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**International  
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**PRE-TRIAL CHAMBER I**

**Before:** Judge Nicolas Guillou, Presiding Judge  
Judge Reine Alapini-Gansou  
Judge Beti Hohler

**SITUATION IN THE STATE OF PALESTINE**

**PUBLIC**

**Submission on behalf of victims in Article 19 proceedings related to the Situation  
in the State of Palestine**

**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**

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## I. INTRODUCTION

1. Pursuant to article 19(3) of the Rome Statute of the International Criminal Court (“Statute”), this joint submission is made by the undersigned Legal Representatives of Victims (“LRVs”) on behalf of the victims in Situation in the State of Palestine, in response to Israel’s invalid and improper challenge to the jurisdiction of this Court pursuant to article 19(2)(c) of the Statute.<sup>1</sup> The LRVs respectfully request the Pre-Trial Chamber (“Chamber” or “PTC”) dismiss Israel’s challenge in its entirety for the reasons set forth below. This submission fully supports the arguments made by the Office of the Prosecutor (“OTP”) in its response of 27 September 2024,<sup>2</sup> and builds upon prior rulings by this Chamber regarding the *Situation in the State of Palestine*, and specifically its 5 February 2021 decision on jurisdiction.<sup>3</sup>

2. The undersigned LRVs emphasise the fundamental importance of this Court’s mandate to deliver justice and accountability for the serious international crimes that have been, and continue to be, committed in Gaza and across the entirety of the territory of the State of Palestine, by senior Israeli officials; in this regard, the LRVs urge this Chamber to grant the Prosecutor’s application to issue arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant without further delay. Israel’s jurisdictional challenge, if accepted, would shield perpetrators of these serious crimes from accountability, ultimately denying the Palestinian victims their fundamental right to justice.

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<sup>1</sup> Public Redacted Version of “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, 23 September 2024 (reclassified as public 4 October 2024), ICC-01/18-354-AnxII-Corr (“Israel’s Jurisdiction Challenge”). The LRVs observe that, in light of the relief sought (dismissal of the Prosecutor’s application for arrest warrants for Benjamin Netanyahu and Yoav Gallant), *id.* Para. 11(c), the purported jurisdictional challenge also appears to be an improper opposition to the arrest warrant application. That process should be conducted on an *ex parte* basis, and accordingly, this request should likewise be rejected as invalid. *See, e.g.*, 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, *Situation in the Democratic Republic of Congo*, 13 July 2006, ICC-01/04, para. 6; Application on behalf of Citizens’ Organisations of The Sudan in relation to the Prosecutor’s Applications for Arrest Warrants of 14 July 2008 and 20 November 2008, 11 Jan. 2009, [ICC-02/05-170](#).

<sup>2</sup> [ICC-01/18-357](#).

<sup>3</sup> 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](#) (“PTC Decision on Jurisdiction”).

## II. PRELIMINARY MATTER: CONFIDENTIALITY AND SECRECY

3. The LRVs note that Israel's Jurisdiction Challenge does not seem to be available on the "Court Records" page of the Situation, or listed in "Court Records" on the home page (<https://www.icc-cpi.int/documents>). The LRVs learned of this filing through media reports and a posting on the U.S.-based blog *Just Security* that included a link uploading this ICC filing to *Just Security*.<sup>4</sup>

4. Under article 19(3) of the Statute, victims have a right to submit observations to the Court in response to challenges to the Court's jurisdiction. Victims cannot, however, submit observations in response to jurisdictional challenges of which they have not been notified – and are unaware. The victims represented by the undersigned LRVs have been participating in proceedings in this *Situation* since at least 2020, have been registered as participants through the Registry/Victim Participation and Reparations Section ("VPRS") in accordance with the Pre-Trial Chamber's instructions,<sup>5</sup> and all of the victims have made submissions in the post-arrest warrant application proceedings initiated by the United Kingdom's *amicus curiae* request.<sup>6</sup> The LRVs respectfully submit that they should have been notified through CMS of Israel's Jurisdiction Challenge, and request that the Chamber, through the Registry, ensures that the victims receive all filings that affect their personal interests, and particularly those for which they have a clear statutory right to submit observations (*e.g.*, pursuant to article 19(3)) or views and concerns under article 68(3).

