Re: The Imperative to Prosecute the Abduction of the Schoolgirls in Nigeria as Genocide

Dear Prosecutor Bensouda:

As President of the Global Justice Center (GJC), I am writing you on a matter of global concern and singular importance: the duty of your office to prosecute Boko Haram’s gender-based abductions, forced marriages, and conversions of Christian schoolgirls as “the crime of crimes”—genocide.

Today marks the one-year anniversary of Boko Haram’s abduction of nearly 300 schoolgirls in Chibok, Nigeria, the majority of whom remain in captivity. According to HUMAN RIGHTS WATCH (HRW), nearly all those abducted were Christian. HRW has also reported a series of abductions, subsequent to Chibok, noting that Boko Haram have been “emboldened” by “[t]he relative ease with which it carried out the Chibok abductions.” The impunity thus far afforded Boko Haram has fueled the continuing and systematic crime of targeted abduction of Christian women and girls.

The abduction of the Chibok schoolgirls is forcible transfer of children, one of the five enumerated acts which constitute genocide under Article 2(e) of the Genocide Convention and Article 6(e) of the Rome Statute. April 7, 2015 marked 21 years since the “transgenerational” genocide against the Tutsi in Rwanda—an “unmistakable disgrace for the world, including the United Nations,” which included the targeting of children. April 24, 2015 will mark 100 years since the Armenian genocide, which also included the forcible transfer of children—one of the “outstanding examples of the crimes of genocide,” according to the U.S. government. The first international convictions for genocide at the Nuremberg Military Tribunals in 1948, United States v. Greifelt, included acts of forcible child transfer, and in his opening statement, the Greifelt Prosecutor underscored the heinous nature of “the crime of kidnapping [sic] children.”

As the attached “Article 15 Communication” sets out in further detail, there is a reasonable basis to believe that Boko Haram is perpetrating genocide 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 OFFICE OF THE PROSECUTOR (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.
More specifically, 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 . . .”

Similarly, HRW reported that Shekau stated in another video, “This is a war against Christians and democracy and their constitution, Allah says we should finish them when we get them.”

On April 1, 2015, at a Special Session of the Human Rights Council on Boko Haram, the U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, Zeid Raad al-Hussein, expressed his concern over the “high risk of escalating ethnic and religious violence,” stating that his Office had received reports that Boko Haram fighters retreating from advancing military forces in Nigeria had murdered women and girls that they had taken as “wives.”

The former HIGH COMMISSIONER, Navi Pillay, has also publicly expressed concern over Boko Haram’s targeting of Christians.

Witness accounts make clear the genocidal intent of these crimes, detailing, consistent with the Elements of Crime of the International Criminal Court (ICC), evidence of: 1) the use of roadblocks; 2) the selection and separation of victims, based upon their membership, as Christians; 3) the exclusion of non-Christians, from genocidal acts; 4) the forcible relocation and transferring of Christians; 5) the use of rape as a means of destroying Christians, and; 6) killing civilians.

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, and because it was getting dark, they assembled us to go to a camp. Many people were taken captive.

The young woman, who finally escaped, also reported seeing many abducted girls at the Boko Haram camp.

In addition, 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”—she became pregnant as a result of the rape.
The NPVRN Study further explained that:

First and foremost, the continued attacks on these areas, believed to be Christian enclaves only, reveal among many other things that the dangerous ideology of Boko Haram is essentially driven by Islamic religious fundamentalism and fanaticism, sustained by crass impunity. In addition, reliable sources seem to suggest that Boko Haram attackers believe Christian women are responsible for making their children hold Islam in disdain, as a religion that perpetrates terror. This has angered Boko Haram sect members; who in turn have made Christian women and their children the most hunted targets [emphasis added]. 22

Therefore, based upon the information set forth in the attached Article 15 Communication, we, respectfully, urge the OTP to conduct a new jurisdictional assessment as part of its ongoing preliminary examination of the situation in Nigeria to determine whether these new crimes that particularly target Christian women and children, constitute genocide. 23

It is critical that the OTP consider whether Boko Haram’s gender-based abductions amount to genocide, for the following reasons:

(1) It would put all States unequivocally on notice that genocide may be occurring in northeastern Nigeria, and, therefore, trigger their positive obligations to prevent and punish genocide under the Genocide Convention, as made clear by the International Court of Justice (ICJ); 24

(2) Nigeria appears unable to meet its own obligations to prevent or to punish genocide under the Genocide Convention. 25 At a minimum, Nigeria has, to-date, failed to make either the Rome Statute or the Genocide Convention part of its domestic law, which means that crimes against humanity, war crimes, and genocide are not crimes in Nigerian law; 26

(3) It would act as a deterrent for other perpetrators, including in Syria and Iraq, by signaling that those targeting women and girls, including through abductions, for acts of genocide, will be held accountable. According to a recent U.N. Human Rights Report, the Islamic State in Iraq and the Levant (ISIL), now formally affiliated with the Boko Haram, is currently using similar tactics of gender-based abductions, forced marriages and conversions, in its attempts to destroy the Yezidi minority population in Iraq and Syria; 27

(4) The Rome Statute imposes a duty on the OTP to “take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children,” 28 in order to take appropriate measures to ensure the effective investigation and prosecution of crimes within the Court’s jurisdiction.

