Cour
Pénale
Internationale

International
Criminal
Court

Original: ***English***

No.: ***ICC-ICC-01/18***
Date: **19 November 2025**

THE APPEALS CHAMBER

Before: **Judge Tomoko Akane , Presiding Judge**
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public
With Public Annex 1, Annex A
and Confidential Annex B

Registry transmission of "Request to Disqualify the Prosecutor and for Ancillary Remedies"

Source: **Registry**

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

☒ **The Office of the Prosecutor**

☐ **Counsel for the Defence**

☒ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants (Participation/Reparation)**

☐ **The Office of Public Counsel for Victims**

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

☒ **States' Representatives**
The State of Israel

☐ **Amicus Curiae**

REGISTRY

Registrar
M. Zavala Giler, Osvaldo

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations Section**

☐ **Other**

I. INTRODUCTION

1. The Registry hereby transmits to the Appeals Chamber ("Chamber"), a "*Request to Disqualify the Prosecutor and for Ancillary Remedies*", ("Request") and its annexes, received from the State of Israel ("Submitter"), on 17 November 2025.

II. PROCEDURAL HISTORY

2. On 17 November 2025, the Registry received an e-mail from the Embassy of Israel, with three documents attached, consisting of the Request and two annexes.[1]

3. On the same day, the Registry consulted the Chamber to seek guidance on whether and how to place the Request on the case record.[2]

4. On 18 November 2025, the Chamber instructed the Registry to submit the Request *via* a Registry transmission filing ("Instruction").[3]

[1] E-mail sent by the Legal Counsel of the Embassy of Israel in The Hague to the Court Management Section ("CMS") on 17 November 2025, at 16.03.
[2] E-mail sent by CMS to the Appeals Chamber on 17 November 2025, at 17.00.
[3] E-mail sent by Legal Officer of the Appeals Chamber to CMS on 18 November 2025, at 11.48.

III. TRANSMISSION

5. Pursuant to rule 13(1) of the Rules of Procedure and Evidence, the Registry hereby transmits the Request as annex to the present submission, in accordance with the Chamber's Instruction.

Marc Dubuisson, Director, Division of Judicial Services

On behalf of

Osvaldo Zavala Giler, Registrar

Dated this 19 November 2025
At The Hague, The Netherlands.

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Date: **17/11/2025**

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Before: **Judge Tomoko Akane, Presiding Judge**
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Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public, With Public Annex A and Confidential Annex B

Request to Disqualify the Prosecutor and for Ancillary Remedies

Source: **The State of Israel**

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

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☐ **Other**

I. INTRODUCTION

1. A Prosecutor must not, pursuant to article 42(7) of the Rome Statute, "participate in any matter in which their impartiality might reasonably be doubted on any ground". The need for impartiality is most acute during investigations. Unlike subsequent, adversarial stages of proceedings, a Prosecutor must investigate and bring charges as an "objective truth seeker and not as a partisan lawyer."[1] Without impartiality, in appearance and in fact, a Prosecutor can neither "investigate incriminating and exonerating circumstances equally," as expressly required by article 54(1)(a) of the Rome Statute (the 'Statute') ("in order to establish the truth"), nor be relied upon to make candid and even-handed submissions in seeking an arrest warrant, as is required in any *ex parte* proceeding.

2. Israel's first-hand experience from its engagement with the Office of the Prosecutor ('OTP') in the months of April-May 2024, combined with information that has now come to light, including as apparently collected by the UN Office of Internal Oversight Services ('OIOS') and through abundant media reporting, indicates that the Prosecutor's impartiality in the conduct of the investigation leading to arrest warrant applications for Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant might "reasonably be doubted"[2] by a "reasonable observer, properly informed."[3] That information suggests that the Prosecutor's decision to hurriedly submit arrest warrant applications in May 2024 might have been influenced by a desire to suppress, divert or protect himself from, allegations of serious sexual misconduct.

3. The doubts concerning the Prosecutor's impartiality do not depend in any way on the truth or falsity of the sexual misconduct allegations. What matters is whether the appearance of the Prosecutor's impartiality in the conduct of investigations in this situation could be reasonably doubted by a reasonable observer, properly informed, based on the Prosecutor's awareness of and reaction to those allegations. A reasonable possibility of such influence is all that is required for disqualification of a Prosecutor from a case. In the present circumstances, the Prosecutor must either be disqualified from these cases, pursuant to article 42(7) of the Statute or, as in the *Venezuela* Situation,[4] invited to excuse himself pursuant to rule 35 of the Rules of Procedure

[1] *Prosecutor v. Yekatom*, Decision on the Yekatom Defence Request for the Exclusion of Allegedly Fabricated Evidence, ICC-01/14-01/18-2460-Red, 23 April 2024 ("*Yekatom* decision for the exclusion of evidence"), para. 28; *Prosecutor v. Ruto et al.*, Dissenting Opinion Judge Kaul to the Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-01/11-373, p. 165, para. 45(3) ("*Ruto* Dissenting opinion Judge Kaul").
[2] Article 42(7) of the Statute.
[3] *Prosecutor v. Duterte*, Decision on the Defence request to disqualify the Prosecutor, ICC-01/21-01/25-286-Red, 15 October 2025 ("Duterte Decision to disqualify the Prosecutor"), para. 38.
[4] *Situation in the Bolivarian Republic of Venezuela*, Decision on the "Request for the Appeals Chamber to Conduct

and Evidence (the 'Rules').

4. Furthermore, the integrity of the arrest warrants cannot be disconnected from the involvement of a Prosecutor lacking the essential condition of impartiality, or appearance thereof. The arrest warrant applications were the vehicle by which the Prosecutor appears to have improperly advanced his personal interests. Given that the Pre-Trial Chamber was not in a position – and was not aware that it needed – to verify the impartiality or sufficiency of the Prosecutor's investigations or *ex parte* submissions, its decision is likewise tainted by the absence of prosecutorial impartiality. Therefore, this Appeals Chamber should declare the arrest warrants of no force or effect as necessarily ancillary to the Prosecutor's disqualification under article 42(7) of the Statute, and/or as part of its inherent jurisdiction and responsibility to ensure fairness at every stage of proceedings. Alternatively, the question of remedy may be remanded to the Pre-Trial Chamber, with instructions to declare that the arrest warrants have no force or effect.[5]

5. This motion will proceed as follows. Part II sets out the relevant facts. It first describes the State of Israel's period of engagement with the OTP, in April-May 2024, based on Israeli officials' first-hand experience and relevant interactions with their interlocutors. It then sets out the information that has come to light since then, in official communications and in abundant media reporting, often relying on numerous identified sources, much of which has been substantially corroborated. Part III first addresses the legal standard for assessing the Prosecutor's impartiality, especially in respect of *ex parte* proceedings. It then demonstrates why the circumstances surrounding the Prosecutor's application for arrest warrants in May 2024 give rise to the conclusion that the Prosecutor's impartiality "might reasonably be doubted". It further explains why, in the present circumstances, the Prosecutor must be disqualified and the arrest warrants based on the investigation under his direction must accordingly be quashed.

