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**Subject: ARTICLE 15 COMMUNICATION TO THE ICC  
OFFICE OF THE PROSECUTOR REGARDING  
2011 POST-ELECTION VIOLENCE IN NIGERIA**

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**I. INTRODUCTION**

1. This communication is filed to the Office of the Prosecutor (the ‘OTP’) of the International Criminal Court (the ‘ICC’) pursuant to Article 15 of the Rome Statute (the ‘Statute’) by Professor Göran Sluiter<sup>1</sup> on behalf of the Northern Coalition for Democracy and Justice (the ‘NCDJ’), a consortium of seventeen non-governmental organizations operating primarily in the northern states of the Federal Republic of Nigeria,<sup>2</sup> as well as on behalf to two unnamed individual citizens of Nigeria<sup>3</sup> (the ‘Victims’) (collectively, with the NCDJ, the ‘Petitioners’).
2. The Petitioners submit that, based on the information set out herein, there is reason to believe that crimes against humanity within the jurisdiction of the ICC—including murder, torture, rape, forcible population transfer, persecution, and other inhumane acts—were committed in the context of politically-motivated sectarian violence immediately following the Nigerian presidential elections of April 2011.<sup>4</sup> Due to the absence of domestic criminal proceedings with respect to those bearing the greatest responsibility for these crimes—in particular (but not limited to), former head-of-state and current presidential candidate General Muhammadu Buhari—and in the light of the gravity of the acts committed, the Petitioners further submit that the case would be admissible under Article 17 of the Statute. Moreover, based on the available

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<sup>1</sup> Professor Sluiter holds a Chair in International Criminal Law at the Faculty of Law at the University of Amsterdam and is a partner at the Amsterdam law firm of Prakken d'Oliveira Human Rights Lawyers.

<sup>2</sup> The NCDJ’s constituent NGOs are the following: (i) Rally for Northern Christians (RNC); (ii) Northern Ibo Union (NIU); (iii) Northern Yoruba Youths (NYY); (iv) Middle Belt Progressive Union (MBPU); (v) People United To Serve Humanity (PUSH–Africa); (vi) Northern Youths Christian Forum (NYCO); (vii) Northern South-South Citizen Forum (NSSCF); (viii) Southern Kaduna Unity Group (SKUG); (ix) Bornu State Consultative Forum (BSCF); (x) Arewa Voters Assembly (AVA); (xi) The Savannah Group (SAG); (xii) Tiv Youth Organisation (TYO); (xiii) Zazzau Democratic Union (ZDU); (xiv) Katsina Peace Initiative (KPI); (xv) Igala Association (Northern wing) (IGA); (xvi) Sokoto Youth Consultative Forum (SYCF); and (xvii) Niger Development Union (NDU).

<sup>3</sup> In order to ensure their safety and protect their privacy, the identities of the Victims will not be disclosed; their accounts are set out in detail below. *See* para 23, *infra*.

<sup>4</sup> *N.b.* Nigeria deposited its instrument of ratification to the Rome Statute on 27 September 2001. *See* ICC Website.

information, there is no reason to believe that the opening of a preliminary investigation by the OTP at this time would in any way contravene the interests of justice. Accordingly, there is a reasonable basis to proceed pursuant to Article 15 of the Statute.

3. In support of this communication, the Petitioners have relied upon a selected number of publicly available reports documenting Nigeria's political background, its fraught electoral history, the crimes committed during the 2011 post-election violence, General Buhari's involvement in those crimes, the Nigerian government's limited and ineffectual responses, and the OTP's preliminary findings with respect to its ongoing investigation into the situation in Nigeria.<sup>5</sup>

## II. RELEVANT FACTS

### A. Nigeria's Fraught Political History

4. The Federal Republic of Nigeria gained its independence from the United Kingdom in 1960. From the outset, the country's government reflected the geographical and ethnic divides of Africa's most populous nation. Since independence, shaky relations—largely (but by no means simply) between the Muslim north and the Christian south—have been the norm. Cultural and political differences between Nigeria's dominant ethnic groups—the Hausa ('Northerners'), Igbo ('Easterners'), and Yoruba ('Westerners')—have consistently wreaked havoc on the country's political landscape.<sup>6</sup> While the late 60s were marked by coups and a brutal civil war, the oil boom of the 70s ushered in a long-running series of military juntas that lasted nearly thirty years.<sup>7</sup>

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<sup>5</sup> *N.b.* The OTP opened a preliminary examination with respect to the situation in Nigeria on or before 18 November 2010. See ICC, Office of the Prosecutor, 'Situation in Nigeria Article 5 Report', 5 August 2013 (hereinafter, the 'Nigeria Article 5 Report').

<sup>6</sup> See, e.g., Nigeria Article 5 Report, para 24 ('Nigeria is a federation comprising 36 States and 774 local government areas [...] with a population of over 168 million people. The country has more than 250 ethnic groups. 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. Ethnic and religious identities often overlap and correlate with the pattern of political parties as well as with voting behavior.')

<sup>7</sup> Excluding the short-lived 'Second Republic', which lasted from 1979 until 1983. Between independence in 1960 and 1999, Nigeria produced only two elected governments—both later overthrown in military coups. Nigeria's military ruled the country for nearly 30 of its first 40 years of independence.

5. One in this series was briefly presided over by General Buhari. His twenty-month term in power—stretching from late-December 1983 to late-August 1985—was marked by, among other things, a poor human-rights record and ‘ethno-religious chauvinism’.<sup>8</sup> In particular, General Buhari systematically repressed freedom of expression through the jailing of journalists, public intellectuals, and student protesters.<sup>9</sup> Additionally, he is ‘credited’ with politically-motivated executions,<sup>10</sup> the so-called Dikko Affair,<sup>11</sup> the

<sup>8</sup> Dr Nkwachukwu Orji and Nkiru Uzodi, ‘Post-Election Violence in Nigeria: Experience with the 2011 Elections’, Policy and Legal Advocacy Center, 2012 (hereinafter, the ‘PLAC Report’), p 37; *see also* Adam Nossiter, ‘Beleaguered, Nigerians Seek to Restore a General to Power’, *Int’l New York Times*, 23 January 2015 (‘As military ruler, Mr. Buhari showed little respect for the democratic process, rising to power in a coup that swept aside a civilian government and promising to include the political participation of Nigerian citizens “at some point”.’)

<sup>9</sup> During his tenure, Buhari passed the 1984 Public Officers (Protection against False Accusations) Act (the so-called ‘Decree No 4’), which gave his government the power ‘to close down any public medium whose existence was deemed “detrimental” to the Federation of Nigeria’. It also gave government the power to press charges against journalists for ‘publishing false stories allegedly ridiculing, or bringing into disrepute, any public official’. Trials under the law were held before one judge and three military officers, with no right of appeal; this ‘clearly violated [...] previous Nigerian practice’. Rhoda E Howard-Hassmann, *Human Rights in Commonwealth Africa* (Rowman and Littlefield: Totowa, NJ 1986). Several well-known journalists were held under the law during Buhari’s time in power, and it was additionally used to expel foreign academics and UN-affiliated researchers. John Maikwano, ‘Nigeria: Buhari Squeezes his Critics’, *Review of African Political Economy*, Vol 12, No 33 (Summer 1985), pp 100–101. Buhari also passed the 1984 State Security (Detention of Persons) Decree (the so-called ‘Decree No 2’), permitted the indefinite detention of Nigerians committing ‘acts prejudicial to state security or (contributing) to the economic adversity of the nation’. *Ibid.* The case of Busari Adelakun is but one example. Adelakun was a grassroots political activist during Nigeria’s Second Republic who had campaigned on behalf of Dr Omololu Olunloyo in an August 1983 gubernatorial election. Olunloyo triumphed and took up his post in October 1983. Three months later, a group of soldiers led by General Buhari overthrew the democratic government, and Buhari assumed power. A commentator describes the aftermath: ‘One of those arrested by the new junta was Adelakun. He was herded into jail alongside other politicians. While Adelakun was not put on trial, he was nonetheless kept in jail despite his poor health, he was an ulcer patient who needed regular treatment and a special diet. But he was denied proper treatment and food; leading Adelakun to suffer in prison until he died. Even after his death, the military junta would not release the corpse to his family. He was yet another Second Republic politician who met his untimely death as a result of the in-human conditions he was subjected to in Buhari’s detention camps.’ Shaka Momodu, ‘Buhari: History and the Wilfully Blind’, *This Day Live*, 10 January 2015.

<sup>10</sup> General Buhari’s government is accused of having executed Bernard Ogedengbe for an action not legally proscribed as a capital offence. It is not disputed that Ogedengbe was executed by firing squad. Buhari has also been criticized for subsequently silencing the press about the issue. *See* Wole Soyinka, ‘The Nigerian Nation Against General Buhari’, *Sahara Reporters*, 14 January 2007. According to one account: ‘Bartholomew Owoh (26) [...], Bernard Ogedengbe (29), and Lawal Ojuolape (30), were executed by firing squad after being arrested and tried for drug trafficking. The case of Bartholomew Owoh, the youngest of them all, was particularly tragic. At the time of his arrest, the crime did not carry capital forfeiture—the punishment was six months imprisonment. But Decree No 20 was hurriedly promulgated and back-dated by one whole year to take effect from when he and others committed the crime and on the basis of that they were all tried, found guilty, and executed by firing squad.’ Shaka Momodu, ‘Buhari: History and the Wilfully Blind’, *This Day Live*, 10 January 2015.

<sup>11</sup> *See* Adam Nossiter, ‘Beleaguered, Nigerians Seek to Restore a General to Power’, *Int’l New York Times*, 23 January 2015 (‘His government also carried out a bizarre kidnapping plot targeting a former minister who had fled to London. It involved Israeli secret agents, giant packing crates and anesthetic drugs.’) This was an extraordinary diplomatic incident in which Buhari’s government was accused by the UK government of kidnapping a dual Nigerian-UK citizen from the UK, anesthetizing him, and shipping him in a crate to Nigeria. The attempt was foiled in progress by British customs officers. Buhari’s government denied responsibility, but the UK held the Nigerian government fully responsible and the High Commissioner was declared *persona non grata*: diplomatic relations soured for some years. In direct response, to the British

draconian 'War Against Indiscipline',<sup>12</sup> and other repressive measures.<sup>13</sup> In 2007, Nigerian playwright and poet Wole Soyinka (recipient of the 1986 Nobel Prize for Literature) accused General Buhari of treating the Oputa Panel—a national human-rights commission set up to review Buhari's time in power—with 'unconcealed disdain' by refusing to appear 'even though complaints that were tabled against him involved a career of gross abuses of power and blatant assault on the fundamental human rights of the Nigerian citizenry'.<sup>14</sup>

6. The end of the 1990s saw the return of nominal democracy and civilian administration. Since then, the country has been ruled by three elected heads-of-state: Olusegun Obasanjo (1999–2007), Umaru Yar'Adua (2007–2010), and Goodluck Jonathan (2010–

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detention of the Nigerian plane that was to fly Dikko out of the country, Nigeria detained a British Caledonian plane. In direct response to the British arrest of the Mossad agents and anesthetist, Buhari's government was accused of having arrested and jailed two British engineers working in Nigeria.

<sup>12</sup> The BBC has recently (December 2014) described Buhari's rule as 'a period remembered for a strict campaign against indiscipline and corruption, and for its human rights abuses. [...] The verdict on Mr Buhari's 20 months as Nigeria's leader is mixed. [...] He also introduced a notorious decree to restrict press freedom, under which two journalists were jailed'. The War against Indiscipline was, according to Larry Diamond, Professor of Sociology and Political Science at Stanford, a period of 'unprecedented repression' unleashed by Buhari. Diamond argues that it was on the 'wave of popular revulsion' against this repression that Buhari's successor, General Babadanga, 'rode to power in August 1985'. In their discussion of the War against Indiscipline, Adebayo Olukoshi and Tajudeen Abdulraheem in the Review of African Political Economy (ROAPE) note that a 'litany of decrees was enacted promising draconian sentences' for crimes that included examination malpractices, among other more serious crimes like arson. They further describe how the government banned the NANS (the students' association), the NMA (Nigerian Medical Association), the NARD (National Association of Resident Doctors), and fired doctors participating in strikes—which was seen as a warning to other trades unions. The authors also speak about Buhari's hostility toward Southern journalists and privately-owned newspapers, which he threatened with closure on federal radio, and about Buhari's failure to prosecute corrupt members of the Shagari civilian regime. They call the failure to prosecute these figures—compared with the hot pursuit of campaigners, academics, and journalists—'patently unjustifiable'. Larry Diamond, 'Nigeria's Search for a New Political Order', *Peace Review: A Journal of Social Justice*, Volume 3, Issue 4, 1991, pp 32–37. 'Buhari justified the military's seizure of power by castigating the civilian government as hopelessly corrupt, and his administration subsequently initiated a public campaign against indiscipline known as "War Against Indiscipline" (WAI). Aspects of this campaign included public humiliation of civil servants who arrived late for work whilst guards were armed with whips to ensure orderly queues at bus stops.' *Ibid*; see also Adam Nossiter, 'Beleaguered, Nigerians Seek to Restore a General to Power', *Int'l New York Times*, 23 January 2015 ('His self-proclaimed "war against indiscipline" was carried to "sadistic levels, glorying in the humiliation of a people," wrote the Nobel laureate and writer Wole Soyinka. Mr Buhari forced tardy civil servants, even older ones, to perform frog jumps, jailed journalists for critical articles, and expelled tens of thousands of immigrants from other West African countries, blaming them for the country's problems.')

<sup>13</sup> See, e.g., Acidosis, 'Why Did Buhari Sentence Fela Kuti To 10 Years In Prison?', Nairaland Forum, 10 November 2014 ('He also moved to silence critics of his administration, passing decrees curbing press freedoms and allowing for opponents to be detained up to three months without formal charges. He also banned strikes and lockouts by workers and founded Nigeria's first secret police force, the National Security Organization. His government sentenced popular musician and political critic Fela Kuti to ten years in prison on charges that Amnesty International denounced as fabricated and politically motivated. Kuti was later pardoned and released by Buhari's successor.')

<sup>14</sup> Wole Soyinka, 'The Nigerian Nation Against General Buhari', *Sahara Reporters*, 14 January 2007.

present).<sup>15</sup> However, despite certain guarded accolades from the United States and others with respect to the 2011 elections,<sup>16</sup> Nigeria's post-independence political landscape has been marked by many significant systemic problems.<sup>17</sup> As one commentator put it:

Nigerian electoral process and governance system largely rest on the logic and practices of organized criminal enterprises. Organized crime entrepreneurs employ secrecy, cooptation, corruption, and violence to promote and defend their interests and organizations. Nigerian political parties and politicians operate in very similar ways. Therefore, it is not surprising that violence, corruption and lack of transparency are embedded in the aims and strategies of Nigerian political parties and politicians.<sup>18</sup>

Electoral violence in the country is primarily due to the perception of politics and political office as investment and as an avenue for the acquisition of extraordinary wealth through corruption, which is otherwise not possible through any form of legitimate vocation and enterprise. As a result of this perception and reality, Nigerian politicians turn electioneering and elections into warfare in which violence and ethnic, religious and other forms of primordial sentiments and prejudices are employed. It is against this background that former President Olusegun Obasanjo counseled his party members to see the 2007 election as a do or die affair.<sup>19</sup>

The politicians, in Nigeria, have over the years 'become more desperate and daring in taking and retaining power; more reckless and greedy in their use and abuse of power; and more intolerant of opposition, criticism, and efforts at replacing them.'<sup>20</sup>

The label of 'democracy', it seems, is little more than a veneer meant to obscure a far more authoritarian reality.

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<sup>15</sup> *N.b.* Yar'Adua died in office and Jonathan, his vice-president, assumed control. Jonathan was elected president in 2011.

<sup>16</sup> *See, e.g.*, Johnnie Carson, US Assistant Secretary of State, Bureau of African Affairs, 'Nigeria, One Year After Elections', Remarks, Washington DC, 9 April 2012 ('The result was clear. Nigeria had conducted its most successful and credible elections since its return to multiparty democracy in 1999. *Despite obvious imperfections*, these elections have given the country a solid foundation for strengthening its democratic institutions in the years ahead.') (emphasis added).

<sup>17</sup> *See, e.g.*, Professor Etannibi Eo Alemika, 'Post-Election Violence in Nigeria: Emerging Trend and Lessons', CLEEN Foundation, 5 July 2011 (hereinafter, the 'CLEEN Report') ('Elections held in Nigeria since independence, were generally not free, fair [or] credible due to several factors. In general, past elections were, to varying degree, characterized by massive fraud, manipulations and violence.');

*ibid*, p 6 ('The elections conducted in 1999, 2003, and especially 2007 were characterized by widespread malpractices such as violence, corruption and falsification of results. After the 2007 election, there was widespread disenchantment with the electoral process.');

*see also* Human Rights Watch, 'Nigeria: Post-Election Violence Killed 800: Promptly Prosecute Offenders, Address Underlying Causes', 16 May 2011 (hereinafter, the 'HRW Report'), p 4 ('The 1999 elections, which brought a retired general, Olusegun Obasanjo, to power, were blighted by such widespread fraud that observers from the Carter Center concluded that "it is not possible for us to make an accurate judgment about the outcome of the presidential election".')

