

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-01/18  
Date: 14 February 2020*

**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**

Request for Leave to File Submissions Pursuant to Rule 103

**Source:** Palestinian Center for Human Rights (PCHR)  
Al-Haq Law in the Service of Mankind (Al-Haq)  
Al-Mezan Center for Human Rights (Al-Mezan)  
Aldameer Association for Human Rights (Aldameer)

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Mr James Stewart, Deputy Prosecutor

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

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

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Mr Peter Lewis, Registrar

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**  
Mr Philipp Ambach, Chief

**Other**

## I. Introduction

1. On 28 January 2020, Pre-Trial Chamber I issued the “Order setting the procedure and the schedule for the submission of observations”<sup>1</sup> providing for the procedure and schedule for amicus observations following the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine” of 22 January 2020.<sup>2</sup> Accordingly, the Palestinian human rights organisations, Palestinian Center for Human Rights (PCHR), Al-Haq, Al Mezan Center for Human Rights (Al Mezan) and Aldameer Association for Human Rights (Aldameer) (hereinafter “Palestinian human rights organisations”) request leave to file joint written “observations on the question of jurisdiction set forth in paragraph 220 of the Prosecutor’s Request”, pursuant to Rule 103 of the Rules of Procedure and Evidence of the International Criminal Court.<sup>3</sup>

## II. Background and Expertise

2. The Palestinian human rights organisations, AL-HAQ, ALDAMEER, PCHR, and AL MEZAN have been operating in the occupied Palestinian territory since 1979, 1993, 1995, and 1999 respectively, investigating, monitoring and documenting violations of international human rights law and international humanitarian law carried out in the occupied Palestinian territory regardless of the identity of the perpetrator. Al Mezan and PCHR have been instrumental in representing the victims before the Israeli judicial system, whereas Aldameer provides legal services to detainees in Israeli jails.
3. AL-HAQ is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the occupied Palestinian territory, the organisation has special consultative status with the United Nations Economic and Social Council. Al-Haq is the West Bank affiliate of the International Commission of Jurists – Geneva and is a member of the International Network for Economic, Social and Cultural Rights (ESCR-Net), the Euro-Mediterranean Human Rights Network (EMHRN), the World

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<sup>1</sup> See Order setting the procedure and the schedule for the submission of observations, ICC-01/18-14, 28 January 2020 (hereinafter ICC-01/18-14)

<sup>2</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020.

<sup>3</sup> ICC-01/18-14, para. 15; Rules of Procedure and Evidence, available at: <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organisations Council (PRHOC), and the Palestinian NGO Network (PNGO).

4. ALDAMEER is a non-governmental organization specialising in the protection of human rights. It was established in 1993 in coordination with the Aldameer Foundation in Ramallah working on democracy and human rights issues. Aldameer aims to ensure the development of human rights principles and internationally recognized standards and values in the Gaza Strip. The Foundation is guided by principles of accountability, rule of law, transparency, tolerance, empowerment, participation, inclusion, equality, equity, non-discrimination, and attention to vulnerable groups.
5. THE PALESTINIAN CENTRE FOR HUMAN RIGHTS is an independent Palestinian human rights organisation, established in 1995, and based in Gaza City. The Centre enjoys Consultative Status with the ECOSOC of the United Nations. It is an affiliate of the International Commission of Jurists – Geneva; the International Federation for Human Rights (FIDH) – Paris; member of the Euro-Mediterranean Human Rights Network – Copenhagen; member of the International Legal Assistance Consortium (ILAC) – Stockholm; member of the Arab Organization for Human Rights – Cairo; and member of the World Coalition against the Death Penalty – Rome. The Centre’s mandate is to: protect human rights and promote the rule of law in accordance with international standards; create and develop democratic institutions and an active civil society, while promoting democratic culture within Palestinian society; support all the efforts aimed at enabling the Palestinian people to exercise their inalienable rights in regard to self-determination and independence in accordance with international law and UN resolutions.
6. AL MEZAN CENTER FOR HUMAN RIGHTS is an independent, non-partisan, non-governmental human rights organisation based in the Gaza Strip. Al Mezan was established in 1999 to protect and advance the respect of human rights in the occupied Palestinian territory, particularly economic, social and cultural rights in the Gaza Strip. Al Mezan supports victims of international law violations, and promotes democratic principles, civic participation, and respect for the rule of law in Gaza as part of the occupied Palestinian territory. Al Mezan gained special consultative status with the United Nations Economic and Social Council in 2010 and is a member of the

