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Prosecutor Karim A.A. Khan KC
International Criminal Court
10 Oude Waalsdorperweg
2597 AK The Hague
The Netherlands

17 November 2023

Dear Prosecutor

I have the honour to hereby forward to you the attached referral of the Situation in Palestine on behalf of the following States Parties to the Rome Statute, in accordance with Article 13(a) and Article 14 of the Statute:

The Republic of South Africa;

the People's Republic of Bangladesh;

the Plurinational State of Bolivia;

the Union of the Comoros; and

the Republic of Djibouti.

Yours sincerely

Vusi Madonsela

Ambassador of the Republic of South Africa to the Kingdom of the Netherlands

Copies to:

H.E. Mr Muhammad Abdul Muhith, Ambassador and Permanent Representative of the People's Republic of Bangladesh to the United Nations in New York

H.E. Mr Issimail Chanfi, Permanent Representative of the Union of the Comoros to the United Nations in New York

His Excellency Mr. Mohamed Siad Doualeh, Permanent Representative of the Republic of Djibouti to the United Nations in New York

H.E. Mr Roberto Calzadilla Sarmiento, Ambassador of the Plurinational State of Bolivia to the Netherlands

State Party referral in accordance with Article 14 of the Rome Statute of the International Criminal Court

The Republic of South Africa;

the People's Republic of Bangladesh;

the Plurinational State of Bolivia;

the Union of the Comoros; and

the Republic of Djibouti;

Acting pursuant to Article 13(a) and Article 14(1) of the Rome Statute of the International Criminal Court ("the Court");

Recalling that on 1 January 2015, the Government of the State of Palestine ("Palestine") lodged a declaration under Article 12(3) of the Rome Statute of the International Criminal Court accepting the jurisdiction of the Court over alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since 13 June 2014, and on 2 January 2015 acceded to the Rome Statute by depositing its instrument of accession with the Secretary-General of the United Nations, and that the Rome Statute entered into force for the State of Palestine on 1 April 2015;

Recalling further that on 22 May 2018, pursuant to Articles 13(a) and 14 of the Rome Statute, Palestine referred to the Prosecutor the situation since 13 June 2014, with no end date, and that the Office of the Prosecutor on 3 March 2021 announced the opening of an investigation in respect of the Situation in Palestine, covering crimes within the jurisdiction of the Court;

Noting that Pre-Trial Chamber I of the Court on 5 February 2021 noted that an investigation had already been instituted by the Prosecutor in terms of Article 53(1) of the Statute and found that the Court can exercise its jurisdiction over the Situation in Palestine;

Gravely concerned about the escalation of violence, including against civilians, and the alleged ongoing commission of crimes within the jurisdictional scope of the Court;

Decide to refer the Situation in Palestine to the Prosecutor of the Court with a view to requesting the Prosecutor to vigorously investigate crimes under the jurisdiction of the Court allegedly committed within the context of the Situation in Palestine, on the following grounds:

1. As at the filing of this referral, there is evidence of continuing commission of the crimes detailed in the Referral by the State of Palestine, dated 15 May 2018 ("*the 2018 referral*"), namely:

    1.1. What is described in the 2018 referral as "*all matters related to the Israeli settlement regime*"; and

1.2. Any conduct, policies, laws, official decisions and practices that underlie, promote, encourage or otherwise make a contribution to the commission of crimes that come within the terms of Articles 7(1)(a), (d), (i), (f), (h), (j) and (k), 8(2)(a)(i), (ii), (iii), (iv), (vi), (vii), (b)(i), (ii), (iii), (iv), (viii), (ix), (xiii), (xvi) and (xxi) of the Rome Statute (see paragraph 11 of the 2018 referral).

1.3. Categories of crimes that can summarily be described (see paragraph 12 of the 2018 referral) as—

1.3.1. Crimes involving the unlawful appropriation and destruction of private and public properties, including land, houses and buildings, as well as natural resources;

1.3.2. Crimes involving the forcible transfer of Palestinians, including by means of violence, compulsion, duress and the creation of inhumane living conditions;

1.3.3. Crimes involving the unlawful transfer of the Israeli Occupying Power's population into Occupied Palestinian Territory;

1.3.4. Crimes involving murders and unlawful attacks on civilians, including through excessive use of force and unlawful killings of Palestinians, including demonstrators exercising their right to protest;

1.3.5. Crimes involving torture, cruel and inhumane treatment of Palestinians;

1.3.6. Crimes involving persecution, including the grave, widespread and systemic denial or violation of basic human rights on discriminatory grounds against Palestinians, including those resulting in or intended to achieve the deportation or forcible transfer, directly or indirectly, of the Palestinian population, the re-population of "cleansed" territories with Israeli settlers and the unlawful appropriation of Palestinian land and properties; and

1.3.7. Crimes involving the establishment of a system of apartheid based in particular on the adoption of discriminatory laws, policies and practices as well as the commission of inhumane acts intended to establish an institutionalised regime of separation and advancement of Israeli settlements accompanied by the systematic oppression and domination by Israeli settlers over Palestinians.

2. Furthermore, and in recent weeks, some of the same crimes appear to have continued to be committed and additional crimes appear to have been committed within the jurisdictional scope of the Court.

2.1. The crime of genocide as provided for in Article 6 (a), (b), and (c) of the Rome Statute;

2.2. Crimes against humanity as defined in Article 7 (a), (b), (d), (e), (h), (j) and (k) – the latter including deliberate destruction of health and civilian facilities necessary for people to meet their basic needs, such as food and water; and

2.3. War crimes as detailed in Article 8 (2)(a)(i), (iii), (iv); (b)(i), (ii), (iii), (iv), (v), (viii), (ix), (xii), (xviii), (xx), (xxi), (xxiv), and (xxv); and/or (e)(i), (ii), (iii), iv), (viii), (x), and (xiv).

2.4. The commission of the above crimes appears from—

2.4.1. Widespread public reports of deliberate targeting of civilians, humanitarian structures and staff, health and religious facilities, of use of phosphorus gas in hostilities, deportation or forced removal of parts of the population, especially in the Gaza Strip, and of knowingly and intentionally causing starvation and inhumane conditions to be endured by the population of the Gaza Strip, through destruction of objects indispensable to the people's survival and impeding relief supplies;

2.4.2. The content of the UN General Assembly Resolution entitled "Protection of civilians and upholding legal and humanitarian obligations" and adopted on 27 October 2023, which points to acts of violence aimed at civilians, lack of proportionality and precaution in the conduct of hostilities, a catastrophic humanitarian situation in the Gaza Strip especially and the urgent need for humanitarian aid;

2.4.3. Public statements made by officials, leaders and persons of authority of the Israeli government and military expressing the intent of committing genocide and the abovelisted crimes against humanity and war crimes, as defined, against Palestinians in general and the population of Gaza Strip in particular.

3. Based on the above, South Africa hereby refers the Situation in Palestine to the Prosecutor of the Court, requesting the Prosecutor to investigate the Situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.