



NEW YORK  
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*By Facsimile and E-mail*

The Honorable Fatou Bensouda, Chief Prosecutor  
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May 8, 2015

Dear Prosecutor Bensouda:

I write on behalf of the Association of the Bar of the City of New York (the Association) to express our grave concern over the abductions of nearly 250, mainly Christian schoolgirls, in Chibok, Nigeria by Boko Haram over one year ago and the ongoing gender-based abductions, forced marriages, and conversions of Christian women and schoolgirls. We urge your Office of the Prosecutor (OTP) to conduct a new assessment as part of your ongoing preliminary examination of the situation in Nigeria to determine that these crimes that target Christian women and children constitute crimes against humanity, and if so, to identify the individuals who should be prosecuted.

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world, and the Committee on African Affairs, which closely monitors and responds to legal developments and human rights abuses in Africa.

Today marks the one-year anniversary of Boko Haram's abduction of nearly 250 schoolgirls in Chibok, Nigeria, the majority of whom remain in captivity. According to Human Rights Watch (HRW), nearly all those abducted were Christian.<sup>1</sup> HRW has also reported a series of

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<sup>1</sup> Human Rights Watch, *Those Terrible Weeks in their Camp: Boko Haram Violence against Women and Girls in Northeast Nigeria*, available at <http://www.hrw.org/reports/2014/10/27/those-terrible-weeks-their-camp-0>.

abductions, subsequent to Chibok, noting that Boko Haram have been “emboldened” by “[t]he relative ease with which it carried out the Chibok abductions.”<sup>2</sup> The impunity thus far afforded Boko Haram has fueled the continuing and systematic crime of targeted abductions of Christian women and girls.

We ask you to consider whether there is a reasonable basis to believe that Boko Haram is perpetrating crimes against humanity against the Christian community in northeastern Nigeria, including by forcibly transferring children, with the intent to destroy the group, as such, at least “in part.” In fact, the determination by the OTP that Boko Haram has committed crimes against humanity, namely persecution, is based, in main part, on evidence of a specific intent to destroy Christians.<sup>3</sup>

According to the OTP, Boko Haram’s declared leader, Abubakar Shekau, stated in video messages posted on YouTube, that Boko Haram is “at war with Christians,” issued an “ultimatum” of three days for Christians to leave northern Nigeria and that Boko Haram, “must destroy Christians and Christianity in Nigeria.”<sup>4</sup>

Accounts by witnesses make clear the intent of these crimes, describing evidence of the selection and separation of victims, based upon their membership, as Christians; the exclusion of non-Christians; the forcible relocation and transferring of Christians; the use of rape as a means of destroying Christians; and killing civilians. All of these actions constitute the Elements of Crime of the ICC.<sup>5</sup>

For example, Watchlist on Children and Armed Conflict has reported that a young woman told them:

When we were going we saw people in military uniform. They stopped us. But [Boko Haram] were dressed like the military ... They held many buses. They checked if you were Christian, in which case they would kill you. If you were Muslim you were allowed to pass. They identified [Christians/Muslims] by their mode of dress. After searching and killing,...they assembled us to go to a camp. Many people were taken captive.”<sup>6</sup>

And, according to a recent study for Nigeria’s Political Violence Research Network (NPVRN), a young Christian woman reported “an attack by Boko Haram on her university accommodation: the men were murdered, the women segregated into Muslim and non-Muslims, and the Christian women systematically raped.”<sup>7</sup> The NPVRN study further found that the continued

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<sup>2</sup> *Id.* at 23-24.

<sup>3</sup> ICC, OTP, *Situation in Nigeria: Article 5 Report* (hereinafter Article 5 Report), paragraphs 15, 87-90, 96-100, Aug. 5, 2013, available at <http://www.icc-cpi.int/iccdocs/PIDS/docs/SAS%20-%20NGA%20-%20Public%20version%205%20Report%20-%2005%20August%202013PDF>

<sup>4</sup> *Id.* at paragraphs 87-88.

<sup>5</sup> See Rome Statute of the International Criminal Court (hereinafter Rome Statute), at art. 21(1)(a); ICC *Case Matrix*; Art. 7: *Crimes against Humanity*, available at <http://www.casematrixnetwork.org/case-mhttp:-m/klamberg-commentary/rome-statute#c1171>.

