

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in Afghanistan; the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; the Special Rapporteur on the right to food; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Independent expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL USA 3/2025

(Please use this reference in your reply)

10 February 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in Afghanistan; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Special Rapporteur on the right to food; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Independent expert on the promotion of a democratic and equitable international order; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/12, 54/1, 55/21, 49/13, 52/9, 50/17, 52/10, 57/7, 1993/2A and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the promulgation of laws and the implementation of policies by the United States Government, which appear to interfere with the independence of the International Criminal Court (ICC) by threatening the ICC, its judges, prosecutors, and staff with sanctions for carrying out their official duties.**

The ICC investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression. As a court of last resort, it seeks to complement, not replace, national courts. It is established and governed by an international treaty called the Rome Statute 1998, which has 125 State parties¹, including the State of Palestine².

¹ <https://asp.icc-cpi.int/states-parties>

² <https://asp.icc-cpi.int/states-parties/asian-states/Palestine>

On 23 June 2020, Special Procedures mandate-holders³ sent a joint communication to your Excellency's Government (AL USA 15/2020) expressing their concerns regarding Executive Order 13928⁴ issued by the President of the United States, Donald Trump. As set out below, this Order was subsequently revoked by President Joseph Biden.

On 8 May 2024, Special Procedures mandate-holders⁵ sent a joint communication to your Excellency's Government (AL USA 15/2024) expressing their concerns that personnel at the ICC were facing harassment and intimidation from U.S. public officials in response to their official work to investigate credible allegations of international crimes relating to the situation in the State of Palestine. We would like to thank you for your response of 10 July 2024⁶.

On 18 October 2024, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism sent a letter (AL USA 20/2024). In this letter, he encouraged the Government to provide greater legal discretion to cooperate with the ICC by repealing legislative impediments to financing, supporting, or legally cooperating with the ICC. We further note that in its response dated 6 January 2025, your Excellency's Government stated that, although the American Service Members' Protection Act allows for assistance to the ICC's efforts to bring to justice foreigners accused of genocide, war crimes, and crimes against humanity, the ICC does not have jurisdiction over what the Court refers to as the "Situation in the State of Palestine".

We remain gravely concerned about threats to the ICC's independence, which have been exacerbated in light of the new developments referred to below.

According to the information received:

United States sanctions against ICC personnel: 2020-2021

On 11 June 2020, the President of the United States, Donald Trump, issued Executive Order 13928.⁷ This Order declared a national emergency in relation to any attempt by the ICC to investigate, arrest, detain, or prosecute any United States personnel without the consent of the United States, or of personnel of countries that are United States allies and who are not parties to the Rome

³ The Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.

⁴ <https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>

⁵ The Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=38529>

⁷ <https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>

Statute or have not otherwise consented to ICC jurisdiction. It authorised the targeting and sanctioning of individual staff of the ICC engaged in efforts to investigate United States and allied personnel, including as part of the ICC Prosecutor's investigation of the situation in Afghanistan. The Order also prohibited any person from making or receiving any contribution or provision of funds, goods, or services by, to, or for the benefit of a person designated for sanctions.⁸

On 2 September 2020, the United States designated the following ICC personnel for sanctions under Executive Order 13928: ICC Prosecutor Fatou Bensouda, for "having directly engaged in an effort to investigate U.S. personnel", and the ICC's Head of the Jurisdiction, Complementarity and Cooperation Division Phakiso Mochochoko, for "having materially assisted Prosecutor Bensouda".⁹

International organizations,¹⁰ States¹¹ and non-governmental organizations¹² all expressed concerns about Executive Order 13928 and the application of unilateral sanctions against ICC officials.

Furthermore, one lawsuit was filed by Open Society Justice Initiative and four dual-national U.S. law professors,¹³ and another by an ACLU human rights attorney, two U.S. law professors and the special adviser on crimes against humanity to the prosecutor of the ICC,¹⁴ on the basis that they were at risk of punishment due to their provision of "services" (including legal advice and technical support) to the ICC.

