



VOL. 4 - ISSUE 2 (2023)

Journal of International Criminal Law

Online Scientific Review

EDITED BY

Heybatollah Najandimanesh
Anna Oriolo

ISSN: 2717-1914

www.jiclonline.org

TABLE OF CONTENTS

VOLUME 4 – ISSUE 2

THE CRIME OF GENOCIDE: NATIONAL AND INTERNATIONAL THEORIES AND PRACTICES. THE JUDGMENT OF HIERARCHICAL RESPONSIBLE IN GENOCIDAL PROCESSES. DIALOGUES AND COMPARATIVE EXPERIENCES: FROM INTERNATIONAL CRIMINAL COURT TO ARGENTINA ESMA TRIAL

Pages 73-81



Carlos Federico Gaitan Hairabedian

CRIMES AGAINST HUMANITY IN NIGERIA: A CASE OF THE ACTIVITIES OF *BOKO HARAM*/ISLAMIC STATE IN WEST AFRICAN PROVINCE

Pages 82-97



Cyril Ezechi Nkolo

THE RATIFICATION OF THE ROME STATUTE: THE NEXT STEP IN ESTABLISHING AN AMERICAN EQUALITARIAN LEGAL ORDER?

Pages 98-112



Ian L. Courts

CORPORATE CRIMINAL LIABILITY AND COMPLICITY IN CRIMES AGAINST HUMANITY: CASE NOTE ON RECENT FRENCH JURISPRUDENTIAL DEVELOPMENTS

Pages 113-130



Kane Abry; Allison Clozel; Hester Kroeze

PROSECUTION OF SUSPECTS OF ATROCITY CRIMES COMMITTED DURING THE LIBERATION WAR OF BANGLADESH THROUGH THE “FUNCTIONAL PARTICIPATION” THEORY DERIVED FROM THE *DEMJANJUK* CASE IN MUNICH

Pages 131-152



Md Mustakimur Rahman

BOARD OF EDITORS

EDITOR-IN-CHIEF

Heybatollah Najandimanesh, Allameh Tabataba'i University of Tehran (Iran)

GENERAL EDITOR

Anna Oriolo, University of Salerno (Italy)

EDITORIAL BOARD

Sètondji Roland J.B. Adjovi, Arcadia University (United States of America)

Hussein Aghaei Janatmakan, Shahid Chamran University of Ahwaz (Iran)

Mohammad Ali Ardebili, Shahid Beheshti University (Iran)

Mohamed Badar, Northumbria University (United Kingdom)

Flavio de Leao Bastos Pereira, Mackenzie Presbyterian University of São Paulo (Brazil)

Paolo Benvenuti, 'Roma Tre' University of Rome (Italy)

Michael Bohlander, Durham University (United Kingdom)

Homayoun Habibi, Allameh Tabataba'i University of Tehran (Iran)

Gerhard Kemp, University of Derby (United Kingdom)

Anja Matwijkiw, Indiana University Northwest (United States of America)

Solange Mouthaan, University of Warwick (United Kingdom)

Ali Hussein Najafi Abrand Abadi, Shahid Beheshti University of Tehran (Iran)

Behzad Razavifard, Allameh Tabataba'i University of Tehran (Iran)

Mehdi Zakerian, Islamic Azad University of Tehran (Iran)

ADVISORY BOARD (REFEREES)

Amina Adanan, Maynooth University (Ireland)

Girolamo Daraio, University of Salerno (Italy)

Ali Garshasbi, AALCO of New Delhi (India)

Noelle Higgins, Maynooth University (Ireland)

Kriangsak Kittichaisaree, ITLOS of Hamburg (Germany)

Panagiota Manoli, University of Peloponnese (Greece)

Roxana Matefi, Transilvania University of Braşov (Romania)

Virginie Mercier, University of Aix-Marseille (France)

Hector Olasolo, Universidad del Rosario of Bogotá (Colombia)

Gisella Pignataro, University of Salerno (Italy)

