

Ref. Amira Alqerem
Palestine
Factual testimony
Art. 15.1 Statute

To the Prosecutor of the International Criminal Court

1. Miss Amira Alqerem, born April 6 1994 in Gaza, of Palestinian nationality, living in the Tal Al Hawa neighborhood of Gaza, acting in her own name as well as on behalf of:

- Fathi Dawson Alqerem, born August 13 1942 in Gaza, her father, businessman, died on January 14, 2009,
- Ismat Alqerem, born March 13, 1993, in Gaza, her sister, died on January 14, 2009,
- Ala Alqerem, born, born on June 14, 1995 in Gaza, her brother, died on January 14, 2009,

2. Having as attorneys ...

3. Explaining that for the needs of her legal action, Amira Alqerem and her team of lawyers choose the address of the law firm of Attorney Gilles Devers, 22 Constantine Street, 69001 Lyon, with notices thus able to be addressed to gilles.devers@wanadoo.fr

4. Certified by Article 15.1 of the Statute of the International Criminal Court respectfully requesting that you gather evidence concerning crimes under the jurisdiction of the Court, that is of consecutive homicides considered war crimes and crimes against humanity, defined by Articles 7 and 8 of the Treaty, and requesting that you petition for the opening of an investigation *proprio motu* of the facts, based on Article 15.3 of the Treaty.

5. The present act is hereby registered within the ongoing procedure of preliminary analysis taken up by your office. (1)

1- The Facts

A – General Data

1 – Operation “Cast Lead”

6. Between December 27, 2008 and January 18, 2009, the State of Israel engaged in a military operation named “Cast Lead” in the Palestinian territory of Gaza. The results speak for themselves:

- 1,417 Palestinians killed, among them 236 combatants and 313 children.
- 5,303 gravely wounded, among them 1,606 children and 828 women.
- On the Israeli side, it is noted that 3 civilians and 10 soldiers died.
- Material losses, notably the property of Palestinian civilians, were considerable.

7. International legal authorities and numerous NGOs have denounced these acts as criminal violations of international law.

2 – The life of Amira Alqerem and her family at the beginning of January 2009 in Gaza

8. Amira Alqerem lived with her father, Fathi Dawson Alqerem, age 42, and also with her sister Ismat and her brother Ala, in the first Tal Al Hawa neighborhood, in the southwest of Gaza. Following the separation of her parents, the father was granted child custody while the children maintained their relationship with their mother. Her father, Fathi Dawson Alqerem, was remarried.

9. Fathi Dawson Alqerem was a businessman, in the shoe industry, and this official profession allowed him to travel regularly to Israel.

3. The military operation in the Tal Al Hawa neighborhood

10. When the Israeli ground troops approached the Tal Al Hawa neighborhood, the inhabitants abandoned their homes, in an attempt to find less uncertain conditions by reaching downtown Gaza.

11. It was a residential neighborhood, lacking any possible military objective. Thus, Fathi Dawson Alqerem had thought it would be possible to remain. The family home was located near the University College of Applied Sciences and contiguous to the Abu-Ghalyoun Mosque.

12. With the departure of the inhabitants, Fathi Dawson Alqerem had accepted the responsibility of receiving the keys to the Mosque and punctually exercising the functions of the muezzin.

B – Wednesday January 14, 2009

1 – The Context

a – Immediate military context

13. The tanks arrived in the early morning of January 14, regrouping throughout much of the open space, to the east of the Alqerem family home.

14. The atmosphere was very tense, marked by random shots. A drone was in the area and air traffic was intense, with numerous helicopters. This area of Gaza had not been the object of systematic bombardments, which was logical since it was a residential neighborhood with no

particular military objective. Material destruction came mainly as a result of shooting, essentially from the tanks, striking against the university building as well as the Mosque minaret, or against homes. But recent photographs show that there were not any widespread aerial bombardments, including January 14, 2009.

b – Household chronology

15. That day, around 6:30pm, Fathi Dawson Alqerem went to the Mosque for the call to the Isha (night) prayer.

16. At approximately 9pm, the three youngsters, brother and two sisters, were gathered on the ground floor of the house to spend the night, with their father, and they went to sleep. The wife was not at home because she had gone to visit members of her family.

2 – The shooting

a – First shot: the death of Fathi Dawson Alqerem

17. During the night, before midnight, Ismat, Amira and Ala were awakened by a strong explosion, which shook their house.

18. They went towards the door, which had been blown down, and they found themselves under the moonlight, in an environment of smoke and dust.

