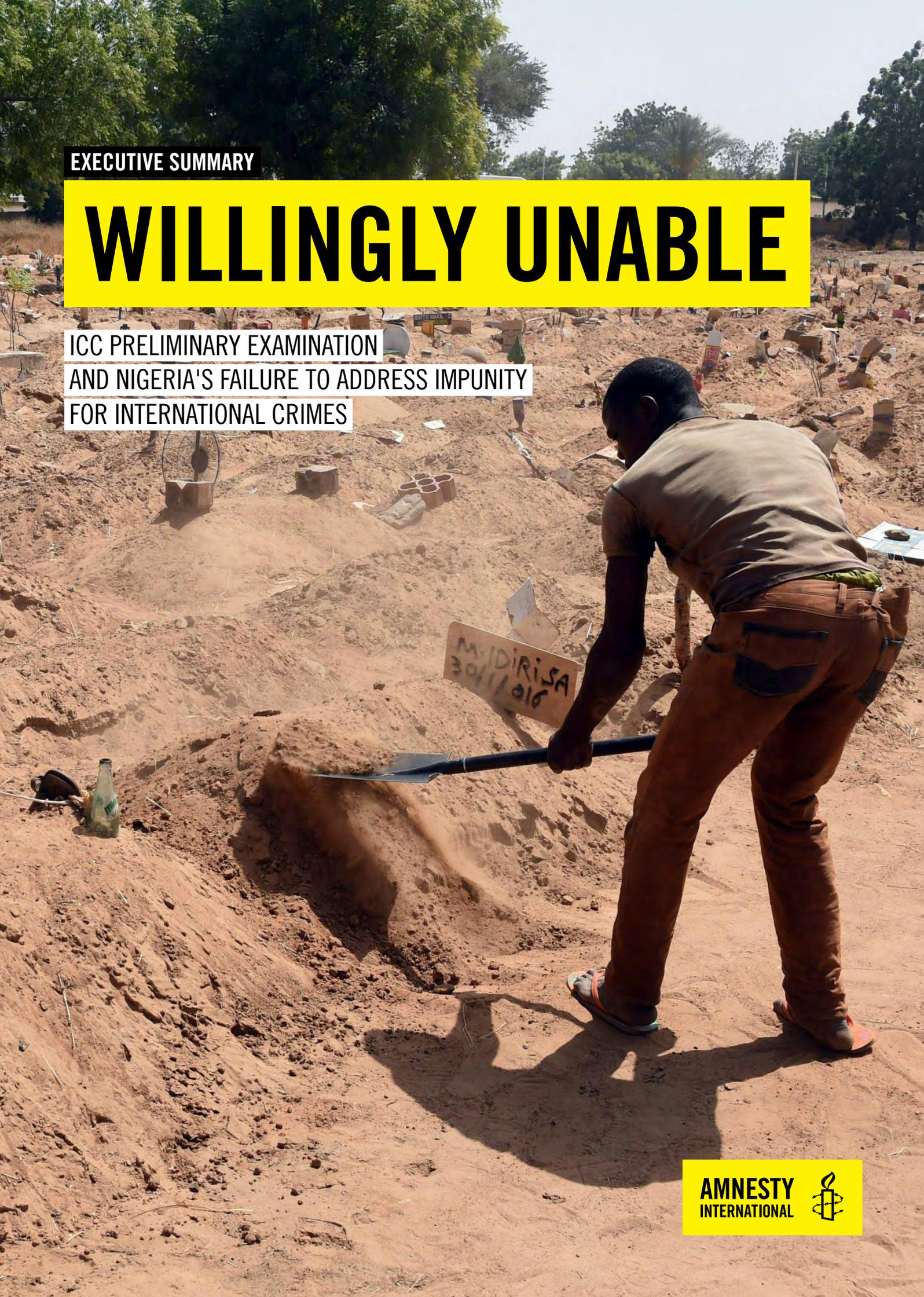


EXECUTIVE SUMMARY

WILLINGLY UNABLE

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



AMNESTY
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First published in 2019 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Index: AFR 44/1475/2019

Original language: English

amnesty.org



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. © PIUS UTOMI EKPEI/AFP/Getty Images



A 15-year-old mother cries next to the body of her six-month-old daughter at their home in Banki, on 28 September 2016. Her daughter was brought into the MSF clinic suffering from severe malaria as well as malnutrition. Hours later she passed away in need of a blood transfusion that was too complicated for the clinic to perform. © Jane Hahn





BACKGROUND

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.

This document is an executive summary of Amnesty International's report that 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.