Irena Rajchinovska Pandeva, Ss. Cyril & Methodius University of Skopje (North Macedonia)

Eduardo Toledo, International Nuremberg Principles Academy (Germany)

Antonio Vecchione, University of Salerno (Italy)

EDITORIAL ASSISTANTS IN-CHIEF

Stefano Busillo, University of Salerno (Italy)

Emanuele Vannata, University of Salerno (Italy)

JICL'S INSIGHTS

Mohammadmehdi Seyed Nasseri, Islamic Azad University of Tehran (Iran)

OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and



- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

COPYRIGHT AND LICENSING

By publishing with the Journal of International Criminal Law (JICL), authors agree to the following terms:

1. Authors agree to the publication of their manuscript in the JICL;
2. Authors confirm that the work is original, unpublished, and not currently under review elsewhere;
3. The JICL is not responsible for the views, ideas, or concepts presented in the articles; these are the sole responsibility of the author(s);
4. The JICL reserves the right to make editorial adjustments and adapt the text to meet publication standards;
5. Authors retain copyright and grant the JICL the right to first publication. The work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0; <https://creativecommons.org/licenses/by-nc-sa/4.0/>), allowing the work to be shared with proper attribution and the initial publication in the JICL, provided that:
 - Attribution: you must cite the authorship and the original source of the publication (JICL, URL and DOI of the work); mention the existence and specifications of this license for use; provide a link to the license; indicate if changes were made; do not apply legal terms or technological measures that legally restrict others from doing anything the license permits;
 - NonCommercial: you may not use the material for commercial purposes;
 - ShareAlike: if you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original;
6. Authors may enter into additional agreements separately for non-exclusive distribution of the published version of the work (*e.g.*, publishing in an institutional repository or as a book chapter), with proper attribution to the JICL and original publication and after having informed the editors of such distribution.

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

by Cyril Ezechi Nkolo *

ABSTRACT: It is a global knowledge that the *Boko Haram* Terrorists and its offshoot of the Islamic State in West African Province have been fighting Nigerian security forces, especially in the North East of Nigeria since 2009. These terrorists in pursuit of their plan/policy have displaced millions of Nigerians, murdered thousands of innocent civilians, maimed, pillaged, raped, tortured and destroyed civilian objects with impunity. The crux of this paper is to investigate whether crimes against humanity have been committed by the activities of the *Boko Haram* terrorists in Nigeria and, where it is committed whether the International Criminal Court can prosecute and sanction the perpetrators. The paper copiously demonstrated that the *Boko Haram* terrorists committed crimes against humanity in all its ramifications via their activities in Nigeria. The common place where the citizens of Nigeria assemble often are market places, restaurants, churches, mosques, motor parks, schools and colleges. Unfortunately, it is these places that became targets by the *Boko Haram* terrorists killing civilians who were *hors de combat* as well as destruction of civilian objects and consequently, committed crimes against humanity. The paper also shows that the Federal Government of Nigeria led by Muhammed Buhari is handling the *Boko Haram* terrorists with kid-glove. Consequently, the Federal Government is unable or unwilling to prosecute and sanction the *Boko Haram* perpetrators for reasons best known to them. It is therefore, recommended that the International Criminal Court should step in to prosecute and sanction the *Boko Haram* terrorists for the heinous crimes committed against thousands of innocent civilians in Nigeria to ensure justice and assuage the spirits of the innocent people the terrorists killed like goats.

KEYWORDS: *Actus Reus*; Armed conflict; Crimes Against Humanity; Criminal Responsibility; *Mens Rea*.

I. Introduction

The *Boko Haram* terrorists and its offshoot of Islamic State in West African province have been fighting Nigerian security forces, especially in the Northeast for over a decade now, displacing more than twenty million people, killing, raping, torturing, kidnapping, pillaging, transferring them, and converting them to slaves. These groups have also attacked villages, killing civilians and innocent people with impunity. They also attack civilian objects such as churches, mosques, schools, shops, hospitals, killing civilians, Correctional Centres, kidnap and collect ransom from their victims.

