

Annex

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/18**
Date: **12 July 2024**

PRE-TRIAL CHAMBER I

Before:

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

SITUATION IN THE STATE OF PALESTINE

Public

Victims' Request for Leave to Submit Observations

Source: Legal Representatives of 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 Victims

Legal Representatives of Applicants



Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representative

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Mr Osvaldo Zavala Giler

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other



I. INTRODUCTION

1. The Legal Representatives of 635 Palestinian Victims (“Victims”) hereby respectfully request leave to submit observations before Pre-Trial Chamber I on the issues raised in the “Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103” (‘the United Kingdom’s Request’ or ‘Request’),¹ namely “[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where [the United Kingdom posits that] Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords”.² As part of its observations, the Victims would further seek to address the legal basis and timing of the Chamber’s consideration of the jurisdictional matter raised in the Request and provide reasons why this issue does not prevent and must not delay the issuing of warrants of arrest under Article 58 of the Rome Statute (‘Statute’).³

2. The Legal Representatives file the current request despite media reports that the United Kingdom may withdraw its Request.⁴ In the event that the United Kingdom no longer proceeds with its Request, and the Chamber decides nevertheless to consider the subject-matter raised in the United Kingdom’s Request, for example on the basis of other submissions received on the same or related issues, the Legal Representatives request leave to submit observations on those submissions.

3. The Victims have long expressed their dismay and profound disappointment at the slow pace of progress in the *Situation in the State of Palestine* at the Court. The Victims, some of whom are at death’s doorstep in the Gaza Strip, simply cannot endure any further delay. The Victims emphasise that any consideration of the issues raised by the United Kingdom or by others (if accepted) is unwarranted under the Statute at this stage and will likely cause the Victims further harm.

¹ The United Kingdom, ‘Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103’, ICC-01/18, 10 June 2024.

² Pre-Trial Chamber I, ‘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’, ICC-01/18-173-Red, 27 June 2024. The Chamber subsequently granted a two-week extension of the time limit.

³ Unless otherwise provided, articles referenced herein are derived from the Rome Statute.

⁴ The Guardian, ‘Labour expected to drop challenge to ICC over Netanyahu arrest warrant’, 8 July 2024.

4. The Victims are Palestinian men and women who live across the State of Palestine, including the Gaza Strip and the West Bank. They have suffered war crimes, crimes against humanity and genocide that fall within the Court's jurisdiction. Nearly all of the Victims participated in the Article 19(3) proceeding that took place in 2020 on the "Prosecutor's request for a ruling on the Court's territorial jurisdiction in Palestine" ('Prosecution's Request for Ruling on Palestine'),⁵ and their powers of attorney were submitted to the Court in accordance with this Pre-Trial Chamber's request.⁶ A minority of the Victims appointed legal counsel after the issuing of the Pre-Trial Chamber's decision on the Prosecution's Request for a Ruling on Palestine.⁷

5. In its Request, the United Kingdom argued that the Chamber deferred deciding on the issue delineated in the United Kingdom's Request in the Article 19(3) proceeding,⁸ an assertion which the Victims consider to be incorrect. Indeed, as part of that proceeding, and pursuant to an order of this Chamber,⁹ the Victims submitted comprehensive observations to this Pre-Trial Chamber on the territorial jurisdiction of the Court, including on the Oslo Accords.¹⁰ This issue has been addressed and dealt with already by the Chamber.

6. The Chamber's previous invitation to victims to submit observations on matters of the Court's jurisdiction in the State of Palestine is consistent with Article 68(3), based on which victims are afforded special status and recognition within the framework of the Rome Statute, Article 19(3), and the Court's caselaw. The Victims continue to have a personal and direct interest in having their views presented and considered on i) the propriety and procedural timeliness of the Chamber's consideration of the United Kingdom's observations and those of

⁵ Office of the Prosecutor, 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18, 22 January 2020.

⁶ 'Victims' observations on the Prosecutor's request for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-99, 16 March 2020 ("Victims' observations on jurisdiction"). The powers of attorney were transmitted to the Registry and transmitted to the Chamber, following a request of the Chamber on 12 March 2020 conveyed by the Victims Participation and Reparations Section.

⁷ Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18, 5 February 2021.

⁸ *Ibid.*

⁹ Order setting the procedure and the schedule for the submission of observations, ICC-01/18, 28 January 2020.

¹⁰ Victims' observations on the Prosecutor's Request for a ruling on the Court's territorial jurisdiction in Palestine, ICC-01/18, 16 March 2020.

any other parties if accepted, and ii) whether or how pre-existing treaties such as the Oslo Accords impact the Court's exercise of jurisdiction, if at all.

