

‘The international legal order needs repair – and Gaza is a part of this’

Saturday 25 May 2024, by [BISHARAT Ghousoon](#), [YOUNIS Issam](#) (Date first published: 24 May 2024).

Al Mezan director Issam Younis explains the obstacles and opportunities for Palestinians following major interventions from the world’s top courts.

Palestinians at the site of a destroyed building from an Israeli air strike in Rafah, in the southern Gaza Strip, May 5, 2024. (Abed Rahim Khatib/Flash90)

In a whirlwind week for global legal developments, two of the world’s highest courts took landmark steps to address the Gaza war that has been raging since the attacks of October 7.

On May 20, the Prosecutor of the International Criminal Court (ICC), Karim Khan, [announced](#) that he was seeking arrest warrants for several top Israeli and Hamas leaders for war crimes and crimes against humanity: Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, whom he accused of intentionally starving and directing attacks against Palestinian civilians in Gaza; and Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh, who were held responsible for directing the killing and abduction of Israeli civilians on October 7.

Then, on May 24, as part South Africa’s ongoing case accusing Israel of genocide, the International Court of Justice (ICJ) [ordered](#) Israel to immediately halt its weeks-long ground invasion of Rafah, demanded Israel reopen the Rafah Crossing with Egypt to allow in humanitarian aid and UN-mandated investigators, and reiterated its call for the immediate release of all Israeli hostages still held in Gaza.

To unpack the significance of these developments, +972 spoke with Issam Younis, director of the Gaza-based [Al Mezan Center for Human Rights](#), and a former commissioner general of the Palestinian Independent Commission for Human Rights. Younis was displaced with his family from Gaza City at the outset of the war, before leaving the Strip for Cairo, where he currently remains.

In a wide-ranging interview, Younis welcomed Khan’s request for arrest warrants, emphasizing the need to use every legal tool to hold Israel accountable; he similarly saw the ICJ ruling as a significant step toward securing a permanent ceasefire in Gaza. Nonetheless, Younis warned, the global system of international law was clearly at its breaking point.

Palestinians, he explained, feel that there is a “chronic antagonism” between their pursuit of justice and a world in which the rules of international law are only selectively applied to certain actors. Gaza, in Younis’ view, is thus a test for the legal order, as countries from the Global South fight to uphold the moral convictions articulated by the Global North nearly eight decades ago.

Younis further argued that targeting Netanyahu and Gallant was the “easy thing to do,” as they are the unpopular public faces of Israel’s military campaign. But he stressed that the ICC must go after a range of officials who executed the crimes, including those being examined by the court’s larger probe on the occupied territories, such as settlement expansion in the West Bank. Still, Younis

remained cautiously optimistic: “Justice is not achieved by a knockout, but by total points,” he said.

The interview has been edited for length and clarity.



Issam Younis, director of Al Mezan Center for Human Rights (Courtesy of Issam Younis).

Ghousoon Bisharat - Many Palestinians have long felt international law has failed to protect them or advance their struggle, culminating in what we see today in Gaza. As someone who has dedicated their life to this field, what would you say to fellow Palestinians about how to view the current legal developments?

Issam Younis - There are two responses to Khan’s request for arrest warrants. The first is that we are optimistic in the long term, on the strategic level. We are not naïve, and we are aware that international law is the product of what states accept for themselves. But we try as much as possible to use these existing tools. As the poet Al-Tughra’i wrote, “how narrow life would be without the space for hope,” so we must keep hope alive.

The second response requires understanding the international legal system. The United Nations, the Geneva Conventions, and other postwar regimes and institutions were established by the victors: to protect international peace and security, maintain the global order, and facilitate international cooperation. These rules have become too narrow to address the existing injustices in the world, to the extent that international law now clearly only applies to some countries and some human beings, but not to all. How can this immorality [in Western countries’ response to Gaza] be explained otherwise?

