

Mandate of the Special Rapporteur on the independence of judges and lawyers

**Mandate of the Special Rapporteur on the situation of human rights in the
Palestinian territories occupied since 1967**

5 December 2024

Excellency,

We write to you in our capacity as United Nations Special Rapporteur on independence of judges and lawyers, and United Nations Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967, in accordance with Human Rights Council resolution 53/12 and 5/1 and Commission on Human Rights resolution 1993/2A, in view of the 23rd Assembly of States Parties (ASP) of the Rome Statute on the International Criminal Court, to be held from 2–6 December 2024, to address the dire situation in the occupied Palestinian territory.

Seventy-six years ago, the United Nations General Assembly recognised the need for a permanent international court to deal with atrocities of the kind prosecuted after World War II. The International Criminal Court (ICC), established nearly thirty years ago, is the legacy of the Nuremberg trials, to never allow war crimes and crimes against humanity, such as those committed during World War II, go unpunished and to ensure those who commit the gravest crimes face justice in a court of law.

Special Procedures mandate holders have publicly and repeatedly expressed their serious concerns about the inhumane nature and overwhelming scale of the Israeli military assault on Gaza that began following the attacks of 7 October 2023, and have called for accountability.¹ Before the two reports – “Anatomy of Genocide”² and “Genocide as Colonial Erasure”³ – , we note that between October and November 2023, 34 Independent UN Experts had already issued three separate warnings regarding the risk of genocide.⁴ Additionally, in July 2024, the UN Special Rapporteur on the Right to Food issued a report outlining the use of starvation as a tactic of genocide.⁵

¹ <https://www.ohchr.org/en/press-releases/2024/10/7-october-un-experts-call-end-violence-and-accountability-after-year-human>; <https://www.ohchr.org/en/press-releases/2024/05/israel-gaza-threats-against-icc-promote-culture-impunity-say-un-experts>.

² [A/HRC/55/73](https://www.un.org/unispal/document/a/hrc/55/73).

³ [A/79/384](https://www.un.org/unispal/document/a/79/384).

⁴ <https://www.un.org/unispal/document/gaza-is-running-out-of-time-un-experts-warn-demanding-a-ceasefire-to-prevent-genocide/>; <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>; <https://www.ohchr.org/en/press-releases/2024/10/tragedy-within-tragedy-un-experts-alarmed-harrowing-conditions-palestinians>.

⁵ [A/79/171](https://www.un.org/unispal/document/a/79/171).

Critically, on 26 January 2024, the International Court of Justice identified a plausible risk of irreparable harm to Palestinian rights under the Genocide Convention and issued provisional measures on three separate occasions.⁶

Further, on 14 November 2024, the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories⁷, released its findings that Israel's warfare in Gaza is consistent with the characteristics of genocide, with mass civilian casualties and life-threatening conditions intentionally imposed on Palestinians.⁸

Notwithstanding the gravity of this situation, on 20 November 2024, a single veto blocked the adoption of an otherwise-unanimous UN Security Council resolution (E10) calling for an immediate and unconditional ceasefire in the Gaza Strip, access for civilians to basic services and the immediate release of the hostages.

The ICC's role is more crucial than ever. The States Parties of the ASP, the main oversight and legislative body of the ICC, have a duty to fulfil their obligations under the Rome Statute and to ensure that the Court can play its role. On 21 November 2024, the ICC's Pre-trial Chamber unanimously issued warrants of arrest for Mr Benjamin Netanyahu and Mr Yoav Gallant, for crimes against humanity and war crimes committed from at least 8 October 2023 until at least 20 May 2024, the day the Prosecution filed the applications for warrants of arrest. It also unanimously issued a warrant of arrest for Mr Mohammed Diab Ibrahim Al-Masri, commonly known as "Deif", for alleged crimes against humanity and war crimes committed on the territory of the State of Israel and the State of Palestine from at least 7 October 2023. Mr Al-Masri is reported to have been killed, though the Court was unable to verify his death.

We recall that these arrest warrants were issued by judges of an independent Court based on evidence about conduct that meets the standards for war crimes and crimes against humanity. In their issuance, the arrest warrants reaffirm that all victims of the most grave crimes are human beings, deserving of accountability. If every person is equal before the law, these arrest warrants demonstrate that the same is true for both victims and alleged perpetrators.

In line with their obligations under the Rome Statute, we underline that Member States should cooperate fully with the ICC in line with article 86 of the Rome Statute. This cooperation includes, *inter alia*, the identification and sharing of the whereabouts of persons or the location of items; the taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court; the service of documents, including judicial documents; the facilitation of the voluntary appearance of persons as witnesses or experts before the Court; the examination of places or sites, including the examination of grave sites; the execution of searches and seizures; the provision of records and documents, including official records and documents; the protection of victims and witnesses and the preservation of evidence (article 93). We highlight in particular that in accordance with procedures

⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order, 26 January 2024, I.C.J. Reports 2024; Order, 28 March 2024, I.C.J. Reports 2024; Request for the Modification of the Order of 28 March 2024, Order, 24 May 2024, I.C.J. Reports 2024.

⁷ Established by the UN General Assembly resolution 2443 (XXIII) in December 1968 to examine the human rights situation in the occupied Syrian Golan, the West Bank, including East Jerusalem and the Gaza Strip.

⁸ [A/79/363](#).

under their national law, States Parties must comply with requests for arrest and surrender of persons sought by the Court who are found on their territory (article 89).

We recall that the Rome Statute makes clear that “official capacity as a Head of State or Government... shall in no case exempt a person from criminal responsibility,” and that any immunities or special rules arising under national or international law “which may attach to the official capacity of a person” shall not bar the Court’s jurisdiction (article 27). The Court has recently made plain that States Parties have the “obligation to arrest and surrender” anyone sought by an ICC arrest warrant, even if such an individual is a Head of State, and regardless of whether the individual’s State of nationality is a Party to the Rome Statute.⁹ The Court has further clarified that no waiver of immunity is required in such circumstances under article 98 of the Statute, even for Heads of State.¹⁰

We note that under article 87, if a “State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council”. We recall further that the International Court of Justice’s Advisory Opinion¹¹ of 19 July 2024 set out clear obligations for UN Member States in ensuring Israel’s compliance with international humanitarian law.

In addition, we take note that some Member States of the United Nations have taken action against the Hamas-led atrocity crimes and toward the release of Hamas-held hostages. We call on States Parties to take decisive action to end the assault on Gaza and the downward spiralling humanitarian situation there, as well as the worsening human rights violations in the occupied West Bank and East Jerusalem. States Parties should immediately suspend arms transfers to Israel given the real risk that such weapons will be used to commit crimes under the Rome Statute. By sending weapons, parts, components, and ammunition to Israeli forces, States risk being complicit in human rights violations and international crimes.¹² This risk is heightened by the issuance of the arrest warrants on 21 November 2024.

In May this year, the Office of the Prosecutor (OTP) denounced statements that “threaten to retaliate against the Court or against Court personnel” for actions taken by the Prosecutor. The OTP’s statement reminded individuals that threats of retaliation may amount to an offense against the administration of justice under Article 70 of the Rome Statute.

We regret that in recent months, authorities in the United States and Israel have made inflammatory statements concerning the ICC, its personnel and its work. Such comments have persisted amid reports that Congressional leaders in the United States are preparing possible retaliatory action, including sanctions on individuals who work for the Court and efforts to de-fund the ICC. We take note with alarm the threat made in

⁹ Situation in Ukraine, Pre-Trial Chamber II, “Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties”, 24 October 2024, ICC-01/22, <https://www.icc-cpi.int/court-record/icc-01/22-90>.

¹⁰ *Ibid.*

¹¹ <https://www.icj-cij.org/node/204176>.

¹² <https://www.un.org/unispal/document/arms-exports-to-israel-must-stop-immediately-un-experts-23feb-2024/>; <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>.

May this year by the Israeli Finance Minister to withhold funds from the Palestinian Authority, should arrest warrants be issued against Israeli officials.

Threats of retaliatory action against an entire population and against justice personnel for carrying out their work exceed the accepted limits of freedom of expression and violate human rights norms. States Parties should take immediate and decisive action to avoid grave crimes against the people in Gaza. We call on all States to respect the Court's independence as a judicial institution and protect the independence and impartiality of those who work within the Court.

Impeding the work of the Court and its Prosecutor is detrimental, not only for accountability in the occupied Palestinian territory but for international justice as a whole.¹³ We are concerned to see countries that consider themselves champions of the rule of law taking actions to intimidate an independent and impartial international tribunal to thwart accountability. These actions stand in stark contrast with efforts to ensure accountability for atrocity crimes elsewhere, such as in Ukraine, Myanmar, and Syria, and have led to accusations of double standards.

As parties to the Rome Statute of the ICC, States Parties should refrain from attacking or interfering with the court's independence and should instead protect the ICC in the face of the on-going threats and intimidations.

Politicians and public officials, particularly those holding high office, play an important role in shaping the media agenda, public debate and opinion. As a result, ethical behaviour and attitudes on their part, including in their public communications, are essential for promoting the rule of law, protection of human rights, and for ensuring public trust in democratic systems of governance.

Sincerely,



Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers



Francesca Albanese
Special Rapporteur on the situation of human rights in the
Palestinian Territory occupied since 1967

¹³ <https://www.ohchr.org/en/press-releases/2024/05/israelgaza-threats-against-icc-promote-culture-impunity-say-un-experts>.