



## The Persecution of Christians in Nigeria

### PRELIMINARY REPORT

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#### **Executive Summary**

Christians in Nigeria have been systematically persecuted for many years. However, this desperate situation gained wider publicity in 2014 after the terrorist group Boko Haram kidnapped girls from a secondary school, sparking the global campaign #BringBackOurGirls. The campaign brought international attention to the terrorist group's brutal activities and many hoped it would be a critical turning point to end their reign of terror. However, two years later the situation in Nigeria has deteriorated further still.

On 14 April 2014, Boko Haram kidnapped 276 girls, most between 16 and 18 years of age, from a secondary school in Chibok, Borno State. 57 of the schoolgirls managed to escape. 219 remain in the hands of Boko Haram. It was reported that the girls were forced into marriages, sold into slavery, presented to Boko Haram soldiers as a prize for their service or taken to neighbouring countries where Boko Haram is also active. It was further reported that non-Muslim girls were forced to convert to Islam. Other reports indicated that some of the schoolgirls were used by Boko Haram as suicide bombers in Cameroon.

Responding to the ongoing atrocities in Nigeria, in 2010 the Prosecutor of the International Criminal Court (the ICC) opened a preliminary examination of the situation in Nigeria. In 2013, the ICC moved to phase three of the preliminary examination. However, almost three years later, the admissibility decision has not yet been made.

This memorandum collates the information about the persecution of Christians in Nigeria and the main sources of persecution, with a specific focus on Boko Haram and the Muslim Fulani herdsman. The memorandum scrutinises Nigerian and international obligations to uphold the right to freedom of thought, conscience, and religion and outlines Nigeria's failure to adhere to these obligations. The memorandum analyses whether the crimes committed against Christians in Nigeria amount to crimes against humanity under the Rome Statute. Lastly, the memorandum collates the response of the international community to the ongoing atrocities in Nigeria.

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ADF INTERNATIONAL

### (a) Background

1. Nigeria comprises 36 States, 774 local government areas and more than 250 ethnic groups.<sup>1</sup> The main groups include the Hausa-Fulani Muslims (north), the Yoruba, both Christians and Muslims (south-west) and the Igbo, mostly Christians (south-east).<sup>2</sup>
2. The population of Nigeria is 182.3 million.<sup>3</sup> There are approximately 89 million Christians in Nigeria. Although Christians comprise 49 per cent of the population, the persecution of Christians is very high.<sup>4</sup> Because of the ongoing persecution of Christians Nigeria was rated 12<sup>th</sup> on the 2016 World Watch List, which ranks the top 50 countries where Christians are persecuted.<sup>5</sup>
3. The area where Christians are persecuted the most is Northern Nigeria. Northern Nigeria is split between the Muslim north and non-Muslim Middle Belt (which is predominantly Christian).<sup>6</sup> Christians are considered a minority in Northern Nigeria. There are over 30 million Christians in Northern Nigeria, comprising 31.12 per cent of the population.<sup>7</sup> In 2014 Christians were the majority in six northern states (Adamawa, Benue, Kogi, Nasarawa, Plateau, Taraba) and were a sizeable minority, 25–50 per cent, in seven Northern states.<sup>8</sup> However, as a result of the ongoing persecution Christians became extinct in many regions of Northern Nigeria.<sup>9</sup>
4. A recent report *Crushed but not defeated* by Open Doors and the Christians Association of Nigeria concluded that:
  1. Christians in Northern Nigeria face violence from different sides;
  2. A minimum of 9,000-11,500 Christians have been killed;
  3. 1.3 million Christians have become internally displaced or forced to relocate elsewhere, since 2000;

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<sup>1</sup> Abdul Raufu Mustapha, Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria, UN Research Institute for Social Development, November 2006, 1.

<sup>2</sup> International Crisis Group, Nigeria: Want in the Midst of Plenty, 19 July 2006, 1-2. Available at: <http://www.crisisgroup.org/en/regions/africa/west-africa/nigeria/113-nigeria-want-in-the-midst-of-plenty.aspx>.

<sup>3</sup> Open Doors, 2016 World Watch List, available at <https://www.opendoorsusa.org/christian-persecution/world-watch-list/nigeria/>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Open Doors, Crushed but not defeated. The impact of persistent violence on the Church in Northern Nigeria, 17. Available at: <https://www.worldwatchmonitor.org/research/4316020>.

<sup>7</sup> Ibid., 17.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

4. Many churches have seen a steep decline in their memberships, 13,000 churches have been closed or destroyed altogether;
  5. Thousands of Christian businesses, houses and other property have been destroyed;
  6. Distrust and fear of Christians towards Muslims have hugely increased, leading to more segregation;
  7. Christians in Northern Nigeria frequently face marginalization and discrimination, especially in the Sharia states in the Far North, but also in the Middle Belt states;
  8. Participation in church activities as well as the private life of Christians have been severely affected. There has been a steep decline due to insecurity and migration, but there is also an increased commitment amongst the Christians that have stayed behind;
  9. All over Northern Nigeria, the impact of persistent violence on Christian communities is enormous (decrease in numbers, traumatization, being overwhelmed by the influx of displaced and relocating Christians, loss of property and lack of resources)
  - [...]
  12. Christians affected by targeted violence have been left severely traumatized.<sup>10</sup>
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5. It was reported that between 2006 and 2014 over 45 278 people were killed.<sup>11</sup> The exact number of Christians killed in Northern Nigeria is not known. Open Doors estimated that 11 500 Christians were killed in the region between 2006 and 2014.<sup>12</sup>
  6. In March 2015, over 1.24 million people were displaced in Northern Nigeria.<sup>13</sup> 92 per cent of the displacements were caused by Boko Haram and 8 per cent were due to attacks carried out by Muslim Fulani herdsmen.<sup>14</sup> It was assessed that over half a million Christians in Northern Nigeria were displaced because of targeting by the respective Islamic extremist groups. Over 13 000 churches were destroyed, abandoned, or closed in Northern Nigeria between 2000 and 2014.<sup>15</sup>

#### **(b) Sources of Persecution of Christians**

7. The main source of persecution of Christians in Nigeria is Islamist terrorists, namely Boko Haram. However, it has also been reported that religious freedom is restricted and/or violated by Northern Muslim political and religious elites, the Muslim Fulani

<sup>10</sup> Ibid., 5.

<sup>11</sup> Ibid., 19.

<sup>12</sup> Ibid., 19.

<sup>13</sup> Ibid., 22.

<sup>14</sup> Office for the Coordination of Humanitarian Affairs, North East Nigeria Crisis: Humanitarian Snapshot, 2015, available at:

[http://reliefweb.int/sites/reliefweb.int/files/resources/NE\\_Snapshot\\_Jan30.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/NE_Snapshot_Jan30.pdf)

<sup>15</sup> (fn 6) 23.

herdsmen, and by the widespread culture of political violence as upheld by the states' practices and policies that discriminate against or otherwise disadvantage Christians. Reports of persecution, discrimination, and restrictions of religious freedom mostly come from the northern regions of Nigeria. Northern Nigeria is predominantly Muslim, with 12 sharia states and 7 non sharia states.<sup>16</sup>

8. On 29 May 2015, President Muhammadu Buhari was sworn into office. Muhammadu Buhari promised to tackle the problem of Islamic extremism, especially that posed by Boko Haram. However, this has not yet occurred. On the contrary, the situation continues to deteriorate. Nigeria was ranked 3<sup>rd</sup> on the 2015 Global Terrorism Index, which measures the impact of terrorism around the world.<sup>17</sup> From 2000–2014, Nigeria was ranked one of the countries most affected by terrorism.<sup>18</sup> From 2013–2014, the number of terrorism related deaths increased by 306 per cent.<sup>19</sup> Furthermore, on 1 March 2016 the World Watch List reported a 62 per cent increase in the violent killings of Christians in Northern Nigeria.<sup>20</sup>

## I. Islamic Extremism

9. The Islamic extremism movement became more prominent after Jonathan Goodluck, a Southern Nigerian Christian, became president in 2011. The aim of the Islamic extremists is to introduce social changes to create 'justice and opportunities for all Muslims'.<sup>21</sup> In August 2014, Boko Haram, an internationally and domestically founded extremist group, established a caliphate in north-east Nigeria.<sup>22</sup> To weaken Goodluck's governance Boko Haram caused destabilization in the region. Goodluck's struggle to combat Boko Haram was cited as one of the main reasons why a Muslim president was elected in 2015.<sup>23</sup>

### i. Boko Haram

10. Boko Haram<sup>24</sup> is a Salafi-jihadi Muslim group that emerged in 2003.<sup>25</sup> Boko Haram is based in north-eastern Nigeria but is also active in Niger, Chad, and Cameroon. It was reported that Boko Haram has conducted attacks on civilian populations in

<sup>16</sup> (fn 6) 23.

<sup>17</sup> Institute for Economics and Peace, 2015 Global Terrorism Index Report, 10. Available at: <http://economicsandpeace.org/reports/>.

<sup>18</sup> Ibid., 15.

