



# WILLINGLY UNABLE

ICC PRELIMINARY EXAMINATION AND NIGERIA'S FAILURE TO ADDRESS IMPUNITY FOR INTERNATIONAL CRIMES

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*Cover photo: A grave-digger heaps sand on graves where victims or dead members of Boko Haram Islamists are buried at Gwange Cemetery in Maiduguri, northeast Nigeria, on February 2, 2016.*

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# EXECUTIVE SUMMARY

Since 2009, Northeast Nigeria has been the scene of an armed conflict between an insurgent movement Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, popularly known as Boko Haram and the Nigerian security forces with serious violations of international humanitarian law and human rights law committed on both sides. Boko Haram has killed thousands of civilians, abducted thousands of women, girls and boys, many of whom have been forcibly recruited as child soldiers or subjected to forced marriages and sexual slavery. On the other hand, Nigerian security forces have committed extrajudicial killings, mass arbitrary arrests and detentions, torture and other ill-treatment, leading to thousands of deaths in custody, enforced disappearances, and other crimes including rape and sexual violence. The International Criminal Court (ICC)'s Office of the Prosecutor (OTP) opened a preliminary examination in 2010 and has identified eight potential cases of war crimes and crimes against humanity perpetrated by both sides of the conflict.

The report critically assesses the ICC-OTP's preliminary examination in Nigeria, and the ability and willingness of the government of Nigeria to ensure accountability for crimes committed by Boko Haram and Nigerian security forces.

Complementarity is a key principle of the Rome Statute, which provides that states parties have the primary obligation to investigate and prosecute Rome Statute crimes. The ICC may open an investigation only if a state party is unable or unwilling to investigate and prosecute alleged perpetrators responsible for these crimes. To make such an assessment, during its preliminary examination phase, the OTP examines if any domestic judicial proceedings exist, and if so, whether they are genuine and 'cover the same persons and substantially the same conduct as alleged in the proceedings before the ICC'.

Between 2009 and 2018, over 20 different forms of inquiries - commissions, committees, panels and other forms of proceedings - have been set up by different authorities and organs of the Nigerian government to look into allegations of serious crimes and violations committed by Boko Haram, Nigerian security forces and its allied vigilante group, the Civilian Joint Task Force (CJTF). The Nigerian authorities claim that two recent inquiries, the Special Board of Inquiry (SBI) - established by the Chief of Army Staff (COAS) in March 2017 and the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP) appointed by the Presidency in August 2017, represent genuine measures to investigate credible allegations made against military and CJTF members. But despite much publicity and posturing, both the PIP and SBI were never designed and mandated to identify perpetrators and recommend any criminal investigations or prosecutions.

The nine-member SBI, which composed four serving and three retired high ranking military officers, concluded its purported 'investigation' in May 2017. Its full report, submitted to the COAS is never made public, but a summary of its findings was released to media. The SBI broadly concluded that there was no evidence of human rights violations alleged against the military during its operations in the north-east and dismissed most allegations of grave human rights violations, including allegations of extrajudicial killings, enforced disappearances and torture as unsubstantiated. It further dismissed all allegations of possible individual criminal responsibility, including command responsibility, of (now retired) senior military officials, rejecting all documentary and other evidence presented to it. The redacted public statement and SBI's summary report did not hide one of the main objectives of this inquiry, which was to reverse denial of visas by USA and UK embassies to the senior military officers implicated in allegations of serious crimes, including war crimes.

The much talked about PIP also concluded its 27 days of "public hearings" across the six geographic zones of the country and presented its report to the Presidency in February 2018. Similarly, the report has not been made public and hence its findings and recommendations remain unknown. Even though the



proceedings of the Panel were declared to be held in public, in practice, most hearings where critical allegations against the military were presented, were arbitrarily held in closed sessions, often following a mere request from the counsels of the military. The PIP also appeared to have transposed adversarial court procedures to an inquisitorial process – putting allegations and the individuals making the allegations themselves on trial rather than investigating credible allegations. Petitioners, victims and witnesses often had to face badgering, harassment, ridicule and re-traumatization when subjected to often hostile cross examination by counsels for the military and at times by members of the panel themselves.

The evidence demonstrates that these inquiries were never intended, designed or conducted with a view to result in criminal prosecutions, and as such they do not comply with Nigeria's obligation to investigate and prosecute alleged perpetrators of crimes under international law.

With respect to accountability for crimes committed by Boko Haram, there is much conflicting information regarding investigative, prosecutorial and trial proceedings conducted in Nigeria, with different and inconsistent information given to the public, the OTP and to Amnesty International itself. Amnesty International's research demonstrates, however, that there have been minimal investigations or prosecutions of Boko Haram perpetrators, in particular Boko Haram leaders, or those most responsible for Rome Statute crimes or conduct amounting to crimes under international law committed by the group. Research findings suggest that only around ten Boko Haram suspects have been convicted of serious crimes such as terrorist acts, killings or hostage taking since the conflict with Boko Haram started in 2009. Effectively until the "mass Boko Haram trials", which started in October 2017, only about 60 "Boko Haram suspects" appear to have been sent to trial.

Nigerian authorities claim that hundreds of so-called 'Boko Haram suspects' have been brought to court during "mass trials" held since last year, where three trial sessions were held in October 2017, February and July 2018 before the Federal High Court of Abuja sitting in Wawa military cantonment in Kainji, Niger State. Amnesty International's research shows that the cases brought to these "mass Boko Haram trials" represent a small fraction of the thousands of individuals arbitrarily arrested and detained under inhumane conditions in most cases for years, in various military detention facilities since the conflict started in 2009. Further the "Kainji trials" appear to have targeted mainly civilians caught in the crossfire and charged with 'minor' offences, such as support to Boko Haram members or concealment of information from the authorities. For instance, the vast majority of charges instituted in the July 2018 mass trials session held in Kainji relate to membership or support of the armed group, and very few cases related to crimes under international law or even crimes against persons. Out of the 144 'Boko Haram suspects' tried in July 2018 - for whom Amnesty International was able to identify their charges - 19 were charged with terrorist acts (or attempt), one for hostage taking, while 124 were charged for Boko Haram membership (68), concealment of information from the authorities (76), supporting Boko Haram (49), and/or participation to Boko Haram trainings or meetings (13). Out of these people 107 were convicted at the end of the trial, with only seven convicted for different terrorist acts and one for hostage taking, while the rest (99 others) found guilty for Boko Haram membership or support, participation in trainings or meetings, concealment of information from the authorities, or a combination of these charges.

The "mass Boko Haram" trials were also marred with egregious violations of the fundamental rights of the suspects and highly questionable to conclude that those convicted were genuinely guilty of any offence, let alone crimes equivalent to Rome Statute crimes or other serious crimes against the person. Amnesty International's research shows that almost all defendants appear to be victims of arbitrary arrests, unlawful prolonged and incommunicado detentions, torture and other ill-treatment; the trials were marked with prosecutions without evidence and convictions largely based on unreliable and untested confessions and guilty pleas; defendants lacked adequate access to legal defence before and during trials; no interpreters were made available to the defendants, who did not always speak the language used in court; and all trial sessions were unduly rushed indicating the judges did not have appropriate time to adequately examine and deliberate on each case.

Amnesty International therefore believes that these sham proceedings were organized to establish legal cover for the thousands of people who had already spent years in unlawful and arbitrary detention, and to hide the Nigerian authorities' failure to investigate and prosecute individuals who bear the greatest responsibility for Boko Haram crimes against civilians.

Amnesty International's analysis concludes that the Nigeria situation is admissible under the ICC's jurisdiction on several grounds:

***Admissibility due to 'inactivity' and lack of any relevant domestic proceedings:*** no actual criminal investigations or prosecutions, or *any* relevant domestic proceedings into crimes under international law allegedly perpetrated by Nigerian security forces have been undertaken or are being undertaken by the

Nigerian authorities. The mandates, conduct and outcome or lack thereof of the two national proceedings initiated in 2017- the SBI and PIP - serve to conclusively demonstrate inactivity on the part of the Nigerian authorities. In parallel, purported 'investigations' which have led to the mass trials of 'Boko Haram suspects' have focused on the crimes of *alleged support or link to Boko Haram by civilians*, and not the *crimes committed by Boko Haram against the civilian population*. These individuals were thus not investigated or prosecuted for the *same conduct* that the OTP is investigating, and these cases do not concern superiors and those allegedly most responsible for crimes under international law committed by Boko Haram in the OTP's potential cases. Amnesty International thus concludes that the Nigerian government has not conducted any relevant national proceedings for the purposes of Article 17 of the Rome Statute into the 'eight potential cases' outlined by the OTP, and that Nigeria should be considered as 'inactive' as a result of this absence of relevant domestic proceedings.

***Admissibility due to lack of genuine domestic proceedings:*** various commissions and panels of inquiry initiated and administered by the Nigerian government, including especially the SBI and PIP, have not been followed up by any further investigations, prosecutions or accountability measures in relation to senior and 'most responsible' military officials and/or into crimes under international law outlined in the OTP's potential cases. The 'inquiries' *were not conducted in a manner consistent with an intent to bring the persons concerned to justice* but instead undertaken for the purpose of shielding the persons concerned from criminal responsibility. In addition, analysis of available evidence indicates that the SBI and the PIP proceedings were marked throughout by *manifestly insufficient steps in their investigation*, including patterns of ignoring evidence, lack of resources allocated to the proceedings, inability or unwillingness to conduct forensic examinations and other necessary steps. In relation to the potential cases concerning Boko Haram, Amnesty International believes that the three "mass Boko Haram trial" sessions which took place in Kainji in 2017/18 constitute '*sham*' proceedings undertaken on the basis of manifestly insufficient evidence and flawed investigations with the intention of hiding the government's failure to hold Boko Haram perpetrators to account - these trials too are not consistent with an intent to bring Boko Haram members to justice. Further, Amnesty International believes that the 'mass trials' were marked by 'egregious violations' of defendants' fundamental human rights, including rights to a fair trial and due process. These violations of fundamental human rights are 'so egregious' that the 'mass trial' proceedings should not constitute genuine proceedings for the purposes of the OTP's admissibility assessment.

***Failure to provide information and co-operation with the ICC:*** The OTP's reports highlight the severe lack of co-operation from the Nigerian government which continue to critically affect the OTP's ability to make a full and informed assessment of the Nigeria situation. The OTP's efforts to encourage genuine relevant national proceedings are commendable, but 'positive complementarity' efforts with 'bare minimum' – if any – results, have delayed the ICC's intervention in Nigeria. Amnesty International believes that the lack of relevant domestic proceedings and lack of co-operation is largely a reflection of the Nigerian government's lack of willingness and its inability genuinely to bring perpetrators to justice.

For the reasons outlined above and laid out in the present report, Amnesty International believes that the Nigerian Government has not conducted relevant national proceedings for the purposes of Article 17 of the Rome Statute, and therefore the OTP should find the Nigeria situation admissible before the Court and request authorization to open *a proprio motu* investigation pursuant to Article 15 of the Rome Statute.

Eight years since the opening of the preliminary examination and faced with the continuing commission of crimes under international law and the possibility of a never-ending preliminary analysis, it is time for the OTP to open a formal investigation in Nigeria.

# METHODOLOGY

This report follows years of research and monitoring conducted by Amnesty International into widespread human rights violations and serious crimes, including war crimes and crimes against humanity, committed in the context of the non-international armed conflict between Boko Haram and Nigerian security forces and allied vigilante groups in the north-east Nigeria. As such, this report builds on previous relevant reports published by Amnesty International including: *Nigeria: They betrayed us: Women who survived Boko Haram raped, starved and detained in Nigeria*<sup>1</sup>; *Nigeria: 'If you see it, you will cry'. Life and death in Giwa Barracks*;<sup>2</sup> *'Stars on their shoulders. Blood on their hands.' War Crimes committed by the Nigerian military*;<sup>3</sup> *'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in north-east Nigeria*;<sup>4</sup> *Nigeria: trapped in the cycle of violence*<sup>5</sup>; as well as numerous press releases and public statements.

Over the years, Amnesty International has been closely monitoring publicly reported inquiries, judicial proceedings and other purported accountability mechanisms conducted in Nigeria in relation to serious crimes and human rights abuses committed by both sides to the conflict in the north-east.

For purpose of this report, Amnesty International has analysed dozens of official documents, including terms of references, mandates, official statements and summaries of findings made publicly available related to the various commissions and panels of inquiry established by different Nigerian political or military authorities, to "investigate" various allegations of violations of international human rights and humanitarian laws committed by the Nigerian security forces. This includes those related to the SBI and PIP proceedings noted as potentially relevant by the OTP in 2017 for its preliminary examination process.

In relation to the SBI, beyond analysis of the publicly available summary of findings, which was also shared to Amnesty International via the Ministry of Foreign Affairs, relevant information was gathered on its conduct during direct engagement with the Board members during a meeting on 10 May 2017.<sup>6</sup> While raising several serious concerns regarding the mandate and terms of reference of the SBI, Amnesty International fully cooperated with the Board. Beyond responding to all questions from SBI members, the organization shared all its publications, relevant correspondence with the authorities (2012 and 2017),<sup>7</sup> video evidence,<sup>8</sup> three samples of satellite analysis<sup>9</sup> and two samples of Amnesty International's video analysis.<sup>10</sup>

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<sup>1</sup> Amnesty International, *'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria* (Index: AFR 44/8415/2018)

<sup>2</sup> Amnesty International, *Nigeria: 'If you see it, you will cry': Life and death in Giwa Barracks* (Index: AFR 44/3998/2016)

<sup>3</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

<sup>4</sup> Amnesty International, *'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in North East Nigeria* (Index: AFR 44/1360/2015)

<sup>5</sup> Amnesty International, *Nigeria: Trapped in the cycle of violence* (Index: AFR 44/043/2012)

<sup>6</sup> The meeting was held via teleconference and was hosted by Amnesty International Nigeria office in Abuja, Nigeria

<sup>7</sup> This included all publications and five thematic overviews of our publications, key findings, research methodology, meetings and correspondence with Nigerian authorities between 2012 and 2017, as well as 66 letters Amnesty International wrote to Nigerian authorities between 2012 and 2017, as well as 15 responses received from the authorities

<sup>8</sup> This included copies of user generated video footage of the extrajudicial executions of IPOB activists on 9 February and 29-30 May 2016 and its aftermaths. Copies of user generated video footage of the extrajudicial executions of detainees after the Giwa barracks attack on 14 March 2014 and its aftermaths, and other user generated video footage from north-east Nigeria

<sup>9</sup> (1) Possible mass graves in Maiduguri after the Giwa barracks attacks, March 2014; (2) an assessment of civilian damage in Borno state in 2014; and (3) an assessment of civilian damage in Baga area, in January 2015

<sup>10</sup> (1) Review and Assessment of Maiduguri Execution Video, March 2014; and (2) Review and assessment of two videos on extrajudicial executions in Borno state, 12 August 2014

Amnesty International also gathered first information on the conduct of the PIP through observation of 24 out of the 27 open sessions of the PIP's hearings.<sup>11</sup> Similarly, Amnesty International fully engaged with the process before the PIP, including directly testifying before the panel, responding to questions under cross-examination and presenting all relevant evidence including extensive reports, documents, photographic and video evidence as well as satellite image analysis.<sup>12</sup>

With regards to proceedings related to Boko Haram crimes, Amnesty International has examined 179 court documents, including 52 judgments and 82 prosecution documents (containing charges brought against suspects), as well as dozens of media and other observers' reports related to the 'mass Boko Haram trials' that commenced in October 2017. Amnesty researchers have also conducted more than 18 interviews with detainees or former detainees subject of these 'mass trials' and the organization's delegates have directly observed hearings of the July 2018 trial session in Kainji, Niger State<sup>13</sup>.

Moreover, Amnesty International has examined all public reports and communications from the Office of the Prosecutor of the ICC – in particular, its Article 5 report on Nigeria and its annual preliminary examination reports between 2013 and 2018. Pursuant to Article 15 of the Rome Statute, Amnesty International has also regularly communicated with representatives of the OTP through emails and meetings in person in order to share the key findings of this research and other relevant evidence, including official documents and videos.

Further, Amnesty International directly and repeatedly engaged with Nigerian authorities seeking relevant information for this report. On 10 October 2018, Amnesty International wrote to the Attorney-General of the Federation and Minister of Justice (AGF) and COAS asking specific questions and information relevant for its research. No response was received as at the time of writing this report. The only relevant response the organization received was from the Department of Public Prosecution of Nigeria on 29 December 2017. The government's response to Amnesty's questions contained in this letter, also annexed, is reflected in this report.<sup>14</sup>

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<sup>11</sup> Amnesty International managed to have its observers attend open sessions of the PIP hearings for 24 out of the 27 days of hearings. But the organization's observers, like the rest of the public and media were not allowed to be present during the closed session of the hearings

<sup>12</sup> Amnesty International delegates appeared before the PIP on 31 October and 1 November 2017 and presented extensive reports, documents and other relevant evidences, including photographic, video and satellite image analysis in support of the organization's findings of the commission of crimes under international law and other serious human rights violations committed in the north-east and other parts of the country. Amnesty International, *Letter submitting Amnesty International's Memorandum to the Presidential Investigation Panel on Review of Compliance of Armed Forces with Human Rights Obligations and Rules of Engagement* (Index: AFR 44/7074/2017)

<sup>13</sup> Four Amnesty International observers were sent to attend hearings before the Federal High Court sitting in Kainji – simultaneously present in all courtrooms during the two days of hearings held during the third and last session of mass trials in Wawa barracks, Kainji, Niger State in July 2018. The first session in October 2017 was not open to the public, and Amnesty International was not present during the second session in February 2018

<sup>14</sup> Amnesty International letter to the Department of Public Prosecutions, dated 28 August 2017, ref. AIN/411/0285/2017; Letter from the Department of Public Prosecutions addressed to Amnesty International, dated 29 December 2017, ref. DPPA/CCG/CAI/06/2017; Amnesty International letter to Attorney-General of the Federation and Minister of Justice (AGF), dated 10 October 2018, ref. AIN/0261/101/18. Amnesty International letter to Chief of Army Staff, dated 10 October 2018, ref. AIN/0260/101/18 (annexed)



# BACKGROUND

The conflict in north-east Nigeria began in 2009 when the insurgent movement Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, popularly known as Boko Haram, started its violent campaign. Boko Haram was established in 2002 in north-east Nigeria as a religious movement committed to a society based on its interpretation of Islam. After clashes in 2009 between the Nigerian security forces and Boko Haram's members, and the extrajudicial execution of their leader Mohammed Yusuf, the group began revenge attacks against the police in 2010. Their attacks increasingly targeted civilians, and from 2012 the group attacked schools, teachers and students to prevent people from receiving a "western" education.

In the course of the conflict, Boko Haram has killed thousands of civilians - through bombing crowded markets, places of worship and roadblocks, during attacks on towns and villages, and in areas under its control to punish individuals for perceived transgressions of the group's rules. Boko Haram has also reportedly abducted at least 4,000 girls, women and boys between 2009 and 2015, with a majority of unmarried women and girls, and trapped tens of thousands more when it took control of towns in the north-east.<sup>15</sup>

In the course of their response to Boko Haram's attacks, Nigerian security forces have also committed serious violations of international humanitarian law and human rights law, including extrajudicial executions, mass arbitrary arrests and unlawful detentions, torture and other ill-treatment<sup>16</sup>, enforced disappearances and rape<sup>17</sup>. As of June 2015, Amnesty International had documented that the Nigerian military had extrajudicially executed more than 1,200 people in the course of the conflict and arbitrarily arrested at least 20,000, of whom at least 7,000 have died as a result of the inhumane conditions in custody.<sup>18</sup>

The conflict with Boko Haram is still ongoing in north-east Nigeria, particularly in more remote and rural areas, with continuing allegations of serious violations of international humanitarian and human rights law and crimes being committed on both sides.

The Prosecutor of the International Criminal Court (ICC) publicly opened a preliminary examination on Nigeria on 18 November 2010 in order to establish whether a 'reasonable basis' exists to proceed with a full investigation into the situation in Nigeria pursuant to the criteria in the Rome Statute.<sup>19</sup>

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<sup>15</sup> Amnesty International, *'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in North East Nigeria* (Index: AFR 44/1360/2015)

<sup>16</sup> Amnesty International, *Nigeria: 'If you see it, you will cry': Life and death in Giwa Barracks* (Index: AFR 44/3998/2016)

<sup>17</sup> Amnesty International, *'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria*, (Index: AFR 44/8415/2018)

<sup>18</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

<sup>19</sup> A "preliminary examination" is undertaken by the Office of the Prosecutor ('OTP') to establish a "reasonable basis" exists to proceed with a full investigation into a situation pursuant to the criteria in the Rome Statute. There is no statutory time limit on the length of a preliminary examination. Article 53(1)(a) - (c) of the Rome Statute establishes the legal framework for a preliminary examination. It provides that the Prosecutor shall consider: jurisdiction (temporal, material, and either territorial or personal jurisdiction); admissibility (complementarity and gravity); and the interests of justice. The standard of proof for proceeding with an investigation into a situation under the Statute is a "reasonable basis". In terms of powers available to the Prosecutor, the ICC's Rule of Procedure and Evidence (Rule 104(2)) provide that "During a preliminary examination, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate and may receive written or oral testimony at the seat of the Court." See, OTP policy paper on preliminary examinations para. 2

In August 2013, the OTP published an 'Article 5 report'<sup>20</sup> (based on information gathered as of December 2012) which established that 'crimes against humanity ha[d] been committed in Nigeria, namely murder and persecution attributed to Boko Haram.'<sup>21</sup>

In 2015, the OTP identified eight "potential cases"<sup>22</sup> of war crimes and crimes against humanity under Articles 7 and 8 of the Rome Statute, which would go on to broadly define the scope of its preliminary examinations in Nigeria. Of these eight "potential cases", six concern conduct by Boko Haram and two conduct by the Nigerian Security Forces.<sup>23</sup> The cases outlined by the OTP concern incidents of large scale criminality, over a wide geographic and temporal scope and are characterised by mass victimization.<sup>24</sup> In particular, cases involving Boko Haram relate to: (i) killings of civilians, (ii) abductions and imprisonment, leading to alleged murders, cruel treatments and outrages upon personal dignity, (iii) attacks on buildings dedicated to education, teachers and students, (iv) recruitment and use of children under the age of 15 years to participate in hostilities, (v) attacks against women and girls, including abductions, rapes, sexual slavery and other forms of sexual violence, forced marriages, the use of women for operational tasks and murders and (vi) the intentional targeting of buildings dedicated to religion, including churches and mosques. As far as Nigerian security forces – including the Nigerian military, state authorities and its allied militia the Civilian Joint Task Force (CJTF)<sup>25</sup> – are concerned, cases relate to the following conduct: (i) alleged mass arrests of boys and young men suspected of being Boko Haram members or supporters, followed by large-scale abuses including summary executions and torture, and (ii) attacks against civilians.<sup>26</sup>

In general, since 2015 the OTP has classified allegations of crimes committed by Boko Haram and the Nigerian security forces as falling within the eight cases it has outlined, which it further broadened having conducted a gender and child-focused analysis to include other crimes, especially with regards to Boko Haram's attacks against civilians, recruitment and use of child soldiers and persecution of women and girls.<sup>27</sup>

Each of the OTP's eight years of preliminary examination in Nigeria has been marked by the further commission of crimes against humanity and war crimes. As a consequence, the OTP's preliminary examination appears to remain in a continual state of "phase 2"<sup>28</sup>, "subject matter jurisdiction" analysis of new crimes on an annual basis, while also undertaking its "phase 3"<sup>29</sup> admissibility assessment of the eight cases it has identified in terms of complementarity and gravity as per Article 17 of the Rome Statute.

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<sup>20</sup> ICC, OTP, *Situation in Nigeria. Article 5 Report*

<sup>21</sup> ICC, OTP, *Situation in Nigeria. Article 5 Report*, para. 128

<sup>22</sup> International Criminal Court, OTP, *Report on Preliminary Examination Activities (2015)*, November 2015, [www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf](http://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf) (hereafter ICC, OTP, *Report on Preliminary Examination Activities (2015)*)

<sup>23</sup> ICC, OTP, *Report on Preliminary Examination Activities (2015)*, para. 195

<sup>24</sup> See Annex II: 8 potential cases outlined by the Office of the Prosecutor in its 2015 Preliminary Examination Report on Nigeria

<sup>25</sup> In June 2013, the Borno State authorities set up a civilian militia, the Civilian Joint Task Force (CJTF) to work with the security forces in Borno State by identifying and helping to arrest Boko Haram members. The militia consists of boys and men aged between 14 and 30, paid for their services by the Borno state government and trained at the National Youth Service Corps camp by the military and the mobile police. See Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), page 24.

<sup>26</sup> ICC, OTP, *Report on Preliminary Examination Activities (2015)*, paras 196-216

<sup>27</sup> International Criminal Court, OTP, *Preliminary Examination report (2016)*, November 2016, [www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](http://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf), paras 291-297; International Criminal Court, OTP, *Preliminary Examination report (2017)*, November 2017, (hereafter OTP PE report 2017) [www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE\\_ENG.pdf](http://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf), paras 210-214

<sup>28</sup> In **phase 1** the ICC OTP conducts an initial assessment of all information on alleged crimes received under Article 15 of the Rome Statute ("Article 15 communications") to filter out information on crimes that are outside the jurisdiction of the Court. In **phase 2**, the Office analyses all information on alleged crimes received or collected to determine whether the preconditions to the exercise of jurisdiction under Article 12 of the Rome Statute are satisfied and whether there is a reasonable basis to believe that the alleged crimes fall under the subject - matter jurisdiction of the Court as per Article 5 of the Rome Statute. In **phase 3**, the Office analyses admissibility in terms of complementarity and gravity as per Article 17 of the Rome Statute. In **phase 4**, having concluded from its preliminary examination that the case is admissible prima facie, the Office, taking into account the gravity of the crimes and the interests of victims, examines under article 53(1)(c) whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice

<sup>29</sup> See footnote above

# THE ICC'S COMPLEMENTARITY ASSESSMENT: LEGAL FRAMEWORK AND ICC JURISPRUDENCE

“Complementarity” is a key principle of the Rome Statute, which provides that States party to the Rome Statute have the primary obligation to investigate and prosecute Rome Statute crimes where they have jurisdiction. As part of preliminary examination process, and in accordance with Article 53(1)(b) of the Statute, the OTP conducts an “admissibility assessment” to ascertain if “the case would be admissible under Article 17”<sup>30</sup> of the Statute and if any ‘complementary’ *relevant* national level proceedings have been or are being undertaken.

