



Situation in Nigeria

Article 5 Report

5 August 2013

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List of Abbreviations

AI	Amnesty International
AFP	Agence France-Presse
ANPP	All Nigeria People's Party
ECWA	Evangelical Church of Winning All
EU	European Union
HRW	Human Rights Watch
ICG	International Crisis Group
IED	Improvised Explosive Device
IDMC	Internal Displacement Monitoring Centre
INEC	Independent National Electoral Commission
JCCD	Jurisdiction, Complementarity and Cooperation Division
JTF	Joint Task Forces
LGA	Local Government Area
NGO	Non-governmental organization
NHRC	Nigerian National Human Rights Commission
MEND	Movement for the Emancipation of the Niger Delta
MOPOL	Police Mobile Force
OTP	Office of the Prosecutor
PDP	People's Democratic Party
PE	Preliminary examination
UN HQ	United Nations Headquarters

I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

1. The Office of the Prosecutor (“Office” or “OTP”) of the International Criminal Court (“Court” or “ICC”) is responsible for determining whether a situation meets the legal criteria established by the Rome Statute (“Statute”) to warrant investigation by the Court. For this purpose, the Office conducts a preliminary examination of all situations that come to its attention based on statutory criteria and the information available. Once a situation is thus identified, article 53(1)(a)-(c) of the Statute establishes the legal framework for a preliminary examination. It provides that, in order to determine whether there is a reasonable basis to proceed with an investigation into the situation, the Prosecutor shall consider: jurisdiction (temporal, territorial or personal, and material); admissibility (complementarity and gravity); and the interests of justice.
2. In order to distinguish the situations that warrant investigation from those that do not, the Office has a filtering process comprising four consecutive phases:
 - In *phase 1*, the Office conducts an initial assessment of all information on alleged crimes received under article 15 of the Rome Statute (“article 15 communications”) to filter out information on crimes that are outside the jurisdiction of the Court.
 - In *phase 2*, the Office analyses 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.
 - In *phase 3*, the Office analyses admissibility in terms of complementarity and gravity as per article 17 of the Rome Statute.
 - In *phase 4*, having concluded from its preliminary examination that the case is admissible *prima facie*, the Office, taking into account the gravity of the crimes and the interests of victims, examines under article 53(1)(c) whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.
3. This article 5 report presents the OTP’s findings on jurisdictional issues under phase 2 and is based on information gathered by the Office up to December 2012.

Procedural History

4. In the period from 10 November 2005 to 30 September 2012, the Office received 59 article 15 communications in relation to the situation in Nigeria, 26 of which were manifestly outside the jurisdiction of the Court. The preliminary examination of the situation in Nigeria was made public on 18 November 2010.

Contextual Background

5. Nigeria's approximately 168 million inhabitants belong to over 250 ethnic groups. Ethnic and religious identities often overlap and correlate with the pattern of political parties as well as with voting behaviour. The information analysed in the present report relates to different crimes committed by different groups at different times in different regions in the country.
6. **Central and northern parts of Nigeria** have been affected by inter-communal, political and sectarian violence at least since the return to democratic rule in 1999, which reportedly has cost the lives of thousands of civilians. Ethnic and/or religious divisions in these regions often coincide with the constitutional distinction between "indigenes" (individuals considered to be living in their state of 'origin') and "non-indigenes" or "settlers" ('newcomers' who, however, might have been living in the state for decades). The main causes of the violence include a struggle for political power and access to resources, particularly between indigenous groups and "settlers".
7. The oil-rich **Niger Delta** region has seen violence among ethnically-based gangs and military groups and between them and federal forces, in particular the so-called Joint Task Force. Among the root causes of the violence in the Delta region are the struggle over control and impact of the oil production in the region and access to resources. One of the most active military groups is the Movement for the Emancipation of the Niger Delta (MEND), whose reported activities include kidnapping both foreign and Nigerian oil workers and attacking oil infrastructure in the region.
8. **The Boko Haram** of today is a Salafi-jihadi Muslim group that operates mainly in north-eastern Nigeria but has also launched attacks in other parts of the country including Abuja, Kaduna and Plateau States.¹ In the past two years, Boko Haram has shown signs of transitioning into a globalized Salafi-jihadi group and has attracted international attention in particular by launching suicide attacks.² The group has allegedly attacked religious clerics, Christians, political leaders, Muslims opposing the group, members of the police and security forces, "westerners", journalists, as well as UN personnel. The group has also been accused of committing several large-scale bombing attacks against civilian objects, including deliberate attacks against Christian churches and primary schools.

¹ The group is known officially as *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, Arabic for "group committed to propagating the Prophet's teachings and jihad." Some in the country have referred to Boko Haram as the Nigerian Taliban in reference to the group's call for Sharia throughout Nigeria. See Stratfor- Scott Stewart, "The Rising Threat from Nigeria's Boko Haram militant group", 13 November 2011.

² David Cook, "Boko Haram: A Prognosis, James A. Baker III Institute for Public Policy", 16 December 2011, p. 3.

9. In June 2011, President Jonathan sent a Joint Task Force comprised of military, police, immigration and intelligence personnel to address the security threat posed by Boko Haram. Security forces have allegedly committed crimes, including extrajudicial killings, torture and other forms of ill treatment as well as pillage and destruction of property.
10. In some instances, mainly in central parts of Nigeria, attacks attributed to Boko Haram may have triggered inter-communal violence. These attacks were however committed in a context different from the inter-communal violence in Central and Northern States and are therefore analysed separately.

Subject-matter Jurisdiction

11. Under phase 2, the Office has analysed jurisdictional issues only, namely temporal, either territorial or personal, and material jurisdiction.
12. Nigeria deposited its instrument of ratification of the Rome Statute on 27 September 2001. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of Nigeria or by its nationals from 1 July 2002 onwards.
13. Based on the information available at this stage, there does not appear to be a reasonable basis to believe that the alleged crimes committed in Central and Northern States in connection with the inter-communal violence could constitute crimes against humanity. This initial assessment may be revisited by the Office in the light of new facts or evidence that could enable the identification of specific leaders or organizations allegedly responsible for instigating such violence or the existence of an organizational policy.
14. Based on the information available at this stage, there also does not appear to be a reasonable basis to believe that the alleged crimes committed in the Delta Region could constitute war crimes. In particular, the violence in the Niger Delta, including the armed confrontations between MEND militants and the Nigerian Joint Task Force in 2009, does not appear to have involved protracted armed violence between governmental authorities and organized armed groups or between such groups, as stipulated in article 8(2)(f). This initial assessment may be revisited in the light of new facts or evidence.
15. The Office considers that there is a reasonable basis to believe that, since July 2009, Boko Haram has committed the following acts constituting crimes against humanity: (i) murder under article 7(1)(a); and (ii) persecution under article 7(1)(h) of the Statute. In particular, the information available provides a reasonable basis to believe 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 Muslims civilians in different locations throughout Nigeria. The scale and intensity

of the attacks have increased over time. The consistent pattern of such incidents indicates that the group possesses the means to carry out a widespread and/or systematic attack, and displays the degree of internal coordination and organizational control required to that end. The attacks have been committed pursuant to the policy defined at the leadership level of Boko Haram, which aims at imposing an exclusively Islamic system of government in northern Nigeria at the expense of Christians specifically. Opponents of this goal have been targeted as well.

16. Although allegations against Nigerian security forces in the context of their operations against Boko Haram may constitute serious human rights violations, the information available as of December 2012 does not provide a reasonable basis to believe that the alleged crimes were committed pursuant to or in furtherance of a State or organizational policy to attack the civilian population. At the time of writing this report, there is also no reasonable basis to believe that the confrontations between the security forces and Boko Haram amount to an armed conflict. Both matters remain the subject of on-going analysis.

Conclusion and next steps

17. The Office has determined that there is a reasonable basis to believe that crimes against humanity have been committed in Nigeria, namely acts of murder and persecution attributed to Boko Haram. Therefore, the Prosecutor has decided that the preliminary examination of the situation in Nigeria should advance to phase 3 (admissibility) with a view to assessing whether the national authorities are conducting genuine proceedings in relation to those who appear to bear the greatest responsibility for such crimes, and the gravity of such crimes.

