

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/18

Date: 13 December 2024

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public

OPCV Request to appear before the Chamber under Regulation 81(4) of the Regulations of the Court in the Appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute"

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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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) request to appear before the Appeals Chamber in the Appeal of the State of Israel against Pre-Trial Chamber I’s “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (the “Appeal”).¹ The present request is subject to the Appeals Chamber not dismissing *in limine* the Appeal, as sought by the Prosecution.²

2. In the context of the present Situation, the OPCV has already been authorised to file observations on jurisdictional matters on two prior occasions,³ representing respectively the general interest of victims, as well as the interests of unrepresented victims. Considering that the Appeal concerns a matter with respect to jurisdiction, victims’ statutory right to present observations on the matter should be likewise given effect at this appellate stage.

3. Indeed, the Appeal plainly concerns “*a matter with respect to jurisdiction*”,⁴ namely the Court’s jurisdiction over Non-Member State nationals deriving from territorial jurisdiction in the uniquely specific setting of the Israeli-Palestinian context. Accordingly, Counsel posit that non-represented victims formerly authorised to

¹ See the “Notice of Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (ICC-01/18-374)”, [No. 01/18-386](#), 27 November 2024 (the “Appeal”).

² See the “Urgent Prosecution Request to Dismiss *in limine* Israel’s ‘Notice of Appeal of “Decision on Israel’s Challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (ICC-01/18-374)’”, [No. ICC-01/18-392](#), 29 November 2024.

³ See the “Public redacted version of the ‘Decision authorizing the views, concerns and general interests of the victims’” (Pre-Trial Chamber I), [No. ICC-01/18-256-Red](#), 7 August 2024, para. 8. See also 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.

⁴ See AMBOS (K.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, C.H. Beck, Hart Nomos Verlagsgesellschaft, München, Oxford, Baden Baden, 4th edition (2022), p. 4933.

submit observations on these matters retain a continuous right to be heard thereon. Equally, the general interests of victims in the Situation remain affected by the Appeal.

4. In this regard, the fact that Israel's challenge to the Court's jurisdiction was filed pursuant to article 19(2) of the Statute should have no bearing on the statutory right of victims to submit observations on jurisdictional matters, enshrined under article 19(3) of the Statute; neither should it be a bar to the OPCV being heard on the general interests of victims in the Situation. The substance of the Appeal, namely a decision "*with respect to jurisdiction*",⁵ should be determinative of their procedural right to participate in the proceedings.

5. Neither the Office nor victims at large are privy to the particulars of the decisions on the warrants of arrest against Mr Netanyahu and Mr Gallant. The OPCV nevertheless requests to also be allowed to intervene on the question of the suspensive effect demanded by the State of Israel. The decisions on the arrest warrants are corollary to the jurisdictional matter on appeal. Therefore, victims' observations should equally be authorised in this regard. 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. Any outcome of the present Appeal will have far reaching consequences for victims' rights and the situation in the interim is of tantamount concern to them.

6. Should the Appeals Chamber grant the request, Counsel ask to be authorised to file observations by 20 January 2025. The request is justified by the fact that the current prevailing situation makes timely interaction with victims and/or NGOs assisting victims challenging. The possibility to file observations by that date will allow Counsel to have meaningful consultations with the victims they will be able to reach

⁵ See *supra* note 4.

and, consequently, to present relevant and substantial observations on such an important matter.

7. Finally and incidentally, Counsel note that, the issue under appeal 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, in their submission, victims in the Situation in the State of Palestine should be invited to present written observations, if they so wish.

II. PROCEDURAL BACKGROUND

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

9. On 28 January 2020, Pre-Trial Chamber I - in a previous composition - issued the "Order setting the procedure and the schedule for the submission of observations" – *inter alia*, inviting victims to present 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 on the question of territorial jurisdiction raised by the Prosecutor.⁸

10. 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

⁶ 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.

⁷ 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.

⁸ 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. 13, referring to para. 220 of 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.

