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# Contemporary International Criminal Law Issues

Contributions in Pursuit of Accountability  
for Africa and the World

*Foreword by* Judge Althea Alexis-Windsor

Takeh B. K. Sendze  
Adesola Adeboyejo  
Howard Morrison  
Sophia Ugwu *Editors*



Springer

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Editors

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# Foreword

Diversity is the panacea for academic inertia. The political and legal climate that existed in 1789 when Jeremy Bentham coined the term international law is much different from the political and legal climate of today's world. International law, whether further disaggregated into public international law or private international law, has found large-scale acceptance. However, that is not to say that it is perfectly settled. There is still debate about subjects such as whether there should be a hierarchy of founding jurisdiction. Is territorial jurisdiction superior to jurisdiction founded in active personality? Is passive personality an accepted principle or does universal jurisdiction stand above them all? What is the difference between the practical prosecution of genocide and extermination as a crime against humanity? When should they be charged? These questions exist and demand an answer which is best discussed before atrocities happen. This then is the reason that I started this foreword by saying that diversity is the panacea for academic inertia. It is important to provide a space for voices to be heard, spoken, written and read.

This seminal book puts together interesting, well-researched and sometimes disparate chapters from authors from varying backgrounds. It reflects the work of practitioners, prosecutors, professors, activists and lawyers. It is composed of people who have worked in and still work in the milieu of international criminal law and whose opinions should be listened to.

In delving into issues deeply and from different points of view, the authors expose the readers to opinions on such topics as the intricacies of the use of universal jurisdiction, the normative standards of genocide, the processes of the International Criminal Court and the legacy of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia.

It may be that there are opinions expressed here that a reader may not agree with, that is acceptable. The important thing is to keep the discourse alive. It is to continue to light a beacon; to raise awareness about international criminal law and how its breaches continue to affect the course of humanity.

The Hague, The Netherlands  
June 2022

Judge Althea Alexis-Windsor

# Preface

The Board and Management of the Centre for African Justice, Peace and Human Rights (CAJPHR) would like to thank all the members of our esteemed organization, in particular the members of the Capacity Building Team, for accomplishing this book project.

The Capacity Building Team at CAJPHR was established with the mandate of producing and disseminating knowledge in International Criminal Law (ICL) through diverse means including research and book publication. The CAJPHR book project is thus intended to serve as a capacity-building tool to educate and empower ICL researchers, practitioners and other stakeholders involved in preventing mass atrocity crimes and bringing justice to victims of such crimes.

The idea of publishing a book titled ‘Contemporary Issues in ICL’ was endorsed at one of CAJPHR’s general meetings a few years ago, when CAJPHR members decided to commence working on this ICL book project as a way of urgently contributing to some ongoing pertinent academic debates on ICL. At this meeting, the team agreed to limit the focus of the proposed book to various aspects of ongoing academic and policy-related discourses pertaining to ICL in Africa. However, following consultations and research conducted at the planning stage of the book project, the team decided to broaden the focus of the book to include debates on various aspects of ICL in Africa and around the world, in order to ensure a wider platform for scholarly reflection and knowledge sharing.

To achieve this, CAJPHR consulted and collaborated with researchers who have gained experiential knowledge of ICL from an academic and practitioner’s perspective to produce the present book titled ‘Contemporary International Criminal Law Issues—The Pursuit of Accountability for Africa and the World’. As the chapters in this book depict, readers will be immersed in International Criminal Law through contributions dealing with various aspects of ICL both in theory and in practice.

At this stage, words cannot describe how much I value the opportunity to have worked closely with my colleagues in the Capacity Building Team, including Rishi Taneja, Marvin Lindjer, Marianne Allam, Ines Nunes, Eden Shosanya, Gabriela Pedroso, Crystal Lam, Catia Trevisani, Alba Montes Reguero, Ingrid-Ioana Murariu, Witness Gerald Airo, Maela Anna Ruiz Le Moing and Suliyat Omotolani Olapade.

Their administrative, technical and research support, together with their commitment to the mandate of our organisation, contributed to bringing this project to a smooth conclusion despite the challenges caused by the COVID-19 pandemic which struck right in the middle of the project.

Gratitude is also extended to the chapters' authors who invested so much in researching, drafting and revising the chapters, despite the many other demands of their personal and professional lives. We look forward to engaging them further in round table discussions on their specific topics.

Additional appreciation goes to all the editors and the author of the foreword for their outstanding assistance at the different stages of the production of this book. Their wealth of experience and commitment brought the book to its successful completion.

Finally, we must express our appreciation to everyone on our publishing team who believed in us and worked extensively to bring out the beauty of our work. We relied on their guidance, and they were ever-patient and supportive throughout the entire process, bringing us right to this moment of sharing with the world 'Contemporary International Criminal Law Issues—The Pursuit of Accountability for Africa and the World'.

The Hague, The Netherlands  
June 2022

Sophia Ugwu  
Founder of the Centre for African  
Justice, Peace and Human Rights

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# Editors and Contributors

## About the Editors

**Takeh B. K. Sendze** is a Cameroonian lawyer who received an LL.B. Honours degree from the University of Buea, Cameroon, in 1999 and an LL.M. in International Law from the University of Hull, UK, in 2002. He is an advocate of the New York State (USA) and Cameroon Bar Associations. He is currently a Legal Officer with the Office of the Prosecutor at the United Nations International Residual Mechanism for Criminal Tribunals, with almost two decades worth of professional experience in the fields of International Law, International Humanitarian Law, International Criminal Law/prosecution and International Human Rights. He is an experienced public speaker, trainer, mentor, guest lecturer and community leader.

**Adesola Adeboyejo** graduated with an LL.B. from the University of Ibadan and was called to the Nigerian Bar in 1989. She has worked in the field of international law, international humanitarian law, international prosecution, and investigations for over two decades, most recently at the International Criminal Court, where she worked first at the Registry and later at the Office of the Prosecutor. Prior to joining the Court, she worked on several cases as a Trial Attorney in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda (ICTR) from 2001 to 2007, and as a Legal Adviser in the Investigations Division from 1999 to 2001. She has served as the Legal Secretary to African Concern, an international NGO (1998), and ran her own law firm out of Lagos, Nigeria (1995 -1998). She lectures regularly and has been both a panel 21 presenter and trainer at the annual ICC Seminar and Training for Counsel. She is currently a Secretary at the Centre for African Justice, Peace and Human Rights.

