

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/18
Date: 12 August 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 for Reclassification of "12 July 2024: Public, Redacted Victims'
Observations on the Proceedings pursuant to articles 19(3) and 68(3) (ICC-01/18-
232-SECRET-Exp-Anx)"**

Source: Legal Representative of Persecution Victims, Katherine Gallagher

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

Amicus Curiae

REGISTRY

Registrar
Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations
Section

Other

I. INTRODUCTION

1. Pursuant to Regulation 23 *bis* of the Regulations of the Court,¹ the Persecution Victims submit this motion by and through their Legal Representative to request that the Pre-Trial Chamber reclassify as “public” their 12 July 2024 submission, “Public, Redacted, Victims’ Observations on the Proceedings pursuant to articles 19(3) and 68(3)” (“12 July Public Victims’ Observations”).²

2. The Persecution Victims did not request that the submission be classified as “secret” and affirm that nothing in the 12 July Public Victims’ Observations needs to be kept secret or confidential. In accordance with standard practice of the Court, and the strong public interest in open justice, it is respectfully submitted that the 12 July Public Victims’ Observations should be reclassified as public.

II. RELEVANT PROCEDURAL HISTORY

3. On 1 January 2015, the Government of the State of Palestine lodged a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the Court over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.”³

4. On 2 January 2015, the State of Palestine acceded to the Rome Statute after depositing its instrument of accession with the U.N. Secretary-General, and on 1

¹ As elaborated upon below, contrary to the circumstances envisioned in Regulations 23 *bis*, the participating Persecution Victims did not seek that their filing be marked as anything other than public, and do not contend or believe that any “factual or legal basis” for a confidential, *ex parte* or secret classification exists for the filing. See Regulation 23 *bis* (1) of the Regulations of the Court.

The undersigned Victims’ Legal Representative understands that the 12 July 2024 filing has been registered as “ICC-01/18-232-SECRET-Exp-Anx” from the reference made to in the Pre-Trial Chamber’s Public redacted version of ‘Decision concerning the views, concerns and general interests of victims’, 30 July 2024, ICC-01/18-256-Conf, 7 August 2024, [ICC-01/18-256-Red](#), footnote 9 (“[Decision on Victims’ Submissions](#)”). The Victims seek only that the public, redacted version of their filing be reclassified from “Secret” to “Public,” and that the “Confidential” version continue to not be made public. Counsel further notes that she included the Office of the Prosecutor (Karim Khan, Prosecutor) on the notification page of both versions of the submission, and does not consider the filing to be an *ex parte* submission.

² For detail on the Persecution Victims’ identities and circumstances, see 12 July Public Victims’ Observations, Section III (“The Victims”).

³ Declaration Accepting the Jurisdiction of the International Criminal Court, Mahmoud Abbas, President of the State of Palestine, 31 Dec. 2014, http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf.

April 2015, the Rome Statute entered into force for the State of Palestine as it became the 123rd State Party to the Rome Statute.⁴

5. On 22 May 2018, the State of Palestine referred the *Situation in the State of Palestine* to the Prosecutor for investigation.⁵

6. On 22 January 2020, after a nearly six year preliminary examination and having concluded that there was a reasonable basis to proceed with an investigation pursuant to article 53(1) of the Statute for crimes that have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip, the Prosecutor requested a ruling pursuant to article 19(3) of the Statute from the Pre-Trial Chamber on the territorial scope of the Court's jurisdiction in the Situation of the State of Palestine.⁶

7. On 28 January 2020, the Pre-Trial Chamber issued an order inviting victims in the Situation in the State of Palestine, among others, to submit written observations on the Prosecutor's request before 16 March 2020.⁷

8. On 16 March 2020, pursuant to the Pre-Trial Chamber's order, the undersigned Victims' Legal Representative submitted observations on behalf of individual Persecution Victims to assist the Pre-Trial Chamber's assessment of the scope of the Court's territorial jurisdiction in the Situation of Palestine, while also "placing this technical question in the larger context of the long quest for justice and accountability by Palestinian victims of serious violations of international law," and stating that they stand ready to provide further observations as warranted.⁸

⁴ On 6 January 2015, the United Nations Secretary General accepted Palestine's accession to the Rome Statute. United Nations, Depository Notification, Ref: C.N.13.2015.TREATIES-XVIII.10, 6 Jan. 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>. See International Criminal Court, *ICC welcomes Palestine as a new State Party*, 1 April 2015, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1103>.

