



Original: **English**

No.: **ICC-01/18**  
Date: **6 August 2024**

**PRE-TRIAL CHAMBER I**

**Before:**

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

**SITUATION IN THE STATE OF PALESTINE**

**Public**

**Written observations of the Israel Bar Association**

**Source:**

**Israel Bar Association**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**  
Mr. Karim A.A. Khan KC

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation / Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

Mr Eli M. Rosenbaum; Professor David Chilstein; Professor John Quigley; High Level Military Group; European Centre for Law & Justice; Professor Steven E. Zipperstein; Mr and Mrs Serge and Beate Klarsfeld; Professors Yuval Shany and Amichai Cohen; the State of Palestine; Professor William Schabas; the Jerusalem Center for Public Affairs and the Institute for NGO Research; the Kingdom of Norway; the Organisation of Islamic Cooperation; Hungary; Republic of Argentina; the Touro Institute on Human Rights and the Holocaust; Canadian Union of Jewish Students (CUJS) and the World Union of Jewish Students (WUJS); Arab Organisation for Human Rights UK (AOHR UK); Assistant Professor Halla Shoaibi and Professor Asem Khalil; Centre for Israel and Jewish Affairs; the Palestine Independent Commission for Human Rights (ICHR); Law for Palestine; Professor Sascha Dominik Dov Bachman, Dr Deborah Mayersen, Professor Gregory Rose and Dr Colin Rubenstein; US

---

Senator Lindsey O. Graham; Lawyers for Palestinian Human Rights; Israel Bar Association; Czech Republic; International Centre of Justice for Palestinians and the Centre for Human Rights Law (SOAS University of London); Jerusalem Institute of Justice; Chile and Mexico; Centre for European Legal Studies on Macro-Crime (MACROCRIMES); Dr Robert Heinsch and Dr Giulia Pinzauti; The Hague Initiative for International Cooperation; ICJ Norway and Defend International Law; UN Special Rapporteurs and Working Groups; the United States of America; Professor Neve Gordon; Al-Quds Human Rights Clinic and Al-Quds University; the League of Arab States; L'association des Juristes pour le respect du droit international and la Fédération internationale pour les droits humains; University Network for Human Rights, the International Human Rights Clinic, Boston University School of Law, the International Human Rights Clinic, Cornell Law School and the Lowenstein Human Rights Project, Yale Law School; Professor Richard Falk and Professor Michael Lynk; Professor Adil Ahmad Haque; Open Society Justice Initiative, European Center for Constitutional and Human Rights, REDRESS Trust, Human Rights Watch and Amnesty International; Republic of Colombia; Hostages and Missing Families Forum and the Raoul Wallenberg Centre for Human Rights; Addameer Prisoner Support and Human Rights Association; International Association of Jewish Lawyers and Jurists; Kingdom of Spain; UK Lawyers for Israel, B'nai B'rith UK, the International Legal Forum, the Jerusalem Initiative and the Simon Wiesenthal

---

Centre; International Commission of Jurists (ICJ); The Palestinian Association for Human Rights (Witness); Guernica 37 Chambers; the Federative Republic of Brazil; ALMA – Association for the Promotion of International Humanitarian Law; Ireland; Avocats pour la Justice au Proche-Orient (AJPO); Federal Republic of Germany; Dr Shahd Hammouri; Al-Haq Law in the Service of Mankind (Al-Haq), Al- Mezan Center for Human Rights (Al-Mezan) and the Palestinian Center for Human Rights (PCHR); République Démocratique du Congo; Arpit Batra; South Africa, Bangladesh, Bolivia, Comoros, and Djibouti.

