Khan al-Ahmar to ICC: this is our only chance to halt Israeli war crimes

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The International Criminal Court should prioritize human rights over state rights when it rules on whether it has jurisdiction with regard to the Israeli-Palestinian conflict, the Bedouin families from the illegal West Bank herding village of Khan al-Ahmar told the tribunal.

The Khan al-Ahmar families submitted a legal brief to the ICC’s pre-trial chamber on Thursday, with the help of Dutch human rights attorney Liesbeth Zegveld.

“As the Khan al-Ahmar victims aptly put it, ‘denying (territorial) jurisdiction would be denying the crimes,’” Zegveld wrote.

The ICC’s pre-trial chamber is examining the question of whether it has the jurisdiction to hear war crimes cases with regard to human rights violations and alleged war crimes in east Jerusalem, the West Bank and the Gaza Strip.

The court is accepting legal arguments on the question of jurisdiction until March 16 from victims of alleged war crimes either by Israelis or the Palestinians. It has also agreed by that date to accept some 40 legal briefs from countries, organizations, individuals and non-governmental groups. Israel and the PA can also submit briefs by Monday.

Many of the arguments are likely to focus on the issue of whether or not the ICC can consider Palestine as being a state, something that is a requirement for jurisdiction because Israel is not a party to the court.

At least seven countries are authorized to submit briefs on this issue and are expected to argue in Israel’s favor: that the ICC can not consider Palestine to be a state. This includes the Czech Republic, Hungary, Germany, Austria, Australia, Brazil and Uganda.

To those who have argued against jurisdiction, Zegveld wrote, “some of those views appear highly political, anachronistic and pay no attention to the international community’s responsibility for recognition and protection of all peoples’ equal rights to justice. Such views, disregarding the Court’s raison d’etre, are a matter of serious concern for Victims.”

She argued that Palestine could legally be considered a state and thus the court has jurisdiction over the territory in question. But the bulk of her argument focused on the need to expand the question and to look at it through the lens of human rights and the court’s reason for existence, which was to “end impunity for atrocious crimes.”

Without the ICC, the Khan al-Ahmar families have no place for legal redress, Zegveld wrote.

The village of tents and shacks located of Route 1 in the West Bank is under threat of forced evacuation by the IDF. Israel’s High Court has ruled that there is no legal impediment to such a move. The ICC’s chief prosecutor Fatou Bensouda has already warned that such an evacuation could be considered a war crime.

Zegveld argued that the families had a right to be considered victims, because there was reasonable basis to believe that crimes would be committed against them in the future.

The Kahn al-Ahmar families are “victims” for the purpose of the statute, Zegveld wrote. “This entitles them to have their fundamental rights recognized and protected under the statute and calls for the ICC to commence its investigation into the alleged crimes without further delay,” she said.

These families face “an imminent and irreversible harm due to Israel’s settlement-related criminal activities, e.g. unlawful appropriation and demolition of their houses, forced evictions and forcible displacement,” she explained.

On their behalf, the ICC has to interpret the question of jurisdiction in a manner that is “consistent with prevention, effective prosecution and punishment of grave crimes arising out of the hostilities and Israel’s illegal settlement activities in the ‘Occupied Palestinian Territory,’” Zegveld wrote.

If the ICC denies jurisdiction, “no criminal investigation will take place” for the “alleged and imminent grave crimes” the Khan al-Ahmar families and other face and or have experienced, she wrote.

Failure to award jurisdiction “affects [victims] rights to access justice, effective remedies, redress and all further rights that would unfold in an investigation, eventual prosecution, convictions and awards for reparations,” Zegveld explained.

Such a failure would be a “devastating blow for the court’s legitimacy,” she stated. Instead, she argued, “justice at the ICC would be contingent on political interests of a limited number of states.”