

Situation in the State of Palestine

Annex

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/18
Date: 12 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 ALLEGED STATE OF PALESTINE

SECRET

**Request for Leave to Make Observations on
Inaccuracies and Omissions in the Prosecutor's Applications for Arrest Warrants
pursuant to Rule 103(1) of the Rules of Procedure
on behalf of the Non-Governmental Organisations
UK Lawyers for Israel ("UKLFI"), B'nai B'rith UK ("BBUK"),
the International Legal Forum ("ILF"), the Jerusalem Initiative ("JI")
and the Simon Wiesenthal Centre ("SWC")**

Source: UK Lawyers for Israel ("UKLFI"), B'nai B'rith UK ("BBUK"), the International Legal Forum ("ILF"), the Jerusalem Initiative ("JI") and the Simon Wiesenthal Centre ("SWC")

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

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REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. This is a Request for leave to make written observations pursuant to Rule 103 of the Rules of Procedure regarding the existence of serious factual inaccuracies and the omission of highly relevant information in the Prosecutor's Applications for warrants for the arrest of Benjamin Netanyahu and Yoav Gallant ("**the Applications**"), as appear from the Prosecutor's public statement ("**the Statement**") purporting to summarise and justify the grounds of these Applications.¹
2. This Request is made by the following NGOs: UK Lawyers for Israel ("**UKLFI**"), B'nai B'rith UK ("**BBUK**"), the International Legal Forum ("**ILF**"), the Jerusalem Initiative ("**JI**") and the Simon Wiesenthal Center ("**SWC**"). We previously made written observations on the Court's jurisdiction in Palestine on 16 March 2020² pursuant to the Court's Order of 20 February 2020.³ Information about our organisations is contained in our application for leave to file those written observations of 14 February 2020.⁴
3. This Request is made following the Court's Order of 27 June 2024⁵ which set a deadline of 12 July 2024 for submitting any other Requests for leave to make observations under Rule 103. In line with Rule 103 and that Order we understand that it is not necessary or appropriate for the request to set out the proposed observations in full, but we endeavour below to indicate the nature of our proposed observations so as to enable the Court to make an appropriate decision on the Request.
4. This Request is filed as "Secret" *ex abundante cautela*, but the Court is invited to reclassify it as public in line with its Order of 27 June 2024 relating to the UK's Request to provide observations.
5. It is appropriate to mention here that four of the above organisations have also submitted a separate Request under Rule 103 to make written observations regarding jurisdiction and admissibility.

¹ [https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state#:~:text=1\)\(k\).-My%20Office%20submits%20that%20the%20war%20crimes%20alleged%20in%20these,Armed%20Groups\)%20running%20in%20parallel.](https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state#:~:text=1)(k).-My%20Office%20submits%20that%20the%20war%20crimes%20alleged%20in%20these,Armed%20Groups)%20running%20in%20parallel.)

² ICC-01/18-92 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01055.PDF; Annex ICC-01/18-92-Anx https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2020_01056.PDF

³ ICC-01/18-63 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00610.PDF

⁴ ICC-01/18-31 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00466.PDF

⁵ ICC-01/18-173-Red <https://www.icc-cpi.int/court-record/icc-01/18-173-red>

Grounds

6. The Applications have not been published, but the Prosecutor made a public statement on 20 May 2024 (“**the Statement**”) that purported to summarise and justify them. We assume that it provided a fair and accurate summary; if not, this raises additional concerns regarding the reliability of statements by the Prosecutor.
7. We respectfully submit that factual allegations in the Statement are plainly false and do not provide “*reasonable grounds to believe that [Mr Netanyahu or Mr Gallant] has committed a crime within the jurisdiction of the Court*” as required by Article 58(1)(a) of the Rome Statute, even if the Court has the required territorial jurisdiction (which is also disputed).
8. As well as negating the alleged crimes, the true facts also show that it is not *necessary* at the present time to arrest Mr Netanyahu or Mr Gallant for any of the purposes specified in Article 58(1)(b) of the Rome Statute.
9. It is highly undesirable to restrict the liberty of any person who, in accordance with Article 66 of the Rome Statute, is presumed innocent until proved guilty, without proper cause and need. In all cases, the Court has a high responsibility to scrutinise applications for arrest warrants stringently and to examine with utmost care whether the criteria in Article 58(1) of the Rome Statute are fully met.
10. This responsibility is even graver where applications are made to arrest a democratically elected Prime Minister and Defence Minister, when they are currently leading their people in highly complex wars against genocidal enemies, that expressly seek the extermination of their people – a people that suffered, and has not yet recovered from, a genocide less than a century ago. The arrest of its key leaders, and even the disruption of their work by forcing them to take steps to avoid arrest, would be liable to prejudice the conduct of the war and could even jeopardise the survival of the people and its country.
11. We respectfully submit that, in these circumstances, if there is any risk that the Applications might be inaccurate or might omit material information or evidence, the Court should permit and facilitate the correction of such deficiencies before making its decision on the Applications.

