



NEAR EAST UNIVERSITY  
INSTITUTE OF GRADUATE STUDIES  
INTERNATIONAL LAW PROGRAM

**THE INTERNATIONAL CRIMINAL COURT ON TERRORISM AND CRIMES  
AGAINST HUMANITY: BOKO HARAM AS CASE STUDY**

MIRIAM DALYOP PAM

MASTER'S THESIS

NICOSIA  
YEAR 2020

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THESIS SUPERVISOR  
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YEAR 2020

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We as the jury members certify the 'THE INTERNATIONAL CRIMINAL COURT ON TERRORISM AND CRIMES AGAINST HUMANITY BOKO HARAM AS CASE STUDY' prepared by MIRIAM DALYOP PAM defended on 15/1/2020 has been found satisfactory for the award of degree of Master

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## DECLARATION

I MIRIAM DALYOP PAM, hereby declare that this dissertation entitled 'THE INTERNATIONAL CRIMINAL COURT ON TERRORISM AND CRIMES AGAINST HUMANITY BOKO HARAM AS CASE STUDY' has been prepared myself under the guidance and supervision of 'Asst. Prof. Dr. Tutku Tugyan' in partial fulfilment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach and Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

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## **ACKNOWLEDGEMENTS**

I am grateful to my supervisor, Asst. Prof Tutku Tugyan for guiding me throughout the duration of this thesis-writing. I thank all who have made this study a success, especially the lecturers from Near East University Cyprus for their diligent teaching.

I deeply appreciate the concern and encouragement from my father- Hon Pam Dalyop and mother Barr. Victoria Pam together with my siblings kaneng Pam, Dalyop Pam and Harat Pam and other family members for their support.

## **ABSTRACT**

### **THE INTERNATIONAL CRIMINAL COURT ON TERRORISM AND CRIMES AGAINST HUMANITY; BOKO HARAM AS CASE STUDY**

The relations of International bodies and institutions with Africa is seen to be spreading rapidly exceeding the areas of developmental and humanitarian cooperation. It has now approached national and internal security issues, as seen in the case of Boko Haram in Northern Nigeria. In the past decade, terrorism and crimes against humanity has become a topic of consideration and has made headlines on global news across the entire world.

The major security problems Nigeria faces are from the terrorist groups such as the Niger Delta militants and Boko Haram. The terrorist group has come to stand out as the most dangerous and lethal in the whole of Africa. The dilemma caused by the Boko Haram is seen as a threat to both international and internal security, with rapid attacks on civilians, churches, security forces and also on international bodies such as the United Nations. The effect of the terrorist group stretches across all the 36 states of the country, thereby having an effect on the country's socio-political and economic growth. Officials from the International Criminal Court (ICC) visited Nigeria with the purpose of investigating cases of human rights violations. Investigations by the ICC so far have not led the prosecution of war criminals in Nigeria.

Thus this research aims to examine the effects of the spread of crimes against humanity and the reign of terror of the Boko Haram terrorist organization, and the role of the international court (ICC) in prosecuting and combatting these crimes in Nigeria.

**KEY WORDS:** International Criminal Court, Boko Haram, Al Shabaab, Terrorism, Crimes against Humanity, Rome Statute, Shar'iah Law, Shura council, Amnesty International Preliminary examinations, Human Rights Watch

## ÖZ

### **THE INTERNATIONAL CRIMINAL COURT ON TERRORISM AND CRIMES AGAINST HUMANITY; BOKO HARAM AS CASE STUDY**

Uluslararası kurum ve kuruluşların Afrika ile ilişkilerinin gelişim ve insani işbirliği alanlarını hızla aştığı görülmektedir. Şimdi, Kuzey Nijerya'daki Boko Haram örneğinde görüldüğü gibi ulusal ve iç güvenlik konularına yaklaştı. Son on yılda, terörizm ve insanlığa karşı suçlar göz önünde bulundurulması gereken bir konu haline geldi ve tüm dünyada küresel haberlerde manşetlere çıktı. Nijerya'nın karşı karşıya olduğu en büyük güvenlik sorunları Nijer Deltası militanları ve Boko Haram gibi terörist gruplardan geliyor. Terörist grup, Afrika'nın en tehlikeli ve ölümcül örgütü olarak öne çıktı. Boko Haram'ın yol açtığı ikilem, sivillere, kiliselere, güvenlik güçlerine ve Birleşmiş Milletler gibi uluslararası kurumlara yönelik hızlı saldırılarla hem uluslararası hem de iç güvenliğe yönelik bir tehdit olarak görülüyor. Terör örgütünün etkisi ülkenin 36 eyaletinin tümüne yayılıyor ve böylelikle ülkenin sosyo-politik ve ekonomik büyümesi üzerinde etkili oluyor. Uluslararası Ceza Mahkemesi (ICC) yetkilileri, insan hakları ihlalleri davalarını araştırmak amacıyla Nijerya'yı ziyaret etti. ICC'nin bugüne kadar yürüttüğü soruşturmalar Nijerya'daki savaş suçlarının yargılanmasını etkilemedi. Bu araştırma, insanlığa karşı işlenen suçların yayılmasının ve Boko Haram terör örgütünün terör saltanatının etkilerini ve uluslararası mahkemenin (ICC) Nijerya'da bu suçların kovuşturulması ve mücadeledeki rolünü incelemeyi amaçlamaktadır.

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**ABBREVIATIONS**

ICC- International Criminal Court

GTI- Global Terrorism Index

ICJ- International Criminal Justice

GTD- Global Terrorism Database

ICTY- International Criminal Tribunal for the former Yugoslavia

ICTR- International Criminal Tribunal Rwanda

ANPP- All Nigeria's People Party

OTP- Office of the Prosecutor

AU- African Union

NPF- Nigerian Police Force

## **CHAPTER 1**

### **INTRODUCTION**

Terrorism and crimes against humanity has gained prominence and widely dominated the international arena in the past decades. Terrorism has been used as an instrument by diverse guerilla and insurgent groups to attract attention and deliver their message from ancient times. It is seen to be the biggest threat to world peace. Boko Haram over the past decades have carried out and portrayed gross acts crimes against humanity and terrorism in Nigeria and other neighboring countries in West Africa, in which this has brought attention to the regional and international bodies. Socioeconomic inequalities, corruption, injustice and religious extremism are few of some of the vices which have collectively changed into violent and fanatical movements demanding radical change. Terrorism and insurgencies thus has become the order of the day constituting difficult challenges which threatens social and political stability, somewhat overcoming military attempts to combat them.

Furthermore, weapons proliferation and transnational conflict, ethnic and religious extremism have subsequently changed the outlook on which terrorism is combatted. The Internet and diverse telecommunication outlets rapidly stretch conflict zones, this has is seen to be a fact: what the masses have viewed to be “local dilemma” just a decade ago is now seen as regional and even international dilemma. The media and internet has made it that, seemingly unrelated terrorist groups join heads and cooperate with each other, to exchange ideas and methods, to give support between them and spread their terror and violence. The Boko Haram have been working in cooperation and have strong ties with Al Qaeda as well as Al Shabaab. And again, suicide terrorism which was seen to be a distant act of terror is seen have crossed borders with ease, as seen in the acts

carried out by Boko Haram in the country, seemingly worst is the threat of weapons of mass destruction which has given them power once seen to be preserved for a whole Nation.

Nigeria which has grown from being twice awarded as a counter with the happiest people in the world to the seventh country that is most terrorized in the whole world according to the ranking of the Global Terrorism Index (GTI)

“Terrorism is ineluctably political in aims and motives, violent and designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command, perpetrated by a subnational group or non-state entity.”<sup>1</sup>

According to (Goldstein et al, 2009: 198). Terrorism refers to a form of violence politically aggravated which indiscriminately and intentionally aims at civilians. Seen from these diverse definitions of terrorism, the common factor cardinal to them is that terrorism is a feature of political violence. Although Nigeria is religiously and ethnically divided, a couple of militant activities have been documented in the Niger Delta region of the country that is essentially rich in oil and gas where the scuffle has turned into an arena of economic crimes, dispute between ethnic and communal groups and general violence. Boko Haram can be said to be one of the reasons why the Nigerian government is said to be weak. There is more to terrorism than the better representation in government or the fight for a fair allocation of resources, as seen in the origin of Boko Haram which gives us reason to say this. In many cases, terrorism lies across political and religious axis in the case of northern Nigeria. According to Stephen Mair, terrorism occurs when there is an interaction between a loss of social identity, social deprivation, political deprivation, economic instability and repression.

Terrorism is a very broad concept and explaining what causes its spread and origin may be a really hard task. Analyzing and explaining the structure between terrorism

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<sup>1</sup> Bruce Hoffman, Inside Terrorism. Columbia University Press (2006)

in Nigeria and the institutions and organizations responsible for combatting the escalations of terrorist acts, with a major focus on the actions of the International Criminal Court (ICC) in prosecuting war crimes, crimes against humanity and terrorism in Nigeria is what this thesis focuses on.

### **1.1 AIM OF STUDY**

The aim of this research is to address and analyze the options for combatting the Boko Haram dilemma and explore the position of international criminal court with regards to this dilemma. One may generate conclusions to the impact of the International Criminal Law from the results in Africa.

Furthermore, The Aim of the study is thereby to examine and analyze Nigeria's legal and procedural framework for investigating and prosecuting the Boko Haram, secondly, to identify the degree of involvement of the International Criminal Court and the applicability of the regime of the court, to consider the withstanding options that could be used to effectively deal with the Boko Haram group between the states which are affected. This thesis is also likely significant because it takes a different path from what is largely recognized as the causes of terrorism especially in the western world which indicates the spread of terrorism to increased radicalization, an expansion in the rate of marginalization of a specific group or the rise of social media.

## **1.2 SIGNIFICANCE OF THE STUDY**

This research is therefore significant in understanding the legal dens in the Nigerian domestic regime in combatting the Boko Haram group. It is also therefore pivotal in portraying the schemes and legal procedures of the International Court of Justice (ICC) in combatting and prosecuting these crimes of humanity in the country.

This research paper will also serve as a tool in shedding light on the legal aspects of the entire situation and also gives future pointers for research on the Boko Haram dilemma. The question of the determination of whether the acts of Boko Haram meets the standard to be regarded as international crimes under the Rome statute because of the fact that the field of international law is always evolving, would be important to the field of study.

Another importance of this research is that it portrays a modern challenge which the nation faces. The research is an updated research carried out which makes it relatable to current issues the Nigerian government faces. It also highlights the obstacles of the inclusion of Terrorism in the Rome Statute of the ICC.

## **1.3 RESEARCH QUESTIONS**

this research seeks to address and answer these questions:

1. What are the legal and procedural responses of the ICC to the Boko Haram violence?
2. Do the acts of Boko Haram fulfill the criteria as War crimes and crimes against humanity which is defined by the Rome Statute?
3. What are the obstacles to the inclusion of Terrorism in the Rome Statute?

## **1.4 STATEMENT OF THE RESEARCH PROBLEM**

The problem of this research lies on the question which ask: what are the legal and procedural responses of the International Criminal Court in prosecuting crimes against

humanity perpetrated by the Boko Haram. The research aims to locate a link between terrorism and the ICC.

The definition of the rapid spread of Boko Haram in this thesis shows the territorial expansion sphere control and terrorist strategy. Boko haram's ability to expand to a large geographical network, the essence of their impact to have transnational links, the use of advanced terrorist strategies, the involvement of the International Court in tackling the rapid expansion will be analyzed during the course of this thesis.

## **1.5 METHODOLOGY**

The data used for this research will be more focused from the year 2000 because one of the aims of this thesis is to address current problems, casualties and insurgencies within this period will be analyzed, portraying the growth and spread of Boko Haram. The case study will be based on Boko Haram insurgents will thus aid in explaining the spread of terrorism and crimes against humanity and low capability of the Nigerian institutions and the role if the International Criminal court. The use of journal articles, research papers, news, books, blogs and the social media will be purposeful in conducting this research.

This research is qualitative based upon library research. It will take a critical approach to the primary and secondary sources with the aim to develop comprehensive defensible answers to the research questions. Primary sources used include international conventions, statutes, Nigerian laws and African treaties. Additionally, reference will be made also to reports of international NGO's and also other reports.

## **1.6 SCOPE AND LIMITATIONS**

The scope of this study is thus is to identify and investigate the main factor which originated the group into its present phase and also examine the role of the International Criminal Court in managing and prosecuting the sect. the main limitation for this research was on my inability to carry out first-hand interviews with former or current members affiliated with the terrorist group, due to the group still being on-going dilemma in the northern region of the country. Another limitation is the availability and collection of efficient data with regards to the attacks carried out by the terrorist group. There was limitation also by inaccurate information from different sources and new outlet on the attacks and approximate number of deaths and injuries.

The scope of this research is quite limited. It focuses on terrorism carried out by the Boko Haram and the involvement of the ICC. The study ascribes the spread of spread of human rights violations by the group to improper and inadequate functioning of the country to combat terrorism in its internal borders.

