



Nigeria: Still waiting for justice, still waiting for change. Government must prioritise accountability in the north-east

AI Index: AFR 44/3599/2016
14 March 2016

During President Buhari's nine months in office, the President himself and his government have repeatedly promised that human rights would be upheld by the military and that all violations would be investigated. Despite these promises, the government is yet to take concrete steps towards investigating serious crimes, including war crimes and possibly crimes against humanity committed in the north-east. In addition, despite some reforms, adequate actions remain to be introduced to ensure safeguards against future violations. The government must urgently take action to put its promises into practice.

Amnesty International, among other human rights organisations, has documented evidence of serious human rights violations, war crimes and other crimes under international law committed by Boko Haram and the Nigerian military. Such violations demand immediate action to bring perpetrators to justice and to guarantee non-recurrence.

During February 2016, Amnesty International met with senior government and military officials to assess steps taken towards implementing Amnesty International's recommendations. Officials pledged their commitment to upholding human rights and disclosed some recent reforms introduced towards ending violations. However critical safeguards against military violations remain absent and the military leadership continues to deny the extent and gravity of the evidence against its predecessors. Crucially, no concrete plans are in place to independently and impartially investigate crimes under international law committed in the north-east.

This public statement highlights the outstanding recommendations that must be urgently implemented by Nigeria. Amnesty International calls on the government to prioritise three issues. Firstly, the government must fulfil President Buhari's promises to investigate by launching comprehensive, independent, impartial and effective investigations into crimes under international law and other serious violations and abuses of human rights committed in the north-east. Secondly, the government must ensure reform of the military's operating procedures to ensure non-recurrence of such violations. In particular, the government and military must ensure that all detainees have access to their families, lawyers and medical assistance, and are brought promptly and regularly before a court. Lastly, the government must work with the National Assembly to bring Nigeria's domestic laws into line with international human rights standards.

BOKO HARAM: WAR CRIMES AND CRIMES AGAINST HUMANITY

The armed group Boko Haram has committed war crimes and crimes against humanity during its conflict with the Nigerian state.¹ Amnesty International's analysis, based on field research, testimonies of witnesses, experts and victims as well as analysis of media reports, suggests that Boko Haram may have murdered at least 8,200 civilians in 2014 and 2015, although the true figure is likely to be higher.² Boko Haram members have routinely bombed civilian targets across Nigeria, raided towns and villages in the north-east and, between July 2014 and February 2015, took control of major towns in Adamawa, Borno and Yobe states.

Amnesty International believes Boko Haram have abducted at least 2,000 women and girls since 2009 and trapped thousands more when it took control of towns in the north-east. Many women and girls were forced into marriage with Boko Haram members. Amnesty International has also documented cases of rape and other forms of sexual violence by members of Boko Haram. Men and boys abducted by Boko Haram were often forced to provide services for Boko Haram or to join them as fighters, or they were killed.

Since March 2015, Nigerian and regional armed forces recaptured major towns from Boko Haram control. The Nigerian army has also announced the recovery of more than 3,900 people from Boko Haram control; the overwhelming majority of whom are women and children. Despite such advances, bomb attacks and small-scale raids by Boko Haram continue.³

Amnesty International continues to call on Boko Haram to end its campaign of violence against civilians, immediately release all detained civilians, guarantee safe passage to all civilians who wish to travel to government-controlled areas, and allow unfettered access by humanitarian agencies to assist civilians in Boko Haram-controlled areas. Boko Haram must immediately issue orders that Boko Haram members or individuals who fight on behalf of Boko Haram must respect human rights and international humanitarian law. The group must remove from the ranks anyone suspected of responsibility for ordering or committing serious violations of international humanitarian law and human rights abuses.

WAR CRIMES COMMITTED BY THE NIGERIAN MILITARY

In the course of security operations against Boko Haram in north-east Nigeria, Nigerian military forces have committed various human rights violations, war crimes and acts which may amount to crimes against humanity.⁴

¹ Amnesty International "Our job is to shoot, slaughter and kill' Boko Haram's reign of terror in north east Nigeria" 14 April 2015 (AFR/1360/2015) available from <https://www.amnesty.org/en/documents/afr44/1360/2015/en/>.