II. INTRODUCTION

18. The Office of the Prosecutor (“Office” or “OTP”) of the International Criminal Court (“Court” or “ICC”) is responsible for determining whether a situation meets the legal criteria established by the Rome Statute (“Statute”) to warrant investigation by the Court. For this purpose, the Office conducts a preliminary examination of all situations that come to its attention based on statutory criteria and the information available.³ Once a situation is thus identified, article 53(1)(a)-(c) of the Statute establishes the legal framework for a preliminary examination. It provides that, in order to determine whether there is a reasonable basis to proceed with an investigation into the situation, the Prosecutor shall consider: jurisdiction (temporal, territorial or personal, and material); admissibility (complementarity and gravity); and the interests of justice. The present report is a public version of the Office’s jurisdictional assessment, the first phase of its preliminary examination.
19. Nigeria is a State Party to the ICC. The preliminary examination of the situation of Nigeria was made public in November 2010. It was initiated by the Prosecutor taking into consideration information on alleged crimes, including information sent by individuals or groups, States and non-governmental organizations as well as additional information sought by the Office to analyse the seriousness of the allegations. Alleged crimes were committed by different groups at different times in different regions of Nigeria. The latter include the Middle-Belt States in Central Nigeria, affected by communal and sectarian violence, the Niger Delta states, affected by violence over control and impact of the oil production in the region and access to resources, as well as the Northern States, affected by communal or electoral violence and attacks by Boko Haram.
20. This report summarizes the analysis conducted so far and presents the findings of the Office with respect to issues of jurisdiction.

III. PROCEDURAL HISTORY

21. In the period from 10 November 2005 to 1 October 2012, the Office received 59 article 15 communications in relation to the situation in Nigeria, 26 of which were manifestly outside the jurisdiction of the Court. The preliminary examination of the situation in Nigeria was made public on 18 November 2010.
22. In July 2012, the OTP conducted a mission to Abuja, Nigeria, led by Prosecutor Fatou Bensouda. The purpose of the mission was to provide an update on the

³ See Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2012 at http://icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/Pages/Report-on-Preliminary-Examination-Activities-2012.aspx.

preliminary examination of the situation in Nigeria and gather information from multiple sources on alleged crimes committed in Nigeria. During the visit, the Nigerian authorities were forthcoming in providing information to the OTP in the context of the preliminary examination, including information on national proceedings at the state and federal levels.

23. The analysis of the situation in Nigeria conducted by the Office takes into consideration information gathered from the Nigerian authorities, open sources, article 15 communications and contacts with academics and researchers specialized in Nigeria. The information used for this public report, however, has been gathered from open sources only, including reports by international NGOs such as Human Rights Watch (HRW), Amnesty International (AI), and International Crisis Group (ICG).

IV. CONTEXTUAL BACKGROUND

24. Nigeria is a federation comprising 36 States and 774 local government areas (LGAs) with a population of over 168 million people.⁴ The country has more than 250 ethnic groups.⁵ The three main ones are: the Hausa-Fulani Muslims living predominantly in the north; the Yoruba, followers of both Christian and Islamic faiths, residing mainly in the south-west; and the Igbo, most of whom are Christians, and can be found primarily in the south-east.⁶ Ethnic and religious identities often overlap and correlate with the pattern of political parties as well as with voting behaviour.⁷
25. Causes and types of violence in Nigeria are multiple and differ from state to state. The parts of Nigeria most affected by violence at different times in the past include:
 - The Middle-Belt states in central Nigeria,⁸ affected by communal and sectarian violence, particularly Plateau State;
 - The Niger Delta⁹ states, particularly Delta and River States;

⁴ United Nations Statistics Division, Country Profile: Nigeria, Data on population in 2008.

⁵ Reports on the number of ethnic groups differ. ICG and HRW cite more than 250, while other sources such as UNDP cite more than 350. "The common myth is that Nigeria has 250 ethnic groups, while some estimates put the number at over 400", Abdul Raufu Mustapha, "Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria", UN Research Institute for Social Development, November 2006, p. 1.

⁶ ICG, "Nigeria: Want in the Midst of Plenty", 19 July 2006, pp. 1-2. These three ethnic groups are popularly referred to by the generic term *wazobia* (from the Yoruba word *wa*, the Hausa word *zo* and the Igbo word *bia*, all of which mean "come").

⁷ Abdul Raufu Mustapha, "Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria", UN Research Institute for Social Development, November 2006, p. 15.

⁸ The Middle-Belt States include Kwara State, Kogi State, Benue State, Plateau State, Nasarawa State, Niger State, Adamawa State and Taraba State.

⁹ Niger Delta region includes the following states: Cross River, Akwa Ibom, Rivers, Bayelsa, Delta and Edo; sometimes it further includes Imo, Abia and Ondo States as they are also oil producers.

- The Northern states, particularly Borno, Kano, and Kaduna States, affected by communal or electoral violence, as well as attacks attributed to Boko Haram.
26. **Central and northern parts of Nigeria** have been affected by inter-communal, political and sectarian violence at least since the return to democratic rule in 1999. Ethnic and/or religious divisions in these regions often coincide with the constitutional distinction between “indigenes” (individuals considered to be living in their state of ‘origin’) and “non-indigenes” or “settlers” (‘newcomers’ who, however, might have lived in the state for decades). The main causes of the violence include thus a struggle for political power and disputes over issuing certificates on indigeneity and access to resources, particularly between indigenous groups and “settlers”.
 27. For instance, in the Plateau State in Central Nigeria, resentment by the predominantly Christian indigenous Berom ethnic group towards the non-indigene Hausa-Fulani in the city of Jos, and by the indigenous Gamai, also predominantly Christian, towards the non-indigene Jarawa, a predominantly Muslim community in the city of Yelwa, has repeatedly sparked violent clashes, resulting in the alleged killing of hundreds of civilians. Ethnic and political violence also has a religious component, as shown in attacks on Christian and Muslim communities, some of which were attributed to Boko Haram (see below).
 28. Violence in the Northern Kaduna State is deeply rooted in the ethnical and religious division between Hausa-Fulani, who are indigenous in most regions of the state, and Igbo and Yoruba, largely Christian communities.¹⁰ Violence occurred in particular around the 2011 elections, during which hundreds of civilians were allegedly killed.
 29. The oil-rich **Niger Delta** region has seen violence among ethnically-based¹¹ gangs and military groups¹² and between them and federal forces, in particular the so-called Joint Task Force. Among the root causes of the violence in the Delta region are the struggle over control and impact of the oil production in the region and access to resources. One of the most active military groups is the Movement for the Emancipation of the Niger Delta (MEND), whose reported activities include kidnapping both foreign and Nigerian oil workers and attacking oil infrastructure in the region. Confrontations with security forces peaked between 2008 and 2009, after which an amnesty programme was put in place benefiting militants in the

¹⁰ HRW, “They Do Not Own This Place, Government Discrimination Against ‘Non-Indigenes’ in Nigeria”, April 2006, pp. 48-49.

¹¹ Three main ethnic groups in the region involved in arming and training the militants are: the Urhobo, the Itsekiri, and the Ijaw.

¹² Based on the research conducted by the Academic Associates Peace Works (AAPW), there are forty-eight recognizable groups in Delta State alone, boasting more than 25,000 members and with an arsenal of approximately 10,000 weapons, Council on Foreign Relations, “Understanding the Armed Groups of the Niger Delta”, September 2009, p. 3.

Niger Delta and providing the region with some stability. However, MEND has not totally ceased its activity.

30. **The Boko Haram** of today, is a Salafi-jihadi Muslim group that operates mainly in north-eastern Nigeria (Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano States) but has also launched attacks in other parts of the country including Abuja, Kaduna and Plateau States.¹³ Its origins date back to 2002 when it was founded as a predominantly radical religious movement by Mohammed Yusuf in Maiduguri, Borno State and the group's declared objective was to replace the Nigerian State with a Shariah-based Islamic system.¹⁴
31. An important event in the group's history was its violent repression in July 2009, when hundreds of alleged Boko Haram followers were killed by security forces in Maiduguri, Borno State, including its leader Mohammed Yusuf, who was allegedly killed in police detention. Its new declared leader, Abubakar Shekau, seems to pursue a more radical, violent and jihadist agenda going beyond the establishment of an Islamic system in Nigeria.¹⁵ In the past two years, Boko Haram has shown signs of transitioning into a globalized Salafi-jihadi group and attracted international attention in particular by launching suicide attacks.¹⁶ The group has allegedly attacked religious clerics, Christians, political leaders, Muslims opposing the group, members of the police and security forces, "westerners", journalists, as well as UN personnel. The group has also been accused of committing several large-scale bombing attacks against civilian objects, including deliberate attacks against Christian churches and primary schools. The radicalisation of Boko Haram, enhanced tactics and a more sophisticated use of weapons has led to larger-scale attacks launched by the group over time, notably in 2011 and 2012.
32. In June 2011, President Jonathan sent a Joint Task Force comprised of military, police, immigration and intelligence personnel to address the security threat posed by Boko Haram. Security forces have allegedly committed crimes, including extrajudicial killings, torture and other forms of ill treatment as well as pillage and destruction of property.

