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Statement: 20 May 2024 | العربية עברית

## Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine



Today I am filing applications for warrants of arrest before Pre-Trial Chamber I of the International Criminal Court in the Situation in the State of Palestine.



## ICC Prosecutor Khan on application for arrest warrants in the situation in the State of Palestine

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On the basis of evidence collected and examined by my Office, I have reasonable grounds to believe that **Yahya SINWAR** (Head of the Islamic Resistance Movement (“*Hamas*”) in the Gaza Strip), **Mohammed Diab Ibrahim AL-MASRI**, more commonly known as DEIF (Commander-in-Chief of the military wing of Hamas, known as the *Al-Qassam Brigades*), and **Ismail HANIYEH** (Head of Hamas Political Bureau) bear criminal responsibility for the following war crimes and crimes against humanity committed on the territory of Israel and the State of Palestine (in the Gaza strip) from at least 7 October 2023:

- Extermination as a crime against humanity, contrary to article 7(1)(b) of the Rome Statute;
- Murder as a crime against humanity, contrary to article 7(1)(a), and as a war crime, contrary to article 8(2)(c)(i);
- Taking hostages as a war crime, contrary to article 8(2)(c)(iii);
- Rape and other acts of sexual violence as crimes against humanity, contrary to article 7(1)(g), and also as war crimes pursuant to article 8(2)(e)(vi) in the context of captivity;
- Torture as a crime against humanity, contrary to article 7(1)(f), and also as a war crime, contrary to article 8(2)(c)(i), in the context of captivity;
- Other inhumane acts as a crime against humanity, contrary to article 7(1)(k), in the context of captivity;
- Cruel treatment as a war crime contrary to article 8(2)(c)(i), in the context of captivity; and
- Outrages upon personal dignity as a war crime, contrary to article 8(2)(c)(ii), in the context of captivity.

My Office submits that the war crimes alleged in these applications were committed in the context of an international armed conflict between Israel and Palestine, and a non-international armed conflict between Israel and Hamas running in parallel. We submit that the crimes against humanity charged were part of a widespread and systematic attack against the civilian population of Israel by Hamas and other armed groups pursuant to organisational policies. Some of these crimes, in our assessment, continue to this day.

My Office submits there are reasonable grounds to believe that SINWAR, DEIF and HANIYEH are criminally responsible for the killing of hundreds of Israeli civilians in attacks perpetrated by Hamas (in particular its military wing, the *al-Qassam Brigades*) and other armed groups on 7 October 2023 and the taking of at least 245 hostages. As part of our investigations, my Office has interviewed victims and survivors, including former hostages and eyewitnesses from six major attack locations: Kfar Aza; Holit; the location of the Supernova Music Festival; Be’eri; Nir Oz; and Nahal Oz. The investigation also relies on evidence such as CCTV footage, authenticated audio, photo and video material, statements by Hamas members including the alleged perpetrators named above, and expert evidence.

It is the view of my Office that these individuals planned and instigated the commission of crimes on 7 October 2023, and have through their own actions, including personal visits to hostages shortly after their kidnapping, acknowledged their responsibility for those crimes. We submit that these crimes could not have been committed without their actions. They are charged both as co-perpetrators and as superiors pursuant to Articles 25 and 28 of the Rome Statute.

During my own visit to Kibbutz Be’eri and Kibbutz Kfar Aza, as well as to the site of Supernova Music Festival in Re’im, I saw the devastating scenes of these attacks and the profound impact of the unconscionable crimes charged in the applications filed today. Speaking with survivors, I heard how the love within a family, the deepest bonds between a parent and a child, were contorted to inflict unfathomable pain through calculated cruelty and extreme callousness. These acts demand accountability.

My Office also submits there are reasonable grounds to believe that hostages taken from Israel have been kept in inhumane conditions, and that some have been subject to sexual violence, including rape, while being held in captivity. We have reached that conclusion based on medical records, contemporaneous video and documentary evidence, and interviews with victims and survivors. My Office also continues to investigate reports of sexual violence committed on 7 October.

I wish to express my gratitude to the survivors, and the families of victims of the 7 October attacks, for their courage in coming forward to provide their accounts to my Office. We remain focused on further deepening our investigations of all crimes committed as part of these attacks and will continue to work with all partners to ensure that justice is delivered.

I again reiterate my call for the immediate release of all hostages taken from Israel and for their safe return to their families. This is a fundamental requirement of international humanitarian law.

