

# A New Spirit at the International Criminal Court in The Hague

Pnina Sharvit Baruch and Ori Beeri | No. 1676 | January 1, 2023

**In his first year and a half as the Prosecutor of the International Criminal Court (ICC), it is evident that Karim Khan is determined to strengthen its influence, particularly in light of the criticism of the Court's limited effectiveness. To this end, Khan promotes collaboration, some precedent-setting, with countries, international organizations, civil society organizations, and communities of victims. In addition, there is a new emphasis on focusing on fewer investigations and integrating advanced technology into the office's work. So far, Khan has rarely referred to the investigation into Israel, but there is a possible change of trend on the issue, given in part by the increase in the budget designated for the investigation and Khan's first statement, although cautious and reserved, that one of his goals next year is to visit "Palestine." The increasing number of voices in the international arena calling for an investigation into Israel, along with changes in Israel that will be perceived as a violation of Palestinian rights, such as the abolition of the Civil Administration and an erosion of the independence of the judicial system, are expected to complicate presentation of the Israeli position and increase the pressure on the Prosecutor to advance the investigation.**

On December 5, 2022, Karim Khan, the Prosecutor of the International Criminal Court (ICC), released the [annual report](#) of the Office of the Prosecutor, entitled *Towards a More Just World – Every Day*. This is the first report published by Khan, who was appointed to the position a year and a half ago. The report reviews the main actions of the office since the Prosecutor assumed his position and presents his opinion regarding the role of the Court. It is evident that Khan is aware of the criticism of the Court's limited effectiveness, which in its 20 years has only convicted five

suspects of substantial crimes, and that he seeks to strengthen the Court's influence.

As detailed in the report, a central objective of the Prosecutor's policy, is turning the ICC into a hub for international justice through increasing cooperation with states parties. Within this context, the Court aims to support investigations and proceedings that take place in the countries themselves, as a reflection of "dynamic complementarity": a dynamic application of the principle of complementarity, which is a fundamental principle of the Court, whereby the Court has jurisdiction only when the state itself does not adequately investigate a case. In this context, agreements signed with several countries are mentioned: with Colombia and Guinea, the agreements led to the closing of the preliminary examinations; and with Venezuela an agreement was signed to support the state procedures, although Khan stated that they are still insufficient. In addition, this cooperation aims to increase the effectiveness of the investigations at the Court itself. Thus, following the agreement with Sudan, most of the evidence in the trial of Ali Kushayb, which opened in court in April 2022, was received through such cooperation.

The report also gives examples of broader cooperation, including the Prosecutor's precedent-setting decision from April 2022 to join a joint investigation team, alongside Ukraine, Lithuania, Poland, Estonia, Latvia, Slovakia, and Romania, to investigate the conflict between Russia and Ukraine, under the auspices of the European Union Agency for Cooperation in Criminal Justice (Eurojust); and his decision from September 2022 to join an investigation team aimed at supporting investigations into crimes against immigrants and refugees in Libya, alongside the Netherlands, Great Britain, and Spain, and in cooperation with Europol (the cooperation with the Office of the Prosecution led to the arrest of two key suspects in Ethiopia and their extradition to Italy and the Netherlands). In addition, Khan emphasized cooperation with other parties – the United Nations, the European Union, the Organization of American States (OAS), the Economic Community of West African States (ECOWAS), and the African Union. The warming of relations with African countries, which included the

appearance of the Prosecutor at the African Union summit for the first time in 17 years, is significant in light of the criticism leveled in the past on the Court's unbalanced focus on the continent's countries.

Another policy measure detailed in the report is the deepening cooperation with civil society organizations and local communities. Thus, the Prosecutor's Office, together with Eurojust, [published](#) a document of practical guidelines for civil society organizations regarding the documentation of crimes and human rights violations, so that they can be used in criminal proceedings. In addition, a roundtable was held with the participation of representatives of civil society organizations and experts from the UN on crimes against children. This is part of a [new initiative](#) of holding annual roundtables with civil society organizations and NGOs.

Khan emphasizes the importance of being present in the countries themselves in order to create a sufficient base of knowledge and make contact with the victims. Accordingly, Khan himself traveled to different countries, and made a number of trips to Ukraine; in addition, a delegation of 42 investigators, most of whom were seconded to the Prosecutor's office by the Netherlands, was sent to Ukraine. According to the report, next year the establishment of four field offices is planned: in Ukraine, Sudan, Venezuela, and Bangladesh.