II. RELEVANT FACTS

6. The Prosecutor's conduct during the month of May 2024 took place in the context of significant and ongoing engagement between the OTP and the State of Israel. On 21 March 2024 the OTP sent Israel a wide-ranging "Request for Assistance" ('RFA') seeking information on issues such as the provision of humanitarian aid to Gaza; a list of all "evacuation orders" and warnings; all information regarding civilians killed in Gaza, including all audio and video-

an *Ex Officio* Review of the Prosecutor's Conflict of Interest in the Venezuela I Situation", ICC-02/18-118, 1 August 2025 ("Venezuela decision on *ex officio* review"), paras. 26-32.

[5] This filing is without prejudice to Israel's status as a State not party to the Rome Statute, to Israel's position that the Court has no jurisdiction in respect of the situation captioned by the Court as "The Situation in the State of Palestine", or to any position concerning the Prosecutor's non-compliance with article 18.

recordings; the designation of "safe zones"; all war cabinet decisions relevant to military operations in Gaza; and any and all decisions and instructions issued by the Coordinator of Government Activities in the Territories unit (COGAT).[6] On 8 April 2024, an Israeli inter-ministerial delegation met with the Prosecutor and his senior staff at the seat of the Court in order to discuss issues arising from the RFA and seeking further specificity about the scope of the requests, information and guarantees as to how national security and other sensitive information could be kept confidential, as well as discussing how matters related to these requests were already being addressed by Israel's legal system. Israel initiated an intensive and expedited inter-ministerial process of identification, declassification and translation of information and provided the OTP with thousands of pages of responsive documents and visual materials, transferred to OTP in separate batches as part of an ongoing process.

7. All of this information was provided on an entirely voluntary basis,[7] with a view to ensuring that the OTP did not misunderstand the factual situation, as well as to showing that Israel's domestic institutions, even in the context of an ongoing armed conflict, were addressing such matters. The OTP's Principal Trial Lawyer in the situation, Andrew Cayley, during a meeting with an Israeli diplomatic representative at Israel's Embassy in The Hague on 8 May 2024, confirmed that the information should continue to be provided, and assured his interlocutors that all the information being provided would be carefully reviewed and that no decisions had yet been made. The sixth batch of information in this ongoing process was provided by Israel to the OTP on 17 May 2024.

8. Meanwhile, Israel and the OTP were also actively discussing an OTP request to conduct an investigative mission to Israel and Gaza. On 26 April, Israel indicated that it was positively disposed towards such a mission, subject to further assurances and conditions, to which the Prosecutor responded positively in writing on 30 April 2024. Following further exchanges, Israel and the OTP agreed on 7 May 2024 that an OTP mission would take place during the week of 27 May 2024, and subsequently agreed that an OTP advance team would arrive in Israel on 20 May 2024 to coordinate the mission. The OTP advance team re-confirmed its imminent arrival to Israeli officials on 17 May 2024.

9. Israel was informed that this mission had also been discussed with senior US officials, as

[6] This RFA had been preceded by an RFA transmitted on 27 February 2024 seeking information concerning the 7 October 2023 attacks. Another RFA was transmitted on 5 April 2024 requesting access to Gaza.
[7] This voluntary engagement was carried out expressly without prejudice to Israel's stated position on the Court's jurisdiction and to its status as a non-party to the Rome Statute, as reflected in contemporaneous communications with the OTP.

is also reflected in an official State Department statement.[8] According to reports, contemporaneous ICC minutes record that the Prosecutor told then Secretary of State Antony Blinken on 3 May 2024 that he viewed the mission as "an important opportunity to understand the situation on the ground" and said that "he would need time to analyze the information the team gathered before making a decision on the warrants."[9] A second media report of the same meeting states that the Prosecutor said that "the court would need time to investigate the evidence it had gathered" following his planned "travel to Israel and Gaza that spring."[10] The Prosecutor was only slightly less explicit in a call with Senator Lindsay Graham just two days before that, when he "made assurances that he would collaborate with Israel to investigate these matters and to proceed judiciously," as stated in an *amicus* filing before the Pre-Trial Chamber.[11]

10. Unbeknownst to Israel at the time (nor, according to reports, most staff within the OTP), the Prosecutor learned on 2 May 2024 that allegations of serious sexual misconduct had been raised against him and would be imminently reported. The information that follows has all been reported in official communications[12] and/or at least two media outlets, often relying on numerous identified sources including: (i) testimony, audio-recordings, emails and text messages gathered by the OIOS; (ii) direct statements from at least a dozen named and unnamed staff members within the OTP; and (iii) statements attributed to the Prosecutor himself. Many of the most relevant facts are substantially corroborated and, viewed as a whole, sufficiently reliable to inform "the perspective of a reasonable observer, properly informed."[13]

11. On 29 April 2024,[14] after returning from an official work trip with the Prosecutor to

[8] Antony J. Blinken, Secretary of State, Warrant Applications by the International Criminal Court, U.S. Department of State, 20 May 2024 ("Press Statement of Secretary of State Blinken").
[9] M. Dalton, "ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault", WSJ, 10 May 2025 ("ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault") ("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.").
[10] R. van der Poel, L. Nieber and H. Chin-A-Fo, "Abuse and manipulation at the International Criminal Court", NRC, 10 October 2025 ("Abuse and manipulation at the ICC").
[11] Written Observations Pursuant to Rule 103 of United States Senator Lindsey O. Graham, ICC-01/18-304, 6 August 2024 ("Written Observations of Senator Lindsey O. Graham"), para. 34.
[12] ICC ASP, Annual report of the Head of the Independent Oversight Mechanism, ICC-ASP/23/18, 18 October 2024 ("IOM Annual Report 2024"), para. 37; Press Release, President of the ASP statement on alleged misconduct by an ICC elected official, 24 October 2024 ("President of the ASP statement on alleged misconduct by an ICC elected official"); Press Release, Statement by the President of the Assembly of States Parties on investigation into alleged misconduct by an ICC elected official, 11 November 2024 ("Statement by the President of the ASP on investigation into alleged misconduct").
[13] *Duterte* Decision to disqualify the Prosecutor, para. 38; *Prosecutor v. Bemba et al.*, Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff, ICC-01/05-01/13-648-Red3, 22 August 2014, para. 24, *referring to Prosecutor v. Gaddafi and Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, ICC-01/11-01/11-175, para. 20.
[14] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault; D. Kirkpatrick, "The

Colombia and Venezuela,[15] a staff member in the Immediate Office of the Prosecutor reportedly "had a breakdown" in the office. She is said to have revealed to two of her colleagues that she had been sexually abused by the Prosecutor for months.[16] The abuse, as she stated in later testimony to the OIOS, included non-consensual sex on numerous occasions from April 2023 through April 2024.[17] On 2 May 2024,[18] the two OTP employees and others in whom they had confided are said to have gone to the Prosecutor's house and told him that they felt obliged to report the misconduct allegations to the Registry.[19] The Prosecutor's immediate response is reported to have been that "he was 'finished' and would have to resign immediately."[20] On the morning of 3 May 2024, Prosecutor Khan posted a social media statement according to which the OTP "insists that all attempts to impede, intimidate or improperly influence its officials cease immediately."[21] The Registry's Internal Oversight Mechanism ('IOM') has indicated that it was informed of the allegations on 3 May 2024.[22] On 5 May 2024, IOM investigators reportedly met with the potential complainant who, at the time, declined to offer information or

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Hague on Trial", The New Yorker, 5 October 2025 ("The Hague on Trial") ("Khan's accuser burst into tears in front of a female colleague, and did so again, later that day, in the office of one of Khan's senior advisers").