Article 17 of the Rome Statute provides that a case will be admissible before the Court if a state has failed to investigate or prosecute those involved in the commission of Rome Statute crimes.<sup>31</sup> 17(1)(a) considers when national authorities are currently dealing with the same case as the ICC; and 17(1)(b) where the national authorities have investigated the same case and decided not to prosecute.<sup>32</sup>

As such, the OTP’s complementarity assessment at the preliminary examination stage first looks at the empirical question of whether there are or have been any *relevant* national investigations or prosecutions<sup>33</sup> - if the suspect or conduct have not been investigated by the national jurisdiction, there is no legal basis for the Court to find the case inadmissible.<sup>34</sup> In other words, “*domestic inactivity*”, the absence of national proceedings, is sufficient ground to make a case admissible before the ICC, even without considering other factors laid out under Article 17 of the Statute, including the questions of unwillingness or inability of the

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<sup>30</sup> International Criminal Court, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya* (hereafter Kenya Article 15 decision), para. 40

<sup>31</sup> Where a state having jurisdiction is not investigating or prosecuting, or has not done so, is defined as “inaction” [*Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, (Case No. ICC-01/04-01/07-1497 OA 8), ICC Appeal Chamber, *Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case*, 25 September 2009, para. 2]

<sup>32</sup> International Coalition of Transitional Justice (ICTJ), *Handbook on Complementarity*, p. 38

<sup>33</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, 25 September 2009, para. 78

<sup>34</sup> See *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, (Case No. ICC-01/09-02/11-274), ICC Appeals Chamber, *Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”*, 30 August 2011, para. 43

state concerned.<sup>35</sup> The OTP's preliminary examinations policy explains that *inactivity* may result from various factors, including "the absence of an adequate legislative framework; the existence of laws that serve as a bar to domestic proceedings, such as amnesties, immunities or statutes of limitation; the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible; or other, more general issues related to the lack of political will or judicial capacity."<sup>36</sup>

At the preliminary examination stage, there is not yet a "case", as understood to comprise an identified set of incidents, suspects and conduct.<sup>37</sup> Consequently, "the contours of the likely cases will often be relatively vague because the investigations of the Prosecutor [at the preliminary examination phase] are at their initial stages."<sup>38</sup> Admissibility is therefore assessed using certain criteria defining a "potential case" including:

- **the groups of persons involved** that are likely to be the focus of an investigation for the purpose of shaping the future case(s);
- **the crimes within the jurisdiction of the Court** allegedly committed during the **incidents** that are likely to be the focus of an investigation for the purpose of shaping the future case(s).<sup>39</sup>

As such, national level investigations must "cover the same persons and substantially the same conduct as alleged in the proceedings before the Court."<sup>40</sup> Further, in keeping with ICC jurisprudence and the OTP's policy on preliminary examinations, relevant domestic proceedings will be assessed on the extent to which they focus on those bearing the **greatest responsibility** for the most serious crimes.<sup>41</sup>

The final critical element of an admissibility test concerns an assessment of 'whether national proceedings are vitiated by an **unwillingness** or **inability** to *genuinely* carry out the proceedings' and whether proceedings were conducted in a manner consistent with an intent to bring the person to justice.<sup>42</sup>

The ICC's Pre-Trial Chamber has held that preliminary examinations must be completed 'within a reasonable time...regardless of [their] complexity'.<sup>43</sup> The presumption of Article 53(1) of the Statute, [...] and of

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<sup>35</sup> International Criminal Court, *Office of the Prosecutor, Policy Paper on Preliminary Examinations* (hereafter OTP PE policy), [https://www.icc-cpi.int/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf), para. 47

<sup>36</sup> OTP PE policy, para. 48

<sup>37</sup> The concept of a case has been defined by the Pre-Trial Chamber I (PTCI) in the *Lubanga* case as including "specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects," and that the admissibility assessment consists of an examination of "both the person and the conduct which is the subject of the case before the Court;" *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Prosecutor's Application for Warrant of Arrest, Article 58, ICC-01/04-01/06 (10 February 2006), paras 21, 31, 38, incorporated into the record by Decision ICC-01/04-01/06-8-Corr

<sup>38</sup> Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011, *Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute*, para. 38

<sup>39</sup> OTP PE policy paras 43-44; See also ICC-01/09-19-Corr, para. 50. See also *ibid*, 182 and 188; Situation in the Republic of Côte d'Ivoire, Corrigendum to "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire", ICC02/11-14-Corr(3 October 2011), paras 190-191 and 202-204.

<sup>40</sup> *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Judgement on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", ICC-01/09-01/11-307, 30 August 2011, paras. 1, 47; *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Judgement on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute," ICC-01/09-02/11-274, 30 August 2011, paras. 1, 46. See also *Prosecutor v. Saif Allslam Gaddafi and Abdullah Al-Senussi*, "Decision on the Admissibility of the Case Against Abdullah Al-Senussi," ICC-01/11-01/11-466-Red, 11 October 2013, para. 66: "for the Chamber to be satisfied that the domestic investigation covers the same 'case' as that before the Court, it must be demonstrated that: a) the person subject to the domestic proceedings is the same person against whom proceedings before the Court are being conducted; and b) the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court ... The determination of what is 'substantially the same conduct as alleged in the proceedings before the Court' will vary according to the concrete facts and circumstance of the case and, therefore, requires a case-by-case analysis." *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'", ICC-01/09-01/11-307 OA, 30 August 2011, para. 1. While Amnesty International believes that this 'same person, same conduct' test applied by the Office of the Prosecutor is an unsatisfactory standard as it fails to require that domestic proceedings relate to crimes of equivalent gravity to Rome Statute crimes, it is the standard applied by the OTP, and it is evident that even applying this relaxed standard the 'mass trials' would not be relevant to an admissibility assessment.

<sup>41</sup> International Criminal Court, Pre-Trial Chamber III, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi*, ICC-01/17-X-9-US-Exp, 25 October 2017 (hereafter Burundi Article 15 decision), 9 November para. 144; OTP PE policy para. 45

<sup>42</sup> OTP PE policy, Article 17(2), paras 50 – 59. Specifically, (a) are proceedings undertaken for the purpose of *shielding the person(s)* from criminal responsibility for crimes within the ICC jurisdiction? (b) has there been an *unjustified delay* in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice? (c) *are proceedings conducted independently or impartially* and in a manner consistent with an intent to bring the person concerned to justice? In assessing unwillingness and inability to investigate and prosecute, the OTP will also consider whether any or a combination of the factors provided in its preliminary examinations policy impact on the proceedings to such an extent as to vitiate their genuineness?

<sup>43</sup> International Criminal Court, Pre-Trial Chamber III, *Situation in the Central African Republic, Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the Central African Republic*, 30 November 2006, ICC-01/05-6, p. 4

common sense, is that the Prosecutor investigates in order to be able to properly assess the relevant facts.<sup>44</sup> It follows that a prolongation of a preliminary examination beyond that point is, in principle, unwarranted.<sup>45</sup> The ‘reasonable basis’ evidentiary standard of a preliminary examination “does not necessitate any complex or detailed process of analysis”, and the information available is not expected to be “comprehensive” or “conclusive”, particularly taking into account the limited investigative powers at the Prosecutor’s disposal, compared to those provided for in Article 54 of the Statute at the investigation stage.<sup>46</sup> Thus, ‘an investigation should in general be initiated without delay and be conducted efficiently in order for it to be effective.’<sup>47</sup>

The OTP has also stated that it will not only assess whether or not relevant national proceedings exist, but also seek to encourage, where feasible, genuine national investigations and prosecutions by the state(s) concerned in relation to crimes identified in the preliminary examination (‘positive complementarity’).<sup>48</sup>

Once a preliminary examination is concluded, if the situation has not been referred to the Court by a state party, the Prosecutor must request authorization to open a *proprio motu* investigation pursuant to Article 15 of the Rome Statute. The ICC Pre-Trial Chamber will conduct a ‘judicial assessment’ to ascertain ‘whether the case that the State is investigating sufficiently mirrors the one that the Prosecutor is investigating’<sup>49</sup>. ‘To carry out this assessment, “the underlying incidents under investigation both by the Prosecutor and the state, alongside the conduct of the suspect under investigation that gives rise to his or her criminal responsibility for the conduct described in those incidents”<sup>50</sup> must be compared. “If it has only been established that ‘discrete aspects’ of the case before the Court are being investigated domestically, it will most likely not be possible for a Chamber to conclude that the same case is under investigation”<sup>51</sup>.

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<sup>44</sup> International Criminal Court, *Pre-Trial Chamber I, Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation* (Hereafter Comoros Article 53 Decision), 16 July 2015, ICC-01/13-34, para. 13

<sup>45</sup> International Criminal Court, Pre-Trial Chamber I, *Request under Regulation 46(3) of the Regulations of the Court, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* ICC-RoC46(3)-01/18, 6 September 2018, para. 84

<sup>46</sup> International Criminal Court, Pre-Trial Chamber I, *Request under Regulation 46(3) of the Regulations of the Court, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* ICC-RoC46(3)-01/18, 6 September 2018, paras 84 - 86, Citing: Comoros Article 53 Decision, para. 13; Kenya Article 15 Decision, para. 27; Côte d’Ivoire Article 15 Decision, para. 24; Pre-Trial Chamber I, *Situation in Georgia, Decision on the Prosecutor’s request for authorization of an investigation*, 27 January 2016, ICC-01/15-12, para. 25; Burundi Article 15 Decision, para. 30; For the need to use rule 47 of the Rules to preserve evidence at the preliminary examination stage, see Burundi Article 15 Decision, para. 15; Kenya Article 15 Decision, para. 32; Comoros Article 53 Decision, para. 13.

<sup>47</sup> International Criminal Court, Pre-Trial Chamber I, *Request under Regulation 46(3) of the Regulations of the Court, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* ICC-RoC46(3)-01/18, 6 September 2018, paras 84 - 86

<sup>48</sup> OTP PE Policy, para. 101.

<sup>49</sup> Burundi Article 15 authorization decision, para. 147

<sup>50</sup> Burundi Article 15 authorization decision, para. 147

<sup>51</sup> Burundi Article 15 authorization decision, para. 147



## NATIONAL LEVEL INQUIRIES - ASSESSMENT BY THE ICC PRE-TRIAL CHAMBER

In 2017, the ICC Pre-Trial Chamber considered national-level ‘commissions’ or ‘inquiries’ established to inquire into allegations of crimes under international law committed in a – at the time – ICC states party. In its decision concerning the OTP’s Article 15 request to authorize the opening of an investigation in Burundi, the Pre-Trial Chamber held that if documentation ‘made available to the Chamber reveals that these Commissions and proceedings do not concern the same (groups of) persons that are likely to be the focus of an investigation into the situation [in a States Party] or that the Commissions have not undertaken tangible, concrete and progressive investigative steps...there is no conflict of jurisdiction between [the States Party] and the Court.’<sup>52</sup> The ICC Pre-Trial Chamber provided some key observations which are highly relevant to an analysis of the Nigerian authorities’ domestic proceedings in 2017:

- A national investigation merely aimed at the gathering of evidence does not lead, in principle, to the inadmissibility of any cases before the Court [...] for the purposes of complementarity, an investigation must be carried out with a view to conducting criminal prosecutions<sup>53</sup>;
- National investigations that are not designed to result in criminal prosecutions do not meet the admissibility requirements under Article 17(1) of the Statute<sup>54</sup>;
- The Chamber will assess why national mechanisms are established instead of following the normal process in accordance with a state’s criminal procedural law as part of the admissibility assessment<sup>55</sup>;
- Only if domestic accountability mechanisms have certain judicial and investigative powers - *including authorization to refer persons to the competent authorities, with concomitant arrests and/or charges brought* – will the findings of (irregularly) constituted national-level mechanisms be assessed for the purposes of a complementarity determination.<sup>56</sup>

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<sup>52</sup> Pre-Trial Chamber I, Prosecutor v Simone Gbagbo, Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo, 11 December 2014, ICC-02/11-01/12-47-Red, para. 65; Appeals Chamber, Prosecutor v Simone Gbagbo, Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, 27 May 2015, ICC-02/11-01/12-75-Red, para. 122

<sup>53</sup> Burundi Article 15 authorization decision, para. 152

<sup>54</sup> Burundi Article 15 authorization decision, para. 152

<sup>55</sup> Burundi Article 15 authorization decision, para. 153

<sup>56</sup> Burundi Article 15 authorization decision, para. 153

# PROCEEDINGS AT NATIONAL LEVEL

As outlined above, the OTP's complementarity assessment at the preliminary examination stage first looks at the question of whether there are or have been any relevant national investigations or prosecutions.<sup>57</sup> In other words, for the purposes of the ICC's admissibility assessment, domestic proceedings of investigations and prosecutions must relate to *conduct* amounting to Rome Statute crimes within the jurisdiction of the Court *during the incidents outlined by the Court*. As such, 'if the suspect or conduct have not been investigated by the national jurisdiction, there is no legal basis for the OTP not to proceed to investigations stage nor Court to find the case inadmissible'.<sup>58</sup>

The following sections present Amnesty International's research findings on the major potentially relevant domestic proceedings concluded or underway in Nigeria over period of OTP's preliminary examination.

## PROCEEDINGS RELATED TO MEMBERS OF BOKO HARAM

Albeit with limited details, the OTP's preliminary examination reports successively mention information the Office has received from Nigerian authorities in respect of investigation and prosecution of suspects in relation to crimes committed by Boko Haram and Nigerian military. In 2014, the OTP highlighted that Nigerian authorities had been 'conducting proceedings' against members of Boko Haram for conduct which constitutes crimes under the Rome Statute.<sup>59</sup> In 2015, the OTP explicitly stated that it had received information on 'about 150 cases relating to Boko Haram members at different levels [which] had been submitted to the Attorney-General of the Federation for approval'.<sup>60</sup> In 2017, the OTP stated that 'a *limited number* [emphasis added] of case files appears to relate to the alleged killings and injuries of civilians by Boko Haram'.<sup>61</sup>

In the absence of more detailed information, it is unclear if the cases mentioned by the OTP in its reports relating to alleged crimes committed by Boko Haram concern conduct(s) within the ICC's jurisdiction, or which 'cover the same individuals and substantially the same conduct as alleged in the proceedings before the Court'.<sup>62</sup> But Amnesty International's research indicates that before October 2017, only a handful of

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<sup>57</sup> *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, 25 September 2009, para. 78

<sup>58</sup> See *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, (Case No. ICC-01/09-02/11-274), ICC Appeals Chamber, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 30 August 2011, para. 43

<sup>59</sup> International Criminal Court, Office of the Prosecutor, *Report on Preliminary Examination Activities (2014)*, December 2014, [www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf](http://www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf), para. 182

<sup>60</sup> ICC, OTP, *Report on Preliminary Examination Activities (2015)*, para. 216

<sup>61</sup> International Criminal Court, OTP, *Preliminary Examination report (2017)*, November 2017, para. 216

<sup>62</sup> See, for example, *Prosecutor v. Saif AlIslam Gaddafi and Abdullah Al-Senussi*, "Decision on the Admissibility of the Case Against Abdullah Al-Senussi," ICC-01/11-01/11-466-Red, 11 October 2013, para. 66: "for the Chamber to be satisfied that the domestic investigation covers the same 'case' as that before the Court, it must be demonstrated that: a) the person subject to the domestic proceedings is the same person against whom proceedings before the Court are being conducted; and b) the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court ... The determination of what is 'substantially the same conduct as alleged in the proceedings before the Court' will vary according to the concrete facts and circumstance of the case and,

cases were brought before the Federal High Courts across the country in relation to crimes by (alleged) Boko Haram members. In response to Amnesty International's request for information, the Ministry of Justice stated that as of October 2017 a total of 12 'Boko Haram suspects' had been convicted in 'terrorism cases'.<sup>63</sup>

Two of these cases appear to relate to high profile Boko Haram members. The first targeted Karibu Abubakar Dikko alias Kabiru Sokoto, alleged 'mastermind of the 'Christmas Day bombing'<sup>64</sup> in Madala, Niger State in 2011 and convicted to life sentence on terrorism charges by the Federal High Court in Abuja in December 2013.<sup>65</sup> Reportedly, there were serious concerns with regards to the fairness of the proceedings, the defendant claiming allegations of torture and denial of access to his lawyers.<sup>66</sup> The second case concerns Usman Umar Abubakar alias Khalid Al-Barnawi, alleged leader of the group Ansaru, a former section of the Boko Haram group, whose trial was opened before the Federal High Court of Abuja in early 2017 on charges of abduction and murder of ten foreigners.<sup>67</sup> But it remains unclear if the defendant has been convicted and at what stage the case is currently at.<sup>68</sup> Although these two cases may potentially be the only prosecutions of senior Boko Haram members to date in Nigeria, lack of information and access to court documents makes it difficult to assess how relevant and genuine these proceedings are. Despite repeated requests, Amnesty International has not received any information on what crimes they were convicted for, and in particular no court documents related to the cases against Kabiru Sokoto and Khalid Al-Barnawi.<sup>69</sup>

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therefore, requires a case-by-case analysis." See also Kenya cases, *Prosecutor v. William Samoei Ruto, Henri Kiprono Kosgey and Joshua Arap Sang, Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Appeals Chamber, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 20 September 2011, ICC-01/09-01/11-307 and ICC-01/09-02/11-274 respectively, paras 1,40 and paras 1, 39 respectively, [www.icc-cpi.int/CourtRecords/CR2011\\_16046.PDF](http://www.icc-cpi.int/CourtRecords/CR2011_16046.PDF) and at [www.icc-cpi.int/CourtRecords/CR2011\\_13819.PDF](http://www.icc-cpi.int/CourtRecords/CR2011_13819.PDF)

<sup>63</sup> Letter from the Department of Public Prosecutions addressed to Amnesty International, dated 29 December 2017, ref. DPPA/CCG/CAI/06/2017 (annexed)

<sup>64</sup> A suicide car bombing on St Theresa's catholic church in Madalla, Niger State, on 25 December 2015 killing 44 people and wounding 75 others

<sup>65</sup> Premium Times, *How we tracked Kabiru Sokoto down*, by SSS, 10 February 2012, [www.premiumtimesng.com/regional/nwest/3739-how-we-tracked-kabiru-sokoto-down-by-sss.html](http://www.premiumtimesng.com/regional/nwest/3739-how-we-tracked-kabiru-sokoto-down-by-sss.html) ; Vanguard, *Boko Haram: Kabiru Sokoto sues FG over conviction*, 29 January 2016, [www.vanguardngr.com/2016/01/boko-haram-kabiru-sokoto-sues-fg-over-conviction/](http://www.vanguardngr.com/2016/01/boko-haram-kabiru-sokoto-sues-fg-over-conviction/)

<sup>66</sup> Premium Times, *How we tracked Kabiru Sokoto down*, by SSS, 10 February 2012, [www.premiumtimesng.com/regional/nwest/3739-how-we-tracked-kabiru-sokoto-down-by-sss.html](http://www.premiumtimesng.com/regional/nwest/3739-how-we-tracked-kabiru-sokoto-down-by-sss.html) ; Vanguard, *Boko Haram: Kabiru Sokoto sues FG over conviction*, 29 January 2016, [www.vanguardngr.com/2016/01/boko-haram-kabiru-sokoto-sues-fg-over-conviction/](http://www.vanguardngr.com/2016/01/boko-haram-kabiru-sokoto-sues-fg-over-conviction/)

<sup>67</sup> Abductions and murders perpetrated in Northeast Nigeria between 2012 and 2013 against foreign nationals. Newsweek, *Nigeria charges leader of Boko Haram splinter group over murders of foreign nationals*, 15 March 2017, [www.newsweek.com/ansaru-khalid-al-barnawi-nigeria-568166](http://www.newsweek.com/ansaru-khalid-al-barnawi-nigeria-568166)

<sup>68</sup> Amnesty International could not access judgements or court documents in these cases nor attend the trials, therefore information collected is limited to media reporting. Requests to the authorities on being provided with details and documents of the cases standing before the Federal High Courts prior to October 2017 were unsuccessful

<sup>69</sup> Amnesty International letter to the Department of Public Prosecutions, dated 28 August 2017, ref. AIN/411/0285/2017. Amnesty International letter to Attorney-General of the Federation and Minister of Justice (AGF), dated 10 October 2018, ref. AIN/0261/101/18 (annexed)

## FROM THOUSANDS OF ARBITRARY ARRESTS AND DETENTIONS TO A FEW FLAWED PROSECUTIONS

Tens of thousands of people, including men, women and children, allegedly suspected to be supporters or members of Boko Haram have been arrested since 2009 in north-east Nigeria, mostly in Adamawa, Borno and Yobe States.<sup>70</sup> Most of these arrests, carried out by the military in many cases with the support of the CJTF<sup>71</sup>, appear to be entirely arbitrary.

On numerous occasions, particularly following Boko Haram raids, soldiers have gone to towns or villages, rounded up hundreds of men and boys and taken into custody those identified as Boko Haram by paid informants who often provide false information in order to get paid<sup>72</sup>. Amnesty International has also documented arrests during house-to-house raids and at checkpoints, and targeted arrests of suspected Boko Haram members' relatives<sup>73</sup>.

"Screening" operations<sup>74</sup> were characterized by mass arbitrary arrests as well. Upon arrival in towns recaptured by the Nigerian military, internally displaced people (IDPs) fleeing violence were arrested allegedly on suspicion of being affiliated to Boko Haram. Random arrests during screening exercises particularly targeted young men, but also some women who were accused of being married to Boko Haram members, so-called 'Boko Haram wives'<sup>75</sup>.

It remains difficult to ascertain the exact number of people arrested and detained in the course of security operations in the northeast as there is no centralized system of recording arrests carried out by security forces, and most of these detainees are either dead or are still held incommunicado in various military barracks and detention facilities run by military forces, with no access to the outside world.

Nevertheless, Amnesty International research demonstrates that thousands have died in detention, including from starvation, thirst, severe overcrowding that led to spread of diseases, torture and lack of medical attention.<sup>76</sup> A high-ranking military officer confirmed that close to 5,000 had died in detention in Giwa barracks<sup>77</sup> alone between 2013 and 2015<sup>78</sup>. Amnesty International has also documented the death of

<sup>70</sup> 20,000 was the minimum estimate in 2015 based on Amnesty International research, interviews with military sources, officials at state and federal government levels, victims and relatives of victims as well as human rights defenders in north-east Nigeria between 2009 and 2015. The actual number is likely to be much higher as there is no proper, centralized system to record the number of arrests carried out by the security forces. See Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

<sup>71</sup> In June 2013, the Borno State authorities set up a civilian militia, the Civilian Joint Task Force (CJTF) to work with the security forces in Borno State by identifying and helping to arrest Boko Haram members. The militia consists of boys and men aged between 14 and 30, paid for their services by the Borno state government and trained at the National Youth Service Corps camp by the military and the mobile police. See Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), p. 24

<sup>72</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), p. 76

<sup>73</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), p. 80

<sup>74</sup> Most people arriving in the recaptured towns had spent months or years living in areas under Boko Haram control, or where Boko Haram was operating. According to the accounts of dozens of internally displaced people interviewed by Amnesty International, the military treated all men, women and, in some cases, children, as potential Boko Haram members. Those arriving in the recaptured towns were subject to a "screening" operation during which the military, with the CJTF, decided who was allowed to proceed to the satellite camps and who they would detain. See Amnesty International, *'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria* (Index: AFR 44/8415/2018), p. 29

<sup>75</sup> Amnesty International, *'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria* (Index: AFR 44/8415/2018), p. 30

<sup>76</sup> Evidence collected by Amnesty International suggests that between 2011 to 2015 alone, more than 7,000 people, mainly men and boys, have died in detention in various military detention centres as result of starvation, thirst, severe overcrowding that led to spread of diseases, torture, lack of medical attention, and the use of fumigation chemicals in unventilated cells. Amnesty International gathered the data and the details of individual cases through visits to mortuaries in Maiduguri, internal military reports, statistics recorded by local human rights activists and interviews with witnesses, victims, former detainees, hospital staff, and military sources. See Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), p. 58. This pattern continued in 2016, when at least 168 people, including babies and children have died in the military detention facility at Giwa barracks, Maiduguri. See Amnesty International, *Written statement to the 32nd session of the UN Human Rights Council, 'Nigeria: Human rights violations by the military continue in the absence of accountability for crimes under international law'* (Index AFR 44/4203/2016)

<sup>77</sup> Giwa barracks is a military detention centre located in Maiduguri State, Northeast Nigeria

<sup>78</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015), p. 58

12 children and babies in the Giwa barracks in 2016.<sup>79</sup> These deaths were often unrecorded and almost never investigated.

Although some detainees have been released over time, thousands remain detained or unaccounted for. The final report of the Presidential Committee on Special detainees linked to Boko Haram Insurgency disclosed in April 2018 that 6,512 'Boko Haram suspects' were still detained in various detention centres across the country.<sup>80</sup> The same report of the Presidential Committee on Special Detainees indicates that some detainees in military facilities had spent up to nine years in detention.<sup>81</sup>

Amnesty International's research suggests that until October 2017, only the relatively few 'Boko Haram suspects' held in ordinary prisons stood a chance to be brought to court, while the thousands of 'Boko Haram suspects' held in various military detention facilities had no prospect of having their case heard by a judicial organ. Even including the few hundreds 'brought to court' during the mass trials started in Kainji in October 2017,<sup>82</sup> the number of people who faced a judge still represents a small fraction of the thousands of people arrested and detained by the Nigerian security forces.

Against this background, Nigerian authorities commenced 'mass trials' of 'Boko Haram suspects' in 2017, in an apparent attempt to address the huge backlog of individuals in military detention awaiting prosecution and to establish legal cover for the thousands of people who have already spent years in unlawful and arbitrary detention. On the eve of the first mass trials, the office of the Federal Ministry of Justice announced that 1670 people were detained in Kainji, awaiting judicial determination of their cases.<sup>83</sup> The statement of the Federal Ministry of Justice remained silent however on how many 'Boko Haram suspects' were detained across all military detention facilities and ordinary prisons in Nigeria or how many had died in detention and what had happened to them. As no individual detained in a military detention facility had ever been brought before a court before 2017, the number of detainees in Wawa barracks in Kainji corresponds to the number of persons who were to be tried – or to be released following court proceedings – in Kainji.