Of course, the status quo [of selectively applying international law] is dangerous. It exposes a crisis in the entire system. The genocide in Gaza confirms that this international order has reached its old age; the rules of 1945 cannot stand upright in the present day. But it is still part of our system as Palestinians. If we can achieve justice through these recent developments, good; if we can’t, it is an opportunity to maximize our political and legal engagement and demonstrate the absence of justice.



The UN Security Council, December 18, 2015. (United Nations Photo)

Palestinians everywhere — whether in the West Bank, Gaza, Jerusalem, the diaspora, or inside Israel — [feel that](#) there is a chronic antagonism between justice and the reality of the world. The assault on Gaza, as the most brutal and criminal degradation of moral and legal values, has put [the lack of justice] at the top of the world's agenda.

Yet to Palestinians, I say: no matter how brutal and criminal the situation is, justice will prevail. Because no matter how much people get used to the sight of blood and death, this is an abnormal situation. It is not right and one day things will change. Justice is not achieved by a knockout, but by total points, and the victim must always make good use of their existing tools.

There is a clear movement around the world: there are mass protests in the streets and on campuses. The Gaza war is not only disrupting the global order, but revealing a [new relationship](#) between the Global North and South. The fact that South Africa led the genocide case at the ICJ was not only symbolic; the alignment of states from the South behind it, both declared and undeclared, is important.

The other world, the white Europeans of the North, must realize that things are no longer as they were. The international order is in need of repair, and Gaza is a part of this. We thought that despite the gap between the South and North, we shared some values with the whole international community, only to discover that even [the most basic] concepts are not agreed upon.

The proof of this immorality is that the war on Gaza is still ongoing after eight months, and that the killing of [over 15,000] children is a debatable topic. As long as the world does not intervene, and keeps sending shipments of weapons and giving political support, it means that the world is accepting the killing of children because the child is not white, and believes that every Palestinian is either a human shield, a terrorist, or an obstacle in the path of a new Middle East.

Bethlehem Municipality employees raise a South African flag in support of their lawsuit against Israel to the International Court of Justice (ICJ), in the West Bank city of Bethlehem, January 16, 2024. (Wisam Hashlamoun/Flash90)

What do you make of today's ICJ decision?

It is a very significant development — a crucial step [not only] to end the genocide in Gaza, but also to pave the way for Israel to be held accountable for the crime of genocide.

The ICJ [calls](#) on Israel to “immediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part.” I understand this text as a call for a ceasefire: the ICJ is ordering Israel to stop its military operation in the whole of the Gaza Strip, then adding a very important comma, followed by “any other action in the Rafah Governorate.”

In my opinion, this is the ICJ ordering Israel to end its entire war, though I expected the court to be clearer [in its formulation].

How do Palestinians in Gaza feel about these developments at the ICC and ICJ?

People in Gaza are extremely angry at the whole global order and the existing institutions of justice. Time is measured with their corpses, and the rest are only alive by chance. They feel abandoned, and that the world is complicit in what is happening to them. As long as you do not stop this war, you are a part of it.

Palestinian NGOs like Al Mezan have been engaging with the ICC to investigate cases dating back to the 2014 war. What do you make of the slow pace of those investigations, which have yet to produce any charges, and the swift ones that were made because of the current war?

The origin of the story dates back to the 2008-9 Gaza war. We went to the ICC Prosecutor at the time, Mr. Luis Moreno Ocampo, and asked to investigate [Israel's conduct in the war] as a violation of the Rome Statute. Three years later, Ocampo came back to us to say that the legal status of the State of Palestine was not clear to the three main parties — the UN General Assembly, UN Security Council, and the States Parties to the Rome Statute — so he could not open an investigation.

When Palestine became a non-member observer state of the UN General Assembly in November 2012, we had a new opening: Palestine now had the “character” of a state that could [sign](#) the Rome Statute, and so it became one of the 124 parties to the ICC.

Eight years later, the ICC prosecutor Fatou Bensouda, decided that there [was a basis](#) on the matter, and the Pre-Trial Chamber [after confirming Palestine's status as a state] [allowed](#) the opening of an investigation in 2021. Since then, the investigation has not progressed a single millimeter, despite several wars launched on Gaza, the continuation of the blockade, and other crimes.

Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), speaks to journalists after briefing the Security Council at its meeting on the situation in Libya. May 26, 2016. (UN Photo/Loey Felipe)

So I think Khan's recent decision suggests that he cannot remain silent in the face of this savagery. It also shows the magnitude of the pressure exerted on the court.

Khan's application to issue arrest warrants against Netanyahu and Gallant — who are both unpopular and undesirable political figures for many, including the U.S. — was the easy thing to do. The world realized, albeit belatedly, that Netanyahu is an obstacle. And as for Gallant, his [statements saying](#) “We are fighting human animals” and “I have ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel” are evidence of political brutality. The prosecutor could not remain neutral.

Choosing the easy path explains why there are no arrest warrants for those who executed and ordered those crimes: the security and military officers, and all the other members of the Israeli war cabinet. The criminal, according to the Rome Statute, is one who ordered, executed, assisted, and even condoned the crime, therefore it is inconceivable not to issue orders to others directly responsible.

Why did the prosecutor ask for arrest warrants related only to crimes since October 7?

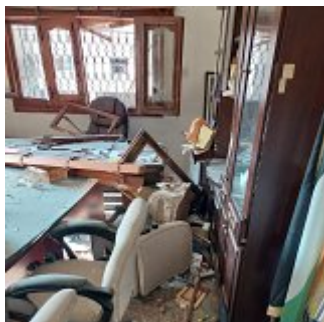
I hope this will be the first round. The prosecutor's duty is to look into all the crimes that threaten international peace and security and to look at the entire file, not to be selective and partial.

But it seems that he is under pressure, and could not go beyond October 7. If he did, it would mean opening the [West Bank] settlements file. For Palestinians, settlements are no less dangerous than the existing war, because they mean eliminating any possibilities for the existence of the Palestinian people. The transfer of a population to occupied territory is a serious crime under the Rome Statute and the Geneva Conventions. I was waiting for it to be part of the current ICC case, but it seems this is the maximum Khan can do now.

The pressure on him also explains why he chose to request warrants against three Hamas members

and only two Israelis. Moreover, the Palestinians are charged with eight crimes, the Israelis with seven counts, and only the Palestinians are accused of torture, ill-treatment, etc., while the crimes of kidnapping, disappearance, and [detention of Palestinians](#) in Israeli military prisons are not even mentioned. I have been working in this field for 35 years, and I have never seen such brutality [against prisoners]: [27 Palestinians were killed](#) in Israeli prisons, not “illegal combatants,” but workers who happened to be in their workplaces when Hamas launched its attack, all passed through security verification, and granted permits to work inside Israel.

The prosecutor also chose not to mention the crime of genocide. Yet what is happening now is a genocide in every sense, and reliable evidence [for this] was presented by the South African legal team before the ICJ.



The destroyed office of Al Mezan Center, Gaza, 2024. (Courtesy of Issam Younis)

A key question regarding the ICC’s intervention is complementarity (i.e. Israel investigating itself). What has Al Mezan’s experience been with the Israeli court system in pursuing accountability?

As a human rights institution, we deal with the existing authority as long as it provides some respect for the human rights of citizens. Among the parties that we engaged with, for example, is the Israeli [Military Advocate General’s Corps](#) (MAG Corps). In the 2014 war and before, we submitted hundreds of requests about the most serious crimes committed. The vast majority of cases were not investigated, except for those concerned with military discipline, such as a case of a soldier stealing a credit card. There was no investigation into the murders of entire families that were erased from the civil registry, or the destruction of a hospital. But we have to exhaust all means of litigation at the national level in front of the occupying power.

Israel is almost the only country in the world where the judiciary boycotts the victim. This is outlined in the 2012 Amendment of the State Liability Law [No. 8]. In many countries, victims boycott the judiciary because they view it as not independent, impartial, or neutral.