5. There is a strong public interest in open justice. The victims recall that standard practice of the Court is to make filings publicly available and hold court proceedings in open session; it is only "special circumstances" such as to protect

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<sup>4</sup> See *Just Security* Post on X, 7 October 2024, available at: [https://x.com/just\\_security/status/1843276793912209507?s=46&t=U9-NcxjBaTBsH22HYhEow](https://x.com/just_security/status/1843276793912209507?s=46&t=U9-NcxjBaTBsH22HYhEow); *Just Security* link to Israel's Jurisdiction Challenge, available at: <https://www.justsecurity.org/wp-content/uploads/2024/10/state-of-israel-on-jurisdiction-article-192-icc-0118-354-anxII-corr.pdf>.

<sup>5</sup> See 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](#).

<sup>6</sup> See [ICC-01/18-335](#) (Gaza Victims); [ICC-01/18-336](#) (Child Victims and Their Families); [ICC-01/18-337](#) (Victims of Persecution).

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 (“Rules”). *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.”<sup>7</sup>

6. In this regard, it is further observed that none of the victims have received instruction to file submissions as confidential – or “secret” – or received any order by the 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.<sup>8</sup> However, since the Prosecutor’s request for arrest warrants, it appears to be almost standard practice in the Situation for filings or decisions to be filed as “secret” – even when the filing party does not seek such a designation or consider it justified under the Rules and Regulations of the Court; while some documents have been reclassified as public, numerous documents in the Situation remain publicly unavailable. Such secrecy makes it difficult if not impossible for the public – and victims – to follow the proceedings, or for victims to fully vindicate their right to participation. Accordingly, the victims additionally request that the Pre-Trial Chamber reconsider its practice in the Situation of seeming to default to “secret” as the classification for filings and decisions, while reserving such classification only for those filings for which a sufficient factual or legal basis exists, and in so doing, bring greater transparency to the proceedings.

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

<sup>8</sup> 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. *See* Regulation 23 *bis* (1) of the Regulations of the Court (explaining the circumstances to file documents as *ex parte*, under seal or confidential).

### III. PROCEDURAL HISTORY

7. In January 2015, the State of Palestine deposited its instrument of accession pursuant to article 125(2) of the Statute,<sup>9</sup> and in parallel it submitted a second declaration under article 12(3) of the Statute,<sup>10</sup> accepting the Court's jurisdiction over crimes "committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014." On 1 April 2015, the Rome Statute entered into force for the State of Palestine as it became the 123<sup>rd</sup> State Party to the Rome Statute.<sup>11</sup>

8. In May 2018, the State of Palestine submitted a State Referral requesting the Prosecutor "to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine."<sup>12</sup> The OTP concluded the Preliminary Examination of the *Situation in the State of Palestine* on 20 December 2019, finding that was a "reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip."<sup>13</sup> Consequently, and to ensure that the matter was clear to all interested parties, the Prosecutor requested the PTC to confirm the scope of the "Court's territorial jurisdiction in Palestine."<sup>14</sup>

9. On 5 February 2021, the PTC issued its Decision confirming that the Court has jurisdiction in the *Situation in the State of Palestine*.<sup>15</sup> In particular, the Chamber found that "Palestine is a State Party to the Statute" and that "the Court's territorial

<sup>9</sup> 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>.

<sup>10</sup> State of Palestine Accession to the Rome Statute, 2nd January 2015 and Declaration Accepting the Jurisdiction of the International Criminal Court, 31st December 2014, [http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine\\_A\\_12-3.pdf](http://www.icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf).

<sup>11</sup> 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>.

<sup>12</sup> Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute, 15 May 2018, [https://www.icc-cpi.int/sites/default/files/itemsDocuments/2018-05-22\\_ref-palestine.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/2018-05-22_ref-palestine.pdf). 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>.

<sup>13</sup> Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court's territorial jurisdiction, 20 December 2019, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-palestine>.

