

ANNEX A

Public

Letter of 30 May 2025



מדינת ישראל
 משרד המשפטים
 State of Israel
 Ministry of Justice

המשנה ליועצת המשפטית לממשלה (משפט בין-לאומי) Deputy Attorney General (International Law)

May 30, 2025

To:
 Deputy Prosecutor Nazhat Shameem Khan
 Deputy Prosecutor Mame Mandiaye Niang
Office of the Prosecutor, International Criminal Court

**Re: Actual or Apprehended Bias and Mishandling by the Prosecutor of the
 investigation into the "Situation in Palestine"**

1. The State of Israel hereby requests certain information regarding credible indications of actual bias, or of facts giving rise to a reasonable apprehension of bias, by the Prosecutor of the International Criminal Court in the handling of the investigations leading to request for arrest warrants against Prime Minister of Israel, Benjamin Netanyahu, and former Minister of Defense of Israel, Yoav Gallant.
2. This request is made without prejudice to Israel's status as a State not party to the Rome Statute, as well as Israel's position that the ICC has no jurisdiction over the situation captioned by the Court as "*The Situation in the State of Palestine*", and its position concerning the inadmissibility of the Prosecution's ongoing investigations and cases.
3. Recent media reports indicate that Prosecutor Khan's handling of the investigations and arrest warrant applications mentioned above have been influenced by an improper personal bias. According to these reports, which include information from sources within the Office of the Prosecutor (OTP), Prosecutor Khan learned

on 2 May 2024 that he was the object of allegations of very serious sexual misconduct from a subordinate working in his immediate office.¹

4. Immediately thereafter, Prosecutor Khan “instructed the team working on the Palestine case to move faster” and put staff working on the investigations “under ‘unbelievably intense pressure’”.² Meanwhile, preparations continued for a visit by the Prosecutor to Israel and Gaza proposed for the end of May 2024, which the Prosecutor had personally requested and had previously indicated was important to his evaluation of the situation and to address complementarity.³ The Prosecutor’s visit was to be preceded by that of an advance team from the OTP traveling on 20 May 2024. However, the Prosecutor abruptly canceled the visit of the advance team, as is now revealed in the media reports, notifying his own team of this cancellation on 19 May 2024.⁴ On 20 May 2024, Israeli officials awaiting the arrival of the OTP advance team only learned of its cancellation immediately before they saw the Prosecutor’s announcement of arrest warrant requests through highly-publicized media appearances, including in a sit-down interview with Christiane Amanpour of CNN.
5. A member of the Office of the Prosecutor is reported as saying in respect of these events: “‘It was completely inconsistent with the general approach that this prosecutor had been applying,’ one person said, noting that Khan had normally prioritized engaging with those his office was investigating. ‘I haven’t heard any explanation for why he did that, and the timing matches up [with the allegations]. It was suspicious. It was very reckless how it was handled.’”⁵ Sources within the OTP with knowledge of the case are also reported to have said that “the applications were not up to the typical standard of the office and that “[e]ven people who signed on to support the warrants didn’t feel that comfortable that the evidence was all there to be doing it when he did it [...] It was definitely more

¹ A. Speri, Drop Site, "Hiding Behind the Atrocities", 11 May 2025 (These allegations included “months long grooming, psychological coercion, and sexual advances, which eventually escalated into ‘unwanted’ and ‘coerced’ sex that lasted nearly a year and continued even after she told Khan that his conduct had left her suicidal.”).

² A. Speri, "Hiding Behind the Atrocities", 11 May 2025.

³ M. Dalton, Wall Street Journal, "ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault," 10 May 2025 (“Khan told Blinken that his trip to Israel and Gaza would be an important opportunity to understand the situation on the ground, according to ICC minutes of a May 3, 2024, call reviewed by the Journal. He said he would need time to analyze the information the team gathered before making a decision on the warrants.”)

⁴ M. Dalton, Wall Street Journal, "ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault," 10 May 2025 (“The timing of the announcement has spurred questions about whether Khan was aiming to protect himself from the sexual-assault allegations. The day before announcing the warrant application, Khan abruptly canceled a trip to Israel and Gaza that he had previously said was important to make his decision.”).