On 1 April 2021, the President of the United States, Joseph Biden, issued Executive Order 14022,¹⁵ terminating the national emergency pertaining to the ICC and revoking Executive Order 13928. The new Order observed that "the threat and imposition of financial sanctions against the Court, its personnel, and those who assist it are not an effective or appropriate strategy for addressing the United States' concerns with the ICC."

Events since 7 October 2023

On 17 November 2023, the ICC Prosecutor Karim Khan said its ongoing investigation into possible crimes committed in the occupied Palestinian

⁸ Ibid. Sec. 3.

⁹ <https://2017-2021.state.gov/actions-to-protect-u-s-personnel-from-illegitimate-investigation-by-the-international-criminal-court/>

¹⁰ The EU High Representative for Foreign Affairs, Mr. Josep Borrell, stressed that "[t]he court [had] been playing a key role in providing international justice and addressing the gravest international crimes – it is a key factor in bringing justice and peace." The spokesperson for the UN Secretary-General stated on 11 June 2020 that "the need to fight impunity and for justice [remained] unchanged."

¹¹ For instance, Germany, France and Switzerland. See http://www.xinhuanet.com/english/2020-06/13/c_139136014.htm and https://www.swissinfo.ch/eng/international-accountability_switzerland--regrets--us-sanctions-against-icc-employees/45830070

¹² Human Rights Watch jointly with 55 other non-governmental human rights organizations launched a petition to "Oppose Trump Administration Measures against the International Criminal Court".

¹³ See <https://www.justsecurity.org/74073/icc-associates-win-temporary-reprieve-from-draconian-us-sanctions/> and https://storage.courtlistener.com/recap/gov.uscourts.nysd.545370/gov.uscourts.nysd.545370.56.0_1.pdf

¹⁴ <https://www.aclu.org/news/human-rights/unless-biden-acts-trumps-assault-on-human-rights-will-continue>

¹⁵ <https://www.federalregister.gov/documents/2021/04/07/2021-07239/termination-of-emergency-with-respect-to-the-international-criminal-court>

territory by Israel, Hamas and other armed Palestinian groups would be extended “to the escalation of hostilities and violence since the (Hamas) attacks that took place on 7 October 2023”¹⁶ after his Office received a referral of the Situation in the State of Palestine from five State Parties.

On 20 May 2024, the Office of the Prosecutor filed applications for arrest warrants in the situation in the State of Palestine in respect of five individuals:

- Mr. Yahya Sinwar (Head of the Islamic Resistance Movement (Hamas) in the Gaza Strip);
- Mr. Mohammed Diab Ibrahim Al-Masri, more commonly known as Deif (Commander-in-Chief of the military wing of Hamas, known as the *Al-Qassam Brigades*);
- Mr. Ismail Haniyeh (Head of Hamas Political Bureau);
- Mr. Benjamin Netanyahu, the Prime Minister of Israel; and
- Mr. Yoav Gallant, then Minister of Defence of Israel.

Following confirmation of the deaths of Mr. Yahya Sinwar and Mr. Ismail Haniyeh, the Prosecutor withdrew the application for arrest warrants in their cases.¹⁷

On 21 November 2024, Pre-Trial Chamber I of the ICC unanimously rejected challenges to its jurisdiction brought by the State of Israel under article 19 of the Rome Statute 1998.¹⁸ In reaching its decision, the Pre-Trial Chamber held that:

- It was not necessary for Israel to have accepted the ICC’s jurisdiction for the Court to move forward, as the Court could exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine, as determined by Pre-Trial Chamber I in a previous composition;¹⁹
- Pursuant to article 19(1) of the Rome Statute, States are not entitled to challenge the Court’s jurisdiction under article 19(2) prior to the issuance of a warrant of arrest. Therefore, Israel’s jurisdictional challenge was premature; and²⁰
- Israel would have the full opportunity to challenge the Court’s jurisdiction and/or the admissibility of any particular case following the issue of arrest warrants or summonses against its nationals.²¹

¹⁶ <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-situation-state-palestine>

¹⁷ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim>

¹⁸ <https://www.icc-cpi.int/court-record/icc-01/18-374> The Pre-Trial Chamber I also rejected Israel’s request under article 18 of the Rome Statute. See <https://www.icc-cpi.int/court-record/icc-01/18-375>

¹⁹ Ibid. para 13.

