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27 August 2024

Dear Mr Khan

Applications for warrants for the arrest of Benjamin Netanyahu and Yoav Gallant

As you may recall, UK Lawyers for Israel (“UKLFI”) is an association of lawyers who support Israel and seek the proper application of the law in matters relating to Israel.

We refer to the applications (the “**Applications**”) you have made for warrants for the arrest of Benjamin Netanyahu and Yoav Gallant. Although the Applications have not been published, you purported to summarise them in a public statement (the “**Statement**”) when you filed them on 20 May 2024. Assuming the Statement provides a fair and accurate summary, we are very concerned that the Applications appear to comprise false information and to omit material information and evidence contradicting that false information and/or otherwise exonerating the accused. These omissions include important material that has come to light since you submitted the Applications.

We respectfully emphasise and remind you (and other members of your Office) of your obligations, set out in more detail below and in the attached **Annex A**, to act impartially, to seek truth objectively, to investigate exonerating matters, not to mislead the Court, and to disclose to the Court all evidence that shows or tends to show innocence. These obligations arise not only under the various professional rules of the International Criminal Court (the “**ICC**”) applicable to you, but also under the professional rules of the Bar of England and Wales, of which you are a member. They are, of course, particularly

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important when presenting material to a court on an *ex parte* basis.¹

We further note that these are continuing obligations. In so far as material information has come to your attention after submitting the Applications, you are obliged to bring it to the attention of the Court as soon as is practicable.

You should already be aware of many of our concerns regarding the inaccuracy and omissions of the Applications from the observations² we have submitted to the Court as an *amicus curiae* under Rule 103 of the ICC's Rules of Procedure and Evidence, and the documents to which these observations refer. However, we set out our concerns in further detail below. As you must appreciate, our concerns go far beyond a few minor details: it appears to us from your Statement that the grounds of the Applications are based in their entirety on false information.

You should also be aware that our concerns have been corroborated and supplemented by observations independently submitted to the Court under Rule 103 by the High Level Military Group (HLMG),³ Prof. Steven E. Zipperstein,⁴ Prof. David Chilstein,⁵ and the Canadian and World Unions of Jewish Students (CUJS and WUJS).⁶

In these circumstances, we respectfully submit that you should immediately ask Pre-Trial Chamber I (the "PTC") not to take a decision on the Applications (or any other applications you may have made to arrest other Israelis on similar grounds) until you have fully reviewed the information and evidence we and others have provided regarding the inaccuracy of the allegations, and that you should then fully review this material, which may lead to you withdrawing the Applications (and any similar applications) or revising them to take this material into account. We would be happy to assist if you have any difficulties in accessing any of the information provided.

We are, of course, aware that the PTC may consider the concerns we have raised in our observations on inaccuracy filed under Rule 103. However, we note that you contend in your response to observations by interveners⁷ that our observations on the inaccuracy and omissions of your applications should be entirely disregarded by the Court. If you are right on this point, it makes it all the more important that you comply strictly with the professional obligations to which we refer. And even if you are wrong on this point, the possibility of the PTC considering our concerns does not in any way absolve you of your

¹ See *R (Martin Kay & anor) v Leeds Magistrates' Court* [2018] EWHC 1233 (Admin) at §§23-26 and 38 <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1233.html>, discussed further below

² ICC-01/18-272 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180922d0c.pdf> at §§22-31.

³ ICC-01/18-267 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180920f26.pdf>

⁴ ICC-01/18-261 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18091a5d6.pdf> at §§24-26

⁵ ICC-01/18-285 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1809233ad.pdf>

⁶ ICC-01/18-295 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1809236dc.pdf> at §§11-15

⁷ ICC-01/18-346 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180949087.pdf> at §§33-36

obligations under the professional rules of the ICC and the Bar of England and Wales.

Moreover, the PTC restricted our observations on all issues, including jurisdiction and complementarity, as well as inaccuracies and omissions in the Applications, to 10 pages.⁸ This was insufficient even to set out the summary of the inaccuracies and contrary evidence contained in our request for leave.⁹ Even if the PTC considers our observations on inaccuracy and omissions, it is not clear that it will consider the summary in our request for leave, despite our citing it in the observations. These circumstances only emphasise the importance of your full compliance with the applicable professional rules.

We are dismayed to read that you intend to rest on the submissions you advanced in the Applications,¹⁰ despite our having shown that every allegation against Benjamin Netanyahu and Yoav Gallant set out in your published summary of them is false, and despite the highly relevant evidence that has emerged since you filed the Applications. With all due respect, this seems to us to manifest a serious lack of integrity on your part. We respectfully urge you to reconsider this position in the light of your professional obligations.

We wish to make clear that we have not changed our view, expressed in our observations to the PTC,¹¹ that the ICC has no territorial jurisdiction in this situation. We remain of the view that the majority decision of the PTC of 5 February 2021 was wrong for those and other reasons. We also maintain that the Applications violate the principle of complementarity. However, in this letter we set out only our concerns regarding false information and the omission of material information and evidence in the Applications.

In view of your request that the PTC urgently renders its decisions on the Applications to issue arrest warrants,¹² we ask you to respond within 7 days, indicating whether you propose to investigate the concerns we have raised. This will inform our consideration as to whether any (and, if so, what) further action might be appropriate on our part. We do not expect you to complete your investigation of our concerns within 7 days, but we hope that you will confirm that you will carefully investigate and respond to us substantively on the points we raise within a reasonable time frame, and that you have asked the PTC not to take any decision on the Applications (or any other applications on similar grounds) in the meanwhile.

Given the importance of the concerns we raise and the urgency you have requested of the PTC, we intend to treat this as an open letter and may publish the fact that we have sent it at any time.

⁸ ICC-01/18-249 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1809006d1.pdf> at §§12-13

⁹ ICC-01/18-234-SECRETEExp-Anx <https://www.uklfi.com/wp-content/uploads/2024/07/Request-for-leave-to-make-observations-on-accuracy-.pdf> §§12-47

¹⁰ ICC-01/18-346 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180949087.pdf> §36

¹¹ ICC-01/18-92 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01055.PDF and ICC-01/18-272 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180922d0c.pdf>

¹² ICC-01/18-346 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180949087.pdf> §114

The Statement

As mentioned above, we assume that the Statement provides a fair and accurate summary of the content of the Applications. If, however, the Statement is not a fair and accurate summary of the Applications, its publication itself breached applicable professional rules.¹³ Such breaches would be particularly serious in view of the sensitivity and profile of the subject and the propensity for false allegations defaming Israel to promote religious and racial hatred in the UK and around the world.¹⁴

The Statement as posted on the ICC's website¹⁵ included a link to a "*Report of the Panel of Experts in International Law*" of the same date (the "**Report**")¹⁶ which sheds some further light on the content of the Applications. We note that the Report states that "*each Panel Member was asked to assess objectively the material provided to them by the Prosecutor*" and that "*Panel members carefully reviewed each of the applications for arrest warrants, as well as underlying evidence, including witness statements, expert evidence and authenticated videos and photographs obtained by investigators.*" We understand from this that the Report is based on the factual information and evidence that your Office provided to them, and that they were not invited to look for or review other information or evidence. Accordingly, if the factual basis of the Applications is defective, this undermines the validity of both the Applications and the Report, since both are based on the same factual information.

According to the Statement, the evidence your Office has collected shows that "*Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival.*" You state that this has occurred through:

1. "*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*";
2. "*arbitrarily restricting the transfer of essential supplies - including food and medicine - through the border crossings after they were reopened*";
3. "*cutting off cross-border water pipelines from Israel to Gaza*", which you state are "*Gazans' principal source of clean water*", "*for a prolonged period beginning 9 October 2023*";
4. "*cutting off and hindering electricity supplies from at least 8 October 2023 until today*";

¹³ See the further discussion below and Annex A.

¹⁴ See e.g. <https://www.dailymail.co.uk/news/article-13067355/Jewish-university-chaplain-forced-hiding-receiving-hundreds-death-threats-against-family-role-IDF-reservist.html>

¹⁵ <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>

¹⁶ <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf>.