**Howard Morrison** (Sir Howard Morrison) KCMG CBE KC graduated with an LL.B. from London University and practised as a barrister and Queens Counsel of Grays Inn, of which he is a Master of the Bench, from 1977 until being appointed as a Circuit Judge in 2004. He defended in war crimes and crimes against humanity

cases including genocide from 1997 to 2004 at the UN Tribunals for the Former Yugoslavia and Rwanda. From 2009 to 2021, he served as a judge of the Special Tribunal for Lebanon, the International Criminal Tribunal for the Former Yugoslavia (where sat as a trial judge in the case of Radovan Karadzic) and the International Criminal Court where he served two terms as President of the Appeals Division. He is a Senior Fellow of the Lauterpacht Centre for International Law of Cambridge University, a Visiting Professor of Northumbria University, a Hon Professor at both Leicester and Warwick Universities and a Fellow of McLaughlin College at York University in Toronto. He was appointed a Hon. LL.D. by Leicester University. He lectures worldwide in International Criminal and Humanitarian Law. He has authored numerous legal judgments and articles.

**Sophia Ugwu** is the Founder and Board Chairperson of a Non-Profit Organization based in the Netherlands, known as and called the Centre for African Justice, Peace and Human Rights. She is a lawyer called to practise at the Supreme Court of Nigeria, and she obtained her LL.M. from Erasmus University Rotterdam. Sophia has gained over 13 years of dynamic and varied legal experience working in diverse capacities at international and domestic jurisdictions. She has interned and worked at different institutions including the International Criminal Court, the Residual Special Court for Sierra Leone and the International Criminal Tribunal for the Former Yugoslavia. Following her interest in the development of international criminal justice and the pursuit of accountability for atrocity crimes in Africa, Sophia founded CAJPHR, creating an intellectual platform for extensive scholarly research and dialogue on atrocity crimes and international criminal justice-related matters.

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# Chapter 1

## Introduction



Sophia Ugwu and Carolyn Edgerton

### Contents

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**Abstract** In order to make this collection as widely accessible as possible, the Centre for African Justice, Peace and Human Rights founder and lead, Sophia Ugwu, teamed up with senior international criminal law practitioner Carolyn Edgerton to create the roadmap to the edited volume, which is the present chapter. Written in clear, simple language, this roadmap offers prospective readers different paths through the volume, highlighting specific themes, areas of research and analysis. To a certain extent, the roadmap also reflects the authors’ personal takeaways from their review and consideration of the different chapters gathered in this publication, and the issues raised. Overall, however, this book is about the future of international criminal law and justice; a future that is rooted in national jurisdictions, informed by internationally recognised human rights, and the historical, cultural, social, and political contexts in which the violations took place. It is these that together will shape transitions to peace.

### 1.1 Background and Context of the Book

The Stichting Centre for African Justice, Peace and Human Rights (CAJPHR) is a volunteer-based, non-profit organization of young lawyers who work together to promote justice, peace and human rights in Africa through education and training; research and publications; building local capacities; and empowerment. CAJPHR is

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deeply committed to a vision of “ridhika” Africa. Ridhika is a Swahili word that means “to be content”. Ridhika Africa will be a peaceful Africa, whose nations and peoples will flourish in justice systems grounded in respect for human rights.

As part of CAJPHR’s contribution to education, research and capacity-building, we publish articles and books as resources for law students and legal practitioners, academics, human rights activists and experts, and non-governmental and civil society organisations in Africa to build their knowledge and understanding of aspects of international criminal law. These materials are prepared with a view to enabling national jurisdictions to adapt and eventually incorporate international standards into their domestic systems and practices. We consider this a small step towards making justice for international crimes accessible to all Africans.

This book, entitled *Contemporary International Criminal Law Issues—Contributions in Pursuit of Accountability for Africa and the World* is not just a book about international justice for Africa, but will be of interest to practitioners more generally. The contributors to this book, from academics to researchers and international criminal lawyers, hail from a range of backgrounds. Over the years they have each made specialised contributions to international criminal law.

The book falls into two parts. Part I—**International Criminal Law: Looking Through the African Lens**, is a collection of critical analyses of some of the issues and challenges in international criminal law and procedure as it develops across the African continent. Part II—**International Criminal Law beyond the African Region** looks at more cross-cutting issues in international criminal law which have broader domestic and international implications.

## 1.2 Overview of the Contents

### Part I—International Criminal Law: Looking Through the African Lens

The choice to dedicate part of this book to Africa was predicated in part upon the fact that the culture of impunity for serious violations of human rights, including those which might constitute international crimes, remains strong across many parts of the continent. Meaningful justice and accountability for these violations is inaccessible to many thousands of direct and indirect victims of these crimes. The ICC, meanwhile, has jurisdictional and institutional limitations to its ability to be able to effectively respond to the reality of many of these violations. In addition, its legitimacy in Africa remains hampered by, among other things, the colonial origins of international criminal law and perceptions of bias on the part of the organization against African leaders.

There is, therefore, an obvious need for focused, continued discussion about pathways for justice and accountability in the region. For these reasons and more, the collection of essays that make up Part I of this book are centred around the future of international justice in Africa. As Dr. Denis Mukwege stated: “This human tragedy

will continue if those responsible are not prosecuted. Only the fight against impunity can break the spiral of violence.”<sup>1</sup>

National and regional accountability for international crimes may be an effective tool to break the cycle of violence. In that regard, Arthur Traldi’s chapter in Part I of this collection, Chap. 2, “Bring Justice to Our Girls? The ICC Inquiry into Boko Haram in Nigeria”, discusses the importance of positive complementarity in the context of the Nigerian situation. Alongside this, looking at the Malabo Protocol, Editimfon J. Ikpatt explores the possibility of a regional court for international crimes as an effective, African-based accountability option in Chap. 3, under the title “Is an African Regional Court a Viable Alternative to the International Criminal Court? A Neutral View”. With normative consistency in cooperating states areas such as human rights, due process and state interpretations of their international treaty obligations, Gerald Kemp in Chap. 6 (“Horizontal and Vertical International Co-operation in Criminal Matters: An African Regional and Sub-regional Perspective”) discusses how mutual legal assistance may serve as a tool to effectively combat international and transnational crime in Africa.

