

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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NIGERIA: FOUR CALLS TO THE ICC PROSECUTOR

Since 2009, northeast Nigeria has been the scene of an armed conflict between Boko Haram and the Nigerian security forces characterized by serious violations of international humanitarian law and gross human rights abuses committed on both sides. Boko Haram has killed thousands of civilians, attacked schools, abducted women as well as girls and boys, many of whom have been forcibly recruited as child soldiers or forcibly married and turned into sex slaves. Nigerian forces have committed extrajudicial executions and other unlawful killings, enforced disappearances, sexual violence, mass arbitrary arrests and detentions, and torture and other ill-treatment. There have been thousands of deaths in custody.

On 11 December 2020, after 10 years of preliminary examination, the International Criminal Court (ICC) then-Prosecutor Fatou Bensouda concluded that war crimes and crimes against humanity have been committed by Boko Haram and the Nigerian military and that Nigerian authorities had failed to investigate and prosecute these crimes, therefore warranting a full investigation by the ICC. She announced that “the requirements under the Statute are met for [the Office of The Prosecutor (OTP)] to proceed. Moving forward, the next step will be to request authorisation from the Judges of the Pre-Trial Chamber of the Court to open investigations.”¹

Shockingly, two years later, this announcement has still not been followed by concrete action.

I – THE PROSECUTOR SHOULD IMMEDIATELY REQUEST OPENING THE INVESTIGATION

As acknowledged in the Office of the Prosecutor’s Policy Paper on Preliminary Examinations,² it has a legal duty to open an investigation when all the statutory criteria are met. Nonetheless, Prosecutor Bensouda decided to delay seeking authorization to open an investigation in Nigeria citing operational challenges brought on by the Covid-19 pandemic and limitations of operational capacity due to overextended resources. Despite committing to discuss the matter with the new incoming Prosecutor, Karim Khan, two years after the completion of the preliminary examination, a request to open the investigation has not yet been made.

Delays by the OTP have inevitably already led to the loss of evidence, and with further delays more evidence will meet that fate. Indeed, over time evidence is often degraded, lost, concealed or destroyed. In a conflict situation, potential witnesses might also flee, disappear or get killed. Opening the investigation now is an absolute necessity for the collection and preservation of evidence to ensure future successful prosecutions.

¹ ICC, “Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria”, 11 December 2020, [icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-nigeria](https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-nigeria)

² ICC Office of the Prosecutor, *Policy Paper on Preliminary Examinations*, November 2013, [icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf)

Most importantly, victims of the conflict in northeast Nigeria have a right to truth and justice and they have already been waiting for more than 12 years. The undelivered promise of an ICC investigation contradicts the OTP's legal obligations, damages the credibility of the international justice system, and sends the message to Nigerian victims and affected communities that the OTP is not committed to address the crimes they suffered. Amnesty International urges the Prosecutor to **immediately** request authorization from the judges to open an investigation.

II – THE PROSECUTOR SHOULD BE MORE TRANSPARENT

For most of the two years since the conclusion of preliminary examination of Nigeria, the OTP has maintained near silence on the status of the situation, leaving victims, survivors and family members to speculate on whether the ICC will ever investigate the crimes they have and continue to suffer and on the reasons for the delay.

In April 2022, Prosecutor Khan conducted an official visit to Nigeria. However, the statement³ he issued at the conclusion of the mission has only caused further confusion and disappointment. It did very little to clarify why the OTP is yet to commence investigations after two years. Although the statement recalls that “the legal criteria to open an investigation into the Situation in Nigeria were met”, it nevertheless indicates that the OTP will prioritize complementarity efforts over opening the investigation. The Prosecutor claimed that he had “agreed with Nigerian authorities on the next immediate steps to inform any future decision [he] will be making on the situation.” He also claimed to have “proposed clear timelines in this respect and welcome[s] Nigeria’s commitment to conclude a formal agreement with [the OTP] on these issues in the near future.” Unfortunately, neither the next immediate steps agreed on with Nigeria nor the timelines proposed by the Prosecutor have been made public.

Transparency of the OTP's activities has diminished under Prosecutor Khan. The Prosecutor did not publish the OTP's regular Annual Report on Preliminary Examination Activities in 2021 nor in 2022. Judges of the ICC in the situation of Afghanistan have also recently criticized the OTP's engagement with victims and civil society through public statements for not being coherent or comprehensive and have urged the OTP “to undertake a thorough and critical assessment of its communication strategy vis-à-vis victims, to ensure a respectful and sensitive dialogue with them.”⁴ This lack of transparency denies information and legal certainty to victims and affected communities, the importance of which cannot be overemphasized. Transparency enables victims and survivors and relevant stakeholders to understand the activities of the OTP in a given situation, mitigates risks of misinformation and helps preserve public confidence in the ICC. As the saying goes, justice must not only be done, it must be seen to be done by those most concerned.

Amnesty International calls on the OTP to explain in clear terms the reasons for delaying the opening of the investigation into the situation in Nigeria; to confirm that a request to open an investigation will be submitted without delay; and to disclose information about what has been agreed with the Nigerian authorities.