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", [No. ICC-01/18-105](#), 16 March 2020.

11. On 5 February 2021, Pre-Trial Chamber I - in a previous composition - issued the “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’”.¹⁰

12. On 20 May 2024, the Prosecutor publicly announced that he filed applications for warrants of arrest for *inter alia* Mr Benjamin Netanyahu, Prime Minister of the State of Israel, and Mr Yoav Gallant, then Minister of Defence of the State of Israel, 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 2023.¹¹

13. 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*” and related sub-issues.¹²

14. On 27 June 2024, the Pre-Trial Chamber issued a public redacted version of its Order authorizing the United Kingdom and other intervening actors to file written observations pursuant to rule 103 of the Rules.¹³

15. On 11 July 2024, the OPCV requested to appear before the Pre-Trial Chamber to represent the general interests of victims in the Situation.¹⁴

¹⁰ See the “Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’” (Pre-Trial Chamber I), [No. ICC-01/19-143](#), 5 February 2021

¹¹ 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.

¹² 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, para. 27. Pursuant to Order [No. ICC-01/18-173-Red](#) dated 27 June 2024, this document was reclassified as Public, [No. ICC-01/18-171-Anx](#).

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’” (Pre-Trial Chamber I), [No. ICC-01/18-173-Red](#), 27 June 2024. The deadline was originally set at 12 July 2024 and subsequently extended to 26 July 2024. 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.

¹⁴ See the “OPCV Request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court”, No. ICC-01/18-185-SECRET, 11 July 2024. The Request was reclassified to public pursuant to an order of Pre-Trial Chamber I dated 30 July 2024. The public version of the filing is available as [No. ICC-01/18-185](#).

16. On 30 July 2024, the Pre-Trial Chamber authorised the Office to file observations on the general interests of victims in the Situation with respect to the matter raised by the United Kingdom.¹⁵
17. On 12 August 2024, the OPCV submitted observations on said jurisdictional question.¹⁶
18. On 26 September 2024, the State of Israel filed a challenge to the jurisdiction of the Court pursuant to article 19(2) of the Statute.¹⁷
19. On 21 November 2024, Pre-Trial Chamber rendered the “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, dismissing said challenge.¹⁸
20. On 27 November 2024, the State of Israel filed its Notice of Appeal.¹⁹
21. On 29 November 2024, the Appeals Chamber designated the Presiding Judge in the Appeal.²⁰
22. On 29 November 2024, the Prosecution filed an urgent request to have the Appeal dismissed *in limine*.²¹

¹⁵ See the “Decision concerning the views, concerns and general interests of victims” (Pre-Trial Chamber I), No-ICC-01/18-256-Conf, 30 August 2024. A public redacted version of the decision was issued on 7 August 2024 as [No. ICC-01/18-256-Red](#).

¹⁶ See the “OPCV Observations on Jurisdictional Matters affecting the general interests of Victims”, [No. ICC-01/18-327](#), 12 August 2024.

¹⁷ See the “Public Redacted Version of ‘Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’”, [No. ICC-01/18-354-AnxII-Corr](#), 26 September 2024.

¹⁸ See the “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, [No. ICC-01/18-374](#), 21 November 2024.

¹⁹ See the “Notice of Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (ICC-01/18-374)”, [No. ICC-01/18-386](#), 27 November 2024 (the “Notice of Appeal”).

²⁰ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeal of the State of Israel against the decision of Pre-Trial Chamber I entitled ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’”, [No. ICC-01/18-390](#), 29 November 2024.

²¹ See *supra* note 2.

III. SUBMISSIONS

24. Counsel submit that the Appeal unequivocally concerns “*a matter with respect to jurisdiction*”, which triggers the statutory right of victims to submit observations as foreseen under the Statute.²²

25. Israel’s challenge relates to the effect of the Oslo Accords – ordinarily a matter of territorial jurisdiction on which victims have, in the past, been specifically authorised to file observations on two separate procedural junctures.²³ Most recently, the Office was authorised to submit observations on precisely this issue following the request raised by the United Kingdom.²⁴ Therefore, victims have a right to also intervene at the present stage of the proceedings.