⁵ See ICC, Statement by ICC Prosecutor, Fatou Bensouda, on the referral submitted by Palestine, 22 May 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180522-otp-stat>.

⁶ Prosecutor's request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine, 22 January 2020, [ICC-01/18-12](#).

⁷ Order setting the procedure and the schedule for the submission of observations, 28 January 2020, [ICC-01/18-14](#) ("28 January 2020 Order"), para. 13.

⁸ Victims' Observations on the Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine (Public Redacted Version), 16 Mar. 2020, [ICC-01/18-110-Red](#), para. 1.

9. On 16 and 19 March 2020, the undersigned Victim's Legal Representative received requests from the Victim Participation and Reparations Section ("VPRS") to submit powers of attorney for the participant victims represented in the 16 March 2020 written observations, pursuant to an instruction from the Pre-Trial Chamber.

10. On 3 April 2020, the undersigned Legal Representative submitted signed powers of attorneys for each of the participant Persecution Victims to VPRS via ICC ShareFile.

11. On 9 April 2020, the powers of attorney for the participant Persecution Victims were transmitted to the Pre-Trial Chamber in Confidential *ex parte* Annex V.⁹ The Registry likewise confirmed that the undersigned counsel is on the List of Counsel.

12. On 5 February 2021, having taken into consideration the positions of the Prosecutor, various States including Palestine, the victims and *amici curiae*, the Pre-Trial Chamber issued the Jurisdictional Decision in which it found that the Court could exercise its criminal jurisdiction in the *Situation in the State of Palestine*, and, by majority, found that the territorial scope of the jurisdiction extends to Gaza and the West Bank, including East Jerusalem.¹⁰

13. On 3 March 2021, the investigation in the Situation of Palestine was opened.

14. On 20 May 2024, the Prosecutor publicly announced that his Office had filed application for arrest warrants for crimes committed from at least 7-8 October 2023 for two Israeli officials, namely Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, as well as for three members of Hamas (Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri aka Deif, and Ismail Haniyeh).¹¹

⁹ Public redacted version of "Transmission of Powers of Attorney", 9 April 2020, ICC-01/18-129, With 9 Confidential EX PARTE Annexes only available to the Registry, [ICC-01/18-129-Red](#). See *id.* note 6.

¹⁰ Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', 5 Feb. 2021, [ICC-01/18-143](#), ("Jurisdictional Decision").

¹¹ Office of the Prosecutor, *Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine*, 20 May 2024 <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> ("Prosecutor Khan's Arrest Warrant Application Announcement").

It is noted that since the Prosecutor filed his application for arrest warrants, two of the three members of Hamas for whom Prosecutor Khan sought arrest warrants (Mohammed Diab Ibrahim Al-

15. On 27 June 2024, the Pre-Trial Chamber authorized the United Kingdom to file *amicus curiae* submissions by 12 July 2024.¹² In the same order, the Chamber set the same deadline for any other requests for leave to make submissions, while stating that it intends “[t]o limit the impact of this procedure on the expeditiousness of the present stage of the proceedings.”¹³

16. On 12 July 2024, the Persecution Victims filed via CMS both a confidential and a public-redacted version of their observations on the proceedings pursuant to articles 19(3) and 68(3) of the ICC Statute. In their 12 July Public Victims’ Observations, the Persecution Victims — Palestinian victims of an ongoing persecutory campaign (among other crimes falling within Court’s jurisdiction) conducted by senior Israeli officials across the occupied Palestinian territory including in the Gaza Strip — respectfully requested, and indeed urged, the Chamber to issue the requested arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant without further delay, and in doing so, reaffirm the findings in the Jurisdictional Decision that the Court’s territorial jurisdiction in the *Situation in the State of Palestine* extends to the territories occupied by Israel since 1967 such that any person committing a crime on that territory, being the territory of Palestine – a State Party – falls within the Court’s jurisdiction under article 12(2)(a) of the Statute.