## **REGISTRY**

---

### **Registrar**

Mr. Osvaldo Zavala Giler

### **Counsel Support Section**

### **Victims and Witnesses Unit**

### **Detention Section**

### **Victims Participation and Reparations Section**

### **Public Information and Outreach Section**

## Introduction

1. As a national organization tasked by law with working for the standards and integrity of the legal profession, the Israel Bar Association ('IBA') respectfully submits observations concerning (a) Israel's national legal system; (b) the activities of Israel's legal system in the context of the current hostilities; and (c) detail regarding a petition before Israel's Supreme Court on the State's humanitarian policies and activities in Gaza.
2. These observations demonstrate that Israel's legal system is robust, comprising of several mechanisms with a tradition of independence and impartiality including in the context of hostilities. Israel's judiciary has also shown the capacity and willingness to hear petitions on a wide range of issues, relating to both individual acts and policy of the military and the government. The IBA submits that such long-standing legal traditions should be respected, as indeed the ICC has done when deferring to the national systems of other States.
3. Israel's legal system is also clearly engaged and active with regard to the current hostilities. Specifically, law enforcement authorities are actively examining and investigating alleged misconduct, including incidents that appear to form part of the Prosecutor's application for arrest warrants (the '**Application**'). Israel's Supreme Court is currently hearing a petition on the State's humanitarian policies and activities in Gaza.<sup>1</sup> The Court should consider these processes, as the factual and legal materials generated as part of these processes and their outcomes are likely to be directly relevant to the Application. Such processes also evidence Israel's ability and willingness to exercise legal mechanisms with regards to the same issues that are the subject of the Application.

### Israel's national legal system

4. Israel is a democracy founded upon the rule of law. Israel's legal system maintains a long tradition of implementing its core values of independence and impartiality.
5. These values are reflected first and foremost in the functions and decisions of the Supreme Court, the highest judicial authority in Israel. The Court exercises appellate jurisdiction over all civil and military courts, and sits as a court of first instance for petitions against State authorities. The Court has interpreted standing and justiciability widely; individuals and civil society organizations may trigger judicial review of legislation and governmental decisions and the Court regularly reviews governmental and military policies. The Court also acts in a timely fashion, including during active hostilities. Some of the issues ruled on by the Supreme Court include the legality of particular weaponry, military tactics, governmental policies concerning targeted killings, security infrastructure built by the State in the West Bank, legislation concerning the detention of unlawful combatants, and the

---

<sup>1</sup> See below for more information. For unofficial translations of the petitioners' filings, see <https://gisha.org/en/aid-access-now/>. For unofficial translations of the respondent's filings, see <https://www.alma-ihl.org/ihl-translations>.

government's policies towards the Gaza Strip (including humanitarian obligations following Israel's withdrawal in 2005).

6. Israel's legal system also comprises of robust and professional mechanisms for providing legal advice and for enforcing the law:

#### *Legal Advice*

7. Israel's Attorney General is the highest legal authority responsible for providing legal advice to the government, and besides the judiciary is the exclusive legal authority for interpreting the law for the executive, including for the Defense Ministry and the IDF. Legal advice provided by the Attorney General's Office is binding on the government and its ministries.<sup>2</sup> The Attorney General provides international law advice to the Government and the Cabinet and oversees the legal advice provided to the military. The Attorney General's Office maintains an international law department, headed by a Deputy Attorney General, with different divisions therein dedicated to international humanitarian law ('IHL'), international criminal law and international human rights law.

8. The Military Advocate General's Corps (the '**MAG Corps**') is responsible for providing legal advice to the IDF. The MAG Corps includes a dedicated International Law Division which provides legal advice to varying levels of command on all issues of international law, including the law applicable to the conduct of hostilities, the legality of weapons, detainee issues and legal obligations towards the civilian population, including with respect to humanitarian aid. Such advice pertains to individual actions as well as policies. Legal advisers are deployed widely, including in the unit responsible for facilitating humanitarian aid and movement in and out of Gaza (called '**COGAT**').<sup>3</sup> Legal training is provided through a dedicated School for Military Law, and IDF standard operating procedures undergo legal review to ensure adherence with Israeli and international law. MAG Corps officers are

---

<sup>2</sup> Affirmed repeatedly by the Supreme Court, most recently in a June 2024 decision (HCJ 6198/23).