<sup>18</sup> CLEEN Report, p 1.

<sup>19</sup> CLEEN Report, p 3.

<sup>20</sup> CLEEN Report, p 1 (quoting Nigerian Electoral Reform Committee Report, 2008, Vol 1:19).

7. According to Human Rights Watch, '[c]orrupt politicians, in many cases backed by mafia-like "godfathers", openly mobilized gangs of thugs to terrorize ordinary citizens and political opponents and to stuff or steal ballot boxes'.<sup>21</sup>

Despite the abysmal record of the 1999 and 2003 elections, the government did not correct the problems in the next elections. Observers from the European Union described the 2007 elections, which brought Umaru Yar'Adua, a Muslim from northern Nigeria, to power, as among the worst they had witnessed anywhere in the world. Human Rights Watch estimates that at least 300 people were killed in violence linked to the 2007 elections.<sup>22</sup>

Sadly, this was but a preview of far worse things to come.

8. The human toll of Nigeria's dalliance with democracy has been staggering. Again, according to Human Rights Watch, '[m]ore than 15,700 people have been killed in inter-communal, political, and sectarian violence since Nigeria returned to civilian rule in 1999'.<sup>23</sup> Such violence is to a large extent accounted for by Nigeria's so-called 'indigene' issue:

[S]tate and local government policies that discriminate against members of ethnic groups classified as 'non-indigenes'—those who cannot trace their ancestry to what are said to be the original inhabitants of an area—have exacerbated existing inter-communal tensions in Nigeria. These discriminatory government policies have effectively relegated millions of residents to permanent second-class status.<sup>24</sup>

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'.<sup>25</sup>

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<sup>21</sup> HRW Report, p 5.

<sup>22</sup> HRW Report, p 4.

<sup>23</sup> HRW Report, p 7–8; *see, e.g., ibid* ('In Kaduna State, at least 2,000 people were killed in sectarian clashes in 2000 sparked by Christian protests against the proposed introduction of Sharia law in the state. Two years later, sectarian violence sparked by Muslim protests linked to the Miss World beauty contest left some 250 people dead. The human cost of such violence has been particularly high in neighboring Plateau State, where Human Rights Watch estimates that more than 3,800 people have been killed in inter-communal and sectarian clashes since 2001, at least 1,000 of them in 2010 alone.')

<sup>24</sup> HRW Report, p 7–8.

<sup>25</sup> Nigeria Article 5 Report, para 6; *ibid*, para 26 ('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".')

In some cases, certificates of 'indigeneity' issued by local governments are required for obtaining employment and many government benefits.<sup>26</sup>

9. Since 1999, Nigeria's successive governments 'have done little to address the root causes of the violence' or to hold 'accountable those responsible' for it.<sup>27</sup> In the past individuals who have complained to the police have been told that arrests are politically problematic and advised 'to wait until a commission of inquiry is set up to investigate the violence'.<sup>28</sup> Of course, such commissions—while often constituted—rarely, if ever, provide any meaningful redress.<sup>29</sup>

'Panels of inquiry have become a tunnel through which the government runs away from their responsibility to bring the culprits of violence to book', said Innocent Chukwuma, executive director of CLEEN Foundation, a civil society group that works on justice sector reform. 'Going to these panels buys the government time and when the problem drops from the headlines they go back to business as usual.'<sup>30</sup>

Such lack of accountability and effective redress prompts 'communities that have suffered violence [to] frequently resort to vigilante justice and exact revenge by inflicting commensurate harm on members of other communities'.<sup>31</sup>

10. In a very real sense, the country is gripped by politicians who consistently stoke religious violence in order to achieve their political goals:

The Muslim-Christian violence underscores a bitter reality: The age of 'do-or-die' politics and 'thugs-for-hire' patronage networks is not dead in Nigeria. And although Nigerian politicians do have the power to tamp down local rivalries that quickly morph into brutal religious violence, more often than not, these leaders do the opposite.<sup>32</sup>

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<sup>26</sup> See Human Rights Watch, 'They Do Not Own This Place: Government Discrimination Against "Non-Indigenes" in Nigeria', April 2006, Volume 18, No 3(A).

<sup>27</sup> HRW Report, p 7-8.

<sup>28</sup> HRW Report, p 7-8.

<sup>29</sup> See HRW Report, p 7-8 ('Over the years, the federal and state governments have set up various committees and commissions of inquiry to investigate outbreaks of violence, but the reports from these bodies, and the occasional government white paper, have mostly been shelved.')

<sup>30</sup> HRW Report, p 7-8.

<sup>31</sup> HRW Report, p 7-8.

<sup>32</sup> Maggie Fick, 'Nigeria election riots: How leaders stoke Muslim-Christian violence', *Christian Science Monitor*, 20 April 2011.

In this environment, 'the often intense divide between deeply religious Muslim and Christian citizens, and the always high-stakes nature of politics and power, means that political violence frequently becomes religious'.<sup>33</sup>

11. Compounding the problem further still is 'the "ready army" [...] of thousands of discontented youth' at the disposal of cynical politicians; such youth are often callously utilized to create the type of 'chaos and bloodshed' politicians are keen to use 'as leverage as they jockey for influence and a greater share of the oil-rich country's immense economic spoils'.<sup>34</sup>

### **B. The Run-Up to the Presidential Elections of 2011**

12. In the wake of such a dismal record, the run-up to the 2011 presidential elections 'was marked by a blend of cautious optimism and foreboding'.<sup>35</sup> According to the International Crisis Group, Nigeria's Independent National Election Committee (the 'INEC'):

won plaudits for instituting important reforms, including to the voting procedure; the introduction of the idea of community mandate protection to prevent malpractice; and the prosecution and sentencing of officials, including the electoral body's own staff, for electoral offences. There were also grounds for pessimism: the upsurge of violence in several states, encouraged by politicians and their supporters who feared defeat; an ambiguous and confusing legal framework for the elections; and a flawed voter registration exercise, with poorly functioning biometric scans, that resulted in an inflated voters roll.<sup>36</sup>

Unfortunately, any hopes for peaceful polling in 2011 were soon to be dashed.

13. Following a comprehensive pre-election assessment, Amnesty International made the following report:

The political environment is, however, very tense. In the run-up to the elections, the country has seen an increase in violence.

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<sup>33</sup> *Ibid*; see also Nigeria Article 5 Report, para 27 ('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 [...].')

<sup>34</sup> Maggie Fick, 'Nigeria election riots: How leaders stoke Muslim-Christian violence', *Christian Science Monitor*, 20 April 2011.

<sup>35</sup> International Crisis Group, 'Lessons from Nigeria's 2011 Elections', Africa Briefing No 81, 15 September 2011.

<sup>36</sup> *Ibid*.

Several hundred people have been killed in politically-motivated, communal and sectarian violence across Nigeria in the past six months. In addition, human rights defenders and journalists, who play a key role in monitoring Nigeria's upcoming election in April, are facing increasing intimidation and harassment. Yet the Nigerian authorities have failed to bring suspected perpetrators to justice, or to take effective measures to prevent further human rights abuses. Security officials are failing to take adequate steps to investigate the killings. To date, few arrests have been made and few people held accountable for their deaths. In failing to put in place credible measures to prevent these killings, and to fully investigate and punish perpetrators, the Nigerian authorities have neither respected, nor met their obligations to exercise due diligence to protect the right to life and security of person, as required under international human rights law and standards.

Over 50 people are reported killed in election related violence since July [2010] throughout Nigeria. Amnesty International has received numerous reports of politically motivated assassinations, threats and intimidation targeting political candidates and their supporters, clashes between armed supporters, and excessive use of force, including lethal force, by security forces in the run-up to the 2011 elections. Yet there have been no general countrywide anti-electoral violence campaigns, no public awareness programs, and no adequate investigations, prosecution and conviction of those responsible. Perpetrators continue to torment political rivals with impunity.

More than 50 people have been killed in sectarian violence in and around Maiduguri, Borno state since July 2010 by people believed to be members of the religious sect Jama'atu Ahlis Sunna Lidda'a Wa'ati Wal Jihad commonly known as Boko Haram.

Over two hundred people have been killed in communal and sectarian violence in Plateau State since 24 December 2010. There have been violent crises in 1994, 2001, 2004, 2008 and 2010 resulting in the death of over 2000 people. Yet the Nigerian authorities have failed to bring suspected perpetrators to justice, or to take effective measures to prevent future violent clashes. The regular and widespread killings in Plateau state constitute a gross violation of human rights. Several inquiries have been established into similar crises in the past but their findings and recommendations have never been made public. In cases where criminal investigations have been initiated, they tend to be inadequate. In most cases there are serious doubts over the quality of evidence against persons arrested. Amnesty International is extremely worried that in reaction to politically-motivated, communal and sectarian violence Nigeria's security forces seem to have adopted measures and practices that may contribute to grave human rights violations. Few people, if any, have been held accountable in a court of law. Victims of previous violence have not received redress or reparation, including compensation. Many survivors and families of victims have been left destitute, further stoking feelings of resentment and desperation.

By failing to take effective measures to stem the tide of violence, the Nigerian authorities have fostered a climate of impunity. They are creating conditions conducive to an escalation of violence around the April 2011 elections.<sup>37</sup>

In the event, the Amnesty International report was as prescient as the eventual results of the election were unfortunate.

#### 14. The United States Institute of Peace was equally wary:

The irony of the violence in Nigeria is that whereas in 2007 former President Olusegun Obasanjo famously declared that the election was a "do or die affair,"—a comment largely seen to urge his supporters to use violence to obtain victory—in 2011, the politicians

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<sup>37</sup> Amnesty International, 'Loss of life, insecurity and impunity in the run-up to Nigeria's elections', March 2011.

emphasized the need for peace. However, there were disturbing signs before the election that the type of violence in Nigeria had changed, when seven bomb blasts occurred in several parts of the country. This constituted almost a third of all bomb blasts in Nigeria since 1995. Moreover, previous elections had not been preceded by bomb blasts.<sup>38</sup>

On the eve of polling, the situation was rapidly deteriorating.

15. As usual, the looming trouble in the north was the result of long-standing religious, ethnic, and geographic tensions:

Inflammatory rhetoric sent via the social media worsened the tensions created by religious and ethnic campaigning by supporters of President Jonathan and Muhammadu Buhari. There were also SMS that attempted to stir up Muslims against President Jonathan and Northern Muslim governors perceived to be supporting him. The anti-Jonathan rhetoric in the North hardened the stance of many Southerners against Buhari, setting up an inevitable clash between followers of Buhari and Jonathan.<sup>39</sup>

The rumor mill was agog with several unsubstantiated stories. For instance, there were allegations that people were paid with as little as two hundred naira (N200) or packets of noodles to vote against Buhari [...]. There were also rumors that some political leaders with close ties with the ruling [People's Democratic Party (the 'PDP')] were stuffing the ballot box with fake ballot papers. All these unsubstantiated allegations helped solidify the fears in the North that the PDP would try to rig the presidential election.<sup>40</sup>

The political tensions that surrounded the presidential election in the north in 2011, which were to lead to violence when its results were announced, were rooted in the longstanding tensions between the north and south of the country. More immediately, however, they were due to the practice of 'zoning' key posts—including the presidency—between different regions by the People's Democratic Party (PDP). Though of dubious constitutionality, zoning is an unwritten agreement for the rotation of the presidency between the north and south of Nigeria.<sup>41</sup>

Causes and types of violence in Nigeria are multiple and differ from state to state. [...] The Northern states, particularly Borno, Kano, and Kaduna States, affected by communal or electoral violence, as well as attacks attributed to Boko Haram.<sup>42</sup>

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<sup>38</sup> US Institute of Peace, 'Nigeria's 2011 Elections: Best Run, but Most Violent', Peace Brief 103, 15 August 2011 (hereinafter, the 'USIP PB 103'), p 2.

<sup>39</sup> PLAC Report, p 15; *see also ibid* ('Sudden shifts in institutional arrangements that guide elections can result in opposition and violence. This is illustrated by Nigeria's experience where the relegation of the power-sharing arrangement which guided the previous election resulted in vigorous opposition and violence. For many analysts, the 2011 post-election violence in Nigeria reflects the regional and religious divisions and simmering tensions created by debates over power sharing modalities in the aftermath of the demise of President Umaru Yar'Adua. Many in the North believe that President Jonathan, a Christian and Southerner, should have conceded his presidential bid to a Northerner and Muslim in honor of the unwritten rotation of power between the North and South. Umaru Yar'Adua, a Northerner and Muslim, succeeded President Olusegun Obasanjo, a Southerner and Christian, who ruled Nigeria for eight years beginning from 1999. Unfortunately, Yar'Adua died untimely in 2010, midway through his term, paving the way for then Vice President Goodluck Jonathan to emerge as president. The proponents of power sharing insist that Jonathan should not have contested the presidency because the North had not completed its 'turn'. The 2011 post-election violence can therefore be seen as an expression of the frustration caused by the failure of Muhammadu Buhari, a Northerner and Muslim, to reclaim the North's control of the presidency from President Jonathan.')

<sup>40</sup> PLAC Report, p 31.

<sup>41</sup> Nigeria Stability and Reconciliation Program (NSRP), Policy Brief, 'The 2011 elections in northern Nigeria post-electoral violence: origins and response' (hereinafter, the 'NSRP Report').

<sup>42</sup> Nigeria Article 5 Report, para 25.

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.<sup>43</sup>

Buhari had been military head of state from 1983-85 and unsuccessfully contested the presidency in 2003 and 2007. He commanded considerable loyalty among northerners and Muslims, including PDP followers who felt betrayed by both southern interests and the northern party elite who had gone along with Jonathan's candidature. While he was a military ruler, Buhari had been the author of the controversial 'War Against Indiscipline' initiative and was admired by his supporters for his stand against corruption. However, Buhari had little following in the south, where he was perceived to be authoritarian, and even a bigot. There were also allegations of undemocratic practices and corruption within his party. Thus, as the 2011 election approached, longstanding political, regional and religious lines of conflict, shaped by the peculiar circumstances of Yar'Adua's early demise and the outcome of the zoning arrangement, both reinforced north-south tensions and led to the emergence of a serious rift in the politics of the north itself.<sup>44</sup>

The 2011 elections, it seemed, were to be no different from those of the past. In fact, they would prove to be the bloodiest in Nigeria's short democratic history.

### C. Large-Scale Death, Destruction, and Displacement

16. On 16 April 2011, presidential elections were held nationwide. The Congress for Progressive Change (the 'CPC'), General Buhari's party, 'emerged as the biggest loser, missing the presidency, and winning only one gubernatorial election, in Nassarawa State'.<sup>45</sup> According to Human Rights Watch, 'deadly election-related and communal violence in northern Nigeria following the April 2011 presidential voting left more than 800 people dead'.<sup>46</sup> The violence, which took place over the course of three days:

began with widespread protests by supporters of the main opposition candidate, Muhammadu Buhari, a northern Muslim from the Congress for Progressive Change, following the re-election of incumbent Goodluck Jonathan, a Christian from the Niger Delta in the south, who was the candidate for the ruling People's Democratic Party. The protests degenerated into violent riots or sectarian killings in the northern states of Adamawa, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Niger, Sokoto, Yobe, and Zamfara.<sup>47</sup>

In addition to the mass killings, 'officials estimate[d] that more than 65,000 people [were] displaced'.<sup>48</sup>

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<sup>43</sup> Nigeria Article 5 Report, para 28.

<sup>44</sup> NSRP Report.

<sup>45</sup> NSRP Report.

<sup>46</sup> HRW Report, p 1.

<sup>47</sup> HRW Report, p 1.

<sup>48</sup> HRW Report, p 1.

17. As expected, the election ‘divided the country along ethnic and religious lines’.<sup>49</sup> And, as ‘it became clear that Buhari had lost, his supporters took to the streets of northern towns and cities to protest what they alleged to be the rigging of the results’.<sup>50</sup> As reported:

The protesters started burning tires, and the protests soon turned into riots. The rioting quickly degenerated into sectarian and ethnic bloodletting across the northern states. Muslim rioters targeted and killed Christians and members of ethnic groups from southern Nigeria, who were perceived to have supported the ruling party, burning their churches, shops, and homes. The rioters also attacked police stations and ruling party and electoral commission offices. In predominately Christian communities in Kaduna State, mobs of Christians retaliated by killing Muslims and burning their mosques and properties.<sup>51</sup>

Despite the positive claims by international and domestic election observers, ‘someone had convinced the mobs that the election had been rigged in favor of incumbent president Goodluck Jonathan, a southern Christian’.<sup>52</sup>

18. According to its various sources, Human Rights Watch has tallied the death, destruction, and displacement as follows:

- a. ‘[A]t least 170 Christians were killed in the post-election riots, hundreds more were injured, and thousands displaced. [...] [M]ore than 350 churches were burned or destroyed by the Muslim rioters across ten northern states.’<sup>53</sup>
- b. ‘In the predominately Christian towns and villages of southern Kaduna State, including Zonkwa, Matsirga, and Kafanchan, sectarian clashes left more than 500 dead [...]. The vast majority of the victims in these areas were Muslim.’<sup>54</sup>
- c. ‘[I]n northern Kaduna State, at least 180 people, and possibly more, were killed in the cities of Kaduna and Zaria and their surrounding suburbs. [...] [D]ozens of people were also killed during riots in the other northern states.’<sup>55</sup>

These figures are echoed by the Nigerian government’s own assessment<sup>56</sup> and are consistent with the NCDJ’s findings.