* Professor; BA(Ed) (UNN); LLB(UNN); BL, MPA (UNN); LLM (UNN); PhD (ABSU); Godfrey Okoye University of Enugu (Nigeria).

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

The terrorists invade the area in large numbers simultaneously attacking villages and settlements.¹ All these attacks have kept occurring without any strong coordinated and consistent intervention from the security agencies, especially since the soldiers were attacked by the terrorists and the commanding officer of the 93 Battalion abducted.² These acts and omissions of the parties, the Nigerian security agencies and the *Boko Haram* terrorists in the conflict amount to crimes like murder, causing grievous bodily harm, malicious destruction of property, terrorism and even treason.³ There are copious laws in Nigeria to punish such serious crimes in Nigeria but the Government is not willing or lack the capacity to do so. Accordingly, these terrorists parade the country, particularly the North East killing civilians, raping, pillaging and destroying civilian objects unchallenged and with impunity. On Sunday June 5, 2022, terrorists launched ferocious attack on Catholic faithful at St. Francis Catholic Church, Owo, Ondo State, killing scores and injuring many others. No one has been arrested and brought to book for these heinous crimes. The terrorists strike at any location of their choice, killing and maiming innocent, law abiding citizens and the government pretends to be helpless.⁴

From the foregoing, it is very obvious that the terrorists and Nigerian security agencies have not only committed acts in conflict with the domestic laws as articulated above but have also committed crimes against the International Humanitarian Law, particularly Crimes Against Humanity and War Crimes. The crux of this paper is to investigate whether crimes against humanity have been committed by the activities of the *Boko Haram* Terrorists and, if so, whether the International Criminal Court can prosecute and sanction the terrorists who committed the offence/crime.

II. Conceptual Clarifications

A. *Boko Haram*

Boko Haram is a combined term derived from Hausa and Arabic languages. The term *Boko* comes from the Hausa word *Animist* meaning western or non-Islamic education. The Arabic word *Haram* means, western education is a sin. *Book Haram* is a controversial Islamic Militant Group that seeks the imposition of Sharia Law and practices on Nigeria beginning with Northern States of Nigeria.⁵ By and large, it is a terrorist or militant group that abhors western education, western culture and scientific explanations to certain natural happenings.

The group was founded by one Mohammed Yusuf. It is targeted to abolish the secular nature of the Nigerian society and to replace it with an Islamic State, by establishing a sharia system of government in the country. It is equally against western education and the teaching of modern science. These ideas are anti-Islam, according to Yusuf.⁶ Thus, the *Boko Haram*

¹ Levinus Nwabughio, *Soldiers Killing: Reps Calls for Redeployment of More Soldiers to Taraba*, VANGUARD NEWSPAPER (July 21, 2022).

² *Id.*

³ FIGHTING ON THE SIDE OF LAW AND JUSTICE: LEGAL ESSAYS IN HONOUR OF PROFESSOR G. O. S. AMADI, CHUKWUNOSO OKAFOR (Chukwunonso Okafo, Simon U. Ortuanya, Chukwunweike A. Ogbuabor eds., 2016), at 276.

⁴ Ikechukwu Amaechi, *Murder of Catholic Priests: Nigerian State is Complicit*, VANGUARD NEWSPAPER (July 21, 2022).

⁵ Aigba Aondifa, *Human Rights and Terrorism in Nigeria: A Focus on the Boko Haram Insurgency*, 4 CALABAR LAW JOURNAL 120 (2016), at 126

⁶ Dennis Nwabuisi, *History and Origin of Boko Haram*, BLOGSPOT (Jan. 15, 2012), <http://nwabuisidenis.blogspot.con.ng/2012/01/history-and-origin-of-boko-haram-people.html>.

terrorists were against western education and culture hence, they perceived its teachings as contrary to tenets of Islam. Consequently, western education and current democratic government should be overthrown and replaced with a theocratic state premised on the Sharia doctrine.