⁵ A. Speri, "Hiding Behind the Atrocities", 11 May 2025.

rushed and premature than planned.”⁶ Another observer within the OTP is quoted as having said that ““He tied his personal fate to the fate of a file [...].”⁷ Certain OTP staffers were reported to have “panicked” upon discovering the sexual misconduct allegations and then seeing Prosecutor Khan’s “uncharacteristically ‘impulsive’” decision to seek the arrest warrants “in light of these allegations”.⁸

6. Israel submits that the Office of the Prosecutor has an obligation to disclose information pertinent to the *prima facie* indications of an appearance of bias reflected in the foregoing information and circumstances. Dispelling this appearance is particularly important in respect of *ex parte* proceedings, which involve the exercise of prosecutorial judgment and discretion. Recent media reports cast a significant shadow over whether that judgment and discretion was exercised without being influenced by personal circumstances. Particular candour and transparency are required in the exceptional circumstances that have arisen.
7. Israel makes this request as a participant in the very proceedings that appear to have been tainted by actual or apparent bias, including the complementarity and jurisdictional challenges pending before the Court. The arrest warrants also concern individuals who are entitled to immunities under international law, reinforcing Israel’s manifest legal interest in ensuring that any proceedings against them are conducted impartially. Israel may, depending on the information received, determine that it is necessary to seek remedies before the Court.
8. The Prosecutor’s decision on 16 May 2025 (reported by the President of the Assembly of States Parties on 18 May 2025 and by the ICC on 19 May 2025) to take leave for the duration of the investigation into the sexual misconduct allegations does not in any way dispel the concerns outlined above. The actual or apparent bias evidenced in media reports pertains to the critical period in 2024 when investigations were underway, decisions were made as to whether to proceed with arrest warrant applications, and Israel’s requests in relation to complementarity were rejected by the OTP.
9. The obligation to provide information where potential bias is in issue is well-established. Judge Samba provided additional information about her duties within the Office of the Prosecutor where there was a potential reasonable apprehension of bias as the parties have the “right to have all the information necessary in order

⁶ A. Speri, "Hiding Behind the Atrocities", 11 May 2025.

⁷ A. Speri, "Hiding Behind the Atrocities", 11 May 2025.

⁸ A. Speri, "Hiding Behind the Atrocities", 11 May 2025.

to form their own opinion about this impartiality.”⁹ The Prosecution also provided information in relation to that potential appearance of bias involving Judge Samba.¹⁰ Judge Hohler similarly opined in this very matter that “[i]ndependence and impartiality of judges are the cornerstone of fair proceedings, and parties and participants have the right to receive the information they deem necessary in order to form their own opinion about a judge’s impartiality. I therefore consider it proper and necessary to expeditiously answer the questions raised by the State of Israel.”¹¹ A failure proactively to disclose information – let alone to disclose information upon request – may enhance a reasonable apprehension of bias.¹² The Prosecutor is subject to the same standards and requirements of impartiality as a judge, if not more so in light of the extensive discretion accorded to him under the statutory instruments of the Court in the conduct of investigations. Indeed, the Prosecutor’s leading role with respect to complementarity in the early stages of an investigation, and the correlative impact of this role on the sovereign rights of States means that ensuring his impartiality is a critical safeguard for the Court’s legitimacy as a whole.

10. Accordingly, Israel requests the following information, or appropriately redacted versions thereof, that appears to be manifestly relevant to the indications of actual or reasonable apprehension of bias in the conduct of the investigations leading to the arrest warrants against Israeli officials:

- a. The arrest warrant applications for Mr. Netanyahu and Mr. Gallant;
- b. Any communications, either within the OTP or with persons outside the OTP, including but not limited to, any independent advisers of the OTP, experts, or any other person outside of the OTP whomsoever, with whom the evidential or legal basis of the arrest warrants was shared in whole or in part, regarding the evidential basis for the arrest warrants or the absence of adequate investigation into exculpatory circumstances;

⁹ *Gicheru*, Decision on Defence Request for Information concerning Judge Samba’s Prior Employment, ICC-01/09-01/20-168, 27 August 2021, para. 3.