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<sup>49</sup> HRW Report, p 1.

<sup>50</sup> HRW Report, p 1.

<sup>51</sup> HRW Report, p 1.

<sup>52</sup> Maggie Fick, ‘Nigeria election riots: How leaders stoke Muslim-Christian violence’, *Christian Science Monitor*, 20 April 2011.

<sup>53</sup> HRW Report, p 2.

<sup>54</sup> HRW Report, p 2.

<sup>55</sup> HRW Report, p 2.

19. Emblematic of Nigeria's ethnic and sectarian strife,<sup>57</sup> Kaduna State bore the brunt of the violence and suffered the highest death toll during the rioting. The following are some of the incidents recorded there by Human Rights Watch:<sup>58</sup>

A lecturer at the Nuhu Bamalli Polytechnic, a college on the outskirts of the city of Zaria, described [...] how a mob of youth chanting pro-Buhari slogans cornered four Christian students and a Christian lecturer in the staff quarters of the campus and beat them to death with sticks, clubs, and machetes on April 17.<sup>59</sup>

In the city of Kaduna, Christians and Muslims who found themselves on the wrong side of the river during the riots were bludgeoned to death by marauding mobs. Churches and mosques were torched in the city. Civil society leaders said that Christian travelers were dragged out of their vehicles by mobs of Muslims and killed on the main road leading north of the city. Mobs of Christians also torched vehicles on the expressway leading through the city's southern neighborhoods, killing Muslim motorists.<sup>60</sup>

[In,] the town of Maraba Rido, on the outskirts of the city of Kaduna[, d]ozens of houses and shops were razed to the ground, and the main mosque was torched, with anti-Islamic graffiti and the inscription 'Jesus is Lord' inscribed on the burned-out walls of the mosque. According to one of the Muslim leaders, 28 Muslims were killed, while hundreds of others fled the area and as a result were unable to vote in the gubernatorial elections.<sup>61</sup>

A Human Rights Watch researcher returned to a polling place near the burned-out homes and mosque in Maraba Rido for the April 28 gubernatorial elections, after the violence. The posted results showed the ruling party candidate for governor, a Christian, received 441 votes, while the Muslim candidate for Buhari's Congress for Progressive Change failed to register a single vote. Similarly skewed results were found by a Human Rights Watch researcher in the town of Zonkwa where many Muslims were killed or fled.<sup>62</sup>

Men from the predominately-Christian Bajju ethnic group in the town of Zonkwa burned six of the town's mosques, as well as the homes, shops, and vehicles of Muslim residents. Witnesses said that violence began late in the afternoon of April 18 and continued throughout the night. By mid-morning on the following day, the Bajju men had killed or displaced nearly all of the town's Hausa-Fulani residents. One of the district heads acknowledged to Human Rights Watch: 'The boys here made it total. They would not relent.'<sup>63</sup>

According to one of the Muslim leaders in Zonkwa who participated in the burial of the victims, and showed Human Rights Watch photo documentation of the mass burial of corpses, 311 Muslims, nearly all of them men, were buried in a mass grave in Zonkwa later that week, while the remains of 24 others, many of their corpses charred beyond recognition, were buried in one of the town's wells. Christian leaders in Zonkwa told

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<sup>56</sup> See NSRP Report (summarizing the findings of the Lemu Commission).

<sup>57</sup> See HRW Report, p 6 ('The Hausa-Fulani ethnic group, most of whom are Muslim, make up the majority in northern Kaduna State, while southern Kaduna State is dominated by predominately Christian ethnic groups. In the city of Kaduna, the state capital, the river that intersects the city serves as a symbolic divider for the largely segregated city, state, and nation.')

<sup>58</sup> HRW Report, p 6.

<sup>59</sup> HRW Report, p 6.

<sup>60</sup> HRW Report, p 6.

<sup>61</sup> HRW Report, p 6.

<sup>62</sup> HRW Report, p 6.

<sup>63</sup> HRW Report, pp 6-7.

Human Rights Watch that 10 Christians had also been killed in the town and surrounding communities. No churches were destroyed.<sup>64</sup>

In the neighboring town of Kafanchan, clashes between Muslim and Christian youth continued unabated throughout the night of April 18. Christian and Muslims leaders told Human Rights Watch that by the next morning at least 20 Christians and 34 Muslims had been killed. The mobs torched hundreds of homes, shops, and vehicles, and razed to the ground the central market. Twenty-six mosques and four churches were burned or destroyed. One of the leaders from the Igbo ethnic group, the vast majority Christians from southeastern Nigeria, told Human Rights Watch that 11 Igbo residents were killed in Kafanchan, while 224 of their houses and 837 shops, many of them in the central market, were burned.<sup>65</sup>

This is but a mere sampling of the death and destruction that followed the elections.

20. A key feature of the violence was the specific targeting of members of Nigeria's National Youth Service Corp (the 'NYSC' or 'youth corps', as they are known locally):

In Bauchi State, rioters targeted members of the National Youth Service Corps, who served as ad-hoc election staff. [...] [O]n the afternoon of April 17 in Giade, a rural town in northern Bauchi State, rioters attacked the youth corps members in the town. The youth corps members, who were from southern Nigeria, ran to the local police station to seek refuge, but the rioters stormed the police station. The mob killed the police officer on duty and burned down the police station [...]. They raped two of the female youth corps members then hacked them to death with machetes, along with five male youth corps members. In total, rioters killed ten youth corps members in the state.<sup>66</sup>

In mid April this year, violent demonstrations exploded in parts of the north as ill-mannered youths expressed outrage over the defeat of the presidential candidate of the Congress for Progressive Change (CPC), Muhammadu Buhari. The victims of the violence were members of the National Youth Service Corps (NYSC), most of them Christians, from the south and from different ethnic groups. Gangs of irate supporters of the CPC tracked down and murdered these defenseless young men and women on national assignment. The rage against NYSC members was the most gruesome display of primordial anger by any group of party supporters in the short history of Nigeria.<sup>67</sup>

In particular, according to the NCDJ, one such youth corper killed in Giade, Mr Ikechukwu Chibuzor Ukeoma, posted the following message on his Facebook page on the evening of 17 April 2011:

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<sup>64</sup> HRW Report, p 7.

<sup>65</sup> HRW Report, p 7.

<sup>66</sup> HRW Report, p 5. *N.b.* The National Youth Service Corps was set up in Nigeria by Act No 24 of 22nd May 1973 (as amended), shortly after the Nigerian civil war to foster national unity and a culture of service among Nigerian youth. Pursuant to the act, all university graduates and graduates of other tertiary institutions are expected to perform a compulsory one-year national service, which service takes them to states far from their states of origin. 'Youth corps', as they came to be known, are thus symbols of national unity in Nigeria. In the light of the difficulties associated with organizing free, fair, and credible elections in Nigeria, it was thought that employment of youth corps would enhance the integrity of the process.

<sup>67</sup> Clifford Ndujihe & Daniel Idonor, 'Post-election violence: FG panel report indicts Buhari', Vanguard, 11 October 2011.

*Na wao!* This CPC supporters would [have] killed me yesterday, no see threat oooo. Even after forcing underage voters on me they wanted me to give them the remaining ballot paper to thumb print. Thank God for the police and am happy I could stand for God and my nation. To all corps members who stood despite these threats esp[ecially] in the north bravo! Nigeria! Our change has come.<sup>68</sup>

Tragically, he was burned to death just a few hours later.

21. Additionally, the following acts of violence have been previously documented by the NCDJ (and previously submitted to the OTP):

- a. Fifty NYSC members were locked up at the secretariat of the Nigerian Christian Corpers Fellowship at Minna, Niger State, and the building was set on fire. Somehow, they managed to escape.
- b. Twenty-seven vehicles within the premises of two churches—the Chapel of Grace and Redeemed Christian Church of God—in Kofar Kawa, Katsina State, were destroyed a few hours after General Buhari made provocative statements on television and radio.
- c. Eight family members of the PDP chairman were willfully killed in Gombe State.
- d. Massive destruction of homes and places of worship took place in Adamawa, Bauchi, Bornu, Kaduna, Kano, and Katsina States.
- e. Nigerian Vice-President Namadi Sambo's home in Zaria, Kaduna State was burned.
- f. Vehicles within the palace of the Emir of Kano in Kano State were burned.
- g. An attack took place on the palace of the Emir of Zaria in Kaduna State.

Once such violence erupted, 'only soldiers succeeded in stopping it'.<sup>69</sup> The aftermath in certain areas hit by the violence, Human Rights Watch noted, 'resembled war zones with entire neighborhoods razed to the ground'.<sup>70</sup>

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<sup>68</sup> See <http://www.facebook.com/people/Ukeoma-Aikfavour/655614177>.

<sup>69</sup> USIP PB 103, p 1.

<sup>70</sup> HRW Report, p 2.

22. Ultimately, the 2011 elections were the most violent in Nigeria's history. 'The violence [...] was also notable because 700 of the fatalities came from Kaduna, [General] Buhari's home state, which has not experienced this level of violence since 2002.'<sup>71</sup> The Nigeria Stability and Reconciliation Program (the 'NSRP') summarized the situation as follows:

While judged by national and international observers to be among the fairest elections in Nigeria's history, the April 2011 elections were to be the bloodiest. As the results of the presidential elections trickled in on 17 April and it became clear that Buhari had lost, his supporters took to the streets in northern towns and cities to protest what they alleged to be the rigging of the results. Three days of rioting and sectarian killings followed in 12 states: Kaduna, Kano, Katsina, Sokoto and Zamfara states in the north-west zone; Bauchi, Adamawa, Gombe, Borno, Jigawa and Yobe in the north-east; and Niger State in the north-central zone. The targets were Christians and members of southern ethnic groups believed to have supported Jonathan; their churches, shops and homes were burned. Police stations, offices of the ruling party and electoral commission officers were also targeted, along with the property of members of the northern elite who were considered to have supported the ruling party. Rumours that traditional rulers had been heavily bribed to support Jonathan's candidacy fed attacks on the Emirs of Kano and Zaria. In southern Kaduna, where most of the violence and 80 per cent of the casualties were concentrated, Christians retaliated by attacking Muslim communities. It was estimated that more than 65,000 people were displaced and 350 churches burned. The violence was generally perpetrated with crude weapons such as axes, machetes, sticks and knives, suggesting a degree of spontaneity. The police were initially unable to control the violence and the army had to be called in. These security forces were later accused of excessive use of force, including unlawful killings.<sup>72</sup>

These acts of wanton inhumanity—murder, torture, rape, and the large-scale destruction of property—were systematically directed at non-Muslims, liberal Muslims, perceived opponents of General Buhari and the CPC, youth corpsers, and southern Nigerians (both Christians and liberal Muslims). 'Many of the victims of the communal clashes and election violence including women and children were reportedly hacked to death, shot, or burnt alive based on their ethnic identity or political beliefs.'<sup>73</sup>

#### **D. Individual Victim Accounts**

23. As noted above, this communication is being filed on behalf of two unnamed Victims, both of whom lost close relatives in the violence described above in Bauchi State.<sup>74</sup> In both cases, the Victims' relatives were killed while on mission in northern Nigeria as members of the NYSC:

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<sup>71</sup> USIP PB 103, p 2.

<sup>72</sup> NSRP Report.

<sup>73</sup> Premium Times, 10 April 2014.

<sup>74</sup> See para 20, *supra*.

- a. Victim No 1 is a petty trader from southern Nigeria with three children. Her husband, a student at the time of the violence, was recruited as a youth corper by INEC and sent to a village in Bauchi State in February 2011. On 18 April of the same year, he called his wife to inform her that ‘they are fighting’ and to assure her that he would attempt to take refuge in a nearby police station. Victim No 1 heard nothing more from her husband; and when she attempted to call him, his telephone was continuously switched off. Eventually, someone from the NYSC informed her by telephone that her husband had been burned to death along with at least ten others. To date, Victim No 1 is unsure of who killed her husband. In May 2011, she traveled to Abuja along with many other grieving family members to meet with the president. The families were told that the killers would be ‘put to book’; however, since then, the authorities have not looked into the matter. In addition to grappling with the grief of her loss and the lack of accountability, Victim No 1 is struggling to provide the necessities for herself and her three children.
  
- b. Victim No 2 is a filling-station attendant from central Nigeria. His close cousin, a young university graduate described as a ‘quiet and independent guy’, travelled to Bauchi State as a youth corper in April 2011. Two days after the election, Victim No 2’s cousin called his father (Victim No 2’s uncle) and told him: ‘they are trying to kill us’. According to Victim No 2, ‘they’ referred to supporters of General Buhari. Victim No 2’s uncle told his son to find shelter at the closest police station, which he did. However, the station was soon set ablaze; and when Victim No 2’s cousin and others fled for their lives, they were hacked to death with machetes. While the government has promised compensation, jobs, and scholarships to the families of those killed in the violence, only a small amount of money has been provided. There has been no investigation into the deaths. While Victim No 2—despite the significance of his loss—is attempting to get on with his life as best he can, his aunt (the mother of his murdered cousin) continues to experience great psychological distress.

These accounts are representative of the thousands of Nigerians who have suffered—directly and indirectly—as a result of the 2011 post-election turmoil. Both accounts are

on file with the Victims' lawyer and may be submitted to the OTP subject to an agreement on confidentiality and further use.

### E. Acts and Conduct of General Muhammadu Buhari

24. General Buhari immediately sought to distance himself from the violence. However, the factual record reflects a much more damning level of intimacy:

In an interview he granted to the Daily Sun (Sunday, 8 August 2010), Buhari predicted the outbreak of violence if the 2011 general elections were perceived to be far from free and fair. In the interview, Buhari was asked: 'Do you fear for the country, that if we don't get it right now ... ?' The interviewer did not complete the question before Buhari interjected, saying: 'There may be no Nigeria ... , because I draw parallel with Somalia so many times. Somalia-sation of Nigeria; I am scared about that.'<sup>75</sup>

During Nigeria's 2011 elections, the leading opposition candidate, Muhammadu Buhari, was reported by the national television as saying that he will not lodge petition regarding the outcome of the election since his previous attempts at legally challenging election outcomes did not yield any meaningful result.<sup>76</sup>

On Tuesday after his official defeat in the presidential race, after dozens of people had been killed and more than 10,000 displaced, popular opposition leader Muhammadu Buhari characterized the violence as 'sad, unfortunate, and totally unwarranted', but issued no direct appeal for calm. 'We have commenced consultations at the highest levels to recover your stolen mandate', Mr Buhari said Wednesday.<sup>77</sup>

There were other ominous signs of potential violence. Buhari's warning of an 'Egypt-style' revolt if the elections were not free and fair was one. Buhari's admonition that his supporters defend their votes was another. And his declaration that going to court to contest the elections would be a waste of his time provided his supporters with the unspoken alternative: take their protests to the streets. Indeed, the day of the presidential elections, Buhari claimed that the ruling party had rigged the election and violence started soon after INEC declared Jonathan the winner. Buhari did not immediately condemn the violence, fueling speculation of his role in inciting it.<sup>78</sup>

Unlike Mr Jonathan, Mr Buhari had refused to condemn, in advance, a possible violent reaction to the election result—a silence analysts said nearly amounted to an invitation to his supporters to take to the streets.<sup>79</sup>

Beyond his controversial comments, Buhari's delayed response to the violent uprisings in the north, in particular his failure to condemn on time the gangs that massacred young men and women carelessly, was at odds with the attributes you will expect to find in a presidential candidate who have long bragged about his nationalist credentials.<sup>80</sup>

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<sup>75</sup> Maggie Fick, 'Nigeria election riots: How leaders stoke Muslim-Christian violence', *Christian Science Monitor*, 20 April 2011.

<sup>76</sup> PLAC Report, p 13.

<sup>77</sup> Clifford Ndujihe & Daniel Idonor, 'Post-election violence: FG panel report indicts Buhari', *Vanguard*, 11 October 2011.

<sup>78</sup> USIP PB 103, p 2.

<sup>79</sup> Adam Nossiter, 'Election Fuels Deadly Clashes in Nigeria', *New York Times*, 24 April 2011.

<sup>80</sup> Clifford Ndujihe & Daniel Idonor, 'Post-election violence: FG panel report indicts Buhari', *Vanguard*, 11 October 2011.