Claire M.H. Boost’s research for Chap. 4 on “The Legitimacy of the International Criminal Tribunal for Rwanda (ICTR)” draws on the lessons learned from the different legitimacy challenges faced by the ICTR to highlight how critically important gaining and maintaining organizational legitimacy will be to the success of any African national or regional international accountability mechanism dealing with international crimes.

Dermot Groome’s contribution, Chap. 5, “The Law of Genocide and Atrocities Committed Against the Herero and Nama Peoples”, is a comprehensive survey of the law of genocide, placed in the context of the Herero and Nama genocides (what is now present-day Namibia and Botswana). This will be important reading for practitioners who wish to fully understand all elements of this ‘crime of crimes’, and to gain an insight into how legal elements of crimes are applied to the facts in classifying the crimes, and assessing cases for prosecution.

Part I closes with James Nyawo, who in Chap. 7 (“The Scope and Application of Universal Jurisdiction: A Synopsis of African States’ Positions and Proposals during Plenary Sessions in the Sixth Committee of the United Nations General Assembly”) discusses the tension around the scope and application of the concept of universal jurisdiction from a post-colonial, African perspective.

## Chapter 2

Arthur Traldi in Chap. 2 looks into the ICC preliminary examination process, and its implementation in the Nigeria situation, particularly in light of the court’s admissibility requirements of gravity and complementarity. The Nigeria examination took approximately ten years until it was concluded, identifying seven potential cases against Boko Haram involving allegations of crimes against humanity and war crimes against tens of thousands of victims and massive numbers of potential defendants.

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<sup>1</sup> Dr. Denis Mukwege Foundation (undated) <https://www.mukwegefoundation.org/the-problem/rape-as-a-weapon-of-war/the-law/>, accessed 18 August 2022.

At that time, the Office of the ICC Prosecutor noted that there were “several national cases against Boko Haram members”, but that none had created a complementarity issue. As of October 2022, an investigation has not yet been opened. Traldi notes that the extended length of time extended time over which the preliminary examination took place might result in numerous practical challenges to any eventual ICC investigation. In addition, the Court as yet has no experience and is ill-equipped to prosecute the large numbers of defendants—even, as Traldi points out, the number required to have carried out the 2014 abduction of 276 schoolgirls in Chibok. Positive complementarity will therefore be essential to ensure justice is delivered for Boko Haram’s violations, even if only a small number of higher level accused persons are tried before the ICC. At the same time, if the ICC does open an investigation, several of the challenges facing Nigerian authorities in conducting their own proceedings (security, lack of infrastructure and capacity among them), will not necessarily be “fixed” by the ICC’s exercise of jurisdiction. Ultimately therefore, how the OTP handles the Nigeria situation will, as Traldi says, be a test of their preliminary examinations policy. It also raises the question of whether the OTP should revisit their approach to complementarity, so that a strict interpretation of the court’s obligations under Article 93(10) of the Rome Statute does not, ultimately, defeat the fight against impunity.

### Chapter 3

Chapter 3 brings the Malabo Protocol to the heart of the book, with Editimfon J. Ikpát’s work on the prospects of regional justice for international crimes in Africa through the proposed African Regional Court and what the relationship of that court *might be* with both domestic courts, and the ICC. While the Malabo Protocol effectively opens the possibility for an amendment to the Rome Statute to include complementary jurisdiction for regional entities, Ikpát notes that in addition to the core international crimes, the Protocol includes other international crimes and transnational crimes of serious concern to the African community (such as unconstitutional change of government, and illicit exploitation of natural resources). The issue arises as to whether the proposed court, with its already expansive mandate, will have the actual, physical capacity and resources to deal with the potentially vast number of criminal cases this expanded criminal jurisdiction might embrace. While Ikpát concedes that this might not present a perfect picture, international criminal law has faced many challenges on its path to global justice. As she states: “There are much more crimes than the ICC can handle, and much more than all state parties to the Rome Statute can handle.” The time for a regional court may be upon us.

### Chapter 4

Claire M.H. Boost makes the point in Chap. 4 that it is important for accountability mechanisms for international crimes to be accepted as legitimate by their stakeholders if they are to reach their full potential. The legitimacy of the International Criminal Tribunal for Rwanda (ICTR), however, was challenged from its outset. Boost examines measures implemented by the ICTR in an effort to repair its legitimacy following the acquittal of Jean-Bosco Barayagwiza (by the Appellate



Chamber) for procedural irregularities, and the decision by former ICTR chief prosecutor Carla Del Ponte to investigate alleged violations on the part of RPF soldiers. The public backlash on both occasions was immediate, and the response from the Rwandese government was harsh. Both times, the government stopped all ICTR-related cooperation, effectively paralysing the organisation's operations. Some weeks after the Barayagwiza acquittal, the Appellate Chamber suspended its decision; after the second incident, Del Ponte was removed from her post as ICTR prosecutor by the UN Security Council. The impression was that both actions were taken in response to pressure from critical ICTR stakeholders. While the relationship between the ICTR and the Rwandan government was crucial for the ICTR's operation, Boost aptly illustrates how these two challenges "demonstrate the sensitivity of the Tribunal's work, the challenges it faced in balancing its legitimacy and operational needs, while also demonstrating how legitimacy is perceived differently through the eyes of its diverse set of stakeholders".

## Chapter 5

From Rwanda in East Africa, Dermot Groome in Chap. 5 takes readers to Southern Africa, to learn about what many consider the first genocides of the 20th century: the attempted extermination of the Herero and Nama peoples by German colonial forces between 1904 and 1908. These have come to be known as the 'forgotten genocides'. In May 2021, the German government recognized its crimes against the Herero and Nama constituted genocide within the meaning of the 1948 Genocide Convention. Against this backdrop, Groome's chapter is a comprehensive survey of the law of genocide as it has developed since 1948 through to the Appeal Judgment against Ratko Mladić in June 2021, just a few days after Germany's historic declaration. Groome analyses the account of the atrocities against the Herero and Nama peoples against the developed framework of the law on genocide. Groome's explanations of the legal elements of the crime—the *mens rea* of genocide (and its special requirements) as well as the *actus reus* and the different modes of participation are clearly presented and easily accessible—useful reading for anyone interested in international criminal law or the study of genocide. They also serve as an important reminder of the need for context-based investigations in dealing with international crimes.

