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Premium

# Expert Explains: Why the ICC Prosecutor has asked for an arrest warrant against Netanyahu, and what could happen now

Warrants have also been sought for three Hamas leaders and Israel's Defence Minister. All five men have been charged with war crimes and crimes against

# humanity. Does this mean Benjamin Netanyahu can now be arrested?

Written by Anjolie Singh

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 NewsGuard



Israeli Prime Minister Benjamin Netanyahu arrives to his Likud party faction meeting at the Knesset, Israel's parliament, in Jerusalem May 20, 2024. (REUTERS/ Ronen Zvulun)

The Prosecutor of the International Criminal Court (ICC) on Monday (May 20) requested arrest warrants against leaders of Hamas and Prime Minister Benjamin Netanyahu of Israel about the October 7, 2023 attacks and the war in Palestine.

Netanyahu called the request “absurd” and the Prosecutor, Karim Khan, one of the “great anti-Semites in modern times”. Hamas demanded a cancellation of the warrants.

But many others feel action by the ICC is long overdue.

## First, what is the International Criminal Court?

The ICC, based at The Hague, investigates and tries individuals charged with the most serious crimes of concern to the international community: genocide, crimes

against humanity, war crimes, and the crimes of aggression.

It is a court of last resort and seeks to complement, not replace, national courts. It prosecutes cases only when states are unwilling or unable to do so. It requires a deferral to national courts only when they engage in independent and impartial judicial processes that do not shield suspects.

This principle of complementarity lies at the heart of the Rome Statute, the international treaty by which the ICC is governed. Currently, 124 countries are Parties to the Rome Statute. Israel is not among them. (India isn't either.)

### **Against whom has the Prosecutor requested warrants of arrest?**

The Prosecutor has sought arrest warrants for three senior leaders of the Palestinian militant group Hamas — its leader in the Gaza Strip Yahya Sinwar; the commander-in-chief of its militant wing, the Al-Qassam Brigades, [Mohammed Deif \(born Mohammed Diab Ibrahim Al-Masri\)](#) ; and the head of the Hamas Political Bureau, Ismail Haniyeh.

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On the Israeli side, warrants have been sought for Netanyahu and Israel's Minister of Defence Yoav Gallant.

### What are these men accused of having done?

All five individuals have been charged with crimes against humanity and war crimes.

**CRIMES AGAINST HUMANITY** include murder, extermination, torture, rape, sexual offences, persecution, and other inhumane acts intentionally causing great suffering, or serious injury to the body or to mental or physical health when committed as part of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of a state or organizational policy.

**WAR CRIMES** include grave breaches of the Geneva Conventions in the context of armed conflict, and include wilful killing or torture of civilians or prisoners of war, extensive unlawful destruction and appropriation of property not justified by military necessity, the taking of hostages, intentionally directing attacks against civilians and civilian objects, using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.

Both the Israeli and Hamas leaders have been charged as co-conspirators as well as under command responsibility, whereby they are responsible for the criminal actions of those under their chain of command.

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## And what specific crimes have they been charged with?

**HAMAS:** Sinwar, Deif and Haniyeh have been charged with the following crimes against humanity: extermination, murder (which is also a [war crime](#)), rape, other acts of sexual violence, and torture with regard to the events of October 7, when Hamas killed more than 1,200 people during raids in southern Israel.

They have also been charged with the war crimes of taking hostages, rape and other acts of sexual violence, torture, cruel treatment and outrages upon personal dignity in the context of captivity.

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The charges emphasise the brutality of the Hamas attack and the continuing cruelty towards hostages.

**ISRAEL:** Netanyahu and Gallant bear criminal responsibility for war crimes and crimes against humanity committed in Gaza from at least October 8, 2023, according to the Prosecutor.

They are charged with war crimes of starvation, wilfully causing great suffering/ serious injury to body/ health or cruel treatment, wilful killing or murder, and directing attacks against a civilian population.

They are also charged with crimes against humanity of extermination and/ or murder, including in the context of deaths caused by starvation, persecution and other inhumane acts. The focus is on the use of starvation as a method of warfare, together with other attacks and collective punishment against the civilian population of Gaza.

(Starvation is also the subject of much of South Africa's case against Israel at the other court in The Hague, the [International Court of Justice](#), albeit in the context of genocide.)

Israel has “intentionally and systematically deprived the civilian population in... Gaza of objects indispensable to human survival” through a “total siege” that involved extended closures of border crossing points, arbitrarily restricting the transfer of essential supplies, including food and medicine, cutting off clean water, and hindering electricity from early October 2023 onward.

This took place alongside attacks on civilians, including those queuing for food; obstruction of aid delivery by humanitarian agencies; and attacks on and killing of aid workers, which forced many agencies to cease or limit their operations in Gaza.

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Importantly, the Prosecutor's applications state that the alleged war crimes were committed both in the context of an international armed conflict between Israel and Palestine and a non-international armed conflict between Israel and Hamas running in parallel.

The classification of the nature of the conflict is important for various reasons, including the need to know which laws apply in a given situation. Starvation is a crime only in international armed conflict.

### **Are ICC decisions binding? What happens next?**

Palestine became the 123rd member of the Rome Treaty on April 1, 2015. In February 2021, the ICC decided that it could exercise jurisdiction over Palestine,

including Gaza and the West Bank.

Israel is not a Party to the Rome Statute. However, the ICC does have jurisdiction over crimes committed by nationals of both State Parties and non-state Parties (such as Israel) on the territory of a State Party (such as Palestine).

The ICC's decisions are binding.

However, it relies on the cooperation of States for support, particularly for making arrests and transferring the arrested individuals to the ICC detention centre, for freezing assets, and enforcing sentences.

However, a panel of judges at the ICC must first decide on the Prosecutor's application.

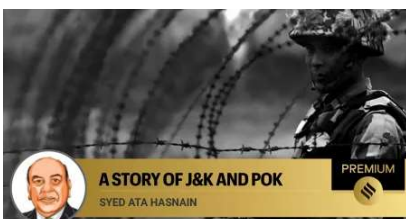
If the necessary standard for the arrest warrants is met (that there are "reasonable grounds to believe" that the person named has "committed a crime within the jurisdiction of the Court"), warrants will be issued.

All 124 State Parties would be under obligation to cooperate with the court, and to arrest and extradite these individuals to The Hague.

This would make international travel difficult for Netanyahu and Gallant in the future, including visits to Israel's allies such as Germany and the United Kingdom, which are Parties to the Rome Statute.

*Anjolie Singh is an international lawyer who represented Croatia in a case against Serbia, under the Genocide Convention, before the ICJ.*

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