² These figures cover Boko Haram attacks in Cameroon, Chad, Niger and Nigeria. They are based on Amnesty International's analysis of credible media sources and data collected by human rights defenders, think tanks and academic institutions. See also the Armed Conflict Location and Event Data Project available from <http://www.acleddata.com/data/realtime-data-2015/> and the Council on Foreign Relations "Nigeria Security Tracker" available from <http://www.cfr.org/nigeria/nigeria-security-tracker/p29483>.

³ Amnesty International "Boko Haram: Bombing campaign sees civilian deaths spiral." 24 September 2015 (AFR 44/2498/2015) available from <https://www.amnesty.org/en/documents/afr44/2498/2015/en/>.

⁴ Amnesty International "Stars on their shoulders. Blood on their hands. War crimes committed by the Nigerian military." 3 June 2015 (AFR 44/1657/2015) available from <https://www.amnesty.org/en/documents/afr44/1657/2015/en/>.

Extrajudicial executions

Amnesty International has documented 27 incidents of extrajudicial executions committed by the military between 2012 and 2014. At least 1,200 men and boys, possibly many more, were killed in these incidents. Nigerian soldiers killed people after they had been captured and when they presented no danger, in flagrant violation of International Humanitarian Law (IHL). One of the most horrific mass extrajudicial executions by the military happened on 14 March 2014 in Maiduguri, Borno state. In the aftermath of a Boko Haram attack on the military detention facility at Giwa barracks, during which detainees were released, Nigerian soldiers killed at least 640 men and boys, most of them recaptured detainees.⁵

The Nigerian military has reported to Amnesty International, on different occasions, that it has conducted two internal investigations into the 14 March 2014 killings. The first investigation claimed that Boko Haram fighters took the detainees outside Maiduguri, separated out Boko Haram members and shot the remaining detainees.⁶ A second investigation reportedly examined a video footage of soldiers and Civilian Joint Task Force members cutting the throats of six detainees recaptured after the Giwa barracks attack and dumping their bodies into mass graves.⁷ Senior military officials implied that the videos showed Boko Haram members pretending to be Nigerian soldiers.

These internal investigations failed to find any wrongdoing by soldiers, despite the testimony of dozens of residents, lawyers, and human rights defenders who spoke to Amnesty International about killings by soldiers in at least nine locations around Maiduguri, video evidence of soldiers killing suspects, as well as dead bodies in the streets, and satellite imagery confirming the existence of several mass graves. Neither military investigation has been made public, preventing any independent evaluation of the adequacy of their procedures and investigations. No-one has been held accountable for these killings.

As stated in Amnesty International's June 2015 report, the only other case of extrajudicial executions investigated by the government was the reported killing of at least 185 people in Baga town in April 2013. In July 2013 the military denied any wrongdoing and to date no-one has been held accountable for these killings. As far as Amnesty International is aware, the other 25 cases documented in the June 2015 report have not been investigated. The inadequacy of investigations conducted to date and the evidence of criminal responsibility of senior military officials mean that independent investigations remain necessary.

The military has recently announced steps that could assist ending extrajudicial executions in the future. The army reportedly launched a review of its rules of engagement and announced that it is training soldiers in international human rights and humanitarian law. The army informed Amnesty International that the Military Police has

⁵ See Amnesty International "Nigeria: More than 1,500 killed in armed conflict in north-eastern Nigeria in early 2014" 31 March 2014 (AFR 44/004/2014) available from <https://www.amnesty.org/en/documents/afr44/004/2014/en/>.

⁶ This information was shared with Amnesty International at a meeting with the Chief of Army Staff on 18 February 2016.