26. In this regard, article 82(1)(a) of the Statute places no restrictions, nor makes any distinction between appeals arising from articles 19(2) or 19(3) of the Statute, the latter granting victims a direct right to participate. In fact, in the Court’s practice, appeals concerning matters related to jurisdiction have always been considered as granting victims an automatic right to file observations,²⁵ because victims’ interests are *per se* affected when a matter concerning the Court’s jurisdiction is being litigated.²⁶

²² The commentary on the Rome Statute notes that “[e]xcept in respect of appeals brought under Article 82(1)(a), the initial jurisprudence of the AC found that participation of victims in appeals against ‘other decisions’ was not automatic. [...]” (emphasis added). See AMBOS (K.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, C.H. Beck, Hart Nomos Verlagsgesellschaft, München, Oxford, Baden Baden, 4th edition (2022), p. 4928.

²³ See the “Public redacted version of the ‘Decision authorizing the views, concerns and general interests of the victims’” (Pre-Trial Chamber I), [No. ICC-01/18-256-Red](#), para. 8. See also 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.

²⁴ See the “Decision concerning the views, concerns and general interests of victims” (Pre-Trial Chamber I), No-ICC-01/18-256-Conf, 30 August 2024. A public redacted version of the decision was issued on 7 August 2024 as [No. ICC-01/18-256-Red](#).

²⁵ See *supra* note 22.

²⁶ 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-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

27. More concretely, 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.

28. Currently, only a limited number of victims affected by the Situation benefit from legal representation. Throughout the years, even before the formal opening of the investigation, the Office, in accordance with its role and mandate pursuant to regulation 81(4) of the Regulations, has been providing "*support and assistance*" directly to victims and to their legal representatives.²⁷ The Office is also in contact with the major NGOs supporting victims.

29. Moreover, pursuant to the same provision, "[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 in the interests of justice*".²⁸

30. Counsel submit that the critical matters raised by the Appeal justify the intervention of the Office to represent the general interests of victims thereon. Indeed, the jurisdictional question is not a mere procedural formality; it is a critical factor that will determine 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

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.

²⁷ Regulation 81(4)(a) of the [Regulations of the Court](#), provides that "[t]he tasks of the Office of Public Counsel for victims shall include: (a) *Providing general support and assistance to the legal representative of victims and to victims, including legal research and advice [...]*", with no temporal limitation.

²⁸ *Ibid.*

endured. The issues raised pertain to impunity and accountability, which are of significant concern to victims.

31. Furthermore, Israel's request for suspensive effect of the recently issued arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Israeli Defence Minister Yoav Gallant is inextricably linked with the matter on Appeal. Accordingly, Counsel posit that victims also have a right to present observations on the request. Indeed, the issuance of the warrants of arrest constitutes a major development within the proceedings in relation to the present Situation and victims have been waiting for almost a decade for such a meaningful development. In this regard, their legitimate interest to obtain justice and to know the truth about the events they suffered cannot be overstated.

32. Should the Appeals Chamber grant the request, Counsel ask to be authorised to file observations by 20 January 2025. The request is justified by the fact that the current prevailing situation renders interactions with victims and/or NGOs assisting victims challenging. The possibility to file observation by that date will allow Counsel to have meaningful consultations with the victims they will be able to reach and consequently to present relevant and substantial observations on such an important matter.

IV. CONCLUSION

For the foregoing reasons, Counsel respectfully request leave to appear in the Appeal filed by the State of Israel and to submit observations by 20 January 2025 representing both the general interest of victims, as well as the interests of unrepresented victims, on both the merits of the Appeal and the request for suspensive effect pending before the Appeals Chamber.



Paolina Massidda



Sarah Pellet

Dated this 13th day of December 2024

At The Hague, The Netherlands