<sup>19</sup> Ibid., 18.

<sup>20</sup> Open Doors, Killing of Christians in Nigeria has Increased, available at: <https://www.opendoorsusa.org/christian-persecution/stories/tag-blog-post/killing-of-christians-in-nigeria-has-increased-by-62/>

<sup>21</sup> (fn 6) 13.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Full name of Ahlis Sunna Lidda'awati wal-Jihad meaning People Committed to the Propagation of the Prophet's Teachings and Jihad.

<sup>25</sup> Africa Check, Explaining Nigeria's Boko Haram and its Violent Insurgency, available at: <https://africacheck.org/factsheets/factsheet-explaining-nigerias-boko-haram-and-its-violent-insurgency/>.

Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe, Kano States, Abuja, and Plateau State.<sup>26</sup>

11. Boko Haram specifically targets Christians as 'non believers'. The attacks of Boko Haram are not random and are directed against Christians, politicians, and Islamic leaders who oppose Boko Haram's ideologies.<sup>27</sup>
12. In 2015, it was reported that Boko Haram pledged allegiance to ISIS/Daesh.<sup>28</sup>
13. Some of the tactics and the ideology of Boko Haram align with the tactics and ideology of ISIS/Daesh. The ideology of both is based on the Sunni faction of Wahhabism.<sup>29</sup> Both have declared a caliphate in the regions they reside. Boko Haram, as ISIS/Daesh, aims to establish an Islamic state. It has been reported that occasionally Christians are given the choice to convert or be killed.<sup>30</sup> ISIS/Daesh uses the same tactic in Syria and Iraq. However, contrary to ISIS/Daesh, Boko Haram has not received the same international support from foreign fighters nor the publicity.
14. Nonetheless, in 2015 it was Boko Haram that was called the deadliest terrorist organisation in the world:

The country witnessed the largest increase in terrorist deaths ever recorded by any country, increasing by over 300 per cent to 7 512 fatalities. Boko Haram, which operates mainly in Nigeria, has become the most deadly terrorist group in the world. Boko Haram pledged its allegiance to ISIL (also known as the Islamic State) as the Islamic State's West Africa Province (ISWAP) in March 2015.<sup>31</sup>

15. Boko Haram's crimes are widespread, both geographically and as far as the magnitude of the crimes is concerned. The exact numbers of persons killed and persecuted are unknown. Reports indicate that over 1 200 Christians and Muslim civilians have been killed since 2009<sup>32</sup>. Of these, over 450 people were killed

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<sup>26</sup> International Criminal Court, Situation in Nigeria, Article 5 Report, 5 August 2013, 79. Available at: [https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/NGA-05-08-2013.aspx](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/NGA-05-08-2013.aspx).

<sup>27</sup> Ibid.

<sup>28</sup> BBC, Nigeria's Boko Haram pledges allegiance to Islamic State, available at: <http://www.bbc.com/news/world-africa-31784538>.

<sup>29</sup> Mail and Guardian Africa, Back to basics: What ISIS, Al-Shabaab and Boko Haram have in common, and how they preach water and drink wine, available at: <http://mgafrica.com/article/2015-06-08-back-to-basics-what-isis-al-shabaab-and-boko-haram-have-in-common>.

<sup>30</sup> Amnesty International, Our job is to shoot, slaughter and kill, Boko Haram's reign of terror in North-East Nigeria, 5, 14. available at: <https://www.amnesty.org/en/documents/afr44/1360/2015/en/>.

<sup>31</sup> (fn 26) 2.

<sup>32</sup> Human Rights Watch, Nigeria: Boko Haram Widens Terror Campaign, available at: <https://www.hrw.org/news/2012/01/23/nigeria-boko-haram-widens-terror-campaign>.

between January and April 2012.<sup>33</sup> Other sources suggest that at least 253 people were killed in January 2012 alone.<sup>34</sup>

16. In 2011, following the elections, Boko Haram attacked Potiskum and the southern Yobe state, reducing the Christian population from 15 to 3.5 per cent. 80 churches were closed, church attendance decreased by 75 per cent and many Christians fled the region.<sup>35</sup> The situation of Christians in Yobe is critical; their religious freedom is severely limited. Churches cannot be officially established (or rebuilt), and families have been separated.<sup>36</sup>
17. In 2012, Boko Haram attacked Lassa, initially targeting Christians (including Christian churches, schools and missions). Subsequently, other individuals refusing to cooperate with Boko Haram were targeted. Boko Haram conquered Lassa, Chibok, Gulak, Magdagali, and in August 2014 Gwoza, Borno, Adamawa and Yobe. It was reported that 36 out of 50 church districts and 1 359 churches were closed. Many Christians fled abroad. Additionally, 356 pastors, 346 assistant pastors and 1 390 evangelists became unemployed.<sup>37</sup>
18. On 14 April 2014, Boko Haram kidnapped 276 girls, most between 16 and 18 years of age, from a secondary school in Chibok, Borno State. 57 of the schoolgirls managed to escape.<sup>38</sup> 219 of the schoolgirls remain in the hands of Boko Haram. It was reported that the girls were forced into marriages, sold into slavery, presented to Boko Haram soldiers as a prize for their service, or taken to neighbouring countries where Boko Haram is also active (namely Cameroon and Chad).<sup>39</sup> It was also reported that non-Muslim girls were forced to convert to Islam.<sup>40</sup> Other reports indicated that some of the schoolgirls were used by Boko Haram as suicide bombers in Cameroon.<sup>41</sup>
19. The kidnapping was followed by reports of further abductions conducted by Boko Haram.<sup>42</sup> In June 2014, over 60 women, girls and children were abducted in Borno State.<sup>43</sup>

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<sup>33</sup> Oxford Research Group, Nigeria: The Generic Context of the Boko Haram Violence, 2. Available at: [www.oxfordresearchgroup.org.uk/sites/default/files/AprEn12.pdf](http://www.oxfordresearchgroup.org.uk/sites/default/files/AprEn12.pdf).

<sup>34</sup> (fn 32).

<sup>35</sup> (fn 6).

<sup>36</sup> Ibid., 16.

<sup>37</sup> Ibid., 15.

<sup>38</sup> OHCHR, Boko Haram's path of destruction, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/BokoHaramspathofdestruction.aspx>.

<sup>39</sup> United Nations, Report of the Secretary-General, Conflict-related sexual violence, S/2015/203, 80.

<sup>40</sup> Amnesty International, Nigeria: Abducted women and girls forced to join Boko Haram attacks, available at: <https://www.amnesty.org/en/latest/news/2015/04/nigeria-abducted-women-and-girls-forced-to-join-boko-haram-attacks/>.

<sup>41</sup> Nigeria sends Chibok parents to see if suicide bomber is missing schoolgirl, available at: <http://news.trust.org/item/20160326193143-vqvf>.

<sup>42</sup> Islamist fighters kidnap 90 women and children from Nigeria villages, available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10922087/Islamist-fighters-kidnap-90-women-and-children-from-Nigeria-villages.html>.

20. On 17 September 2014, Boko Haram attacked Konduga town; on 13 May 2014, Tsangayari and Garawa village.<sup>44</sup>
21. In November 2014, Boko Haram kidnapped more than 506 women and children from Damask in Northern Nigeria. Boko Haram killed approximately 50 women and children before leaving the town. An additional 70 bodies of women and children were found outside Damask.<sup>45</sup>
22. On 28 November 2014, Boko Haram detonated bombs at the Grand Mosque in Kano.<sup>46</sup>
23. On 5 May 2015, Boko Haram attacked civilians in Gomboru Ngala, killing at least 315 and destroying buildings.<sup>47</sup>

*ii. The Muslim Fulani Herdsman*

24. The attacks of the Muslim Fulani herdsmen are prominent in the area of the Middle Belt states, especially in Kaduna, Plateau, Nassarawa, Benue and Taraba.<sup>48</sup> The Muslim Fulani herdsmen clash with the indigenous tribes, mostly Christians, over grazing land.<sup>49</sup> The clashes have intensified since the 2011 elections and again at the time of the 2015 election.<sup>50</sup> It was reported that the Muslim Fulani seek dominance over the territories and ultimately aim to eliminate the presence of Christians in the area.<sup>51</sup>
25. Between 1994 and 2012, the city of Jos in Plateau experienced increased attacks by the Muslim Fulani herdsmen.<sup>52</sup> Since 2010, southern Tarabaka was targeted by the Muslim Fulani herdsmen leading to crises in the region. Tarabaka was predominantly Christian with 45 per cent Christians, 35 per cent Muslims, and 20 per cent members of traditional religions. In 2014, over 100 churches were destroyed and over 200 were abandoned.<sup>53</sup> After a three day long siege in Wukari, approximately 50 people were killed and over a 100 were injured.<sup>54</sup>

<sup>43</sup> Ibid.

<sup>44</sup> (fn 17) 12.

<sup>45</sup> Reuters, Boko Haram kidnapped hundreds in northern Nigeria town: residents, available at: <http://www.reuters.com/article/us-violence-nigeria-kidnapping-idUSKBN0MK22Y20150324>.