No one would argue compellingly that the violence that erupted in Bauchi, Gombe, Katsina, Kaduna, and other parts of the north [...] was merely spontaneous. The bloodshed was premeditated and was executed by supporters of the CPC. Buhari's response to the violence was supremely inappropriate and disappointing, even though he reluctantly and belatedly criticized the violence days after it erupted.<sup>81</sup>

There were reports that some CPC supporters threatened that 'all hell would be let loose' if their preferred candidate was not declared winner of the elections [...]. In fact, the CPC candidate, Muhammadu Buhari, was reported as telling his supporters that the 2011 election, like the previous ones, would be rigged. He advised them to cast their vote and ensure that they protect their votes: 'You should never leave polling centers until the votes are counted and the winner declared and you should lynch anybody that tries to tinker with the votes'. [...] Earlier he threatened that 'the fate of this country will be decided by the people in April ... Anybody who stands in the way of the people will be crushed by the people' [...]. Later, he advised the political class: 'with what is happening in North Africa, the Middle East, and the Gulf states I think the message is getting across to politicians, especially the ruling party that they either behave themselves or the ordinary people will take over ... Elections must be free and fair, that is the bottom line. If people choose bad legislators, let them freely change them. But if they can't, what is happening in some parts of Africa and the Middle East is bound to happen' [...]. These comments by the CPC candidate were considered inflammatory and were condemned by many people.<sup>82</sup>

Such inflammatory comments appear to have been designed to elicit an expected response; and, in fact, they led to the violence described above.

25. In April 2011, during one of Buhari's campaign rallies he and some CPC stalwarts called upon his supporters 'to destroy, kill, and maim men, women, and children' who were opposed to his candidature.<sup>83</sup> According to the NCDJ, Buhari made statements on local television, the BBC Hausa Service, and the Voice of America Hausa Service on 16 April 2011 insinuating that he had evidence that aircraft had been conveying ballot papers meant for rigging the elections to various predetermined locations, with specific reference to his home state of Katsina.<sup>84</sup> More troubling still were statements made in the course of his political campaign urging his supporters to 'lynch and roast alive' anyone perceived to have rigged the elections.<sup>85</sup>

26. Such highly incendiary rhetoric has been captured on video. A recent clip posted on the online video-sharing website You Tube showed General Buhari addressing CPC

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<sup>81</sup> *Ibid.*

<sup>82</sup> PLAC Report, pp 30–31 (citing Josef Omorotionmwan, 'Who wants Nigeria dead?', Vanguard, 17 March 2011). *N.b.* The statement by Buhari reads in Hausa as follows: 'Ku kasa, ku tsare, ku raka; duk wanda ya taba muku kuri'a, ku gama da shi.'

<sup>83</sup> See attached video footage.

<sup>84</sup> See Rotimi Fadeyi, Omeiza Ajayi, Ubong Ukpong, and Adeola Tukur, '2015 Elections, Jonathan, Buhari and the Voting Pattern', *National Mirror*, 25 December 2014.

<sup>85</sup> *Ibid.*

supporters ahead of the 2011 elections.<sup>86</sup> Speaking in Hausa, his native language, he appeared to have uttered the following phrase: ‘*Ku fita ku yi zabe. Ku Kasa, ku tsare, ku raka ku tsaya. Duk Wanda ya taba ku, ku halaka shi.*’ The English subtitles which accompanied the video read: ‘Firstly, you must register, come out and vote. You guard, protect, escort to the collation centre and you wait until the result is counted. Anyone who stops you, kill them!’ The crowd then appeared to chant wildly. General Buhari has claimed that the video was doctored and denied using the word *halaka*, which means ‘kill’ or ‘destroy’ in Hausa.<sup>87</sup>

27. In 2012, referring to the 2015 elections, General Buhari reportedly made the following statement: ‘They either conduct a free and fair election or they go a very disgraceful way. If what happened in 2011 (alleged rigging) should again happen in 2015, by the grace of God, the dog and the baboon would all be soaked in blood.’<sup>88</sup> Again, General Buhari sought to downplay the significance of his remarks, claiming that the comments referred simply to the fact that his supporters should not allow the PDP to interfere in the upcoming elections.<sup>89</sup>
28. Through their lawyers, Petitioners, will make available a DVD to the OTP, attached to the present communication, which includes essential video footage of one of General Buhari’s campaign rallies.

#### F. The Nigerian Government’s Response

29. In May 2011, two separate commissions of inquiry were established to investigate the causes and extent of the election violence: a twelve-member commission by the governor of Kaduna State (where the bulk of the incidents had taken place) and a twenty-two-member national panel by President Jonathan. However, observers were not optimistic: ‘[T]he track records of past commissions suggest that neither effort will make any headway.’<sup>90</sup>

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<sup>86</sup> Lord Varys, ‘PDP Propaganda Video Of Buhari Supposedly Asking Supporters To Kill’, Nairaland, 31 December 2014.

<sup>87</sup> Lord Varys, ‘PDP Propaganda Video Of Buhari Supposedly Asking Supporters To Kill’, Nairaland, 31 December 2014.

<sup>88</sup> John Alechenu, Olusola Fabiyi, Tunde Odesola, and Olalekan Adetayo, ‘Buhari Under Fire Over Threat of Bloodshed’, Punch, 16 May 2012.

<sup>89</sup> *Ibid.*

<sup>90</sup> USIP PB 103, 15 August 2011, pp 1–2.

Commissions to investigate violence in Nigeria have been organized in the past, but their recommendations and findings have either remained unimplemented or essentially kept secret, resulting in a culture of impunity. Thus, residents have little faith that the two commissions currently investigating the roots of the violence in northern Nigeria will have any effect. Should these beliefs materialize, the two commissions will not succeed in helping to break the cycle of electoral violence in Nigeria. Instead, the commissions must not only identify the perpetrators of violence, but they must be brought to book and compensation must be obtained for the victims.<sup>91</sup>

In the town of Kafanchan, one of the Christian leaders lamented to Human Rights Watch that past commissions of inquiry have failed to bring the culprits to book. 'There have been commissions of inquiries set up in the past, but I don't know what they did; that is why we are really skeptical', he said. 'I want to believe that if they had done justice, maybe a repeat of this wouldn't have come. This time justice should be done.'<sup>92</sup>

The move surprised no one, and the results were equally expected: 'In just three weeks, two presidential panels that investigated outbreaks of violence in different parts of Nigeria submitted reports of dissimilar quality to President Goodluck Jonathan.'<sup>93</sup>

30. The national investigation, presided over by Dr Sheik Ahmed Lemu,<sup>94</sup> made a number of findings and conclusions relevant to the instant submission:

The first and probably the most important major cause [of the violence] is the failure on the part of the previous successive regimes since the military handover of power in 1999 to implement the recommendations of various committees, commissions and panels that had taken place in our nation. That failure facilitated the widespread sense of impunity in the culprits and perpetrators of crimes and violence in the Nigerian society.<sup>95</sup>

People indicted by the committees and commissions concerned should be prosecuted. These recommendations are based on what the panel observed from many victims of those previous disturbances which are nursing reprisals and have only been waiting for the slightest excuse to move into action which some of them did during the 2011 election violence and civil disturbances.<sup>96</sup>

Generally speaking, the basic cause of the violence in nearly all the communities concerned is political. Ethno-religious sentiments were brought into the issue through negative campaigns and rumor mongering by unscrupulous individuals to achieve their ulterior motives.<sup>97</sup>

*Provocative utterances by many individuals and the widespread charge by prominent politicians including the CPC presidential candidate to the electorate 'to guard their votes' appeared to have been misconstrued by many voters to include recourse to violence which*

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<sup>91</sup> USIP PB 103, p 2.

<sup>92</sup> HRW Report, p 3.

<sup>93</sup> Vanguard, 11 October 2011.

<sup>94</sup> See Lanquart, 'Post-election Violence: Lemu Committee Submits Report; Blames Buhari', *Nairaland*, 11 October 2011; NSRP Report ('The Panel on Investigation of Post-Election Violence, chaired by retired Grand Qadi Sheikh Dr Ahmed Lemu, was established on 11 May 2011. Its 22 members were charged with investigating the post-election violence.')

<sup>95</sup> Lanquart, 'Post-election Violence: Lemu Committee Submits Report; Blames Buhari', *Nairaland*, 11 October 2011.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

*they did.* However, a long interactive session was held with the CPC presidential candidate and five-member delegation of the panel, led by the chairman, in the office of the CPC presidential candidate in Kaduna on 14th September 2011. It was discovered that he himself was a victim of the violence and of the destruction of his property the photographs of which were given to the said delegation.<sup>98</sup>

Considering that the panel is not a Judicial Commission of Inquiry, we avoided going beyond our jurisdiction to indict any individual or group of individuals. However, we presented the critical cases together with the supporting DVDs and relevant documents in a manner that security agencies could follow up to reveal more facts about the cases concerned and take appropriate actions.<sup>99</sup>

The report itself, presented to the government on 10 October 2011, was not released to the public. As to casualties, the 'Lemu Panel gave the number killed during the violence as 938, with most of the killings occurring in northern Nigeria'.<sup>100</sup>

31. In response to the report, President Jonathan, made a number of promises:

And that is why even if your recommendation you did not prescribe punishment but your report is there for other government organs to look into. I am also more interested in the preventive aspect of the recommendation than the punishment aspect. Yes people who commit offences must face the laws of the land but how do we prevent subsequent occurrence is the key thing that is dear to me.<sup>101</sup>

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<sup>98</sup> Lanquart, 'Post-election Violence: Lemu Committee Submits Report; Blames Buhari', *Nairaland*, 11 October 2011; see also Clifford Ndujihe & Daniel Idonor, 'Post-election violence: FG panel report indicts Buhari', *Vanguard*, 11 October 2011, p 1 ('The Presidential Committee on Post-Election Violence in parts of the country, yesterday submitted its report stating that Congress for Progressive Change, CPC, Presidential Candidate, Major General Muhammadu Buhari's provocative remarks played a role in the bloody violence that led to the death of 10 members of the National Youth Service Corps, NYSC, and hundreds of others after last April's presidential polls.');

*ibid* ('The 22-man Panel said that Buhari's pre-election utterances might have been misconstrued by his supporters to engage in the condemnable mayhem that greeted the aftermath of the presidential elections.');

Ndujihe & Idonor, p 2 ('The Sheikh Ahmed Lemu-led Panel, which was inaugurated on May 11 2011, turned-in its report yesterday, stating that though Gen. Buhari was also a victim of the violence, his statement to his supporters that they should guard their votes may have been misconstrued by those who took the law in their hands to perpetrate the heinous crimes leading to wanton destruction of lives and properties.');

PLAC Report, p 31 ('The Panel of Inquiry set up by the government to investigate the causes of the 2011 post-election violence specifically attributed the 2011 violence partly to inflammatory remarks including the ones made by Buhari.');

*Vanguard*, 11 October 2011 ('In its report, the panel noted with sadness that the inflammatory comments made by Buhari prior to the presidential election contributed to the violence.');

*ibid* ('Beyond all these, the presidential panel astounded everyone when it observed that Buhari was also a victim of the post-election violence. That must have baffled many people. In one moment the panel described Buhari as an accessory before and after the violence and yet in another moment the same panel described Buhari as a casualty of the violence. The remark appeared designed to confuse the issues. How could someone who was alleged to have contributed to violence be described as a victim of the same violence? There is no valid evidence to uphold that assertion other than what Buhari told the panel during an interactive session.');

Ndujihe & Idonor, p 2 ('However, the panel claimed that "a long interactive session was held between the CPC presidential candidate and a five-member delegation of the panel, led by the chairman, in the office of General Buhari in Kaduna on September 14, 2011. It was discovered that he (Buhari) was a victim of the violence, the photographs of which were given to the said delegation".')

<sup>99</sup> Lanquart, 'Post-election Violence: Lemu Committee Submits Report; Blames Buhari', *Nairaland*, 11 October 2011.

<sup>100</sup> NSRP Report (citing Federal Government of Nigeria (2011) Report of the Federal Government Investigation Panel on 2011 Election Violence and Civil Disturbances, Abuja, September 2011).

<sup>101</sup> Lanquart, 'Post-election Violence: Lemu Committee Submits Report; Blames Buhari', *Nairaland*, 11 October 2011.

I assure you we will follow your recommendations. You did mention that some of the problems are that when recommendations are made to government, government hardly implement them. They will make speeches, make pronouncements, then the media will carry it then lock them up, though some recommendations may be difficult for implementations.<sup>102</sup>

But we have decided that even in the Jos crisis in fact just this morning I was saying to the Secretary to Government of the Federation, we have set up a committee we are going to look at all the recommendations and we must issue white papers heavens will not fall. Until government has the political will and encourage to do what is right no matter how painful it will be, the culture of impunity will continue and we want to reduce that culture of impunity so we will look at your recommendation, the Federal Executive Council will look at it and come out with a white paper.<sup>103</sup>

At the time of writing, it does not appear that any of these assurances were implemented. Certainly, no criminal investigations with respect to the election violence—let alone prosecutions—have taken place.<sup>104</sup>

32. For his part, General ‘Buhari has denied making inciting utterances, saying that the panel and the Federal Government were executing a pre-determined agenda since the [PDP] and President Goodluck Jonathan had earlier accused the CPC of being responsible for the mayhem even before the panel was raised’.<sup>105</sup>

33. In addition to the secretive and ultimately ineffectual commissions, it was reported that:

Former Head of State General Muhammadu Buhari, who was President Goodluck Jonathan’s main challenger in last April’s election is under investigation by the State Security Service (SSS) over his campaign speeches in the build up to the election, reliable sources told Daily Trust in Abuja yesterday. The sources said the thinking in government is that there is a discernible link between Buhari’s speeches on the hustings and the election violence that trailed the presidential election. Buhari lost the election to Jonathan, but as soon as the results were announced violence flared up in about ten states in the North. Government officials alleged Buhari’s insistence that voters should guard their votes had encouraged people to go on rampage as soon as it was announced that Jonathan had won the election.<sup>106</sup>

At the time of filing, it is not known what, if anything, emerged from the SSS investigation.

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> See, e.g., NSRP Report (‘Unfortunately, aside from the establishment of a special electoral offences tribunal, it is not clear whether these recommendations are being implemented with any determination, or that those responsible for the violence are being prosecuted.’)

<sup>105</sup> Clifford Ndujihe & Daniel Idonor, ‘Post-election violence: FG panel report indicts Buhari’, Vanguard, 11 October 2011, p 1.

<sup>106</sup> Nairaland, 18 October 2011.

## G. The ICC's Initial Assessment of the Post-Election Violence

34. As early as 21 April 2011, the OTP publicly expressed its concern over the post-election violence:

The Office of the Prosecutor is closely following on the situation in Nigeria and is concerned with the outbreak of violence surrounding the National Assembly and Presidential elections of April 2011.

In the context of its on-going preliminary examination activities, the Office will seek to establish whether the recent violence may have been planned and organized and whether crimes falling within the Court's jurisdiction may have been committed.<sup>107</sup>

The OTP had previously opened a broader preliminary examination into the situation in Nigeria; this fact was made public on 18 November 2010.

35. Further to its ongoing preliminary examination, a report was issued on 5 August 2013.<sup>108</sup> The following findings are relevant to the instant communication:

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.*<sup>109</sup>

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.<sup>110</sup>

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.<sup>111</sup>

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

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<sup>107</sup> ICC, Office of the Prosecutor, 'Statement of the Prosecutor of the International Criminal Court, Luis Moreno-Ocampo in relation to Nigeria', 21 April 2011.

<sup>108</sup> Nigeria Article 5 Report.

<sup>109</sup> Nigeria Article 5 Report, para 13 (emphasis added). *N.b.* However, the OTP found that the violence attributable to Boko Haram warranted further investigation: '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.' Nigeria Article 5 Report, para 17.

<sup>110</sup> Nigeria Article 5 Report, para 33.

<sup>111</sup> Nigeria Article 5 Report, para 40.

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.<sup>112</sup>

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: [...] (vi) attack in Kaduna, Kano, and 10 other States (Adamawa, Bauchi, Borno, Gombe, Jigawa, Katsina, Niger, Sokoto, Yobe, and Zamfara) in April 2011.<sup>113</sup>

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'.*<sup>114</sup>

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.<sup>115</sup>

Overall, the available information is insufficient to establish whether the attacks on the civilian population in central and northern states were isolated and/or spontaneous acts of violence, or were committed pursuant to a State or organizational policy.<sup>116</sup>

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.<sup>117</sup>

Available information on identifiable actors or organizations involved in organizing, inciting and/or financing violence targeted against specific groups is thus insufficient to provide a reasonable basis to believe that acts were committed in furtherance of or pursuant to an organizational policy.<sup>118</sup>

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.<sup>119</sup>

Based on these preliminary findings, the OTP concluded that: '[a]t the time of writing, the available information is insufficient to provide a reasonable basis to believe that the

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<sup>112</sup> Nigeria Article 5 Report, para 50 (citing HRW Report).

<sup>113</sup> Nigeria Article 5 Report, para 52.

<sup>114</sup> Nigeria Article 5 Report, para 55 (emphasis added).

<sup>115</sup> Nigeria Article 5 Report, para 56.

<sup>116</sup> Nigeria Article 5 Report, para 61.

<sup>117</sup> Nigeria Article 5 Report, para 62.

<sup>118</sup> Nigeria Article 5 Report, para 65.