[15] Statement, ICC Prosecutor Karim A.A. Khan KC concludes visit to Venezuela, opens in-country office in Caracas, 24 April 2024 ("Today I have concluded my fourth official visit to the Bolivarian Republic of Venezuela (22-24 April 2024)"); ICC Office of the Prosecutor launches Policy on Complementarity and Cooperation, 25 April 2024 ("At the event in Bogotá, ICC Prosecutor Karim A.A. Khan KC described the vision behind the renewed complementarity drive of his Office…"); D. Graham-Brown, M. Hookham, "British law chief bringing war crimes case against Israel 'pressed alleged victim to deny sexual assault claims'", Daily Mail, 8 March 2025 ("British law chief bringing war crimes case against Israel 'pressed alleged victim to deny sexual assault claims'".

[16] A. Speri, "Hiding Behind Atrocities", Drop Site News, 11 May 2025 ("Drop Site"); ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("The woman told Lynch and her colleague about the alleged abuse once she returned to The Hague"); The Hague on Trial.

[17] Abuse and manipulation at the ICC ("NRC also had access to confidential minutes, recordings, e-mails, investigative reports, witness statements and app messages"); ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("testimony to U.N. officials […] which was reviewed by The Wall Street Journal"); Drop Site ("Drop Site also reviewed relevant internal documents, including emails, texts, phone records, written testimony submitted to investigators").

[18] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault.

[19] The Hague on Trial ("On May 2, 2024, Lynch and the female colleague told Khan that they felt obliged to pass her allegations to human resources"); Drop Site ("within a couple of days of that meeting, Lynch decided that he had no choice but report the allegations to the court's human resources department"); H. Davies, R. Flummerfelt, "ICC prosecutor allegedly tried to suppress sexual misconduct claims", The Guardian, 27 October 2024 ("ICC prosecutor allegedly tried to suppress sexual misconduct claims") ("Khan was told one evening in early May that serious allegations would soon be shared with the IOM when a small group of staff from his office approached him, according to multiple people familiar with the events").

[20] Drop Site.

[21] Drop Site; Statement of the ICC Office of the Prosecutor on "X", 3 May 2024. This OTP statement was "retweeted" by the Prosecutor on his personal account.

[22] IOM Annual Report 2024, para. 37 ("On 3 May 2024, the IOM was informed of allegations that an elected official would have engaged in behaviour in violation of the Court's Harassment AI"); President of the ASP statement on alleged misconduct by an ICC elected official ("I am aware of recent public reports regarding alleged misconduct by the ICC Prosecutor towards a member of his Office. I can confirm that the Independent Oversight Mechanism (IOM) was seized of this matter on the basis of a third-party report … As reported by the IOM in its 2023-2024 Annual Report, following the conversation with the alleged victim, the IOM was not in a position to proceed with an investigation at that stage"); D. Hearst, I. Mulla, S. Hooper, "Exclusive: How Karim Khan's Israel war crimes probe was derailed by threats, leaks and sex claims", Middle East Eye, 1 August 2025 ("How Karim Khan's Israel war crimes probe was derailed by threats, leaks and sex claims"); Abuse and manipulation at the ICC.

file a complaint.[23] On or about 6 May 2024, the Prosecutor is reported to have attempted to compel the two staff members who had reported the allegations to the IOM to leave immediately for Uganda despite there being "no work-related reason for them to go at that time".[24] On or about 7 May 2025, the IOM declined to take the investigation forward,[25] but reportedly advised the Prosecutor "to avoid one-on-one contact" with the alleged victim. [26]

12. Following 3 May 2024, the Prosecutor reportedly "instructed the team working on the Palestine case to move faster" and put them under "'unbelievably intense pressure'" to finalize the arrest warrant applications.[27] On 20 May 2024, while Israeli officials awaited the arrival of the OTP mission's advance team in Jerusalem later that day, the Prosecutor filed the arrest warrant applications before Pre-Trial Chamber I. He chose to make them public, and maximized media coverage by arranging a sit-down interview with Christiane Amanpour on that day.[28] The OTP's advance team did not arrive in Israel as scheduled in order to finalize details for the Prosecutor's planned visit.

13. Following the filing of the arrest warrant applications, the Prosecutor reportedly pressured the potential complainant to disavow the sexual misconduct allegations.[29] According to the reported statement of the victim to the OIOS, the Prosecutor "approached her several times in the office crying" and, on at least one occasion, "'said in tears: "Tell me if I need to resign …. *Think about the Palestinian arrest warrants*"'".[30] To this end, during a phone call in October 2024, Prosecutor Khan is reported to have stated that if she ever made the allegations known: "The casualties will unfortunately be three: You and your family, me and my family *and the justice of the victims*."[31]

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[23] IOM Annual Report 2024, para. 37 ("the alleged affected individual declined to pursue a formal complaint with the IOM…"); ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault; J. Goodman, M. Quell, "International court prosecutor who charged Netanyahu faces sexual misconduct accusation", AP News, 25 October 2024 ("International court prosecutor who charged Netanyahu faces sexual misconduct accusation"); Abuse and manipulation at the ICC ("According to her statement, she was given a choice on the spot: did she want an investigation into her boss, or were the allegations untrue? S. broke off the meeting in distress, she wanted nothing."); ICC prosecutor allegedly tried to suppress sexual misconduct claims; The Hague on Trial.
[24] Drop Site; Abuse and manipulation at the ICC.
[25] IOM Annual Report 2024, para. 37 ("Accordingly, the IOM determined that no investigation was necessary at this stage.").
[26] ICC prosecutor allegedly tried to suppress sexual misconduct claims ("minimise contact with the woman and avoid spending time with her alone, at night or while travelling on work trips."); Drop Site ("the investigator also said the IOM had recommended a series of 'mitigating measures,' including that the Prosecutor 'minimize one-on-one contact'"); The Hague on Trial ("The oversight bureau, concluding that the woman would not participate in any inquiry, e-mailed Khan on May 7th, advising him to 'minimise individual one-on-one contact' with her").
[27] Drop Site.
[28] CNN Podcast, Amanpour, "Exclusive: ICC Chief Prosecutor Karim Khan", 20 May 2024.
[29] The Hague on Trial ("The woman has told U.N. investigators that, at about the same time, Khan and another court official close to him were pushing her to clarify that she had no intention of pursuing a complaint.").
[30] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault (italics added).
[31] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault (italics added) ("The

