

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **9 September 2024**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

Public
with SECRET, EX PARTE, Annex A only available to the Prosecution

Public redacted version of : “Prosecution’s withdrawal of the “Prosecution’s application under article 58 for a warrant of arrest against Ismail HANIYEH” [REDACTED]”, 2 August 2024, ICC-01/18-263-SECRET-Exp

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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**

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I. INTRODUCTION

1. The Prosecution hereby withdraws the “Prosecution’s application under article 58 for a warrant of arrest against Ismail HANIYEH” filed on 20 May 2024¹ because of the changed of circumstances caused by HANIYEH’s death. There is sufficient and reliable information indicating that Ismail HANIYEH, the Head of the Political Bureau of the Islamic Resistance Movement (“Hamis”), was killed early in the morning on 31 July 2024 in Tehran, Islamic Republic of Iran.

2. The Prosecution is gathering information with respect to the reported death of Mohammed Diab Ibrahim AL-MASRI (“DEIF”), commander-in-chief of the *Izz ad-Din al-Qassam Brigades* (“*al-Qassam*”). The Prosecution will withdraw its Article 58 Application against DEIF if sufficient and reliable information confirms his death.

3. In light of the ongoing criminality described in the Prosecution’s Applications, and consistently with article 58(1)(b), the Prosecution respectfully requests that the Chamber issue its decisions on the applications for warrants of arrest against Yahya SINWAR, DEIF, Benjamin NETANYAHU, and Yoav GALLANT with utmost urgency.

II. CONFIDENTIALITY

4. Pursuant to regulation 23bis(2) of the Regulations of the Court, this request is filed SECRET and *Ex Parte*, since the Prosecution’s Article 58 Application bears the same classification.

III. PROCEDURAL BACKGROUND

5. On 20 May 2024, the Prosecution submitted Article 58 Applications against five persons in the Situation in the State of Palestine.²

6. On 10 June 2024, the United Kingdom (“UK”) requested leave to provide observations under rule 103 of the Rules 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”.³

¹ [REDACTED]. The Prosecution will refer to the applications for arrest warrants requested in this situation as “Article 58 Applications”.

² [REDACTED].

³ ICC-01/18-171-SECRET-Exp.

7. On 27 June 2024, for the first time at such a stage of proceedings, the Chamber granted the UK's request to file observations in these *Ex Parte* article 58 proceedings and allowed for further requests for observations under rule 103 to be submitted by 12 July 2024.⁴

8. On 4 July 2024, the Chamber granted the UK's request for an extension of time to provide observations under rule 103 by 26 July 2024, in light of the approaching general election in the UK on 4 July 2024.⁵ Ultimately, the UK chose to not file any observations by 26 July 2024.

9. [REDACTED].⁶ [REDACTED].⁷

10. On 22 July 2024, after receiving over 70 applications, and without providing in the decision reasons as to why "the observations proposed are desirable for the proper determination of the case",⁸ the Chamber granted leave to provide observations by 6 August 2024 to most applicants, even though many applicants had raised issues unrelated to the Oslo Accords. The Chamber also directed legal representatives of potential victims to rely on article 68(3) of the Statute if they wished to provide observations.⁹

11. [REDACTED].

12. On 30 July 2024, the Office of Public Counsel for Victims and five groups of legal representatives of victims were granted leave to provide observations pursuant to article 68(3) by 12 August 2024.¹⁰

13. On 1 August 2024, the Prosecution requested leave to file a consolidated response of 50 pages to all the observations by 26 August 2024.¹¹

IV. SUBMISSIONS

14. The Prosecutor withdraws its Article 58 Application against HANIYEH. The Prosecution relies on abundant social and news media material (written and visual), including official statements from States and photographs, that evidence HANIYEH's death. In particular, Iran's

⁴ ICC-01/18-173-Red, para. 6.

⁵ ICC-01/18-178.

⁶ [REDACTED].

⁷ [REDACTED].

⁸ ICC-01/18-249, para. 10.

⁹ ICC-01/18-249, paras. 11, 14.

¹⁰ ICC-01/18-256.

¹¹ ICC-01/18-259-SECRET-Exp.