Border crossings

12. The Statement alleges that Israel imposed “*a total siege over Gaza, that involved completely closing the three border crossing points, Rafah, Kerem Shalom and Erez, from 8 October 2023 for extended periods*”. Every element of this allegation is false. The key facts down to the end of May 2024 were as follows:

- (a) The Rafah crossing is between the Gaza Strip and Egypt (not Israel). Neither side of this crossing was under Israeli control between 8 October 2023 and 6 May 2024. On 7 May 2024 the Israel Defence Forces (“**IDF**”) took control of the Gaza Strip side of this crossing and has remained in control of this side since then, but does not control the Egyptian side. When Egypt is unwilling to allow goods through the Rafah crossing, Israel cannot force it to do so, short of starting a war with Egypt.

The Rafah crossing was open on 8 October 2023,⁶ but closed by Egypt between 9 October 2023 and 20 October 2023.⁷ It was reopened for humanitarian supplies on 21 October 2023⁸ and remained open until 6 May 2024.⁹ During this period trucks were transferred from Israel to the Egyptian side of the Rafah crossing on all dates except most Saturdays¹⁰ and 26-27 October 2023; 20 November 2023; 2, 16, 18, 19, 23 and 27 February 2024; 5 March 2024; and 23 and 29 April 2024.¹¹ Thus, apart from most Saturdays, there were only 12 days out of the 200 between 21 October 2023 and 6 May 2024 on which trucks were not transferred to the Egyptian side of the Rafah crossing.

At times, transfer of the goods through the Rafah crossing was delayed due to limited capacity on the Egyptian and/or Palestinian side of the crossing. However,

⁶ UN OCHA, reliefweb, *Escalation in the Gaza Strip and Israel, Flash Update #2*

<https://reliefweb.int/report/occupied-palestinian-territory/escalation-gaza-strip-and-israel-flash-update-2-enarhe>

⁷ Ebrahim, Nadeen, *The Last Remaining Exit for Gazans Is through Egypt. Here's Why Cairo Is Reluctant to Open It*, CNN 20/10/2023. <https://edition.cnn.com/2023/10/13/middleeast/egypt-rafah-crossing-gaza-palestinians-mime-intl/index.html>

⁸ COGAT, X, 23/10/2023 <https://x.com/cogatonline/status/1716493685523648820>

⁹ <https://english.ahram.org.eg/NewsContent/1/1234/523140/Egypt/Foreign-Affairs/Rafah-crossing-between-Egypt-and-Gaza-operating-no.aspx>

¹⁰ Transfers were made to the Egyptian side of the Rafah crossing on Saturdays until 23 December 2023 except 28 October and 18 November 2023: see the document “Humanitarian Aid” posted at

<https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>

¹¹ “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>

all or virtually all of the goods delivered to the Egyptian side of the Rafah crossing were transferred through the crossing.

The Rafah crossing has been closed by Egypt since 7 May 2024 despite Israel's willingness to keep it open on the Gaza Strip side.¹²

- (b) The Kerem Shalom crossing was closed by Israel following the attacks on 7 October 2023. It was reopened for the inspection of goods to be transferred to Rafah on 12 December 2023¹³ and then for direct transfer of goods into the Gaza Strip on 17 December 2023.¹⁴ Since then trucks have passed through it or through Gate 96 (an additional entry point opened by Israel for humanitarian aid on 12 March 2024) into the Gaza Strip on all dates except Saturdays and 22, 24, 26-28 December 2023; 25, 26 and 28 January 2024; 7-9, 16, 22 and 27 February 2024; 23 and 29 April 2024; and 6-8 May 2024.¹⁵ Thus, apart from Saturdays, there were only 19 days out of the 167 between 17 December 2023 and 31 May 2024 on which goods were not transferred through the Kerem Shalom crossing or Gate 96 into the Gaza Strip.
- (c) The Erez crossing was a pedestrian only crossing prior to 7 October 2023. It was damaged in the Palestinian attacks on 7 October 2023.¹⁶ Israel repaired it and added an adjacent goods crossing which opened for humanitarian aid on 1 May 2024.¹⁷

¹² Reuters, *As Egypt Refuses to Open Rafah Crossing, Much-Needed Humanitarian Aid Begins to Rot in The Times of Israel*, 24/5/2024 https://www.timesofisrael.com/liveblog_entry/as-egypt-refuses-to-open-rafah-crossing-much-needed-humanitarian-aid-begins-to-rot/; Staff, *Toi, Israel, Egypt Said Moving toward Reopening Rafah Crossing Amid Us Pressure*, The Times of Israel, 30/5/2024 <https://www.timesofisrael.com/israel-egypt-said-to-agree-to-reopen-rafah-crossing-following-us-pressure/>; Reuters, *Egypt demands Israel withdraws from Rafah crossing for it to operate again, sources say*, 2/6/24 <https://www.reuters.com/world/middle-east/egypt-demands-israel-withdraws-rafah-crossing-it-operate-again-sources-say-2024-06-02/>