14. These efforts to pressure the potential complainant to disavow the sexual misconduct allegations were reportedly frequent. The Prosecutor himself and one of his aides, who, reportedly, later became his Chief of Staff, contacted the victim "two or three times a week before ramping up to nearly every day from July and then often multiple times a day from August until mid-October."[32] The Chief of Staff reportedly told her that "Khan was 'very scared' and 'nervous' the allegations would eventually leak."[33]

15. On 11 November 2024, following reporting by media outlets during the final week of October 2024,[34] the President of the Assembly of States Parties ('ASP') announced that she was commissioning an external investigation into allegations of misconduct, to be conducted by the OIOS.[35]

16. On 21 November 2024, Pre-Trial Chamber I issued the arrest warrants for Prime Minister Netanyahu and Mr. Gallant.

17. On 10 and 11 May 2025, the *Wall Street Journal* and an online journalistic platform called *Drop Site* reported significant new details about the sexual misconduct allegations and, for the first time, reported a widespread suspicion within the OTP that the arrest warrant applications had been filed precipitously to protect the Prosecutor's personal interests.[36]

18. On 16 May 2025, the Prosecutor announced his intention to "take leave" until the end of the OIOS process.[37]

19. On 30 May 2025, Israel requested information from the OTP concerning the indications of bias surrounding the arrest warrant applications contained in the *Wall Street Journal* and *Drop Site* articles. That letter set out the "*prima facie* indications" of "actual or apparent bias"

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casualties of the allegations would include 'the justice of the victims that are on the cusp of progress,' he said to her, according to a record of a call that is now part of an independent U.N. investigation into her allegations."); The Hague on Trial ("The *Journal* article quoted Khan's statement in the secretly taped October 17th phone call about 'the victims that now, finally, are on the cusp of progress.'").

[32] British law chief bringing war crimes case against Israel 'pressed alleged victim to deny sexual assault claims'.

[33] ICC prosecutor allegedly tried to suppress sexual misconduct claims.

[34] International court prosecutor who charged Netanyahu faces sexual misconduct accusation; ICC prosecutor allegedly tried to suppress sexual misconduct claims. On 18 October 2024, the IOM referred to the complaints in its annual report to the ASP but without naming the subject of the complaint. *See* IOM Annual Report 2024, para. 37.

[35] Statement by the President of the ASP on investigation into alleged misconduct; Drop Site.

[36] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault; Drop Site ("Once news of the allegations surfaced, staff within the prosecutor's office also began to question whether the warrant applications were connected to the accusations against him. '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." Others viewed Khan's decision to seek the warrants as uncharacteristically "impulsive" before they learned of the sexual misconduct allegations, and "panicked" once they saw it in light of the allegations").

[37] Statement, ICC Deputy Prosecutors: Work of the Office continues across all situations, 19 May 2025.

contained in those articles and explained that "[d]ispelling 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."[38]

20. On 13 June 2025, the Prosecution refused this request.[39]

21. On 24 June 2025 the President of the ASP announced that the OIOS's fact-finding investigative report, once received, would be assigned to an external panel of judicial experts who will report to the ASP Bureau via the Presidency of the Assembly as to appropriate next steps following consideration of the legal framework.[40]

22. On 5 October 2025, *The New Yorker* published an article with additional factual details, including that the OIOS investigators appear to have questioned the Prosecutor about whether the sexual misconduct allegations impacted on the conduct of the investigation in the so-called "Situation in Palestine".[41] On 8 October 2025, the Dutch media outlet *NRC* published a major feature concerning the sexual misconduct allegations and their potential impact on the investigations in this situation, which also contained significant new details.[42]

III. SUBMISSIONS

(i) A Prosecutor is prohibited from participating in any matter where their impartiality might reasonably be doubted, which applies with particular force given the duties of impartiality applying to investigations and *ex parte* applications

23. Article 42(7) of the Statute requires that "[n]either the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground." According to the Appeals Chamber, "'it is not necessary to establish an actual lack of impartiality on the part of the Prosecutor. Rather, the question […] is whether it reasonably appears that the Prosecutor lacks impartiality. In determining whether there is such an appearance of partiality, […] this determination should be based on the perspective of a reasonable observer, properly informed.'"[43] The question is whether the reasonable observer

[38] Annex A.
[39] Confidential Annex B.
[40] Press Release, Statement by the ASP Presidency concerning the assignment of the OIOS fact-finding report on alleged misconduct by ICC Prosecutor to an external judicial expert Panel, 24 June 2025.
[41] The Hague on Trial.
[42] Abuse and manipulation at the ICC.
[43] *Venezuela* Decision on *ex officio* review, para. 34 (citations omitted); *Duterte* Decision to disqualify the Prosecutor, para. 38.

"having considered all the facts and circumstances, would reasonably apprehend bias."[44]

24. A Prosecutor has a positive obligation under rule 35 of the Rules to request to be excused whenever there is "reason to believe that a ground for disqualification exists." This "reason to believe" standard, according to the Appeals Chamber, is the same that applies to the authorization, or opening, respectively, of an investigation under articles 15 and 53 of the Statute, namely the "existence of a material factual basis or reason that is the foundation of the belief."[45]

25. This requirement of impartiality applies throughout proceedings, but has particular significance given the obligations and degree of discretion of a prosecutor at the investigative stage. One of those obligations, pursuant to article 54(1)(a) of the Statute is to "investigate incriminating and exonerating circumstances equally." This provision "makes it clear that the Prosecution is conceived of as an 'objective truth seeker and not as a partisan lawyer' during the investigation phase."[46] Any investigation by the ICC Prosecutor, as would be required of an investigating judge in a civil law system, "must be comprehensive."[47]

26. The fairness and integrity of the arrest warrant process depends on an impartial and comprehensive investigation, and the candid presentation of all relevant and exculpatory facts by the Prosecutor. A Pre-Trial Chamber to which an arrest warrant application is submitted, without any independent investigative mandate or resources, has no choice but to rely on the Prosecutor's exercise of his "autonomous and independent investigative powers."[48] If these powers are not exercised impartially, including by discharging the obligation to investigate and present "exonerating circumstances equally", the Pre-Trial Chamber "would be unable to differentiate properly between the cases which warrant being committed for trial and those which do not."[49]

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[44] *Venezuela* Decision on *ex officio* review, para. 34 (citations omitted); *Duterte* Decision to disqualify the Prosecutor, para. 39.
[45] *Venezuela* Decision on *ex officio* review, para. 39.
[46] *See* *Yekatom* decision for the exclusion of evidence, para. 28; *Ruto* Dissenting opinion Judge Kaul, p. 165, para. 45(3).
[47] *Prosecutor v. Katanga & Ngudjolo*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ICC-01/04-01/07-474, 13 May 2008, para. 82.
[48] *Prosecutor v. Ruto et al*., Decision on the "Request by the Victims' Representative for authorisation to make a further written submission on the views and concerns of the victims", ICC-01-/09-01/11-371, 9 December 2011, paras. 16-17.
[49] *Prosecutor v. Bemba*, Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure Between the Parties, ICC-01/05-01/08-55, 31 July 2008, para. 29. *See* Michael Ramsden & Cecilia Chung, 'Reasonable Grounds to Believe: An Unreasonably Unclear Evidentiary Threshold in the ICC Statute', (2015) 13 J. Int'l Crim. Just. 555, 571 ("At an *ex parte* stage of the proceedings, the Chamber is completely reliant on the prosecution for information. In practice, the danger arises that there is no equality of arms if the prosecutor is merely required to disclose what he or she deems appropriate and necessary.").

