



Reference: ASP/2026/56

The Hague, 27 August 2026

Dear Mr. Saul, Ms. Satterthwaite and Ms. Alsalem,

I thank you for your letter, dated 23 July 2026 (ref: OL OTH 44/2026), sent in your capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on violence against women and girls, its causes and consequences, respectively, under the communications procedure of the Special Procedures of the United Nations Human Rights Council. I note that your communication was made following information you have received *“concerning inadequacies in the procedural rules for the handling of complaints of misconduct by personnel of the International Criminal Court, with potentially negative implications for the human rights of Court personnel (complainants and respondents) as well as for the Court’s work towards accountability for international crimes and public confidence in the institution.”*

I appreciate your interest in the procedures applied to complaints of misconduct at the International Criminal Court, and in drawing attention to best practice international standards in line with international human rights law, including labour rights, which are applicable to the States party to the instruments referred to under the heading “Applicable international standards”. I understand that your reference to article 6 of the International Covenant on Economic, Social and Cultural Rights should in this context refer to article 7 of the said Covenant.

I note that in your letter you state that *“[a] number of uncertainties about the legal, procedural and institutional processes for handling complaints within the Court emerged following allegations of sexual misconduct against the Court’s Prosecutor, which were publicly reported in October 2024”*. You state that your communication is not related to the underlying complaints in that matter, which were due to be determined by vote of the Assembly of States Parties on 24 July 2026. While expressed as unrelated, the publication of your letter one day prior to the conduct of the vote on removal of Mr. Khan under article 46 of the Rome Statute may be considered unfortunate. This is particularly the case in the context of a sustained campaign of misinformation and politicization of a matter considered by the Bureau and the Assembly of States Parties to constitute a confidential internal disciplinary proceeding concerning an elected official, conducted in full compliance with the legal framework established for that purpose.

I am grateful to have this opportunity to explain and clarify the relevant legal framework of the International Criminal Court. While your letter states that it identifies areas of concern about complaints handling *generally*, there appears to be a clear connection to the context of your letter, and therefore it is necessary to address in this reply some of the details related to that specific context. I note that the responses in relation to the context of Mr. Khan are provided in the spirit of cooperation, transparency and acknowledgement of the importance



of your work as Special Rapporteurs; taking into account that decisions regarding misconduct can be brought before the Administrative Tribunal of the International Labour Organisation (ILOAT) for review, this response is made without prejudice to any potential proceedings before the ILOAT.

First, I note your reference to the establishment of the Independent Oversight Mechanism (“IOM”) by Assembly resolution ICC-ASP/8/Res.1 of 26 November 2009. I wish to advise that, following its establishment, the operational mandate of the IOM was adopted by the Assembly of States Parties by resolution ICC-ASP/12/Res.6 of 27 November 2013. The operational mandate of the IOM was subject to review by the Assembly of States Parties in subsequent years, and amendments were adopted at the seventeenth session of the Assembly in 2018, at the eighteenth session of the Assembly in 2019, and at the twenty-fourth session of the Assembly in 2024.¹ These amendments demonstrate the continuous assessment and review of the legal framework by the Assembly of States Parties in order to guarantee that it remains relevant and consistent with international standards.

At its seventeenth session, in resolution ICC-ASP/17/Res.2, the Assembly adopted amendments to rule 26 of the Rules of Procedure and Evidence of the Court. These amendments changed the practice, to which you refer in your letter, of factual findings of the IOM being transmitted by the IOM to the Presidency of the International Criminal Court, assisted by one or more judges, appointed on the basis of automatic rotational basis (see, by way of background, ICC-ASP/17/30 and ICC-ASP/17/35). The amendment to rule 26 was made following close consideration by the Study Group on Governance, a subsidiary body of the Bureau in which all States Parties participate in a structured dialogue with all of the organs of the International Criminal Court. The amended rule 26, paragraph 4, provided as follows:

“All complaints [other than those set aside as manifestly unfounded under rule 26, paragraph 3,] shall be investigated by the Independent Oversight Mechanism. The Independent Oversight Mechanism shall transmit the results of any investigation, together with its recommendations, to the Assembly of States Parties and any other competent organ(s) as set out in articles 46 and 47 of the Rome Statute, and rules 29 and 30.”