¹³ COGAT, X, 11/12/2023 <https://x.com/cogatonline/status/1734295968357720408>; COGAT, X, 12/12/2023 <https://x.com/cogatonline/status/1734531403037966542>; COGAT, X, 12/12/2023 <https://x.com/cogatonline/status/1734653422882738328>

¹⁴ Rose, Emily, *Aid Enters Gaza through Israel's Kerem Shalom Crossing for First Time in War*. Reuters, 17/12/2023 <https://www.reuters.com/world/middle-east/aid-enters-gaza-through-israels-kerem-shalom-crossing-first-time-war-2023-12-17/>

¹⁵ The closure on 6-8 May 2024 followed a Hamas rocket attack on the crossing: COGAT, X, 5/5/2024 <https://x.com/cogatonline/status/1787155081420292605>; Fabian, Emanuel, *IDF Says Kerem Shalom Crossing Reopened to Gaza Aid, Days after Attack Forced Closure*, The Times of Israel, 8/5/2024 https://www.timesofisrael.com/liveblog_entry/idf-releases-footage-of-crowds-rushing-aid-trucks-in-gaza-city-hamas-claims-104-killed/

¹⁶ Fabian, Emanuel, *Israel shows major damage to Erez Crossing with Gaza following Hamas assault*, The Times of Israel, 17/10/2023 https://www.timesofisrael.com/liveblog_entry/israel-shows-major-damage-to-erez-crossing-with-gaza-following-hamas-assault/

¹⁷ Bachner, Michael, et al, *Israel opens Erez crossing to Gaza aid for first time as Blinken tours border*, The Times of Israel, 1/5/2024 <https://www.timesofisrael.com/israel-opens-erez-crossing-to-gaza-aid-for-first-time-as-blinken-tours-border/>

Israel also built an additional crossing for humanitarian aid, Erez West, which opened on 12 May 2024.¹⁸ Truckloads entered the Gaza Strip through one or other of the Erez crossings on all dates in May 2024, except Saturdays and 2-3, 9-10, 14 and 24 May.¹⁹ Some medical equipment had also been transferred through the original Erez crossing on 17 April 2024.²⁰

(d) Israel also encouraged the provision of the US built floating pier, JLOTS, and ensured its security from attack by Palestinian terrorists.²¹ This was opened on 17 May 2024 and was in use until 24 May 2024, following which it was damaged due to stormy weather.²² The damage was repaired in June and its operation was resumed,²³ although unfortunately it had to be suspended again later in June due to further stormy weather.²⁴

(e) Israel has also facilitated air drops of humanitarian aid by several countries.

13. We respectfully submit that the information summarised out above is completely inconsistent with the Statement and with the Applications, assuming the Applications are fairly summarised in the Statement. Israel has not imposed a *“total siege over Gaza ... from 8 October 2023”*. Nor has there been a complete closure by Israel of the three crossing points for extended periods. At least one crossing point has been open on most dates since 21 October 2023. Furthermore, the closures of the Rafah crossing point between 9 and 20 October 2023 and since 7 May 2024 were not imposed by Israel; they

¹⁸ COGAT, X, 12/5/2024 <https://x.com/cogatonline/status/1789686967589843327>; Fabian, Emanuel. *Israel opens 3rd crossing into northern Gaza to 'increase aid routes' during war*, The Times of Israel, 12/5/2024 <https://www.timesofisrael.com/israel-opens-3rd-crossing-into-northern-gaza-to-increase-aid-routes-during-war/>

¹⁹ “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>

²⁰ Ibid.

²¹ JNS, *Netanyahu to AIPAC: I suggested idea of Gaza-aid sea route to Biden*, 18/3/2024 <https://www.jns.org/netanyahu-i-suggested-gaza-aid-sea-route-to-biden/>; Fabian, Emanuel. *IDF says Israeli troops to secure Gaza aid pier that US is constructing*. The Times of Israel, 25/4/2024 https://www.timesofisrael.com/liveblog_entry/idf-says-israeli-troops-to-secure-gaza-aid-pier-that-us-is-constructing/; Fabian, Emanuel, *IDF says its boosting forces to secure US Gaza aid pier*, The Times of Israel, 8/6/2024 https://www.timesofisrael.com/liveblog_entry/idf-says-its-boosting-forces-to-secure-us-gaza-aid-pier/

²² Liebermann, Oren, et al, *US pier constructed off Gaza has broken apart*, CNN, 29/5/2024

<https://edition.cnn.com/2024/05/28/politics/us-gaza-pier-broken-apart/index.html>

²³ Reuters, *Gaza pier resumes operations after pause due to weather, US officials say*. 11/6/2024 <https://www.reuters.com/world/middle-east/gaza-pier-resumes-operations-after-pause-due-weather-us-officials-say-2024-06-11/>

²⁴ Staff, Toi, et al, *US pier again removed from Gaza coast due to sea conditions, may not be reanchored*, The Times of Israel, 29/6/2024 <https://www.timesofisrael.com/us-pier-again-removed-from-gaza-coast-due-to-sea-conditions-may-not-be-reanchored/>

were imposed by Egypt. The closure of the Erez crossing point in respect of humanitarian supplies until 1 May 2024 was not *imposed* by Israel; it existed because the terminal was not equipped for the transfer of goods and was also heavily damaged in the Hamas attack on 7 October 2023.