## Chapter 6

In Chap. 6, Gerhard Kemp writes about the potential for mutual legal assistance in criminal matters to serve as a means to combat international and transnational crimes in Africa, and a modality for Pan-Africanism. Written from a South African perspective, and focusing on the Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters (which the author explains is a regional framework for mutual legal assistance, incorporated into South African domestic law), Kemp explores some of the key state obligations assumed by those who have ratified the Protocol. His extensive analysis identifies what he describes as "significant incongruities" between state laws and practice, impacting on effective cooperation, citing (among others): areas such as human rights and due process (particularly in

matters of extradition); transfer of prisoners, and state interpretations of their international treaty obligations (in particular, state failures to arrest and surrender El-Bashir to the ICC pursuant to the court's arrest warrants). While mutual legal assistance may facilitate cooperation between African states in dealing with investigations and prosecutions of international crimes, Kemp states that it will first require "consistency on human rights, normative clarity, and pragmatism not of the cynical kind".

## Chapter 7

Part I closes with James Nyawo's chapter on universal jurisdiction from a post-colonial, African perspective (Chap. 7). He begins with a useful overview of the principles for exercising criminal jurisdiction under international law, followed by a detailed analysis of the development of the modern concept of universal jurisdiction, and an outline of the different forms of universal jurisdiction. While acknowledging the importance of universal jurisdiction in the fight against impunity for core international crimes, individual African states disagree over, among other things, its scope and application. By way of illustration, Nyawo refers, for example, to the 2002 Cairo—Arusha Principles, which proposed the inclusion of "major adverse economic, social or cultural consequences such as acts of plunder and gross misappropriation of public resources, human trafficking and serious environmental crimes", a proposal which he observes is completely in line with the role that multinational corporations continue to play in "disparaging" Africa. Other African nations have pointed to the idea that universal jurisdiction should comply with principles of sovereign equality of states and immunity of government and high level state officials. Altogether, says Nyawo, this points to a need for some kind of legal instrument or guidelines to address these issues. After all, he states, "The issues raised by African States cannot be wished away."

## Part II—International Criminal Law beyond the African Region

The chapters in Part II of this book deal with aspects of international criminal justice which have an impact far beyond the African continent. Gender, for example, cuts across all aspects of our work, in all contexts. With this in mind, Priya Gopalan's chapter, Chap. 8, "Breaking Binaries and Honing-in on Harms: Inclusive Approaches Towards Sexual and Gender-Based Crimes", will be valuable for practitioners engaged in interviewing and documentation, particularly with survivors of sexual and gender-based crimes in any context. Among other things, it reminds us of the importance of moving away from rigid, binary ideas about gender so that we can come to a more survivor-centred approach—not only in our communications with survivors, but in our case-related decisions. Drawing in part on lessons learned from the experiences of dealing with sexual violence cases at the *ad hoc* tribunals, in her chapter entitled: "Sexual and Gender-based Violence: What Legacy for the New ICC Prosecutor?", Natacha Bracq in Chap. 9 offers recommendations for the effective implementation of the ICC OTP's gender justice strategy, to avoid some of the challenges and barriers which arose in earlier proceedings, and continue to affect positive, consistent outcomes at the ICC today.

In its many different forms, modern day slavery affects a vast cross-section of the world's population. Slavery crimes predominantly affect women, children, minorities and socially marginalized groups; however, slavery is not criminalized in many countries of the world. In this context, Vanessa Hernández Soto in Chap. 10 looks at the roots of modern-day slavery; explores the ways in which the international criminal justice system has contributed to the jurisprudence around slavery crimes; and presents recommendations on how international criminal law could be used to hold perpetrators to account in the fight against impunity for slavery crimes.

With few exceptions, international criminal trials have proved costly, time-consuming and invariably complex. Against this background and in the final chapter of this collection, Chap. 11, ICTR veteran Charles A. Adeogun-Phillips offers a comprehensive, case-by-case overview and commentary on the evolution and practice of guilty pleas in international criminal law in "The Evolution and Practice of Guilty Pleas in International Criminal Law".

### **Chapter 8**

In the first section of Chap. 8, Priya Gopalan expands our ideas around the scope and meaning of 'gender' by exploring how gender norms and stereotypes cause gaps in justice and accountability for conflict-related violence, and provides examples from numerous contexts. The stereotype of the weak woman victim, for example, against the strong, self-confident male protector who can never be a victim, is a gender binary which Gopalan says is reflected in the invisibility of sexual violence against men and boys in conflict around the world. Others, such as LGBTQI+ individuals, who live outside established gender roles, are particularly vulnerable, and that vulnerability can increase in conflict. They too face many barriers to reporting violations, "diminishing the prospects for accountability and justice". Additionally, any survivor may have numerous, intersecting vulnerabilities. It is important for documenters to therefore recall that these intersections will affect how anyone experiences violence. Understanding these vulnerabilities will help practitioners develop the most appropriate responses for those individuals they are dealing with. In line with this, in the following section of her chapter, Gopalan advocates intersectional and interdisciplinary approaches to survivors. This kind of individualized, survivor-centred approach will enable a fuller understanding of the harm suffered. It will help build better cases, improve access to justice for survivors, and result in jurisprudence that is inclusive, and rooted in their lived experiences.