<sup>46</sup> (fn 17) 12.

<sup>47</sup> (fn 6) 12.

<sup>48</sup> Ibid., 13.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., 14.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., 17.

<sup>53</sup> (fn 6) 16.

<sup>54</sup> Premium Times Nigeria, Taraba judgement: Violence erupts in Wukari, available at: <http://www.premiumtimesng.com/news/headlines/192846-taraba-judgement-violence-erupts-in-wukari.html>.

26. In May 2014, over 200 Christian farmers were killed in Galadima village—a fraction of the 1 229 killings that were perpetrated by Muslim Fulani herdsmen in 2014.<sup>55</sup>
27. In May 2015, more than 70 Christians were killed by Muslim Fulani herdsmen in the state of Plateau.<sup>56</sup>
28. In December 2015, Muslim Fulani herdsmen killed 15 Christians in a village near Jos. Two small children were among the victims.<sup>57</sup>
29. Between 22–29 February 2016, more than 300 Christians were killed by Muslim Fulani herdsmen in Agatu, Benue state.<sup>58</sup> It was further reported that in February 2016, over 500 Christians were killed.<sup>59</sup>

## **II. Northern Muslim Political and Religious Elite**

30. The Northern Muslim political and religious elite were a merger of the Hausa-Fulani royal classes and the Hausa-Fulani politicians. The Northern elite want to remain in power to protect class interest. The Northern elite were behind the marginalization and persecution of Christians for years. However, this persecution became even more prominent after President Goodluck was elected.<sup>60</sup> The 2011 election was followed by a crisis in which numerous Christians (and some opposition party members, including Muslims) were killed.<sup>61</sup> On 5 April 2014, Fulani militants attacked Galandima village killing over 200 people.<sup>62</sup>

## **III. Political Violence and State Oppression**

31. Systematic violence by politicians, political elites, corruption, epidemic violence, weak state institutions, bad governance, and competition for political power have contributed to the persecution of Christians in Nigeria.<sup>63</sup>
32. In 2007, Tudum Wada Dankadai in Kano state, with a population of 9 million, of which 1 million were Christians, underwent the so-called ‘Muhammed drawing crisis’. A few secondary school students were accused of drawing an offensive image. This sparked attacks against students and churches. Eight churches were burned. Many Christians fled. The remaining Christians became marginalized. Christian girls were forced to marry Muslim men. Christian children were not allowed

<sup>55</sup> Baptist Press, Fulani herdsmen kill 300 Nigerian Christians, available at: <http://www.bpnews.net/46497/fulani-herdsmen-kill-300-nigerian-christians>.

<sup>56</sup> Morning Star, Pastor, More than 70 Christians Killed in Plateau State, Nigeria, available at: <http://morningstarnews.org/2015/05/pastor-more-than-70-christians-killed-in-plateau-state-nigeria/>.

<sup>57</sup> Ibid.

<sup>58</sup> (fn 55).

<sup>59</sup> Christian Post, Radical Islamist Herdsmen Kill 500 Nigerian Christians Over Month, Villagers Afraid to Bury Their Dead, available at: <http://www.christianpost.com/news/radical-islamist-herdsmen-kill-500-nigerian-christians-over-month-villagers-afraid-to-bury-their-dead-159303/>

<sup>60</sup> (fn 6) 12.

<sup>61</sup> Ibid.

<sup>62</sup> (fn 17) 12.

<sup>63</sup> (fn 6) 14.

to attend school. Christian businesses were closed.<sup>64</sup> The Nigerian government has done little, if anything, to stop this crisis from escalating and to protect the persecuted and displaced Christians (as a religious minority group in Kano state).

33. In 2016, the governor of Kaduna State introduced A Bill to Substitute the Kaduna State Religious Preaching Law of 1984. This controversial draft bill aims to allow the state government to control and monitor all religious activities. Contrary to Section 10 of Nigeria's constitution, the bill would establish Islam and Christianity as the official state religions (section 4). Furthermore, the bill would place numerous restrictions on the manifestation and practice of the right to freedom of thought, conscience, and religion. Section 12 of the draft bill states:

A person shall be guilty of an offence who, in contravention of this law;

- (a) preachers without a valid licence;
- (b) plays religious cassette or uses a loud speaker for religious purpose after 8pm in a public place;
- (c) uses a loudspeaker for religious purpose other than inside a Mosque or Church and the surrounding areas outside the stipulated prayer times;
- (d) uses a loudspeaker in vehicles plying the streets with religious recording;
- (e) abuses religious books;
- (f) incites disturbance of the public peace;
- (g) abuses or uses any derogatory term in describing any religion, or;
- (h) carries weapons of any description whether concealed or not in places of worship or to any other place with a view to causing religious disturbance.<sup>65</sup>

34. Some of northern and southern state laws and practices may violate the right to freedom of thought, conscience, and religion (as guaranteed in Nigeria's constitution or under international law). In the 12 northern sharia states, sharia law is being applied to both Muslims and Christians.<sup>66</sup> It was reported that in the south, Muslims are being discriminated against.<sup>67</sup> The Nigerian government has failed to take steps to resolve the tensions between the different religious groups.

<sup>64</sup> Ibid., 16.

<sup>65</sup> Draft bill available at: <http://www.vanguardngr.com/2016/03/kaduna-religious-preaching-fire-within/>.

<sup>66</sup> United States Commission on International Religious Freedom, Annual Report 2015, 102. Available at: <http://www.uscirf.gov/reports-briefs/annual-report/2015-annual-report>.

<sup>67</sup> Ibid.

### (c) Legal Framework

#### I. Nigerian Law

35. The right to freedom of religion or belief is protected in the *Constitution of the Federal Republic of Nigeria 1999*.

36. Section 38 of the constitution states:

(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

37. Section 10 of the constitution states: ‘the Government of the Federation or of a State shall not adopt any religion as State Religion.’

38. Section 15 of the constitution states:

(1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

(2) Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

39. Section 42 of the constitution confirms that the law cannot discriminate on the basis of religion, ethnicity, gender or political opinion:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

## **II. International Human Rights Law**

### *i. The International Covenant on Civil and Political Rights*

40. Nigeria acceded to the International Covenant on Civil and Political Rights (the ICCPR) on 29 July 1993 and it came into force on 29 October 1993. The right to freedom of thought, conscience and religion is protected under Article 18 of the ICCPR. Furthermore, as confirmed by the Human Rights Committee in its General Comment No. 22:

the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.<sup>68</sup>

41. Some of the government's practices that prevent people from professing and practicing their faith freely will further violate Articles 2 and 26 of the ICCPR, which guarantee equal rights and freedom from discrimination on the basis of religion, and Article 27, which guarantees the rights of religious minorities to profess and practise their faith.

### *ii. Other Human Rights Treaty Obligations*

42. Nigeria ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UN CAT) on 28 June 2001. Article 2(1) of the UN CAT requires Nigeria to take effective legislative, administrative, judicial or other measures to prevent torture in territories under its jurisdiction. Article 2(2) of the UN CAT clarifies that there is no exception to the prohibition of torture in the UN CAT. Neither states of emergency, states of war, nor political instability can be invoked as a justification of torture.

43. Nigeria acceded to the International Convention for the Protection of All Persons from Enforced Disappearance (the ICAPED) on 27 July 2009. Article 3 of the ICAPED requires Nigeria to investigate all acts prohibited under Article 2, namely:

arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of

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<sup>68</sup> Human Rights Committee, General Comment No.22, 1.

liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

44. Nigeria also acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on 16 October 1967. Article 5 of ICERD requires Nigeria to:

prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution...

(vii) The right to freedom of thought, conscience and religion.

45. Nigeria acceded to the International Covenant on Economic, Social and Cultural Rights (the ICESCR) on 29 July 1993. The ICESCR guarantees numerous economic, social and cultural rights, that in accordance with Article 2(2), Nigeria is under a duty to guarantee will be exercised without discrimination based on 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

### **III. Rome Statute**

46. The International Criminal Court (the ICC) was specifically created to investigate and prosecute the most heinous international crimes. The jurisdiction of the ICC is defined in the Rome Statute. Nigeria signed the Rome Statute on 1 June 2000 and deposited its instrument of ratification on 27 September 2001.<sup>69</sup>

#### *i. Jurisdiction*

47. Article 5(1) of the Rome Statute indicates that the ICC has jurisdiction over:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

48. As specified in Article 13 of the Rome Statute, there are three scenarios in which the ICC may exercise its jurisdiction over the crimes listed in Article 5(1):

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<sup>69</sup> International Criminal Court, Nigeria, available at: [https://www.icc-cpi.int/en\\_menus/asp/states%20parties/african%20states/Pages/nigeria.aspx](https://www.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/nigeria.aspx).

