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Nigeria: Ensure Independence and Effectiveness of the Presidential Investigation Panel

Amnesty International commends all attempts by the government of Nigeria to meet its obligations under the Constitution of Nigeria and international law to investigate, prosecute and punish all crimes under international law and other serious violations of human rights law, whether committed by Boko Haram or the Nigerian military and the civilian joint task force. In this respect, Amnesty International welcomes the constitution of a Presidential Investigation Panel on Review of Compliance of Armed Forces with Human Rights Obligations and Rules of Engagement (Presidential Panel) on 11 August 2017.

Provided international standards and best practices on thorough, effective, independent and impartial investigations are guaranteed and implemented, the Presidential Panel offers an opportunity to finally bring justice to victims of war crimes and other serious human rights violations committed across parts of Nigeria affected by conflict and military operations. Amnesty International will continue to cooperate to the best of its abilities to assist the government of Nigeria in meeting its obligations to investigate, prosecute and punish all crimes under international law and other serious violations and abuses of human rights. Toward this end, the organisation has submitted a memorandum¹ to the Presidential Panel outlining the findings of its years of research relevant to the terms of reference (ToR) of the Panel.

Amnesty International also welcomes the publication of the ToR of the Presidential Panel, which is the first step towards ensuring transparency of its mandate, working methods and scope of investigations. However, the organisation highlights the following observations and concerns with respect to the ToR and working methods of the Presidential Panel and calls for immediate action by the government and the Presidential Panel in order to ensure thorough, effective, independent and impartial investigation of allegations.

Observations and concerns on the ToR and working methods of the Presidential Panel

Amnesty International notes that the ToR of the Presidential Panel, as made public on government notice² and media, lacks sufficient clarity on scope of its mandate and several issues related to its working methods.

¹ <https://www.amnesty.org/en/documents/afr44/7074/2017/en/>

² <https://www.publicnotice.ng/2017/08/14/presidential-investigation-panel-to-review-compliance-of-the-armed-forces-with-human-rights-obligations-and-rules-of-engagement/> (Public Notice and ToR)

In particular, Amnesty International is concerned that the ToR do not clearly indicate whether measures will be put in place to protect victims or other vulnerable persons testifying (or providing written memoranda) before the Panel. Protection of victims and witnesses and all those who come into contact with the Panel, and an undertaking that no such person shall, as the result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals, is critical to ensure that all those concerned may be able to come forward to provide relevant information to the commission without fear and with all the necessary protection. Witnesses and victims before the Panel should also be provided with adequate information on the procedures the commission will follow during the hearings, and with all the necessary support and protective measures during their testimony, particularly if they may be subject to cross-examination.

Another area that the ToR fails to specify is the temporal and geographical scope of the Panel's jurisdiction. It is therefore not clear how far back in time the Presidential Panel is entitled to go in its investigation into alleged crimes under international law and other serious violations and abuses of human rights as well as 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.

Another issue that remains unclear from the ToR is the mandate of the Presidential Panel to ensure those responsible for violations and crimes are brought to justice. Amnesty International welcomes the Panel's mandate to recommend "means of preventing violations of international humanitarian and human rights law in conflict situations,"³ which is a vital step towards ensuring that such violations do not occur in the future. However, the organisation is concerned that the ToR do not specifically provide for the Panel, as a result of its investigation, to make recommendations for investigation and prosecution of suspected perpetrators of crimes under international law and other serious violations and abuses of international human rights law, or to institute criminal proceedings themselves against suspected perpetrators. The government's constitutional and international obligation goes beyond mere investigation of such violations, and includes bringing perpetrators to justice.

As such, Amnesty International calls on the government to amend the mandate the Presidential Panel to include making recommendations on investigations and prosecution of perpetrators of crimes and human rights violations. Failing this, the organisation calls on the Presidential Panel to interpret its mandate broadly, specifically its mandate under the provision that allows it to "to make further recommendations in line with these terms of reference as may be deemed necessary,"⁴ as having the authority to make such recommendations for investigation and prosecution of suspected perpetrators of human rights violations and crimes.

Amnesty International further believes that it is critical to ensure the Presidential Panel is provided with all the necessary financial and human resources to carry out its work, including a dedicated Secretariat. Such Secretariat support should assist the Presidential

³ Public Notice and ToR, para. 2(d).

⁴ Public Notice and ToR, para. 2(e).

Panel from its establishment to the presentation of the report by providing substantive and technical expertise and support. Given the nature of allegations that stand to be investigated, Amnesty International believes that the Secretariat support to the Presidential Panel should include, amongst others, competent and independent professional staff with expertise in human rights investigation, criminal investigation, forensic analysis, legal analysis, witness/source protection advice, gender advice, data management and interpretation.

Amnesty International also urges the government to ensure the Presidential Panel is provided with the necessary timeframe in order to carry out a thorough and comprehensive investigation of allegations. Amnesty International is concerned that a period of 90 days as reported in media⁵ for the Panel to conduct its investigation and submit its final report, is too short to adequately carry out such an investigation, analyse the findings and make appropriate recommendations. This is particularly the case given that, without apparent limitations on the temporal and geographic scope of the investigation, the scope of the investigation could be extremely broad.