7. In granting leave to the United Kingdom, and potentially to other *amici curiae*, to submit observations under Rule 103 on this narrow issue, the Chamber has signaled that short deadlines will be given. The Legal Representatives encourage the Chamber not to allow these proceedings to cause further delays. The Legal Representatives are ready to submit observations within a short timeframe, should they be granted leave.

II. SUBMISSIONS

A. Victims may present and have their views and concerns considered in relation to proceedings affecting investigations, including issues that may impact the scope or exercise of the Court's jurisdiction

8. Article 68(3) of the Statute provides that where victims' personal interests are affected, the Court shall permit their views and concerns to be presented and considered at all stages of the proceedings determined to be appropriate by the Court. The statutory framework guarantees the possibility for victims to present their views and concerns at any stage of the process before the Court. The Appeals Chamber has confirmed that victims may participate in judicial proceedings even at the pre-investigation and investigation stages. The Appeals Chamber stated in its seminal decision from 2008 that:

Victims are not precluded from seeking participation in any judicial proceedings, including proceedings affecting investigations, provided their personal interests are affected by the issues arising for resolution.¹¹

9. Issues that could impact on the scope or exercise of the Court's jurisdiction fundamentally affect victims' personal interests and several Chambers, including this Pre-Trial Chamber, have heard and considered victims views on such decisive issues in the *Situation in*

¹¹ Appeals Chamber, 'Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber 1 of 24 December 2007, ICC-01/04-556, 19 December 2008, paragraph 56.

the People's Republic of Bangladesh/Republic of the Union of Myanmar, the Situation in the Islamic Republic of Afghanistan, the Situation in the State of Palestine, and the Situation in the Bolivarian Republic of Venezuela. Matters affecting whether the Court can hear cases are plainly of critical importance to victims as they determine whether there will in fact be an investigation and prosecution.

10. Accordingly, Pre-Trial Chamber I agreed to hear victims on the question whether the Court may exercise jurisdiction in relation to the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh. In those proceedings, Pre-Trial Chamber I decided that the victims had standing to submit observations pursuant to Article 68(3) and, furthermore, that Rule 93 of the Rules of Procedure and Evidence gives it discretion to accept victims' observations on any issue and at any stage of the proceedings, whenever the Chamber finds it appropriate.¹² The Chamber considered that the victims' personal interests were affected by the Request in view of the fact that their applications were linked to, *inter alia*, alleged deportations from Myanmar to Bangladesh and their observations concerned the specific legal question arising from the Request.

11. The Appeals Chamber also received and considered the views of victims in relation to the authorization of investigations in the *Situation in the Islamic Republic of Afghanistan*, eventually allowing the Court to exercise jurisdiction.¹³ Similarly, the Appeals Chamber considered in the *Situation in the Bolivarian Republic of Venezuela* that "the personal interests of victims, within the meaning of article 68(3) of the Statute,¹¹ might be affected by the outcome of its decision on the Prosecution's Request" on whether to resume the investigation.¹⁴

12. The same has occurred in the present Situation. The Pre-Trial Chamber's previous invitation to victims in the *Situation in Palestine* to submit their observations as part of the Article 19(3) proceeding is set out below in paragraphs 14-17 of this Request for leave. The

¹² Pre-Trial Chamber I, 'Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute"', Request under Regulation 46(3) of the Regulations of the Court, ICC-RoC46(3)-01/18-37, 6 September 2018, paragraph 21.

¹³ See Appeals Chamber, 'Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan', ICC-02/17 OA4, 5 March 2020, paragraphs 14-15, and 44.

¹⁴ Pre-Trial Chamber I, 'Order inviting observations and views and concerns of victims', ICC-02/18, 18 November 2022, paragraph 10.

Victims submit that the same invitation should again be made in the present proceedings, and that there is no basis to deviate from that procedure.

13. In light of the aforementioned, it is irrefutable that the determinative consideration as to whether victims' personal interests are affected encapsulates questions affecting jurisdiction and that the issue raised in the United Kingdom's Request (or any similar request if granted) clearly qualifies as such. Whether the Court can exercise jurisdiction over Israelis will severely affect the interests of all the Victims, since the outcome will have an immediate and decisive impact on whether the Court will be able to exercise its mandate over serious crimes committed in Palestine. If the Court were to rule that it cannot exercise jurisdiction over Israeli nationals for crimes they commit in the territory of the State of Palestine, in circumstances where Palestine cannot exercise criminal jurisdiction over them, then Palestinians in both the Gaza Strip and the West Bank will certainly not be able to enjoy their rights to truth, justice, and reparation.