<sup>14</sup> *Id.*

<sup>15</sup> PTC Decision on Jurisdiction, [ICC-01/18-143](https://www.icc-cpi.int/news/decision-ptc-jurisdiction).

jurisdiction in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.”<sup>16</sup> As a consequence, on 3 March 2021, Prosecutor Bensouda swiftly announced the opening of the investigation into the *Situation in the State of Palestine*.<sup>17</sup>

10. In the context of this ongoing investigation, on 20 May 2024, the OTP filed applications for arrest warrants against three members of Hamas – Yahya SINWAR, Mohammed Diab Ibrahim AL MASRI, and Ismail HANIYEH – and two Israeli officials – Prime Minister Benjamin NETANYAHU and the Defence Minister Yoav GALLANT – (the “Arrest Warrant Applications”).<sup>18</sup>

11. On 10 June 2024, the United Kingdom (“UK”) filed a request to provide written amicus curiae observations under rule 103(1) of the Rules.<sup>19</sup> While the UK subsequently withdrew its request, on 22 July 2024 the Chamber granted approximately sixty requests to file *amici curiae* observations.<sup>20</sup> On 12 August 2024, the undersigned LRVs submitted observations on behalf of victims in the ongoing proceedings, in accordance with article 68(3) of the Statute and rule 93 of the Rules, as well as the Chamber’s Orders of 22 July 2024 and 30 July 2024 (as redacted on 7 August 2024).<sup>21</sup>

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<sup>16</sup> *Id.*, p. 60 & para. 118.

<sup>17</sup> Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, 3 March 2021, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>. Notably, in announcing the opening of the investigation more than three and a half years ago, Prosecutor Bensouda identified “a first step” to “notify all States Parties and those States which would normally exercise jurisdiction over the crimes concerned about its investigation,” which “permits any such State to request the Office to defer to the State’s relevant investigation of its own nationals or other within its jurisdiction” in relation to Rome Statute crimes.

<sup>18</sup> Since the Arrest Warrant Applications were filed and announced, all three members of Hamas for whom Prosecutor Khan sought arrest warrants have reportedly been killed. See [ICC-01/18-324](#) (PTC decision terminating proceedings against Mr Ismail Haniyah). See, e.g., J. Mackenzie, Nidal Al-Mughrabi and Samia Nakhoul, [Hamis Leader Sinwar killed by Israeli troops in Gaza, Netanyahu says war will go on](#), Reuters, 17 Oct. 2024; Aaron Boxerman et al, [Israel Confirms Death of Hamas Commander Amid Funerals for 2 Senior Militants](#), N.Y. Times, 1 Aug, 2024.

<sup>19</sup> Request by the United Kingdom for Leave to Submit Written Observations Pursuant to Rule 103, 10 June 2024, [ICC-01/18- 171-SECRET-Exp-Anx](#).

<sup>20</sup> Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024, [ICC-01/18-249](#).

<sup>21</sup> [ICC-01/18-335](#) (Gaza Victims); [ICC-01/18-336](#) (Child Victims and Their Families); [ICC-01/18-337](#) (Victims of Persecution). See [ICC-01/18-249](#) and [ICC-01/18-256-Red](#).

12. On 23 August 2024, the OTP filed a consolidated response to the observations by *amici* and victims.<sup>22</sup>

13. On 23 September 2024, Israel filed a challenge to the Court's jurisdiction, pursuant to article 19(2)(c) of the Statute. It argued that (i) the "pre-conditions to the Court's jurisdiction cannot be fulfilled" as the State of Palestine does not have sovereignty over the West Bank and the Gaza Strip, and "there is no 'territory of' a State (within the meaning of the Rome Statute) over which the Court may exercise its jurisdiction"; and (ii) the Oslo Agreements prevent the State of Palestine from delegating jurisdiction to the Court.<sup>23</sup> It also claimed that "is deeply committed to preventing and punishing any breaches of international humanitarian and international criminal law."<sup>24</sup>

14. On 27 September 2024, the OTP responded to Israel's Challenge, arguing that it was "premature", "incorrect" and "flawed."<sup>25</sup> The OTP argued that Israel's Jurisdiction Challenge should be dismissed *in limine*, stating that it was procedurally premature as no "case" had yet arisen under Article 19(2) of the Statute, and further asserting that Israel lacked standing under Article 19(2)(c) to challenge jurisdiction.

15. This submission by the LRVs agrees with and supports the OTP's conclusion that Israel's Jurisdiction Challenge should be dismissed *in limine* and provides further observations from the perspective of the affected victims in the State of Palestine, including in Gaza.

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<sup>22</sup> Prosecution's consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, 23 August 2024, [ICC-01/18-346](#) ("Prosecution's Consolidated Response"). According to the OTP, "[i]n total, the Chamber has received submissions from some ten groups of victims (including OPCV), OPCD, 40 States Parties (from 18 States Parties directly and from two international organisations which represent an additional 22 States Parties, alongside more than 30 other non-States Parties), 41 academics and non-governmental organisations (individually or in groups), and three individuals." *Id.*, para 31.