V. PRELIMINARY JURISDICTIONAL ISSUES

¹³ The group is known officially as *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, Arabic for "group committed to propagating the Prophet's teachings and jihad." Some in the country have referred to Boko Haram as the Nigerian Taliban in reference to the group's call for Shariah throughout Nigeria. See Stratfor - Scott Stewart, "The Rising Threat from Nigeria's Boko Haram militant group", 13 November 2011.

¹⁴ Africa Security Brief, "Boko Haram's Evolving Threat", No. 20/April 2012, p.5.

¹⁵ On 21 June 2012, the US Department of State designated Abubakar Shekau, Abubakar Adam Kamar, and Khalid al-Barnawi as Specially Designated Global Terrorists under section 1(b) of Executive Order 13224. See Media Note, Office of the Spokesperson, Washington, DC, 21 June 2012.

¹⁶ David Cook, "Boko Haram: A Prognosis, James A. Baker III Institute for Public Policy", 16 December 2011, p. 3.

33. At this stage the Office has analysed jurisdictional issues only, namely temporal, either territorial or personal, and material jurisdiction. Nigeria ratified the Rome Statute on 27 September 2001. Therefore, the Court has jurisdiction over crimes committed on the territory of Nigeria or by Nigerian nationals as of 1 July 2002. No article 124 declaration has been lodged limiting the jurisdiction of the Court over war crimes by its nationals or on its territory.

VI. SUBJECT-MATTER JURISDICTION

34. With respect to material jurisdiction, the Office examined whether any of the alleged crimes fall within the jurisdiction of the Court. For a crime to fall within the Court's jurisdiction the crime must be one of the crimes set out in article 5 of the Statute.

A. Applicable Law

1. Contextual Elements of Crimes against Humanity

35. The contextual elements of crimes against humanity include the following: (i) an attack against any civilian population; (ii) a State or organizational policy; (iii) an attack of a widespread or systematic nature; (iv) a nexus between the individual act and the attack; and (v) the accused's knowledge of the attack.¹⁷

2. Contextual Elements of War Crimes

36. Article 8 of the Rome Statute requires the existence of an armed conflict.¹⁸ According to Trial Chamber I, "[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."¹⁹

37. A non-international armed conflict is characterised "by the outbreak of armed hostilities of a certain level of intensity, exceeding that of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, and which takes place within the confines of a State territory. The

¹⁷ Situation in the Republic of Côte D'Ivoire, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire", 3 October 2011 (notified on 15 November 2011), ICC-02/11-14-Corr, p. 14, para. 29.

¹⁸ See Elements of Crimes, second last element of each crime under article 8.

¹⁹ Situation in the Democratic Republic of the Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06 (14 March 2012), para. 533.

hostilities may break out (i) between government authorities and organized dissident armed groups or (ii) between such groups.”²⁰

38. Thus, in order to distinguish an armed conflict from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the armed confrontation must reach (1) a minimum level of intensity and (2) the parties involved in the conflict must show a minimum of organization.
39. Taking into account that the causes and perpetrators of violence differ in Central and Northern states from those in the Niger Delta region, the legal assessment with respect to alleged crimes committed in these two regions as well as by Boko Haram will be analysed separately.

B. Situation in Central and Northern States related to inter-communal violence

40. Between July 2002 and April 2011, thousands of people died in a series of major assaults in the context of inter-communal, sectarian and political violence in central and northern Nigeria, especially in the States of Kaduna, Kano, and Plateau. The majority of alleged deaths appear to be of civilians killed by unidentified attackers using firearms, machetes, axes, arrows, knives and traditional weapons. A number of victims were burned alive.

1. Legal assessment with respect to possible crimes against humanity

41. The purpose of the legal assessment is to establish whether there is a reasonable basis to believe that crimes against humanity have been committed in the Central and Northern States in the context of inter-communal violence.

Attack against any civilian population

42. It appears from the available information that most of the acts of violence carried out throughout the inter-communal violence were targeting civilians, particularly in Plateau, Kano, Kaduna, Katsina, Yobe, Sokoto, Nasarawa, Gombe and Bauchi States. According to Human Rights Watch reports, attackers were armed with firearms, machetes, axes, knives, petrol bombs, rocks, iron bars, sticks and traditional weapons.²¹

²⁰ Situation in the Democratic Republic of the Congo, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06 (14 March 2012), para. 534; *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08-424, 15 June 2009, para. 231.

²¹ HRW, “Nigeria: Protect Survivors, Fully Investigate Massacre Reports”, 23 January 2010; HRW, *Arbitrary Killings by Security Forces*, 20 July 2009, p. 3; HRW, “Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States”, 25 May 2005, pp. 17-18.

43. Further, the supporting material indicates that members of specific communities constituted the groups which directed attacks at civilians on the basis of their ethnicity, religious, and/or suspected political affiliation. The attacks also involved the destruction and burning down of houses and religious objects of a specifically targeted community. Examples of such attacks include the incidents referred to below.
44. There have been long-standing inter-communal tensions in Kaduna, which have reportedly been expressed increasingly in religious rather than in ethnic terms. On 21 November 2002, following the publication of a newspaper article commenting on the Prophet in the context of the "Miss World" beauty contest initially planned to be held in Nigeria,²² organized groups of Muslim youths in different areas of Kaduna city in **Kaduna State** began attacking members of the Christian community particularly in mixed Christian-Muslim neighbourhoods.²³ The following day, Christian groups started retaliating by specifically targeting Muslims.²⁴ According to HRW, a total of around 250 persons were allegedly killed in these attacks.²⁵
45. On 24 February 2004, the *COCIN* church in Yelwa, **Plateau State** was attacked by an unidentified group of mostly young Muslim men allegedly killing at least 78 Christians.²⁶ Estimates about Muslims killed that day ranged from 15 to 190.²⁷ The violence in Yelwa continued on 2 and 3 May 2004 when between 600²⁸ and 700²⁹ Muslims were allegedly killed by an unidentified group of members of the Christian community.³⁰ Between 200 and 370 Muslims, mostly women and children, were allegedly abducted from Yelwa during this attack.³¹
46. On 11 May 2004, demonstrations of Muslims in the city of Kano, **Kano State**,³² developed into two days of rioting and attacks on Christian residents, 200 to 250 of whom were reportedly killed.³³

²² HRW, "The 'Miss World Riots': Continued Impunity for Killings in Kaduna, July 2003, p. 7.

²³ HRW, "The 'Miss World Riots': Continued Impunity for Killings in Kaduna", July 2003, pp. 7-8.

²⁴ HRW, "The 'Miss World Riots': Continued Impunity for Killings in Kaduna", July 2003, p. 8.

²⁵ HRW, "The 'Miss World Riots': Continued Impunity for Killings in Kaduna", July 2003, p. 2.

²⁶ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, pp. 15, 19.

²⁷ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 19.

²⁸ Global IDP project, "Internal displacement in Nigeria: a hidden crisis", 1 February 2005, p. 10.

²⁹ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 25.

³⁰ Global IDP project, "Internal displacement in Nigeria: a hidden crisis", 1 February 2005, p. 10.

³¹ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 40.

³² Kano is the name of both the State in northern Nigeria and the capital of the State.

³³ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, pp. 61-62.

47. On 27 November 2008, local elections held in **Plateau State** led to an outbreak of inter-communal violence when young men from Muslim and Christian communities gathered into mobs that started killing members of the opposing side and destroying their property, including religious establishments.³⁴ Human Rights Watch estimated that at least 700 people, both Christian and Muslims, were killed in Jos between 27 and 29 November 2008, including 133 who were allegedly killed by government security forces. Muslim authorities in Jos registered 632 people killed, while Christian authorities documented 129.
48. Between 17 January and 7 March 2010, allegedly 300 people, both Christian and Muslim, died as a result of the violent clashes in the city of Jos, **Plateau State**.³⁵ This includes the alleged killing of 150 Muslims in Kuru Karama by groups of Christians and reprisal attacks on Christians on 7 March 2010, during which between 200 and 500 Christians were allegedly killed by unidentified Muslim men in three villages³⁶ - Dogo Nahawa, Zot and Ratsat, just south of Jos in **Plateau State**.³⁷
49. A new cycle of violence in **Plateau State** started in December 2010 with a series of bomb blasts planted by Boko Haram on Christmas Eve in two Christian communities in Jos. The violence continued through January 2011. As a result of the December 2010 - January 2011 violence, more than 200 Muslims and Christians alike were allegedly killed by the opposite side.³⁸
50. Widespread inter-communal violence took place in twelve northern and central states triggered by the results of the presidential elections held in April 2011. The violence erupted in Kano State on 16 April 2011, shortly after the Independent National Electoral Commission (INEC) announced the results of the presidential elections. The riots spread across eleven other states, i.e. Adamawa, Bauchi, Borno, Gombe, Jigawa, Katsina, Niger, Sokoto, Yobe, Zamfara and Kaduna, this last state experiencing the bulk of the violence. HRW reported that election-related violence left more than 800 people dead in northern Nigeria over three days of rioting.³⁹
51. Security forces have equally been accused of committing crimes. An unknown number of individuals have allegedly been detained arbitrarily as part of a response to the inter-communal violence in central and northern Nigeria. An unknown number of detainees arrested in connection with the inter-communal

³⁴ HRW, "Arbitrary Killings by Security Forces", 20 July 2009, p. 4.