<sup>119</sup> Nigeria Article 5 Report, para 72.

alleged crimes were committed pursuant to a State policy to direct attacks against any civilian population'.<sup>120</sup>

36. However, the OTP's determination regarding the 2011 post-election violence was manifestly a provisional one as it clearly left the door open for further inquiry based on new facts: 'The assessment of jurisdictional issues with respect to other [non-Boko Haram] groups in Nigeria *will continue*.'<sup>121</sup>

## H. Recent Developments

37. In April of last year, the CLEEN Foundation officially predicted what many Nigerians unfortunately already took for granted: further violence in the wake of the February 2015 polls.<sup>122</sup> Later in 2014, the International Crisis Group (the 'ICG') made the following assessment:

Nigeria's presidential, parliamentary, and state gubernatorial and assembly elections, scheduled for February 2015, will be more contentious than usual. Tensions within and between the two major political parties, competing claims to the presidency between northern and Niger Delta politicians and along religious lines, the grim radical Islamist Boko Haram insurgency, and increasing communal violence in several northern states, along with inadequate preparations by the electoral commission and apparent bias by security agencies, suggest the country is heading toward a very volatile and vicious electoral contest. If this violent trend continues, and particularly if the vote is close, marred or followed by widespread violence, it would deepen Nigeria's already grave security and governance crises.<sup>123</sup>

Unfortunately, instances of such predicted volatility and viciousness were not long in coming.

38. Threats by General Buhari's supporters against their political opponents were reported as early as December 2014.<sup>124</sup> And on 12 January 2015, campaign-related violence

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<sup>120</sup> Nigeria Article 5 Report, para 76.

<sup>121</sup> ICC, Office of the Prosecutor, 'New OTP Report on On-going Preliminary Examination of the Situation in Nigeria', 6 August 2013 (emphasis added).

<sup>122</sup> See *Premium Times*, 10 April 2014 ('Electoral violence is most likely to occur in 15 Nigerian states during the 2015 general elections, a research by a non-governmental organization has shown. CLEEN Foundation, a non-governmental organization that promotes public safety, security, and access to justice, on Wednesday in Abuja listed 15 states as the most volatile with high security risk during the forthcoming 2015 election. The organization in its report titled 'Third Security Threat Assessment', noted that the security situation in the country could be seen as a reflection of the failure of the Nigerian state to protect its citizens.')

<sup>123</sup> International Crisis Group, 'Nigeria's Dangerous 2015 Elections: Limiting the Violence', Africa Report No 220, 21 November 2014.

<sup>124</sup> See, e.g., Mohammed Lere, 'I've Received Threats for Criticizing Buhari – Sheik Gumi', *Premium Times*, 23 December 2014.

erupted in Jos, the capital of Plateau State; those seen burning PDP vehicles were reported to have been simultaneously chanting 'Sai Buhari' and 'Baba Buhari oyoyo'.<sup>125</sup> As a PDP official described the situation: 'We have observed a dangerous trend of politically motivated violence unleashed on innocent Nigerians by supporters of those who have shown desperation to assume political power at all costs.'<sup>126</sup> For his part, General Buhari again attempted to distance himself from the attack: 'I have received news of violence in Jos today. I condemn this violence in its entirety. I reject any supporter who resorts to violence.'<sup>127</sup>

39. Most recently, US Secretary of State John Kerry flew to Nigeria on 25 January 2015 to meet with President Jonathan, General Buhari, and INEC Chairman Attahiru Jega in an attempt to preempt further clashes at February's polls.<sup>128</sup> Despite statements by both candidates in opposition to additional election-related violence,<sup>129</sup> the United States is treading cautiously with respect to its historical ally in the region. Speaking in response to the candidates' pledges, a US State Department official noted: 'That said, there is a propensity for such violence to erupt, and we want to get ahead of it.'<sup>130</sup>

### III. PRELIMINARY EXAMINATIONS

40. The concept of a 'preliminary examination' is found in Article 15 of the Statute.<sup>131</sup> It is the procedural mechanism by which the OTP may determine whether there is a

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<sup>125</sup> 'Jos Violence: Call Your Supporters to Order, Presidency Tells Buhari', *Premium Times*, 12 January 2015.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> See Michael Gordon, 'Kerry Meets With Nigerian Leaders to Encourage Peaceful Election', *Int'l New York Times*, 25 January 2015 ('Concerned that Nigeria could face post-election turmoil, Secretary of State John Kerry on Sunday urged President Goodluck Jonathan and his principal political rival to respect the results of next month's presidential vote and to discourage their supporters from carrying out violent protests. "It is imperative that these elections happen on time, as scheduled, and that they are an improvement over past elections," Mr Kerry said in a news conference at the end of his visit here. [...] If political violence erupts, it could have sectarian overtones, because much of Mr. Buhari's support comes from the predominantly Muslim north, while Mr Jonathan has support in the mainly Christian south.')

<sup>129</sup> These statements were the result of, among other things, encouragement from former UN Secretary-General Kofi Annan. See Michael Gordon, 'Kerry Meets With Nigerian Leaders to Encourage Peaceful Election', *Int'l New York Times*, 25 January 2015.

<sup>130</sup> Michael Gordon, 'Kerry Meets With Nigerian Leaders to Encourage Peaceful Election', *Int'l New York Times*, 25 January 2015.

<sup>131</sup> See Statute, Article 15(1) ('The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.');

Article 15(2) ('The Prosecutor shall analyze the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the

reasonable basis to proceed with an investigation, subject to authorization (at a later stage) by the ICC's Pre-Trial Chamber (the 'PTC'). One of the means of triggering a preliminary examination is the filing of a so-called 'communication' to the OTP by an individual, group, state, or organization.<sup>132</sup>

41. The legal framework of a preliminary examination is governed by Article 53(1)(a)–(c) of the Statute,<sup>133</sup> which requires the OTP to consider: (i) jurisdiction (temporal, material, and either territorial or personal); (ii) admissibility (complementarity and gravity); and (iii) the interests of justice.<sup>134</sup> In so doing, the OTP employs a four-phase filtering process.<sup>135</sup>

Depending on the facts and circumstances of each situation, the Office may either decide: to decline to initiate an investigation where the information manifestly fails to satisfy the factors set out in article 53(1)(a)–(c); to continue to assess relevant national proceedings; to continue to collect information in order to establish sufficient factual and legal basis to render a determination; or to initiate the investigation, subject to judicial review as appropriate.<sup>136</sup>

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Court.); Article 15(3) ('If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. [...]'); and Article 15(6) ('If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.')

<sup>132</sup> See OTP Website.

<sup>133</sup> Article 53(1) provides as follows: 'The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether: (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; (b) The case is or would be admissible under article 17; and (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice. If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.'

<sup>134</sup> See Case No ICC-01/09, 'Decision Pursuant to Article 15 the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya', Public Document, Pre-Trial Chamber II, 31 March 2010 (hereinafter, the 'Kenya PTC Decision'), para 20 ('In reaching this conclusion, rule 48 [...] dictates that the Prosecutor "shall consider the factors set out in article 53, paragraph 1(a) to (c)". On the basis of a finding by the Prosecutor that there is "a reasonable basis to proceed with an investigation", the Prosecutor "shall submit" to the Chamber a request for authorization of the investigation.')

<sup>135</sup> See OTP Website ('In phase 1, the Office conducts an initial assessment of all information on alleged crimes received under article 15 ("article 15 communications"), to filter out information on crimes that are outside the jurisdiction of the Court. In phase 2, it analyzes all information on alleged crimes received or collected to determine whether the preconditions to the exercise of jurisdiction under article 12 are satisfied and whether there is a reasonable basis to believe that the alleged crimes fall under the subject matter jurisdiction of the Court. In phase 3, it analyzes admissibility in terms of complementarity and gravity. In phase 4, having concluded from its preliminary examination that the case is admissible, it will examine the interests of justice. A recommendation that an investigation would not serve the interests of justice will be made only under highly exceptional circumstances.')

<sup>136</sup> See OTP Website.

A reasoned response is to be issued at the conclusion of the process.<sup>137</sup>

42. According to the OTP section of the ICC website:

The Statute does not specify what the communication should contain. The Office analyses all communications received and the extent of the analysis is affected by the detail and substantive nature of the information available. If the available information does not provide sufficient guidance for an analysis that could lead to a determination that there is a reasonable basis to proceed, the analysis is concluded and the sender informed. *This decision is provisional and may be revised in the event that new information is forthcoming.*<sup>138</sup>

As part of its review, the OTP ‘may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, and other reliable sources that are deemed appropriate. The Office may also receive oral testimony at the seat of the Court’.<sup>139</sup>

43. As to the test applicable at this preliminary stage of the proceedings—namely: ‘a reasonable basis to believe’—this ‘is the lowest evidentiary standard provided for in the Statute’.<sup>140</sup>

This is logical given that the nature of this early stage of the proceedings is confined to a preliminary examination. Thus, the information available to the Prosecutor is neither expected to be ‘comprehensive’ nor ‘conclusive’, if compared to evidence gathered during the investigation.<sup>141</sup>

Therefore, an ICC PTC, ‘in evaluating the available information provided by the Prosecutor, [...] must be satisfied that there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court “has been or is being committed”’.<sup>142</sup>

44. Accordingly, given the fact that permission to undertake an *initial investigation* shall be sought by the Prosecutor on satisfaction of the ‘lowest evidentiary standard provided for in the Statute’, it follows that the test for initiating a *preliminary examination*—the

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<sup>137</sup> See OTP Website (‘In order to promote transparency of the preliminary examination process the Office issues regular reports on its activities and provides reasoned responses for its decisions to either proceed or not proceed with investigations.’)

<sup>138</sup> OTP Website (emphasis added).

<sup>139</sup> See OTP Website.

<sup>140</sup> Kenya PTC Decision, para 27.

<sup>141</sup> Kenya PTC Decision, para 27.

<sup>142</sup> Kenya PTC Decision, para 35.

antecedent to an initial investigation and the relief sought by a communication to the OTP—is lower still.

#### IV. CRIMES AGAINST HUMANITY

##### A. Definition and Chapeau Elements

45. According to Article 7(1) of the Rome Statute, a crime against humanity is defined as ‘any of the [enumerated underlying] acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack [...]’.<sup>143</sup> An ‘attack directed against any civilian population’ is further defined by the Statute as ‘a course of conduct involving the multiple commission of acts referred to in [Article 7] paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’.<sup>144</sup> As developed by the relevant jurisprudence,<sup>145</sup> this definition encompasses five so-called chapeau (or contextual) elements: (i) an attack directed 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(s) and the attack; and (v) the accused’s knowledge of the attack.

##### *1. Attack Directed Against Any Civilian Population*

46. An ‘attack’ is in no way restricted to a military attack; rather, the term refers simply to ‘a campaign or operation carried out against the civilian population’,<sup>146</sup> either in time of

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<sup>143</sup> Article 7(1) of the Rome Statute sets out the following underlying acts: ‘(a) Murder, (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.’ *N.b.* The underlying crimes relevant to the instant submission will be discussed in greater detail below.

<sup>144</sup> Rome Statute, Article 7(2)(a).

<sup>145</sup> See Nigeria Article 5 Report, para 35 (citing ICC-02/11-14-Corr, Situation in the Republic of Côte D’Ivoire, ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Côte d’Ivoire’, 3 October 2011, para 14, para 29).

<sup>146</sup> ICC, Pre-Trial Chamber II, ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya’, 31 March 2010 (hereinafter, the ‘Kenya Article 15 Decision’), para 80.

peace or time of armed conflict. '[C]ommission of the acts referred to in Article 7(I) of the Statute constitute the attack itself and, beside the commission of the acts, no additional requirements for the existence of an attack should be proven.'<sup>147</sup> The notion of 'civilian population' does not signify the entire population of the affected (targeted) state; instead, it 'encompasses any civilian group linked by shared characteristics or common features',<sup>148</sup> the emphasis being on the collective nature of the crimes as opposed to the isolated targeting of individuals.<sup>149</sup>

47. The OTP has already determined that an attack was directed against the civilian population of northern Nigeria in the wake of the presidential elections of 2011.<sup>150</sup> Additionally, and particularly instructive to this filing, the ICC's PTC II has made similar findings with respect to the 2007–2008 post-election violence in Kenya (the 'Kenya Case'), where it was determined that: (i) 'the violence comprised a significant number of incidents [...] relat[ing] to three general categories of attacks',<sup>151</sup> namely: (i) 'attacks initiated by groups associated with [one political party] and directed against *perceived* [...] supporters' of another party;<sup>152</sup> (ii) 'retaliatory attacks conducted by members of the groups targeted by the initial attacks and directed against members of those groups deemed responsible for the initial violence';<sup>153</sup> and (iii) 'a large number of violent acts committed by the police'.<sup>154</sup>
48. In the Kenya Case, the OTP had claimed that 'members of the organized groups associated with members or supporters of [political parties] deliberately targeted civilians who were perceived to be sympathetic to the rival group and that the acts of

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<sup>147</sup> ICC, Pre-Trial Chamber II, Situation in the Central African Republic, Prosecutor v Bemba, 'Decision Pursuant to Article 61(7)(a) and (b) of the ICC Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo', 15 June 2009, para 75.

<sup>148</sup> Guénael Métraux, 'International Crimes and the Ad Hoc Tribunals', 2005, p 166.

<sup>149</sup> See ICTY, Trial Chamber II, *Prosecutor v Dusko Tadić*, 'Judgment', 7 May 1997, para 644 ('The requirement in Article 5 of the Statute that the prohibited acts must be directed against a civilian "population" does not mean that the entire population of a given State or territory must be victimized by these acts in order for the acts to constitute a crime against humanity. Instead the "population" element is intended to imply crimes of a collective nature and thus exclude single or isolated acts, which, although possibly constituting war crimes or crimes against national penal legislation, do not rise to the level of crimes against humanity.')

<sup>150</sup> See para 35, *supra*.

<sup>151</sup> Kenya Article 15 Decision, para 103.

<sup>152</sup> Kenya Article 15 Decision, para 104 (emphasis added).

<sup>153</sup> Kenya Article 15 Decision, para 105.

<sup>154</sup> Kenya Article 15 Decision, para 105.

violence were “based on ethnicity and political affiliation”.<sup>155</sup> The PTC accepted that ‘the civilian population was the primary target of the attacks’,<sup>156</sup> noting in particular that ‘the attackers targeted business premises and residential areas of various villages burnt down entire houses, as well as places where people sought refuge’<sup>157</sup> and that ‘attacks were directed against members of specifically identified communities’, which ‘were targeted on behalf of their ethnicity which was, in turn, associated with the support of one of the two major political parties’.<sup>158</sup>

49. Useful analogies may also be drawn to the findings of the ICC’s PTC I regarding post-election violence in Abidjan, Ivory Coast from late-2010 to early-2011 (the ‘Ivory-Coast Case’), where it was determined that ‘a series of multiple acts of violence (including killings, attempted killings, rapes, severe injuries, and arbitrary arrests) was carried out by the pro-[incumbent] forces and directed against civilians perceived to be [opposition] supporters’.<sup>159</sup> With respect to the existence of an attack, the PTC held that:

The nature of [the] acts [committed], the population that was targeted, the identity of the perpetrators, and the chronology of the relevant events establish[ed] that those multiple acts, viewed collectively, express[ed] a ‘course of conduct’ within the meaning of article 7(2)(a) of the Statute, as a defining element of the ‘attack against the civilian population’.<sup>160</sup>

Such acts were therefore, ‘to be [...] considered “as part of” the relevant course of conduct that targeted perceived [opposition] supporters, within the meaning of article 7(1) of the Statute’.<sup>161</sup>

50. Accordingly, given the OTP’s previous findings as well as the many similarities between the facts of the Kenya and Ivory-Coast Cases and those of the present one, the April 2011 violence described above was clearly an attack directed against the civilian population of the twelve identified states of northern Nigeria. In this respect, it is

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<sup>155</sup> Kenya Article 15 Decision, para 107.

<sup>156</sup> Kenya Article 15 Decision, para 109.

<sup>157</sup> Kenya Article 15 Decision, para 109.

<sup>158</sup> Kenya Article 15 Decision, para 110.

<sup>159</sup> ICC, Pre-Trial Chamber I, Situation in the Republic of Cote d’Ivoire, *Prosecutor v Laurent Gbagbo*, ‘Decision on the Confirmation of Charges Against Laurent Gbagbo’, 12 June 2014 (hereinafter, the ‘Ivory-Coast Article 15 Decision’), para 211.

<sup>160</sup> Ivory-Coast Article 15 Decision, para 212.

<sup>161</sup> Ivory-Coast Article 15 Decision, para 212.

submitted that the 2011 attack on Nigeria's civilian population is of no less gravity than the episodes of election violence in Ivory Coast and Kenya.

