



Palestine & the International Criminal Court

The international community has important systems in place to ensure people in power are held accountable for their actions – whoever and wherever they are. The International Criminal Court (ICC) is one such institution. The International Criminal Court has opened an investigation into crimes committed in Palestine. Shockingly, the Australian Government knows that this is the only place for Palestinians to have war crimes prosecuted but still argued to the court not to open an investigation.

The International Criminal Court – established to examine war crimes

The International Criminal Court investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.

There have thus far been 30 cases before the Court, with some cases having more than one defendant.



ICC Preliminary examination into Palestine finds evidence of crimes

Since 2015 the ICC Prosecutors undertook a preliminary examination into allegations of war crimes and crimes against humanity in Palestine. These investigations have focused on settlements in the West Bank and East Jerusalem and military attacks in Gaza. The investigation in the former is focused on possible crimes of the Israeli Defence Force (IDF), the latter also includes armed Palestinian groups such as Hamas.

The ICC prosecutor's report released in December 2019 indicated that "all the statutory criteria under the Rome Statute for the opening of an investigation have been met" .

Given the complexity of the Palestinian territories, and that Israel is not a signatory to the Rome Statute, the ICC Prosecutor asked the "ICC Pre-Trial Chamber to confirm their opinion regarding the territorial jurisdiction". The Pre-Trial Chamber invited submissions to its inquiry.

The Rome Statute: Treaty which gives legal basis to ICC

The Treaty that allows the International Criminal Court to function is the *Rome Statute*. It was adopted in July 1998 and gained the 60 ratifications required to bring it into force by 2002. Seven countries voted against the Treaty, including the USA and Israel.

The Rome Statute authorises the ICC to investigate crimes where States are unable or unwilling to do so themselves. The Court has jurisdiction over crimes committed in the territory of a State Party, or where the alleged perpetrator is a national of a State Party, or if the UN Security Council authorises them to do so.

There are currently 123 State Parties to the Treaty. Australia was one of the first countries to ratify the Treaty in 2002. Palestine ratified the Treaty in 2015. Israel and the United States of America have not ratified the Treaty. Israel indicated it would not join the Treaty as crimes covered by the ICC include "the action of transferring population into occupied territory".

ICC Pre-trial Chamber confirms Palestine has right to be heard & ICC has jurisdiction

In February 2021, the Pre-Trial Chamber of the International Criminal Court resolved that Palestine is indeed a State Party to the Statute, and that the alleged crimes had been conducted within this State's territory of the Gaza Strip, and the West Bank including East Jerusalem.

It concluded that "Palestine has agreed to subject itself to the terms of the ICC Rome Statute and has the right to be treated as any other State Party for the matters related to the implementation of the Statute."

The investigation begins

On March 3, 2021 the Prosecutor announced it would be commencing an investigation. The Prosecutor emphasised the investigation "will be conducted independently, impartially and objectively, without fear or favour".

Palestinians, including Hamas who faces investigation, welcomed the decision. The Israeli Prime Minister, who is facing domestic corruption charges, accused the Court of antisemitism.

APAN celebrates the decision as a major step towards ending impunity for actions committed in Palestine.

However the investigation has made no meaningful progress in the years since then, in comparison to swift action seen in other investigations.

Australian positions on the ICC and Palestine

The former Australian Coalition Government opposed ICC proceedings in Palestine, arguing that Palestine is not a state and therefore the ICC does not have territorial jurisdiction in this area. Australia was one of seven countries that made formal representations to this effect to the ICC Pre-Trial Chamber. When the Pre-Trial Chamber released its ruling in February 2021 the Foreign Minister's Press Release declared that Australia has "deep concerns" with the ruling, and "Australia does not therefore recognise the right of any so-called 'State of Palestine' to accede to the Rome Statute. The International Criminal Court should not exercise jurisdiction in this matter".

During Senate Estimates in March 2020, a spokesperson from the **Department of Foreign Affairs and Trade** confirmed that Israel had made representations to the Australian Government on this issue. In response to questions by then Shadow Foreign Minister Wong, a the DFAT spokesperson also stated that there is no other Court where Palestine could seek redress for any crimes committed in their territory.

While the **Current Australian Government hasn't made public comment about the investigations**, a letter to constituents, in August 2020 Labor Foreign Affairs spokesperson Senator Penny Wong stated "Labor is concerned about the Australian Government's decision to provide observations, alongside several other countries, regarding the ICC's ability to investigate alleged war crimes in the Palestinian Territories, which would appear to favour the legal position advocated by Israel".

The Australian Greens have been strongly supportive of the ICC investigations. In May 2020 Greens leader Adam Bandt stated that "it's shameful that Australia lined up with just a handful of countries to try to deny the Palestinian people recourse through international institutions like the ICC".



APAN calls on the Government to publicly support the ICC

The Australian government consistently endorses, and calls on countries to respect the rules-based international order. Given the former Government's disregard of Israel's violations of international law it is important that the current Australian Government gives enthusiastic public support to the ICC investigations in Palestine, and seeks for a progress update.