It is also not clear from the ToR whether, beyond the public hearings and memoranda, the Panel will be interviewing relevant stakeholders, including members of the military, and considering other types of information, including documentary, or conducting visits to sites where crimes and other serious violations and abuses of human rights have allegedly occurred and what resources will be available to ensure forensic investigation of such sites, as well as places of detention, mortuaries and burial sites, in order to fulfil its mandate. As the invitation to submit memoranda and appear before the Panel appears to be voluntary,⁶ it would seem that the Panel would need to extend the scope of its investigation to proactively seek out information in order to ensure that it is sufficiently comprehensive.

In this regard, it is not clear, from the ToR, or from the Tribunals of Inquiry Act (1990) under whose authority the Presidential Panel was presumably established, what the entitlements of the Panel are with respect to freedom of movement, inquiry and protection, including the corresponding obligations of all of the organs of the state (including military, police, Ministry of Justice etc.), and what steps have been taken to ensure:

- a) freedom of movement of the Panel throughout the country to investigate various sites where allegations of human rights violations have been made;
- b) unhindered and frequent access to all places and establishments (including all places of detention, mortuaries and burial sites) and the mandate to meet and interview members of the military, community leaders, NGOs, and other

⁵ See <https://www.channelstv.com/2017/08/11/osinbajo-inaugurates-panel-on-human-rights-abuse-in-the-military/>, 11 August 2017; <http://www.dailycorrespondents.com.ng/2017/08/osinbajo-inaugurates-presidential-panel-on-human-rights-abuse-in-the-military/>, 11 August 2017.

⁶ Public Notice and ToR, para. 3 which states that “stakeholders, affected persons, institutions and interested members of the public are hereby invited to submit to the Presidential Investigation Panel, memorandum that will assist it in the discharge of its mandate”.

institutions, and any such person whose testimony is considered necessary for the fulfilment of the mandate;

- c) free access to all sources of information, including documentary material and physical evidence, including those held by the military;
- d) appropriate security arrangements for the staff and documents of the Panel.

Finally, Amnesty International is also concerned that it remains unclear from the ToR whether the final report of the Presidential Panel will be made public. Amnesty International strongly encourages the Panel to make its findings public, unlike those of previous investigations, including the recently concluded Special Board of Inquiry, whose report has not been made public.

Therefore, while commending the establishment of the Presidential Panel, and committing to engage with it, Amnesty International encourages the government and the Panel to take these observations and concerns into account by interpreting and/or amending as necessary the mandate of the Panel, and provide further information to the public with respect to the issues raised above.

Background

Amnesty International has been documenting gross and massive violations and abuses committed by all sides to the non-international armed conflict in the North-East of the country as well as human rights violations in the rest of the country, including the killing of at least 150 peaceful pro-Biafra protesters in the south east of the country and the killing of 350 people by the military between 12 and 14 December 2015 following a confrontation between members of the Islamic Movement of Nigeria (IMN) and soldiers in Zaria, Kaduna state. Amnesty International's findings have been published in our successive reports from 2012 to 2016. Amnesty International continues to document a number of cases of arbitrary arrests, incommunicado detentions, extra-judicial executions, torture and ill-treatment in Nigeria.

Time and again, Amnesty International has repeatedly called on the Nigerian government to initiate independent, impartial and effective investigations into such compelling evidences of crimes under international law committed by Nigerian military forces and Boko Haram members. The organisation has also met and urged various officials within the Nigerian government, including the President, the Attorney General and Minister of Justice, the Chief of Army Staff and others, to take steps to end violations and ensure justice to victims of such atrocities. However, while the organisation welcomes the establishment of this Presidential Panel, Amnesty International believes that the steps taken so far by the government of Nigeria towards investigating and bringing perpetrators to justice remain inadequate and ineffective.

Specifically, Amnesty International has repeatedly stated that the Nigerian military is not sufficiently independent to investigate, prosecute and try alleged perpetrators of human rights violations and crimes under international law. In this regard, Amnesty International also takes note of the findings of the recently-concluded Special Board of Inquiry (SBOI), which exonerated nine senior commanders named by Amnesty International as suspected of responsibility for crimes under international law. Amnesty International cooperated with the SBOI while raising several serious concerns regarding the mandate and terms of

reference of the board.

Amnesty International stands by its call for an investigation that is independent, impartial and thorough: criteria that the SBOI clearly did not meet. Further, the focus of the SBOI was to test the veracity of the allegations raised by Amnesty International, which limited the effectiveness of the Panel and represents a misunderstanding of the obligation of the state. The onus lies on the government of Nigeria, not on human rights groups such as Amnesty International, to ensure the independent and effective investigation of all credible allegations of crimes under international law.

Amnesty International welcomes several of the recommendations of the SBOI, including those relating to the improvement of detention conditions and that reports of the investigations by the military into human rights violations should be made public. However, with respect to the conclusions of the Special Board of Inquiry, Amnesty International stands by the findings of its research and maintains that the nine senior commanders named in our report should be the subject of an effective and independent investigation.

Public Document

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