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
  - (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
  - (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.
49. Furthermore, as clarified in Article 12 of the Rome Statute, there are certain preconditions for the ICC to exercise its jurisdiction. The preconditions are as follows:

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
  - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
  - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

## *ii. Prosecution*

50. The ICC Prosecutor has the power to initiate investigations of crimes within its jurisdiction (under Article 5 of the Rome Statute), in accordance with Article 15 of the Rome Statute. Article 15 of the Rome Statute states:
1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.
  2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
  3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-

Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.
  5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.
  6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.
51. The ICC Prosecutor may conduct investigations of crimes under its jurisdiction and this on his/her own initiative (*proprio motu*) without any external referral. Such investigation refers to preliminary examinations of the crimes within the jurisdiction, namely, the crimes listed in Article 5 and in accordance with the pre-requirement in Article 12 of the Rome Statute. However, any investigation that crosses the threshold of preliminary examination would need to be authorized by the Pre-Trial Chamber in accordance with Article 15(3)–(5).

### *iii. Crimes Against Humanity*

52. Article 7 of the Rome Statute defines crimes against humanity as:

any of the following acts when committed as part of a widespread or systematic attack directed against any civilian, with knowledge of the attack:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
  - i) Enforced disappearance of persons;
  - j) The crime of apartheid;
  - k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
53. Considering the evidence in the public domain, Boko Haram may have committed crimes against humanity, including murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape and sexual violence, persecution, enforced disappearance, and other inhumane acts.
54. **Murder:** The crime against humanity by murder under Article 7(1)(a) of the Rome Statute requires that the perpetrator caused the death of one or more persons as part of a widespread or systematic attack directed against the civil population. The perpetrator must act with knowledge of that act being a part of a widespread attack.<sup>70</sup>
55. There is irrefutable evidence to confirm that both Boko Haram and the Muslim Fulani herdsmen perpetrated killings in various regions in Nigeria. Both Islamic extremist groups aim to establish Islamic states in Nigeria and therefore predominantly target Christians. Boko Haram is active in Northern Nigeria, targeting Christians and others opposing their ideology. The Muslim Fulani herdsmen are active in the Middle Belt states, targeting Christian farmers.
56. **Extermination:** The crime against humanity by extermination under Article 7(1)(b) of the Rome Statute requires that:
1. The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.
  2. The conduct constituted, or took place as part of, a mass killing of members of a civilian population.
  3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
  4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>71</sup>

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<sup>70</sup> International Criminal Court, Elements of the Crime, 5. Available at: [https://www.icc-cpi.int/en\\_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/elements%20of%20crimes.aspx](https://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/elements%20of%20crimes.aspx).

<sup>71</sup> Ibid., 6.

57. Considering the magnitude of the crimes committed by Boko Haram and by the Muslim Fulani herdsmen, the widespread and systematic nature of the killings and their ultimate aim of eliminating Christians to establish Islamic states, the crimes may amount to extermination.
58. **Enslavement:** The crime against humanity by enslavement under Article 7(1)(c) of the Rome Statute requires that the perpetrator ‘exercised any or all of the powers attaching to the right of ownership over one or more persons’<sup>72</sup> including purchasing and selling. The act would have to be part of a widespread attack and the perpetrator would have to know or intend the act to be a part of such a widespread attack.
59. The kidnappings and abductions perpetrated by Boko Haram are well documented. Some of the kidnapped or abducted persons are being sold as slaves or presented to Boko Haram soldiers as payment. There have been no reports to suggest that the Muslim Fulani herdsmen enslave individuals. However, this may change once more evidence is available.
60. **Deportation or forcible transfer of population:** The crime against humanity by deportation or forcible transfer of population under Article 7(1)(d) of the Rome Statute requires that the perpetrator, by way of physical force, coercion or threat, displaced or deported people. The deported or transferred individuals would have to be lawfully in the area from which they were deported or transferred, and the perpetrator must have been aware of that fact. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack.
61. The widespread and systematic campaign of terror perpetrated by Boko Haram in Northern Nigeria and of the Muslim Fulani herdsmen in the Middle Belt causes the local population to flee their homes (and the regions).
62. **Imprisonment or other severe deprivation of physical liberty:** The crime against humanity by imprisonment or other severe deprivation of physical liberty under Article 7(1)(e) of the Rome Statute requires that the perpetrator imprisoned or severely deprived liberty of one or more persons. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack. The magnitude of the crime would have to be such as to trigger international law and the perpetrator would have to be aware of the circumstances contributing to the magnitude of the crime.<sup>73</sup>
63. As suggested in numerous reports, it is the practice of Boko Haram to imprison and deprive individuals of their liberty. There have been no reports to suggest that the Muslim Fulani herdsmen imprison individuals. However, this may change as more evidence becomes available.

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<sup>72</sup> Ibid., 6.

<sup>73</sup> Ibid., 7.

64. **Torture:** The crime against humanity by way of torture under Article 7(1)(f) of the Rome Statute requires the perpetrator to inflict severe physical or mental pain to one or more persons in the perpetrator's custody or control. The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack. Pain and suffering arising from lawful sanction is not considered a crime against humanity.<sup>74</sup>
65. Numerous reports confirm that Boko Haram inflicts severe physical and mental pain and suffering on the people it has kidnapped, abducted, or enslaved. That is, Boko Haram tortures people under their control. To date, no reports suggest that the Muslim Fulani herdsmen torture individuals. However, this may change once more evidence is available.
66. **Rape:** The crime against humanity by way of rape under Article 7(1)(f) of the Rome Statute requires that the perpetrator:
1. invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
  2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>75</sup>
67. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack.
68. **Sexual slavery:** The crime against humanity by way of sexual slavery under Article 7(1)(f) of the Rome Statute requires that the perpetrator:
- exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.<sup>76</sup>
69. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack.
70. **Enforced prostitution:** The crime against humanity by way of enforced prostitution under Article 7(1)(f) of the Rome Statute requires that:

<sup>74</sup> Ibid., 7.

<sup>75</sup> Ibid., 8.

<sup>76</sup> Ibid.

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
  2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.<sup>77</sup>
71. The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack.
72. **Forced pregnancy:** The crime against humanity by way of forced pregnancy under Article 7(1)(f) of the Rome Statute requires that the perpetrator forcibly made pregnant one or more women with 'the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.'<sup>78</sup> The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack.
73. **Enforced sterilization:** The crime against humanity by way of enforced sterilisation under Article 7(1)(f) of the Rome Statute requires that the perpetrator, through an act that does not constitute a medical treatment, permanently prevents one or more persons from being able to reproduce.<sup>79</sup> The act would have to be conducted without genuine consent. The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack.
74. **Sexual violence of comparable gravity:** The crime against humanity by way of sexual violence of comparable gravity under Article 7(1)(f) of the Rome Statute requires that the perpetrator:
- committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.<sup>80</sup>
75. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack. The act would have to be of similar gravity as other crimes punishable under

<sup>77</sup> Ibid., 9.

<sup>78</sup> Ibid., 9.

<sup>79</sup> Ibid., 9.

<sup>80</sup> Ibid., 10.

Article 7(1)(g) and the perpetrator would have to be aware of the circumstances contributing to the gravity of the crime.

76. There is irrefutable evidence to confirm that Boko Haram perpetrates rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other form of sexual violence of comparable gravity, especially on kidnapped, abducted and enslaved persons. There have been no reports to suggest that the Muslim Fulani herdsmen imprison individuals. However, this may change as more evidence becomes available.
77. **Persecution:** The crime against humanity by way of persecution under Article 7(1)(h) of the Rome Statute requires that:
1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
  2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
  3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.<sup>81</sup>
78. The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack. Additionally, the act would have to be committed in conjunction with other crimes under Article 7 of the Rome Statute.
79. Persecution as a crime against humanity is not a new concept and derives from the Nuremberg Trials. The concept was furthered in the Rome Statute. The crime of persecution is a form of discrimination prohibited under Article 7(1)(h).
80. It has to be noted that the crime of persecution can eventually lead to genocide if all other elements of genocide are established. It has been argued that extreme persecution can amount to genocide if the persecution is intended to cause the destruction of a group, in whole or in part:<sup>82</sup>

Persecution as a crime against humanity is an offence belonging to the same genus as genocide ... In both categories what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics ... Thus, it can be said that, from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of willful and deliberate

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<sup>81</sup> Ibid., 10.

<sup>82</sup> *Prosecutor v. Kupreškić et al.* (Judgement) IT-95-16-T (14 January 2000) 636.

acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.<sup>83</sup>

81. The persecution of Christians in Nigeria must be followed carefully, as it may well meet the threshold of genocide if it is possible to establish on the part of the perpetrators an intention to destroy the protected groups (such as religious groups, including Nigeria's Christian community) in whole or in part.
82. There is evidence that Boko Haram and the Muslim Fulani herdsmen commit the crime of persecution against Christians. Both extremist groups target Christians because of their faith.
83. **Enforced disappearance of persons:** The crime against humanity by way of enforced disappearance of persons under Article 7(1)(i) of the Rome Statute requires that:
  1. The perpetrator:
    - (a) Arrested, detained or abducted one or more persons; or
    - (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.
  2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
  - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
  3. The perpetrator was aware that:
    - (a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
    - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
  4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.
  5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.
  6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.<sup>84</sup>

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid., 11.