14. The Prosecutor's allegations appear to be an attempt to alter the facts to fit a mistranslation of an oral statement made by Yoav Gallant on 9 October 2023.²⁵ The statement has been widely translated as "*We are imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed.*" In fact, he said (in translation): "*We are imposing a complete siege on the City of Gaza ...*". The words "עיר עזה" ("*City of Gaza*") can be heard clearly on the recording. While the City of Gaza is the largest town in the Gaza Strip, it is not the whole of the Gaza Strip by any means. Closing the crossing points into the Gaza Strip, which are all at some distance from Gaza City, could not in the short term impose a "*complete siege*" on the City of Gaza.
15. Whatever Yoav Gallant said, meant or intended on the second day after the terrible atrocities led by Hamas on 7 October 2023, the objective facts are that no total siege was imposed on Gaza City or the Gaza Strip and the three crossing points were not completely closed by Israel, certainly not for extended periods.
16. The Statement goes on to allege that Israel "*arbitrarily restrict[ed] the transfer of essential supplies – including food and medicine – through the border crossings after they were reopened.*" In fact, medical equipment was transferred to the Rafah crossing and/or through other crossings into the Gaza Strip on 175 of the 225 days between 21 October 2023 and the end of May 2024, while food was transferred on 191 days in this period.²⁶ Israel was entirely justified to insist on inspecting food, medicines and other goods to be transferred into Gaza.²⁷
17. We suspect that this allegation is not supported by any or any reliable evidence. We would respectfully observe that the Court should scrutinise any evidence with particular care given the evident inaccuracy of other allegations made by the Prosecutor.

²⁵ <https://www.youtube.com/watch?v=WVPdSpCAbB0>

²⁶ "Humanitarian Aid" posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>

²⁷ Magid, Jacob. *Israeli officials: Oxygen concentrators for Gaza tunnels found hidden in aid shipment*. The Times of Israel, 3/11/2023 https://www.timesofisrael.com/liveblog_entry/israeli-officials-oxygen-concentrators-for-gaza-tunnels-found-hidden-in-aid-shipment/

Water pipelines

18. The Statement alleges that *"The siege [by Israel] also included cutting off cross-border water pipelines from Israel to Gaza - Gazans' principal source of clean water - for a prolonged period beginning 9 October 2023"*. Every element of this allegation is also false.
19. Prior to 7 October 2023, three pipelines from Israel provided no more than 10% of the fresh water used in the Gaza Strip.²⁸ The other fresh water used by Gazans was mainly obtained from the aquifer, usually after desalination, or from the sea after desalination. A major expansion of the Rafah desalination plant had been completed in June 2023.²⁹
20. Two of the three pipelines were damaged in Israel in the Hamas attack on 7 October 2023.³⁰ The remaining working pipeline was closed by Israel on 9 October 2023 but was reopened on 15 October 2023.³¹ A second pipeline was repaired in Israel and reopened by 29 October 2023.³² These pipelines together supplied 28.5 million litres of fresh water per day – nearly 13 litres per person.
21. The water pipeline network within the Gaza Strip was in poor condition prior to 7 October 2023 resulting in substantial leakage, but this does not support the Prosecutor's allegation quoted above.

²⁸ IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>; EFE, *Israel partially restores water supply to Gaza*, 16/10/2023 <https://efe.com/en/latest-news/2023-10-16/israel-partially-restores-water-supply-to-gaza/>; Sharon, Jeremy, *Israel reopens second of three water pipelines into Gaza*, The Times of Israel, 29/10/2023 <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/>

²⁹ UNICEF, *EU and UNICEF mark the completion of the final phase of the expansion of the Southern Gaza Seawater Desalination plant*, 5/6/2023 <https://www.unicef.org/sop/press-releases/eu-and-unicef-mark-completion-final-phase-expansion-southern-gaza-seawater>.

