

Prosecutor Karim A. A. Khan KC
Office of the Prosecutor of the International Criminal Court
PO Box 19519
2500 CM, The Hague
The Netherlands

Sent via email

13 October 2023

Dear Prosecutor,

In light of the extreme gravity of the situation in Gaza, Israel and the West Bank, the increasing devastation, and the ever-mounting civilian casualties on both sides, I am writing to you as Chair of the Bar Human Rights Committee of England and Wales to ask that you urgently issue a formal preventative statement in relation to the ongoing conflict.

Serious violations of international law have been carried out by all parties to the conflict to date, including grave crimes committed by Hamas in Israel and by Israeli forces in Gaza and the West Bank. Those crimes are ongoing and are set to intensify further still with the ongoing embargo on water, food, fuel and electricity into Gaza, and following Israel's ultimatum, ordering the population of the North of Gaza to leave, including Gaza City – home to approximately 1.1 million people. In this urgent context – and with a further significant escalation of hostilities and of the humanitarian crisis imminent – your voice can play a critical role. We urge you to resume the important and effective practice of the Office of the Prosecutor in issuing such a statement.

A formal statement would serve as an important reminder at this time that your Office is undertaking an ongoing investigation into the “Situation in the State of Palestine”, that you have jurisdiction over the current hostilities in relation to acts of genocide, war crimes and crimes against humanity committed by any person in Gaza or the West Bank, including East Jerusalem, and/or committed by nationals of State parties to the Rome Statute of the International Criminal Court, including the State of Palestine, within Israel or elsewhere. All persons who have committed, are committing, or plan to commit such serious crimes, or otherwise order, aid and abet or facilitate them or contribute to their commission, must be left with no doubt that they are individually accountable and at risk of prosecution by the Court.

We ask you to emphasise that all parties are required to abide by the fundamental international humanitarian law principle of distinction and to take all necessary measures to protect civilians and civilian infrastructure, including schools and hospitals, and United Nations and Red Cross / Red Crescent / Magen David Alom facilities, ambulances and personnel.

We further ask you to emphasise that the following are crimes within the established framework of international law, falling under the jurisdiction of the Court:

- Intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects;
- Hostage-taking;
- Intentionally directing attacks against humanitarian personnel and infrastructure;
- The extensive destruction of property not justified by military necessity;
- Employing weapons of warfare, including incendiary weapons, of a nature to cause unnecessary suffering or which are inherently indiscriminate;
- Inhumane acts intentionally causing great suffering or serious injury to body or to physical or mental health;
- The starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival;
- The forcible transfer, deportation or displacement of the civilian population;
- Declaring that no quarter will be given; and
- Killing or causing serious bodily or mental harm to members of a national, ethnical, racial or religious group, with intent to destroy the group in whole or in part.

In light of the extreme gravity of the circumstances, it is essential that you underscore that an order directing the civilian population to leave a given geographical area does not deprive remaining civilians or civilian objects in that area of their civilian status, and that the fundamental principle of distinction and the rules on the conduct of hostilities remain fully applicable. The International Committee of the Red Cross has been unequivocal in stating that: *“The instructions issued by the Israeli authorities for the population of Gaza City to immediately leave their homes, coupled with the complete siege explicitly denying them food, water, and electricity, are not compatible with international humanitarian law.”*¹

A formal statement by your Office would serve as an urgent reminder to third States and to the international community of their own obligations to prevent violations of international law. It would also send an unequivocal message to all those involved in committing such crimes, and to those involved in ordering them, aiding, abetting, facilitating them or otherwise contributing to their commission – including by providing the means for their commission – that they stand to be held personally accountable for their actions.

Moreover, the urgent progression of your investigation into the Situation in the State of Palestine, and the initiation of prosecutions would serve to end the impunity that has continued to prevail in the region, in the context of which these serious crimes are being committed.

¹ <https://www.icrc.org/en/document/israel-and-occupied-territories-evacuation-order-of-gaza-triggers-catastrophic-humanitarian-consequences>.

We remain at your disposal to discuss this matter further.

Yours sincerely,



Stephen Cragg KC

Chair of the Bar Human Rights Committee of England & Wales

On behalf of the Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England and Wales (BHRC) is an association of practicing barristers, legal academics and law students, dedicated to protecting the rights of advocates, judges, and human rights defenders around the world, and to promoting the principles of justice and respect for fundamental human rights internationally through the rule of law. It is autonomous of the Bar Council of England and Wales.