

Mandate of the Special Rapporteur on the independence of judges and lawyers

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(Please use this reference in your reply)

19 January 2026

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the Executive Order on Imposing Sanctions on the International Criminal Court (executive order 14203) issued on 6 February 2025.¹

Recalling international human rights standards related to the right to a fair trial, I would like to offer the following analysis and observations regarding the compatibility of this executive order ("the Executive Order") and subsequent designations pursuant to the executive order, with international human rights law obligations binding on the United States of America. I recall that the United States ratified the International Covenant on Civil and Political Rights (ICCPR) on 8 June 1992, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment on 21 October 1994. I also note that many portions of the Universal Declaration of Human Rights (UDHR), including its provisions relating to the right to a fair trial, have become binding customary law.

The ICCPR includes international guarantees on the right to a fair trial and the independence of the judiciary, which require States to protect judges and prosecutors from improper interference and to ensure that they are able to carry out their functions without undue pressure. These internationally established rules concerning the independence and impartiality of judicial bodies apply to international courts and tribunals the same way they apply to domestic judicial bodies.

I take the opportunity to recall that in communications [USA 3/2025](#) and [USA 15/2024](#), Special Procedures mandate holders addressed their serious concerns to your Excellency's Government regarding retaliatory actions directed at officials and staff associated with the ICC. I note with regret that to this date, your Excellency's Government has not replied to any of our concerns.

In this letter, I do not intend to offer an exhaustive analysis of all Sections of the Executive Order. Instead, I focus on those that, as they stand, are not in line with relevant human rights standards and which infringe on the role of the judges and prosecutors of the International Criminal Court, undermine accountability for the most grave international crimes, and are not compatible with international human rights law and applicable standards.

¹ <https://www.federalregister.gov/documents/2025/02/12/2025-02612/imposing-sanctions-on-the-international-criminal-court>

ICC jurisdiction

The Executive Order states that the President of the United States of America finds that “the International Criminal Court (ICC), as established by the Rome Statute, has engaged in illegitimate and baseless actions targeting America and our close ally Israel. The ICC has, without a legitimate basis, asserted jurisdiction over and opened preliminary investigations concerning personnel of the United States and certain of its allies, including Israel, and has further abused its power by issuing baseless arrest warrants targeting Israeli Prime Minister Benjamin Netanyahu and Former Minister of Defense Yoav Gallant. The ICC has no jurisdiction over the United States or Israel, as neither country is party to the Rome Statute or a member of the ICC. Neither country has ever recognized the ICC’s jurisdiction, and both nations are thriving democracies with militaries that strictly adhere to the laws of war. The ICC’s recent actions against Israel and the United States set a dangerous precedent, directly endangering current and former United States personnel, including active service members of the Armed Forces, by exposing them to harassment, abuse, and possible arrest.”

While it is true that the United States has not ratified the Rome Statute of the International Criminal Court, this has no bearing on the jurisdiction of the ICC to investigate and sanction alleged war crimes and crimes against humanity in the State of Palestine or Afghanistan.

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

Situations in which alleged crimes within the jurisdiction of the ICC appear to have occurred may be taken up by the Court following action by any of the following three actors: (1) a state party, (2) the Security Council or (3) the ICC prosecutor. In each situation, the ICC has a plainly regulated process to determine its jurisdiction, and States—whether they are parties to the ICC or not—have the opportunity to challenge the jurisdiction of the Court in relevant cases.

Jurisdiction – State of Palestine

On 20 December 2019, the then-serving ICC Prosecutor announced the conclusion of the preliminary examination of the Situation in the State of Palestine. The Prosecutor determined that all the statutory criteria under the Rome Statute for the opening of an investigation had been met and found that there was a reasonable basis to proceed with an investigation into the Situation in the State of Palestine, pursuant to article 53(1) of the Statute. As there had been a referral from the State of Palestine, there was no requirement to seek authorization from the Pre-Trial Chamber before proceeding to open an investigation.