Our approach was, “We are from Gaza, and Israeli judges need to do us justice,” but they always provide political and legal cover [to the state]. One victim [who we represented] lost his house in 2008 and rebuilt it; in 2012, his family member was killed; and in 2014, the army destroyed his house again. No Israeli court gave him justice. So where does he go? The principle of complementarity is fundamental, but in the case of Israel, its judiciary cannot provide justice to Palestinians.

How do you view the U.S. reaction to the ICC news?

The U.S. is part of the problem, not part of the solution. The U.S. put pressure on the court, and when the previous prosecutor Fatou Bensouda opened an investigation, she was punished: the Trump administration revoked the visas of Bensouda and other aides, in addition to other retaliatory

measures. During the Bush Administration, the U.S. also signed agreements with most of the state parties to the Rome Statute not to extradite or detain any U.S. citizen accused of war crimes, and thus granted immunity to its soldiers. This week, U.S. senators signed threatening statements against the court. This is unprecedented.

Israeli Prime Minister Benjamin Netanyahu meets with United States President Joe Biden in Tel Aviv, October 18, 2023. (Miriam Alster/Flash90)

What do you expect from a country that thinks and acts this way? If the U.S. wanted to end the war, it would have ended the war in five minutes, with one phone call from Biden. For the U.S., the court is excellent as long as it issues a decision to arrest Putin, but becomes a problem when it handles other cases of its close allies. The U.S. is dragging the world toward dangerous and even catastrophic situations.

What do the warrants mean for Palestine's obligations as a signatory to the Rome Statute – including the fact that Sinwar and Deif are in Palestinian territory?

Let us agree that the State of Palestine does not exercise any kind of sovereignty, and is a state under occupation. It is a virtual state. If the president himself wants to move from one place to another in the West Bank or outside it, he needs the approval of the Israelis. The world is aware that the Palestinian Authority does not have any powers to arrest anyone. It wants to fulfill its legal duties as an independent state, but it cannot.

[Regarding Hamas], we are not the ones who set international law, but there are rules that apply to everyone, and which everyone must respect. Resistance and struggle are part of human nature, which seek to emphasize morality and the humanitarian laws that the civilized world has accepted for itself. There is always a need to reflect on the means of resistance and how it can achieve the best possible results. Resistance always needs revisions, but this does not negate that there is an occupation and it must be resisted.

The most important question is how can the Palestinian people do that while subjected to this savagery and aggression. In the end, the tree of life is evergreen, and theory is gray.

This conflict must be put to an end and provide the Palestinians with all the moral, legal, and humanitarian resources so that they can exercise their right to self-determination. By the way, this is not only about the right to their own state; I am against the idea that the problem of Palestinians is that they don't have a state. In fact, the Palestinian people seek the right to self-determination so that we can decide our fate. Maybe we don't want a state?

This is the first time that Palestinian leaders are formally accused of international war crimes. What does that mean for the Palestinian struggle and resistance? Does the ICC move also mean that there are red lines to the resistance?

As human rights institutions, we believe that anyone who violates the Rome Statute, regardless of their nationality, must be brought to justice and take responsibility for their actions.

Hamas leader Yahya Sinwar seen at a rally in Beit Lahiya, Gaza Strip, May 30, 2021. (Atia Mohammed/Flash90)

I am of the opinion that even if this decision to request arrest warrants against Sinwar, Deif, and Haniyeh is unacceptable to some Palestinians, this is an opportunity for any defendant to stand before the court, defend their narrative, put things into context, and present evidence. In the end, even if warrants are issued, those charged are still innocent until proven otherwise.

We are not the ones who decide what is a war crime: in the end, the court will decide. But the court itself has to be highly credible, and not politicize the issue, because the international system is now being tested. And we still ask loudly, "Who is committing a genocide?"

As for the choice between resisting and negotiating [with Israel], in my opinion, both are problematic as long as these choices do not have the consensus of the people. We will pay a price for either option, but it is one we are ready to pay. The important issue is that there is a just cause and we want to end the occupation, but there is an organized effort to frame our every action as immoral.