III – THE PROSECUTOR SHOULD REQUEST AND ALLOCATE BUDGET FOR THE NIGERIA INVESTIGATION

Although Prosecutor Bensouda cited a lack of resources as a reason for not opening an investigation, since then the OTP has not requested any resources to conduct the investigation. Meanwhile, the OTP has opened

³ ICC, “ICC Prosecutor, Mr Karim A.A. Khan QC, concludes first official visit to Nigeria”, 22 April 2022, [icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-concludes-first-official-visit-nigeria](https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-concludes-first-official-visit-nigeria)

⁴ ICC Pre-Trial Chamber, Situation in the Islamic Republic of Afghanistan, Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation, ICC-02/17, 31 October 2022, para. 36.

four new investigations – in Palestine, Philippines, Venezuela and Ukraine – and requested resources to carry them out.

Situation under 'active' investigation ⁵	2021 budget as allocated on 1 January ⁶ (EUR thousands)	2022 budget as allocated on 1 January ⁷	2023 budget requested ⁸
Afghanistan	NA	428.0	1,791.7
Bangladesh/Myanmar	2,398.6	2,057.7	2,321.9
Burundi	2,791.7	2,444.1	1,793.7
Côte d'Ivoire II	3,297.8	2,702.8	2,055.1
Darfur	1,223.3	4,375.1	3,506.3
Georgia	2,868.4	NA	NA
Libya	2,706.5	2,785.0	2,668.9
Palestine	NA	NA	944.1
Philippines	NA	NA	1,917.8
Ukraine	NA	NA	4,449.8
Venezuela I	NA	NA	1,550.8

In announcing his decision to open the Ukraine investigation, the Prosecutor even called for additional budgetary support,⁹ for voluntary contributions to support all our situations, and for the loan of gratis personnel emphasising “[t]he importance and urgency of our mission is too serious to be held hostage to lack of means.”¹⁰ This stands in stark contrast to the approach of delaying the Nigeria investigation. No such commitment has been shown to seek additional resources when it comes to investigating crimes committed by Boko Haram or the Nigerian military.

This failure to request funding for investigations in Nigeria shows double standards and selectivity. It leaves victims and survivors in northeast Nigeria without avenues for justice.

Victims of crimes in Nigeria are as entitled to justice as victims of crimes elsewhere.¹¹ Amnesty International urges the Prosecutor to request and allocate funding, including through accessing the contingency fund, to enable investigations into the situation in Nigeria without further delay, and urges States Parties to the Rome Statute to provide the OTP and the ICC more broadly with sufficient resources to conduct prompt, thorough, impartial and effective investigations in all situations.

⁵ Active investigations refer to ongoing investigations conducted by the Office of the Prosecutor either on its own initiative upon authorisation by the Court or upon State Party or UN Security Council referral. It does not include situations in which the Prosecutor has already brought cases to trial, such as the DRC or CAR, even though these situations might still be under ongoing investigation, as these situations are included in another section of the OTP's proposed budget.

⁶ ICC, *Proposed Programme Budget for 2022 of the International Criminal Court* ICC-ASP/20/10, 16 August 2021, asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ICC-ASP-20-10-ENG.pdf, Annex XII pp. 226

⁷ ICC, *Proposed Programme Budget for 2023 of the International Criminal Court*, ICC-ASP/21/10, 19 August 2022, asp.icc-cpi.int/sites/asp/files/2022-08/ICC-ASP-21-10-ENG.pdf, Annex XII pp. 225

⁸ ICC, *Proposed Programme Budget for 2023 of the International Criminal Court*, Annex XII, pp 225

⁹ Chuka Arinze-Onyia, “Are there hidden costs of the ICC Prosecutor’s campaign for additional budget support, voluntary contributions and secondments?”, 11 October 2022, hrij.amnesty.nl/are-there-hidden-costs-of-the-icc-prosecutors-campaign-for-additional-budget-support-voluntary-contributions-and-secondments/

¹⁰ ICC, *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation”*, 28 February 2022, icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening

¹¹ Amnesty International, “The ICC at 20: Double standards have no place in international justice”, 1 July 2022, amnesty.org/en/latest/news/2022/07/the-icc-at-20-double-standards-have-no-place-in-international-justice/

IV – THE PROSECUTOR SHOULD ENGAGE WITH NIGERIAN CIVIL SOCIETY

The OTP has made no recent effort to engage with victims and survivors of the conflict in northeast Nigeria nor civil society working in the affected region. The Prosecutor’s visit to Nigeria in April presented an important opportunity to meet with victims, survivors and civil society in Nigeria and allow the Prosecutor to explain its office’s decision to close the preliminary examination and the steps that will follow; as well as to hear the views and expectations of victims, affected communities and civil society. Regrettably, the Prosecutor chose not to meet with victims or civil society in Nigeria during his visit, and consulted exclusively with Nigerian authorities.

This approach ran counter to the Prosecutor’s important commitments to deepen partnerships with impacted communities and civil society as it is the only way to deliver on the “legitimate demands for justice of survivors”.¹² Instead, civil society and victims have been left to rely on the OTP’s public statements, which are unclear and few and far between, as the only source of information about the situation. They are also deprived of opportunities to address the OTP with their own views and concerns.

Amnesty International calls on the Prosecutor to engage regularly and meaningfully with victims, survivors and civil society working with impacted communities in northeast Nigeria.

¹² ICC, “ICC Prosecutor Karim A.A. Khan QC announces new initiative to strengthen engagement with civil society | International Criminal Court”, 13 May 2022, [icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-new-initiative-strengthen-engagement-civil-society](https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-new-initiative-strengthen-engagement-civil-society)