

## A REVIEW OF THE BOKO HARAM INSURGENCY AND ARMED CONFLICTS IN NIGERIA UNDER INTERNATIONAL HUMANITARIAN LAW

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### Abstract

*The paper takes an overview of types of conflicts recognized under international humanitarian law, in the light of the Boko Haram insurgency in Nigeria. It commences with a background, the current state of national security in Nigeria which is followed by an examination of the concept of terrorism, its variants and how to handle it, the provisions of Article 3 of the Geneva convention of 1949, applicable international treaties, convention against torture and other issues dealing with cruelty, inhuman or degrading treatment of prisoners and punishment, the provisions of the convention on prohibition or restriction on the use of certain conventional weapons, which may be deemed to be excessively injurious or to have indiscriminate effects 1981, the provisions of the charter of the United Nation 1945, the provisions of the convention on the prevention of the crime of genocide 1948, the international committee of the Red Cross and their activities in armed conflicts, visitation to prisoners, care, awareness and a conclusion.*

### Background

The issues of terrorism, civil disobedience, coups, countercoups, declarations of independence and of full insurgency by regions and persons over parts of Nigeria since independence, appear to have been exacerbated, in recent times, by the activities of the Boko Haram sect in parts of North-Eastern region of Nigeria leading to the death of several thousands of persons, injuring many others and also destroying properties worth billions of naira. Until recently, it appeared that all efforts including those made by the Nigeria and international community appeared to have failed to halt the invasion of the Boko Haram sect.

Boko Haram's activities appear to have been compounded by the recent pledge by the insurgents to the dreaded ISIS. This is coming at a time when Nigerians and indeed the international community appeared to have thought that the issues relating to coups, kidnappings, unbridled bloodletting that characterized the militancy struggle in the Niger Delta region, coups, countercoups, civil disobediences, sectarian violence in Nigeria had finally abated. In Nigeria since independence, emphasizing in appropriate places, the legal implications of these developments in Nigeria and the international community emphasizing the fact that despite the enactment of Nigeria's Anti-terrorism Act, 2011, its accompanying regulations and other statutes, the danger in Nigeria, presently foisted on the country by the Boko Haram sect and other similar groupings is one that requires urgent multinational/multisectoral attention.

### Introduction

The subjects of Insurgencies and or Terrorism in recent times, have proved to be perennial challenges in our world today. No day passes without one report or the other about the rising wave of violence, insurgencies or terrorist activities inflicting mayhem on humanity and critical infrastructure in both developed, underdeveloped and developing countries. It is of common knowledge that the Nigerian Nation is still combating the climaxing wave of terrorism let loosed by proximal and remote causes that have left on its train, trouble, snuffles, blood, the obliteration of critical infrastructure and the destruction and maiming of lives running into several hundreds of thousands.

### The provisions of the common article 3 of the Geneva convention of 1949

The provisions of this article regulates the conduct of civil war. It presents a list of rules which, as stated by the International Court of Justice (ICJ) in its judgment of 27 June 1986 in the dispute between Nicaragua and the United States as an expression of fundamental considerations of humanity. In the words of Hans-Peter Gasser:

"Article 3 is binding, not only because it is part of International Treaty Law, but also an expression (Unwritten) general principles of law. It is absolutely binding international law; **jus cogens** even though it is observed to be so limited compared with the numerous texts regarding so the called international armed conflicts".

It is also important here to consider another section of the said article which extends the protection to non-international armed conflict as captured in the additional Protocol II to the Convention of 1949 found under of 28 Article, which elaborately expands the rule of common Article 3 already extensively mentioned

It has being rightly postulated that for the first time in history of law relating to internal conflicts, Protocol II has made clear provisions prohibiting attacks on civilian population and of the use of force against individual civilians. Article 13, for example, provides for the protection of the civilian population and by stating that;

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- 1) The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
- 2) The civilian population as such, as well as individual civilians, shall not be the object of attack. Act or threats of violence, the primary purpose of which is to spread terror among the civilian population are prohibited.
- 3) Civilian shall enjoy the protection afforded by this part, unless and for such time and they take a direct part in hostilities.

In the ongoing Boko Haram insurgency in the North Eastern Region of Nigeria, the Federal Government has stated severally that it is bound by the provisions of the above protocols and will not do anything to harm the civilian populace. While the above assurances are welcoming, it is difficult to believe that there has being no civilian casualties in all the fierce fighting that have gone on for several years between the Boko Haram sect and the Nigerian army. Other provisions, in instruments worthy of considerations include article 14 as shown below;

#### **Article 14**

This Article adds another useful dimension in the provision of “objects indispensable to the survival of the civilian population”. It provides as follows:

“Starvation of civilian as a method of combat is prohibited. It is therefore prohibited to attach, destroy, remove or render useless, for that purpose, object indispensable to the survival of the civilian population, such as foodstuff, agricultural areas for the production of food stuffs, crops, livestock, drinking water installations and supplies and irrigation work”. It has well documented by Abadi Lady Esq. follows that

“All these are part of the measures contained in the treaties aimed at regulating the conduct of non-international armed conflict. But in actual fact situations are different in war times. In the Biafra conflict for instance, before recognition, Nigeria imposed economic blockage on the fledgling state. Life became so unbearable for the ordinary Biafran that it was common practice to see people eat food and praying mantis.

Every leaf in the bush was turned to edible vegetable and the main source of protein food was the relief materials from International Relief Agencies like CARITAS (Catholic Relief International and World Council of Churches (WCC)). However, an open fact that reliance on relief supplies can never effectively take care of any hungry population.

While the war between Iraq and the United States continued, complete blockage was not possible because Iraq entered into deals which ensured that there was the oil for food deal which allowed the Iraqs to sell a certain percentage of oil in exchange for food and other essential needs like medicine. This situation can be contrasted with the situation that prevailed during the Nigerian Biafra war which brought about total economic blockage. A “Nigerian top Government official was quoted as saying that the economic blockage of Biafra was aimed at starvation and starvation is a legitimate instrument of warfare”. It is hoped that the Nigerian Military is not adopting a similar posture in the ongoing Boko Haram insurgency.

#### **Treaties**

It is appropriate, perhaps, to define what exactly treaties are. Treaties are international agreements formally signed, ratified or adhered to by sovereign states. They serve as a unifying instrument. Under international humanitarian law, there are numerous treaties governing armed conflicts. It is appropriate, to consider some of the treaties dealing with internal and external warfare and their applicability to the ongoing war between the Boko Haram sect and the Nigeria army.

#### **Types of conflicts recognized under international humanitarian law**

Until recently, non-international armed conflict was regarded as armed confrontations that take place within the territory of a state. Instances locatable are insurgencies between the government on the one hand and armed insurgent groups on the other hand. This is clear from the development of the Boko Haram insurgency in Nigeria. In whatever way one looks at it the members of such insurgency groupings, howsoever described to wit: insurgents, rebels, revolutionaries, secessionist, freedom fighters, terrorists or by such similar appellatives claim to be fighting for one or many of the following reasons. These include those fighting to take ‘the reins of power’, or to obtain greater autonomy within the state, or those fighting order to secede and create their own state, as it happened in the Biafran secession-attempt in Nigeria.

At other times, the agitations and purpose of the insurgents may become very complicated. For example in the Liberian conflict which started as a war between the Government (Master Sergeant Doe’s) forces and a rebel faction led by Charles

Taylor led to the growth of other factions and finally became ‘a free for all war’. It is, however, on record that the Economic Community of West African States (ECOMOG FORCE’S) intervention that led to the stoppage of the war but even at that; the war was still regarded as non-international armed conflict. This type of conflict is however regarded as internationalized civil wars and is still within the purview of international humanitarian law.

#### **Terrorism**

As stated above, in recent times, domestic and world news is punctuated daily with stories of all manner of violence, kidnapping of persons of all categories beginning from school children in nursery and primary schools children by militants in and outside Nigeria. For almost one year, over 200 school girls were taken away from their school in Chibok in the Northeastern of Nigeria by the Boko Haram sect. Before then, the said sect had burnt down the Nigerian office of the United Nations office in Abuja where several persons were killed, maimed and several more injured. Similarly, the Boko Haram sect and other bodies, as would be shown later in this work, have also carried out several dastardly leading to the death of several person in churches, mosques, market, motor parks, television viewing centres, clubs etc.

One may then asked: what is terrorism and what are the causes of its prevalence in societies today:

*Why acts of terrorism, violence and insurgencies have become transnational phenomena? Why is it that*

*almost all nations of the world have become victims to acts of terrorism and insurgencies? Is terrorism synonymous with violence? What can modern societies do to stem the tide of terrorism and insurgency around the globe?*

Existing literature give clues to the above and other related questions.

### **What then is Terrorism?**

In the words of Webster Dictionary 2005 edition, terrorism is the “use of terror in or and violence to intimidate” people. This may mean then that the perpetrators are likely to use ‘weapons’ that will produce intimidation, threats of intimidation and various forms of harms on their victims. Intimidation, threats and other will produce different degrees of harm on people. These may range from acts that may bring about a breach of the peace, the causing of grievous bodily harm on persons, disrupt the orderly functioning of societal activities, psychological, material, financial, family life.

According to section 1 (2) of the Nigerian the terrorism Act 2011, an act of terrorism is defined as facts which:

- a. may seriously harm or damage a country or an international organization;
- b. Is intended or can reasonably be regarded as having been intended to-
  - i. Unduly compel a government or international organization to perform or abstain from performing any act;
  - ii. Seriously intimidate a population;
  - iii. Seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of ‘a country or an international organization; or
  - iv. Otherwise influence such government or international organization by intimidation or coercion; and
- c. Involves or causes, as the case may be-
  - i. An attack upon a person’s life which may cause serious bodily harm or death;
  - ii. Kidnapping of a person;
  - iii. Destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
  - iv. The seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection;
  - v. The manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of biological and chemical weapons without lawful authority;
  - vi. The release of dangerous substance or causing fire, explosives or floods, the effect of which is to endanger human life;
  - vii. Interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- d. An act or omission in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.
- e. An act which disrupts a service but is committed in pursuance of a protest. However, demonstration or stopped of work is not a terrorism act within the meaning of this definition provided that the act is not intended to result in any harm referred to in subsection(2) (b) (i) or (iv) of this section.

It is now a well-known fact all insurgencies include terrorism, with the caveat that there is no universally accepted definition of terrorism. While there is no accepted definition in international law, the United Nations- sponsored working group’s definitions include the one that was drafted by Alex P. Schmid for the policy Working Group on the United Nations and Terrorism in the process of reporting to the Secretary-General of the UN, on behalf of the committee in 2002, postulated that: “without attempting a comprehensive definition of terrorism, it would be useful to delineate some broad characteristics of the phenomenon. Terrorism is, in most cases, especially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose. Terrorism is a criminal act, but it is more than mere criminality. To overcome the problem of terrorism it is necessary to understand its political nature as well as its basic criminality” and psychology. The United Nations needs to address both sides of this equation.

Also in the year 2004, the UN Security Council by Resolution, 1566 defined terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act”. By all standards, the above definition is all embracing, to the extent that its covers violence or terrorism directed at groups, persons, and the state.

There is also, for example, the issue of conflicts in the definitions of terrorism and insurgencies. The essay that won the 24th Annual United States Chairman of the Joint Chiefs of Staff Strategic Essay written by Michael F. Morris, observed that a pure terrorist group that “may pursue political, even revolutionary, goals, but their violence replaces rather than complements a political program”. Mr. Michael F. Morris further emphasized the fact that the “use, or non-use, of terrorism does not define insurgency, but that organizational traits have, over the years provided another means of determining the two apart. In his analyses Insurgencies normally field fighting forces of magnitudes larger than those of terrorist organizations”. It was further submitted that while Insurgencies have a “political purpose, and may provide social services and have an overt, even legal, political wing, their covert wing carries out attacks on military forces with tactics such as raids and ambushes, as well as acts of terror such as attacks that cause deliberate civilian casualties”.

Mao, on the other hand, viewed terrorism a basic part of his part of the three phases of revolutionary warfare. Several insurgency models recognize that completed acts of terrorism widen the security gap. According to Carlos Marighella, the Marxist guerrilla theoretician, terrorism is to be defined to include acts of terror, as a means of accomplishing something that fits the concept of

opening the security gap and also saw terrorism as part of forming a guerilla movement. For the purposes of this book, however, terrorism can also be seen as forming part of various activities adopted by insurgencies in their operations in almost all Nations of the world. It is therefore submitted that terrorism is an aspect of insurgency. In whatever way, one looks at, however, it must be admitted that given the murderous activities of Boko Haram, for example in Nigeria, it is difficult to measure whether Nigerians have being positively impacted or protected by the ongoing terrorism in parts of Nigeria in accordance with the provisions of Nigeria's Terrorism Act, 2011.

### **Theories of terrorism**

"Passy Amaraegbu"<sup>1</sup> has given further insight to various theories of terrorism as follows: There are several psychological reasons, causes and theories of terrorism. From the psychoanalytic viewpoint, terrorism is a product of psychopathology. In other words, terrorism emanates from mental illness. Unconscious motives and perpetration of the tendencies in the personality, according to the Freudian psychoanalytic theory both contribute to the prevalence of terrorism and violence in the human personality".

*Passy located recent studies on the issue of mental health of terrorism indicate that some of the function effectively in normal day-to-day running of their lives. For instance, they may have a regular carrier or manage their homes well, yet once the duty of terrorism beckons, a typical terrorist will sacrifice his/her treasure at the altar of terrorist activity. One then wonders what type of mental health such terrorist enjoy?*

The second theory that has been isolated is the social learning theory, which according to Passy posits that "terrorism is simply a learned act. Derived from the nurture theory, the social learning theory states that terrorism is not an innate trait, but an attitude. This can be vicarious and or intentional. Passy analysis that this second theory is relevant to our Nigerian situation of terrorism. He wondered loudly what else can explain a situation where "young people, including females have been recruited to engage in terrorism. The terrorist have found indoctrination to be a useful tool to propagate their heinous act.

The third theory, in the words of Passy, again, is the psychological theory of is the recognitive viewpoint which is to the effect that: "different people based their theory on the perception, understanding and interpretation of the environment. Basically, people form an internal or cognitive map of their external environment, which becomes the determinant of their behavior. Once more, we can see the relevance of this theory in the Nigerian terrorist situation.

We know of such a prevailing mindset, which believes that some sections of the Nigerian Nation is marginalized, dispossessed of their power or birthright. Consequently the only way to regain power is through terrorism". This is a pervasive mindset of the Nigerian terrorist, Passy observed rightly, in our view, is who bestrides the double stool of religious indoctrination and power. He argued further that perception is important in determining human behavior, and this is because: "It is the baseline of human judgment, action and attitude. It is perception that developed into a mindset and ultimately goes ahead to form our worldview, which is the compass of our journey through life.

Vengeance and forgiveness, hatred and love, stringiness and generosity begin with perception, develop into a mindset and ultimate form our worldview. Solving the problem of terrorism must begin from this point of education, enlightenment and change of mindset".

### **How to handle terrorism**

Retaliatory military violent strategies alone may never may never solve the problem of terrorism. Used alone and predominantly, they are counterproductive. Social scientist strongly think that there are three effective strategies of handling terrorism. These are reducing intergroup conflict, creating incentive for the reduction of terrorism and socializing young people.

With over 250 tribal groups in Nigeria and many years of real and perceive marginalization of these various tribes or Nations, we do know that curbing terrorism in our country is a huge task. However, this can be addressed strategically by focusing on resolving the conflicts or handling the hurting spot of each of the most aggrieved or vulnerable tribe or Nation.

The use of incentives is yet an invaluable strategy to deal with terrorism. These incentives vary from coast to coast and from one tribal Nation to the other. It is important that those that are in charge of the conflict resolution should avoid rubbing Peter pay Paul, because such measures would be ineffective. The last remedy propounded by social scientist against terrorism is employing the instrument of socialization among young people. This is akin to vaccinating a prospective patient against onslaught of an impending disease. As a preventive strategy against terrorism, socialization is potent. Prevention is always better than cure. We all know that the Nigerian situation is a complex one, which needs a multi-strategic approach to handle.

Our armed forces must be equipped with modern technological armoury. Nigerians should learn to be sensitive and alert against every sign of terrorism, while the relationship between the armed forces and the citizens should be improved. Citizens should learn some self-defence tactic, while the government at all levels should be involved (and seen to be) in the protection of the lives of the citizenry.

As a major problem, which complicate the Nigerian terrorism imbroglio, solution must be found in the principles of military intelligence, strict discipline, enforcement of equity and justice. By no means are these easy matter to pursue and accomplish. Yet, conquering terrorism must incorporate these bold steps. It was Rudy Giuliani, who said: "Courage is about the management of fear, not the absence." In spite of our fears, Nigeria must move on and boldly, too. Terrorism is majorly a psychological warfare, which involves two mindsets – that of the terrorist, who wants to intimidate, harm and ultimately control the opposition. On the other side is the opposition, who labours to crush or chain the mind of the terrorist. It is not an easy war at all. And this is why divine intervention becomes necessary. The physical, psychological and social wars should be combined with the spiritual. Foot soldiers and spiritual warriors should form a synergy. Heaven will surely smile on us.

### The Current State of National Security in Nigeria

Is Nigeria in a state of crisis or facing any threat to its security to warrant urgent formulation of a national security mandate or strategy? If so, how has the crisis or threat to security been engaged up till now? Has Nigeria's engagement demonstrated recognition of, and respect for human rights? These are the main questions that this section of the paper deals with in order to establish whether there is a need for a revised national security policy document and what aspects of human rights such a document needs to engage under our prevailing constitutional framework. Commentaries on the security situation in Northern Nigeria paint a grim picture and suggest the existence of a regime of fear. For instance, according to one commentator, Boko Haram (generally described as an Islamic insurgent/militant group) 'has killed and maimed more innocent civilians in the past year than ISIS and Al-Shabaab combined' and there are reports that 'in 2014 alone it killed 6,644 people surpassing ISIS which killed 6,073, thus making it the deadliest terrorist group in 2014 according to a report by Global Terrorism Index'.<sup>1</sup>

Apart from the destruction of lives occasioned by the Boko Haram sect, it is claimed that as a result of the Boko Haram insurgency, 'there are over two million Internally Displaced Persons from the North-east, with over three million faced with the threat of food security, and millions of children in the three states of Adamawa, Borno and Yobe confronted with acute malnutrition'.<sup>2</sup> For their part, human rights organisations such as Amnesty International claim that in the course of a 'violent campaign against the Nigerian government', the Boko Haram insurgency 'has claimed at least 17, 000 lives, mostly civilian, and forced more than one million people to flee their homes'.<sup>3</sup> In the Southern part of Nigeria, different shades of agitation for the independent state of Biafra hold sway, albeit in a relatively peaceful manner. Meanwhile, the Niger Delta remains a flashpoint for violent agitation for improved access to the region's oil wealth. Clearly, all is not well with the Nigerian state and in this state of un-wellness, a recipe for the 'politics of fear'<sup>4</sup> is evident.

Citing other scholars, Brysk describes the 'politics of fear' as involving: 'the construction of threats as total and unknowable, enemies as sub-human other and the use of force as a healthy and necessary assertion of identity that overrides the rights of potential enemies'.<sup>5</sup> In this formulation, power –understood as the ability to control the actions of others'- and particularly the accumulation of power, becomes a critical factor in efforts to enhance national security. Arguably, the recommendation of force as appropriate response to national security concerns resonates with Nigeria's realities. As a candidate in Nigeria's 2015 Presidential elections, current Nigerian President Muhammad Buhari observed that '... our response to this unprecedented threat to our national security has been characterized largely by the use of force'.<sup>7</sup> Whether labouring under, or manipulating the 'politics of fear', the general approach of the Nigerian state to crisis or threat to national security has been to subject the citizenry to threat or actual use of force, very often excessive force. Repeatedly, the outcome of the threat or use of force or excessive force is that human rights of citizens and residents are undermined or abused. For instance, Orji recalls that in response to the supposed threat posed by Nigerian youths of Ijaw extraction who had converged in Kaiama to make the Kaiama Declaration, 'the Federal Government [of Nigeria] responded with reprisals that witnessed the decimation of Odi town'.<sup>8</sup> Similarly, Nigeria's response to agitations by the Nigerians of Ogoni extraction was to descend on the leadership of the Ogoni protestations culminating in the arrest, prosecution, conviction and hanging of nine Ogoni leaders (including Ken Saro-Wiwa) supposedly for inciting mob action leading to the death of four other Ogoni leaders.<sup>9</sup> It has to be noted that whereas the Ogoni clampdown occurred in the heydays of military dictatorship in Nigeria, the invasion of Odi was during a democratic era. In other words, resort to force and use of the sovereign power of the Nigerian state in the face of crisis or threat to national security has been constant notwithstanding the character of the regime in office or the constitutional circumstance of the state.

In the North-East of Nigeria, the response from the Nigerian government to the Boko Haram insurgency was to declare an extended state of emergency in at least three states in the North-East. The state of emergency 'gave overly broad emergency powers to the security forces' and empowered a Joint Task Force comprising of different agencies of the security apparatus to lead operations against the insurgents. The result, according to Amnesty International was that 'Nigerian military forces have extra-judicially executed more than 1,200 people; they have arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture'.<sup>10</sup> In addition to allegations of torture and extra-judicial killings, Amnesty International claims further that 'Hundreds, if not thousands, of Nigerians have become victims of enforced disappearance; and at least 7,000 people have died in military detention as a result of starvation, extreme overcrowding and denial of medical assistance'.<sup>11</sup> As if the abusive actions of the military are not enough, Amnesty International reports that the Civilian Joint Task Force, a civilian militia set up to

<sup>1</sup> Alex Enumah, 'Rethinking Nigeria's National Security' (ThisDay Newspaper) available at <https://www.thisdaylive.com/index.php/2016/06/20/rethinking-nigerias-national-security/>

<sup>2</sup>As above.

<sup>3</sup>Amnesty International Report, (2015) 'Stars on their shoulders. Blood on their hands. War crimes committed by the Nigerian military'

<sup>4</sup>Brysk, 'Human Rights and National Insecurity', 6.

<sup>5</sup>As above.

<sup>6</sup>See A Wolfers, "National Security" as an Ambiguous Symbols' (1952) 67(4) Political Science Quarterly, 481, 485

<sup>7</sup> See NIGERIA'S NATIONAL SECURITY by Muhammadu Buhari March 18, 2015 reproduced in <https://seunfakze.wordpress.com/2015/03/18/nigerias-national-security-by-muhammadu-buhari/>

<sup>8</sup>KE Orji, 'National Security and Sustainable Development in Nigeria: Challenges from the Niger Delta' African Research Review(Pp. 198-211), 203.

<sup>9</sup>As above.

<sup>10</sup>As above.

<sup>11</sup>As above. Amnesty International claims that its report is based on independent 'interview of eighty military sources' and examination of 'more than 800 official documents, including military reports and other correspondence between military units based in the north-east and Defence Headquarters'. The organisation also claims to have conducted more than 412 interviews with victims, their relatives, eye witnesses, human rights activists and other professionals.

support the work of the military has played 'a key role in mass arbitrary arrests and in screening operations in which informants point out Boko Haram suspects. Civilian JTF members have been involved ... in beating and killing men after their arrests'. Separate from the Boko Haram insurgency, it is claimed that 'more than 300 members of the sect [Islamic Movement in Nigeria (IMN), a Shi'ite Muslim minority group] are believed to have been killed in the Zaria attack, which the army initially described as an assassination attempt on the Chief of Army Staff, Turkur Buratai, a General'.<sup>1</sup> By Amnesty International's account, 'Witnesses and relatives of victims interviewed ...said they had seen dozens of people being shot dead by soldiers and that dozens of wounded protesters died when soldiers set fire to a building in the IMN leader's residential compound which was being used to treat the wounded and as a makeshift mortuary'.<sup>2</sup>