¹⁰ *Id.* paras.1-2.

¹¹ Provision of Information Concerning Previous Employment with the Office of the Prosecutor, 20 November 2024, ICC-01/18-373 Anx, para. 6.

¹² *Karemera et al.*, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera’s Motion for Leave to Consider New Materials, AC, ICTR-98-44-AR15bis.2, 22 October 2004, para. 67 (“The particular circumstances involved here include, in addition to the admitted association and cohabitation, the fact that Judge Vaz did not disclose these facts until Defence counsel expressly raised this matter in court and that she withdrew from the case after Defence lodged applications for her disqualification on this basis and before the Bureau decided the disqualification motions.”)

- c. Any documentation or correspondence, either within the OTP or with persons outside the OTP, concerning whether potential exculpatory material provided by Israel should or need not be reviewed, either internally or by any person outside of the OTP, prior to the issuance of the arrest warrant applications;
- d. Any documentation or correspondence, either within the OTP or with persons outside the OTP (including but not limited to the Internal Oversight Mechanism or officials of the Assembly of States Parties), in particular during, but not limited to, the period between the disclosure of these allegations at the end of April 2024 and 20 May 2024 addressing:
 - i. whether there was a potential link between the Prosecutor's decision to expedite the applications for the arrest warrants and the sexual misconduct allegations and / or investigation thereof;
 - ii. whether the Prosecutor should recuse himself from involvement in any matters as a result of allegations or investigations concerning sexual or other misconduct;
- e. Any documentation or correspondence communicated in any form to the Prosecutor, in particular during, but not limited to, the period between the end of April and 20 May 2024, expressing concerns about:
 - i. the decision to refuse Israel's request of 1 May 2024 that the ICC's investigations be deferred and for further information about the scope of the Prosecution's investigations;
 - ii. the legal or evidential sufficiency of the proposed applications for arrest warrants;
 - iii. the timing and publicity of the applications for arrest warrants;
 - iv. compliance with the statutory obligation to "investigate incriminating and exonerating circumstances equally", including in relation to giving due consideration to the significant volume of material provided by Israel to the OTP on request and in relation to the decision to cancel the OTP's visit to Israel;
 - v. Compliance with OTP policies and / or practices relating to applications for arrest warrants; and
- f. Any other documentation, communications or correspondence whatsoever indicating that the Prosecutor received advice that the issuance of arrest warrants on 20 May 2024 was not legally warranted given the stage of the investigations or for any other reason.

11. Some of the foregoing requests, in particular requests (b)-(d), refer to communications outside of the scope of rule 81 of the Rules of Procedure and Evidence and, therefore, may not be rejected on that basis. Even in respect of

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communications purported to be internal to the OTP, rule 81 should not be used as an excuse to with-hold information that is probative of actual or potential bias of the Prosecutor. The Prosecution must, notwithstanding rule 81, disclose information that is indicative of an actual or reasonable apprehension of bias. If truly sensitive information makes such disclosure difficult, then redactions should be applied, and the Prosecution must adopt the narrowest possible interpretation of these restrictions in the interest of justice.

12. The current situation can only be described as extraordinary. There are credible indications of a Prosecutor driven by personal bias to hastily issue arrest warrants against two individuals who were entitled to State immunity. Israel maintains that this was inherently unlawful, as well as wholly unjustified from both an evidential perspective and based on the Court's own principle of complementarity. The Office of the Prosecutor undoubtedly disagrees. Nevertheless, preserving the integrity of the justice process should be supported and agreed upon by all. That integrity now requires remedial action by the Office of the Prosecutor in the form of the limited disclosure, as requested above, that addresses the indications of personal bias that have now arisen.
13. Israel looks forward to your prompt response in light of the pendency of matters before the Court that are directly affected by this issue. If no positive response to this request is received by 13 June 2025, Israel will consider that the request has been rejected. Depending on the information received, Israel may determine that it is necessary to pursue further remedies, including seeking judicial intervention.



Dr. Gilad Noam,

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