

THE ICC VERDICT: SIGNIFICANCE AND IMPLICATIONS

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Since October 2023, Israel has proclaimed a “total siege on Gaza” killing thousands of innocent Palestinians by airstrikes and ground assaults. Currently, the death toll stands at 37,616 with 84,494 injured and more than 1.7 million displaced.¹ Rafah which was considered to be a safe haven for the millions of refugees has been invaded by Israeli forces and around 800,000 refugees have been forced to flee again to camps and shelters that are already overcrowded.² Rafah was the last place for the Palestinian refugees that connects the border between Egypt and the Gaza Strip. Although continues efforts are being made for a permanent ceasefire through mediators, innocent Palestinians continue to suffer.

In December 2023, South Africa commenced legal proceedings against Israel’s “genocidal acts” and military interventions in Gaza at the International Court of Justice (ICJ). The request for interim measures took place in mid-January 2024. On January 26, 2024, the ICJ handed down a significant ruling calling for Israel to execute or implement all necessary actions to hinder activities as per the Genocide Convention. The Court denied South Africa’s appeal for an immediate cessation of hostilities in Gaza and it instructed Israel to authorize or enable access to the necessities and

¹ ‘Israel-Gaza war in maps and charts: Live tracker’, *Aljazeera*, <https://www.aljazeera.com/news/longform/2023/10/9/israel-amas-war-in-maps-and-charts-live>,
² ‘Gaza: Nearly 800,000 now displaced from Rafah’, *United Nations*, <https://news.un.org/en/story/2024/05/1149951>

emergency aid in the Gaza Strip.³ This preliminary judgement enforced legal obligations and required Israel to give an update within a month on actions taken to comply.

Following months of gathering evidence on May 20, 2024, Chief Prosecutor Karim Khan of the ICC filed a request for arrest warrants for Israel's Prime Minister Benjamin Netanyahu, Defense Minister Yoav Gallant and Hamas leaders Yahya Sinwar, Mohammed Diab Ibrahim al-Masri, and Ismail Haniyeh over the accusations of war crimes. In a statement, Chief Prosecutor stated that he has compelling evidence to suggest that these five members are responsible for crimes against humanity. It is important to note that the representatives of both sides rejected these allegations, criticising Khan's decision. However, a group of pre-trial judges will evaluate if there is enough evidence for the arrest warrants and ratified under Article 58(1). Subsequently, any state that is a signatory to the Rome Statute of ICC will be obliged to hand over the suspects to ICC for prosecution.

Reactions to ICC Prosecutor's Decision

Prime Minister Benjamin Netanyahu was enraged by the news and said, "I reject with disgust the comparison of the prosecutor in The Hague between Democratic Israel and the mass murderers of Hamas and Israel was waging a just war against Hamas, a genocidal terrorist organisation that perpetrated the worst attack on the Jewish people since the Holocaust."⁴

On the other hand, Hamas called for the revocation of assertions directed towards its leaders and stated that the prosecutor was "equating the victim with the executioner". The group also stated that the petition to issue the arrest warrants of Israeli leadership is excessively delayed as "the Israeli occupation committed thousands of crimes".⁵

President Joe Biden called the request for arrest warrants by the prosecutor "outrageous" and stressed that "there is no equivalence—none—between Israel and Hamas."⁶ China hoped that the Court would maintain a neutral stance. However, Russia was critical of the U.S. reaction and France with some other European countries (Belgium, Slovenia, Norway, Ireland, Switzerland, Denmark, and Spain) supported the action taken by Karim Khan, the ICC chief prosecutor.⁷ Germany, which is

³ 'Summary of the Order of 26 January 2024, *International Court of Justice*, , January 26, 2024. <https://www.icj-cij.org/node/203454>

⁴ Jeremy Bowen, "What the ICC arrest warrants mean for Israel and Hamas", *BBC*, May 22,2024. <https://www.bbc.com/news/articles/cw4490z75v3o>.

⁵ "What ICC arrest warrants mean for Israel and Hamas", *BBC News*, May 21,2024.<https://www.aol.com/icc-arrest-warrants-mean-israel-233029393>.

⁶ Ibid.

⁷ "Shahrokh Saei, "Israeli criminals in ICC's crosshairs", *Tehran Times*, May 21, 2024.

regarded as Israel's strong supporter in Europe, also stressed that issuing arrest warrants for both Hamas leaders and Israeli officials within the same appeal might imply a false equivalence.⁸

Foreign Minister of Oman Badr bin Hamad al-Busaidi and his Jordanian counterpart, Ayman Safadi embraced Khan's appeal and emphasized the imperative of respecting the ICC's actions.

Turkish Justice Minister Yilmaz Tunc commended Karim Khan for his actions and described the action as "constructive, though it comes late."⁹

The rightwing organisations like Al Haq, Al Mezan and Centre for the Human Rights, Palestine, called the action a "crucial step" towards putting an end to Israel's ruthless onslaught in Gaza and called it "tireless efforts by Palestinian and international civil society organisations demanding the issuance of arrest warrants."¹⁰

The Associate Director of the Human Rights Watch Balkees Jarrah in his statement said that

"Karim Khan's decision to seek arrest warrants for five people for grave international crimes committed in Israel and Palestine since October 7 in the face of pressure from US lawmakers and others reaffirms the crucial role of the International Criminal Court. Victims of serious abuses in Israel and Palestine have faced a wall of impunity for decades. This principled first step by the prosecutor opens the door to those responsible for the atrocities committed in recent months to answer for their actions at a fair trial. ICC member countries should stand ready to resolutely protect the ICC's independence as hostile pressure is likely to increase while the ICC judges consider Khan's request."¹¹

Moussa Faki Mahamat, Chairperson African Union's Commission considered the petition against Israeli authorities to be highly reasonable and said that 'it should have been done earlier'.¹²

<https://www.tehrantimes.com/news/498849/Israeli-criminals-in-ICC-s-crosshairs>

⁸ "West divided over ICC arrest warrants for Netanyahu", Gallant, *Middle East Monitor*, May 22, 2024.

