



Rt Hon Dominic Raab MP
Foreign Secretary
Foreign, Commonwealth and Development Office
London SW1A 2AH

CC: Lord Tariq Ahmad of Wimbledon (Minister of the State for the UN and Multilateral)
Rt Hon James Cleverly MP (Minister of State for the Middle East)

04 September 2020

Dear Secretary of State,

Re: Requesting the UK government responds to actions of the United States administration in sanctioning officials working at the International Criminal Court, including ICC Prosecutor, Fatou Bensouda

We write further to correspondence with the UK government dated 18 September 2018 (enclosed) in which we raised concerns at the comments made by then U.S. National Security Advisor John Bolton highlighting planned steps to be taken by the U.S. administration which would undermine the crucial and legitimate work of the International Criminal Court (ICC). One such comment related to imposing sanctions against ICC prosecutors and judges.

On 30 September 2018 we received a response to this letter from the Rt Hon Alistair Burt MP, then Minister of State for the Middle East and North Africa (enclosed). The UK's position in respect of the comments made about the ICC was unambiguous:

“The UK is clear that the ICC can play an important role in ending impunity for the most serious international crimes. It has our full support in pursuing the mandate it was given under the ICC Statute”

As lawyers committed to the protection of human rights and compliance with international law, we are now extremely concerned that the U.S. administration took the egregious step on 2 September 2020 of imposing sanctions on senior officials at the ICC: Prosecutor, Fatou Bensouda, and Head of the Jurisdiction, Complementarity and Cooperation Division, Phakiso Mochoko. Their names have been added to a sanction list¹ which was created pursuant to an executive order signed by U.S. President Donald Trump on 11 June 2020. The effect of this step is that these senior ICC staff members have been deemed “*pecially designated nationals*” along with other individuals suspected of terrorism and organised crime. They can have their assets blocked, and be obstructed in any efforts to enter the US or seek the cooperation with U.S. State officials.

¹ List published on the US Department of Treasury's website, available at <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20200902> [last accessed 3 September 2020]



In the wake of the signing of President Trump’s executive order, a number of States (including the United Kingdom) endorsed a statement expressing “*unwavering support*” for the ICC². In response to the imposition of sanctions on Fatou Bensouda and Phakiso Mochochoko, the European Union's High Representative/Vice President, Josep Borrell, yesterday stated “*The sanctions... are unacceptable and unprecedented measures that attempt to obstruct the Court's investigations and judicial proceedings...[T]he United States should reconsider its position and reverse the measures it has taken.*” France's Foreign Minister Jean-Yves Le Drian similarly called the U.S. sanctions “*a grave attack against the Court... and put into question multilateralism and the independence of the judiciary*”.

In contrast to these clear and unequivocal statements from the EU's top diplomat and France's Foreign Minister, we are only aware – as reported by the Independent - of an unnamed spokesperson for the British Prime Minister quite tepidly stating: “*The UK regrets the measures taken by the US against ICC employees. These officials must be able to carry out their work independently and impartially, without fear of sanction.*” This UK response, unlike the EU and French responses, does not appear commensurate to the sheer gravity of the U.S. administration imposing punitive sanctions against the ICC's top officials for merely discharging their responsibilities on the basis of legal requirements under the Rome Statute.

The imposition of sanctions is consistent with disturbing statements made earlier this year. You will know that on 20 January 2020, one month after the ICC Prosecutor announced that the situation in Palestine merits a full criminal investigation, Israeli Prime Minister Benjamin Netanyahu called for “*sanctions against the international court, its officials, its prosecutors, everyone.*” Subsequently, on 17 March 2020, U.S. Secretary of State Michael R. Pompeo threatened to impose punitive measures against two named senior ICC staffers, other ICC staffers, and their families. His remarks came after the ICC authorised an investigation into the situation in Afghanistan. This combination of threats and the U.S. visa ban policy of March 2019 against ICC personnel investigating possible war crimes committed by U.S. forces or allies in Afghanistan, seeks to undermine the Court’s ability to deliver justice to victims whenever States are unwilling or unable to genuinely investigate and prosecute crimes under the Rome Statute.

As highlighted in our letter two years ago, the United Kingdom bears a responsibility to take a proactive and leadership role in supporting the work undertaken by the ICC. We recognise the UK government's important consistent support for the ICC. However, it is regrettably clear that the steps taken as outlined in then Minister Alistair Burt's response letter of 30 September 2018 (namely “*regularly discussing a full range of issues with the US Administration at every level*”) have been ineffective in deterring the escalation of concrete steps taken by the U.S. administration to threaten the independence and effectiveness of the ICC.

² Statement available at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/icc-cpi/2020-06-23_icc-cpi.aspx?lang=eng [last accessed 3 September 2020]



As a State Party to the Rome Statute, it is imperative that the UK government respond publicly, in clear and unequivocal terms, to condemn the imposition of sanctions on senior officials at the ICC which seriously undermines potential access to justice for victims of some of the most serious alleged international crimes. An expression of “regret” by an unnamed UK government spokesperson is insufficient to the gravity of this escalatory measure and objectively falls short against the UK having a leadership role in international criminal justice. We therefore urge the UK government to:

1. Provide a clear and unequivocal public statement condemning the imposition of sanctions on senior officials at the ICC, and express strong and continued commitment to the ICC and its prosecutorial and judicial independence in bilateral, multilateral, and public forums;
2. Call on the U.S. administration to immediately remove names of senior ICC personnel from its sanctions list, rescind its ICC visa ban policy, and desist from adopting any further punitive measures against the Court, its staff, or their families;
3. Call on the government of Israel to repudiate its call for sanctions against the Court and its staff;
4. Publicly express the UK government's determination to cooperate fully with the Court across its work; and
5. Call on all relevant actors to cooperate with the Office of the Prosecutor of the ICC if it does open an investigation into the situation of Palestine.

We would be grateful for your careful consideration of this urgent matter and for your reply.

Yours sincerely,

Tareq Shrourou (Director) and Angelina Nicolaou
Lawyers for Palestinian Human Rights