

23 June 2021

H.E. Mr Karim Khan
Prosecutor
International Criminal Court

Your Excellency,

On behalf of the International Federation for Human Rights (FIDH) and 47 of its member organisations, we would like to congratulate you for your election as the third Prosecutor of the International Criminal Court (ICC). We look forward to continuing our engagement with your Office, and in that vein, would like to introduce FIDH's work regarding situations under the jurisdiction of the Court. We also take this opportunity to bring your attention to several issues we believe merit your consideration.

FIDH is an international human rights NGO federating 192 organisations from 117 countries. Since 1922, we have been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. As a federal movement, FIDH places its member organisations at the heart of our decision-making process. This structure ensures that FIDH merges on-the-ground experience and knowledge with expertise in international law, mechanisms of protection and intergovernmental bodies. The joining of our forces provides a unique combination that makes FIDH's work representative of the views of national human rights organisations and local civil society.

FIDH is committed to holding perpetrators of atrocity crimes to account through the international criminal justice system. We were one of the civil society organisations spearheading the movement to create the ICC. We participated actively in the negotiations for the Rome Statute, and advocated for the Court to have a structure which would allow for the meaningful participation of survivors and communities affected by international crimes. Since

2004, FIDH maintains a permanent delegation in The Hague, through which we contribute to the dialogue between civil society and the ICC.

Civil society plays a vital role in the collection of information that may otherwise be lost. We hope your Office continues its engagement with NGOs, through the annual roundtables, ad-hoc bilateral meetings, and other regular joint activities. Over the past year FIDH, in partnership with other organisations, has conducted documentation missions and submitted comprehensive evidence to the OTP regarding war crimes and crimes against humanity in Colombia, Mexico, Venezuela and Ukraine. We have also supported public advocacy efforts relating the work of your Office in Cambodia, Central African Republic, Côte d'Ivoire, Guinea-Conakry and Sudan. Earlier this year, we filed requests for leave to submit *amicus curiae* observations in the Abd-Al-Rahman case and in the ongoing proceedings in the situation of Afghanistan. We have also submitted *amicus curiae* observations regarding the Palestine situation.

Aside from this work that is specific to situations under the jurisdiction of the Court, FIDH also engages with timely and core issues that are vital to the success of the OTP and the ICC as a whole. We are currently conducting research for a series of stocktaking papers that will analyse your predecessor's progress and setbacks in three key areas: the investigation and prosecution of sexual and gender-based crimes (SGBC), the work conducted during preliminary examination phases, and the strategy and implementation concerning outreach to victims and affected communities. The full report will be presented with the occasion of the 20th Assembly of States Parties in December 2021. These papers will not only look at the work of Fatou Bensouda's Office, but also make specific recommendations that your Office can implement moving forward.

Since the creation of the ICC, all our work conducted at the Court, or in connection to it, has been survivor-centred. FIDH and the undersigned organisations welcome the central role you have given to victims in your investigations at UNITAD, and share your commitment to upholding the principles embedded in the Rome Statute—including the participation of victims. The findings of the Independent Expert Review (IER) support the view that victim participation does not constitute a burden in proceedings, nor does it cause delays or supplementary costs.

FIDH is actively following the implementation of the recommendations put forward by the Group of Independent Experts. It is the hope of all the signatory organisations here that you take the review process as an opportunity to advance the implementation of victims' rights at the OTP. We encourage you to build on the progress achieved during Fatou Bensouda's term, and seriously consider ways in which your Office can foster further engagement with communities affected by crimes under the jurisdiction of the Court.

Specifically, we ask you to provide adequate and timely information to survivors from early stages, including from the preliminary examination phase—regardless of whether they have formally been accepted to participate in the proceedings as victims. In situations like Afghanistan or Georgia, victims remain unaware of the status of an investigation that impacts them directly. The need for accurate information about the Court will only increase over the coming years, as misinformation and disinformation become easier to spread through digital technologies. We encourage you to coordinate with the Registry in developing a joint communications strategy for the Court, and explore how new technologies may be leveraged for reaching out to communities in situation countries.

FIDH and its member organisations have long advocated for the OTP to preserve evidence from preliminary examination stages. Recent cases show that digital evidence will play an increasingly central role in the work of your Office, and we commend previous efforts, such as the creation of an external Technology Advisory Board, to keep the OTP abreast of technological developments. While lack of assistance from countries where investigations are taking place has hampered progress in the past, the borderless nature of digital information is a crucial development for ICC investigators. We encourage you to negotiate further cooperation protocols with state parties and companies to facilitate the preservation of digital evidence, particularly for data available online that may become unavailable at later stages.

The signatory organisations acknowledge the challenges your Office faces, but also concur with you that the OTP needs "to do better and that change is needed." We note with concern the length of certain preliminary examinations, in particular Colombia and Guinea. It is our view that the OTP, when assessing a State's efforts to secure accountability at the domestic level,

should consider ongoing crimes as an indication of domestic processes not having an immediate prospect of success, and provided that all other criteria are met, proceed promptly to request the opening of an investigation. As such, the OTP has an immense power over alleged perpetrators of crimes and their victims, and only an Office that acts independently and with integrity will be able to honour the responsibility bestowed upon it. When these values are under attack, the entire international justice project is endangered. FIDH and its members, like many other civil society organisations, stood up against attempts by the Trump administration to undermine the independence of the OTP—and if needed, we will rise up again to defend the independence of any organ of the Court.

Finally, in order for the Prosecution to take tangible steps towards accountability, the OTP should submit a budget proposal that is needs-based and ensures adequate funds at all stages, including the preliminary examination phase. As you have noted in the past, the OTP should review its staffing needs to ensure it has the linguistic, geographical and technical expertise required to understand the culture, history, politics and other undercurrents in situation countries. Moreover, investigative and legal teams should have a gender balance, and OTP activities should count with sufficient participation of lawyers and investigators from the country concerned—or where possible, have investigators based in the country instead of carrying out short missions. We invite you to consider how some of this capacity could be acquired through secondments, remunerated visiting professional opportunities, and short-term assignments to fill specific temporary gaps.

In your application for this role, you mentioned that you “would like to lead an effort to refocus and re-energise the OTP.” FIDH and the signatory organisations welcome this approach and look forward to seeing progress in the aforementioned areas. For many communities around the world, the ICC is their last chance to receive any accountability for the crimes that have been inflicted upon them. In one of her final trips, we saw how warmly Prosecutor Bensouda’s delegation was received by crowds in Kalma camp—where Darfurians are still waiting for perpetrators to be held accountable for their abuses. Survivors of international crimes and their communities deserve all our best efforts to make justice a reality.

With the highest consideration,

1. Armanshahr | OPEN ASIA, Afghanistan
2. Civil Society Institute (CSI), Armenia
3. Bahrain Centre for Human Rights (BCHR), Bahrain
4. Odhikar, Bangladesh
5. Viasna, Belarus
6. Quartier des Libertés, Belgium
7. Asamblea Permanente de Derechos Humanos de Bolivia (APDHB), Bolivia
8. DITSHWANELO The Botswana Centre for Human Rights, Botswana
9. Movimento Nacional de Direitos Humanos (MNDH), Brazil
10. Cambodian Human Rights and Development Association (ADHOC), Cambodia
11. Maison des Droits de l'Homme du Cameroun (MDH), Cameroon
12. Groupe Lotus, Democratic Republic of Congo
13. Fundación Regional de Asesoría en Derechos Humanos (INREDH), Ecuador
14. Finnish League for Human Rights (FLHR), Finland
15. Ligue des droits de l'Homme (LDH), France
16. Human Rights Center, Georgia
17. Internationale Liga für Menschenrechte, Germany
18. Organisation Guinéenne de Défense des Droits de l'Homme et du Citoyen (OGDH),
Guinea
19. Association of Parents of Disappeared Persons (APDP), India
20. Defenders of Human Rights Centre (DHRC), Iran
21. League for the Defence of Human Rights in Iran (LDDHI), Iran
22. Amman Center for Human Rights Studies (ACHRS), Jordan
23. International Legal Initiative Foundation (ILI), Kazakhstan

24. Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR),
Kazakhstan
25. Human Rights Movement « Bir Duino-Kyrgyzstan », Kyrgyzstan
26. Mouvement Lao pour les Droits de l'Homme (MLDH), Laos
27. Latvian Human Rights Committee (LHRC), Latvia
28. Association Malienne des Droits de l'Homme (AMDH), Mali
29. Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. (CMDPDH),
México
30. Promo-LEX, Moldova
31. ALTSEAN-Burma, Myanmar
32. Women Peace Network (WPN), Myanmar
33. Human Rights Commission of Pakistan (HRCP), Pakistan
34. Al Mezan Center for Human Rights, Palestine
35. Al Haq, Palestine
36. The Palestinian Human Rights Organization (PHRO), Palestine
37. Liga Portuguesa dos Direitos Humanos – Civitas, Portugal
38. Association Rwandaise pour la Défense des Droits et Libertés Publiques (ADL), Rwanda
39. ALQST for Human Rights, Saudi Arabia
40. Syrian Center for Media and Freedom of Expression (SCM), Syria
41. Association Tunisienne des Femmes Démocrates (ATFD), Tunisia
42. İnsan Hakları Derneği (IHD), Turkey
43. Foundation for Human Rights Initiative (FHRI), Uganda
44. Center for Civil Liberties (CCL), Ukraine
45. Committee on the Administration of Justice (CAJ), United Kingdom
46. Center for Justice and Accountability (CJA), United States
47. Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA), Venezuela