



שורת הדין (ע"ר)

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November 25, 2019

Mrs. Fatou Bensouda, Chief Prosecutor
Office of the Prosecutor
International Criminal Court
The Hague, Kingdom of the Netherlands

Dear Mrs. Bensouda,

1. Over the past five years, SHURAT HADIN – ISRAEL LAW CENTER, has filed numerous communications with your office. We have brought to your attention the war crimes and crimes against humanity of officials of the Palestinian Authority (PA) and of Hamas.
2. Our communications have brought detailed account of:
 - a. The **intentional indiscriminate attacks against Israeli civilians**, as **thousands of rockets and mortars** were fired upon Israeli towns and villages, many by FATAH members **under the command of the President of the PA**.
 - b. **The torture of innocent Palestinians in clandestine PA facilities**, as part of a widespread or systematic attack directed against the civilian population present in PA-administered areas.
 - c. The **wanton destruction of civilian property and the natural environment** by incendiary devices which has burnt into ashes natural reserves and destroyed agricultural and residential property in Israel, destroying tens of thousands of acres in Israel.
 - d. The **abuse of Palestinian children** in armed conflict and the **use of civilians, including women and children, as human shields** for the criminal acts against Israelis.
 - e. Attempted invasion into Israeli territory in order to **attack civilian villages** and kill civilians.
3. Our communications were thorough and highly detailed, referring to all aspects relevant to the decision to investigate atrocities, including the issues of jurisdiction, admissibility and the interest of justice.

4. Since we submitted our communications, officials of the PA, Hamas and other Palestinians, including the individuals whom we have communicated to you, have continued to flout international humanitarian law with impunity. Only two weeks ago, we have witnessed hundreds of rockets fired on Israeli civilian towns and villages, including Tel-Aviv. These are merely the latest addition to the thousands of rockets, mortars and other terrorist attacks against civilians which Palestinians, including the said individuals, have directed since 2014.
5. Furthermore, PA officials administer a "pay-to-slay" scheme in which the PA directs payments from the Palestinian Authority Martyr's Fund to convicted terrorists. These payments thus incentivize war crimes because the size and duration of the PA's "martyr's payments" are dependent upon the severity of the attack. The PA pays the largest "martyr's payment" to the most egregious violators of international humanitarian law in consequence of the wantonness of the violation.
6. The United States, the Netherlands, Australia, Norway and other governments have halted or reduced financial support to the PA because of the outrageous and unlawful nature of the "pay-to-slay" scheme. Yet, the ICC prosecutor's office has chosen not to consider at all the grave breach of international humanitarian law which the "pay-to-slay" scheme constitutes. This is highly discordant and may represent a perverse application of the principle of gravity, as your office devotes significant resources to the investigation of alleged subsidies to "settlers", but simultaneously ignores the patently unlawful PA "martyrs" payments, which are direct subsidies for the murder of civilians.
7. The "pay-to-slay" scheme is only part of a larger theme, laying the ground to further violence, war crimes and crimes against humanity. In this context, the PA's Ministry of Education systematically incites to War Crimes and Crimes Against Humanity through a curriculum which includes the demonization of Jews and Israelis, the delegitimization of the right of Israel to exist and the praise of the murderers of innocent civilians.
8. Despite the severity of the crimes described in our communications – **we have received no feedback from your office. Furthermore, you have not contacted us to "seek and receive the views of the victims" whom we represent, as required by the regulations of your office** and in the spirit of the pre-trial chamber decision from 13 July 2018 (ICC-01/18-2).
9. In addition, your office's annual reports show that little, if any, consideration has been given to our complaints as the mere description of the Israeli-PA "situation" is highly unbalanced, focusing mainly on the claims of the PA. Your near-exclusive focus on the claims of the PA raises questions as to the impartiality of your evaluation of the situation under preliminary investigation.

10. While your office has ignored our communications detailing the victimization of Israeli civilians, **you have repeatedly met with other NGO's, which have solicited against Israel and/or filled complaints against Israel.**
11. Furthermore, you have met PA officials responsible for that victimization. Specifically, you met with PA President Mahmud Abu Abbas (Abu-Mazen) on Oct. 30, 2015, despite the clear evidence which we presented in our communications, concerning President Abbas's personal criminal liability for FATAH rocket fire at Israeli civilians and civilian objects.
12. We respectfully note the impropriety of the collegial meeting you held with PA President Abbas. Such meeting, between a prosecutor and a person against whom the law requires dispassionate consideration of a valid allegation of criminal conduct, seriously degrades the actual and perceived impartiality of the prosecutor's office.
13. Pursuant to your regulations and the decisions of the pre-trial chamber, we ask you to **meet with us in person**, in order to:
 - 1) Update us on the status of our communications.
 - 2) Examine the need for further information and evidence we can provide in support of our communications.
 - 3) Receive further information concerning the criminal activity of officials of the PA and of Hamas who are within the jurisdiction of the court.
 - 4) Examine the need to hear the views of Israeli victims whom we represent.

We shall be thankful for your prompt reply.

Respectfully,



Nitsana Darshan-Leitner
President, Shurat HaDin Israel Law Center