5. *“other attacks on civilians, including those queuing for food”;*
6. *“obstruction of aid delivery by humanitarian agencies”;* and
7. *“attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza”.*

You submit 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 in Gaza”.*

You claim that *“The effects of the use of starvation as a method of warfare ... are acute, visible and widely known, and have been confirmed by multiple witnesses interviewed by [your] Office, including local and international medical doctors”.* You say: *“They [these effects] include malnutrition, dehydration, profound suffering and an increasing number of deaths among the Palestinian population, including babies, other children, and women”.* You assert that *“Famine is present in some areas of Gaza and is imminent in other areas”.* You quote a post on X by the UN Secretary General of 18 March 2024 which alleged: *“1.1 million people in Gaza are facing catastrophic hunger – the highest number of people ever recorded – anywhere, anytime”.*¹⁷

The Report appears to confirm that the basis of the Applications is the allegation of *“intentionally using starvation of civilians as a method of warfare”* and includes other alleged crimes *“resulting from or associated with the systematic deprivation of objects indispensable to the survival of Palestinian civilians in Gaza.”* We also note from your Statement that your office is continuing inquiries in relation to *“the large-scale bombing that has caused and continues to cause so many civilian deaths, injuries and suffering Gaza”.*

We infer from this that the Applications as they stand do not allege crimes in relation to bombing or other military action except where it is said to form part of the deliberate obstruction of aid delivery. We will not therefore address the widespread misinformation in relation to bombing and casualties generally in this letter. However, we take the opportunity to draw your attention to the fact that multiple studies, articles and posts have shown that Palestinian casualty figures produced by the Hamas-controlled Gaza ministries and circulated by the UN during this war have very likely been fabricated and/or manipulated, as regards both overall totals and what proportions of them were men, women or children.¹⁸ Moreover, these casualty figures do not distinguish between civilians and combatants. It appears from the information currently available that the ratio of civilians to combatants killed in the current war in the Gaza Strip is in fact much lower

¹⁷ <https://x.com/antonioguterres/status/1769827656940278191>

¹⁸ Analyses of the Palestinian casualty statistics and other points made in this paragraph are discussed and relevant references cited by Jonathan Turner, *Briefing Note on Palestinian Casualty Figures*, UKLFI Charitable Trust 12/8/2024 <https://www.uklfi.com/wp-content/uploads/2024/08/Palestinian-Casualty-Figures-Briefing-Note-v2.pdf>

than in other urban armed conflicts worldwide in recent years, despite the difficulty of fighting terrorists deeply entrenched in, around and underneath the civilian population. This and other evidence¹⁹ indicate that the Israeli forces have taken exceptional care to limit civilian casualties.

The evidence

Despite your claim that your Office has “*worked painstakingly to separate claims from facts and to soberly present conclusions based on evidence*” and that you have been guided by your obligation to “*investigate incriminating and exonerating evidence equally*”, it appears from your Statement that the Applications did not take into account publicly available evidence, including official documents, that contradict the allegations you made. Moreover, since the submission of the Applications, considerable new material has become available, and it is your responsibility to ensure that the Court is updated with this information before it reaches its decision on the Applications.

We address below each of the allegations set out in the Statement in turn. **Annex B** provides a detailed review of reports on whether there has been a famine in the Gaza Strip, as alleged in the Statement.

Border crossings

You allege that Israel imposed “*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*”.

However, the key facts up to and including the end of May 2024²⁰ were as follows, according to official figures and statements released by the Israeli Government Department, Coordination of Government Activities in the Territories (“**COGAT**”), as well as other publicly available information cited below:

- (1) The Rafah crossing is between the Gaza Strip and Egypt (not Israel),²¹ as you no doubt recall from your visit to the crossing.²² Egyptian forces have remained in control of the Egyptian side of the crossing at all times since 8 October 2023. When Egypt is unwilling to allow goods through the Rafah crossing, Israel cannot force it to do so, short of starting a war with Egypt. Israeli forces were not present on either side of the

¹⁹ Maj. John Spencer, *Israel Has Created a New Standard for Urban Warfare. Why Will No One Admit It?*, Newsweek 25/3/2024 <https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-1883286>; High Level Military Group, Observations, ICC-01/18-267 <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180920f26.pdf> §§20-23

²⁰ We have focused our examination of your allegations on the period down to the end of May 2024 because your applications were filed and your statement was made on 20 May 2024. We therefore assume that you are not relying on alleged crimes after that date to justify the Applications.

²¹ <https://www.google.com/maps/place/Rafah+Crossing/@31.2481789,34.2568488,12z/data=!4m6!3m5!1s0x14fd93842067f5cd:0x330d09c6cad7ca73!8m2!3d31.2481743!4d34.2594237!16s%2Fg%2F11m0rkjcnh?entry=ttu>

²² <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>

Rafah crossing prior to 7 May 2024. Israeli forces took control of the Gaza Strip side of the Rafah crossing on 7 May 2024 and have remained in control of that side of the crossing since then.²³

The Rafah crossing was open on 8 October 2023,²⁴ but closed by Egypt (not Israel) between 9 October 2023 and 20 October 2023.²⁵ It was reopened for humanitarian supplies on 21 October 2023²⁶ and remained open until 6 May 2024.²⁷ During this period trucks were transferred from Israel to the Egyptian side of the Rafah crossing on all dates except most Saturdays²⁸ and 26-27 October 2023; 20 November 2023; 2, 16, 18, 19, 23 and 27 February 2024; 5 March 2024; and 23 and 29 April 2024.²⁹ Thus, apart from most Saturdays,³⁰ there were only 12 days out of the 200 between 21 October 2023 and 6 May 2024 on which trucks were not transferred to the Egyptian side of the Rafah crossing. Throughout this period large quantities of humanitarian supplies were regularly transferred through the Rafah crossing into the Gaza Strip.³¹

The Rafah crossing has been closed by Egypt since 7 May 2024 despite Israel's requests to open it and willingness to keep it open on the Gaza Strip side.³²

²³ Israel Ministry of Foreign Affairs, *Swords of Iron: Select IDF Spokesperson/Cogat updates* <https://www.gov.il/en/pages/swords-of-iron-select-idf-spokesperson-cogat-updates#MAY%202024>

²⁴ UN OCHA, reliefweb, *Escalation in the Gaza Strip and Israel, Flash Update #2* <https://reliefweb.int/report/occupied-palestinian-territory/escalation-gaza-strip-and-israel-flash-update-2-enarhe>

²⁵ Nadeen Ebrahim, *The Last Remaining Exit for Gazans Is through Egypt. Here's Why Cairo Is Reluctant to Open It*, CNN 20/10/2023. <https://edition.cnn.com/2023/10/13/middleeast/egypt-rafah-crossing-gaza-palestinians-mime-intl/index.html>.

²⁶ COGAT, X, 23/10/2023 <https://x.com/cogatonline/status/1716493685523648820>

²⁷ <https://english.ahram.org.eg/NewsContent/1/1234/523140/Egypt/Foreign-Affairs/Rafah-crossing-between-Egypt-and-Gaza-operating-no.aspx>

²⁸ Transfers were made to the Egyptian side of the Rafah crossing on Saturdays until 23 December 2023 except 28 October and 18 November 2023: see the document "Humanitarian Aid" posted by COGAT at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip> (bottom right), "Crossings" tab. It is helpful to sort the manifest by date or by crossing then date.

²⁹ COGAT, "Humanitarian Aid" posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, "Crossings" tab

³⁰ Closure of the Kerem Shalom and Nitzana crossings on Saturdays was agreed between Israel, the US, Egypt and the UN to facilitate the UN's distribution of goods on the Gaza Strip side of the Kerem Shalom crossing and the reception of goods on the Egyptian side of the Rafah crossing: COGAT, X, 19/1/24 <https://x.com/cogatonline/status/1748340624636432732>

³¹ IDF, *A Timeline of Our Humanitarian Aid Efforts* [https://www.idf.il/en/mini-sites/hamas-israel-war-24/our-humanitarian-aid-efforts/a-timeline-of-our-humanitarian-aid-efforts/#:~:text=24%2F11%2F2023&text=Today%20\(Friday%2C%2024%2F11,trucks%20following%20a%20security%20inspection](https://www.idf.il/en/mini-sites/hamas-israel-war-24/our-humanitarian-aid-efforts/a-timeline-of-our-humanitarian-aid-efforts/#:~:text=24%2F11%2F2023&text=Today%20(Friday%2C%2024%2F11,trucks%20following%20a%20security%20inspection).

³² Reuters, *As Egypt Refuses to Open Rafah Crossing, Much-Needed Humanitarian Aid Begins to Rot* in *The Times of Israel*, 24/5/2024 https://www.timesofisrael.com/liveblog_entry/as-egypt-refuses-to-open-rafah-crossing-much-needed-humanitarian-aid-begins-to-rot/; *Israel, Egypt Said Moving toward Reopening Rafah Crossing Amid Us Pressure*, *The Times of Israel*, 30/5/2024 <https://www.timesofisrael.com/israel-egypt-said-to-agree-to-reopen-rafah-crossing-following-us-pressure/>; Reuters, *Egypt demands Israel withdraws from Rafah crossing for it to operate again, sources say*, 2/6/24 <https://www.reuters.com/world/middle-east/egypt-demands-israel-withdraws-rafah-crossing-it-operate-again-sources-say-2024-06-02/>

