



Original: English

No. ICC-01/18
Date: 13 July 2018

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE STATE OF PALESTINE

Public

Decision on Information and Outreach for the Victims of the Situation

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis, Registrar

Defence Support Section

Victims and Witnesses Section

Nigel Verrill, Chief

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach, Chief

Other

PRE-TRIAL CHAMBER I (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”), in the situation in the State of Palestine (“Palestine”), issues the following Decision on Information and Outreach for the Victims of the Situation.

I. BACKGROUND

1. On 1 January 2015, Palestine lodged a declaration under article 12(3) of the Rome Statute (the “Statute”), accepting the jurisdiction of the Court over alleged crimes “committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”.¹
2. On 2 January 2015, Palestine deposited its instrument of accession to the Statute with the Secretary-General of the United Nations, in accordance with article 125(2) of the Statute.²
3. On 16 January 2015, the Prosecutor opened a preliminary examination into the situation in Palestine.³
4. On 22 May 2018, Palestine submitted to the Prosecutor a referral of the situation in Palestine pursuant to articles 13(a) and 14 of the Statute. In particular, the letter of referral requests the Prosecutor “to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine”.⁴ It further specifies that “[t]he State of

¹ See Annex I to Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I (“Assignment Decision”), 24 May 2018, ICC-01/18-1-AnxI, p. 2.

² Secretary-General of the United Nations, “Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession”, 6 January 2015, Reference: C.N.13.2015. Treaties-XVIII.10 (Depositary Notification), <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf> (last accessed on 3 July 2018).

³ ICC Press Release: 16 January 2015, “The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine”, ICC-OTP-20150116-PR1083; see also Annex I to Assignment Decision, ICC-01/18-1-AnxI, p. 5, para. 1 and footnote 1.

⁴ Annex I to Assignment Decision, ICC-01/18-1-AnxI, p. 8, para. 9.

Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip".⁵

5. On 24 May 2018, pursuant to regulation 46(2) of the Regulations of the Court ("the Regulations"), the Presidency assigned the Situation in Palestine to this Chamber.⁶

II. APPLICABLE LAW AND PRELIMINARY REMARKS

6. The Chamber notes articles 21 and 68(3) of the Statute, rules 16(1)(a)-(c) and (2)(a), 85, 86 and 89 to 93 of the Rules of Procedure and Evidence (the "Rules"), regulation 86 of the Regulations and regulations 6, 8, 103(1), 104, 105 and 112(1) of the Regulations of the Registry.

7. In the view of the Chamber, for the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible, particularly to the victims of situations and cases before the Court. Outreach and public information activities in situation countries are quintessential to foster support, public understanding and confidence in the work of the Court. At the same time, they enable the Court to better understand the concerns and expectations of victims, so that it can respond more effectively and clarify, where necessary, any misconceptions.⁷

8. The Chamber recalls that victims play an important role in the Court's proceedings. Pursuant to article 68(3) of the Statute, the Court *shall permit* the views and concerns of victims to be presented and considered at the stages of

⁵ *Ibid.*, footnote 4.

⁶ Assignment Decision, ICC-01/18-1.

⁷ See ICC-ASP, "Strategic Plan for Outreach of the International Criminal Court", 29 September 2006, ICC-ASP/5/12, https://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf, paras 1-3 (last accessed on 3 July 2018).

the proceedings determined to be appropriate by the Court. 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.

9. The Chamber also notes article 21(3) of the Statute according to which the “application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status”.⁸ In this respect, the Chamber takes note of international human rights instruments concerning victims’ rights, such as the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”,⁹ the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”,¹⁰ and the “Convention of the Rights of the Child”.¹¹ Moreover, the “right to an effective remedy” and the “right to have access to justice”, which lie at the heart of victims’ rights, are also found in articles 2(3)(a) and 14(1) of the International Covenant on Civil and Political

⁸ Pre-Trial Chamber II, *Situation in the Republic of Kenya*, [Decision on Victims’ Participation in Proceedings Related to the Situation in the Republic of Kenya](#), 3 November 2010, ICC-01/09-24, paras 4 and 5; in this context, the Appeals Chamber said: “[a]rticle 21 (3) of the Statute stipulates that the law applicable under the Statute must be interpreted as well as applied in accordance with internationally recognized human rights. *Human rights underpin the Statute; every aspect of it, including the exercise of the jurisdiction of the Court. Its provisions must be interpreted and more importantly applied in accordance with internationally recognized human rights [...]*” (emphasis added), see Appeals Chamber, *The Prosecutor v Thomas Lubanga Dyilo*, [Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19\(2\)\(a\) of the Statute of 3 October 2006](#), 14 December 2006, ICC-01/04-01/06-772, para. 37.

⁹ United Nations General Assembly, A/RES/40/34 of 29 November 1985.

¹⁰ United Nations General Assembly, A/RES/60/147 of 21 March 2006.