84. The act would have to constitute a part of a widespread attack and the perpetrator would have to know or intended the act to be a part of such a widespread attack.
85. Evidence suggests that Boko Haram has been perpetrating the enforced disappearance of, in particular, women, children and schoolchildren.
86. **Other inhumane acts:** The crime against humanity by way of other inhumane acts under Article 7(1)(k) of the Rome Statute requires that the perpetrator inflicts serious physical or mental injury, or great suffering by an inhumane act of a similar character to crimes falling under Article 7 of the Rome Statute.<sup>85</sup> The act would have to constitute part of a widespread attack and the perpetrator would have to know or intended the act to be part of such a widespread attack. The perpetrator would have to be aware of the circumstances establishing the character of the act.

#### **(d) Response to Atrocities**

##### **I. Nigerian Response**

87. Nigeria has been struggling to combat Boko Haram for years. Initially, Nigeria failed to recognize Boko Haram as a terrorist organization and continued to treat it as an insurgent group without having any financial or military support from other terrorist organizations.
88. In the aftermath of the Chibok schoolgirls kidnapping, Nigeria received international military support to tackle the problem. Nonetheless, Boko Haram continued to cause destabilization in the region. The situation deteriorated over the subsequent months raising concerns about whether the approach taken by Nigeria was adequate. Goodluck's struggle to combat Boko Haram, which has been labelled 'ineffective, insufficient, and marred by high-level corruption within the security sector,'<sup>86</sup> was perceived as the main reason why a Muslim president was elected in 2015.<sup>87</sup>
89. The new president, Muhammadu Buhari, shortly after taking over the office, introduced numerous changes to the country's counter Boko Haram policy, including replacing the personnel heading the military response.<sup>88</sup> The military operational headquarters was moved to Maiduguri (the centre of the region affected by Boko Haram).<sup>89</sup> It was reported that the new response was successful both in dealing with Boko Haram and with the issue of corruption in Nigeria. It was reported that numerous officials were arrested on charges of corruption and fraud, including charges relating to a \$2 billion arms deal.<sup>90</sup> In recent weeks the Nigerian army has managed to rescue hostages. In March 2016, it was reported that over 800 Boko

<sup>85</sup> Ibid., 11.

<sup>86</sup> Congressional Research Service, Nigeria's Boko Haram: Frequently Asked Questions, 9. Available at: [www.crs.gov](http://www.crs.gov).

<sup>87</sup> Ibid.

<sup>88</sup> Ibid., 9.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

Haram hostages were rescued from villages in Borno.<sup>91</sup> The Nigerian army under Muhammadu Buhari continues to be more effective in addressing the challenges posed by Boko Haram. However, Boko Haram has not yet been defeated. This militant force continues to be active in the region. It continues to commit crimes against humanity.

## **II. ICC Response**

90. The preliminary examination of Nigeria by the ICC was announced in November 2010.
91. On 5 August 2013, the Office of the Prosecutor of the ICC published an Article 5 Report on the situation in Nigeria (the ICC 2013 Report). The report focused on the so-called phase two of preliminary examination, which considered
 

all information on alleged crimes received or collected to determine whether the preconditions to the exercise of jurisdiction under article 12 of the Rome Statute are satisfied and whether there is a reasonable basis to believe that the alleged crimes fall under the subject-matter jurisdiction of the Court as per article 5 of the Rome Statute.
92. The investigation conducted by the Office of the Prosecutor of the ICC was prompted by communication received by the office between 10 November 2005 and 30 September 2012. Out of 59 communications received, 33 were within the jurisdiction of the ICC.
93. The ICC 2013 Report focuses on crimes committed in the regions of central and northern Nigeria and the Niger Delta, and on the crimes committed by Boko Haram across Nigeria.<sup>92</sup>
94. The ICC 2013 Report indicates that the central and northern part of Nigeria has been experiencing political and sectarian violence since approximately 1999. The main reasons for the violence are a struggle for political power and access to resources.<sup>93</sup> The clashes were between Berom (predominantly Christian) groups and Hausa-Fulani (Muslim) in the city of Jos, between Gamai (predominantly Christian) and Jarawa (Muslims) in the city of Yelwa, and between Hausa-Fulani Muslims and Igbo, and Yoruba in the Northern Kaduna State.<sup>94</sup>

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<sup>91</sup> The Guardian, More than 800 Boko Haram hostages were rescued by Nigerian army, available at: <http://www.theguardian.com/world/2016/mar/25/boko-haram-hostages-rescued-nigerian-army>.

<sup>92</sup> International Criminal Court, Situation in Nigeria, Article 5 Report, 5 August 2013, 5. Available at: [https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/NGA-05-08-2013.aspx](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/NGA-05-08-2013.aspx)

<sup>93</sup> Ibid., 26.

<sup>94</sup> Ibid., 27.

95. The Niger Delta has been struggling with violence between ethnically-based gangs and military groups (and between federal forces). The main cause of the violence in the region is the struggle over control of lucrative oil production.<sup>95</sup>
96. Boko Haram operates in the north-east of Nigeria, in areas including Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano States. Since 2011, Boko Haram has been transitioning into a globalised Salafi-jihad group. Boko Haram has reportedly attacked ‘religious clerics, Christians, political leaders, Muslims opposing the group, members of the police and security forces, “westerners”, journalists, as well as UN personnel’ and deliberately targeted Christian churches and primary schools.<sup>96</sup>
97. The ICC 2013 Report concludes that, based on the evidence available, the crimes committed in the central and Northern States do not amount to crimes against humanity<sup>97</sup> and the crimes committed in the Delta region do not amount to war crimes.<sup>98</sup> However, the ICC 2013 Report confirms that there are reasonable grounds to conclude that Boko Haram has committed crimes against humanity, including murder (Article 7(1)(a) of the Rome Statute) and persecution (Article 7(1)(h) of the Rome Statute). The ICC 2013 Report further confirms that ‘since July 2009, Boko Haram has launched a widespread and systematic attack that has resulted in the killing of more than 1 200 Christian and Muslim civilians in different locations throughout Nigeria.’<sup>99</sup> It is reported that the aim behind such targeted persecution is the establishment of an Islamic state in the northern Nigeria.
98. Based on the finding, the ICC Prosecutor confirmed that the assessment of the situation in Nigeria would continue to phase three of the preliminary examination, namely, the admissibility test. Such admissibility assessment considers whether national authorities are taking steps to prosecute the perpetrators for their crimes (crimes that amount to crimes against humanity under international law).
99. The ICC in its report on preliminary examination activities from 12 November 2015 (the ICC 2015 Report) identifies six potential cases of Boko Haram committing crimes under Article 7 of the Rome Statute (and two cases of such crimes being committed by the Nigerian Security Forces).<sup>100</sup>
100. The first potential case refers to Boko Haram’s policy to target so-called non believers.<sup>101</sup> This policy was conveyed by Abu Bakar Shekau in his video message of 17 February 2015 in which he stated that ‘an enemy to us and a target to our

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<sup>95</sup> Ibid., 29.

<sup>96</sup> Ibid., 8, 31.

<sup>97</sup> Ibid., 13.

<sup>98</sup> Ibid., 14.

<sup>99</sup> Ibid., 15.

<sup>100</sup> ICC Report on Preliminary Examination Activities, 12 November 2015, 195. Available at:

[https://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/reports/Pages/default.aspx](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/reports/Pages/default.aspx).

<sup>101</sup> Ibid., 196.

forces and we will enslave him and sell him in the markets.'<sup>102</sup> The Office of the Prosecutor of the ICC has found that between January 2013 and March 2015, over 356 reported incidents of killings conducted by Boko Haram caused deaths of over 8 000 civilians.<sup>103</sup>

101. The second potential case refers to kidnappings, abductions, and imprisonment of civilians, as associated with murder, torture, inhuman and degrading treatment. The Office of the Persecutor of the ICC assesses that between January 2014 and March 2015, there were over 55 reported incidents of abductions of over 1 885 persons.<sup>104</sup> In 2014, Boko Haram abducted over 1 123 persons, including 536 women and girls.<sup>105</sup> However, other sources suggested that the number of abducted persons in Nigeria between May 2013 and April 2015 exceeds 2 000 persons.<sup>106</sup>
102. The third potential case refers to Boko Haram's attacks on schools, other buildings designated for education and attacks against students and teachers.<sup>107</sup> Such attacks are being perpetrated as Boko Haram believes that 'western values', which are considered contrary to Islamic values, are taught at educational institutions. It was reported that between January 2012 and October 2013 over 70 teachers and 100 children were killed or injured by Boko Haram.<sup>108</sup> Another source suggested that between 2009 and 2014, Boko Haram killed between 173 and 176 teachers.<sup>109</sup> Over 50 schools were burnt, 60 schools were closed, leading to a decision in 2014 to close all secondary schools in the Borno State due to security concerns.<sup>110</sup>
103. The fourth potential case refers to Boko Haram's recruitment and use of child soldiers. It was reported that Boko Haram was using soldiers as young as 12, many under the threat of violence and death.<sup>111</sup>
104. The fifth potential case relates to Boko Haram's attacks on women and girls.<sup>112</sup> It was reported that such attacks have increased since 2013. The attacks were conducted 'for punitive reasons, i.e. on the basis of their religion or for attending schools, and tactical reasons, for example forcing them to carry out cleaning and cooking or other operational tasks.'<sup>113</sup> The attacks included rape, sexual violence and slavery, forced marriages, abductions and murder. The Office of the Prosecutor of the ICC assesses that between November 2014 and February 2015, Boko Haram

<sup>102</sup> Newstime Africa, Boko Haram threatens Nigeria polls, regional leaders, available at: <http://www.newstimeafrica.com/archives/37735>.