<https://www.middleeastmonitor.com/20240522-west-divided-over-icc-arrest-warrants-for-netanyahu-gallant/>

⁹ West divided over ICC arrest warrants for Netanyahu, Gallant", *Middle East Monitor*, May 22, 2024.

<https://www.middleeastmonitor.com/20240522-west-divided-over-icc-arrest-warrants-for-netanyahu-gallant/>

¹⁰ "World reacts to ICC prosecutor seeking Israel, Hamas arrest warrants", *Al Jazeera*, May 20, 2022.

<https://www.aljazeera.com/news/2024/5/20/world-reacts-to-icc-prosecutor-seeking-israel-hamas-arrest-warrants>

¹¹ Israel/Palestine: ICC Prosecutor Requests Arrest Warrants, Human Rights Watch, May 20, 2024.

<https://www.hrw.org/news/2024/05/20/israel/palestine-icc-prosecutor-requests-arrest-warrants>

¹² "West divided over ICC arrest warrants for Netanyahu, Gallant", *Middle East Monitor*, May 22, 2024.

<https://www.middleeastmonitor.com/20240522-west-divided-over-icc-arrest-warrants-for-netanyahu-gallant/>

The ICC's Prosecution Record and Significance and Wider Implications

Since its inception, the ICC has issued 46 arrest warrants nearly half of them were taken into ICC custody and underwent court proceedings. Seven individuals including the former Libyan leader Muammar Gaddafi passed away before ICC trial proceedings. Presently 17 individuals are subject to arrest orders from the ICC who have not been arrested. President Putin of Russia is also one of them whose arrest warrants were issued in March 2023.

The custody of the accused is essential for any prosecution to move on with a trial because the ICC is not allowed to prosecute people in absentia (Article 63), so custody of the accused is key for any prosecution to proceed to trial. The ICC relies on states' cooperation for the enforcement of all its decisions, including the execution of arrest warrants.

According to the regulations of the ICC, the United Nations Security Council (UNSC) can pass a resolution that would put a hold on an investigation or prosecution for a year, with the option to extend it for an indefinite period. When a state has not complied with its obligation to detain a person under an ICC warrant, they have generally been subject to limited procedural repercussions. Using their current investigations or trials concerning the same persons and similar alleged offences, Israel and the Palestinian authorities might both formally request that the prosecutor's office postpone the case.

The prosecutor is then able to determine if the state's inquiries are legitimate and temporarily halt the case. The prosecutor may request Court permission to restart the inquiry if they believe the national investigations are insufficient.

The Rome Statute's procedure for carrying out trials for the most serious international offences typically requires a long time to guarantee that the highest requirements of international criminal law are followed, minimising the potential of suspects being detained. This thorough procedure includes a number of steps, including gathering and keeping track of reliable evidence, which can be challenging in areas of ongoing conflict and may require governmental approval to enter some areas.¹³

The arrest warrant request is noteworthy because it is the first time the ICC's Office of the Prosecutor has brought accusations against a head of the country who has the backing of Western countries. The top prosecutor has been explicitly threatened, and twelve U.S. senators have warned

¹³ Stephanie van den Berg, 'What do ICC arrest warrants mean for Israel and Hamas leaders?', Reuters, <https://www.reuters.com/world/middle-east/what-happens-after-icc-prosecutor-seeks-warrants-israel-gaza-conflict-2024-05-20/>, Accessed May 22, 2024.

against seeking convictions against Israeli leaders. Despite this, the decision has been taken. When the warrants for arrest are granted, it may further isolate Israel internationally and hasten the increasing call for Netanyahu to step down from office and it can result in difficult diplomatic situations.¹⁴ As stipulated by the Rome Statute, prosecutions pertaining to the most serious crimes of concern to the world community are often held over a period of years, provided that the suspects are caught.¹⁵

It might take weeks or months for an ICC judicial committee to determine if there is enough evidence to issue arrest warrants at this point. Even if it is unlikely that a head of state will ever be arrested or convicted, issuing warrants for their arrest can limit their power. Similarly, at that point, states who have ratified the Rome Statute of the ICC are entitled to imprison the men, if they had a chance. The U.S., China, and Russia are not among the 124 signatories. Israel has also not signed. However, because the Palestinians are signatories, the ICC has decided that it is legally permitted to try crimes committed during the conflict.¹⁶

Consequently, this has turned into a political upheaval for Israel and its international friends, irrespective of the result. The Israeli government's top officials will become wanted persons whenever such warrants are issued. However, there will be both local and international repercussions.

¹⁴ 'Experts react: The ICC prosecutor wants Netanyahu and Hamas leaders arrested for war crimes. What's next?', Atlantic Council, <https://www.atlanticcouncil.org/blogs/new-atlanticist/experts-react/experts-react-t> Accessed May 22, 2024.

¹⁵ 'Experts react: The ICC prosecutor wants Netanyahu and Hamas leaders arrested for war crimes. What's next?', Atlantic Council, <https://www.atlanticcouncil.org/blogs/new-atlanticist/experts-react/experts-react-t> Accessed May 22, 2024.

¹⁶ Osama Al Sharif, 'Gantz's challenge to Netanyahu and the ICC: What comes next?', Arab News, <https://www.arabnews.com/node/2514291>, Accessed May 22, 2024.