B. The Chamber already recognised the participation of the Victims in judicial proceedings relating to the jurisdiction of the Court in the Palestine Situation pursuant to Article 19 of the Statute

14. In 2020, this Chamber invited victims to submit written observations on the Prosecutor's Request for a Ruling on Palestine, limited to the question of jurisdiction set forth in paragraph 220 of the Request.¹⁵

15. The Victims communicated their views through written observations submitted on 16 March 2020, and their Legal Representatives subsequently transmitted powers of attorney to the Chamber upon its request.¹⁶ In its decision on the Prosecutor's Request for a Ruling on Palestine, Pre-Trial Chamber I acknowledged the Victims' observations on jurisdiction among other observations made on behalf of victims.¹⁷

¹⁵ Pre-Trial Chamber I, 'Order setting the procedure and the schedule for the submission of observations', ICC-01/18-14, 28 January 2020, paragraph 13.

¹⁶ Victims' observations on jurisdiction.

¹⁷ Pre-Trial Chamber I, 'Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143, 5 February 2021, paragraphs 39, 121, 126.

16. In their submissions, the Victims directly addressed the question of the status of the Oslo Accords and the argument made by the Israeli Attorney General that the Court may not exercise jurisdiction over Area C, Jerusalem, and Israeli nationals by virtue of the Oslo Accords. Specifically, the Victims submitted arguments that the Oslo Accords do not bar the Court's exercise of jurisdiction over the Palestinian territory occupied in 1967; do not prevent the State of Palestine from accepting the Court's jurisdiction over its territory; cannot undermine the exercise of the right to self-determination; and, do not permit the State of Palestine to derogate from its duty to exercise jurisdiction over grave breaches under the Geneva Convention.¹⁸

17. Granting the present request would be entirely consistent with this Pre-Trial Chamber's own practice in the *Situation in the State of Palestine*, Article 68(3), the centrality of victims in the Rome Statute system, and the Appeals Chamber's clear recognition of the general right of victims to participate in judicial proceedings affecting an investigation.

C. The matters on which the Victims seek to submit views and concerns in the present proceedings

18. The Legal Representatives request leave to make submissions on the jurisdictional question raised in the United Kingdom's Request (or any similar request if accepted), and the appropriateness and timing of its request at this stage of the proceedings, as noted above. If granted leave, the legal submissions will address the key argument that the Chamber's ongoing consideration of the Prosecutor's application for arrest warrants under Article 58 of the Statute in the *Situation in the State of Palestine* is separate from, and should not be derailed by, the issues raised by the United Kingdom or any other party. The Chamber's decision of 2021 confirms that the Court has jurisdiction and can on this basis proceed to issue arrest warrants, and the Legal Representatives do not agree with the United Kingdom that the factual position has moved on since 2020 in any manner material to the jurisdictional questions at issue.¹⁹

19. The Victims also seek to submit observations in any event on why the Oslo Accords do not affect the exercise of the Court's jurisdiction, should the Pre-Trial Chamber nonetheless consider it necessary to make determinations on the issues raised by the United Kingdom. The

¹⁸ Victims' observations on jurisdiction, paragraphs 106-118.

¹⁹ The United Kingdom's Request, paragraph 23.

Legal Representatives will advance arguments that the Court's jurisdiction does not rely on the delegation by States Parties of their own criminal jurisdiction; international law does not allow a State to renounce the rights of protected persons and the Oslo Accords cannot be interpreted as having such an effect; the Rome Statute applies to States Parties that do not have full or any effective control over their territory; and the Court would severely undermine its own mandate if States were permitted to circumvent the Court's exercise of jurisdiction through agreements.

20. As part of their observations, the Victims will draw a clear distinction between the effect, if any, of pre-existing treaty obligations on the execution of requests by the Court and State cooperation under Chapter 9 of the Statute, and the exercise of the Court's jurisdiction. Based on the Appeals Chamber judgment on the authorisation of an investigation in the *Situation in the Islamic Republic of Afghanistan*, the Victims will posit that the Oslo Accords cannot block or affect the issuing of arrest warrants, nor can they limit in any way the Court's jurisdiction.

III. RELIEF REQUESTED

21. For these reasons, the Victims respectfully seek leave from Pre-Trial Chamber I to submit views and concerns on the issues identified in the United Kingdom's request or on the same or related issues if leave to submit is granted to others.

Respectfully submitted on the 12 of July 2024 at The Hague and London,



Nada Kiswanson van Hooydonk



Rodney Dixon KC