## 2. State or Organizational Policy

51. The second chapeau element requires that the attack was conducted pursuant to or in furtherance of a state or organizational policy. Such 'policy need not be formalized',<sup>162</sup> and a showing of an established government program is not required. The emphasis here is planned, directed, or organized violence as opposed to violence of a spontaneous nature.<sup>163</sup> The required showing is an attack conducted 'in furtherance of a common policy using public or private resources'.<sup>164</sup> The existence of such a policy may be inferred from evidence of repeated perpetration of the same acts or collective mobilizations organized by the state or organization in question<sup>165</sup> and may be deduced from evidence of, among other things, the active promotion or encouragement of the attack.<sup>166</sup>
52. As to this element, the OTP has previously concluded that, based on the evidence available as of August 2013, the existence of a state or organizational policy behind Nigeria's post-election violence was not clear. In this regard, the office noted that the 'main constraint' was the lack of '[a]vailable information on identifiable actors or organizations involved in organizing, inciting and/or financing violence targeted against specific groups'.<sup>167</sup> However, it does not appear that the OTP was apprised of the information contained herein regarding the specific acts and conduct of General Buhari and the supporters of his CPC party. And, as the OTP has already concluded with respect

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<sup>162</sup> ICC, Pre-Trial Chamber II, Situation in The Central African Republic, *Prosecutor v Bemba*, 'Decision Pursuant to Art 61(7)(a) and (b) of the ICC Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo', (Case No ICC-01/05-01/08), 15 June 2009, para 81.

<sup>163</sup> ICC, Pre-Trial Chamber II, Situation in The Central African Republic, *Prosecutor v Bemba*, 'Decision Pursuant to Art 61(7)(a) and (b) of the ICC Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo', 15 June 2009, para 81; ICTY, Trial Chamber, *Prosecutor v Tadic*, 'Judgment', 7 May 1997, para 653.

<sup>164</sup> ICC, Pre-Trial Chamber I, Situation in The Democratic Republic of Congo, *Prosecutor v Katanga*, 'Decision on the Confirmation of Charges', 30 September 2008, para 396.

<sup>165</sup> ICC, Trial Chamber II, Situation in The Democratic Republic of Congo, *Prosecutor v Katanga*, 'Judgment', 7 March 2014, para 1109 ('L'existence d'une politique d'un État ou d'une organisation pourra donc, dans la plupart des cas, être déduite, notamment, du constat de la répétition d'actes réalisés selon la même logique, de l'existence d'activités préparatoires ou encore de mobilisations collectives orchestrées et coordonnées par cet État ou cette organisation.') (available in French only).

<sup>166</sup> *Ibid*, para 1108.

<sup>167</sup> Nigeria Article 5 Report, para 65.

to these incidents, the mere existence of such a large-scale attack ‘indicate[s] a certain level of organization, planning, and coordination between attackers’ and therefore ‘could be a relevant indicative factor in establishing such a policy’.<sup>168</sup> In terms of organization, witnesses to the Nigerian violence noted that certain attackers had their faces painted black, chanted the CPC slogan of ‘change’ as they carried out crimes, and told perceived opponents: ‘Today you will face the music.’<sup>169</sup>

53. Based on the PTC’s analysis in the Kenya Case, the new information presented herein suggests the likely existence of such a policy. Notably, in that case, the Chamber found that ‘prior to the elections, some politicians employed inflammatory rhetoric to articulate their aim [...] [; s]uch statements were publicly disseminated through leaflets or the media[; and] [...] warnings [were] given to people in anticipation of the violence’;<sup>170</sup> additionally, the PTC found that retaliatory attacks were directed ‘against perceived rival communities’.<sup>171</sup> All of these factors were equally in evidence in the 2011 post-election violence in Nigeria.

54. In the Ivory-Coast Case, with regard to the existence of a policy, a factor relevant to PTC I’s determination that violence was contemplated by President Gbagbo prior to the election was a speech the Chamber characterized as ‘an early expression of an intention to use force if necessary’.<sup>172</sup> Despite attempts to characterize that speech in a light favorable to Gbagbo, the PTC was swayed by, among other things, specific references

<sup>168</sup> Nigeria Article 5 Report, para 56.

<sup>169</sup> HRW Report, p 9.

<sup>170</sup> Kenya Article 15 Decision, para 120.

<sup>171</sup> Kenya Article 15 Decision, para 127; *see also ibid* para 117 (Despite some episodes of spontaneous violence and ‘opportunistic crime which accompanied the general situation of lawlessness’, the PTC determined ‘that the violence was not a mere accumulation of spontaneous or isolated acts. Rather, a number of the attacks were planned, directed or organized by various groups including local leaders, businessmen, and politicians associated with the two leading political parties, as well as by members of the police force’); para 119 (‘It is alleged that during these meetings, the youth were given instructions, supplied with weapons and distributed money. Moreover, it is reported that training and oath-taking in camps or at private residences took place in preparation for the attacks. In some instances, such meetings were directly followed by violent attacks against specific communities.’); para 121 (‘the organized nature of some of the attacks may further be inferred from the strategy and method employed in the attack [...] the attacks were well coordinated and organized [...] carried out by large groups of raiders which arrived from different directions outside of the scene of the attack, carried out simultaneous attacks [...] showed visible signs of internal cohesion’); para 124 (‘[s]ome of the retaliatory attacks showed similar features pointing to forms of organization and planning’); para 125 (‘accounts of politicians employing hate speech [...] as well as ethnic propaganda disseminated by religious leaders and local language media [and] [...] prior to the violence, verbal warnings and leaflets were circulated among the non-Kikuyus’); para 126 (Attacks were ‘well organized and regimented [...] youths were paid for participating in the violence [...] politicians financed the violence or supplied weapons, vehicles, and petrol’.)

<sup>172</sup> Ivory-Coast Article 15 Decision, para 218.

to 'combat' as well as another reference, 'superficially cloaked in metaphor, to [Gbagbo's] own readiness to use force'.<sup>173</sup> Similarly, in the instant case, General Buhari has attempted to minimize the incendiary nature of his remarks by hiding behind metaphors.<sup>174</sup> However, upon closer scrutiny—especially given the context in which the statements were made—General Buhari's comments are indicative of a policy to claim victory in the 2011 elections at any cost, including civilian casualties.

55. The organizational policy underlying the attack, in which General Buhari played a pivotal role, fulfills the requirement of having sufficient capacity to direct crimes against humanity. As the PTC explained in the Kenya Case:

With regard to the term 'organizational', the Chamber notes that the Statute is unclear as to the criteria pursuant to which a group may qualify as an 'organization' for the purposes of article 7(2)(a) of the Statute. Whereas some have argued that only State-like organizations may qualify, the Chamber opines that the formal nature of a group and the level of its organization should not be the defining criterion. Instead, as others have convincingly put forward, a distinction should be drawn on *whether a group has the capability to perform acts which infringe on basic human values* [...].<sup>175</sup>

Clearly, the group responsible for Nigeria's 2011 election violence possessed such capability.

56. In his dissenting opinion in the Kenya Case, Judge Kaul argued that only 'state-like' organizations could carry out the requisite 'organizational policy' with respect to crimes against humanity.<sup>176</sup> There is no basis in law to adopt such a stringent test. Yet even if one were to apply it to the violence instigated by General Buhari in 2011, Judge Kaul's test would be satisfied. In any strongly and hotly contested presidential election, serious candidates will have the support of well-organized political parties, campaign staff, support groups, youth movements, and other means of assistance. Not only is such a high degree of organization required to contest a presidential election, it is also the springboard for assuming office and exercising state power should the contesting candidate prevail. On the basis of such particular proximity to state power, it should be concluded that the 2011 election violence amounts to an attack on the Nigerian population pursuant to an organizational policy.

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<sup>173</sup> Ivory-Coast Article 15 Decision, para 112.

<sup>174</sup> See para 27, *supra*.

<sup>175</sup> Kenya Article 15 Decision, para 90 (emphasis added).

<sup>176</sup> See Kenya Article 15 Decision, Dissenting Opinion of Judge Hans-Peter Kaul, paras 44 *et seq.*

57. Accordingly, on the evidence presented, there is reason to believe that the violence described above has been committed pursuant to an organizational policy of the CPC and its leader General Buhari.

### *3. Widespread or Systematic Nature of the Attack*

58. The attack against the civilian population must be either widespread or systematic. The widespread nature of an attack may result from a large number of victims<sup>177</sup> or from the attack's broad geographical extent. A single attack in one area may be widespread if the number of victims is sufficiently high.<sup>178</sup> Systematic, the disjunctive alternative, is a qualitative element. It refers to the organized nature of the attacks and the recurrence of similar criminal conduct over a sustained period.<sup>179</sup> The widespread or systematic analysis applies only as a contextual element; it need not be undertaken with respect to each underlying crime.<sup>180</sup>
59. The OTP has already determined that the post-election violence in the twelve identified states was 'widespread in nature'.<sup>181</sup> And, although it is unnecessary to show that such violence was also systematic, again the OTP has noted that 'circumstances suggest that the attack may have been prepared and premeditated, and could therefore be considered "systematic"'.<sup>182</sup> And, again, PTC II's analysis in the Kenya Case is instructive. In that case, the OTP claimed and the PTC accepted, that 'the post-election violence were not isolated or random acts; they took place on a large scale and targeted a large number of civilian victims';<sup>183</sup> 'a large number of civilians were victimized in the course of the attacks'.<sup>184</sup> In the Kenya Case, over the course of two months, '1,133 to 1,220 people were killed, about 3,561 people injured, and up to approximately 350,000 persons displaced [...] [and] an increased number of rapes and other forms of sexual violence

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<sup>177</sup> ICC, Pre-Trial Chamber III, Situation in The Central African Republic, *Prosecutor v Bemba*, 'Decision on the Prosecution's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo', 10 June 2008, para 33.

<sup>178</sup> ICC, Pre-Trial Chamber I, Situation in The Democratic Republic of Congo, *Prosecutor v Kantanga*, 'Decision on the Confirmation of Charges', 30 September 2008, para 395.

<sup>179</sup> ICTY, Trial Chamber, *Prosecutor v Dusko Tadic*, 'Judgment', 7 May 1997, para 648; ICTY, Trial Chamber, *Prosecutor v Kunarac et al*, 'Judgment', 22 February 2001, para 429.

<sup>180</sup> ICTY, Appeals Chamber, *Prosecutor v Blaškic*, 'Judgment', 29 July 2004, para 101; ICTY, Appeals Chamber, *Prosecutor v Kunarac et al*, 'Judgment', 12 June 2002, paras 93–96.

<sup>181</sup> See para 35, *supra*.

<sup>182</sup> *Ibid.*

<sup>183</sup> Kenya Article 15 Decision, para 129.

<sup>184</sup> Kenya Article 15 Decision, para 130.

reportedly occurred during this period'.<sup>185</sup> While the corresponding number of deaths and displacements in Nigeria are less in absolute terms, the fact that over 800 people were killed and more than 65,000 uprooted from their homes indicates a level of systematic behavior that cannot be ignored.

60. In the Ivory-Coast case, PTC I considered the attack in question to have been widespread based on the 'large number of acts', the 'significant number of individuals' targeted (at least 160 killed, 38 raped, and 118 subjected to other inhumane acts), the extended time period (four months), and the geographic scope of the violence (the entire city of Abidjan).<sup>186</sup> Additionally, the Chamber characterized the attack as systematic, noting in particular, among other things, 'a clear pattern of violence directed at [opposition] demonstrators or activists, and more generally against areas whose inhabitants were perceived to be [opposition] supporters'.<sup>187</sup> The post-election turmoil in northern Nigeria followed a strikingly similar 'pattern of violence', which ultimately led to far more casualties and covered a much broader geographic area. Moreover, the election violence in Nigeria resulted in a significantly higher number of fatalities.
61. Accordingly, on the evidence presented, there is sufficient reason to believe that the 2011 post-election violence in northern Nigeria was *both* widespread and systematic in nature.

#### ***4. Nexus Between Individual Acts and Attack***

62. At this extremely preliminary stage of the proceedings, it is unnecessary to demonstrate a nexus between the individual criminal acts and the larger attack:

The Chamber points out that the issue of whether an act was committed as part of a widespread or systematic attack needs to be analyzed on a case-by-case basis with regard to each particular act. At the current stage of the proceedings, the Chamber merely considers the situation as a whole without focusing beyond what is necessary for the purpose of the present decision on specific criminal acts.<sup>188</sup>

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<sup>185</sup> Kenya Article 15 Decision, para 131.

<sup>186</sup> Ivory-Coast Article 15 Decision, para 224.

<sup>187</sup> Ivory-Coast Article 15 Decision, para 225.

<sup>188</sup> Kenya Article 15 Decision, para 135.

Nevertheless, it is worth noting that in the Kenya Case, it was found that ‘the nature, aims, and consequences of many of the individual acts recall either the characteristics of the initial attacks, the retaliatory attacks, or the attacks emanating from the police’.<sup>189</sup>

This was deemed sufficient to establish the necessary connection. In the instant case, it cannot be denied that the ‘nature, aims, and consequences’ of the various individual acts described above bear a similar relationship to the characteristics of the larger attack.

63. Additionally, in the Ivory-Coast case, the nexus requirement was satisfied where the four distinct incidents in question shared ‘common features (in terms of their characteristics, nature, aims, targets, and alleged perpetrators, as well as times and locations) with the other acts forming part of the attack’.<sup>190</sup> It is clear in the case of Nigeria’s 2011 post-election violence—even at this very preliminary juncture—that many, if not all, of the documented incidents that took place throughout the northern part of the country shared distinctive ‘common features’.
64. Accordingly, for purposes of this filing, there is sufficient reason to believe that a nexus exists between the underlying criminal acts described herein and the larger attack against the civilian population of northern Nigeria.

### ***5. Knowledge of the Attack***

65. According to PTC II of the ICC, evidence of *mens rea* is not required for the purpose of opening an investigation under Article 15 of the Rome Statute:

In light of the nature of the current stage of the proceedings, bearing in mind that there is presently no suspect before the Court, the Chamber considers that the last requirement cannot be adequately addressed at this stage, as knowledge is an aspect of the mental

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<sup>189</sup> Kenya Article 15 Decision, para 135; *see also ibid*, para 136 (‘With regard to the initial attacks, the Chamber notes, for instance, that in different locations within the Rift Valley large groups of youth attacked Kikuyu and Kisii civilians and burnt down their houses with the alleged aim to expel the members of these groups. The consequence of such attacks was the massive displacement of members of the targeted groups from their place of residence.’); para 137 (‘With regard to the retaliatory attacks, in many locations, the attacks were carried out by members of the Mungiki gang and groups of youths who attacked members of the Kalenjin and Luo community with machetes and other weapons and forcibly circumcised Luo men. At the various scenes of such attacks, the consequence of the violence was the massive displacement of the targeted communities from the respective areas.’); and para 138 (‘In as far as the attacks emanating from the police are concerned, there are accounts of excessive use of force which left many people dead or injured.’)

<sup>190</sup> Ivory-Coast Article 15 Decision, para 212.

element under article 30(3) of the Statute. Therefore, the Chamber's analysis will be limited to the first four enumerated requirements.<sup>191</sup>

However, for the sake of completeness, it bears noting that once a potential perpetrator is identified by the Court, it must eventually be established that he had *both* knowledge of the attack in question as well as the intention to further that attack by way of his conduct.<sup>192</sup> It is not required, however, 'that the [alleged] perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the state or organization'.<sup>193</sup>

## B. Underlying Crimes

66. The underlying crimes alleged herein must be examined 'in light of the nature of the current stage of the proceedings, bearing in mind that there is presently no suspect before the [Court]'.<sup>194</sup> Accordingly, it will not be necessary at this stage 'to assess the *mens rea* in relation to the specific crimes' discussed below.<sup>195</sup> And the *actus reus* elements will be evaluated in accordance with the approach described above regarding preliminary examinations.

### 1. Murder – Article 7(1)(a)

67. The elements of 'murder' as a crime against humanity are the following: (i) the perpetrator killed one or more persons; (ii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (iii) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.<sup>196</sup>

68. In both the Kenya and Ivory-Coast Cases, which bear several striking factual similarities to the instant case, distinct ICC PTCs found that the reported post-election

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<sup>191</sup> Kenya Article 15 Decision, para 79.

<sup>192</sup> See ICC Elements of Crimes, Introduction, para 2.

<sup>193</sup> *Ibid.*

<sup>194</sup> Kenya PTC Decision, para 73.

<sup>195</sup> Kenya PTC Decision, para 73.

<sup>196</sup> See ICC Elements of Crimes, p 5. *N.b.* 'The term "killed" is interchangeable with the term "caused death".'  
*Ibid.*

deaths in those two countries amounted to murder under the Statute.<sup>197</sup> The number of individuals killed was approximately 1200 in the Kenya Case and at least 160 in the Ivory Coast Case.

69. As set out above, it is well documented that more than 800 people lost their lives in Nigeria's post-election violence of 2011, many of them brutally with crude weaponry (machetes, sticks, and clubs); others were gang-raped and burned to death.<sup>198</sup> The OTP has already acknowledged as much.<sup>199</sup> Illustrative of such brutality are the murders of the relatives of the two unnamed Petitioners, one of whom was burned to death and the other hacked to death with a machete.<sup>200</sup> Accordingly, for purposes of this filing, there is sufficient reason to believe that the underlying crime against humanity of 'murder' took place in northern Nigeria from 16–18 April 2011.

## **2. Forcible Transfer – Article 7(1)(d)**

70. The elements of 'deportation or forcible transfer of population' as a crime against humanity are the following: (i) the perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts; (ii) such person or persons were lawfully present in the area from which they were so deported or transferred; (iii) the perpetrator was aware of the factual circumstances that established the lawfulness of such presence; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>201</sup>

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<sup>197</sup> See Kenya Article 15 Decision, paras 141 *et seq*; Ivory Coast Article 15 Decision, paras 193–194, 271 ('Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces killed at least 160 persons in [...] four incidents [...].')