<sup>3</sup> On the IDF's system of legal advice, see the MAG Corps website (<https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/about-the-mag-corps/>) and a 2015 governmental report (<https://www.gov.il/en/pages/2014-gaza-conflict-factual-and-legal-aspects>; Chapter VI).

highly regarded internationally,<sup>4</sup> are regularly invited to participate in international legal processes,<sup>5</sup> publish academic articles on IHL,<sup>6</sup> and engage with international law experts.<sup>7</sup>

9. Legal advice provided by the MAG Corps is binding. MAG Corps legal advisers are independent from the chain of command they advise; they are subject only to the Military Advocate General (the 'MAG'). The MAG holds the highest rank in the IDF besides the Chief of Staff, and she is not subject to the Chief of Staff on professional matters but to the Attorney General. The Prosecutor himself has acknowledged the strength of this system; "Israel has a professional and well-trained military. They have, I know, military advocate generals and a system that is intended to ensure their compliance with international humanitarian law."<sup>8</sup>

10. As noted above, Israel's practices and policies in the context of armed conflict may be the subject of judicial review including before the Supreme Court, which may also address the legal advice of the MAG and the Attorney General.

11. Public information is regularly available on Israel's legal positions.<sup>9</sup> A few weeks after Hamas instigated the current hostilities the State published its legal positions on the conduct of hostilities, including on humanitarian issues.<sup>10</sup> The State's legal positions also appear in public filings to the Supreme Court.

---

<sup>4</sup> From a recent analysis of a US Army Judge Advocate: "...the IDF's MAG Corps is an exceptionally competent group of advisors on the law of armed conflict that is organized to ensure IDF commanders have access to high-caliber legal advice in real time... I am confident that the IDF has mainstream legal positions and is equipped with first-rate legal advisors..."; <https://lieber.westpoint.edu/inside-idf-targeting/>. See also: "The IDF's International Law Department is a model other nations would do well to emulate. The IDF develops LOAC experts early in their careers and allows them to focus on the subject throughout it, albeit in a variety of positions."; <https://lieber.westpoint.edu/embracing-loac-pluralism/>.

<sup>5</sup> For example, a serving Head of the International Law Department was invited to act as a peer reviewer to the ICRC's updated commentaries on the Third Geneva Conventions; <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/acknowledgements-and-abbreviations/commentary/2020>.

<sup>6</sup> For some examples of such publications, see <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/publications/>.

<sup>7</sup> For example international conferences on IHL hosted by the IDF with participation of senior legal advisers and academics from many countries; <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/conferences-on-the-law-of-armed-conflict/>.

<sup>8</sup> <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

<sup>9</sup> In addition to footnote 3 above, see also a publication concerning the violent riots and attacks on the Israel-Gaza border in 2018; <https://www.idf.il/en/mini-sites/q-a-concerning-the-violent-riots-and-attacks-occurring-on-the-border-between-gaza-and-israel-during-2018-9/>.

<sup>10</sup> See: *Key Factual and Legal Aspects*, at <https://www.gov.il/en/pages/hamas-israel-conflict2023-key-legal-aspects>, *Frequently Asked Questions*, at <https://www.gov.il/en/pages/swords-of-iron-faq-6-dec-2023> and *Humanitarian Efforts*, at <https://www.gov.il/en/pages/israel-hamas-conflict-2023-humanitarian-efforts>.

Regarding humanitarian issues, see for example the following from these publications; "Israel wishes no harm to civilians and is committed to addressing the humanitarian needs of those suffering as a result of Hamas's brutality and instigation of these hostilities..." and "As indicated, *inter alia*, by the entrance of supplies into Gaza through the Rafah Crossing and the provision of water from Israel to Gaza, a matter of fact and law there is no 'siege' on Gaza (even though a siege on enemy forces is not unlawful under international law subject to certain safeguards, as is also evident from the military manuals of various states)." See also statements by the

12. It is difficult to reconcile an allegation that a manifestly unlawful policy (in contravention to Israel's clear legal obligations and publicly stated positions) could be instituted at the highest political echelon and implemented throughout the civilian and military authorities, with the system of legal advice described above.

#### *Law Enforcement*

13. The authority to investigate criminal offenses lies with the Israel Police and the authority to prosecute with the Attorney General. Immunities for public officials, including government ministers, are limited and historically have not protected such officials from investigation and prosecution. Procedurally, investigations against elected officials typically start with a preliminary examination by the Israel Police or the Attorney General to determine whether there is reasonable suspicion of a criminal offense. Where this is the case, a criminal investigation will be formally opened. In Israel's history former and serving ministers (including Prime Ministers) and a former President have been prosecuted by the Attorney General. Some have been convicted and served jail time.