- (2) The Kerem Shalom crossing was closed by Israel following the attacks on 7 October 2023. It was reopened on 12 December 2023 for the inspection of goods to be transferred to Rafah,³³ and then for direct transfer of goods into the Gaza Strip on 17 December 2023.³⁴ Since then trucks have passed through it or through Gate 96 (an additional entry point opened by Israel for humanitarian aid on 12 March 2024³⁵) into the Gaza Strip on all dates except Saturdays and 22, 24, 26-28 December 2023; 25, 26 and 28 January 2024; 7-9, 16, 22 and 27 February 2024; 23 and 29 April 2024; and 6-8 May 2024.³⁶ Thus, apart from Saturdays, there were only 19 days out of the 167 days between 17 December 2023 and 31 May 2024 on which goods were not transferred through the Kerem Shalom crossing or Gate 96 into the Gaza Strip.
- (3) The Erez crossing was a pedestrian-only crossing prior to 7 October 2023 and had not been used to transfer humanitarian aid into the Gaza Strip since 2007.³⁷ The crossing was seriously damaged in the Hamas attacks on 7 October 2023.³⁸ Israel repaired it and added an adjacent goods crossing which opened for humanitarian aid on 1 May 2024.³⁹ Israel also built an additional crossing for humanitarian aid, Erez West, which opened on 12 May 2024.⁴⁰ Truckloads entered the Gaza Strip through one or other of the Erez crossings on all dates in May 2024, except Saturdays and 2-3, 9-10, 14 and

³³ COGAT, X, 11/12/2023 <https://x.com/cogatonline/status/1734295968357720408>; COGAT, X, 12/12/2023 <https://x.com/cogatonline/status/1734531403037966542>; COGAT, X, 12/12/2023 <https://x.com/cogatonline/status/1734653422882738328>

³⁴ Emily Rose, *Aid Enters Gaza through Israel's Kerem Shalom Crossing for First Time in War*. Reuters, 17/12/2023 <https://www.reuters.com/world/middle-east/aid-enters-gaza-through-israels-kerem-shalom-crossing-first-time-war-2023-12-17/>

³⁵ <https://x.com/IsraelMFA/status/1767871404534292575>; IPC Famine Review Committee, *Gaza Strip, June 2024* https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf p10

³⁶ COGAT, "Humanitarian Aid" posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, "Crossings" tab. The closure on 6-8 May 2024 followed a Hamas rocket attack on the crossing:

<https://x.com/cogatonline/status/1787155081420292605>; Emanuel Fabian, *IDF Says Kerem Shalom Crossing Reopened to Gaza Aid, Days after Attack Forced Closure*, The Times of Israel, 8/5/2024 https://www.timesofisrael.com/liveblog_entry/idf-releases-footage-of-crowds-rushing-aid-trucks-in-gaza-city-hamas-claims-104-killed/

³⁷ <https://www.ochaopt.org/data/crossings>.

³⁸ Emanuel Fabian, *Israel shows major damage to Erez Crossing with Gaza following Hamas assault*, The Times of Israel, 17/10/2023 https://www.timesofisrael.com/liveblog_entry/israel-shows-major-damage-to-erez-crossing-with-gaza-following-hamas-assault/

³⁹ COGAT, "Humanitarian Aid" posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, "Crossings" tab; Bachner, Michael, et al, *Israel opens Erez crossing to Gaza aid for first time as Blinken tours border*, The Times of Israel, 1/5/2024 <https://www.timesofisrael.com/israel-opens-erez-crossing-to-gaza-aid-for-first-time-as-blinken-tours-border/>

⁴⁰ COGAT, X, 12/5/2024 <https://x.com/cogatonline/status/1789686967589843327>; COGAT, "Humanitarian Aid" posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, "Crossings" tab; Emanuel Fabian, *Israel opens 3rd crossing into northern Gaza to 'increase aid routes' during war*, The Times of Israel, 12/5/2024 <https://www.timesofisrael.com/israel-opens-3rd-crossing-into-northern-gaza-to-increase-aid-routes-during-war/>

24 May.⁴¹ Some medical equipment was also transferred through the original Erez crossing on 17 April 2024.⁴²

- (4) JLOTS: Israel also encouraged the provision of the US built floating pier, JLOTS, and ensured its security from attack by Palestinian terrorist groups.⁴³ Use of the pier to deliver aid commenced on 17 May 2024. Unfortunately, serious difficulties were encountered due to stormy weather, resulting in interruptions in its use, repeated repairs, and its eventual dismantling.⁴⁴ Nevertheless, nearly 20 million pounds (8.8 million kg) of humanitarian aid were delivered into Gaza using the pier.⁴⁵ While this project was not as successful as hoped, the efforts made in themselves contradict the allegation that a total siege was imposed with the intention of depriving the civilian population of objects indispensable to human survival.
- (5) Airdrops: Israel also facilitated numerous air drops of humanitarian aid from 26 February 2024 onwards.⁴⁶

The information summarised out above is completely inconsistent with your Statement and with your Applications, assuming the Applications are fairly summarised in the Statement. Israel has not imposed a “total siege over Gaza ... from 8 October 2023”. Nor has there been a complete closure by Israel of the three crossing points for extended periods. Apart from the fairly short period from 9-20 October, at least one of the crossing points has been open on most dates since 8 October 2023. Since 17 December 2023, two or more crossing points have been open on most dates. Furthermore, the closures of the Rafah crossing point between 9 and 20 October 2023 and since 7 May 2024 were not

⁴¹ COGAT, “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, “Crossings” tab

⁴² COGAT, “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, “Crossings” tab

⁴³ JNS, *Netanyahu to AIPAC: I suggested idea of Gaza-aid sea route to Biden*, 18/3/2024 <https://www.jns.org/netanyahu-i-suggested-gaza-aid-sea-route-to-biden/>; Emanuel Fabian, *IDF says Israeli troops to secure Gaza aid pier that US is constructing*, The Times of Israel, 25/4/2024 https://www.timesofisrael.com/liveblog_entry/idf-says-israeli-troops-to-secure-gaza-aid-pier-that-us-is-constructing/; Emanuel Fabian, *IDF says its boosting forces to secure US Gaza aid pier*, The Times of Israel, 8/6/2024 https://www.timesofisrael.com/liveblog_entry/idf-says-its-boosting-forces-to-secure-us-gaza-aid-pier/

⁴⁴ Oren Lieberman et al, *US pier constructed off Gaza has broken apart*, CNN, 29/5/2024 <https://edition.cnn.com/2024/05/28/politics/us-gaza-pier-broken-apart/index.html>; Reuters, *Gaza pier resumes operations after pause due to weather, US officials say*, 11/6/2024 <https://www.reuters.com/world/middle-east/gaza-pier-resumes-operations-after-pause-due-weather-us-officials-say-2024-06-11/>; *US pier again removed from Gaza coast due to sea conditions, may not be reanchored*, The Times of Israel, 29/6/2024 <https://www.timesofisrael.com/us-pier-again-removed-from-gaza-coast-due-to-sea-conditions-may-not-be-reanchored/>

⁴⁵ Vice Admiral Brad Cooper, Press Briefing on Humanitarian Maritime Corridor in Gaza 19/7/2024, US Agency for International Development, <https://www.usaid.gov/news-information/speeches/jul-19-2024-press-briefing-humanitarian-maritime-corridor-gaza>

⁴⁶ COGAT <https://gaza-aid-data.gov.il/main/#:~:text=Since%20the%20start%20of%20the,Strip> under heading “Aerial Route; IDF, *A Timeline of Our Humanitarian Aid Efforts* [https://www.idf.il/en/minisites/hamas-israel-war-24/our-humanitarian-aid-efforts/a-timeline-of-our-humanitarian-aid-efforts/#:~:text=24%2F11%2F2023&text=Today%20\(Friday%2C%2024%2F11,trucks%20following%20a%20security%20inspection](https://www.idf.il/en/minisites/hamas-israel-war-24/our-humanitarian-aid-efforts/a-timeline-of-our-humanitarian-aid-efforts/#:~:text=24%2F11%2F2023&text=Today%20(Friday%2C%2024%2F11,trucks%20following%20a%20security%20inspection)

imposed by Israel; they were imposed by Egypt. The closure of the Erez crossing point in respect of humanitarian supplies until 1 May 2024 was not *imposed* by Israel; it existed because the terminal was not equipped for the transfer of goods and was also heavily damaged in the Hamas attack on 7 October 2023.

Your allegations appear to be an attempt to alter the facts to fit a mistranslation of an oral statement made by Yoav Gallant on 9 October 2023.⁴⁷ The statement has been widely translated as “*We are imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed.*” In fact, he said (in translation): “*We are imposing a complete siege on the City of Gaza ...*”. The words “עיר עזה” (“*City of Gaza*”) can be heard clearly on the recording. While the City of Gaza is the largest town in the Gaza Strip, it is not the whole of the Gaza Strip by any means. Closing the crossing points into the Gaza Strip, which are all at some distance from Gaza City, could not in the short term impose a “*complete siege*” on the City of Gaza.

Moreover, this statement should be considered in the context of other statements made by Yoav Gallant at this time. As demonstrated by Yair Rosenberg, Gallant repeatedly stated that the objective was to destroy Hamas, not the Palestinian people.⁴⁸

Whatever Yoav Gallant said, meant or intended on the second day after the terrible atrocities led by Hamas on 7 October 2023, the objective facts are that no total siege was imposed on Gaza City or the Gaza Strip and the three crossing points were not completely closed by Israel, certainly not for extended periods.