Three trial sessions were held in October 2017, February and July 2018 before the Federal High Court of Abuja sitting in Wawa military cantonment in Kainji, Niger State. Individuals who faced the "Kainji mass trials" were part of the thousands of arbitrarily arrested, mostly by the military. Very often, individuals arrested were not informed of the reasons for their arrest or their detention. They were transferred to military detention facilities without being charged – and after months or more often years of detention, most detainees still did not know what charges had been brought against them or if they had been formally charged at all<sup>84</sup>. Amnesty International has reasons to believe that these individuals were never charged as, until 2017, there was no intention to send them to trial.

In the absence of access to all the trial sessions and judgements in Boko Haram related cases, Amnesty International cannot provide precise numbers and nature of prosecutions or convictions. Nevertheless, the overemphasis on prosecuting for 'minor crimes' – like crimes of supporting Boko Haram or having concealed information regarding the group's activities, as opposed to crimes perpetrated by Boko Haram against civilians – appears to be a clear and dominant pattern.<sup>85</sup>

For instance, Amnesty International has been able to identify that the vast majority of charges instituted in the July 2018 mass trials session in Kainji relate to membership or support of the armed group, and very few cases related to crimes under international law or even crimes against persons. Indeed, out of the 144 'Boko Haram suspects' tried in July 2018 - for whom Amnesty International was able to identify their charges - 19 were charged with terrorist acts (or attempt), one for hostage taking, while 124 were charged for Boko Haram membership (68), concealment of information from the authorities (76), supporting Boko Haram (49), and/or participation to Boko Haram trainings or meetings (13). Out of these people 107 were convicted

<sup>79</sup> At least 12 babies and children – 10 boys and 2 girls – died in Giwa barracks between February 2016 and April 2016. Witnesses estimated that four of the boys were one-year-olds, and the other were five months, two years, three years, four years, five years and 15 years old respectively. The girls were approximately two years and five years old. See Amnesty International, *If you see it, you will cry: Life and death in Giwa Barracks*, (Index: AFR 44/3998/2016), p. 10

<sup>80</sup> Leadership, *SGF receives final report of presidential C'tee on B/Haram detainees*, April 2018. <https://leadership.ng/2018/04/26/sgf-receives-final-report-of-presidential-ctee-on-b-haram-detainees/>

<sup>81</sup> Leadership, *SGF receives final report of presidential C'tee on B/Haram detainees*, April 2018. <https://leadership.ng/2018/04/26/sgf-receives-final-report-of-presidential-ctee-on-b-haram-detainees/>

<sup>82</sup> See p. 15: *Proceedings related to members of Boko Haram* for further explanation of the mass trials

<sup>83</sup> Ministry of Justice, Press Statement, *AGF set to commence trial of suspected Boko Haram terrorists*, September 2011, [http://www.justice.gov.ng/index.php/ogp-nigeria?task=document\\_viewdoc&id=63](http://www.justice.gov.ng/index.php/ogp-nigeria?task=document_viewdoc&id=63)

<sup>84</sup> Interviews conducted by Amnesty International in 2018 with detainees and former detainees from Wawa barracks, Kainji

<sup>85</sup> Amnesty International has gathered 179 court documents (including 52 judgements and 82 prosecution documents containing the charges brought against suspects), has interviewed 18 detainees or former detainees and has sent observers to the July session of mass trials held in Kainji



- seven were convicted for terrorist acts, one for hostage taking, and the 99 others for Boko Haram membership or support, participation in trainings or meetings, concealment of information from the authorities, or a combination of these charges.

Amnesty International was able to obtain two out of these eight judgements issued in July 2018 trials concerning crimes against persons – one related to the conviction for hostage taking and the other one for act of terrorism for 'having volunteered and travelled to Mali to assist the terrorist activities of Hasbul Mujahud fighters'. Both convictions were solely based on the admission of the facts by the defendant in court through his guilty plea, and in the absence of any other type of evidence.<sup>86</sup>

From the information Amnesty International has collected, only around ten Boko Haram suspects have been convicted of serious crimes such as 'terrorist acts', killings or hostage taking since the conflict with Boko Haram started in 2009.<sup>87</sup> Several hundreds of individuals however have been found guilty of supporting Boko Haram (by way of providing or selling goods or logistical support<sup>88</sup>) and/or not having provided information on Boko Haram members or activities to the Nigerian authorities.

The 'mass trial' proceedings were also marked by many severe fair trial violations.<sup>89</sup> From the outset, all defendants appear to be victims of arbitrary arrests, unlawful prolonged and incommunicado detentions, torture and other ill-treatment. Despite claim of humane treatment and improved detention conditions at Kainji,<sup>90</sup> people interviewed by Amnesty International all describe horrendous conditions of detention and people dying of starvation, thirst, overcrowded detention cells and lack of medical care. Allegations of torture or other ill-treatment, especially recurrent beatings, are also numerous.<sup>91</sup>

The trials sessions were organized in improvised courtrooms within the Wawa barracks, with judicial personnel travelling to Kainji for the sessions, each lasting from two to four days. As acknowledged by Judge Nyako, judge of the Federal High Court in Abuja assigned to these cases, "the settings – civilian courts in a military base – were not ideal."<sup>92</sup> The October 2017 trial session was held in secret, with no access to observers and families of people facing the trial. Following demands by civil society organizations, the February and July 2018 trial sessions were however opened to observers.

As discussed above, Amnesty International's research also confirms that mass trials held in Kainji were characterized by a complete lack of evidence and conviction largely based on unreliable confessions and guilty pleas. The Federal Ministry of Justice itself recognized that there were some major challenges in cases tried at Kainji, including 'poorly investigated case files due to the pressure during the peak of conflict at the theatre', 'over reliance on confession based evidence', 'lack of forensic evidence' and 'absence of co-operation between investigators and prosecutors at pre investigation stages'.<sup>93</sup> In all cases Amnesty International could observe, there was *not one* instance where evidence other than confessions was used.<sup>94</sup> Defendants interviewed by Amnesty International claimed that they were pressured to plead guilty, while cases where the defendants refused to plead guilty were adjourned. Untested guilty pleas and/or

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<sup>86</sup> The judgements make mention that "it is trite law that the free and voluntary plea of guilt by an accused person alone is sufficient to sustain a conviction, provided the court is satisfied that it was made in a free atmosphere and is direct, unequivocal and positively proved". See Federal High Court of Nigeria holden at Wawa cantonment, Kainji, Niger State on Monday the 10th Day of July 2018 before his Lordship, Hon. Justice Dr. Nnamdi O. Dimgba Judge, Suit No. FHC/KAINJI/CR/347/2018, Judgment; Federal High Court of Nigeria holden at Wawa cantonment, Kainji, Niger State on Monday the 10th Day of July 2018 before his Lordship, Hon. Justice Dr. Nnamdi O. Dimgba Judge, Suit No: FHC/KAINJI/CR/367/2018, Judgment

<sup>87</sup> Amnesty International has examined 179 court documents, including 52 judgments and 82 Prosecution documents (containing charges brought against suspects), as well as dozens of media and other observers' reports related to the 'mass Boko Haram trials' that commenced in October 2017. Amnesty researchers have also conducted more than 18 interviews with detainees or former detainees subject of these 'mass trials' and the organization's delegates have directly observed hearings of the July 2018 trial session in Kainji, Niger State

<sup>88</sup> Former detainees interviewed by Amnesty International in 2018 explain having been accused of support by way of providing food or selling a car to an alleged Boko Haram member. Previous research also shows how relatives of Boko Haram members were arrested and detained solely because they were related to alleged Boko Haram members, see Amnesty International, 'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria, (Index: AFR 44/8415/2018), page 69

<sup>89</sup> Human Rights Watch, *Nigeria: Flawed trials of Boko Haram Suspects, September 2018*, [https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects?sm\\_a\\_u\\_=-iVVH6jkMQs6sLsh](https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects?sm_a_u_=-iVVH6jkMQs6sLsh); UN Office of the High Commissioner on Human Rights, Press briefing, *Boko Haram trials in Nigeria*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22232&LangID=E>

<sup>90</sup> A spokesperson of the Department of Public Prosecutions declared that the military had kept the detainees "in good condition". See South China Morning Post, *Nigeria begins mass trials of hundreds of Boko Haram Islamic suspects*, 10 October 2017, <https://www.scmp.com/news/world/africa/article/2114633/nigeria-begins-mass-trials-hundreds-boko-haram-islamist-suspects>

<sup>91</sup> Interviews conducted in September 2018. Former detainees describe having to drink their urine to survive, witnessing co-detainees dying from starvation and thirst, and living in fear. All former detainees also recount severe beatings upon arrival at Wawa barracks. One former detainee described the living conditions as being "hell on earth"

<sup>92</sup> South China Morning Post, *Nigeria begins mass trials of hundreds of Boko Haram Islamic suspects*, 10 October 2017, <https://www.scmp.com/news/world/africa/article/2114633/nigeria-begins-mass-trials-hundreds-boko-haram-islamist-suspects>

<sup>93</sup> Ministry of Justice, Press Statement, *AGF set to commence trial of suspected Boko Haram terrorists*, September 2011, <http://www.justice.gov.ng/index.php/ogp-nigeria?task=document.viewdoc&id=63>

<sup>94</sup> Amnesty International conclusions here are based on both first-hand observations of the July 2018 trials and analysis of additional 52 judgements of the Federal High Court sitting in Kainji

confessional statements cannot be considered reliable evidence of guilt, taking into account the conditions of detention, the fear of death reported by all former detainees and the likelihood that these ‘confessions’ were obtained under torture.

Defendants also lacked adequate access to legal defence during trials at Kainji. Individuals interviewed by Amnesty recall that a team of lawyers from Legal Aid Centre was sent to Kainji a few days before the trials commenced, to meet with the detainees and represent them at trial, but they had very little time to offer representation to dozens if not hundreds of persons that they were supposed to represent. Some detainees did not even have the chance to meet with a lawyer before being brought to court.<sup>95</sup> Meetings within the Wawa barracks and under the supervision of the military did not guarantee the confidentiality and trust necessary to the relationship between the lawyers and their clients.

In addition, the trial settings and organization violated basic fundamental rights to a fair trial.<sup>96</sup> Interpreters were not available to the defendants, who did not always speak the language used in court.<sup>97</sup> Defendants, even when they understood the language, were not properly informed of the charges against them nor their rights and they were not generally in a position to understand the judicial proceedings –having not had the time to discuss it with their lawyers – and to prepare and defend their case.

The speediness of these trials also demonstrates that there was no possible debate during the hearings and that the judges did not have any time to properly examine and deliberate on each case. Hundreds of individuals tried in the course of a few days meant that each case was determined in a matter of minutes – despite which all convicted persons were sentenced to several years of detention<sup>98</sup>.

Furthermore, the control exercised by the military through their detention of these incarcerated individuals, the continuous presence of soldiers at all stages of the proceedings and the fact that hearings were conducted inside the military compounds are all elements which imply the negation of the independence and the impartiality of the judiciary in these conditions, and in turn the validity of the legal process as a whole.

To conclude, judicial proceedings conducted before the Federal High Court sitting in Kainji (Niger State) relating to Boko Haram crimes (i) concern a tiny fraction of the total number of people arbitrarily arrested and detained in the context of the conflict in Nigeria, (ii) the vast majority target civilians caught in the crossfire and charged with ‘minor’ offences, and (iii) these proceedings present such egregious violations of the fundamental rights of the suspected and accused persons that one cannot consider them as fulfilling the basic requirements of a fair trial and it is impossible to conclude that those convicted were genuinely guilty of any offence, let alone crimes equivalent to Rome Statute crimes or other serious crimes against the person.

## RECENT PROCEEDINGS RELATED TO ALLEGED CRIMES COMMITTED BY NIGERIAN MILITARY

Over 20 different forms of commissions and panels of inquiry have been set up by various organs of the Nigerian government, including the Federal Government, State Governments, the military and the Senate relating to the conflict in the north-east between 2009 and 2018, most of which relate to conduct of the military operations in the region and/or in response to specific allegations of serious crimes and human rights violations committed by members of the military and CJTF in their operations in the region. In addition, the statutorily independent national human right body, the National Human Rights Commission (NHRC), has set up at least four investigative inquiries between 2013 and 2018.<sup>99</sup> All available information confirms that none of these inquiries have ever led to the investigation and prosecution of members of the military for any crimes under international law.

The OTP’s preliminary examination reports do not reference any of these commissions or panels, until 2017, where the OTP took note of two domestic inquiries established in 2017, the ‘Special Board of Inquiry’ (“SBI”) - instituted by the Nigerian military - and the ‘Presidential Investigation Panel to Review Compliance of the

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<sup>95</sup> Interviews conducted by Amnesty International, September 2018. At least one individual interviewed had no legal representation during his trial

<sup>96</sup> International Covenant on Civil and Political Rights, 1966, Article 14, specifically Article 14(3)

<sup>97</sup> International Covenant on Civil and Political Rights, 1966, Article 14, specifically Article 14(3). At least two individuals interviewed by Amnesty International explained that they did not understand the reading of the charges against them nor the sentence pronounced against them

<sup>98</sup> From the 52 judgments Amnesty International obtained from the July criminal session, sentences vary from 3 to 20 years of detention

<sup>99</sup> See Annex I: Inquiries set up by Nigerian government to look into allegations of serious crimes and violations committed by Boko Haram, Nigerian Security Forces and CJTF

Armed Forces with Human Rights Obligations and Rules of Engagement' ("PIP") - set up the Presidency. – which it said may constitute *prima facie* relevant proceedings concerning its admissibility assessment of potential cases related to alleged crimes committed by the Nigerian military and authorities.

The two commissions of inquiry cited by the OTP in its 2017 report should be considered against the history in Nigeria of instituting commissions of inquiry that do not lead to concrete investigations and prosecutions. The specifics of these two commissions are analysed below:

## SPECIAL BOARD OF INQUIRY (SBI)

Following successive reports of grave human rights violations and allegations of crimes perpetrated by members of the Nigerian military by Amnesty International and other human rights groups, and amidst apparent pressure from the US government to investigate these allegations<sup>100</sup>, the Chief of Army Staff (COAS) Lieutenant General Tukur Buratai inaugurated a nine-member Special Board of Inquiry (SBI) on 8 March 2017 to investigate a wide range of allegations of human rights violations across the country.<sup>101</sup>

The membership of the board included four serving and three retired high ranking military officers and two lawyers.<sup>102</sup>

Reportedly set up under section 172 of the Armed Forces Act,<sup>103</sup> it was tasked to “express its opinion” and only had fact-finding powers. Moreover, section 172 clearly states that none of the evidence given to the board would be admissible in court martial procedures unless a witness had given false evidence.<sup>104</sup> In addition, the Terms of Reference of the SBI<sup>105</sup> did not include a specific mandate to identify and recommend individuals for investigation or prosecution, rather the Board was tasked with “Determin[ing] the veracity of the report by human right groups in relation to the allegations against some retired senior officers”.<sup>106</sup> As such, SBI was not a body constituted to result in criminal prosecutions and does not comply with Nigeria’s obligation to investigate and prosecute alleged perpetrators of crimes under international law and serious violations and abuses of human rights.

There is no independently verifiable information on how the SBI conducted its inquiry and the extent to which it gathered, verified and assessed evidence independently. But in a document<sup>107</sup> it shared to Amnesty International, the SBI claims to have conducted its inquiry through reviews of submissions and documentation, interviews, visits to six detention facilities,<sup>108</sup> five IDP camps<sup>109</sup> and visits to three other states<sup>110</sup>. The SBI further claims that it interacted with government officials, including Governors, Commissioners of Police and Directors of DSS and conducted interviews with “detainees and their handlers,

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<sup>100</sup> Executive summary, SBI, July 2017, AHQ DOAA/GI/300/. The introduction clarifies that the US government had withdrawn visas for various military officials: “interactions between relevant Nigerian and US officials on the issue suggested that a more comprehensively constituted inquiry be made into the allegations to abate the situation.”

<sup>101</sup> Vanguard, *Army sets up panel to investigate alleged ex-judicial killings, rights violations by personnel*, 8 March 2017, <https://www.vanguardngr.com/2017/03/army-sets-panel-investigate-alleged-ex-judicial-killings-rights-violations-personnel/>

<sup>102</sup> Major General AT Jibrin (rttd) - President; Barrister Olawale Fapohunda; Col PC Izukanne (rttd); Barrister Tony Ojukwu; Brigadier General A Dadan-Garba (rttd); Brigadier General OL Olayinka; Colonel LB Mohammed; Colonel UM Wambai; Lieutenant Colonel CM Akaliro.

<sup>103</sup> Letter to Amnesty International from the President of the SBI dated 27 April 2017, reference: AHQ DOAA/GI/300/195

<sup>104</sup> Armed Forces Act Section 172: boards of inquiry (4) Evidence given before a board of inquiry shall not be admissible against a person in a proceeding before a court-martial or at a summary trial by the commanding officer or appropriate superior authority other than a proceeding for an offence under section 101 of this Act or for an offence under section 114 of this Act when the corresponding offence is perjury

<sup>105</sup> Terms of Reference were shared with Amnesty International in a letter from the President of the SBI dated 27 April 2017, reference: AHQ DOAA/GI/300/195 (hereafter SBI Terms of Reference): a. Evaluate the general conditions of detainees and their handlers in military detention facilities across Nigeria; b. Examine the reasons that are adduced by human rights groups for alleged cases of deaths in military detention facilities across Nigeria. c. Investigate any allegations of summary executions in Giwa Barracks on 14 Mar 14, or in any other NA barracks on any day; d. Investigate all known allegations of torture, forced disappearance, unlawful killing and illegal detention in relation to Nigerian Army operations; e. Determine the veracity of the report by human right groups in relation to the allegations against some retired senior officers. f. Evaluate the conditions of Internally Displaced Persons (IDPs) camps across Nigeria; g. Examine the reasons that are adduced by human rights groups for alleged cases of deaths that have occurred in IDP camps across Nigeria; h. Investigate the role played by the Nigerian Army during the rally by Indigenous People of Biafra (IPOB) in Onitsha on 30 May 16 and Aba on 9 Feb 16; i. Investigate and elucidate any other circumstance or information relating to the matters as the Board may deem important.

<sup>106</sup> SBI Terms of Reference, (e)

<sup>107</sup> Executive summary, SBI, July 2017, AHQ DOAA/GI/300/, para. 3, p.2

<sup>108</sup> The military detention facilities in Giwa Barracks, Yola, Kainji, as well as Maximum security prison in Maiduguri and Kirikiri maximum and medium security prisons in Lagos State

<sup>109</sup> Dalori and Bakassi camps in Borno State, Pompomari camp in Yobe State, the NYSC and Malkohi IDP camps in Adamawa State

<sup>110</sup> Anambra, Enugu and Abia States

camp officials, IDPs, eye witnesses, local residents and other relevant stakeholders”.<sup>111</sup> But the SBI acknowledged the lack of forensic evidence analysis in its methodology.<sup>112</sup>

On 31 May 2017, the SBI submitted its report to COAS but the full report has not yet been made public. Amnesty International was provided only with the executive summary of the report (transmitted to the organization through the Minister of Foreign Affairs) and similar details contained in the summary were presented to public in a media statement on 14 June 2017.<sup>113</sup> As such, it is impossible to independently scrutinize the findings, methodology and veracity of information gathered and considered in the inquiry.

The SBI broadly concluded that there was no evidence of human rights violations alleged against the military during its operations in the north-east and dismissed most allegations of grave human rights violations, including allegations of extrajudicial killings, enforced disappearances and torture. Furthermore, the findings of the SBI attempted to soften the gravity of human rights abuses by the military. For example, the statement noted that detention facilities were not keeping proper records and did not document properly that “many of the detainees were at the time of arrest malnourished and in poor physical state” which could be “misconstrued as evidence of deliberate starvation.”<sup>114</sup>

The Board paid particular focus in dismissing all allegations of possible individual and command responsibility made on (now retired) senior military officers including Major General John Ewansiha, Major General OT Ethan, Major General Ahmadu Mohammed, Major General AO Edokpayi and Brigadier General R.O. Bamigboye, rejecting documentary and other evidence made public and citing lack of forensic evidence to substantiate allegations.<sup>115</sup> The redacted public statement and the summary report shared to Amnesty International did not hide one of the main objectives of the inquiry, which was to reverse the withdrawal and denial of USA and UK visas to some serving and retired senior officers named in Amnesty International’s report.<sup>116</sup> One of the board’s recommendations states “AHQ [Army Headquarters] should use the Ministry of Foreign Affairs, DIA and through subtle diplomacy convince the UK and US embassies to reconsider their stand on the senior officer’s visas.”<sup>117</sup>

On the other hand, the SBI found that the detention facilities were overcrowded and insanitary and evidence of “a lot of deaths” in custody<sup>118</sup>. It further stated that there were delays in the profiling, investigations, trial of detainees and acknowledged their denial of access to lawyers. While the SBI made recommendations for the improvement of the medical and welfare conditions of detainees, as well as provision of access to legal aid for detainees, it did not make any recommendations on criminal investigations into the nature and causes of these conditions. It limited itself to “[a]dvise on the desirability” of setting up a “Presidential Panel of Inquiry to investigate all cases of human rights violations”.<sup>119</sup>

As far as Amnesty International could confirm, the findings of the SBI have not been handed over to any competent investigative authority in Nigeria view to conduct any further investigations or criminal proceedings. The COAS reviewed the report of the SBI and concluded that the report contained “astounding findings” and that Amnesty International’s allegations are “spurious”. The COAS appeared to only accept four recommendations, none of which relate to any measures towards criminal investigations or individual accountability.<sup>120</sup>

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<sup>111</sup> Executive summary, SBI, July 2017, AHQ DOAA/G1/300/, para. 3: “Theatre Commander Op LAFIYA DOLE, GOCs of 3,7,81 and 82 Divisions, Provost Marshal(Army), Director Legal Services(Army) and Desk Officer Nigerian Army Human Rights Office. The Board further interviewed Major Generals LP Ngubane, JAH Ewansiha, OT Ethan, OA Edokpayi, A Mohammed as well as Brigadier General RO Bamigboye and obtained their sworn statements.”

<sup>112</sup> Nigerian Army, Department of Civil Military Affairs, *Text of Media Briefing by Major General NE Angbazo on Report of Special Board of Inquiry to Investigate Alleged Human Rights Violations Against Nigerian Army Personnel in the Fight Against Insurgency at the North East and Internal Security Operations at the South East*, 14 June 2017, <https://www.army.mil.ng/full-text-of-media-briefing-by-maj-gen-ne-angbazo-on-report-of-special-board-of-inquiry-to-investigate-alleged-human-rights-violations/>, (hereafter Media Briefing by Major General NE Angbazo), para. 44 (h)

<sup>113</sup> Media Briefing by Major General NE Angbazo

<sup>114</sup> Media Briefing by Major General NE Angbazo, p.4

<sup>115</sup> Media Briefing by Major General NE Angbazo, p.8

<sup>116</sup> Media Briefing by Major General NE Angbazo, para. 1

<sup>117</sup> Executive summary, SBI, July 2017, AHQ DOAA/G1/300/, para 8 (t), p.11

<sup>118</sup> Executive summary, SBI, July 2017, AHQ DOAA/G1/300/, para 6, p. 8

<sup>119</sup> Media Briefing by Major General NE Angbazo, p.16

<sup>120</sup> a. The DA Washington should take up findings and recommendations of the SBI with a view to clearing the issue with stakeholders at his end. b. The Ministry of Justice should facilitate the setting up of a Special Prosecution Team to profile and prosecute the detainees. c. The Ministry of Justice should discountenance the spurious allegations of human rights abuses peddled by the d. The ONSA should ensure that there is synergy among the stakeholders in the counterinsurgency operations for effectiveness. See all recommendations in the SBI report in Media Briefing by Major General NE Angbazo, p.15

## PRESIDENTIAL INVESTIGATION PANEL TO REVIEW COMPLIANCE OF THE ARMED FORCES WITH HUMAN RIGHTS OBLIGATIONS AND RULES OF ENGAGEMENT' ("PIP")

The Presidency appointed the "Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement" (PIP), in August 2017.<sup>121</sup> The PIP was composed of seven members, including a serving Judge from the Court of Appeals (who was appointed to chair the panel), a serving Major-General from the military, a representative of the Office of the National Security Adviser and a legal professional who served as member in the previously constituted SBI that largely exonerated the military from allegations of violations.<sup>122</sup>

The PIP was given a wide mandate to investigate armed forces' compliance with international human rights and humanitarian law obligations, alleged acts of violations as well as investigation of "matters of conduct and discipline" within the armed forces.<sup>123</sup> The terms of reference further indicate that the panel was mandated to make recommendations on "means of preventing" the violation of international humanitarian and human rights laws in conflict situations as well as further recommendations "as it deemed necessary."<sup>124</sup> But the terms of reference was notable for its silence on whether the PIP was mandated to make recommendations for investigation and prosecution of suspected perpetrators of crimes under international law and other serious human rights violations or to institute such criminal proceedings by itself. The legal basis on which the PIP was established was never clarified and the government and the panel itself ignored calls to clarify this.<sup>125</sup> As result, and having observed the conduct of the PIP during the public hearings it held over the course of its mandate, Amnesty International believes that the PIP was never intended or designed to result in criminal prosecutions and as such does not comply with Nigeria's obligation to investigate and prosecute alleged perpetrators of crimes under international law and other serious violations and abuses of human rights.

The temporal and geographical scope of the panel's jurisdiction was also left undefined and hence there was no clarity on how far back in time the PIP was entitled to go in its investigation into alleged violations and matters of conduct and discipline within the armed forces, nor whether its jurisdiction extends to such acts committed over the entirety of the territory of Nigeria. The government and the panel itself ignored further calls to clarify this jurisdictional incertitude.<sup>126</sup>

It also appears that the PIP was not provided with all the necessary technical and human resource capacity to execute such a wide and complex investigative mandate beyond a secretary and a counsel. Given the nature of allegations that the PIP was mandated to investigate, the panel should have had competent and independent professional staff with expertise in human rights investigation, criminal investigation, forensic analysis, legal analysis, witness protection advice, gender advice, data management and interpretation.

