

# ICC Arrest Warrants

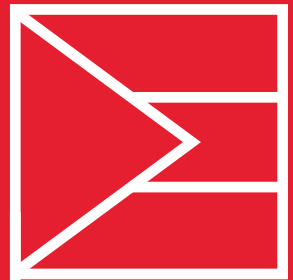
June 2024



**Sawtuna**  
Our Voices

---

London | Washington



# Contents

**01**

**ICC Arrest Warrants Issued**

3

**02**

**International Response  
to Arrest Warrants**

5

**03**

**Implications in  
International Law**

7

**04**

**Practical Implications  
on Accused**

9

**05**

**Two Side-ism & the  
Colonial Critique of the ICC**

11

**06**

**Implications for the  
Genocide in Gaza**

13

**07**

**Attempts to Obstruct  
Justice by US Government**

15

**\***

**Footnotes**

17

01

[← BACK TO CONTENTS](#)

# ICC Arrest Warrants Issued



01

# ICC Arrest Warrants Issued

On 20 May 2024, the Chief Prosecutor of the International Criminal Court (ICC), Karim Khan, announced that he was seeking arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant, and for Hamas leader Yahya Sinwar, the head of Hamas' Political Bureau, Ismail Haniyeh, and the head of Hamas' military wing, Mohammed Deif.<sup>1</sup>



## The Israeli leaders are accused of:

Starvation of civilians as a method of warfare as a war crime

- Wilfully causing great suffering, or serious injury to body or health
- Wilful killing or murder as a war crime
- Intentionally directing attacks against a civilian population as a war crime
- Extermination and/or murder, including in the context of deaths caused by starvation, as a crime against humanity
- Persecution as a crime against humanity
- Other inhumane acts as crimes against humanity<sup>2</sup>



## The Hamas leaders are accused of:

Extermination as a crime against humanity

- Murder as a crime against humanity and as a war crime
- Taking hostages as a war crime
- Rape and other acts of sexual violence as crimes against humanity and also as war crimes in the context of captivity
- Torture as a crime against humanity, and also as a war crime, in the context of captivity
- Other inhumane acts as a crime against humanity, in the context of captivity
- Cruel treatment as a war crime in the context of captivity
- Outrages upon personal dignity as a war crime in the context of captivity<sup>3</sup>

Although Israel is not a signatory to the ICC, the ICC has ruled that it does have legal authority to prosecute criminal acts committed by Israeli officials because the Palestinians are signatories.<sup>4</sup>

The ICC does not have any power to arrest individuals itself and must rely on states party to the Rome statute to arrest individuals when they enter their legal jurisdiction.<sup>5</sup>

02

[← BACK TO CONTENTS](#)

# International Response to Arrest Warrants



© Miriam Alster / Pool / AFP via Getty Images

## 02

# International Response to Arrest Warrants



## US & European reactions

US President Joe Biden criticised Khan's decision by calling the application for indictments against Israeli leaders "outrageous".<sup>6</sup> US Secretary of State Antony Blinken released a statement reading: "the United States fundamentally rejects the announcement today from the prosecutor of the International Criminal Court that he is applying for arrest warrants for senior Israeli officials".<sup>7</sup>

British Prime Minister Rishi Sunak, Canadian Prime Minister Justin Trudeau, Austrian Chancellor Karl Nehammer, and Czech Prime Minister Petr Fiala have made similar statements condemning the ICC's decision to issue arrest warrants for Israeli officials.<sup>8</sup>

## Israeli reactions

Netanyahu described the arrest warrants as "a moral outrage of historic proportions".<sup>9</sup> Netanyahu said Karim Khan, the Chief Prosecutor of the International Criminal Court (ICC) was one of the "great antisemites in modern times", and that his decision to seek arrest warrants against Israel's prime minister and defence minister was "callously pouring gasoline on the fires of antisemitism that are raging around the world".<sup>10</sup>

Gallant wrote on social media platform X: "the attempt of the prosecutor of the International Criminal Court, Karim Khan, to reverse the creation will not succeed - the parallel of the prosecutor between the terrorist organisation Hamas and the State of Israel is despicable and disgusting", and added that "the State of Israel is not a party to the Court and does not recognise its authority".<sup>11</sup>