Arbitrary restrictions on transfer of humanitarian aid

You allege that Israel “*arbitrarily restrict[ed] the transfer of essential supplies - including food and medicine - through the border crossings after they were reopened*”. However, according to official Israeli documents, food was transferred to the Rafah crossing and/or through other crossings into the Gaza Strip on 191 of the 225 days between 21 October 2023 and the end of May 2024, while medical supplies were transferred on 175 days in this period.⁴⁹

Israel has not placed restrictions on humanitarian aid entering Gaza, including food, water and medical equipment.⁵⁰ On the contrary, numerous minutes of Israeli cabinet decisions

⁴⁷ <https://www.youtube.com/watch?v=WVPdSpCAB0>

⁴⁸ Yair Rosenberg, *What Did Top Israeli War Officials Really Say About Gaza?*, The Atlantic 21/1/2024; Yair Rosenberg, *How to Win an Argument but Lose the Plot*, The Atlantic, 5/2/2024 <https://www.theatlantic.com/international/archive/2024/02/clauidine-gay-israel-icj-context/677341/>.

⁴⁹ “Humanitarian Aid” posted at [https://govextra.gov.il/cogat/humanitarianefforts/home/#:~:text=Since%20the%20start%20of%20the,S](https://govextra.gov.il/cogat/humanitarianefforts/home/#:~:text=Since%20the%20start%20of%20the,Strip) [Strip](https://govextra.gov.il/cogat/humanitarianefforts/home/#:~:text=Since%20the%20start%20of%20the,SStrip), “Crossings” tab. It may be helpful to sort the manifest here by “Content”

⁵⁰ Adv. Galit Raguán, oral statement to ICJ, 12/1/2024, ICJ transcript §56 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>; COGAT, X, 11/11/2023 <https://x.com/cogatonline/status/1723430393959890956>; COGAT, X, 12/11/2023 <https://x.com/cogatonline/status/1723619482524950529>; COGAT, X, 31/12/2023 <https://x.com/cogatonline/status/1741365852828475883> and <https://x.com/cogatonline/status/1741515700131258629>;

record instructions to prevent any humanitarian disaster.⁵¹

Security checks on goods entering the Gaza Strip are required and justified to prevent the smuggling of weapons and other goods for military use, as has occurred in the past⁵² and has been attempted during the current war.⁵³ Nevertheless almost 99% of the thousands of trucks coordinated with the Israeli authorities have been approved by them for entry into the Gaza Strip, and most of the tiny percentage that were not approved were subsequently admitted following the removal of items suitable for military use.⁵⁴ Israel does not place a blanket ban on dual use items; these can be approved following security inspections.⁵⁵

According to the UN Office for the Coordination of Humanitarian Affairs (“OCHA”), in the whole of 2022, a total of 28,698 truckloads of human food products, hygiene and cleaning supplies and medical supplies (including humanitarian aid) entered the Gaza Strip, although only 3,936 truckloads were categorised as humanitarian aid.⁵⁶ By contrast, between 8 October 2023 and 31 May 2024 (236 days), Israel facilitated the entry of 32,767 truckloads of humanitarian aid.⁵⁷

Data downloaded from the Gaza Health Partners Logistics & Medical Supplies Dashboard⁵⁸ on 24 March 2024 show the delivery of large quantities of medical supplies, including insulin and anaesthetics,⁵⁹ contrary to your allegations in an interview reported in the *Sunday Times* on 25 May 2024.⁶⁰

This allegation also appears to be false and evidence contradicting it appears to have been

COGAT, X, 17/1/2024 <https://x.com/cogatonline/status/1747678088727589020>;

COGAT, X, 20/1/2024 <https://x.com/cogatonline/status/1748778546686747040>

⁵¹ Prof. Malcolm Shaw KC, oral statement to ICJ, 12/1/2024, ICJ transcript §41 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>

⁵² Adv. Galit Ragan, oral statement to ICJ, 12/1/2024, ICJ transcript §65 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>

⁵³ Jacob Magid, *Israeli officials: Oxygen concentrators for Gaza tunnels found hidden in aid shipment*, The Times of Israel, 3/11/2023 https://www.timesofisrael.com/liveblog_entry/israeli-officials-oxygen-concentrators-for-gaza-tunnels-found-hidden-in-aid-shipment/

⁵⁴ COGAT, X, 22/1/2024 <https://x.com/cogatonline/status/1749500352209039501>;

COGAT, X, 25/1/2024 <https://x.com/cogatonline/status/1750530118832021561>;

COGAT, X, 3/3/2024 <https://x.com/cogatonline/status/1764259044183687327>;

COGAT, X, 12/3/2024 <https://x.com/cogatonline/status/1767450722998599694>;

COGAT, X, 26/3/2024 <https://x.com/cogatonline/status/1772686962098381179>;

COGAT, X, 16/4/2024 <https://x.com/cogatonline/status/1780230694549045664>

⁵⁵ COGAT, X, 3/3/2024 <https://x.com/cogatonline/status/1764259044183687327>;

COGAT, X, 26/3/2024 <https://x.com/cogatonline/status/1772686962098381179>

⁵⁶ <https://www.ochaopt.org/data/crossings>.

⁵⁷ <https://gaza-aid-data.gov.il/main/#AidData>.

⁵⁸ <https://app.powerbi.com/view?r=eyJrIjoZDhkN2M2YWUOTFjMS00MGU0LTThiOGEtODJmOTRiNDZmOWQ1IiwidCI6ImY2MTBjMGIG3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOiJh9>

⁵⁹ https://www.uklfi.com/wp-content/uploads/2024/08/DataExport_032424.xlsx; Dr Mark Zloch, X, 24/3/2024 <https://x.com/MarkZloch/status/1771927041920663818>

⁶⁰ <https://www.thetimes.com/world/israel-hamas-war/article/icc-prosecutor-uk-didnt-blitz-the-ira-israel-needs-that-restraint-0sxjbv12g>.

ignored, contrary to your duties to the Court and as a member of the Bar of England and Wales.

Water pipelines

You further allege that “*The [total] siege [by Israel] also included cutting off cross-border water pipelines from Israel to Gaza*”, which you state are “*Gazans’ principal source of clean water*”, “*for a prolonged period beginning 9 October 2023*”. However, publicly available evidence, including from official sources, indicates that:

- (1) Prior to 7 October 2023, three pipelines from Israel provided no more than 10% of the fresh water used in the Gaza Strip. The other fresh water used by Gazans was mainly obtained from the aquifer, usually after desalination, or from the sea after desalination.⁶¹ A major expansion of the Rafah desalination plant was completed in June 2023⁶² and may have reduced the proportion of fresh water provided through the cross-border pipelines to significantly below 10%.
- (2) Two of the water pipelines into the Gaza Strip from Israel were damaged by Hamas on 7 October 2023.⁶³ The remaining working pipeline was closed by Israel on 9 October 2023 but was reopened on or about 15 October 2023.⁶⁴ A second pipeline was repaired and reopened by 29 October 2023.⁶⁵ These two pipelines together supplied 28.5 million litres of fresh water per day – nearly 13 litres per person in the whole of the Gaza Strip. Supply of fresh water was subsequently resumed through the

⁶¹ IDF, *Daily Recap: Hamas-Israel War October 29th, 2023 (19:30) – Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>; Jeremy Sharon, *Israel reopens second of three water pipelines into Gaza*, The Times of Israel, 29/10/2023 <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/>

⁶² UNICEF, *EU and UNICEF mark the completion of the final phase of the expansion of the Southern Gaza Seawater Desalination plant*, 5/6/2023 <https://www.unicef.org/sop/press-releases/eu-and-unicef-mark-completion-final-phase-expansion-southern-gaza-seawater>

⁶³ IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>; COGAT, X, 25/10/2023 <https://x.com/cogatonline/status/1717208085574340850>; Response of the State of Israel to the question posed by Judge Nolte at the oral hearing of 17 May 2024 on South Africa’s fourth request for provisional measures, 18/5/2024, para. 22 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240518-oth-01-00-en.pdf>

⁶⁴ Jacob Magid, *Israeli official confirms that Israel has resumed water supply to Gaza*, The Times of Israel, 15/10/2023 https://www.timesofisrael.com/liveblog_entry/us-says-israel-has-restored-water-supply-to-gaza/; Barak Ravid, *Israel resumes water supply to southern Gaza after U.S. pressure*, Axios, 15/10/2023 <https://www.axios.com/2023/10/15/israel-resumes-water-supply-to-southern-gaza-after-us-pressure>

⁶⁵ IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-hamas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>; COGAT, Swords of Iron: Humanitarian Report 29/10/2023 <https://govextra.gov.il/media/4f1ju5vz/humanitarian-report-29-october.pdf>; Jeremy Sharon, *Israel reopens second of three water pipelines into Gaza*, The Times of Israel, 29/10/2023 <https://www.timesofisrael.com/israel-reopens-second-of-three-water-pipelines-into-gaza/>

third water pipeline, following repairs, on or before 2 May 2024.⁶⁶

- (3) Truckloads of fresh water were also transferred to the Rafah crossing and/or through other crossings into the Gaza Strip on 165 of the 225 days between 21 October 2023 and the end of May 2024.⁶⁷ Israel has not restricted the supply of water through the crossings,⁶⁸ which have been open as stated above.
- (4) Water has also been supplied into the Gaza Strip through a pipeline from a desalination plant in Egypt opened on 18 December 2023.⁶⁹

Further details about water supplies are contained in Annex B, which shows that the Report of the Famine Review Committee (“FRC”) of the Integrated Food Security Phase Classification (“IPC”) of 18 March 2024 (the “**Second IPC Report**”) contained incomplete and misleading information regarding water supplies.⁷⁰

This allegation also appears to be false and evidence contradicting appears to have been ignored.

