

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 Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

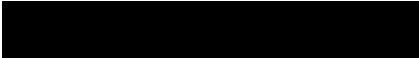
Public

**Request by Addameer for leave to submit written observations pursuant to
Rule 103**

Source: Addameer Prisoner Support and Human Rights Association

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

The Office of the Prosecutor



Legal Representatives of the Victims	Legal Representatives of the Applicants
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Unrepresented Victims	Unrepresented Applicants (Participation/Reparation)
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The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
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States' Representatives Competent Authorities of the State of Palestine	Amicus Curiae
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REGISTRY

Registrar Mr. Osvaldo Zavala Giler	Counsel Support Section
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Victims and Witnesses Unit 	Detention Section
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Victims Participation and Reparations Section 	Other
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I. INTRODUCTION

1. On 10 June 2024, the United Kingdom filed a request for leave to submit written observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence on “[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords.”¹ On 27 June 2024, Pre-Trial Chamber I (the “**Pre-Trial Chamber**”) granted leave for the United Kingdom to submit such observations by 12 July 2024 (later extended to 26 July 2024²), and set the deadline by which any other requests for leave to submit written observations pursuant to Rule 103(1) must be made as 12 July 2024.³

2. Addameer Prisoner Support and Human Rights Association (“**Addameer**”) hereby requests leave to submit observations pursuant to Rule 103(1) on the same question on which the United Kingdom has been granted leave.

II. EXPERTISE

3. Addameer is a Palestinian non-governmental organisation (“NGO”) that for more than 30 years has offered free legal aid and representation to Palestinian political prisoners and human rights defenders before the Israeli military courts and Palestinian civil courts in the West Bank. Addameer’s legal aid work before Israeli and Palestinian courts in the West Bank is one of the organization’s core pillars, with Addameer’s

¹ 10 June 2024, ICC-01/18-171-SECRET-Exp.

² *Situation in the State of Palestine*, [Decision on the ‘Request by the United Kingdom for Extension of Time Limit’](#), PTCL, ICC-01/18-178, 4 July 2024.

³ *Situation in the State of Palestine*, [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’](#), PTCL, ICC-01/18-173-Red, 27 June 2024.

lawyers providing free legal representation and advice to hundreds of Palestinian detainees and their families every year.

4. Addameer is also actively engaged in efforts to secure accountability for international crimes committed in Palestine. This has involved making submissions to UN investigative and human rights bodies⁴ as well as direct engagement the International Criminal Court ("ICC" or "Court"). Addameer has submitted detailed communications to the ICC Prosecutor directly in 2019 and 2022. It has further engaged in public advocacy efforts in respect of the Situation in Palestine. In November 2019, Addameer called on the ICC Prosecutor to open an investigation into the Situation in Palestine.⁵ In April 2021, Addameer launched a petition for the ICC to investigate crimes in connection with the Israeli military judicial system.⁶ In November 2022, Addameer called on the ICC Prosecutor to urgently expedite his investigation into the Situation in Palestine.⁷ In October 2023, Addameer called on the ICC Prosecutor to issue arrest warrants in connection with his investigation into the Situation in Palestine and to investigate and prosecute crimes committed in connection with Israel's military offensive in Gaza since 7 October 2023.⁸ In May 2024, Addameer

⁴ See, as just two examples, Addameer Prisoner Support and Human Rights Association, Al-Haq, and Housing and Land Rights Network, "Entrenching and maintaining an apartheid regime over the Palestinian people as a whole", submission to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, January 2022; and International Human Rights Clinic at Harvard Law School and Addameer Prisoner Support and Human Rights Association, "Apartheid in the Occupied West Bank", joint submission to the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, February 2022; both referred to in [Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk](#), UN Doc. A/HRC/49/87, 12 August 2022.

⁵ [Appeal for Action letter to the ICC Prosecutor](#), 10 December 2019, published by The Rights Forum.

⁶ [Petition to the ICC Office of the Prosecutor to Investigate War Crimes by Israeli Military](#), 16 April 2021.

⁷ [198 Organizations including Al-Haq Send Letters to the ICC Prosecutor and the ASP President Concerning the Situation of Palestine](#), Al-Haq, 26 November 2022.

⁸ [Genocide Scholars and 100 Palestinian and International Civil Society Organisations Call on Prosecutor Khan to Issue Arrest Warrants, Investigate Israeli Crimes and Intervene to Deter Incitement to Commit Genocide in Gaza](#), Al-Haq, 20 October 2023.

called on the ICC Prosecutor to investigate and issue arrest warrants for war crimes and crimes against humanity committed against prisoners detained by Israel.⁹

5. Addameer is also presently acting on behalf of victims in the Situation in Palestine proceedings, and in this connection has filed submissions that have addressed questions including the relevance of the Oslo Accords to the Court's jurisdiction.¹⁰

6. Addameer's long-standing engagement with the military and civil court systems in the West Bank and with the ICC make it particularly well placed to assist the Pre-Trial Chamber on questions relating to the impact of the Oslo Accords on Palestine's criminal jurisdiction and on the ICC's jurisdiction over Israeli nationals.

