

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

12 April 2019

The Honourable Chrystia Freeland
Minister of Foreign Affairs
111 Wellington Street
Ottawa, Ontario K1A 0A6
E-mail: chrystia.freeland@international.gc.ca

Dear Minister,

Re: Threats & reprisal by USA against the International Criminal Court and its Prosecutor

This is further to our letter of 25 March 2019 regarding recent threats by the United States (US) aimed at intimidation of International Criminal Court (ICC) judges, prosecutors, and staff so as to attempt to prevent them from independently performing their duties under the Rome Statute.

We attach for your information LRWC's [letter of 9 April 2019 to the US](#) President, Secretary of State and National Security Advisor expressing grave concern about the threats and the recent reprisal against the ICC Prosecutor (OTP).¹ Despite numerous expressions of concern, including a resolution by the Assembly of States Parties (ASP) to the Rome Statute,² statements from a number of States including Canada³ and the statement of two UN Special Rapporteurs,⁴ the US on 4 April 2019 acted on its threats by revoking the US entry visa of the chief Prosecutor of the ICC, Ms. Fatou Bensouda.

LRWC's letter reminded the US government that,

... the purpose of the ICC, established by the Rome Statute, is to prosecute the most serious international crimes, including war crimes, crimes against humanity and genocide. The duty to prevent and enforce accountability for these crimes is a customary international law obligation owed to all humankind (*erga omnes*). To fulfill that obligation, States that have ratified the Rome Statute, the Genocide Convention, the UN Convention against Torture (UNCAT) and the Geneva Conventions have adopted the duty to prosecute suspects irrespective of where the alleged offence occurred or the nationality of the suspect(s) or victim(s). Prevention or obstruction of the examination or investigation of such crimes and prosecution of suspects by the ICC or other court having jurisdiction contravenes the *erga omnes* obligations of States as well as the relevant treaty obligations and the rule of law. The US has been a State Party to the Genocide

Convention since 1998 and the UNCAT since 1994, and a High Contracting Party to the Geneva Conventions since 1955.

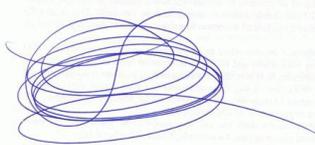
Canada, which has also ratified these treaties, is obligated to uphold treaty provisions and accordingly should insist that all other ratifying countries, including the US, comply with their multilateral treaty obligations.

The urgent necessity for full cooperation by States Parties to the Rome Statute is highlighted by the Pre Trial Chamber's (PTC) 12 April 2019 decision. The PTC rejected authorization of an investigation of grave crimes committed in Afghanistan by the US Armed Forces, the CIA and others based not on a lack of jurisdiction or reasonable grounds, but the "extremely limited" prospects for a successful investigation and prosecution, in large part due to a demonstrated and anticipated lack of cooperation from authorities in Afghanistan and other relevant States.⁵ The OTP has issued a statement indicating that her office "will further analyse the decision and its implications, and consider all available legal remedies."⁶ The OTP must be fully enabled to conduct her analyses and consideration of further action independently and without any harassment or intimidation.

Canada and all States that have ratified the Rome Statute, the Genocide Convention, the UNCAT, and the Geneva Conventions, must urgently exercise concerted diplomatic efforts to insist that the US halt threats and rescind reprisals against the ICC and its personnel.

Thank you for your continued attention to this serious matter. We look forward to hearing from you as to Canada's actions to the address US threats and reprisals.

Sincerely,

A blue ink handwritten signature, appearing to read "Gail Davidson", is written over a light grey rectangular background.

Gail Davidson
Executive Director, LRWC

A black ink handwritten signature, appearing to read "Catherine Morris", is written over a light grey rectangular background.

Catherine Morris
UN Liaison Director, LRWC

A black ink handwritten signature, appearing to read "Marjorie Cohn", is written over a light grey rectangular background.

Marjorie Cohn
LRWC Director
Deputy Secretary General, International Association of Democratic Lawyers
Former President, US National Lawyers Guild

Copied to:

The Honourable Erin O'Toole, MP
Official Opposition, Foreign Affairs Critic
House of Commons
Ottawa, Ontario
Canada K1A 0A6
Email: Erin.OToole@parl.gc.ca

Mr. Garnett Genuis, MP
Official Opposition Deputy Foreign Affairs Critic
House of Commons
Ottawa, Ontario
Canada K1A 0A6
Email: Garnett.Genuis@parl.gc.ca

Ms. H el ene Laverdi ere, MP
NDP Foreign Affairs Critic
House of Commons
Ottawa, Ontario
Canada K1A 0A6
Email: Helene.Laverdiere@parl.gc.ca

Ms. Elizabeth May, MP
Leader, Green Party of Canada
House of Commons
Ottawa, Ontario
Canada K1A 0A6
Email: Elizabeth.May@parl.gc.ca

References

¹ LRWC, Threats and reprisal by USA against the International Criminal Court and its Prosecutor, at <https://www.lrwc.org/threats-and-reprisal-by-usa-against-the-international-criminal-court-and-its-prosecutor/>.

² ICC-ASP/17/Res.5, Strengthening the International Criminal Court and the Assembly of States Parties, Adopted at the 13th plenary meeting on 12 December 2018 by consensus, ICC-ASP/17/20.. This resolution states that the ASP is “gravely concerned by attempts at intimidation to deter cooperation,” and calls on all States Parties “to intensify their efforts to promote universality,” as well as “to continue to express their political and diplomatic support to the Court...[and] “to strengthen their efforts to ensure full and effective cooperation with the Court,” at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/RES-5-ENG.pdf.

³ Statement of Canada to the 17th Session of the ASP, December 2018, expressing concern about efforts to undermine the ICC by threats directed at the Court and its personnel, at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20CAN%2005-12-2018.pdf; See also “Statement on the International Criminal Court From Global Affairs Canada,” 18 March 2019, that the ICC “is essential to investigating and prosecuting the most serious crimes of international concern” and that ICC personnel “should not be targeted for the important work that they do,” at <https://www.canada.ca/en/global-affairs/news/2019/03/statement-on-the-international-criminal-court.html>.

⁴ "US 'threats' against International Criminal Court must stop, say UN experts," by Michel Forst, Special Rapporteur on the situation of human rights defenders; and Diego García-Sayán, Special Rapporteur on the Independence of Judges and Lawyers, 22 March 2019.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24392&LangID=E>.

⁵ “ICC judges reject opening of an investigation regarding Afghanistan situation,” ICC, 12 April 2019, at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1448>. See the decision: *Situation in the Islamic Republic of Afghanistan, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan*, ICC-02/17, International Criminal Court (ICC), 12 April 2019, at https://www.icc-cpi.int/CourtRecords/CR2019_02068.PDF.

⁶ “Statement of the Office of the Prosecutor following the decision of Pre-Trial Chamber II concerning the Situation in Afghanistan,” ICC, 12 April 2019, at <https://www.icc-cpi.int/Pages/item.aspx?name=190412-otp-stat-afghanistan>.