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Prosecutor Fatou Bensouda
International Criminal Court
The Netherlands

November 4, 2015

Dear Prosecutor,

We write with regard to your preliminary examination of the situation in Palestine to share materials we believe may be relevant to your ongoing analysis as you consider whether or not to pursue a formal investigation.

Since 1990, Human Rights Watch has documented serious violations of international human rights and humanitarian law committed in the context of the Israeli-Palestinian conflict. In our assessment, there has been a near complete absence of accountability before either Israeli or Palestinian justice systems for these abuses that amount to criminal offenses. Given the close connection between impunity and the prospect of future violations, Human Rights Watch attaches the highest importance to your office's progress in its consideration of the situation.

Your office has indicated that the next step after opening a preliminary examination includes determining whether there is a reasonable basis to believe that ICC crimes have been committed, including war crimes and crimes against humanity. We are aware that the gravity of crimes committed and the existence of national proceedings that would preclude the ICC's intervention are additional factors your office will consider. As your office determines whether a formal investigation is warranted, we expect it will scrutinize alleged crimes impartially regardless of who is responsible and we have included relevant information accordingly. We believe there are at least two areas of violations of international law that deserve particular attention as part of the Palestine examination.

First, we believe that violations associated with Israeli settlement policies should be thoroughly scrutinized by your office. For almost 50 years, the Israeli government has transferred its citizens into the Occupied Palestinian Territories, forcibly displacing Palestinians from their homes and implementing a system of discrimination against Palestinians. All of these policies have continued since June 13, 2014, the commencement date of the Palestinian declaration accepting

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the court's jurisdiction, including the unlawful transfer of thousands of Israeli citizens into occupied territory, according to reports from Israel's Central Bureau of Statistics.

Second, we urge you to assess violations committed during the 2014 fighting in the Gaza Strip. Our analysis shows that Israeli forces and Palestinian armed groups committed serious violations of the laws of war during fighting in July and August 2014. Israeli military operations in Gaza, including attacks in violation of the laws of war, caused the vast majority of civilian casualties and destruction of civilian infrastructure. Palestinian armed groups carried out unlawful rocket and mortar attacks on Israeli population centers.

To further assist your examination in this respect, please find attached an annex listing Human Rights Watch publications relevant to these issues. While Palestine's declaration provides the ICC with jurisdiction from only June 13, 2014, we believe the history of violations of international law and impunity spanning several decades merits attention by your office, including as an indication of the prospects for genuine domestic proceedings.

Finally, as you are no doubt aware, sizeable expectations are raised by your office's consideration of the situation in Palestine. In many places around the world, impunity for grave abuses committed in the Israeli-Palestinian conflict over many years is seen as proof positive that there are double standards at work with respect to international justice—as an example of how officials of powerful governments or those backed by powerful governments are less likely to face accountability for serious crimes under international law.

In this context, the ICC Office of the Prosecutor should strive to communicate as transparently as possible with regard to the status of its examination, as it has increasingly done in recent years in other situations. Going forward, we will continue to communicate with your office regarding our ongoing documentation of abuses, as well as on the status of domestic criminal proceedings, as may be relevant to your examination.

Sincerely,

Richard Dicker
Director
International Justice Program

Sarah Leah Whitson
Executive Director
Middle East North Africa Division

Attachment – HRW Research