

Annex E.4.16

Public



Date : Tuesday 24 April 2012

**ICC : A formal investigation must be opened on the 2008
conflict in Georgia**

Dear Ms Fatou Bensouda and Mr Luis Moreno-Ocampo,

The signatory organizations named below welcome the election of Ms. Fatou Bensouda as the next Prosecutor of the International Criminal Court (ICC). We hope that the role of the ICC in strengthening international justice and prosecuting international crimes will be strengthened throughout the following nine years.

<http://www.fidh.org/Petition-to-the-Office-of-the>

FIDH - Worldwide Human Rights Movement

- [english] - Eastern Europe & Central Asia - Georgia -

Mr. Prosecutor, Madame Prosecutor-elect, we write to you today to urge you in your capacity to ensure that justice is served in relation to the August 2008 conflict between Georgia and Russia - a situation under preliminary examination by the ICC's Office of the Prosecutor since 2008.

More than three years have passed since the announcement of the opening of a preliminary examination into the August 2008 armed conflict between Georgia and Russia. Evidence from numerous sources indicates that grave crimes occurred during (and following) the conflict, including war crimes and crimes against humanity. As a result of the conflict, over 23,000 people have been forcibly displaced, villages have been torched and razed to the ground, and the territory of South Ossetia has been completely cleansed of ethnic Georgians. Evidence points to crimes having been committed by both sides to the conflict.

The Office of the Prosecutor conducted two visits to Russia in March 2010, and February 2011, and one visit to Georgia in June 2010. In September 2011, both Governments have been requested to provide a written update on the evolution of their respective investigations, what they did in October and December 2011. In its Report on Preliminary activities dated December.13.2011, the OTP concluded "There is a reasonable basis to believe that the war crimes of pillaging, destroying civilian property and inflicting acts of torture were committed in the context of the August 2008 armed conflict. There also is a reasonable basis to believe that the crime against humanity of forcible transfer or deportation of population was committed. Further evaluation of alleged unlawful attacks by all parties, including the alleged attack against Russian peacekeepers, is required."

Although corresponding authorities from both Georgia and Russia state that national investigations into the crimes committed during the war are ongoing, neither side has publicly shown any progress or significant effort for these to be deemed genuine investigations. For more than three years, no information whatsoever has been available to the victims, their legal representatives, the general public or other interested parties about any national investigations being undertaken. Moreover, in his 29 September 2010 report, Monitoring of Investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, Council of Europe Commissioner for Human Rights, Thomas Hammarberg highlighted significant gaps in the investigations carried out by the Georgian authorities into the disappearance of ethnic Ossetians following the 2008 conflict. Two reports published by the Norwegian Helsinki Committee, based on research and data collected by Georgian human rights groups, document serious shortcomings in domestic investigation of war crimes in Georgia. Furthermore, in its World Report 2012, Human Rights Watch notes that Georgian authorities have yet to ensure a comprehensive investigation into, and accountability for, international human rights and humanitarian law violations by their forces.

We, the below signatories of this Petition, believe that the victims of the Georgian-Russian war deserve to see justice done, that these serious crimes do not go unpunished, and that there should be no impunity for the officials of either state should they be found guilty of such crimes. We believe that under the circumstances, the ICC has an undeniable role to play. Mr. Prosecutor, by making an official announcement about the preliminary examination into the armed conflict between Georgia and Russia in August 2008, the ICC-OTP acted as a catalyst for the opening of national investigations. However, civil society monitoring of these investigations for the past three years has led us to conclude that investigations and prosecutions by Georgia and Russia are not being carried out in a manner in keeping with the Rome Statute's provisions on jurisdiction and admissibility nor with the principle of complementarity. The absence of any attempts towards co-operation between Russian and Georgian investigative authorities and the fact that the Georgian authorities are unable to conduct investigative activities in South Ossetia where the most serious crimes were committed, makes Georgia unable, even if it was willing, to effectively investigate some of the most serious crimes committed during the 2008 war.

Should the ICC-OTP's attention to the events of August 2008 waver, we fear that all national investigations, however

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cursory, will be brought to a standstill. This could have serious ramifications throughout the Caucasus region, which has seen a number of armed conflicts over the last twenty years, and where tension continues to simmer. On the other hand, a strong ICC engagement in the August 2008 war, could be a game changer for the whole Caucasus region, where there have been many crimes, but little justice.

We strongly believe that appropriately targeted efforts by the OTP could ensure that justice is delivered to victims. As such, we urge you to undertake the following actions:

1) Strengthen the dialogue with the Georgian and Russian governments on the status of the investigations undertaken at the national level and to insist to make sure that the progress and outcomes of national investigations are available to the public 2) Update the December report on the status of the ICC OTP preliminary analysis and the assessment of the national investigation 3) Should the ICC-OTPs preliminary analysis confirm that national investigations are not being undertaken in a genuine manner as observed above, we would urge you, Madame Prosecutor-elect, to open a formal investigation into the crimes allegedly committed during the 2008 conflict in Georgia.

Georgian Young Lawyers' Association

Human Rights Centre

Article 42 of the Constitution

Organization "Public Defender"

International Centre on Conflict and Negotiations

Norwegian Helsinki Committee

International Federation for Human Rights (FIDH)