*Benjamin Netanyahu, Yoav Gallant*

On the basis of evidence collected and examined by my Office, I have reasonable grounds to believe that **Benjamin NETANYAHU**, the Prime Minister of Israel, and **Yoav GALLANT**, the Minister of Defence of Israel, bear criminal responsibility for the following war crimes and crimes against humanity committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023:

- Starvation of civilians as a method of warfare as a war crime contrary to article 8(2)(b)(xxv) of the Statute;
- Wilfully causing great suffering, or serious injury to body or health contrary to article 8(2)(a)(iii), or cruel treatment as a war crime contrary to article 8(2)(c)(i);
- Wilful killing contrary to article 8(2)(a)(i), or Murder as a war crime contrary to article 8(2)(c)(i);
- Intentionally directing attacks against a civilian population as a war crime contrary to articles 8(2)(b)(i), or 8(2)(e)(i);
- Extermination and/or murder contrary to articles 7(1)(b) and 7(1)(a), including in the context of deaths caused by starvation, as a crime against humanity;
- Persecution as a crime against humanity contrary to article 7(1)(h);
- Other inhumane acts as crimes against humanity contrary to article 7(1)(k).

My Office submits that the war crimes alleged in these applications were committed in the context of an international armed conflict between Israel and Palestine, and a non-international armed conflict between Israel and Hamas (together with other Palestinian Armed Groups) running in parallel. We submit that the crimes against humanity charged were committed as part of a widespread and systematic attack against the Palestinian civilian population pursuant to State policy. These crimes, in our assessment, continue to this day.

My Office submits that the evidence we have collected, including interviews with survivors and eyewitnesses, authenticated video, photo and audio material, satellite imagery and statements from the alleged perpetrator group, shows that Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival.

This occurred through the imposition of a total siege over Gaza that involved completely closing the three border crossing points, Rafah, Kerem Shalom and Erez, from 8 October 2023 for extended periods and then by arbitrarily restricting the transfer of essential supplies – including food and medicine – through the border crossings after they were reopened. The siege also included cutting off cross-border water pipelines from Israel to Gaza – Gazans’ principal source of clean water – for a prolonged period beginning 9 October 2023, and cutting off and hindering electricity supplies from at least 8 October 2023 until today. This took place alongside other attacks on civilians, including those queuing for food; obstruction of aid delivery by humanitarian agencies; and attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza.

My Office submits that these acts were committed as part of a common plan to use starvation as a method of war and other acts of violence against the Gazan civilian population as a means to (i) eliminate Hamas; (ii) secure the return of the hostages which Hamas has abducted, and (iii) collectively punish the civilian population of Gaza, whom they perceived as a threat to Israel.

The effects of the use of starvation as a method of warfare, together with other attacks and collective punishment against the civilian population of Gaza are acute, visible and widely known, and have been confirmed by multiple witnesses interviewed by my Office, including local and international medical doctors. They include malnutrition, dehydration, profound suffering and an increasing number of deaths among the Palestinian population, including babies, other children, and women.

Famine is present in some areas of Gaza and is imminent in other areas. As UN Secretary-General António Guterres [warned](#) more than two months ago, “1.1 million people in Gaza are facing catastrophic hunger – the highest number of people ever recorded – anywhere, anytime” as a result of an “entirely manmade disaster”. Today, my Office seeks to charge two of those most responsible, NETANYAHU and GALLANT, both as co-perpetrators and as superiors pursuant to Articles 25 and 28 of the Rome Statute.

Israel, like all States, has a right to take action to defend its population. That right, however, does not absolve Israel or any State of its obligation to comply with international humanitarian law. Notwithstanding any military goals they may have, the means Israel chose to achieve them in Gaza – namely, intentionally causing death, starvation, great suffering, and serious injury to body or health of the civilian population – are criminal.

Since last year, in [Ramallah](#), in [Cairo](#), in [Israel](#) and in [Rafah](#), I have consistently emphasised that international humanitarian law demands that Israel take urgent action to immediately allow access to humanitarian aid in Gaza at scale. I specifically underlined that starvation as a method of war and the denial of humanitarian relief constitute Rome Statute offences. I could not have been clearer.

As I also repeatedly underlined in my public statements, those who do not comply with the law should not complain later when my Office takes action. That day has come.

In presenting these applications for arrest warrants, my Office is acting pursuant to its mandate under the Rome Statute. On 5 February 2021, Pre-Trial Chamber I decided that the Court can exercise its criminal jurisdiction in the Situation in the State of Palestine and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem. This mandate is ongoing and includes the escalation of hostilities and violence since 7 October 2023. My Office also has jurisdiction over crimes committed by nationals of States Parties and by the nationals of non-States Parties on the territory of a State Party.

Today's applications are the outcome of an independent and impartial investigation by my Office. Guided by our obligation to investigate incriminating and exonerating evidence equally, my Office has worked painstakingly to separate claims from facts and to soberly present conclusions based on evidence to the Pre-Trial Chamber.

As an additional safeguard, I have also been grateful for the [advice](#) of a panel of experts in international law, an impartial group I convened to support the evidence review and legal analysis in relation to these arrest warrant applications. The Panel is composed of experts of immense standing in international humanitarian law and international criminal law, including Sir Adrian Fulford PC, former Lord Justice of Appeal and former International Criminal Court Judge; Baroness Helena Kennedy KC, President of the International Bar Association's Human Rights Institute; Elizabeth Wilmshurst CMG KC, former Deputy Legal Adviser at the UK Foreign and Commonwealth Office; Danny Friedman KC; and two of my Special Advisers – Amal Clooney and His Excellency Judge Theodor Meron CMG. This independent expert analysis has supported and strengthened the applications filed today by my Office. I have also been grateful for the contributions of a number of my other Special Advisers to this review, particularly Adama Dieng and Professor Kevin Jon Heller.

Today we once again underline that international law and the laws of armed conflict apply to all. No foot soldier, no commander, no civilian leader – no one – can act with impunity. Nothing can justify wilfully depriving human beings, including so many women and children, the basic necessities required for life. Nothing can justify the taking of hostages or the targeting of civilians.

The independent judges of the International Criminal Court are the sole arbiters as to whether the necessary standard for the issuance of warrants of arrest has been met. Should they grant my applications and issue the requested warrants, I will then work closely with the Registrar in all efforts to apprehend the named individuals. I count on all States Parties to the Rome Statute to take these applications and the subsequent judicial decision with the same seriousness they have shown in other Situations, meeting their obligations under the Statute. I also stand ready to work with non-States Parties in our common pursuit of accountability.

It is critical in this moment that my Office and all parts of the Court, including its independent judges, are permitted to conduct their work with full independence and impartiality. I insist that all attempts to impede, intimidate or improperly influence the officials of this Court must cease immediately. My Office will not hesitate to act pursuant to article 70 of the Rome Statute if such conduct continues.

I remain deeply concerned about ongoing allegations and emerging evidence of international crimes occurring in Israel, Gaza and the West Bank. Our investigation continues. My Office is advancing multiple and interconnected additional lines of inquiry, including concerning reports of sexual violence during the 7 October attacks, and in relation to the large-scale bombing that has caused and continues to cause so many civilian deaths, injuries, and suffering in Gaza. I encourage those with relevant information to contact my Office and to submit information via [OTP Link](#).

My Office will not hesitate to submit further applications for warrants of arrest if and when we consider that the threshold of a realistic prospect of conviction has been met. I renew my call for all parties in the current conflict to comply with the law now.

I also wish to emphasise that the principle of complementarity, which is at the heart of the Rome Statute, will continue to be assessed by my Office as we take action in relation to the above-listed alleged crimes and alleged perpetrators and move forward with other lines of inquiry. Complementarity, however, requires a deferral to national authorities only when they engage in independent and impartial judicial processes that do not shield suspects and are not a sham. It requires thorough investigations at all levels addressing the policies and actions underlying these applications.

Let us today be clear on one core issue: if we do not demonstrate our willingness to apply the law equally, if it is seen as being applied selectively, we will be creating the conditions for its collapse. In doing so, we will be loosening the remaining bonds that hold us together, the stabilising connections between all communities and individuals, the safety net to which all victims look in times of suffering. This is the true risk we face in this moment.

Now, more than ever, we must collectively demonstrate that international humanitarian law, the foundational baseline for human conduct during conflict, applies to all individuals and applies equally across the situations addressed by my Office and the Court. This is how we will prove, tangibly, that the lives of all human beings have equal value.

*For further details on "preliminary examinations" and "situations and cases" before the Court, click [here](#), and [here](#).*

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