³⁵ HRW, "Nigeria: Protect Survivors, Fully Investigate Massacre Reports"; Agence France-Presse, "Nearly 300 killed in Nigeria religious clashes", 19 January 2010.

³⁶ Most of the Christians inhabiting the villages of Dogo Nahawa, Ratsat and Zot were of the Berum ethnicity. HRW, "Nigeria: Investigate Massacre, Step Up Patrols", 8 March 2010.

³⁷ New York Times, "Toll from Religious and Ethnic Violence in Nigeria Rises to 500", 8 March 2010.

³⁸ HRW, "Nigeria: New Wave of Violence Leaves 200 Dead", 27 January 2011.

³⁹ HRW, "Nigeria: Post-Election Violence Killed 800", 16 May 2011. Shehu Sani of the Nigerian Civil Rights Congress (CRC) reported 316 dead in Zonkwa, 147 in Zangon Kataf and 83 in Kafanchan, with a total of 564 in these three rural towns in Kaduna State, Al Jazeera, "Nigeria rights group says 500 dead in unrest", 24 April 2011.

violence have been allegedly tortured by security forces in detention facilities across Nigeria.⁴⁰ Additional information on the scale, pattern and circumstances of alleged detentions and torture is required.

Widespread or systematic

52. Based on the available information, out of the alleged attacks directed against the civilian population, those widespread in nature can be sorted into six groups: (i) attack in Plateau (Yelwa) and Kano (Kano) States in the period from February 2004 through May 2004; (ii) attack in Plateau State (Jos) in November 2008; (iii) attack in Plateau State (Jos) in the period from January 2010 through May 2010; (iv) attack in Plateau State (Jos) in the period from December 2010 through January 2011; (v) attack in Kaduna State (Kaduna) in November 2002; (vi) attack in Kaduna, Kano, and 10 other States (Adamawa, Bauchi, Borno, Gombe, Jigawa, Katsina, Niger, Sokoto, Yobe, and Zamfara) in April 2011.
53. Alleged attacks took place on a large scale and targeted a large number of civilian victims. According to the available information, in Plateau State alone around 1,100 people were killed in 2004; 700 people were killed in November 2008; more than 500 people were killed between January and May 2010; more than 200 were killed between December 2010 and January 2011; 800 deaths were reported as a result of the April 2011 violence.
54. The alleged attacks are widely distributed throughout the Nigerian territory, yet concentrated on populated areas of Plateau, Kano, Kaduna, Katsina, Yobe, Sokoto, Nasarawa, Gombe and Bauchi States.
55. The systematic nature of the attacks is less clear. The repetition of violence over the 2007, 2008 and 2011 elections indicates a certain pattern of violence which erupted before and/or after the announcement of the election results. Such recurrence does not necessarily point to the planned or organized character of the attacks. In some cases, though, circumstances suggest that the attack may have been prepared and premeditated, and could therefore be considered 'systematic'.
56. Larger attacks indicate a certain level of organization, planning and coordination between attackers. Attacks of such a nature do not necessarily require the existence of an organizational policy, but could be a relevant indicative factor in establishing such a policy.
57. The 24 February 2004 attack on the *COCIN* church appears to have been planned and organized in advance. The coordinated behaviour of the attackers – divided into two groups - indicates they had particular tasks to perform during the attack. Furthermore, according to witnesses interviewed by HRW, one of the attackers

⁴⁰ UN Press Release, "Special Rapporteur on Torture Concludes Visit to Nigeria", 12 March 2007.

appeared to be their commander pointing to possible organization with hierarchy.⁴¹

58. The 2 May 2004 attack in Yelwa also seems to have been organized. Reportedly, large groups of attackers were recruited from different LGAs and were well-armed. Additionally, attackers were operating in different groups with a certain level of organization, as there were several commanders among them.⁴² Finally, their mode of operation indicated a high level of coordination.⁴³ However, there is no information on a formal structure that the perpetrators belonged to or on the possible organizers and financiers of the violence.⁴⁴
59. According to witnesses of the 11-12 May 2004 attacks in Kano interviewed by Human Rights Watch, the older attackers were leading the groups and were carrying out the killings, while the younger ones were shouting and intimidating people.⁴⁵ This division of roles and tasks between the attackers could be an indicator of the organized character of the attack.
60. The 7 March 2010 attack on three predominantly Christian villages near Jos appears to have been well-coordinated and systematic in nature. First, villages were attacked at around the same hour with similar weapons.⁴⁶ Second, attacks were conducted in a similar manner following the same pattern.⁴⁷ Additionally, according to witnesses' claims, Berom Muslims in the community were asked to vacate the area prior to the attack.⁴⁸ A news media report pointed out that the attack on one of the villages, Dogo Nahawa, "had been planned at least several days before by a local group called Thank Allah."⁴⁹ However, the group is unknown and there is no further information on its structure, membership and functioning.

State or organizational policy

61. Overall, the available information is insufficient to establish whether the attacks on the civilian population in central and northern states were isolated and/or

⁴¹ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, pp. 16-18.

⁴² HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, pp. 23-24.

⁴³ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 23.

⁴⁴ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 56.

⁴⁵ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 60.

⁴⁶ HRW, "Nigeria: Investigate Massacre, Step Up Patrols", 8 March 2010.

⁴⁷ HRW, "Nigeria: Investigate Massacre, Step Up Patrols", 8 March 2010.

⁴⁸ The Nation Online, "Hundreds dead in fresh Jos violence", 8 March 2010.

⁴⁹ New York Times, "Nigerians Recount Night of Their Bloody Revenge", 10 March 2010.

spontaneous acts of violence, or were committed pursuant to a State or organizational policy.

62. The main constraint in establishing the existence of an organizational policy in the Nigerian context is the lack of information on alleged perpetrators and consequently on the existence of an organization or a group implementing an implicit or explicit policy to attack a civilian population.
63. Human Rights Watch concluded that with regard to the situation in Plateau State “violence has not been carried out by recognized groups or militia with a clear structure. No individual or organization has openly claimed responsibility for the killings.”⁵⁰ Moreover, “there are no formal or clearly identifiable armed groups who maintain a visible presence in the periods between the fighting.”⁵¹
64. The alleged role of religious leaders in inciting ordinary people to carry out attacks against specifically targeted groups or the involvement of local political leaders in organizing and financing the violence requires further substantiation given insufficient or contradicting information.
65. Available information on identifiable actors or organizations involved in organizing, inciting and/or financing violence targeted against specific groups⁵² is thus insufficient to provide a reasonable basis to believe that acts were committed in furtherance of or pursuant to an organizational policy.
66. With regard to the involvement of the state in the violence, the response of the Nigerian government and the security forces⁵³ has been two-fold depending on the incident. In some instances, security forces allegedly retreated soon before the violence started, failing to protect victims of the attack.⁵⁴ In others, the security forces allegedly used extensive, possibly excessive, force to cope with the violence.⁵⁵
67. During the 21-22 November 2002 violence, the state government imposed a curfew soon after the fighting began. The security forces had a licence to shoot people breaching the curfew.⁵⁶ Allegedly, the security forces were involved in extrajudicial killings and injured dozens of people. In a number of instances, the police or

⁵⁰ HRW, “Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States”, 25 May 2005, p. 6.

⁵¹ HRW, “Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States”, 25 May 2005, p. 6.

⁵² Amnesty International, Annual Report 2010.

⁵³ Security forces include both Nigerian army and police.

⁵⁴ See for example incidents reported by HRW, “Nigeria: Use Restraint in Curbing Job Violence”, 19 January 2010; AI, “Loss of life, insecurity and impunity in the run-up to Nigeria’s elections”, March 2011, p. 9.

⁵⁵ HRW, “The ‘Miss World Riots’: Continued Impunity for Killings in Kaduna”, July 2003, p. 9; HRW, “Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States”, 25 May 2005, p. 73.

