

## Helsinki Committee calls for independent investigation of ICC irregularities<sup>1</sup>

By Stéphanie Maupas

The human rights organization has written to the Prosecutor of the International Criminal Court to demand that she establish "broad and transparent" inquiries of the internal functioning of her Office. The demand is based on the exposure in Mediapart, since the end of September 2017, of a series of major irregularities within the ICC.

The Norwegian Helsinki Committee, an influential organization for the defence of human rights, requests in a [letter of 12 March to the Prosecutor of the International Criminal Court \(ICC\)](#), Fatou Bensouda, that she launch "transparent and broad inquiries into breaches of professional and ethical standards" committed by members of the Court.

According to the NGO, the inquiries should be entrusted to an external expert in order to determine "the role of the first Prosecutor", Luis Moreno-Ocampo, "as well as his Chef de Cabinet at the time, Mrs. Silvia Fernández de Gurmendi [later President of the ICC]", in the alleged misconduct.

The letter of the Helsinki Committee follows the international journalist investigation [The Secrets of the Court](#), published at the end of September 2017 by [The European Investigative Collaborations \(EIC\)](#), based on documents obtained by Mediapart, and revealing a series of major dysfunctions within the ICC (conflicts of interests, biased investigations, offshore fortune...), mostly related to its former Prosecutor Luis Moreno-Ocampo.

Following our revelations, Fatou Bensouda, the current Prosecutor, who was Ocampo's deputy for eight years, referred to an internal body at the ICC, the Independent Oversight Mechanism, to investigate the actions of two named female employees. This was the former spokesperson, Florence Olara, and an analyst at the Office of the Prosecutor, Jennifer Schense. In doing so, the Court responded in a minimum way to the revelations by the press, attempting to relegate to past practices the facts denounced and placing all the responsibility on two officials for acts resulting from operating methods of the Court itself.

Like the Helsinki Committee now, several voices have asked for weeks that an independent inquiry should take place, including the [ICC Bar Association](#), which brings together defence lawyers and victims, and the NGO *Women's Initiative for Gender Justice*. "In many respects, the revelations could be considered emblematic of an underlying culture within the Court", the NGO pointed out in a [statement](#).

This is essentially what the Helsinki Committee as well supports, which also relies on [an article](#) published following the revelations of Mediapart by four heavyweights of international criminal justice, including Morten Bergsmo, former Chief of the Legal Advisory Section, ICC Office of the Prosecutor, and Bill Wiley, the first investigator employed at the ICC. Evoking "a climate of fear and intimidation", they recount how, in September 2003, Luis Moreno-Ocampo and his Chef de Cabinet, Silvia Fernández de Gurmendi, had tried to put pressure on them to be able to employ a diplomat, a national of one of the countries having allowed for the election of the Prosecutor. In short, thanks for service rendered.

Accidental timing or not, the letter of the Helsinki Committee was sent to the Prosecutor two days after the end of the mandate of Silvia Fernández de Gurmendi as President of the ICC. According to several sources, the Argentine diplomat now aims to become High

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<sup>1</sup> Translation by the Norwegian Helsinki Committee of [article](#) published on Thursday, 15 March 2018, by Mediapart.

Commissioner for Human Rights (OHCHR) in Geneva, a position that will be available in September. Asked by email, Silvia Fernández de Gurmendi did not answer.

Member of the Argentine delegation at the diplomatic conference which created the ICC in 1998, Silvia Fernández de Gurmendi then became Chef de Cabinet of the first Prosecutor, Luis Moreno-Ocampo, from 2003 to 2006. According to New Zealand researcher Chris Mahony, the Argentine diplomat was a “key player” in the election of her Argentine compatriot at the top of international justice.

In 2009, after a new digression in the Ministry of Foreign Affairs in Buenos Aires, she returned to The Hague with a mandate as judge for nine years. Then, elected by her peers, she became the head of the ICC in 2015.

When, in December 2017, two months after revelations from the Secrets of the Court, then President Gurmendi spoke about the troubles of the ICC before the Assembly of States Parties – a kind of Parliament of the Court, made up of its 123 Member States – she announced that she had compiled an inventory of existing texts on disciplinary authority for mistakes by employees of the ICC and its elected officials, judges, prosecutors and clerks. She promised a timetable to fill the many gaps. And finally, she gave assurance that the Independent Oversight Mechanism was fully operational.

However, a few days after being referred to by the Prosecutor, the Director of the Oversight Mechanism announced that he was ready to leave his post to join UNICEF. He has still not been replaced to this day.

Moreover, the independence of the Mechanism is also questioned by an episode dating back to 2016. A complaint had been filed against the President and the Prosecutor. They then ordered the Mechanism to conduct an investigation. And the latter used the services of an employee of the Registry (an organ placed under the authority of the Presidency), who had been given time to investigate the case ...

Since its establishment in The Hague in July 2002, the history of the International Criminal Court is adorned with various dysfunctions, conflicts of interests, small arrangements, and sometimes even amateurism. Among the states that support it, NGOs, or its staff, two schools of thought have been opposing each other since its first steps. Those, in a minority, who fear that its slides will undermine its credibility, weakening its deterrent force. They therefore ask the Court to reform so as not to provide weapons to its opponents.

And those who think that pointing out its malfunctions may weaken it and play into the hands of its enemies. And these enemies are many. They count all those who fear that tomorrow they have to be accountable to the ICC for their war crimes and their mass crimes. “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”, says Norwegian Helsinki Committee Secretary-General, Bjørn Engesland. “We fear that lack of such trust will weaken the ICC in the future investigations and prosecutions, undermining its role as a custodian of justice for victims of international crimes.”