27. This is especially important in respect of the investigation and submissions in support of an arrest warrant, which is done *ex parte*. Common law prosecutors (or applicants) are bound in the *ex parte* context by the "duties of candour and good faith", which require that the evidence presented to the court is "'complete and thorough'" and based on "a thorough review of the information in its possession and […] representations based on all of the information including that which is unfavourable to their case."[50] The prosecutor must "put on his defence hat and ask himself, what, if he was representing the defendant or a party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge."[51] As has been acknowledged judicially and is now enshrined in England and Wales' Criminal Practice Directions, this is "a heavy burden but a vital safeguard. Full details must be given."[52]

28. In summary, the Pre-Trial Chamber's ability to discharge its mandate in an *ex parte* context depends entirely on the Prosecutor's impartiality in ensuring: (i) a sufficiently comprehensive investigation, including investigating incriminating and exonerating circumstances equally; and (ii) candid and even-handed sharing with the Pre-Trial Chamber of exonerating information obtained in the course of the investigation. Without any mandate to conduct independent investigations, the Pre-Trial Chamber can only rely on the quality of the Prosecution's investigations and submissions.

(ii) The Prosecutor's impartiality "might reasonably be doubted" in respect of the arrest warrant applications, and the investigations on which they are based

a. Introduction

29. A reasonable doubt has now arisen whether the Prosecutor was impartial in the conduct of the investigations, and in deciding to seek arrest warrants against Mr. Netanyahu and Mr. Gallant, after he had learned about the impending sexual misconduct allegations against him. This reasonable doubt arises based on the following information: (i) the words reportedly used by the Prosecutor himself to attempt to dissuade the potential complainant from coming forward

[50] *Canada (Citizenship and Immigration) v. Harkat*, [2014] 2 S.C.R. 33, para. 101.
[51] *Re Stanford* International Bank Ltd (In Receivership)[2011] Ch 33 per Hughes LJ at 109, para. 191 ("it is essential that the duty of candour laid upon any applicant for an order without notice is fully understood and complied with. It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge").
[52] *Criminal Practice Directions 2015 (Consolidated Version)* [2022] 5 WLUK 690, at 47A.3 ("Applicants for orders and warrants owe the court duties of candour and truthfulness. On any application made without notice to the respondent, and so on all applications for search warrants, the duty of frank and complete disclosure is especially onerous. The applicant must draw the court's attention to any information that is unfavourable to the application. The existence of unfavourable information will not necessarily lead to the application being refused; it will be a matter for the court what weight to place on each piece of information."). See also: *R (On the Application of S, F and L) v Chief Constable of the British Transport Police and Southwark Crown Court* [2014] W.L.R. 1647 per Aikens LJ at 1659.

with serious allegations of sexual misconduct; (ii) the abrupt cancelation of the investigative mission to Israel and Gaza replaced by intense pressure to announce the filing of a request for arrest warrants, despite substantial volumes of exculpatory material having been provided by Israel that could not have been comprehensively verified or negated by the time that the applications were filed, combined with the reported "suspicion" amongst OTP employees that the Prosecutor's abrupt change of direction may have been influenced by the sexual misconduct allegations; and (iii) reports of other false allegations or intimidation by the Prosecutor against those perceived as making or reporting the sexual misconduct allegations. The doubts concerning the Prosecutor's impartiality do not depend in any way on the truth or falsity of the sexual misconduct allegations. What matters is whether the appearance of the Prosecutor's impartiality in the conduct of investigations in this situation could be reasonably doubted based on the Prosecutor's awareness of and reaction to those allegations.

b. The Prosecutor's own words to the victim

30. When trying to convince the potential complainant not to make a formal complaint against him, the Prosecutor is reported *verbatim* to have said: "*Think about the Palestinian arrest warrants*".[53] He is also quoted *verbatim* as having told her that one of the "casualties" if she were to make a complaint would be "*the justice of the victims*."[54] It is reported that an audio-recording of these words as spoken by the Prosecutor is now in the possession of the OIOS.[55]

31. These words would be reasonably viewed by a properly informed observer as showing the Prosecutor attempting to leverage the arrest warrants to advance his own personal interests. The arrest warrants appear to have been used to persuade the potential complainant to disavow the sexual misconduct allegations. Whether these conversations occurred before or after the arrest warrant applications were filed is not specified and is also immaterial: either way, they show the Prosecutor's apparent conflation, and use, of the arrest warrants to advance his personal interests in respect of allegations that would be personally and professionally devastating. Indeed, as reported, it seems that the leveraging of the arrest warrants in favour of his personal interest was, for a time, successful: "The warrant also discouraged his accuser for a time from pushing her allegations, officials said, because she strongly supported the investigation of

[53] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault.
[54] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("The 'casualties' would also include 'the justice of the victims that now, finally, are on the cusp of progress.'").
[55] How Karim Khan's Israel war crimes probe was derailed by threats, leaks and sex claims ("Her recording of the call, which lasted for more than an hour, is also among the material reviewed by MEE that is understood to be relevant to the OIOS investigation.").

Israeli leaders."[56]

32. It does not matter that these words were spoken in a private setting. If anything, the setting suggests a candid expression of the Prosecutor's motives. Now that they have been made public and have been widely reported, they are relevant to whether a reasonable observer would doubt the Prosecutor's impartiality.[57]

c. The abrupt cancellation of the mission to Israel and Gaza, and the failure to review or follow up on the information provided by Israel before applying for arrest warrants

33. As previously described, the planning for an OTP mission to Israel and Gaza was already underway when the Prosecutor learned of the sexual misconduct allegations against him. As set out in Part II above, during the months of April-May 2024 senior OTP staff and Israeli officials held multiple exchanges regarding the transfer of information pursuant to the OTP's RFA and regarding said mission, which was requested by the OTP and scheduled to take place during the week of 27 May. As mentioned, the Prosecutor abruptly cancelled the mission on 20 May – the same day that an advance team was scheduled to arrive in Israel – and instead filed the requests for arrest warrants. This about-face came as a surprise to Israel given its previous communications with the OTP up to that point, as well as to additional interlocutors in contact with OTP during the relevant period. As noted above, the Prosecutor reportedly told Secretary Blinken "that his trip to Israel and Gaza would be an important opportunity to understand the situation on the ground," that "he would need time to analyze the information the team gathered before making a decision on the warrants,"[58] and that "the court would need time to investigate the evidence it had gathered."[59]

