Statement: 30 October 2023

Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel

International Criminal Court Prosecutor Karim A.A. Khan KC visited the Rafah Border Crossing between Egypt and the Gaza Strip on 29 October 2023. After the visit, the Prosecutor spoke from Cairo on the current situation in the State of Palestine and Israel.

Below is a transcript of his oral remarks. For the video, please see here.

I come to Egypt at what everybody knows is a very precarious time in world affairs. It's a moment when conflict once again has brought human suffering to the fore. We see nightmares in the daytime on our television screen. We hear voices that are not actors but are humans, that are children that could be our own, and we are rewinding the horrors of the past.

The stories and the accounts that I have heard in different parts of the world, whether it's in Bucha, in Ukraine, or in Darfur; or in the voices of the Rohingya in Myanmar, or the suffering that we see in Kabul, we see that these human markers of suffering are tragically more the norm than the exception. We see them time and time again in so many places.

And it's in times like this, as I have consistently stated, since I became Prosecutor of the International Criminal Court, that we need the law more than ever. Not the law in abstract terms, not the law as a theory for academicians, lawyers and judges. But we need to see justice in action. People need to see that the law has an impact on their lives. And this law, this justice, must be focused on the most vulnerable. It should be almost tangible. It is something they should be able to cling on to. It is something that they should be able to embrace when they are faced with so much loss, pain and suffering.

When I became Prosecutor in June 2021, I established for the first time a dedicated team to investigate the Palestine situation. And for the last two years, as I have been calling, requesting, pleading for additional resources, I have also been steadily increasing the resources and personnel for the Palestine investigation. I did this to make sure that I could discharge my responsibilities and the Office could discharge its responsibilities as best we can. And in December of last year, in front of all the Assembly of States Parties, I highlighted that one of the key

priorities for this year was my prayer, was my hope that I would be able to go to Israel and Palestine. And I did that because the Palestine investigation has always been, and remains, a very important investigation in the ICC. It's one that cannot be forgotten and it is one that is being conducted as effectively as we can. And I can say unequivocally that over the last one year, I have, together with the men and women of my Office, engaged in a very sustained manner with the Palestine investigation, and we've really made every single effort we could to enter Israel and Palestine.

But we have watched with horror the pictures emerging from Israel on the 7th of October. I think any of us that are parents or have children, any of us that have families, any of us that are alive, any of us that have love of God or love of humanity in our heart could not have helped feel their hearts chill on hearing the various accounts that came from so many innocent civilians in Israel whose lives were torn apart on that fateful day. And we simply cannot live in a world, we cannot leave a world for our children where burnings and executions and rapes and killings can take place as if they are normal, as if they are to be tolerated, as if they can happen without consequence. Children and men and women and the elderly can't be ripped from their homes and taken as hostages, whatever the reasons. And when these types of acts take place, they cannot go uninvestigated and they cannot go unpunished. Because these types of crimes that we've all been watching, that we saw on the 7th of October, are serious violations, if proven, of international humanitarian law.

And one can't watch videos of innocent Israelis being hunted down on a Saturday morning at a party and not pause to think for a moment at the hatred and the cruelty that underpinned those attacks. These acts that we saw on the 7th of October are not acts that accord with our humanity. They are acts that are repugnant to any person that believes in God. They're the most un-Islamic acts and cannot be committed in the name of a religion whose very name is peace.

As I stated five days after the attacks that took place on the 7th of October, we have jurisdiction over crimes committed by the nationals of state parties. And therefore that jurisdiction continues over any Rome Statute crimes committed by Palestinian nationals or the nationals of any state parties on Israeli territory, if that is proven. And whilst Israel is not a member of the ICC, I stand ready to work with state parties and non-state parties alike in pursuit of accountability. My primary and indeed my only objective must be to achieve justice for the victims and to uphold my own solemn declaration under the Rome Statute as an independent prosecutor, impartially looking at the evidence and vindicating the rights of victims whether they are in Israel or Palestine.

Since the 7th of October, I really intensified my efforts to get in and access the locations where crimes were committed in Israel, to meet the families of those that are grieving, those that are living with fear, as if time has stood still at an acutely painful moment, waiting for their loved ones, worried, where are those hostages that were taken and praying for their return? And I've similarly made every effort to enter Gaza, but it has not been possible. In Gaza, I wanted to meet those who are suffering such tremendous pain, to hear their experiences firsthand, and very importantly, to promise to them, to give a commitment to them, that their birthright is justice. They own justice and they deserve justice as much as any other of God's creation deserves justice.

