

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **14 February 2025**

PRE-TRIAL CHAMBER I

Before: Judge Nicolas Guillou, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Beti Hohler

SITUATION IN THE STATE OF PALESTINE

SECRET

and *EX PARTE*, only available to the Prosecution

**Prosecution's notification of the death of Mohammed Diab Ibrahim AL-MASRI
("DEIF") and request to terminate the proceedings**

Source: Office of the Prosecutor

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

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☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

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(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

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Section**

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I. INTRODUCTION

1. The Prosecution requests the Pre-Trial Chamber to withdraw the warrant of arrest issued for Mohammed Diab Ibrahim AL-MASRI ("DEIF")¹ and terminate the proceedings against him pursuant to article 58(4) of the Statute due to the changed circumstances caused by DEIF's death. The Prosecution has obtained sufficient and reliable information that DEIF was killed in the hostilities in Gaza. Since DEIF is deceased, the Court cannot exercise jurisdiction over him, nor can the Arrest Warrant be executed.² Yet, considering the circumstances of this case where DEIF has survived several assassination attempts, the Prosecution requests that the proceedings against him be terminated without prejudice, that is, that the proceedings may be again pursued should information become available that he is still alive.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, this filing is classified as 'secret, *ex parte*', available only to the Prosecution and the Registry because it refers to filings and materials with the same level of classification. If the Chamber decides to terminate the proceedings against DEIF, the Prosecution submits that there is no longer a basis to maintain the confidentiality of this filing, and requests that the Chamber simultaneously reclassify this filing to 'public'.

III. PROCEDURAL BACKGROUND

3. On 20 May 2024, the Prosecution submitted, Secret and *Ex Parte*, its application for a warrant of arrest for DEIF under article 58 of the Statute.³

4. Subsequently, the Prosecution became aware of reports alleging that DEIF had been killed in an Israeli air strike on 13 July 2024.⁴

5. On 15 November 2024, the Prosecution notified the Chamber that it had inquired with the State of Israel and the State of Palestine about information and any relevant material concerning the reported death of DEIF, but that at that stage it did not have sufficient and reliable information with respect to his death to withdraw the Article 58 Application against

¹ ICC-01/18-376-SECRET ("Arrest Warrant").

² [ICC-01/11-01/17-24](#), para. 4; [ICC-01/11-01/13-38](#), para. 4.

³ ICC-01/18-167-SECRET-Exp ("Article 58 Application").

⁴ See e.g., [PSE-OTP-00156090](#), [PSE-OTP-00156092](#), [PSE-OTP-00156098](#), [PSE-OTP-00156101](#), [PSE-OTP-00156104](#), [PSE-OTP-00156083](#); but see [PSE-OTP-00156076](#).

him.⁵ The Prosecution stated that if further information became available and/or a change of circumstances arose that required it to withdraw the Article 58 Application, it would do so.⁶

6. On 21 November 2024, the Chamber granted the Prosecution's application and issued the Secret Arrest Warrant.⁷

IV. SUBMISSIONS

7. A decision to terminate proceedings against a deceased person will be based on the totality of information available to the Chamber.⁸ In determining whether a suspect has died, previous chambers have taken into consideration a range of information, including official State communications regarding the death of the individual concerned,⁹ social media material,¹⁰ and photographs.¹¹ A decision to terminate proceedings against a deceased suspect is not contingent on the production of an official death certificate.¹²

8. Based on the totality of information now available, outlined below, there is sufficient and reliable information establishing DEIF's death and, therefore, there is no longer a basis to maintain the Arrest Warrant and proceedings against him. The Prosecution requests the Chamber to withdraw the Arrest Warrant pursuant to article 58(4) and terminate the proceedings. Yet, considering the circumstances of this case, the Prosecution requests that the proceedings against him be terminated without prejudice and may be again pursued should information become available that he is alive.

9. DEIF, also known as "Abu Khaled" (أبو خالد) and more commonly as "DEIF" (الضيف) ("the Guest") was the Commander-in-Chief or Head of the *Izz ad-Din al-Qassam Brigades* ("al-Qassam Brigades" or "IQB").¹³ Since the Prosecution Notification concerning DEIF on 14 November 2024,¹⁴ the Prosecution has received no information suggesting that DEIF is still alive. To the contrary, the following recently obtained information confirms that DEIF is dead.

⁵ ICC-01/18-372-SECRET-Exp ("Prosecution Notification Concerning DEIF"), para. 2.

⁶ Prosecution Notification Concerning DEIF, para. 2.

⁷ ICC-01/18-376-SECRET ("Arrest Warrant").

⁸ [ICC-02/04-01/05-465](#), para. 5.

⁹ See e.g. [ICC-01/09-01/20-337](#), para. 6.

¹⁰ See e.g. [ICC-01/11-01/17-24](#), para. 5.

¹¹ See e.g. [ICC-01/11-01/17-24](#), para. 5.

¹² [ICC-01/11-01/17-24](#), para. 4; [ICC-02/05-03/09-512-Red](#), para. 18.

¹³ ECFR Mohammed Deif, [PSE-OTP-00144864](#); BBC, 19 Mar. 2024, [PSE-OTP-00144869](#); IDF Deif, 15 Oct. 2023, [PSE-OTP-00144871](#).

