

United States Senate
WASHINGTON, DC 20510

November 1, 2024

Päivi Kaukoranta
President of the Assembly of States Parties
International Criminal Court
Oude Waalsdorperweg 10
2597 AK, The Hague
The Netherlands

Dear President Kaukoranta,

We write you today with great concern regarding the inappropriate actions taken by Prosecutor Karim A.A. Khan in his decision to seek arrest warrants for the duly elected Prime Minister and Defense Minister of the State of Israel. As the oversight body of the International Criminal Court (ICC) with the power to appoint and remove the Prosecutor, we implore you to exercise the authority granted to you by the Rome Statute to investigate the highly irregular and potentially illegal actions by the Prosecutor in this case.

There are two grave concerns we seek to raise with you and that we urge this body to investigate:

First, Prosecutor Khan did not comply with the law when he applied for arrest warrants against Israeli government officials. Prior to the announcement of the warrant applications, a bipartisan group of United States Senators—four Republicans and four Democrats—urged Prosecutor Khan to meet with Israeli legal representatives as he investigated Israel's response to Hamas' brutal October 7 terrorist attack. We explained that a thorough and fair investigation must allow both sides to present their argument, and that engagement between the Prosecutor and the State of Israel was explicitly required by the Rome Statute and the principle of complementarity.¹

After speaking with Prosecutor Khan and members of his office, we left with the impression that the Prosecutor would meaningfully engage with the State of Israel before any action was taken. Indeed, we received notification that members of Prosecutor Khan's team were scheduled to meet with legal representatives for the State of Israel on May 20 in Israel. To our astonishment, however, members of the Prosecutor's office never boarded the plane to Israel and the meeting was abruptly canceled just a few hours before it was to take place. It is our understanding that Israeli legal officials were notified of this cancellation on May 20, while at the airport awaiting the arrival of the Prosecutor's office.

Prosecutor Khan's abrupt cancellation and his announcement of an application for arrest warrants on that same day have always been perplexing, and stand in stark contrast to the assurances we received from his office that there would be meaningful consultations with Israel, as required by

¹ See ICC-01/18-304-Corr, Written Observations Pursuant to Rule 103 of United States Senator Lindsey O. Graham, Originally Filed on 06 August 2024.

the letter and spirit of the Rome Statute. We continue to urge the Court to follow the notification procedures required by article 18 of the Rome Statute, and to otherwise give full effect to the principle of complementarity in the conduct of the investigation. As we have repeatedly stated and the Rome Statute makes clear, the principle of complementarity must be adhered to and should grant deference to a sovereign nation with a robust and mature legal system like Israel's.

Second, in addition to these legal concerns regarding Prosecutor Khan's application for warrants against Israeli officials, there is a cloud hanging over the Prosecutor and his office. It has come to light recently through numerous media reports—particularly an Associated Press (AP) story dated October 25, 2024—that allegations of sexual harassment and misconduct against Prosecutor Khan emerged earlier this year, around the time he decided not to send his team to meet with Israeli legal representatives and announced a warrant application instead.² Other media reports indicate there may have been an effort to suppress these reports through intimidation.³ The AP story raises questions as to whether there may have been a connection between the timing of the cancelled consultation with Israeli officials and the inquiry into allegations of misconduct against Prosecutor Khan. The AP story also goes into great detail about broader, systemic issues at the Court, including troubling repeated allegations of oppressive working conditions for women at the Court for years.

We urge the Assembly to use the authority under the Rome Statute and the Rules of Procedure and Evidence to investigate fully the allegations against Prosecutor Khan and to consider whether he should be suspended pending the results of an investigation. If the allegations are substantiated, we urge the Assembly to take all necessary steps available under its authority—up to and including holding a vote for his removal—and to consider the implications on the investigations led by Prosecutor Khan. Transparency is of utmost importance regarding the allegations against Prosecutor Khan. We urge the body to take this seriously.

Any action by the Court regarding arrest warrants for Israeli officials without the benefit of a completed investigation into the serious allegations hanging over Prosecutor Khan would cast doubt on the Court's actions, and jeopardize the credibility of the ICC more broadly. We urge you to consider seriously the concerns we have raised.

We appreciate your attention to this matter and look forward to a prompt response.



Lindsey O. Graham
United States Senator



Ben Cardin
United States Senator

² Joshua Goodman and Molly Quell, *International court prosecutor who charged Netanyahu faces sexual misconduct accusation*, Associated Press, 25 October 2024.

³ Harry Davies and Robert Flummerfelt, *ICC prosecutor allegedly tried to suppress sexual misconduct claims against him*, The Guardian, 27 October 2024.



John Thune
United States Senator



Richard Blumenthal
United States Senator



Joni K. Ernst
United States Senator



John Fetterman
United States Senator