On 22 January 2020, the Prosecutor seized the Chamber under article 19(3) of the Rome Statute, requesting a ruling on the scope of the Court's territorial jurisdiction

in the Situation in the State of Palestine. On 5 February 2021, the Pre-Trial Chamber issued its decision, finding that the ICC has jurisdiction over crimes that occurred or are occurring on the territory of the State of Palestine, defined for that purpose to encompass “the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.”² In reaching this conclusion, the Pre-Trial Chamber recalled that the ICC is not constitutionally competent to determine matters of statehood that would bind the international community. By ruling on the territorial scope of its jurisdiction, the Chamber was neither adjudicating a border dispute under international law nor prejudging the question of any future borders. The Chamber's ruling was for the sole purpose of defining the Court's jurisdiction.

On 12 and 30 October 2023, ICC Prosecutor Karim Khan announced that events on and following 7 October 2023, which fall within the ICC's jurisdiction, are being investigated under the purview of the ICC's investigation into the Situation in the State of Palestine.

Jurisdiction – Afghanistan

Afghanistan deposited its instrument of accession to the Rome Statute on 10 February 2003, conferring jurisdiction on the ICC concerning crimes listed in the Rome Statute committed on the territory of Afghanistan or by its nationals from 1 May 2003 onwards. On 20 November 2017, the Prosecutor requested authorization from the Pre-Trial Chamber to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan since 1 May 2003, as well as regarding similar crimes related to the armed conflict in Afghanistan allegedly committed in the territory of other States Parties to the Rome Statute since 1 July 2002. On 5 March 2020, the Appeals Chamber of the ICC decided unanimously to authorize the Prosecutor to commence an investigation into alleged crimes under the jurisdiction of the Court in relation to the Situation in the Islamic Republic of Afghanistan.³ The investigation resumed in 2022 after the Pre-Trial Chamber concluded that Afghanistan was not carrying out genuine investigations in a manner that would justify a deferral of the Court's investigations and that Afghan authorities were not showing an interest to pursue the deferral request the State submitted on 26 March 2020.⁴ In addition, on 28 November 2024, the Office of the Prosecutor received a referral of the Situation in the Islamic Republic of Afghanistan from Chile, Costa Rica, Spain, France, Luxembourg, and Mexico.

The ICC is therefore mandated to investigate and prosecute international crimes committed in the State of Palestine and the Islamic Republic of Afghanistan that fall within its temporal and territorial jurisdiction, regardless of the status, nationality or allegiance of the perpetrators. Disputes regarding jurisdiction or the admissibility of charges should be resolved through challenges before the ICC, in accordance with the rule of law. The ICC has shown itself perfectly capable of receiving, considering, and impartially and independently ruling on such challenges.

² International Criminal Court, ICC-01/18, at para. 118 (5 Feb. 2021).

³ International Criminal Court, ICC-02/17 OA4 (5 March 2021).

⁴ International Criminal Court, ICC-01/12 (31 October 2022).

On declarations of states of national emergency

The Executive Order asserts that the:

“United States will impose tangible and significant consequences on those responsible for the ICC’s transgressions, some of which may include the blocking of property and assets, as well as the suspension of entry into the United States of ICC officials, employees, and agents, as well as their immediate family members, as their entry into our Nation would be detrimental to the interests of the United States.”

The Executive Order also determines that:

“any effort by the ICC to investigate, arrest, detain, or prosecute protected persons, as defined in section 8(d) of this order, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to address that threat.”

Article 4 of the International Covenant on Civil and Political Rights makes clear that States Parties must recognize the exceptional nature of emergency measures when declaring or renewing such mechanisms. Any declaration of a national emergency must take into consideration the legality, necessity, and proportionality of the measure. It may only be declared in response to an “exceptional situation threatening the life of the nation.” This strict rule is essential because a declaration of emergency can authorize the suspension of constitutional guarantees, grant broad powers to State authorities, and allow for the infringement of important freedoms and human rights. The principles of necessity and proportionality must be respected with regard to the duration and geographical scope of any state of emergency and any measures taken pursuant to that emergency. International law does not allow for the indefinite restriction or suspension of fundamental rights and freedoms. Furthermore, States party to the ICCPR must immediately inform the UN Secretary-General of the provisions from which they have derogated and the reasons for any such measures. Finally, these measures must be subject to scrutiny and approval by the legislature and by independent judicial bodies to prevent abuse of power.

