

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/18
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PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

PUBLIC, REDACTED

**Victims' Resubmitted Observations on the Proceedings
pursuant to articles 19(3) and 68(3)**

Source: Legal Representative of Persecution Victims, Katherine Gallagher

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

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1. Pursuant to article 68(3) of the Statute and in accordance with Pre-Trial Chamber I's ("Pre-Trial Chamber" or "Chamber") 7 August 2024 Decision on Victims' Submissions,¹ the previously-recorded participants, the Persecution Victims, submit these observations through their Legal Representative ("LRV") on the state of proceedings.² This includes observations on the Prosecutor's publicly-announced application for arrest warrants under article 58 and legal issues arising from the 27 June 2024 order granting *amici* leave to request filing observations pursuant to rule 103 of the Rules of Procedure and Evidence ("RPE") on purported "further questions of jurisdiction" that the United Kingdom, as the initiator of this process, claimed (before apparently reversing its position) were left unaddressed in the Chamber's 5 February 2021 decision on jurisdiction;³ in that decision, the Chamber found that the territorial jurisdiction of the ICC's jurisdiction in the Situation of Palestine extends to Gaza and the West Bank, including East Jerusalem.⁴

2. As victims of an ongoing persecutory campaign (among other crimes falling within Court's jurisdiction) conducted by senior Israeli officials across the occupied Palestinian territory including in the Gaza Strip, the Persecution Victims urge the Chamber to issue arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant without further delay, and in doing so, reaffirm the Jurisdictional Decision findings that the Court's territorial jurisdiction in the *Situation in the State of Palestine* extends to the territories occupied by Israel since 1967 such that any person committing a crime on that territory, being the territory of Palestine – a State Party - falls within the Court's jurisdiction under article 12(2)(a).

¹ Public redacted version of 'Decision concerning the views, concerns and general interests of victims', 30 July 2024, ICC-01/18-256-Conf, 7 August 2024, [ICC-01/18-256-Red](#).

² See *supra* para. 5 & Section II. As the Pre-Trial Chamber previously explained, article 68 of the Statute translates into "the *right* [of victims] to be heard" and "the *duty*" of the Court "to effectively enable them to exercise this right." Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, [ICC-01/18-2](#), para. 8 ("Palestine Outreach Decision"). See *id.* para. 10-11.

³ Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024 (27 June 2024), [ICC-01/18-171-Anx](#), ("U.K. Request"), para. 3; Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file amicus curiae observations, 27 June 2024, [ICC-01/18-173-Red](#) ("27 June 2024 Order").

⁴ Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 Feb. 2021, [ICC-01/18-143](#) ("Jurisdictional Decision").

I. RELEVANT PROCEDURAL HISTORY

3. On 22 January 2020, the Prosecutor requested an article 19(3) ruling on the territorial scope of the Court's jurisdiction in the Situation of the State of Palestine.⁵ On 16 March 2020, pursuant to the Chamber's order,⁶ the Persecution Victims submitted observations on the scope of the Court's territorial jurisdiction, while also "placing this technical question in the larger context of the long quest for justice and accountability by Palestinian victims of serious violations of international law," and affirming readiness to provide further observations as warranted.⁷ On 5 February 2021, having taken into consideration positions of the Prosecutor, various States, victims and *amici curiae*, the Chamber issued the Jurisdictional Decision, finding the Court could exercise its criminal jurisdiction in the *Situation in the State of Palestine*, and, by majority, found the territorial scope of jurisdiction extends to Gaza and the West Bank, including East Jerusalem. On 3 March 2021, the investigation in the Situation of Palestine was opened.

4. On 20 May 2024, the Prosecutor announced that he had filed applications for arrest warrants for crimes committed from at least 7-8 October 2023 for two Israeli officials (PM Netanyahu and Defense Minister Gallant), and three members of Hamas (Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, Ismail Haniyeh).⁸

5. On 10 June 2024, the United Kingdom filed the U.K. Request to provide *amicus curiae* observations under rule 103(1) of the RPE. On 27 June 2024, the Pre-

⁵ Prosecutor's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, [ICC-01/18-12](#). On 1 January 2015, the State of Palestine accepted the ICC's jurisdiction over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014;" the following day, acceded to the Rome Statute after depositing its instrument of accession with the U.N. Secretary-General; and on 1 April 2015, the State of Palestine became the 123rd ICC State Party. [Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine](#), 31 Dec. 2014. On 6 January 2015, the U.N. SG accepted Palestine's accession to the Rome Statute. U.N., [Depositary Notification](#), Ref: C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015. See ICC, [ICC welcomes Palestine as a new State Party](#), 1 April 2015.