²⁰ Ibid. para 17.

²¹ Ibid. para 18.

On 21 November 2024, the Pre-Trial Chamber I issued warrants for the arrest of Mr. Benjamin Netanyahu and Mr. Yoav Gallant.²² The Chamber found reasonable grounds to believe that Mr. Netanyahu and Mr. Gallant each bear criminal responsibility as co-perpetrators for the war crime of starvation as a method of warfare, and the crimes against humanity of murder, persecution, and other inhumane acts. The Chamber also found reasonable grounds to believe that Mr. Netanyahu and Mr. Gallant each bear criminal responsibility as civilian superiors for the war crime of intentionally directing an attack against the civilian population.

On the same date, the Pre-Trial Chamber I issued a warrant for the arrest of Mr. Mohammed Diab Ibrahim Al-Masri, known as Deif.²³ Hamas confirmed in January 2025 that Deif had been killed in July 2024.

United States Government officials and politicians publicly expressed their disagreement with the Pre-Trial Chamber's decision to issue arrest warrants for Mr. Netanyahu and Mr. Gallant. President Joseph Biden described the warrants as "outrageous",²⁴ while a White House spokesperson stated that "The United States fundamentally rejects the Court's decision."²⁵ U.S. Politicians called for sanctions against the ICC,²⁶ and against any U.S. allies who assisted the ICC in enforcing arrest warrants against Mr. Netanyahu and Mr. Gallant.²⁷

On 3 January 2025, a bill, titled the 'Illegitimate Court Counteraction Act', was introduced into the United States House of Representatives.²⁸ After characterizing the Court as "illegitimate", the bill asserts that because the United States and Israel are not parties to the Rome Statute or members of the ICC, the Court has no jurisdiction over the United States, Israel, or its citizens or lawful residents.²⁹

The bill, which would take effect 60 days after enactment, imposes mandatory sanctions on any foreign person, and their immediate family members (defined as a spouse, parent, sibling, or adult child of the person)³⁰ who the President determines:

- Has directly engaged or otherwise aided any effort by the ICC to investigate, arrest, detain, or prosecute U.S. persons or citizens or lawful

²² <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>

²³ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim> Although Mr. al-Masri is believed to be deceased, the Court could not confirm his death and thus moved forward with the arrest warrant pending such confirmation.

²⁴ <https://il.usembassy.gov/statement-from-president-joe-biden-on-warrants-issued-by-the-international-criminal-court/>

²⁵ <https://www.reuters.com/world/us-rejects-icc-arrest-warrants-israeli-officials-white-house-spokesperson-says-2024-11-21/>

²⁶ See for example <https://x.com/RepRichHudson/status/1859641380697723262> and <https://x.com/RitchieTorres/status/1859601113370005667>

²⁷ <https://youtu.be/CpdIqOpwLVg?feature=shared>

²⁸ <https://www.congress.gov/bill/119th-congress/house-bill/23> The bill had previously been introduced, as H.R. 8282, to the prior Congress, but had not been enacted. See <https://www.congress.gov/bill/118th-congress/house-bill/8282>

²⁹ <https://www.congress.gov/bill/119th-congress/house-bill/23/text> Sec. 2(1)

³⁰ Ibid. Sec. 5(5)

residents from an ally of the United States that has not consented to ICC jurisdiction and is not a party to the Rome Statute, including Israel;

- Has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any such effort; or
- Is owned or controlled by, or is currently acting or purports to have acted, directly or indirectly, for or on behalf of any person that directly engages in any effort.³¹

These sanctions include denying and revoking visas for admission to the United States and blocking all property transactions and interests in property in the United States, or within the possession or control of a U.S. person.³² The bill would also rescind any funds the United States has designated for the ICC and prohibit any future funding by the U.S. government for the court.³³ The bill passed in the House on 9 January 2025 and was placed before the United States Senate, where it was rejected on a procedural vote on 28 January.³⁴

On 20 January 2025, United States President Donald Trump issued an Executive Order, revoking President Biden’s Executive Order 14022 and thus purporting to reinstate Executive Order 13928 of 11 June 2020.³⁵ Information suggested that the President might be required to make a new declaration of emergency in order to invoke powers under Executive Order 13928 given the passage of time and intervening actions since its promulgation in 2020.