## **1.7 ORGANIZATION OF THE PAPER**

This research is organized into six chapters. The first chapter comprises of the introduction, aim of study, significance of the research, research questions, statement of the problem, methodology, and scope and limitation of the research and also includes the background information on Nigeria. The second chapter highlights the literature Review on Crimes against Humanity and Terrorism, the Third on Boko Haram, analyzing the terrorist group carefully, the fourth chapter focuses on the Criminal Court on Boko Haram. The Fifth Chapter highlights the findings and Analysis of the research and finally the sixth Chapter on the conclusion and Recommendations.

## 1.8 BACKGROUND INFORMATION ON NIGERIA

The Federal Republic of Nigeria is a constitutional republic comprising of 36 states and a federal capital territory which is Abuja, the country is divided into six geopolitical regions which is the North-east, North-central, Northwest, South-west, South-south, South-east, it comprises of 774 local Government Areas (LGA). The country which is located in the West of Africa, has an area of 923,768 square kilometers which makes it the fourth largest in Africa, the country shares a border with Chad and Cameroon in the east, Niger in the North, Republic of Benin to the West<sup>2</sup> the country claims a territorial sea of approximately 12 nautical miles, and has a 200 meters continental shelf (ibid). Nigeria gained its independence from Britain on October 1<sup>st</sup> 1960 and became 1963, in most parts of its existence as a nation it has been ruled by military dictators specifically from the northern region of the country. Subsequently, the country has been ruled under democracy since 1999.

## DEMOGRAPHICS

### POPULATION

Nigeria is composed of more than 250 ethnic groups with different customs and languages. Of these ethnic groups, out of the ethnic groups the Hausa/Fulani, Igbo and Yoruba are the most influential and populous.<sup>3</sup> The Hausa/Fulani constitute 29% of the population, Yoruba constitute 21% and Igbo 18%.<sup>4</sup> According to a 2011 report by the

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<sup>2</sup> Kirk-Greene, A., Falola, T. and Kendrick, R. *Nigeria/Culture, history & People*. [online] Encyclopedia Britannica. Available at: <https://www.britannica.com/place/Nigeria> [Accessed 23 Dec. 2019]. (2019)

<sup>3</sup> Metlink Royal Meteorological Society. Retrieved 13 November 2019, from <https://www.metlink.org/climate/climate-negotiations-for-schools/country-background-information/country-background-information-nigeria/> <https://www.worldbank.org/en/country/nigeria> (2019)

<sup>4</sup> John Paden J, Faith and Politics in Nigeria: Nigeria as a Pivotal State in the Muslim World. Washington D.C.: United States Institute of Peace Press (2009)

World Bank, the total population of the country is approximately at 162,470,737. (World Bank) The official population was subsequently last reported after the 2006 census by the national population Commission estimated to be 140,431,760. As it is known, the world is estimated to have 7 billion people, with the approximation of 167 million people, Nigeria accounts for 2.4 per cent of the world's population.

## RELIGION

Nigeria is home to diverse religions which vary regionally. The Three main religions being Islam, Christianity and Traditional worshippers. Of these three religious identities in Nigeria the traditional is the least politically active. According to 2003 Nigerian Demographic and health survey, Muslims consist of 50.4% of the population, 48% are Christians and the other 1.8% are other religions (Nigeria National Population Commission and ORC Macro,2004). As of a 2011 study conducted it was seen an increase in population of the Christians to 50.8% which is approximately 80,510,000 of the population, and the number of Muslims is estimated to be 75,738,00 (Per Forum and Public Affairs, 2011).

Furthermore, Nigeria is also divided along the line of region and ethnicity. The Hausa ethnic group in the Northern region is estimated to be 95% Muslims and just 5% Christians, and in the south-east are mostly 98% Christians and 2% African traditional religions, the Yoruba tribe constitutes of 60% Christians and 30% Muslims with 10% traditional African religions the north-central zone which is home to majority of the minority are mostly Christians and traditionalists with few Muslims (National Population Commission).

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The topic of religion has always been interconnected with politics in the country. “the intensity of religious identity in Nigeria is regarded as one of the highest in the world”).<sup>5</sup> Highlighting this religious identity plays a role in the distrust between Muslims and Christians. In a survey it was noted that 62% of the Christians in the country trust people at all or a bit. Furthermore, religion is seen in the Nigerian legal and judicial system which has three codes of law as follows: Nigerian statute law which mirrors English law, customary law and Shariah law which is Islamic law. The topic of religion is important in pointing out the role of religion and ethnicity in consideration to the present security dilemma the country faces.

## LANGUAGE

There are 521 languages in Nigeria and out of these 521 languages, 510 are living languages, two are second languages without mother-tongue speakers and 9 of them are extinct.<sup>6</sup> However, the major languages spoken in the country include Hausa, Igbo, Fulfude, Ibibio and Pidgin English. The main language spoken which is English was adopted from the British during colonization, with the purpose of easing the linguistic and cultural unity of the country. Nevertheless, Yoruba, Igbo and Hausa are the three main languages that are being spoken in Nigeria.

## EDUCATION

The education system in Nigeria is seen to be defective majorly due to deteriorating institutional infrastructure. Study has shown that the literacy rate between females

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<sup>5</sup> Ibid.

<sup>6</sup> Gordon Raymond Jr, *Ethnologue: Languages of the World*,” Fifteenth edition. Dallas, Tex.: SIL International, retrieved 14 november 2019 from <http://www.ethnologue.com/> (2005)

between 15-24 years is 65 per cent while that of the males between the same age range is 78 per cent (world bank) The literacy level is estimated to be 61.3% as at July 2012 for the entire population, which makes it that 50 million Nigerians are still illiterates. The highest level of illiteracy in the country is recorded by the northern parts in which western education was earlier restricted due to the fact that the religious leaders dreaded the idea of the Christian missionaries inferring with Islam.(ibid) Some stumbling blocks with regards to the Nigerian educational system includes the very poor maintenance and inability of the government to pay salaries fast, which leads to strikes by teachers of various institutions and also the shortage of qualified teachers. There are approximately 117 universities in the country which includes both the public and private schools.

## ECONOMY

Nigeria is undoubtedly one of the largest economies in Africa, it is categorized as a mixed economy emerging market with a lower middle income status (World Bank, July 2012). Before crude oil was unearthed, the economy solely depended on Agriculture. At a point, the country was the world's largest exporter of cocoa, palm oil, sugar cane, yams, maize and cassava. Oil and petroleum has however taken lead and have played huge roles in the country's economy for the last fifty decades, in which it accounts for approximately 95% of exports and 95% of all its foreign exchange revenue<sup>7</sup> Nigerian is seen to be the 10<sup>th</sup> largest oil producer in the world and the third largest in the whole of Africa.

Furthermore, notwithstanding its strong fundamentals, the oil-rich country has been seen to be plagued by inadequate power supply, an inefficient property registration system, lack of infrastructure, delays in the passage of legislative reforms, a slow and ineffective judicial system, restrictive trade policies, an inconsistent regulatory

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<sup>7</sup> Nigeria Economy - overview - Economy. Retrieved 13 November 2019, from [https://www.indexmundi.com/nigeria/economy\\_overview.html](https://www.indexmundi.com/nigeria/economy_overview.html) (2019)

environment, unreliable dispute resolution mechanisms, pervasive corruption. Additionally, security risks and regulatory constraints have limited new investment in oil and natural gas, and Nigeria's oil production had been contracting every year since 2012 until a slight rebound in 2017.<sup>8</sup> Nigeria also has a manufacturing industries located in some few states of the country, steel mills, pulp and paper mills, petrochemical plants, aluminium smelter and a car manufacturing industry, in which these companies are located in strategic locations close to essential raw materials.

Lastly, in regards to Nigeria's the Gross Domestic Product per capita in Nigeria was last recorded in 2018 at 2396.30 US dollars. The GDP per Capita is equivalent to 19 percent of the world's average. the GDP per capita in the country averaged 1736.15 USD from 1960 until 2018, reaching a peak of 2563.90 USD in 2014 and an estimated low of 1145.80 USD in 1968.<sup>9</sup> Nigeria has an exceedingly developed financial service sector, with diverse international and local banks, insurance companies and brokers, private equity funds and brokerage houses.<sup>10</sup>

## POLITICS

The major problems Nigeria faces is rooted in very bad leadership and corruption. A study has shown that Nigeria is the 35<sup>th</sup> most corrupt country in the world. Politics has been described in Laswllian concept simply as he who gets what, when and how. According to the Estonian notion, it is an authoritative allocation of the values of the. Additionally, In the Marxian he defined politics is a class struggle for control of the State.

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<sup>8</sup> ibid

<sup>9</sup> Nigeria GDP per capita | 2019 | Data | Chart | Calendar | Forecast | News.).Retrieved 13 November 2019, from <https://tradingeconomics.com/nigeria/gdp-per-capita> (2019)

<sup>10</sup> James P Lewis P, Growing Apart: Oil, Politics, and Economic Change in Indonesia and Nigeria, University of Michigan Press (2007) p 132

The Critiques of the Nigerian State and modern political culture has trailed the socio-psychological tendencies inherent in Nigerian political system to the innate struggles for more power since political activities metamorphosed to local participation as an outcome of the introduction of 1945 Richards Constitution.<sup>11</sup>

The politics and power struggle that emerged were as a result of a faulty and flawed foundation in the formation of Nigerian State because of peremptory imposition of one nation-state on a society of diverse nationalities through a fragmented political system. The British who colonized the country did not take into consideration the heterogeneous differences of Nigerian people and societies together with their repugnance and different stages of political developments and national identities at the advent of colonial rule (Kolawale, 2002).

The Nigerian political class has turned the democracy of the country into revenue ventures, this is seen to be the motivating factor for politics within the politics of the country. The structures of the government are very poor and not accountable. Nigeria since independence has made \$600 billion in revenue, nevertheless, the Save Nigeria Group have claimed that the money the country has made is estimated to be as far as \$1 trillion and they also claimed that \$600 billion has secretly been stolen by Nigerian leaders (save Nigeria Group, 2019) Nigerian politicians are one of the richest worldwide, with more than half of its population living under crucial poverty.

## **SUMMARY**

The major problem Nigeria faces has always stemmed from bad governance and political corruption. The politicians steal and embezzle the country's funds to the neglect of the poor and starving population. British control and influence over modern Nigeria and Africa's most populated country spread through the 19th century. Numbers of constitutions after World War II allowed Nigeria greater autonomy in which the country's independence was granted in 1960. (one world nations online, 2019) Most of the next 40 years Nigeria was ruled by two military committees. And in 1999 emerged a new constitution with a peaceful transition to civilian government. The government of Nigeria

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<sup>11</sup> Awolowo, Obafemi, *Thoughts on Nigerian constitution*: ibadan spectrum books, pp.3-10.

has continued to face the formidable task of revolutionizing a petroleum-based economy, in which the country's revenues and income have been squandered by mismanagement and corruption. Additionally, the country has continued to experience non-stopping religious and ethnic tensions. Though the 2003 and 2007 presidential elections were flawed by substantial instabilities and violence, Nigeria is experiencing currently its longest period of civilian rule since independence. The elections of April 2007 recognized the first civilian-to-civilian pass on of power in the history of the country. Nigeria took up a nonpermanent seat on the UN Security Council for the 2014-15 term on January 2014.

## **CHAPTER TWO**

### **CRIMES AGAINST HUMANITY AND TERRORISM**

#### **2.1 Introduction**

This chapter explores a number of different writings, scholarly works and views of different writers and authors in the field of terrorism on different aspect of the subject matter. It takes a look at the views and opinions of different writers which are contained in journal articles and books which are related to the research. This chapter highlights the general overview of the meaning of terrorism, crimes against humanity and Genocide, the causes and trends of terrorism, crimes against humanity and insurgency carried out by the Boko Haram and the role of international organizations with focus on the International Criminal Court (ICC) in prosecuting these crimes in Nigeria. Furthermore, the concept of terrorism is really broad. Diverse scholars have taken a look at this concept from different angles. Terrorism and crimes against humanity is seen to have no particular geographical region in which its carried out, it takes place in different parts of the globe with reasons and circumstances best known to the terrorist groups in order to achieve their goals.