⁶ Order setting the procedure and the schedule for observations, 28 January 2020, [ICC-01/18-14](#), ¶ 13.

⁷ Victims' Observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine (Public Redacted Version), 16 Mar. 2020, [ICC-01/18-110-Red](#), para. 1.

⁸ OTP, [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024. Since the Prosecutor filed his applications for arrest warrants, two of the three members of Hamas for whom Prosecutor Khan sought arrest warrants (Mohammed Diab Ibrahim Al-Masri aka Deif and Ismail Haniyeh) have reportedly been killed, with Israel claiming responsibility for M. Deif's killing. See, e.g., Aaron Boxerman et al, [Israel Confirms Death of Hamas Commander Amid Funerals for 2 Senior Militants](#), N.Y. Times, 1 Aug, 2024.

Trial Chamber granted the request and set a 12 July 2024 deadline for the submission. In the same order, the Chamber set the same deadline for any other leave requests, while stating that it intends “[t]o limit the impact of this procedure on the expeditiousness of the present stage of the proceedings.”⁹

6. On 12 July 2024, the undersigned LRV filed both a public-redacted and confidential version of Victims’ observations with the Chamber pursuant to articles 19(3) and 68(3), and was subsequently invited to resubmit those observations conforming to a 10-page limit, by 12 August 2024.¹⁰

7. Having sought an extension of time to file its observations because of the general election scheduled U.K.,¹¹ which resulted in a change of government, the United Kingdom did not submit any observations by the new 26 July deadline. Between 29 July and 12 August, at least 60 *amicus curiae* briefs were filed.

II. THE VICTIMS

8. The Victims have been recorded in this proceeding during the article 19(3) proceeding, *see supra* para. 5, n. 8. All are Palestinian, by nationality and/or ethnicity. Collectively the Victims have suffered crimes specified in article 5 of the Statute, including persecution, as well as other crimes falling within the jurisdiction of the Court, in all parts of the territory of the State of Palestine. In light of the current genocidal campaign being waged against Palestinians in Gaza, none of the Victims’ names will be made public for fear of retribution.¹² This fear is grounded in prior experience with Israeli authorities as well as a documented long campaign by Israeli officials - as well as the United States – to discourage Palestinian engagement with the ICC and threats of punishment against those who do participate in the ICC

⁹ 27 June 2024 Order, para. 6.

¹⁰ Public redacted version of ‘Decision concerning the views, concerns and general interests of victims’, 30 July 2024, ICC-01/18-256-Conf, 7 August 2024, [ICC-01/18-256-Red](#). The 12 July 2024 filing is cited in the Decision as “ICC-01/18-232-SECRET-Exp-Anx.” The Persecution Victims’ public-redacted 12 July 2024 observations remain classified as “secret;” they have filed a request for reclassification, marked “public” and dated 12 August 2024, which has not yet been notified or listed on Court Records.

¹¹ Request by the United Kingdom for Extension of Time Limit, 2 July 2024, ICC-01/18-176.

¹² A number of Victims sought to be identified by pseudonym to avoid identification due to a well-founded fear of retribution taken against them, their family members and/or community by Israeli authorities for participation in ICC proceedings. *See* Victims’ Observations, [ICC-01/18-110-Red](#), ¶¶5-27.

proceedings,¹³ including now other ICC member States who do not share Israel's view of the Prosecutor's accountability efforts.¹⁴