⁵⁶ HRW, “The ‘Miss World Riots’: Continued Impunity for Killings in Kaduna”, July 2003, p. 9.

military reportedly targeted particular individuals with the specific intent to kill them.⁵⁷

68. According to witnesses of the 2-3 May 2004 attack interviewed by Human Rights Watch, a number of attackers wore military or police uniforms. Some witnesses found ID cards of police/military personnel at the scene.
69. Military and police were also deployed to quell the 11-12 May 2004 violence and restore order in Kano. Allegedly, they carried out extrajudicial killings, mainly of Muslim men, including people who were not involved in the violence, according to testimonies gathered by Human Rights Watch.⁵⁸ There have been allegations that the administration of Joshua Dariye, then-governor of Plateau State, may have instigated the May 2004 violence, particularly when he suggested in an interview to the "Daily Champion" newspaper in March 2004 that the demands of Jos's Hausa community to be recognized as indigenes could be a ground for evicting them from the state altogether.⁵⁹
70. In response to the 28-29 November 2008 violence in Jos, the Plateau State governor, Jonah Jang, imposed a dusk-to-dawn curfew and issued a "shoot-on-sight" order to security forces.⁶⁰ This order applied to anyone breaking the curfew.⁶¹ Human Rights Watch researchers documented 15 separate incidents of extrajudicial execution by the security forces during which at least 74 men and boys (all but two were Muslims) were killed.⁶² According to Human Rights Watch, the majority of victims were unarmed at the time of the killings.⁶³ Reportedly the vast majority of killings were perpetrated by the anti-riot Police Mobile Force (MOPOLs).⁶⁴
71. In order to suppress the 17-23 January 2010 violence in Jos, Vice-President Goodluck Jonathan sent in the military and police.⁶⁵ The exact involvement of these security forces in the violence and possible killings is not clearly established. Some reports noted that the military and police used excessive force against both Christians and Muslims in responding to the violence.⁶⁶ On the other hand, international NGOs reported that the police abandoned their post shortly before the violence began and the killings were committed without police intervention to stop the violence, despite repeated calls to the police.⁶⁷

⁵⁷ HRW, "The 'Miss World Riots': Continued Impunity for Killings in Kaduna", July 2003, p. 13.

⁵⁸ HRW, "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", 25 May 2005, p. 73.

⁵⁹ HRW, "They Do Not Own This Place". Government Discrimination Against "Non-Indigenes" in Nigeria", April 2006, pp.44-45.

⁶⁰ HRW, "Arbitrary Killings by Security Forces", 20 July 2009, pp. 8-9.

⁶¹ HRW, "Arbitrary Killings by Security Force", 20 July 2009, p. 9.

⁶² HRW, "Arbitrary Killings by Security Forces", 20 July 2009, p. 1.

⁶³ HRW, "Arbitrary Killings by Security Forces", 20 July 2009, pp. 10-19.

⁶⁴ HRW, "Arbitrary Killings by Security Forces", 20 July 2009, p. 1.

⁶⁵ AFP, "Nearly 300 killed in Nigeria religious clashes", 19 January 2010.

⁶⁶ HRW, "Nigeria: Use Restraint in Curbing Job Violence", 19 January 2010.

⁶⁷ HRW, "Nigeria: Use Restraint in Curbing Job Violence", 19 January 2010; AI, "Loss of life, insecurity and impunity in the run-up to Nigeria's elections", March 2011, p. 9.

72. Human Rights Watch documented dozens of credible instances of both the police and the military using excessive force when responding to the rioting and inter-communal violence in April 2011. There were accounts of police and soldiers in Kaduna, Gombe and Bauchi States systematically beating people they had rounded up after the riots.⁶⁸
73. However, according to Human Rights Watch, the common practice of stealing uniforms of the security forces by unknown people makes it difficult to identify situations where members of the security forces actually participated in the attacks. Some witnesses interviewed by Human Rights Watch believed that perpetrators of arbitrary killings during the 28-29 November 2008 violence may have been persons only pretending to be police officers and soldiers, thereby contradicting the other evidence collected by Human Rights Watch.⁶⁹
74. Available information on the use of extensive force by the security forces, including the alleged commission of extrajudicial killings, provides insufficient basis to establish that such killings were committed as part of an attack against the civilian population and in furtherance of a state policy. Taking into account claims that the security forces uniforms could have been misused in the commission of alleged crimes, additional information in identifying the alleged perpetrators of extrajudicial killings is required. Further, information on the possible ethnic/religious affiliation of victims of extrajudicial killings would be helpful for further analysis.
75. The situation where the Nigerian government and the security forces showed a passive attitude could hardly be characterized as a failure to take action with the aim of encouraging the attacks without further information on the circumstances and reasons for such abstention.
76. At the time of writing, the available information is insufficient to provide a reasonable basis to believe that the alleged crimes were committed pursuant to a State policy to direct attacks against any civilian population.

2. Legal assessment with respect to possible war crimes

77. Inter-communal clashes in central and northern States relate to isolated or sporadic acts of violence without sustained military confrontation, thereby falling under the category of internal disturbances and tensions⁷⁰ as opposed to an armed conflict in

⁶⁸ Reliefweb, "Nigeria: Nailing the perpetrators of violence", 17 May 2011.

⁶⁹ HRW, "Arbitrary Killings by Security Forces", 20 July 2009, pp. 10-19.

⁷⁰ Internal disturbances involves "situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the

a legal sense. Even with the involvement of police and armed forces for the purposes of restoring law and order,⁷¹ there is no information on the existence of open hostilities between the government forces and organized armed groups or between such groups which would qualify the events in question as armed conflict.

78. The requirement that the groups involved have a minimum degree of organization is also not met. There is no factual information which would indicate a level of organization of the parties to the conflict such as the existence of a responsible command and the ability of a group to carry out sustained and concerted military operations.⁷² According to the available information, the alleged perpetrators of the attacks were members of local communities appearing not to have a hierarchical structure or belonging to any armed group which would satisfy the minimum level of organization.

C. Situation related to Boko Haram

1. Legal assessment with respect to possible crimes against humanity

(a) Alleged crimes committed by Boko Haram

(i) Contextual elements

Attack against any civilian population

79. The information available provides a reasonable basis to conclude that Boko Haram launched an attack directed at the civilian population in different parts of Nigeria, including Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano States in the north, as well as Abuja and Plateau State in central Nigeria beginning in July 2009. In these areas, civilians were the primary object of the attacks and they were not a randomly selected group of individuals. Reportedly, Boko Haram members, often riding motorcycles and carrying Kalashnikov rifles under their robes, killed numerous Christian worshippers, and assassinated local politicians, community

authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules." As regards 'internal tensions' these could be said to include in particular situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances.", Y. Sandoz – C. Swinarski – B. Zimmermann, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 (Martinus Nijhoff Publishers, Geneva, 1987), paras. 4475-4476.

⁷¹ Y. Sandoz – C. Swinarski – B. Zimmermann, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 (Martinus Nijhoff Publishers, Geneva, 1987), para. 4341.

⁷² Y. Sandoz – C. Swinarski – B. Zimmermann, Commentary on the Additional Protocols of 8 June 1997 to the Geneva Conventions of 12 August 1949 (Martinus Nijhoff Publishers, Geneva, 1987), paras. 4463-4470.

leaders, and Islamic clerics opposed to the group. The group has also claimed responsibility for bombing churches, banks, and beer parlours in northern Nigeria, as well as the UN building and the police headquarters in Abuja.⁷³ Since the beginning of 2012, suspected Boko Haram members have also attacked at least 12 schools in and around Maiduguri (Borno State).⁷⁴

Widespread or systematic

80. The attack against the civilian population has been widespread in terms of the high number of victims as well as the geographical spread. Human Rights Watch estimates that since 2009 more than 1,200 Christian and Muslim civilians have been killed in hundreds of suspected attacks by the group in 12 northern and central Nigerian states, as well as Abuja.⁷⁵ The Oxford Research Group refers to 450 people killed by Boko Haram in the period from January 2012 through April 2012.⁷⁶ Human Rights Watch speaks of “more than 253” deaths in 21 attacks during the first three weeks of January 2012.⁷⁷
81. From 2009 until 2012, the occurrence of killings attributed to Boko Haram expanded from the north-east (2009) further west to Kebbi and southwards to Plateau State (2010). In 2011, deaths occurred even further south in Abuja and Taraba States. As for the first five months of 2012, killings also occurred in Adamawa State in the east.

State or organizational policy

82. The attack against the civilian population was committed pursuant to the policy defined at the leadership level of Boko Haram aiming at establishing an Islamic system of government in Nigeria.⁷⁸ The primary targets of the group’s more recent attacks are members of Christian community, local politicians and community leaders, Muslims who are perceived as opposing Boko Haram, and members of the international community. The group also targets security forces.
83. The available information appears sufficient to establish that Boko Haram could be considered as an “organization” capable of defining and implementing a policy of

⁷³ HRW, “Nigeria: Boko Haram Widens Terror Campaign”, 24 January 2012.

