



Amnesty International Statement in support of the request by ECCHR for review of the ICC Prosecutor's decision not to open an investigation in the Situation in Iraq/UK

Amnesty International welcomes the [submission by the European Center for Constitutional and Human Rights \(ECCHR\)](#) of a request to the Prosecutor of the International Criminal Court to reconsider the decision taken in December 2020 not to open a full investigation into the situation in Iraq/UK.

The request for reconsideration provides the Office of the Prosecutor ('OTP') with a golden opportunity to correct a historic error it made in December 2020, when it decided not to open an investigation into the conduct of members of the UK armed forces in Iraq - despite having found a reasonable basis to believe that they had committed war crimes from 2003 to 2009. In our view, the December 2020 decision was a [shameful one](#), which bowed to the pressure of a powerful state and endorsed an overly deferential approach to national level proceedings which did not represent complementarity, but rather complicity with major-power impunity.

The Prosecutor's decision provides a road-map for states party obstructionism to the ICC and international justice. As such, the consequences of any decision by the OTP not to reconsider its decision may be dire.

At present, states who may not be willing to conduct genuine investigations and prosecutions of their own nationals or militaries have been put on notice that the Court will not intervene even in the face of bad faith and delayed investigations, or proceedings which are characterized by a lack of independence or impartiality. Most damning of all, the OTP has demonstrated that states who are not willing to undertake genuine investigations have nothing to fear from the ICC-OTP, even when it has determined that war crimes have been committed and without a single national-level prosecution being carried out.

Amnesty International therefore calls on the Office of the Prosecutor to reconsider its decision and determine whether legal and factual errors have been made in its original decision. We commend ECCHR and - above all - Iraqi victims of torture and other war crimes who have, for so long and in the face of enormous challenges, pursued justice for the harms they have suffered.

We recall that coexistent with, and due to its independent and wide-ranging decision-making prerogatives within the Rome Statute, the OTP must hold itself to the highest standards of legal review and due process norms. There is no shame in correcting or reconsidering past decisions where legal or factual errors are identified. This is particularly the case when the Office may be considering novel legal issues. For example, we note from the Prosecutor's December decision that it marked 'the first time where a state's potential unwillingness has formed the primary focus of the Office's complementarity assessment', as well as 'the first time that the Office has set out its findings on genuineness as the primary focus of its complementarity assessment'.

In our view, these novel legal issues, as well as other potential legal and factual errors in the Office's original decision should be reconsidered, with a view to opening an investigation into the situation in Iraq/UK which would allow the Prosecutor to benefit from the full range of investigative powers under the Statute.