<sup>198</sup> See paras 16–22, *supra*.

<sup>199</sup> See para 35, *supra*.

<sup>200</sup> See para 23, *supra*.

<sup>201</sup> See ICC Elements of Crimes, pp 6–7. *N.b.* 'The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.' *Ibid.* "'Deported or forcibly transferred" is interchangeable with "forcibly displaced".' *Ibid.*

71. In the Kenya Case, the PTC found that the massive population displacements were a consequence of the post-election violence and therefore amounted to forcible transfers under the Statute.<sup>202</sup>
72. As set out above, it is well documented that more than 65,000 people were displaced in the wake of the post-election violence in Nigeria.<sup>203</sup> These individuals—residents of the twelve identified states—were lawfully present in their home areas at the time of the uprising. Based on the facts presented, it is self-evident that there were no conceivable grounds under international law for their displacement, which was purely the result of the prevailing mayhem. Accordingly, for purposes of this filing, there is sufficient reason to believe that the crime against humanity of ‘forcible transfer’ took place in northern Nigeria from 16–18 April 2011.

### **3. Torture – Article 7(1)(f)**

73. The elements of ‘torture’ as a crime against humanity are the following: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) such person or persons were in the custody or under the control of the perpetrator; (iii) such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>204</sup>
74. Based on the available information, it appears that certain individuals were tortured during the post-election violence in Nigeria. For example, fifty youth corpers were locked into a building that was then set ablaze.<sup>205</sup> While they thankfully managed to escape the inferno, these individuals most certainly suffered severe physical and/or mental pain during their ordeal. They were obviously ‘in the custody or under the control of’ their tormentors, and their treatment was in no way related to ‘lawful

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<sup>202</sup> See Kenya PTC Decision, paras 156 *et seq.*

<sup>203</sup> See paras 16–22, *supra*.

<sup>204</sup> See ICC Elements of Crimes, p 7. *N.b.* ‘It is understood that no specific purpose need be proved for this crime.’ *Ibid.*

<sup>205</sup> See para 21(a), *supra*.

sanctions'. Accordingly, for purposes of this filing, there is sufficient reason to believe that the crime against humanity of 'torture' took place in northern Nigeria from 16–18 April 2011.

#### 4. Rape – Article 7(1)(g)

75. The elements of 'rape' as a crime against humanity are the following: (i) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; (ii) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent; (iii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (iv) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>206</sup>
76. In both the Kenya and Ivory-Coast Cases, distinct ICC PTCs found that the numerous incidents of sexual violence which took place as part of the post-election violence in those two countries amounted to rape under the Statute.<sup>207</sup>
77. Based on the available information, it appears that certain individuals were raped during the post-election violence in Nigeria. For example, two female youth corpers were raped in Giade, Bauchi State on 17 April 2011 and then hacked to death with machetes.<sup>208</sup> Another youth corper volunteering in Giade, Agnes Anyanwu, was gang-raped to death; chillingly, at the time of her brutal rape and murder, Ms Anyanwu was

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<sup>206</sup> See ICC Elements of Crimes, p 8. *N.b.* "The concept of "invasion" is intended to be broad enough to be gender-neutral." "It is understood that a person may be incapable of giving genuine consent if affected by natural, induced, or age-related incapacity." *Ibid.*

<sup>207</sup> See Kenya Article 15 Decision, paras 151 *et seq*; Ivory-Coast Article 15 Decision, 195–196, 272 ('Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces raped at least 38 women and girls in [...] two incidents [...].')

<sup>208</sup> See para 20, *supra*.

pregnant.<sup>209</sup> Accordingly, for purposes of this filing, there is sufficient reason to believe that the crime against humanity of 'rape' took place in northern Nigeria from 16–18 April 2011.

### 5. *Other Inhumane Acts – Article 7(1)(k)*

78. The elements of 'other inhumane acts' as a crime against humanity are the following: (i) the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; (ii) such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute; (iii) the perpetrator was aware of the factual circumstances that established the character of the act; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>210</sup> This category is conceived as a residual one for crimes that are not necessarily specified in the Statute but nevertheless are of comparable seriousness.<sup>211</sup>
79. Among other offences, the category has been used to describe acts of sexual violence,<sup>212</sup> acts of a non-sexual nature amounting to an affront to human dignity,<sup>213</sup> the destruction of property,<sup>214</sup> and forcible transfer.<sup>215</sup> In the context of the latter, the deprivation of food, water, medical assistance, and sanitary conditions has been held to constitute an attack on human dignity capable of amounting to other inhumane acts.<sup>216</sup>
80. In the Kenya Case, ICC PTC II found that injuries and brutal conduct sustained in the post-election violence that fell short of murder and rape nevertheless amounted to other

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<sup>209</sup> See Annex II, *infra*.

<sup>210</sup> See ICC Elements of Crimes, p 12. *N.b.* 'It is understood that "character" refers to the nature and gravity of the act.' *Ibid*.

<sup>211</sup> See ICTY, *Prosecutor v Milomir Stakic*, IT-97-24-A, 22 March 2006, paras 315–16; ICTY, *Prosecutor v Vasiljevic*, IT-98-32-T, 29 November 2002, para 234; ICTY, *Prosecutor v Kupreskic et al*, IT-95-16-T, 14 January 2000, para 563; ICTY, Trial Chamber, *Prosecutor v Tihomir Blaskic*, IT-95-14-T, 3 March 2000, para 237; ICTY, Trial Chamber, *Prosecutor v Dario Kordic & Mario Cerkez*, IT-95-14/2-T, 26 February 2001, para 269.

<sup>212</sup> ICTR, *Prosecutor v Jean-Paul Akayesu*, ICTR-96-4-T, 2 September 1998, para 688.

<sup>213</sup> SCSL, *Prosecutor v Alex Tamba Brima et al*, 'Judgment', SCSL-04-16-T, 20 June 2007, para 697.

<sup>214</sup> Iraqi High Tribunal, *Prosecutor v Saddam Hussein*, 1/CI/2005, 5 November 2006.

<sup>215</sup> ICTY, *Prosecutor v Kupreskic et al*, 'Judgment', IT-95-16-T, 14 January 2000, paras 565–566.

<sup>216</sup> ECCC, 'Case 002/01 Judgment', 002-19-09-2007-TC, 7 August 2014, paras 457, 564–565.

inhumane acts under the Statute.<sup>217</sup> In particular, the evidence in that case indicated that thousands of ‘persons suffered injuries as a result of the violence associated with the 2007 presidential elections’,<sup>218</sup> including ‘recurrent forms of physical violence [...] caused through gunshots or beatings’.<sup>219</sup> Some of the victims, it was found, ‘incurred [significant] long-term disabilities’.<sup>220</sup>

81. In the Ivory-Coast Case, it was determined that at least 118 persons were injured in the post-election violence in Abidjan.<sup>221</sup> ICC PTC I held as follows:

Considering the modalities in which the alleged criminal acts were performed, including the kinds of weaponry used, and in light of the available information on the types of injuries suffered by the victims of the crimes charged, the Chamber is satisfied that there are substantial grounds to believe that the infliction of these acts by the pro-Gbagbo forces caused great suffering and serious injury to body.<sup>222</sup>

This was held to amount to the crime of other inhumane acts under article 7(1)(k) of the Statute.<sup>223</sup>

82. Based on the available information—and by analogy to the Kenya and Ivory-Coast Cases—there is little doubt that many individuals who were spared death, rape, torture, property destruction, and/or displacement, nevertheless endured ‘great suffering, or serious injury to body or to mental or physical health’. Accordingly, for purposes of the instant filing, there is reason to believe that the crime against humanity of ‘other inhumane acts’ took place in northern Nigeria from 16–18 April 2011.

### ***6. Persecution – Article 7(1)(h)***

83. The elements of ‘persecution’ as a crime against humanity are the following: (i) the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights; (ii) the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such; (iii) such

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<sup>217</sup> See Kenya PTC Decision, paras 166 *et seq.*

<sup>218</sup> See Kenya PTC Decision, paras 169.

<sup>219</sup> See Kenya PTC Decision, paras 170.

<sup>220</sup> See Kenya PTC Decision, paras 170.

<sup>221</sup> Ivory-Coast Article 15 Decision, para 197.

<sup>222</sup> Ivory-Coast Article 15 Decision, para 198.

<sup>223</sup> See Ivory-Coast Article 15 Decision, para 199; *ibid*, para 273 (‘Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces inflicted great suffering and serious injury to body on at least 118 persons in [...] four incidents [...].’)

targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law; (iv) the conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court; (v) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (vi) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>224</sup>

84. According to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (the 'ICTY'), persecution is defined as 'the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5' of the ICTY Statute.<sup>225</sup> The ICTY Appeals Chamber has held that the destruction of property belonging to a given population may constitute the crime of persecution based on the extent and nature of the destruction.<sup>226</sup> The impact of the deprivation of the destroyed property must be serious, as where such property was an indispensable or vital asset of the owner or crucial to the livelihood of a given population.<sup>227</sup> Where the cumulative effect of the destruction of property on discriminatory grounds results in displacement, such destruction—including that of homes, businesses, and personal property—may amount to persecution.<sup>228</sup>

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<sup>224</sup> See ICC Elements of Crimes, p 10. *N.b.* 'This requirement ['contrary to international law'] is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes.' 'It is understood that no additional mental element is necessary for this element other than that inherent in element 6.' *Ibid.*

<sup>225</sup> ICTY, *Prosecutor v Kupreskic et al*, 'Judgment', 14 January 2000, para 621. For purposes of the first element of persecution, 'fundamental rights' are generally understood to be those 'found in international standards on human rights such as those laid down in the Universal Declaration on Human Rights of 1948, the two United Nations Covenants on Human Rights of 1966 and other international instruments on human rights or on humanitarian law'. *Ibid.*

<sup>226</sup> See ICTY, *Prosecutor v Tihomir Blaskic*, 'Appeals Judgment', 29 July 2004, paras 144–149; ICTY, *Prosecutor v Dario Kordic*, 'Appeals Judgment', 17 December 2004, para 108.

<sup>227</sup> ICTY, *Prosecutor v Kupreskic et al*, 'Judgment', 14 January 2000, para 631 ('The Trial Chamber finds that attacks on property can constitute persecution. [...] However, the case at hand concerns the comprehensive destruction of homes and property. Such an attack on property in fact constitutes a destruction of the livelihood of a certain population. This may have the same inhumane consequences as a forced transfer or deportation. Moreover, the burning of a residential property may often be committed with a recklessness towards the lives of its inhabitants. The Trial Chamber therefore concludes that this act may constitute a gross or blatant denial of fundamental human rights, and, if committed on discriminatory grounds, it may constitute persecution.')

<sup>228</sup> See ICTY, *Prosecutor v Milomir Stakic*, 'Judgment', 31 July 2003, para 763.

85. The notion of persecution on political grounds includes the targeting of civilians on the basis of their political opposition, whether *actual or perceived*, to a particular regime or its leader.<sup>229</sup> Victims of political persecution are not required to be members of a political party or group.<sup>230</sup> Where individuals are targeted, it must be specifically because of their *actual or perceived* association with that group<sup>231</sup> or, simply, their *actual or perceived* political opinions.<sup>232</sup> It is the perpetrator's *subjective* identification of the group or collectivity that matters; this would include those 'defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies'.<sup>233</sup>
86. Ethnic groups are defined by the applicable jurisprudence as 'groups whose members share a common language or culture'<sup>234</sup> and who 'belong to it automatically, by birth, in a continuous and often irremediable manner'.<sup>235</sup> The existence and membership of a targeted ethnic group may also be determined on the basis of the perpetrator's *subjective* perception.<sup>236</sup>
87. In the Ivory-Coast Case, ICC PTC I determined that at least 316 victims of murder, rape, and other inhumane acts committed by pro-incumbent forces 'were targeted by reason of their identity as perceived political supporters of [the opposition]'.<sup>237</sup> Such targeting was found to have been based on political, ethnic, national, and religious grounds.<sup>238</sup> As the Chamber put it:

The victims of these crimes were targeted because they were perceived to be members of Alassane Ouattara's political groups or his supporters or because they lived in neighborhoods of Abidjan believed to be Ouattara strongholds. Often, they were also

<sup>229</sup> ICC, Pre-Trial Chamber I, Situation in Libyan Arab Jamahiriya, 'Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL- SENUSSI', 27 June 2011, para 65.

<sup>230</sup> Gerhard Werle, Principles of International Criminal Law, 2nd Ed, 2009, para 907.

<sup>231</sup> *Ibid*, paras 890, 899.

<sup>232</sup> ICC, Pre-Trial Chamber I, Situation in Libyan Arab Jamahiriya, 'Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL- SENUSSI, 27 June 2011, para 65; *ibid*, paras 42–64 (Those who were described by the PTC as targeted persons included activists and demonstrators against the Abo Sleem massacre, writers and journalists perceived as dissidents, recipients of banned television frequencies, protestors against arrests of activists, and members of a funeral procession for murdered dissidents.)

<sup>233</sup> ICTY, Trial Chamber, *Prosecutor v Naletilic and Martinovic*, 'Judgment', 31 March 2003, para 636.

<sup>234</sup> ICTR, Trial Chamber, *Prosecutor v Jean-Paul Akayesu*, 'Judgment', 2 September 1998, para 513.

<sup>235</sup> *Ibid*, para 511.

<sup>236</sup> ICTR, Trial Chamber III, *Prosecutor v Simeon Nchamihigo*, 'Judgment', 12 November 2008, paras 329–338.

<sup>237</sup> Ivory-Coast Article 15 Decision, para 204.

<sup>238</sup> Ivory-Coast Article 15 Decision, para 205.

targeted on ethnic grounds (mainly the Dioula and Baoulé), religious grounds (Muslims), or national grounds (citizens of West African countries such as Mali, Burkina Faso, and Nigeria and Ivorians of West African descent). Laurent Gbagbo and other members of the common plan perceived all members of the abovementioned political, ethnic, national and religious groups as supporters of Alassane Ouattara.<sup>239</sup>

This, according to the Chamber, amounted to persecution under the Statute.<sup>240</sup>

88. In addition to the murder, torture, and rape that took place over the course of three days of rioting in northern Nigeria, a large number of buildings—including homes, mosques, churches, shops, police stations, party offices, electoral commission offices, and markets—as well as vehicles and other personal properties were looted, burned, and otherwise destroyed or damaged.<sup>241</sup> Such destruction was part of the impetus for the massive population displacement that was to follow. This severe deprivation of life, liberty, dignity, and property is contrary to international law.
89. Worse yet, as described above, many (if not most) of the civilians targeted in the violence were sought out because of their actual or perceived membership in political, racial, ethnic, cultural, and/or religious groups.<sup>242</sup> A complex mix of rivalries—Muslim versus Christian, North versus South, Buhari/CPC versus Jonathan/PDP, Hausa/Fulani versus Igbo/Yoruba—permeated the elections and their violent aftermath. In particular, the factual record demonstrates that the various reported acts of inhumanity were systematically directed at non-Muslims, liberal Muslims, actual and perceived opponents of General Buhari and the CPC, youth corpors, and southern Nigerians (both Christians and Muslims).
90. Accordingly, for purposes of this filing, there is sufficient reason to believe that the crime against humanity of ‘persecution’ took place in northern Nigeria from 16–18 April 2011.

### C. General Conclusion Regarding Crimes Against Humanity

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<sup>239</sup> Ivory-Coast Article 15 Decision, para 274.

<sup>240</sup> See Ivory-Coast Article 15 Decision, para 206 (‘Accordingly, the Chamber concludes that the specific elements of the crime of persecution under article 7(1)(h) of the Statute are met.’)

<sup>241</sup> See paras 16–22, *supra*; Annex 1, *infra*.

<sup>242</sup> *Ibid.*

91. On the information presented—bearing in mind the nature of the instant filing, the low threshold applicable to preliminary examinations, as well as the object and purpose of the OTP’s mandate—there is a reasonable basis to believe that many crimes against humanity were committed in northern Nigeria in the wake of the presidential elections of 2011.

## V. INDIVIDUAL CRIMINAL RESPONSIBILITY

92. Pursuant to Article 25(3) of the Statute, ‘a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person’:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime; [...] (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.<sup>243</sup>

As noted above, for purposes of the instant submission, a detailed analysis as to the issue of *mens rea* is premature.

### A. Soliciting or Inducing the Commission of Crimes Against Humanity

93. While the Statute does not contain an explicit definition for the modes of liability of ‘instigation’ or ‘incitement’ (except with respect to genocide), these concepts are well-developed under international-criminal jurisprudence and arguably fall under Article 25(3)(b)’s conception of solicitation or inducement, which—at *this preliminary stage of the proceedings*—would appear to best characterize General Buhari’s potential individual criminal responsibility.

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<sup>243</sup> Rome Statute, Article 25(3).

