

## NIGERIA

### *Procedural History*

204. The preliminary examination of the situation in Nigeria was announced on 18 November 2010. The Office has received a total of 131 communications pursuant to article 15 in relation to the situation in Nigeria.
205. On 5 August 2013, the Office published an Article 5 report on the Situation in Nigeria, presenting its preliminary findings on jurisdictional issues.<sup>18</sup>
206. On 12 November 2015, the Office identified eight potential cases involving the commission of crimes against humanity and war crimes under articles 7 and 8 of the Statute that form the subject of the ongoing admissibility assessment, including six for conduct by Boko Haram and two for conduct by the Nigerian security forces.<sup>19</sup>

### *Preliminary Jurisdictional Issues*

207. Nigeria deposited its instrument of ratification to the Statute on 27 September 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Nigeria or by its nationals from 1 July 2002 onwards.

### *Contextual Background*

208. The armed conflict between Boko Haram and Nigerian security forces continued during the reporting period. The intensity of the hostilities between the Nigerian Security Forces supported by the armed forces of neighbouring States, including Chad, Niger, and Cameroon on the one hand and Boko Haram on the other however appear to have decreased. The coalition forces consolidated their military gains against Boko Haram, including the recapture of the Sambisa Forest from Boko Haram in December 2016, located in Nigeria's north-eastern Borno State. Having been displaced from their strongholds in Nigeria, Boko Haram fighters reportedly continued to cross Nigerian borders into the neighbouring States of Niger, Chad, and Cameroon. Since April 2017, Boko Haram reportedly increased its military activities, including alleged attacks on civilians, in particular in Nigeria's Borno and Adamawa states as well as on the territory of neighbouring countries.
209. Apart from the conflict with Boko Haram, the Nigerian Security Forces were reportedly involved in other security operations, including in clashes with pro-Biafra protesters in the course of 2017.

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<sup>18</sup> See ICC-OTP, [Situation in Nigeria: Article 5 Report](#), 5 August 2013.

<sup>19</sup> See ICC-OTP, [Report on Preliminary Examination Activities 2015](#), paras. 195-214.

### *Subject-Matter Jurisdiction*

210. During the reporting period, the Office continued to gather and examine information on new crimes allegedly committed in Nigeria. New allegations of crimes were reported in particular in the context of the armed conflict between Boko Haram and the Nigerian security forces, including SGBC as well as crimes against children allegedly committed by Boko Haram.
211. Boko Haram reportedly continues to use children under the age of 15 years as child soldiers, with some being used as suicide bombers. New information reviewed by the Office indicates a sharp increase in the use of children under the age of 15 years and women and girls in suicide attacks in 2017. According to UNICEF, between January and August 2017, 83 children have been used as “human bombs”, 55 of whom were girls, most often under 15 years old and 27 were boys; one was a baby strapped to a girl. Amnesty International (“AI”) also reported a sharp rise in civilian deaths in north-eastern Nigeria resulting from Boko Haram’s increased use of suicide bombers, often women and girls who were forced to carry explosives into crowded areas. In September 2017, AI recorded the killing of 381 civilians between April and September 2017 in Cameroon and Nigeria attributable to Boko Haram. Boko Haram reportedly claimed responsibility for some of the attacks. On the basis of a preliminary assessment of targeted groups, *modus operandi*, and geographical patterns, it appears that the majority of the suicide attacks can be attributed to Boko Haram.
212. The above conduct falls within the potential cases against Boko Haram already identified by the Office, relating to the commission of crimes against humanity and war crimes under articles 7 and 8 of the Statute, namely Boko Haram’s attacks against civilians, recruitment and use of children under the age of 15 year to participate in hostilities, and the persecution of women and girls.
213. During the reporting period, the Office further continued its factual and legal analysis of other allegations of crimes unrelated to the armed conflict between Boko Haram and the Nigerian security forces. In that regard, the Office carefully examined the events of December 2015 in Zaria, Kaduna State, involving clashes between members of the Islamic Movement of Nigeria (“IMN”) and Nigerian security forces. It is alleged that members of the IMN armed with batons, knives, and machetes stopped the convoy of the Chief of Army Staff on a principle road in Zaria on 12 December 2015 and that in subsequent security operations, the Nigerian military killed at least 349 persons (men, women, and children) while at least 66 others were injured. On the basis of information available, including the report of a Judicial Commission of Inquiry established by the Kaduna State Government to investigate the events, the Office has reached preliminary findings and will seek further clarifications from the Nigerian authorities.
214. The Office has furthermore received information alleging crimes committed by the Nigerian Security Forces against pro-Biafra protesters in the course of 2017. The examination of this information is ongoing.