Electricity and fuel

You further allege that “*The [total] siege also included ... cutting off and hindering electricity supplies from at least 8 October 2023 until today [20 May 2024]*”. However, publicly available evidence, including from official sources, indicates that:

- (1) Prior to 7 October 2023, Israel supplied about half of the Gaza Strip’s electricity through 10 power lines. The remainder of the Gaza Strip’s electricity was provided by Gaza’s power station, individual generators and solar power. The use of solar power was very extensive. Since the mains electricity supply was unreliable, essential facilities and many other buildings had their own generators and/or solar panels.⁷¹
- (2) 9 out of the 10 power lines from Israel to Gaza were destroyed by Hamas on 7 October

⁶⁶ COGAT, Archive of daily updates, May 2, 2024 <https://gaza-aid-data.gov.il/main/archive/>; Response of the State of Israel to the question posed by Judge Nolte at the oral hearing of 17 May 2024 on South Africa’s fourth request for provisional measures, 18/5/2024, para. 22 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240518-oth-01-00-en.pdf>

⁶⁷ COGAT, “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip,> “Crossings” tab

⁶⁸ COGAT, X, 12/11/2023 <https://x.com/cogatonline/status/1723619482524950529>; Oral statement of Adv Omri Sender to ICJ, 12/1/2024, transcript page 51, §10 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>

⁶⁹ COGAT, X, 20/12/2024 <https://x.com/cogatonline/status/1737391562437296407>; Oral statement of Adv Omri Sender to ICJ, 12/1/2024, ICJ transcript, page 51 §10 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>,

⁷⁰ Annex B §§24-29

⁷¹ COGAT, *Energy sources in the Gaza Strip: An Overview*, 24/10/2023 <https://govextra.gov.il/media/uuspdhpx/energy-sources-in-the-gaza-strip-an-overview-24-october.pdf>; Will Todman et al, *Gaza's Solar Power in Wartime*, Center for Strategic and International Studies (CSIS), 21/11/2023 <https://www.csis.org/analysis/gazas-solar-power-wartime>;

2023 during its attacks on Israel.⁷² Mending them under risk of rocket and other fire from Palestinian terrorists in the Gaza Strip would have been dangerous and it is likely that the electricity workers would have refused to do it.⁷³

- (3) Following 7 October 2023, Hamas continued to use electricity to light and ventilate its military tunnels and other underground military facilities, to power its IT systems, and for other military uses.⁷⁴
- (4) In these circumstances Israel did not repair the power lines in the first few months of the war and did not supply mains electricity to the Gaza Strip through the sole remaining power line. However, on 7 October 2023 there were substantial reserves of fuel in the Gaza Strip, enabling the continued use of electricity generators.⁷⁵ Israel has facilitated regular transfers of fuel into the Gaza Strip since 15 November 2023.⁷⁶ In addition there has been sunshine on most days in the Gaza Strip since 8 October 2023, enabling solar power generation.⁷⁷ Electricity clearly remained available in Gaza for both essential and non-essential purposes, despite repeated claims by aid organisations that essential facilities were on the verge of closure due to the lack of electricity.⁷⁸

⁷² COGAT, X, 21/10/2023 <https://x.com/cogatonline/status/1715639057705775242>; COGAT, X, 17/10/2023 <https://x.com/cogatonline/status/1714214881719665018>; IDF, *Daily Recap: Hamas - Israel War October 29th, 2023 (19:30) - Day 23* <https://www.idf.il/en/mini-sites/idf-recaps-daily-summaries-of-the-amas-israel-war/hamas-war-daily-recaps/daily-recap-hamas-israel-war-october-29th-2023-19-30-day-23/>

⁷³ The Jerusalem Post, *Electric corp. union refuses to fix Gaza lines until Israelis returned*, 20/5/2021 <https://www.jpost.com/israel-news/electric-corp-union-refuses-to-fix-gaza-lines-until-israelis-returned-668615>

⁷⁴ COGAT, X, 29/10/2023 <https://x.com/cogatonline/status/1718590392717676692>; COGAT, X, 17/12/2023 <https://x.com/cogatonline/status/1736413454271934572>; Adv Galit Ragan, oral statement to ICJ, 12/1/2024, transcript page 48, §65 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>; Emanuel Fabian, *Directly beneath UNRWA's Gaza headquarters, IDF uncovers top secret Hamas data center*, The Times of Israel, 10/2/2024 <https://www.timesofisrael.com/directly-beneath-unrwas-gaza-headquarters-idf-uncovers-top-secret-hamas-data-center/>

⁷⁵ COGAT, *Energy sources in the Gaza Strip: An Overview*, 24/10/2023 <https://govextra.gov.il/media/uuspdhpx/energy-sources-in-the-gaza-strip-an-overview-24-october.pdf>; COGAT, X, 29/10/2023 <https://x.com/cogatonline/status/1718590392717676692>; Dr Elai Rettig, *Fuel Supply in Gaza – Needs and Uses*, BESA Center, 16/11/2023 <https://besacenter.org/fuel-supply-in-gaza-needs-and-uses/>

⁷⁶ COGAT, “Humanitarian Aid” posted at <https://govextra.gov.il/cogat/humanitarian-efforts/home/#:~:text=Since%20the%20start%20of%20the,Strip>, “Fuel” tab; Oral statement of Adv Omri Sender to ICJ, 12/1/2024, transcript page 51, §12 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>; COGAT X 25/11/2023 <https://x.com/cogatonline/status/1728412175742460192>; COGAT X 25/11/2023 <https://x.com/cogatonline/status/1728333071173259655>;

COGAT, X, 27/11/2023 <https://x.com/cogatonline/status/1729196356613587039>; COGAT, X, 28/11/2023 <https://x.com/cogatonline/status/1729579641457737920>; COGAT, X, 30/11/2023 <https://x.com/cogatonline/status/1730339148374872108>

⁷⁷ <https://www.timeanddate.com/weather/palestine/gaza/historic?month=11&year=2023> (data for other months can be accessed by selecting from the “pull-down” list in the upper right of the page)

⁷⁸ COGAT, X, 26/10/2023 <https://x.com/cogatonline/status/1717464616844906548>; COGAT, X, 4/11/2023 <https://x.com/cogatonline/status/1721091200134885873>

(5) Since 8 October 2023 Hamas has seized fuel in the Gaza Strip, including from hospitals, and prevented civilians from accessing it.⁷⁹

In the light of the well-substantiated facts set out above, your allegation regarding electricity supplies is grossly misleading.

Alleged attacks on civilians queuing for food

The Statement goes on to allege: “*This [the alleged total siege] took place alongside other attacks on civilians, including those queuing for food.*” The alleged attacks are not identified in the Statement. However, a highly publicised incident in which the IDF fired on Palestinians apparently seeking food supplies was that in Al Rashid Street in Gaza City on 29 February 2024. It seems likely that this incident was included in, and probably the focus of, this allegation.