This is what we talk about. This is what is meant when we say that Lady Justice is blind. Certain conduct is prohibited and certain rights must be protected. And whilst I wasn't able to enter Gaza on this trip, I stood almost on the door of Gaza when I went to the Rafah Crossing this morning. And there's no denying that any right-minded person would agree that beyond that crossing, - and I had those pictures we see on the television around the world in my mind - beyond that crossing are innocent Palestinians, innocent children, boys and girls who should be at school, who should be playing in parks or playing football or playing with their friends, learning and studying and hoping to build a better future, hoping to cure the mistakes of this generation of leaders and our own shortcomings. And instead, they're enduring unimaginable suffering. And the pictures we see can only be described as horrific and heartbreaking. Palestinians who want no part of this conflict are caught up in hostilities. And too many are dying and too many are being injured. And it's alarming to see the bodies of young children that could be our own children being dragged, baked in dust, still and silent, -as lifeless bodies - or injured and bleeding - being rushed to medical facilities that may not have the means to fix them and give them a chance to breathe the air and see the sun of tomorrow.

The fact that innocent civilians are trapped under the weight of a war they cannot escape and which is not their fault is not tenable. We need to step back and agree it's not acceptable that they're caught up in a war not of their making and they're deprived of an opportunity to live and have the experiences that we have had and the experiences of building a better world. And as a society, we simply cannot accept, I believe, that the brutal nature of war is some fait accompli. We can't willfully turn our faces away from that suffering because it's hard to watch, because it makes uncomfortable viewing. We can't turn our faces away from the suffering of innocents in particular. And we cannot and must not lose sight of the fact that there are laws that govern the conduct of hostilities.

There's no blank cheque. It's not a case that one can do whatever one wants to pursue a particular objective. The laws that we have, the Rome Statute that I operate under, requires that innocent lives are particularly protected. And what is most important is that the application of the law is not theoretical. People have heard promises for a long time. There have been enough words to fill libraries. In my view, the protections afforded by the law apply equally regardless of one's race and one's religion, one's nationality, one's gender.

There are no children of a lesser God. There are no children of a lesser God. When the Holy Quran states that to kill one innocent is as if one is killing all of humanity, it doesn't mention Muslim or non-Muslim. Rather, it says to kill one innocent is to kill all humanity, to save one innocent - not an innocent of this religion or that religion, an innocent of this nationality or that nationality — but to save one innocent, is to

save all humanity. And you all know the Holy Quran and you know that verse specifically recalls that this was the message given to Prophet Moses, peace be upon him. So it's a common ground in the teachings of the Jewish faith and the Muslim faith. But, unfortunately, we too often pay lip service to these fundamental precepts that actually echo in the law that has been created these millennia later.

In this regard, I have to say that Israel has clear obligations in relation to its war with Hamas: not just moral obligations, but legal obligations that it has to comply with the laws of armed conflict. It's there in the Rome Statute. It's there in black and white. It's there in the Geneva Conventions. It's there in black and white.

Israel has a professional and well-trained military. They have, I know, military advocate generals and a system that is intended to ensure their compliance with international humanitarian law. They have lawyers advising on targeting decisions, and they will be under no misapprehension as to their obligations, or that they must be able to account for their actions. They will need to demonstrate that any attack, any attack that impacts innocent civilians or protected objects, must be conducted in accordance with the laws and customs of war, in accordance with the laws of armed conflict.

They need to demonstrate the proper application of the principles of distinction, precaution and of proportionality. And I want to be quite clear so there's no misunderstanding: In relation to every dwelling house, in relation to any school, any hospital, any church, any mosque – those places are protected, unless the protective status has been lost. And I want to be equally clear that the burden of proving that the protective status is lost rests with those who fire the gun, the missile, or the rocket in question.

My Office certainly will scrutinise all information we receive in this regard to ensure that the law is not some kind of optional extra that one can take and leave. It is there to bind us together and to keep us away from the gates of hell and further misery. And this principle equally applies to Hamas in relation to firing rockets into Israel, either targeting civilians or knowing they don't have the sophistication to avoid civilian casualties. As I stated just a few days after the events of the 7th of October, my Office has an ongoing investigation with jurisdiction over Palestine that goes back to 2014 and any crimes committed on the territory of Palestine by any party. And this includes jurisdiction over current events in Gaza and also current events in the West Bank. I'm also extremely concerned with the spike, the increase, in the number of reported incidents of attacks by Israeli settlers against Palestinian civilians in the West Bank. We will investigate these attacks and all further attacks must cease immediately.