⁷ See Amnesty International "Nigeria: Gruesome footage implicates military in war crimes" 5 August 2014 available from <https://www.amnesty.org/en/latest/news/2014/08/nigeria-gruesome-footage-implicates-military-war-crimes/>.

investigated cases of indiscipline by soldiers, including human rights abuses, since at least October 2015. It also announced on 18 February 2016 the creation of a human rights desk within the Army, which will handle complaints from members of the public. Amnesty International has requested additional information about the investigations reportedly carried out by the Military Police to evaluate whether it could amount to an effective internal oversight mechanism for future violations.

In order to bring an end to such unlawful killings, the government should compile, analyse and publish regular national data on the use of excessive force, including all fatal shootings and deaths in custody. All persons reasonably suspected of criminal responsibility for extrajudicial executions should be held accountable through fair trials not subject to the death penalty.

Deaths in custody

Amnesty International has also documented that since March 2011, more than 7,000 men and boys have died in detention. The highest death rates were recorded in Giwa barracks in May, June and July 2013, when up to 180 deaths were reported on some days. The main causes of deaths in detention were starvation, thirst, severe overcrowding that led to spread of diseases, torture and lack of medical attention, and the use of fumigation chemicals in unventilated cells.

The military claims it has detained fewer than 7,000 people in north-east Nigeria and therefore it is impossible for so many to have died in its custody. Where suspects died in detention, the army claims this was a result of life-threatening injuries sustained during battle prior to arrest.

These claims are not convincing. The military's own correspondence from 2012 and 2013 establishes that detainees died on a daily basis in Giwa barracks.⁸ At its peak, in June 2013, more than 1,400 corpses were delivered from the barracks to one of the mortuaries in Maiduguri. These shocking rates of death are confirmed by military sources and witnesses. Amnesty International spoke to eyewitnesses, including military sources, and analysed video and photographic evidence to determine to causes of death from several detention facilities. Other organisations, including the United Nations Office of the High Commissioner for Human Rights, also found evidence that detainees were deprived of food and water and kept in overcrowded conditions which resulted in death.⁹

In the last two years, the army has taken steps to improve detention conditions. In at least one facility, the army provides more frequent access to food and water, some access to medical care and improved sanitary facilities. It's also reported that independent monitors have started visiting detention facilities.

However, additional safeguards must be put in place to ensure that deaths in custody do not continue. There is still no independent information publicly available about detention

⁸ P. 10 and 94-97, Amnesty International "Stars on Their Shoulders. Blood on Their Hands. War crimes committed by the Nigeria military".

⁹ United Nations High Commissioner for Human Rights "Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected", 9 December 2015 (A/HRC/30/67) available from http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A-HRC-30-67_en.docx.

conditions and the military is yet to provide information about the detention facilities where the worst conditions have been documented.

The government should immediately close all unofficial and secret places of detention, including ungazetted military detention centres, and either transfer detainees to lawful places of detention or release them. All detainees must be held in detention facilities where conditions are sanitary and humane, which ensure their physical integrity. They must have access to professional medical care, adequate food and all other necessities of human survival. Detainees should have access to a process that allows them to lodge complaints about their treatment and must be brought before the courts and be given the opportunity to challenge the lawfulness of their detention. The government should strengthen the effectiveness of independent oversight bodies with powers to review and investigate complaints of ill-treatment and to monitor conditions in prisons and detention facilities. Detention facilities should be subjected to regular independent inspection by national and international human rights bodies, and should be accessible to human rights NGOs.

Deaths in custody must be independently investigated, any military officials who bear criminal responsibility for these deaths must be held accountable in fair trials and the relatives of those who died must be informed of their fate.

Torture

Torture is routinely and systematically used by security forces in Nigeria to extract confessions or as a form of punishment.¹⁰ Former detainees described being beaten, suspended from metal poles and shocked with electric batons by soldiers, among other torture methods. Victims of torture or other ill-treatment rarely have access to medical assistance and many die as a result of their injuries.

