

Executive Summary

Introduction

1. The Palestinian Centre for Human Rights (PCHR), Al-Haq, and Al Mezan Centre for Human Rights (“Palestinian Human Rights Organizations” or “Submitting Organizations”) make their submission pursuant to Article 15(2) of the Rome Statute of the ICC on behalf of themselves and Palestinian victims. This third communication by the Submitting Organizations, and the first to specifically focus on the Gaza closure, seeks to assist the OTP in establishing that a reasonable basis exists for finding that, since 13 June 2014, crimes falling within the jurisdiction of the Court have been, and indeed continue to be, committed on the territory of Palestine, a State Party to the Rome Statute. The crimes described in this submission have been and continue to be committed by high-level Israeli military and civilian officials.

2. In the submission, the Palestinian Organizations provide an illustrative overview of the acts and omissions that underlie and constitute the unlawful closure policy, as well as the impact of these acts on the civilian population of the Gaza Strip, and Palestine more broadly, as carried out in the course of Israel’s closure of the Gaza Strip from June 2007 to the present. In particular, the Palestinian Human Rights Organizations urge the Prosecution to analyze the closure of Gaza by the Occupying Power, Israel, and the resulting crimes under Articles 7(1)(h) (persecution) and 7(1)(k) (other inhumane acts) of the Statute, as detailed. In relation to other inhumane acts, the Submitting Organizations recall that collective punishment is prohibited under Article 33 of the Fourth Geneva Convention. The Palestinian Human Rights Organizations maintain that while the Gaza closure began prior to the date on which the Court was vested with jurisdiction, the policies have continued into the period in which the Court undeniably has jurisdiction over the territory of Palestine.

Facts

3. Closures has been imposed on Palestinian civilians to varying degrees since the onset of Israel’s military occupation of the Palestinian territory in 1967 – an occupation which continues to the present day, including over the Gaza Strip. The current closure policy is the latest and most severe manifestation of a broader Israeli policy and process of fragmentation and separation of the Palestinian territory, begun in the early 1990s.

4. The Gaza Strip, a constituent part of the State of Palestine, is frequently described as the world’s largest open-air prison. This is not exaggeration: for the last nine years, approximately two million Palestinians have been effectively locked inside the tiny coastal territory, denied access to the remainder of the occupied Palestinian territory – and the outside world. In June 2007, following the assumption of power in Gaza by Hamas, Israel, the Occupying Power (also referred to in this submission as “Israeli authorities” and Israeli occupation forces “IOF” depending on the context), intensified the movement restrictions imposed since the 1990s on people and goods into and out of Gaza. This marked the beginning of the current Gaza closure, which has remained in force continuously to the present day, and which is the subject of this submission.

8. Gaza's unlawful closure is the result of a comprehensive package of restrictions that must be viewed cumulatively in order to comprehend their full effect. This includes the sealing off of the Gaza Strip by land, air, and sea; the enforcement of a no-go "buffer zone" within the territory of the Gaza Strip itself; and the blocking, with tightly controlled exceptions, of all transit of people and goods through Gaza's land crossings. Israel steadily controls not only the five border crossings between its territory and the Gaza Strip, but also Gaza airspace, Gaza territorial sea, and can access any communication from Gaza to the outside world (and vice versa). All forms of travel and external trade, both imports or exports, are subject to a strict permit regime with opaque rules and procedures that are virtually impossible to access and understand, as they are normally available only in Hebrew, are subject to continue changes and often remain unpublished.

9. Gaza's isolation has been further exacerbated by heightened Egyptian restrictions on travel through the Rafah border crossing. Since 2011, Rafah, the sole border crossing located between the Gaza Strip and Egypt, has been opened only a few days per year. Since 24 October 2014, traffic through the crossing, including for humanitarian assistance, has nearly ceased, as Egypt has kept Rafah mostly closed, citing security reasons.

10. The ongoing closure of the Gaza Strip restricts Palestinians' right to freely move and choose their residence within their State's territory, as well as other rights for which liberty of movement serves as a prerequisite, such as rights to work, health, education and family life. As a result of these movement restrictions, even patients in need of life-saving medical care are often denied permission or critically delayed in obtaining treatment outside the Gaza Strip. Students from Gaza are unable to attend universities in the West Bank, including East Jerusalem, and are frequently denied or delayed when seeking permission to exit for study abroad. Palestinian families are forcibly divided between Gaza, the West Bank (including East Jerusalem) and abroad, with parents, children, spouses, brothers and sisters unable to visit each other, even within the Palestinian territory, for decades. Business people and traders are impeded in conducting their professional activities, as exports are virtually banned and imports grossly over-regulated and limited in ways that harm civilians and the economy of Gaza. Cumulatively, the closure undermines Palestinians' individual and collective rights to self-determination and has wrought a crisis of dignity on Gaza's civilian population. Not only are Palestinians in Gaza restricted from leaving but, as a rule, visitors are not permitted to enter Gaza either. Only a tightly regulated number of internationals are allowed into the Gaza Strip under a strict and complicated system of permits.

11. The impact of the illegal closure of Gaza has been further compounded by three intensive military offensives carried out by Israel on the captive population of Gaza between late 2008 and 2014. Each of these major military assaults has claimed a significant number of civilian lives, including hundreds of children, and left the population increasingly traumatized. During the Israeli offensives, Israel's closure prevented civilians from seeking safety and refuge outside the Gaza Strip, including blocking access to other parts of the Palestinian territory, and rendered 500,000 Palestinians in Gaza (28% of the population) either homeless or temporarily displaced. Even after the cessation of these intense periods of military hostilities, civilians in Gaza have been unable to rebuild their homes and lives, as ongoing import restrictions as part of the closure bar the entry of crucial construction materials and other basic supplies. Two years after the last assault, at least 75,000 people are estimated to remain displaced, with nearly a

quarter of them (23%) currently living in the rubble of their damaged homes. The nine-year closure combined with the three major military offensives on Gaza in the span of only six years has left basic infrastructure devastated and severely eroded Palestinian livelihoods and coping mechanisms. Without immediate “herculean efforts” to reverse the devastating environmental, health, and socio-economic consequences of the closure, the UN predicts that Gaza may be uninhabitable by 2020 – in less than four years.

12. The manufactured de-development of Gaza has created a situation in which the Gaza Strip currently lacks even the most basic infrastructures, such as electricity or water. According to **Awny Naim**, the General Director of the Gaza Electricity Distribution Corporation (GEDCo), “Gaza’s power network needs to be fully rebuilt all over again.” In response to the long power outages, many Gaza residents resort to alternative energy sources, like candles and small, independent generators. “Because some of these alternatives are not safe,” Naim cautions, their misuse results in widespread incidents of fume inhalation and carbon monoxide poisoning, and even generator explosions and fires. “Dozens of fatalities and injuries have been documented, most of them children.” In March 2015, the Palestinian Water Authority Minister Mazen Ghoneim declared that “[t]he biggest water catastrophe on earth is in the Gaza Strip, as 97% of the coastal aquifer water is unfit for human use because of seawater intrusion and leakage of sewage water into it.”

24. The comprehensive restrictions imposed by Israel have severely undermined living conditions in the Gaza Strip and fragmented the occupied Palestinian territory, straining its economic and social fabric. As of 2015, the closure had already led to a 50% reduction of Gaza’s economy. Unemployment in the Gaza Strip is now the highest in the world, with 41% unemployment in 2015, and youth unemployment closer to 60%. Despite Israel’s pledge to allow enough humanitarian and commercial imports for the survival of the population, many Palestinians in Gaza lack access to the resources needed to fulfill their basic needs, including adequate food, medicine, fuel, electricity, potable water and other essential commodities. Due to access restrictions in the land and sea, many Palestinians in Gaza are unable to cultivate their land or fish their sea. Instead, the Palestinian population of Gaza has been made largely dependent on expensive Israeli goods and international humanitarian aid. Nearly 80% of Gaza’s population receives some form of international aid, most of which is food.

Legal Analysis

25. In accordance with Article 5 of the Rome Statute and taking into account the jurisprudence of the Court, the Palestinian Human Rights Organizations submit that there is reasonable basis to believe that the conduct in question constitutes crimes against humanity within the jurisdiction of the Court. Namely, the Organizations assert that the implementation of Israel’s closure policy in relation to the Gaza Strip from 2007 to the present, and particularly the policy in effect since 13 June 2014 and the cumulative, continuing impact and effects of the policy from June 2007 through the present on the Palestinian civilian population, constitutes crimes against humanity of persecution in violation of Article 7(1)(h) and other inhumane acts causing great suffering, or serious injury to body or to mental or physical health in violation of Article 7(1)(k).

26. The international community has widely described the deprivations inhering to the current closure of the Gaza Strip as forms of “collective punishment” in violation of international humanitarian law. The Palestinian Human Rights Organizations submit that this collective punishment of the civilian populations manifests through the deprivations of fundamental rights (including the right to be free from collective punishment) that clearly breach the threshold of “severe” deprivation required to constitute the crime against humanity of persecution.

27. In arguing that the crime of persecution is committed, the Palestinian human rights organization submit the following, illustrative list of rights that have been violated: the right to freedom of movement; the right to life and physical security; the right to work; the right to an adequate standard of living, including the right to adequate food, water, and housing; the right to health; the right to obtain an education; freedom from discrimination and equal protection of the law; the right to family life; the right to self-determination; and finally, the overarching right to dignity of the entire civilian population of Gaza.

28. For the severe deprivations of fundamental rights described above to qualify as the crime of persecution, the act or the omissions of the perpetrator must have “targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such. In this regard, the Submitting Organisations argue that persons discriminated upon herein, within the meaning of the crime of persecution, are Palestinians. In particular Palestinians in Gaza as recognized by Israel as part of, but a distinct group from Palestinians in other parts of occupied Palestinian territory. The discrimination is on national, political, ethnic, religious and/or cultural grounds. The target of Israel’s closure policy is the entire civilian population of Gaza, numbering approximately 2 million people. However, it is important to recall that although the civilian population of Gaza bears the brunt of the closure policy’s impact that forms the basis of this submission, additional consequences – including the deprivation of fundamental rights - are also experienced by the entire population of occupied Palestine, and indeed, the Palestinian people as a whole.

29. On the matter of admissibility, there are currently no national proceedings in either Israel or Palestine against those who bear the greatest responsibility for the crimes alleged herein in relation to Israel’s imposition of the closure on the Gaza Strip. In addition, the violations presented involve the violation of fundamental rights on a widespread and systematic basis, with a discriminatory element, causing severe physical and mental suffering and societal de-development. This situation arose out of policies, acts and omissions involving the highest levels of the Israeli civilian and military structure. The crimes committed involve undue restrictions on civilians’ freedom of movement and access to the basic building blocks of a dignified life. As such the Palestinian Human Rights Organizations submit that the potential cases arising from an investigation into the conduct described herein would be admissible to the Court.

30. The Submitting Organisations also provide that proceeding with an investigation would be in the interest of justice and is consistent with the object and purpose of the Rome Statute.

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