## 2.2 MEANING AND CHARACTER OF TERRORISM

The concept of terrorism is characterized by the desire to reach its goals and objectives by terrifying and threatening individuals and groups who might hinder it.<sup>12</sup> Nevertheless, although there is no yet a globally compliant definition of terrorism, it is believed that a prominent factor is dependent on political demands, other common definitions nevertheless refer to those terrifying and violent acts which have the purpose of creating fear are carried out for a political, religious or ideological goals with purposely disregarding and targeting the safety of civilians.<sup>13</sup>

The Global Terrorism Database (GTD) postulates three main criteria for an act to be highlighted and described as terrorist:

- i. The act must be aimed at attaining a political, economic, religious, or social goal.
- ii. There must be evidence of an intention to coerce, intimidate, or convey some other message to a larger audience (or audiences) than the immediate victims.
- iii. The action must be outside the context of legitimate warfare activities, i.e. the act must be outside the parameters permitted by international humanitarian law

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<sup>12</sup>O Oche, & C Dokubo, The scourge of globalized networks of terror and Nigeria's security. In conference on "Nigeria and the world after forty years: policy perspectives for a new century", NIIA, Lagos, December (2011) pp. 5-6

<sup>13</sup> Ekaterina Stepanova, Terrorism in Asmmetrical conflict; ideological and structural aspects, oxford University press (2008) p.5

(particularly the admonition against deliberately targeting civilians or non-combatants).<sup>14</sup>

According to (Lodge 1981), he identified three different categories of terrorism, firstly, the revolutionary terrorism which is directed at political revolution, the sub-revolutionary terrorism which is basically politically motivated but it is not directed at a revolution, lastly is the Repressive terrorism which aims on curbing some particular individuals, groups and deterring any sought of violence or behavior which is seen as undesirable. Furthermore, according to Christian Walker, it is possible to highlight two types of terrorist actions, in which the first is seen a sought of freedom fight for the citizens of the country, examples of these are groups like the PKK in Turkey, and IRA in Northern Ireland. in the path of a political concept without any link to a specific part of the country, i.e. the Brigade Rosse of Italy and the RAF in Germany. Secondly, the concept of fear and insecurity should be noted as an adequate element but not a necessary prerequisite to be qualified as terrorism. And lastly, the number of terrorist or persons do not specifically matter who must collaborate or form alliance to be considered a terrorist.<sup>15</sup>

According to Title 22, Chapter 38 of the United States code (U.S.C), terrorism is defined as “premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents”<sup>16</sup>

“Terrorism is ineluctably political in aims and motives, violent and designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted

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<sup>14</sup> Global Terrorism Database (GTD) | START.umd.edu. Retrieved 8 December 2019, from <https://www.start.umd.edu/research-projects/global-terrorism-database-gtd> (2019)

<sup>15</sup>Christian Walter, Defining terrorism in national and international law. Terrorism as a Challenge for national and international Law: Security versus Liberty, (2004) 23-44.

<sup>16</sup> U.S. Code § 2656e - Terrorism-related travel advisories. Retrieved 23 December 2019, from <https://www.law.cornell.edu/uscode/text/22/2656e>

by an organization with an identifiable chain of command, perpetrated by a subnational group or non-state entity”<sup>17</sup>

From the various definitions of terrorism, it is seen that the common denominator highlighted in these definitions is that terrorism is a feature of political violence. In these modern times, the use of technology and globalization has been a catalyst to the intensity and spread of terrorism making it a broad and international concept. We have less substantive knowledge about terrorism than we have about civil and interstate wars therefore slowing down empirical research.<sup>18</sup> Terrorism is an elusive phenomenon in which social media and media at large have used to cover nearly all non-state violence, the notion is vague at three levels which is ontological, political and conceptual. Ontologically, terrorism surrounds different political entities which may be a certain kind of violence, different political entities, particular armed groups and violent and conflict strategy. Politically, Terrorism is a demeaning term to the extent that terrorist use it to degrade their enemies, in such a case it is hard to find out which armed group can be referred to as terrorist. Finally, Conceptually, the dominant party argues that terrorism is recognized as an act violence against civilians, while other parties take focus on the nature and aim of the attack.<sup>19</sup>

The concept of Terrorism has different contours for different purposes and the better way to think of terrorism is not as a crime, but rather a different aspect of crime, a higher and more dangerous version of crime, a kind of super-crime which incorporates some of the basic characteristics of warfare.<sup>20</sup> According to George Fletcher there are eight variables of terrorism; the required intention, the connection of the offender to the state,

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<sup>17</sup> Hoffman, B (2006). Inside Terrorism. Columbia University Press (2019)

<sup>18</sup> Sanchez-Cuena, why do we know so little about Terrorism? (2014) pg 590-601

<sup>19</sup> ibid

<sup>20</sup> George Fletcher, The Indefinable concept of Terrorism” Journal of International Criminal Justice, vol 4, issue 5, (2013) pp. 894-901

the factor of violence, the nature of the victims, the level of organization, the absence of guilt, the justice and motive of their cause and the element of theatre.<sup>21</sup>

Another example of "terrorism" related terminology is Resolution 1566 (2004), which aimed to assist States in meeting their obligations under Security Council Resolution 1373 (2001) to take domestic legislative action. It defines to "terrorism" as:

“criminal acts, including against civilians, committed with 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 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, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature. (Para. 3).

This research will further define terrorism as an illegitimate of force by an individual, state or group to create fear and compel a weaker target in order to achieve their goals.

### **2.3 CAUSES OF TERRORISM**

There has been a lot of arguments about what precisely causes terrorism, Terrorism is a very broad concept, therefore it is difficult to elaborate on the act of terrorism as a result of a singular cause. Thus, the reasons and causes of terrorism differ from terrorist groups. There is no universally accepted definition of terrorism. It is known to be defined as defined as the de-liberate use of violence and intimidation directed at a large audience to coerce a community into granting politically or ideologically motivated demands. The main short term goals of terrorism are: gaining publicity and media attention: destabilizing polity and damaging economies. Furthermore, the long term goals

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<sup>21</sup> ibid

of terrorism is redistribution of power, influence and wealth according to Frey and Leuching. Terrorist organizations must have goals that are not enforceable in the ordinary political process and for whose implementation their members are willing to use force. Typical terrorist behavior like taking hostages and mass killing serves as a tool to achieve these strategic goals.<sup>22</sup>

Extremist views in religion, nationalism, ideology, psychology and ethnicity in most cases lead to terrorism. Some other catalyst to the cause of terrorism include occupation, poverty, and sometimes military oppression. Additionally, International injustice can be another cause of terrorism. Ideologies play an important role on how terrorist select their targets: it gives the terrorist the purpose for action, it gives them a prism on how they view other people and it justifies their actions.<sup>23</sup>

high growth rates of population change the demographic structure of counties around the world, thereby, increasing younger age groups<sup>24</sup> with the existence presence of poverty, the younger people will not be able to achieve efficient goals: the “blockage of goal-seeking behavior” is a source of frustration and violence in society. It was confirmed in a study that the highest majority of terrorists were young adult males. In general, the widespread presence of young population in poor socioeconomic environments will likely increase social deprivation that will be a catalyst to frustrated, violent and angry behavior of individuals. These psychosocial risk factors in some particular regions can cause terrorism. In particular, the combination of problematic socioeconomic conditions and high growth rates of population in society may drag the young individuals into a collective/individual deviance and in turn to terrorism. Furthermore, yet another possible effect of high growth rates of population is higher economic inequality, which is a catalyst

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<sup>22</sup> D Meierrieks., T Krieger, *What Causes Terrorism?* (2009)

<sup>23</sup> Ofer Azar, *The Implications of Tipping for Economics and Management.* (2013)

<sup>24</sup> Paul Ehrlich, Jianguo Liu, *Population and Environment*, 24(2), (2002) p 183-192.

to violent crime in society.<sup>25</sup> Poverty and income inequality can bring about resource deprivation, which are associated with violent crime.<sup>26</sup> Furthermore, Stolzenberg, Eitle and D'Alessio (2006) postulated that violence is rooted on economic deprivation that acts as a catalyst factor in the act and process of crime. In general, economic inequality of countries, together with population pressure, thereby leads to hostility, frustration and resentment which can be leading factors of terrorism and violence in society.<sup>27</sup> High levels of population growth, associated with income inequality, bring feeling of lack of justice and unfairness that leads poor people to seek compensation and satisfaction by all means, which results in them committing crimes against other individuals in the society. According to Gilligan (2001), income inequality affects personality of people and brings about and humiliation and disrespect, which are included in the most common catalyst to violence and consequently to terrorism. In summary high population growth and economic inequality can bring about negative social interactions and low sense of control over one's life, all of These psychosocial risk factors may further enhance terrorism.

Recognizing the root causes of terrorism is a complicated task due to different reasons. The concept of the 'root causes' can be viewed from an angle of political issue than from other research on social theory and on terrorism. According to Bjorgo, 2005, there are different levels of terrorism, in which he explained that some are somewhat more remotely while others are more directly attached with terrorism in which the precipitants and preconditions of terrorism is what makes the causes differ from another. Furthermore, he categorized the causes accordingly into **Structural** causes; class structure, globalization. **Facilitator** causes; weak state control of territory, weapons technology. **Motivational**

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<sup>25</sup> Mario Coccia, General Causes of Violent Crime: The Income Inequality. (2017)

<sup>26</sup> Hsieh, C.-C., Pugh, M. D, Poverty, Income Inequality, and Violent Crime: Meta-Analysis of Recent Aggregate Data Studies. *Criminal Justice Review*, 18(2), (1993) 182–202.

<sup>27</sup> Judith B, P Blau, The Cost of Inequality: Metropolitan Structure and Violent Crime. *American Sociological Review*, 47(1) (1982) 114

Causes; rhetoric and ideology. And lastly **Triggering** causes; political calamities and outrageous acts<sup>28</sup>

The role of religious beliefs in explaining terrorism should never be underestimated. Majority believe that religious beliefs have been behind terrorism in many societies, there also causes that may lead to dissatisfaction. Causes of Crisis and conflicts may be about territory and resources, competition over power, but the notion of Religion adds another twist to it. Furthermore, Ali Ozdogan and James Piazza argue that the separation of minority groups like lack of access to facilities like health and welfare, education, and unequal employment opportunities, has been a cause of complaint by minority groups in a state which may likely take a form of terrorist activities. The wide divide between social groups in the terms of religion, ethnicity and culture may lead to a structural and social degradation as a cause of weak relationship between each other. Additionally, they argued that the more socially fragmented a nation or society is, the higher tendency there is to labor force that can likely lead to terrorism.<sup>29</sup>

Furthermore, poor societies lead and enhances a weak state which will not have the magnitude to deter terrorist activities or promote programs which subsidizes support for terrorist acts. Environmental degradation can be one of the issues can also be one of the issues that triggers people in a society to think that terrorism is the last option. other

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<sup>28</sup> Bakker, E, Tore Bjorgo, *Strategies for preventing terrorism*, Basingstoke: Palgrave Macmillan, 2013, xi + 116 pp., 201. *Security and Human Rights*, (2013) 24(2) 215–217.

<sup>29</sup> James Piazza, Poverty, minority economic discrimination, and domestic terrorism. *Journal of Peace and Research*, (2011) 48(3), 339–353.

factors that may also trigger this feeling in people is human rights abuses, alienation, humiliation and dispossession.<sup>30</sup>

## 2.4 CRIMES AGAINST HUMANITY

According to the Rome Statute, crimes against humanity include acts that include; extermination, 'murder, enslavement, deportation or the forcible transfer of persons, imprisonment or other serious deprivation of physical liberty that violates the fundamental rules of international law that includes; rape, sexual slavery, torture, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of that aspect; the persecution against any identifiable group on racial, political, ethnic, national, religious, gender or other factors which are internationally recognized as impermissible under international law, in conjunction with any act referred to in Article 7 of the Rome Statute or any crime that is within the jurisdiction of the International Criminal Court which includes the imposed disappearance of people, apartheid and other inhumane acts that are within that category, intentionally causing crucial suffering or great discomfort to body, mental or physical health.'<sup>31</sup> The Rome statute thereby requires that such acts must be committed with the knowledge of systematic and widespread attack. It also requires that such acts must constitute systematic and widespread attack which is aimed against any civilian population conforming to a state or organizational policy to commit such attacks.<sup>32</sup>

Crimes against humanity cut deep; they are the worst thing that human beings do to each other. Intuitively, they seem to violate the sense of humanity itself. The question is how? What makes this question so pressing is that the very idea of "humanness itself,". The Judaeo-Christian concept of 'man created in God's image', like the metaphysical

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<sup>31</sup> Article 7(1), UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, UN Doc. A/CONF. 183/9; ILM 1002 (1998); 2187 UNTS 90. (1998).

<sup>32</sup> *ibid*

concept of an immaterial, immortal soul, is close-minded and too contestable to affect our intuitions about what makes us humans special and gives us special value-all the more so if these intuitions are supposed to be shared across confessions and cultures.<sup>33</sup> For that reason, it would not be right to seek an answer to our question through metaphysical means. Rather we should seek the idea in the same set of intuitions that conforms the law of crimes against humanity.

The outlook of 'humanness' should be looked towards what is portrayed in the law. Recollect the five features of crimes against humanity:

- i. Crimes against humanity are inflicted on victims based on their group membership rather than their individual characteristics;
- ii. Crimes against humanity are crimes committed against fellow nationals as well as foreigners;
- iii. Crimes against humanity are international crimes, and their criminality overrides state sovereignty;
- iv. Crimes against humanity are committed by politically organized groups acting under color of policy;
- v. Crimes against humanity include only the most severe and abominable acts of violence and persecution. (Luban, 2004)

## **2.5 HISTORICAL DEVELOPMENT OF CRIMES AGAINST HUMANITY**

A major early articulation of the notion of crimes against humanity came about through the Martens Clause of the Fourth Hague Convention, which referred to the "laws of humanity and the dictates of public conscience" (Convention Respecting the laws and customs of war on land, annex to the convention regulations respecting the laws and

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<sup>33</sup>Robert Greene, Richard Rorty, *Philosophy and the Mirror of Nature*. *MLN*, 95(5) (1980) 1387.

customs of war on land).<sup>34</sup> Another major historical moment came about with the 1915 declaration by Russia, Britain and France that Turkey had carried out crimes against humanity by carrying out acts of genocide against its Armenian population.<sup>35</sup> Nevertheless, the Treaty of Versailles did not include a definition of crimes against humanity, but just on war crimes, a Commission which was set up to look into responsibilities and prosecutions for acts during the war came to the conclusion that Germany together with her allies had violated the laws of humanity, making them predisposed to criminal prosecution. Treaty of Sevres which was signed with Turkey in 1920, explicitly proposed prosecution of those responsible for crimes against humanity, in which they were held responsible for carrying out genocide on Armenians in particular, nevertheless, the treaty was never ratified and no tribunals were formed.<sup>36</sup> Even though prosecution of crimes against humanity was not being pursued in implementation, the concept was beginning to become definite. The United Nations War Crimes Commission during World War II realized the need for an additional category to complement war crimes. the treaty of surrender referred to prosecution of both war crimes and similar offenses with the surrender of Italy. The major aim was not to prosecute only war crimes, but rather for all the operation to be included in the trial. The point was that but for the fact that the victims were obviously enemy most been German nationals, such persecutions were related to war crimes with intend to create such a category being provided by the basis that the suggestion that Nazi exterminators and persecutors had not breached the traditional rules of warfare).