### **Chapter 9**

In Chap. 9, Natacha Bracq looks back at both the challenges and landmark developments in the investigation, prosecution and adjudication of sexual and gender-based crimes as international crimes as a way of framing the scope of the task ahead for ICC Prosecutor Karim Khan in effectively dealing with these violations. Her analysis surveys some of the hurdles faced at the *ad hoc* tribunals in their efforts to bring conflict-related sexual violence cases to justice, and highlights how, despite the reforms instituted by the ICC Office of the Prosecutor since 2012 and a growing body of jurisprudence on critical issues around sexual and gender-based violence,

these same shortcomings continue to be repeated at the ICC. The result is that ICC cases involving sexual and gender-based crimes remain vulnerable to ultimately being dismissed at the pre-trial or trial stages. For example, Bracq observes that SGBC charges are still subject to conservative judging, a practice identified and criticized at the *ad hocs*, and manifested by what Bracq characterizes as a lack of “judicial receptiveness”: a higher degree of scrutiny than other charges and a reluctance to find remote perpetrators individually responsible. Bracq’s recommendations for the effective implementation of the ICC’s gender justice strategy are practical, and extremely well placed. They include integrating sexual violence crimes into investigation strategies from the outset of any case, and involving SGBV experts at every stage of the criminal justice procedure, until “positive and consistent outcomes are shown, and sustainable expertise has been developed internally”. As she says: “Continuous advocacy, capacity building, training, and gender mainstreaming within the court will hopefully continue bearing fruit.”

### **Chapter 10**

In Chap. 10, Vanessa Hernández Soto explores the potentials for international criminal justice to play a greater role in efforts to effectively combat modern slavery. Noting that the jurisprudence of the *ad hocs* and the ICC may have clarified the elements of the crime of slavery as such (impacting on international human rights law and potentially, domestic criminal law), Hernández Soto points out that international prosecutions of slavery-related crimes remain only “marginal and sporadic”, whereas modern slavery has global prevalence. Asking whether international criminal law is “fit for purpose” to respond to the complexities, transnational nature and sheer magnitude of modern slavery crimes, Hernández Soto offers a number of approaches which she suggests could, together, improve accountability. Among them: targeted international prosecutions for slavery crimes, and national universal jurisdiction prosecutions of slavery crimes to ‘fill in’ accountability gaps where the ICC is unable to act, and where states are unwilling or unable to take action to combat contemporary forms of slavery. Hernández Soto also proposes an innovation: the establishment of an international mechanism specifically designed to combat modern slavery in its different forms. Like other authors who have contributed to this collection, Hernández Soto recognises the importance of building national capacities for dealing effectively with international and transnational crimes, and makes the point that this mechanism should have a mandate for building capacities of national stakeholders, and serve as a vehicle for increased co-operation, knowledge and expertise sharing with its members.

### **Chapter 11**

This collection concludes with the detailed work of Charles A. Adeogun-Phillips on the evolution and practice of guilty pleas in international criminal law in Chap. 11. Beginning by setting out the legal framework for guilty pleas at the ICTY and ICTR, his review and examination of cases resolved by pleas at the two *ad hocs* is divided into two phases, marked by the implementation of the completion strategy at each institution. Adeogun-Phillips then moves on to cases resolved by guilty pleas at the

Kosovo and East-Timor hybrid courts, and finally examines the guilty plea in the ICC *Al Mahdi* case. His review of the 2020 ICC OTP Guidelines for Agreements Regarding Admissions of Guilt, which set out a number of factors for the OTP to consider in dealing with guilty pleas, will be useful for practitioners, as he highlights some notable differences with the practice at the ICTY and ICTR—an approach to guilty pleas that is more victim-centred. Notably, and among others, the Guidelines “encourage” the OTP to prioritize admissions of guilt which are more valuable to victims, and those that are accompanied by an expression of remorse.

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**Part I**  
**International Criminal Law: Looking  
Through the African Lens**

# Chapter 2

## Bring Justice to Our Girls? The ICC Inquiry into Boko Haram in Nigeria



Arthur Traldi

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**Abstract** Since the kidnapping of almost 300 schoolgirls in Chibok, Nigeria, made famous by the #BringBackOurGirls campaign, crimes by Boko Haram in Nigeria have received significant global attention. However, international justice has been slow to react. This chapter conducts a detailed analysis of the aspects of the International Criminal Court’s preliminary examination into the situation in Nigeria which relate to Boko Haram, analysing the potential cases identified by the Office of the Prosecutor (“OTP”) in light of the Court’s admissibility requirements (gravity and

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complementarity). It proposes that OTP consider evidence of a persecutory campaign against Nigerian Christians within a single case in order to focus investigations and concludes that the Court's next steps in the Nigeria situation will have lasting significance for its approach to complementarity and gravity and its relationship with the African Union.

**Keywords** Nigeria · Boko Haram · Terrorism · International Criminal Court · Preliminary Examination · Investigation · Persecution · Crimes against Humanity · War Crimes

## 2.1 Introduction

#Bringbackourgirls. One of the most popular hashtags of 2014 called for returning or rescuing the hundreds of young Nigerian schoolgirls kidnapped from Chibok, Nigeria, by Boko Haram operatives in April 2014.<sup>1</sup> A global Twitter campaign reached the White House: then-First Lady Michelle Obama, along with two million other Twitter users, posted about it.<sup>2</sup> Seven years later, 112 of the kidnapped schoolgirls remain missing.<sup>3</sup> A variety of rescue efforts have failed to bring them home.<sup>4</sup> None have been returned since 2018.<sup>5</sup>

This chapter analyses an admittedly less urgent, though still meaningful, omission: the lack of any international prosecutions<sup>6</sup> of Boko Haram members for this kidnapping or other alleged crimes<sup>7</sup> within the International Criminal Court's ("ICC's")

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<sup>1</sup> Rubin (2014) <http://www.teenvogue.com/story/bring-back-our-girls-nigeria>. Accessed 23 June 2021.

<sup>2</sup> Parkinson and Hinshaw (2021) <http://www.vanityfair.com/news/2021/02/how-michelle-obama-joined-a-global-campaign-to-bring-back-our-girls>. Accessed 23 June 2021.

<sup>3</sup> Obiezu (2021) <https://www.voanews.com/africa/more-100-chibok-girls-still-missing-seven-years-later>. Accessed 25 June 2021.

<sup>4</sup> E.g. Parkinson and Hinshaw (2021) [www.theatlantic.com/international/archive/2021/04/america-nigeria-bring-back-our-girls/618480/](http://www.theatlantic.com/international/archive/2021/04/america-nigeria-bring-back-our-girls/618480/). Accessed 24 June 2021.