## Hamas reaction

Hamas denounced the ICC prosecutor's decision to seek arrest warrants against its leaders, accusing Karim Khan of trying to "equate the victim with the executioner".<sup>12</sup> Hamas demanded the cancellation of the request, adding that Khan's application for arrest warrants for Netanyahu and Gallant had come "seven months too late".<sup>13</sup>

03

[← BACK TO CONTENTS](#)

# Implications in International Law



03

# Implications in International Law

The ICC arrest warrants have been seen by some as having an important impact in setting an example that Western leaders can be prosecuted in international courts, as opposed to only leaders of global South countries, as has been the case until now.<sup>14</sup> This could signal an end to the impunity of Western leaders which has persisted in international law.<sup>15</sup>

The arrest warrants have also set a precedent that the ICC has jurisdiction over Israeli officials, despite Israel not having signed the Rome Statute, due to the Palestinians being signatories to the Statute.<sup>16</sup>



04

[← BACK TO CONTENTS](#)

# Practical Implications on Accused



## 04

# Practical Implications on Accused

The practical implications on the accused will have a far greater impact on Israeli officials than the Palestinians.<sup>17</sup> If Israeli officials want to travel abroad to the 124 states party to the Rome Statute, as they have done recently, they will risk arrest.<sup>18</sup> Foreign governments would have to choose between ignoring the ICC's mandate, or arresting the officials who have previously been welcomed in Europe and the US.<sup>19</sup>

Israel has tried to kill the Palestinians accused by the ICC for the past eight months, representing a greater threat than the ICC arrest warrants.<sup>20</sup> Hamas is also a designated terrorist organisation in parts of Europe and North America, which already prevented their travel to these continents.<sup>21</sup> As Qatar has not ratified the Rome Statute, Hamas officials are still able to travel there.<sup>22</sup>

05

[← BACK TO CONTENTS](#)

# Two Side-ism & the Colonial Critique of the ICC



# Two Side-ism & the Colonial Critique of the ICC

The simultaneous issuing of arrest warrants for Israeli and Hamas officials has demonstrated the two-sideism and coloniality of the ICC. More arrest warrants have been issued towards Hamas officials than Israelis, despite Israel having killed over 37,000 Palestinians, in comparison to 695 Israeli civilians and 373 members of Israeli security forces<sup>23</sup> – many of whom were likely killed by the Israeli military rather than Hamas on 7 October 2023.<sup>24</sup>

The disproportionality of these arrest warrants, numerically favouring Israel, demonstrates the coloniality of the international legal system and its inability to account for circumstances of colonisation and the right of occupied peoples to resist their subjugation, including through armed resistance.<sup>25</sup> These rights are enshrined under Additional Protocol I to the Geneva Conventions of 1949 and UN General Assembly Resolution 3314 of 1974.<sup>26</sup>

This disproportionate criminalising of people from the global South has a long history within the ICC, whereby those prosecuted have thus far never been from Western powers such as the US and UK and has only prosecuted Africans since its creation.<sup>27</sup> As a result of this double standard, the African Union urged its member states to withdraw from the ICC in 2017.<sup>28</sup>

06

[← BACK TO CONTENTS](#)

# Implications for the Genocide in Gaza



06

# Implications for the Genocide in Gaza

Ultimately, the ICC arrest warrants will have no impact on the trajectory of the genocide in Gaza, as the ICC has no power to arrest Israeli officials or prevent them from continuing their genocide, nor can it prosecute people *in absentia*.<sup>29</sup>

The arrest warrants will only be impactful after the genocide ends, if there is a change in Israeli government and the new government decides to hand them over to the ICC, or if Netanyahu and Gallant travel to countries that are states party to the ICC. Currently, over 15 people who are charged with ICC arrest warrants remain at large, some for over a decade since the arrest warrants were issued.<sup>30</sup>

07

[← BACK TO CONTENTS](#)

# Attempts to Obstruct Justice by US Government



07

# Attempts to Obstruct Justice by US Government

On 4 June 2024, the US House of Representatives passed legislation to impose sanctions on the ICC over its decision to issue arrest warrants for Israeli officials.<sup>31</sup> If passed through the Senate, the legislation would impose sanctions on people involved in ICC prosecutions of Americans or citizens of states allied to the US that are not ICC members, such as Israel.<sup>32</sup> It also would block ICC officials' entry to the US, revoke their existing US visas, and restrict them from US property transactions.<sup>33</sup>