The panel followed a quasi-judicial approach in its inquiry, which in effect meant that all who made submissions to the PIP in response to its public call for memorandum, including victims, witnesses, experts and organizations, were treated as petitioners/complainants and the alleged perpetrators, the military more broadly and its various branches, were considered as the respondents.<sup>127</sup> Even though the proceedings of the panel were declared to be held in public, the PIP's rules of procedure provided that the "the panel may hold private sittings where this is necessary in the interests of national security and public safety."<sup>128</sup> The rules further stated that the panel's sittings would not be open to press or media coverage".<sup>129</sup> In practice, this resulted in most proceedings where critical allegations against the military were made to be arbitrarily held in closed sessions, often following a mere request from the counsels of the military.<sup>130</sup>

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<sup>121</sup> Federal Ministry of Information and Culture, Federal Republic of Nigeria, *Osinbajo says it's armed forces, FG's duty to meet up with human rights norms*, 12 August 2017, <https://fmic.gov.ng/fg-armed-forces-duty-meet-human-rights-norms-osinbajo/> (hereafter Osinbajo PIP statement)

<sup>122</sup> Osinbajo PIP statement

<sup>123</sup> Osinbajo PIP statement

<sup>124</sup> Osinbajo PIP statement

<sup>125</sup> Amnesty International, *Nigeria: Ensure Independence and Effectiveness of the Presidential Investigation Panel* (Index: AFR 44/7075/2017)

<sup>126</sup> Amnesty International, *Nigeria: Ensure Independence and Effectiveness of the Presidential Investigation Panel* (Index: AFR 44/7075/2017)

<sup>127</sup> Rules of Procedure for the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement, 11 September 2017; on file with Amnesty International (hereafter PIP Rules of Procedure)

<sup>128</sup> PIP Rules of Procedure, section 1.4

<sup>129</sup> PIP Rules of Procedure, section 2.3

<sup>130</sup> Amnesty International observation reports, on file with Amnesty International



Over the course of its mandate, the PIP received hundreds of petitions and held 27 days of hearings across the six geographic zones of the country. Based on information gathered through observation of the open sessions of the panel's hearings<sup>131</sup> and having directly experienced the proceedings when the organization's delegates testified before the PIP,<sup>132</sup> Amnesty International has established a number of additional concerns on the conduct of the PIP's hearings and its broader inquiry process.

Firstly, the PIP does not seem to have employed basic and essential investigative and evidence gathering methodologies and principles. All available information indicates that the PIP largely relied on soliciting information from the public and organizing "public" hearings to examine these allegations there and then, as opposed to employing its own independent and proactive evidence gathering exercise. As observed in all the open sessions, the PIP does not even appear to have examined or investigated any of the allegations or information submitted to it prior to the hearings but instead required the petitioners and, where they could afford them, their legal representatives to present their submissions, evidence and witnesses. While the panel members did report to have conducted some field visits, including to detention centres and a cemetery in Maiduguri, the panel's investigation process did not involve any forensic examination, exhumation of suspected mass grave sites and independent analysis and verification of photographic and video evidence.<sup>133</sup> It also remains uncertain if the PIP requested, secured and independently examined critical documentary evidence from the military relevant to its investigation of allegations including mass arbitrary arrests, death in custody and extrajudicial executions.

Secondly, as result of the adversarial court procedures adopted by the PIP and the manner in which the "public" hearings were administered, the PIP appears to have put the individuals making the allegations themselves on trial rather than investigating and, where necessary, recommending the prosecution of alleged perpetrators. In effect, the process appears to have transposed adversarial court procedures to an inquisitorial process - requiring victims to prove allegations they made and subverting the investigative obligation of the State. Petitioners, victims and witnesses had to face badgering, harassment, ridicule and re-traumatization when subjected to often hostile cross-examination by the counsels for the military and at times by members of the panel themselves. In all sessions observed by Amnesty International, the military lawyers cross-examined the petitioners in an at times aggressive and dismissive way. During a hearing in Maiduguri for example, a counsel for the military was observed openly badgering a victim, a survivor of sexual violence who appeared to testify, ridiculing her by asking if she knew what sexual harassment was and insisting that the witness and other women victims who appeared were paid for sex.<sup>134</sup> Amnesty International observers also noted several other instances of bullying and harassment during panel hearings, including instances of accusation against petitioners as being Boko Haram sponsors.<sup>135</sup>

Thirdly, there was no measures put in place to protect victims, witnesses or other vulnerable persons testifying before (or providing written memorandum to) the panel. The terms of reference and rules of procedure of the PIP were virtually silent on this. In addition, despite the adversarial and quasi-judicial nature of the panel's hearings, there was no *pro bono* legal representation provisions made to petitioners, witnesses and victims who are unable to afford one. The lack of these critical safeguards may have influenced the full participation of witnesses and victims. For instance, a representative of the NHRC present during the PIP's hearing in Enugu told the panel that there were hardly any victims and witnesses present due to fear of reprisals by the military.<sup>136</sup>

Amnesty International also observed various instances of disorganization of the "public hearings". For instance, in a number of hearings, there were no translators available, creating additional barriers for effective participation of victims and witnesses. The military repeatedly delayed cross-examinations and victims and witnesses often had to wait for hours and/or come back the next day or at another hearing session to be heard. Some victims and witnesses had to go to three different states before they had concluded their presentation and cross examination. Others were not even given the opportunity to testify because they could not afford the transport. Some victims were also arbitrarily excluded from testifying. For instance, in Maiduguri, the panel announced that they would no longer hear relatives of alleged victims of

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<sup>131</sup> Amnesty International managed to have its observers attend open sessions of the PIP hearings for 24 out of the 27 days of hearings. But the organization's observers, like the rest of the public and media were not allowed to be present during the closed session of the hearings

<sup>132</sup> Amnesty International delegates appeared before the PIP on 31 October and 1 November 2017 and presented extensive reports, documents and other relevant evidences, including photographic, video and satellite image analysis in support of the organization's findings of the commission of crimes under international law and other serious human rights violations committed in the north-east and other parts of the country. Amnesty International, *Letter submitting Amnesty International's Memorandum to the Presidential Investigation Panel on Review of Compliance of Armed Forces with Human Rights Obligations and Rules of Engagement* (Index: AFR 44/7074/2017)

<sup>133</sup> This was confirmed by some members of the PIP to Amnesty International during its appearance in hearings in Abuja on 31 October and 1 November 2017

<sup>134</sup> Amnesty International observation, public hearing in Maiduguri, September 2017

<sup>135</sup> Amnesty International observation, public hearing in Maiduguri, September 2017

<sup>136</sup> Amnesty International observation, public hearing in Enugu, October 2017

arbitrary arrests and detention and ordered that they should send all these cases to the counsel of the army, who should then compile a list of detainees and investigate. By doing so, the panel transferred their mandate to investigate human rights violations to those they were supposed to investigate. They also missed an opportunity to hear from the relatives and victims themselves details about arrest and detention.<sup>137</sup>

The PIP presented its final report to the presidency in February 2018, but this report has not been made public at the time of writing.<sup>138</sup> As such, it is impossible to independently scrutinize the findings, methodology and veracity of information gathered and considered in the inquiry. Media reports suggest that the only known recommendation by the PIP is the strengthening of the NHRC.<sup>139</sup> The government has so far ignored calls to publish the PIP report,<sup>140</sup> but reportedly claims that a commission had been set up to develop the government's whitepaper in response to the report.<sup>141</sup>

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<sup>137</sup> Amnesty International observation, public hearing in Maiduguri, 20 September 2017

<sup>138</sup> VON, *Presidential investigation Panel recommends overhaul of Rights Commission*, 9 February 2018, <https://www.von.gov.ng/presidential-investigation-panel-recommends-overhaul-rights-commission/>

<sup>139</sup> VON, *Presidential investigation Panel recommends overhaul of Rights Commission*, 9 February 2018, <https://www.von.gov.ng/presidential-investigation-panel-recommends-overhaul-rights-commission/>

<sup>140</sup> Amnesty International, *Nigeria: Release presidential panel report to ensure transparency and accountability*, 11 September 2018, <https://www.amnesty.org/en/latest/news/2018/09/nigeria-release-presidential-panel-report-to-ensure-transparency-and-accountability/>

<sup>141</sup> Premium Times Nigeria, *Alleged Military Abuses: Presidency replies Amnesty Int'l on judicial panel report*, 11 September 2018, <https://www.premiumtimesng.com/news/top-news/283177-alleged-military-abuses-presidency-replies-amnesty-intl-on-judicial-panel-report.html>

# ANALYSIS OF POTENTIAL ADMISSIBILITY

In accordance with international human rights and humanitarian law as well as domestic constitutional and human rights law, Nigeria has the obligation to investigate and prosecute all crimes under international law allegedly committed by all parties to the conflict in north east Nigeria, including by the Nigerian security forces and Boko Haram. Nigeria also has specific international legal obligations as a state party to the Rome Statute of the ICC. Its primary - 'complementarity' - obligation (with the ICC as a 'last resort') is to investigate and prosecute perpetrators of Rome Statute crimes (including war crimes and crimes against humanity) committed on Nigerian territory or by Nigerian nationals, and to co-operate with the ICC.

An overview of the eight years preliminary examination period in Nigeria creates the appearance of some activities happening related to cases under examination by the OTP. Such a context, where there is an appearance of relevant domestic proceedings happening, no matter how minimal they could be, potentially poses challenges to the OTP in its admissibility assessment and makes it difficult for the OTP to immediately proceed to make an Article 15 *proprio motu* request to open an investigation.<sup>142</sup>

However, as outlined in the following sections of this report, Amnesty International's analysis of the situation in Nigeria indicates that there is indubitably insufficient domestic activity to satisfy the inadmissibility requirements of the Rome Statute, especially regarding the two "potential cases" related to alleged crimes committed by Nigerian military. As such, Amnesty International believes that despite the appearance of *prima facie* relevant domestic proceedings conducted or being conducted in Nigeria, the OTP should hold that the Nigeria situation is admissible before the Court and, pursuant to Article 15 of the Rome Statute, make a *proprio motu* application for authorization to the chamber to launch an investigation.

The eight-year delay in undertaking relevant domestic proceedings in Nigeria - particularly into crimes committed by the Nigerian military and the CJTF – has not been objectively justified. Neither has the Nigerian preliminary examination shown incremental progress towards investigations<sup>143</sup> and prosecutions, or a gradual increase in political will or capacity to do so. Rather, it is defined by almost complete inactivity. Conversely, recent inadequate and rushed domestic proceedings (including particularly the 'mass trials' of 'Boko Haram suspects'), that appear to be targeted at victims of arbitrary arrests and allegedly lower level perpetrators further demonstrate a lack of genuine intent to bring perpetrators to justice. In a similar vein, inquiries like the SBI, which appear to have specifically been set up to 'exonerate' all senior members of the Nigerian military, are an indication of a lack of political will on the part of the Nigerian government to genuinely investigate and prosecute those most responsible for crimes under international law committed by the Nigerian military.

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<sup>142</sup> As Human Rights Watch noted in its commentary on lengthy preliminary examinations, the OTP could be left "in limbo": the OTP could find itself with "too much domestic activity to be certain ICC judges will find OTP action permissible, but too little domestic activity to close out the preliminary examination in deference to genuine national proceedings". See Human Rights Watch, *Pressure Point: The ICC's Impact On National Justice, Lessons from Colombia, Georgia, Guinea, and the United Kingdom*, 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/ij0418\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/ij0418_web_0.pdf), p. 13

<sup>143</sup> Human Rights Watch, *Pressure Point: The ICC's Impact On National Justice, Lessons from Colombia, Georgia, Guinea, and the United Kingdom*, 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/ij0418\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/ij0418_web_0.pdf), p. 8

Fundamentally, to investigate and prosecute crimes under international law, the Nigerian authorities need to demonstrate both the capacity and the political will to do so - Nigeria must be 'willing to be able.' Amnesty International believes that the apparent 'domestic inactivity' in Nigeria is largely a reflection of the government's lack of willingness and its inability to genuinely to bring perpetrators to justice.

The ICC's Pre-Trial Chamber has held that Preliminary examinations must be completed 'within a reasonable time...regardless of [their] complexity'.<sup>144</sup> The presumption of Article 53(1) of the Statute, [...] and of common sense, is that the Prosecutor investigates in order to be able to properly assess the relevant facts.<sup>145</sup> It follows that a prolongation of a preliminary examination beyond that point is, in principle, unwarranted.<sup>146</sup>

The 'reasonable basis' stage is the lowest evidentiary standard provided for in the Statute. With this in mind, the ICC has stated that 'the preliminary examination as such "does not necessitate any complex or detailed process of analysis", and the information available is not expected to be "comprehensive" or "conclusive", particularly taking into account the limited investigative powers at the Prosecutor's disposal, compared to those provided for in Article 54 of the Statute at the investigation stage.<sup>147</sup> Thus, 'an investigation should in general be initiated without delay and be conducted efficiently in order for it to be effective.'<sup>148</sup>

In addition, any further undue delay in opening an investigation in Nigeria should be assessed against its likely infringement of victims' internationally recognised human rights as provided for in Article 21(3) of the Rome Statute. In a recent decision, the Pre-Trial Chamber of the ICC succinctly captured the impact of delayed preliminary examinations on victims' access to reparative justice:

'...the Prosecutor is mandated to respect the internationally recognized human rights of victims with regard to the conduct and result of her preliminary examination, especially the *rights of victims to know the truth, to have access to justice and to request reparations*, as already established in the jurisprudence of this Court [...] Within the Court's legal framework, the [sic] *victims' rights both to participate in the proceedings and to claim reparations are entirely dependent on the Prosecutor starting an investigation or requesting authorization to do so*. The process of reparations is intrinsically linked to criminal proceedings, as established in Article 75 of the Statute, and *any delay in the start of the investigation is a delay for the victims to be in a position to claim reparations for the harm suffered as a result of the commission of the crimes within the jurisdiction of this Court*.'<sup>149</sup>

In the following sections, this report outlines what Amnesty International considers as some of the major interrelated factors, considered as a whole, would lead to a reasonable conclusion that Nigeria has failed in its obligations under international law and the Rome Statute to investigate and prosecute crimes under international law committed in its territory, and as such support the admissibility of "potential cases" under examination by the OTP.

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<sup>144</sup> International Criminal Court, Pre-Trial Chamber III, *Situation in the Central African Republic, Decision Requesting Information on the Status of the Preliminary Examination of the Situation in the Central African Republic*, 30 November 2006, ICC-01/05-6, p. 4.

<sup>145</sup> ICC, Pre-Trial Chamber I, *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation* (hereafter: Comoros Article 53 Decision), 16 July 2015, ICC-01/13-34, para. 13

<sup>146</sup> ICC, Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018 at para. 84 Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018, para. 84

<sup>147</sup> ICC, Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018 at para. 84-86, Citing: Comoros Article 53 Decision, para. 13; Kenya Article 15 Decision, para. 27; Côte d'Ivoire Article 15 Decision, para. 24; Pre-Trial Chamber I, Situation in Georgia, Decision on the Prosecutor's request for authorization of an investigation, 27 January 2016, ICC-01/15-12, para. 25; Burundi Article 15 Decision, para. 30; For the need to use rule 47 of the Rules to preserve evidence at the preliminary examination stage, see Burundi Article 15 Decision, para. 15; Kenya Article 15 Decision, para. 32; Comoros Article 53 Decision, para. 13

<sup>148</sup> ICC, Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018 at paras 84-86,

<sup>149</sup> ICC, Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018 at para. 88 Citing: Pre-Trial Chamber II, Situation in the Republic of Kenya, Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya, 3 November 2010, ICC-01/09-24, para. 5; Pre-Trial Chamber I, Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, 13 May 2008, ICC-01/04-01/07-474, paras 31-44; Appeals Chamber, Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, 3 March 2015, ICC-01/04-01/06-3129 (A A2 A3), para. 65

# ADMISSIBILITY DUE TO ‘INACTIVITY’ AND LACK OF ANY RELEVANT DOMESTIC PROCEEDINGS

As outlined above,<sup>150</sup> the first question in a complementarity assessment is whether there are or have been any relevant national investigations or prosecutions as expressly stated in Article 17 of the Rome Statute. In other words, the absence of any relevant domestic proceeding, technically referred to as “domestic inactivity”, is in and by itself sufficient to make a situation admissible before the ICC. The OTP’s preliminary examinations policy explains that several factors could contribute to “inactivity”, including the absence of an adequate legislative framework; deliberate focus of proceedings on low-level or marginal perpetrators; or other general indicators of the lack of political will or judicial capacity.<sup>151</sup>

Should it be established that there are or have been relevant national investigations or prosecutions, the OTP proceeds with examining whether such proceedings relate to the “potential cases” being examined by the Office and in particular, whether their focus is on those most responsible for the most serious crimes committed.<sup>152</sup> This assessment of the extent to which relevant national proceedings relate to the “potential cases” [at the preliminary examination phase] is relatively vague due to the fact that the OTP’s investigations are still at their initial stages. As discussed above, the ICC’s admissibility test at the preliminary examination phase is broader than at subsequent trial phases, given that there is not yet a ‘case’, as understood to comprise an identified set of incidents, suspects and conduct.<sup>153</sup> Nonetheless there are established criteria in defining ‘potential cases’ for the purpose of admissibility assessment in this phase.<sup>154</sup>

Amnesty International’s analysis of whether the Nigerian authorities have conducted any relevant domestic proceedings in Nigeria indicates that the Nigerian authorities have not initiated any criminal investigations or prosecutions into those most responsible for Rome Statute crimes committed by the Nigerian military or CJTF. The OTP already noted in 2017 that it is faced with critical information gap on the existence of any domestic proceedings related to the two “potential cases” of crimes allegedly committed by Nigerian security forces.<sup>155</sup> Furthermore, analysis of the mandates, composition and conduct of the two potentially “relevant inquiries”<sup>156</sup> initiated in 2017, the SBI and PIP, confirms that they were never intended or designed to result in criminal prosecutions and as such do not comply with Nigeria’s obligation to investigate and prosecute alleged perpetrators of crimes under international law. The mandates and terms of references of both inquiries did not include specific mandates to identify and recommend individuals for investigation or prosecution.<sup>157</sup> The full findings and recommendations of these two inquiries remain unknown as the government is yet to make public the final reports.<sup>158</sup> But from the summary statement released to public, it is confirmed that at least one of the inquiries - the SBI - has made no recommendations of criminal investigations despite its finding of serious violations and possible crimes, including possible arbitrary arrests, incommunicado detentions, overcrowded and insanitary detention conditions.<sup>159</sup> As far as Amnesty International could confirm, the findings of the two inquiries, the PIP and SBI have not been handed over to any competent investigative authority in Nigeria with the view to conduct any further investigations or criminal proceedings. Amnesty International has thus concluded that the formal outcomes of these inquiries – exonerating all senior military officers – serves to conclusively demonstrate inactivity on the part of the Nigerian authorities.

With respect to crimes committed by Boko Haram Amnesty International is aware of only two cases<sup>160</sup> that may represent proceedings against those ‘most responsible’ (senior Boko Haram members) for serious crimes equivalent to Rome Statute crimes. But the totality of steps undertaken by Nigerian authorities do not reflect meaningful accountability measures sufficient for the widespread criminality committed by the armed group, including as outlined in the OTP’s six potential cases against Boko Haram. The vast majority of cases purportedly investigated, prosecuted and undergoing trial, including those considered in the “mass Boko

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<sup>150</sup> See page 11 above, *The ICC’s Complementarity Assessment: Legal Framework and ICC Jurisprudence*

<sup>151</sup> OTP PE policy, para. 48

<sup>152</sup> OTP PE policy, para. 49

<sup>153</sup> See pp 11-14 above: *The ICC’s Complementarity Assessment: Legal Framework and ICC Jurisprudence*

<sup>154</sup> OTP PE policy, para. 43

<sup>155</sup> OTP PE report 2017, para. 218

<sup>156</sup> OTP PE report 2017, para. 218

<sup>157</sup> See pp 20-25: *Special Board of Inquiry (SBI) and Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP)*

<sup>158</sup> The SBI submitted its report to COAS on 31 May 2017 and while the summary of its findings was shared to Amnesty International and also released to public in a media statement on 14 June 2017, the full report has not yet been made public. The PIP presented its final report to the presidency in February 2018, but this report has not been made public at the time of writing

<sup>159</sup> Executive summary, SBI, July 2017, AHQ DOAA/G1/300/, para 6, p. 8

<sup>160</sup> *FRN v. Kabiru Sokoto* (Convicted Dec. 2013) and *FRN v. Khalid Al Barnawi* (2018)



Harm trials” which commenced in October 2017, appear to have targeted mainly civilians caught in the crossfire. Having examined all available information on the ‘mass trials’ undertaken into suspected Boko Haram members, Amnesty International considers that the trials are either a continuation, and/or an attempt to cover up, the unlawful arbitrary detention of civilians that the organization has previously concluded may constitute part of an attack directed against the civilian population by the Nigerian military.

These trials are not only deeply flawed but reflect the fact, demonstrated above, that the ‘investigations’ completed by the security forces, which have led to the mass trials of ‘Boko Haram suspects,’ focused on the crimes of alleged *support or links to Boko Haram by civilians*, and not the *crimes committed by Boko Haram against the civilian population*.<sup>161</sup> In other words, the Nigerian authorities seem to be prioritizing investigations into the ‘wrong crimes’ and against the ‘wrong people’.

Even were the ‘mass trials’ targeted against members of Boko Haram rather than civilians caught in the cross fire, the low-level of alleged responsibility (none have been charged in the mass trials for holding positions of authority or responsibility within Boko Haram) would further demonstrate that failure of the Nigerian authorities to bring those most responsible for Boko Haram crimes to justice. In its preliminary examinations policy, the OTP states that, ‘the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible’<sup>162</sup> may show inactivity of a state party as well as raise serious concerns about those proceedings’ genuineness.

In addition, applying the *same persons/same conduct* test<sup>163</sup> to all known investigations and prosecutions of alleged ‘Boko Haram members’ – including in relation to the ‘mass trials’ - Amnesty International believes that the nature of the charges brought against the detainees – overwhelmingly for membership to or support of a terrorist organization – demonstrate that these proceedings do not relate to the same persons and same conducts that the OTP is currently investigating.<sup>164</sup> As such, the mass trials of alleged ‘Boko Haram suspects’ cannot be ‘relevant proceedings’ for the purposes of Article 17 of the Rome Statute.

One of the reasons for Nigeria’s failure to investigate and prosecute alleged Boko Haram perpetrators may be its failure to domesticate the Rome Statute and thus to define all crimes under international law as crimes under national law, as well as incorporating definitions which are not consistent with the strictest requirements of international law, creates a serious impunity gap.<sup>165</sup> While a lack of legislation criminalizing war crimes or crimes against humanity does not *per se* render a case admissible before the Court<sup>166</sup>, ‘the absence of the required legislative framework to prosecute the same conduct or forms of responsibility’<sup>167</sup> may lead to a state’s ‘inactivity’ and indicate that a state is unable to investigate or prosecute relevant (complementary) cases. As such, the OTP would be justified – in line with its Preliminary Examination policy – to find Nigeria ‘inactive’ as a result of the absence of relevant domestic proceedings due to its inadequate legislative framework.<sup>168</sup>

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<sup>161</sup> See p. 15: *Proceedings related to members of Boko Haram*

<sup>162</sup> OTP PE policy, para. 48

<sup>163</sup> *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Decision on the Admissibility of the Case Against Abdullah Al-Senussi,” ICC-01/11-01/11-466-Red, 11 October 2013, para. 66: “for the Chamber to be satisfied that the domestic investigation covers the same ‘case’ as that before the Court, it must be demonstrated that: a) **the person subject to the domestic proceedings is the same person against whom proceedings before the Court are being conducted**; and b) **the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court** ... The determination of what is ‘substantially the same conduct as alleged in the proceedings before the Court’ will vary according to the concrete facts and circumstance of the case and, therefore, requires a case-by-case analysis.”

<sup>164</sup> While Amnesty International believes that that “same person, same conduct” test applied by the Office of the Prosecutor is an unsatisfactory standard as it fails to require that domestic proceedings relate to crimes of equivalent gravity to Rome Statute crimes, it is the standard applied by the OTP, and it is evident that even applying this relaxed standard, the ‘mass trials’ would not be relevant to an admissibility assessment. A conviction for an ordinary crime, even when it has common elements with a crime under international law, does not convey the same moral condemnation as if the person had been convicted of a crime under international law. Further, principles of criminal responsibility applicable to ordinary crimes do not include command or superior responsibility, making it difficult or impossible to prosecute commanders or superiors for failing to exercise such authority over their subordinates. See Amnesty International, *Universal Jurisdiction A Preliminary Survey Of Legislation Around The World – 2012 Update*, (Index: IOR 53/019/2012), p. 14

<sup>165</sup> Amnesty International, *Universal Jurisdiction A Preliminary Survey Of Legislation Around The World – 2012 Update*, (Index: IOR 53/019/2012), p. 12

<sup>166</sup> Where the domestic authorities are investigating crimes under international law the ICC’s analysis of the subject matter of the domestic proceedings will focus on the *alleged conduct* and not on its legal characterization, see, *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, (ICC-01/11-01/11-344-Red) at paras 85 to 88: “The Chamber is of the view that the assessment of domestic proceedings should focus on the **alleged conduct** and not its legal characterization. The question of whether domestic investigations are carried out with a view to prosecuting “international crimes” is not determinative of an admissibility challenge. [...] It follows that a domestic investigation or prosecution for “ordinary crimes”, **to the extent that the case covers the same conduct**, shall be considered sufficient. It is the Chamber’s view that **Libya’s current lack of legislation criminalizing crimes against humanity does not per se render the case admissible** before the Court”

<sup>167</sup> OTP PE policy para. 48

<sup>168</sup> OTP PE policy para. 48

## INFORMATION AND ‘IMPUNITY GAPS’ DUE TO INACTIVITY

Throughout the OTP’s preliminary examination reports on Nigeria, reference is made to insufficient information provision from the Nigerian authorities or ‘information gaps’ with respect to national proceedings. In 2017, the OTP described these gaps in information on relevant domestic proceedings as reflecting ‘impunity gaps’<sup>169</sup> which had to be identified and remedied by stakeholders, as part of the OTP’s ongoing admissibility assessment.<sup>170</sup> While, the OTP has not yet gone so far as to say so, Amnesty International believes that persistent information gaps are indicators of a lack of investigative steps.

In 2014, the OTP stated that it was ‘expecting further information from the Nigerian authorities on national proceedings including, but not limited to, those most responsible for alleged crimes by Boko Haram’<sup>171</sup>. The 2014 report does not indicate the alleged criminal conducts for which the defendants were charged, nor the relevance of the cases to the OTP’s preliminary examination, but it raised concerns regarding the information’s relevance, stating that proceedings in Nigeria would have to be ‘substantially the same as those that would likely arise from an investigation into the situation’ and be conducted into ‘those most responsible for the most serious crimes’.<sup>172</sup> The OTP also indicated that ‘information gaps remain[ed] with respect to national proceedings, in particular regarding the *high discrepancy between the reported number of arrests of persons associated with Boko Haram and information on relevant legal proceedings*.’[emphasis added].<sup>173</sup>

In February 2015, the Nigerian authorities informed the OTP that about 150 cases relating to Boko Haram members *at different levels* [emphasis added] had been submitted to the Attorney-General of the Federation for approval. No further information was provided as to the ‘level’ of the Boko Haram members referenced or the scope of any domestic proceedings throughout the Boko Haram command structure. In 2017, the OTP stated that proceedings being undertaken in Nigeria were related to ‘low-level Boko Haram members rather than leadership’,<sup>174</sup> again highlighting the lack of information relevant information provision by the Nigerian authorities.