The United Nations Human Rights Committee has made clear that all measures taken during an officially proclaimed state of exception must be necessary, proportionate, and non-discriminatory.⁵ The proper regulation of a state of emergency is an essential dimension of a State’s response to an exceptional situation. Exceptions must comply with a series of conditions, and may not harm specifically identified non-derogable rights, including the right of judicial review.⁶ Each measure must be “directed to a real, clear, present, or imminent danger,” and governments must ensure that they are not used to limit legitimate dissent, protest, expression, and the work of civil society. Furthermore, it is important that States resorting to such measures explicitly articulate how the specific threat requires the adoption of exceptional legal measures. Such measures must be as non-intrusive as possible to achieve their objective.

⁵ Human Rights Committee, General Comment No. 29 (CCPR/C/21/Rev.1/Add.11).

⁶ Advisory Opinion OC-9/87 of the Inter-American Court of Human Rights (6 October 1987), https://www.corteidh.or.cr/docs/opiniones/seriea_09_ing.pdf.

The Executive Order declaring a national emergency concerning the actions of personnel of the International Criminal Court does not seek to respond to an event, the very nature of which may put the nation at risk. Instead, it seeks to empower the Executive to sanction individuals engaged in efforts to end impunity for the most grave international crimes, without the benefit of due process. For this reason, it is not in line with international human rights standards.

Sanctions against judges and prosecutors

Sanctions are a manifestly inappropriate response to disagreement with a legitimate court decision. By directly targeting individual prosecutors and judges solely for their official judicial acts, such sanctions amount to an attempt to influence or punish judicial operators for their work. The Executive Order thus appears out of line with human rights guarantees binding on the United States, including those pertaining to the right to a fair trial under the ICCPR and the UDHR.

The Executive Order provides, under section 1, that:

“(a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- (i) the person listed in the annex to this order; and
- (ii) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General:
 - (A) to have directly engaged in any effort by the ICC to investigate, arrest, detain, or prosecute a protected person without consent of that person's country of nationality;
 - (B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity in subsection (a)(ii)(A) of this section or any person whose property or interests in property are blocked pursuant to this order; or
 - (C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property or interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.”

The independence of the judiciary is enshrined, *inter alia*, in the ICCPR and further developed in the Basic Principles on the Independence of the Judiciary, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in 1985, and the Guidelines on the Role of Prosecutors, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. The UN Human Rights Committee has clarified 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 (CCPR/C/GC/32, general comment No. 32, para. 19).

The Basic Principles on the Independence of the Judiciary⁷ 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 Prosecutors⁸ 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.

Of course, human rights principles and standards relating to judges, lawyers and prosecutors recognize that they should be accountable in the discharge of their functions and subject to disciplinary proceedings, as necessary (A/65/274, para. 60). Disciplinary and other proceedings, however, should be carried out in full conformity with existing international norms and standards, and may never be a reprisal for their legitimate work.

State legislative, regulatory, or executive provisions that allow for the imposition of unilateral sanctions against judges and prosecutors of the ICC, as set out in the Executive Order, merely for carrying out their lawful duties, run afoul of the United States' international human rights obligations. These provisions constitute a clear violation of the privileges and immunities owed to international judges and prosecutors, as well as a breach of a broad array of human rights and fundamental freedoms of the targeted individuals.

⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>.

On adequate remedy

Section 3 of the Executive Order provides that:

“The prohibitions in section 1(a) of this order include:

- (a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order; and
- (b) the receipt of any contribution or provision of funds, goods, or services from any such person.”