⁷⁴ HRW, “Nigeria: Boko Haram Targeting Schools”, 7 March 2012.

⁷⁵ HRW, “Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria”, October 2012, p. 76.

⁷⁶ Oxford Research Group, Nigeria: The Generic Context of the Boko Haram Violence, 30 April 2012, p.2.

⁷⁷ HRW, “Nigeria: Boko Haram Widens Terror Campaign”, 24 January 2012.

⁷⁸ HRW, “Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria”, October 2012, p. 32.

committing crimes against humanity.⁷⁹ The group appears to be under a responsible command, namely the leadership exerted by Abubakar Shekau.⁸⁰

84. Further, a consistent pattern of incidents suggests that the group actually possesses the means to carry out a widespread or systematic attack, and displays the degree of internal coordination and organizational control required to that end. The group may not exercise control over part of the Nigerian State but appears to be well-established in the north-eastern region (Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano States) and able to launch attacks across the country.
85. After having initially conducted hit-and-run assassinations in drive-by shootings from the back of motorbikes following the 2009 riots,⁸¹ since 2010, Boko Haram has begun to systematically use IED attacks, for instance the 24 December 2010 bombing in Jos. In addition, Boko Haram reportedly carried out a number of other, mainly IED, attacks with small IEDs being thrown from moving vehicles or planted near targets in Maiduguri and Bauchi States. The first vehicle-borne suicide attack by Boko Haram was carried out in June 2011 targeting the Inspector General of the Nigerian Police Force in Abuja and was seen as a “significant and ominous tactical and operational upgrade in capabilities.”⁸² Since the suicide attack on the UN offices in Abuja in August 2011, a new feature in Boko Haram attacks has recently been the use of massive vehicle-borne IEDs against high-profile targets, with some attacks being simultaneous or otherwise coordinated.⁸³ In late 2011 and early 2012, the group allegedly carried out large-scale attacks combining bomb and gun attacks targeting both security forces and civilian targets.
86. The policy to attack civilians is explicit and evidenced by public statements issued by Boko Haram leaders or spokesmen. In July 2010, Abubakar Shekau, leader of Boko Haram, threatened attacks not only against the Nigerian state, but also against “outposts of Western culture.”⁸⁴
87. More specifically, in a video message posted on YouTube on 11 January 2012, Abubakar Shekau stated that Boko Haram is “at war with Christians because the whole world knows what they did to us [...]” indicating that the attacks on

⁷⁹ *Situation in the Republic of Côte d’Ivoire*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11-14-Corr, 3 October 2011, para. 46 quoting the “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya”, 31 March 2010 (notified on 1 April 2010), ICC-01/09-19-Corr, paras. 90-93.

⁸⁰ HRW, “Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria”, October 2012, p. 76.

⁸¹ The Telegraph, “Boko Haram claims responsibility for Nigeria attacks”, 25 December 2011.

⁸² Africa Security Brief, “Boko Haram’s Evolving Threat”, No.20/April 2012, p. 4.

⁸³ Africa Security Brief, “Boko Haram’s Evolving Threat”, No.20/April 2012, p. 5.

⁸⁴ In September 2011, in a video message following the UN bombing, the alleged bomber stated that the attack was “meant to send a message to the US president ‘and other infidels’”. In addition, statements in this and another video refer to the UN HQ as a “forum of all the global evil.” BBC News, “Nigeria UN bomb: Video of ‘Boko Haram bomber’ released”, 18 September 2011; Africa Security Brief, Boko Haram’s Evolving Threat, No.20/April 2012, p. 4.

Christians are revenge for killings of Muslims in Nigeria.⁸⁵ In the same message, Boko Haram issued an “ultimatum” of three days for Christians to leave northern Nigeria.⁸⁶ The UN High Commissioner for Human Rights issued a statement thereafter, warning that the acts of Boko Haram may amount to crimes against humanity.⁸⁷

88. Abubakar Shekau also released a video message on 12 April 2012 in which, according to the Sahara reporters, he stated that Boko Haram “must destroy Christians and Christianity in Nigeria particularly those killing Muslims in Nigeria”. Boko Haram would also “kill all Muslims aiding the arrest and harassment of its members”.⁸⁸ Shekau warned that, “if, by any chance, any Muslim helps any infidel in this war he should know that he is a dead person”⁸⁹
89. With respect to alleged crimes committed by Boko Haram, the information available provides a reasonable basis to conclude that the contextual elements required for such acts to amount to crimes against humanity are met.

(ii) Underlying acts constituting crimes against humanity

90. On the basis of the available information, there is a reasonable basis to believe that since July 2009, Boko Haram committed:
- (i) murder constituting a crime against humanity under article 7(1)(a) of the Statute;
 - (ii) persecution constituting a crime against humanity under article 7(1)(h) of the Statute.

Murder

91. The *actus reus* of the crime of murder requires that the perpetrator killed one or more persons and that the conduct was “committed as part of a widespread or systematic attack directed against a civilian population”.⁹⁰

⁸⁵ BBC News, “Boko Haram: Nigerian Islamist leader defends attacks”, 11 January 2012.

⁸⁶ Africa Security Brief, “Boko Haram’s Evolving Threat”, No. 20/April 2012, p. 5.

⁸⁷ The High Commissioner noted that “members of Boko Haram and other groups and entities, if judged to have committed widespread or systematic attacks against a civilian population – including on grounds such as religion or ethnicity - could be found guilty of crimes against humanity. Deliberate acts leading to population “cleansing” on grounds of religion or ethnicity would also amount to a crime against humanity,” she added. The High Commissioner recalled that it is for this reason that the International Criminal Court was created as a back-up mechanism to the efforts and willingness of national authorities to ensure that there is accountability, OHCHR,– “Pillay urges concerted effort by Nigerian leaders to halt spiralling sectarian violence”, 12 January 2012.

⁸⁸ Sahara Reporters, “In A New Video Boko Haram Leader Threatens To “Devour” President Jonathan In 3 Months”, 12 April 2012.

⁸⁹ Jubilee Campaign, “Boko Haram, Inciting messages of intolerance against Christians”, (undated), p. 3.

⁹⁰ Elements of Crimes, Article 7.

92. According to the available information, Boko Haram has carried out a series of attacks against the civilian population which has resulted in the murder of at least 1,200 civilians since July 2009. The victims include religious clerics, aid workers, government officials, and random bystanders.
93. For example, AI reports that on 17 June 2012, Boko Haram bombed three church services in Kaduna, killing at least 21 people. Revenge attacks between Christians and Muslims resulted in the deaths of at least 70 more.⁹¹
94. A Christian church in Kaduna was also reportedly attacked on 8 April 2012, when two Boko Haram suicide bombers killed between 38 and 41 people.⁹² From 40⁹³ to 65⁹⁴ people were allegedly killed as a result of a suicide car bomb attack carried out by Boko Haram against the Saint Theresa church in Madalla, Niger state on 25 December 2011.
95. On 26 August 2011, the group allegedly launched its first attack on an international target, the UN Office in Abuja, resulting in 23 deaths (including 11 UN staff members) and 73 wounded.⁹⁵

Persecution

96. The *actus reus* of the crime of persecution requires that the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights and targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.⁹⁶ Additionally, such targeting must be based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.
97. Boko Haram has allegedly carried out numerous attacks targeting specifically Christian churches and Christians in northern and central Nigeria since 2009, including torching and blowing up churches, and carrying out abductions, forced conversions, and attacks in markets and during religious services using guns, improvised explosive devices, or suicide bombers. According to Human Rights Watch, the attacks on Christians in northern and central Nigeria appear to be part of a systematic plan of violence and intimidation.⁹⁷

⁹¹ AI, "Trapped in the cycle of violence", 01 November 2012, p. 14.

⁹² Jeune Afrique, "Nigeria - au moins 20 morts dans un attentat près d'une église", 08 April 2012.

⁹³ AFP, "Blood, flesh and tears at Nigerian church hit by blast", 26 December 2011.

⁹⁴ The Monitor, "Nigeria: Forces Infiltrated By Boko Haram, Jonathan Almost left Hopeless", 12 February 2012.

⁹⁵ Africa Security Brief, "Boko Haram's Evolving Threat", No.20/April 2012, pp. 4-5.

⁹⁶ Elements of Crimes, article 7(1)(h).

⁹⁷ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 44.