III. SUMMARY OF INTENDED OBSERVATIONS

7. Addameer proposes to submit observations on the Court's jurisdiction over Israeli nationals in respect of crimes committed wholly or partly in the territory of Palestine. In particular, Addameer will address the suggestion that the Court is precluded from exercising jurisdiction on the basis that Palestine allegedly cannot delegate to the Court criminal jurisdiction over all or parts its territory and/or in relation to Israeli nationals because it does not possess such jurisdiction pursuant to the Oslo Accords, in particular Oslo II.¹¹ Addameer will explain why this position is wrong by developing points going to the following issues:

8. First, Addameer will examine the nature of the Court's jurisdiction under the Statute and explain that the Court does not exercise delegated jurisdiction. As the Appeals Chambers has confirmed in the context of immunity, limitations on domestic

⁹ [ICC Prosecutor Completely Neglects to Mention the Crimes Committed Against Palestinian Prisoners in Arrest Warrants for Israeli Officials](#), Addameer, 22 May 2024.

¹⁰ *Situation in the State of Palestine, Observations on behalf of Victims*, PTCI, ICC-01/18-123, 16 March 2020.

¹¹ *Situation in the State of Palestine, Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'*, PTCI, ICC-01/18-143, para. 126.

jurisdiction “*find no application in relation to an international court such as the International Criminal Court*”.¹² Any domestic limitation on a particular State’s criminal jurisdiction is therefore irrelevant to the scope of the Court’s jurisdiction.

9. Second, even if Article 12 of the Rome Statute does give effect to a system of delegated jurisdiction, Palestine has the same criminal jurisdiction under international law as any State. It would be the general customary international law jurisdiction that States Parties would delegate to the Court, and not any specific jurisdiction that a particular State possessed with respect to particular persons or territory. This is confirmed by the fact that the Court does not review the specific competence of the relevant State Party every time a referral is made.

10. Third, as a matter of general international law, bilateral agreements only have effect *inter se* and are not opposable to third parties.¹³ Accordingly, even if Oslo II were to be recognised as a treaty that binds Palestine,¹⁴ it would operate only on a bilateral basis and would not be opposable to the Court any more than a bilateral treaty that purported to reserve to the State a broader competence than existed at customary international law.

11. Fourth, Addameer will address the limitations on a State’s ability to contract out of an international law obligation to prosecute or extradite international crimes, and consider the implications for the Court’s jurisdiction. In particular, Article 47 of the Fourth Geneva Convention (“GCIV”) makes clear that Palestinians in occupied territory cannot be deprived “in any case or in any manner” of the safeguards of GCIV

¹² *Prosecutor v. Al Bashir* ([Judgment in the Jordan Referral re Al-Bashir Appeal](#)), AC, ICC-02/05-01/09-397Corr, 6 May 2019, para. 115.

¹³ See [Territorial and Maritime Dispute \(Nicaragua v. Colombia\)](#), Judgment, I.C.J. Reports 2012, para. 95; [Anglo-Iranian Oil Company \(U.K. v. Iran\)](#), Judgment, Preliminary Objections, I.C.J. Reports 1952, p. 109.

¹⁴ This is not accepted: [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion](#), I.C.J. Reports 2019, para. 172 (“In the Court’s view, it is not possible to talk of an international agreement, when one of the parties to it ... was under the authority of the latter”) applies *mutatis mutandis*.

“as a result of any agreement concluded between the authorities of the occupied territories”. One such safeguard is that provided by the obligation in Article 146(2) GCIV on High Contracting Parties to “to search for persons alleged to have committed, or to have ordered to be committed such grave breaches, and shall bring such persons, *regardless of their nationality* before its own courts”.¹⁵ Moreover, a State may not contract out of an *erga omnes* obligation by means of a bilateral treaty because such obligations are owed to all members of the international community, not only the other State party to the treaty in question. It follows that, in the same way that the Oslo Accords cannot preclude the operation of Palestine’s obligation to prosecute or extradite Israeli officials, it similarly does not limit the Court’s jurisdiction over such individuals for crimes within the Court’s jurisdiction.

IV. CONCLUSION

12. For the foregoing reasons, and with the intention of assisting the Pre-Trial Chamber with its consideration of the question of the Court’s jurisdiction over Israeli nationals, Addameer respectfully requests leave to make the observations outlined here in fuller detail pursuant to Rule 103(1).



Jemima Stratford KC
Catherine Drummond
Counsel, on behalf of Addameer

Dated this 12th day of July 2024

At London, United Kingdom

¹⁵ Emphasis added.