Will the ICC criminally probe Abbas for mass torture?

February 17, 2019

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The Jerusalem Post

<https://www.jpost.com/Middle-East/Will-the-ICC-criminally-probe-Abbas-for-mass-torture-580952>

An NGO plans to file a crimes against humanity complaint with the International Criminal Court prosecution later this week against Palestinian Authority President Mahmoud Abbas for mass torture.

The NGO, the Jerusalem Institute of Justice (JIJ), said that with the ICC prosecution signaling in December that it was closer to potentially criminally probing Israelis for war crimes, it wanted to make sure that the PA was taken to task at the same time.

According to JIJ, the PA under Abbas has ordered and facilitated mass torture of its own people numbering around 180 per year.

It expects to file its complaint in The Hague on Wednesday.

Citing a combination of human rights groups’ reports, such as a 2016 report by the Independent Commission for Human Rights, as well as around a dozen of their own witnesses whom they have met with, JIJ said that the evidence is sufficient for a crimes against humanity charge against Abbas.

Though when the ICC was founded in 2002, many might have thought that the court would only deal with crimes like genocide, in November 2017, the ICC prosecution opened a full criminal probe into the US for torture of detainees during the post 9/11 years.

If the ICC was willing to go after the US for torture, it would seem to be even more obligated to do the same for Abbas and other members of the PA.

Whereas the ICC prosecution itself acknowledged the US had carried out some investigations of the torture allegations but found the probes insufficient, JIJ said that the PA has not even bothered to probe allegations that it tortures its own people.

Within the torture allegations, JIJ also said that there have been cases of detainees who were killed during their interrogation by PA security services and that torture has been used both against media critics of Abbas and against the Palestinian homosexual community.

JIJ is not the first to file complaints against Abbas.

In January 2015, law center Shurat HaDin filed war crimes complaints against Abbas on the basis of reports that Fatah-affiliated armed groups fired significant numbers of rockets into Israel from Gaza during Operation Protective Edge, along with Hamas, who fired most of the rockets.

Shurat HaDin argued that Abbas is vicariously liable for the Fatah armed groups’ actions as its leader, though it recognized that publicly Abbas opposed the rocket fire.

JIJ has now added the issue of mass torture which was not covered previously.

JIJ International Law chairman Ori Mord said that it was important to note that mass emotional torture, such using sleep deprivation, could also constitute crimes against humanity, if used on enough detainees.

The ICC prosecution’s December annual report signaled that it might open a full criminal probe of both the Israeli and the Palestinian sides soon – although soon in ICC terms may be measured in a period of as much as a year.

Israel says the ICC has no jurisdiction over it: a) since it did not sign the ICC’s Rome Statute, b) it argues Palestine is not a state and therefore has no capacity to ask the ICC to intervene, and, c) it argues that since Israel prosecutes its soldiers for violations, ICC involvement is precluded.

While there are potential allegations against Abbas and the PA which date back more than a decade, Mord said that JIJ would focus on post-June 2014, since that is the period in which the ICC prosecution has clear jurisdiction regarding the Palestinians.

One of the dizzying legal issues which comes up in these legal battles is how the PA deals with Palestinians who collaborate with Israel against Palestinian terror. According to the Oslo Accords, the PA cannot persecute Palestinians who help prevent terror against Israel, and Israeli courts have found that provision to be binding. However, the PA disputes that interpretation, saying it has a right to interrogate and prosecute spies.

It is unclear what position the ICC prosecution will take on the issue, although in principle the ICC has portrayed itself as defending even the rights of criminals against torture.