³⁰ IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>

³¹ Magid, Jacob, *Israeli official confirms that Israel has resumed water supply to Gaza*, The Times of Israel, 15/10/2023 https://www.timesofisrael.com/liveblog_entry/us-says-israel-has-restored-water-supply-to-gaza/; Barak, Ravid, *Israel resumes water supply to southern Gaza after U.S. pressure*. Axios, 15/10/2023 <https://www.axios.com/2023/10/15/israel-resumes-water-supply-to-southern-gaza-after-us-pressure>

³² IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>; Sharon, Jeremy, *Israel reopens second of three water pipelines into Gaza*, The Times of Israel, 29/10/2023 <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/>

22. Truckloads of water were also transferred to the Rafah crossing and/or through other crossings into the Gaza Strip on 165 of the 225 days between 21 October 2023 and the end of May 2024.³³ This is also incompatible with the allegation of a “total siege”.

Electricity and fuel

23. The Statement further alleges that “*The [total] siege also included ... cutting off and hindering electricity supplies from at least October 2023 until today*”. This is also grossly misleading.
24. Prior to 7 October 2023, Israel supplied about half of Gaza’s electricity through ten power lines. The remainder of Gaza’s electricity was provided by Gaza’s power station, individual generators and solar power. Since the mains electricity supply was unreliable, essential facilities and many other buildings had their own generators.³⁴
25. Nine of the ten power lines from Israel into the Gaza Strip were damaged in the Hamas-led assault on Israel on 7 October 2023.³⁵ Mending them under risk of rocket and other fire would have been dangerous and it is likely that the electricity workers would have refused to do it.³⁶ Communities in Israel which these power lines had also served had been evacuated to the extent they had survived. In any case, mains electricity supplied by Israel to the Gaza Strip was used by Hamas to light and ventilate its military tunnels and other underground military facilities, to power its IT systems³⁷ and for other military uses. In these circumstances, Israel did not repair the power lines in the first few months of the war and did not supply mains electricity to the Gaza Strip, until it very recently decided to supply mains electricity to the Gaza desalination plant.³⁸

³³ “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>

³⁴ Todman, Will, et al, *Gaza's Solar Power in Wartime*, Center for Strategic and International Studies (CSIS), 21/11/2023 [https://www.csis.org/analysis/gazas-solar-power-wartime#:~:text=Prior%20to%20the%20outbreak%20of,supplying%20120%20megawatts%20\(MW\).](https://www.csis.org/analysis/gazas-solar-power-wartime#:~:text=Prior%20to%20the%20outbreak%20of,supplying%20120%20megawatts%20(MW).)

³⁵ IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>;

³⁶ Jerusalem Post, *Electric corp. union refuses to fix Gaza lines until Israelis returned*, 20/5/2021 <https://www.jpost.com/israel-news/electric-corp-union-refuses-to-fix-gaza-lines-until-israelis-returned-668615>

³⁷ Fabian, Emanuel. *Directly beneath UNRWA's Gaza headquarters, IDF uncovers top secret Hamas data center*, The Times of Israel, 10/2/2024 <https://www.timesofisrael.com/directly-beneath-unrwas-gaza-headquarters-idf-uncovers-top-secret-hamas-data-center/>

³⁸ I24 News, *IDF confirms i24NEWS report: Electricity to be transferred to Gaza for desalination*, 2/6/2024 <https://www.i24news.tv/en/news/middle-east/palestinian-territories/artc-idf-confirms-i24news-report-electricity-to-be-transferred-to-gaza-for-desalination>

26. On 7 October 2023 there were substantial reserves of fuel in Gaza, enabling the continued use of electricity generators.³⁹ Israel has enabled transfers of fuel into the Gaza Strip since 15 November 2023. Fuel in tanks or trucks has been transferred regularly into the Gaza Strip since then.

Alleged attacks on civilians queuing for food

27. The Statement goes on to claim: *“This took place alongside other attacks on civilians, including those queuing for food”*. The alleged attacks are not identified in the Statement. However, the most publicised incident in which members of the IDF fired on Palestinians apparently seeking food supplies was that in Al Rashid Street in Gaza City on 29 February 2024. It seems likely that this incident would be included in this allegation
28. If this allegation is intended to refer to the incident on 29 February, it is misleading in describing the civilians as *“queuing for food”*. It is clear from video footage⁴⁰ that there were very large crowds around the trucks and that they were not in an orderly queue. The IDF estimated that the crowds numbered about 12,000. The crowds stopped the trucks as they tried to progress northwards along Al Rashid Street in Gaza City and started to loot the goods.⁴¹
29. The IDF's investigation found that some of the crowd approached to within a few meters of IDF troops tasked with facilitating safe passage for the convoy. The IDF troops believed this posed a real threat to them and fired at these members of the crowd. However, according to the IDF's investigation, most of the Palestinian casualties resulted from the stampede rather than the IDF's fire.⁴²

³⁹ Rettig, Elai, *Fuel Supply in Gaza – Needs and Uses*, BESA, 16/11/2023 [https://besacenter.org/fuel-supply-in-gaza-needs-and-uses/#:~:text= Hamas%20rockets%20\(Qassams\)%20use%20solid, and%20heat%2C%20requiring%20diesel%20fuel](https://besacenter.org/fuel-supply-in-gaza-needs-and-uses/#:~:text= Hamas%20rockets%20(Qassams)%20use%20solid, and%20heat%2C%20requiring%20diesel%20fuel)

