

Pursuant to Pre-Trial Chamber I's Decision ICC-01/18-325 dated 09-08-2024, this document is reclassified as Public

**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**

**Secret**

**OPCD Submission on *Amicus Curiae* Observations**

**Source:**            **Office of Public Counsel for the Defence**

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

**The Office of the Prosecutor**  
Mr Karim A.A. Khan KC

**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**  
Ms Marie O'Leary

**States Representatives**  
The United Kingdom

**Amicus Curiae**

**REGISTRY**

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**Registrar**  
Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

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1. On 27 June 2024, Pre-Trial Chamber I granted the United Kingdom's Rule 103(1) Request<sup>1</sup> without prejudice to any further decision on this matter.<sup>2</sup> Noting that this should not be understood as an open call for *amicus curiae* submissions, a deadline of 12 July 2024 was set for any other requests for leave to make observations.<sup>3</sup>
2. This litigation is extraordinary. Arrest warrant applications are conventionally treated as *ex parte* between the Prosecutor and the Pre-Trial Chamber. Here we have the exceptional situation where third parties are involved in litigating whether warrants should be issued, while the persons potentially subject to them remain conspicuously unrepresented in the proceedings; "this would seem a curious and unfair process".<sup>4</sup>
3. When the Pre-Trial Chamber, in its previous composition, made certain determinations relevant to the question of jurisdiction,<sup>5</sup> the OPCD was granted leave to submit *amicus curiae* observations on the general interests of the defence.<sup>6</sup> Arguably, this novel and complex litigation at an even later stage carries greater implication of defence rights and raises questions about the legal considerations necessary to protect the interests of potential suspects.<sup>7</sup>
4. Unless said persons at the subject of this litigation submit arguments themselves, OPCD observations can provide a necessary defence rights-focused perspective which would otherwise be lacking in the range of submissions to be heard by the Pre-Trial Chamber. Therefore, in line with our mandate under Regulation of the Court 77(4)(c), the OPCD submits that it stands ready to submit *amicus curiae* on the general

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<sup>1</sup> [Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103](#), 10 June 2024, ICC-01/18-171-Anx.

<sup>2</sup> [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'](#), 26 June 2024, ICC-01/18-173-Red, para. 5. On 4 July 2024, an extension of time was granted for these UK submissions (until 26 July). ICC-01/18-178.

<sup>3</sup> *Ibid.*, para. 6.

<sup>4</sup> See Prosecution Submissions as summarised by the Appeals Chamber in Situation in the Democratic Republic of the Congo, [Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58"](#), 13 July 2006, ICC-01/04-169 ("DRC Arrest Warrant Judgment"), para. 28. The Prosecution continued that it would also create a "very curious system wherein suspects are permitted to comment on their own arrest warrants before they are issued" and suggested, in that case, that admissibility questions only be entertained following issuance of any arrest warrant if so issued by the Pre-Trial Chamber.

<sup>5</sup> [Decision on the 'Prosecution request pursuant to article 19\(3\) for a ruling on the Court's territorial jurisdiction in Palestine'](#), 5 February 2021, ICC-01/18-143 ("Preliminary Decision on Jurisdiction").

<sup>6</sup> [Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence](#), ICC-01/18-63, 20 February 2020, paras 55-56.

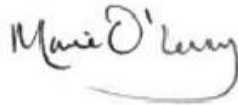
<sup>7</sup> See [DRC Arrest Warrant Judgment](#), paras 46–53 (requiring the Pre-Trial Chamber to bear in mind the interests of the suspect when making admissibility determinations at this stage, emphasising the importance that the interests of suspects are not impaired by previous judicial determinations).

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defendants' rights to be held by any named or unnamed persons at this unique stage of a case, should the Pre-Trial Chamber proceed in hearing views.

**CLASSIFICATION**

5. This filing is classified as 'Secret', pursuant to Regulation of the Registry 14(d), based on instruction of the ICC Registry; there is no protected information contained and it can be reclassified as 'Public' at any time by order of the Pre-Trial Chamber.



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Marie O'Leary  
Acting Principal Counsel of the OPCD

dated this 12 day of July 2024  
at The Hague, The Netherlands