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<sup>34</sup> Agreement for the prosecution and punishment of the major war criminals of the European axis, art. 6(c), Aug 8, 1945, 82 U.N.T.S 279, 287-88. (1945).

<sup>35</sup>, L..C Greene, Group rights, war crimes and crimes against humanity. International Journal on Minority and Group Rights, 1(2) (1993)

<sup>36</sup>David Matas, *No more: the battle against human rights violations*. Toronto: Dundurn Press. (1994)

The very first definition of crimes against humanity was provided by the International Military Tribunal in Nuremberg in 1945, which defined the term in article 6(c) as referring to

“murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”<sup>37</sup>

Furthermore, after the world war II, the allies put together a wider definition into the law that governs Germany, instigating challenges that prosecutions which was under the new standard clashed with the principle of legality.<sup>38</sup>

Article 2(1)(c) of the Allied Control Council Law defined crimes against humanity as;

“Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.”<sup>39</sup>

After the War, the international community entirely conceded the notion of crimes against humanity in which the International Law Commission further developed the concept. The Commission in 1950 set forth its very first definition of crimes against humanity, defining the principle as;

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<sup>37</sup> Agreement for the prosecution and punishment of the major war criminals of the European axis, art. 6(c), Aug 8, 1945, 82 U.N.T.S 279, 287-88 (1945).

<sup>38</sup>Charles Jalloh, what makes a crime against humanity a crime against humanity (2013) p 395-96

<sup>39</sup> Control council law no. 10; punishments of persons guilty of war crimes against the peace and against humanity. article 2(1) (c) § (1945).

“Murder, extermination, enslavement, deportation, or other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, where such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.”<sup>40</sup>

The ICL brought about a newer definition in 1954 on crimes against humanity, this time the commission took out the war nexus requirement, and thereby defined crimes against humanity as:

“Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities” (Int’l I. comm’n, Rep. on the work of its sixth session, draft code of offences against the peace and security of mankind, 1964)

After the cold War, the next crimes against humanity definition by the ICL was produced in 1991 in which it was renamed the Draft Code of Crimes Against the Peace and Security of Mankind. The Draft states, under an article with the heading “Systematic or Mass Violations of Human Rights” as follows;

“An individual who commits or orders the commission of any of the following violations of human rights: murder; torture; establishing or maintaining over persons a status of slavery, servitude or forced labor; persecution on social, political, racial, religious or cultural grounds, in a systematic manner or on a mass scale; or deportation or forcible transfer of population shall, on conviction thereof, be sentenced.”<sup>41</sup>

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<sup>40</sup> Control council law no. 10; punishments of persons guilty of war crimes against the peace and against humanity. article 2(1) (c) § (1945).

<sup>41</sup> Lyal Sunga, *The emerging system of international criminal law: developments in codification and implementation*. The Hague; London; Boston: Kluwer Law International (1997)

The International Law Commission yet adopted another definition of the crimes against humanity in 1996 which states that:

“Any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: a) Murder; b) Extermination; c) Torture; d) Enslavement; e) Persecutions on political, racial, religious or ethnic grounds; f) Institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) Arbitrary deportation or forcible transfer of population; (h) Arbitrary imprisonment; (i) Forced disappearance of persons; (j) Rape, enforced prostitution and other forms of sexual abuse; (k) Other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.”<sup>42</sup>

On the definition, the ICL noted that by Systematic, it meant an act committed pursuant to a preconceived policy or plan, and by Massive meant acts which includes a range of victims.

The history of the changing definitions of situations of crimes against humanity highlights the way in which the crimes against humanity has systematically evolved, further changes are in store in the future following this concept due to some uncertainties in some areas of the definition. The history demonstrates a systematic yet gradual expansion in the fundamental elementary violations which may be taken to be verifiable to a situation of crimes against humanity.

## **2.6 RELATIONSHIP BETWEEN TERRORISM AND CRIMES AGAINST HUMANITY**

Although the concept of terrorism was not included as one of the specific provision from the ICC Statute, there are diverse elements portraying that it should nonetheless be prosecuted under the heading of crimes against humanity. particular, the concept of

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<sup>42</sup> *Int'l Law Commission Rep, on the work of its forty-eight session*. art. 18, U.N. DOC. A/CN.4/ L.532 § (1996).

terrorism could be addressed as the sub-offence of murder, torture, deportation, or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, persecution, enforced disappearance, and, more generally, as an inhumane act pursuant to Article 7(1)(k). the post WWII bylaw supports this approach, as highlighted by many instances provided both by the International Military Tribunal of Nuremberg and the two UN ad hoc tribunals. Furthermore, the advantages of prosecuting terrorism under the crimes against humanity are many Firstly, the offences can be committed by everyone, which includes non-state actors.<sup>43</sup> Secondly, a majority of victims are covered, which includes every person who is not performing de facto combating functions from their nations independently. The first aspect proves beyond doubt to be a big advantage to the prosecution of acts of terrorism under the topic of war crimes, mainly where such acts are carried out by a state against its own citizens. Therefore, crimes against humanity has to do with government representatives, diplomats, detainees, prisoners of war, members of the armed forces who are either wounded, sick or more entirely hors de combat, including common civilians who share the same nationality of the criminals. What matters is the function exercised during the attack. It is however possible that the ICC's jurisprudence may develop the notion of civilians so as to encompass combatants as well, thus filling a gap of IHL. Under humanitarian law, the idea is that the notion of terror is inherent to war. although it is the combatants' job to fight and deal with such strategies, terrorist attacks against them does not amount to a breach of the laws of war. Thirdly, it would not be obligatory to discuss whether the policy lying underneath such acts was admissible or not. Therefore, as long as an act is committed in advancement of any policy, it shall be banned.<sup>44</sup>

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<sup>43</sup>Michael Scharf, Newton Michael, *terrorism and crimes against humanity* (2008) (pp. 262–278).

<sup>44</sup> Ibid.

## **2.7 TERRORISM AS A CRIME AGAINST HUMANITY UNDER THE ICC STATUTE**

Article 7's definition was based on customary law. Nevertheless, the wording provides that the latter is intended for "the object of this legislation," which means that some specificities can exist with respect to the ICC statute. Under Article 5 of the ICC Statute, the court will have jurisdiction on "serious crimes of concern to the international community as a whole, including crimes against humanity." The first will therefore be to analyze whether this provision requires the same elements as previous international agreements that preclude crimes against humanity. The second step is to determine whether it is possible to prosecute terrorism.

## **2.8 The criteria of Crimes Against Humanity Under Article 7 ICC Statute**

### **i. NO NEXUS WITH THE WAR**

Unlike its predecessors, Article 7 ICC complies with customary law by omitting any requirement of a war nexus, regardless of whether it is intended as a substantial law or a legal limitation.<sup>45</sup> Under this provision, crimes against humanity are wholly independent of war crimes and crimes against peace or a war context. Therefore, as long as all the criteria are met, this definition may cover all types of terrorism; in wartime, out of wartime and out of theatre.

### **ii. "Any of the Following Acts"**

The first question is whether there is an exhaustive list of crimes against humanity. The lists found in the laws of the ad hoc tribunals of the United Nations were

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<sup>45</sup> Roberta Arnold, *The ICC as a new instrument for repressing terrorism*. Ardsley, N.Y.: Transnational Publishers (2004)

previously argued to be illustrative. based on customary law, including Article 7 of the ICC Statute. It may therefore be concluded, by analogy, that the list contained in this provision is illustrative. This view is confirmed by the fact that the notion of "inhuman acts" is an abstract definition that could include more acts than those expressly specified in the Rome Statute.<sup>46</sup> Specifically, the ICC statute provides that acts such as sexual slavery and other forms of sexual violence, enforced disappearance may fall within this concept.<sup>47</sup>

### **iii. Discriminatory Grounds**

The topic under consideration in Rome was whether all crimes against humanity should be committed on grounds of racism. Eventually, it was agreed to abide by customary law. Accordingly, Article 7 of the ICC Statute, like the ICTY includes a racial ground only for the offence of persecution.

### **iv. Committed as Part of an Attack**

This criterion has been introduced as a threshold of jurisdiction. Similar to the ICTY statute, acts must take place as part of an attack under the ICC Statute. Individual acts of a single attacker must not constitute an assault by themselves. However, the nexus between the two must be sufficient. The statute shall not clarify the degree of the nexus required. According to the United Nations tribunals, however, reliable evidence would include parallels between the actions of the accused and the activities solely due to the lack of legislative or administrative intervention.

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<sup>46</sup> Boot, M., *Genocide, crimes against humanity, war crimes: nullum crimen sine lege and the subject matter jurisdiction of the International Criminal Court*. Antwerpen; New York: Intersentia (2002)

<sup>47</sup> Roberta Arnold, *The ICC as a new instrument for repressing terrorism*. Ardsley, N.Y.: Transnational Publishers (2004)

**v. Widespread or systematic**

The attack must be either widespread or systematic, a position consistent with the jurisprudence of ICTY and ICTR. With regard to its significance, the drafters of the elements decided to leave the matter to the ICC's evolving jurisprudence. In Robinson's opinion, it is noteworthy that the adoption by the ICC Statute of a clause that the attack would require several commissions of actions pursuant to or in respect of a state or organizational law to conduct such an attack;

The assault does not actually have to be interpreted or "widespread" as having large-scale activity involving a vast number of victims, but it must be at least some-scale and involve multiple victims. An attack does not necessarily need to be "systematic," but at least it must be carried out in accordance with or in accordance with some kind of state or organization plan or policy.

The result would therefore be a combination of a high-threshold but disjunctive (widespread or systematic) test combined with a low but conjunctive (multiple and policy) test.<sup>48</sup>

**vi. Against any civilian population**

According to various authors, the word "civilian" in Article 7 of the ICC Statute, as in the ICTY and the ICTR Statutes, implies persons of any nationality who have not or are no longer active in hostilities. Robinson observes, however, that the elements did not address the meaning of the "civilian population" because of the debates that had arisen on whether to include combatants and whether to consider all people as civilians in times of no armed conflict. The drafters therefore decided to leave the

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<sup>48</sup> *ibid*

matter to the jurisprudence of the ICC, considering the subject matter to be too complex and the evolving area of law to be regulated in the element.

## CHAPTER THREE

### BOKO HARAM

#### 3.1 What is Boko Haram?

Officially, Boko Haram is named Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad which in Arabic means "People Committed to the Propagation of the Teachings of the Prophet and Jihad." The group which is better known by its Hausa name 'Boko Haram' was a local Salafist radical group which became a Salafist-jihadist after 2009 terrorist organization. It is centered in Nigeria's northeast, in the Kanuri-populated areas. Boko Haram, loosely translated from the local Hausa language, means 'Western education or culture is forbidden.' In other words, 'Western education or civilisation is a crime.

This fanatical Islamist group recruits disaffected youth, depressed and disillusioned people, unemployed students and Almajiris (street children) from the northern parts of Nigeria by looking at their grievances and radicalizing their members.<sup>49</sup> They threaten the nation's sovereignty, national peace and security, and Nigeria's territorial integrity by targeting symbols of national authority and infrastructure. They engage in a number of Although at this point they may have regional influence, they are forming transnational functional ties in practice with international terrorist organization.<sup>50</sup>

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<sup>49</sup> Alexander Nicoll, Boko Haram: Nigeria's growing new headache. Strategic Comments. Vol 17(9) (2011)

<sup>50</sup> Gabrielle Blanquart, Boko Haram: Terrorist Organization, Freedom Fighters or Religious Fanatics? An Analysis of Boko Haram Within Nigeria, an Australian Perspective and the Need for Counter Terrorism Responses that Involves Prescribing them as a Terrorist Organization (2012)

### 3.2 Origin of Boko haram

It is claimed that the Nigerian Islamic Sect called 'Boko Haram' started with the name 'Sahaba' way back in 1995 and was headed by one Abubakar Lawan.