Amnesty International is deeply concerned that the OTP is allowing itself to be manipulated by the Nigerian authorities through inconsistent, insufficient, irrelevant, and delayed information provision by said authorities. It appears that the provision of information by the Nigerian government of *potentially relevant* open case files and arrests (without – as the OTP detailed in 2014 - information on subsequent relevant legal proceedings) and limited ‘investigative steps’ has served to hold the ICC at bay. This potentially leaves the OTP ‘in limbo’, forcing it to conclude that there is ‘too much domestic activity to be certain ICC judges will find OTP action permissible, but too little domestic activity to close out the preliminary examination in deference to genuine national proceedings’.<sup>175</sup>

The OTP has provided that a ‘refusal to provide information or to co-operate with the ICC’ is a relevant factor in its complementarity assessment of willingness or inability to conduct relevant domestic proceedings and may indicate an intent to shield persons from criminal responsibility<sup>176</sup> or undue delay in undertaking domestic proceedings. It is thus incumbent on the Nigerian authorities to *proactively* share information on a regular basis with the OTP on relevant domestic proceedings if any, without necessary prompting by the OTP.

Amnesty International therefore believes that, in keeping with the ICC Pre-Trial Chamber’s rulings, the OTP should consider that the persistent absence of information to substantiate the Nigerian government’s assertion of ongoing relevant national proceedings, demonstrates a ‘situation of inactivity’<sup>177</sup>. In view of such indicators of such inactivity, an OTP investigation into the Nigeria situation is potentially admissible for the purposes of Article 17 of the Rome Statute.

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<sup>169</sup> See OTP PE report 2017, para. 229: “While the Office requires further information on relevant domestic proceedings, it will continue to hold consultations with the Nigerian authorities and with intergovernmental and non-governmental organizations to assist relevant stakeholders in identifying pending impunity gaps and the scope for possible remedial measures.”

<sup>170</sup> OTP PE report 2013, para. 224, OTP PE report 2017 para. 229

<sup>171</sup> OTP PE report 2014, para. 184

<sup>172</sup> OTP PE report 2014, para. 184

<sup>173</sup> OTP PE report 2014, para. 188

<sup>174</sup> OTP PE report 2017, para. 216

<sup>175</sup> Human Rights Watch, Pressure Point: The ICC’s Impact On National Justice, Lessons from Colombia, Georgia, Guinea, and the United Kingdom, 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/ij0418\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/ij0418_web_0.pdf), p. 13

<sup>176</sup> OTP PE policy para. 51

<sup>177</sup> See para. 66 of the Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute, the *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta And Mohammed Hussein Ali*, 30 May 2011, ICC-01/09-02/11 – “The Appeals Chamber pointed out that the admissibility of the case must be determined “on the basis of the facts as they exist at the time of the proceedings concerning the admissibility challenge”. Thus, in the absence of information, which substantiates Government of Kenya’s challenge that there are ongoing investigations against the three suspects, up until the party filed its Reply, the Chamber considers that there remains a situation of inactivity. Consequently, the Chamber cannot but determine that the case is admissible following a plain reading of the first half of Article 17(I)(a) of the Statute.”

In conclusion, despite the minimal *appearance* of some relevant domestic proceedings, Amnesty International considers that the OTP should determine that the Nigerian government has not conducted any relevant national proceedings for the purposes of Article 17 of the Rome Statute.

## ADMISSIBILITY DUE TO LACK OF GENUINE DOMESTIC PROCEEDINGS

Article 17(1)(b) of the Rome Statute provides that cases are inadmissible before the Court if they have been investigated by a State which has jurisdiction over them and the State has decided not to prosecute the person(s) concerned, *unless the decision(s) resulted from the unwillingness or inability of the State genuinely to prosecute* – so called ‘sham proceedings’. Article 17(2) of the Rome Statute provides the criteria for assessing **unwillingness** or **inability** to *genuinely* carry out the proceedings’ and to assess whether proceedings were conducted in a manner consistent with an intent to bring the person to justice.<sup>178</sup>

Amnesty International’s analysis of the potentially relevant domestic proceedings outlined in the OTP’s 2017 preliminary examinations report,<sup>179</sup> both in relation to Boko Haram and the Nigerian military, demonstrates that the proceedings were largely ‘sham proceedings’ and represent the unwillingness or inability of the Nigerian government to genuinely carry out investigations and prosecution of perpetrators reasonably suspected of Rome Statute crimes.

The following sections outline some of the organization’s findings of key indicators of absence of *genuineness* in domestic proceedings, including emblematic examples relating to manifestly inadequate investigations, concerns of independence and impartiality, unjustified delays and other actions or inactions in proceedings that are either inconsistent with the intent to bring to persons to justice or demonstrative of intent to shield persons from criminal responsibility.<sup>180</sup>

## PROCEEDINGS WITH NO INTENT TO RESULT IN CRIMINAL PROSECUTIONS

Numerous factors indicate the lack of an intent to bring persons to justice and/or the deliberate intent to shield persons from criminal responsibility across all the potentially relevant domestic proceedings identified by the OTP, including with respect to the two inquiries related to alleged crimes committed by Nigerian military that were initiated in 2017. Analysis of the mandate and conduct of these two inquiries gives the first indication.

As discussed above, despite wide “investigative” powers, neither the SBI and PIP were mandated to identify and recommend individuals for criminal investigation or prosecution.<sup>181</sup> The legal basis on which the PIP was established was never clarified and the government and the panel itself ignored calls to clarify this.<sup>182</sup> The SBI<sup>183</sup> appears to be set up under section 172 of the Armed Forces Act,<sup>184</sup> which states that none of the evidence given to investigative body established therein would be admissible in court martial procedures,

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<sup>178</sup> See OTP PE policy, Article 17(2) and paras 50–59, specifically, (a) are proceedings undertaken for the purpose of *shielding the person(s)* from criminal responsibility for crimes within the ICC jurisdiction? (b) has there been an *unjustified delay* in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice? (c) *are proceedings conducted independently or impartially* and in a manner consistent with an intent to bring the person concerned to justice? In assessing unwillingness and inability to investigate and prosecute, the OTP will also consider whether any or a combination of the factors provided in its preliminary examinations policy impact on the proceedings to such an extent as to vitiate their genuineness?

<sup>179</sup> OTP PE report 2017, para. 218

<sup>180</sup> OTP PE policy, paras 50–54

<sup>181</sup> See pp 20-25: *Special Board of Inquiry (SBI) and Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP)*

<sup>182</sup> Amnesty International, *Nigeria: Ensure Independence and Effectiveness of the Presidential Investigation Panel* (Index: AFR 44/7075/2017)

<sup>183</sup> Terms of Reference were shared with Amnesty International in a letter from the President of the SBI dated 27 April 2017, reference: AHQ DOAA/GI/300/195 ToR: a. Evaluate the general conditions of detainees and their handlers in military detention facilities across Nigeria; b. Examine the reasons that are adduced by human rights groups for alleged cases of deaths in military detention facilities across Nigeria. c. Investigate any allegations of summary executions in Giwa Barracks on 14 Mar 14, or in any other NA barracks on any day; d. Investigate all known allegations of torture, forced disappearance, unlawful killing and illegal detention in relation to Nigerian Army operations; e. Determine the veracity of the report by human right groups in relation to the allegations against some retired senior officers. f. Evaluate the conditions of Internally Displaced Persons (IDPs) camps across Nigeria; g. Examine the reasons that are adduced by human rights groups for alleged cases of deaths that have occurred in IDP camps across Nigeria; h. Investigate the role played by the Nigerian Army during the rally by Indigenous People of Biafra (IPOB) in Onitsha on 30 May 16 and Aba on 9 Feb 16; i. Investigate and elucidate any other circumstance or information relating to the matters as the Board may deem important.

<sup>184</sup> Letter to Amnesty International from the President of the SBI dated 27 April 2017, reference: AHQ DOAA/GI/300/195

unless a witness had given false evidence.<sup>185</sup> Hence both inquiries were never intended or designed to result in criminal prosecutions.

There is no independently verifiable information on how the SBI conducted its inquiry and the extent to which it gathered, verified and assessed evidence independently. But from available information, numerous flaws in the SBI's inquiry process point to the SBI as constituting a sham proceeding which was undertaken for the purpose of shielding the persons concerned from criminal responsibility.<sup>186</sup> For example, the SBI was created on 8 March 2017 with its final report submitted on 18 May 2017. While expedient investigations may indicate a willingness to conduct relevant national proceedings, in this instance, given the wide scope and complexity of allegations it was expected to investigate, it is extremely doubtful that the pace of the investigation allowed for an effective international criminal investigation. The SBI repeatedly acknowledged it was not conducting its own investigations into several allegations and critical evidence made available to it, citing the lack of forensic evidence analysis or absence of "concrete proof", thereby indicating, on the most charitable interpretation, that the commission was established as a quasi-judicial body and expected NGOs such as Amnesty International to conduct its inquiries on its behalf. For example, it dismissed information of a possible mass grave site stating that 'no specific description of the location of the alleged pit in the [Amnesty International] report',<sup>187</sup> without itself commissioning any investigations into the reasonable suspicion demonstrated by Amnesty International that such a burial ground existed.

Indeed, the SBI's analysis of allegations, and its reasoning in dismissing most, appears more an attempt to undermine the facts and evidence presented in Amnesty International's reports than conducting genuine investigation into the allegations. The SBI disregarded most allegations and evidence of human rights violations and crimes alleged against the military, including allegations of extrajudicial killings, enforced disappearances and torture, as unsubstantiated, rather than attempting to substantiate them. It dismissed the possibility of senior military officers being investigated for possible individual and command responsibility – citing absence of concrete proof, lack of forensic evidence and/or lack of direct link between the officer and documentary and other evidence presented.<sup>188</sup><sup>189</sup> Despite findings of congestion, poor sanitation in detention centers as well as detainees lack of access to legal representatives and indications of arbitrariness of arrests, the SBI did not appear to have made any recommendations for investigation into any individuals for their possible criminal responsibility. Amnesty International therefore believes the SBI's report and its purported 'investigation' demonstrates an unwillingness to genuinely investigate, including on the grounds of ignoring evidence or giving it insufficient weight, and non-admission of evidence.<sup>190</sup>

Of course, the Rome Statute provides for the possibility that national level investigations may exonerate certain suspected perpetrators and that a case will not automatically be admissible before the ICC if a national level investigation has been undertaken by a state which has decided not to prosecute the person concerned. However, the apparent lack of *any* criminal investigations and prosecutions of any senior military or civilian leaders for crimes equivalent to Rome Statute crimes shows that the proceedings were conducted by the Nigerian authorities in a manner inconsistent with an intent to bring perpetrators to justice.

The government's failure to disclose the full reports of the SBI and PIP, the two potential proceedings cited by the OTP in its 2017 report, further indicate the potential 'intent to shield a person from criminal responsibility'.<sup>191</sup> The government only published selected information from the SBI report and it is yet to disclose the PIP report, which was presented to the Presidency in February 2018. The two proceedings should be considered against the history in Nigeria of instituting commissions of inquiry that do not lead to concrete investigations and prosecutions. As discussed above, over 20 different forms of commissions and panels of inquiries have been set up by various organs of the Nigerian government relating to the conflict in the north-east between 2009 and 2018, most of which relate to conduct of the military operations in the region and/or in response to specific allegations of serious crimes and human rights violations committed by members of the military and CJTF in their operations in the region. In addition, the statutorily independent national human right body, the National Human Rights Commission (NHRC), has set up at least four investigative inquiries between 2013 and 2018.<sup>192</sup> Very little is known about the conduct of these inquiries and their findings as most have not been made public. But all available information suggests that none of

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<sup>185</sup> 172 Boards of inquiry (4) Evidence given before a board of inquiry shall not be admissible against a person in a proceeding before a court-martial or at a summary trial by the commanding officer or appropriate superior authority other than a proceeding for an offence under section 101 of this Act or for an offence under section 114 of this Act when the corresponding offence is perjury,

<sup>186</sup> See OTP PE policy, paras 50-54

<sup>187</sup> Media Briefing by Major General NE Angbazo, para. 32, p. 7

<sup>188</sup> See p. 22 above, para. 3, *Special Board of Inquiry (SBI)*

<sup>189</sup> Media Briefing by Major General NE Angbazo, p.4

<sup>190</sup> OTP PE policy, para. 51

<sup>191</sup> OTP PE policy, para. 51

<sup>192</sup> See Annex I

these inquiries have ever led to the investigation and prosecution of persons for any crimes under international law.

In addition to the concerns Amnesty International has with the mandates and the conduct of the inquiries, the composition of the panels of both inquires and their conduct raises concerns relating to the impartiality and independence of the proceedings.<sup>193</sup> The more flagrant case is that of the SBI, which was mainly composed high ranking military officers, four serving and three retired.<sup>194</sup> Investigation of alleged crimes committed by military, including possible criminal responsibility of senior military officers, by a body mainly composed of military officers raises the clear concern that those investigating and prosecuting the incidents could potentially be connected to the perpetrators as their commanders or subordinates.<sup>195</sup> At the very least, suspected military perpetrators and those responsible for the investigation were ‘connected’ as members of the military. The central role of military figures in such inquiries further raises significant concerns of undue influence, if not interference, in the proceedings by those with significant military seniority and power, which may have influenced the conduct of the hearings, as well as intimidating victims, witnesses and those quasi-judicial personnel taking part in them. Public statements made by the COAS, the head of the army and the most senior military official, further raises questions on the true motive behind constituting SBI. For instance, during his inauguration address, the COAS noted that allegations of violations were “demoralising” to Nigerian army personnel, thereby suggesting SBI have been set up to improve the image of the army as opposed to investigating possible crimes.<sup>196</sup>

In relation to the PIP,<sup>197</sup> the appointments of a serving Major-General from the military, a representative of the Office of the National Security Adviser (NSA) and a former member of the SBI into its membership, also raise similar concerns of impartiality and independence. While it is difficult to independently scrutinize the findings, methodology and veracity of information gathered and considered by the PIP due to government’s failure to publish its final report, certain aspects of its conduct during its inquiry further highlight concerns of impartiality and lack of respect for principles of due process in PIP’s proceedings. For instance, as result of the adversarial court procedures adopted by the PIP and the manner in which its “public” hearings were conducted, the PIP appears to have put individuals making allegations and the allegations themselves on trial rather than investigating the allegations of crimes and violations and, where necessary, recommending the prosecution of alleged perpetrators. In effect, the process appears to have transposed adversarial court procedures to an inquisitorial process - requiring victims to prove allegations they made and subverting the investigative obligation of the state.<sup>198</sup>

## MANIFESTLY INADEQUATE INVESTIGATIONS

Manifestly insufficient steps in investigation or prosecution also strongly indicate a lack of willingness to bring perpetrators to justice.<sup>199</sup> The ICC has held that the words ‘case is being investigated’ in Article 17(1)(a) of the Rome Statute require domestic authorities to take ‘tangible, concrete and progressive investigative steps’ aimed at ascertaining whether individuals are criminally responsible for the same conduct that is alleged in the case before the Court.<sup>200</sup> The mere preparedness to take such steps or the investigation of other suspects is not sufficient<sup>201</sup> - ‘investigative steps’ must be taken.’ National authorities must take steps directed at ascertaining the responsibility of *those suspects* allegedly responsible for the conduct outlined by the OTP, ‘for instance by *interviewing witnesses or suspects, collecting documentary evidence, or carrying*

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<sup>193</sup> OTP PE policy, paras 53 and 54

<sup>194</sup> Major General AT Jibrin (retired)-President; Barrister Olawale Fapohunda; Col PC Izukanne (rt); Barrister Tony Ojukwu; Brigadier General A Dadan-Garba (rt); Brigadier General OL Olayinka; Colonel LB Mohammed; Colonel UM Wambai; Lieutenant Colonel CM Akaliro.

<sup>195</sup> OTP PE policy, para. 54

<sup>196</sup> The Daily Trust, *Army set up board of inquiry on human rights abuses*, 8 March 2017. <https://www.dailytrust.com.ng/news/general/army-set-up-board-of-inquiry-on-human-rights-abuses.html>

<sup>197</sup> The Daily Trust, *Army set up board of inquiry on human rights abuses*, 8 March 2017. <https://www.dailytrust.com.ng/news/general/army-set-up-board-of-inquiry-on-human-rights-abuses.html>

<sup>198</sup> See p. 23 on *Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP)*

<sup>199</sup> OTP PE policy, para. 51

<sup>200</sup> Pre-Trial Chamber I, *Prosecutor v Simone Gbagbo*, Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo, 11 December 2014, ICC-02/11-01/12-47-Red, para. 65; Appeals Chamber, *Prosecutor v Simone Gbagbo*, Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo”, 27 May 2015, ICC-02/11-01/12-75-Red, para. 122

<sup>201</sup> See *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, (Case No. ICC-01/09-02/11-274), ICC Appeals Chamber, *Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”*



out forensic analyses.<sup>202</sup> Furthermore, ‘the appropriateness of the investigative measures, the amount and type of resources allocated to the investigation, as well as the scope of the investigative powers of the persons in charge of the investigation’ are all relevant factors for assessing ‘inactivity’.<sup>203</sup>

In its Burundi Article 15 decision, the Pre-Trial Chamber further held that investigative steps should continue until a ‘comprehensive investigation’ had been carried out, and perpetrators brought to justice. States should undertake ‘crucial investigative steps’<sup>204</sup> to make a ‘proper assessment of circumstances’ outlined in potential cases. Amnesty International believes that ‘crucial investigative steps’ should be considered as part of a ‘benchmarks’ exercise which should be implemented by the OTP in its preliminary examination process, with clear deadlines set for their fulfilment by the Nigerian authorities.<sup>205</sup>

Based on available information, it appears that the Nigerian authorities have not identified the ‘crucial investigative steps’ they have taken, and the OTP has similarly not (publicly) detailed what these might entail. For instance, indictments of low-level perpetrators in the overwhelming majority of cases related to crimes committed by Boko Haram may indicate that investigations have not taken place throughout command structures and hierarchies. In relation to crimes allegedly committed by Nigerian military, the government of Nigeria has not made public full information on how panels and commissions of inquiry it has established over the years, including the PIP and SBI, conducted their ‘investigations’. Hence the extent to which the inquiries independently gathered information and evidence and/or compelled relevant authorities to provide relevant information for their investigations is unclear.

Analysis of available evidence indicates that the PIP and SBI proceedings were marked throughout by manifestly insufficient steps in their investigation including: deviations from established practices and procedures for international criminal investigation; patterns of ignoring evidence or (where it was presented) giving it insufficient weight; inability or unwillingness to conduct forensic examinations; failures of disclosure and/or undue admission or non-admission of evidence and; a lack of resources allocated to the proceedings which impacted on the inquiries’ capacity to undertake forensic investigations and other necessary steps in investigation.

Amnesty International could not verify the investigative and forensic competencies of members of the SBI and the PIP or if any budget was made available to the PIP and SBI for forensic investigations. But as discussed above, neither inquiry seems to have conducted forensic examinations or exhumations.<sup>206</sup> The SBI has publicly acknowledged that it lacked such capacity, and so did members of the PIP.<sup>207</sup> Without forensic expertise and capacity, these investigations disregarded the wealth of evidence available. Publications of Amnesty International, including photographic and video evidence<sup>208</sup> have demonstrated the likely situation of and mass graves<sup>209</sup>, the proper exhumation of which are crucial to establish causes and circumstances of death. Neither the PIP or the SBI have attempted to open mass graves, the exact locations of which were provided for instance in Amnesty International’s reports,<sup>210</sup> in order to verify identities and causes of death.

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<sup>202</sup> See *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, (Case No. ICC-01/09-02/11-274), ICC Appeals Chamber, *Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute”*, 30 August 2011, para. 1 – see also See J. Stigen, *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity* (Martinus Nijhoff Publishers, 2008), p. 203. Stigen notes that “there must be an examination of some detail reflecting a sufficient measure of thoroughness. Otherwise it will be considered as inaction”

<sup>203</sup> Burundi Article 15 OTP request at para. 148 *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Decision on the Admissibility of the Case Against Abdullah Al-Senussi”, ICC-01/11-01/11-466-Red, 11 October 2013, para. 210

<sup>204</sup> Burundi Article 15 authorization, paras 164 and 174

<sup>205</sup> See p. 41: *Recommendations to the ICC, Office of the Prosecutor (OTP)*

<sup>206</sup> See pp 20-25: *Special Board of Inquiry (SBI) and Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP)*

<sup>207</sup> This was confirmed by some members of the PIP to Amnesty International during its appearance in hearings in Abuja on 31 October and 1 November 2017

<sup>208</sup> See for example Amnesty International publications: *Gruesome footage implicates military in war crimes*, 5 August 2014. <https://www.amnesty.org/en/press-releases/2014/08/nigeria-gruesome-footage-implicates-military-war-crimes/>; *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

<sup>209</sup> See for example Amnesty International publications: *More than 1,500 killed in armed conflict in north eastern Nigeria in 2014, 31 March 2014*, <https://www.amnesty.org/en/latest/news/2014/03/nigeria-war-crimes-and-crimes-against-humanity-violence-escalates-north-east/>; *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

<sup>210</sup> In March 2014, for example, a map with the suspected locations of mass graves of those suspected to be killed by the military on 14 March 2014 was shared. Amnesty International, *Nigeria: More than 1,500 killed in armed conflict in North-Eastern Nigeria in early 2014, 31 March 2014* (Index: AFR 44/004/2014). Amnesty International letter dated 31 March 2014, Ref. AFR 44/2014.026. Another exact location of a possible mass grave was also included in Amnesty International’s report ‘*Bullets were raining everywhere: Deadly repression of pro-Biafra activists*’ (Index: AFR 44/5211/2016)

In other ICC situations, forensic examinations and proper analyses of alleged crime scenes have constituted ‘crucial investigative steps’ which must be taken by states parties<sup>211</sup> – ‘investigations [are] necessary in order to properly analyse the alleged crime scene[s] before [they are] altered and the bodies [...] disposed of by the security forces’.<sup>212</sup> In the same vein, questioning is required to ascertain the circumstances of the death of those persons.

In addition, despite the abundant photographic and video evidence, which show amongst other things faces of perpetrators, neither commission ensured that evidence be reviewed by experts. In some cases, it was simply set aside by military officials as “doctored”.<sup>213</sup> In other cases the military stated it would investigate the allegations, but no report was ever made public. For example, following Amnesty International’s publication of video footage showing members of Nigeria’s military slitting the throats of detainees, the Nigeria Defence Headquarters (DHQ) announced that this was “alien” to the Nigerian military, but they would investigate it.<sup>214</sup> No investigation report was made public and Amnesty International is not aware that any independent investigation of the individuals identified in these videos by any competent body. The Nigeria army claimed in 2016 that the military police found that no member of the army was involved in this incident.<sup>215</sup>

Witnesses to the incidents outlined in the eight potential cases should also be fully questioned – another ‘crucial investigative step’ that would likely be resulting in their testimony in relevant domestic cases<sup>216</sup>. While some previously instituted commissions of inquiry and the PIP requested memorandums and organized public hearings, it remains unclear whether any of them identified victims and eye witnesses for confidential interviews to verify allegations. The PIP for example, encouraged those with “genuine and verifiable cases of alleged human rights abuses” to submit memorandums and present “verifiable evidence”.<sup>217</sup> By doing so, the panel transposed adversarial court procedures to an inquisitorial process - requiring victims to prove allegations they made and subverting the investigative obligation of the State. There has been no indication that the PIP interviewed, or ensured the interviews of victims, witnesses and experts beyond the public hearings, including members of the military.

The Nigerian authorities have not publicly announced that any of the inquiry panels they established had the power to subpoena witnesses to give information and as far as Amnesty International could verify, neither SBI or PIP compelled witnesses to testify. In this regard, the ICC Pre-Trial Chamber has held that “comprehensive investigations’ require their own powers or the power to seize other authorities to compel persons who may have been in possession of relevant information to appear before them, as well as providing persons with the necessary protective measures”<sup>218</sup>.

In relation to the gathering of witness testimony, the OTP provides in its preliminary examinations policy that ‘the absence of conditions of security for witnesses, investigators, prosecutors and judges or the lack of adequate protection systems’ is an indicator of a state’s inability to conduct relevant domestic proceedings. Related to this, the intimidation of victims or witnesses, is also an indicator that proceedings are not conducted genuinely. In this regard, most inquiries in Nigeria did not have any protection for witnesses and victims in place. In 2011, the Presidential Committee on the Security Challenges in the North-East Zone of Nigeria observed that the public, civil society and traditional and religious leaders were “reluctant to come out and provide information”, possibly due to fear and “lack of assurances in protecting informants, by security forces.”<sup>219</sup> In 2017, in Enugu, a [representative of the NHRC] told the PIP that there were hardly any victims and witnesses out of fear of the military.<sup>220</sup> In relation to the SBI, it is unclear what protection measures were taken to ensure detainees, victims and witnesses could interact freely and confidentially.