### *Admissibility Assessment*

215. During the reporting period, the Office has continued to assess the admissibility of the eight potential cases it has identified in relation to the armed conflict between Boko Haram and the Nigerian security forces.
216. With respect to the crimes allegedly committed by Boko Haram, information provided to the Office by the Attorney-General of the Federation mostly relates to proceedings targeted at low-level Boko Haram members rather than its leadership. A limited number of case files appears to relate to the alleged killings and injuries of civilians by Boko Haram.
217. The Office is however aware of a series of new proceedings initiated by the Nigerian authorities in October 2017, potentially relevant to the admissibility assessment. According to a statement of the Office of the Attorney-General of the Federation, several prosecutors were assigned to bring to court more than 2,300 Boko Haram suspects, currently detained in two military camps in north-western Nigeria. Four judges have been reportedly assigned to try these cases and defence counsels have been identified to represent the suspects. A first phase of proceedings addressing 575 detainees has reportedly concluded, leading to 45 convictions and sentences between 3 and 31 years in jail and 468 acquittals due to the lack of relevant information. 34 cases were struck out for lack of evidence and 28 cases were transferred to the Federal High Court Abuja Division and adjourned until next year due to the absence of relevant witnesses.
218. With respect to crimes allegedly committed by the Nigerian security forces information available to date only relates to some extent to the two potential cases identified by the Office. The Office however notes that the Nigerian authorities initiated two relevant inquiries during the reporting period, namely the Special Board of Inquiry (“SBI”) instituted by the Nigerian Army and the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (“PIP”).
219. The SBI was convened by the Chief of Army Staff of the Nigerian Army on 8 March 2017 and submitted its report on 18 May 2017, a summary of which was published in June 2017. The SBI was mandated to investigate allegations of human rights violations against the Nigerian Security Forces, including in the context of its operations against Boko Haram in north-eastern Nigeria. According to the terms of reference of the SBI, this includes allegations of deaths in military detention, allegations of summary executions in Giwa barracks on 14 March 2014, allegations of torture, enforced disappearances, unlawful killings and illegal detention. The SBI was also tasked to determine the veracity of specific allegations raised by AI against individual senior military officers.
220. The SBI found that the delayed trials of Boko Haram detainees resulting in some cases of deaths in custody constitute a denial of the detainees’ right to a fair trial. However, the SBI found no evidence of arbitrary arrests or extra judicial

executions of detainees in any of the documents reviewed. The SBI was also unable to substantiate any of the allegations by AI against individual senior military officers.

221. The PIP was set up by Acting President Yemi Osinbajo on 11 August 2017, in accordance with one of the SBI's recommendations. The PIP is mandated among others to investigate alleged violations of international humanitarian law and human rights law and matters of conduct and discipline in the Nigerian Armed Forces in local conflicts and insurgencies. Stakeholders, affected persons, institutions and interested members of the public have been invited to submit information to the PIP to assist it in the discharge of its mandate. From 7 September to 6 October 2017, the PIP held a public hearing in Abuja. The last hearing reportedly took place on 8 November 2017, concluding the investigation. A final report of the proceedings is currently being drafted by the panel and will be submitted to the Government with recommendations for further action.

### *OTP Activities*

222. The Office continued its factual and legal assessment of any new information on alleged crimes received during the reporting period and gathered additional information on relevant national proceedings conducted by the Nigerian authorities. It conducted four missions to Nigeria in the reporting period in relation to its admissibility assessment.
223. In November 2016, the Prosecutor met with the Attorney-General of the Federation and Minister of Justice, Mr Abubakar Malami in The Hague, to discuss the status of the preliminary examination of the situation in Nigeria and to recall pending requests and the specific requirements of the Office to conduct its admissibility assessment. On this occasion, the Attorney-General reiterated Nigeria's commitment to the ICC in general and cooperation with the OTP's preliminary examination in particular.
224. In May 2017, the Prosecutor travelled to Abuja to meet with Acting President Yemi Osinbajo and relevant civil and military authorities, including the Minister of Foreign Affairs and the Minister of Defence. The Acting President as well as the Minister of Foreign Affairs ensured the Prosecutor of Nigeria's support and cooperation. In a separate meeting, the Prosecutor discussed the situation in Nigeria with civil society organisations and listened to victims of alleged crimes.
225. In May 2017, the Office held a second technical meeting with Nigerian authorities at the Ministry of Justice in Abuja to gather relevant information with respect to the potential cases identified by the Office for the purpose of its admissibility assessment. The meeting was attended by a wide range of relevant Nigerian institutions and stakeholders from the justice and security sectors. The Office informed the participants on the status of the preliminary examination, recalled the pending requests for additional information, and elaborated on the requirements of the Office to conduct its admissibility assessment. The

participants provided updated information on relevant initiatives, including the setting up of SBI by the Chief of Defence Staff of the Nigerian Army. In the course of the same mission, the Office met with the National Human Rights Commission (“NCHR”) in Abuja and members of the SBI.

226. In December 2016, March 2017, and June 2017, the Office presented the preliminary findings of its ongoing examination to Nigerian prosecuting authorities during capacity building workshops organised by international partners of Nigeria. In these workshops, experts on international crimes exchanged experiences with Nigerian professionals currently investigating and prosecuting crimes that could fall under ICC jurisdiction, such as prosecutors from the office of the Director of Public Prosecutions of the Federation and the Nigerian Army.
227. Throughout the reporting period, the Office maintained close contact with relevant partners and stakeholders on the situation in Nigeria, including international and Nigerian NGOs, communication senders, and diplomatic actors.

#### *Conclusion and Next Steps*

228. The Office will continue its analysis of all new crimes allegedly committed in the situation in Nigeria and its admissibility assessment of the eight potential cases currently identified in order to reach a decision on whether the criteria for opening an investigation are met. The Office will continue to pay special attention to allegations of SGBC and crimes committed against children.
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 organisations to assist relevant stakeholders in identifying pending impunity gaps and the scope for possible remedial measures.