On 6 February 2025, President Donald Trump issued an Executive Order entitled “Imposing Sanctions on the International Criminal Court.”³⁶ The Executive Order asserts that the ICC has engaged in “illegitimate and baseless actions” targeting the United States of America and Israel by opening preliminary investigations concerning U.S. and Israeli personnel and by issuing warrants for the arrest of Mr. Netanyahu and Mr. Gallant. The Order declares a national emergency in relation to any effort by the ICC to investigate, arrest, detain, or prosecute “protected persons”. These are defined as United States persons, as well as citizens or lawful residents of countries that are United States allies and who are not parties to the Rome Statute or have not otherwise consented to ICC jurisdiction.³⁷

The Executive Order blocks all property transactions and interests in property in the United States, or within the possession or control of a U.S. person. The sanctions authorized by the Executive Order can be imposed against any foreign person who is determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General to:

³¹ Ibid. Sec. 3(a)

³² Ibid. Sec. 3(b)

³³ Ibid. Sec. 4

³⁴ <https://www.congress.gov/bill/119th-congress/house-bill/23/all-actions>

³⁵ <https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>

³⁶ <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/>

³⁷ Sec. 8(d).

- Have directly engaged in any effort by the ICC to investigate, arrest, detain, or prosecute a protected person without the consent of that person’s country of nationality;
- Have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of any such effort, or any person subject to sanctions under the Executive Order; or
- Be owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, any person sanctioned under the Executive Order.³⁸

Within 60 days of the order, the Secretary of the Treasury, in consultation with the Secretary of State, shall submit to the President a report on additional persons that should be sanctioned under the Order.³⁹

The Executive Order also prohibits any person from making or receiving any contribution or provision of funds, goods, or services by, to, or for the benefit of a person designated pursuant to the order.⁴⁰ Pursuant to the International Economic Emergency Powers Act, violation of this prohibition can result in civil or criminal penalties.⁴¹

Furthermore, the entry of sanctioned individuals and their immediate family members (defined as spouses and children)⁴² into the United States as immigrants or nonimmigrants, is suspended, except where the Secretary of State determines that the entry of the person would not be contrary to the interests of the United States. These entry restrictions also apply to “aliens determined by the Secretary of State to be employed by, or acting as an agent of, the ICC”.⁴³

Without prejudging the accuracy of the information received, grave alarm is expressed at the policies and initiatives adopted by the Government of the United States of America, which appear to be aimed at influencing the independence of the ICC and undermining its efforts to investigate, prosecute and sanction war crimes and crimes against humanity, as well as thwarting victims’ access to justice. We would like to highlight our concern over the impact of these sanctions on the wide range of important situations around the world.

We would like to recall that Special Procedures have welcomed the request by the Prosecutor of the ICC to issue arrest warrants for senior Taliban leaders Haibatullah Akhundzada and Abdul Hakim Haqqani for the crime against humanity of persecution on gender grounds in Afghanistan, hailing it as a critical step forward in the pursuit of

³⁸ Sec. 1(a).

³⁹ Sec. 5.

⁴⁰ Ibid. Sec. 3.

⁴¹ 50 U.S.C. §§ 1705

⁴² Sec. 7(f).

⁴³ Sec. 4.

justice⁴⁴.