III. Observations and Submissions

A. On the Process and Proceedings on the Applications for Arrest Warrants

9. Requests for applications for arrest warrants have generally been made under seal, and decisions on such applications have likewise generally been rendered *ex parte*, under seal, until such time as they are unsealed.¹⁵ Indeed, the Victims note that the Appeal Chamber has previously cited the Prosecutor's considered assessment "the risk that public awareness of the [arrest warrant] proceedings prior to certain arrangements being put in place could cause the suspects to hide, flee or obstruct or endanger the investigation or proceedings" or place victims/witnesses at risk as sufficient grounds for proceeding *ex parte* and under seal/confidentially.¹⁶ The Victims query why the Prosecutor deviated from standard practice of not announcing applications for arrest warrants *at least* they are granted, noting the security risks and risks to the integrity of the investigation attendant in such a premature announcement in the context of ongoing criminality that has prompted the International Court of Justice to issue three sets of provisional measures for a plausible genocide against the Palestinian people in Gaza by Israel,¹⁷ as well as the risks of prompting a *political* response or debate about the efficacy of at least one set

¹³ See, e.g., N. Landau, [Netanyahu Calls to Impose Sanctions Against International Criminal Court](#), *Haaretz*, 21 Jan. 2020; [Israel's Retaliatory Seizure of Tax: A War Crime to Punish ICC Membership](#), *Al Haq*, 1 Apr. 2015; Exec. Order 13928, 85 Fed. Reg. 36139 (11 June 2020) (for national emergency, imposing sanctions on ICC officials).

¹⁴ See, e.g., [Israel Revokes Eight Norwegian Diplomats' Status with the PA as Punishment for Recognizing Palestine](#), *Haaretz*, 8 Aug. 2024.

¹⁵ See, e.g., *Situation in Uganda*, Decision on the Prosecutor's Application for Warrants of Arrest Under Article 58, *ex parte*, under seal, 8 July 2005, ICC-02/04; *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo*: Decision on the Prosecutor's Application for a warrant of arrest, Article 58 (Under Seal), ICC-01/04-01/06, 10 Feb. 2006, Pursuant to the Decision ICC-01/04-01/06-37 reclassified as public. See also *Situation in Ukraine*: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova Belova (announcing existence of confidential arrest warrants *after* the issuance of such warrants pursuant to a confidential application).

¹⁶ Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest,' Article 58, *Situation in the Democratic Republic of Congo*, 13 July 2006, ICC-01/04, para. 6. ("Appeals Chamber Arrest Warrants Judgment").

¹⁷ I.C.J., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Provisional Measures Order](#), 26 Jan. 2024; [Provisional Measures Order](#), 28 March 2024; [Provisional Measures Order](#), 24 May 2024.

of such warrants (by States Parties, non-States Parties and named suspects alike)¹⁸ rather than a *legal* assessment based solely on article 58 criteria.

10. There is typically no opportunity for any party – let alone a third State – to intervene in arrest warrant proceedings. The Appeals Chamber has emphasized that review of arrest warrant applications should be conducted on an *ex parte* basis.¹⁹ In a prior instance where there was a request to intervene in review of applications for arrest warrants²⁰ – notably where the existence of arrest warrants against an accused (Omar Bashir, Situation of Sudan) was already public but the Prosecutor sought to amend the arrest warrants – the request was denied.²¹ Chambers consider two factors when assessing applications of potential *amicus curiae*: i) whether the submissions ‘would be of indispensable assistance, or would provide information that it could not procure by other means’; and ii) the respective stage of the proceedings in the light of the filings received.²² The U.K.’s proposed submission – and many, if not, most of the accepted *amici* - failed both tests for acceptance as an *amicus curiae*, as well as what has emphasized as a critical consideration: “the first and foremost factor for leave to be granted pursuant to rule 103 of the Rules is whether the relevant application *relates to an issue that is actually before the competent Chamber.*”²³ (emphasis added). With regard to the first, the Chamber already received and considered argument on the matter which the U.K. sought (and other have in the U.K.’s stead) to opine on

¹⁸ See, e.g., [Statement from President Joe Biden on the Warrant Applications by the International Criminal Court](#), 20 May 2024 (United States); Maroosha Muzaffar, [Netanyahu in furious response to war crimes allegations: ‘This is the new antisemitism’](#), (21 May 2024) (Israel); [Federal Foreign Office on the application for arrest warrants at the International Criminal Court](#), 20 May 2024 (Germany).

¹⁹ Appeals Chamber Arrest Warrants Judgment, paras. 21-23 (proceeding publicly “posed serious risks to the life and well-being of victims and witnesses, the integrity and efficiency of ongoing investigative efforts, and the prospects of success of any future arrest efforts.”).

