

**Mandates of the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
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20 March 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; pursuant to Human Rights Council resolutions 34/5 and 35/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the remarks made by the U.S. President's National Security Adviser, Mr. John R. Bolton, and the US Secretary of State, Mike Pompeo, against the International Criminal Court (ICC), which appear to constitute serious threats to, and interference with, the independence of the Court and its judges, prosecutors and staff.

According to the information received:

On 10 September 2018, the U.S. President's National Security Adviser, Mr. John R. Bolton, delivered an address at an event organised by the Federalist Society on "Protecting American Constitutionalism and Sovereignty from International Threats".

At the beginning of his remarks, Mr. Bolton said that he would make "a major announcement on U.S. policy toward the International Criminal Court, or ICC."

Explaining that he wanted to deliver "a clear and unambiguous message" on behalf of the President of the United States, he stated: "The United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court. We will not cooperate with the ICC. We will provide no assistance to the ICC. We will not join the ICC. We will let the ICC die on its own. After all, for all intents and purposes, the ICC is already dead to us."

Mr. Bolton recalled that to "protect" American service members from the ICC, the Congress passed in 2002 the American Service members' Protection Act, or ASPA, which authorises the President "to use all means necessary and appropriate, including force, to shield our service members and the armed forces of our allies from ICC prosecution." Following the adoption of the Act, the U.S. signed about 100 binding, bilateral agreements to prevent other countries from delivering U.S. personnel to the ICC. However, the U.S. were unable to reach agreement with every single country in the world.

He further stated that the U.S. would adopt a number of measures, in accordance with the American Service members' Protection Act, should the Court decide to take action against the U.S., Israel or other U.S. allies. These measures would include, in particular, a ban on ICC judges and prosecutors from entering the United States; the freeze of their funds in the U.S. financial system; and ultimately, their prosecution in the U.S. criminal system. The U.S. would also do the same "for any company or state that assists an ICC investigation of Americans."

According to recent reports, senior ICC staff resigned their positions as a consequence of the remarks made by Mr. Bolton.

In March 2019, US Secretary of State, Mike Pompeo, confirmed Mr. Bolton's threats, when he announced that the US would revoke or deny visas to members of the ICC involved in investigations against the US troops in Afghanistan or elsewhere and threatened economic sanctions.

Without prejudging the accuracy of the information received, we would like to express our deep concern about the explicit threats made by the U.S. President's National Security Advisor and the Secretary of State against ICC judges, prosecutors, and personnel if they were to proceed with an investigations of the kind mentioned by Mr. Bolton. These threats constitute an improper interference with the independence of the ICC and could hinder the ability of ICC judges, prosecutors, and personnel to carry out their professional duties.

We are furthermore concerned that the statement made by Mr. Bolton may discourage human rights defenders, civil society organisations, victims' representatives, companies or others from cooperating with the ICC in pursuit of truth and justice. This statement may equally have a chilling effect on civil society, as well as on the ICC's ability to fulfill its mandate. We remind the government that the UN Declaration on Human Rights Defenders' affirms the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, Mr. Bolton's threats appear to violate this right.

In all countries of the world, the judicial system is central to the protection of human rights and fundamental freedoms. Courts play a vital role in ensuring that victims of human rights violations have access to effective remedies and protection; that perpetrators of human rights violations are brought to justice and that anyone 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 at the national level.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and comments that you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal basis for the actions envisaged by the U.S. President's National Security Advisor against 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 explain how these measures would be consistent with international standards governing the personal immunity of judges and prosecutors for legitimate acts undertaken in the exercise of their functions.
4. Please explain how the aforementioned threatened prosecution is compatible with a conducive environment for human rights defenders, civil society organisations and victims' representatives for cooperation with the ICC.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

The independence of the judiciary is prescribed, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, and the Basic Principles on the Independence of the Judiciary.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, General Comment No. 32 (2007) of the United Nations Human Rights Committee notes 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 (General Comment No. 32, para. 19).

The Basic Principles on the Independence of the Judiciary 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 Prosecutors 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.

In relation to the potential adverse impacts on human rights defenders, civil society organisations and victims' representatives who might be discouraged from cooperating with the ICC, I would like to refer your Excellency's Government to 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 would like to 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. Furthermore, I would like to bring to your attention Article 9, paragraph 4, point a) of the UN Declaration on Human Rights Defenders, reaffirming 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

organisations to cooperate with the ICC would appear to violate Article 9 of the Declaration.