¹¹ Convention on the Rights of the Child, 20 November 1989, UN Treaty Series vol. 1577, p. 3.

Rights,¹² articles 6(1) and 13 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms,¹³ article 7(1)(a) of the African Charter on Human and Peoples' Rights,¹⁴ and articles 8(1) and 25(1) of the American Convention on Human Rights.¹⁵

10. The Chamber underlines that in accordance with the Court's legal framework, the rights of victims before the ICC are not limited to their general participation within the context of judicial proceedings pursuant to article 68(3) of the Statute.¹⁶ In this regard, it is worth recalling that victims also 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.¹⁷

11. Importantly, in order to be able to properly exercise their rights, victims should be provided with sufficient and accurate information about the Court's role and activities. The Assembly of States Parties ("ASP") repeatedly acknowledged this need in various resolutions in the last years, such as:

¹² International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature on 19 December 1966, UN Treaty Series, vol. 999, p. 171.

¹³ Convention on Human Rights and Fundamental Freedoms, 4 November 1950, UN Treaty Series, vol 213, p. 221.

¹⁴ African Charter on Human and Peoples' Rights, 27 June 1981, UN Treaty Series, vol. 1520, p. 217.

¹⁵ American Convention on Human Rights, also referred to as the pact of San José, Cost Rica, 22 November 1969, UN Treaty Series, vol. 1144, p. 143.

¹⁶ Pursuant to rule 93 of the Rules, the views of "other" victims – i.e. not participating pursuant to rules 89 to 91 of the Rules – may be sought by a Chamber on any issue, including with regard to the review of the Prosecutor's decision not to investigate pursuant to rules 107 and 109 of the Rules.

¹⁷ See, for example, article 15(1), (2) and (6) of the Statute and rule 49 of the Rules; article 53 and rule 104 of the Rules; rule 92(1) and (2) of the Rules. Rule 92(2) of the Rules provides for the notification of victims "who have communicated with the Court with respect of the situation", envisaging communication between victims and the Court even before the Prosecutor's decision as to whether to initiate an investigation has been taken. See also Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of the Pre-Trial Chamber I of 7 December 2007 and in the appeal of the OPCD and the Prosecutor against the decision of the Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, ICC-01/04-556, para. 53; Pre-Trial Chamber II, *Situation in the Republic of Uganda*, [Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06](#), 10 August 2007, ICC-02/04-101, paras 93-95.

[...] *emphasizes* the importance of effective outreach to victims and affected communities in order to give effect to the mandate of the Court;

Stresses the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and *emphasizes* the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims;¹⁸

Reiterating that [...] access to relevant information concerning violations and redress mechanisms are essential components of justice and, in this regard, *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the International Criminal Court towards victims;¹⁹

Underlines the need to continue to optimize and adapt outreach activities, in light of the different phases of the judicial cycle, and to encourage further efforts to ensure that victims and affected communities have access to accurate information about the Court, its mandate and activities, as well as about victims' rights under the Rome Statute, including their right to participate in judicial proceedings and claim for reparations [...].²⁰

12. In the light of the above, the Chamber is of the view that preliminary first steps should be taken at this stage with a view to providing accurate information about the Court, including its mandate and activities, to victims of the situation. When and if the Prosecutor takes the decision to open an investigation, the Chamber will, in a second step, give further instructions to the Registry in order to increase its activities and inform and assist victims in more detail regarding their potential participation in conformity with the Statute. Ultimately, this approach of the Chamber will allow the Court to better advance the interests of justice and protect the rights of victims.

¹⁸ ASP, Strengthening the International Criminal Court and the Assembly of States Parties, 14 December 2017, ICC-ASP/16/Res.6, paras 93-94; Resolution on Victims and affected communities, reparations and Trust Fund for Victims, 17 December 2014, ICC-ASP/13/Res.4, fourth preambular paragraph; Strengthening the International Criminal Court and the Assembly of States Parties, 17 December 2014, ICC-ASP/13/Res.5, para. 71; Strengthening the International Criminal Court and the Assembly of States Parties, 27 November 2013, ICC-ASP/12/Res.8, para. 51; The impact of the Rome Statute system on victims and affected communities, 8 June 2010, RC/Res.2, sixth preambular paragraph.

¹⁹ ASP, Victims and affected communities, reparations and Trust Fund for Victims, 27 November 2013, ICC-ASP/12/Res.5, fourth preambular paragraph; Strengthening the International Criminal Court and the Assembly of States Parties, 27 November 2013, 14th preambular paragraph; Resolution on Victims and affected communities, reparations and Trust Fund for Victims, 17 December 2014, ICC-ASP/13/Res.4, fourth preambular paragraph; Strengthening the International Criminal Court and the Assembly of States Parties, 17 December 2014, ICC-ASP/13/Res.5, 20th preambular paragraph.