Are you confident that the world will abide by the arrest warrants?

We continue to believe that maintaining international security, stability, and peace is the duty of the world. It is interesting that a country that provides cover for the genocide, like Germany, says that the court's decisions must be respected. The failure to implement these decisions would mean that the world has forgotten the rule of law and is transitioning to the rule of the jungle.

How might the ICC's pursuit of arrest warrants influence the ICJ case?

They are two different spaces and each court has full independence, with no official relation between them. But since the ICJ is discussing the genocide case, this can help the ICC prosecutor charge the accused Israelis. Without a doubt, the ICJ case helps to create the appropriate environment [for the ICC's actions]. The ICJ accepted South Africa's request, which means that there is a basis for the claim. It is up to the court to decide on the merits, but from a procedural point of view, the ICC prosecutor should not have been afraid to bring forward the genocide charges against the Israeli individuals.



The destroyed building of Issam Younis' son in Gaza, May 2024. (Courtesy of Issam Younis)

You and your family left Gaza in December, and are now in Cairo. How do you feel in this moment?

We are alive by chance, and still wavering between life and death. The most important thing for me is to be strong and support my wife and children. I am in Cairo but my heart and mind are with my family, neighbors, colleagues, and friends in Gaza.

We have lost our homes and property. I was forced to leave my house in Al-Rimal neighborhood in Gaza City on Oct. 13. My house and office were badly damaged, and my son's entire building was destroyed, hit by a missile. We were displaced in Rafah for a few months, unlike many others who were killed when their homes were targeted, and left Gaza on Dec. 3.

What we experienced in Gaza was unbelievable. I will never forget the fear of the [fire belt bombings](#). Imagine the sound of gunshots from an automatic rifle; now imagine the same thing from airplanes. It launches at the same speed, seconds between the barrel, in a residential area full of children and

women. The state of terror is indescribable. I lost many family members and friends. I try not to listen to the news, because the news always brings you the names of people who were killed.

Will you return to Gaza?

Yes, of course. When the war ends, I want to go back and contribute to rebuilding Gaza. There is no dignity for you except in your homeland. I want to go back, but my family may not return because there are no houses, hospitals, schools, or universities.

I understand those who say they cannot return, because all the necessities of life have been completely destroyed. I understand the young ones who managed to get out and do not want to come back. But I will return to rebuild Gaza for the young generation, for my children and grandchildren.

Ghousoon Bisharat

P.S.

• +972 Magazine. May 24, 2024:

<https://www.972mag.com/nakba-march-of-return-gaza/>

• Ghousoon Bisharat is the editor-in-chief of +972 Magazine.

• Our team has been devastated by the horrific events of this latest war. The world is reeling from Israel's unprecedented onslaught on Gaza, inflicting mass devastation and death upon besieged Palestinians, as well as the atrocious attack and kidnappings by Hamas in Israel on October 7. Our hearts are with all the people and communities facing this violence.

We are in an extraordinarily dangerous era in Israel-Palestine. The bloodshed has reached extreme levels of brutality and threatens to engulf the entire region. Emboldened settlers in the West Bank, backed by the army, are seizing the opportunity to intensify their attacks on Palestinians. The most far-right government in Israel's history is ramping up its policing of dissent, using the cover of war to silence Palestinian citizens and left-wing Jews who object to its policies.

This escalation has a very clear context, one that +972 has spent the past 14 years covering: Israeli society's growing racism and militarism, entrenched occupation and apartheid, and a normalized siege on Gaza.

We are well positioned to cover this perilous moment - but we need your help to do it. This terrible period will challenge the humanity of all of those working for a better future in this land. Palestinians and Israelis are already organizing and strategizing to put up the fight of their lives.

Can we count on your [support](#)? +972 Magazine is a leading media voice of this movement, a desperately needed platform where Palestinian and Israeli journalists, activists, and thinkers can report on and analyze what is happening, guided by humanism, equality, and justice. Join us.

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