The report states that in the coming period emphasis will be given on reducing the number of pending investigations and preliminary examinations, in order to streamline the Court's work and achieve better results in a specified number of cases. Since its inception, not a single investigation opened has been closed in the Court. In this spirit, on December 16, 2022, Khan announced the end of the investigation phase of three existing situations (out of 17) – one in [Georgia](#), which deals with crimes during the conflict with Russia in 2008, and two investigations in the [Central African Republic](#), one which deals with crimes during the conflicts in the country in 2002-2003, and the second in crimes since 2012. This means that no new lines of investigation will be explored, but cooperation with the local authorities and support for the state procedures will

continue. Thus, the Office of the Prosecution is assisting the authorities of the Central African Republic to conduct proceedings on its own, and on October 31, 2022, the Special Criminal Tribunal (SCC) established in the country [convicted](#) three defendants of war crimes and crimes against humanity, as part of the first trial held there. The choice not to continue investigating new cases within the framework of these situations signifies Khan's tendency, since taking office, to focus on "fresh" crimes committed in recent years. The report also states that sexual and gender-based violence and crimes against children are prioritized.

According to the report, the Prosecutor intends to promote the integration of advanced technology in the day-to-day work of the office. The report indicates three areas: using artificial intelligence (AI) to produce concrete information available from the quantities of digital information; uploading the information to the cloud in a way that will allow access and sharing with local authorities as well; and use of experts seconded to his office by states parties. In this context, the report mentions cooperation with Microsoft in both hardware and software. In addition, Khan points out moves underway to change the work culture in the Prosecutor's office. This in part comes in response to the criticism leveled at the office by [the independent committee of experts](#) that examined the functioning of the Court. The report mentions moves such as mandating the inclusion of women in lists of candidates for senior positions and other actions to ensure gender representation in all ranks of the office.

The investigation into the case of Israel was officially opened in March 2021, and focuses on allegations of crimes committed in the territories of the West Bank, East Jerusalem, and the Gaza Strip starting on June 13, 2014, by all parties to the conflict. The investigation can refer to any crime committed as of this date, with no set end date.

In the year and a half since taking office, Khan has rarely addressed the investigation, and it does not seem to be his top priority. However, there is recent evidence of the beginning of a possible change in relation to the investigation. Although the Court's [budget](#) for 2023 shows that relatively

limited resources are still allocated to the investigation compared to most investigations, the budget is three times larger than the budget allocated to it in 2022. In addition, the investigation is noted as one of the ten investigations that will be prioritized next year. Also, on December 5, during the annual assembly of the states parties of the court, Khan [announced](#) that one of his goals is to visit "Palestine" next year (alongside Afghanistan and Congo). It seems that Khan, aware of political sensitivities, deliberately chose cautious wording and did not state more explicitly that he planned to visit, and qualified he would visit, "God willing." In the report, Khan also mentions his intention to use investigators seconded to him from different countries in several investigations, including the situation in "Palestine."

Over the years, Israel has had informal contacts with the Office of the Prosecution. In comparison to the previous Prosecutor, it seems that Khan is more attentive to the Israeli arguments. Israel also uses its allies to influence the Prosecutor not to advance the investigation in its case. However, from the beginning of his tenure, Khan has shown that he grants importance to public sentiment. As the voices calling to investigate Israel's policies and actions increase, the pressure on the Prosecutor to advance the investigation will also increase. One illustration is the campaign surrounding the death of journalist Shireen Abu Akleh, even though the [request](#) by al-Jazeera to investigate the case is not expected to succeed in light of the independent investigation that Israel conducted and the fact that this is a single case that does not meet the Court's threshold of gravity. The pressure is expected to increase following critical assertions in the expected advisory opinion by the International Court of Justice (ICJ), which has been asked to address the illegality of the ongoing "Israeli occupation." Furthermore, internal Israeli moves, which might be perceived as infringing on the rights of the Palestinians, such as the abolition of the Civil Administration, as well as compromises to the rule of law and to the independence of the judicial system, will make it more difficult to successfully present the Israeli position, both directly and through friendly countries, and will weigh on the ability to continue to delay the progress of the investigation.

Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen