

**House Foreign Affairs Committee  
Tom Lantos Human Rights Commission**

**Hearing  
on  
Conflict and Killings in Nigeria's Middle Belt**

**December 17, 2020, 1:00 p.m. EST  
2373 Rayburn House Office Building**

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Thank you, Mr. Chairmen, for holding this important hearing on “Conflict and Killings in Nigeria’s Middle Belt.” By way of introduction, this intervention discusses: 1) the legal criteria pertaining to the crime of genocide, including the element of specific intent; 2) the facts concerning Boko Haram, ISWAP and Fulani extremists; and 3) application of the facts to the law.

**I. Genocide**

The United State of America has been a contracting party to the 1948 Genocide Convention, since 4 November 1988.<sup>1</sup> Article II of the Convention defines the crime of Genocide as “any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.”

As noted, Article II of the Convention requires “*the specific intent to destroy, in whole or in part, a national, ethnic, or religious group as such.*” In the words of the International Court of Justice (ICJ) in the *Bosnian Genocide* case, the bad actors in question must be “suspected of preparing genocide, or reasonably suspected of harboring specific genocidal intent.”<sup>2</sup> The specific intent element may be proven by the general context surrounding the imminent genocide, for example,

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 UNTS 277 (1951), hereinafter Genocide Convention. According to the records of the United Nations, the United States of America signed the Convention on 11 December 1948 and acceded to or ratified it on 25 November 1988, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=en) (last accessed at 12/14/2020)

<sup>2</sup> *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Judgment, I.C.J. Reports 2007, para. 430 [hereinafter *Bosnian Genocide* case]

preparation for genocide, or by a pattern of attacks, or by the existence of a plan, coordinated efforts, or policy to commit genocide.<sup>3</sup>

If the specific intent is not established, then the crime in question is not genocide, which, in turn, means that the undertaking “to prevent and to punish” genocide in Article I of the Genocide Convention, as reflected in customary international law, is not triggered. If activated, the duty to prevent, defined as being associated with the due diligence standard, in the *Bosnian Genocide* case, has been simply summarized by one international legal scholar to mean: “the state has to use its best efforts within the means available to it to prevent the genocide from occurring, in order to avoid responsibility.”<sup>4</sup>

## II. Facts

My testimony will briefly examine three Islamic extremist groups operating in Nigeria.

Boko Haram was designated by the United States as a foreign terrorist organization, in November 2013.<sup>5</sup> It is “genocidal by self-proclamation, by ideology, and by actions, in what it says, what it believes, and what it does.”<sup>6</sup> The term “Boko Haram,” loosely translated as “Western education is forbidden,” targets Christian generally and Muslims who violate its rules, as evidenced in its videos. Boko Haram has targeted both Christian girls,<sup>7</sup> and Muslim boys,<sup>8</sup> who study at educational institutions. The most recent attack in December 2020 was against Muslims and involved the kidnapping of over 333 boys at gun point from a school in the northwestern state of Katsina.<sup>9</sup> The notorious 2014 kidnapping of 276 Christian schoolgirls from their school dormitories, in Chibok, Borno, brought to light the justification of Boko Haram’s treatment of the girls as property. Since it has waged a campaign on behalf of Allah,<sup>10</sup> Boko Haram is free to use, manipulate, damage, destroy, and dispose of them as objects. According to the same ideology, these girls offend Allah by being Christian, going to school, and being unmarried at the age of 9.<sup>11</sup> Most of the girls were

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<sup>3</sup> JOHN HEICK, A DUTY TO PREVENT GENOCIDE: DUE DILIGENCE OBLIGATIONS AMONG THE P5 (Edward Elgar Publishing: 2018), p. 215.

<sup>4</sup> Ibid., p. 207.

<sup>5</sup> See [Executive Order \(E.O.\) 13224](#) issued by U.S. President George W. Bush on September 23, 2001, as a response to the September 11, 2001 attacks, as [renewed by U.S. President Donald J. Trump](#), who extended the E.O. targeting terrorism financing, available at (last accessed 12/14/2020)

<sup>6</sup> HEICK, *supra* note 3, p. 215, in reference to DAESH citing Elise Labott and Tal Koplan, “John Kerry: ISIS responsible for genocide: CNN,” available at <https://www.cnn.com/2016/03/17/politics/us-iraq-syria-genocide/index.html> (last accessed 12/14/2020).

<sup>7</sup> Jane F. Adolphe, “Sexual Violence as a Tactic of Terror: The Plight of Christian Women and Girls,” p. 146, in RONALD J. RYCHLAK, JANE F. ADOLPHE, EDS. THE PERSECUTION AND GENOCIDE OF CHRISTIANS: PREVENTION, PROHIBITION, AND PROSECUTION (Angelico Press: 2017).

<sup>8</sup> James Barnett, “The US Cannot Ignore the Islamic State’s Greatest Affiliate,” *Critical Threats*, 4 February 2019, available at <https://www.criticalthreats.org/analysis/al-shabaabs-rise-in-the-al-qaeda-network> (last accessed 12/15/2020).

<sup>9</sup> “Boko Haram Claims Kidnapping of Hundreds of Nigerian Students,” *Aljazeera.com*, 15 December 2020, available at <https://www.aljazeera.com/news/2020/12/15/boko-haram-claims-kidnapping-of-hundreds-of-nigerian-students> (last accessed 12/16/2020).

<sup>10</sup> Adolphe, *supra* note 7; See also Aliyu Dahiru, “‘Nobody Can Arrest Me, I’m doing God’s Work,’ Shekau Boasts in New Video,” *HumAngle*, 17 November 2020, available at <https://humangle.ng/nobody-can-arrest-me-im-doing-gods-work-shekau-boasts-in-a-new-video/> (last accessed 12/15/2020).

<sup>11</sup> Ibid.

given over to Boko Haram soldiers, as sex slaves.<sup>12</sup> To label this situation as a marriage is a misnomer. Consequently, it is unsurprising that the Prosecutor of the International Criminal who completed the preliminary investigation on the situation of Nigeria, in December 2020, concluded: “there is a reasonable basis to believe that members of Boko Haram and its splinter groups have committed” a long list of crimes against humanity and war crimes, including “persecution on gender and religious grounds; and other inhumane acts.”<sup>13</sup>

The Islamic State in West Africa Province (ISWAP), a faction or “splinter group” of Boko Haram, was designated by the United States as a foreign terrorist organization, in February 2018. It is also “genocidal by self-proclamation, by ideology, and by actions, in what it says, what it believes, and what it does.”<sup>14</sup> ISWAP reportedly differentiates itself from Boko Haram with its “practices more in line with the Islamic State,” a greater commitment to global jihad and the targeting of Western interests in Africa (e.g., plotting attacks on U.S. and UK embassies, and commercial airlines), while generally avoiding the killing of Muslim civilians.<sup>15</sup>

The Fulani are a “large and widely dispersed group of both nomadic herders and sedentary farmers living in the African Sahel/Savannah belt.”<sup>16</sup> A group of Fulani extremists operating in Nigeria are by their actions leaving a trail of warning signs of genocide. Some observers assert that massacres by Fulani extremists have killed over thousands of Christians in Nigeria, since 2015 for being members of a religious group, and underline the following points.

- Fulani extremists frequently carry AK47’s, not rusty guns, and sometimes arrive on motorcycles, other times in trucks with 100 or more heavily armed killers. They bum and depopulate Christian villages, forcibly displace Christian farmers from their villages and land. The massacres have become deadlier since Muhammadu Buhari, a Fulani, became President.<sup>17</sup>

Similarly, others claim that “100% of victims of Jihadist Herdsmen killings are Christians...Jihadist Herdsmen target and kill Christians only or burn or destroy their properties

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<sup>12</sup> Ibid.

<sup>13</sup> Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria, 11 December 2020, available at <https://www.icc-cpi.int/Pages/item.aspx?name=201211-prosecutor-statement> (last accessed 12/15/2020).

<sup>14</sup> JOHN HEICK, A DUTY TO PREVENT GENOCIDE: DUE DILIGENCE OBLIGATIONS AMONG THE P5 (Edward Elgar Publishing: 2018) in reference to DAESH citing Elise Labott and Tal Koplan, “John Kerry: ISIS responsible for genocide: CNN,” available at <https://www.cnn.com/2016/03/17/politics/us-iraq-syria-genocide/index.html> (last accessed 12/14/2020).

<sup>15</sup> James Barnett, “The US Cannot Ignore the Islamic State’s Greatest Affiliate,” *Critical Threats*, 4 February 2019, available at <https://www.criticalthreats.org/analysis/al-shabaabs-rise-in-the-al-qaeda-network> (last accessed 12/15/2020)

<sup>16</sup> Vicente et al., “Population history and genetic adaptation of the Fulani nomads: inferences from genome-wide data and the lactase persistence trait,” *BMC Genomics* (2019) 20:915 <https://doi.org/10.1186/s12864-019-6296-7> available at <https://bmcgenomics.biomedcentral.com/articles/10.1186/s12864-019-6296-7#:~:text=The%20Fulani%20are%20a%20large,east%20%5B1%2C%20%5D> (last accessed 12/15/2020)

<sup>17</sup> See the website of Genocide Watch, available at <https://www.genocidewatch.com/nigeria> (last accessed 12/16/2020).

including dwelling houses, farmlands and worship and learning centers.”<sup>18</sup> In contrast, others disagree with the above assertions and deny the existence of any genocide of Christians in Nigeria, attributing the problems to herder/famer conflicts provoked by climate change.<sup>19</sup>

That the Nigerian government has been unwilling or unable to stop the violence has now been confirmed by the State Department’s CPC designation for Nigeria of December 7 and by the Prosecutor for the International Criminal Court. In her statement of 13 December 2020, Prosecutor, Fatou Bensouda, announced the need for a full investigation.<sup>20</sup> Bensouda’s “preliminary examination, open since 2010,” was lengthy due to the priority her Office gave to support the Nigerian authorities in investigating and prosecuting the crimes domestically.<sup>21</sup> Yet, the efforts of the Prosecutors Office have proved futile, and disconcerting in the face of the Bensouda’s conclusion that there is a reasonable basis to believe that even members of the Nigerian Security Forces (“NSF”) have committed a long list of crimes against humanity and war crimes.<sup>22</sup>

### III. Application

Regarding Boko Haram and ISWAP, policy makers have no doubt about the genocidal intent behind the massacres and kidnappings of Christians attributed to these groups. The case against the Fulani extremists, however, remains unclear for American policy makers. While many on the ground are convinced of their genocidal intent, more evidence is obviously needed on coordination, for example, their leaders, their policies, and patterns of massacres that show the necessary genocidal intent. Other evidence should focus on connections with terrorist groups like Boko Haram and ISWAP as well as orders from any identifiable Fulani extremist leaders and information about the flow of monies and arms to the same. Lastly, the study of statements made by certain government officials, in both English and local languages, should be undertaken to determine whether the government is an accessory to the crimes by way of counsel, command, consent, provocation, praise, concealment, partaking, silence or defense.

Understanding that the global community has witnessed the combination of massacres and forced displacement as the preferred tactic for other genocides (e.g., Bosnia, Darfur, Kosovo, and Myanmar), the current “genocidal warning signs” related to the Fulani extremists cannot be ignored. I strongly urge congressional action to ensure that the State Department undertakes without delay serious efforts to document, study, and analyze these atrocities, with specific attention to the religious factor.

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<sup>18</sup> Intersociety, “Nigeria: 1, 2020 Defenceless Christians Hacked to Death by Jihadists In Six Months (jan-june 2020),” *The Nigerian Voice*, 12 July 2020, available at <https://www.thenigerianvoice.com/news/289655/nigeria-1202-defenceless-christians-hacked-to-death-by-jih.html> (last accessed 12/16/2020).

<sup>19</sup> Kunle Adebajo, “Analysis: An Assessment of Claims on ‘Christian Genocide’ in Nigeria,” *HumAngle*, 19 August 2020, available at <https://humangle.ng/analysis-an-assessment-of-claims-on-christian-genocide-in-nigeria/> (last accessed 12/16/2020).

<sup>20</sup> Statement of the Prosecutor, Fatou Bensouda, *supra* note 13.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