The army maintains that its soldiers do not use torture or cruel, inhuman and degrading treatment. However, Amnesty International continues to document cases of such treatment. For example, on 21 November 2015, seven men were beaten during their arrest and detention by Nigerian soldiers in Damaturu, Yobe state.¹¹ One man died the next day as a result of his injuries.

All vital safeguards against torture are routinely flouted by the military. The military must ensure that all suspects have access to lawyers, relatives and medical assistance, and are promptly and regularly brought before a judge. As noted previously, the government should ensure that detainees can lodge complaints about their treatment and that independent oversight bodies can effectively investigate complaints of ill-treatment and monitor detention conditions. The government must ensure that international human rights standards on the prohibition of torture and ill-treatment are fully incorporated into the codes of conduct and training of military officials, and strictly enforced. Confessions or other evidence obtained through torture must never be invoked in legal proceedings.

¹⁰ See also Amnesty International "'Welcome to Hellfire': Torture and other ill-treatment in Nigeria" 18 September 2014 (AFR 44/011/2014) available from <https://www.amnesty.org/en/documents/AFR44/011/2014/en/>.

¹¹ Amnesty International "Nigeria: Man's death following beating by soldiers must be impartially investigated" 26 November 2015, available from <https://www.amnesty.org/en/latest/news/2015/11/nigeria-mans-death-following-beating-by-soldiers-must-be-impartially-investigated/>.

Arbitrary arrests and unlawful detention

Amnesty International has documented cases of mass arbitrary arrests by Nigerian troops in Adamawa, Borno and Yobe states since 2009. Soldiers have arrested people without reasonable suspicion that they have committed a crime, often on the word of an unreliable informant. According to military sources, between January 2012 and July 2013 alone, more than 4,500 people were arrested. The military's own documents describe the arrest of large numbers of people, for including for instance the arrest of 916 "Boko Haram suspects" between 16 May 2013 and 30 June 2013.¹² Witnesses, victims, and sources in the military described dozens of mass arrests and screening operations to Amnesty International. Their testimonies corroborate dozens of videos mass arrests, showing hundreds of residents gathered and seated at a market or other central location. In the overwhelming majority of cases, suspects were held without access to their lawyers or relatives, without formal charges and without ever appearing in court.

Following internal assessments, the military announced the release of a cumulative total of 752 detainees in November 2014, July 2015, September 2015 and February 2016. While thousands have been arrested and held in detention, only a handful have faced trial: between December 2010 and June 2015, 24 court cases were concluded, involving fewer than 110 people.¹³ Amnesty International believes that these suspects were not convicted for crimes under international law.

All security forces authorised to conduct arrests must be reminded of the circumstances under which arrest and detention are justified under national and international law. Security forces should record the grounds of arrest when suspects are brought into custody and this should be reviewed by a superior officer. If there are insufficient grounds and authority for arrest, the person must be released. Further, the government should immediately end the involvement of the Civilian JTF and other vigilante bodies in arrests and detentions.

Suspects should be charged with a recognizable criminal offence and tried in accordance with international standards, or released. All detainees must be brought promptly and regularly before a judge and have access to a procedure through which they may challenge the lawfulness of their detention. The government should ensure an up-to-date, centralized register of all people arrested and detained is maintained and kept readily available and accessible to the relatives and lawyers of those detained, as well as to any other people who may be concerned. All detainees must have prompt and ongoing access to their relatives and legal counsel.

Accountability

Nigeria's constitution and international law require that Nigeria investigates war crimes and crimes against humanity promptly, independently and effectively. The International

¹² P8 and 75-86, Amnesty International "Stars on Their Shoulders. Blood on Their Hands. War crimes committed by the Nigerian military."

¹³ See P.44 International Criminal Court Office of the Prosecutor "Report on Preliminary Examination Activities 2014" 2 December 2014, available from <http://www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf>. The report states that between December 2010 and October 2013, 21 cases for alleged involvement in Boko Haram crimes were concluded before Nigerian courts involving 96 defendants. According to media reports, since October 2013, a further 3 cases involving 6 people were concluded.