Women and children, mostly from Bama LGA, meeting in a Maiduguri IDP camp to plan their advocacy on their husbands' release, March 2018 © Amnesty International

at least
20,000

number of people that the Nigerian military had arbitrarily arrested in the course of the conflict (as of June 2015)

complementarity principle

is a key principle of the Rome Statute, which provides that states parties have the primary obligation to investigate and prosecute Rome Statute crimes

more than
1,200

number of people that the Nigerian military had extrajudicially executed in the course of the conflict (as of June 2015)

9 years

time since the opening of the preliminary examination on Nigeria by the Office of the Prosecutor of the International Criminal Court

over
20

number of inquiries - commissions, committees, panels and other forms of proceedings - that 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) between 2009 and 2018

THE ICC'S COMPLEMENTARITY ASSESSMENT

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

2013

In **2015**, the OTP identified eight "potential cases" 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

2016
2017
2018

In **August 2013**, the OTP published an 'Article 5 report' (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

2010

2015

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



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'.



16th Assembly of States Parties to the Rome Statute of the International Criminal Court, 16-24 November 2016, World Forum Convention Center, The Hague. © Amnesty International

RECENT PROCEEDINGS RELATED TO ALLEGED CRIMES COMMITTED BY NIGERIAN MILITARY

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.



Knifar women waiting to testify in front of the Presidential Investigation Panel, September 2017
© Private

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.

Three young girls, including Fatima and Goggo, walk home in Maiduguri, Nigeria, on September 4, 2019. Fatima, 18, spent 15 months in the Giwa barracks near Maiduguri, Nigeria, before moving to a camp in the city last summer for displaced Nigerians. She was abducted in 2014 by Boko Haram fighters. Goggo was 10 when her village near Gwoza was attacked by Boko Haram militants. When soldiers found her and her family, they accused her father and brother of being militants. That was the last time she saw them. Goggo spent two years in the women's side of Giwa where she shared a room with two hundred people. © Tom Saater/For The Washington Post via Getty Images





[[left and right]] 'Mass trials' undertaken into suspected Boko Haram members (inc. Kainji) © Private

PROCEEDINGS RELATED TO MEMBERS OF BOKO HARAM

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.

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.

GWOZA, NIGERIA: Part of the Emir's palace which was destroyed during fighting in Gwoza, Nigeria, the former base of Boko Haram, recently retaken by the Nigerian military. © Jane Hahn for the Washington Post



ANALYSIS OF POTENTIAL ADMISSIBILITY

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.



Women and children in Bama Hospital camp, 5 December 2015. Hundreds of displaced people died in this camp. © Gbemiga Olamikan





A woman carries firewoods inside an IDP camp on April 20, 2019 in Maiduguri, Nigeria. General elections were held in Nigeria on 23 February 2019 to elect the President, Vice President, House of Representatives and the Senate, which the incumbent president Muhammadu Buhari won. In Maiduguri, the capital city of Borno State in northeastern region, saw democracy working by electing the president, governor, and other cabinet members, despite the military tensions with Boko Haram, a Jihadist group which began its military insurgency in 2009. Ten years into the insurgency, the city has become relatively safer than before; however, it still possesses tens of thousands of Internally Displaced Persons of the armed-conflict who could not return their home villages. © Jean Chung/Getty Images

CONCLUSIONS



For the reasons outlined in this document and laid out in the 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.

Nine 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.



Women and children, mostly from Bama LGA, meeting in a Maiduguri IDP camp to plan their advocacy on their husbands' release, March 2018 © Amnesty International

KEY RECOMMENDATIONS

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

- As a matter of urgency, conclude the Nigeria preliminary examination, determine the admissibility of the eight potential cases and seek authorization to open a *proprio motu* investigation.
Nine years since the opening of the preliminary examination and faced with the continuing commission of crimes under international law and the lack of genuine efforts to investigate and prosecute at the national level, it is time for the OTP to open a formal investigation in Nigeria.

In parallel, the OTP should:

- Insist that its cooperation requests are fully answered by the Nigerian authorities in a timely manner, and demand the provision of concrete information regarding alleged steps taken towards accountability in Nigeria - including especially arrests, charges and judgments of those most responsible for crimes equivalent to Rome Statute crimes;
- Publicly report on cooperation with the Nigerian authorities, or the lack thereof, including providing information on failure to answer to or implement specific OTP requests.

TO THE GOVERNMENT OF NIGERIA:

- Immediately release all individuals who have been arbitrarily arrested and detained in the context of the conflict in the Northeast;
- Immediately put an end to torture and ill-treatment of individuals detained in military facilities as well as the practice of sham trials of such detainees, including in the Giwa barracks;
- Ensure that all individuals detained in the context of the conflict in the Northeast who face credible allegations of criminal responsibility for crimes under international law are promptly brought to trial before independent, impartial and competent courts, in a manner that respects international standards of fairness and transparency;
- 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 independent, impartial and effective criminal investigations 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, and publicly report on all efforts made to bring senior leaders of Boko Haram, military and CJTF members and others 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.

Handover of solidarity actions from sections to Knifar women movement in Maiduguri, Borno State, Nigeria. © Amnesty International Nigeria



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TO ONE PERSON, IT
MATTERS TO US ALL.**

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Index: AFR 44/1475/2019

December 2019

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