The articles and rules to which the above quote refers identified the Assembly and the Bureau as the competent bodies to deal with recommendations resulting from an investigation by the IOM concerning an elected official. Accordingly, your reference to the initial practice of submission of complaints to the Court Presidency not being followed in the case of Mr. Khan is explained by the amendment to the legal framework in 2018.

I further note your concern that the complaint against Mr. Khan was referred by myself for external investigation by the United Nations Office of Internal Oversight Services (“OIOS”) when the legal framework provides for conduct of such an investigation by the IOM. I note that, as reported in my press release of 24 October 2024, the matter was first referred to the IOM but could not be pursued:

“[T]he IOM follows a victims-centered approach in the implementation of its mandate, and therefore seeks the consent of any alleged victim of misconduct before proceeding with an investigation. The IOM did so upon being seized. As reported by the IOM in

¹ See ICC-ASP/17/Res.2, ICC-ASP/19/Res.6, annex II, and ICC-ASP/24/Res.2, annex II.



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.”

On 11 November 2024, I issued a further press release which set out the basis for referral to the OIOS:

“After having consulted the Bureau of the Assembly of States Parties (ASP), I am seeking on behalf of the ASP Presidency an external investigation into the matters related to alleged misconduct by the ICC Prosecutor. The involved parties have been informed.

The Independent Oversight Mechanism (IOM), which exercises full operational independence from the International Criminal Court and reports directly to the ASP, is competent to investigate such allegations. The IOM was seized of the matter on the basis of a third party request and subsequently on the basis of a request by the Prosecutor. However, given the particular circumstances of this case, including the IOM’s victim-centred approach, and perceptions of possible and future conflicts of interest, the IOM has indicated that it has no objection to exceptionally resorting to an external investigation.

An external investigation is therefore being pursued in order to ensure a fully independent, impartial and fair process, in conformity with the legal framework of the ICC and the IOM and following a victim-centred approach. The practical modalities of the investigation are being finalized. I call on all involved parties to cooperate fully with that investigation.

I must insist on due respect for the privacy and the rights of all involved parties.”

I wish to further inform you that it is the practice of the IOM to outsource investigations when a conflict of interest may give rise to perceptions of impartiality of the IOM in carrying out the investigation. The possibility to resort to an external investigator is provided in the Operational Mandate of the IOM, and now also in the Rules of Procedure and Evidence of the Court, and the investigation of the allegations made against Mr. Khan was not the first time investigations were outsourced due to a perceived conflict of interest on the part of the IOM. In the circumstances of this matter, the proper protection of the rights of all those involved rendered it necessary for the investigation against Mr. Khan to be referred to another investigative body.

I note your reference to the OIOS “Manual for Practitioners”, which you state requires that the OIOS apply a civil-type standard of proof in its investigations, described as follows: *“Clear and convincing proof requires more than a preponderance of evidence but less than proof beyond reasonable doubt – it means that the truth of the facts asserted is highly probable”*. While I was not able to locate an OIOS “Manual for Practitioners”, I did locate the quoted reference in the OIOS Investigations Manual.² On pages 26 to 27 of that Manual, the quoted language is from a judgment of the United Nations Appeals Tribunal, in the context of the standard required to be met to institute disciplinary proceedings before the internal justice system of the United Nations:

² Available at: https://oios.un.org/sites/default/files/general/investigations_manual.pdf.



“[...] the standard of proof of evidence required to institute disciplinary proceedings has been set forth in the United Nations Appeals Tribunal judgment of Molari (2011-UNAT-164): ‘Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond reasonable doubt – it means that the truth of the facts asserted is highly probable.’ ”

With respect to your observation that *“the judicial panel appears to have applied a criminal standard of proof based on the procedure of the International Labour Organisation Administrative Tribunal”*, I can confirm that the Terms of Reference of the panel provide specifically that the jurisprudence of the ILOAT, whose jurisdiction the Court has accepted, is part of the legal framework governing any potential actions based on the findings of the OIOS report. In its decisions, including on the adjudication of complaints originating from the International Criminal Court, the Tribunal has made clear that the standard of proof applicable for the institution of a disciplinary measure by organisations that have accepted its jurisdiction is the standard of beyond reasonable doubt.