²⁰ See Application on behalf of Citizens' Organisations of The Sudan in relation to the Prosecutor's Applications for Arrest Warrants of 14 July 2008 and 20 November 2008, 11 Jan. 2009, [ICC-02/05-170](#). (seeking to argue on the negative effect of arrest warrants on peace building or alternative means of transitional justice, and the entrenchment of negative perceptions of the ICC).

²¹ Pre-Trial Chamber I, Decision on Application under Rule 103, 4 Feb. 2009, [ICC-02/05-185](#). The Pre-Trial Chamber denied the Trade Union’s application, concluding that it was not within the Chamber’s power or responsibility to assess the implications of the arrest warrant for the “interests of justice”. See also U.K. Request, footnote 25 (listing decisions).

²² See, e.g., Decision on an Amicus Curiae application and on the “Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d’asile” (arts. 68 and 93(7) of the Statute), 9 June 2011, ICC-01/04-01/07, para. 54.

²³ Decision on Application under Rule 103, 4 Feb. 2009, para. 8.

back in 2020, including from the Prosecutor, victims and multiple *amicus curiae*, during its consideration of the article 19(3) jurisdictional review,²⁴ and already ruled that the Oslo Agreements are not an impediment to the Court's exercise of jurisdiction.²⁵ With regard to the second, review of applications for arrest warrants – which are generally expected to be considered on a confidential and *ex parte* basis – are not the appropriate juncture to consider the issue proposed for consideration.²⁶ And as for the “foremost” factor identified, the U.K. Request did not seek, and indeed, the U.K. – like many who actually followed through on their *amicus* request – is not suitably positioned, to weigh in on the *actual matter* before the Chamber: whether the article 58 factors for issuance of arrest warrants are met.

11. The reasons for keeping the review of applications for arrest warrant *ex parte* and confidential consistently articulated by Pre-Trial Chambers and the Appeals Chamber are well-founded.²⁷ The Victims add to the long list the risk for political interference (rather than legal insight), which, it is suggested, may be what was afoot in the U.K. Request – and is blatant in some of the *amicus* briefs. The Victims recall

²⁴ See, Jurisdictional Decision, notes 321-327.

²⁵ *Id.*, para. 129. Notably, the U.K. Request cites to paragraph 131 as the basis for its purported legal question in need of answering before issuance of arrest warrants, which falls under the “Final Considerations” heading, rather than acknowledging 129, which reflects the Pre-Trial Chamber's findings in the section headed “The Oslo Accords.” For prior instances where *amicus* applications were rejected as inappropriate at the stage of the proceedings or would not aid the Chamber, see, e.g., Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence, 17 August 2007, ICC-01/04, para. 5; Decision on the motion filed by the Queen's University Belfast Human Rights Centre for leave to submit an *amicus curiae* brief on the definition of crimes of sexual slavery, 7 April 2011, ICC-01/04-01/07, para. 6.

²⁶ To the extent matters raised in the U.K. Request (including now by other *amici*) could be considered as relevant to admissibility, Pre-Trial Chambers have consistently found it is unnecessary to examine the admissibility of a case against a person named in an application for an arrest warrant at the time of issuance of any such arrest warrant. See, e.g., Pre Trial Chamber II, Decision on the Prosecutor's Application under Article 58, 13 July 2012, ICC-01/04-02/06, ¶ 6 (“The Chamber does not consider it necessary to examine the admissibility of the case at this stage of the proceedings.”); Pre-Trial Chamber II, “Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, 8 March 2011, ICC-01/09-01/11-01, para. 12. Indeed, the Appeals Chamber has stated unequivocally: “An initial determination by the Pre-Trial Chamber that the case is admissible is not a prerequisite for the issuance of a warrant of arrest pursuant to article 58 (1) of the Statute.” Appeals Chamber Arrest Warrants Judgment, para. 1.