But then Abubakar Lawan was later said to have gone to study at Medina University, Saudi Arabia, leaving the old clerics to give the leadership of the party to a self-proclaimed spiritual leader called Mohammed Yusuf. Yusuf was said to have rejected the old clerical teachings, reorganizing and coming up with what had become, Boko Haram in 2002 in Maiduguri's northern city, where he was headquartered. Therefore, the group includes members from neighboring Chad and Niger who only speak Arabic. Yusuf succeeded in strengthening his grip in northern states like Bauchi, Gombe, Kano, Katsina and Yobe at the same time. And in 2004 the complex was relocated near the Nigerian-Niger border to Yusuf's home town called Kanamma in Yobe state. A militant base named "Afghanistan" was founded in Kanamma.

Boko Haram is not Nigeria's first Islamic movement to advocate a Jihad, but it has broadened the scope of Islamic revival efforts. Since the early nineteenth century, such movements had begun by Usman Dan Fodio to establish the rule of religious scholars. Muhammed Marwa, a Cameroonian Muslim scholar who settled in Kano, set up the Maitatsine movement in the 1980s. They were known to reject all forms of non-Quranic innovation that led to a clash with the Nigerian army during which more than 6,000 people died.<sup>51</sup> Others include Nigeria's Islamic Movement led by Sheik Ibrahim El Zakky, Mallam

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<sup>51</sup> Roman Loimeier, Boko Haram: The development of a militant religious movement in Nigeria. *Africa Spectrum*, (2012) 137-155

Badamasi's Kala-Kato, Al Gulan's Ahmadiya movement, and late Abubakar Gunmi.<sup>52</sup> They were allowed to build their own mosque (the Ibn Taimiyyah Masjid) after regrouping and relocating back to Maiduguri under the new leadership of Mohammed Yusuf. By providing food, shelter and welfare to the unemployed Nigerian youth and refugees from neighboring war thorn states, they strategically recruited more members. A major incident that separated Boko Haram's emergence from mainstream Islamic bodies was the killing of a prominent preacher Sheik Ja'afar Mahmoud, who had condemned the party for their extremist ideologies before the general elections in 2007.<sup>53</sup>

By the end of July 2009, when a protest at Boko Haram was outlawed, rioting broke out in Bauchi Region, spreading to Yobe, Borno and other areas. The fighting lasted several days, and in Maiduguri city, at least 300 people died. With a large-scale police operation, the Nigerian government responded. A large number of people, including sect leader Mohammed Yusuf, have been arrested. He was shot dead on July 30, 2009 while trying to escape, according to a police spokesman. Secta leaders are confirmed to have been arrested unlawfully by police. Yusuf had named his successor by this time: Abubakar Shekau. Boko Haram waged an implacable "holy war" against the Nigerian government under Shekau. The activities of the sect moved underground and entered a new dimension of its terrorism. It carried out numerous suicide attacks, including one on Abuja, the capital's police headquarters. The progressively brutal attacks by Boko Haram, which now also targeted civilians, spread fear and terror throughout the region. About 32,000 people have been killed over the years.<sup>54</sup>

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<sup>52</sup> Freedom Onuoha, The audacity of the Boko Haram: Background, analysis and emerging trend. Security Journal. Vol. 25 (2) (2012)

<sup>53</sup> Aina V, *Domestic Institutions and the spread of boko haram in Nigeria* (2016)

<sup>54</sup> Antonio Cascais, 10 years of radicalization; Boko Haram. (2019) assessed 13 november, 2019  
<https://www.dw.com/en/10-years-of-radicalization-boko-haram/a-49781704>

### 3.3 Ideology of Boko Haram

Boko Haram, as mentioned above, is an independent salafist movement that only became a Salafist Jihadist group in 2009. Paul Lubeck of the University of California observed that Yusuf was also a qualified salafist (a school of thought frequently associated with jihad) and heavily influenced by Ibn, a 14th century legal scholar notable for Islamic fundamentalism and considered a "major strategist" of Middle East radical groups.<sup>55</sup> Boko Haram propagates that it is not only illegal to associate with the Western World, but also against the Islamic community and Nigerian government, the latter accusing them of political corruption and poor judiciary system. They initially fought for the establishment of a Shari'a government in Borno State under the then Governor Ali Sheriff to sanitize this, but after 2009 their goal was directed toward the Islamization of the whole of Nigeria. The Boko Haram school of thought believes something Western to be completely un-Islamic, and as such the basis of religious decline. Boko Haram then followed a 'non-western' culture by adopting non-western clothes, eating basic foods, and worshipping in Maiduguri's own mosque, all of which often distinguish them from other Muslims in the North. In fact, its leaders do not engage with the local Muslim population and in the past have even carried out murders on anyone who criticizes it, even Muslim clerics. The group also has a complex leadership structure which comprises divisions led by highly trained employees who successfully carry out assigned tasks. These divisions also include the manufacture of explosives, suicide bombers, surveillance, research, welfare / healthcare and other logistics needed to achieve their aims properly. It was also said that Boko Haram's top decision-making body was called the "Shura Council."<sup>56</sup>

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<sup>55</sup> Toni Johnson, "Backgrounder: Boko Haram". Council on Foreign Relations, August 31, 2011. As of February 10, 2013: <http://www.cfr.org/africa/boko-haram/p25739>

<sup>56</sup> Boko Haram Reportedly Has Complex Organizational Structure | Sahara Reporters. (2012, July 15). Retrieved December 23, 2019, from Sahara Reporters website: <http://saharareporters.com/news-page/boko-haram-reportedly-has-complex-organizational-structure>

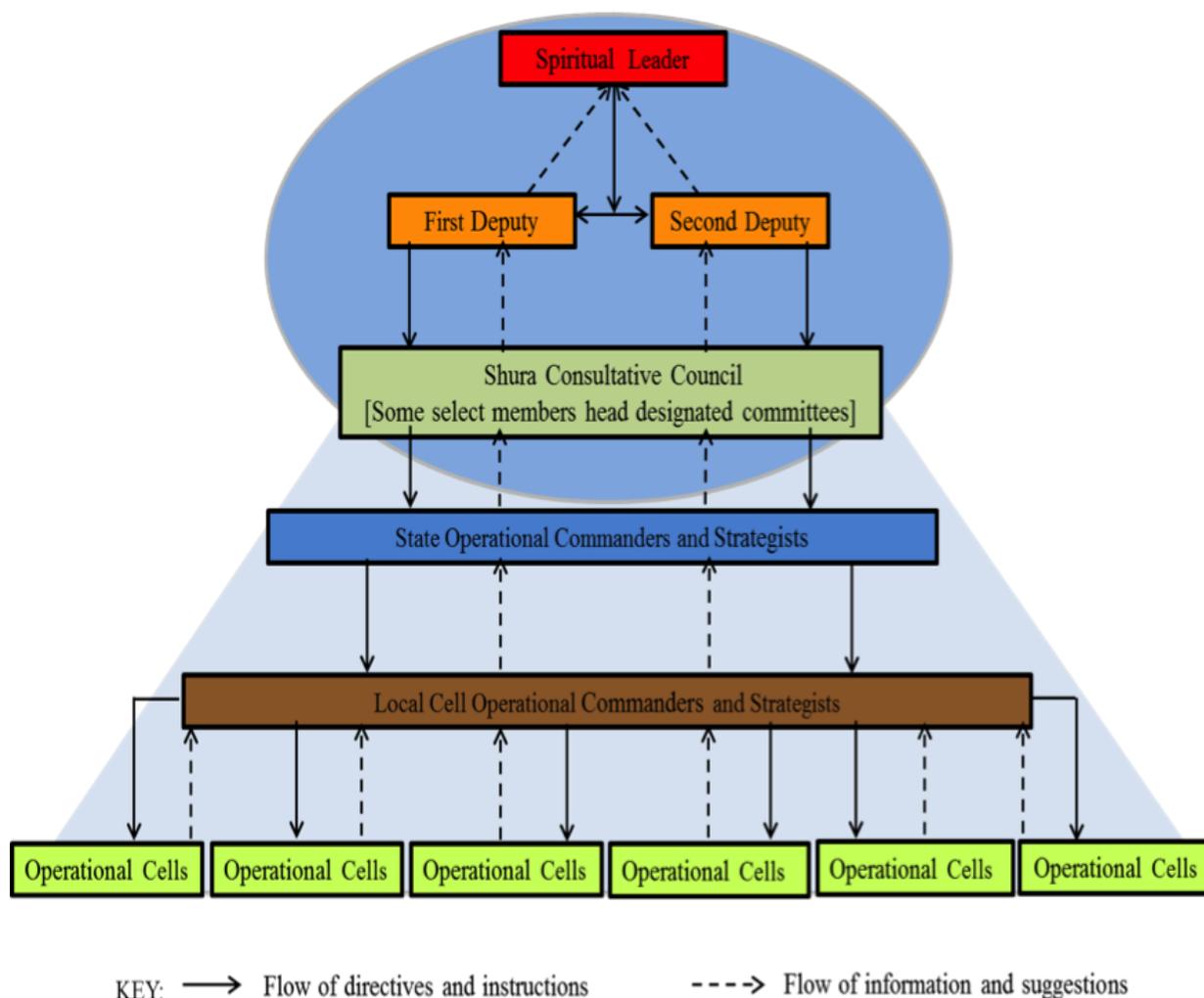


Image 1: Hierarchical structure of Boko Haram

(Source: <https://rampages.us/bokoharam/wp-content/uploads/sites/7589/2015/07/bokoH-1.png> )

For its organisation, the Boko Haram Terrorist group uses a fluid hierarchical structure. The leader who sets goals and determines the final say in the organization is at the top of their organization. Abubakar Shekau is considered the founder of Boko Haram as mentioned earlier. Below him are well-organized layers and centralized cells that form the framework of support and organisation. The cells consist of multiple sections of funding from sympathetic Islamists in northern Nigeria, and various smaller organizations,

portions of Nigerian state, and security forces.<sup>57</sup>The second most important division of authority under the president is the 30-member decision-making body, called the Shura Council. Because Boko Haram has a complex structure with contributive support cells, it is difficult to fully determine the size of the group. Under the organizational hierarchy, each department falls under the Shura Council's leadership. Each division has common roles and activities. Several divisions concentrate on internal support for the group, including support for suicide bombers families and medical care, while others are responsible for publicity, operations, and procurement of capital. Since the organisation is well compartmentalized, below the Shura Council's intelligence, the group has active operational security. All the different departments and cells are operated independently, ensuring confidentiality, while group meetings are rarely and unpredictably taking place. Finally, the team relies heavily on communications from the messenger to ensure clear and secure contact.<sup>58</sup>

### **3.4 Boko Haram's area of Operation and strategy**

In the predominantly Muslim northern states and regions of Nigeria, the group specifically enjoys popular support. Bauchi, Gombe, Kano, Katsina, Yobe and Borno are among those states. Most of its early attacks were in the state capital city of Borno, Maiduguri. Since 2009, however, they spread their assaults to almost every region of Nigeria where they had the least chance, including the Federal Capital Territory of Nigeria, Abuja. Boko Haram now has about 540,000 supporters, including rebels from nearby Chad, Niger and Cameroon. By 35 incidents in 2013 to 107 incidents in 2014, tactics such as bombing rose 3 fold in 2014. Nevertheless, the increase in deaths from bombings was much more consistent: in 2014 some 1,490 people died in explosions, 14 times more than the 107 people who died in the same manner in 2013. And, as predicted,

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<sup>57</sup> whitlowzw. (2015). BOKO HARAM » Author » whitlowzw. Retrieved December 23, 2019, from Rampages.us

website: <https://rampages.us/bokoharam/author/whitlowzw/>

<sup>58</sup> ibid

in public places, most bombings targeted civilians: 38% of those killed by Boko Haram in 2013 were private citizens. As a result, 2014 has seen an increase in Boko Haram's suicide attacks. Although these types of strategies had been very unusual until then, in 2014 Boko Haram accounted for 31 suicide attacks, most of them targeting civilians or academic and religious establishments again.<sup>59</sup> based on data provided by the Global Terrorism Database (2015) a clearer picture of the types of weapons used by the Boko Haram is depicted below.