17. Also on 12 July, the undersigned counsel received an acknowledgement of receipt of the 12 July Public Victims’ Observations from the Court Management Section, which advised that “the CMS has been instructed by the Chamber to file all documents related to the Rule 103(1) procedure as secret. Until your submission is reclassified, if at all, you are not authorised to disclose the fact that you submitted a

Masri aka Deif and Ismail Haniyeh) have reportedly been killed, with Israel claiming responsibility for M. Deif’s killing. See, e.g., Aaron Boxerman et al, *Israel Confirms Death of Hamas Commander Amid Funerals for 2 Senior Militants*, N.Y. Times, 1 Aug, 2024, available at:

<https://www.nytimes.com/2024/08/01/world/middleeast/israel-hamas-muhammad-deif.html>.

¹² 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, 27 June 2024, [ICC-01/18-173-Red](#) (“27 June 2024 Order”).

¹³ 27 June 2024 Order, para. 6.

request under rule 103.”¹⁴ In an email response on 26 July 2024, the undersigned counsel noted that the 12 July Public Victims' Observations was submitted pursuant to articles 19(3) and 68(3) of the Statute, not rule 103, and requested that the filing be notified and made public. On 1 August 2024, CMS advised the undersigned counsel via email that it “has been instructed to register your submission as secret. For the time being, we have not received any order to reclassify the document into public. If you deem it necessary, you may indeed file a document to request the reclassification of your document.”

18. On 7 August 2024, the undersigned counsel was notified of the Pre-Trial Chamber's Public redacted version of the [Decision on Victims' Submissions](#), which permits legal representatives for victims in the Situation, including undersigned counsel (who will be making such a filing later today), to file observations not to exceed 10 pages under article 68(3) of the Statute by 12 August 2024. Through that Decision, the existence of the 12 July Public Victims' Observations was made public.¹⁵

III. Request for Reclassification

19. The participating Persecution Victims have received no instruction to file any submissions as confidential – or “secret” – or any order by the Pre-Trial Chamber advising or instructing that filings in the Situation in the State of Palestine should be submitted as secret or confidential, or classified as such, let alone any explanation for why such a blanket instruction would or could be warranted.¹⁶

¹⁴ Regulation 14 of the Regulations of the Registry sets out the “levels of confidentiality” for judicial records and materials, with “secret” (reg. 14(d)) being the most restricted level of confidentiality.

¹⁵ Undersigned counsel has received no further indication of the current status of the 12 July Public Victims' Observations, including whether it remains “restricted” or “secret” after public reference was made to it in the [Decision on Victims' Submissions](#), but it does not appear to be available on Court Records. To the extent that the Pre-Trial Chamber determined that there existed a “factual and legal basis” for marking their filing as “secret,” the participating Persecution Victims respectfully submit that “the basis for classification no longer exists” under Regulation 23 *bis* (3), after the Decision, and after the public filings of more than 50 *amicus* briefs in the Situation addressing similar issues.

¹⁶ As noted in the Procedural History (para. 17), the undersigned counsel was advised by CMS on 1 August that it was instructed to register the 12 July Public Victims' Observations as secret, without further explanation. It is recalled that the Regulations of the Court provide that there should exist a “factual and legal basis” for marking any filing other than public. *See* regulation 23 *bis* (1).