<sup>23</sup> Israel's Jurisdiction Challenge, paras. 124 and 87-102.

<sup>24</sup> *Id.*, para. 10.

<sup>25</sup> See Prosecution Response to "Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" - ICC-01/18-354-SECRET-Exp-AnxI-Corr, 27 September 2004 (reclassified as public 10 October 2024), [ICC-01/18-357](#) ("Prosecution's Response to Israel").



#### IV. VICTIMS' STANDING IN THE PROCEEDINGS

16. The victims represented in this submission are entitled to file their observations in these proceedings, in accordance with article 19(3) of the Statute, as Israel's Challenge concerns a question of jurisdiction.

17. The victims represented in this submission have a profound interest in ensuring that these proceedings move forward expeditiously, and that untimely, unsubstantiated and frivolous filings are not permitted to delay or otherwise frustrate the course of justice. While conscious that any intervention may cause further delays, the victims consider it essential that their perspective on Israel's Jurisdiction Challenge be considered. The voices of the victims in the State of Palestine, and particularly in Gaza, who have suffered direct harm as a result of the most serious crimes perpetrated against them, must remain central to these proceedings as the Court seeks to fulfil its mandate to put an end to impunity and contribute to the prevention of such crimes.

#### V. SUBMISSIONS

##### *Israel's Challenge to the Jurisdiction is Unfounded.*

18. The undersigned LRVs previously addressed at length the non-relevance of the Oslo Agreements to these proceedings, and the broader challenges made to the Court's jurisdiction in the Situation in 2020.<sup>26</sup> In this submission, the LRVs will provide observations, both procedural and substantive, on Israel's jurisdictional challenge.

19. Israel argues that it "has an immediate right to challenge jurisdiction under article 19 given the current stage of proceedings in the Situation."<sup>27</sup> It claims that "Article 19 expressly permits jurisdictional challenges (as opposed to admissibility challenges) to be brought in relation to a Situation as a whole, and not only in relation

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<sup>26</sup> See [ICC-01/18-112](#) (Gaza Victims); [ICC-01/18-102](#) (Child Victims and Their Families); [ICC-01/18-110-Red](#) (Victims of Persecution); [ICC-01/18-335](#) (Gaza Victims); [ICC-01/18-336](#) (Child Victims and Their Families); [ICC-01/18-337](#) (Victims of Persecution)

<sup>27</sup> Israel's Jurisdiction Challenge, para. 48; *see id.*, at paras. 46-57.

to “a case.”<sup>28</sup> The undersigned LRVs share the OTP’s view that Israel’s attempt to challenge the jurisdiction of the Court is legally unfounded. They stress that Israel’s assertion that article 19 authorises jurisdictional challenges at the situation stage does not have any legal basis in Statute or the Rules.

20. As correctly explained by the OTP, challenges to the Court’s jurisdiction under article 19(2) can only be raised once a “case” has arisen.<sup>29</sup> The textual interpretation of article 19(2) makes clear that jurisdictional challenges are tied to a specific “case” and not the broader “situation.”<sup>30</sup> A “case” arises under the Statute only after the Pre-Trial Chamber issues a decision under article 58, such as an arrest warrant or a summons to appear.<sup>31</sup> In the situation at hand, the Pre-Trial Chamber has not yet issued any such article 58 decision, meaning that no “case” has been initiated.

21. Indeed, this Chamber’s jurisprudence has already confirmed that the scope of article 19(2) is limited to specific *cases*, not investigations at the Situation level. It has explicitly stressed that “the references to ‘case’ specifically restrict the scope of application of the mechanisms set forth in article 19(1)-(2) of the Statute,” while “the absence of such references in article 19(3) of the Statute confirms, *a contrario*, that this mechanism extends beyond a case.”<sup>32</sup>

22. In addition, the *ex-parte* nature of article 58 confirms the interpretation that jurisdictional challenges are admissible only once a “case” has started. Proceedings

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<sup>28</sup> *Id.* at para. 51.

<sup>29</sup> Prosecution’s Response to Israel paras. 7-9.

<sup>30</sup> See PTC Decision on Jurisdiction, para. 73.