If so, the Statement is misleading in describing the civilians as “*queuing for food*”. It is clear from video footage⁸⁰ that there were very large crowds around the trucks and that they were not in an orderly queue. The IDF estimated that the crowds numbered about 12,000. The crowds stopped the trucks as they tried to progress northwards along Al Rashid Street in Gaza City and started to loot the goods.⁸¹

The IDF’s investigation found that some of the crowd approached to within a few meters of IDF troops tasked with facilitating safe passage for the convoy. The IDF troops believed this posed a real threat to them and fired at these members of the crowd. However, according to the IDF’s investigation, most of the Palestinian casualties resulted from the stampede rather than the IDF’s fire.⁸²

Failure to consider the outcome of the IDF’s investigation properly and to draw it to the attention of the Court would breach your obligations under the Code of Conduct of the

⁷⁹ COGAT, X, 16/10/2023 <https://x.com/cogatonline/status/1713896540874440791>;
IDF, X, 17/10/2023 <https://x.com/IDF/status/1714320476825112808>;
COGAT, X, 24/10/23 <https://x.com/cogatonline/status/1716706205542797601>;
COGAT, X, 29/10/2023 <https://x.com/cogatonline/status/1718590392717676692>;
COGAT, X, 1/11/2023 <https://x.com/cogatonline/status/1719756266006810820>;
COGAT, X, 25/3/2024 <https://x.com/cogatonline/status/1772316633605812511>; Oral statement of Adv Galit Rague to ICJ, 12/1/2024, transcript page 48 §65 <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>

⁸⁰ Emanuel Fabian, *IDF releases footage of crowds rushing aid trucks in Gaza City; Hamas claims 104 killed*, The Times of Israel, 29/2/2024 https://www.timesofisrael.com/liveblog_entry/idf-releases-footage-of-crowds-rushing-aid-trucks-in-gaza-city-hamas-claims-104-killed/

⁸¹ Uzi Baruch, *IDF investigation reveals: Thousands of Gazans looted, no shots fired at convoy*, Arutz Sheva 8/3/2024 <https://www.israelnationalnews.com/news/386437>; Maariv Online, *Israel has evidence that Gazans killed in February aid disaster died from overcrowding*, The Jerusalem Post, 1/4/2024 <https://www.jpost.com/israel-hamas-war/article-794797>

⁸² Maariv Online, *Israel has evidence that Gazans killed in February aid disaster died from overcrowding – report*, The Jerusalem Post, 1/4/2024 <https://www.jpost.com/israel-hamas-war/article-794797>; Danielle Greyman-Kennard, *Majority killed by stampede in Gaza aid convoy catastrophe, IDF probe finds*, The Jerusalem Post, 3/3/2024 <https://www.jpost.com/israel-hamas-war/article-789947>; Uzi Baruch, *IDF investigation reveals: Thousands of Gazans looted, no shots fired at convoy*, Arutz Sheva, 8/3/2024 <https://www.israelnationalnews.com/news/386437>

Bar of England and Wales as well as applicable Regulations of the ICC.

The Statement also makes no mention of attacks by Hamas and other Palestinian armed groups on civilians, including those queuing for food.⁸³ This is relevant here because the IDF may have been wrongly blamed for attacks by armed Palestinians, whether by mistake, or through a prejudiced assumption that Israel is to blame for anything bad that happens, or because witnesses fear to accuse Hamas or other gunmen or even wish to seek favour by blaming Israel.

Aid delivery

You further allege that *“This [the alleged total siege by Israel] took place alongside obstruction of aid delivery by humanitarian agencies”*. However, publicly available evidence, including from official sources, indicates that:

- (1) Israel has not obstructed the delivery of aid by humanitarian aid agencies in the Gaza Strip, but humanitarian agencies have been unable to deliver the aid at the same pace as Israel has been able to inspect and clear it for delivery.⁸⁴
- (2) Between 7 October 2023 and 15 April 2024, the Israeli authorities (COGAT) approved 84.8% of requests for the coordination of humanitarian operations in Gaza.⁸⁵
- (3) Hamas and other armed groups have frequently looted humanitarian aid, resulting in its diversion away from those who most need it, its resale at prices which the poorest

⁸³ IDF, X, 9/12/2023 <https://x.com/IDF/status/1733577626705416303>;

COGAT, X, 4/2/2024 <https://x.com/cogatonline/status/1754011689022832663>

⁸⁴ COGAT, X, 12/12/2023 <https://x.com/cogatonline/status/1734666375837204902>;
COGAT, X, 26/12/2023 <https://x.com/cogatonline/status/1739607681604739133>;
COGAT, X, 29/12/2023 <https://x.com/cogatonline/status/1740789532247953888>;
COGAT, X, 30/12/2023 <https://x.com/cogatonline/status/1741056770405965840>;
COGAT, X, 3/1/2024 <https://x.com/cogatonline/status/1742591911800578126>;
COGAT, X, 10/1/2024 <https://x.com/cogatonline/status/1744994858618568861>;
COGAT, X, 19/1/2024 <https://x.com/cogatonline/status/1748340624636432732>;
COGAT, X, 23/1/2024 <https://x.com/cogatonline/status/1749904243748749753>;
COGAT, X, 1/2/2024 <https://x.com/cogatonline/status/1753134957671661728>;
COGAT, X, 5/2/2024 <https://x.com/cogatonline/status/1754519258887819392>;
COGAT, X, 15/2/2024 <https://x.com/cogatonline/status/1758187447681155365>;
COGAT, X, 26/2/2024 <https://x.com/cogatonline/status/1762150029777621051>;
COGAT, X, 14/3/2024 <https://x.com/cogatonline/status/1768290855834497126>;
COGAT, X, 20/3/2024 <https://x.com/IDF/status/1770528079460388957>;
COGAT, X, 10/4/2024 <https://x.com/cogatonline/status/1777987692275306770>;
COGAT, X, 24/4/2024 <https://x.com/cogatonline/status/1783162012718993916>;
COGAT, X, 24/5/2024 <https://x.com/cogatonline/status/1793919142548083022>;

Debbie Mohnblatt, *COGAT: Israel Can Increase Aid to Gaza, but UN Logistics Stand in the Way*, The Media Line 15/12/2023 <https://themedialine.org/top-stories/cogat-israel-can-increase-aid-to-gaza-but-un-logistics-stand-in-the-way/>; Lazar Berman, *COGAT pushes UN to ‘scale up’ and distribute aid piling up at Gaza border crossings*, The Times of Israel 20/6/2024 https://www.timesofisrael.com/liveblog_entry/cogat-pushes-un-to-scale-up-and-distribute-aid-piling-up-at-gaza-border-crossings/

⁸⁵ COGAT, X, 15/4/2024 <https://x.com/cogatonline/status/1779918614126092657>

cannot afford, financing of Hamas, and serious dangers to aid workers.⁸⁶ Ignoring this problem appears to have led you to assume, wrongly, that any failure of aid to reach those in need of it must be evidence of an Israeli conspiracy to starve the civilian population as a method of warfare.

Again, you have an obligation to consider the above matters and all other evidence contradicting your allegations. It appears from the Statement that you have not done so.

Attacks on aid workers

You claim that “*This [the alleged total siege by Israel] took place alongside ... attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza.*” Again, these alleged attacks are not identified in the Statement. However, the most publicised incident in which the IDF fired on aid workers was the strike on a three-car convoy of World Central Kitchen (“WCK”) staff in North Gaza on 1 April 2024, resulting in the death of seven aid workers.

Publicly available evidence, including from official sources, indicates that:

- (1) The incident took place against the background of frequent looting of aid by Hamas and other armed groups.⁸⁷
- (2) An investigation by the IDF found that IDF commanders had ordered the strike after wrongly concluding that the cars were being used by Hamas terrorists. In doing so, the commanders had failed to comply with the IDF’s rules of engagement and standard operating procedures. They were dismissed and Israel apologised.⁸⁸
- (3) The Australian government appointed Air Chief Marshal Mark Binskin to advise on the sufficiency and appropriateness of measures taken by Israel to investigate, report and respond to the incident, including holding those responsible to account.⁸⁹ Amongst other matters, his detailed report of 2 August 2024⁹⁰ notes that locally-

⁸⁶ COGAT, X, 16/10/2023 <https://x.com/cogatonline/status/1713896540874440791>;
IDF, X, 17/10/2023 <https://x.com/IDF/status/1714320476825112808>;
IDF, X, 9/12/2023 <https://x.com/IDF/status/1733577626705416303>;
COGAT, X, 8/1/2024 <https://x.com/cogatonline/status/1744366954167533829>;
COGAT, X, 4/2/2024 <https://x.com/cogatonline/status/1754011689022832663>; Adv Galit Raguan, oral statement to ICJ, 12/1/2024, ICJ transcript page 48, §65, <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240112-ora-01-00-bi.pdf>; Vice Admiral Brad Cooper, Press Briefing on Humanitarian Maritime Corridor in Gaza 19/7/2024, US Agency for International Development, <https://www.usaid.gov/news-information/speeches/jul-19-2024-press-briefing-humanitarian-maritime-corridor-gaza>; *Gaza aid trucks stolen by gunmen and looted, as convoys start crossing from Israel*, The Times of Israel, 17/12/2023 <https://www.timesofisrael.com/gaza-aid-trucks-stolen-by-gunmen-and-looted-as-convoys-start-crossing-from-israel/>

⁸⁷ See the references cited in previous footnote

⁸⁸ <https://www.idf.il/en/mini-sites/hamas-israel-war-24/all-articles/conclusion-of-the-investigation-into-the-incident-in-which-7-wck-employees-were-killed-during-a-humanitarian-operation-in-gaza/>

⁸⁹ <https://www.dfat.gov.au/publications/international-relations/special-adviser-public-report-government-israels-response-idf-attack-world-central-kitchen-aid-workers-gaza-monday-1-april-2024>

⁹⁰ <https://www.dfat.gov.au/sites/default/files/special-advisers-public-report-israels-response-wck-strikes->

contracted security personnel got on and into the trucks at the WCK Welcome Centre, and one of these on top of the trailer of the third truck fired into the air as they moved away from the Centre. This was misinterpreted by an Israeli commander as indicating that Hamas had hijacked the aid convoy. The presence of armed security personnel had not been notified or approved in the detailed coordination process between WCK and COGAT. Marshal Binskin's assessment, based on the information available to him, was that the IDF strike on the WCK aid workers was not knowingly or deliberately directed against the WCK.