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<sup>211</sup> Burundi Article 15 authorization decision, paras 148, 164, 174

<sup>212</sup> Burundi Article 15 authorization decision, para. 172

<sup>213</sup> See Defence HQ Press Release, *New plot against operations of Nigerian military - Director Defence Information*, 30 May 2014. <http://www.nta.ng/news/20140530-new-plot-against-operation-of-nigerian-military-defence-press-release/>: “The campaign which is to rely heavily on doctored and falsified audio visual materials”

<sup>214</sup> DHQ, *Defence Headquarters investigating Amnesty International video allegations of human rights abuse by Nigerian Military*, 5 August 2014, [www.defenceinfo.mil.ng/defence-headquarters-investigating-amnesty-international-videoallegation-of-human-rights-abuse-by-nigerian-military/](http://www.defenceinfo.mil.ng/defence-headquarters-investigating-amnesty-international-videoallegation-of-human-rights-abuse-by-nigerian-military/)

<sup>215</sup> National Human Rights Commission, *Nigerian military human rights dialogue, First progress report*, 9 August 2016. [www.nigerianbar.org.ng/index.php/downloads/send/8-publications/28-nigerian-military-human-rights-dialogue-1st-progress](http://www.nigerianbar.org.ng/index.php/downloads/send/8-publications/28-nigerian-military-human-rights-dialogue-1st-progress)

<sup>216</sup> Burundi Article 15 authorization decision, para. 173

<sup>217</sup> PIP Rules of Procedure, section 7.4

<sup>218</sup> Burundi Article 15 authorization decision para. 164 and Pre-Trial Chamber I, *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the Admissibility of the Case against Saif Al-Islam Gaddafi (“Gaddafi Admissibility Decision”), 31 May 2013, ICC-01/11-01/11-344-Red, paras 209-211; Pre-Trial Chamber I, *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the Admissibility of the Case against Abdullah Al-Senussi (“Al-Senussi Admissibility Decision”), 11 October 2013, ICC-01/11-01/11-466-Red, para. 283

<sup>219</sup> Final Report of the Presidential Committee on Security Challenges in the North-East zone of Nigeria (Galtimari Committee), para. 14, p. 5

<sup>220</sup> Amnesty International observation, public hearing in Enugu, October 2017

It is likely that – as a result - victims and witnesses with crucial testimonies related to potential criminal investigations have not come forward. In this regard, the Pre-Trial Chamber’s recent Burundi decision has specifically held that states are not excused from carrying out investigations by simply highlighting that witnesses were not willing to come forward – ‘it is ‘not up to [...] families to bring “another version of the events” but incumbent on [national-level inquiries] to investigate, using all the means as its disposal, and therefore to give proper consideration to all hypotheses.’<sup>221</sup>

Numerous other factors also highlight the manifestly insufficient investigative steps conducted by the PIP and SBI. For instance, the SBI’s ‘investigations’ appear to be conducted through ‘reviews of submissions and documentation’; interviews; and field visits to six detention facilities,<sup>222</sup> five IDP camps in Borno, Yobe and Adamawa States<sup>223</sup> and Anambra, Enugu and Abia States.<sup>224</sup> While the Board stated publicly that it reviewed the documents Amnesty International referred to in its 2015 report and the videos Amnesty provided, there is no indication that the SBI did its own independent investigation into the allegations and the Board did not clarify its methodology for these reviews.<sup>225</sup> It is also unclear what level of military information the SBI had access to. The media briefing stated that the board reviewed only “several” internal military documents which contained evidence that human rights violations occurred with knowledge of the chain of command. Likewise, while the media briefing did refer to earlier military panels and their reports into Amnesty International’s findings of human rights violations, the board only reviewed “some” of these reports.<sup>226</sup>

Similarly, the 2017 Presidential Investigation Panel did not appear to investigate the allegations of violations and crimes prior to holding public hearings. Rather, petitioners and, where they could afford them, their legal representatives had to present the evidence and propose witnesses. Neither did the PIP indicate that it had engaged the services of professional criminal investigators to further consider and investigate evidence submitted in petitions and at the public hearings. While the Panel members appear to have organized some field visits - including to military detention and a military cemetery in Maiduguri – the PIP did not conduct or order forensic investigation of sites where crimes under international law and other serious violations and abuses of human rights have allegedly occurred, including mass burial sites and mortuaries. It also remains uncertain if the PIP requested, secured and independently examined critical documentary evidence from the military relevant to its investigation of allegations including mass arbitrary arrests, death in custody and extrajudicial executions.

## SHAM ‘BOKO HARAM TRIALS’

As discussed above, three ‘mass trial’ sessions have taken place in Nigeria since 2017 before the Federal High Court of Abuja sitting in Wawa military cantonment in Kainji, Niger State.<sup>227</sup> However, not only are these trials not relevant proceedings for the purposes of Article 17 of the Rome Statute,<sup>228</sup> Amnesty International believes these ‘sham’ trials attempted to hide the inaction of the Nigerian authorities with regards to accountability for more serious crimes committed by Boko Haram and to give a ‘vener’ of accountability in Nigeria.

Mass trial proceedings against civilians and alleged low-level Boko Haram members and supporters in north-east Nigeria have been justified by classifying those held or tried as ‘insurgents’ or ‘terrorists’ and have been undertaken in an attempt to conceal the commission of crimes by the Nigerian military against the accused persons themselves and the inaction of the Nigerian authorities with regards to accountability for the heinous crimes committed by Boko Haram. These proceedings indicate that the Nigerian authorities have not been able to conduct investigations into the heinous crimes committed by Boko Haram independently or impartially and in a manner consistent with an intent to bring those most responsible to justice. These conclusions are based on the arbitrary nature of the arrests and detentions of suspects; the inhumane treatment of detainees and the refusal or failure of the state to bring them before the courts for periods of up to five years; the failure to ‘investigate’ and charge crimes under international law and other serious abuses of human rights; the investigative methodology of the security forces (or lack thereof) and the reliance on

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<sup>221</sup> Burundi Article 15 authorization decision, para. 173

<sup>222</sup> The military detention facilities in Giwa Barracks, Yola, Kainji, as well as Maximum security prison in Maiduguri and Kirikiri Maximum and Medium security prisons in Lagos states

<sup>223</sup> Dalori and Bakassi Camps in Borno State, Pompomari Camp in Yobe State, the NYSC and Malkohi IDP camps in Adamawa State

<sup>224</sup> In all states, the SBI interacted with the Governor, Commissioner of Police and Director of DSS. The board also interviewed “detainees and their handlers, camp officials, IDPs, eye witnesses, local residents and other relevant stakeholders”

<sup>225</sup> According to the statement released to media, “the SBI based its findings on a “reasonable ground to believe” standard of proof”

<sup>226</sup> Media Briefing by Major General NE Angbazo.

<sup>227</sup> See p. 15, *Proceedings related to members of Boko Haram*

<sup>228</sup> See pp 28-29, *Admissibility due to ‘inactivity’ and lack of any relevant domestic proceedings*

confessions and guilty pleas following prolonged incommunicado detention in inhuman conditions.<sup>229</sup> These concerns place the convictions of those tried in grave doubt, and strongly indicate that the proceedings cannot be considered genuine proceedings for the purpose of an Article 17 admissibility assessment.

With reference to the OTP's indicators, Amnesty International believes that these proceedings constitute 'sham' proceedings - undertaken to provide an appearance of accountability – with the ultimate effect of shielding perpetrators from accountability. Available information indicates that authorities hurriedly 'prosecuted' individuals in these mass trials, most of whom had been unlawfully detained for years, and deviated from established practices and procedures<sup>230</sup> for conducting trial proceedings in Nigeria. The trial sessions took place in several improvised court chambers within the military detention facility, each presided by a judge of the Federal High Court of Abuja who had travelled to Kainji, with simultaneous hearings over the course of two to four days.<sup>231</sup> The accelerated procedure and exceptional sitting demonstrated the judicial authorities' intention to conclude as many cases as possible at each trial session.

The mass trials concerned detainees who were often arbitrarily arrested due to mistaken or highly questionable identification practices. The steps taken in the investigation or prosecution of suspects were subsequently 'manifestly insufficient'<sup>232</sup> as documented by Amnesty International.<sup>233</sup> Detainees were often not informed of the reasons for their arrest or their detention and were transferred to military detention facilities without having been charged – indeed, after months or years of detention.<sup>234</sup> Those who were then charged were subject to manifestly inadequate prosecution practices, as demonstrated through the prosecution of vast majority of detainees for minor offences and with 'crimes' related to their alleged Boko Haram membership.

The absence or lack of evidence in the mass trials was also flagrant: often no witnesses were brought to court, nor any type of material evidence presented.<sup>235</sup> The OTP has provided that proceedings characterized by severe evidential failings (failures of disclosure, fabricated evidence, non-admission of evidence)<sup>236</sup> would be considered as ingenuine for the purposes of an admissibility assessment. Similarly, the OTP has provided that manipulated or coerced statements indicate 'sham' or ingenuine proceedings. In all trial sessions that Amnesty International observe or judgements it reviewed, there was *not one* instance where evidence other than confessions was used.<sup>237</sup> Many defendants interviewed by Amnesty International claimed that they were pressured to plead guilty, while cases where the defendants refused to plead guilty were adjourned.

The reliance on untested guilty pleas and/or confessional statements made by detainees who had been subjected to months or years of arbitrary detention, torture or other forms of ill-treatment in military detention facilities<sup>238</sup> strongly indicate that the proceedings should not be considered genuine.

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<sup>229</sup> See p. 15, *Proceedings related to members of Boko Haram*; Amnesty International observation reports; Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015).

<sup>230</sup> OTP PE policy, para. 51

<sup>231</sup> See p. 15, *Proceedings related to members of Boko Haram*

<sup>232</sup> OTP PE policy, para. 51

<sup>233</sup> See p. 15, *Proceedings related to members of Boko Haram*

<sup>234</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015); Amnesty International, 'They betrayed us': Women who survived Boko Haram raped, starved and detained in Nigeria (Index: AFR 44/8415/2018).

<sup>235</sup> See p. 15, *Proceedings related to members of Boko Haram*

<sup>236</sup> OTP PE policy, para. 51

<sup>237</sup> Amnesty International conclusions here are based on both first-hand observations of the July 2018 trials and analysis of additional 52 judgments of the Federal High Court sitting in Kainji

<sup>238</sup> Amnesty International, *Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian military* (Index: AFR 44/1657/2015)

## EGREGIOUS VIOLATIONS OF HUMAN RIGHTS

Further to Amnesty International's assessment that the 'mass trial' proceedings should be considered 'sham', Amnesty International also believes that the 'mass trials' concerning 'Boko Haram suspects' pass the threshold of the 'egregious violations' test determined by the ICC Appeals Chamber.<sup>239</sup> This report does not allow for a full elucidation of the shocking and widespread human rights violations Amnesty International documented in its monitoring of the 'mass trials'. But as discussed above, defendants appear to be victims of arbitrary arrests, unlawful prolonged and incommunicado detentions, torture and other ill-treatment; the trials were marked with prosecutions without evidence and convictions largely based on unreliable, untested confessions and guilty pleas; defendants lacked adequate access to legal defence before and during trials; no interpreters were made available to the defendants, who did not always speak the language used in court; and all trial sessions were unduly rushed indicating the judges did not have appropriate time to adequately examine and deliberate on each case.<sup>240</sup>

Consequently, Amnesty International strongly believes that the 'mass trial' proceedings fall so far below international standards of fairness - due to the violations of defendants' fundamental rights<sup>241</sup> - that they are incapable of constituting investigations or prosecutions for the purpose of an Article 17 admissibility assessment and cannot be regarded as providing any genuine form of justice to the suspects. In effect, the 'mass trials' are not consistent with an intent to bring reasonably suspected Boko Haram perpetrators to justice.<sup>242</sup>

Pursuant to Article 21 (3) of the Rome Statute, the Court must apply and interpret law 'consistent with internationally recognised human rights'. The OTP must therefore examine whether, in the mass trial proceedings in Nigeria, principles of due process have been followed, as provided in article 67 of the Rome Statute, in international law instruments and, under customary international law. The widespread instances of fundamental fair trial violations must lead to the conclusion that minimum fair trial guarantees under Article 14(3) ICCPR had been violated. Amnesty International believes that the due process violations it has observed in the 'mass trials' of Boko Haram members, amounting to 'violations of the fundamental rights of the accused' have affected the independence or impartiality of the proceedings such that (pursuant to the OTP's Preliminary Examination policy<sup>243</sup>) Nigeria must be held as either unwilling or unable genuinely to conduct relevant domestic proceedings.<sup>244</sup> More fundamentally these human rights and fair trial violations are so egregious that it must be concluded that those brought before the courts are not those responsible for the crimes that the OTP would be investigating and that therefore these trials are not a genuine attempt to ensure accountability for crimes committed by Boko Haram.

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<sup>239</sup> See *The Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, ICC-01/11-01/11-565, Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 titled 'Decision on the admissibility of the case against Abdullah Al-Senussi', 24 July 2014, para 3 (hereafter Al-Senussi Appeals Chamber Judgment).

<sup>240</sup> See p. 15, *Proceedings related to members of Boko Haram*

<sup>241</sup> The international framework of fundamental safeguards against unfair trials is made up of treaties and provisions of non-treaty instruments. The International Covenant on Civil and Political Rights - in particular Article 14 - sets out a number of core principles of fairness as recognized by the international community, including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(3) ICCPR provides minimum fair trial guarantees in criminal proceedings. Article 67 of the Rome Statute provides for rights of the accused at the ICC and mirrors the international standards for fair trials as set out in Article 14 ICCPR. The right to a fair trial in non-international armed conflict is guaranteed in both treaty law and customary international law. The primary international humanitarian law provisions concerning the right to fair trial in non-international armed conflicts are found in Article 3 common to all four Geneva Conventions and Article 6 of Protocol II.

<sup>242</sup> Al-Senussi Appeals Chamber Judgment, para. 3

<sup>243</sup> OTP PE policy, para. 55

<sup>244</sup> OTP PE policy, para. 57

# CONCLUSION AND RECOMMENDATIONS

The Office of the Prosecutor of the International Criminal Court is considering eight possible cases relating to the commission of Rome Statute Crimes in Nigeria. Two of these cases relate to alleged crimes by the military and the CJTF, while six relate to crimes committed by Boko Haram. This report has demonstrated that the Nigerian government is not willing and able to bring alleged military or CJTF perpetrators of Rome Statute crimes to justice and that on the whole they have failed to bring Boko Haram perpetrators to justice.

It is crystal clear that no genuine investigations and prosecutions have been initiated against the military and the CJTF. To the extent the SBI and PIP ‘investigated’ allegations against members of the military and determined no basis to proceed, the proceedings constitute ‘sham proceedings’ to provide a veneer of accountability in Nigeria, and specifically to shield those responsible from accountability.<sup>245</sup> The proceedings sought to cover up the commission of crimes, to avoid a full investigation into the perpetrators and incidents outlined in the potential cases, and to shield persons concerned from criminal responsibility.

The following observations demonstrate that “proceedings” regarding crimes committed by the military have not been sufficient to meet Nigeria’s obligations under international law and would not bar the admissibility of cases brought before the ICC:

- i. The mechanisms established do not constitute ‘national criminal investigations’ in the technical scope of the term or within the meaning of Article 17(1)(a)-(b) of the Statute. The mechanisms are generally administrative in nature and do not have full (or any) investigatory powers and do not conduct criminal investigations.
- ii. None of the domestic inquiries instituted over the last ten years, and in particular the SBI and PIP, considered the criminal responsibility of those relevant person(s) or conduct(s) of those most responsible for crimes under international and which are or would be the focus of the potential cases before the ICC investigation. The mechanisms did not identify any suspected perpetrators nor refer persons to the competent authorities, and no arrests and/or charges have been brought.
- iii. The proceedings did not lead to any *prosecutions* concerning allegations against perpetrators who are ‘most responsible’, nor consider whether superiors or leaders of the units identified in the potential cases bore any responsibility or should be called to account.
- iv. None of the mechanisms established by the Nigerian authorities have led to any recommendations for further ‘crucial investigative steps’ of relevance to the potential cases, further accountability, or any other follow-up action. Rather the SBI and PIP exonerated all senior military officers.

There is conflicting information from the government of Nigeria regarding proceedings against members of Boko Haram, with different information apparently being given to the OTP and to Amnesty International itself. Amnesty International’s research demonstrates, however, that there have been minimal investigations or prosecutions of Boko Haram perpetrators, in particular Boko Haram leaders, or those most responsible for Rome Statute crimes or conduct amounting to crimes under international law committed by the group.

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<sup>245</sup> In its admissibility assessment of national level accountability mechanisms in Burundi, the OTP stated that “to the extent that the [national] authorities have cleared members of the security forces as alleged physical perpetrators of any wrongdoing, [...] the inquiries conducted into these allegations were not conducted genuinely, but were undertaken for the purpose of shielding the persons concerned from criminal responsibility”



Amnesty International's research has determined that only around ten Boko Haram suspects have been convicted of serious crimes such as terrorist acts, killings or hostage taking since the conflict with Boko Haram started in 2009. Effectively until the "mass Boko Haram trials", which started in October 2017, only about 60 "Boko Haram suspects" were sent to trial. In response to Amnesty International's request for information the Ministry of Justice stated in October 2017 that a total of only 12 persons had been convicted in relation to Boko Haram activities.<sup>246</sup>

Amnesty International's research has further demonstrated that 'mass trials' of alleged 'Boko Haram suspects' conducted from 2017 onwards are not relevant for any determination of the admissibility of the cases relating to crimes committed by Boko Haram. Crucially, applying the OTP's own standards, the Nigerian authorities' proceedings in the mass trials appear not to have targeted substantially the same conduct as required for the purposes of complementarity and the ICC's admissibility determination. In addition, the vast majority of individuals convicted during the mass trials have not been found guilty of crimes against the person, let alone crimes equivalent to Rome Statute crimes and have instead been found guilty of membership of Boko Haram, supporting Boko Haram (by way of providing or selling goods or logistical support) and/or not having provided information on Boko Haram members or activities to the Nigerian authorities. All available evidence indicates that detainees were charged with minor offences in order to justify and cover up the illegal detention of civilians arbitrarily arrested during the conflict.

Amnesty International has also documented that breaches of detainees' fundamental rights are so egregious that it is impossible to conclude that any of those convicted were in fact guilty of any crime at all. It is also evident that those subject to 'mass trials' were not those most responsible for the horrific war crimes and crimes against humanity committed by Boko Haram in north east Nigeria.

The OTP has undertaken a number of missions to Nigeria, to meet with the President and high-level government officials. Indeed, the willingness of the Nigerian authorities to host OTP missions is positive; as are high-level commitments to the ICC of support and co-operation. However, high-level commitments which are not matched by full and relevant information provision and domestic level investigative steps do not fulfil the requirements of complementarity and should not be used by the OTP to defer its decision to open an investigation. Similarly, OTP activities in Nigeria which relate to attending 'seminars'<sup>247</sup> or 'capacity building workshops',<sup>248</sup> as part of the OTP's 'positive complementarity'<sup>249</sup> mandate, do not fulfil the requirements of Article 17 of the Rome Statute nor should be considered as part of a 'willingness' assessment. As the OTP states in its policy on preliminary examinations: 'Any interaction between the Office and the national authorities cannot be construed as a validation of the national proceedings, which will be subject to independent examination by the Office taking into account all of the relevant factors and information.'<sup>250</sup>

The OTP's efforts to encourage genuine relevant national proceedings are commendable, but 'positive complementarity' efforts with 'bare minimum' – if any – results may have delayed the ICC's intervention in Nigeria. The ICC has recently held that victims' rights apply to the 'conduct' of the preliminary examination, not only its result.<sup>251</sup> Therefore, any further undue delay in opening the opening of an investigation in Nigeria should be assessed against its likely infringement of victims' rights to access justice and reparations, and internationally recognised human rights as provided for in Article 21(3) of the Rome Statute. Furthermore, delays in opening an investigation harm the Court's credibility in Nigeria and weaken – year on year – the Court's pressure on Nigerian authorities to undertake relevant and genuine national level prosecutions.

Amnesty International therefore believes that the OTP should proceed to make a *proprio motu* application, pursuant to Article 15, to the Chamber to request authorization to proceed to an investigation. Any further delay will allow further destruction and decay of evidence. In the meantime, and pending such a decision, the OTP should significantly strengthen its co-operation demands to the Nigerian authorities. In an attempt to ensure an effective preliminary examination, the OTP should set 'benchmarks' for compliance by the Nigerian authorities in terms of co-operation and complementarity. The OTP may wish to publicly define and report on the benchmarks - as it has in other preliminary examination situations.

Amnesty International is concerned by delays to the process caused by the provision of minimal information regarding 'bare minimum' domestic proceedings followed by a substantial increase of information on 2017. There has also been a pattern of delayed responses by the Nigerian authorities to requests for information from OTP, which hamper the OTP's capacity to proceed with the preliminary examination. It is in the

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<sup>246</sup> Letter from the Department of Public Prosecutions addressed to Amnesty International, dated 29 December 2017, ref. DPPA/CCG/CAI/06/2017 (annexed)

<sup>247</sup> OTP PE report 2014, para. 186

<sup>248</sup> OTP PE report 2017, para. 226

<sup>249</sup> OTP PE policy, para. 102

<sup>250</sup> OTP PE policy, para. 102

<sup>251</sup> Pre-Trial Chamber I, Request under Regulation 46(3) of the Regulations of the Court, Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute" ICC-RoC46(3)-01/18, 6 September 2018, para. 86

interests both of the OTP and Nigeria to demonstrate that serious steps are being taken to cure Nigeria's inability or unwillingness to bring perpetrators to justice. Above all it is in the interest of victims.

## RECOMMENDATIONS

### TO THE ICC, OFFICE OF THE PROSECUTOR (OTP):

Expediently conclude the Nigeria preliminary examination, determine the admissibility of the eight potential cases and seek authorization to open a *proprio motu* investigation;

In the meantime, the OTP should:

- ensure that its co-operation requests are as 'targeted' as possible – with clear and specific details of what information is required, in relation to specific perpetrators and incidents. The OTP must subsequently ensure that its targeted requests are fully answered by the Nigerian authorities in a timely manner;
- insist on the provision of concrete information regarding steps taken towards accountability in Nigeria - including especially arrests, charges and convictions of those most responsible for crimes equivalent to Rome Statute crimes;
- publicly report on which aspects of its requests have not been fully answered by the Nigerian authorities and should demand explanations from the Nigerian authorities when this is the case;
- establish benchmarks on progressive investigative developments (charges and prosecutions against those most responsible from the Nigerian military and Boko Haram) and 'crucial investigative steps' (interviewing witnesses, forensic examinations, crime-base investigations, structural investigations) to be taken in a defined timeframe;
- urgently consider providing indicative lists of conducts and persons to the Nigerian authorities (and publicly if appropriate),<sup>252</sup> along with timeframes and deadlines by which investigations and (likely) prosecutions should have been taken into persons and conducts specified;
- set timeframes in which the Office expects to receive full responses to information requested from Nigerian authorities.

### TO THE GOVERNMENT OF NIGERIA:

- Immediately make public the full report of the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (PIP) and set out the steps that will be taken to implement recommendations made, if any;
- Immediately initiate an independent, impartial and effective criminal investigation of all credible allegations of crimes under international law and other serious violations and abuses of human rights committed by all parties to the conflict in north-east Nigeria;
- Publicly report on all efforts made to bring senior leaders of Boko Haram and others most responsible for Rome Statute Crimes to justice;
- Publicly report on all efforts made to bring those military and CJTF members most responsible for Rome Statute Crimes to justice;
- Co-operate fully and proactively with the Office of the Prosecutor of the International Criminal Court - by providing all available information on domestic proceedings concerning the OTP's potential cases and ensuring that the OTP's targeted co-operation requests are answered fully and in a timely manner.

