ICC Unlikely to Take Action Soon Against Israel

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<http://m.jpost.com/Arab-Israeli-Conflict/ICC-report-says-action-against-Israel-wont-be-taken-in-the-near-future-468098#article=6017MzQ2MjkzOERBRjhCNzA0MzM1QzlENTA5RTI1REIyNTg>=

A report by the International Criminal Court Prosecution explaining its methodology for prioritizing which cases to push forward with the fastest indicates that it is unlikely to take action against Israel in the near future, but that settlements as war crimes may eventually be center-stage.

Since January 2015, ICC Prosecutor Fatou Bensouda has been preliminarily examining Israel and “Palestine” for alleged war crimes violations relating to the 2014 Gaza war.

The report issued by the ICC Prosecutor’s Office at the end of last week, but not previously reported on in Israel, does not mention Israel or the Palestinians specifically.

But the report does frame its principles for selecting cases for investigations or prosecutions, and states explicitly that “if national authorities are conducting or have conducted investigations or prosecutions…and such investigations or prosecutions have not been vitiated by an unwillingness or inability to genuinely carry them out, the case will not be selected for further investigation or prosecution.”

The IDF legal division has investigated or is still investigating 31 criminal cases and a range of 360 other preliminary cases, including all of the three main cases that the ICC Prosecutor has previously expressed the most interest in.

According to Bensouda’s explicit statement in the report on prioritization of cases, she will not choose to get more deeply involved in the Israeli-Palestinian conflict as long as Israel’s investigations are ongoing.

There was a point where many observers started to predict that Bensouda would move from a preliminary review to her own full criminal investigation of IDF soldiers after IDF investigations dragged past a year since the 2014 Gaza war.

However, in February, Bensouda told *theJerusalem Post* in an exclusive interview in The Hague that she was not in a rush and other ICC officials indicated that they were not anxious to make their own decisions before Israel’s State Comptroller issues its report on the legality of the IDF’s targeting policy.

The current ICC report explicitly indicates, even two years after the 2014 Gaza war, Bensouda will not select Israel for further criminal investigation, but will wait for the results of IDF investigations.

Further, the ICC report explicitly states that any assessment to move forward in criminally investigating a country’s soldiers “is potentially subject to revision based on any change of facts.”

If at some point the ICC does start to criminally investigate a case, it may halt that investigation if Israel modifies its position on the case.

Alternatively, the ICC can also switch to moving forward with full criminal investigations at any point down the line if the IDF starts closing big cases which it does not think should be closed.

On the flip side the report explicitly threatens an increased focus on issues which could tie into allegations that settlements erected or expanded since November 2012 are war crimes for displacing Palestinians from their land.

The report states “the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in…the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.”

The majority of the world considers ongoing settlement activity, especially activity since the UN General Assembly recognized Palestine as a state in November 2012, to be a war crime.

Nevertheless, in December 2015, Bensouda’s predecessor as ICC Prosecutor, Luis Moreno Ocampo, told *the Jerusalem Post* that Israeli High Court of Justice decisions sustaining a settlement’s legality could potentially be used as a defense against war crimes charges.

Bensouda said in a statement that forecasting to the world how she will select flagship cases to move forward with more aggressively is part of her commitment to transparency and impartiality.