Islamic Revolutionary Guard Corps¹² as well as various State officials¹³ and numerous open sources¹⁴ have consistently reported the death of HANIYEH. Hamas itself has confirmed the death of its political leader and issued an obituary.¹⁵

15. Pursuant to article 25(1) of the Statute, the Court has jurisdiction only over ‘natural’ persons. The Court’s criminal proceedings seek to determine individual criminal responsibility and jurisdiction cannot be exercised over a deceased person. Thus, if a suspect is deceased, jurisdiction cannot be exercised over, and arrests warrants cannot be executed for, them.¹⁶ Further, the production of a death certificate is not a pre-requisite for terminating criminal proceedings and Chambers have consistently relied on a variety of material, including open source material, to terminate proceedings against deceased persons.¹⁷

16. Accordingly, and in light of the information outlined above, there is no reason for the Prosecution’s Article 58 Application against HANIYEH to remain outstanding. The Prosecution hereby withdraws it.

17. Further, the Prosecution is gathering information with respect to the reported death of DEIF. It will withdraw its Article 58 Application against him as soon as possible once it is satisfied that his death is established.

18. Finally, in light of the worsening situation in Palestine and the continuation of the crimes described in the Prosecution’s Article 58 Applications,¹⁸ the Prosecution respectfully requests that the Chamber decide upon the applications for warrants of arrest against Yahya SINWAR (Head of Hamas in the Gaza Strip), DEIF (commander-in-chief of *al-Qassam*), Benjamin NETANYAHU (Prime Minister of Israel), and Yoav GALLANT (Minister of Defence of Israel) with utmost urgency. The Prosecution reiterates its submissions, consistent with article

¹² Sepah News, “تهران در وی محافظان از یکی و هنیه اسماعیل شهادت داد؛ خبر سیاه کل عمومی روابط” (The public relations of the whole army announced Martyrdom of Ismail Haniyeh and one of his bodyguards in Tehran), 31 July 2024; Sepah News, “ایران بویژه مقاومت مقتدر جبهه سخت پاسخ با صهیونیستی رژیم جنایت: اسلامی انقلاب یاساران سیاه کل عمومی روابط” (The Leader of the Revolution’s condolence message following the martyrdown of the great mujahid Mr. Ismail Haniyeh: The Zionist regime prepared the ground for harsh punishment), 31 July 2024. The Prosecution provides an unofficial English translation of the Arabic original sources in Annex A.

¹³ [Times of Israel, Outcry as Turkish embassy in Israel lowers flag in honor of Haniyeh; envoy summoned](#), 2 August 2024; [AlJazeera, Hamas chief Ismail Haniyeh’s funeral held in Qatar](#), 2 August 2024.

¹⁴ [NYTimes, Bomb Smuggled into Tehran guesthouse months ago killed Hamas leader](#), 1 August 2024; [Haaretz, Angle, Shock and Suspicion: Arab World reacts to Haniyeh’s assassination in Tehran](#), 1 August 2024; [BBC, Hamas leader's funeral draws crowds in Iran](#), 1 August 2024; [Le Monde, Ismail Haniyeh's death: 'Negotiations for a ceasefire and the release of hostages are undermined'](#), 1 August 2024. The Prosecution attaches in Annex A the sources which are not openly available.

¹⁵ Hamas Info, “حماس تنعى رئيس مكتبها السياسي الأخ القائد الشهيد المجاهد إسماعيل هنية” (Hamas mourns the head of its political bureau, the martyred leader, the mujahid Ismail Haniyeh), 31 July 2024; Hamas Info, “بيان نعى القائد والمجاهد الشهيد” (Obituary statement for the martyr leader and mujahid Ismail Haniyeh), 31 July 2024. The Prosecution provides an English translation of the Arabic original sources in Annex A.

¹⁶ ICC-01/11-01/17-24, para. 4; ICC-01/11-01/13-38, para. 4.

¹⁷ ICC-01/11-01/17-24, para. 5.

¹⁸ The crimes of hostage taking and starvation are continuing crimes.

58(1)(b) of the Statute, that the arrest of SINWAR, DEIF, NETANYAHU and GALLANT is necessary to, *inter alia*, ensure that they do not obstruct or endanger the investigation or court proceedings, prevent the continuing commission of the crimes alleged and/or the commission of other Rome Statute crimes.

IV. RELIEF REQUESTED

19. The Prosecution hereby withdraws the application for a warrant of arrest against Ismail HANIYEH.

20. Further, the Prosecution requests the Chamber to expeditiously issue its decisions on the applications for warrants of arrest against Yahya SINWAR, DEIF, Benjamin NETANYAHU, and Yoav GALLANT.



Karim A.A. Khan KC, Prosecutor

Dated this 9th day of September 2024

At The Hague, The Netherlands