My message at this time is a consistent one that I have given in numerous parts of the world. It flows from the common yardstick of legality that we have to enforce, and it flows from the principle that justice is every child's birthright, every civilian's entitlement. The message is that any person with their finger on the trigger of a gun or controls a missile, has certain responsibilities. My Office will look closely to see whether those responsibilities are being adhered to or not.

And in relation to states, I call upon state parties to the ICC and non-state parties to help collectively vindicate the Geneva Conventions, to help collectively vindicate principles of customary international law and also principles of the Rome Statute, to share evidence regarding any allegations or any crimes so that we can properly investigate them and prosecute them as appropriate.

I've previously circulated on our platforms, on the ICC website, on Twitter, on other medium, in Arabic, in Hebrew and in English, a secure portal that individuals, your viewers, citizens around the world can send information to, that may be relevant or probative to the investigation in Palestine or Israel. Crimes allegedly committed in both places have to be looked into.

I additionally call upon civil society organisations around the world to work with us, professionally and objectively. I make a particular plea to NGOs to send us any and all evidence that underpins their reports or their communiques or their notices that they issue. NGO reports by themselves are, of course, not evidence and I cannot and will not act pursuant to my oath of office without reliable evidence that we can validate that can stand up in a court of law.

I also want to be clear that my Office is in the business of conducting credible, relevant, professional, and independent criminal investigations. And so I don't, I haven't, and I won't be giving a running commentary on social media, or anywhere else for that matter, regarding the state of investigations in this or any other situation. But the absence of commentary does not mean the absence of investigations.

Hostage taking represents a grave breach to the Geneva Conventions. It represents a specific offence under the Rome Statute. And I call for the immediate release of all hostages taken from Israel and for their safe return to their families.

We've heard a lot from the Secretary General of the United Nations, from the head of the Office for the Coordination of Humanitarian Affairs, Martin Griffiths, and from the World Health Organization regarding the dire humanitarian situation in Gaza. Impeding relief supplies as provided by the Geneva Conventions may constitute a crime within the Court's jurisdiction. I want to underline clearly to Israel that there must be discernible efforts, without further delay, to make sure civilians receive basic food, medicine, anaesthetics, morphine. We hear reports of operations taking place without these basic medicines, as if we're in the Middle Ages. Civilians must receive basic food and water and the desperately needed medical supplies.

This morning, I saw trucks full of goods, full of humanitarian assistance stuck where nobody needs them, stuck in Egypt, stuck on Rafah and away from the hungry mouths or the bleeding wounds. These supplies must get to the civilians of Gaza without delay. And in the same way, I underline to Hamas and anybody who has control in Gaza, that when Inshallah, such aid reaches Gaza, it's imperative that the assistance gets to the civilian population, and is not misused or diverted away from them.

I think our shared humanity, our faith, our traditions, require us to remember and express condolences for the loss of so many. In Israel, those that have been buried, for those that are waiting for their loved ones to be returned and that same heart, those same filial relationships and those same bonds of blood, of family, of friendship apply in Gaza to those Palestinians suffering so profoundly - for the many that are being buried and for the so many futures that have already been cut short in this ugly conflict.

It is really tragic, as we express our condolences, to have to ask what on earth is happening to this Holy Land of Israel and Palestine, whose very ground sheds tears at the blood of so many innocents that is being spilt?

I'll end my remarks where I started, really, which must be to recall the gravity of this moment, the gravity of this situation. We should never think things cannot get worse. What we are seeing around the world today are these epicentres of violence, whether it's in Ukraine or in the Sahel, whether it's in what's happening in Darfur, the plight of the Rohingya, what's happening in Afghanistan. I think it really is a moment where we must cling to the law. It's our duty to do so. It's an imperative if we love our own children. We have to act because it is such a perilous moment.

I fear that if we fail collectively to hear the call of our humanity, if we fail to listen to the reproaching soul of our hearts, to be better than we are, to be more just than we've been, to fight for things not based upon people's religion or tribe or nationality, their wealth or their poverty, but simply because we want to live in a world where there is equality so that we do not fall completely into the abyss. We want to live in a world where there is justice. We have to do better than we are doing right now. There are so many that are crying, and there are so many that are in pain. Collectively, the law and the quest for justice is essential to move out of the misery that we see all around us.

Thank you so much for your time and for coming. Thank you so much.

For more on the Office of the Prosecutor's investigation into the situation in Palestine, please see here.

To submit potential evidence to the Office, please visit OTP Link.

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