19. They looked in vain for their father, before sighting his corpse lying on the ground, very close to the house. The body was covered with blood, with no signs of life. Nearby, there was a crater, somewhere around fifty centimeters deep.

b – Second shot: grave wounds to Amira Alqerem

20. The three children were gathered together, kneeling or squatting next to their father. But quickly they decided to seek help, and for this reason, Ismat and Ala began leaving the scene and were several meters away.

21. At that moment a second explosion rung out and Amira Alqerem, who had remained near her father, collapsed, now feeling the effects of a tear in her right leg. Blood gushed out and the wound caused intense pain.

c – Third shot: the death of Ismat and Ala Alqerem

21. In order to call for help, Ismat and Ala had gone towards a road, located to the northwest. First they had passed by a group of houses, through small streets and alleys that descended upon the main street. They were then out in the open, shouting for help, and a third shot hit them. Their

bodies were found 10 meters from each other, blown to pieces. The bodies were so unrecognizable and the human debris so scattered, that, when two days later, the inhabitants returned to their neighborhood – before Amira had been found, they thought that Amira too had been a victim of this third missile. .

d – Fourth shot: Fathi Dawson Alqerem (his cadaver) and Amira Alqerem are shot again.

22. With the third explosion and the silencing of the calls for help, Amira Alqerem realized that her sister Ismat and brother Ala had been targeted and shot. Immediately she analyzed that she should seek protection for herself. Numb with fear, she dragged herself back to her home. She heard a fourth explosion behind her and Amira saw the legs of her father torn off by the blow.

C – Amira Alqerem’s survival, through January 17, 2009

1 - Friday, January 15, 2009

23. Amira Alqerem, semi-conscious, fell asleep in her house, under the veranda.

24. Up awakening, with much difficulty, she was able to drink water from the faucet.

25. Her only goal is to somehow reach help. She approached the body of her father in order to take the portable telephone, which was out of order. She thought of recovering the chip and to find an aunt, who lived about 500 meters away. Not being able to walk, she crawled the distance, protecting her leg with a stocking. She arrived at nightfall, only to discover that the house was empty.

26. Exhausted, she fell asleep in the street, against a wall.

2 – Friday, January 16, 2009

27. Amira Alqerem, upon awakening, saw a house not far from her position, which she recognized as belonging to a journalist whose daughter was a friend of her sister Ismat. She was able to enter because the house was not completely locked, and she got in. She was able to drink water she found in a bottle. She found cushions and clothing and fell asleep, losing consciousness several times, in a state of extreme weakness.

3 – Saturday January 17, 2009

28. On January 17 around one o’clock in the morning, Mr. Eid Imad returned home, following the order for the tanks to retreat. He found Amira and immediately drove her to the Shifa hospital, where she was taken under care, first with a series of transfusions. Four days later, her condition stabilized enough for her leg to be operated on.

29. Amira Alqerem was able to come to France, at the end of July 2009, in order to have access to hospital care, before undergoing long-term rehabilitation.

II – The Claims

1 - Admissibility of evidence

30. Given that this is a factual testimony, within the framework of Article 15.1 of the Statute, the admissibility of testimony of a minor child cannot be contested.

31. As for her needs, Miss Amira Alqerem requests the application of the articles of the Convention on the Rights of the Child, applicable without reservation in the occupied territories (3) and invokes that the mature minor statute, recognized by the House of Lords in the Gillick Affair (4), applicable in questions of health, a component of the right to life (5).

2 – Jurisdiction of the Court

32. This testimony falls within the jurisdiction of the Court, since it relates to an ongoing preliminary analysis of the situation in Palestine undertaken by your office, as illustrated by the footnotes below.

33. Amira Alqerem sees her case in the context of a juridical situation that has existed, unresolved, for 60 years. It would be particularly inequitable if her right to access to a judge were challenged – since from that time on it has been widely accepted that the *jus cogens* (6) applies – with the rationale that the international community is responsible for this failure, for having contributed to creating the context for the Israeli-Palestinian conflict, through Resolution 181 on November 29, 1947, and for subsequent shortcomings. Furthermore, the U.N. General Assembly has not stopped reminding us of its commitment to its responsibility, thus exemplifying that the International Criminal Court, independently, should take into account this juridical environment.

34. For example, the Resolution of July 20, 2004:

« The U.N. General Assembly

« reaffirms the permanent responsibility of the United Nations, vis-a-vis the question of Palestine, until the day when all aspects of this issue are satisfactorily resolved, based on international law (7) (...)”

35. Furthermore, it is necessary to certify what has been widely affirmed, that by default, Palestine should acquire of the status of State, in full exercise of precisely what has been usurped by the State of Israel, this usurpation facilitating Israel’s crimes and preventing the victims from acting in the interest of justice.

