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**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/18
Date: 11 July 2024

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

SECRET

**OPCV Request to appear before the Chamber pursuant to
regulation 81(4) of the Regulations of the Court**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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United Kingdom

Amicus Curiae**REGISTRY**

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Section****Other**

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the "Regulations"), the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office") requests to appear before the Pre-Trial Chamber to represent the general interests of Victims in relation to the application by the United Kingdom to provide *amicus curiae* observations under rule 103 of the Rules of Procedure and Evidence (the "Rules") on "*whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords*".¹

2. Preliminarily, the Principal Counsel notes that, the issue raised by the United Kingdom being jurisdictional in nature, Victims are entitled to present observations in accordance with article 19(3) of the Rome Statute (the "Statute"). Consequently, Victims in the Situation in the State of Palestine should be invited to submit written observations. In fact, under said provision, groups of Victims have previously presented submissions on the Prosecution's request for a ruling on the Court's territorial jurisdiction in Palestine.²

¹ See the "Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103", No. ICC-01/18-171-SECRET-Exp-Anx, 10 June 2024. Pursuant to Order ICC-01/18-173-Red dated 27 June 2024, this document was reclassified as Public, [No. ICC-01/18-171-Anx](#).

² See the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", [No. ICC-01/18-12](#), 22 January 2020. See also the "The Khan al-Ahmar Victims' Observations", [No. ICC-01/18-68](#), 12 March 2020 (submitted by Liesbeth Zegveld); the "Victims' observations on the Prosecutor's request for a ruling on the Court's territorial jurisdiction in Palestine", [No. ICC-01/18-99](#), 16 March 2020 (submitted by Fergal Gaynor and Nada Kiswanson van Hooydonk); the "Submissions on behalf of child victims and their families pursuant to article 19(3) of the statute", [No. ICC-01/18-102](#), 16 March 2020 (submitted by Bradley Parker and Khaled Quzmar); the "Observation of Victims of Palestinian Terror in respect to the Court's Territorial Jurisdiction in Palestine", [No. ICC-01/18-109-Red](#), 16 March 2020 (submitted by Nitsana Darshan-Leitner); the "Public Redacted Version Victims' Observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", [No. ICC-01/18-110-Red](#), 16 March 2020 (submitted by Katharine Gallagher); the "Submission on Behalf of Palestinian Victims Residents of the Gaza Strip", [No. ICC-01/18-112](#), 16 March 2020 (submitted by Raji Sourani, Chantal Meloni and Triestino Mariniello); the "Observations écrites sur la question de compétence énoncée au paragraphe 220 de la Demande du Procureur", [No. ICC-01/18-113](#), 16 March 2020 (submitted by Dominique Cochain Assi); the "Observations au nom des victimes palestiniennes sur la Demande du Procureur", [No. ICC-01/18-120](#),

3. The question of the Court's jurisdiction *ratione personae* over Israeli nationals alleged to have committed crimes in Palestinian territories is deeply intertwined with the personal interests of the Victims and, as such, affects their general interests in a fundamental manner. Indeed, the jurisdictional question is not merely a procedural formality but a pivotal matter that determines whether the Victims' voices will be heard and their suffering acknowledged through a credible judicial process. At the core of these issues is the fundamental right of the Victims to justice, accountability, and reparations for the atrocities they have endured. A negative decision would perpetuate the impunity gap, denying Victims the justice they rightfully deserve and undermining the broader objectives of international criminal justice.

4. The Office presented observations on the Prosecution's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine before Pre-Trial Chamber I in its previous composition.³ In said proceedings, Counsel from the Office was directly appointed by the Chamber pursuant to regulations 80 and 81(4)(b) of the Regulations, to represent Victims who did not have legal representation for the purpose of submitting observations on the jurisdictional issue.⁴ It is therefore appropriate that the OPCV is also authorised to present submissions on the issue(s) raised by the United Kingdom.

5. Allowing the Office to appear before the Pre-Trial Chamber will ensure that the rights and interests of all Victims are protected and duly taken into account at this stage. In light of the Order issued by the Chamber on 27 June 2024,⁵ the Principal

16 March 2020 (submitted by Gilles Devers and Liesabeth Zegveld); and the "Observations on behalf of victims", [No. ICC-01/18-123](#), 16 March 2020 (submitted by Steven Powles and Sarah Francis).

³ See the "Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims", [No. ICC-01/18-105](#), 17 March 2020.

⁴ See the "Order setting the procedure and the schedule for the submission of observations" (Pre-Trial Chamber I), [No. ICC-01/18-14](#), 28 January 2020, para. 14.

⁵ See the "Public redacted version of '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'" (Pre-trial Chamber I), [No. ICC-01/18-173-Red](#), 27 June 2024.

Counsel files her request at this juncture in the interest of the efficiency and expeditiousness of the proceedings.

II. PROCEDURAL BACKGROUND

6. On 22 January 2020, the Prosecution filed the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine".⁶

7. On 28 January 2020, Pre-Trial Chamber I in its previous composition issued the "Order setting the procedure and the schedule for the submission of observations" – *inter alia*, inviting Victims to submit observations and appointing "counsel from the Office of the Public Counsel for Victims (the 'OPCV') to represent victims in the Situation in the State of Palestine who do not have legal representation for the sole purpose of submitting observations [...]".⁷

8. Between 12 and 16 March 2020, Pre-Trial Chamber I received observations on behalf of various groups of Victims.⁸ On 17 March 2020, Counsel from the OPCV filed the "Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims".⁹

9. On 20 May 2024, the Prosecutor publicly announced that he filed several applications before the newly constituted Pre-Trial Chamber I (the "Chamber") for warrants of arrest for Mr Yahya Sinwar, Mr Mohammed Diab Ibrahim Al-Masri (Deif), and Mr Ismail Haniyeh for war crimes and crimes against humanity allegedly committed on the territory of the State of Israel and the State of Palestine (in the Gaza strip) from at least 7 October 2023; as well as for Mr Benjamin Netanyahu and Mr Yoav

⁶ See the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", *supra* note 2.

⁷ See the "Order setting the procedure and the schedule for the submission of observations", *supra* note 4, para. 14.

⁸ See *supra* note 2.

⁹ See the "Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims", *supra* note 3.

Gallant for war crimes and crimes against humanity allegedly committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023.¹⁰

10. On 10 June 2024, the United Kingdom filed a request to provide written *amicus curiae* observations on “whether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords”¹¹ and related sub-issues.¹²

11. On 27 June 2024, the Chamber issued a public redacted version of its Order authorising the United Kingdom to file written observations pursuant to rule 103 of the Rules by 12 July 2024 and setting the same deadline for any other request for leave to make observations under rule 103 of the Rules.¹³

12. On 4 July 2024, following a request by the United Kingdom,¹⁴ the Chamber extended the deadline for the State to file written observations until 26 July 2024.¹⁵

III. CONFIDENTIALITY

13. The present submission is filed secret by order of the Chamber. However, the Principal Counsel indicates that the document does not contain any confidential information and can be re-classified as “public”.

¹⁰ See the “[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#)”, 20 May 2024. Publicly available on the ICC website.

¹¹ See the “Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103”, *supra* note 1, para. 27.

¹² *Idem*.

¹³ See the “Public redacted version of ‘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’”, *supra* note 5.

¹⁴ See the “Request by the United Kingdom for Extension of Time Limit”, No. ICC-01/18-176-SECRET, 2 July 2024. Pursuant to Pre-Trial Chamber I’s Decision ICC-01/18-178 dated 4 July 2024, this document was reclassified as Public, [No. ICC-01/18-176](#).

¹⁵ See the “Decision on the ‘Request by the United Kingdom for Extension of Time Limit’” (Pre-Trial Chamber I), [No. ICC-01/18-178](#), 4 July 2024.

IV. SUBMISSIONS

14. Preliminarily, the Principal Counsel notes that, the issue raised by the United Kingdom being jurisdictional in nature, Victims are entitled to submit observations in accordance with article 19(3) of the Statute and rule 59(3) of the Rules. Consequently, Victims in the Situation in the State of Palestine should be invited to submit written observations.

15. The fundamental question on whether the Court can exercise jurisdiction over Israeli nationals alleged to have committed crimes in Palestinian territories, has a direct bearing on the Victims' quest for justice. Accepting an interpretation of the Oslo Accords that denies this jurisdiction would lead to the impossibility of opening impartial and transparent investigations, allowing alleged perpetrators to escape accountability and undermining the rule of law. Such an interpretation contradicts international obligations and violates Victims' rights, obstructing the Court's mandate to prosecute serious international crimes. Victims must, therefore, be heard because the issue fundamentally affects their rights to justice, truth and redress. Lastly, allowing Victims to present submissions is not only foreseen in the text of article 19(3) of the Statute, but it will also ensure that the concerns of the Victims - including those who previously engaged with the Court - are heard and their position on this decisive jurisdictional matter duly taken into account.¹⁶

1. The OPCV's twofold mandate to appear in respect of specific issues and to represent the general interest of Victims

16. Pursuant to regulation 81(4) of the Regulations, "[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues; [...] and (e) Representing a victim or victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is

¹⁶ See *infra*, paras. 21 and 22.

in the interests of justice".¹⁷ This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instruction of the Chamber or upon request of the Office itself.

17. In this regard, the Principal Counsel recalls that the OPCV was established as an independent permanent body within the Court "*able to provide expert advice and assistance*" on Victims' issues.¹⁸ Since the Office's inception, the practice of the Court and the responsibilities entrusted to the OPCV by both the Chambers and Victims have greatly contributed to the development of such expertise.

18. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of Victims.¹⁹ In other instances, the Office appeared at the Chambers' request.²⁰ Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to Victims in accordance with its role and mandate before the Court.

19. Pre-Trial Chamber II relied on regulation 81(4)(e) of the Regulations to appoint the OPCV, noting that the Office is specifically mandated and possesses the expertise and experience to represent Victims.²¹ In turn, Trial Chamber I confirmed that the

¹⁷ See regulation 81(4) of the Regulations of the Court, Doc. [ICC-BD/01-05-16](#).

¹⁸ See FULFORD (A.), "The role of the Office of Public Counsel for Victims in trial proceedings", in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

¹⁹ See, *inter alia*, the "Decision on the 'Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan' (ICC-02/17-35) and on the 'Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court' (ICC-02/17-39)" (Pre-Trial Chamber II), No. [ICC-02/17-43](#), 12 June 2019; the "Decision on the OPCV's request to participate in the reparations proceedings" (Trial Chamber I), No. [ICC-01/04-01/06-2858](#), 5 April 2012; the "Decision on the OPCV's 'Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims' application process'" (Pre-Trial Chamber III), No. [ICC-02/11-01/11-57](#), 13 March 2012; the "Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)" (Trial Chamber II), No. [ICC-01/04-01/07-1205](#), 12 June 2009; and the "Order on the Office of Public Counsel for Victims' request filed on 21 November 2007 (Trial Chamber I), No. [ICC-01/04-01/06-1046](#), 27 November 2007, para. 2.

²⁰ See, *inter alia*, the transcripts of the hearings held on 30 October 2007, No. [ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 20-23, and on 4 December 2007, No. [ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 52-54.

²¹ See the "Decision on the Legal Representation of Victims" (Pre-Trial Chamber II), No. [ICC-01/14-01/18-205](#), 23 May 2019.

OPCV can appear in respect of specific issues pursuant to regulation 81(4)(b) of the Regulations by filing *"an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)"*.²² More recently, the Appeals Chamber has considered it appropriate for the OPCV to submit written observations under regulation 81(4)(e) of the Regulations regarding the general interests of Victims, following the submission of an appeal against an article 18(2) decision in the situation in the Philippines²³ and in the Situation in the Bolivarian Republic of Venezuela I.²⁴

20. In light of the above, the Chamber may benefit from receiving OPCV legal submissions representing the general interests of Victims. The Office had presented observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, before Pre-Trial Chamber I in its previous composition.²⁵ It is, therefore, appropriate that it is authorised to present submissions on the jurisdictional issue(s) currently raised by the United Kingdom.

2. The issues raised by the United Kingdom affect the general interest of Victims

21. The Principal Counsel submits that the issue of the Court's jurisdiction *ratione personae* over Israeli citizens alleged to have committed crimes in Palestinian territories is intricately connected to the personal interests of Victims. Indeed, this jurisdictional question is not a mere procedural formality; it is a critical factor that will determine

²² See the "Decision on the role of the Office of Public Counsel for Victims and its request for access to documents" (Trial Chamber I), No. [ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

²³ See also the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), No. [ICC-01/21-66 OA](#), 21 March 2023.

²⁴ See the "Decision on the OPCV's "Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court" (Appeals Chamber), No. [ICC-02/18-54 OA](#), 21 July 2023. See also the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), No. [ICC-02/18-60 OA](#), 24 August 2023.

²⁵ See the "Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims, *supra* note 9.

whether Victims' voices are heard and their suffering acknowledged through a credible judicial process. Central to these concerns is the fundamental right of Victims to justice, accountability, and reparations for the atrocities they have endured. A decision denying jurisdiction would exacerbate the impunity gap, depriving Victims of the justice they rightfully deserve and undermining the broader objectives of international criminal justice.

22. The Victims' need for justice cannot be overstated. The Palestinian territories have witnessed severe violations of international humanitarian law and human rights, including but not limited to, unlawful killings, forced displacement, persecution and destruction of property. These actions have had devastating effects on individuals, families, and communities. For the Victims, justice involves not only the prosecution and punishment of those responsible but also the restoration of their dignity and assurance that such crimes will not recur. Transparent and independent investigations and prosecutions are necessary to uphold the integrity of the judicial process and to ensure that justice is not only done but is seen to be done. Victims have a legitimate expectation that their grievances will be addressed impartially and that the alleged perpetrators, regardless of their nationality, will be held accountable.

23. Pursuant to its legal framework, the Court has a duty to exercise its jurisdiction over those responsible for international crimes when the complementary test is met. Said duty includes respecting the internationally recognised human rights of Victims during criminal proceedings, where the outcome of such proceedings leads *"to the identification, prosecution and punishment of those who have victimised them"*.²⁶

24. In the present circumstances, the issues raised pertain to impunity and accountability, which are of significant concern to Victims.²⁷ This context justifies the

²⁶ See the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), No. [ICC-01/04-01/07-474](#), 13 May 2008, para. 41.

²⁷ See the "Separate opinion of Judge Sang-Hyun Song" appended to the "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007" (Appeals Chamber), No. [ICC-](#)

intervention of the Office to represent the general interests of Victims on these critical matters. Victims of the crimes committed in the Situation in the State of Palestine, along with their families, have the right to obtain justice, to know the truth about the events they suffered, and to be redressed.

V. CONCLUSION

25. For the foregoing reasons, the Principal Counsel respectfully requests the Pre-Trial Chamber to be allowed to submit written observations on the general interests of Victims in relation to the issue(s) raised by the United Kingdom, within a deadline to be established by the Chamber.



Paolina Massidda
Principal Counsel

Dated this 11th day of July 2024

At The Hague, The Netherlands

[01/04-01/06-925 OA8](#), 13 June 2007, para. 16: “*victims of serious crimes have a special interest that perpetrators responsible for their suffering be brought to justice, and this interest is protected by human rights norms*”. See also, the “Decision on victims’ representation and participation” (Trial Chamber V), No. [ICC-01/09-01/11-460](#), 3 October 2012, para. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), No. [ICC-01/09-02/11-498](#), 3 October 2012, para. 9; the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. [ICC-01/05-01/08-1005](#), 10 November 2010, para. 9(a); the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. [ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97; and the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victims at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I), No. [ICC-01/04-01/07-474 13-05-2008](#), paras. 31 and 34.