Government's response to the Boko Haram insurgency in the North-East and the IMN situation in Kaduna State have both occurred in the midst of a democratic dispensation in Nigeria. In each case, government's resort to force and state violence as a primary response is conspicuous and pronounced. In both the North and the South of Nigeria, the government appears to have elected not to adopt a 'law-enforcement/criminal-law' or 'law-and-order' approach to tackling the security challenges. Instead, relying heavily on the use of armed forces, the Nigerian state has adopted a war approach that emphasises the use of heavy military force within the internal borders of the Nigerian state. Significantly, the reports do not only indicate a propensity to violate rights protecting the personal integrity of citizens but in some cases also showed distinct disregard for civil rights as well as due-process rights.<sup>3</sup>

More generally, it has to be re-emphasised that the reports above indicate that within the last few years the Nigerian state has faced or is facing a combination of internal unrest and armed and unarmed assault or threat of assault on its territory, norms and values. If Wolfers is correct, applying his argument that 'security points to some degree of protection of values previously acquired' leads to the conclusion that the Nigerian state is in a situation of insecurity.<sup>4</sup> Citing Walter Lippmann's view that "a nation is secure to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war, and is able, if challenged, to maintain them by victory in such a war", Wolfers suggests that 'security rises and falls with the ability of a nation to deter an attack or to defeat it'.<sup>5</sup> The threat in this case is national, therefore Nigeria has faced and continues to face threats to its national security. And the government's (executive's) response to, and engagement with the threats has been to mobilise the sovereign power as represented by the might of its security forces to confront individuals and communities perceived as the source(s) of these threats. As available evidence indicates, this response has resulted in judicially endorsed and extra-judicial killings, arbitrary arrest and detention of persons (often in indescribable conditions), torture and cruel treatment of persons, enforced disappearance of persons, denial of access to proper and adequate medical treatment, militarisation of society and expansion of the powers and prerogative of security agencies and security personnel, reduction of public participation in decision-making on public affairs, indiscriminate and excessive use of force for resolution of internal dispute and denial of fair hearing. Naturally, this prompts the question: how much sacrifice does a society need to make (in terms of liberty and human rights) to enjoy enhanced national security? If there is balancing between human rights and national security, the balancing has been heavily skewed against human rights. Rights have had to be sacrificed in a so-called pursuit of national security.

We shall now examine various instruments of the United Nations dealing with the issues of international humanitarian law as it apply to the ongoing Boko Haram crises in Nigeria.

#### **Convention against torture and other cruel, inhuman or degrading treatment or punishment 1984**

This convention takes into account Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 7 of International Convention on Civil and Political Right (ICCPR) both of which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

During armed conflict victims are subjected to torture as degrading treatment. To this end, this convention established a committee against torture. Whether or not the Nigerian army is observing the provisions above is very doubtful. From the reports collided from the press, parties to the ongoing Boko Haram crises are summarily executed when caught. Boko Haram itself has shown videos of members of the Nigeria army whose heads were cut off while the army has also consistently boasted of many insurgents who have been killed without recourse to law. In all of these, it would appear that it is the harmless civilian populace who are often caught in the crossfire of the war between Boko Haram, the Nigerian army and the hapless Communities that have become to theater of war and bloodshed. It is disgraceful, in Nigeria, to notice that instead of providing security and welfare for the civilian victims, politicians have continued to play politics with the very lives of these victims.

#### **The provisions of the convention on prohibition or restriction on the use of certain conventional weapons, which may be deemed to be excessively injurious or to have indiscriminate effects, 1981**

This convention recognizes the importance of pursuing every effort which may contribute to progress towards general and complete disarmament under strict and effective international control.

The scope of application refers to Article 2 which is Common to Geneva Convention of 1949 for the protection of victims of armed conflict. Its protocol 1 deals with non-detectable fragments and also prohibit the use of weapons, the primary effect of which is to injure by fragments which in the human body escape detection by x-ray etc.

