy Prosecutor in 2010, following the deaths of seven persons, stated "We are keeping an eye on events in Guinea".⁸ In another occasion, in 2014, you issued a statement expressing your deep concern regarding the escalating violence in the situation in Libya.⁹

⁵ CNN, Diplomats: US blocks UN statement for independent inquiry into Gaza violence , 1 April 2018, Accessible at <https://edition.cnn.com/2018/03/31/middleeast/gaza-protests-un-intl/index.html>

⁶ EU calls for probe into Gaza protest, 31 March 2018, Accessible at: <http://www.dw.com/en/eu-calls-for-probe-into-gaza-protest/a-43209979>

⁷ ICC, PTC I, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, para. 51.

⁸ <https://www.legal-tools.org/doc/532ce6/pdf/> Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the occasion of the 28 September 2013 elections in Guinea (27 September 2013).

⁹ ICC PROSECUTOR, FATOU BENSOU DA, STATEMENT IN RELATION TO THE ESCALATING VIOLENCE IN LIBYA'S SITUATION , 25 July 2014, Accessible at: <https://unsmil.unmissions.org/icc-prosecutor-fatou-bensoudastatement-relation-escalating-violence-libyas-situation>.



5. Given the above-mentioned points, ICICL hereby requests the Prosecutor of the International Criminal Court, in discharging the inherent mandates of her office, and in consistency with the well-established practice of the Office, issues a preventive statement in relation to the 30 March events in the situation in Palestine. The preliminary examination stage is an opportunity for fulfilling the expressive mandates of the Court. Issuing a preventive statement in a situation under the preliminary examination, in addition to its contribution to the prevention of crimes, enhances the impartiality and legitimacy of the Court. ICICL does not recognize any practical or legal obstacle in issuing such a statement that could provides some benefits without any cost. It is obvious that such a statement is without any prejudice to any further determination by the Office in this regard.

6. ICICL expects to have an official response to the current request.

Yours sincerley,

Mohammad H. Zakerhossein

Director of Iranian Center for International Criminal Law

The Hague,

Netherlands