(5) The OTP’s policy on sexual and gender-based crimes also calls for the integration of a gender perspective into every stage of the prosecutorial process, including from the earliest stages of the preliminary examination, and on the Prosecutor to “charge acts of sexual and gender-based crimes as different categories of crimes within the Court’s jurisdiction (war crimes, crimes against
humanity, and genocide), in order to properly describe, *inter alia*, the nature, manner of commission, intent, impact, and context."\(^{20}\) The OTP is also in the process of preparing a comprehensive **policy on children** and has further pledged that “[c]rimes against children must be investigated and prosecuted to the full extent of the law;\(^{30}\)

(6) Finally, the government of **Nigeria is struggling to uphold its Responsibility to Protect** (R2P) and has requested external help in order to better protect its population, an act which, consistent with Pillar Two of R2P, calls on the international community, including the ICC as the legal arm of R2P, to provide assistance with prosecutions.\(^{31}\)

In sum, the ICC’s enforcement of the specially protected rights of kidnapped girls under Article 2(e) of the Genocide Convention and Article 6(e) of the Rome Statute, will increase the global political will, moral suasion and legal gravitas necessary, once and for all, to stop the genocidal abductions of girls and women in Nigeria and elsewhere, including in Syria and Iraq. It is critical to stop crimes targeting girls and women and ensure justice for all gender crimes.

Madame Prosecutor, we thank you, in advance, for your attention to these pressing matters, and are available to discuss these concerns further with you.

The ICC has admirably taken historic steps to put justice for women and girls at the forefront of its agenda. And in this case, there is a way to ensure justice for (and, more importantly, to rescue!) the abducted girls of Nigeria as well as to establish a precedent of intolerance for crimes of this nature. It has never been more important to focus on these crimes considering the emerging pattern of the use of gender-based abductions by not only Boko Haram but ISIL and the OTP’s April 8, 2015 Statement that it lacks a jurisdictional basis, at this stage, to open a preliminary examination into the crimes committed in Syria and Iraq, by ISIL.\(^{32}\)

**We implore the ICC to demonstrate its will.**

Peux ce que veux: Allons-y (“Where there’s a will, there’s a way. Let’s go”).\(^{33}\)

Sincerely,

Janet Benshoof
President, Global Justice Center

---


3 *Id.* at 23-24.

1 Statute of the International Criminal Court ("ICC"), A/Conf.183/9, Art. 6(e) (July 17, 1998) [hereinafter Rome Statute].
4 See, e.g., Dooley, supra note 5.
8 Id. at 674; And, it was the United States who lobbied for including forcible child transfers among the prohibited acts of genocide, including the “forced transfer of children” as a final clause in the enumeration of the acts constituting physical and biological genocide, in its draft Genocide Convention. See U.N. Secretariat, Econ. & Soc. Council, Prevention and Punishment of Genocide: Comments by Governments on the Draft Convention Prepared by the Secretariat, at 35, U.N. Doc. E/623 (January 30, 1948).
10%20Public%20version%20Article%205%20Report%20-%202005%20%20August%202013.PDF.
11 Id. at ¶¶ 87-88.
12 HRW, Those Terrible Weeks, supra note 2, at 17.
14 Article 5 Report, supra note 12, ¶ 87, n. 87.
16 Watchlist on Children and Armed Conflict, “Who Will Care For Us?”: Grave Violations against Children in Northeastern Nigeria, at 23 (2014 September) available at http://watchlist.org/wordpress/wp-
content/uploads/2111-2111-Watchlist-Nigeria_LR.pdf; see also Annex 2, Article 15 Communication.
17 Id.
19 NPVRN Report, supra note 20, at 25.
22 Id. at 21.
25 See Id. at ¶ 427 (underscoring that the obligation to prevent and the obligation to punish genocide are separate legal obligations of a State).
28 Rome Statute, supra note 4, Article 54(1)(b).
31 Global Centre for the Responsibility to Protect, R2P Monitor, March 15, 2015, at 7-8, available at http://www.globalr2p.org/publications/362 (concluding that “[t]he government of Nigeria is struggling to uphold its Responsibility to Protect and needs ongoing support from the international community.”).
33 International Coalition for the Responsibility to Protect, Q&A: The Responsibility to Protect (RtoP) and Nigeria, http://responsibilitytoprotect.org/Nigeria%20Q%20A%20FINAL(2).pdf (last visited April 12, 2015) (“Nigeria has requested external help in order to better protect its people, an act which is consistent with pillar II of RtoP and calls on the international community to provide assistance and capacity-building to states that are under stress and unable to protect their civilian population from mass atrocity crimes.”).
35 The final line in General Roméo Dallaire’s now infamous “Genocide Fax” to U.N. headquarters in New York, dated 11 January 1994, in which he quite presciently warned of the preparation for the “anti-Tutsi extermination.”