Calls made for ICC's Bensouda to address allegations of collusion with PA

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The Prosecutor of the International Criminal Court's recent statement on Twitter defending her Office's "independence and objectivity" were made in response to accusations that she had colluded with the Palestinian Authority over the decision by the court to hear war crimes cases against Israeli military personnel, NGO Palestinian Media Watch has claimed.

In a May 8 tweet, the ICC's official's account quoted Fatou Bensouda as saying: "misinformation and smear campaigns do not change facts about the conduct of my Office's work concerning the situation in #Palestine."

The tweet included a photograph of Bensouda, alongside another quote from her which read: "Fact: My Office is executing its mandate concerning Palestine situation with utmost professionalism, independence & objectivity in strict conformity with the Rome Statute. Any insinuation or assertion to the contrary is simply misled & unfounded."

There is no mention in the tweet or in any others by the account of why there was a need to make such a statement.

However PMW, which monitors Arabic-language media content in relation to the Arab-Israeli conflict, has claimed that its own report on alleged collusion between Bensouda and the PA prompted the tweet.

Approximately two weeks before the tweet, on April 23, PMW released a report detailing a number of accusations within the Jordanian press that the ICC Prosecutor had been colluding with the Palestinian Authority and had already decided to try Israeli soldiers for alleged war crimes.

In December 2019, Bensouda ruled that 'Palestine' is a state and that there was sufficient evidence that both Israel and Hamas committed war crimes, warranting her opening a full criminal investigation. However, she also submitted a request to the ICC's Pre-Trial Chamber seeking confirmation that the ICC has jurisdiction over "the situation of Palestine," and that the territory "comprises the West Bank, including East Jerusalem, and Gaza," according to PMW.

But a report in Jordan's Jafra News claimed that this pre-trial process was a sham designed to make Bensouda's office appear impartial.

PMW quotes Jafra News as reporting: “The general prosecutor’s office explained to the Palestinian side that it did not wait for the Preliminary Department's (i.e., Pre-Trial Chamber–Ed.) decision in order to begin preparations to open an investigation. This is because the aforementioned decision [that the ICC has jurisdiction] is a foregone conclusion, and a petition to this [Pre-Trial] Chamber was only done in the first place out of considerations related to protecting the ICC's public image and its proper activity, in the framework of its official authorities in a sensitive investigation such as this.”

According to the Jordanian report, Bensouda's office passed information along to the PA indicating that the investigation would go ahead before the Chamber had made any such decision.

In late April Bensouda doubled down on her position that the investigation should go ahead, ignoring around 50 briefs submitted to the Chamber in Israel's favour, to side with the Palestinian position.

"This report by Jafra News suggests that the ICC prosecutor is biased, lacks integrity, and therefore is incapable of conducting a fair proceeding concerning Israel." PMW said in its report.

Furthermore, PMW corroborated allegations that there had been contact between Bensouda's office and the PA, pointing to a photograph published by WAFA, the official PA news agency, on February 15 this year, showing PA Prime Minister Muhammad Shtayyeh meeting with Bensouda in February.

Additionally, PLO Executive Committee Secretary Saeb Erekat told PA TV that not only had the PA had a hand in preparing the case for the ICC, but internationally designated terror groups including Hamas and the Popular Front for the Liberation of Palestine (PFLP) had also been involved.

“After our acceptance as members of the ICC, His Honor [PA] President [Mahmoud Abbas] established a supreme national committee responsible for following up with the court," Erekat told PA TV, adding: "I have the honor of chairing it. [PA Minister of Foreign Affairs] brother Riyad Al-Malki is the official link connecting to the ICC, and he is the rapporteur to the committee…This committee included [factions] from all ends of the Palestinian political spectrum, without any exceptions… The number of committee members was 45 and we all worked as a team. Dr. Ghazi Hamad of [Hamas] was even elected the committee’s spokesman.”

According to PA TV, he continued: “There were six from the Hamas Movement. And sister Khalida Jarrar who represented the Popular Front [for the Liberation of Palestine], Allah willing may she be released; and there was [Deputy Secretary-General of the Democratic Front for the Liberation of Palestine] brother Qais [Abd Al-Karim] ‘Abu Laila.’”

These claims were not addressed by Bensouda or the ICC in their tweet.

In a statement on their website, Maurice Hirsch Adv. and Itamar Marcus of PMW commented: "The extent and depth of the collusion between Bensouda and the Palestinians may be surmised both by her attempt in her recent tweet to hide or downplay her interaction with the Palestinians who she should be prosecuting, and by the exhilaration they expressed."

They point out that recognition of Palestinian statehood by the court ought also to leave the Palestinians vulnerable to prosecution for war crimes, yet PA TV reported that Shtayyeh had praised Bensouda for her opinion that the investigations ought to go ahead, as had Erekat who, according to PA TV, via PMW, "expressed his pride in Bensouda’s commitment to the mandate given to her in order to guarantee the demand for accountability and justice."

"The confidence expressed by Shtayyeh and Erekat indicates they are certain Bensouda will only prosecute Israel and not prosecute Palestinians, even though objectively the Palestinians are the ones who have committed crimes," PMW argued.

"It begs the conclusion that Palestinian leaders who have praised the decision, have either been told explicitly or have been led to believe by the ICC prosecutor that only Israel is to be targeted by the court, and not them. All of these are further indications of improper collusion between the prosecutor and the Palestinian Authority."

Hirsch and Marcus have called upon Bensouda to "publish a serious response," in which she doesn't merely protest her impartiality, but addresses the allegations made by PMW over collusion with the Palestinian Authority.