



ICC Prosecutor should affirmatively decide that Gaza cases are admissible for investigation following Pre-Trial Chamber decision that the Court has jurisdiction

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The [decision](#) of Pre-Trial Chamber I of the International Criminal Court to properly find that the Court's territorial jurisdiction in the Situation in Palestine does include the territory of Gaza, West Bank and East Jerusalem, is a vital step forward towards achieving legal accountability and justice for the many victims, survivors and their families of alleged serious international crimes perpetrated by Israeli forces and their military and political leadership.

It significantly paves the way for ICC Prosecutor, Fatou Bensouda, to immediately open a criminal investigation into the situation in Palestine. This follows her [seminal decision](#) on 20 December 2019 that found “*there is a reasonable basis to proceed with an investigation*”, subject to obtaining confirmation from the Pre-Trial Chamber that the scope of the Court's territorial jurisdiction over Palestine does comprise Gaza, West Bank and East Jerusalem.

The ICC Prosecutor materially stated in December 2019: “*I am satisfied that (i) war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip; (ii) potential cases arising from the situation would be admissible; and (iii) there are no substantial reasons to believe that an investigation would not serve the interests of justice.*”

Now, following the ICC Pre-Trial Chamber's important decision last Friday, it is imperative for the ICC Prosecutor to make the only determination that she could do based on the facts, which is that alleged serious international crimes committed by Israeli authorities within the context of 2014 hostilities in Gaza shall be included within the scope of her imminent investigation.

The [Prosecutor's Request](#) to the Pre-Trial Chamber on 20 December 2019 provided an important caveat that a crucial determination on the genuineness and scope of Israel's investigative processes vis-a-vis the 2014 hostilities in Gaza had not yet been made. Paragraph 94 stated that the admissibility assessment “*remains ongoing at this stage and will need to be kept under review*”, due to “*limited accessible information in relation to proceedings that have been undertaken and the existence of pending proceedings in relation to other allegations*”.

This stands in clear contrast to the Prosecutor's admissibility assessment on alleged crimes committed in the West Bank, including East Jerusalem, by Israeli authorities. The Prosecutor made clear at Paragraph 95 that the admissibility assessment in the context of the West Bank/East Jerusalem is already fully satisfied in her view. This is presumably because there are no domestic investigative proceedings for the Prosecutor to have had to assess in regard to alleged crimes committed by Israeli authorities vis-a-vis the West Bank/East Jerusalem.



Last July on the sixth anniversary of the attacks on Gaza, LPHR and its close partner, the Al Mezan Centre for Human Rights, [issued](#) a statement on behalf of thousands of victims, survivors and their families, calling upon the ICC Prosecutor to make the objectively necessary determination that Israel is demonstrably unwilling to provide genuine investigations, and accordingly the Office of the Prosecutor is required to investigate the 2014 attacks on Gaza.

Our grave call to the ICC Prosecutor is based upon empirical evidence of the systemic impunity deeply embedded within Israel's military investigation processes, following years of working relentlessly on behalf of victims, survivors and their families to pursue accountability for clearly apparent serious violations of international criminal, humanitarian and human rights law.

The ICC Pre-Trial Chamber's decision is a vital step towards meeting the hope and imperative of victims, survivors and their families, and bringing an end to the devastating cycle of systemic impunity. It is now for the ICC Prosecutor to continue to necessarily act upon the clear and compelling evidence in front of her in relation to the situation in Palestine, and make an admissibility determination on Gaza cases that properly aligns with the authoritative and gravely extant words of the UN independent Commission of Inquiry into the 2014 Gaza Conflict:

“The commission is concerned that impunity prevails across the board for violations of international humanitarian and human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture, and ill-treatment in the West Bank.”

The recurrent serious violations that have egregiously harmed thousands of civilians in Gaza over the years without distinction—men and women, boys and girls, the elderly and people with disabilities—must be met with an effective accountability deterrent that only the international justice avenue of the International Criminal Court can realistically provide.

It remains an imperative for the due rights of victims, survivors and their families; for the upholding of the international rule of law; and for the prevention or deterrence of ongoing and future atrocities; that the long moral arc is not damagingly deviated or disproportionately delayed at a critical juncture, as it bends towards justice.

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For more on LPHR's work in this area, please see the following:

- [LPHR and Al Mezan Statement to ICC Prosecutor](#): Assessing cases of the 2014 attacks on Gaza leads to definitive conclusion: victims and survivors have been abandoned to non-genuine investigations and gross injustice (published July 2020 – on sixth anniversary of the 2014 military offensive on Gaza)



- [LPHR, Al Mezan and Medical Aid for Palestinians Report: Chronic Impunity: Gaza's Health Sector Under Repeated Attack](#) (published March 2020)
- [LPHR Statement: A seminal step towards legal accountability and justice for victims, survivors and their families: ICC Prosecutor Fatou Bensouda's decision that she is ready to open an investigation into the situation in Palestine](#) (published December 2019)
- [LPHR Q&A: Current progress of the International Criminal Court's preliminary examination into the situation in Palestine and potential next steps](#) (published July 2019)
- [LPHR Report: Eleven key points relevant to the complementarity assessment being undertaken by the Office of the Prosecutor of the International Criminal Court on the grave issue of targeted airstrikes against family homes in Gaza](#) (published April 2019)
- [LPHR and Al Mezan Centre for Human Rights Complaint Submission](#) to the United Nations Commission of Inquiry on the 2014 Gaza Conflict concerning large-scale destruction and damage to family houses in the Gaza Strip, with associated profound loss of life and injury to Palestinian residents, during Israel's military operation between 7 July 2014 and 26 August 2014 (published September 2014)
- [LPHR Evidence Submission](#) to the UN independent Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory: Israel's Supreme Court judgment on the legality of Israel's rules of engagement in the context of use of force against Gaza protesters (December 2018)
- [LPHR and Al Mezan Centre for Human Rights Report: Justice Denied: Gaza human shield survivors and the systemic failure of Israel's military investigation system to provide accountability](#) (published September 2018)
- [LPHR, Al Mezan Centre for Human Rights and Medical Aid for Palestinians Report: No More Impunity: Gaza's Health Sector Under Attack](#) (June 2015)
- [LPHR, Al Mezan Centre for Human Rights and Medical Aid for Palestinians Complaint Submission](#) to the United Nations Commission of Inquiry on the 2014 Gaza Conflict concerning destruction and damage to medical infrastructure, and loss of life and injury to civilians and medical personnel, in Gaza, during Israel's military operation between 7 July 2014 and 26 August 2014 (published February 2015)