94. According to the ICC's PTC II, 'the terms "soliciting" and "inducing" within the meaning of article 25(3)(b) of the Statute [...] both characterize the situation whereby the perpetrator is prompted by another to commit the offence'.<sup>244</sup> Previously, the same chamber:

recall[ed] that, in order to make a finding on [...] criminal responsibility for the mode of liability of inducing, the following objective and subjective elements must be fulfilled: (a) the person exerts influence over another person to either commit a crime which in fact occurs or is attempted or to perform an act or omission as a result of which a crime is carried out; (b) the inducement has a direct effect on the commission or attempted commission of the crime; and (c) the person is at least aware that the crimes will be committed in the ordinary course of events as a consequence of the realization of the act or omission.<sup>245</sup>

Unlike the mode of liability of 'ordering', neither 'soliciting' nor 'inducing' requires the alleged perpetrator to have been in a position of authority vis-à-vis the individuals who physically carried out the underlying crimes.<sup>246</sup>

95. In confirming the charges of inducing 'the commission and/or the attempted commission of [...] crimes'<sup>247</sup> against Bosco Ntaganda of the Democratic Republic of Congo, the PTC found that the suspect had, among other things, 'exerted influence over [others] to commit [...] crimes, which in fact occurred and, in the case of murder, were also attempted'.<sup>248</sup> The PTC's conclusion on this point was 'further supported by the fact that Mr Ntaganda created an environment in which crimes against [his opponents] were encouraged or officially approved'.<sup>249</sup> Moreover, 'in his capacity as a high-ranking [...] official, Mr Ntaganda: [...] openly used derogatory language against [his opponents]; and [...] failed to take all necessary and reasonable measures to prevent and/or repress [...] crimes'.<sup>250</sup>

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<sup>244</sup> ICC, Pre-Trial Chamber II, Situation in the Central African Republic, *Prosecutor v Bemba et al.*, 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute', 11 November 2014, para 34 (citing Pre-Trial Chamber II, 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda', 9 June 2014, para 153).

<sup>245</sup> ICC, Pre-Trial Chamber II, 'Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda', 9 June 2014 (hereinafter, the 'Ntaganda Article 61 Decision'), para 153; *see also* Ivory-Coast Article 15 Decision, para 243 ('The Chamber is of the view that "ordering", "soliciting", and "inducing" in essence fall into a broader category of "instigating" or "prompting another person to commit a crime", in the sense that they refer to a conduct by which a person is influenced by another to commit a crime.')

<sup>246</sup> *See* Ivory-Coast Article 15 Decision, para 243 ('[T]he requirement of a position of authority, which is particular to "ordering"[...] is not a necessary element of "soliciting" or "inducing".')

<sup>247</sup> Ntaganda Article 61 Decision, para 154.

<sup>248</sup> Ntaganda Article 61 Decision, para 155.

<sup>249</sup> Ntaganda Article 61 Decision, para 155.

<sup>250</sup> Ntaganda Article 61 Decision, para 155.

96. In the Ivory-Coast Case, PTC I confirmed the charges against Laurent Gbagbo under Article 25(3)(b), focusing on, among other things, the fact that: ‘Gbagbo instructed or otherwise instigated the pro-Gbagbo forces to carry out certain actions in the execution of which the crimes in the context of the four charged incidents were committed’<sup>251</sup> and ‘Gbagbo’s instructions or instigation had a direct effect on the commission of the crimes’.<sup>252</sup> With respect to instructing or otherwise instigating, the following factors, among others, were considered highly relevant:

(iii) by mobilizing them for his cause, Laurent Gbagbo directed the actions of the youth and militia groups in Yopougon and provided them with the purpose of their fighting, which was to retain his power by all means, including through the use of violence against civilians known or perceived to be supporters of his political opponent Alassane Ouattara; and (iv) Laurent Gbagbo, by emphasizing the goal (i.e. to stay in power) through statements and actions prior to and during the crisis without qualifying the means that were permissible to attain this goal, created a general situation amongst the forces under his and his inner circle’s control, which justified the use of violence against the civilian population.<sup>253</sup>

Additionally, as to the consequences of such actions, it was determined that ‘Gbagbo’s instruction or instigation had a direct effect on the commission of crimes’<sup>254</sup> as evidenced by, among other things, the fact that certain attacks ‘occurred as a result of the mobilization and manipulation of the youth and militia to fight for maintaining Laurent Gbagbo in power’.<sup>255</sup>

97. In developing its own jurisprudence with respect to instigation (described above), the ICC has substantially relied upon the case-law of the ad-hoc tribunals,<sup>256</sup> both of which have addressed the concept in detail.<sup>257</sup> The following is a brief summary of the applicable ICTY and International Criminal Tribunal for Rwanda (‘ICTR’) jurisprudence:

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<sup>251</sup> Ivory-Coast Article 15 Decision, para 244.

<sup>252</sup> Ivory-Coast Article 15 Decision, para 244; *see also* Ntaganda Article 61 Decision, paras 145, 153.

<sup>253</sup> Ivory-Coast Article 15 Decision, para 246.

<sup>254</sup> Ivory-Coast Article 15 Decision, para 247.

<sup>255</sup> Ivory-Coast Article 15 Decision, para 247.

<sup>256</sup> *See* Ntaganda Article 61 Decision, para 153 (citing ICTY, Appeals Chamber, *Prosecutor v Kordic and Cerkez*, ‘Judgment’, 17 December 2004, paras 27, 32; ICTR, Appeals Chamber, *Prosecutor v Nahimana et al*, ‘Judgment’, 28 November 2007, para 480; ICTR, Appeals Chamber, *Prosecutor v Nchamihigo*, ‘Judgment’, 18 March 2010, para 61).

<sup>257</sup> *N.b.* The statutes of those tribunals explicitly mention the concept. *See* ICTY Statute, Article 7(1) (‘A person who planned, *instigated*, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.’) (emphasis added); ICTR Statute, Article 6(1) (‘A person who planned, *instigated*, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.’) (emphasis added).

In *Blaskic*, an ICTY trial chamber defined instigating as ‘prompting another to commit an offence’, while the ICTR understood it to mean ‘urging, encouraging or prompting’ another person to commit a crime. There must be a ‘causal connection between the instigation and the actus reus of the crime’; this has been held to mean that the instigation must have ‘directly and substantially contributed’ to the other person’s commission of the substantive offence, or must at least have been a ‘clear contributing factor’. However, ‘but for’ causation is not required, that is, the Prosecutor need not prove that the crime would not have been committed had it not been for the accused’s acts.<sup>258</sup>

As regards the required mens rea, the instigator must act intentionally, that is, must have ‘intended to provoke or induce the commission of the crime’, or must at least have been ‘aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts’. At the same time the accused must again be proven to have ‘directly or indirectly intended that the crime in question be committed’.<sup>259</sup>

There has been a certain amount of confusion in the case-law with regard to the relationship between instigation and incitement. In *Rutaganda* and, later, in *Musema*, the ICTR held that ‘incitement to commit an offence, under Article 6(1), involves instigating another, directly and publicly, to commit an offence. Similarly, in the *Akayesu* trial chamber judgment it was found that ‘instigation under Article 6(1) must include the direct and public elements, required for incitement, particularly, incitement to commit genocide. In its later judgment in the same case, the Appeals Chamber of the ICTR, however, found that this view was mistaken, and that there was no need for instigation generally to be direct and public in order to be punishable. Therefore, unlike direct and public incitement to commit genocide [...], instigation need not be direct and public. An omission, as well as an act, can constitute instigation, and mere presence at the time and place where a crime is being committed can amount to instigation or encouragement, particularly where the accused occupies a position of authority.’<sup>260</sup>

Instigation as defined by the relevant ICTY and ICTR jurisprudence is not an inchoate crime; rather, it is ‘punishable only where it leads to the actual commission of an offence intended by the instigator’.<sup>261</sup> This differs significantly from the Rome Statute’s approach, which embraces the notion of attempt.<sup>262</sup>

<sup>258</sup> Wibke Kristin Timmermann, ‘Incitement in International Criminal Law’, *International Review of the Red Cross*, Vol 88, No 864, Decemer 2006 (citing ICTY, Trial Chamber, *Prosecutor v Blaskic*, , ‘Judgment’, 3 March 2000, para 280; ICTY, Trial Chamber, *Prosecutor v Kordic and Cerkez*, ‘Judgment’, para 387; ICTY, Trial Chamber, *Prosecutor v Krstic*, ‘Judgment’, 2 August 2001, para 601; ICTR, Trial Chamber, *Prosecutor v Semanza*, ‘Judgment and Sentence’, 15 May 2003, para 381; ICTR, Trial Chamber, *Prosecutor v Bagilishema*, ‘Judgment’, 7 June 2001, para 30; *Blaskic*, para 278; *Semanza*, para 381; ICTR, Trial Chamber, *Prosecutor v Kamuhanda*, ‘Judgment and Sentence’, 22 November 2004, para 593; ICTR, Trial Chamber, *Prosecutor v Muhimana*, ‘Judgment and Sentence’, 28 April 2005, para 504; ICTR, Trial Chamber, *Prosecutor v Kajelijeli*, ‘Judgment and Sentence’, 1 December 2003, para 762; ICTR, Trial Chamber, *Prosecutor v Nindabahizi*, ‘Judgment and Sentence’, 15 July 2004, para 456; ICTY, Trial Chamber, *Prosecutor v Kvočka et al*, ‘Judgment’, 2 November 2001, para 252; *Kordic and Cerkez*, para 387).

<sup>259</sup> Wibke Kristin Timmermann, ‘Incitement in International Criminal Law’, *International Review of the Red Cross*, Vol 88, No 864, Decemer 2006 (citing ICTY, Trial Chamber, *Prosecutor v Naletilic and Martinovic*, ‘Judgment’, 31 March 2003, para 60; *Kvočka et al*, para 252; *Blaskic*, para 278; *Kordic and Cerkez*, para 386; *Bagilishema*, para 31).

<sup>260</sup> Wibke Kristin Timmermann, ‘Incitement in International Criminal Law’, *International Review of the Red Cross*, Vol 88, No 864, Decemer 2006.

<sup>261</sup> *Ibid.*

<sup>262</sup> See Rome Statute, Article 25(3)(b) (‘Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted’) (emphasis added).

98. While a detailed discussion of possible modes of liability is not necessary at this stage, given the OTP's assertion above regarding the lack of identifiable perpetrators, a cursory examination is warranted. As set out above, as early as August 2010, General Buhari publicly predicted violence in April 2011 if the elections were to be perceived as less than free and fair, likening the situation in Nigeria to that of Somalia and expressing his fear in that regard.<sup>263</sup> Closer to election time, he made additional public references to the possibility of an Egypt-style revolt.<sup>264</sup> Moreover, he stated on national television that he would refrain from utilizing legal mechanisms to contest any unfavorable outcomes, noting that this would be a waste of time.<sup>265</sup> According to some commentators, this provided his supporters with an implicit alternative: to take their protests to the streets.<sup>266</sup> More explicitly, General Buhari admonished his supporters to 'defend' their votes, warning that those who stood in the way of the people would be crushed by the people, who—if unsatisfied—would take over.<sup>267</sup>
99. Far more egregious were General Buhari's comments to supporters that they should 'lynch and roast alive' anyone who attempted to tinker with the ballots and 'destroy, kill, and maim' those opposed to his candidature.<sup>268</sup> Moreover, his public claims that he had evidence of PDP vote-rigging, particularly in his home state of Katsina, must be understood in the context of well-publicized threats by some CPC supports that 'all hell would be let loose' if General Buhari did not succeed.<sup>269</sup> And it was only well after the death, destruction, and displacement had abated that he characterized the violence as unfortunate; he never directly condemned it or appealed for calm.<sup>270</sup>
100. Notably, a direct link between General Buhari's 'provocative utterances' (to put it mildly) and the ensuing violence was made by the Lemu Commission.<sup>271</sup>

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<sup>263</sup> See para 24, *supra*.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*

<sup>268</sup> See paras 25–26, *supra*.

<sup>269</sup> See para 24, *supra*.

<sup>270</sup> See para 24, *supra*.

<sup>271</sup> See para 30, *supra*.

101. Following a preliminary examination, the OTP would be in the best situation to legally characterize—according to the ICC’s jurisprudence—the precise nature of General Buhari’s liability. However, for purposes of this filing, suffice it to say that the acts and conduct described above very likely amount to incitement and/or instigation, as those terms have come to be understood by international criminal jurisprudence. The prohibition and punishment of such activity is clearly contemplated by Article 25(3)(b) of the Statute.

### B. Indirect Co-perpetration of Crimes Against Humanity

102. The objective elements (*actus reus*) of co-perpetration as a mode of liability under Article 25(3)(a) of the Statute have been defined as follows:

- (a) the suspect must be part of a common plan or an agreement with one or more persons;
- (b) the suspect and the other co-perpetrator(s) must carry out essential contributions in a coordinated manner which result in the fulfillment of the material elements of the crime;
- (c) the suspect must have control over the organization;
- (d) the organization must consist of an organized and hierarchical apparatus of power;
- (e) the execution of the crimes must be secured by almost automatic compliance with the orders issued by the suspect.<sup>272</sup>

The subjective elements (*mens rea*) of this mode of liability need not be addressed at this stage of the proceedings.<sup>273</sup>

103. In the Ivory-Coast Case, ICC PTC I determined that there was sufficient evidence to confirm charges of indirect co-perpetration against Laurent Gbagbo, under Article 25(3)(a) of the Statute.<sup>274</sup> In concluding that ‘Gbagbo, together with his inner circle,

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<sup>272</sup> Ntaganda Article 61 Decision, para 104.

<sup>273</sup> *N.b.* While not relevant to the instant filing, the following subjective elements (*mens rea*) must, of course, be met at a later stage of any eventual proceedings: ‘(a) the suspect must satisfy the subjective elements of the crimes namely (i) intent and knowledge within the meaning of article 30 of the Statute, unless otherwise provided in the Statute or the Elements of Crimes; (ii) and specific intent (*dolus specialis*) where required; (b) the suspect and the other co-perpetrators must be mutually aware and accept that implementing the common plan will result in the fulfillment of the material elements of the crimes; and (c) the suspect must be aware of the factual circumstances enabling him to exercise joint control over the commission of the crime through another person(s).’ Ntaganda Article 61 Decision, para 121.

<sup>274</sup> *See* Ivory-Coast Article 15 Decision, para 230 (‘Laurent Gbagbo was part of a common plan to use force against civilians with members of his inner circle [...]’); *ibid*, para 241 (‘[T]he Chamber finds that there are substantial grounds to believe that Laurent Gbagbo is criminally responsible under article 25(3)(a) of the Statute for committing, jointly with members of his inner circle and through members of the pro-Gbagbo forces, crimes against humanity of murder, rape, other inhumane acts (serious injury to body and great suffering) or, alternatively, attempted murder, and persecution.’)

designed a common plan to retain power by all means, including through the use of force against civilians',<sup>275</sup> the Chamber relied upon, among other things:

(ii) [...] Gbagbo's public statements indicating an intention to hold on to power at any cost, including by use of force against civilians; (iii) the campaign activities aimed at mobilizing supporters for the possible use of violence, which began well in advance of the violence [...]; (iv) the mobilization of the youth for violent acts [...], as well as (vii) the steps undertaken by Laurent Gbagbo [...] in reaction to the evolution of the crisis [...].<sup>276</sup>

Based on these considerations, the Chamber concluded 'that violence against civilians, *while not in itself the ultimate goal of Laurent Gbagbo and his inner circle*, was a criminal element *inherent to the common plan to stay in power at any costs*'.<sup>277</sup>

104. In terms of the coordinated contributions made to the implementation of such a common plan, it was found that Gbagbo provided 'support [to] militia and youth groups, including by way of defining a purpose for them (namely to fight for him), [and by] encouraging and endorsing their actions [...]'.<sup>278</sup> Notably, it was determined that 'without the contribution of Laurent Gbagbo, the crimes would not have been committed or would have been committed in a significantly different way'.<sup>279</sup> To reiterate the key findings of PTC I, Gbagbo: (i) 'made public statements which indicate[d] an intention to hold on to power at any cost, including by use of force against civilians [...]';<sup>280</sup> (ii) along with others, 'aimed their campaign activities, which began well in advance of the violence [...], towards mobilizing supporters for the possible use of violence [...]';<sup>281</sup> and 'mobilized the youth for violent acts against known or perceived supporters of [his] political opponent [...]'.<sup>282</sup>

105. As in the Ivory-Coast Case, the available evidence suggests that General Buhari and his supporters sought to achieve a CPC victory in Nigeria in 2011 by all means necessary, including through the use of violence against civilians. Moreover, it is evident that General Buhari made his intentions known—explicitly and implicitly—by way of his

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<sup>275</sup> Ivory-Coast Article 15 Decision, para 231.

<sup>276</sup> Ivory-Coast Article 15 Decision, para 231.

<sup>277</sup> Ivory-Coast Article 15 Decision, para 231 (emphasis added).

<sup>278</sup> Ivory-Coast Article 15 Decision, para 232.

<sup>279</sup> Ivory-Coast Article 15 Decision, para 232.

<sup>280</sup> Ivory-Coast Article 15 Decision, para 237.

<sup>281</sup> Ivory-Coast Article 15 Decision, para 237.

<sup>282</sup> Ivory-Coast Article 15 Decision, para 237.