<sup>5</sup> 82 girls were released on 6 May 2017. United Nations Security Council 2020, S/2020/652; by the end of 2018, 112 of 276 remained missing. United States Department of State, Bureau of Counterterrorism 2019; by the end of 2019, 112 still remained missing. United States Department of State, Bureau of Counterterrorism 2020.

<sup>6</sup> Some defendants have pled guilty, and at least two have been sentenced, in domestic proceedings in Nigeria. See below, Sect 2.5.2.2.

<sup>7</sup> In many instances, Boko Haram publicly took responsibility for an alleged crime or all available indications are that crimes were perpetrated by Boko Haram members. However, in the absence of findings at trial, and due to the very limited weight of conclusions drawn at ICC's preliminary examination stage, for legal purposes the reported violations are treated herein as allegations.



jurisdiction.<sup>8</sup> Section 2.1 of this chapter briefly outlines publicly available information about Boko Haram and its command structure. Section 2.2 explains the ICC's process as of November 2021. Section 2.3 briefly explains the alleged crimes. While the ICC process is ongoing, Sect. 2.4 identifies anticipated next steps as of this writing, as well as specific areas in which the process thus far may be instructive for future situations within the Court's jurisdiction.

## 2.2 Boko Haram

Boko Haram is a Nigerian armed group “known officially as *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, Arabic for ‘group committed to promoting the Prophet’s teachings and jihad’.”<sup>9</sup> The name Boko Haram can be roughly translated to mean “Western education is forbidden”.<sup>10</sup> According to the ICC’s Office of the Prosecutor (“OTP”), it was founded in 2002 “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.”<sup>11</sup> As of 2018, U.S. sources estimated Boko Haram’s ranks included 4,000–6,000 “hard-core militants”, while others estimated a larger force.<sup>12</sup>

ICC OTP concluded that as of 2013, Boko Haram was “under a responsible command, namely the leadership exerted by Abubakar Shekau.”<sup>13</sup> Boko Haram has subsequently faced factional divides and Shekau at times aligned himself with other groups such as Da’esh and Al Qaeda in the Islamic Maghreb (AQIM).<sup>14</sup> During the

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<sup>8</sup> The preliminary examination into the situation in Nigeria has also focused on allegations against Nigerian government forces. Other anti-government terrorist groups have been present and participated in hostilities in Nigeria as well. Allegations against those groups are outside the primary focus of this chapter. Similarly, other mechanisms to facilitate investigation or prosecution have been established in some situations—such as the Kosovo Specialist Chambers, the Special Tribunal for Lebanon, the Extraordinary African Chambers, the UN Independent Investigative Mechanism for Myanmar, the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL, and the International, Impartial, and Independent Mechanism for Syria. However, no such *ad hoc* mechanisms have been established in situations where the ICC already has jurisdiction over all relevant crimes, so this chapter does not consider potential international mechanisms to investigate or prosecute allegations against Boko Haram and its members other than the ICC.

<sup>9</sup> International Criminal Court, Office of the Prosecutor 2013c citing Stewart 2011.

<sup>10</sup> E.g. Gaffey (2017) [www.newsweek.com/chibok-girls-boko-haram-583584](http://www.newsweek.com/chibok-girls-boko-haram-583584). Accessed 24 June 2021.

<sup>11</sup> International Criminal Court, Office of the Prosecutor 2013c, para 30 citing Pham 2012, No 20 5. See also Felter 2018.

<sup>12</sup> Felter 2018.

<sup>13</sup> International Criminal Court, Office of the Prosecutor 2013c, para 84 citing Human Rights Watch 2012, 76. See also Blanchard 2016, p. 3 (“Boko Haram is reportedly led by a shura council, under the direction of Abubakar Shekau”); Kielsgard and Orina 2020.

<sup>14</sup> E.g. Campbell 2018; United Nations Security Council 2020, S/2020/652, para 16; Blanchard 2016, p. 4, p. 7.

drafting of this chapter, Shekau was reported to have died,<sup>15</sup> though similar reports had surfaced before.<sup>16</sup>

In 2015, Shekau reportedly pledged allegiance to Da'esh and changed Boko Haram's name to Islamic State West Africa Province ("ISWAP").<sup>17</sup> The next year he split with the group, after which Boko Haram/*Jama'atu Ahlis Sunna Lidda'Awati Wal-Jihad* and ISWAP constituted separate factions. Reports reflect a third faction known as Bakura, which was reportedly allied with Shekau.<sup>18</sup> Other sources refer to a splinter group known as *Jama'atu Ansarul Muslimina Fi Biladis Sudan* (Supporters for the aid of Muslims in Black Africa), or "Ansaru",<sup>19</sup> which broke with Shekau in the early 2010s<sup>20</sup> but was reportedly purged in 2013.<sup>21</sup> Many sources refer to all these groups as Boko Haram,<sup>22</sup> complicating the task of identifying those perpetrators for whose acts Boko Haram's leadership may be held legally responsible.

The U.S. State Department designated Boko Haram as a Foreign Terrorist Organization ("FTO") on 14 November 2013.<sup>23</sup> In announcing the designation, the State Department observed:

Boko Haram is a Nigeria-based militant group with links to al-Qa'ida in the Islamic Maghreb (AQIM) that is responsible for thousands of deaths in northeast and central Nigeria over the last several years including targeted killings of civilians...

Boko Haram has been conducting an ongoing and brutal campaign against Nigerian military, government, and civilian targets. Among its most lethal attacks, Boko Haram carried out indiscriminate attacks in Benisheikh, Nigeria in September 2013 that killed more than 160 innocent civilians, including women and children. Boko Haram has also conducted attacks against international targets, including a suicide bombing of the United Nations building in Abuja on August 26, 2011, that killed 21 people and injured dozens more, many of them aid workers supporting development projects across Nigeria.<sup>24</sup>

The State Department's designation came three months after the International Criminal Court's Office of the Prosecutor concluded there was reason to believe Boko Haram had been responsible for international crimes. OTP determined:

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<sup>15</sup> E.g. Abdullahi and Adebajo (2021) <https://humangle.ng/boko-haram-strongman-shekau-dead-as-iswap-fighters-capture-sambisa-forest/>. Accessed 25 June 2021.

<sup>16</sup> E.g. Shekau (2021) <https://www.bbc.com/news/world-africa-57207296>. Accessed 25 June 2021.

