

# Annex B

**TO ALL STATES PARTIES  
AND OTHER STATES WITH JURISDICTION**

Ref.: OTP/PAL/SPs/Notif/090321/FB

Date: 9 March 2021

Your Excellency,

In accordance with article 18(1) of the Rome Statute (“Statute”) of the International Criminal Court (“ICC” or “the Court”), I hereby wish to notify you that on 3 March 2021, I initiated an investigation with respect to alleged crimes within the jurisdiction of the Court committed in the Situation in Palestine since 13 June 2014, on the basis of a [referral submitted by the Government of the State of Palestine](#) on 22 May 2018 pursuant to articles 13(a) and 14 of the Rome Statute.

My decision to initiate an investigation was preceded by a request for a jurisdiction ruling, submitted on 22 January 2020, on the scope of the Court’s territorial jurisdiction in the Situation in Palestine. On 5 February 2021, Pre-Trial Chamber I decided, by majority, that this territorial jurisdiction extends to Gaza and the West Bank, including East Jerusalem. In its ruling, the Chamber stressed that it was neither determining whether Palestine fulfilled the requirements of statehood under public international law, nor adjudicating a border dispute, nor prejudging the question of any future borders, but was solely determining the scope of the Court’s territorial jurisdiction, as requested. This decision ICC-01/18-143, is publicly available on the Court’s website at: <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/18-143>.

Accordingly, I have initiated an investigation with respect to alleged crimes within the jurisdiction of the Court committed in the Situation in Palestine [since 13 June 2014](#).

As a result of the Office’s preliminary examination and based on the information available, I have determined that there is a reasonable basis to believe that war crimes were committed in the context of the 2014 hostilities in Gaza. In particular, there is a

reasonable basis to believe that members of the Israel Defense Forces (“IDF”) committed the war crimes of: intentionally launching disproportionate attacks in relation to at least three incidents which the Office has focussed on (article 8(2)(b)(iv)); wilful killing and wilfully causing serious injury to body or health (articles 8(2)(a)(i) and 8(2)(a)(iii), or article 8(2)(c)(i)); and intentionally directing an attack against objects or persons using the distinctive emblems of the Geneva Conventions (article 8(2)(b)(xxiv), or 8(2)(e)(ii)). Moreover, there is a reasonable basis to believe that members of Hamas and Palestinian armed groups (“PAGs”) committed the war crimes of: intentionally directing attacks against civilians and civilian objects (articles 8(2)(b)(i)-(ii), or 8(2)(e)(i)); using protected persons as shields (article 8(2)(b)(xxiii)); wilfully depriving protected persons of the rights of fair and regular trial (articles 8(2)(a)(vi) or 8(2)(c)(iv)) and wilful killing (articles 8(2)(a)(i), or 8(2)(c)(i)); and torture or inhuman treatment (articles 8(2)(a)(ii), or 8(2)(c)(i)) and/or outrages upon personal dignity (articles 8(2)(b)(xxi), or 8(2)(c)(ii)). In addition, there is a reasonable basis to believe that in the context of Israel’s occupation of the West Bank, including East Jerusalem, members of the Israeli authorities have committed war crimes under article 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank since 13 June 2014.

The Office further considers that the scope of the investigation encompasses allegations of crimes committed by members of the IDF through the use of non-lethal and lethal means against persons participating in demonstrations beginning in March 2018 near the border fence between the Gaza Strip and Israel. In this context, it should be noted that the above events and their provisional legal qualifications, which have been identified by my Office for the threshold-setting purpose of opening an investigation, are without prejudice to the future scope of a subsequent investigation, which may encompass any alleged crimes within the scope of the situation.<sup>1</sup>

In accordance with article 18(2) of the Statute, I invite you to inform the Court within one month of receipt of this notification whether your State is investigating, or has investigated, its nationals or others within its jurisdiction, with respect to the above criminal acts allegedly committed in the Situation in Palestine.

Should you have any questions relating to this notification, your staff should not hesitate to contact the Office’s Judicial Cooperation team by email ([OTPJudicialCooperation@icc-](mailto:OTPJudicialCooperation@icc-)

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<sup>1</sup> See Appeals Chamber, *Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan*, (Afghanistan Appeals Judgment) [ICC-02/17-138](#), 5 March 2020, para. 61.

cpi.int), or Mr Pascal Turlan, Judicial Cooperation Adviser (Pascal.Turlan@icc-cpi.int or +31 70 515 8400).

Please accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read 'Bensouda', written over a horizontal line.

Fatou Bensouda  
Prosecutor