<sup>31</sup> See Prosecution’s Response to Israel, para. 15. See also Pre-Trial Chamber I, *Situation in the Democratic Republic of the Congo*, Decision on the Application for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 17 January 2006, [ICC-01/04-101-tEN-Corr](#), para. 65; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute,” 30 August 2011, [ICC-01/09-01/11-307](#), para. 40; *Situation in the Democratic Republic of the Congo*, Decision following Consultation held on 11 October 2005 and the Prosecution’s Submission on Jurisdiction and Admissibility filed on 31 October 2005, 9 November 2005, [ICC-01/04-93](#), p. 4; *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-US-Exp 13](#) (“DRC Arrest Warrant Appeal Judgment”), para. 51.

<sup>32</sup> PTC Decision on Jurisdiction, para. 73.

under article 58 are conducted exclusively between the Prosecutor and the Court.<sup>33</sup> Permitting Israel to challenge the Court's jurisdiction before the issuance of an arrest warrant or summons to appear – before there are specific cases against named individuals – would improperly transform the (undisputed) *ex-parte* character of deliberations under Article 58 into adversarial litigation.<sup>34</sup> Such an outcome would be inconsistent with the Court's procedural framework and long-standing jurisprudence, and should not be permitted.

23. Israel has further argued that it must file its challenge now because article 19(5) requires that a State make jurisdictional challenges “at the earliest opportunity.” This argument is based on a misreading of article 19(5), which imposes a procedural obligation on States to act promptly once the right to challenge arises, *but not before*. As explained above, the possibility to challenge the Court's jurisdiction under article 19(2) does not arise until a specific case has been initiated by the issuance of an arrest warrant or summons to appear under article 58.

24. In light of the above, Israel's attempt to challenge the Court's jurisdiction is unsupported and improper and should be dismissed.

#### ***The Pre-Trial Chamber Already Confirmed the Court's Jurisdiction.***

25. Israel has attempted to argue that the Court's jurisdictional requirements are not satisfied, asserting that the State of Palestine does not have sovereignty over the West Bank and the Gaza Strip and “there is no ‘territory of’ a State (within the meaning of the Rome Statute) over which the Court may exercise its jurisdiction.” As this Chamber has already ruled in 2021, Israel's arguments are without merit.

26. The State of Palestine's ratification of the Rome Statute satisfies the preconditions for jurisdiction under article 12(2)(a) of the Statute. As recognised and

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<sup>33</sup> *Situation in the Republic of Kenya*, Decision on the Application for Leave to Submit *Amicus Curiae* Observations, 18 January 2011, [ICC-01/09-35](#), para. 10; *Situation in the Republic of Kenya*, Decision on the “Application for Leave to Participate in the Proceedings before the Pre-Trial Chamber relation to the Prosecutor's Application under Article 58(7)”, 11 February 2011, [ICC-01/09-42](#), paras. 18-20, 23; *DRC Arrest Warrant Appeal Judgment*, para. 45.

<sup>34</sup> See Prosecution's Response to Israel, para. 8; Prosecution's Consolidated Response, paras. 41-43.

confirmed in the PTC Decision on Jurisdiction, Palestine is a State Party of the ICC.<sup>35</sup> This status of State Party is sufficient to establish the Court's territorial jurisdiction. This Chamber's prior ruling, and indeed the conduct of the Assembly of States Parties and other Member States, have confirmed that the accession of Palestine to the Rome Statute grants the Court territorial jurisdiction over crimes committed on the territory of Palestine, regardless of the nationality of the suspects involved.

27. Therefore, this Chamber has already settled the key jurisdictional questions regarding Palestine's statehood and territorial jurisdiction under article 12(2)(a) of the Statute.<sup>36</sup> It has clearly rejected the very arguments put forward by Israel now that were previously raised by numerous amici curiae observations, which had similarly argued that the Court cannot exercise its jurisdiction over crimes allegedly committed on the Palestinian territory.<sup>37</sup> This Chamber has authoritatively concluded that "Palestine acceded to the Statute in accordance with the procedure defined by the Statute and, in addition, the Assembly of States Parties has acted in accordance with Palestine's accession. Palestine is therefore a State Party to the Statute, and, as a result, a 'State' for the purposes of article 12(2)(a) of the Statute. These issues have been settled by Palestine's accession to the Statute (emphasis added)."<sup>38</sup>

28. Moreover, Israel's allegations that there would be no territory of a State over which the Court can exercise its jurisdiction have likewise been rejected by this Chamber. This Chamber has already found that "territorial jurisdiction in the *Situation in Palestine* extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem."<sup>39</sup> Accordingly, the satisfaction of the preconditions for the Court's jurisdiction in the *Situation in the State of Palestine* are already conclusively decided.

