



LPHR statement on atrocity crimes and two criteria the ICC Prosecutor must fulfil

19 December 2023

Yesterday over 100 Palestinians were reportedly killed in Israeli airstrikes against residential buildings in Jabalia refugee camp, amid the prolonged starvation conditions imposed upon Gaza's civilian population since the Israeli defence minister's order of total siege on 9 October.

Relentless mass killing of Palestinian civilians by targeted airstrikes and the near-total siege on Gaza continue to shock the conscience of humanity. As too does the continued holding of Israeli civilians as hostages and indiscriminate rocket fire by Palestinian armed groups into Israel. All clearly appear to constitute *atrocities crimes*.

The UN High Commissioner for Human Rights, Volker Turk, recently used this specific term when [stating](#): “The catastrophic situation we see unfolding in the Gaza Strip was entirely foreseeable and preventable. My humanitarian colleagues have described the situation as apocalyptic. In these circumstances, there is **a heightened risk of atrocity crimes**.”

The use of the term, “atrocities crimes”, by the UN's leading human rights official, appears to be entirely intentional and it is significant. Its importance may be clarified by reference to a [UN report](#) – with a foreword by then UN Secretary-General, Ban Ki-moon – published in 2014, entitled: “*A framework of analysis for atrocity crimes: a tool for prevention*”.

This landmark UN report describes the term “atrocities crimes” as including “three legally defined international crimes: genocide, crimes against humanity and war crimes”. It further includes “ethnic cleansing” within its scope, despite not being an independent crime under international law.

The UN report importantly clarifies State responsibilities in the context of atrocities crimes: “apart from the moral and ethical responsibility that we all have to protect populations at risk of atrocities crimes, both individually and collectively, there are also well-established legal obligations to do so.”

In relation to third States, it cites the obligation to “respect and ensure respect for international humanitarian law”, contained in [Article 1 of the Geneva Conventions](#). It asserts that this provision can be interpreted as including an obligation to prevent violations of international humanitarian law, including war crimes. Acts in conformity with this legal obligation would include seeking:

- i) an urgent ceasefire within a context of systematic international law violations;
- ii) the protection of civilians and their rapid access to humanitarian relief; and
- iii) the humane treatment and release of hostages and detainees.

The UN report does not focus on State duties to investigate and punish the commission of atrocities crimes. However, then UN Secretary-General, Ban Ki-moon, does express in the report's foreword: “although calls for accountability are common when such [atrocities] crimes are committed, impunity is all too common”. A firm linkage between impunity and future atrocities crimes is clear.



Preventing “all too common” impunity, and its dire consequences, by delivering legal accountability for atrocity crimes in the context of Israel/Palestine, is a vital responsibility of the Prosecutor of the International Criminal Court, Karim Khan KC.

LPHR submit that ICC Prosecutor Khan must fulfil two inextricably-linked criteria when undertaking this essential duty:

1. The ICC Prosecutor must pursue legal accountability for all atrocity crimes committed by Israel and Palestinian armed groups *since* 7 October 2023.
2. The ICC Prosecutor must pursue legal accountability for all atrocity crimes committed by Israel and Palestinian armed groups *prior to* 7 October 2023 (going back to [13 June 2014](#)).

Present and past atrocity crimes should not, and cannot, be divorced from each other by the ICC Prosecutor, when undertaking his grave duty of delivering legal accountability. For, as recognised by then UN Secretary-General Ban Ki-moon in the significant UN report on preventing atrocity crimes:

“Atrocity crimes take place on a large scale, and are not spontaneous or isolated events; they are processes, with histories, precursors and triggering factors which, combined, enable their commission.”

Amid the continuing horror, LPHR strongly encourages the ICC Prosecutor to fulfil his exceptionally significant duty to investigate and prosecute all present and past atrocity crimes in Israel/Palestine, with a necessary leap-forward in prioritisation and pace by his Office, and without fear or favour.