98. The attacks appear to be committed in furtherance of the policy of the Boko Haram leadership to persecute Christians in the north of the country. This policy was proclaimed by Boko Haram spokesperson Abu Qaqa on 2 January 2012 when he issued a three-day ultimatum to southern Nigerians, most of whom are Christian, to leave the north.⁹⁸
99. During the five days of violence in July 2009, Boko Haram members allegedly killed 37 Christian men, including three pastors, and torched or partially destroyed 29 churches in Borno State, according to Christian leaders. Human Rights Watch reported that, since 2010, armed gunmen suspected of being Boko Haram members attacked worshippers in at least 18 churches across eight northern and central states, killing more than 127 Christians and injuring numerous others.⁹⁹ On Christmas Eve 2010, gunmen allegedly attacked two churches in Maiduguri, killing six people, including a pastor.¹⁰⁰ That same evening in the city of Jos, suspected Boko Haram members detonated several explosives in Christian neighbourhoods, which reportedly left 33 people dead. A year later, on Christmas Day 2011, Boko Haram allegedly struck at St. Theresa's Catholic Church in Madalla, Niger State, killing 43 people in addition to the two bombers. Boko Haram members also attacked a church in Jos that day, killing a police officer on guard.¹⁰¹ On 10 June 2012, a suicide bomber drove a car into Christ Chosen Church in Jos, killing one person and injuring an estimated 100 persons. Boko Haram claimed responsibility for the attack.¹⁰² As mentioned above, on 17 June 2012, there were allegedly three coordinated attacks against two churches in the city of Zaria and one in the city of Kaduna, in Kaduna State, northern Nigeria killing at least 21 persons.¹⁰³
100. The group also targeted political candidates and religious leaders. For example, on 28 January 2011, Boko Haram claimed responsibility for the killing of eight persons including Fannami Gubio, the All Nigeria People's Party (ANPP) candidate for Borno State Governor.¹⁰⁴ Boko Haram has reportedly also targeted Muslim figures who opposed the group, including the brother of the traditional ruler Shehu of Borno, the prominent Maiduguri cleric, Ibrahim Ahmad Abdullahi Bolori, and the cleric Ibrahim Birkuti of southern Borno State.¹⁰⁵

⁹⁸ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 50.

⁹⁹ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 44.

¹⁰⁰ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 48.

¹⁰¹ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 48.

¹⁰² AI, "Trapped in the cycle of violence", 01 November 2012, p. 14.

¹⁰³ Leadership, Kaduna, "Suicide Bombers Attack 3 Churches As Youths Launch Reprisal", 17 June 2012; AI, "Trapped in the cycle of violence", 01 November 2012, p. 14.

¹⁰⁴ AI, "Trapped in the cycle of violence", 01 November 2012, p. 11.

¹⁰⁵ Africa Security Brief, "Boko Haram's Evolving Threat", No.20/April 2012, p. 4.

(b) Alleged crimes committed by security forces in relation to Boko Haram

Attack against any civilian population

101. There are credible reports about alleged crimes committed by security forces, deployed to address the security challenge posed by Boko Haram in northern Nigeria, particularly in and around Maiduguri, Borno State. During the JTF operations, persons suspected of being members of Boko Haram were allegedly arrested and extrajudicially executed, subjected to torture and other forms of ill-treatment, and/or became victims of enforced disappearance. In addition, JTF members were allegedly responsible for acts of rape, pillage and destruction of civilian property.
102. During the government's crackdown on Boko Haram in July 2009 in Yobe, Borno and Kano States, allegedly unlawful counter-measures were taken by the security forces including extrajudicial killings. The five-day violence left more than 600 people dead, most of whom, according to government authorities, were suspected Boko Haram members.¹⁰⁶ Other incidents of extrajudicial killings were further reported, particularly in Maiduguri, Borno State.¹⁰⁷ In particular during the period from 30 October to 1 November 2012, JTF forces allegedly killed between 30 and 70 young men in Kalari neighbourhood in Maiduguri. According to media sources, the youths had been rounded up in house-to-house searches by soldiers and were later transported to a field where they were executed.¹⁰⁸
103. Amnesty International reported a number of cases of enforced disappearance of persons arrested by JTF.¹⁰⁹ Human Rights Watch reported cases of torture and other forms of ill-treatment of persons suspected of being affiliated with Boko Haram by security forces.¹¹⁰ Amnesty International also reports that detainees in Giwa barracks are held in severely overcrowded conditions and suffer from inhuman treatment.¹¹¹ There is at least one allegation of rape committed by JTF forces.¹¹² They are furthermore alleged to be responsible for the destruction of

¹⁰⁶ According to open sources, security forces allegedly also killed "large numbers of civilians" with no connection to Boko Haram. HRW, "Nigeria: Prosecute Killings by Security Forces", 26 November 2009; Al Jazeera, "Video shows Nigeria 'executions'", 9 February 2010.

¹⁰⁷ See HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 65; AI, "Trapped in the cycle of violence", 01 November 2012, p. 21.

¹⁰⁸ AI, "Independent investigation into Maiduguri killing vital", 02 November 2012.

¹⁰⁹ AI, "Trapped in the cycle of violence", 01 November 2012, p. 28.

¹¹⁰ According to Human Rights Watch, detainees in Giwa military camp in Maiduguri were allegedly held underground in inhuman conditions. One man was allegedly tortured by pulling on his genitals with a pair of pliers, another by peeling the skin off with a razor. See HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 72.

¹¹¹ AI, "Trapped in the cycle of violence", 01 November 2012, pp. 40-42.

¹¹² JTF forces also allegedly raped a woman on 9 July 2011 in Kaleri neighbourhood of Maiduguri, Borno State. See HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 69.

property, in particular by setting fire to houses and shops of civilians in Maiduguri, Borno State.¹¹³

104. At the time of writing, the information available is however insufficient to establish the existence of an attack against any civilian population. Namely, it is unclear whether the civilian population was a primary object of the alleged attack or whether the alleged acts by the JTF were directed against a limited and randomly selected group of individuals. Further information on the planning and deployment of the JTF, the conduct of search operations as well as the circumstances of commission of the alleged crimes is required.

Widespread or systematic

105. According to the information available, the alleged conduct appears to be widespread in nature since most of the incidents seem to be committed in several states of northern Nigeria where security forces were deployed, in particular in and around the city of Maiduguri, Borno State, which reportedly constitutes the stronghold of Boko Haram.

106. The systematic nature of the alleged conduct however seems unclear at this stage. While the available information suggests a certain pattern in the conduct of operations by JTF, it is insufficient at this stage to establish the organized nature of the alleged acts of violence.

State or organizational policy

107. While there is credible information that the Nigerian security forces resort to excessive force and/or commit abuses against civilians suspected of being affiliated with Boko Haram, at present, the information available to the Office does not indicate the existence of a State policy to launch an attack against the civilian population.

2. Legal assessment with respect to possible war crimes

108. Boko Haram is an armed group which seems to meet a minimum level of organization. The group's founder and former leader Mohammed Yusuf, who was allegedly killed by the security forces during the riots and subsequent government crackdown in July 2009, has been remembered by the group as a "martyr" up to this day. He was succeeded by a Nigerian named Mallam Sanni Umaru, who presented himself as the new group's leader in an open letter on 9 August 2009.

¹¹³ See for example the incidents reported by AI, "Trapped in the cycle of violence", 01 November 2012, p. 32.

However, in July 2010, Mohammed Yusuf's former deputy, Abubakar Shekau, who was thought to have been killed during the 2009 uprising, surfaced in a video and proclaimed himself the new head of Boko Haram.¹¹⁴ While the group has been primarily based in the north-eastern region (Borno, Yobe, Katsina, Kaduna, Bauchi, Gombe and Kano States), it has gradually expanded to "virtually all northern states,"¹¹⁵ with attacks having occurred also in Abuja, Kaduna and Plateau States. The group has proven its ability to carry out military operations.

109. The second requirement is whether the armed confrontations between Boko Haram's militants and the Nigerian security forces have reached the minimum level of intensity to meet the threshold of an armed conflict.

110. Government security forces have been one of the declared targets of Boko Haram. According to Human Rights Watch, Boko Haram has shot and killed police officers on active duty at police stations, roadblocks, government buildings, and churches, and has claimed responsibility for bombing police facilities using IED and suicide bombers. The group has reportedly further struck at military bases, checkpoints, and vehicles, especially those of security forces in Maiduguri.¹¹⁶

111. On 31 December 2011, President Jonathan declared a State of Emergency that lasted for six months and suspended some constitutional rights. He also deployed additional security forces to northern Nigeria and granted them emergency powers to address the security threat by Boko Haram.¹¹⁷ The security forces currently deployed in northern Nigeria to engage Boko Haram are comprised of military, police and intelligence personnel, known as the JTF.¹¹⁸ The JTF is deployed under "Operation Restore Order" (currently under Operation Restore Order III¹¹⁹) and engage Boko Haram militants militarily. Human Rights Watch reports that security forces have killed "hundreds of Boko Haram suspects and random members of communities where attacks have occurred".¹²⁰

112. Operation Restore Order focuses on the north-eastern States of Borno and Yobe. Most of the clashes reportedly occur in Maiduguri, capital of Borno State. Maiduguri is the heartland of Boko Haram and used to be their main seat under

¹¹⁴ Groupe de recherche et d'information sur la paix et la sécurité, "Boko Haram Fiche documentaire", 19 Octobre 2011, pp. 3-4.

¹¹⁵ The Guardian, "Boko Haram: History, ideas and revolt (2)", 8 July 2011.

¹¹⁶ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012.

¹¹⁷ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 9.

¹¹⁸ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 9.

¹¹⁹ Nairaland, "Press statement by JTF on killing of Boko Haram leader", 7 October 2012.

¹²⁰ HRW, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria", October 2012, p. 9.

the leadership of Yusuf. The JTF has an important military base in Maiduguri called Gilwa military barracks.¹²¹

113. At the time of writing, analysis suggests that the security operation against Boko Haram may still fall under the category of “internal disturbances”¹²² as opposed to a non-international armed conflict. However, the issue remains subject to on-going analysis. The Office will seek additional information on the types and the geographical spread of security operations, and the structure and organization of the JTF and other relevant security forces in order to fine-tune its assessment.

D. Situation in Niger Delta

1. Legal assessment with respect to possible crimes against humanity

Attack against any civilian population

114. Reportedly, members of the JTF killed a number of civilians in the course of operations against armed groups in Niger Delta, particularly in River and Delta States, in particular in 2008 and 2009.¹²³

115. Armed gangs have also been accused of abductions¹²⁴ and the recruitment of children under the age of 15 years.¹²⁵ However, additional information on these alleged crimes is required.

116. Additionally, the Niger Delta States have been affected by the political violence in the context of the 2007 and 2011 elections. Allegedly, local politicians and local communities hired or provided support to armed groups in this context.¹²⁶

¹²¹ HRW, “Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria”, October 2012, p. 72.

¹²² See footnote 70 above.

¹²³ For example, on 13 September 2008, the JTF allegedly attacked three villages, Soku, Kula, and Tombia in River State, by using air and land forces. An unknown number of civilians were allegedly also killed in the attack. On 15 May 2009, the JTF allegedly attacked two villages, Oporoza and Okerenkoko, located near the city of Warri in Delta State by opening fire from helicopters. AI estimated that at least 100 civilians were killed as a result of the attack. See, AI, “Unlawful killings/displacement/access to medical care”, 20 May 2009, p. 1.

¹²⁴ HRW reports that in the first six months of 2007 alone allegedly more than 100 oil workers were abducted. Also, in early 2007 several children were captured for ransom by armed attackers. ICG research shows that, in 2006 alone, over 70 foreigners (mostly oil workers) were kidnapped for ransom. See HRW, “Nigeria. Criminal Politics: Violence, ‘Godfathers’ and Corruption in Nigeria”, October 2007, pp. 81-83; ICG, “Nigeria’s Elections: Avoiding a Political Crisis”, 28 March 2007, p. 12.

¹²⁵ Small Arms Survey, “Armed and Aimless: Armed Groups, Guns, and Human Security in the Ecowas Region”, May 2005, pp. 344-345.

¹²⁶ Council on Foreign Relations, “Understanding the Armed Groups of the Niger Delta”, September 2009, pp. 12-13; HRW, “Criminal Politics: Violence, ‘Godfathers’, and Corruption in Nigeria”, October 2007, p. 84.

Widespread and systematic/State or organizational policy

117. At this stage, however, there is nothing to suggest that armed groups or the security forces have launched systematic or widespread attacks against the civilian population of the Niger Delta in furtherance of a State or an organizational policy.
118. The available information provides no reasonable basis to believe that crimes against humanity have been committed in the Niger Delta region.

2. Legal assessment with respect to possible war crimes

119. Alleged conflict in the Niger Delta took place mainly between the government's JTF and MEND, one of the most active armed groups in the Niger Delta in the periods of time under analysis. Taking into consideration that most sources refer to "militants" being attacked by the JTF, it is possible that other armed groups participated in the hostilities in collaboration with MEND.
120. Available information on the violence, although indicative, is insufficient to conclude that an armed conflict of non-international character took place in the relevant periods of time. While the requirement of the minimum level of organization of parties involved in the violence seems to be met, there is a lack of information on the circumstances of relevant attacks for assessing the level of intensity and determining whether the conducted operations were isolated and sporadic acts of violence, or sustained military operations involving open hostilities.

Organized armed groups

121. Although little is known about the organization and structure of MEND, the available information indicates that MEND is an armed group with a decentralized structure, organized enough to be able to engage in an armed conflict.
122. MEND's leadership is divided into three distinct branches operating in three different states in the Niger Delta region: Western MEND in Delta State; Eastern MEND in Rivers State; and Central MEND in Bayelsa State.¹²⁷ Each branch operates under a separate leadership responsible for implementing the goals of the group, namely taking over the control of oil resources and destroying the capacity of the Nigerian government to export oil. The MEND leaders also articulate the group's agenda through giving statements to international media, claiming responsibility

¹²⁷ Council on Foreign Relations, "Understanding the Armed Groups of the Niger Delta", September 2009, p. 19.

for attacks on oil pipelines and abductions of oil workers, and being involved in negotiations with government authorities.

123. MEND has further demonstrated its ability to carry out effective and highly coordinated attacks. The tactics implemented by MEND include bombings of crucial pipelines and hostage-taking. In short, MEND probably qualifies as an organized armed group within the meaning of article 8.

Level of intensity

124. Based on the available information, the temporal element in determining the level of intensity includes at least two periods of time. The first period started in June 2008 when President Yar'Adua ordered a military crackdown in the Niger Delta following persistent rebel attacks,¹²⁸ and ended in September 2008 when "militants" declared a unilateral ceasefire. During this period, the largest operation was carried out on 13 September 2008 when the JTF allegedly attacked three villages (Soku, Kula, and Tombia) in Rivers State by using air and land forces. The attack resulted in an unknown number of civilian deaths and 20,000 displaced persons.¹²⁹ Although the level of intensity is high with regard to the seriousness of the attack (deployment of government forces which included air and land military forces, civilian deaths, and high number of displaced persons), it is unclear from the available information whether the JTF and armed groups confronted each other in open hostilities.

125. The second period started in January 2009 and lasted until a ceasefire on 15 July 2009 and included the government offensive against the camp held by rebel Ateke Tom, on 30 January 2009, and¹³⁰ the above mentioned JTF attack on two villages (Oporoza and Okerenkoko) on 15 May 2009.

126. On the basis of available information, it does not appear that the violence in the Niger Delta, including the two incidents above, has ever reached the intensity level of 'protracted armed violence' required to qualify as an armed conflict of non-international character.

VII. CONCLUSION

127. The available information currently does not provide a reasonable basis to believe that the alleged crimes committed in the central and northern States in the context of the inter-communal violence and in the Niger Delta region qualify as war crimes

¹²⁸ IRIN, "Timeline of recent unrest in Niger Delta region", 04 February 2010.

¹²⁹ IRIN, "Timeline of recent unrest in Niger Delta region", 04 February 2010; ICG, "Nigeria: Seizing the Moment in the Niger Delta", 30 April 2009, p. 3.

¹³⁰ ICG, "Nigeria: Seizing the Moment in the Niger Delta", 30 April 2009, p. 3.

or crimes against humanity under the jurisdiction of the ICC. This conclusion may be revisited in the light of new information.

128. Based on the available information, there is a reasonable basis to believe that, since July 2009, Boko Haram committed in the territory of Nigeria the crimes of (i) murder constituting a crime against humanity under article 7(1)(a) of the Statute, and (ii) persecution constituting a crime against humanity under article 7(1)(h) of the Statute.
129. At the time of writing, there is no reasonable basis to believe that the alleged killing and other abuses attributed to the Nigerian security forces have been committed as part of a widespread or systematic attack directed against any civilian population pursuant to or in furtherance of a State policy. The question remains under analysis, however.
130. At the time of writing, the situation in the context of which the alleged crimes are committed by Boko Haram does not seem to qualify as an armed conflict; hence the contextual elements of war crimes are not met. The Office will seek additional information in order to fine-tune its assessment.
131. Accordingly, the Prosecutor has decided to move the situation in Nigeria to phase 3 of the preliminary examination with a view to assessing whether the Nigerian authorities are conducting genuine proceedings in relation to the crimes committed by Boko Haram.