

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18
Date: 2 June 2025

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public Document

**OPCV's 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:

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☒ States' Representatives
State of Israel

☐ Amicus Curiae

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations 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 and the Victims currently unrepresented in relation to the State of Israel’s challenge to the jurisdiction of the Court (the “Jurisdictional Challenge”).¹

2. Counsel from the Office has previously been authorised to present observations in the Situation in the State of Palestine on matters related to jurisdiction. In particular, the Office was directly appointed by the Pre-Trial Chamber in its previous compositions – 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 issues *sub judice*, and/or to represent the general interest of the Victims.²

3. In line with previous rulings in the matter, it seems appropriate for the Pre-Trial Chamber to authorise the OPCV to also present observations on the merits of the Jurisdictional Challenge representing the general interests of Victims and the unrepresented Victims.

¹ 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](#), 23 September 2024 (the “Jurisdictional Challenge”).

² 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.

II. PROCEDURAL BACKGROUND

4. On 28 January 2020, following a request from the Prosecution,³ Pre-Trial Chamber I, in its previous composition, issued an order inviting, *inter alia*, 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 [...]”.⁴

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

6. On 20 May 2024, the Prosecutor announced that he filed several applications before the newly constituted Pre-Trial Chamber I 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 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 2023.⁶

7. 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*

³ 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 OPCV “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.

⁴ See the “Order setting the procedure and the schedule for the submission of observations”, *supra* note 2, para. 14.

⁵ 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.

⁶ 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.

circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords”⁷ and related sub-issues.⁸

8. On 11 July 2024, the OPCV requested leave to appear before the Pre-Trial Chamber to present observations to represent the general interests of the Victims.⁹

9. On 30 July 2024, the Pre-Trial Chamber granted the OPCV’s request.¹⁰

10. On 12 August 2024, the Office filed its observations on the jurisdictional matter raised by the United Kingdom.¹¹

11. On 25 October 2024, the Presidency reconstituted the Pre-Trial Chamber, replacing one Judge.¹²

12. On 21 November 2024, the Pre-Trial Chamber rejected the State of Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute (the “Statute”).¹³

13. On 13 December 2024, the State of Israel filed an appeal against the Pre-Trial Chamber’s decision.¹⁴

⁷ See the “Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103”, ICC-01/18- 171-SECRET-Exp-Anx. (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](#)).

⁸ *Idem*.

⁹ 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. Pursuant to Order No. ICC-01/18-256-Conf, dated 30 July 2024, this document was reclassified as Public, [No. ICC-01/18-185](#).

¹⁰ 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](#).

¹¹ See the “OPCV Observations on Jurisdictional Matters affecting the general interests of Victims”, [No. ICC-01/18-327](#), 12 August 2024.

¹² See the “Decision replacing a judge in Pre-Trial Chamber I”, [No. ICC-01/18-366](#), 25 October 2014.

¹³ 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.

¹⁴ See the “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-01/18-402](#), 13 December 2024. In parallel, Israel filed a request for leave to appeal. However, since its appeal as of right was accepted by the Appeals Chamber, the recital of the procedural history in the matter will not mention this parallel litigation.

14. On 24 April 2025, the Appeals Chamber reversed the Pre-Trial Chamber's decision of 21 November 2024, and remanded the matter back to rule on the substance of the jurisdictional challenge.¹⁵

15. On 28 May 2025, the Pre-Trial Chamber issued the Decision on the conduct of proceedings,¹⁶ recognising the right of Victims to file observations in the matter and instructing the Victims Participation and Reparations Section to contact the Legal Representatives of the Victims to facilitate the submission of their observations by 27 June 2025.¹⁷

III. SUBMISSIONS

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 in the interests of justice".¹⁸ 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 office within the Court "*able to provide expert advice and assistance*" on Victims' issues.¹⁹ Since the Office's inception, the practice of the Court

¹⁵ See the "Judgment on 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'", [No. ICC-01/18-422](#), 24 April 2025, para. 64.

¹⁶ See the "Decision on the conduct of proceedings and other procedural matters related to 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'", [No. ICC-01/18-435](#), 28 May 2025.

¹⁷ *Ibid.*, p. 8.

¹⁸ See regulation 81(4) of the Regulations of the Court, Doc. [ICC-BD/01-05-16](#).

¹⁹ 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.

and the responsibilities entrusted to the OPCV by both the Chambers and Victims have greatly contributed to the development of such expertise.

18. Ever since the proceedings on the jurisdictional scope of the Situation in the State of Palestine, the Office has been approached by Victims and Victims' organisations that have shared their views and concerns about the proceedings before the Court. None of these actors have formally appointed counsel of their own choosing, as they have not yet been admitted to formally participate in any case arising out of the Situation. This is precisely the situation foreseen by regulation 81(4) of the Regulations, where the OPCV is uniquely placed to convey the views and concerns of such Victims.

19. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interests of Victims in various Situations before the Court.²⁰ In other instances, the Office appeared at the Chambers' request.²¹ 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.

20. As recently recalled by Pre-Trial Chamber I in the *Duterte* case, "*the assignment of the Office of Public Counsel for Victims (the 'OPCV') to represent 'the collective interests of*

²⁰ See the "Order setting time limits for observations in relation to the 'Defence Challenge with Respect to Jurisdiction'(ICC-01/21-01/25-121)", [No. ICC-01/21-01/25-128](#), 7 May 2025. See also, *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.

²¹ 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.

*potential victims' at this stage of the proceedings, the Chamber notes that it is the responsibility of the OPCV to represent potential victims 'who have already communicated with the Court in relation to [this] case' within the meaning of rule 59 of the Rules. [...] In view of the foregoing, the Chamber hereby finds it appropriate that the Prosecution and the OPCV submit their written observations on the Challenge [...]."*²²

21. The Office has already presented observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in the Situation in the State of Palestine, before Pre-Trial Chamber I in a previous composition.²³ It also presented observations on the jurisdictional question raised by the United Kingdom.²⁴

22. In accordance with the wording of article 19(3) of the Statute and rule 59(3) of the Rules of Procedure and Evidence Victims are entitled to submit observations on any jurisdictional challenge. This includes Victims who may not be represented at this juncture and/or were unable to appoint counsel.

23. 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 many Victims. Therefore, the Office submits that all Victims who have interacted with the Court should have the opportunity to present observations and that the general interests of the Victims should be protected at this stage of the proceedings. Indeed, the practice of the Court has so far allowed for the views and concerns of unrepresented Victims to be heard in proceedings on jurisdictional

²² See the "Order setting time limits for observations in relation to the 'Defence Challenge with Respect to Jurisdiction' (ICC-01/21-01/25-121)", *supra* note 20, paras. 3-4.

²³ 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 **Error! Bookmark not defined.**

²⁴ See the "OPCV Observations on Jurisdictional Matters affecting the general interests of Victims", [No. ICC-01/18-327](#), 12 August 2024.

matters, as well as the need to protect the general interests of the Victims, recognising that the intervention of the Office is warranted.

IV. CONCLUSION

24. For the foregoing reasons, the Principal Counsel respectfully requests the Pre-Trial Chamber to authorise the OPCV to appear before it to represent the general interests of Victims and unrepresented Victims, authorising her to file written submission on the Jurisdictional Challenge by the already established deadline.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath.

Paolina Massidda
Principal Counsel

Dated this 2nd day of June 2025

At The Hague, The Netherlands