International Network for Economic, Social and Cultural Rights (ESCR-Net), the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organisations Council (PHROC), and the Palestinian NGO Network (PNGO).<sup>4</sup>

7. The work of these Palestinian human rights organisations has been internationally recognised and acclaimed. Al-Haq has been awarded the Fayeze A. Sayegh Memorial Award (1986), the Rothko Chapel Award for Commitment to Truth and Freedom (1986), has been co-recipient alongside B'Tselem of the Carter-Menil Human Rights Prize (1989) and the Geuzenpenning Prize for Human Rights Defenders (2009), while General Director of Al-Haq Mr. Shawan Jabareen was the 1990 recipient of the Reebok Human Rights Award, the Welfare Association's NGO Achievement Award (2010), and the Danish PL Foundation Human Rights Award (2011). In 2018, the French Republic co-jointly awarded Al-Haq and B'Tselem the Human Rights Prize of the French Republic (2018), which is "awarded to organizations that are being harassed or pressured for defending and promoting human rights".<sup>5</sup> Al-Haq was awarded the Annual Human Rights and Business Award in 2019 at the UN Forum on Business and Human Rights.<sup>6</sup>
8. Similarly, PCHR is a recipient of the French Republic Award on Human Rights (1996), the Bruno Kreisky Award for Outstanding Achievements in the Area of Human Rights (2002), the International Services Human Rights Award (UNAI) (2003) and the Human Rights Prize of Andalusia (2009).<sup>7</sup> In addition, Director of PCHR, Raji Sourani has been recipient of the Joint Laureate for Robert F Kennedy Memorial for Human Rights (1991) (jointly held with Israeli lawyer, Avigdor Feldman), Washington and the Right Livelihood Award, Stockholm (2013).

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<sup>4</sup> Al Mezan, "About Al Mezan" available at: <https://www.mezan.org/en/page/1/About+Us> (last accessed 13 February 2020).

<sup>5</sup> PCHR, "About PCHR" available at: <https://www.pchrgaza.org/about/about.html> (last accessed 13 February 2020).

<sup>6</sup> Business and Human Rights Resource Centre, "Al-Haq named 2019 recipient of Human Rights and Business Award" (26 November 2019), available at: <https://www.business-humanrights.org/en/al-haq-named-2019-recipient-of-human-rights-and-business-award> (last accessed 13 February 2020).

<sup>7</sup> PCHR, "About PCHR" available at: <https://www.pchrgaza.org/about/about.html> (last accessed 13 February 2020).

9. Al Mezan's director Mr. Issam Younis was awarded the 2008 Weimar Human Rights Prize for his work to protect and promote human rights and provide assistance to victims of abuses. Al Mezan's staff member Mr. Samir Zaqout was awarded for his human rights work in defending the right to freedom of expression by the Palestinian Center for Development and Media Freedom (MADA).<sup>8</sup>
10. Since 2009, the Palestinian human rights organisations have worked to petition the Prosecutor of the International Criminal Court to open an investigation into the Situation of Palestine. In 2009, Al-Haq submitted and presented a position paper<sup>9</sup> at the 2010 NGO Roundtable in The Hague, which was cited in the Prosecutor's Request of January 2020.<sup>10</sup> The organisations welcome an opportunity to build upon this analysis in light of relevant subsequent developments in the Court's jurisprudence and with respect to Palestine's standing within the international community.
11. On 2 January 2015, the State of Palestine acceded to the Rome Statute. Since then, Palestinian human rights organisations have submitted six substantial joint communications to the Office of the Prosecutor outlining a reasonable basis for the belief that war crimes and crimes against humanity have been committed in the occupied Palestinian territory. In parallel, thousands of photographic and documentary files recorded by the organisations were submitted by EyeWitness to the International Criminal Court.
12. The organisations submitted communications to the UN Commission of Inquiry in 2014 and to the UN Commission of Inquiry on the Great Return March (2018), meeting with the latter in Amman. The organisations materials were relied on extensively in the detailed findings of the Commission of Inquiry.<sup>11</sup>

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<sup>8</sup> Al Mezan, "Al Mezan Congratulates Samir Zaqout and Mustafa Ibrahim who won Freedom of Expression Awards" (4 May 2011), available at:

<https://www.mezan.org/en/post/12092/Al+Mezan+Congratulates+Samir+Zaqout+and+Mustafa+Ibrahim+who+won+Freedom+of+Expression+Awards> (last accessed 13 February 2020).