²⁷ See PTC II, Decision on Application for Leave to Submit *Amicus Curiae* Observations, 18 January 2011, ICC-01/09-35, para. 10 (“the proceedings triggered by the Prosecutor's application for a warrant of arrest or a summons to appear are to be conducted on an *ex parte* basis. The only communication envisaged at the article 58 stage is conducted between the Pre-Trial Chamber and the Prosecutor.”).

that the U.K. government (like the U.S., for example) at the time the Request was filed met Prosecutor Khan's Arrest Warrant Application Announcement with condemnation.²⁸ The fact that the change of government resulted in a changed position about filing observations is, respectfully, evidence that such observations were to be offered as *political* opinions rather than *legally*-based arguments, and demonstrates the danger of any Pre-Trial Chamber allowing *political* views to interfere or otherwise influence what must be an independent consideration of facts-to-law under article 58. The Victims are concerned this current proceeding serious risks impairing the independence of the Court.²⁹ Respectfully, prior precedents on applications under rule 103 strongly suggest that it was error to grant the U.K. Request – and open the flood gates to an estimated 60 amicus submissions, especially from parties whose expressed interests are *political* rather than *legal*. Those submissions that are of a political, rather than legal nature, should not be given *any* weight in undertaking the article 58 assessment.³⁰

B. Amici including States Parties - Lack Standing to Challenge Jurisdiction

12. The U.K. Request, like a number of *amicus* briefs by other States parties, was misconceived, as neither the U.K., nor now Germany nor other third States have legal standing to challenge the ICC's jurisdiction in relation to the arrest warrant applications under article 19.³¹ These third States seeks in effect to introduce a challenge that it is not permitted under article 19(2).³² None who intervened against issuing arrest warrants satisfy those criteria and none can be considered "an

²⁸ Alexander Butler, [UK minister slams International Criminal Court seeking arrest warrants as 'repugnant'](#), The Independent (20 May 2024) (United Kingdom).

²⁹ The Victims note, with great concern, reporting that the United States exerted significant pressure on the U.K. to continue with its pre-election submission rather than reverse or change course. See Patrick Wintour, [US 'pressuring UK to block ICC's Netanyahu arrest warrant'](#), The Guardian, 10 July 2024.

³⁰ See, e.g., [ICC-01/18-300](#); [ICC-01/18-280](#); [ICC-01/18-304](#).

³¹ Although certain submissions purport to be based on article 19(1), the Chamber has not invoked this provision- and indeed, has already carried out a review of its jurisdiction in the Situation, including the impact on the Oslo Agreements on its territorial jurisdiction. Jurisdictional Decision, paras. 124-129.

³² Under article 19(2), challenges to the Court's jurisdiction are limited to: i. An accused or a person for whom a warrant of arrest or a summons to appear has been issued; ii. A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or iii. A State from which acceptance of jurisdiction is required under article 12.

interested State.”³³ It is therefore improper for these States, as it was for the U.K., to challenge through the side-door of an *amicus curiae* observation the Court’s jurisdiction over any accused for crimes that took place on territory which this Chamber has already deemed to fall within the Court’s jurisdiction in the Jurisdictional Decision, namely the occupied Palestinian territory - Gaza and the West Bank, including East Jerusalem. The Chamber is respectfully requested to disregard such improper challenges to jurisdiction, and proceed to *expeditiously* grant the arrest warrants.³⁴

C. Arrest Warrants are Justified for Benjamin Netanyahu and Yoav Gallant

13. Article 58(1) “stipulates only two substantive prerequisites for the issuance of an arrest: firstly, the Pre-Trial Chamber must be satisfied that there “are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court,” and secondly, “the arrest of the person must appear necessary for at least one of the three reasons enumerated in article 58(1)(b) of the Statute.”³⁵ The alleged crimes set forth in the Prosecutor’s application against Netanyahu and Gallant fall squarely within the jurisdiction of Court, as set forth in the 5 February 2021 Jurisdictional Decision, in that all alleged crimes come within the subject-matter and temporal scope of the Court’s jurisdiction and have occurred on the territory of a

³³ See Appeals Chamber, *Situation in Afghanistan*, Judgment on the appeal against the decision on the authorization of an investigation into the Situation in the Islamic Republic of Afghanistan, 5 March 2020, [ICC-02/17-138](#), para. 44, cited in the Jurisdictional Decision, para. 128.

³⁴ Indeed, the U.K rightly observed “written observations on article 58 proceedings have previously been rejected, in part on the basis that article 58 proceedings are ex parte.” U.K. Request, ¶20, n. 25.