36. In particular, acting for the rights of children, in cases when no other State can effectively

assure the defense of such rights, it is impossible to exclude Palestine from the jurisdiction of the International Criminal Court unless it is admitted, with the world conscience as witness, that justice is being denied.

3 – Demand for an investigation

37. Access to a judge, first so that an investigation be conducted, is in keeping with the recognition of the right of victims in the struggle against impunity. The exercise of penal procedure is a pertinent form for applying this right, but it is also the best means for fighting against the repeat of situations that put human rights in peril. (8)

38. The testimony of Amira Alqerem is precise and detailed. It describes various episodes which stem from a military and criminal logic.

39. The subjective elements of this testimony correspond to objective elements:

- the neighborhood was not a military objective nor the object of systematic bombardment, either before or after January 14, 2009;
- the four shots that were documented on January 14, 2009 were directed, each time, at people, doubtlessly at civilians, given that the view of the military personnel firing the shots was from a very low altitude;
- the second and third shots were targeted against children who were seeking help;
- the second shot was fired when Ismat and Ala Alqerem were away from the house and out in the open, which proves they were being watched and targeted;
- the fourth shot was fired at a child who was already on the ground and who was trying to save her life.

40. At the same time, Amira Alqerem's testimony is supported by material evidence:

- the map of the scene, showing the different places where the shots were fired;
- photographs showing the material damage which, as regrettable as it is, is limited in such a way that it becomes apparent that the four shots were exclusively against human targets;
- the testimony of Mr. Eid Imad, who found Amira Alqerem on January 17;
- medical findings referring to the bodies of the victims, showing that high-powered arms were used;
- medical findings relating to the admission of Amira Alqerem to Shifa Hospital.

41. These facts establish the intention of homicide against civilians, through military means and beyond the scope of any military purpose, which clearly justifies an investigation of war crimes and crimes against humanity, in application of Articles 7 and 8 of the Statute of the International Criminal Court.

4 - Rights of the victim

42. Amira Alqerem asks to be informed on the follow-up to this petition, in order that she can exercise her rights as victim, based on Articles 15.3 and 68-3 of the Statute 9 and according to the

choice of domicile specified at the head of this petition.

<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/palestine?lan=en-GB>

² Report of the The Independent Fact Finding Commission on Gaza: Nowhere to hide, presented to the League of Arab States on 30 April 2009; Analytical summary, available on the U.N. website, Security Council, S/2009/244. These figures are furnished in a way that is validated by The Palestinian Center for Human Rights, the Ministry of Health or UNRWA.

³ International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, finding from 9 July 2004, par. 113; Human Rights Committee CCPR/C0/78/ISR, 21 August 2003, par. 11; Economic and Social Committee, 09-42998, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian, 29 July 2009, p. 1.

⁴ Gillick c. West Norfolk and Wisbech Area Health Authority, [1985] 3 All E.R. 402. This decision was subsequently adopted by a number of States. US Supreme Court, Planned Parenthood of Central Missouri c. Danforth Attorney General of Missouri, 428 U.S. 52 (1976) ; Australia Hight Court, Secretary, Department of Health and Community Services c. J.W.B. (Marion's Case) (1992), 175 C.L.R. 218 ; Canada Supreme Court, A.C. c. Manitoba, 26 Juin 2009, 2009 CSC 30, n° 31955. Human rights Committee : CCPR Communication 397/1990,

⁵ Human Rights Committee, CCPR/C/21/Rev.1, General Observation No. 14, 27 mai 2008.

⁶ CEDH Golder c. United Kingdom, 21 février 1975, par. 35; Inter-American Court of Human Rights, Goiburú c. Paraguay, 22 septembre 2006, par. 131; Special Tribunal for Lebanon, appointed judge, 15 April 2009, CH/PTJ/2009/03 ; TPIY, Judgment Fwundzija, 10 December 1998, par. 153-157.

⁷ General Assembly, GA/1488/ES -10/15 demanding that Israel comply with its obligations in virtue of the opinion of the ICJ on the building of a wall in the occupied Palestinian territory.

⁸ International Human Rights Court, Velasquez Rodríguez, 29 juillet 1988, series C, No 4 ;

⁹ ICC, Preliminary Chamber 1, Democratic Rrepublic of Congo, 17 janvier 2006, n° ICC-01/04 ; Inter-American Court of Human Rights, Blake c. Guatemala, 24 janvier 1998, Série C, n° 36 ; CEDH, Perez c. France, 12 février 2004, n° 47287, par. 68.