<sup>103</sup> (fn 100) 198.

<sup>104</sup> Ibid., 199.

<sup>105</sup> Ibid.

<sup>106</sup> Amnesty International, Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in north east Nigeria, 13 April 2015, 59.

<sup>107</sup> (fn 100) 201.

<sup>108</sup> Ibid., 202.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid., 203.

<sup>112</sup> Ibid., 205.

<sup>113</sup> Ibid., 205.

abducted over 500 women and 1 000 children from Gwoza local government area.<sup>114</sup> It was confirmed that Boko Haram specifically targeted Christian women and girls.<sup>115</sup>

105. The sixth potential case relates to Boko Haram's intentional targeting of buildings designated for religious practices, including churches and mosques.<sup>116</sup> In June 2014, Boko Haram destroyed five churches and killed over 48 people near Chibok in Borno State.<sup>117</sup> On 28 November 2014, Boko Haram attacked a mosque in Kano, killing over 100 people and injuring 260.<sup>118</sup>

106. The seventh and eight potential cases refer to crimes committed by the Nigerian Security Forces in the course of their operations against Boko Haram and in recruiting child soldiers.<sup>119</sup>

107. The Office of the Prosecutor of the ICC continues to assess the seriousness of the acts committed by Boko Haram and the reliability of the sources of information.<sup>120</sup> The Nigerian government confirmed that as of February 2015, over 150 cases of Boko Haram members were submitted to the Attorney General of Nigeria for consideration.<sup>121</sup> The assessment of admissibility of the alleged crimes is ongoing,<sup>122</sup> however, the progress of the cases is uncertain.

### **III. UN Response**

108. The United Nations is one of the strongest voices raising awareness about the situation in Nigeria and denouncing the atrocities. However, as the ICC is already investigating the crimes there is nothing to suggest that the United Nations will become further involved.

109. The UN Security Council Press Statement on Terrorist Attacks in Nigeria from 14 April 2014 indicated that

the members of the Security Council condemned in the strongest terms the multiple terrorist attacks committed by Boko Haram that occurred in Nigeria on 13 and 14 April, causing numerous deaths and injuries...The members of the Security Council underlined the need to bring perpetrators, organizers, financiers and sponsors of these reprehensible acts of terrorism to justice, and urged all States, in accordance with their obligations under international law

<sup>114</sup> Ibid., 206.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid., 208.

<sup>117</sup> Punch, Boko Haram kills 48, burns churches near Chibok, available at: <http://www.punchng.com/news/boko-haram-kills-43-schoolchildren/>

<sup>118</sup> BBC News, Boko Haram Kano attack: Loss of life on staggering scale, available at: <http://www.bbc.com/news/world-africa-30266868>

<sup>119</sup> (fn 100) 210-215.

<sup>120</sup> Ibid., 216.

<sup>121</sup> (fn 100) 216.

<sup>122</sup> Ibid., 221.

and relevant Security Council resolutions, to cooperate actively with the Nigerian authorities in this regard.<sup>123</sup>

110. The UN Security Council Press Statement on Attacks in Nigeria, released on 9 May 2014, condemned:

the terrorist attacks committed by Boko Haram that occurred in Gamboru Ngala, Nigeria on 5 May causing hundreds of deaths and injuries...The members of the Security Council also expressed their profound outrage at and condemned in the strongest terms the abduction of 276 schoolgirls on 14 April in Chibok, Nigeria, as well as the reported abduction on 5 May of eight girls in Warabe, Nigeria. They demanded the immediate and unconditional release of all abducted girls still in captivity and further expressed their deep concern at statements made by the alleged leader of Boko Haram threatening to sell these girls as slaves.<sup>124</sup>

111. On 22 May 2014, the UN Security Council passed Resolution 2083 (2012) adding Boko Haram to a list of individuals and entities subject to the Al-Qaida sanctions regime that imposes targeted financial sanctions and an arms embargo.<sup>125</sup>

112. The 10 November 2014 UN Security Council Press Statement on Suicide Bomb Attack against Government Science Technical School in Potiskum in Yobe State, Nigeria denounced

the suicide bomb attack on 10 November 2014 committed against the Government Science Technical School in Potiskum in Yobe State, Nigeria, which killed several dozen people, mostly students, and injured many more...The members of the Security Council condemned all abuses of human rights and, where applicable, violations of international humanitarian law, including those involving killing and maiming, attacks against schools and schoolchildren, sexual and gender-based violence and abductions, and underlined that all perpetrators of such acts must be held accountable at national or international levels.<sup>126</sup>

113. The 2 February 2015 UN Security Council Press Statement on Boko Haram Attacks in Nigeria and against Chadian Troops in Cameroon stated:

The members of the Security Council condemned in the strongest terms the continued escalation of attacks perpetrated by Boko Haram terrorists, including on 1 February in Maiduguri, Borno State, as well as the increasing attacks in the Lake Chad Basin

<sup>123</sup> Security Council Press Statement on Terrorist Attacks in Nigeria, 14 April 2014, available at: <http://www.un.org/press/en/2014/sc11352.doc.htm>.

<sup>124</sup> UN Security Council, Security Council Press Statement on Attacks in Nigeria, 9 May 2014, available at: <http://www.un.org/press/en/2014/sc11387.doc.htm>.

<sup>125</sup> United Nations, Security Council Al-Qaida Sanctions Committee Adds Boko Haram to Its Sanctions List, available at: <http://www.un.org/press/en/2014/sc11410.doc.htm>.

<sup>126</sup> UN Security Council, Security Council Press Statement on Suicide Bomb Attack against Government Science Technical School in Potiskum in Yobe State, Nigeria, 10 November 2014, available at: <http://www.un.org/press/en/2014/sc11639.doc.htm>.

region, including against the Chadian army contingent deployed to fight Boko Haram in Cameroon at the request and with the collaboration of the Cameroonian authorities, on 29 and 30 January near the border town of Fotokol, which killed four Chadian soldiers and injured 12 others.<sup>127</sup>

114. The 5 February 2015 UN Security Council Press Statement on Boko Haram Attacks against Chadian Troops and Civilians alongside Border between Cameroon and Nigeria indicated that:

the members of the Security Council condemned in the strongest terms the continued escalation of attacks perpetrated by Boko Haram terrorists, including on 3 February alongside the border between Cameroon and Nigeria, against the Chadian army contingent deployed to fight Boko Haram in Cameroon and Nigeria, which killed 13 Chadian soldiers and injured 21 others, and against the civilian population and Cameroonian troops which killed at least three Cameroonian soldiers and a sizeable number of civilians in Fotokol on 4 February. The members of the Security Council noted that the Chadian military counter-attack against Boko Haram into Nigerian territory was conducted with the consent and the collaboration of the Federal Republic of Nigeria whose territorial integrity remained intact.<sup>128</sup>

115. The 13 February 2015 UN Security Council Press Statement on Boko Haram Attacks in Cameroon, Chad and Niger condemned:

the continued escalation of attacks perpetrated by Boko Haram terrorists, including on 13 February in Ngouboua, Chad, against civilians, which killed many persons including the local traditional leader and injured several others, as well as the 8 February attack in Kerawa, Cameroon, and 6-8 February attacks in Diffa, Niger.<sup>129</sup>

116. In March 2015, during its twenty-third special session, the UN Human Rights Council passed Resolution S-23/1 Atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States. The resolution called:

for the perpetrators of the heinous crimes committed by the terrorist group Boko Haram to be brought before the competent courts of the affected States to ensure that those responsible for abuses of human rights and violations of international humanitarian law, including attacks targeting civilians, are held accountable.

*Deeply concerned* by the continued atrocities and abuses of international human rights law and violations of international

<sup>127</sup> UN Security Council, Security Council Press Statement on Boko Haram Attacks in Nigeria and against Chadian Troops in Cameroon, 2 February 2015, available at: <http://www.un.org/press/en/2015/sc11763.doc.htm>.

<sup>128</sup> UN Security Council, Security Council Press Statement on Boko Haram Attacks against Chadian Troops and Civilians alongside Border between Cameroon and Nigeria, 5 February 2015, available at: <http://www.un.org/press/en/2015/sc11768.doc.htm>.