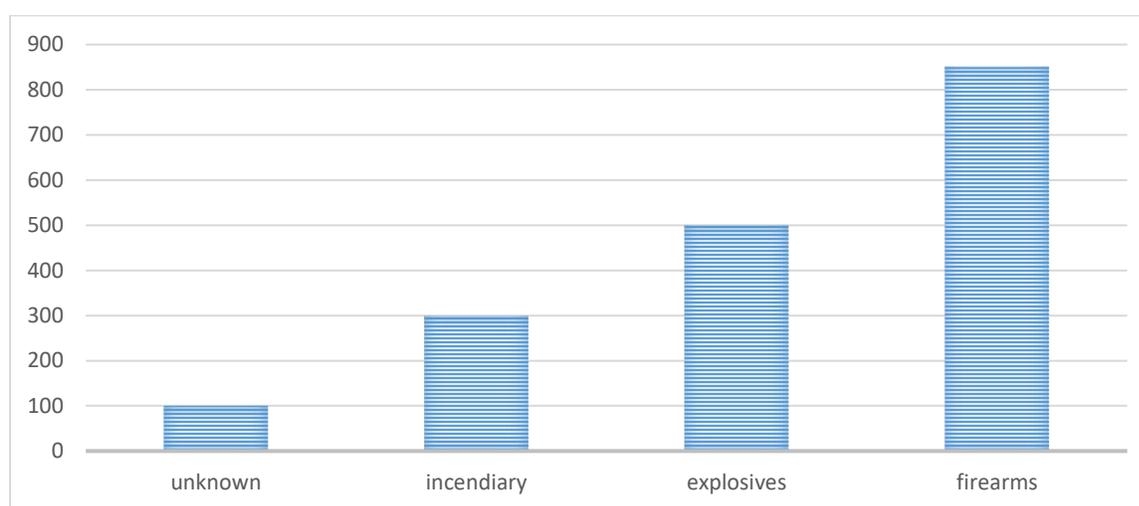


Image 2: Types of weapons used by Boko Haram in various attacks committed between 2012-2014. Fig no. 1

Another Boko Haram technique, which has practically become this group's trademark, is women's use in terrorist actions. People within the group either had basic support roles or were actively involved in illegal and violent acts such as trafficking of weapons, armed assaults or suicide bombings. It is not a new tactic to use women in terrorist activities and the reasons behind it are very simple: women are less suspect than men, they are often searched in a looser way and their clothes help them to easily hide

<sup>59</sup> Marius Pricopi, Tactics Used by the Terrorist Organisation Boko Haram. *Scientific Bulletin*, 21(1) (2016) 40–45.

guns or explosives. Boko Haram maintains a website at <http://yusufislamicbrothers.blogspot.com/> where they laud their jihad values in order to reach an internet-savvy audience. they also hold an address at [nigjihadist@yahoo.com](mailto:nigjihadist@yahoo.com) to connect to leaders planning to join. The secret public relations unit of the group is saddled with external contact duties like the internet, as well as making videos and posting them to Youtube (Sahara Reporters, 2012). Its strategies now also include suicide bombings and the first and successful suicide bombings in Boko Haram's history took place on 26 August 2011. Boko Haram is currently conducting explosives activities with mobility and full productivity and has claimed responsibility for more than twenty Nigerian bombings. The arsenal now also features weapons in the Ak-47 type, bombs, rocket-powered grenades, automatic rifles, air-to-air rockets, vehicle-mounted anti-aircraft machine guns, anti-aircraft visor machine guns and explosives such as Semtex, all of which may have been imported from Libya into the Sahel during its 2011 conflict.<sup>60</sup>

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<sup>60</sup> Louis Charbonneau, Arms from Libya could reach Boko Haram, al Qaeda: U.N. Retrieved December 23, 2019, from U.S. website: <http://www.reuters.com/article/2012/01/26/us-libya-un-arms-idUSTRE80P1QS20120126>

<b>FORMS OF ATTACK</b>	<b>BEFORE THE DEATH OF YUSUF</b>	<b>AFTER THE DEATH OF YUSUF</b>
Attacks on police	4	234
Attacks on private citizens and property	10	544
Attacks on military	0	138
Attacks on Government <b>(general)</b>	2	120
Attacks on religious institutions/figures	2	118

Table 1: Attacks Before and After Death of the Boko Haram Leader

Source available at Global Terrorism Database 2015

Ultimately, Boko Haram's even more complex strategy was to take control of towns and villages. When this was the case, conflicts generally respected the following sequence of events (Amnesty International, 2015): first, large numbers of terrorists targeted the cities, primarily attacking police or military establishments and facilities; They targeted civilians, either shooting them down while they tried to escape or killing them in their own homes; raided stores, personal valuables were confiscated, houses were set on fire and residents were kidnapped (Amnesty International, 2015).

There is a strong link between the Boko Haram strategies and their aims, such as the assassination of a Borno governor's nominee from the ANPP (All Nigeria People's Party)

whose views were not in accordance with this group's objectives.<sup>61</sup> The Nigerian boundaries are weak, and this is mainly what gives the group the freedom to move small and light weapons openly around and within the government.<sup>62</sup> The ideology of the group is deeply rooted in the Islamist tradition that constitutes one of the various forms of radical Islamism in Northern Nigeria. Boko Haram membership and followers have managed to spark the cocktail of extreme inequality, political corruption and youth unemployment in northern Nigeria.<sup>63</sup> Boko Haram carried out a series of massacres and kidnappings in which one of their main strategies was the aggressive use of women, which is said to be in reaction to the methods that the Nigerian government has previously employed.

The estimates above show that the number of attacks against a specific target was at least a hundred times greater. Most of them were targeted by private citizens. Nevertheless, following Yusuf's death, the army that had never been targeted until 2010, was struck 138 times more. Despite arresting Boko Haram leaders and killing the chief, the Nigerian Police Force was not exempted, reaching 230 times more than before across the country's various cities. Often attacked are churches and mosques to alert religious leaders who were planning to preach against them.

In addition to a method of armed assault used by the Boko Haram movement in carrying out its assaults, the Global Terrorism Database reveals that the next possible favored tactics are bombings and shootings, attacks on buildings, installations and kidnappings (Global Terrorism Database, 2015). It will be misleading to say that the Nigerian military is always primed for such kinds of attacks. Since bombing the UN headquarters, Boko

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<sup>61</sup> Alexander Nicoll, Boko Haram: Nigeria's growing new headache. *Strategic Comments*. Vol 17(9) (2011)

<sup>62</sup> Freedom Onuoha, Porous Borders and Boko Haram's Arms Smuggling Operations in Nigeria. *Al Jazeera*, 8. (2013)

<sup>63</sup> Daniel Agbiboa, The Nigerian burden: religious identity, conflict and the current terrorism of Boko Haram. *Conflict, Security & Development*, 13(1) (2013) 1-29

Haram received further international recognition and also brought more dialog success right since kidnapping 200 school girls in Chibok.

### **3.5 CONCLUSION**

Seeing from the outside, these disputes may seem to boil down to religious differences, disagreements between Muslim and Christian citizens' blocs. Nevertheless, if one looks further, one discovers that politics— more specifically, state patronage control — is the primary cause of many of these disputes. A weakness in political institutions and security services has created a political situation in which such threats to stability are not addressed until there is a certainty about violence. It is only when a state-controlled politician is convinced that such a threat cannot be bent to his advantage that he will order any action against it. Such is the security institutions' weakness; aggression is their only way of dealing with any such threat. In these conditions, Boko Haram was founded.

Boko Haram is an Islamic movement that claims a gang of dishonest, fake Muslims has captured northern politics. It aims to wage war against them, and ultimately the Federal Republic of Nigeria, to establish a sharia-ruled "clean" Islamic state. It has been driven by a desire for vengeance against leaders, police, and Islamic institutions since 2009 for their involvement in that year's brutal suppression of the party. But the team has proven to be highly adaptable, rapidly evolving its strategies and shifting its priorities at the behest of a dynamic leadership. In August 2011, when it bombed the UN compound in Abuja, killing twenty-three people, the group jumped on the world's agenda. Some observers say that Boko Haram has managed to find allies in the Sahel in other global jihadist movements.

The speed at which the group developed the ability to produce large and efficient improvised explosive devices and attract suicide bombers to deliver them suggests outside assistance.

## CHAPTER FOUR

### THE INTERNATIONAL CRIMINAL COURT ON BOKO HARAM

#### 4.1 INTRODUCTION

The focus of this study is on the Boko Haram insurgency in north-eastern Nigeria because the ICC is still active only in this context. As discussed earlier, Boko Haram is an Islamic extremist group operating throughout the northeast and northwest, including Sokoto, Niger, Plateau, Kogi, Benue, Taraba and Abuja, Nigeria's federal capital.<sup>64</sup>The basic purpose is to uphold Islamic ideals as reflected in its name, which translates 'Western education is a sin.' Responsibility to protect seeks to address various forms of violations of human rights. The conclusion statement of the 2005 World Summit related to genocide, war crimes, crimes against humanity and ethnic cleansing. Such offences were sometimes referred to as acts of 'mass atrocity,' which is a general term.

The four offenses that come within the scope of R2P (responsibility to protect) have been identified by several international legal instruments. An example of an international legal act that identified some of those offences is the Rome Statute, which is a legally binding document on states parties that established the International Criminal Court (ICC) (UN General Assembly, Rome Statute of the International Criminal Court, 2010). It is important

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<sup>64</sup> Pérouse Marc-Antoine, De@Montclos, Afrika-Studiecentrum Leiden, *Boko Haram: Islamism, politics, security and the State in Nigeria*. Leiden: African Studies Centre (2014)

to note at this point that on 27 September 2001 Nigeria ratified the Rome Statute. Consequently, the International Criminal Court has authority over Nigerians or people of other nationalities who commit crimes of importance to the international community, such as war crimes, crimes against humanity and genocide in Nigeria. The ICC can therefore investigate and prosecute such crimes of mass atrocity if its jurisdiction has been triggered by referral to the prosecutor by states parties, referral to the ICC by the UN Security Council or by the prosecutor's proprio motu investigations.

#### **4.2 THE INTERNATIONAL CRIMINAL COURT**

The ICC investigates and, when applicable, charges persons charged with the most serious crimes of interest to the international community: terrorism, war crimes, crimes against humanity and the crime of aggression. The Court is participating in a global struggle to end impunity, and the Court aims to hold those responsible accountable for their crimes through international criminal justice. The Court itself is unable to achieve these goals. This aims to supplement, not substitute, national courts as a last resort court. The ICC is the first permanent international criminal court in the world, regulated by an international treaty called the Rome Statute.<sup>65</sup> In supporting the Court, the countries that joined the Rome Statute process took a stand against those who, after committing massive, systemic international crimes, in the past would have had no one to respond. The ICC calls on all countries to join the war against impunity in order to punish victims of such crimes and to help prevent future cases of such crimes. The adoption of the Rome Statute in 1998 was a historic event in itself, marking a watershed in the actions of mankind towards a more just world.

After being ratified by 60 States, the Rome Statute came into force in 2002. In addition to establishing the Court and defining the crimes of genocide, war crimes, crimes against humanity, and—as amended in 2010—the crime of aggression, the Rome Statute also sets new standards for the representation of victims in the courtroom, ensuring fair trials and

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<sup>65</sup> Article 7(1), UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, UN Doc. A/CONF. 183/9; ILM 1002 (1998); 2187 UNTS 90. (1998).

defense rights. The Court is seeking global cooperation to protect all individuals from the crimes codified in the Rome Statute. Twenty years after the Rome Statute, the ICC has made substantial progress in bringing accountability to global attention. But it has faced setbacks, and as human rights crises marked by international crimes continue to proliferate, its mandate has proved both more necessary and more daunting than its founders had foreseen. The court and its member countries will have to face the challenge to be successful. (International Criminal court, 2010)

#### **4.3 Nigeria's journey towards International Criminal Justice**

In 2001, the Nigerian government signed the Rome Statute creating the ICC. As of 1 July 2012, the ratification put Nigeria and its residents under the ICC's authority to investigate and prosecute international criminal offenses. The ICC Prosecutor's Office issued 59 reports based on various Rome Statute Articles between 10 November 2005 and 30 September 2012, as well as 15 messages from government agencies, foreign non-governmental organizations, critics and scholars linked to war crimes, genocide and crimes against humanity in Nigeria. On 18 November 2012, The Prosecutor's Office visited Nigeria to perform a comprehensive review of actions of war crimes and crimes against humanity allegedly committed against civilians by members of Boko Haram and the Nigerian military during the Boko Haram insurgency.<sup>66</sup> The initial analysis concluded that there was a reasonable basis for believing that crimes against humanity had been perpetrated in Nigeria, including acts of murder, devastation, and Boko Haram's alleged ethnic cleansing. Therefore, the Prosecutor's Office determined that the preliminary examinations would move to the admissibility point to determine whether the national authorities were willing or capable of punishing those liable or whether the ICC had to

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<sup>66</sup> About the International Criminal Court. (2019). Retrieved from [icc-cpi.int](https://www.icc-cpi.int) website:

<https://www.icc-cpi.int/about>

become involved. Since the initial ICC investigation of Boko Haram's complicity in war crimes and the Nigerian Admissibility Recommendation of the Prosecutor's Office, criminal proceedings have not resumed. The Nigerian government officially does not investigate or move cases to the ICC.<sup>67</sup>

The ICC prosecutor issued a statement on 20 January 2015 condemning allegations of escalating violence in North East Nigeria and the use of women and children as suicide bombers, sexual slaves, soldiers and mothers. The ICC subsequently carried out a trip to Abuja to confirm and reinforce the statement made by the prosecutor before the February 2015 polls. In its attempts to investigate the legality of existing national trials to resolve suspected Rome Statute violations throughout Nigeria, the ICC has engaged national governments, national press, and civil society organizations, as well as to avoid commissioning and collecting information on new allegations. The determination of admissibility in relation to the eight possible cases reported by the Office in 2015 is continuing in relation to the non-international armed conflict. (Coalition for the International Criminal Court) The Nigerian government told the Office in February 2015 that nearly 150 cases involving leaders of Boko Haram at various levels had been sent for review by Nigeria's Attorney General. The cases, which included the imprisonment of people detained by the military in the sense of military operations against Boko Haram, were classified for investigation, among others, by a joint commission including members of the military, security services, and the offices of the Public Investigation Officer and the Attorney General. Given the lack of progress in complying with the Rome Statute with domestic laws on international crime prosecution, the government's ability and willingness to conduct proceedings against all sides of the conflict will remain a key focus of the Office's assessment of admissibility. Since 2017, three rounds of mass trials have been launched by the Nigerian government before the Federal High Court's special courts to try thousands of Boko Haram suspects detained in Kainji military detention.