¹⁴ Prosecution Notification Concerning DEIF.

10. On 30 January 2025, Hamas publicly communicated through its official Telegram channel that "Chief of Staff of the Qassam Brigades [...] Mujahid leader Mohammed Deif" was "martyred" in the Battle of Flood of Al-Aqsa and called for "performing the absentee funeral prayer for the souls of the martyred leaders tomorrow after the Friday prayers in Palestine and in all mosques and Islamic centres around the world".¹⁵ A picture of DEIF accompanied the announcement.¹⁶ This is the first time that Hamas officially acknowledged and announced DEIF's death.

11. That same day, Hamas listed the names of deceased military commanders on its official website, stating that they had been identified "after completing all necessary procedures and dealing with all security warnings imposed by battle and field conditions, and after conducting the necessary verification and taking all relevant measures".¹⁷ The first person named on that list was "Commander Muhammad Al-Deif (Abu Khaled), Chief of Staff of the Al-Qassam Brigades".¹⁸

12. Also on 30 January 2025, Hamas spokesperson Abu Obeida appeared in a video broadcasted in media outlets announcing that DEIF, along with other Hamas military commanders, had been killed in combat.¹⁹ Media outlets reported Hamas' announcement.²⁰

13. The day after, on 31 January 2025, the current head of Hamas in Gaza, Khalil Al Hayya, likewise announced that DEIF was deceased.²¹ Moreover, in an interview from a shelter in the eastern part of Gaza city released on the same day, DEIF's purported spouse, his children and other relatives also confirmed the death of DEIF.²² They explained that he had been killed in Khan Yunis and that last time they saw him was on 6 October 2023.²³

14. The repeated public and official announcements of DEIF's death by Hamas and DEIF's immediate family are consistent with the initial reports of DEIF's death, including official

¹⁵ [PSE-OTP-00192521](#); [PSE-OTP-00192518](#).

¹⁶ [PSE-OTP-00192521](#); [PSE-OTP-00192518](#).

¹⁷ [PSE-OTP-00192520](#); [PSE-OTP-00192521](#).

¹⁸ [PSE-OTP-00192520](#); [PSE-OTP-00192521](#).

¹⁹ [PSE-OTP-00192527](#) (with English subtitles); *see also* [PSE-OTP-00192524](#) (in Arabic).

²⁰ BBC, [Hamas confirms death of military chief Deif](#), 30 January 2025 (last accessed 14/02/2025); NYT, [Muhammad Deif, Hamas Military Commander in Gaza, Is Dead](#), 30 January 2025; France 24, [Hamas confirms death of October 7 mastermind Mohammed Deif](#), 30 January 2025 (last accessed 14/02/2025).

²¹ [PSE-OTP-00192856](#) (video); [PSE-OTP-00193978](#) (Partial Arabic Transcript); [PSE-OTP-00193979](#) (Partial English Transcript).

²² [PSE-OTP-00192853](#) (video); [PSE-OTP-00193976](#) (Partial Arabic Transcript); [PSE-OTP-00193977](#) (Partial English Transcript).

²³ [PSE-OTP-00193977](#), Ins. 12-25.

announcements by the IDF and other Israeli authorities, that DEIF had been killed in Khan Yunis on 13 July 2024.²⁴

15. The Prosecution has not been able to obtain a death certificate for DEIF. Nor is it possible, given the nature of the hostilities in Gaza, to safely explore other measures such as exhumation with DNA analysis to confirm DEIF's death. The Prosecution moreover considers that further investigative steps are unlikely to yield additional proof of DEIF's death. In any event, the totality of the available information provides reliable and compelling proof of DEIF's death.

16. Article 58(4) states that "the warrant of arrest shall remain in effect unless otherwise ordered by the Court". In the circumstances, there is no reason for the Arrest Warrant to remain outstanding. Accordingly, the Prosecution requests the Chamber to withdraw the Arrest Warrant and to terminate the proceedings against DEIF.

17. Yet, considering the circumstances of this case where DEIF has survived several assassination attempts²⁵ and the impossibility of obtaining a death certificate, the Prosecution requests that the proceedings against him be terminated without prejudice, that is, that the proceedings may be again pursued should information become available that he is alive.²⁶

V. CONCLUSION AND RELIEF SOUGHT

18. For the above reasons, the Prosecution respectfully requests the Chamber to withdraw the Arrest Warrant against DEIF and terminate the proceedings against him with immediate effect, without prejudice to resume the proceedings should information become available that he is alive.



Karim A.A. Khan KC, Prosecutor

Dated this 14th day of February 2025
At The Hague, the Netherlands

²⁴ See e.g. [PSE-OTP-00156090](#), [PSE-OTP-00156092](#), [PSE-OTP-00156098](#), [PSE-OTP-00156101](#), [PSE-OTP-00156104](#), [PSE-OTP-00156083](#); see also [PSE-OTP-00183715](#); but see [PSE-OTP-00156076](#).

²⁵ [PSE-OTP-00144864](#); [PSE-OTP-00144869](#); [PSE-OTP-00147902](#); [PSE-OTP-00144874](#).

²⁶ [ICC-02/05-03/09-512-Red](#), p. 12.