<sup>9</sup> Al-Haq Position Paper on Issues Arising from the Palestinian Authority's Submission of a Declaration to the Prosecutor of the International Criminal Court under Article 12(3) of the Rome Statute, December 2009.

<sup>10</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020, p. 99, see fn 587, p. 101, fn 598, available at: [https://www.icc-cpi.int/CourtRecords/CR2020\\_00161.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_00161.PDF) (last accessed 13 February 2020).

<sup>11</sup> See generally, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory A/HRC/40/CRP.2 (18 March 2019), p. 255 and throughout.

13. Staff of Palestinian human rights organisations have been subjected to death threats and harassment for their work on communications to the Court. In particular, the Office of the Prosecutor Report on Preliminary Examination Activities (2016) noted: “As publicly reported earlier this year, staff members of certain organisations that have gathered information of relevance to the OTP preliminary examination, such as Al-Haq and Al Mezan Center for Human Rights, have been subjected to threats and other apparent acts of intimidation and interference. The Office takes this situation very seriously and has consulted with the organisations and persons affected as well as liaised with the Dutch authorities, as the Host State to the Court, in order to ensure that appropriate steps and measures are taken to address the situation.”<sup>12</sup> Notwithstanding, the Palestinian human rights organisations continue to pursue justice for the victims of war crimes and crimes against humanity committed in the occupied Palestinian territory in the context of a 52-year Israeli military occupation.

### III. Summary of Proposed Joint Submission

14. As Palestinian human rights organisations we strongly welcome the Prosecutor’s analysis and broadly agree with the arguments raised in the January 2020 request submitted to Pre-Trial Chamber I for a jurisdictional ruling on the scope of the territorial jurisdiction of the International Criminal Court (“ICC” or the “Court”) under Article 12(2)(a) of the Rome Statute in Palestine. If granted leave to submit *amicus* briefs, the organisations’ joint written submission to the Pre-Trial Chamber will affirm the Prosecutor’s analysis and support the conclusion that ‘the Court’s territorial jurisdiction extends to the Palestinian territory occupied by Israel during the Six-Day War in June 1967, namely the West Bank, including East Jerusalem, and Gaza.’<sup>13</sup>

15. Our organisations will set out in our submission how the State of Palestine was occupied by the British administration, prior to the establishment of

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<sup>12</sup> Office of the Prosecutor, “ICC Prosecutor’s Report on Preliminary Examination Activities (2016) – Excerpt on Situation in Palestine” available at: <https://www.un.org/unispal/document/auto-insert-202100/> (last accessed 13 February 2020).

<sup>13</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020, para 3, available at: [https://www.icc-cpi.int/CourtRecords/CR2020\\_00161.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_00161.PDF) (last accessed 13 February 2020).

Mandatory Palestine, which was recognised as a class A mandate.<sup>14</sup> Since this period, Palestine's sovereignty over the territory has been in abeyance as a result of successive military occupations. As such, the application of the Montevideo Criteria to the characterisation of Palestine's acquisition of statehood during occupation, is moot.<sup>15</sup> Recognition of the already existing State of Palestine continues.<sup>16</sup>

16. The written submission will draw upon the International Criminal Court's jurisprudence with respect to the question of South Ossetia in the Georgia Situation, having reference to the function of recognition, broadly understood, and the imperative of avoiding unnecessary impunity gaps, as well as the consideration given to the nature and scope of the Court's jurisdiction in, for example, the Situation in Bangladesh/Myanmar.

17. Further, the submission will discuss one of the significant features of the Oslo Process as noted in the Prosecutor's Request, that: 'the Palestinian Council was to maintain criminal jurisdiction over certain crimes and persons within particular territorial areas.'<sup>17</sup> Our submission will further support the conclusion that while Palestine may be temporarily compromised on the scope of the enforcement of its criminal law jurisdiction, this does not effect the territorial scope of its contemporary prescriptive jurisdiction. Anomalies in respect of the criminal jurisdiction, are explained by reference *inter alia* to the administrative regime unique to occupation law, as detailed in Article 65 of the Fourth Geneva Convention *et post modum*.

18. Accordingly, the organisations will provide a brief review of the nature of the belligerent occupation, which presupposes an international armed conflict, between States, recognised by Israeli High Court of Justice jurisprudence and military orders, including the full application of the Hague Regulations.<sup>18</sup> The

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<sup>14</sup> Al-Haq, "70 Years On: Palestinians Retain Sovereignty Over East and West Jerusalem" 3, available at:

[http://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/images/stories/PDF/Jerusalem\\_20%20Oct\\_final.pdf](http://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/Jerusalem_20%20Oct_final.pdf) (accessed 13 February 2020),

<sup>15</sup> John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, 2010) Chapter 16; Richard H. Steinberg, *Contemporary Issues Facing the International Criminal Court* (Brill Nijhoff, 2016) 43

<sup>16</sup> Veronika Bilkova, "A State without territory?" in Martin Kuijer, Wouter Werner, *Netherlands Yearbook of International Law* (Asser Press, 2016) 30.