⁴⁰ Fabian, Emanuel, *IDF releases footage of crowds rushing aid trucks in Gaza City; Hamas claims 104 killed*, The Times of Israel, 29/2/2024 https://www.timesofisrael.com/liveblog_entry/idf-releases-footage-of-crowds-rushing-aid-trucks-in-gaza-city-hamas-claims-104-killed/

⁴¹ Baruch, Uzi, *IDF investigation reveals: Thousands of Gazans looted, no shots fired at convoy*, Arutz Sheva, 8/3/2024 <https://www.israelnationalnews.com/news/386437>; Maariv Online, *Israel has evidence that Gazans killed in February aid disaster died from overcrowding*, The Jerusalem Post, 1/4/2024 <https://www.jpost.com/israel-hamas-war/article-794797>

⁴² Maariv Online, *Israel has evidence that Gazans killed in February aid disaster died from overcrowding – report*, The Jerusalem Post, 1/4/2024 <https://www.jpost.com/israel-hamas-war/article-794797>; Greyman-Kennard, Danielle, *Majority killed by stampede in Gaza aid convoy catastrophe, IDF probe finds*, The Jerusalem Post, 3/3/2024 <https://www.jpost.com/israel-hamas-war/article-789947>; Baruch, Uzi, *IDF investigation reveals:*

Attacks on aid workers

30. The Statement also refers to “*attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza*”. Again, these are not identified in the Statement. However, the most publicised incident in which the IDF fired on aid workers was the strike on a three-car convoy of World Central Kitchen (“WCK”) staff in North Gaza on 1 April 2024, resulting in the death of seven aid workers.
31. An investigation by the IDF found that IDF commanders had ordered the strike after wrongly concluding that the cars were being used by Hamas terrorists. The commanders were dismissed and Israel apologised.
32. WCK suspended its operations in the Gaza Strip following the strike but subsequently resumed and expanded them.⁴³ Two other aid organisations, Anera and Project Hope, that also suspended operations in the Gaza Strip following the strike, subsequently resumed them.⁴⁴ This suggests that the Prosecutor’s claim that Israeli attacks on aid workers “*forced many agencies to cease or limit their operations in Gaza*” is not accurate.

Omission of any reference to looting of aid by Hamas and other armed gangs

33. The Statement makes no mention of the serious problem of looting of humanitarian aid by Hamas and other armed gangs, which results in the diversion of aid away from those who most need it, the resale of aid at prices which the poorest cannot afford, and serious dangers to aid workers.⁴⁵
34. Ignoring this problem leads the Prosecutor to assume, wrongly, that any failure of aid to reach those in need of it must be evidence of an Israeli conspiracy to starve the civilian population as a method of warfare.

Thousands of Gazans looted, no shots fired at convoy, Arutz Sheva, 8/3/2024

<https://www.israelnationalnews.com/news/386437>

⁴³ Gore, Erin, *World Central Kitchen Resuming Gaza Operations*, World Central Kitchen, 28/4/2024 <https://wck.org/news/chefs-for-gaza>; *Chefs for Gaza, WCK opens third Gaza Field Kitchen*, World Central Kitchen 14/5/2024 <https://wck.org/news/damians-kitchen>

⁴⁴ Anera, *Anera Resumes Humanitarian Operations in Gaza*, 11/4/2024 <https://www.anera.org/press/anera-to-resume-humanitarian-operations-in-gaza/>; Project Hope, *Resuming Programming in Gaza Following Aid Worker Attacks*, 6/4/2024 <https://www.projecthope.org/news-stories/press-release/resuming-programming-in-gaza-following-aid-worker-attacks/>

⁴⁵ Staff, Toi, *Gaza aid trucks stolen by gunmen and looted, as convoys start crossing from Israel*, The Times of Israel, 17/12/2023 <https://www.timesofisrael.com/gaza-aid-trucks-stolen-by-gunmen-and-looted-as-convoys-start-crossing-from-israel/>

Alleged famine

35. The Statement alleges “*Famine is present in some areas of Gaza and is imminent in other areas. As UN Secretary-General António Guterres warned more than two months ago, ‘1.1 million people in Gaza are facing catastrophic hunger – the highest number of people ever recorded – anywhere, anytime’*”.
36. These allegations appear to have been based on the FEWS NET Report of 18 March 2024.⁴⁶ That Report has now been superseded by the subsequent Review by the Famine Review Committee (“**FRC**”) of May 2024, published on 4 June 2024,⁴⁷ and the further FRC Report on the Gaza Strip for June 2024 published on 25 June 2024.⁴⁸ The latter Reports found that the former Report had been based on significant under-reporting of foodstuffs entering the Gaza Strip.
37. The FRC Review published on 4 June 2024 re-analysed the situation in northern Gaza, where the conditions were allegedly to have been the most severe. The Review concluded that it did not find the claims about IPC Phase 5 “Famine” plausible, either in context of current situation as of the end of April, or in context of projections for May-July.⁴⁹ It noted that the earlier FEWS NET analysis had ignored World Food Programme (**WFP**) flour deliveries to the bakeries and privately contracted and/or commercial trucking. When those are taken into account, the new FRC analysis showed that the daily kilocalories requirements had been clearly surpassed in April, even if the most conservative estimates are used.⁵⁰