<sup>6</sup> Watchlist on Children and Armed Conflict, *Who Will Care For Us?: Grave Violations against Children in Northeastern Nigeria*, at 23, September 2014, available at [http://watchlist.org/wordpress/wp:content/uploads/2111-Watchlist-Nigeria\\_LR.pdf](http://watchlist.org/wordpress/wp:content/uploads/2111-Watchlist-Nigeria_LR.pdf).

<sup>7</sup> Nigeria’s Political Violence Research Network Working Paper No. 1, November 2013, available at <https://worldwatchmonitor.org/research/3117403> (hereinafter NPVRN Report).

attacks are believed to be on Christian enclaves only, and that Boko Haram sect members “have made Christian women and their children the most hunted targeted.”<sup>8</sup>

We ask you to consider whether Nigeria is able to meet the requirements of complementarity under the Rome Statute.<sup>9</sup> The Rome Statute imposes a duty on the OTP to take into account the nature of a crime, “in particular where it involves sexual violence, gender violence or violence against children” in order to take appropriate measures to ensure the effective investigation and prosecution of crimes within the court’s jurisdiction.<sup>10</sup> Further, Nigeria has requested external help in order to better protect its population, an act consistent with Pillar Two of R2P, calling on the international community, including the ICC as the legal arm of R2P, to assist with prosecutions.<sup>11</sup>

Therefore, based upon the evidence of activities and information discussed above, and your statements on the abduction of the schoolgirls in Nigeria<sup>12</sup> and the escalating violence in Nigeria<sup>13</sup> and your Office’s policy on prosecuting gender-based crimes and crimes against children,<sup>14</sup> we respectfully request that your Office conduct a new assessment as part of your ongoing preliminary examination of the situation in Nigeria to determine that these crimes that target Christian women and children constitute crimes against humanity, and if so, to identify the individuals who should be prosecuted.

Respectfully yours,



Debra L. Raskin

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<sup>8</sup> *Id.* at 21.

<sup>9</sup> Coalition for the International Criminal Court; Delivering on the promise of a fair, effective and independent Court-Review Conference of the Rome Statute-Stocktaking-Complementarity available at <http://www.iccnw.org/?mod=complementarity.pdf> and Lawyers without Borders, Canada, *The Principle of Complementarity in the Rome Statute and the Colombian Situation, Article 1. Complementarity and Inaction are Incompatible*, available at [http://www.iccnw.org/documents/asf\\_rapport-anglais\\_complementarity\\_and\\_colombia.pdf](http://www.iccnw.org/documents/asf_rapport-anglais_complementarity_and_colombia.pdf)

<sup>10</sup> Rome Statute, Article 54(1)(b).

<sup>11</sup> Global Centre for the Responsibility to Protect, *R2P Monitor*, March 15, 2015, at 7-8, available at <http://www.globalr2p.org/publications/362>; Global Centre for the Responsibility to Protect, *Nigeria: The extremist Islamist group Boko Haram continues to perpetrate mass atrocity crimes. Excessive use of force by the security forces also contributes to the threat of further atrocities*, available at <http://www.globalr2p.org/regions/nigeria>, March 15, 2015.

<sup>12</sup> Statement of the Prosecutor of the International Criminal court, Fatou Bensouda, on the abduction of schoolgirls in Nigeria, August 5, 2014, available at [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/pages/otp-statement-08-2014.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/otp-statement-08-2014.aspx)

<sup>13</sup> Statement of the Prosecutor of the International Criminal court, Fatou Bensouda, following reports of escalating violence in Nigeria, January 1, 2015, available at [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-20-01-2015.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-20-01-2015.aspx)

<sup>14</sup> Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the occasion of the 25th Anniversary of the Convention on the Rights of the Child: End the scourge of violence against children, November 20, 2014, available at [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-20-11-2014.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-20-11-2014.aspx).

CC:

H.E. Muhammadu Buhari  
President of the Federal Republic of Nigeria

Ambassador of the Federal Republic of Nigeria to the United States

H.E. U. Joy Ogwu, OFR  
Ambassador and Permanent Representative of the Federal Republic of Nigeria to the United Nations

Honorable Commissioner Zeid Ra'ad Al Hussein  
U.N. High Commissioner for Human Rights

The Honorable John F. Kerry  
U.S. Secretary of State

Honorable Dr. Nkosazana Dlamini Zuma  
Chairperson of the African Union Commission

Honorable Kayitesi Zainabo Sylvie  
Chairperson of the African Commission on Human and People's Rights