29. By questioning the Court's jurisdiction over crimes committed on Palestinian territory, Israel seeks to improperly re-open matters already decided by the Pre-Trial

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<sup>35</sup> See PTC Decision on Jurisdiction, para. 102.

<sup>36</sup> *Id.*, para. 112.

<sup>37</sup> See, e.g., [ICC-01/18-103](#); [ICC-01/18-69](#); [ICC-01/18-83](#).

<sup>38</sup> PTC Decision on Jurisdiction, para. 112.

<sup>39</sup> *Id.*, para. 118.

Chamber – and delay the proceedings. This attempt contradicts established legal principles and should be rejected. The Chamber’s decision in the article 19(3) ruling is clear and remains in full force.

## VI. CONCLUSION AND RELIEF REQUESTED

30. For the reasons set forth herein, the arguments presented by Israel in its challenge are both procedurally and substantively unfounded and should be rejected forthwith.

31. The victims observe that Israel’s Jurisdiction Challenge appears to serve a different goal – namely, to obstruct the Court’s ability to deliver timely justice. The LRVs wish to recall the view of the International Court of Justice in its Advisory Opinion of July 2024, affirming “that occupation cannot be used in such a manner as to leave indefinitely the occupied population in a state of suspension and uncertainty, denying them their right to self-determination” and which recognized “[t]he sustained abuse by Israel of its position as an occupying power, [...] and continued frustration of the right of the Palestinian people to self-determination.”<sup>40</sup>

32. The present challenge mirrors, and is consistent with, Israel’s widely reported previous efforts to interfere with and avoid legal responsibility, efforts that have only exacerbated the suffering of the victims in Gaza and in the rest of the Palestinian territory. Such delay tactics must not be permitted. Further delay will only encourage the commission of further crimes, resulting in further irreparable damage to the victims in Palestine. The suffering of the people in Gaza is already unimaginable: as of 22 October 2024, at least 42,718 Palestinians have been killed, more than 10,000 have been reported missing or are presumed to be under the rubble, and almost 100 thousand have been injured.<sup>41</sup> Additionally, 1.9 million people, amounting to 90 per cent of the Gazan population, have been internally displaced and are now cramped in

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<sup>40</sup> ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, 19 July 2024, paras. 257 and 261.

<sup>41</sup> OCHA, Reported Impact Snapshot, 22 October 2024, at <https://www.ochaopt.org/content/reported-impact-snapshot-gaza-strip-22-october-2024>.

an area limited to 1.5 square meter per person.<sup>42</sup> In addition, 96 per cent of the population in Gaza is projected to face crisis or worse levels of food insecurity. 495,000 of that population are projected to reach a catastrophic level, with nearly 1 in 5 children already suffering from wasting, the most life-threatening form of malnutrition.<sup>43</sup>

33. The victims represented in this submission urge the Chamber to dismiss Israel's Jurisdiction Challenge without further delay and deny Israel's latest attempt to disrupt the ongoing proceedings, aimed at continuing to enjoy impunity for the international crimes committed. Respectfully, it is imperative that the Chamber proceeds - with the highest expeditiousness - to issue the arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant, as requested by the Prosecutor more than five months ago.

34. The issuance of arrest warrants is an absolutely needed measure to bring justice and to contribute to stop the horrifying crimes committed not only in Gaza over the past year, but in the entire Palestinian territory since many years. Millions of people are waiting in despair for a sign of justice from this Court.

Respectfully submitted,

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Legal Representatives for Gaza Victims

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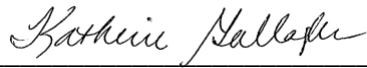
<sup>42</sup> Ibidem.

<sup>43</sup>Statement by UNICEF Deputy Executive Director for Humanitarian Action and Supply Operations on the near-blockade of aid and access in North Gaza, 18 October 2024, at <https://www.unicef.org/press-releases/statement-unicef-deputy-executive-director-humanitarian-action-and-supply-operations>.



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Bradley Parker and Khaled Quzmar  
Legal Representatives for Child Victims and Their Families



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Katherine Gallagher  
Legal Representative for Victims of Persecution

Dated this 28th day of October 2024, at Cairo, Egypt; Milan, Italy; Liverpool, United Kingdom; New York, United States.