- (4) WCK suspended its operations in the Gaza Strip following the strike but subsequently resumed and expanded them.⁹¹ Two other aid organisations, Anera and Project Hope, that also suspended operations in the Gaza Strip following the strike, rapidly resumed them.⁹² This suggests that your claim that Israeli attacks on aid workers “*forced many agencies to cease or limit their operations in Gaza*” is not accurate.

The facts and evidence set out above are plainly inconsistent with an allegation that the strike on the WCK vehicles was “*part of a common plan to use starvation as a method of war*”.

Allegations of famine

The Statement asserts: “*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’*”.

The quotation of the UN Secretary-General appears to be from a post by him on X on 18 March 2024. On that date, reports relating to the situation in the northern part of the Gaza Strip were published by the FRC⁹³ and the Famine Early Warning Systems Network (FEWS NET).⁹⁴ It appears that the Secretary General based his post on those reports and that you also relied on them.

However, as explained in detail in Annex B to this letter, it has been shown that those reports were based on fundamentally inadequate information. Amongst other significant failings, they omitted to take into account World Food Programme deliveries of flour to bakeries and privately contracted and/or commercial truck deliveries. Their conclusions

[august-2024.pdf](#)

⁹¹ Erin Gore, *World Central Kitchen Resuming Gaza Operations*, World Central Kitchen, 28/4/2024 <https://wck.org/news/chefs-for-gaza>; *Chefs for Gaza, WCK opens third Gaza Field Kitchen*, World Central Kitchen 14/5/2024 <https://wck.org/news/damians-kitchen>

⁹² Anera, *Anera Resumes Humanitarian Operations in Gaza*, 11/4/2024 <https://www.anera.org/press/anera-to-resume-humanitarian-operations-in-gaza/>; Project Hope, *Resuming Programming in Gaza Following Aid Worker Attacks*, 6/4/2024 <https://www.projecthope.org/news-stories/press-release/resuming-programming-in-gaza-following-aid-worker-attacks>

⁹³ https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Committee_Review_Report_Gaza_Strip_Acute_Food_Insecurity_Feb_July2024_Special_Brief.pdf

⁹⁴ https://fews.net/sites/default/files/2024-03/Gaza%20Targeted-Analysis-03182024-Final_0.pdf

were wrong and their predictions of imminent famine did not come to pass.⁹⁵

On 4 June 2024 the FRC published a Review⁹⁶ of the FEWS NET analysis of 18 March 2024 which concluded that “*The FRC does not find the FEWS NET analysis plausible for the current period*” and “*is unable to endorse the IPC Phase 5 (Famine) classification for the projection period*”. We appreciate that this Review was published after you filed the Applications, but it is now your professional duty to draw it to the attention of the Court, since it contradicts a key allegation on which, according to the Statement, the Applications are based.

Annex B also discusses further reports that supersede the reports of 18 March 2024, as well as other documents and analyses that refute the allegations of famine.⁹⁷ The full contents of these documents must be placed before the Court by you, with their relevance objectively explained, at the earliest practicable moment. They are wholly inconsistent with allegations that Israel created a famine in the Gaza Strip.

Allegations of starvation

You claim in the Statement that “*Israel has intentionally and systematically deprived the civilian population in all parts of Gaza of objects indispensable to human survival*”. You say that “*This occurred through the imposition of a total siege over Gaza*” comprising the elements discussed above. We have demonstrated above that all of those elements are false. The overall allegation is therefore without foundation.

You also claim that the alleged acts discussed above “*were committed as part of a common plan to use starvation as a method of war*”. Again, since the allegations as to the acts are false, the allegation of a conspiracy comprising them must fall.

You continue by asserting that “*The effects of the use of starvation as a method of warfare ... include malnutrition, dehydration, profound suffering and an increasing number of deaths among the Palestinian population, including babies, other children, and women*”.

These allegations do not appear to be based on data collected in a scientific manner. As regards the allegation of malnutrition, according to the Third IPC Report⁹⁸ discussed in Annex B, the malnutrition estimates are close to the baseline 4% prevalence rate in Gaza

⁹⁵ See Annex B §§16-38

⁹⁶ <https://www.un.org/unispal/document/famine-review-committee-ipc-4jun24>

⁹⁷ See particularly Naomi Fliss-Isakov et al, *Nutritional Assessment of Food Aid Delivered to Gaza via Israel during the ‘Swords of Iron’ War*, Working Paper published 24/5/2024 <https://biochem-food-nutrition.agri.huji.ac.il/arontroen/publications/nutritional-assessment-of-food-aid-delivered-to-gaza>; Israel Ministry of Foreign Affairs, *Transparency and Methodology Issues in the IPC Special Brief of 18 March 2024*, 29/5/2024 <https://www.gov.il/en/pages/transparency-and-methodology-issues-in-the-ipc-special-brief-of-18-march-2024>; FRC, *Gaza Strip* 25/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf

⁹⁸ FRC, *Gaza Strip* 25/6/2024 https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Famine_Review_Committee_Report_Gaza_June2024.pdf

before the war.⁹⁹ Furthermore, there does not appear to be any scientific evidence of an “*increasing number of deaths*” from starvation. The Second IPC Report, also discussed in Annex B, confirms that the analysis suggesting an increasing number of deaths from starvation has not been based on “*representative evidence of non-trauma mortality*” and that “*no direct measurements of [crude death rate] or [under five death rate] after trauma exclusion are currently available.*”¹⁰⁰

Moreover, despite the Gaza Ministry of Health claim that there have been 34 deaths since the beginning of the war allegedly caused by starvation, the chief paediatrician of Kamal Adwan hospital, where the majority of the starvation deaths have been reported, said that the cause of death in these cases was not lack of food or water, but intestinal infections.¹⁰¹ This anecdotal evidence should be put in context: based on the pre-war birth rate and infant mortality rate, around 1000 infants would have died in Gaza in the course of a year if there had not been any war.¹⁰²

Instead of relying on data collected in a scientific manner, the Statement asserts: “*The effects of the use of starvation as a method of warfare ... are acute, visible and widely known, and have been confirmed by multiple witnesses, including local and international medical doctors*”.

We infer that “*acute, visible and widely known*” refer to media coverage. You are obliged to consider and draw to the attention of the Court the unreliability of such evidence, especially in relation to a territory that has been and may remain under the control of a ruthless terrorist organisation, that has no compunction about severely punishing those who do not follow the regime line when speaking to media companies. Moreover, bearing in mind there are numerous mobile telephones in Gaza, there have not been photographs of many emaciated Gazans in the media. Indeed, based on our experience, the assertion that “*The effects of the use of starvation as a method of warfare ... are acute, visible and widely known*” is incorrect in relation to the Gaza Strip.

The statements of medical doctors who work or have worked in the Gaza Strip may also be unreliable, as shown by research regarding a number of such doctors who have made statements to media organisations.¹⁰³ Again, you are obliged to consider and draw this to the attention of the Court. Moreover, even if such statements provide evidence of particular cases of starvation, this would not show general starvation consistent with the use of starvation as a method of warfare, and nor would it show that Israel is responsible

⁹⁹ <https://www.nutritioncluster.net/sites/nutritioncluster.com/files/2024-02/GAZA-Nutrition-vulnerability-and-SitAn-v7.pdf#page=8>.

¹⁰⁰ https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Gaza_Strip_Acute_Food_Insecurity_Feb_July2024_Special_Brief.pdf, pp. 2, 27.

¹⁰¹ <https://www.telegraph.co.uk/global-health/terror-and-security/gaza-malnutrition-israel-war-famine-children/#:~:text=intestinal%20infections>.

¹⁰² <https://www.cia.gov/the-world-factbook/about/archives/2022/field/infant-mortality-rate/>.

¹⁰³ David Collier, *International media and the Hamas supporting Doctors of Shifa* <https://david-collier.com/doctors-shifa-hospital/>; David Collier, *BBC Verify – a hostile land of make believe – part one* <https://david-collier.com/bbc-verify/>; David Collier, X, 2/2/24 <https://x.com/mishtal/status/1753356777150611886>

for these particular cases. Responsibility could, for example, lie with Hamas for diverting aid. As observed above, there may be a prejudiced assumption that Israel is to blame for anything bad that happens.

Your professional obligations

BSB Handbook

You are registered as a practising barrister by the Bar Standards Board. You are also identified and promoted as a member of Temple Garden Chambers on its website. On the ICC's website you are identified as Karim A.A. Khan KC and the biographical description states "*Karim is a barrister and King's Counsel with more than 30 years of professional experience as an international criminal law and human rights lawyer.*" It adds that you are a Bencher of Lincoln's Inn.¹⁰⁴ In short, you are, and hold yourself out as, a practising member of the Bar of England and Wales.