<sup>17</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020, para 70.

<sup>18</sup> S. Weil, 'The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories' 89 Number 866 *International Review of the Red Cross*, 397 (2007), at 405.

very nature of de facto occupation militates against the ability of the occupied State to maintain effective control over the territory.<sup>19</sup> Often the belligerent occupant will re-arrange boundaries, temporarily and within the context of the occupation framework.<sup>20</sup> This does not compromise statehood as this submission establishes, drawing from comparative practice of boundary manipulation during military occupations which were later unrecognised *post facto bellum*.<sup>21</sup> This analysis is specifically resonant in consideration of Areas A, B and C, which similarly amount to the reordering of territory during occupation, which may have illegal and permanent effects.

19. In this vein, the submission will draw on the long practice during comparative belligerent occupations whereby ‘absent sovereigns’ or ‘governments in exile’ continue to legislate remotely, a practice supported by many prominent jurists including Professor De Visscher who in 1918, argued “that laws and decrees of absent sovereigns are valid in occupied territory, because ...the presence of the occupant is nothing more than a de facto event even without any legal effect on the legal powers of the lawful sovereign”.<sup>22</sup>

20. Our analysis will be supported by reference to the State of Palestine’s implementation of its obligations under international treaties on human rights law, humanitarian law, and international criminal law, and particularly its rights and obligations with respect to the investigation and prosecution of international crimes. Overlapping jurisdiction is not unknown within the international legal framework, and we will briefly summarise the situation whereby Israel, as the Occupying Power, has legal obligations within the territory of Palestine, the territorial jurisdiction of the State of Palestine, for the purpose of Article 12 of the Rome Statute, continues to be the totality of the territory within the Green Line i.e. the West Bank, including East Jerusalem, and Gaza. Meanwhile mindful of the internationally binding nature of armistice agreements, such as that giving rise to the Green Line.

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<sup>19</sup> Memorandum from the Right Hon. Lord Goldsmith, QC to the Prime Minister (March 26, 2003), reprinted in J. Kampfner, ‘Blair Told it would be Illegal to Occupy Iraq’, *New Statesman*, 26 May 2003, at 16-17.

<sup>20</sup> ICRC Report, ‘Expert Meeting, Occupation and Other Forms of Administration of Foreign Territory’ 70

<sup>21</sup> Von Glahn, *The Occupation of Enemy Territory; A Commentary on the Law and Practice of Belligerent Occupation* (The University of Minnesota Press, 1957) 96.

<sup>22</sup> Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Carnegie Endowment for International Peace, 2000) 136.

21. Overall our analysis will support the Prosecutor’s conclusion as to the “territory” over which the Court may exercise its jurisdiction under Article 12(2)(a) through an analysis as to how, on a case by case basis, the ICC may review such situations before it by reference to the object and purpose of the Rome Statute, the need to avoid unnecessary impunity gaps, and in light of the Article 21 requirement that the exercise of the jurisdiction of the Court be in accordance with internationally recognized human rights norms.<sup>23</sup>
22. As a final point, we wish to put before the Pre-Trial Chamber that any consideration of the territorial jurisdiction of Palestine must also acknowledge Palestine’s jurisdiction over its maritime territory and analysis will be provided to this effect.

### III. Conclusion

23. For these reasons, and with the intention of assisting the Pre-Trial Chamber with its review of the Prosecutor’s Request, we request that leave be granted for a joint submission in accordance with rule 103 of the Court’s Rules of Procedure and Evidence and with the Chamber’s Order. The submission will not exceed 30 pages.



**Dr. Susan Power, Al-Haq**

on behalf of

Mr. Shawan Jabareen, Al-Haq;

Ms. Hala Qishawi Jaber, Aldameer Association for Human Rights;

Mr. Raji Sourani, General Director of Palestinian Center for Human Rights;

Mr. Issam Younis, Al Mezan Center for Human Rights.

Dated this 14<sup>th</sup> day of February 2020

At Cork, Ireland

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<sup>23</sup> 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, ICC-01/04-01/06 (OA4), 13 December 2006, para 36.