34. In just days, the Prosecutor went from telling the US Secretary of State that the upcoming mission to Israel was essential to his investigations, to putting his staff "under 'unbelievably intense pressure' to prepare the arrest warrants."[60] The view of multiple OTP officials who are

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[56] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("'I held on for as long as I could because I didn't want to f--- up the Palestinian arrest warrants'"; "The woman… later told colleagues and friends that she didn't want to disrupt the arrest warrants by bringing a complaint against Khan.").
[57] *See e.g. Prosecutor v. Šešelj*, Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, IT-03-67-T, 28 August 2013, para. 10 ("While the Prosecution contends that the Letter was a 'private letter to a group of friends', the Chamber notes that it subsequently became openly available both in print and on the Internet.").
[58] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("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.").
[59] Abuse and manipulation at the ICC ("Khan gave the impression that it would not reach that point: he was planning to travel to Israel and Gaza that spring. Thereafter, he said, the court would need time to investigate the evidence it had gathered.").
[60] Drop Site ("In the two days leading up to the public announcement the staff working on the warrant applications

quoted in media reports is that "'[e]ven people who signed on to support the warrant didn't feel that comfortable that the evidence was all there to be doing it when he did it,' said another. 'It was definitely more rushed and premature than planned.'"[61] Others found the timing "inexplicable" and feared the applications "had been 'rushed' and were 'sloppy', or at least not as strong as they should have been for a case of such import." [62]

35. One OTP source named in the media reports is former Principal Trial Lawyer, Andrew Cayley, who had co-led the investigation. He was told just days in advance that the mission to Israel was to be cancelled and arrest warrants sought instead.[63] Mr. Cayley is reported to have been "angry when he found out about [the sexual misconduct allegations] later".[64] Many of Mr. Cayley's colleagues reportedly shared that perception:

> Once news of the [sexual misconduct] allegations surfaced, staff within the prosecutor's office also began to question whether the warrant applications were connected to the accusations against him. "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." Others viewed Khan's decision to seek the warrants as uncharacteristically "impulsive" before they learned of the sexual misconduct allegations, and "panicked" once they saw it in light of the allegations.[65]

36. The warrant applications, in the words of "court officials", "shored up support for Khan among anti-Israel ICC nations that would likely back Khan if the allegations ever became public."[66] Another unnamed person observed that "'He tied his personal fate to the fate of a file [….]'".[67] Mr. Khan is quoted in the *Wall Street Journal* as saying in response to these allegations that he had already "informed U.S. State Department officials in March 2024, before sexual-abuse allegations had been made against him, that he intended to apply for the

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came under 'unbelievably intense pressure' from the prosecutor, a source said. Some felt they were asked to do the 'impossible.'").

[61] Drop Site.

[62] Drop Site ("The announcement also left Khan's own staff at the prosecutor's office astonished, including several who welcomed action against Netanyahu but felt that the case was not yet ready. Several people at the office of the prosecutor told Drop Site that they were blindsided by the public announcement, a move they found abrupt and inexplicable. Some of those familiar with the case feared the applications themselves had been "rushed" and were "sloppy", or at least not as strong as they should have been for a case of such import. "It didn't feel like the timeline for a process where you're dotting every i and crossing every t, which you think for something this politically charged, that would be the priority," one person said.").

[63] Abuse and manipulation at the ICC.

[64] Abuse and manipulation at the ICC ("[The Prosecutor] said nothing to them about the allegations of sexually inappropriate behaviour, Andrew Cayley confirmed to NRC. He was angry when he found out about them later.")

[65] Drop Site; Abuse and manipulation at the ICC ("High-ranking employees at the ICC said Khan's application for the arrest warrants was unexpected and it was unclear why his visit was cancelled at the last minute.").

[66] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault.

[67] Drop Site.

warrants."[68] A media outlet called "*Middle East Eye*" has also published an account of Prosecutor Khan informing the British government on 15 April 2024 that he would be seeking the arrest warrants.[69] This argument is also advanced in the *The New Yorker* article.[70]

37. While the "possibility" of arrest warrants may have been previously discussed with States,[71] the Prosecutor had also made clear that further investigations were required before a final decision on whether to seek arrest warrants against Israeli officials could be made.[72] This is reflected in his own statement to Mr. Blinken during the 3 May call as reported in the *Wall Street Journal*,[73] in the NRC's account of what he said during that conversation,[74] and in Mr. Blinken's reaction to the arrest warrant applications. Mr. Blinken was, it is said, "particularly angry" at the issuance of the warrants.[75]

38. This is confirmed by Secretary Blinken's public statement on the day of the filing of the arrest warrant applications:

> the Prosecutor himself was scheduled to visit Israel as early as next week to discuss the investigation and hear from the Israeli Government. The Prosecutor's staff was supposed to land in Israel today to coordinate the visit. Israel was informed that they did not board their flight around the same time that the Prosecutor went on cable television to announce the charges. These

[68] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault. *See also* D. Hearst, I. Mulla, "Exclusive: David Cameron threatened to withdraw UK from ICC over Israel war crimes probe," Middle East Eye, 9 June 2025 ("David Cameron threatened to withdraw UK from ICC over Israel war crimes probe") ("On 25 March, Khan informed the US administration of his decision and forewarned them the warrants would be applied for by the end of April.").
[69] David Cameron threatened to withdraw UK from ICC over Israel war crimes probe ("on 15 April in London, the prosecutor told British Justice Secretary Alex Chalk that he would apply for the warrants.").
[70] The Hague on Trial.
[71] A. Deutsch, S. van den Berg, H. Pamuk, "Exclusive: ICC prosecutor opted for warrants over visit to Gaza", Reuters, 5 July 2024 ("ICC prosecutor opted for warrants over visit to Gaza") ("The sources said they had been aware that Khan might seek warrants for Netanyahu and other high-level Israeli officials: Since at least March, Khan or members of his team had been informing the governments of the U.S., UK and some other permanent members of the U.N. Security Council about the possibility of bringing charges against Israeli and Hamas leaders").
[72] ICC prosecutor opted for warrants over visit to Gaza ("Khan's decision to request the warrants upended the plans backed by Washington and London for the prosecutor and his team to visit Gaza and Israel. The court was set to gather on-site evidence of war crimes and offer Israeli leaders a first opportunity to present their position and any action they were taking to respond to the allegations of war crimes, five sources with direct knowledge of the exchanges told Reuters.").
[73] ICC Set Plan to Charge Netanyahu Just After Prosecutor Was Accused of Sexual Assault ("[Khan] would need time to analyze the information the team gathered before making a decision on the warrants.").
[74] Abuse and manipulation at the ICC.
[75] Drop Site ("But Khan's surprise announcement, bypassing the heavily anticipated trip, was perceived by the Biden administration as a betrayal. Furious State Department officials who had helped broker the trip accused Khan of having "played them," multiple U.S. officials and ICC sources told Drop Site. Blinken, who was to testify before legislators on Capitol Hill the day after the announcement, was particularly angry. The Biden administration never engaged with the court after that. Khan "irreparably damaged any relationship he had tried to rebuild with the U.S.," one source said."); ICC prosecutor opted for warrants over visit to Gaza ("three sources with direct knowledge of the U.S. administration's dealings with the court told Reuters cooperation has been damaged by Khan's sudden action [….] 'We worked hard to build a relationship of no surprises,' said one U.S. source, who asked not to be named because of the sensitivity of the case").