<sup>129</sup> UN Security Council, Security Council Press Statement on Boko Haram Attacks in Cameroon, Chad and Niger, 13 February 2015, available at: <http://www.un.org/press/en/2015/sc11780.doc.htm>.

humanitarian law committed by the terrorist organisation called Boko Haram, including those involving the targeting of civilians, including children, school girls, women, minority religious and ethnic groups, educational institutions, market places public transport, as well as the recruitment and use of children, sexual and gender based violence, the destruction and confiscation of public and private property, and the use of minors and forced recruitment of female suicide bombers, including children and female suicide bombers...

*Requests the Office of the United Nations High Commissioner for Human Rights to collect information from affected States and in close cooperation and consultation with them, in order to prepare a report on violations and abuses of human rights and atrocities committed by the terrorist group Boko Haram in the States affected by such acts, with a view towards accountability, and to provide an oral update, as part of an interactive dialogue, to be held at the twenty-ninth session of the Human Rights Council and to submit a report for its consideration at its thirtieth session.<sup>130</sup>*

**117. The UN Security Council Press Statement on Boko Haram Attacks against Civilians in North-East Nigeria and Chad from 7 April 2015 denounced:**

the terrorist attacks perpetrated by Boko Haram in north-east Nigeria and Chad including the deadly attacks in Kwajafa in Borno State, Nigeria, on 5 April 2015 and in Tchoukou Telia, Chad, on 3 April 2015.<sup>131</sup>

**118. The 11 June 2015 UN Security Council Statement by the President of the Security Council recorded that:**

the Security Council condemns in the strongest terms the terrorist attacks conducted by Boko Haram since 2009, which have caused large-scale and devastating loss of life and represent a threat to the stability and peace of West and Central Africa. In particular, the Council strongly condemns the continued increase in attacks perpetrated by the terrorist group in Nigeria, along the Nigeria-Cameroon border, in the northern provinces of Cameroon and attacks near the Nigeria-Chad border. The Council expresses concern that the activities of Boko Haram continue to have adverse humanitarian impact on West and Central Africa including the displacement of an estimated 74 000 Nigerians into neighbouring Cameroon, 96 000 internally displaced persons within Cameroon, and in Chad almost 20 000 Nigerian refugees, 8 500 returnees and 14 500 internally displaced persons.

The Security Council welcomes the recent gains made by States in the region against Boko Haram, and commends the bravery of the troops involved. The Council underlines the continuing threat

<sup>130</sup> UN Human Rights Council, S-23/1 Atrocities committed by the terrorist group Boko Haram and its effects on human rights in the affected States, A/HRC/S-23/2.

<sup>131</sup> UN Security Council, Security Council Press Statement on Boko Haram Attacks against Civilians in North-East Nigeria and Chad, 7 April 2015, available at: <http://www.un.org/press/en/2015/sc11852.doc.htm>.

presented by Boko Haram to peace and stability in the region. It urges States in the region to further enhance regional military cooperation and coordination to more effectively and immediately combat Boko Haram, in accordance with international law. In this regard, it welcomes efforts by the region to set up a multinational joint taskforce, and strongly encourages the ongoing coordination efforts of ECCAS, and ECOWAS to counter Boko Haram. The Council stresses the need to adopt a comprehensive approach in order to successfully tackle the threat presented by Boko Haram to the region. The Security Council encourages partners to increase security assistance to Lake Chad Basin Commission countries and Benin, humanitarian support across the region for those affected by Boko Haram activities. The Council calls on UNOCA to continue its collaboration with the United Nations Office for West Africa (UNOWA), in order to continue to support, as appropriate, the states of the Lake Chad Basin region to address the impact of the threat on peace and security, including the political, socioeconomic and humanitarian situation in the subregion. The Council underlines the need for all actions to counter Boko Haram to be conducted in compliance with international law, including international humanitarian law, human rights law and refugee law, as applicable<sup>132</sup>

119. The 12 October 2015 UN Security Council Press Statement on Terrorist Attacks by Boko Haram indicated that:

the members of the Security Council condemned in the strongest terms the horrific 10 and 11 October terrorist attacks attributed to Boko Haram, perpetrated in the towns of Baga Sola, Chad, and Kangaleri, Cameroon, which resulted in a large number of deaths and casualties.<sup>133</sup>

120. The 8 December 2015 UN Security Council Statement by the President of the Security Council noted that:

the Security Council expresses its concern at the scale of the growing humanitarian crisis caused by the activities of the Boko Haram terrorist group, which has displaced over 2.5 million people including an estimated 1.4 million children and 200 000 refugees in Cameroon, Chad and Niger.<sup>134</sup>

121. The Office of the United Nations High Commissioner for Human Rights (the OHCHR) prepared the report *Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected* for the 30<sup>th</sup> session of the UN Human Rights Council. The OHCHR concluded that there was evidence to confirm that Boko Haram has conducted ‘intentional killing and abduction of civilians and the targeting of protected civilian objects, the use of children in hostilities, rape and other

<sup>132</sup> UN Security Council Statement by the President of the Security Council from 11 June 2015, S/PRST/2015/12.

<sup>133</sup> UN Security Council, Security Council Press Statement on Terrorist Attacks by Boko Haram, 12 October 2015, available at: <http://www.un.org/press/en/2015/sc12075.doc.htm>.

<sup>134</sup> UN Security Council Statement by the President of the Security Council, 8 December 2015, S/PRST/2015/24.

forms of sexual violence, and torture and ill-treatment' that may amount to crimes against humanity and/or war crimes.<sup>135</sup> The OHCHR further indicated that some government forces may have committed 'extrajudicial killings, enforced disappearances, arbitrary arrests and detention, and ill-treatment.'<sup>136</sup>

122. Boko Haram abducted boys for indoctrination and for military purposes, and girls for sexual exploitation, forced conversion, forced marriage and forced labour.<sup>137</sup> The abductions, including the abduction of 276 schoolgirls from Chibok, may have amounted to cruel, inhuman and degrading treatment (by virtue of the conditions and duration of the captivity).<sup>138</sup> In April 2015, 293 women and children were rescued by the Nigerian army in Sambisa forest.<sup>139</sup>
123. Boko Haram subjected individuals to repeated beatings when they were unable to recite the Quran or refused to convert.<sup>140</sup> Individuals were also deprived of food and water for a prolonged period.<sup>141</sup> These acts may amount to cruel, inhuman and degrading treatment or punishment.
124. Boko Haram committed sexual and gender biased violence including: sexual slavery, sexual violence, forced marriage, forced pregnancies.<sup>142</sup> Women and girls were also forced to give birth in extreme conditions leading to injuries and infections. Many suffered from miscarriages due to the conditions of captivity and a lack of adequate medical care.<sup>143</sup>
125. Boko Haram has been using children in hostilities and practising violence against children. Boko Haram recruits and uses child soldiers, including for suicide attacks.<sup>144</sup>
126. Boko Haram has been conducting attacks against civilians and on protected objects, as defined under international law, such as schools, mosques, churches, prisons, hospitals and markets. The militant group has also contaminated water installations.<sup>145</sup> Between 2012 and 2014, over 338 schools in Adamawa, Borno and Yobe were destroyed by Boko Haram's attacks. Boko Haram destroyed bridges in Kubroshosh. On 6 April 2015, Boko Haram set on fire a mosque in Kwajafa village. In June 2015, Boko Haram attacked a church in Postikum.<sup>146</sup>

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<sup>135</sup> UN HRC, Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected, 9 December 2015, A/HRC/30/67, 78.

<sup>136</sup> Ibid., 79.

<sup>137</sup> Ibid., 29.

<sup>138</sup> Ibid., 30.

<sup>139</sup> Ibid., 31.

<sup>140</sup> Ibid., 35.

<sup>141</sup> Ibid., 36.

<sup>142</sup> Ibid., 38.

<sup>143</sup> Ibid., 42.

<sup>144</sup> Ibid., 44.

<sup>145</sup> Ibid., 47.

<sup>146</sup> Ibid., 44.

127. Boko Haram has caused the destruction and appropriation of property. Entire villages have been destroyed, including the village of Lassa in the state of Borno in December 2014.<sup>147</sup>
128. The crimes committed by Boko Haram have ignited tension between communities and religions.<sup>148</sup>
129. In January 2016, Ms Maud de Boer-Buquicchio, UN Special Rapporteur on the sale of children, child prostitution and pornography, Ms Urmila Bhoola, UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and Dainius Pūras, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health called upon the Nigerian government to take steps to address the situation of women and children most affected by the Boko Haram insurgency. The Special Rapporteurs asked for 'more information, at an appropriate time and bearing in mind security considerations, on the steps taken to locate and rescue all victims of abduction by Boko Haram, in particular the schoolgirls from Chibok.'<sup>149</sup> The Special Rapporteurs' report of their visit in Nigeria will be presented later in 2016.
130. The UN Security Council Press Statement on Terrorist Attacks by Boko Haram from 2 February 2016 indicated that 'the members of the Security Council condemned in the strongest terms the horrific terrorist attacks on 30 January 2016 attributed to Boko Haram in Dalori village in north-eastern Nigeria, which resulted in a large number of deaths and casualties.'<sup>150</sup>

#### **IV. Other Responses**

##### *i. European Union*

131. On 2 June 2014, the European Union (the EU) placed Boko Haram on a list of 'persons, groups and entities covered by the freezing of funds and economic resources under EC Regulation No 881/2002 with (EU) Commission Implementing Regulation No 583/2014 of 28 May 2014.'<sup>151</sup>
132. In June 2015, the European Commission (the EC) pledged to provide over €21 million in aid to Nigeria and other neighboring countries affected by Boko Haram.<sup>152</sup> As the EC explained:

<sup>147</sup> Ibid., 51.