We would like to recall with urgency that Special Procedures mandate-holders have raised concerns about war crimes, crimes against humanity, direct and public incitement to genocide, and risks of genocide several times in the past months, reminding all governments they have a duty to prevent genocide,⁴⁵ an obligation to “ensure respect” for international humanitarian law, and a duty to investigate and prosecute international crimes. Furthermore, in a letter sent on 23 March 2023 to the ICC, mandate-holders expressed “concern for the pervasive impunity and ever-deteriorating human rights situation in the occupied Palestinian territory, owing to acts that may amount to widespread and systemic violations of international law committed by various actors”.⁴⁶ And, on 26 November 2024, Special Procedures mandate-holders urged compliance with the ICC’s warrants to arrest Benjamin Netanyahu, Yoav Gallant, and Mohammed Diab Ibrahim Al-Masri (Deif), asserting that these arrest warrants “can help save lives”.⁴⁷

We would like to recall that the ICC has jurisdiction in the national territory of Palestine, the latter having acceded to the Rome Statute in 2015. The ICC is therefore mandated to prosecute international crimes committed in Palestine that have not been prosecuted by national courts, regardless of the status, nationality or allegiance of the perpetrators. We observe that disputes regarding jurisdiction or the admissibility of charges should be resolved through challenges before the ICC, in accordance with the rule of law. Sanctions are an inappropriate response to a disagreement with the legitimate finding of an independent and impartial court. We further note that the ICC enjoys the support of clear majority of the international community.

Further, we would like to recall the customary principle of universal jurisdiction, codified in multiple treaties to which the United States are party (including the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Geneva Conventions of 1949 and the Genocide Convention), according to which certain crimes, including torture, war crimes and crimes against humanity, can be investigated and prosecuted in any jurisdiction, irrespective of the nationality of the perpetrator.

Both the 6 February Executive Order and the proposed Illegitimate Court Counteraction Act create the risk of sanctions being imposed against a non-United States person involved in any ICC effort to investigate or prosecute officials from a country that is a U.S. ally, including Israel, as well as any person involved in executing the arrest warrants against Mr. Netanyahu or Mr. Gallant. Such wide-ranging policies have the power to impact judges, prosecutors and support staff working at the ICC, as well as officials in any State that complies with the ICC’s arrest warrant, and the families of any individual sanctioned.

⁴⁴ <https://www.ohchr.org/en/press-releases/2025/01/afghanistan-un-experts-welcome-icc-prosecutors-application-arrest-warrants>

⁴⁵ <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>

⁴⁶ <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-03-23-Letter-ICC-Palestine.pdf>

⁴⁷ <https://www.ohchr.org/en/press-releases/2024/11/icc-arrest-warrants-can-help-save-lives-must-be-respected-and-complied-un>

We consider that the imposition of unilateral sanctions against judges, prosecutors and staff members of the ICC merely for carrying out their lawful duties constitutes not only a clear breach of a broad array of human rights and fundamental freedoms of the targeted individuals and their family members, as well as a violation of their privileges and immunities, under public international law. If carried out, the sanctions would also appear to amount to offenses against the administration of justice under article 70 of the Rome Statute, which punishes efforts to impede or intimidate an official of the Court or to retaliate against an official of the Court on account of duties performed by that official.

Additionally, we express concern at the potential adverse impact that the implementation of these sanctions may have on human rights defenders, civil society organisations, victims' representatives, businesses and others. Foreign entities may be at risk of sanction themselves, while US entities risk severe civil or criminal penalties for providing services to sanctioned persons. These measures are wholly disproportionate and will have an inevitable chilling effect.

The concerns outlined above would apply to any measures – no matter the format or legislative vehicle – that seek impose sanctions against the ICC, its judges, prosecutors or other staff members, merely for carrying out their lawful duties.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide detailed information on the legal basis for the actions envisaged by the 6 February Executive Order and the proposed Illegitimate Court Counteraction Act, or any other proposed United States sanction regime against the ICC judges, prosecutors, and personnel, and explain their compatibility with international human rights standards relating to the independence of the judiciary and the fight against impunity for gross human rights violations.
2. Please provide detailed information on the compatibility of the 6 February Executive Order and the proposed Illegitimate Court Counteraction Act, or any other proposed United States sanction regime with international standards on courts' independence and objective investigations and impartial judicial proceedings.
3. Taking into consideration that international standards relating to the security of tenure and protection of justice personnel include personal immunity of judges and prosecutors for legitimate acts undertaken in the exercise of their functions, please explain how the measures set out in the February 6 Executive Order and the proposed Illegitimate Court Counteraction Act, or any other proposed United States sanctions regime, could be regarded as being in line with international standards binding on the USA.

