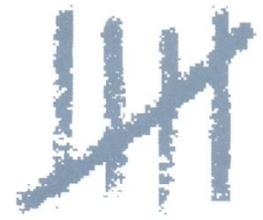


The Right Honourable Ms Fatou Bensouda
Prosecutor of the International Criminal Court
International Criminal Court
Post Office Box 19519
2500 CM, The Hague
The Netherlands



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

3 August 2014

Dear Prosecutor,

Request for the initiation of an investigation, pursuant to article 15 of the Rome Statute, on the basis of information on crimes within the jurisdiction of the International Criminal Court

Prompted by the extreme gravity of the situation in the Gaza Strip, in particular the ever-increasing number of civilian casualties and large scale of destruction, we, professors and practitioners of public international law and criminal law in Britain, strongly urge you to use your power under article 15 of the Rome Statute immediately to initiate a preliminary investigation on “the basis of information on crimes within the jurisdiction of the Court” (article 15(1)).

United Nations reports record that an estimated 23,304 air-to-surface missiles, tank shells and naval shells have been fired by Israel at the Gaza Strip since Israel launched its latest military assault on the territory on 7 July 2014. During the same period, 3,008 rockets have been fired by Palestinian armed groups at Israel, according to Israeli military sources, in addition to over 886 mortars, reported by the United Nations.

Over 1,525 Palestinians have been killed in the Gaza Strip since 7 July 2014, according to United Nations figures, current as of 2 August 2014. 13 Palestinians have also been killed in the West Bank by Israeli soldiers and settlers, and many more injured, including by live Israeli military fire. In the same time period, two Israeli civilians and one civilian of Thai nationality have been killed, as well as 63 Israeli soldiers. Many Palestinians killed have yet to be identified. However, the United Nations estimates that approximately 84 percent of those whose identities are known are civilians, including 329 children. The fatalities include entire families killed in their homes, patients killed in their hospital beds, doctors, paramedics, United Nations humanitarian workers and members of the press.

The Palestinian Ministry of Health reports that more than 8,900 Palestinians, over 30 percent of them children, have been injured, many of them critically. The United Nations warns that the health system is near collapse and that “a health disaster of widespread proportions is rapidly unfolding”: ambulances continue to be targeted; dozens of hospitals and clinics have been damaged or destroyed; five hospitals and 34 clinics have had to shut down due to damage or insecurity; others have received military warnings to evacuate; all are overwhelmed. Over 100 schools have been hit. An estimated 10,300 families have had their homes demolished or seriously damaged, many in targeted attacks. Entire areas of the Gaza Strip have been laid waste. Israel shelled the territory’s only electricity power plant on 29 July 2014, leaving Gaza’s population with no or extremely limited electricity and access to

water. Over 326,000 severely traumatised children, who have experienced death, injury and/or demolition of their homes, are in need of urgent, ongoing support.

At least forty four percent of the Gaza Strip is under evacuation notice, having been declared a military no-go zone, whilst military attacks continue in the remainder of the territory. An estimated 475,000 Palestinians – over a quarter of the total population – have been displaced. 1.8 million people, approximately half of whom are children and 66 percent of whom are registered refugees, have nowhere to which they can flee. The land and sea borders are closed. Civilians who evacuated their homes pursuant to Israeli military warnings have been killed and injured in Israeli strikes on locations where they have sought refuge, including United Nations schools, as they have been in previous military assaults on the territory.

Reports produced by non-governmental organisations following preliminary investigations strongly suggest that crimes within the jurisdiction of the International Criminal Court have been and are being committed. Supporting information is appended to this letter. Additional information, including from “States, organs of the United Nations, intergovernmental or non-governmental organizations [and] other reliable sources” (article 15(2)) is readily and widely available. Eye witness accounts have been documented, and “written or oral testimony” can be provided by victims and others (article 15(2)). There can be no doubt as to the “seriousness of the information” available (article 15(2)).

The United Nations Secretary General, Ban Ki Moon, has called for “accountability and justice”. That call has been echoed by the United Nations High Commissioner for Human Rights, Navi Pillay, who has underscored the need for “real accountability considering the increasing evidence of war crimes”.

The 2009 declaration made to the International Criminal Court by the Government of Palestine pursuant to article 12(3) of the Rome Statute provides the jurisdictional basis for you to open an investigation under article 15. Since the United Nations granted the State of Palestine non-member observer State status in November 2012, any prior doubts that may have existed concerning the status of Palestine as a State within the meaning of article 12(3) have been resolved. There is no legal requirement for a further declaration in order for an investigation to be initiated.

All the requirements for the initiation of an investigation pursuant to article 15 are clearly made out. The “information available to the prosecutor provides”, at the very least, “a reasonable basis to believe that... crime[s] within the jurisdiction of the Court ha[ve] been or [are] being committed” (article 53(1)(a)). No “issues of admissibility” under article 17 arise (article 53(1)(b)), and in any event are incapable of constituting a bar to the “commencement of the investigation” (article 15(4)). The utmost “gravity of the crime[s] and the interests of the victims” both warrant and merit an investigation (article 53(1)(c)), and there can be no doubt that such an investigation would serve the interests of justice (article 53(1)(c)).

The initiation of an investigation would send an unequivocal message to those involved that they stand to be held personally accountable for their actions. As such, it could play an important role in bringing breaches of international law in the region to a rapid end. It would also serve to bring an end to the impunity which has underpinned the ever increasingly brutal cycles of violence in the region, and which has caused – and is continuing to cause – extreme suffering to its civilian population.

Please accept, Prosecutor, the expression of our highest consideration and respect.

KIRSTY BRIMELOW QC, *Chair of the Bar Human Rights Committee of England and Wales*

HELENA KENNEDY QC, *Member of the House of Lords; Chair of Justice - the British Arm of the International Commission of Jurists; President of the School of Oriental and African Studies*

SIR GEOFFREY BINDMAN QC, *Senior Consultant, Bindmans Solicitors; Visiting Professor of Law, University College London and London South Bank University; Fellow of the Institute of Advanced Legal Studies*

ROY AMLOT QC, *former Chair of the Bar Council of England and Wales*

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ANDREW HALL QC, *former Chair of the Criminal Bar Association of England and Wales*

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PROFESSOR GEOFF GILBERT, *Professor of International Criminal Law, University of Essex*

PROFESSOR GUY S. GOODWIN-GILL, *Senior Research Fellow, All Souls College, Oxford; Professor of International Refugee Law; Barrister, Blackstone Chambers*

PROFESSOR VERA GOWLLAND-DEBBAS, *Visiting Professor, University College London; Academic Member Doughty Street Chambers*

PROFESSOR PENNY GREEN, *Director, International State Crime Initiative; Professor of Law and Criminology, the Dickson Poon School of Law, King's College London*

PROFESSOR NICK GRIEF, *Professor of Law, Kent Law School, University of Kent*

PROFESSOR IAIN GM SCOBIE, *Professor of Public International Law, University of Manchester*

PROFESSOR LYNN WELCHMAN, *Professor of Law, School of Law, School of Oriental and African Studies*

Institutional affiliations are provided for identification purposes only.

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All links were accessed in late July / early August 2014.