In rare step, International Criminal Court reaches out to ‘Palestinian victims’

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In an exceedingly rare move, the International Criminal Court last week launched a campaign to reach out to “victims of the situation in Palestine,” raising the ire of Israeli officials and criticism from a former Foreign Ministry legal adviser.

In a [little-noticed press release](https://www.icc-cpi.int/CourtRecords/CR2018_03690.PDF) issued Friday, three judges who are members of the so-called pretrial chamber dealing with Palestinian complaints of alleged Israeli war crimes ordered the court’s registry “to establish, as soon as practicable, a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine.”

Furthermore, the judges required the [registry](https://www.icc-cpi.int/about/registry) — a neutral organ of the court providing administrative support — to open an “informative page on the Court’s website” geared exclusively to Palestinians, and to report on the progress of its activities every three months.

The judges’ goal is the creation of a “continuous system of interaction between the Court and victims, residing within or outside of Palestine,” they added.

Victims “play an important role” in the court’s work, the judges noted.

“Victims have therefore the right to be heard and considered, at stages of the proceedings determined to be appropriate, and the Court has the duty to effectively enable them to exercise this right.”

In January 2015, ICC chief prosecutor Fatou Bensouda opened a preliminary examination into the “situation in Palestine,” after the “State of Palestine” signed the Rome Statute and formally accepted the court’s jurisdiction over its territory.

Two months ago, Palestine submitted to the court a so-called state referral, asking the prosecutor to investigate “past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine,” which it defined as the West Bank, East Jerusalem and Gaza.

The Israeli government declined to comment on the matter this week. But in private conversations, officials in Jerusalem stressed that the judges’ statement merely talks about informing people about the court’s work and does not take a position on the actual examination.

At the same time, the statement was deemed “unusual” and “strange” by the officials, in that it is almost unprecedented that a pretrial chamber would engage in active outreach to victims in a case that has not yet advanced to the stage of an investigation.

Jerusalem has long argued that the ICC has no jurisdiction over matters related to the Israeli-Palestinian conflict, since it has no jurisdiction over Israel (which is not a member state) and because Palestine is not a state and therefore cannot exercise jurisdiction over the West Bank.

Alan Baker, a former legal adviser to Israel’s Foreign Ministry who was involved in negotiating the ICC’s founding statute, slammed the statement as “quite crazy,” arguing that the court has allowed itself to become a tool of pro-Palestinian propaganda.

“This seems to me to be quite crazy, and the court is openly turning itself into a Palestinian propaganda engine, similar to the [United Nations] Human Rights Council, with a regular reporting regime on Palestine only and a distinct section of its website devoted to Palestine,” Baker told The Times of Israel.

The three ICC judges were going out of their way to cater to Palestinian victims in preparation of a trial, despite the fact that the prosecutor has not yet decided whether to open an investigation or whether the court even has jurisdiction over the territory in question, Baker noted.

“All this seems to indicate that the ICC is venturing far beyond its role and is being politically manipulated, or is manipulating itself, against its own better interests,” he fumed.

“Does it have so much spare time on its hands that it can dabble in such nonsense?” he added.

The chief prosecutor has yet to decide whether to proceed from the preliminary examination to a full-fledged investigation, which proceeds a potential trial.

Whether she will do so [depends on various factors](https://www.timesofisrael.com/palestine-at-the-icc-a-headache-israel-might-be-able-to-live-with/), including whether Palestine is indeed considered a state and has jurisdiction over the territory it claims, and if Israeli crimes allegedly committed there fulfill the court’s gravity requirements.

Furthermore, the Hague-based court will not investigate alleged Israeli violations in Palestine if it finds the Israeli legal system can be relied upon to investigate any grave crimes committed by Israelis.

But the judges of the pretrial chamber — which deals with legal issues before a trial begins — argued that victims have the right to be heard even before judicial proceedings begin.

They have the right “to provide information to, receive information from and communicate with the Court, regardless and independently from judicial proceedings, including during the preliminary examination stage,” the three judges wrote.

To be able to exercise this right, victims “should be provided with sufficient and accurate information about the Court’s role and activities.”

If and when the prosecutor decides to open an investigation into the situation in Palestine, the registrar shall “increase its activities and inform and assist victims in more detail,” the judges went on. “Ultimately, this approach of the Chamber will allow the Court to better advance the interests of justice and protect the rights of victims.”