4. Please also explain how the aforementioned threats are compatible with an environment conducive to human rights defenders, civil society organisations and victims' representatives cooperating with the ICC.
5. Please explain how the aforementioned threats are compatible with the customary principle of universal jurisdiction, codified in multiple treaties to which the United States is party (including the CAT, the Geneva Conventions of 1949 and the Genocide Convention), according to which certain crimes can be investigated and prosecuted irrespective of the nationality of the perpetrator.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Richard Bennett
Special Rapporteur on the situation of human rights in Afghanistan

Elizabeth Salmón
Special Rapporteur on the situation of human rights in the Democratic People's
Republic of Korea

Michael Fakhri
Special Rapporteur on the right to food

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living, and on the right to non-discrimination in this context

George Katrougalos
Independent expert on the promotion of a democratic and equitable international order

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory
occupied since 1967

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

The independence of the judiciary is prescribed, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, and the Basic Principles on the Independence of the Judiciary.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, general comment No. 32 (2007) of the United Nations Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (general comment No. 32, para. 19).

The Basic Principles on the Independence of the Judiciary provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process (principle 4).

The Guidelines on the Role of Prosecutors provide that States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability (principle 4). The standards referred to above refer to the obligations of governmental and other institutions to protect and promote the independence of the judiciary and the prosecution service. They also apply, *mutatis mutandis*, to the work carried out by international judges and prosecutors in the legitimate exercise of their functions.

We consider that the enforcement of E.O. 13928 and the imposition of unilateral sanctions against judges, prosecutors and staff members of the ICC may also result in the violation of a number of human rights and fundamental freedoms included in the ICCPR, including the prohibition of punishment for acts that did not constitute a crime at the moment of their commission (art. 15); fair trial guarantees, in particular the right to due process and the presumption of innocence (art. 14 (2) to (7)); the right to freedom of movement (art. 12) and the right to privacy and family life (art. 17).

In addition, we wish to recall that, as established by in Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate, prosecute, and punish those

responsible. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations (principle 4). To that end, where it is so provided for in an applicable treaty or other international legal obligations, States should provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses (principle 5).

In relation to the potential adverse impacts on human rights defenders, civil society organisations and victims' representatives who might be discouraged from cooperating with the ICC, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 (b) and c) provides that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

Furthermore, we would like to bring to your attention article 9, paragraph 4, point a) of the UN Declaration on Human Rights Defenders, reaffirming the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies. Actions that hinder or restrict the ability of individuals and organisations to cooperate with the ICC would appear to violate article 9 of the Declaration.

Furthermore, we would like to draw your Excellency Government's attention to Human Rights Council's resolution 12/2, which urges Governments to prevent and refrain from all acts of intimidation or reprisal against those who, inter alia, avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose. In this regard, the Human Rights Council condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights.

In relation to the interests of victims of atrocity crimes, ICC plays a vital role in ensuring that victims of human rights violations have access to effective remedies and protection; that perpetrators of human rights violations are brought to justice; and that anyone suspected of a criminal offence receives a fair trial in accordance with international standards. As the ICC is a court of last resort, undermining its legitimacy by threatening judges and prosecutors may well block access to justice and

accountability that otherwise are not attainable at the respective national levels.

We would also like to recall that proper regulation of a State of Emergency is an important dimension of a rule of law response to exceptional or crisis situations. International human rights treaties including Article 4 of the International Covenant on Civil and Political Rights affirm the right of derogation in the context of emergency to the extent “strictly required by the exigencies of the situation”. (A/HRC/40/52 Add.1 para 14). Before a State invokes a derogation, two fundamental conditions must be met: the situation must amount to an emergency which threatens the life of the nation, and the State must have officially proclaimed a state of emergency.” (A/HRC/37/52, para. 10)

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. In its [general comment No. 34](#), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11). The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress” (para. 23).

Finally, we would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (OP10). Furthermore, we recall that despite that article 19(3) of the ICCPR recognizes “national security” as a legitimate aim, national security considerations should be “limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group” (A/71/373). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373).