<sup>17</sup> Around the same time, Nigerian government forces captured Boko Haram's "capitol", Gwoza. Kurtzer 2020, p. 3. Before 2015, Shekau had sought links with Al-Qaeda. Kielsingard and Orina 2020, p. 178.

<sup>18</sup> United Nations Security Council 2020, S/2020/652, para 16; International Crisis Group 2020.

<sup>19</sup> E.g. International Criminal Court, Office of the Prosecutor 2018, para 218; Kielsingard and Orina 2020, p. 177.

<sup>20</sup> E.g. Campbell 2014b, p. 9; Blanchard 2016, pp. 4, 7; Kielsingard and Orina 2020, p. 178. All three sources note Ansaru objected to Boko Haram's killing Muslims in Nigeria, while Blanchard also notes reports that Ansaru's leaders and Shekau differed on interpretations of Islamic law.

<sup>21</sup> Blanchard 2016, p. 4.

<sup>22</sup> United States Department of State 2020.

<sup>23</sup> United States Department of State, Bureau of Counterterrorism 2021.

<sup>24</sup> United States Department of State, Office of the Spokesperson 2013.

... 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) [of the Rome Statute]; 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 Muslim civilians in different locations throughout Nigeria...

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...<sup>25</sup>

[C]ivilians 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 worshipers, and assassinated local politicians, community 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. Since the beginning of 2012, suspected Boko Haram members have also attacked at least 12 schools in and around Maiduguri (Borno State).<sup>26</sup>

Several similar international statements have been issued since 2013.<sup>27</sup>

## 2.3 The ICC Process

### 2.3.1 Framework

An ICC investigation or preliminary examination covers a “situation” in which crimes have allegedly been committed,<sup>28</sup> not a single discrete offense. While the Rome Statute does not define the term, a “situation” is perhaps best understood as “a temporally and territorially defined space within which one or more crimes within the jurisdiction of the court may have been committed”.<sup>29</sup>

A preliminary examination is the initial stage of ICC review. During this stage, the OTP has limited investigative authority, proceeding essentially on the basis of information provided to it by others. It may request information from sources it deems

<sup>25</sup> International Criminal Court, Office of the Prosecutor 2013c, para 15.

<sup>26</sup> International Criminal Court, Office of the Prosecutor 2013c, para 79 (citations omitted).

<sup>27</sup> E.g. United Nations Security Council 2015, S/PRST/2015/12; United Nations Office of the High Commissioner for Human Rights 2015, A/HRC/30/67; United Nations Security Council 2017, S/RES/2349; United States Department of State 2020; United Nations Human Rights Council 2021, A/HRC/46/NGO/99.

<sup>28</sup> E.g. United Nations Treaty Collection, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002). [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en) (Rome Statute) Articles 13(a), 13(b), 14(1), 14(2), 15(5), 15(6).

<sup>29</sup> Ford 2017, fn 158 (citations omitted).

reliable and may receive testimony but only at the seat of the Court in the Hague—not in the field where crimes were committed and most evidence is located.<sup>30</sup>

OTP has established a four-phase process for preliminary examinations:

- (i) Phase One, assessing communications received pursuant to Article 15 to analyse and verify the seriousness of information and filter out situations manifestly outside the jurisdiction of the Court or already under investigation;<sup>31</sup>
- (ii) Phase Two, analysing whether the Rome Statute’s preconditions to jurisdiction are satisfied and whether there is a reasonable basis to believe that alleged crimes would fall within the subject-matter jurisdiction of the Court, concluding with an Article 5 Report on the Court’s subject-matter jurisdiction;<sup>32</sup>
- (iii) Phase Three, analysing the admissibility of potential cases in light of complementarity and gravity pursuant to Article 17 of the Rome Statute, while continuing to collect information on subject-matter jurisdiction;<sup>33</sup> and
- (iv) Phase Four, regarding whether the “interests of justice” support the initiation of an investigation and culminating in the issuance of an Article 53(1) Report. Based on that Report, the Prosecutor determines whether to initiate an investigation.<sup>34</sup>

The framework effectuates what OTP considers Article 53’s “legal framework for a preliminary examination”.<sup>35</sup> While the process has been criticized by the ICC’s Independent Expert Review (“IER”),<sup>36</sup> as of this writing it remains ICC standard. To justify moving from preliminary examination to a full investigation at the end of the process, the OTP must find a “reasonable basis” to believe crimes within the jurisdiction of the Court have been committed.<sup>37</sup>

### ***2.3.2 Implementation in the Nigeria Situation***

Nigeria signed the Rome Statute on 1 June 2000 and deposited its instrument of ratification on 27 September 2001.<sup>38</sup> The ICC thus has jurisdiction over Nigerian nationals who commit Rome Statute crimes and over Rome Statute crimes committed

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<sup>30</sup> International Criminal Court, Office of the Prosecutor 2013a.

<sup>31</sup> *Ibid.*, para 78.

<sup>32</sup> *Ibid.*, paras 80–81.

<sup>33</sup> *Ibid.*, para 82.

<sup>34</sup> *Ibid.*, para 83.

<sup>35</sup> *Ibid.*, para 5. See also International Criminal Court, Office of the Prosecutor 2020a, para 3.

<sup>36</sup> International Criminal Court 2020.

<sup>37</sup> International Criminal Court, Office of the Prosecutor 2013a, para 5; See International Criminal Court, Office of the Prosecutor 2020a, para 3.