> and other circumstances call into question the legitimacy and credibility of this investigation.[76]

39. The precipitous filing of the arrest warrant applications also meant ignoring, or failing to adequately review and follow-up on, volumes of documentary information that the OTP had requested, and that Israel had expeditiously provided as part of an ongoing process. An impartial and diligent Prosecutor, abiding by his obligations under article 54(1)(a), would have sought further information to verify or negate this exculpatory information. Indeed, OTP officials noted that this had been the Prosecutor's general practice in other situations prior to seeking arrest warrants.[77]

40. Instead, the Prosecutor cancelled the planned investigative mission, made no follow-up requests for information, and filed arrest warrants without – in all likelihood – adequately highlighting the exculpatory information in his possession. It is implausible that an impartial Prosecutor, with which the relevant State was actively engaging and actively responding to requests for information, could have gone in a matter of days from emphasizing the importance of this mission to Mr. Blinken, confirming a date for the visit on 7 May and subsequently agreeing to send an advance team on 20 May, to then suddenly deciding that he was too frustrated to continue with investigations,[78] that he possessed sufficient incriminating evidence in any event, and that the arrest warrant application must be filed immediately. This was a radical, sudden and unexplained departure from his approach – as expressed to Senator Graham – on 1 May 2024 to "proceed judiciously."[79] The timing of the arrest warrant applications strongly suggests, in line with the "suspicions" expressed by OTP employees, that the Prosecutor was willing to sacrifice the impartial discharge of these obligations on the altar of his personal interests.

d. Other allegations reportedly made by the Prosecutor to distract attention from, or to discredit, the sexual misconduct allegations

41. The Prosecutor baselessly questioned the motives of those whom he viewed as responsible for the sexual misconduct allegations, demonstrating the lengths to which he was willing to go to discredit the allegations against him. On 8 May 2024, the Prosecutor reportedly wrote to the IOM that:

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[76] Press Statement of Secretary of State Blinken.
[77] Drop Site ("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.").
[78] The Hague on Trial, ("Khan has told investigators that he decided to seek the warrants in May, 2024, because of frustration with what he considered to be delaying tactics by Israel…").
[79] Written Observations of Senator Lindsey O. Graham, para. 34.

> The timing [of the sexual misconduct allegation] is particularly concerning coming as it does along with a tide of other threats from a variety of sources, some of which are public and others are not [….] Given the security factor and the nature of the threats […] I would like your advice as to how we can manage security risks and threats in a manner that cannot be considered a reprisal. It goes without saying, of course, that I will not engage in any act of reprisal against any individual related to this matter or any other.[80]

42. The Prosecutor also told other ICC employees that "[the potential complainant]'s accusations were part of a bigger plan, dropping hints that a power game was being played […]".[81] More broadly, he "fueled the narrative that Israel might be behind the allegations".[82] As noted above, he also posted a warning on the social media platform "X" the morning after learning of the allegations that "all attempts to impede, intimidate or improperly influence its officials cease immediately."[83]

43. The Prosecutor also reportedly used his supervisory authority over other staff members for the same purpose. Reports indicate that he retaliated against the OTP employees who complained to the IOM – again, in an apparent attempt to discredit the sexual misconduct allegations.[84] This pattern of conduct, widely reported and based on multiples sources, is indicative of the Prosecutor's apparent willingness during this crucial period to misuse his official powers to fortify his own position should the sexual misconduct allegations ever come to light.

e. Conclusion:

(i) The Prosecutor must be disqualified from the cases against Mr. Netanyahu and Mr. Gallant

44. The Prosecutor's impartiality, particularly during the crucial period between learning of the potential sexual misconduct allegations on 2 May 2024, and the filing of the arrest warrant applications on 20 May 2024, "might reasonably be doubted" by a reasonable observer, properly informed. A reasonable observer, properly informed, could not ignore the critical mass of corroborated media reporting showing: (i) that the Prosecutor's own words reveal an inappropriate personal interest in the immediate issuance of the arrest warrants; (ii) that

[80] How Karim Khan's Israel war crimes probe was derailed by threats, leaks and sex claims.
[81] Abuse and manipulation at the ICC.
[82] Drop Site.
[83] Statement of the ICC Office of the Prosecutor on "X", 3 May 2024.
[84] Drop Site ("But, according to several people, Khan and his supporters have also staged a smear campaign against the alleged victim, portraying her as "unstable" and "crazy," "with a distorted view of reality," as well as retaliating against some of those who had stood up for her. Court and U.S. sources said that Khan had thrown Lynch, his longtime adviser, "under the bus."); S. van den Berg and A. Deutsch, "Exclusive: ICC prosecutor Khan accused of retaliation for sexual misconduct allegation, sources say", Reuters, 3 April 2025 ("The five sources, all of whom asked not to be named due to concerns of reprisals, said Khan, who is British, had demoted at least four staff in his office.").

observers within the OTP reasonably suspected that the precipitous halt of the process of receipt of materials from Israel, the sudden cancellation of the mission to Israel and Gaza, and the rushed preparation of the arrest warrant applications was related to the Prosecutor's desire to suppress or discredit the sexual misconduct allegations; and (iii) that the Prosecutor was willing to make other false allegations to do so. Furthermore, it does not matter that there might be other potential explanations for the Prosecutor's conduct: all that is required for impartiality to be "reasonably doubted" under article 42(7) of the Statute is that it be one of the reasonable explanations.[85] Accordingly, the Prosecutor must be disqualified from the cases against Mr. Netanyahu and Mr. Gallant, or invited to disqualify himself pursuant to rule 35 of the Rules.

(ii) The arrest warrants requested and based on investigation under the Prosecutor's direction must be quashed

45. A necessary corollary of the Prosecutor's disqualification is the invalidation of the arrest warrants against Mr. Netanyahu and Mr. Gallant. The arrest warrant applications were themselves the vehicle by which the Prosecutor appears to have advanced his personal interests at the expense of his impartiality. These doubts as to impartiality infect every major element surrounding the arrest warrant applications: the sufficiency of investigations during the critical month of May 2024; the decision not to undertake a long-planned investigative mission that had previously been identified as crucial; the failure to review or follow-up on documentary information voluntarily provided; and the content of submissions to the Pre-Trial Chamber, including whether they were fully candid and identified exculpatory information. Furthermore, the doubts concerning impartiality relate to a strong bias: an attempt to suppress or defeat allegations that may amount to criminal conduct against the Prosecutor.