14. The IDF also maintains a robust justice system.<sup>11</sup> Soldiers are obligated to report suspicions of misconduct, and complaints can be filed by victims, witnesses and civil society organizations (including outside of Israel). The Military Prosecution proactively reviews media and international organizations and NGO reports for relevant information. Where a credible complaint gives rise to a *prima facie* suspicion of criminal misconduct, the Military Prosecution will order a criminal investigation. These are conducted by the Military Police (an independent unit separate from the MAG Corps) via a dedicated unit specializing in investigating situations of warfare.

15. Criminal investigations are accompanied by a dedicated department of the Military Prosecution specializing in investigating and prosecuting operational incidents. The Military Prosecution is separate from MAG Corps' departments providing legal advice; they do not fulfill both functions. Indictments against IDF personnel are filed in the Military Courts; a separate unit from the MAG Corps.

16. Where a credible complaint does not give rise to *prima facie* suspicion of criminal misconduct, the Military Prosecution can refer it for further factual examination by a permanent body called the Fact-Finding and Assessment Mechanism (the 'FFAM'). The FFAM, headed by a Major General, is independent from the chain of command of those

---

Israeli representatives in the proceedings against Israel at the International Court of Justice: "...Israel remains committed to helping international organizations and States involved in the aid effort to overcome these hurdles, and consistently increase the amount of aid and services available to the population in Gaza..." at <https://www.gov.il/en/pages/facts-on-the-ground>.

<sup>11</sup> For more detail, see <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/addressing-alleged-misconduct-in-the-context-of-the-war-in-gaza/>, the MAG Corps website and Chapter VII of the governmental publication referenced in footnote 3 above.



involved in the hostilities and comprises of experts from different fields. It has wide authorities and capabilities for obtaining information from within and outside the IDF. The MAG reviews the FFAM's findings and materials to determine whether a criminal investigation is required.

17. Here, too, civilian authorities provide oversight. Decisions by the Military Court of Appeals may be appealed to the Supreme Court. The MAG's decisions whether to open criminal investigations or file indictments may be challenged before the Attorney General and before the Supreme Court (either against the Attorney General's decision on review or directly against the MAG's decision).<sup>12</sup>

18. Israel's system for examining and investigating violations of IHL has been assessed by an independent commission of inquiry which included international legal observers.<sup>13</sup> The commission's work included reviewing the national justice systems of several other States.<sup>14</sup> The commission found Israel's system to generally be in compliance with international law standards, and the State acted to implement recommendations for improvement.

#### *Other mechanisms*

19. Israel's State Comptroller maintains wide powers to conduct independent review of the activities of governmental ministries, including policies.<sup>15</sup> Israeli law also provides for the establishment of different commissions of inquiry ('COI'). A State COI, for example, is authorized by law to examine matters "of essential public importance" and is typically used to review the conduct of decision-makers in connection with high policy matters, such as national security. Governmental COIs have also been used to examine claims in the context of hostilities.<sup>16</sup> COIs have wide investigative authorities, are independent, and can issue recommendations that are both thematic as well as on the responsibility of specific

---

<sup>12</sup> See, for example, a petition filed with the Supreme Court by civil society organizations against the Attorney General's review of the MAG's decision not to reopen an investigation into an incident occurring in the 2014 Gaza Conflict; HCJ 8008/20, Atef Ahad Subhi Bakr et al v. MAG et al. (a news article on the ruling can be found at <https://www.ynetnews.com/article/r1daqqxs5>).

<sup>13</sup> See the report of a Public Commission tasked with assessing Israel's mechanisms for examining and investigating claims of violations of IHL according to international law (the "**Turkel Commission**"); [https://www.gov.il/en/pages/turkel\\_committee](https://www.gov.il/en/pages/turkel_committee). The international observers were Rt. Hon. Lord Trimble, General (ret.) Kenneth Watkin QC and Prof. Timothy McCormack.

