

INTERNATIONAL LAWYERS CAMPAIGN FOR THE INVESTIGATION AND PROSECUTION OF THE CRIMES COMMITTED AGAINST THE PALESTINIAN PEOPLE.

To: Ms. Fatou Bom Bensouda, Office of The Prosecutor (OTP), the International Criminal Court

1. *Mindful* that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind',ⁱ
2. *Guided* by the 'Nürnberg Principles'ⁱⁱ and stressing in this regard the principle of individual criminal responsibility for international crimes, including war crimes and crimes against humanity,ⁱⁱⁱ
3. *Affirming* that victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law have a right to a remedy and reparation,^{iv}
4. *Affirming* 'that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured',^v
5. *Recalling* that Israel continues illegally to occupy Palestinian territory seized since 1967,^{vi} which has resulted in the longest ongoing belligerent occupation of a territory anywhere in the world, whilst also laying siege to the Gaza strip following the IDF's "disengagement" in 2005^{vii},
6. *Denouncing* the unimaginable atrocities that have been committed and continue to be committed by Israel against Palestinian civilians which deeply shock the conscience of humanity,
7. *Recalling* the countless resolutions from the UN General Assembly, UN Security Council and the Human Rights Council denouncing such violations by the State of Israel,^{viii}
8. *Recalling* further that, notwithstanding numerous reports submitted by Palestinian and international NGOs to the OTP, war crimes and crimes against humanity have continued on an aggravated basis throughout the period of preliminary examination by the OTP,^{ix}
9. *Denouncing* the failure and refusal by the State of Israel to hold accountable any of those suspected of committing crimes against Palestinian civilians, resulting in abandoning the rule of law and replacing it with widespread impunity for Israeli officials who have sanctioned, and for Israeli individuals who have perpetrated, such crimes. Impunity contributes to the continuation, intensification and recurrence of such crimes,^x
10. *Recalling* Palestine's accession to the Rome Statute and its acceptance of ICC jurisdiction over crimes committed in the OPT since 13 June 2014,^{xi} following its recognition as a state by the international community,^{xii}

11. *Recalling* the opening of a preliminary examination by the OTP on 16 January 2015 into the situation in Palestine,^{xiii} and the overwhelming evidence supplied by Palestinian and international NGOs, concerning ‘past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of the Palestine’,^{xiv}

12. *Recalling* the ICC’s obligations to undertake **effective** prosecutions and apply and interpret law in a manner ‘consistent with internationally recognised human rights’,^{xv} and in this regard highlighting the right of Palestinian victims to a prompt investigation,^{xvi} including not only the OTP’s preliminary examinations, but moving further to conduct full investigations and initiate prosecutions where appropriate,

13. *I Declare* that justice delayed is justice denied, and *Demand* the OTP immediately move forward to investigate and refer for prosecution by the International Criminal Court those gross violations of International Human Rights Law and serious violations of International Humanitarian Law committed by individuals acting or purporting to act on behalf of the State of Israel, which have occurred and continue to occur within the jurisdiction of the Court.

Please review the boxes below carefully (if you do not consent to your name being shared at all, then do not put a mark in either box):

- ✓ **I consent to my name being shared, as part of a list of signatories, with the ICC Prosecutor.**
- ✓ **I consent to my name being published, as part of a list of signatories, on the IADL website.**

SIGNED:

EMAIL ADDRESS:

PROFESSION:

MEMBER OF:(Optional, for identification purposes only)

ⁱ Universal Declaration of Human Rights, Preamble

ⁱⁱ Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal, International Law Commission (Nürnberg Principles) – Affirmed by General Assembly resolution 95(I). The Nürnberg Charter is considered reflective of Customary International law (See: *Tadić*, Opinion and Judgment, Trial Chamber, 7 May 1997, para. 623; and *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, para. 141). In the *Eichmann* case, the Israeli Supreme Court held that General Assembly resolution 95 (I) is evidence that the Nürnberg principles form part of customary international law. According to the Court, “if there was any doubt as to this appraisal of the Nuremberg Principles as principles that have formed part of customary international law ‘since time immemorial,’ such doubt has been removed by two international documents. We refer to the United Nations Assembly resolution of 11.12.46 which ‘affirms the principles of international law recognized by the Charter of the Nuremberg Tribunal, and the judgment of the

Tribunal,' and also to the United Nations Assembly resolution of the same date, No. 96 (1) in which the Assembly 'affirms that genocide is a crime under international law'" (*Attorney General of Israel v. Eichmann*, Supreme Court of Israel (1962) 36 ILR 277).

iii *Ibid*, Principles I and VI, which in turn are reflected in Articles 5 and 25 of the Rome Statute.

iv See: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UNGA Res. 60/147 of 16 December 2005); see further: Article 8 of the Universal Declaration of Human Rights; Article 2 of the International Covenant on Civil and Political Rights; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child; Article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV); Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949; and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977; and Articles 68 and 75 of the Rome Statute of the International Criminal Court.

v Preamble, Rome Statute

vi *Legal Consequences of the Construction of A Wall in the Occupied Palestinian territory* (Advisory Opinion) [2004] ICJ Rep 2004, [78]

vii No international organization or other relevant body at the international level has found Israel's "disengagement" from the Gaza Strip in 2005 to terminate its ongoing status as an Occupying Power. As the OTP has recognised in its Flotilla Report: "the prevalent view within the international community is that Israel remains an occupying power in Gaza despite the 2005 disengagement", para. 25, concluding: "there is a reasonable basis upon which to conclude that Israel continues to be an occupying power in Gaza despite the 2005 disengagement." *Id.* at paras. 27, 29. See further, "*Situation of Palestine: Closure of Gaza – Palestinian Human Rights and Victims' Communication to the International Criminal Court Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of the Illegal Closure of the Gaza Strip: Persecution and Other Humane Acts Committed against the Civilian Population as Crimes Against Humanity*", submitted by Palestinian Centre for Human Rights, Al-Haq, Al-Mezan Centre for Human Rights and Aldameer Association for Human Rights, November 2016.

viii See Footnotes 22 through 26 to the May 15, 2018 Referral by the State of Palestine

ix See, above Footnote vii, "*Situation of Palestine: Closure of Gaza*". Further carefully researched confidential submissions have been filed with the ICC by Palestinian human rights organizations on behalf of victims of crimes against humanity committed by high-level Israeli officials in the course of "Operation Protective Edge".

x Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution s-21/1 24 June 2015 A/HRC/29/CRP.4 [650] –[651]

xi Date acceded 2 January 2015, date lodged declaration under article 12(3) of Rome statute accepting jurisdiction 1 January 2015

xii UNGA 'Status of Palestine in the UN' (2012) UN Doc A/RES/67/19, Art 2

xiii The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine, 16 January 2015.

xiv See above, footnotes vii, ix.

xv Rome Statute, Preamble and Article 21

xvi UN Human Rights Committee, General Comment No. 20; Velasquez Rodriguez IACtHR Series C 4 (1988) [174], [176] and [177] *Estamirov and Others v. Russia* ECHR para [89]