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<sup>252</sup> In its decision authorizing a *proprio motu* investigation in Burundi, the Pre-Trial Chamber states that it was guided by "Indicative list of crimes allegedly committed during the most serious incidents within the situation" and a "Preliminary list of persons or groups that appear to be the most responsible for the most serious crimes" Burundi Article 15 decision para. 144. In its Preliminary Examination Report 2017, the OTP stated that, in relation to Colombia, it had "identified 29 commanding officers" on whom it wished to receive detailed information from the Colombian authorities - on the cases being reportedly investigated and on whether concrete and progressive investigate steps have been or are being taken. See OTP Preliminary Examination Report 2017, paras 134 and 135

# ANNEX I

## INQUIRIES SET UP BY NIGERIAN GOVERNMENT TO LOOK INTO ALLEGATIONS OF SERIOUS CRIMES AND VIOLATIONS COMMITTED BY BOKO HARAM, NIGERIAN SECURITY FORCES AND CJTF

NAME	BRIEF DESCRIPTION OF MANDATE	SET UP BY WHOM?	FULL REPORT MADE PUBLIC?	DATE ESTABLISHED	CONCLUSION DATE
High-Powered Post-Mortem Committee on the Sectarian Crisis in Kano, Bauchi, Yobe, and Borno States (the "Dike Committee").	To investigate the circumstances leading to the July 2009 clashes between the security forces and Boko Haram members, including the alleged killing of the leader of Boko Haram and the slaughter or killing of over 17 police officers.	Federal Government	No	3 August 2009	Unknown
Administrative Committee of Inquiry - Borno State	To investigate the July 2009 clashes between the security forces and Boko Haram members, including to 'assess damages, look into area of compensation and make recommendations to the government'.	Borno State Government	No	16 August 2009	22 October 2009

<b>Presidential Committee on the Security Challenges in the North-East Zone of Nigeria (the "Gaitimari Committee")</b>	To review security challenges in the north-east and recommend solutions for resolving the situation; liaise between the Federal Government and the relevant state governments; liaise with the National Security Adviser to ensure that the security services discharged their duties professionally; consult stakeholders and ascertain "the true state of affairs"; and to consider any other peace building initiatives.	Federal Government	No	02 August 2011	September 2011
<b>Presidential Committee on Dialogue and Peaceful Resolution of Security Challenges in the North (The "Turaki Committee")</b>	To create dialogue with Boko Haram members and bring the conflict to an end peacefully.	Federal Government	No	22 April 2013	29 September 2013
<b>Presidential Fact-finding Committee on the Abduction of Chibok Schoolgirls (the "Chibok Investigation" 2014)</b>	To establish the circumstances leading to the 14 April 2014 abduction of 276 female students of the Government Secondary School, Chibok, in Borno State by Boko Haram members.	Federal Government	No	02 May 2014	20 June 2014
<b>Presidential Fact-finding Committee on the Abduction of Chibok Schoolgirls (the "Chibok Investigation" 2016)</b>	To investigate the circumstances leading to the abduction of the Chibok schoolgirls in April 2014 as well as the response of the authorities.	Federal Government	No	14 January 2016	Unknown
<b>Presidential Committee on Special Detainees in Prisons and Other Detention Facilities in Different Parts of the Country</b>	To profile special detainees in prisons and other detention facilities in different parts of the country. The initiative aimed at fast-tracking the profiling of detainees linked to the Boko Haram insurgency.	Federal Government	No	December 2016	April 2018

<b>Fact-finding Committee on the Allegation of 'Rape and Child Trafficking' in Internally Displaced Persons (IDPs) Camps in the North-East of Nigeria</b>	To investigate the allegations of sexual violence and trafficking in camps for IDPs made by the International Center for Investigative Reporting (ICIR).	Federal Government	No	09 February 2015	February 2015
<b>Special Investigation Panel led by Inspector General of Police to investigate alleged abuses at Internally Displaced Persons (IDPs) camps reported by Human Rights Watch (HRW)</b>	To respond to the allegations of rape and sexual violence included in HRW's October 2016 report.	Federal Government	No	03 November 2016	Unknown
<b>Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Organizations and Rules of Engagement ("PIP")</b>	To investigate armed forces' compliance with international human rights and humanitarian law obligations, alleged acts of violations as well as investigation of "matters of conduct and discipline" within the armed forces.	Federal Government	No	12 August 2017	9 February 2018
<b>A 12-member Committee set up by the National Security Adviser to investigate abduction of 110 students from Government Girls Science and Technical College (GGSTC) in Dapchi, Yobe State, on 19 February 2018</b>	To unravel the circumstances surrounding the abduction of 110 students of the GGSTC in Dapchi, Yobe State, following the attack on the school by insurgents on 19 February 2018.	Federal Government	No	27 February 2018	Unknown

<b>Senate Committee on Defence, Police, National Security and Intelligence</b>	To investigate the allegations that soldiers carried out widespread destruction and killings in Baga, Borno State in April 2013.	Senate	Yes	23 April 2013	26 June 2013
<b>Senate Ad-Hoc Committee on Investigation of Amnesty International Report on the Alleged Human Rights Abuse in the North-East (Order 42)</b>	To investigate the violations highlighted in the Amnesty International report, published in May 2018, which indicted the Nigerian military over human rights abuses that include rape, torture and exploitation of Internally Displaced Persons in the IDPs camps in the north-east of Nigeria	Senate	No	5 July 2018	Unknown
<b>Joint Investigation Team (JIT I)</b>	To screen all suspects in detention facilities run by the Nigerian military and make recommendations for prosecution.	Defence Headquarters	No	July 2013	December 2013
<b>Joint Investigation Team (JIT II)</b>	To screen all suspects in detention facilities run by the Nigerian military and make recommendations for prosecution.	Defence Headquarters	No	Unknown	25 July 2014
<b>Committee to investigate the immediate and remote causes of the incident that occurred at Giwa Barracks on 14 March 2014</b>	To investigate the allegation that the Nigerian military had extrajudicially executed up to 640 people in the aftermath of the 14 March 2014 Giwa Barracks attack by Boko Haram.	Defence Headquarters	No	April 2014	Unknown



<p><b>Military Panel of Inquiry to Investigate the Circumstances Surrounding the Allegation of Extra Judicial Killings and Mass Arrest by the Nigerian Military and Members of the Youth Volunteer Group in Operation Zaman Lafiya Areas of Responsibility</b></p>	<p>To obtain, study, and analyse various reports and accusations of arbitrary arrests, detentions and extrajudicial executions levelled against the Nigerian security forces in the north-east, determine if the perpetrators of the violations are Nigerian army personnel and identify them in person, and to determine the identities of other perpetrators of the violations and abuses in the videos of 2013 and 2014.</p>	<p>Chief of Defence Staff (CDS)</p>	<p>No</p>	<p>July 2014</p>	<p>Unknown</p>
<p><b>Nine-member Special Board of Inquiry to Investigate Alleged Human Rights Violations Against Nigerian Army Personnel in the Fight Against Insurgency at the North East and Internal Security Operations at the South East</b></p>	<p>To investigate allegations of human rights violations by the Nigerian military both in the south-east and north-east of the country.</p>	<p>Chief of Army Staff (COAS)</p>	<p>No</p>	<p>8 March 2017</p>	<p>31 May 2017</p>
<p><b>Six-member Board to investigate the accidental air strike on 17 January at Rann, Borno State</b></p>	<p>To conduct a thorough investigation into the 17 January 2017 incident where at least 167 people (including children) were killed and several others were injured after the Nigerian Air Force dropped bombs at the site of an IDP camp in Rann, Borno State, and to determine the immediate and remote causes as well as the circumstances that led to the incident with a view to forestall future occurrence.</p>	<p>Nigerian Air Force</p>	<p>No</p>	<p>19 January 2017</p>	<p>April 2017</p>
<p><b>Board of Inquiry to investigate the accidental air strike on 17 January at Rann, Borno State</b></p>	<p>To investigate the erroneous airstrike of Internally Displaced Persons (IDP) near the Camp at Rann in Kala-Balge Local Government Area, Borno State, on 17 January 2017, by the Nigerian Air Force.</p>	<p>Chief of Defence Staff (CDS)</p>	<p>No</p>	<p>Unknown</p>	<p>July 2017</p>

<b>Investigations into Allegations of Misconduct of Soldiers In Bama Hospital</b>	To investigate alleged misconduct by soldiers and members of Joint Task Force (JTF) in an Internally Displaced Persons (IDPs) camp in Bama, Borno State, following a petition to federal lawmakers, accusing the security personnel of sexual assault going on from 2015.	COAS	No	6 June 2017	Unknown
<b>Nigerian Army Corp of Military Police (NACMP) investigations into Amnesty International's reports</b>	To investigate alleging reports of the deaths of at least 107 men and boys in military detention in Borno state between January and March 2016 and alleged detention and deaths of children in Giwa barracks since February 2016.	COAS	Yes <sup>253</sup>	Unknown	Unknown
<b>National Human Rights Commission investigations into the Baga killings between 15 and 21 April 2013</b>	To investigate an encounter that took place between uniformed personnel and alleged insurgents in Baga, Borno State, near Nigeria's north-eastern border with Lake Chad, including assessment of the wider humanitarian situation in Borno and Yobe States.	National Human Rights Commission (NHRC)	Yes	3 May 2013	4 June 2013
<b>National Human Rights Commission investigation into allegations of human rights violations in north east Nigeria</b>	To investigate the evidence of extrajudicial executions carried out by members of the Nigerian military and members of the state-sponsored militia, the "Civilian Joint Task Force" and military detention facilities.	National Human Rights Commission (NHRC)	Unknown	August 2014	Unknown
<b>National Human Rights Commission Three-person Panel to Conduct Public Inquiry into The Alleged Killings of Some Squatters in an Uncompleted Building in Gudu/Apo District of Abuja on 20 September 2013</b>	To investigate a joint raid carried out by the Army and SSS which led to the killing of eight men and injury of a further 11 in the Apo area of Abuja on 20 September 2013	National Human Rights Commission (NHRC)	Yes	19 December 2013	7 April 2014

<sup>253</sup> The report was presented at the 3<sup>rd</sup> Nigeria Military Human Rights Dialogue, and was subsequently published in The Nigerian Human Rights Dialogue report on 9 August 2016. Amnesty International could not verify whether the published report was a full version of the report presented to the Chief of Army Staff.

<p><b>13-member Kaduna State Judicial Commission of Inquiry into the 12 December 2015 Clashes in Zaria, Kaduna State (the “Zaria Commission”)</b></p>	<p>To investigate a violent confrontation between the convoy of the Chief of Army Staff and a procession of some members of the Islamic Movement of Nigeria (IMN), a Shi'ite religious and political organization, on 12 December 2015, in Zaria, Kaduna State, determine the context and causes of the clashes, ascertain numbers killed, and identify relevant individuals, institutions and federal and state actors in the unlawful killing.</p>	<p>Kaduna State</p>	<p>Yes</p>	<p>29 January 2016</p>	<p>15 July 2016</p>
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# ANNEX II

## 8 POTENTIAL CASES OUTLINED BY THE OFFICE OF THE PROSECUTOR IN ITS 2015 PRELIMINARY EXAMINATION REPORT ON NIGERIA

CASE	ALLEGED PERPETRATOR (GROUP)	CRIMES – SUBJECT MATTER JURISDICTION	INCIDENTS	VICTIMS	Reference: Paras in OTP 2015 Report
1	Boko Haram	<p>Intentionally launching attacks against civilians perceived as “disbelievers”:</p> <ul style="list-style-type: none"> <li>• Pillaging and setting houses on fire;</li> <li>• Killing people, abducting residents or preventing them from fleeing;</li> <li>• Bombings of civilian areas, such as places of worship, markets or bus stations, often by suicide bombers.</li> </ul>	<ul style="list-style-type: none"> <li>• [January 2013 - March 2015] 356 reported incidents of killings in Borno, Adamawa, Yobe, Plateau, Kano, the Federal Capital Territory (Abuja), Gombe, Kaduna, Bauchi;</li> <li>• Occasional incidents of killings in Cameroon (since February 2013) and Niger (Dumba and Diffa, since January 2015).</li> </ul>	Over 8,000 civilians	Paragraphs 196-198

2	Boko Haram	<ul style="list-style-type: none"> <li>Abductions and imprisonment of civilians, leading to alleged murders, cruel treatments and outrages upon personal dignity.</li> <li>Detention of thousands of civilians in its camps and in towns under its control in Borno state and other areas in the north-east of Nigeria, including in the Sambisa forest, around Lake Chad, and near the Gorsi mountains in Cameroon. For example, in Bama town, hundreds of men were reportedly held by Boko Haram in the town's prison for several weeks before being executed.</li> </ul>	Between January 2014 and March 2015, the OTP recorded 55 incidents of abductions, mostly in Borno, Yobe and Adamawa States.	<p>At least 1,885 abductees (some of which were later released or liberated):</p> <ul style="list-style-type: none"> <li>In 2014 alone at least 1,123 persons were abducted, of which 536 were female victims. From May 2013 to April 2015, open sources reported the abduction of more than 2,000 women and girls</li> </ul>	Paragraphs 199-200
3	Boko Haram	<p>Attacks on buildings dedicated to education, teachers and students:</p> <ul style="list-style-type: none"> <li>School buildings were allegedly bombed, attacked with firearms and/or burned down.</li> </ul>	At least 50 schools were either burned down or badly damaged and 60 more were forced to close [in Borno]	<p>[January 2012 - October 2013]: 70 teachers and more than 100 schoolchildren and students reportedly killed or wounded.</p> <ul style="list-style-type: none"> <li>In May 2014, Nigeria Union of Teachers reported that at least 173 teachers had been killed between 2009 and 2014; Borno State officials cited a figure of 176 teachers.</li> <li>As a result, all secondary schools in Borno were closed as well as 120 schools in 10 districts of the far north of Cameroon.</li> </ul>	Paragraphs 201-202
4	Boko Haram	<p>Recruitment and use of children under the age of 15 years to participate in hostilities.</p> <ul style="list-style-type: none"> <li>Most allegedly used for intelligence gathering, tracking the movements of enemy forces, transportation of weapons, participating in the attacks.</li> </ul>		No information available on the total number of child soldiers, the UN reported the recruitment and use of children as young as 12 years old by Boko Haram.	Paragraphs 203-204
5	Boko Haram	<p>Attacks against women and girls:</p> <ul style="list-style-type: none"> <li>abductions, rapes, sexual slavery and other forms of sexual violence, forced marriages, the use of women for operational tasks and murders. Most of the persons abducted were unmarried women and girls, many of whom reportedly forced into</li> </ul>	Most notorious case is arguably the abduction of 276 girls from the Government Girls Secondary School in	Between November 2014 and February 2015 alone, more than 500 women and 1,000 children were reportedly abducted from Gwoza local government area.	Paragraphs 205-207

6	Boko Haram	<p>marriage. Forced marriages reportedly entail repeated rapes or violence and death threats in cases of refusal. Many attacks specifically targeted Christian women.</p> <ul style="list-style-type: none"> <li>Using women and girls in suicide attacks on civilian targets, including girls as young as seven. In 2015 Boko Haram fighters allegedly murdered their so-called “wives”, often women forcibly married to Boko Haram fighters, and other captives as Nigerian Security Forces and forces supporting them advanced.</li> </ul> <p>Intentional targeting of buildings dedicated to religion, including churches and mosques;</p> <ul style="list-style-type: none"> <li>Setting churches on fire and attacking mosques.</li> </ul>	<p>Chibok, Borno State on 14 April 2014</p> <p>(‘For example’)</p> <ul style="list-style-type: none"> <li>In June 2014, Boko Haram allegedly attacked three villages near Chibok, Borno State, killing at least 48 people and setting five churches on fire;</li> <li>On 28 November 2014, in Kano, capital of Kano State, Boko Haram attacked the central mosque, killing more than 100 people, injuring 260 others and causing extensive damage to the building</li> </ul>	<p>(‘For example’)</p> <ul style="list-style-type: none"> <li>In June 2014 attack near Chibok: at least 48 people;</li> <li>In 28 November 2014, in Kano, more than 100 killed and 260 injured.</li> </ul>	Paragraphs 208-209
7	Nigerian Security Forces	<ul style="list-style-type: none"> <li>Alleged mass arrests of boys and young men suspected of being Boko Haram members or supporters;</li> <li>(following) large-scale abuses, including summary executions and torture.</li> </ul>	<p>(‘For example’)</p> <ul style="list-style-type: none"> <li>Mass arrests in Borno, Yobe and Adamawa States (and detention). (For example) on 14 March 2014, over 500 former detainees who were liberated during a Boko Haram attack on the Giwa military barracks were recaptured and allegedly executed by the Nigerian Security</li> </ul>	<ul style="list-style-type: none"> <li>At least 20,000 people arrested in Borno, Yobe and Adamawa States.</li> <li>More than 7,000 people reportedly died in military detention due to illness, poor condition and overcrowding of detention facilities, torture, ill-treatment and extrajudicial executions;</li> <li>On 14 March 2014, over 500 former detainees recaptured and allegedly executed.</li> </ul>	Paragraphs 211-213



	8	Nigerian Security Forces	Attacks against civilians	Forces, in some cases by slitting their throats.	<ul style="list-style-type: none"> <li>• Killings during security operation on 17 April 2013 in the town of Baga, Borno State.</li> <li>• Up to 228 persons may have been killed following the 17 April 2013 security operation.</li> <li>• At least 2,275 dwellings allegedly destroyed in the attack.</li> </ul>	Paragraphs 214
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28 August 2017

Lieutenant General Tukur Yusuf Buratai NAM GSS psc(+)  
Chief of Army Staff  
Defence Headquarters  
Opposite Agura Hotels  
PMB 196, Area 7  
Garki  
Abuja.



NIGERIA

**AMNESTY  
INTERNATIONAL**



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Dear Lt Gen Buratai,

Ref: AIN/411/0284/2017

**RE: REQUEST FOR INFORMATION ON COURT CASES RELATING TO MILITARY**

Amnesty International is currently preparing a report on Nigeria's efforts to investigate and prosecute those suspected of perpetrating human rights abuses or violations or crimes under international law during the non-international armed conflict in the North-east of the country. We note that on p. 67 of the 2016 Preliminary Examination Report from the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) on the situation in Nigeria, the OTP indicates that "[b]oth the DPPF and the military authorities provided supporting material including investigative reports and case files regarding potentially relevant individual cases" in relation to investigations and prosecutions of crimes falling under the jurisdiction of the ICC in Nigeria.

In order to help us better understand and reflect all the steps the government of Nigeria has taken towards ensuring justice for victims, we are writing to request to be provided with the following information:

1. An overview of all members of the military that are being or have been prosecuted since 2009 for crimes and violations they are suspected of committing relating to operations in the context of the conflict in the North-east, the date they were charged before a court of law, either civilian or military, the charges filed against them and the current status of their case and the location they are currently detained.
2. How many members of the Nigerian military are currently serving a sentence in a prison for crimes committed related to operations in the context of the conflict in the North-East? Were these cases court-martials or before civilian courts? What were they convicted of and what was the sentence? In which prison are they currently detained? We would be grateful if you could provide copies of full judgments of any such cases.
3. How many members of the Nigerian military have been demoted or dismissed for crimes committed related to operations in the context of the conflict in the North-East? What were they convicted of and what was the sentence?
4. How many members of the Nigerian military have been suspended from their posts pending investigations of credible allegations of crimes committed which relate to operations in the context of the conflict in the North-east?

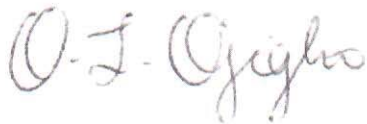
Amnesty International has also written to Ministry of Defence requesting similar information and to the Ministry of Justice requesting information regarding numbers of investigations and prosecutions of Boko Haram members suspected of human rights abuses and crimes under international law related to the conflict in the North-East.

Amnesty International would be grateful to receive a response to these questions by **27 September 2017** and we remain at your disposal to answer any questions. We are also available for a meeting to discuss the above questions and other matters arising if necessary.

Kindly do not hesitate to contact me at +2348099900992 or at the address above or by email at [osai.ojigho@amnesty.org.ng](mailto:osai.ojigho@amnesty.org.ng) and copying [uloma.obike@amnesty.org.ng](mailto:uloma.obike@amnesty.org.ng).

We look forward to your reply.

Yours sincerely,



**Osai Ojigho**  
Director,  
Amnesty International Nigeria

cc. General Olonisakin, Chief of Defence Staff  
Defence Headquarters

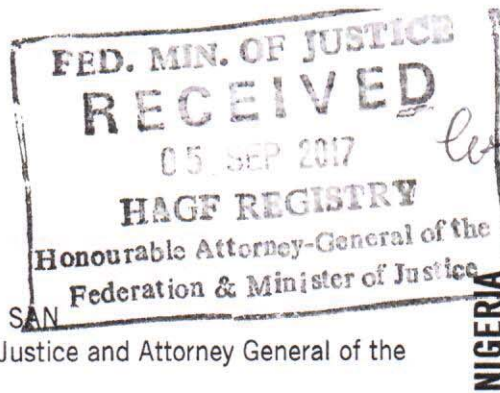
cc. Lieutenant General Tukur Yusuf Buratai, Chief of Army Staff

cc. Ministry of Foreign Affairs



28 August 2017

Mr. Abubakar Malami SAN  
The Hon. Minister of Justice and Attorney General of the  
Federation  
The Federal Ministry of Justice  
New Federal Secretariat Complex  
5th Floor Shehu Shagari Way  
Central Area,  
Abuja FCT  
Nigeria



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Ref: AIN/411/0285/2017

Dear Mr. Abubakar Malami SAN,

**RE: REQUEST FOR INFORMATION ON COURT CASES RELATING TO BOKO HARAM**

Amnesty International is currently preparing a report on Nigeria's efforts to investigate and prosecute those suspected of perpetrating human rights abuses or violations or crimes under international law during the non-international armed conflict in the North-east of the country. We note on p. 66 of the 2016 Preliminary Examination Report from the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) on the situation in Nigeria that "the [Federal High Court] is already seized of a number of terrorism cases relating to Boko Haram's conduct, a few of which have led to convictions." However no further information is available publicly on these cases.

In order to help us better understand and reflect all the steps the government of Nigeria has taken towards ensuring justice for victims, we are writing to request to be provided with the following information:

1. An overview of all Boko Haram suspects that are being or have been prosecuted since 2009, including the date and location suspects were arrested, the date they were charged before a court of law, the charges filed against them and the current status of their case and the location they are currently detained. In particular, we would request that you provide information about the cases cited by the OTP in the Preliminary Examination Report before the Federal High Court, including those which reportedly led to convictions.
2. How many arrests of Boko Haram suspects have been reported to your Ministry since 2009 by the security forces and/or more specifically, referred to the Complex Case Unit in the Office of the Department of Prosecutions?
3. How many of the suspects arrested since 2009 have been released? Were they released on bail or were the charges withdrawn?
4. Any information about the number of Boko Haram suspects arrested since 2009 who have been detained longer than 30 days and who have never been charged with any offence/or subsequently released without charge.
5. How many Boko Haram suspects are currently serving a sentence in a prison (please indicate location of prisons)? What were they convicted of? Could you provide us with copies of the full judgment in these cases?

Amnesty International has also written to the Ministry of Defence and Chief of Army Staff, copying your Ministry, requesting similar information regarding numbers of investigations and prosecutions of members of the military suspected of human rights violations and crimes under international related to the conflict in the North-East.

Amnesty International would be grateful to receive a response to these questions by **27 September 2017** and we remain at your disposal to answer any questions. We are also available for a meeting to discuss the above questions and other matters arising if necessary.

Kindly do not hesitate to contact me at +2348099900992 or at the address above or by email at [osai.ojigho@amnesty.org.ng](mailto:osai.ojigho@amnesty.org.ng) and copying [uloma.obike@amnesty.org.ng](mailto:uloma.obike@amnesty.org.ng).

We look forward to your reply.

Yours sincerely,



**Osai Ojigho**  
Director,  
Amnesty International Nigeria

cc. General Olonisakin, Chief of Defence Staff  
Defence Headquarters

cc. Lieutenant General Tukur Yusuf Buratai, Chief of Army Staff

cc. Ministry of Foreign Affairs



16 October 2017

**Major General Nuhu Angbazo**  
Chief of Military/Civil Affairs  
Army Headquarters  
Area 7, Garki,  
Abuja FCT  
Nigeria

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Ref: AIN/411/0315/2017

Dear Maj Gen Nuhu,

**RE: REQUEST FOR INFORMATION ON COURT CASES RELATING TO MILITARY**

Amnesty International is currently preparing a report on Nigeria's efforts to investigate and prosecute those suspected of perpetrating human rights abuses or violations or crimes under international law during the non-international armed conflict in the North-east of the country. We note that on p. 67 of the 2016 Preliminary Examination Report from the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) on the situation in Nigeria, the OTP indicates that "[b]oth the DPPF and the military authorities provided supporting material including investigative reports and case files regarding potentially relevant individual cases" in relation to investigations and prosecutions of crimes falling under the jurisdiction of the ICC in Nigeria.

In order to help us better understand and reflect all the steps the government of Nigeria has taken towards ensuring justice for victims, we are writing to request to be provided with the following information:

1. An overview of all members of the military that are being or have been prosecuted since 2009 for crimes and violations they are suspected of committing relating to operations in the context of the conflict in the North-east, the date they were charged before a court of law, either civilian or military, the charges filed against them and the current status of their case and the location they are currently detained.
2. How many members of the Nigerian military are currently serving a sentence in a prison for crimes committed related to operations in the context of the conflict in the North-East? Were these cases court-martials or before civilian courts? What were they convicted of and what was the sentence? In which prison are they currently detained? We would be grateful if you could provide copies of full judgments of any such cases.
3. How many members of the Nigerian military have been demoted or dismissed for crimes committed related to operations in the context of the conflict in the North-East? What were they convicted of and what was the sentence?
4. How many members of the Nigerian military have been suspended from their posts pending investigations of credible allegations of crimes committed which relate to operations in the context of the conflict in the North-east?

Amnesty International has also written to Ministry of Defence requesting similar information and to the Ministry of Justice requesting information regarding numbers of investigations and prosecutions of Boko Haram members suspected of human rights abuses and crimes under international law related to the conflict in the North-East.

Amnesty International would be grateful to receive a response to these questions by **23 October** and we remain at your disposal to answer any questions.



We would also like to ask for a meeting at a time convenient for you to discuss the above questions and other matters arising if necessary.

Kindly do not hesitate to contact me at +2348099900992 or at the address above or by email at [osai.ojigho@amnesty.org.ng](mailto:osai.ojigho@amnesty.org.ng) and copying [uloma.obike@amnesty.org.ng](mailto:uloma.obike@amnesty.org.ng).

We look forward to your reply.

Thank you.

Yours sincerely,



**Osai Ojigho**  
Country Director,  
Amnesty International Nigeria

**Cc. General Olonisakin, Chief of Defence Staff** ✓  
Defence Headquarters  
Garki Abuja

**Mr. Abubakar Malami SAN,**  
The Hon. Minister of Justice and Attorney General of the Federation  
Federal Ministry of Justice  
Abuja

**Honourable Geoffrey Onyema**  
Hon. Minister of Foreign Affairs  
Ministry of Foreign Affairs

# DIRECTOR OF PUBLIC PROSECUTIONS OF THE FEDERATION

P.M.B. No. 192  
Telephone: 09-2731553  
Tel/Fax:



FEDERAL MINISTRY OF JUSTICE HEADQUARTERS  
Plot 71B, Shehu Shagari Way  
Maitama, Abuja  
Nigeria

29<sup>th</sup> December, 2017  
DPPA/CCG/CAI/06/2017

The Director  
Amnesty International  
10A Usuma Street, Off Gana Street  
Maitama Abuja

## RE: REQUEST FOR INFORMATION ON COURT CASES RELATING TO BOKO HARAM

The Office of the Honourable Attorney-General of the Federation is in receipt of your letter dated 28<sup>th</sup> August 2017 referenced AIN/411/0285/2017 based on the above-mentioned subject.

2. I am directed to inform that in response to this request, it is instructive to note as a general rule that the Office of the Honourable Attorney-General of the Federation (HAGF) has the constitutional duty to prosecute cases as the Chief Law Officer of the Federation. Therefore, our responses will be limited to information at our disposal in the discharge of that duty in relation to Boko Haram cases.

3. For ease of reference, you may wish to note that your individual requests have been reproduced in bold prints hereunder and the responses contained in seriatim therein.

**1. An overview of all Boko Haram suspects that are being or have been prosecuted since 2009 including the date and location suspects were arrested, the date they were charged before a court of law, the charges filed against them and the current status of their case and the location they are currently detained. In particular the cases cited by the OTP in the Preliminary Examination Report before the Federal High Court, including those which reportedly led to convictions.**

a. Please refer to attachment "A" titled "CONCLUDED AND PENDING TERRORISM CASES IN DIFFERENT COURTS AS AT 18<sup>TH</sup> OCTOBER, 2017"

b. The date of charge is indicated in the column "CHARGE NO". Other details like the title of the cases and the courts in which they are pending are also contained in the Attachment "A".



- c. Each of the defendants contained in the table is charged with a terrorism related offence.
- d. All the defendants tried in Federal High Court Abuja are detained in Kuje Prisons Abuja.
- e. The current status of each case can be seen in the column "STAGE OF CASE"

**2. How many arrests of Boko Haram suspects have been reported to your Ministry since 2009 by the security forces and/or more specifically, referred to the Complex Casework Group (CCG) Unit in the Office of the Director of Public Prosecutions.**

- a. The Office of the HAGF and indeed the CCG does not receive report of arrests from security agencies. However, the CCG through the Director of Public Prosecutions of the Federation (DPPF) receives case files upon conclusion of investigations from security agencies.
- b. The investigative agencies including the military will be better disposed to respond adequately to this request as it falls squarely on their duties.