The OTP's preliminary examination successively discuss information received from the Nigerian authorities on the investigation and prosecution of offenders in connection with Boko Haram and Nigerian military crimes. In 2014, the OTP found out that Nigerian

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<sup>67</sup> *ibid.*

officials had initiated "proceedings" against Boko Haram leaders for behavior that constituted offences under the Rome Statute.

In the absence of more detailed information, it is unclear whether the cases mentioned by the OTP in its documents on alleged crimes committed by Boko Haram involve behavior(s) within the jurisdiction of the ICC, or include the same persons and substantially the same activity as charged in the proceedings before the Court.<sup>68</sup>

Nigeria's failure to provide co-operation with the ICC Failure to provide information The OTP's findings demonstrate the Nigerian government's serious lack of cooperation which appears to have a significant effect on the OTP's ability to conduct a full and accurate assessment of the situation in Nigeria. The actions of the OTP to promote truly valid national trials are commendable, but the efforts with strong complementarity' of bare minimum if any outcomes have hindered the involvement of the ICC in Nigeria.

For these reasons, Amnesty International believes that the Nigerian Government has not conducted relevant national proceedings for the purposes of Article 17 of the Rome Statute and that the OTP should therefore find the situation in Nigeria admissible before the Court and request authorisation to open a proprio motu investigation pursuant to Article 15 of the Rome Statute.<sup>69</sup>

#### **4.4 ICC'S VIEW ON CRIMES AGAINST HUMANITY COMMITTED BY BOKO HARAM**

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<sup>68</sup> *WILLINGLY UNABLE. ICC PRELIMINARY EXAMINATION AND NIGERIA'S FAILURE TO ADDRESS IMPUNITY FOR INTERNATIONAL CRIMES*. (n.d). Retrieved from <https://www.amnesty.org/download/Documents/AFR4494812018ENGLISH.PDF>

<sup>69</sup> Ibid.

As mentioned earlier, The Rome Statute has defined crimes against humanity to include acts such as 'murder, imprisonment, or other severe deprivation of physical liberty in violation of fundamental rules of international, as well as persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in Article 7 (1) or any crime within the jurisdiction of the Court.' (UN General Assembly, Rome Statute of the International Criminal Court,2010) committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack,<sup>70</sup> pursuant to or in furtherance of a state or organizational policy to commit such attack. The Rome Statute further says that 'attack directed against any civilian population' refers to a course of conduct involving the multiple commission of acts referred to in Article 7 (1) of the Rome Statute.

The International Criminal Tribunal for Rwanda (ICTR) has defined what constitutes a 'widespread or 'systematic' attack. The ICTR said that 'widespread' refers to 'massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims'.<sup>71</sup>

identified a 'systematic' attack to be one that is 'thoroughly coordinated and follows a regular pattern based on a common agenda involving considerable public or private capital.' It is a prerequisite that a preconceived strategy or policy should be in effect, but this policy does not have to be formally adopted as a state policy.<sup>72</sup>Boko Haram's attacks were common as they include the frequent execution of acts such as kidnapping, harassment on the grounds of the faith of Christians and Muslims, and the recruitment of girls and women who have been targeted against a plurality of victims, with the populace located in the northeastern part of the country being the most affected. The attacks were carried out regularly because the attacks including bomb blasts and gun shootings for which Boko Haram claimed responsibility both seemed to have been carried out in a

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<sup>70</sup> Ibid.

<sup>72</sup> ibid

planned and orchestrated fashion The attacks occurred repeatedly and are carried out in a similar way. It is important to determine if, for the purposes of Article 7(2)(a) of the Rome Statute, Boko Haram applies as an organization that may implement a strategy for the commission of crimes against humanity. In 2010, the International Criminal Court's Pre-Trial Chamber decided in the case relating to the situation in Kenya (The situation in Kenya,2010) that whether a particular party applies as an entity for the purposes of Article 7(2)(a) of the Rome Statute depends on a number of criteria and a case-by-case review is used to make such a decision. Boko Haram has the means to carry out a massive and concerted attack on civilians. To execute their plans, Boko Haram has trucks, bikes, weapons, and explosives and fighters. Boko Haram applies as an organization because it fulfills the criterion allowing the party to have the ability to commit acts in compliance with its strategy. Boko Haram committed extensive and systemic persecution of Christians and Muslims supposedly working with the state or condemning their brutal acts. (The Office of the Prosecutor, 2010)

Boko Haram leaders targeted Christian communities and destroyed more churches in various parts of Nigeria on Holy days including Christmas Day and Easter Sunday. A lot of Christians attend church services on those days, and Boko Haram has succeeded in killing many Christians by bombing churches and gun attacks.

Because the crimes committed by Boko Haram constitute crimes against humanity and war crimes as specified in Articles 7 and 8 of the Rome Statute, the situation in Nigeria comes within the scope of the responsibility to protect, which puts primary responsibility on the Nigerian government to protect its citizens from crimes against humanity and war crimes committed by Boko Haram.

A widespread or systematic attack on a fundamental human right is also a threat to peace in a broader sense, affecting the world's security and well-being.<sup>73</sup> The attack particularly, must be designed to infringe a civilian population's protected human rights. The widespread or systemic nature of the attack may be linked to the expansion of the

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<sup>73</sup> Werle Gerhard, Jessberger Florian, Burghard B, Volker Nerlich, & Al, E., *Principles of international criminal law*. Oxford; New York: Oxford University Press, Cop. (2014)

attacks to a wide geographic area or the number of victims involved. It must be massive, frequent, collectively carried out with considerable seriousness and directed against a variety of victims.<sup>74</sup> The assault is deemed to be systemic because, it lasted for over five years, and the acts of violence that included it followed a similar trend to a considerable extent. The way in which the attacks on Boko Haram took place also points to the widespread and systematic element. Most of the attacks on Boko Haram was carried out with sophisticated weapons, suspects usually dressed in military uniforms with evidence of the bullet and carried out in an organized way. Many of the attacks have been identified with accuracy and experience as well as planned and conducted. Although the group's administrative structure is unknown, it is clear that it has the potential to commit a widespread and systematic attack, and it has controlled a wide range of de facto land in the state of Borno, Yobe and Adamawa (human rights watch report, 2014).

According to Article 7(1) of the commission, regarding crimes against humanity, these acts may result in or consist of murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape or even forced disappearance of individuals. The acts in question include execution, genocide, enslavement, expulsion or forcible relocation of the population, incarceration, abduction, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other form of sexual abuse of comparable extent, oppression, forced displacement of people, segregation, and any other inhumane classification.

#### **4.5 ACCEPTANCE OF INTERNATIONAL CRIMINAL JUSTICE IN NIGERIA**

Nigeria signed the ICC's Rome Statute on 1 June 2000 and deposited its ratification document on 27 September 2001. Since 1 July 2002, the ICC had authority over

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<sup>74</sup> *Bemba (ICC-01/05-01/08), Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo (2009) para.83. (ICC 2009)*

international crimes committed in Nigeria. However, the ICC acts on the complementarity principle, which imposes the main responsibility on state parties to investigate and prosecute international crimes. The ICC will only have authority over the proceedings if the state in question is unable or unable to sue. Unwillingness, reluctance, and inactivity are commonly seen as indicators of primary responsibility for investigation and trial being abdicated.<sup>75</sup> In the case of the Rome Statute, the Nigerian Attorney-General and Justice Minister set up an inter-ministerial committee to produce a draft of the 2012 Act on Crimes Against Humanity, War Crimes, Genocide and Other Offences, which was eventually forwarded for ratification to the Federal Executive Council. The Bill was forwarded for translation into national law to the National Assembly upon approval. The Bill provides a framework for ICC-Nigeria partnership, which is a positive development in accordance with previous arrangements. The aims of the ICC Bill are:

- (i) to provide for legislation under Nigerian law to prosecute and enforce international crimes of genocide, crimes against humanity and war crimes;
- (ii) to give effect to certain clauses of the International Criminal Court's Rome Statute adopted in Rome on 17 July 1998; and
- (iii) to facilitate collaboration with the International Criminal Court in the performance of its roles under the Rome Statute.<sup>76</sup>

The ICC Act exercises original jurisdiction in the Federal High Courts, the High Court of the Federal Capital Territory and the High Court of any territory in Nigeria to adjudicate international crimes.<sup>77</sup> Under the concept of positive complementarity, the ICC Bill provides that Nigeria may seek assistance from the ICC in investigating and prosecuting offences under the Rome Statute for which the maximum penalty under Nigerian law is not less than five years imprisonment. The ICC Bill also specifies that Nigeria must serve

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<sup>75</sup> Darryl Robinson, The Mysterious Mysteriousness of Complementarity. *Criminal Law Forum*, 21(1) (2010) 67–102.

<sup>76</sup> *CRIMES AGAINST HUMANITY, WAR CRIMES, GENOCIDE AND RELATED OFFENCES BILL, 2012*

<sup>77</sup> *ibid*

as a state of compliance of sanctions by the ICC and that the Nigerian Attorney-General may inform the relevant government ministries, offices, and agencies which includes the National Security Adviser whenever the need arises.<sup>78</sup> Furthermore, the ICC Bill provides that the ICC prosecutor can conduct investigations in Nigeria in compliance with the Rome Statute. Finally, ICC judges can sit in Nigeria to gather evidence, initiate or prosecute a prosecution, render a decision in a proceeding, or appeal a sentence imposed by the ICC.

#### **4.6 ICC PROSECUTION OF CRIMES COMMITTED BY THE BOKO HARAM**

The objectives of the Bill “AN ACT TO PROVIDE FOR THE ENFORCEMENT AND PUNISHMENT OF CRIMES AGAINST HUMANITY, WAR CRIMES, GENOCIDE AND RELATED OFFENCES AND TO GIVE EFFECT TO CERTAIN PROVISIONS OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT IN NIGERIA” enacted by the National Assembly of the Federal republic of Nigeria as follows;

- (i) provide for measures under Nigerian law for the punishment and enforcement of international crimes of genocide, crimes against humanity and war crimes;<sup>79</sup>
- (ii) give effect to certain provisions of the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 (in this Act referred to as “the Rome Statute”)<sup>80</sup>

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<sup>78</sup> *ibid*

<sup>79</sup> *CRIMES AGAINST HUMANITY, WAR CRIMES, GENOCIDE AND RELATED OFFENCES BILL, 2012*

<sup>80</sup> *ibid*

- (iii) Enable Nigeria cooperate with the International Criminal Court (in this Act referred to as “the Criminal Court” in the performance of the its functions under the Rome Statute. <sup>81</sup>

The Application of this Act is;

The provisions of the Rome Statute specified in subsection (2) of this section have the force of law in Nigeria in relation to the following matters —

- (a) making of requests by the Criminal Court to Nigeria for assistance and the method of dealing with those requests;
- (b) conduct of an investigation by the Prosecutor of the Criminal Court;
- (c) bringing and determination of proceedings before the Criminal Court;
- (d) enforcement in Nigeria of sentences of imprisonment or other measures imposed by the Criminal Court and related matters; and
- (e) making of requests by Nigeria to the Criminal Court for assistance and the method of dealing with those requests. (AN ACT TO PROVIDE FOR THE ENFORCEMENT AND PUNISHMENT OF CRIMES AGAINST HUMANITY, WAR CRIMES, GENOCIDE AND RELATED OFFENCES AND TO GIVE EFFECT TO CERTAIN PROVISIONS OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT IN NIGERIA, 2012)
- (f) Furthermore, On Crimes against Humanity, the Bill states that;
  1. A person in Nigeria or elsewhere commits a crime against humanity, commits an offence and is liable on conviction to the penalty specified in subsection 2 of the Bill.
  2. The penalty for an offence referred to in subsection 1 of the Bill is
    - (a) where the offence involves the willful killing of a person, the same as the penalty for murder under the Penal Code or Criminal Code; and <sup>82</sup>

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<sup>81</sup> ibid

<sup>82</sup> ibid

(b) in any other case, imprisonment for a term not exceeding 30 years or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.<sup>83</sup>

(3) In this section, “attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in this subsection against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack.

So far, the preliminary examination indicated that there was a reasonable basis for concluding that crimes against humanity had been perpetrated in Nigeria, including acts of murder, devastation, and Boko Haram's alleged ethnic cleansing. Therefore, the Prosecutor's Office agreed that the preliminary investigations would move to the 'admissibility stage' to determine whether the national authorities remain willing or capable of punishing those liable or whether the ICC needs to become involved. Since the Nigerian government's preliminary ICC investigation of Boko Haram's complicity in war crimes and the Prosecutor's Office's request for admissibility, trial proceedings have not began. The Nigerian government officially is neither investigating or moving cases to the ICC.<sup>84</sup>

## 4.7 CHAPTER SUMMARY

The response of the International Criminal Court (ICC) to the crimes against humanity and terrorism has been explored in this chapter. To date, the ICC's inquiries into war

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<sup>83</sup> *ibid*

<sup>84</sup> International Criminal Court. (2019, September 30). Retrieved from Human Rights Watch website: <https://www.hrw.org/topic/international-justice/international-criminal-court>

crimes and crimes against humanity have not resulted in any conviction that contrasts sharply with the aspirations of most civilian. While they generally accepted the ICJ, they were dissatisfied by the court's conduct, i.e. no trials were conducted or are expected. As part of a preliminary investigation, the International Criminal Court's Office of the Prosecutor (OTP) monitored the conflict between Boko Haram and the Nigerian armed forces. It claimed that there is reason to believe that Boko Haram is responsible for war crimes and crimes against humanity and that, according to international law, the fighting between Boko Haram and the armed forces has reached the level of a non-international armed conflict.