20. From the United Kingdom's request, however, the Persecution Victims understand that the Pre-Trial Chamber "has stipulated that *all* filings in the situation in Palestine must be classified as secret."¹⁷ (The Persecution Victims observe that the filing directly preceding the U.K. Request appears to have been filed as "public," with no reclassification necessary;¹⁸ it remains unknown when the Chamber's stipulation to classify filings as "secret" referenced by the U.K. was issued.)

21. As a preliminary matter, the Persecution Victims recall that proceedings (filings, decisions, hearings) before the International Criminal Court are generally public, and that it is only "special circumstances" such as to protect victims and witnesses, or confidential and sensitive information, that warrant that an "exception to the principle of public hearings" or "publication" of documents be made. *See* articles 64(7), 67(1) and 68(2) of the Statute; rules 15(1) and 43 of the Rules of Procedure and Evidence. *See also* regulation 20 of the Regulations of the Court. Notably, the Pre-Trial Chamber in this Situation (as previously composed) recognized the fundamental importance of transparency and access to information not only to avoid "misconceptions" by victims and others impacted by the work of the Court, but to enable the ICC to "properly fulfill its mandate" and "foster support, public understanding and confidence in the work of the Court."¹⁹

22. The Persecution Victims observe that, in addition to their own prior request for reclassification via CMS, various parties in this Situation have requested that their submissions be reclassified as public,²⁰ and indeed, the Pre-Trial Chamber has indicated reclassification requests by participants would be entertained,²¹ and has in

¹⁷ Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024 (27 June 2024), [ICC-01/18-171-Anx](#), ("U.K. Request"), para. 29. (emphasis in the original).

¹⁸ Public redacted version of "Twenty-third Registry Report on Information and Outreach Activities Concerning Victims and Affected Communities in the Situation", 21 May 2024, 22 May 2024, [ICC-01/18-170-Red.](#)

¹⁹ Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, [ICC-01/18-2](#), para. 7.

²⁰ *See, e.g.*, U.K. Request, paras. 29-32; [Decision on Victims' Submissions](#), n. 4 (OPCV request).

²¹ *See* Order in relation to the OPCD's submissions on amicus curiae observations and the Prosecution's request to file a consolidated response, 9 August 2024, ICC-01/18-325 ("[OPCD Order](#)"), para. 9.

fact granted such requests.²² In so doing, it appears that the Pre-Trial Chamber based its re-classification determination on the view of the participant of the appropriate classification. See [OPCD Order](#), para. 7 ("Noting that the OPCD indicates that its submissions may be reclassified as public, pursuant to Regulation 23bis(3), the Chamber instructs the Registry to reclassify the OPCD Submissions as public.")

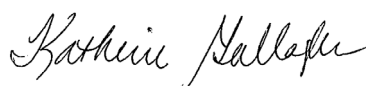
23. Additionally, requests made by other victims to file observations (often including a summary of the observations to follow) have been classified as public, registered and made publicly available through Court Records on the ICC's website, as well as under Court Records on the State of Palestine page.²³

24. Particularly in light of the re-classification decisions in the Situation, the public filing and publication of other victims' submissions between 24-26 July, and the public acknowledgement of the filing by the Chamber, it is respectfully submitted that no good cause exists for continuing to classify the 12 July Public Victims' Observations as "secret" and for denying the Persecution Victims request for re-classification of this submission as "public."

IV. CONCLUSION

II. For the foregoing reasons, the Persecution Victims request that the Chamber reclassify the 12 July Public Victims' Observations as "public," notify the filing to the parties and participants in the Situation, and make it available on Court Records.

Respectfully submitted,



Katherine Gallagher
Legal Representative for Victims of Persecution

At New York, United States,
Dated this 12th day of August, 2024.

²² [OPCD Order](#), para. 7; 27 June 2024 Order, para. 7; [Decision on Victims' Submissions](#), para. 8.

²³ See, e.g., Victims' Request for Leave to Submit Views and Concerns under Articles 68(3) and 19(3) of the Rome Statute, notified 24 July 2024, [ICC-01/18-251](#).