**3. How many of the suspects arrested since 2009 have been released. Were they released on bail or were the charges withdrawn.**

- a. You may wish to note that the Office of the HAGF can only respond to this request as it relates to suspects or defendants who were brought before the court upon preferring a charge against them and suspects whom the HAGF has found that there is insufficient evidence with which to prosecute.
- b. 3 defendants were released on bail upon conditions by reason of ill health.
- c. 6 defendants were discharged, acquitted and released by the court upon a trial on merits.
- d. 210 suspects were discharged by the court upon motions ex parte by the prosecution for want of sufficient evidence to prosecute. They were ordered to undergo deradicalisation and rehabilitation programme of the Operation Safe Corridor in Gombe before they are released to join their families.
- e. 65 suspects had their charges withdrawn by the prosecution and struck out by the court on account of their absence from court due to death or loss (particularly during jail break).

**4. Any information about the number of Boko Haram suspects arrested since 2009 who have been detained longer than 30 days**

**and who have never been charged with any offence/or subsequently released without charge.**

- a. 1669 suspects were detained in Kainji detention facility beyond 30 days but have been formally remanded by the court in October, 2017 for 90 days within which prosecution should prefer a charge or have the cases struck out and the suspects discharged by the court.
- 5. How many Boko Haram suspects are currently serving a sentence in a prison (please indicate location of prisons). What were they convicted of. Provide copies of full judgment in these cases.**
- a. There were 12 convicts prior to the Kainji trials in October, 2017
  - b. After the Kainji trials there were 50 convictions and the number increased to a total of 62 convicts.
  - c. All the defendants convicted of terrorist related offences and listed in Attachment "A" are serving sentences in Kirikiri Maximum prisons and Kuje Prisons Abuja. The "REMARKS" column in attachment "A" provides details of each convict's prison location.
  - d. The 50 convicts from Kainji were ordered to serve their sentences in prisons designated by the Comptroller General of Prisons. The process of evacuating them to the designated prisons is still on going.
4. Please find attached necessary relevant documents and judgments in relation to your request.
  5. The above is for your information only. You may wish to further contact us for more information in this regard.
  6. Accept; please the assurances of the Honourable Attorney-General of the Federation and Minister of Justice.



**JONES-NEBO N.B**

Assistant Director Public Prosecutions of the Federation  
For: Honourable Attorney-General of the Federation and  
Minister of Justice



Attachment 'A'

CONCLUDED AND PENDING TERRORISM CASES IN DIFFERENT COURTS AS AT 18<sup>TH</sup> OCTOBER, 2017

S/NO	CHARGE NO	TITLE OF CASE PARTIES	COURT PENDING	STAGE OF CASE	HANDLED BY	NEXT ADJOURNED DATE	REMARKS
1	SC/70/2015	MOHAMMED NAZEEF YUNUS V FRN & 2 ORS	SUPREME COURT	NOTICE OF APPEAL SERVED	JONES -NEBO	TO BE FIXED	
2	SC/58/2015	SALAMI ABDULLAHI V FRN & 2 ORS	SUPREME COURT	NOTICE OF APPEAL SERVED	N.B JONES -NEBO (AD)	TO BE FIXED	
3.	SC/31/2015	MUSA UMAR V FRN & 2 ORS	SUPREME COURT	NOTICE OF APPEAL SERVED	N.B JONES -NEBO (AD)	TO BE FIXED	
4.	CA/A/237C/2014	MOHAMMED NAZEEF YUNUS V FRN & 2 ORS	COURT OF APPEAL ABUJA	APPEAL DETERMINED. JUDGMENT DELIVERED	N.B JONES -NEBO (AD)	CASE REVERTED TO TRIAL COURT TO RESUME	APPEAL DISMISSED
5.	CA/A/222a/2014	MUSA UMAR V FRN & 2 ORS	COURT OF APPEAL ABUJA	APPEAL DETERMINED. JUDGMENT DELIVERED	N.B JONES -NEBO (AD)	CASE REVERTED TO TRIAL COURT TO RESUME	APPEAL DISMISSED
6.	CA/A/222C/2014	SALAMI ABDULLAHI (ASTA) V FRN &	COURT OF APPEAL ABUJA	APPEAL DETERMINED. JUDGMENT	N.B JONES -NEBO (AD)	CASE REVERTED TO TRIAL	APPEAL DISMISSED

		2 ORS	A	DELIVERED		COURT TO RESUME	
7.	FHC/ABJ/C R/13/2014	FRN V MOHAM MED NAZEEF YUNUS & 2 ORS	FHC 6 ABUJA	PROSECUTION HAS CALLED SEVEN (7) OUT OF EIGHT (8) TRIAL WITHIN TRIAL ON GOING	N.B JONES -NEBO (AD)	16 <sup>TH</sup> JAN 2018	
8		FRN V KABIRU SOKOTO	FHC 6 ABUJA	CASE CONCLUDED	C. ONUEGBU (AD)	DEFENDANT CONVICTED ON 20 DEC 2013	<b>CONVICT SERVING IN KIRIKIRI MAXIMUM PRISON</b>
9	FHC/ABJ/C R/112/2013	FRN V MUSTAPHA FAWAZ & 4 ORS	FHC 6 ABUJA	CASE CONCLUDED	MR. EGEDE & G.N OKAFOR (CSC)	CONVICT APPEALED	<b>1 DEFENDANT CONVICTED, 3 DEFENDANTS DISCHARGED</b>
10	FHC/L/316C /13	FRN V BURAHUSSAINI	FHC LAGOS	CASE CONCLUDED	LAGOS STATE MOJ WITH HAGFIAT	DEFENDANT CONVICTED ON 11 MAY 2014	<b>1 CONVICT SERVING IN KIRIKIRI MAXIMUM PRISON</b>



11	FHC/C/ 299C/14	FRN V ALI MOHAM MED MODU & 2 ORS	FHC LAGO S	CASE CONCL UED	LAGOS STATE MOJ WITH HAGF FIAT	DEFEN DANTS CONVI CTED ON 11 MAY 2014	<b>3 CONVI CTS SERVI NG IN KIRIKI RI MAXIM UM PRISO N</b>
12	FHC/MKD/C R/33/2017	FRN V OCHEID O KENNE DY ADA	FHC 2 MARK UDI	PROSEC UTION HAS CALLED THREE (3) WITNES SES	G.N OKAFO R (CSC)	1 OCT 2017	
13	FHC/MKD/C R/56/2016	FRN V OKO OCHAI	FHC 1 MARK UDI	ADJOU RNE D FOR DEFINIT E HEARIN G	G.N OKAFO R (CSC)	31 OCT 2017	
14	FHC/ABJ/C R/36/2013	FRN V YUSUF SALISU ASIRGA	FHC 10 ABUJ A	JUDGE DECEA SED CASE RE- ASSIGN ED	G.N OKAFO R (CSC)	NIL	
15	FHC/ABH/C R/104/2016	FRN V SAMUE L MICHA E L BUNAS & 2 ORS	FHC 10 ABUJ A	CASE TO BE TRANSF ERRED TO FHC BAYELS A	G.N OKAFO R (CSC)	NIL	
16	FHC/ABJ/C R/138/2011	FRN V SENATO R MOHAM MED ALI NDUME	FHC 6 ABUJ A	CASE CONCL UED	G.N OKAFO R (CSC)	NIL	<b>DEFEN DANT DISCH ARGED AND ACQUI TTED</b>
17	FHC/ABJ/C R/122/2013	FRN V ABADA	FHC 5 ABUJ	TRIAL ON	MRS OHAK	I DEC 2017	

		KI ABDUL MANNA N	A	GOING	WE (CSC)		
18		FRN V SALISU MOHAM MED	FHC 10 ABUJ A	TRIAL ON GOING	MRS OHAK WE (CSC)	6 DEC 2017	
19	FHC/ABJ/C R/37/2013	FRN MUSIBA U MOHAM MED	FHC 4 ABUJ A	TRIAL ON GOING	MRS OHAK WE (CSC)	TO BE FIXED	
20	FHC/ABJ/C R/02/13	FRN V MUSTA PHA UMAR	FHC 6 ABUJ A	CASE CONCL UDED	S.M LABAR AN	DEFEN DANT CONVI CTED	<b>CONVI CT SERVI NG IN KUJE PRISO N</b>
21	CA/A/197/C R/2014	TALAL RODA V FRN	COUR T OF APPE AL	CASE CONCL UDED	S.M LABAR AN	NIL	<b>APPEL LANT DISCH ARGED AND ACQUI TTED</b>
22	FHC/ABJ/C R/113/11	FRN V SHUAIB U ABUBA KAR & 5 ORS	FHC 6 ABUJ A	CASE CONCL UDED	S.M LABAR AN	<b>5 CONVI CTED, 1 DISCH ARGE D AND ACQUI TTED</b>	<b>5 CONVI CTS SERVI NG IN KUJE PRISO N</b>
23	FHC/ABJ/C R/178/12	FRN V MUKTA R IBRAHI M	FHC ABUJ A	CASE CONCL UDED	S.M LABAR AN (PSC)	<b>DEFEN DANT DISCH ARGE D AND ACQUI TTED</b>	
24		FRN V HARUN A ALI ABBAS & 2 ORS	FHC 5 ABUJ A	TRIAL	S.M LABAR AN (PSC)	6 DECE MBER, 2017	
25		FRN V	FHC 3	CASE	S.M	22 <sup>ND</sup>	



		KHALID AL- BARNA WI	ABUJ A	TRANSF ERRED TO CJ FOR RE- ASSIGN MENT	LABAR AN (PSC)	FEB 2018	
26		FRN V AMINU SADIQ OGWUC HE & ORS	FHC 8 ABUJ A	TRIAL ON GOING	S.M LABAR AN (PSC)	18 OCT, 2017	
27	FHC/BAU/1 36C/2012	FRN V ADAMU ABDULL AHI (AKA DANJU MA)	FHC BAUC HI	JUDGM ENT RESERV ED	S.M LABAR AN (PSC)	TO BE FIXED	
28	FHC V 63C/2015	FRN V MUSTA PHA ISA &5 ORS	FHC ABUJ A	DEFEN CE	S.M LABAR AN (PSC)	10 JAN 2018	
29	FHC/ABJ/C R/342/2015	FRN V ABDUL AZEEZ MUHAZ ZAB	FHC ABUJ A	TRIAL	S.M LABAR AN (PSC)	14 NOV 2018	
30	FHC/ABJ/C R/201/14	FRN V KASHIM AHMED	FHC MAID UGUR I	NOT YET ARRAIG NED	A. ADEW UMI- ALUKO (SSC)	TO BE FIXED	
31	FHC/MKD/C R/60/2016	FRN V MNGOH OL TORWU A & ORS	FHC MARK UDI	PROSEC UTION TO OPEN	A. ADEW UMI- ALUKO (SSC)	1 <sup>ST</sup> AND 2 <sup>ND</sup> NOV 2017	
32	FHC/MKD/C R/57/2016	FRN V SION JOSEPH ONUOH A & ORS	FHC MARK UDI	PRELIMI NARIES TO HEARIN G	A. ADEW UMI- ALUKO (SSC)	1 NOV 2017	
33	FHC/MKD/C R/34/2017	FRN V ODE ABAH &	FHC MARK UDI	HEARIN G	C. NNANN A (SSC)		

34	FHC/BAU/C R/18C/2017	ANOR FRN V NURA AHMED	FHC BAUC HI	NOT YET ARRAIG NED	C. NNANN A (SSC)	TO BE ASSIG NED	
35	FHC/MKD/C R/34/2017	FRN V TERFA JIRGBA & ORS	FHC MARK UDI	HEARIN G	C. NNANN A	16TH NOV 2017	
36	FHC/MKD/C R/35/2017	FRN V HARUN A TERZUN GWE IGBE & ANOR	FHC MARK UDI	TRIAL ON GOING PROSEC UTION CALLED TWO (2) WITNES SES	A. C O L E	24TH OCT, 2017	
37	FHC/ABJ/C R/85/11	FRN V MUSA UMAR & 5 ORS	FHC 2 ABUJ A	PROSEC UTION TO CALL LAST WITNES S		28TH NOV	



10 October 2018

**Lt. Gen. Buratai**  
Chief of Army Staff  
Nigerian Army Headquarters  
Ministry of Defence  
Area 7 Garki  
PMB 239  
Abuja



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Ref: AIN/0260/101/18

Dear Lt. Gen. Buratai,

**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS INTO ALLEGED VIOLATIONS AND CRIMES UNDER INTERNATIONAL LAW COMMITTED BY MEMBERS OF THE ARMED FORCES**

I am writing to request updated information on the measures taken by the Nigerian Army to investigate and prosecute allegations of serious human rights violations and crimes under international law committed by members of the armed forces.

We enclose herewith and refer to our successive earlier correspondences on the same matter for which we are yet to receive responses, including our letter:

- dated 3 March 2016, Ref: TG AFR 44/2016.012, addressed to Lt. Gen. Buratai, Chief of Army Staff wherein we requested information in follow-up to the meeting with Amnesty International's delegation on 18 February 2016;
- dated 28 August 2017, Ref: AIN/411/0284/2017, addressed to Lt. Gen. Buratai, Chief of Army Staff, wherein we requested information on court cases relating to members of the military;
- dated 16 October 2017, Ref: AIN/411/0315/2017, addressed to Major General Nuhu Angbazo, Chief of Military/Civil Affairs, Army Headquarters

Your response to our questions and requests for information outlined below will greatly assist us in accurately reflecting the full breadth of measures taken by the Federal Government of Nigeria, including the Army, to investigate alleged human rights violations and crimes committed by members of the military in the context of the conflict in the north-east and hold those responsible to account in a fair trial process.

As we are approaching the conclusion of our report on this matter, we appreciate response by 1 November 2018.

1. Amnesty International is trying to assess the full breadth of measures taken by the Army to **investigate possible individual criminal responsibility** of soldiers and officers in relation to credible allegations and complaints of crimes and human rights violations committed in the context of operations in the north-east since 2009. We therefore kindly request the following information:
  - 1.1. An overview of all allegations or complaints of crimes and human rights violations committed in the context of military operations in the north-east received by responsible officers or desk within the Army, including the military police, Army Headquarters and the Army's Human Rights Desk (since it was established). Can you explain the status of consideration of these allegations or complaints, including those concluded, ongoing and their outcomes?



- 1.2. How many such allegations have led to investigations into **possible individual criminal responsibility** of soldiers and officers? Could you provide an overview of the status and outcomes of such investigations if any?
  - 1.3. In his presentation during a meeting with you and Amnesty International's delegation on 18 February 2016, Provost Martial Brigadier General Hamman made reference to a spreadsheet of cases of indiscipline, including human rights violations reportedly investigated by the military police since October 2015, some of which resulted in court-martial proceedings. We refer to our letter dated 3 March 2016, Ref: TG AFR 44/2016.012 and request again copy of the reported register of investigations carried out by the military police since 2012.
2. Amnesty International is trying to assess the full breadth of measures taken by the Army to **prosecute and hold to account all** soldiers and officers reasonably suspected of individual criminal responsibility in relation to credible allegations and complaints of crimes and human rights violations committed in the context of operations in the north-east since 2009. Further to our letter dated 28 August 2017, Ref: AIN/411/0284/2017 we kindly request again the following information:
    - 2.1. An overview of all members of the military that are being or have been prosecuted since 2009 for crimes and human rights violations they are suspected of committing relating to operations in the context of the conflict in the north-east; the date they were charged before a court of law, either civilian or military; the charges filed against them; the current status of their case and where applicable, the locations they are currently detained pending trial and/or prosecutions;
    - 2.2. How many members of the military are currently serving a sentence in a prison for crimes committed related to operations in the context of the conflict in the north-east? Were these cases concluded before court-martials or before civilian courts? What were they convicted of and what was their sentence? Were these trial proceedings accessible to the public or held in private? In which prison are they currently serving their sentence? We would be grateful if you could provide copies of full judgments of any such cases.
    - 2.3. How many members of the Nigerian military have been demoted or dismissed for crimes committed related to operations in the context of the conflict in the North-East? What were they convicted of and what was the sentence?
    - 2.4. How many members of the Nigerian military have been suspended from their posts pending investigations of credible allegations of crimes committed which relate to operations in the context of the conflict in the North-east?
  3. Amnesty International is trying to assess the veracity, genuineness and outcomes of the following **publicly and privately announced internal "investigations"** conducted by the Army since 2012 in relation to credible allegations and complaints of crimes and human rights violations committed in the context of operations in the north-east. We therefore kindly request the following information:
    - 3.1. In his presentation during a meeting with you and Amnesty International's delegation on 18 February 2016, Provost Martial Brigadier General Hamman made reference to an investigation reportedly carried out by the army into allegations of extra-judicial execution of hundreds of recaptured Boko Haram detainees by the military following the attack on Giwa barracks on 14 March 2014. We refer to our letter dated 3 March 2016, Ref: TG AFR 44/2016.012 and request again copy of the full report of investigations reportedly carried out into the events of 14 March 2014, including copies of witness statements (redacted to remove identifying information, if required);
    - 3.2. In response to Amnesty International's publication of video evidence, verified by witnesses, of soldiers cutting the throats of detainees recaptured by the military following the attack on Giwa barracks on 14 March 2014, the former Chief of Defence Staff A.S Badeh responded to Amnesty International on 23 December 2014 (enclosed) reporting that an internal investigation into this allegation is ongoing and committed to share the findings. The same was confirmed by the former National Security Advisor in a letter to Amnesty International dated 30 July 2014 (also enclosed). Amnesty International has never received a copy of the promised investigative report and further to our previous request (our letter dated 3 March 2016, Ref: TG AFR 44/2016.012 refers) we request again copy of this report.



- 3.3. Full copy of the investigative report into the credible allegations of deaths of at least 107 men and boys in a military detention facility in Borno state between January and March 2016, further to our request in our letter dated 12 April 2016, Ref: TG AFR 44/2016.016 (enclosed);
  - 3.4. Copy of the full report of the 'Special Board of Inquiry to Investigate Alleged Human Rights Violations Against Nigerian Army Personnel in the Fight Against Insurgency at the North East and Internal Security Operations at the South East' (2017), including copies of witness statements (redacted to remove identifying information, if required);
  - 3.5. Copy of the fully report on the investigation into allegations of misconduct of soldiers in Bama hospital, as announced by Army spokesman Sani Usman and reported by Reuters on 6 June 2017;
  - 3.6. Can you explain, for each of the aforementioned investigations (3.1 to 3.5) if the reported investigations led to prosecution and/or court martial proceedings of suspected soldiers and/or officers? If so, could you please provide an overview of the nature of charges and sentences as well as copies of judgments in each case?
4. Amnesty International is trying to confirm statistics, conditions and the legality of "Boko Haram suspects" under military detentions. In this regard, we have noticed the completion of the October 2017, February 2018 and July 2018 trials of Boko Haram suspects held at Wawa Cantonment, Kanji, Niger State (Kainji detention facility). In order to verify our research and understand the full picture, we kindly request the following information:
- 1.1. How many detainees are currently held in Kainji detention facility?
  - 1.2. How many of these detainees have been convicted of a crime and are serving their prison term?
  - 1.3. How many have been charged and are awaiting trial?
  - 1.4. How many have been discharged or acquitted and are currently undergoing the deradicalisation and rehabilitation programme?
  - 1.5. How many Boko Haram suspects are currently held in other detention facilities run by the military across the country, including in Maiduguri, Bauchi, Damaturu, Lagos, Abuja and Yola?
  - 1.6. Could you kindly provide us with comprehensive information on the deradicalization and rehabilitation programme that the discharged detainees are currently undergoing, including a copy of the official programme document?

I look forward to hearing from you with responses to our questions.

Please accept the assurances of my highest consideration.

*O. J. Ojigho*

**Osai Ojigho**  
Country Director,  
Amnesty International Nigeria

CC: Attorney General of the Federation and Minister of Justice, Hon. Mr. Abubakar Malami

[

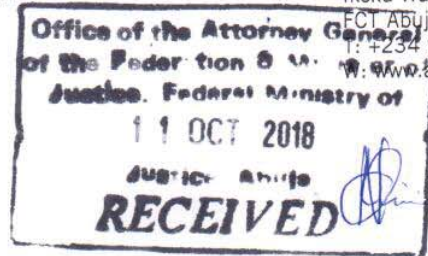
10 October 2018

Attn.: Jones Nebo N.B  
Assistant Director Public Prosecutions of the Federation



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The Federal Ministry of Justice  
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Ref: AIN/0261/101/18

Dear Mr Abubakar Malami SAN,

**RE: REQUEST FOR ADDITIONAL INFORMATION ON COURT CASES RELATING TO CRIMES COMMITTED BY SUSPECTED BOKO HARAM MEMBERS**

I would like to express our deepest gratitude for the detailed information and response provided to us in your letter dated 29 December 2017, Ref (DPPA/CCG/CAI/06/2017). We also appreciate the steps taken by your office to facilitate our observation of the trials held at Wawa Cantonment, Kainji, Niger State in July 2018.

I am writing to follow up on your letter dated 29 December 2017, Ref (DPPA/CCG/CAI/06/2017) and request updated information on the trials of Boko Haram suspects. Your response to our questions and request for additional information outlined below will greatly assist in accurately reflecting all the steps the Federal Government of Nigeria has taken towards ensuring justice for victims of grave crimes and human rights violations:

1. Can you kindly confirm or clarify (if incorrect) our subsequently outlined understanding of the outcome of the trials held at Wawa Cantonment, Kainji, Niger State in October 2017? After reviewing the information kindly provided in your letter dated 29 December 2017, Ref (DPPA/CCG/CAI/06/2017), we understand that:
  - 1.1. 210 suspects were discharged and released by the court upon ex parte motions by the prosecution for want of sufficient evidence to prosecute;
  - 1.2. 65 suspects had their charges withdrawn by the prosecution and struck out by the court on account of their absence from court due to death or loss;
  - 1.3. upon a trial on merits, 6 defendants were acquitted, and 50 defendants were convicted;
  - 1.4. 28 suspects had their cases adjourned and transferred to the Federal High Courts in Abuja and Minna and were therefore transferred to Kuje prison in Abuja;
  - 1.5. in conclusion, a total of 294 individuals whose cases were either concluded or transferred to the Federal High Court in Abuja and Minna in October 2017, and who should no longer be detained at Wawa Cantonment.



2. We kindly request further information on the outcomes of the *February 2018 and July 2018* trial sessions held at Wawa Cantonment, Kainji, Niger State, similar to the information you provided us with regards to the October 2017 trials. In particular, could you tell us, *for each trial session*:
  - 2.1. How many suspects were discharged and released by the court upon ex parte motions by the prosecution for want of sufficient evidence to prosecute?
  - 2.2. How many suspects had their charges withdrawn by the prosecution and struck out by the court on account of their absence from court due to death or loss?
  - 2.3. How many suspects were subjects of a trial on merits before the Federal High Court sitting in Kainji, and among them how many were acquitted and how many were convicted?
  - 2.4. What specific charges the convicted persons were convicted for?  
What type of evidence was used as the basis for these convictions – material evidence, witnesses, confessional statements, or other type?
  - 2.5. How many suspects had their cases adjourned and/or transferred to another court?
  - 2.6. How many suspects or defendants detained at Wawa Cantonment, if any, are still waiting for their case to be determined following the completion of the October 2017, February 2018 and July 2018 trial sessions?

We would be very grateful if copies of the case files of all these persons tried before the Federal High Court sitting in Kainji, and in particular judgments following trials on merits, could be provided to us. Any overview list of these cases would be useful as well.

3. We kindly request updated information regarding trials of Boko Haram suspects that commenced, are ongoing or concluded before other Federal High Courts in Abuja, Bauchi, Lagos, Makurdi, and Maiduguri since your last letter dated 29 December 2017 (i.e. all trials held in 2018) including information on:
  - 3.1. How many suspects were convicted, discharged or acquitted? Kindly provide judgments in these cases as well.
  - 3.2. Taking into account there were already ongoing cases before the Federal High Courts in Abuja, Bauchi, Lagos, Makurdi and Maiduguri late 2017, and further cases were then transferred from Kainji to Abuja in 2017 and 2018, how many cases are currently pending before these Federal High courts?
4. Amnesty International is also trying to assess the extent to which allegations of crimes and human rights violations committed by members of the military and the Civilian Joint Task Force have been investigated and prosecuted. As such, can you please provide us with information on:
  - 4.1 How many cases of alleged crimes committed by members of the military and/or the Civilian Joint Task Force in the context of their operations in the north-east have been referred to the Complex Crimes Group and the Office of the Attorney General and Ministry of Justice for prosecution since 2009?
  - 4.2 If any, please explain who referred these cases and provide us with updated information on their status, including how many suspects were convicted, discharged or acquitted? Kindly provide judgments, if any, in these cases as well.

As we are approaching the conclusion of our report on this matter, we appreciate response by 1 November 2018.

I look forward to hearing from you with responses to our additional questions.

Please accept, Honourable Minister, the assurances of my highest consideration.



**Osai Ojigbo**  
Country Director,  
Amnesty International Nigeria

**AMNESTY INTERNATIONAL  
IS A GLOBAL MOVEMENT  
FOR HUMAN RIGHTS.  
WHEN INJUSTICE HAPPENS  
TO ONE PERSON, IT  
MATTERS TO US ALL.**

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# WILLINGLY UNABLE

## ICC PRELIMINARY EXAMINATION AND NIGERIA'S FAILURE TO ADDRESS IMPUNITY FOR INTERNATIONAL CRIMES

Since 2009, Northeast Nigeria has been the scene of an armed conflict between Boko Haram and the Nigerian security forces, with serious violations of international humanitarian law and human rights law committed on both sides. Boko Haram has killed and abducted thousands; girls and boys have been subject to recruitment as child soldiers or to forced marriage and sexual slavery. Nigeria's security forces have conducted mass arbitrary arrests and detentions, torture and other ill-treatment leading to deaths of thousands.

This report critically assesses the International Criminal Court's Office of the Prosecutor (OTP) eight-year long preliminary examination into alleged crimes committed in the context of the conflict in northeast Nigeria and the government's failure to investigate and prosecute alleged perpetrators of crimes under international law. The report shows that most of the investigations and prosecutions conducted against alleged members of Boko Haram do not relate to the horrific crimes against civilians committed by members of the group and that they are "sham" proceedings. At the same time, the report reveals that, in the last eight years, the Nigerian government has not conducted any relevant criminal proceeding related to Rome Statute crimes against members of the Nigerian military and its allied vigilante group.

Eight years since the opening of the preliminary examination of Nigeria by the OTP, Amnesty International concluded that the Nigerian government has not conducted any relevant proceedings into the war crimes and crimes against humanity perpetrated by both Boko Haram and the Nigerian security forces. Amnesty International calls on the OTP to open a formal investigation in Nigeria.