<sup>14</sup> The national systems reviewed were that of the United States, Canada, Australia, the United Kingdom, Germany, and the Netherlands.

<sup>15</sup> <https://www.mevaker.gov.il/En/About/Pages/MevakerTafkid.aspx>.

<sup>16</sup> Examples include the Agranat Commission (into the conduct of the 1973 war), the Kahan Commission (into claims of Israeli responsibility for a civilian massacre during the First Lebanon War), the Winograd Commission (into the conduct of the Second Lebanon War, including the IDF's compliance with IHL), and the Turkel Commission (into an incident in which people were killed during an IDF operation to stop a ship breaching a maritime blockade on Gaza).

individuals for misconduct. A State COI can also refer suspicions of criminal conduct to the Attorney General, who may open a criminal investigation.<sup>17</sup>

### Israel's legal system during the current hostilities

20. The system of legal advice described above is applicable in the current hostilities,<sup>18</sup> as is the law enforcement system. The MAG has published that over 1,000 incidents have been referred to or marked for review by the FFAM.<sup>19</sup> These include alleged incidents of harm to aid organizations' infrastructure and personnel, civilian shelters, large numbers of civilians, and medical facilities and personnel. At least some are likely to be of relevance to the Application; for example, the incident in which World Central Kitchen personnel were killed is under examination by the IDF and will be reviewed by the MAG.<sup>20</sup>

21. Seventy-four incidents have been referred for criminal investigation,<sup>21</sup> relating to a range of issues, including detainee abuse, pillage, and the unlawful use of force. A soldier has recently been indicted for abuse of a detainee.<sup>22</sup>

22. Separately, an external commission has been established to examine IDF detention facilities; an indication that where allegations give rise to possible wider concerns, these are examined too. The findings of the commission are also to be examined by the MAG, who may order criminal investigations.<sup>23</sup>

---

<sup>17</sup> For more information on COIs, see the Turkel Report, footnote 13 above, at p.309, as well as <https://en.idi.org.il/articles/54878>.

<sup>18</sup> See for example the publications in footnote 9 above. See also a speech by the MAG, "...From Day 1 of the war, the officers of the MAG Corps have reported to duty and have stood alongside IDF commanders across all fronts, in order to assist them in executing the objectives of the war as set out by the Government, in a manner consistent with the law."; <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/remarks-of-the-military-advocate-general-at-the-israel-bar-association-annual-conference-may-2024/>. See also the Deputy Attorney General in the proceedings against Israel at the ICJ; "... I regularly advise the Government on issues of international law, including humanitarian law. This has not changed since 7 October... "; at <https://www.gov.il/en/pages/concluding-israel-s-arguments>. See also *Key Legal Aspects*, footnote 10 above; "Israel has incorporated LOAC into all aspects of its military operations through legal training, operational procedures and plans, continuous operational legal advice, and robust and independent investigation mechanisms for addressing allegations of IDF misconduct. The Attorney General's Office provides ongoing international law advice to the Cabinet and the Government, and the Supreme Court exercises judicial oversight, including during hostilities."

<sup>19</sup> <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/addressing-alleged-misconduct-in-the-context-of-the-war-in-gaza/> (first published February 24, 2024, and updated August 3, 2024).

<sup>20</sup> <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/>.

<sup>21</sup> See <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/addressing-alleged-misconduct-in-the-context-of-the-war-in-gaza/> and <https://www.idf.il/en/mini-sites/military-advocate-general-s-corps/remarks-of-the-military-advocate-general-at-the-israel-bar-association-annual-conference-may-2024/>. See also [https://www.timesofisrael.com/liveblog\\_entry/idf-probing-allegations-of-torture-of-gazan-detainees-at-sde-teiman-base-military-prosecutor/](https://www.timesofisrael.com/liveblog_entry/idf-probing-allegations-of-torture-of-gazan-detainees-at-sde-teiman-base-military-prosecutor/).

<sup>22</sup> <https://www.timesofisrael.com/idf-indicts-reservist-for-severely-beating-palestinian-detainees-filming-acts/>.

<sup>23</sup> <https://www.idf.il/en/mini-sites/idf-press-releases-regarding-the-hamas-israel-war/may-24-pr-establishment-of-a-special-advisory-committee-to-the-chief-of-the-general-staff/>

23. There have also been petitions filed directly to the Supreme Court during the hostilities. These have included petitions on the conduct of hostilities, different issues pertaining to detainees, and humanitarian policies and activities.<sup>24</sup>

24. Furthermore, there is public discourse in Israel on the establishment of a COI. Both the Defense Minister and the Attorney General have publicly supported setting up a COI despite the fact that the hostilities are ongoing, and the Supreme Court has been petitioned to order the Government to establish such a COI.

25. The above mechanisms and procedures are capable of leading to investigation and prosecution of the senior military and political echelon where there is a basis to do so. Such procedures also allow for the examination of policy decisions as well as individual incidents.

26. It is not trivial that significant law enforcement actions are taken while Israel remains in a state of war. As the Court has had occasion to consider, this is not always the practice of States.<sup>25</sup> In Israel's case, this may be more so, considering the hostilities are taking place inside Israeli territory, Israel remains under attack from a number of different States and terrorist organizations and over one hundred people are still held hostage in Gaza.

27. Nevertheless, as described above, law enforcement authorities have shown readiness to exercise their powers and independence. These efforts have been transparent, as shown by the public statements by such authorities. They have also demonstrated willingness to cooperate with non-Israeli authorities. For example, the Australian government requested a former Chief of the Australian Defense Force review Israel's examinations into the incident in which an Australian and others working with the World Central Kitchen were killed. The public report published by the Australian envoy includes clear statements that support was received for every request (including reviewing classified materials and detailed discussions with IDF commanders and legal authorities), that access was given to all areas so requested and that the IDF had been transparent in the process.<sup>26</sup>

---

<sup>24</sup> For example, HCJ 7624/23 (regarding an alleged potential attack against a hospital), HCJ 4621/24 (regarding medical evacuations from Gaza), HCJ 4268/24 (regarding detention sites), HCJ 1537/24 (regarding visitation of detainees), and HCJ 1414/24 (regarding the legal authorities for detaining unlawful combatants).

<sup>25</sup> For example, the Prosecutor's approach to the UK's investigations of claims of IHL violations.

<sup>26</sup> The public report provides detail both about the Israel's examinations as well as findings regarding the incident itself. With regard to Israel's examinations, the report concludes that "Israel's response to the incident [was] timely, appropriate and mostly sufficient"; that other Western militaries, including the Australian Defense Forces, would likely not be able to conduct after-action reviews with the same speed as the IDF; and that their command structures would not be able to implement administrative measures as quickly as the IDF did in this case. Regarding the incident, the report assesses that the IDF did not knowingly or deliberately attack the World Central Kitchen, including based on footage and information presented to the envoy and which had not yet been made public by the IDF. See <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>.

28. It would appear that the above is pertinent to a determination as to whether the Prosecutor has adequately deferred to the Israeli legal system and has adequately engaged with the Israeli authorities on the specific concerns the subject of the Application, and whether the Court would benefit from reviewing the findings of these processes when determining the factual and legal basis for the Prosecutor's requests. It is noted that the Prosecutor publicly said Cairo on October 30, 2023, that "whilst Israel is not a member of the ICC, I stand ready to work with state parties and non-state parties alike in pursuit of accountability."<sup>27</sup>

### **Supreme Court petition on humanitarian policy and activities**

29. Directly relevant to the Application is a petition currently before Israel's Supreme Court on Israel's humanitarian policies and actions concerning Gaza, filed in March 2024 by five civil society organizations against the Government and against the Prime Minister, the Defense Minister and the Head of COGAT.<sup>28</sup> The petitioners sought an order for the respondents to enable access to all humanitarian aid, equipment and staff to Gaza and to significantly increase the flow of aid, submitting that Israel constitutes an occupying power and thus has heightened obligations towards the civilian population.

30. The Supreme Court set an immediate hearing for the beginning of April and ordered the respondents to file a response beforehand. The respondents' submission addressed the petitioners' claims and included a classified annex. The hearing was broadcast live, except for an *ex-parte* hearing for the State to present classified information. The Supreme Court ordered the respondents submit supplementary information, including regarding humanitarian efforts in Gaza during the hostilities, the bottlenecks in the flow of aid, and data regarding unfulfilled coordination requests. The supplementary information included a response to a report published by a network of international agencies on food security phase classification in Gaza and another confidential annex with additional details and classified Cabinet decisions.

31. As the petition concerns an ongoing matter, the Court has requested additional information to address factual developments on the ground. The petitioners have also filed additional submissions addressing these developments. To date there have been three hearings and five submissions from each of the petitioners and respondents addressing various issues –

a. The hearings and the submissions have addressed the factual situation in Gaza, the impact of the war on the humanitarian situation in Gaza, detailed discussions

---

<sup>27</sup> <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

<sup>28</sup> An unofficial translation of the petition appears at [https://gisha.org/UserFiles/File/LegalDocuments/HCIJPetition2024/High\\_court\\_2280-24\\_petition\\_180324\\_EN.pdf](https://gisha.org/UserFiles/File/LegalDocuments/HCIJPetition2024/High_court_2280-24_petition_180324_EN.pdf).

surrounding Israel's humanitarian policies and activities, and discussions regarding Israel's international law obligations including under IHL, the law of occupation and international human rights law.

b. Both the petitioners and the respondents have submitted critiques of the other's arguments and the sources relied upon by each. The petitioners have submitted expert opinions by both Israeli and foreign international law experts and food security experts to support their arguments. The Supreme Court has also summoned senior IDF officers to address the Court's questions in both open and *ex-parte* hearings.

c. The respondents have provided both classified and unclassified information regarding: (i) practical challenges pertaining to access to aid in dynamic and changing hostilities; (ii) the impact of circumstances outside of Israel's control on aid efforts (such as Hamas's purported hoarding, theft and commandeering of aid, the limitations of the aid organizations active in Gaza and the conduct of third States that operate border crossings and are otherwise involved in the aid efforts); (iii) the impact of the developments in the fighting on the aid efforts; (iv) facts regarding the humanitarian situation as it existed prior to October 7, 2023 and the impact of the October 7, 2023 attacks (such as the destruction of existing border crossings and murder and kidnapping of border personnel by Hamas during the attacks, and the significant damage caused to electricity and water lines into Gaza by Hamas); (v) the security risk to Israeli personnel conducting humanitarian activities (such as Hamas fire on border crossings); and (vi) developments and improvements in the aid efforts (including distribution within Gaza) as the hostilities have progressed (such as the establishment by Israel of new border crossings, coordination with international organizations to improve coordination and logistic efforts and the opening of maritime and air routes for aid delivery). The fact that the Supreme Court can, in real time, receive and respond to classified information and input from senior IDF officials, and consider such information in its findings and decisions, provides the Supreme Court with a particular advantage over other non-State or international judicial instances.

d. The hearings and filings have addressed the specific allegation of starvation of civilians.<sup>29</sup> The respondents have attested to governmental policy from the start of the hostilities, and addressed public statements made by officials cited by others as evidence of intent to harm the civilian population in Gaza.

32. The submissions and the Supreme Court's decisions are in Hebrew. Unofficial translations of filings by the petitioners and the respondent (except for classified materials) and the Supreme Court's orders are online.<sup>30</sup> As the time of submission of these observations,

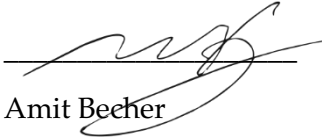
---

<sup>29</sup> Petitioners' first filing, footnote 28 above, p.118.

<sup>30</sup> For unofficial translations of the petitioners' filings, see <https://gisha.org/en/aid-access-now/>. For unofficial translations of the respondent's filings, see <https://www.alma-ihl.org/ihl-translations>.

the Supreme Court has ordered the State to submit responses to questions from the Court and the petitioner's latest submissions.

**Respectfully submitted:**

A handwritten signature in black ink, appearing to read 'Amit Becher', is written over a horizontal line. The signature is fluid and cursive.

Amit Becher

President, Israel Bar Association

Dated this 6 day of August 2024

At Tel Aviv, Israel