# Footnotes

- <sup>1</sup> ‘US pressure could derail ICC arrest warrants for Israeli leaders’ *Al Jazeera* (24 May 2024) available at <https://www.aljazeera.com/news/2024/5/24/us-pressure-could-derail-icc-arrest-warrants-for-israeli-leaders>
- <sup>2-3</sup> ‘Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine’ International Criminal Court (20 May 2024) available at <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>
- <sup>4-5</sup> ‘What the ICC arrest warrants mean for Israel and Hamas’ *BBC News* (21 May 2024) available at <https://www.bbc.co.uk/news/articles/cw4490z75v3o>
- <sup>6</sup> ‘Warrant Applications by the International Criminal Court: PRESS STATEMENT’ US Department of State (20 May 2024) available at <https://www.state.gov/warrant-applications-by-the-international-criminal-court/>
- <sup>7</sup> ‘US pressure could derail ICC arrest warrants for Israeli leaders’ *Al Jazeera*
- <sup>8</sup> ‘World reacts to ICC prosecutor seeking Israel, Hamas arrest warrants’ *Al Jazeera* (20 May 2024) available at <https://www.aljazeera.com/news/2024/5/20/world-reacts-to-icc-prosecutor-seeking-israel-hamas-arrest-warrants>
- <sup>9-11</sup> ‘What the ICC arrest warrants mean for Israel and Hamas’ *BBC News*
- <sup>12-13</sup> ‘World reacts to ICC prosecutor seeking Israel, Hamas arrest warrants’ *Al Jazeera*
- <sup>14-15</sup> ‘The ICC arrest warrants: an international law expert’s perspective’ *LSJ* (30 May 2024) available at <https://lsj.com.au/articles/the-icc-arrest-warrants-an-international-law-experts-perspective/>
- <sup>16-22</sup> ‘What the ICC arrest warrants mean for Israel and Hamas’ *BBC News*
- <sup>23</sup> ‘Israel social security data reveals true picture of Oct 7 deaths’ *France 24* (15 December 2023) available at <https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths>
- <sup>24</sup> ‘New evidence emerges of Israel killing its own civilians’ *The Electronic Intifada* (22 February 2024) available at <https://electronicintifada.net/blogs/ali-abunimah/new-evidence-emerges-israel-killing-its-own-civilians>
- <sup>25-26</sup> ‘Palestinians have a legal right to armed struggle’ *Al-Jazeera* (20 July 2017) available at <https://www.aljazeera.com/opinions/2017/7/20/palestinians-have-a-legal-right-to-armed-struggle>
- <sup>27</sup> ‘Africa Attacks the International Criminal Court’ Human Rights Watch (14 January 2014) available at <https://www.hrw.org/news/2014/01/14/africa-attacks-international-criminal-court>
- <sup>28</sup> ‘African Union: Resolution Urges States to Leave ICC’ Library of Congress (10 February 2017) available at [https://www.loc.gov/item/global-legal-monitor/2017-02-10/african-union-resolution-urges-states-to-leave-icc/#:~:text=\(Feb.,ICC%2C%20BBC%20NEWS%20\(Feb.](https://www.loc.gov/item/global-legal-monitor/2017-02-10/african-union-resolution-urges-states-to-leave-icc/#:~:text=(Feb.,ICC%2C%20BBC%20NEWS%20(Feb.)

## Footnotes continued...

- 29 ‘The ICC Prosecutor’s applications for arrest warrants explained’ Chatham House (21 May 2024) *available at* <https://www.chathamhouse.org/2024/05/icc-prosecutors-applications-arrest-warrants-explained>
- 30 ‘Arresting ICC suspects at large’ International Criminal Court *available at* <https://www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf>
- 31-33 ‘US House passes Republican bill to sanction International Criminal Court over Israel’ *Reuters* (4 June 2024) *available at* <https://www.reuters.com/world/us/us-house-passes-republican-bill-sanction-international-criminal-court-over-2024-06-04/#:~:text=The%20legislation%20%2C%20opens%20new%20tab,them%20from%20U.S.%20property%20transactions.>