## CHAPTER 5

### FINDINGS AND ANALYSIS

At the inception of this thesis, I came up with a hypothesis as well as raised some few questions with regards to the International Criminal Court (ICC) on crimes against humanity and terrorism with Boko Haram of Nigeria as a case study. Therefore, answering these questions is detrimental for testing the hypothesis. To derive a final conclusion, this chapter will analyze the main findings and thus bringing me to the very first research question.

#### 1) **What are the legal and procedural responses of the ICC to the Boko Haram violence?**

Nigeria has ratified the Rome Statute which grants jurisdiction to the International Criminal Court (ICC) to prosecute alleged crimes of genocide, crimes against humanity or war crimes. Nonetheless, the ICC has been investigating Nigeria's crimes.

Preliminary examination is a step in which the OTP decides whether a case satisfies the legal criteria set out in the Rome Statute and requires the OTP's inquiry. Before a formal investigation is conducted, the preliminary examination must be completed successfully. The ICC Prosecutor began a comprehensive review of the situation in Nigeria on November 18, 2010. It accompanied many letters obtained as early as 2005 from the Prosecutor's Office (the OTP) to the ICC. The unreasonably long time taken to deliberate on Nigeria's situation is frustrating and

offers no hope that justice will be achieved for the victims. What is even more troubling, though, is the fact that other crimes committed within Nigeria are not included in the preliminary review (or even if they were considered, they were not listed as a potential case for prosecution).

The OTP reported six possible cases of Boko Haram committing crimes against humanity and two cases of such crimes committed by the Nigerian Security Forces. The six cases involved Boko Haram:

- 1) killing nonbelievers resulting in the killings of over 8,000 people;
- (2) assassination, kidnapping and incarceration of civilians connected to rape, torture and cruel and degrading treatment.
- (3) assaults on classrooms, other school buildings and attacks on students and teachers;
- (4) recruiting and use of child soldiers;
- (5) attacks on women and girls;
- (6) deliberate targeting of religious buildings, including churches and mosques. The two lawsuits against the Nigerian Security Forces are counter-terrorist activities against Boko Haram and child soldiers recruiting.<sup>85</sup>

The ICC was in touch with the government of Nigeria to inquire about the reaction of the Nigerian government to the atrocities. In early 2015, the ICC was told by the Nigerian government that 150 lawsuits against Boko Haram were sent for consideration to the Nigerian Attorney General. Nevertheless, no real progress has been made in this respect and therefore the ICC is still interested in the proceedings. In relation to the killings, the ICC continues to consider new messages, particularly in relation to the armed conflict between Boko Haram and the Nigerian security forces.<sup>86</sup>

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<sup>85</sup> Pieter Omtzigt, Ewelina U Ochab, Bringing Daesh to Justice: What the International Community Can Do. *Journal of Genocide Research*, 21(1) (2018) 71–82.

<sup>86</sup> *ibid*

**(2) Do the acts of Boko Haram fulfill the criteria as crimes against humanity which is defined by the Rome Statute?**

As noted in Chapter three and Chapter Four, the Rome Statute defines crimes against humanity as of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (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.<sup>87</sup>

As discussed in Chapter three, most if not all the crimes carried out by the Boko Haram falls under crimes against humanity. In northern Nigeria, Boko Haram has claimed responsibility and murdering a number of Christians in northern Nigeria. Since 2010, suspected members of the group have targeted or opened fire on worshippers in at least 18 churches in eight northern and central states. The terrorist group have carried out widespread and systematic murder and persecution as seen through hundreds of attacks they have carried out since 2009, the group is responsible for killing more than 1500 people, in the first few months of 2012, more than 815 people died in some 275 suspected attacks by the group. (HUMAN RIGHTS WATCH) Since the beginning of 2014, Boko

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<sup>87</sup> Article 7(1), UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, UN Doc. A/CONF. 183/9; ILM 1002 (1998); 2187 UNTS 90. 1998

Haram has seized at least 2,000 women and girls, and many have been coerced into sexual slavery and trained to fight. Reports on Boko Haram's various war crimes and crimes against humanity, including the massacre of at least 5,500 people as it rampaged through Nigeria in 2014 and early 2015. Boko Haram murdered, kidnapped and brutalized men and women, boys and girls, Christians and Muslims during a reign of terror that affected millions.

With the support of the #BringBackOurGirls initiative, the 276 schoolgirls kidnapped from Chibok received worldwide attention. But the missing schoolgirls are just a small proportion of Boko Haram's kidnapped women, girls, young men and boys. More than 15,000 non-combatant civilians were killed. Up to 3 million people are internally displaced or pushed as refugees across borders. About \$6 billion has been invested endlessly in the fight. More than 75% of school-age children are out of school because most classrooms are either demolished or closed.<sup>88</sup> Since 2000 until now, Boko Haram has transformed the demographic profile of the people of the state of Borno and the northeast as a whole. The early investigations of the International Criminal Court were based on evidence of mass arrests, torture, and summary executions routinely and frequently perpetrated by security forces, resulting in thousands of deaths and disappearances. Statistics by Amnesty International stated that between 2011 and 2015 more than 7,000 men and boys died as a result of this abhorrent abuse in military detention.

### **(3) What are the obstacles to the inclusion of Terrorism in the Rome Statute?**

The ICC has no authority under the Rome Statute over acts of terrorism as a separate offence. This condition is not an anomaly, but rather the express intention of the majority of States parties to the Rome Conference, which opposed militant inclusion in the Rome Statute. The only mention of terrorism at the conference's conclusion was in resolution E

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<sup>88</sup> Chino Obiagwu, Judicial and Institutional Developments in Nigeria against Atrocity Crimes and the Protection of Victims. Posted by admin on May 16, 2018 Chair, Nigerian Coalition for the International Criminal Court (NCICC) (2018)

in the Appendix to the final act, which proposed revisiting the issue of including terrorism at the meeting of a review conference.

The first and foremost obstacle to the incorporation of terrorism in the Rome Statute was the lack of a definition of what constitutes terrorism, and disagreement with the existing definition in the draft document. On the other hand, it was suggested that the absence of an appropriate definition should not conflict with the use of a workable definition and move alongside the trial of terrorist at the ICC.<sup>89</sup>

The second reason for states' refusal to include terrorism in the Rome Statute was the presumption that the three main crimes; war crimes, crimes against humanity, and genocide, represented offences of great concern to the international community, and terrorism does not rise to this level of international concern. Originally, terrorist acts were known as "merely" treaty offences, but as they became more foreign in nature and yielded more disastrous results, they produced a need for international cooperation to combat them and became the focus of increasing international condemnation. This trend has prompted some analysts to argue that terrorist acts have become foreign crimes.

The third reason to deny the incorporation of terrorism in the Rome Statute was the desire to avoid overburdening the ICC and the need for a gravity threshold. The counter-argument to this point is that the court's apprehension of a work overload is not specific to terrorism and has already been discussed in the Rome Statute itself. The Rome Statute drafters understood the ICC should be reserved for a special class of the most atrocious acts, and to do this, they put some safety valves in the document.<sup>90</sup>

Finally, another argument is based on a more practical level; some states questioned the need for terrorism to be included in the Rome Statute because a system of

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<sup>89</sup> Michael Lawless, *Terrorism. International Journal: Canada's Journal of Global Policy Analysis*, 63(1) (2008) 139–159.

<sup>90</sup> Roberta Arnold, *The ICC as a new instrument for repressing terrorism*. Ardsley, N.Y.: Transnational Publishers (2004)

international cooperation was already in place to deal with it as a treaty crime. While it may be possible that counter-terrorism treaties attempt to create a "extradite or prosecute" system between their member states to guarantee compliance with them, this is not a good reason enough to grant jurisdiction to the ICC. For example, genocide, an undisputed central crime, was also already in effect in 1948 under the framework of an international treaty (Genocide Convention).

The result of the above-mentioned discussion is that, out of all the arguments put forward at the 1998 Rome Conference against the inclusion of terrorism in the jurisdiction of the ICC, the majority still tend to be untrustworthy. There's only one thing that can still be a real obstacle. The problem is the lack of a fitting definition of terrorism.<sup>91</sup>

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<sup>91</sup> Aviv Cohen, *Prosecuting Terrorists at the International Criminal Court: Reevaluating an Unused Legal Tool to Combat Terrorism* (2012)

## **CHAPTER SIX**

### **CONCLUSION AND RECOMMENDATION**

#### **Conclusion**

The preliminary examinations concluded that there was a reasonable basis for concluding that crimes against humanity had been perpetrated in Nigeria, including acts of murder, devastation, and Boko Haram's alleged ethnic cleansing. Therefore, the Prosecutor's Office agreed that the preliminary investigations would move to the 'admissibility point' to determine whether the national authorities remain willing or capable of punishing those liable or whether the ICC needs to become involved. As discussed in previous chapters, I thereby come to the conclusion that indeed the Boko Haram attacks falls under the criteria of crimes against humanity as postulated by the Rome Statute, as seen through all the widespread and systematic attacks described in previous chapters of this research.

Furthermore, with regards to the last research questions' findings on the obstacles of the inclusion of terrorism in the Rome Statute, I generated arguments and counter arguments to the obstacle, this argument states that terrorism has a solid foundation as an international treaty offence to be dealt with. This is the exact opposite of the earlier argument that terrorism is not a well-established offense in contrast with the other key crimes. The truth is that the existing legal mechanisms that deal with what is regarded as criminal behavior by the international community are simply irrelevant in

deciding whether an offense should be included in the Rome Statute. since 2010, the ICC Prosecutor's Office (OTP) has opened a preliminary examination of the situation in Nigeria. On 15 October 2019, following the conclusion of the fourth mission to Nigeria by Prosecutor Fatou Bensouda, it issued a statement ' welcoming the submission by the Nigerian Government of additional information on national prosecutions to promote the continuing review and examination of the appropriate Rome Statute requirements by its Office.

It seems that the Office has not yet decided whether or not to open an investigation into the matter, almost ten years after the preliminary examination was conducted. (Amnesty International)

Finally, based on the information on this research, it is reasonable to believe that since July, 2009, Boko Haram has committed crimes against humanity in the territories of Nigeria as a crime under Article 7(1)(a) of the statute and (ii) persecution constituting a crime against humanity under article 7 (1)(h) of the statute. Accordingly, the prosecutor has decided to move the situation in Nigeria to phase 3 of the preliminary examinations with a view to determining whether the Nigerian authorities are undertaking legitimate investigations in relation to the crimes committed by the Boko Haram.

## **RECOMMENDATIONS**

On domestic prosecutions, as noted in previous chapters, Nigeria has a lot of resources yet to be untapped, therefore, the government should work towards improving the economy of Nigeria.

Furthermore, the Nigerian Police Force (NPF) plays a crucial role with regards to law and order and other security issues in the country. The police force is paid really low salaries, especially the field workers with lower ranks, this has come to be one of the reasons Boko Haram is able to breach a portion of the Nigerian government, which makes it really difficult to track them down. I recommend that the Nigerian government should

carry out well-grounded reforms in the police force and also increase the salaries of the lower ranking police officers working in the field. They police force should also be given proper training, the ethics properly improved. Also, not only the police force, but other security forces like the Nigerian Navy and Army likewise need similar reforms.

As discussed in previous Chapters, the majority of the members of the Boko Haram are from neighboring countries like Cameroon, Chad, Niger and Mali, therefore, this issue is not purely just for Nigeria, it has been it somewhat a regional problem. The government of Nigeria as well as the government of these countries listed where the Boko Haram are alleged to be recruited should therefore, carry out efficient tactics to tighten up border security. I also recommend the international community's assistance if necessary in improving border security.

The option of the intervention no the ICC has been diagnosed crucially. It is evident that the court is in the position to intervene in the Boko Haram insurgency. If the court then decides to intervene in the situation, it could likely end in a success. The relationship between the African Union and the ICC has become considerable unfriendly in the past years. (African Union Inauguration of the Multi National Joint Task Force Headquarters against the Boko Haram Terrorist Group, 2015)

It is quite doubtful that the ICC would decide to investigate another issue in Africa. Therefore, while this option is the most preferred, it is not really practical.

Lastly, making use of a mixed court has the capacity of taking into account all the previously neglected forms of the Boko Haram issue, it can also lead to a logical end of the crisis. The proposed mixed court may be established in accordance to an agreement between Nigeria, Chad, Cameroon and Niger. Utilizing a mixed court as a response to the Boko Haram dilemma has many advantages. This court has a higher potential of success due to the resources that could be contributed by all the member states. Additionally, using a mixed court as a response to this issue would also ensure that, through a standardized system, individuals responsible for commissioning such egregious crimes are held personally responsible.

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