In regard to the Victims request that the arrest warrants be granted “*expeditiously*,” the Victims note that the two sets of arrest warrants in the Situation of Ukraine were granted within one month of the applications being lodged; the Pre-Trial Chamber noted the continuation of crimes as the basis for the expeditious and public announcement of the arrest warrants, to serve a deterrent to the commission of further crimes. See, e.g., Press Release, [Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov](#), 25 June 2024 (“mindful that conduct similar to that addressed in the warrants of arrest, which amounts to violations of international humanitarian law, appears to be ongoing, the Chamber considered that public awareness of the warrants may contribute to the prevention of the further commission of crimes pursuant to article 58(1)(b)(iii) of the Rome Statute.”). The same conditions certainly apply here, where the ICJ has found claims of genocide to be plausible and three sets of provisional measures necessary.

³⁵ Decision on the Prosecution Application for a Warrant of Arrest, 6 March 2007, ICC-01/04-02/06, para. 10. Article 58(1)(b) reasons include: ensuring a person does not obstruct or endanger the investigation or the court proceedings; and to prevent the person from continuing with the commission of similar crimes within the jurisdiction of the Court.

State Party - Palestine, namely in Gaza. As for the application for arrest warrants against Netanyahu and Gallant for war crimes and crimes against humanity,³⁶ even information available in the public domain – most notably the finding by the I.C.J. that it is plausible that violations of Palestinians’ right to be free from genocide or the risk of genocide has been violated through *inter alia* the imposition of a “total siege” leading to the denial of basic necessities for life including food, fuel, electricity, water, civilian while decimating the healthcare infrastructure, and a continual military assault and bombardment³⁷ – makes clear that the “reasonable grounds to believe” standard is satisfied.³⁸ Of course the Victims note that, pursuant to his independent investigation, the Prosecutor’s application is supported by evidence including “interviews with survivors and eyewitnesses, authenticated video, photo and audio material, satellite imagery and statements from the alleged perpetrator group.”³⁹

14. The issuance of arrest warrants against Netanyahu and Gallant are necessary to prevent either of the individuals, who remain in the most senior leadership positions in Israel, from committing further crimes within the jurisdiction of the Court. The issuance of such arrest warrants – and the beginning of a break to the cycle of impunity – could forestall further harm to the Victims who remain in Gaza, as well as those Victims who have family, loved ones and members of their

³⁶ The Victims recall that crimes against humanity are committed on a widespread or systematic basis, often as part of a State policy. Being that the Netanyahu and Gallant are two of the most senior Israeli officials, and the crimes – using the State apparatus – are ongoing, it is inconceivable that Israel is or will investigate them or their crimes, and any *amici* submissions arguing for deferral are misconceived.

³⁷ See, e.g., ICJ opinion dated January 26, 2024, at ¶ 30 (finding “acts and omissions complained of ... appear to be capable of falling within the provisions of the Genocide Convention.”). See Provisional Measures Orders, *supra* n. 20.

³⁸ See, e.g., Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, *Detailed Findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023*, U.N. Doc. A/HRC/56/CRP.4 (June 10, 2024); Francesca Albanese (Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967), *Anatomy of a Genocide*, U.N. Doc. A/HRC/55/73 (March 25, 2024).

Notably, after an evidentiary hearing where victim and expert testimony was presented on allegations of U.S. failure in the duty to prevent, or complicity in, genocide, a federal court concluded: “Both the uncontroverted testimony of the Plaintiffs and the expert opinion proffered at the hearing on these motions as well as **statements made by various officers of the Israeli government indicate that the ongoing military siege in Gaza is intended to eradicate a whole people and therefore plausibly falls within the international prohibition against genocide.**” *Defense for Children International-Palestine et al., v. Biden, et al.*, _F. Supp. 3d., 2024 WL 390061 at *2 (N.D. Cal. Jan. 30, 2024).

³⁹ Prosecutor Khan’s Arrest Warrant Application Announcement.

community remaining in Gaza facing mass famine and continual bombardment, and indeed those Palestinians who have fled Gaza but continue to suffer severe physical or mental harm and other deprivations of fundamental rights stemming from forced displacement and the endurance of a genocidal campaign, as well as Victims in other parts of the occupied Palestinian territory. Arrest warrants are also necessary due to the clear disregard expressed for the Court by Netanyahu and Gallang. Not only can the Court expect no cooperation, both have attacked the Court and the Prosecutor.⁴⁰

D. The Oslo Agreements Are No Impediment to Issuance of Arrest Warrants

15. The Pre-Trial Chamber has already assured itself of the Court's jurisdiction over the Situation of Palestine, as issue of the Oslo Agreements was already raised and assessed as part of the Chamber's consideration of jurisdiction, and found to be no barrier to the Court's exercise of jurisdiction in the Situation.⁴¹ The Chamber declared the Oslo Agreements "are not pertinent to the resolution of ...the scope of the Court's territorial jurisdiction in Palestine"⁴² and went on to hold that jurisdiction was established for the Court, in part because the State of Palestine had effectively conferred jurisdiction on the Court.⁴³ There exist **no** cogent reasons for the Pre-Trial Chamber to revisit or reconsider its jurisdictional ruling, and certainly no basis to consider the matter at this stage of the proceedings through an amicus filing.⁴⁴

⁴⁰ See, e.g., "['Hit Job': ICC prosecutor seeking arrest warrants for Israeli leaders is 'absurd,' Netanyahu says](#)," 21 May 2014, Good Morning America ("This guy [Prosecutor Khan] is out to demonize Israel," Netanyahu said. "He's doing a hit job. He's creating a false symmetry between the democratically elected leaders of Israel and the terrorist chieftains."); [Gallant: ICC has no authority after prosecutor seeks warrants for Israeli leaders](#), Reuters, 21 May 2024 ("The attempt by the prosecutor to prevent the state of Israel's right to defend itself and free its hostages, must be rejected off hand.").

As has been widely reported, such attacks did not commence with Prosecutor Khan's Arrest Warrant Application Announcement, but include a decade-long Israeli "war" against the ICC, its staff and senior officials including the current and former Prosecutor, as well as civil society organizations and individuals (including lawyers) working to support the advancement of Situation in Palestine to the case-stage. Harry Davies, Bethan McKernan, and Yuval Abraham, [Spying, hacking, and intimidation: Israel's nine-year war on the ICC exposed](#), The Gaurdian (28 May 2024).

⁴¹ See Jurisdictional Decision, paras. 124-129.

⁴² Jurisdiction Decision, para. 129.

⁴³ Jurisdiction Decision, para. 118.

⁴⁴ As the Prosecutor argued below, along with numerous *amici* then (and again now), ICC jurisdiction is not the result of delegation by States Parties or the transfer of a subset of their sovereign powers. The Prosecutor recognized that once a state "has conferred jurisdiction" upon the Court, "the resolution of the State's potential conflicting obligations is not a question that affects the Court's

IV. CONCLUSION

16. For the reasons set out above, the Victims request that the Pre-Trial Chamber:

- (i) Reconsider its decision to give weight to *amicus curiae* briefs at this stage of the proceedings, especially when opining on matters not before the Chamber or outside the scope of what article 19 or rule 103 permits;
- (ii) Review the Prosecutor's Applications for Arrest Warrants against Benjamin Netanyahu and Yoav Gallant in light of its jurisdiction findings in its Decision of 5 February 2021;
- (iii) And, finding the requirements of Article 58 are satisfied, issue the arrest warrants without further delay.

Respectfully submitted,



Katherine Gallagher
Legal Representative for Victims of Persecution

At New York, United States, Dated this 12th day of August, 2024.

jurisdiction [.] . . . but may become an issue of cooperation or complementarity during the investigation and prosecution stages." Article 19(3) Request, ICC-01/18, para. 185. Indeed, states "confer upon" or "accept" the jurisdiction of international courts and tribunals, because they need those courts to complement their own enforcement jurisdiction, including acting when the national systems are unable – a fundamental feature of the ICC's complementarity regime. Moreover, the status of the territory under the Court's jurisdiction (Gaza and the West Bank, including East Jerusalem) as occupied by Israel and provisions of international humanitarian law including article 146(2) of the Fourth Geneva Convention, particularly when read in the light of article 21(3), only confirms that it would be error to find that the Oslo Agreements as a basis for depriving Palestine of prescriptive jurisdiction over its territory. *See also* Jurisdictional Decision, para. 102 ("it would indeed be contradictory to allow an entity to accede to the Statute and become a State Party, but to limit the Statute's inherent effects over it").