²⁰ ASP, The impact of the Rome Statute system on victims and affected communities, 8 June 2010, RC/Res.2, para. 3.

13. In addition, for a more efficient use of the Court's limited resources, the Chamber is of the view that outreach and information activities should be conducted with the coordinated efforts of the different sections of the Court vested with responsibilities related to victims. This approach allows for synergies and harmonisation between the different sections of the Court, in particular regarding the messages directed to affected communities and victims, avoiding contradictions, and assists streamlining and rationalising any possible future participation process, enhancing its predictability, efficiency and expeditiousness.²¹

III. ACTIVITIES IN RELATION TO VICTIMS OF THE SITUATION

14. The Registry shall establish, as soon as practicable, a system of public information and outreach activities among the affected communities and particularly the victims of the situation in Palestine. In the view of the Chamber, the Registry should establish a continuous system of interaction between the Court and victims, residing within or outside of Palestine, for as long as the situation in Palestine is assigned to a Pre-Trial Chamber.

15. All relevant Registry's sections are expected to be involved in such outreach and information activities. In particular, the Public Information and Outreach Section ("PIOS"), the neutral communication facilitator and promoter of the Court, as well as the Victims Participation and Reparations Section ("VPRS"), the section dedicated to facilitating the participation of victims, should take a central role in the initial phase of approaching victims,

²¹ For a similar approach at different stages of the proceedings, see Pre-Trial Chamber II, *The Prosecutor v Bosco Ntaganda*, [Decision Establishing Principles on the Victims' Application Process](#), 28 May 2013, ICC-01/04-02/06-67, paras 1-3; Pre-Trial Chamber II, *The Prosecutor v Dominic Ongwen*, [Decision Establishing Principles on the Victims' Application Process](#), 4 March 2015, ICC-02/04-01/15-205, paras 1-3; Pre-Trial Chamber I, *The Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Décision fixant les principes applicables aux demandes de participation des victimes](#), 24 May 2018, ICC-01/12-01/18-37, para. 12.

non-governmental organizations and intermediaires to broaden their understanding of and support for the mandate and work of the Court. If need be, those sections may consult with the Victims and Witnesses Unit regarding protection issues. .

16. The information and outreach activities should (i) clearly indicate the general parameters of the Court's jurisdiction in relation to the situation in Palestine; (ii) provide victims and affected communities, as well as intermediaries, with timely, accurate, concise, accessible and comprehensive information regarding the general mission of the Court as well as each of its organs' role and activities; (iii) promote greater understanding of the different stages of the proceedings before the Court and the diverse roles that victims are statutorily called to play during these various stages; and (iv) respond to concerns and expectations. With regard to the role of each organ of the Court, victims should be reminded, in case they want to communicate information to the Court for the purposes of an eventual investigation or prosecution, that such information should be addressed directly to the Office of the Prosecutor.²²

17. In developing the abovementioned activities, and pursuant to regulation 103 of the Regulations of the Registry, the Registry shall ascertain and take into account factors relating to the specific context of the present situation such as languages or dialects spoken, local customs and traditions, literacy rates and access to media.

²² Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgment on victims participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, ICC-01/04-556, paras 51-53.

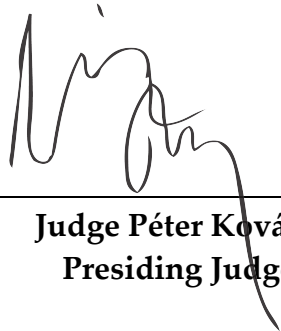
18. Regarding means of publicity and notice, the Chamber is of the view that various means should be considered, including messages in local and international media, radio, television and internet. Within this context, the Chamber instructs the Registry to create an informative page on the Court's website, especially directed to the victims of the situation in Palestine. To the extent possible, this informative page on the Court's website should be available in the various language(s) that would facilitate access to the relevant information by the victims and affected communities.

19. The Registry is instructed to inform the Chamber, on a periodic basis, about the progress of and challenges to its outreach and information activities related to the situation in Palestine, including the resources available, and should provide the Chamber with a report ("Registry's Initial Report") to be filed at a time deemed appropriate but no later than 14 December 2018.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **ORDERS** the 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 and report back to the Chamber in compliance with the principles established in the present decision;
- b) **ORDERS** the Registry, after the submission of the Registry's Initial Report (no later than 14 December 2018), to inform the Chamber, every three months, about the progress of its activities concerning victims and affected communities in the situation of Palestine; and
- c) **ORDERS** the Registry, to create an informative page on the Court's website, especially directed to the victims in the situation of Palestine.

Done in both English and French, the English version being authoritative.



**Judge Péter Kovács,
Presiding Judge**



Judge Marc Perrin de Brichambaut



**Judge Reine Adélaïde Sophie
Alapini-Gansou**

Dated this Friday, 13 July 2018

At The Hague, the Netherlands.