Criminal Court's Office of the Prosecutor (OTP) has also concluded that there is sufficient evidence to warrant investigations by Nigerian authorities. The OTP is "analysing the relevance and genuineness of national proceedings by the competent national authorities" before deciding whether to open its own investigation.¹⁴

President Buhari and members of his government have repeatedly promised to investigate crimes and violations committed in the country, including those committed by the military. But these promises need to be translated into concrete actions. Nine months since President Buhari made these promises, there is still no concrete plan for such investigations. Amnesty International believes that Nigeria is not only capable of investigating international crimes committed in Nigeria, but that domestic investigations and prosecutions would better serve the people of north-east Nigeria.

As a first concrete step, Amnesty International calls on the Government to establish an independent and effective investigative panel to examine evidence against individuals suspected of crimes under international law and to prepare cases for prosecution by an independent prosecutorial authority. In the circumstances where the police and military are neither sufficiently independent nor effective to investigate crimes under international law committed in north-east Nigeria by both sides to the conflict, the Government has an obligation to ensure the establishment of an investigative panel independent of the military and the police to ensure that sufficient evidence is produced to initiate criminal prosecutions.

The government must also take immediate steps to ensure that all evidence of crimes and human rights violations are preserved, including by issuing an order that all military records must be preserved. The independent body established to conduct investigations must be empowered to protect witnesses and the government should establish an effective witness protection programme for subsequent trials. Several commissions were set up by previous governments or by the military to look into the root causes of the conflict, investigate specific incidents or assess the status of detainees in custody. The government should ensure full transparency by making public all findings of these commissions. It should also make public statistics of all completed investigations and prosecutions of individuals for crimes relating to the conflict in north-east Nigeria.

Amnesty International named nine high-ranking military officials in charge of operations in north-east Nigeria between 2012 and 2015 who should be investigated for potential individual and command responsibility for crimes under international law. Six of the individuals named by Amnesty International are currently retired, one was reinstated in January 2016 following an unrelated suspension and is awaiting posting, and the status of two others is unknown.¹⁵ Pending investigations, the remaining individuals in active

¹⁴ See P.49 International Criminal Court Office of the Prosecutor "Report on Preliminary Examinations 2015" 12 November 2015, available from <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>

¹⁵ In July 2015 President Buhari retired the Chief of Defence Staff, Air Chief Marshal Alex Badeh and the Chief of Army Staff, Lt. General Kenneth Minimah, both named in Amnesty International's report. ACM Badeh was reportedly arrested in February 2016 on unrelated charges. Former service chiefs named by Amnesty International, Lt. General Azubuike Ihejirika and Admiral Ola Sa'ad Ibrahim, had already retired by June 2015. Amnesty International believes that Major General Obida T. Ethan and Major General John A.H. Ewansiha are also retired. Major General Ahmadu Mohammed was reinstated in January 2016. As far as Amnesty International is aware, the remaining high-ranking officers named in the report, Brigadier General Austin O. Edokpayi and Brigadier General Rufus O. Bamigboye are still in active service.

service should be suspended or at least placed in positions where they could not be responsible for further crimes under international law or interfere with investigations.

Legislation:

The government should work with the National Assembly to review the current legal framework used by Nigeria's security forces in their operations in the north-east. Specifically, the Terrorism Prevention Act should be brought into line with international law, including by providing that an individual may only be arrested on reasonable suspicion of having committed a criminal offence; that all individuals must be promptly brought before a court and charged with a recognisable criminal offence; and that law enforcement officers (including the military when exercising such a function) may only use force when strictly necessary and to the minimum extent required under the circumstances. The provisions of the Terrorism Prevent Act relating to the death penalty should be also repealed.

In addition, the government should introduce legislation to criminalise torture and enforced disappearances, in line with Nigeria's obligations under the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and its Optional Protocol, and the Convention for the Protection of All Persons from Enforced Disappearance. Nigeria should also domesticate the Rome Statue by enacting implementing legislation.