⁴⁶ FEWS NET, *Gaza Strip Targeted Analysis*, 18/3/2024 https://fews.net/sites/default/files/2024-03/Gaza%20Targeted-Analysis-03182024-Final_0.pdf

⁴⁷ IPC, *Famine Review Committee: Review of the Famine Early Warning Systems Network (FEWS NET) IPC-Compatible Analysis for the Northern Governorates of the Gaza Strip / Conclusions and Recommendations / May 2024*, 4/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/documents/IPC_Famine_Review_Committee_Report_FEWS_NET_Gaza_4June2024.pdf

⁴⁸ IPC, *Famine Review Committee: Gaza Strip, June 2024 / Conclusions and Recommendations*, 25/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf

⁴⁹ IPC, *Famine Review Committee: Review of the Famine Early Warning Systems Network (FEWS NET) IPC-Compatible Analysis for the Northern Governorates of the Gaza Strip / Conclusions and Recommendations / May 2024*, 4/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/documents/IPC_Famine_Review_Committee_Report_FEWS_NET_Gaza_4June2024.pdf p.1, Table 1

⁵⁰ Ibid., Annex 1

38. The FRC Report published on 25 June 2024 classified both the current and the projected situation in all parts of Gaza as Phase 4 “Emergency”, rather than Phase 5 “Famine”. Moreover, key metrics indicated a very clear trend of improvement over the last few months:
- (a) The Food Consumption Score (“FCS”) in northern governorates has steadily improved since March, and in the rest of Gaza since December.⁵¹ In May its values were actually much better than before the war.⁵²
 - (b) Two other key indicators - rCSI and HHS - showed a similar trend of significant improvement since January.⁵³
39. Two key parameters required for declaring famine are the rates of non-trauma related mortality and of acute malnutrition among children. Neither of these are even close to the Phase 5 “Famine” threshold and the values in the Report of 25 June imply that the situation should be classified as Phase 3 “Crisis” or even Phase 2 “Stressed”.

Alleged malnutrition and deaths due to starvation

40. The Statement also claims: *“The effects of the use of starvation as a method of warfare ... include malnutrition, dehydration, profound suffering and an increasing number of deaths among the Palestinian population, including babies, other children and women”*. These allegations do not appear to be based on data collected in a scientific manner.
41. As regards the allegation of malnutrition, the June 25 Report contains several tables of results of 47 malnutrition screenings of children under the age of 5 carried out in April and May 2024. The last column shows IPC phases that would be consistent with the results of each survey. We observe that neither Phase 4 “Emergency” nor Phase 5 “Famine” appear there at all - the highest phase is Phase 3. In fact most of the results, as

⁵¹ IPC, *Famine Review Committee: Gaza Strip, June 2024 / Conclusions and Recommendations*, 25/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf pp.14-15

⁵² World Food Programme, *WFP Palestine Country Brief September 2022*, https://un.org/unispal/wp-content/uploads/2022/10/WFPCBSEPT22_181022.pdf; Zlochin, Mark, X, 26/6/2024 <https://x.com/MarkZlochin/status/1806030415918145552>

⁵³ IPC, *Famine Review Committee: Gaza Strip, June 2024 / Conclusions and Recommendations*, 25/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf p.15

well as area-wise averages, are close to the baseline 4% prevalence rate in Gaza before the war.⁵⁴

42. Nor does there appear to be any scientific evidence of an “*increasing number of deaths*” from starvation. A similar claim had been made in a Special Brief of the IPC of 18 March 2024: “*The upward trend in non-trauma mortality is also expected to accelerate*”.⁵⁵ However, the same document later said: “*The analysis could not benefit from representative evidence of non-trauma mortality as intended by IPC Protocols (Crude Death Rate and Under Five Death Rate) ... no direct measurements of CDR or U5DR after trauma exclusion are currently available*”.⁵⁶
43. According to the Gaza Ministry of Health, there have been 34 deaths since the beginning of the current war allegedly caused by starvation. All of the published cases have been children suffering from serious conditions, such as cystic fibrosis or cerebral palsy. In addition, the chief paediatrician of Kamal Adwan hospital, where the majority of the starvation deaths have been reported, said that the cause of death in these cases was not lack of food or water, but intestinal infections.⁵⁷ This anecdotal evidence should be put in context: based on the pre-war birth rate and infant mortality rate, around 1000 infants would have died in Gaza if there had not been any war.⁵⁸
44. In addition, the June 25 IPC report describes a survey conducted in order to estimate non-trauma related mortality. However, the authors only share all-cause (trauma and non-trauma related) mortality statistics, despite having the non-trauma mortality figures. Nevertheless, even the all-cause statistics - CDR of 0.55 deaths/10,000/day and U5DR of 0.72 – are very far from the IPC Phase 5 “Famine” thresholds of 2 and 4, respectively. In