<sup>1</sup> Premium Times, 'Zaria Massacre: Shi'ite group releases own video, says attack by military "planned, deliberate" available at <http://www.premiumtimesng.com/news/headlines/196311-zaria-massacre-%E2%80%8Bshiite-group-releases-own-video-says-attack-by-military-planned-deliberate.html>

<sup>2</sup> Amnesty International (2016), pg 7

<sup>3</sup> For instance, the rights to free movement, expression and free speech, information and fair hearing all suffer in some ways during these campaigns.

<sup>4</sup> Wolfers, note 32 above, 484.

<sup>5</sup> As above.

#### **The Provisions of the Charter of the United Nations 1945**

This charter is directed at saving succeeding generations from the scourge of armed conflict which are known to have brought untold sorrow to mankind and to reaffirm faith in fundamental human right, in the dignity and worth of the human persons. Its purpose is to maintain international peace and security and to this end, it had taken effective and collective measures for the prevention and removal of threat to peace and for the conformity of the principle of justice and international law hence the establishment of Security Council and the international Court of Justice (ICJ) as of its organ.

#### **The provisions of the convention on the prevention of the crime of genocide 1948**

This convention recognizes that all period of history, genocide has inflicted great losses on humanity and being convinced that in order to liberate mankind from such an odious scourge, international cooperation is required.

In Article VI, it provides that persons charged with direct and public incitement, attempt, complicity and conspiracy to commit genocide or has committed genocide shall be tried by a competent tribunal of the state or the International Criminal Court (ICC).

#### **The international committee of the Red Cross and their activities in armed conflicts**

The International Committee of the Red Cross based in Geneva, Switzerland, is the founding body of the Red Cross/Red Crescent Movement.

As a neutral intermediary in the event of armed conflict, it endeavours on its own initiative or on the basis of the Geneva Convention to protect and assist the victim of the international and civil armed conflict thereby contributing to the peace of the world.

The International Committee to Red Cross (ICRC) is the promote of the Geneva Convention and the custodian of International Humanitarian law, its operations are not limited to armed conflict alone, it operates even when there is no armed conflict such as in cases of famine and flood.

The International Committee of Red Cross (ICRC) being charged with the instrumentality of overseeing the needs of victims of armed conflict dealing with situations whether covered by the Geneva.

Convention or not applies the same criteria to its activities for detainees, such as;

- Its delegates must be able to access to all prisoners (or detainee) and to speak to them freely and without witness
- They must have access to all places of detention and be allowed to repeat the visit
- They must be given list of all persons to be visited (or be able to draw up such list on the spot)

The International Committee or Red Cross (ICRC) in an armed conflict plays the following role:

#### **Visitation To Prisoners**

The purpose of ICRC visits is to access the material and psychological conditions of detention and the treatment of the prisoners.

Where improvements are necessary, the ICRC makes recommendation to the detaining authorities.

The report drawn up by the ICRC following visits to places of detention are strictly confidential and may not be published.

In internal armed conflict, the report are handed over to the detaining authorities only while in international armed conflict, the report are handed over to the detaining authorities and also to the prisoner's powers of origin.

Tracing Agency

The international committee of Red Cross (ICRC) serves as an instrument charge with carrying out the following:

- To obtain record, process and transit all information required for the identification of persons being traced.
- To forward correspondence between dispersed family members when normal means of communication are disputed
- To seek persons report missing or whose relatives are without news of them.
- To reunite families and organize transfer and repatriations

#### **Care**

The international committee of Red Cross (ICRC) THE FOUNDING BODY OF THE Red Cross/ Red Crescent being a voluntary, independent and neutral intermediary brings care and assistance to victims to armed conflict to alleviate human suffering with impartiality (when victims are assisted, the selection criteria is not based on gender, creeds, religion etc but on the needs of victims giving preference to the most vulnerable).

#### **Awareness**

They work for the understanding and dissemination of the knowledge of humanitarian law and for its faithful application.

It runs a variety of projects to promote and raise awareness amongst all categories of people including government.

#### **Conclusion**

While it is too early in the day to determine whether the Nigerian Army, despite the repeated claims by the Federal Government, to be executing the ongoing war between the Boko Haram and the Nigeria Army. It is suggested that both sides of the conflict must comply with the provisions of the relevant international treaties as they relate to the unarmed civilian populace, their rights and those of the parties engaged in the warfare.