46. The Pre-Trial Chamber does not know – and will never know – what information may have been with-held, let alone what information may not have been produced through further investigations, if they had not been impacted by the involvement of a Prosecutor lacking impartiality. Nothing that the Pre-Trial Chamber could have done at the time, nor that it can do now, can undo the foundational damage to the *ex parte* article 58(1) proceedings caused by the involvement of a Prosecutor whose impartiality might reasonably be doubted. The arrest warrants resulting from such a heavily tainted process are inherently unsafe and damaging to the Court's integrity.

47. Mere disqualification is not sufficient in these circumstances to restore the fairness of proceedings. A criminal court committed to the rule of law and to basic principles of justice, let

[85] *See* *Venezuela* Decision on *ex officio* review, para. 37 and references therein (comparing the standard set out in article 42(7) for disqualification to that in articles 15 and 53, concerning the opening of an investigation).

alone one established to serve as a Court "complementary to national criminal jurisdictions," cannot credibly maintain the integrity of its proceedings and judicial decisions, without giving effect to the requirement that the Court's proceedings have not been tainted by the absence of impartiality. The only adequate remedy, in the particular circumstances of this case, is to restore the *status quo ante* the arrest warrant applications. An *ex parte* proceeding involving a Prosecutor whose impartiality might reasonably be doubted, especially in a phase of proceedings where he is required to act with a degree of impartiality equivalent to that of an investigating judge,[86] would both be unfair and appear to be unfair. Article 21(3) of the Statute requires that "the judicial process in its entirety" is conducted "in accordance with internationally recognized human rights" including "the right to a fair trial."[87] Fairness requires prosecutorial impartiality at all stages of proceedings.[88] An arrest warrant application process cannot be said or presumed to be fair where it involved a Prosecutor whose "impartiality might reasonably be doubted on any ground."[89]

48. Restoring the *status quo ante* requires the arrest warrants to be quashed. This would not preclude an impartial Prosecutor examining the situation anew.[90] Accordingly, this is not a "drastic" remedy.[91] Indeed, it is a basic requirement of justice in the present circumstances. Although the Pre-Trial Chamber has the primary authority to order this remedy,[92] the Appeals Chamber also has a "duty to ensure fairness throughout the entirety of the proceedings."[93] A necessary ancillary remedy to disqualification in this case must include declaring that the arrest warrants are invalid, and of no force or effect.

49. Alternatively, the Appeals Chamber is requested, if it considers that it does not have the authority to invalidate the arrest warrants, to remand the matter to the Pre-Trial Chamber with

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[86] Kai Ambos, Rome Statute of the International Criminal Court, Article-by-Article Commentary (4th ed.), Beck, 2022, pp. 1647-1648.
[87] *Prosecutor v. Lubanga*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, ICC-01/04-01-772, 14 December 2006, para. 37.
[88] *Prosecutor v. Abd-al-Rahman*, Decision on the Prosecution application under article 58(7) of the statute, ICC-02/05-01/07-1, 27 April 2007, para. 28 ("The Chamber is of the view that, as required by article 21(3) of the Statute, the expression 'reasonable grounds to believe' must be interpreted and applied in accordance with internationally recognized human rights").
[89] Article 42(7) of the Statute.
[90] As stated above, this filing is without prejudice to Israel's status as a State not party to the Rome Statute and to Israel's position that the Court has no jurisdiction in respect of the situation captioned by the Court as "The Situation in the State of Palestine".
[91] *Cf. Prosecutor v. Abd-Al-Rahman*, Decision on the Defence's Request for postponement of the presentation of its case, ICC-02/05-01/20-916-Red, 17 April 2023, paras. 29-32.
[92] Article 58(4) of the Statute: "The warrant of arrest shall remain in effect until otherwise ordered by the Court."
[93] *Duterte* Decision to disqualify the Prosecutor, paras. 35, 55; *Prosecutor v. Mokom*, Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled "Decision on legal representation further to the Appeals Chamber's judgment of 19 July 2022", ICC-01/04-01/22-124-Red, 19 December 2022, para. 44.

instructions to invalidate the arrest warrants that it has issued.

50. In these circumstances, Israel has standing to make this request pursuant to article 42(8)(a) of the Statute. While States are not expressly identified in article 42(8)(a), the mere issuance of arrest warrants against its Head of Government and former Minister of Defense directly infringes Israel's sovereignty as a State not party to the Rome Statute and violates its immunity under international law.[94] The Plenary of Judges has recognized that States do have standing in similarly "unique" circumstances under the identically-worded article 41(2)(b).[95] In the alternative, this Appeals Chamber is invited to conduct a *proprio motu* review, as it did in the Venezuela situation,[96] as to whether the Prosecutor's "impartiality might reasonably be doubted on any ground."

IV. CONCLUSION and RELIEF SOUGHT

51. The arrest warrants against Prime Minister Netanyahu and Mr. Gallant are irremediably tainted by an investigation and *ex parte* application prepared by a Prosecutor whose impartiality might reasonably be doubted pursuant to article 42(7) of the Statute. The Prosecutor does not now, and did not at the crucial time when he sought arrest warrants, have the appearance of impartiality necessary to be able to fulfil his obligations under article 54(1)(a) to investigate incriminating and exonerating circumstances equally, or to otherwise act – as he must – impartially before the Pre-Trial Chamber. The Prosecutor must, in these circumstances, be disqualified under article 42(7) and (8) of the Statute or invited to excuse himself pursuant to rule 35 of the Rules.

52. A necessary consequence of this disqualification is that the arrest warrants that are the product of an investigation and *ex parte* submissions made by a Prosecutor whose impartiality might reasonably be doubted must be invalidated. An appearance of sufficient information before the Pre-Trial Chamber to issue arrest warrants does not remedy the harm, as the Pre-Trial Chamber does not, and cannot ever, know what information would have been obtained or presented by a Prosecutor possessing the appearance and reality of impartiality. The close relationship between the personal bias at issue in this case, and the issuance of the arrest warrants themselves, requires a restoration of the *status quo ante* the Prosecutor's involvement in the arrest warrant applications.

[94] ICJ, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), para. 70.
[95] *Situation in Ukraine*, Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024 (ICC-01/22-92-Anx), ICC-01/22-107, 22 November 2024, para. 23.
[96] *Venezuela* Decision on *ex officio* review, paras. 26-32.

53. Israel accordingly requests that the Appeals Chamber:

a. Disqualify the Prosecutor pursuant to article 42(7) and (8) of the Statute; or, in the alternative, invite the Prosecutor to disqualify himself pursuant to rule 35 of the Rules;

b. Declare that the arrest warrants issued against Mr. Netanyahu and Mr. Gallant are of no force or effect; or, in the alternative,

c. Remand the question of remedy to the Pre-Trial Chamber, with instructions that the arrest warrants be declared of no force or effect;

Respectfully submitted:

Dr Gilad Noam, Office of the Attorney-General of Israel

Dated this 17 November 2025

At Jerusalem, Israel

ANNEX A

Public

Letter of 30 May 2025

מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

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

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

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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 cancelation 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

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[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;

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[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-AR15*bis*.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

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,

Deputy Attorney-General (International Law)