⁵⁴ Global Nutrition Cluster, *Nutrition Vulnerability and Situation Analysis /Gaza / February 2024*

<https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2024-02/GAZA-Nutrition-vulnerability-and-SitAn-v7.pdf#page=8> p.4

⁵⁵ IPC Global Initiative, *Special Brief / The Gaza Strip*, 15/3/2024

https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_Feb_July_2024_Special_Brief.pdf p.2

⁵⁶ Ibid., p.27

⁵⁷ Sebouai, Lilia, *Children 'starting to die from malnutrition' in northern Gaza as food crisis worsens*. The Telegraph, 22/2/2024 <https://www.telegraph.co.uk/global-health/terror-and-security/gaza-malnutrition-israel-war-famine-children/#:~:text=intestinal%20infections>

⁵⁸ CIA, *The World Factbook (2022 Archive)* / Birth rate <https://www.cia.gov/the-world-factbook/about/archives/2022/field/birth-rate/country-comparison>; CIA, *The World Factbook (2022 Archive)* / Infant mortality rate <https://www.cia.gov/the-world-factbook/about/archives/2022/field/infant-mortality-rate/>

fact, the probable non-trauma related mortality rates are likely to be lower than the Phase 4 thresholds and indicative of IPC Phase 3, or even Phase 2.

Unreliable sources

45. The Statement asserts that *“The effects of the use of starvation as a method of warfare ... are acute, visible and widely known, and have been confirmed by multiple witnesses interviewed by my Office, including local and international medical doctors”*.
46. We infer that *“acute, visible and widely known”* refers to media coverage. We would respectfully observe that a criminal court should be very wary of relying on media coverage of a war as evidence, especially in relation to a territory that has been and may remain under the control of a ruthless terrorist organisation, that has no compunction about penalising those who do not follow the regime line when speaking to media companies. In any case, bearing in mind there are numerous mobile telephones in Gaza, there do not appear to have been many photographs of starving Gazans in the media.
47. As for the evidence of witnesses, we would respectfully warn the Court not to assume that the evidence of doctors must be true. It appears that many doctors in Gaza who speak to the media are members or supporters of Hamas⁵⁹ and other doctors who speak to the media may not dare go against the Hamas line.

The Panel of Experts

48. We appreciate that the Prosecutor received the advice of a “panel of experts in international law”. It is not clear to us what status, if any, they have or on what legal basis or authority they provided their advice to the Prosecutor.⁶⁰ In any event, it appears that they were asked to form and did form the views they expressed on the basis of the material provided to them by the Office of the Prosecutor. Accordingly, if that material is inaccurate or omits relevant information, their Report does not help to validate the Applications.

⁵⁹ David Collier, *International media and the Hamas supporting Doctors of Shifa* <https://david-collier.com/doctors-shifa-hospital/>; David Collier, *BBC Verify – a hostile land of make believe – part one* <https://david-collier.com/bbc-verify/>; David Collier, X, 2/2/24 <https://x.com/mishtal/status/1753356777150611886>

⁶⁰ The legality and propriety of this engagement are disputed by Adv. Norman Menachem Feder, *ICC Prosecutor Tapped External Panel to Review Evidence: Is That Even Allowed?*, Lawfare, 9/7/2024: <https://www.lawfaremedia.org/article/icc-prosecutor-tapped-external-panel-to-review-evidence--is-that-even-allowed>

Request

49. We respectfully request leave to make observations in line with the points made above on factual inaccuracies and omissions in the Applications, as they appear from the summary of the Applications in the Statement.

Respectfully submitted by



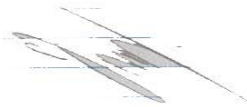
Jonathan Turner, Chief Executive, on behalf of UK Lawyers for Israel ("UKLFI"),



Jeremy Havardi, on behalf of B'nai B'rith UK ("BBUK") Bureau of International Affairs,



Arsen Ostrovsky, on behalf of the International Legal Forum ("ILF")



Elias Zariana, on behalf of the Jerusalem Initiative ("JI") and



Rabbi Abraham Cooper, Associate Dean and Global Social Action Director, on behalf of Simon Wiesenthal Centre ("SWC")

Dated this 12th day of July 2024

At London, Tel Aviv, Jerusalem and Los Angeles