With respect to your concerns and recommendations, I note that the Rules of Procedure and Evidence of the Court, the Rules of Procedure of the Assembly, the Regulations of the Court and the Operational Mandate of the Independent Oversight Mechanism clearly define all aspects of the complaints process, including the roles of all actors, and allocate clear responsibilities for findings of facts and law. As already indicated, the standard of proof for the imposition of a disciplinary measure is in accordance with the jurisdiction of the ILOAT, whose jurisdiction the Court has accepted. This is a protective standard. There are also clear rules that govern the circumstances when a person who is the subject of allegations may be suspended and the criteria for suspension.

With respect to your recommendation that the Assembly should *“avoid establishing irregular, uncodified ad hoc procedures”*, given the paragraph explaining the context of your communication, I understand this may refer to the procedure applied in relation to the allegations against Mr. Khan. In that respect I wish to provide some important clarifications.

The legal framework in place at the time those complaints arose, including the amended rule 26 referred to above, provided that the investigative report would be submitted to the Bureau of the Assembly of States Parties and that the Bureau would make a recommendation to the Assembly for removal under rule 81 of the Rules of Procedure of the Assembly, if it considered the investigation established allegations of serious misconduct or serious breach of duty, or would impose a disciplinary measure under rule 82 of the Rules of Procedure of the Assembly, if it considered the investigation established allegations that constituted less serious conduct. In a report issued in 2020, an Independent Expert Review had made a recommendation to the Assembly of States Parties regarding amendment of this legal framework, which was partially accepted by the Assembly. More specifically, the Assembly accepted the recommendation that investigative reports into allegations of alleged misconduct against an elected official should be submitted to an advisory body, namely an independent panel of experts, for legal characterization of the facts established by the investigation, to assist the Bureau in its consideration of the matter.



During 2024 and 2025, amendments to the legal framework to implement this recommendation were being actively considered by the Study Group on Governance and the facilitation on the review of the work and operational mandate of the Independent Oversight Mechanism, and concluded with the adoption of ICC-ASP/24/Res.1 and ICC-ASP/24/Res.2, establishing the mechanism of an ad hoc panel to provide advice to the Bureau on the legal characterization of the facts. In light of this circumstance, and concerned to ensure that Mr. Khan's due process rights were fully respected pending completion of this work and formal adoption of the amendments by the Assembly, the Bureau decided to establish an ad hoc Panel to advise the Bureau on the legal characterization of the investigative report into the allegations of misconduct against Mr. Khan ("ad hoc Panel").

I further note that once the terms of reference for future ad hoc Panels were adopted by the Assembly in ICC-ASP/24/Res.2, annex I, the Bureau amended the terms of reference it had adopted in order to grant Mr. Khan the right to make submissions to the ad hoc Panel, consistent with the terms of reference that had been adopted by the Assembly. This amendment was made to ensure that Mr. Khan benefited from the same due process rights that would be accorded to elected officials in the future under the amended framework.

Throughout the process, the Bureau extensively accorded Mr. Khan due process rights, including early access to the OIOS report and the underlying evidence as well as the acceptance of submissions made by Mr. Khan to the ad hoc Panel in addition to submissions requested by the Bureau under rule 27 of the Rules of Procedure and Evidence of the Court.

Further, while the amended rule 28 allowed the Bureau to suspend Mr. Khan at any time if the seriousness of the allegations warranted that suspension, the Bureau did not apply this amended provision. In that regard, it respected the terms of the original rule 28, prior to the amendments adopted by the Assembly in ICC-ASP/24/Res.1, which permitted suspension only after hearing the person concerned. The Bureau only suspended Mr. Khan following its hearing of him under rule 27 of the Rules of Procedure and Evidence of the Court, and pursuant to the criteria of seriousness of the allegations that had been made.

