

27 May 2024

**The Hon Anthony Albanese MP**  
Prime Minister of Australia

**The Hon Mark Dreyfus KC, MP**  
Attorney-General of Australia

**Senator the Hon Penny Wong**  
Minister for Foreign Affairs

*Via email*

Dear Prime Minister, Attorney-General and Foreign Minister,

**Re: Call for Condemnation of Threats by Leader of the Opposition Against the International Criminal Court**

Following the announcement of applications for arrest warrants by the Prosecutor of the International Criminal Court (ICC) in the situation of the State of Palestine against two Israeli leaders and three Hamas leaders,<sup>1</sup> we have been alarmed by a rise in public comments in Australia and abroad threatening the independence of the ICC.

Australia has long been at the forefront of building an effective international criminal justice system to ensure there is no impunity for international crimes. We urge you to reconfirm Australia's unwavering support for the ICC as an independent and impartial judicial institution in light of threats to its mandate and its officials.

We write in response to the concerning comments made by the Leader of the Opposition, the Hon Peter Dutton MP in a press conference on 22 May 2024, remarking the following in response to the arrest warrant applications against Israeli Prime Minister Benjamin Netanyahu and Israeli Minister of Defence Yoav Gallant:

The first instance, [Prime Minister Albanese] needs to make sure that there is moral clarity in our country... put pressure on the ICC to make sure that they reverse this terrible decision.

Then I think the next steps in relation to what you would take beyond that; I'm very open to [cutting ties with the International Criminal Court]. I don't rule it out.

But I think the pressure at the moment needs to be for like-minded countries that share our values, to stand shoulder to shoulder, for them to be no different, and to put pressure on the ICC, to make sure that this anti-semitic stance that they've taken, does not advance.<sup>2</sup>

<sup>1</sup> International Criminal Court, ['Statement of ICC Prosecutor Karim A.A. Khan: Applications for arrest warrants in the situation in State of Palestine'](#) (20 May 2024).

<sup>2</sup> Patrick Hannaford, ['Opposition Leader Peter Dutton 'very open' to cutting ties with International Criminal Court over Israel arrest warrants'](#) *Sky News Australia* (22 May 2024).

The remarks by the Leader of the Opposition undermine Australia's commitment to international law and promote a culture of impunity. We urge you to denounce the threats by Mr Dutton to pressure the Prosecutor to withdraw his applications for arrest warrants against Israeli leaders. Acting upon such threats impedes accountability and could violate laws established to safeguard against the interference and obstruction of the Court's administration of justice. We call on you to condemn such remarks in the strongest terms.

Only two states have previously withdrawn from the Rome Statute, leading to a discernible setback in efforts to combat impunity worldwide and advance universal ratification. Mr Dutton's suggestion of such withdrawal by Australia undermines Australia's reputation and standing on the global stage as an advocate for the rule of law and international justice.

We welcome the statement made by the Department of Foreign Affairs and Trade on 21 May 2024 acknowledging that the decision to issue arrest warrants is an independent exercise of the Court's function. In acknowledging the Court's independence, Australia must uphold the integrity of the Court's processes through concrete expressions of support and defend it by unequivocally condemning any form of political interference.

Under the Rome Statute, States Parties have an obligation to fully cooperate with the ICC in its investigation and prosecution of crimes.<sup>3</sup> The power to execute arrest warrants issued by the Court are vested in States Parties, underscoring the importance of cooperation in fulfilling the Court's mandate. We note sections 268.111 and 268.112 of the Commonwealth Criminal Code prohibit both conduct constituting reprisals against officials of the ICC and conduct which intentionally perverts the course of justice in respect of the Court's functions.<sup>4</sup> The legislation is unambiguous in criminalising conduct that causes or threatens to cause any detriment to an official of the Court, and conduct that intentionally perverts, obstructs or prevents the course of justice, with each offence carrying a penalty of five years imprisonment.

In a recent statement, several United Nations Special Rapporteurs echoed our concerns and further warned that:

...politicians and public officials play an important role in shaping the media agenda, public debate and opinion. As a result, ethical behaviour and attitudes on their part, including in their public communications, are essential for promoting the rule of law, protection of human rights, and for ensuring public trust in democratic systems of governance...<sup>5</sup>

We remind you that any unlawful retaliatory action including by way of sanctions, travel bans or freezing of assets by states, against officials of the ICC would not only obstruct the course of justice, but also jeopardise Australian nationals employed by the Court, including those working in the Office of the Prosecutor. Such actions could also amount to offences against the administration of justice under Article 70 of the Rome Statute, which strictly prohibits retaliation against an official of the Court on account of duties performed by them or another official.<sup>6</sup>

The law, in all respects, must be applied equally. Independent judicial processes must be allowed to do their work free from political pressures. We look forward to a timely public statement reiterating in the strongest terms Australia's support for the Rome Statute system and unwavering commitment to preserving and defending the Court's integrity, undeterred by any measures or threats against the Court or its officials.

Sincerely,

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<sup>3</sup> *Criminal Code Act 1995* (Cth), sch 1 ('Criminal Code'), ss 268.111-268.112.

<sup>4</sup> Rome Statute, Article 86.

<sup>5</sup> UN Office of the High Commissioner for Human Rights, '[Israel/Gaza: Threats against the ICC promote culture of impunity, say UN experts](#)' (10 May 2024).

<sup>6</sup> Rome Statute, Article 70(1)(e).



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