

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**

Date: **22 October 2024**

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou**

SITUATION IN THE STATE OF PALESTINE

SECRET and *EX PARTE*, only available to the Prosecution

Prosecution's withdrawal of the "Prosecution's application under article 58 for a warrant of arrest against Yahya SINWAR" (ICC-01/18-169-SECRET-Exp)

Source: Office of the Prosecutor

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

The Office of the Prosecutor 	Counsel for the Defence
Legal Representatives of the Victims	Legal Representatives of the Applicants
Unrepresented Victims	Unrepresented Applicants
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	Amicus Curiae

REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

SUBMISSIONS

1. The Prosecution hereby withdraws the “Prosecution’s application under article 58 for a warrant of arrest against Yahya SINWAR” filed on 20 May 2024¹ because of the change of circumstances caused by SINWAR’s death. There is sufficient and reliable information indicating that Yahya SINWAR, the Head of the Islamic Resistance Movement (“ Hamas”) in Gaza, was killed on 16 October 2024 in Rafah, Gaza.² Since SINWAR is deceased, jurisdiction cannot be exercised over him, nor can an arrest warrant be executed.³
2. Moreover, as this Chamber held in taking note of the Prosecution’s withdrawal of the arrest warrant against Ismail HANIYEH, also due to his death: “[a]t this stage of the proceedings, where the Chamber is seised of an application for a warrant of arrest pursuant to article 58 of the Rome Statute and has not made a determination on the matter, the withdrawal of the Application falls within prosecutorial discretion, and therefore does not require further assessment by the Chamber”.⁴
3. The Prosecution notes that five months have elapsed since it filed article 58 applications against five persons in the *Situation in the State of Palestine*. In the meantime, crimes within the jurisdiction of the Court continue to be committed with devastating human consequences, including with respect to crimes described in the applications, such as the war crimes of starvation, hostage taking, intentionally directing attacks against a civilian population, and wilful killings, and the crimes against humanity of extermination and persecution. Moreover, at least two of the wanted persons have been killed.⁵
4. In these circumstances, the Court risks being perceived as failing in its duty to provide accountability to the victims of this Situation and to contribute to the prevention of these crimes in a timely manner.⁶ A judicial determination that there are reasonable grounds to believe that leaders are criminally responsible for war crimes and crimes against humanity has value and entails significant consequences. It is unclear why this Chamber has not decided on the

¹ ICC-01/18-169-SECRET-Exp.

² IDF Spokesperson on the elimination of Sinwar: [PSE-OTP-00176084](#); Israel Prime Minister on the death of Sinwar: [PSE-OTP-00176090](#); Video-recording depicting the dead body of Sinwar: [PSE-OTP-00176093](#); Remarks by Vice President Harris on the Death of Yahya Sinwar: [PSE-OTP-00176100](#); Statement of Deputy Chairman Hamas Political Bureau on sinwar’s death: [PSE-OTP-00176106](#); Haaretz, Israel Confirms It Has Killed Hamas Leader Yahya Sinwar, Mastermind of the Oct. 7 Attack: [PSE-OTP-00176095](#); NYT, Hamas Leader killed in Gaza Fighting, Israel says: [PSE-OTP-00176098](#).

³ [ICC-01/11-01/17-24](#), para. 4; [ICC-01/11-01/13-38](#), para. 4.

⁴ [ICC-01/18-324](#).

⁵ The Prosecution has not yet withdrawn the Article 58 Application against Mohammed Diab Ibrahim AL-MASRI (“DEIF”). It continues to assess the situation and will withdraw the Application once it is satisfied of DEIF’s death.

⁶ Statute, Preamble, para. 5.

Applications in five months—which already exceeds most article 58 determinations. This is also difficult to reconcile with the Court's legal framework more broadly, which requires a Chamber to issue a decision on confirmation of charges—after a more complex adversarial proceeding and to a more exacting standard of proof—within 60 days of a hearing.⁷

5. Accordingly, the Prosecution maintains and reiterates its request for this Chamber to decide the remaining applications for the arrest of Benjamin NETANYAHU, Yoav GALLANT and DEIF with utmost urgency.

6. Pursuant to regulation 23bis(2), this request is filed SECRET and *Ex Parte*, since the Prosecution's Article 58 Application bears the same classification. However, since the Application is withdrawn and there are no reasons justifying this classification, the Prosecution requests the simultaneous re-classification of this request to Public.



Karim A.A. Khan KC, Prosecutor

Dated this 22nd day of October 2024

At The Hague, The Netherlands

⁷ Regulations of the Court, regulation 53(1).