I draw your attention to the press release I issued following the conclusion of the special session of the Assembly on 24 July 2026, addressing some of the misinformation concerning the disciplinary proceedings.³

With respect to your statements concerning investigations by the IOM, I direct your attention to the Administrative Instruction on Investigations of Unsatisfactory Conduct (ICC/AI/2022/01) which governs investigations by the IOM. I also invite you to review the reports of the IOM available on the website of the Assembly.

With respect to your concern regarding safeguards against retaliation and protection of complainants I direct your attention to the Presidential Directive on Protection Against Retaliation (ICC/PRESG/2024/001) and the Administrative Instruction on Addressing Discrimination, Harassment, Including Sexual Harassment and Abuse of Authority (ICC/AI/2022/003), which provide robust protections and avenues for redress.

³ "Statement of the ASP President following the conclusion of disciplinary proceedings involving Prosecutor Karim Khan", available at: <https://asp.icc-cpi.int/press-releases/PR-20260726>.



I fully share your view that complainants and respondents should not be subject to public attacks or disclosure of confidential information, and have consistently insisted in my statements on due respect for the privacy and the rights of all parties involved. I note that under the legal framework complaints are confidential and should not be publicly disclosed. Throughout the proceedings, the Presidency and the Bureau remained bound by their obligation of confidentiality and exercised restraint in responding to media reports or public speculation.

Regarding your statement that “[w]here allegations involve senior Court personnel, adequate steps must be taken by the Court’s management and the ASP as required to actively mitigate the potential negative impacts on the welfare of staff and workplace morale”, I reiterate that complaints are confidential, but in the circumstances of Mr. Khan, where that confidentiality was not respected by several actors involved, I am satisfied that the Assembly and the Court took all necessary steps to protect the welfare of staff and workplace morale, while abiding by the commitment to respect the confidentiality of those proceedings.

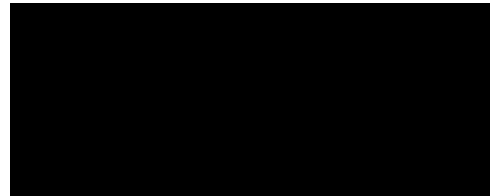
With respect to your statement that “[c]omplaint processes must not be exploited for political attacks or reprisals by any actor, including member States, to discredit the Court’s vital work for justice and accountability”, I wholeheartedly share this view. I note in that regard that the allegations made against Mr. Khan were considered by the Bureau and by the Assembly of States Parties as an internal confidential disciplinary matter, completely unrelated to investigations or prosecutions by the Court. Allegations to the contrary were not substantiated in the investigation by the OIOS, nor at any other stage of the process.

With respect to your observation that the Court’s workplace culture and management practices should be thoroughly reviewed and the recommendations of the 2020 Independent Expert Review report implemented, I draw your attention to the steps that have been taken by the Study Group on Governance, whose reports are publicly available on the Assembly website, as well as the reports of the Court on the implementation of those recommendations. I also note that since the issuance of the Independent Expert Review report the Court has issued a number of Administrative Instructions. In addition to those to which I have already referred, this includes an Administrative Instruction on the Prevention of Sexual Exploitation and Abuse (ICC/AI/2023/001) and an Administrative Instruction on the Ombuds Office (ICC/AI/2026/001). I also draw your attention to the ICC Strategic Plan-2026-2029 and in particular Strategic Goal 6, which concerns improving workplace culture.

With respect to your request for any information on further improvement that the Bureau of the Assembly is considering in relation to the Court’s rules and procedures on the handling of misconduct complaints, I refer to your observation that the amendments to the Court’s Rules of Procedure and Evidence adopted by the Assembly in ICC-ASP/24/Res.1, as well as the adoption of the terms of reference for ad hoc Panels and amendments to the Rules of Procedure of the Assembly in ICC-ASP/24/Res.2, have significantly clarified, regularized and improved many aspects of complaints handling. I share this observation and advise that the Assembly has constantly reviewed its governance framework through its subsidiary bodies and facilitations in close consultation with Court officials, and will continue to do so.



I hope to have sufficiently responded to the queries you have raised and remain ready to provide any clarifications necessary.



Päivi Kaukoranta
President
Assembly of States Parties
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