As a practising barrister regulated by the Bar Standards Board, you must comply with the requirements set out in the BSB Handbook. We set out the relevant provisions in Annex A to this letter. Other members of your Office who are practising English barristers are also subject to the rules.¹⁰⁵

In our view you provide legal services within the meaning of these rules when acting as the Prosecutor of the ICC.

In applying these rules to your conduct as a prosecutor, particularly when making an *ex parte* application, we consider that regard should be had to the principles set out in *R (Kay and another) v Leeds Magistrates Court* [2018] EWHC 1233 (Admin):¹⁰⁶

"23. It is not disputed that...

(1) Whilst the Code for Crown Prosecutors does not apply to private prosecutions, a private prosecutor is subject to the same obligations as a Minister for Justice as are the public prosecuting authorities – including the duty to ensure that all relevant material is made available both for the court and the defence.

(2) Advocates and solicitors who have the conduct of private prosecutions must observe the highest standards of integrity, of regard for the public interest and duty to act as a Minister for Justice in preference to the interests of the client who has instructed them to bring the prosecution – owing a duty to the court to ensure that the proceeding is fair.

24. There is no doubt that the duty of candour applies to an ex parte application for

¹⁰⁴ <https://www.icc-cpi.int/about/otp/who-s-who/karim-khan>

¹⁰⁵ In this regard, the guidance gC4.1 regarding complicity in another person misleading the court should be noted.

¹⁰⁶ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1233.html>

the issue of summonses. In R v Grays Justices, ex parte Low 1988 3 AER 834 a refusal to dismiss summonses was quashed by this court because of a failure to comply with the duty of candour. Nolan J (as he then was), who gave the leading judgment, said at 837G (my emphasis):

... it is now established that the withholding of material information is in itself a critical factor in determining whether a summons should be set aside as an abuse of the process of the court...

25. More generally, authorities...variously describe the duty as being one of “full and frank disclosure” which “necessarily includes a duty not to mislead the judge in any material way” and which requires the disclosure to the court of “any material which is potentially adverse to the application” or “might militate against the grant” or which “may be relevant to the judge’s decision, including any matters which indicate that the issue....might be inappropriate”.

26. As Hughes LJ (as he then was) memorably put it in In re Stanford International Bank Limited [2011] Ch 33 at [191]:

“...In effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge....”

[...]

38. As this case demonstrates, the grant of summonses, typically conducted ex parte, can have far reaching consequences. Compliance with the duty of candour is the foundation stone upon which such decisions are taken. In my view, its importance cannot be overstated.”

It seems to us, with all due respect, that

- (1) On any view, the continuing publication of the Statement containing false allegations is in breach of Core Duties CD3 and CD5 as well as Rules 8 and 9
- (2) If the Statement is a fair summary of the Applications, in pursuing the Applications you are not acting with candour and are not complying with the requirements of the Handbook, including Core Duties CD1, CD3 and CD5, and Rules C3, C6, C8 and C9.
- (3) If, on the other hand, the Statement is not a fair summary of the Applications, then the Statement would be additionally misleading in misrepresenting the Applications (as well as making false allegations), in breach of CD3, CD5, Rule 8 and Rule 9.

ICC Professional Rules

We also set out in Annex A to this letter the relevant rules from the Rome Statute and the

various ICC Regulations and Codes of Conduct. These rules are also binding on other members of your Office.

As well as requirements of competence, integrity, probity, impartiality, fairness, honesty and truthfulness, we note that under Article 54(1)(a) of the Statute you must:

“In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally”

This is further elaborated in paragraph 49 of the Code of Conduct for the Office of the Prosecutor (“OTP”):

“... the Office shall investigate incriminating and exonerating circumstances equally in all steps involved in the planning and conduct of investigative and prosecutorial activities. In particular, Members of the Office must:

- (a) conduct investigations with the goal of establishing the truth, and in the interests of justice;*
- (b) consider all relevant circumstances when assessing evidence, irrespective of whether they are to the advantage or the disadvantage of the prosecution;*
- (c) ensure that all necessary and reasonable enquiries are made, and the results disclosed in accordance with the requirements of a fair trial, whether they point to the guilt or the innocence of the suspect.”*

With respect to these *ex parte* Applications, fulfilling your obligations would include at the very least drawing the Court’s attention to the information and evidence mentioned in this letter and Annex B, which are highly relevant to the decision you are asking the Court to make. You must draw specific attention to the points we have made, address them substantively, and explain objectively how they might affect the conclusions you previously reached.

In our view the principles set out in *R (Kay and another) v Leeds Magistrates Court* are equally applicable here, in particular:

“... a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge....”

We also note the requirements in paragraphs 30 and 39 of this Code of Conduct. Paragraph 30(a) requires respect for the presumption of innocence and states that *“Members of the Office must not publicly express an opinion on the guilt or innocence of*

a person under investigation or the accused outside the context of the proceedings before the Court”. Paragraph 30(b) specifies that the required impartial conduct includes “refraining from expressing an opinion that could, objectively, adversely affect the required impartiality”. Paragraph 39 requires members of the Office to “refrain from making any public pronouncements, outside the context of the proceedings before the Court, that they know, or reasonably ought to know, may be disseminated by means of public communication, and may have a substantial likelihood of prejudicing the judicial proceedings or the rights of any person in the proceedings before the Court.”

You have made several public pronouncements outside the context of ICC proceedings, accompanying your announcement of the Applications. These statements are very likely to prejudice the rights of the persons named in those Applications, namely Benjamin Netanyahu and Yoav Gallant.

We also stress that the obligations under the professional rules of both the English Bar and the ICC are continuing obligations, requiring you to ensure that the Court is informed as soon as practicable if you become aware that any previous statement or impression given may be misleading, and removing the potentially misleading information.¹⁰⁷ This is particularly the case where the Court is in the process of preparing a ruling or judgment on the material you have placed before it.

Relevance of the concerns as to accuracy and omissions

The points we have made earlier in this letter demonstrating the serious inaccuracy of the allegations in the Statement, and presumably the Applications, are plainly relevant to the criteria in both Article 58(1)(a) and Article 58(1)(b) of the Statute.

It is highly undesirable to restrict the liberty of any person who, in accordance with Article 66 of the Rome Statute, is presumed innocent until proved guilty, without proper cause and need. Your responsibility of complete candour is even graver when making *ex parte* applications to arrest a democratically elected Prime Minister and Defence Minister while they are currently leading their country in highly complex wars against genocidal enemies. Moreover, if arrest warrants are issued against Benjamin Netanyahu and Yoav Gallant on the basis of the totally false allegations in the Statement, other Israelis cannot assume that their innocence of wrongdoing will avoid the risk of imprisonment for years in The Hague on the basis of false allegations, if they travel abroad. Israelis are particularly at risk since false allegations against them are often credulously accepted due to prejudice against the Jewish State.¹⁰⁸

Article 58(1)(b) is only satisfied if the arrest of the accused person appears *necessary* to achieve one of three specified objects. None of them appear to be relevant at all to the current situation, and your publication that you were filing the Applications is inconsistent

¹⁰⁷ See the guidance gC4.2 and gC4.4 in the BSB Handbook.

¹⁰⁸ See the Statement by ELNET and UKLFI to the ICJ under Practice Direction XII, 29/9/2023 §§14-33 <https://www.uklfi.com/wp-content/uploads/2024/08/ELNET-Submission-to-ICJ-29-9-23-final.pdf>

with the first two objects. If, nevertheless, the Applications rely on the third object, to prevent the accused from continuing with the alleged crime, evidence of improvements in the humanitarian situation in the Gaza Strip is highly relevant to the presumed contention that the arrest of Netanyahu and Gallant is necessary to prevent the starvation of civilians in Gaza.

The concerns we have expressed above are also highly relevant in relation to complementarity. By proceeding without giving Israeli authorities any reasonable opportunity to investigate the allegations you are making, you have gravely increased the risk that you are relying on false information. This makes it all the more important for you to examine the points we have raised with utmost care before proceeding further with the Applications. Regrettably, we see no sign of your complying with your obligations in this regard.

Conclusion

We believe that the material referred to in this letter and its Annex B constitutes only a small portion of the publicly available material refuting the allegations in the Statement. If we find it necessary to take further steps, we may add to the material we deploy. Although we have provided substantial material in this letter and in our Rule 103 observations and the request for leave to make Rule 103 observations, we would respectfully remind you of your obligation to seek out all exonerating material, using the ICC's substantial resources. It seems to us that you have made no real effort to do so.

Please let us have your response within 7 days. As we have made clear, we are not asking you to deal with the substance within 7 days, but merely to confirm that you will carefully investigate and respond to us substantively on the points we raise within a reasonable time frame, and that you have asked the PTC not to take any decision on the Applications (or any other applications on similar grounds) in the meanwhile.

Yours sincerely



Brian Doctor KC



Jonathan Turner



Natasha Hausdorff