<sup>148</sup> Ibid., 72.

<sup>149</sup> OHCHR, The reintegration of women and children essential to the path towards lasting peace, 26 January 2016, available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16986&LangID=E>.

<sup>150</sup> United Nations, Security Council Press Statement on Terrorist Attacks by Boko Haram, 2 February 2016, available at: <http://www.un.org/press/en/2016/sc12233.doc.htm>.

<sup>151</sup> European Union, The EU lists Boko Haram as a terrorist organisation, 140605/01, available at:

<sup>152</sup> European Commission, EU boosts humanitarian aid to those displaced by Boko Haram violence, available at: [http://europa.eu/rapid/press-release\\_IP-15-5213\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5213_en.htm).

the new EU funding will provide immediate support, including clean water, food, shelter, healthcare and protection to the displaced and the host communities in the north-east of Nigeria, as well as to Nigerian refugees in the neighbouring countries. €12.5 million of this funding will be used to tackle the humanitarian challenges in Nigeria, and €8.5 million to support the refugees in Niger, Cameroon and Chad.<sup>153</sup>

## *ii. The United States*

133. On 21 June 2012, the United States labelled three Boko Haram leaders, Abubakar Shekau, Abubakar Kambar, and Khalid al Barnawi, as Specially Designated Global Terrorists under section 1(b) of Executive Order 13224:<sup>154</sup>

The designation under E.O. 13224 blocks all of Shekau's, Kambar's and al-Barnawi's property interests subject to U.S. jurisdiction and prohibits U.S. persons from engaging in transactions with or for the benefit of these individuals. These designations demonstrate the United States' resolve in diminishing the capacity of Boko Haram to execute violent attacks.<sup>155</sup>

134. In November 2013, the United States Department of State designated Boko Haram and Ansaru as Foreign Terrorist Organizations (FTO) in line with Section 219 of the Immigration and Nationality Act:<sup>156</sup>

The consequences of these FTO and E.O. 13224 designations include a prohibition against knowingly providing, or attempting or conspiring to provide, material support or resources to, or engaging in transactions with, Boko Haram and Ansaru, and the freezing of all property and interests in property of the organizations that are in the United States, or come within the United States or the control of U.S. persons.<sup>157</sup>

135. In the subsequent years, the United States has undertaken numerous steps to counter Boko Haram and support the Nigerian government in its struggle with the terrorist groups. These steps include supporting the Multinational Joint Task Force by providing training, intelligence, and equipment (in total worth \$71 million).<sup>158</sup> In September 2015, \$45 million in defense services and articles were directed to combat Boko Haram.<sup>159</sup> The \$40 million Global Security Contingency Fund Counter Boko Haram program was established to assist Cameroon, Chat, Niger, and Nigeria

<sup>153</sup> Ibid.

<sup>154</sup> Office of the Spokesperson, Terrorist Designations of Boko Haram Commander Abubakar Shekau, Khalid al-Barnawi and Abubakar Adam Kambar, available at: <http://www.state.gov/r/pa/prs/ps/2012/06/193574.htm>.

<sup>155</sup> Ibid.

<sup>156</sup> United States Department of State, Terrorist Designations of Boko Haram and Ansaru, available at: <http://www.state.gov/r/pa/prs/ps/2013/11/217509.htm#.UoOamr6s8zA.twitter>.

<sup>157</sup> Ibid.

<sup>158</sup> The United States Department of State, United States Support to Counter Boko Haram, available at: <http://www.state.gov/r/pa/prs/ps/2016/02/252399.htm>.

<sup>159</sup> Ibid.

to improve security and strengthen cross-border cooperation to combat Boko Haram.<sup>160</sup> In the financial year 2015–2016, the United States provided over \$195 million in humanitarian aid to the populations most affected by Boko Haram in the region.<sup>161</sup>

136. On 9 February 2016, Ms Linda Thomas-Greenfield, Assistant Secretary, Bureau of African Affairs, indicated the United States plans further measures to counter Boko Haram.<sup>162</sup> The proposed policy includes:

enhancing the efforts of all of the affected countries to fight Boko Haram; weakening Boko Haram's capacity, financing, and cohesion; enhancing national, state, and local efforts to engage with civilians affected by Boko Haram; countering and preventing violent extremism; removing underlying drivers of insecurity; and addressing the humanitarian needs of civilians affected by Boko Haram.<sup>163</sup>

### *iii. Other State Responses*

137. In May 2014, France, Chad, Cameroon, Niger and Benin agreed to an action plan to defeat Boko Haram.<sup>164</sup> Also in May 2014, China pleaded to assist Nigeria in fighting against Boko Haram.<sup>165</sup> In June 2014, the UK indicated that its military and educational aid to Nigeria to combat Boko Haram would increase.<sup>166</sup> In March 2016, Turkey expressed its willingness to support Nigeria in combating Boko Haram.<sup>167</sup> The Economic Community of West African States has also been actively supporting Nigeria's actions.

## **(e) Conclusion and Recommendations**

138. As a result of Boko Haram's and the Muslim Fulani herdsmen's campaign against Christians in Nigeria, the Christian population has dramatically decreased, either through killings and executions or by forced migration. Although Nigeria has been receiving international military assistance to fight Boko Haram since May 2014, the situation remains volatile and the terror campaign in Northern Nigeria continues. The instability in the region and the impunity with which Boko Haram effectively

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> The United States Department of State, Boko Haram and Its Regional Impact, available at: <http://www.state.gov/p/af/rls/rm/2016/252357.htm>

<sup>163</sup> Ibid.

<sup>164</sup> BBC, Africa leaders declare 'war' on Nigeria Boko Haram, available at: <http://www.bbc.com/news/world-africa-27451966>.

<sup>165</sup> Sahara Reporter, China To Partner With Nigeria In The Fight Against Boko Haram Terrorism, available at: <http://saharareporters.com/2015/12/10/china-partner-nigeria-fight-against-boko-haram-terrorism>.

<sup>166</sup> BBC, Boko Haram crisis: UK boosts Nigeria military aid, available at: <http://www.bbc.com/news/world-africa-27812766>.

<sup>167</sup> News, Turkey offers support to West Africa in fighting terrorism, available at: <http://europe.newsweek.com/erdogan-boko-haram-al-qaeda-432417>.

operates has affected other regions of Nigeria, namely, the Middle Belt, where the Muslim Fulani herdsmen attack Christian farmers to eradicate them from the region.

139. The ICC has been considering the situation in Nigeria since 2010. However, the examination is still in phase three (admissibility stage) of the preliminary examination. The lapse of six years without significant progress indicates a lack of urgency in addressing the human rights abuses in Nigeria. This is despite the fact that the situation is not improving and on the contrary, since 2014, has deteriorated.

#### **Recommendations for Nigeria:**

140. To combat the persecution of Christians, Nigeria must ensure that the allegations of violations of domestic criminal law are duly investigated and prosecuted in accordance with due process. Nigeria must protect Christians and other religious groups from persecution and take steps to combat the Islamic extremism on its soil.

141. Nigeria must ensure that government practice does not limit the scope of the right to thought, conscience, and religion as provided for under Nigeria's constitution and international law. Nigerian law must reflect international standards. Therefore, Nigeria must ensure that any proposal that limits this right, such as the proposed 'Bill to Substitute the Kaduna State Religious Preaching Law of 1984,' is rejected.

142. Nigeria must ensure that Christians and other religious minorities can freely exercise their right to freedom of thought, conscience, and religion, in their worship, observance, practice and teaching. This is especially important as any such limitation and discrimination can be used as a basis for violent persecution on a broad scale, ultimately leading to crimes against humanity.

#### **Recommendations for the ICC**

143. The ICC must ensure that its examinations are conducted expeditiously. It has been almost six years since the ICC initiated preliminary examinations but no significant progress has been made. In the meantime, the situation in Nigeria has deteriorated substantially. The ICC must consider all the evidence of the crimes committed by Boko Haram and the Muslim Fulani herdsmen and act now.

#### **Recommendations for the UN Security Council**

144. Although the ICC is already conducting a preliminary examination of the situation in Nigeria, the UN Security Council should consider taking steps to ensure that the ICC is provided all evidence of the atrocities that the UN Security Council may have. Further, to expedite the preliminary examination process, the Council should assist the ICC to obtain additional evidence. The UN Security Council could establish a special commission of experts to collate the evidence from the field. If the ICC decided not to proceed with investigations, the UN Security Council should consider establishing an ad hoc tribunal for the crimes committed by Boko Haram, the Muslim Fulani herdsmen and other terrorist groups active in the region.