These provisions make clear that the Executive Order may have adverse impacts on human rights defenders, civil society organizations and victims’ representatives, who might be discouraged from cooperating with the ICC and its personnel. Such provisions run afoul of 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, I 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. Further, article 9, paragraph 4, point (a) of the UN Declaration on Human Rights Defenders reaffirms 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 organizations to cooperate with the ICC appear to violate article 9 of the Declaration.

I draw your Excellency Government’s attention to Resolution 12/2 of the Human Rights Council, 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.

The ICC plays a vital role in ensuring that victims of human rights violations and atrocity crimes have access to effective remedies and protection; that perpetrators of human rights violations are brought to justice; and that those 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 anywhere in the world.

The Executive Order runs afoul of international standards that protect both the rights of justice personnel who are directly sanctioned and those who protect the right to remedy for the victims of the worst international crimes.

Individuals designated for sanctions

- On 10 February 2025, ICC Prosecutor Karim Khan was designated for sanctions under the executive order⁹.
- On 5 June 2025, the Department of State published additional designations¹⁰ pursuant to executive order 14203, listing four ICC judges for sanctions under the executive order, citing “the threat” resulting from the authorization of the ICC’s investigation into US personnel in Afghanistan, and the issuance of arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant.¹¹
- On 20 August 2025, the Department of State¹² designated two more ICC judges and two Deputy Prosecutors pursuant to the executive order for “the threat” resulting from the authorization of an investigation into US personnel in Afghanistan, and for the issuance of arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant.¹³
- On 18 December 2025, the Secretary of State designated for sanctions¹⁴ two more ICC judges for having directly engaged in efforts by the ICC to investigate, arrest, detain, or prosecute Israeli nationals, including voting with the majority in favor of the ICC’s ruling against Israel’s appeal on 15 December 2025.¹⁵

The Executive Order provisions for sanctions against judges, prosecutors and staff members of the ICC would also run afoul of a number of human rights and fundamental freedoms included in the ICCPR, including 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 my assessment, the provisions in this EO may allow for measures that are far-reaching, with long-term and devastating impacts on accountability for the gravest

⁹ <https://www.federalregister.gov/documents/2025/02/12/2025-02612/imposing-sanctions-on-the-international-criminal-court>

¹⁰ <https://www.state.gov/releases/office-of-the-spokesperson/2025/06/imposing-sanctions-in-response-to-the-iccs-illegitimate-actions-targeting-the-united-states-and-israel/>

¹¹ <https://www.state.gov/imposing-sanctions-in-response-to-the-iccs-illegitimate-actions-targeting-the-united-states-and-israel/>

¹² <https://www.state.gov/releases/office-of-the-spokesperson/2025/08/imposing-further-sanctions-in-response-to-the-iccs-ongoing-threat-to-americans-and-israelis-2/>

¹³ <https://www.state.gov/releases/office-of-the-spokesperson/2025/08/imposing-further-sanctions-in-response-to-the-iccs-ongoing-threat-to-americans-and-israelis/>

¹⁴ <https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel/>

¹⁵ <https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel/>

crimes. Such wide-ranging measures would 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.

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

1. Please provide any additional information and/or comments you may have on the above-mentioned analysis.
2. Please provide detailed information on the legal basis for the actions envisaged by this Executive Order 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.
3. Please provide detailed information on the compatibility of this executive order with international standards on courts' independence and objective investigations and impartial judicial proceedings.
4. Please explain how the aforementioned measures are compatible with the customary principle of universal jurisdiction, codified in multiple treaties to which the United States is party (including the Convention against Torture and the Geneva Conventions of 1949), according to which certain crimes can be investigated and prosecuted irrespective of the nationality of the perpetrator.

In closing, I strongly urge Your Excellency's Government to repeal this Executive Order, since its provisions pose a real risk of harm to judicial independence, accountability for the gravest crimes, and to individuals' rights to a fair and public hearing by a competent, independent and impartial tribunal, as guaranteed by binding international human rights law. I stand ready to engage in dialogue with Your Excellency's government on this very important matter and to provide any technical advice to ensure compliance with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers