

16 June 2021

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL
Centre for International Justice
The Hague
The Netherlands

W: www.amnesty.org and <https://hrij.amnesty.nl/>
Twitter: @AmnestyCIJ

Prosecutor, Karim Khan

Re: OPEN LETTER ON THE COMMENCEMENT OF YOUR TERM OF OFFICE AS ICC PROSECUTOR

On behalf of Amnesty International, I congratulate you on assuming office as Prosecutor of the International Criminal Court ('ICC'). The international community has asked you to pursue justice in the most challenging situations, against the most powerful perpetrators. Amnesty International extends our assistance and support in this herculean task.

You take on this role when international justice, and the human rights movement as a whole, faces unprecedented challenges. Ongoing failures to pursue accountability for crimes under international law and other serious violations of human rights are among the root causes of a crisis of confidence in the human rights movement; the international rule of law; and international institutions including the ICC. Despite this, demands for the ICC's intervention continue to rise, as Rome Statute crimes continue to be committed with impunity. The climate crisis seems set to make conflict even more common; and we can already see mass human rights violations against those affected by climate change and related displacement. Your office will have to respond to legitimate calls to make Ecocide a crime under the Rome Statute.

Of course, there is no need to look into the future to recognize the importance of your role. Recent war crimes committed in the [Occupied Palestinian Territories](#), crimes against humanity committed in [Myanmar](#) by an emboldened military, and the resurgence of the commission of crimes under international law in [Colombia](#) serve to demonstrate the cost of delay in the pursuit of accountability for historical and present violations.

In our view, the situations in The Philippines, Palestine, and Afghanistan represent the *raison d'être* for the International Criminal Court. The ICC investigations act as a 'last resort' in situations that have remained in the blind spot of international justice, especially because powerful states have blocked and hindered accountability for decades. As such, the importance of your Office's work cannot be overstated. Indeed, investigations in these situations represent momentous breakthroughs for justice, after years, if not decades, of non-accountability.

Other situations also require your urgent attention. For more than a decade, the Nigerian government has been '[willingly unable](#)' to pursue justice for crimes committed in the north-east of the country, by both Boko Haram and the Nigerian military. Having concluded its preliminary examination, we had expected your Office to proceed with an investigation, instead the situation has been placed in an arbitrary holding pattern while massive crimes continue to be committed with impunity and justice is further delayed for the victims. We hope that you will recognize that further delays in Nigeria will only harm prospects of successful future prosecutions and we urge your Office to [urgently request](#) authorization for this investigation. We share similar concerns

regarding the situation in Ukraine, which has also been held 'in limbo' between a preliminary examination and investigation. We understand and regret that states parties are failing and refusing to allocate the resources you will need to proceed expeditiously with these situations, and we will vociferously continue to call on states to meet their obligations. Ultimately, however, resource justifications for the OTP not having made further progress provide no consolation to victims who have waited so long for justice in situations like Nigeria, where impunity is enshrined so deeply.

In May 2021, Amnesty International and the Asser Instituut published an [expert report](#) entitled '[The Rome Statute at 40](#)'. The report provides a number of critical observations from a 'post-Rome generation' of ICC stakeholders for the next twenty years of the Court. A key finding was that much needs to be done to ensure meaningful access to justice at the ICC for those most affected by crimes under international law.

Another key finding was that comprehensive international justice may require looking 'beyond the ICC' with the OTP undertaking its work pursuant to a broader notion of complementarity. This would involve the Court and OTP considering its role within a broad Rome Statute *system* of international justice, including engaging, where appropriate, with other regional and national international justice processes. We understand that you share this outlook.

However, in our view, complementarity does not mean primacy of state proceedings at all costs, in particular when states are not genuinely willing or able to investigate and prosecute crimes under international law. In this regard, the OTP's decision in December 2020, not to open an investigation in UK/Iraq was a [shameful one](#), which bowed to the pressure of a powerful states party and provided a roadmap for state obstructionism on the national level and at the ICC. As you take office, we strongly urge you to reconsider this decision, and to recognize that such an overly deferential approach to states does not represent complementarity, but rather complicity with major-power impunity.

Your term presents a real moment for revitalization of the OTP, which has not fully met the expectations placed on it – in particular by those most affected by crimes under international law. We have also been concerned that the OTP has not always been marked by a culture of accountability for its performance, and we consider that the start of your tenure may serve as an excellent opportunity to consider where improvements could be made to your Office's work, for example in ensuring that strong cases are presented in Court, based on effective investigations and firm evidence.

At the same time, your office faces significant challenges, including as a result of decisions of the Assembly of States Parties to [chronically underfund](#) the OTP and prevent it from reaching even a [basic capacity](#). In our view, the Office of the Prosecutor has, as a rule, not requested [adequate annual budgets](#) and has instead proactively given in to pressure from the ASP, thus allowing arbitrary political considerations to determine the budget. Related to this, you will be acutely aware that states who do not want the ICC to investigate certain situations may seek to weaken the Court through an inadequate budget allocation. With the Court's major funders expressing their opposition to the Palestine investigation for example, coupled with the risk that states will continue to impose arbitrary financial restrictions, we are concerned that political considerations will affect the work of your Office. Against this background, we urge you to resist arbitrary limits on your resources as unacceptable infringements on your Office's ability to carry out its independent mandate.

As your Office has indicated that it intends to open investigations in a number of new situations, we were very concerned to read in the report of the Independent Expert Review that, based on the 2020 budget proposal, the Investigation and Prosecution Divisions of your office are severely under-staffed, with the Investigation Division 'having 87 less full-time staff than estimated to provide the basic needs of the Division.' In our view, your new term represents a key opportunity to

discuss frankly with the Assembly, the short, medium, and long-term resource requirements for an effective ICC. We urge you to reset the Court's [defeatist](#) budgetary approach, and - in your first weeks in office - to request a budget which realistically aligns with the increased demands on your Office in 2022.

In your first days in office, you will find that a number of situations await your urgent intervention, with preliminary examinations in Nigeria, Ukraine and The Philippines recently concluded with a view to opening investigations. Although we recognize that you may have to consider the prioritization of certain activities, this should take place on the basis of transparent and clearly defined criteria and with the rights of victims – many of whom have waited years for your office to proceed from preliminary examination to investigation – foremost in your mind. We also strongly urge you not to undertake a process of prioritisation based on the acceptance of unsustainable demands by the Assembly of States Parties that your Office present 'zero-growth' annual budgets from year to year. Prioritization of your activities should be based upon your Office having reached at least a baseline (or 'basic') capacity level of staff and resources, where your Office will be able to adequately respond – with a reasonable degree of prioritisation – to demands for its intervention without undermining quality and efficiency.

Mr. Prosecutor,

In the pursuit of your mandate, you must be brave and fiercely independent.

We are under no illusion that you will come under immense pressure from powerful states as you investigate situations where their nationals and interests are affected. Indeed, a number of states parties have recently attempted to interfere with the Court's judicial mandate by [publicly opposing](#) the ICC's investigation in Palestine, for example. We are also aware that some states – as demonstrated by UK Prime Minister Boris Johnson's [letter](#) published on 9 April 2021 – appear to suggest a hope that the Palestine investigation may proceed differently with your arrival in post.

We therefore call on you, in relation to the Palestine situation, and in all of the situations in which you will work, to undertake your mandate with utmost independence and without fear or favour. If, or when you receive pushback or threats following the proper exercise of your independent mandate, Amnesty International and our 10 million members will defend you to our utmost ability. As you pursue investigations in the most challenging situations, you will have our support – we are counting on you.

Yours Sincerely,

Agnès Callamard
Secretary General, Amnesty International