<sup>38</sup> Rome Statute.

on Nigerian territory since the Statute came into effect on 1 July 2002<sup>39</sup>—around the same time Boko Haram was established.<sup>40</sup>

The OTP publicly announced a preliminary examination into the Situation in Nigeria on 18 November 2010.<sup>41</sup> The OTP opened the preliminary examination *proprio motu*, exercising its authority under Article 15 of the Rome Statute.<sup>42</sup>

Phase One and Phase Two of the Nigeria situation, combined, took almost three years. In 2013, the OTP issued its Article 5 Report.<sup>43</sup> It concluded that there was a reasonable basis to believe Boko Haram had engaged in a widespread and systematic attack against a civilian population, fulfilling the *chapeau* requirements for crimes against humanity, and that Boko Haram members had committed the crimes against humanity of murder and persecution.<sup>44</sup> The OTP concluded, however, that it had not established that hostilities between Boko Haram and the Nigerian government rose to the level of an armed conflict, so the threshold requirements to investigate potential war crimes had not been satisfied.<sup>45</sup>

Phases Three and Four took more than seven years, making Nigeria one of the “lengthiest [preliminary] examinations” at the ICC.<sup>46</sup> The Nigeria situation also prompted a high number of Article 15 communications to the OTP—169, as of the 2018 Preliminary Examination Report.<sup>47</sup>

The OTP updated its Phase Two determinations at several points during these later phases. Initially, just months after the Article 5 Report had declined to find a non-international armed conflict in Nigeria, the OTP concluded that Boko Haram was sufficiently organized and violence between it and government forces was sufficiently intense to constitute a non-international armed conflict.<sup>48</sup> It consequently determined it would consider whether conduct in the situation might give rise to allegations of war crimes under Articles 8(2)(c) and 8(2)(e) of the Rome Statute.<sup>49</sup> Beginning in its 2015 Report, the OTP concluded it had reason to believe Boko Haram members

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<sup>39</sup> See International Criminal Court, Office of the Prosecutor 2020a, para 252.

<sup>40</sup> *Ibid.*, p. 2.

<sup>41</sup> International Criminal Court, Office of the Prosecutor 2010 cited in American Bar Association International Criminal Court Project 2020.

<sup>42</sup> Rome Statute art 15(1).

<sup>43</sup> International Criminal Court, Office of the Prosecutor 2013c.

<sup>44</sup> *Ibid.*

<sup>45</sup> International Criminal Court, Office of the Prosecutor 2013c, para 113 (citation omitted). Allegations of crimes against humanity and/or war crimes are essential to give the ICC jurisdiction over alleged Boko Haram crimes because terrorism is not included in the Rome Statute. E.g. Kenny 2017.

<sup>46</sup> International Criminal Court 2020, para 714.

<sup>47</sup> International Criminal Court, Office of the Prosecutor 2018, para 214. 2018 was the last PE report in which OTP publicly reported the number of Article 15 communications received in each open situation.

<sup>48</sup> International Criminal Court, Office of the Prosecutor 2013b, paras 214–219.

<sup>49</sup> *Ibid.*, para 219.

had committed war crimes identified in the ICC Statute, as well as crimes against humanity.<sup>50</sup>

OTP also noted new allegations in its annual reports and in other statements. On top of the 1200 civilians it found reason to believe had been killed by Boko Haram in the 2013 Article 5 Report, it has noted the killings of thousands more civilians over the next eight years<sup>51</sup> as well as other alleged crimes, including the kidnapping of the Chibok women.<sup>52</sup>

During the preliminary examination, Nigeria remained a strong supporter of the ICC even while the African Union (AU) expressed concerns about the work of the Court. As a rotating Security Council member, Nigeria voted in favour of the UNSC resolution referring Libya to the ICC.<sup>53</sup> After Burundi, Gambia, and South Africa stated plans to withdraw, Nigeria affirmed its “continuous commitment to support and cooperate with the Court”<sup>54</sup> and later opposed an AU resolution calling for member states to consider withdrawal from the Rome Statute.<sup>55</sup> Instead, Nigerian officials reaffirmed Nigeria’s commitment to support the ICC in general and to cooperate with the OTP’s preliminary examination in particular.<sup>56</sup> At the urging of Nigerian ICC President Judge Chile Eboe-Osuji,<sup>57</sup> in 2018, Nigerian President Buhari praised

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<sup>50</sup> International Criminal Court, Office of the Prosecutor 2015, paras 195–214. OTP subsequently identified war crimes of murder; cruel treatment; outrages on personal dignity; intentionally directing attacks against the civilian population; intentionally directing attacks against building dedicated to education and to places of worship and similar institutions; pillage; rape, sexual slavery, and sexual violence; and the conscription and use of child soldiers. International Criminal Court, Office of the Prosecutor 2018, para 222. In 2019, OTP also identified war crimes of attacks on humanitarian workers. International Criminal Court, Office of the Prosecutor 2019b, para 183.

<sup>51</sup> See International Criminal Court, Office of the Prosecutor 2013b, para 212 (noting allegations of up to 211 more civilians killed in Boko Haram attacks); International Criminal Court, Office of the Prosecutor 2014, para 177 (noting allegations of more than 2000 civilians killed in Boko Haram attacks in the first six months of 2014); International Criminal Court, Office of the Prosecutor 2015, para 198 (“According to the Office’s analysis, from January 2013 to March 2015, 356 reported incidents of killings can be attributed to Boko Haram... which led to the killing of over 8,000 civilians...”); International Criminal Court, Office of the Prosecutor 2017, para 211 (noting allegations of 381 civilians killed by Boko Haram between April 2017 and September 2017 in Cameroon and Nigeria); International Criminal Court, Office of the Prosecutor 2018, paras 228–229 (noting allegations that approximately 60 more civilians had been killed).

<sup>52</sup> International Criminal Court, Office of the Prosecutor 2014, para 177; International Criminal Court, Office of the Prosecutor 2015, para 206; International Criminal Court 2014.

<sup>53</sup> See Ssenyonjo 2018 (citation omitted).

<sup>54</sup> Lansky 2016.

<sup>55</sup> E.g. Premium Times (2017) [www.premiumtimesng.com/news/headlines/222331-nigeria-pledges-remain-icc-2.html](http://www.premiumtimesng.com/news/headlines/222331-nigeria-pledges-remain-icc-2.html). Accessed 25 June 2021; Keppler 2017; Kersten 2017.

<sup>56</sup> E.g. International Criminal Court 2013 (then-President Jonathan); International Criminal Court, Office of the Prosecutor 2017, para 223 (Attorney-General Malami); International Criminal Court 2018a (“senior authorities”); International Criminal Court 2019 (Vice-President Osinbajo).

<sup>57</sup> E.g. Charania 2021. President Eboe-Osuji served as an ICC judge for much of the preliminary examination and remained President in December 2020 when OTP concluded its preliminary examination. E.g. International Criminal Court 2021b.