

AMNESTY INTERNATIONAL OPEN LETTER

Date: 13 February 2021 index number: AFR 44/3654/2021

OPEN LETTER TO THE OTP REQUESTING IMMEDIATE ACTION ON THE SITUATION IN NIGERIA

Dear Prosecutor Fatou Bensouda, Dear future Prosecutor Karim Khan,

The time is running out for the Prosecutor of the ICC to do what is right for the people of Nigeria; too long has the Office waited while thousands die, and none are held accountable. The time to act is now!

Northeast Nigeria has been the scene of an armed conflict characterized by egregious violations of international humanitarian and human rights law for over a decade. Boko Haram committed war crimes and crimes against humanity, including the murder of thousands of civilians, through bombings and other unlawful killings; widespread abductions, especially of girls, boys, and younger women; forced marriage, rape and other sexual violence; widespread attacks on schools; and recruitment and use of child soldiers. During their operations, the Nigerian armed forces have also committed war crimes and crimes against humanity, including extrajudicial executions; indiscriminate attacks; arbitrary detention and torture and other ill-treatment of thousands of civilians; and sexual violence. Amnesty International estimates that at least 10,000 individuals have already died in detention. These horrific crimes are still ongoing. According to the UN, nearly 2.4 million of people were displaced in the context of the conflict.

On 11 December 2020 the Office of the Prosecutor announced it had reached a decision with regards to the preliminary examination into the situation in Nigeria. It concluded that war crimes and crimes against humanity have been committed by Boko Haram and the Nigerian military and that Nigerian authorities had failed to investigate and prosecute these crimes, therefore warranting a full investigation by the OTP into the situation in Nigeria.

Shockingly, this announcement has not yet been followed by concrete action, in particular Amnesty International notes that the OTP has not yet (publicly) sought authorization to open an investigation in Nigeria. We therefore urge you to immediately request authorisation to open an investigation in Nigeria.

Victims of the conflict in Nigeria have a right to truth and justice. The promise of a future investigation which is not translated into taking steps to open an investigation is hollow.

Amnesty International has three immediate calls, which cannot wait any longer:

1. THE OTP SHOULD IMMEDIATELY SUBMIT A REQUEST TO THE PRE-TRIAL CHAMBER FOR AUTHORIZATION TO OPEN THE INVESTIGATION INTO THE SITUATION IN NIGERIA

Victims have been waiting for more than 10 years. For the first time, they can see a glimpse of an avenue for justice. There is no reason for the OTP to further delay seeking the judicial authority needed to initiate the full investigation, now that the preliminary examination concluded that an investigation should be opened. We note also that a Pre-Trial Chamber decision on a request to authorize an investigation may take a number of months – adding further delays to the process and necessitating a request seeking authorization to open an investigation as a matter of urgency. Future OTP prioritization decisions or budget considerations cannot be used as an excuse to further delay making the request to the judges and, ultimately, further delay justice. Indeed, any further delay, and the delays have already been shocking in this case, will inevitably lead to the loss of evidence.

2. THE OTP MUST QUICKLY TAKE MEASURES TO PRESERVE EVIDENCE AND PROTECT POTENTIAL WITNESSES

With time, evidence is often degraded, lost, concealed, or destroyed. In a conflict situation, potential witnesses might also flee, disappear, or get killed. But there are things that can be done now to preserve any evidence of crimes and to protect any potential witnesses. Certain crime scenes, for instance mass grave sites, should be preserved. The OTP should also consider undertaking mass-grave exhumations or taking testimonies from witnesses who are particularly vulnerable. We note that article 56 Rome Statute provides grounds for the OTP – early in an investigation - to gather and preserve evidence which because of its nature, may not be fully reproduced at trial. We urge the OTP to consider its powers under

article 56, including the possibility of securing evidence before authorisation for a full investigation is granted. Of course, the opening of a full investigation would ensure that the OTP had recourse to the Part IX of the Rome Statute related to states' obligations to fully cooperate with the Court.

3. THE OTP IN COORDINATION WITH THE REGISTRY MUST URGENTLY START OUTREACH ACTIVITIES IN NIGERIA

There is a consistent demand for justice in Northeast Nigeria, which has seen huge interest in the ICC, which victims see as their last realistic hope for redress for crimes committed by all parties. Local victims' networks have been calling for the ICC intervention for years. Thousands of Nigerians have watched Amnesty's online debate in which a representative of the OTP participated, a few days after the announcement on the preliminary examination's conclusion. Outreach is urgently needed and should be commenced immediately, so that victims and affected communities may effectively and meaningfully engage with the ICC, and vice versa. This would include victims sharing their views and expectations and the ICC explaining its mandate and the ongoing judicial processes, not least to explain the obligations and powers of the OTP and the ICC system as a whole, right of victims to participate in the ICC proceedings and the continuing role that the Nigerian authorities must play in bringing justice to the people.

Best regards,

Amnesty International