



Mrs. Fatou Bensouda
Prosecutor
International Criminal Court

Oslo, 12 March 2018

Mrs. Fatou Bensouda, Prosecutor of the ICC,

The [Norwegian Helsinki Committee](#) – a Norway based internationally oriented human rights organization – would like to raise our concerns related to serious allegations in respected media outlets that members of your Office helped the first Prosecutor of the International Criminal Court (ICC), Mr. Luis Moreno-Ocampo, to make money by assisting persons suspected of having aided ICC crimes in Libya, as well as some broader issues linked to the heritage of the first Prosecutor.

Reports based on leaked emails from Mr. Moreno-Ocampo have appeared in, *inter alia*, Mediapart, Der Spiegel, the Sunday Times and NRC Handelsblad, detailing highly problematic activities and improper relationships between Mr. Moreno-Ocampo and members of the Office of the Prosecutor. A recent policy brief, “A Prosecutor Falls, Time for the Court to Rise”, further points to a range of issues of alleged professional and ethical misconduct of the first Prosecutor as well as its consequences on the current functioning of your Office.¹ Its authors – Prof. Morten Bergsmo, Mr. Wolfgang Kaleck, Dr. Sam Muller and Dr. William H. Wiley – are all respected, experienced and knowledgeable persons in the international criminal law community; some of them were formerly senior members of the Office of the Prosecutor and leaders of the advance team that established the ICC.²

We fully endorse your recent statement at the 54th Munich Security Conference that, “accountability for Rome Statute crimes is an essential component of promoting human

¹ The policy brief is available at <http://www.toaep.org/pbs-pdf/86-four-directors/>.

² See their contributions in: Morten Bergsmo, Klaus Rackwitz and SONG Tianying (editors), *Historical Origins of International Criminal Law: Volume 5*, Torkel Opsahl Academic EPublisher, Brussels, 2017, available at <http://www.toaep.org/ps-pdf/24-bergsmo-rackwitz-song>.

security". The Norwegian civil-society community has since the adoption of the Rome Statute of the ICC in 1998 wholeheartedly supported the fundamental principles underpinning the new institution, and challenged States Parties and other states to provide full support for the effective functioning of the Court.

The Norwegian Helsinki Committee has close contact with victims and witnesses of international crimes and knows by first-hand experience the importance of timely prosecution and reparations. We believe that the wider ICC system of justice – including by enhancing national capacity and willingness to prosecute core international crimes – is potentially a great step in fighting impunity worldwide and thereby preventing such crimes to take place in the future. However, to reach this goal, we need an ICC functioning according to the highest ethical and professional standards.

This is the background for why we address the circumstances that undermine trust in and credibility of the ICC. We are aware of external pressures on the Court and that there are powerful actors on the global scene that may wish the Court to fail. For the Court to strengthen its authority there should, in our view, be thorough, transparent and broad inquiries into breaches of professional and ethical standards by members of the Office of the Prosecutor. These inquiries must include the role of the first Prosecutor, as well as his Chef de Cabinet at the time, Mrs. Silvia Fernández de Gurmendi, former President of the ICC, including for possible abuse of former staff members.

In your statement of 5 October 2017, you refer to investigation by the Independent Oversight Mechanism (IOM). We do not know the outcome of this investigation; however, the IOM has serious limitations and cannot deal with important aspects of the issue at hand, such as the role of the first Prosecutor after he stepped down as Prosecutor. According to a statement by the ICC Bar Association, "the IOM is ill-equipped if not unable to properly and thoroughly investigate the broad range of allegations that are of concern here".³

A further statement by the Women's Initiatives for Gender Justice, "A critical time for the ICC's credibility", calls for strengthening ethical and professional oversight of the work of the ICC, including by establishing organs external to the Court.⁴

³ ICC Bar Association, "ICCBA Statement on Allegations Against Former ICC Prosecutor", 29 November 2017.

⁴ The Women's Initiatives for Gender Justice, "A critical time for the ICC's credibility", 12 October 2017.

Allegations subsequently articulated in the media further accentuate the need for an independent inquiry of your and your Office's relation with Mr. Moreno-Ocampo. According to media reports, you had frequent contact with Mr. Moreno-Ocampo, also seeking his advice, after you commenced your service as Chief Prosecutor in 2012.⁵

As an urgent measure, we ask you to use your "full authority over the management and administration of the Office" to conduct credible and transparent reviews of the legacy of the first Prosecutor in order to establish relevant facts of professional and ethical misconduct. We think that the credibility of the review will depend on appointing *external* experts, who are and will be perceived as fully independent.

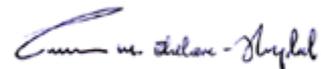
In a situation where there exist credible reports of serious misconduct – and even a pattern of weak professional and ethical standards – in an institution of such importance as the ICC, there will always be different views on ways to resolve the issue. We know that many friends of the Court prefer low-profile measures, if any at all; not to give ammunition to actors that are hostile to the Court. But this is not a question of communications strategy or external relations.

We are convinced that for the Court to fulfil its mandate – which is in itself difficult – a transparent and broad inquiry by external experts is necessary to restore trust in the Office of the Prosecutor. Such a process is not incompatible with the independence of the Office, and it need not be costly. We fear that lack of such trust will weaken the ICC in future investigations and prosecutions, undermining its role as a custodian of justice for victims of international crimes.

Best regards,



Bjørn Engesland
Secretary General



Gunnar M. Ekeløve-Slydal
Deputy Secretary General

⁵ See <https://theblacksea.eu/stories/article/en/icc-ocampo-bensouda-fallout>.