



Birchgrove Legal Files Case for Complicity to Genocide to the Hague- International Criminal Court [Media Release]

EMBARGOED MEDIA RELEASE

PM referred to International Criminal Court accused of complicity in genocide

Tuesday, 5 March 2024

Australian Prime Minister Anthony Albanese has been referred to the International Criminal Court as an accessory to genocide in Gaza, making him the first leader of a Western nation to be referred to the ICC under *Article 15 of the Rome Statute*.

A team of Australian lawyers from Birchgrove Legal, led by King's Counsel Sheryn Omeri, have spent months documenting the alleged complicity and outlining the *individual criminal responsibility* of Mr Albanese in respect to the situation in Palestine.

The 92-page document, which has been endorsed by more than one hundred Australian lawyers and barristers, was yesterday submitted to the Office of ICC Prosecutor, Karim Khan KC.

The document sets out a number of actions taken by the PM and other ministers and members of parliament, including Foreign Minister Wong and the Leader of the Opposition, for the Prosecutor to consider and investigate. These include:

- Freezing \$6 million in funding to the primary aid agency operating in Gaza – UNRWA – amid a humanitarian crisis based on unsubstantiated claims by Israel

after the International Court of Justice had found it plausibly to be committing genocide in Gaza.

- Providing military aid and approving defence exports to Israel, which could be used by the IDF in the course of the *prima facie* commission of genocide and crimes against humanity.
- Ambiguously deploying an Australian military contingent to the region, where its location and exact role have not been disclosed.
- Permitting Australians, either explicitly or implicitly, to travel to Israel to join the IDF and take part in its attacks on Gaza.
- Providing unequivocal political support for Israel's actions, as evidenced by the political statements of the PM and other members of Parliament, including the Leader of the Opposition.

Ms Omeri KC said the case was legally significant because it focused exclusively on two modes of *accessorial liability*.

“The Rome Statute provides four modes of individual criminal responsibility, two of which are accessorial,” Omeri said.

“In relation to accessorial liability, a person may be criminally responsible for a crime set out in the Rome Statute if, for the purpose of facilitating the commission of that crime, that person aids, abets or otherwise assists in the commission of the crime, or its attempted commission, including by providing the means for its commission.

“Secondly, if that person in any other way contributes to the commission of the crime or its attempted commission by a group, knowing that the group intends to commit the crime.”

Ms Omeri KC said the Article 15 communication had been carefully drafted by those instructing her and was now a matter for the Prosecutor to consider.

“The Office of the Prosecutor of the ICC is already pursuing an ongoing investigation into the situation in the State of Palestine, which it has been conducting since March 2021,” Omeri said.

“That includes investigating events which have occurred since 7 October 2023. This Article 15 communication will add to the evidence available to the Prosecutor in relation to that situation.

“The Article 15 communication is of a piece with recent domestic legal cases brought against Western leaders in a number of countries such as in the US, against President Biden, and most recently, in Germany, against, among other senior government ministers, Chancellor Scholz.

“These cases demonstrate a growing desire on the part of civil society and ordinary citizens of Western countries to ensure that their governments do not assist in the perpetration of international crimes, especially in circumstances where the ICJ has found a plausible case of genocide in Gaza.”

Principal solicitor at Birchgrove Legal, Moustafa Kheir, said his team had twice written to Mr Albanese, putting him on notice and seeking a response on behalf of the applicants who make up a large consortium of concerned Australian citizens, including those of Palestinian ethnicity.

Mr Kheir said communications were ignored on both occasions.

“Since October we have attempted communications with our Prime Minister as we reasonably believe that he and members of his cabinet are encouraging and supporting war crimes committed by Israel against Palestinian civilians through their political and military assistance,” Kheir said.

“The Prime Minister has ignored our concerns and given the limited avenues we have for recourse under national law, we have been left with little option but to pursue this Article 15 communication to the International Criminal Court.

“Our communication has been endorsed by King’s Counsel Greg James AM and well over 100 senior counsel and barristers, retired judges, law professors and academics from around Australia who wish to test the strength of international law to hold their own democratic leaders accountable given the barriers we face to do it nationally.

“As lawyers and barristers, it is impossible to sit back and watch sustained breaches of international law while Albanese continues to refer to the perpetrator as “a dear friend.”

A copy of the application can be viewed here: [ICC-Referral-Australian-Government-Ministers-and-Opposition-Leader-04032024_BLG.pdf](#)

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On Background

In Australia, a prosecution for international crimes cannot be brought without the endorsement and support of the Attorney General which poses a significant conflict of interest.

A bill was recently introduced to senate to remove this blockage. If adopted the Bill would end the Attorney General’s power to block crimes against humanity cases from being heard in Australian courts.

The ICC is a court of last resort. It will prosecute international crimes where States parties to the Rome Statute, such as Australia, are either unable to do so themselves or have shown themselves to be unwilling to do so.

Last November more than 1400 lawyers signed a letter which called upon the Australian government to exert its influence to secure a ceasefire in Gaza and the West Bank, and ensure there is adequate provision of food, fuel, medicine, and other humanitarian assistance to Gaza as well as the unconditional restoration of water and electricity.

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