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KENYA HUMAN RIGHTS
COMMISSION



Egyptian Initiative
for Personal Rights



Andrew Gilmour
Assistant Secretary-General for Human Rights
Office of the High Commissioner for Human Rights, New York
UN Headquarters
New York, NY 10017
USA

21 September 2018

RE: Intimidation and Reprisals – U.S. National Security Adviser John Bolton Remarks re: Cooperation with the International Criminal Court

Dear Assistant Secretary General,

We are writing to you regarding a clear case of intimidation and threat of reprisal that merits your urgent attention. This is in line with your designation to lead efforts within the UN system to end all intimidation and reprisals against those cooperating with the UN on human rights.

We urge you to consider taking urgent action in response to explicit and concrete threats made by the U.S. President’s National Security Advisor, John Bolton, against International Criminal Court (“ICC”) judges, prosecutors, and personnel if they proceed with an investigation into alleged war crimes committed by U.S. military and intelligence forces in Afghanistan, as well as any company or state that assists the ICC.¹

¹*National Security Advisor John R. Bolton Address*, The Federalist Society (Sep. 10 2018) <https://fedsoc.org/events/national-security-advisor-john-r-bolton-address>.

As stated in the Secretary-General's recent report on reprisals, '[W]hile recognizing the independent judicial nature of the International Criminal Court, the Court is regarded as a related organization in the United Nations System.'²

We consider Bolton's dangerous remarks part and parcel of a concerning attack on multilateralism, international rule of law, and global and regional bodies mandated to monitor and investigate human rights violations and fight impunity.

We are very concerned that, by threatening the ICC, its judges, its prosecutors, and personnel, as well as any state or party that is supposed to or willing to assist the ICC in its investigation, virtually anyone who would be in a position to assist the Court could be targeted. This would include individuals, organizations, and victims' representatives. We are concerned about the threatened actions—prosecutions, travel bans, and asset freezes—noting that the U.S. has no legal authority to carry out these threats. We are equally concerned about the potential chilling effect that may ensue from such intimidation, as well as the effect on the ICC's ability to fulfil its mandate.

Human Rights Council Resolution 36/21 and the UN Declaration on Human Rights Defenders reaffirm 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 organizations to cooperate with the ICC violate this right, undermine the ICC's effectiveness and credibility, and amount to an attack on the international system itself.

We urge you, in keeping with your mandate to combat intimidation and reprisals, to:

- Follow up with the concerned State's representatives
- Publicly denounce the comments
- Urge the State's representatives to refrain from adopting any legislation, policy or practice that has the effect of undermining unhindered access to and communication and cooperation with the ICC
- Keep us apprised of correspondence with the U.S. Government.

Yours sincerely,

Agora International Human Rights Group
American Civil Liberties Union
Canadian Civil Liberties Association
Centro de Estudios Legales y Sociales
Egyptian Initiative on Personal Rights
International Commission of Jurists

International Service for Human Rights
Irish Council for Civil Liberties
Human Rights Law Network (India)
Kenya Human Rights Commission
Legal Resources Center (South Africa)

CC:

Mr. António Guterres, Secretary General of the United Nations
Mr. O-Gon Kwon, President of the Assembly of States Parties to the Rome Statute
Judge Chile Eboe-Osuji, President of the International Criminal Court
Ms. Fatou Bensouda, Prosecutor of the International Criminal Court
Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders
Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers
Mr. Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

² U.N. Secretary-General, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, Annex II, § 29, U.N. Doc. A/HRC/39/41 (Aug 13 2018).