

COMPLAINT TO THE ICC FOR GENOCIDE AND OTHER CRIMES (ART. 15.1)

INFORMATION LETTER N° 3

Statement from the Lawyers

18 November 2023

THE PROCEDURE HAS MADE GOOD PROGRESS – EFFORTS TO CONVINCING THE PROSECUTOR'S OFFICE MUST CONTINUE AND INCREASE

This letter is a public document and may be freely distributed.

As of 18 November, the legal procedure has made good progress, starting from the Complaint that gathered many NGOs (160) and lawyers (560). The question of the genocide of the Palestinian people has been asserted as the key subject in international debate. States have followed suit: Belgium has committed to funding the investigation via a grant to the ICC; 5 States (South Africa, Bangladesh, Bolivia, the Comoros Islands and Djibouti) have formally filed a referral, thereby changing the Prosecutor's decision-making framework.

We are keeping to the same method: action towards the Court's divisions to convince them of the necessity of a swift and in-depth investigation on the ongoing genocide, and cooperation in the service of Palestinians' rights, by providing competence and availability. We are in contact with the Palestine Bar to determine how we can best act.

1/ The Complaint

The updated text of the Complaint is attached, in French and English.

The Complaint gathers over 160 NGOs and 600 lawyers. This is a remarkable success, and likely the strongest act of international solidarity in the profession.

Our goal remains unchanged, according to the legal method: analyze the facts, determine the applicable rules of law, draw out a solution, and seek to convince the judge of it

2/ The Genocide

As of writing, we have found no in-depth analysis that contradicts the Complaint's thesis, i.e. the qualification of genocide.

A reminder: International law distinguishes between genocide through the physical extermination of peoples (e.g. the genocide of the Jews) from genocide through destruction of social life (ICC Statute, Art 6, b) and c)). The material criteria were the denial of access to water and electricity, organized famine, undermining access to healthcare, expelling from housing, population transfer, ill-treatment and humiliation... For Palestine may be added: intense bombardment causing over 95%-civilian deaths. With respect to the criterion of intentionality, it is flagrant in the many public statements whose content is "dehumanizing". The goal is to reduce Palestinians to a state of sub-humanity, to break their society and to expel the greater part of it. The violence of current rhetoric is merely the continuation of the denial of the right to self-determination of the Palestinian people. It is this denial of the right to self-determination that is the deep cause of the current genocide.

3/ Managing Emails and Files

Our workdays have been intense, and we have lacked time to manage all emails and phone calls.

We will set up a website to gather all the relevant information..

Also kindly circulate this letter to your networks. We thank in advance those we have not replied to yet to make themselves known so that we can add them to our lists.

Recently, a call to send me e-mails from witnesses has begun to circulate. These are of no use, and I thank you for putting an end to it.

4/ The Website

We are engaged in real-time work—but also long-term work, that must be open to the greatest number. We are therefore preparing a website that will publish documents related to the procedure, general information, information on ongoing cases, analysis, and a regular newsletter that will enable exchange, each of these in several languages. Several translators have offered their services.

5/ The Procedure

The propaganda remains that the Court cannot give a ruling since Israel has not recognized the Court. This question was solved by a 5 February 2021 ICC decision: Palestine is a State, whose sovereign territories are the West Bank, East Jerusalem and Gaza, and the government of Palestine has validly transferred its criminal jurisdiction to the Court. No State has appealed this judgment.

We are currently in the investigation phase, which is well defined by the Court's methods. The principle is that only the Prosecutor decides.

Two decisive advances have been made:

- While the Prosecutor judged that he did not have the required budget, Belgium made a commitment to finance the investigation.
- While the State-parties remained indifferent, on 17 November, five States (South Africa, Bangladesh, Bolivia, the Comoros Islands and Djibouti) formally submitted a referral to the ICC Prosecutor. This changes the question for the investigation: the Prosecutor must decide on the basis of these referrals, and not just on his own initiative.

On 16 November, the UN's Special Rapporteurs demanded that States act "to prevent the genocide of the Palestinian people." States could take the initiative of an urgent-measures procedure before the International Court of Justice. This is not yet the case. We therefore continue our efforts before the ICC.

On 18 November the first work-meeting was held with the Palestine Bar, to determine the best means to cooperate.

On 22 November, we held a work-meeting with the team of the Prosecutor's Office entrusted with Palestine. We will provide a detailed briefing of it.

5/ Victims' Complaints

We are preparing the files for the first victims' cases. Given circumstances on the ground, these files are often imperfect. However, the destruction of ID documents and evidence after bombing must not ease the path of impunity.

On the procedural level, in case of death, family members are eligible to join judicial proceedings. According to the jurisprudence, and given the extreme violations of law in question, we may argue that if no family

member is in a position to join proceedings, a relative may be eligible. These obstacles are therefore merely apparent, and the files can be completed in the future.

I confirm our availability to analyze and draft the first complaint files by Palestinians. A first batch of files will be presented to the Prosecutor's Office at our 22 November meeting (complaints by individuals and by the Director of Hospitals.)

Je confirme notre disponibilité pour instruire et rédiger les premiers dossiers de plainte des Palestiniens. Nous aurons une première série de dossiers qui seront présentés au bureau du Procureur de la CPI lors de notre réunion du 22 novembre (plaintes de particuliers, et du directeur de hôpitaux).

If you have contacts in Gaza, and starting from minimal information, we can make contact and begin work.

6/ Witness Complaints

The Court's Statute enables any person to bear witness to crimes that fall within the Court's jurisdiction and that call for a judicial answer. Any person can thus contact the ICC Prosecutor's Office to provide information, evidence or analysis.

The Prosecutor decides alone... but not arbitrary. The criteria he must take into account include "the interest of justice". We therefore need to demonstrate that this genocidal aggression against the Palestinian people offends the conscience, and not merely legal analyses, and that every person demands that justice respond to this violence.

There is no form-letter. Every citizen may express his convictions as such. What matters is sincerity.

The letter can be individual or collective. There is no set structure, nor any compulsory phrasing: only the sincere expression of a double conviction: the gravity of the violations of law, and the need to see justice speak, to put an end to the impunity that is the primary cause of crimes, and to defend the individual and collective rights of Palestinians, through a firm application of the principle of equality.

However, we warn against addressing letters directly to the Prosecutor's Office. This would be counter-productive. We recommend addressing them to complainticc@gmail.com

We will leave the text as-is, except if it contains illicit content, and we will organize for them to be sent collectively to the Prosecutor. All the letters will be made available.

Communicate your commitment to the cause to the Prosecutor!

7/ Testimonies

We will be highly attentive to receiving the greatest possible number of direct testimonies by Palestinians, to retrace the lived experience of this human tragedy.

8/ Petition

We are awaiting the outcome of the meeting with the prosecutor's office, and will then propose the text of a petition, in several languages.

9/ Lawyers—Experts

600 lawyers working together is no easy task... and it is our challenge: our army of lawyers does not have the right to let the Palestinians down.

Some have signed onto the Complaint as a gesture of support, while others want to invest themselves in long-term work. We are currently in the phase of urgency, but the work will be long-term, and we will find our equilibrium in this long-term work.

For now, we have planned a meeting on Saturday 25 November, but it is quite difficult to find a meeting hall in Paris, and we cannot yet confirm this meeting.

10/ 25 November open meeting

You are all invited to attend an information meeting:

Saturday November 25, 2023, from 2 to 5 pm

Espace Paul Eluard, 2 Place Marcel Pointet, 93240 Stains

Many thanks to the municipality of Stains for hosting this event.

A ZOOM connection will be set up, with translations.

11/ First works

Let us however begin to organize through work on the following themes:

1. General

- 1.1. The history of Palestine
- 1.2. The history of Gaza
- 1.3. The establishment and management of the blockade of Gaza
- 1.4. The economic and social consequences of the blockade of Gaza

2. General Law

- 2.1. The right to self-determination
- 2.2. The right to armed resistance
- 2.3. The status of resistance fighters
- 2.4. The general regime of legitimate self-defense
- 2.5. The impossibility for Israel to invoke legitimate self-defense to police the Occupied Territories
- 2.6. Israel and IHL
- 2.7. Israël and human rights conventions
- 2.8. The Palestinian prisoners
- 2.9. Jerusalem

3. The crime of genocide

- 3.1. Basic analysis
- 3.2. Exhaustive study of the texts
- 3.3. Exhaustive study of the jurisprudence
- 3.4. Doctrinal publications

4. The crime of genocide against the Palestinian people

Material elements

- 4.1. War plans
- 4.2. Water
- 4.3. Energy
- 4.4. Food
- 4.5. Access to care
- 4.6. Attacks against hospitals
- 4.7. The destruction of residential buildings
- 4.8. The destruction of mosques
- 4.9. Forced transfer of population
- 4.10. Attacks against UN installations
- 4.11. The destruction of civilian property without military justification
- 4.12. Inhuman and degrading treatment
- 4.13. Weapons used
- 4.14. The use of phosphorus bombs
- 4.15. Attacks on health : summary and data

Elements of Internationality

- 4.16. Statements by M. Netanyahu
- 4.17. Statements by other political and military officials
- 4.18. Statements by allies
- 4.19. The project of population transfer
- 4.20. Older statements showing the roots of the genocide

Let us know what subject you wish to work on. The subject can be approached freely by each group, through documentation and analysis.

For documentation, always begin with UN documentation.

The goal is to master every subject, in order to draft as soon as possible an extensive synthesis that demonstrate that the investigation is perfectly manageable. The trap will be to contend that an investigation is unfeasible given the multiplicity of events. Whereas :

- Opening an investigation, drawing out the charges, and issuing arrest warrants are not held to the standard of proof required for a trial
- All the principal elements of the crime of genocide are easily demonstrated, enabling an exact perspective on this State criminality.

12/ The structure

In general, we will keep to the current group dynamic, producing legal acts and documentation, committed to defending Palestinians' rights.

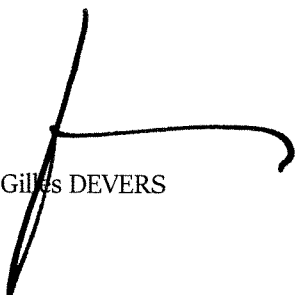
Regarding the lawyers, it will be necessary—but not urgent—to set up an organization in order to become identified as an interlocutor vis-à-vis third parties. This gathering into a permanent organization will enable distinguishing individual statements from those that commit the group as a whole. Further, this gathering of the lawyers involved will emphasize that we remain strictly within the bounds of our profession and its code of ethics. The group will not become an NGO. It deals neither with politics, nor with religion, and will not organize solidarity actions. It will remain within the basic framework of the legal profession, advised by a « Council of Elders » that will gather the Presidents of the Bar and intellectuals who have made themselves known as volunteers.

13/ Financing

The strong principle is that commitment to this cause is *pro bono*.

However, the scale of the work to be accomplished and its costs may justify some compensation. A common fund will thus be proposed, together with rules to manage it.

Lyon, 20 x 1 2023



Gilles DEVERS



Khaled AL SHOULI



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