B. Armed Conflict

Armed conflict is defined as a state of open hostility between two countries or between a country and an aggressive force. A state of armed conflict may exist without a formal declaration of war by either side.⁷ From the definition above, it is clear that what constitutes armed conflict is a matter of law.⁸ Also, implied in the definition is that armed conflict is classified into two broad categories viz, International Armed Conflict (IAC) and Non-International Armed Conflict.⁹ International Armed conflict is deemed to exist where the circumstances meets the thresh hold provided by Article 2 Common to the Geneva Convention. The article provides that: in all cases of declared war between two or more States Parties to the convention even if the state of war is not recognized by one of the parties involved and all situations of partial or total occupation of the territories of parties to the convention even if the occupation is met with no armed resistance.¹⁰ In *The Prosecutor v Tadic*,¹¹ the International Criminal Tribunal for former Yugoslavia held that armed conflict is deemed to exist wherever there is a resort to armed force between states. Thus, in an International Armed Conflict, that is any resort to armed force by the state against another may constitute armed conflict within the contemplation of Article 2 Common to the Geneva Convention notwithstanding the level of intensity of the conflict.¹² An armed conflict is international if it takes place between two or more states, such as the current war between Russia and Ukraine.

On the other side of the coin is non-International Armed Conflict. According to Common Article 3, Non-International Armed Conflicts applies to armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties.¹³ An internal armed conflict or non -international armed conflict may be defined as armed conflict that takes place in the territory of a state and which does not qualify as an International armed conflict as articulated above.¹⁴ Put differently, it is a protracted armed conflict between government authorities and organized armed groups or between such groups within a state.¹⁵ Article 8 (2)(f) states that: “the concept of armed conflicts not of an international character” include, armed conflict that take place in the territory of a state when there is protracted armed conflict between government authorities and organized armed groups or between such groups.¹⁶

⁷ BLACK’S LAW DICTIONARY (Bryan A. Garner ed., 2014), at 129.

⁸ Elijah O. Okebukola, *Calibrating the Legal Obligation in the Ongoing Non-International Armed Conflict in Nigeria*, BOKO HARAM AND INTERNATIONAL LAW (John-Mark Iyi, Hennie Strydom eds., 2017), at 82.

⁹ Elijah O. Okebukola, *Legal Regime for The Protection of Civilians and Civilian Objects During Armed Conflict*, 3(1) NASARAWA JOURNAL OF PUBLIC AND INTERNATIONAL LAW 251 (2016), at 252

¹⁰ Art. 2 Common to the Geneva Conventions.

¹¹ ICTY, *Prosecutor v. Dusko Tadic*, 11-94-1-AR 72, Appeals Chamber, Judgment (Oct. 2, 1995), para. 70.

¹² Okebukola, *Calibrating the Legal Obligation*, *supra* note 8, at 252.

¹³ Vitus M. Udegbale, *An Appraisal of International Humanitarian Law*, 2(3) INTERNATIONAL REVIEW OF LAW AND JURISPRUDENCE 100 (2020), at 106

¹⁴ KRIANGSAK KITTICHAISAREE, INTERNATIONAL CRIMINAL LAW (2006), at 137

¹⁵ ICTY, *Prosecutor v. Dusko Tadic*, IT-01-47-AR72, Appeal Chamber, Decision on Interlocutory appeal, (July 7, 2003), para. 7

¹⁶ MARK O. UNEGBU, FROM NUREMBERG CHARTER TO ROME STATUTE: JUDICIAL ENFORCEMENT OF INTERNATIONAL HUMANITARIAN, LAW (2015), at 192

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

Non-international armed conflicts are generally covered by Article 3 Common to the General Conditions and by Additional Protocol 11.¹⁷ The existence of non-international or internal armed conflict triggers the application of International Humanitarian Law as the law of armed conflict regulating the limits on which the parties to an armed conflict may conduct hostilities and protect all persons affected by the conflict. It applies whenever there is a protracted armed violence within the territory of a state between government forces and organized armed groups or between such groups.¹⁸ As observed by Unegbu, the purport of Common art. 3 and Additional protocol 11 is to extend the principles applicable in international wars to non-international armed conflict.¹⁹ Additional protocol also applies to armed conflict and further provides that: non-international armed conflicts are armed conflicts which take place in the territory of High Contracting Party between its armed forces and dissident armed forces or their organized armed groups which, under responsible command, exercise such control over parts of its territory as to enable them to carry out sustained and concerted military operations to implement this protocol.²⁰ Humanitarian Law on war is provided by the Additional protocol 11 and art. 82(f) of the Rome Statute of International Criminal Court. Art. 8(2)(e) of the Rome Statute is very eloquent on this. In line with the traditional humanitarian law, these articles exclude crimes committed in situations of International or non-international disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature from the concept of war crimes. The International Court for Yugoslavia in Tadic Decision,²¹ established two major criteria for an armed conflict to qualify as a Non-International Armed conflict under Common art. 3 thus:

- (i) The armed conflict must be protracted; this is also known as the “intensity principle”;
- (ii) the armed group(s) must be organized.

These criteria are used for the purpose of differentiating between armed conflict on the one hand and banditry, unorganized or short-lived insurrections on the other hand.²²

A juxtaposition of the basic legal elements of non-international or internal armed conflict as constituted by the Rome Statute, art. 8(2)(f), art. 3 Common to the Geneva Convention and Additional Protocol and the activities of the *Boko Haram* Terrorists/ISWAP shows that the armed conflict between the Government of Nigeria and *Boko Haram* qualifies as Non-International Armed Conflict. *Boko Haram* activities in Nigeria has lasted for over a decade and is increasing in intensity every minute of the day. The element of protractedness of the conflict as required by the law is patently manifest with regard to the *Boko Haram* activities. The present insistent wave of terrorists’ attacks on Nigerians and the Nigerian State usually ascribed to *Boko Haram* over a decade has called the Nigerian national security apparatus to arm, challenging them.²³

Other elements as required by the law to declare an armed conflict as non-international armed conflict include the following:

¹⁷ *Id.*, at 191.

¹⁸ ICTY, The Prosecutor v. Fatmir Limaj, IT-03-66-T, Trial Chambers, Judgment (Nov. 30, 2005), para. 84.

¹⁹ Unegbu, *supra* note 16, at 191.

²⁰ Art. 1(1) Additional Protocol II to the Geneva Convention (June 8, 1977).

²¹ ICTY, Prosecutor v. Dusko Tadic, Appeals Chamber, *supra* note 11, para. 70.

²² ICTY, Prosecutor v. Dusko Tadic, IT-94-1-7, Trial Chambers, Judgment (May 7, 1997), para. 526.

²³ Adedoyin Akinsulore, *The Boko Haram Syndrome and the Nigerian’s National Security Crises: A Socio-Legal Appraisal*, 16(1) UNIVERSITY OF BAMM LAW JOURNAL 199 (2015), at 199.

The armed group(s) must be organized, it must be under a responsible command, exercise such control over a part of the territory to enable them to carry out sustained and concerted military operations.

These elements are conspicuously present in the activities of the *Boko Haram* Nigeria. *Boko Haram* has a very superb structure and command. Since the demise of their founder in 2012, they always have a very fine command structure and organogram. They are also in control of some parts of states in North-East of Nigeria that even pay taxes to them such as Damaturu in Bornu State and up till today control Damaturu junction road. Contrary to the claims that no Local Government Area in Bornu State is under the control of *Boko Haram* Insurgents, the Speaker of Bornu State House of Assembly, Abdulkarim Lawan, has said that two Local Government Areas are being controlled by the terrorists. He identified the affected local government Areas as Guzamala and Kukawa in Bornu North Senatorial District. Consequently, Lawan appealed to the Federal Government and the military to dislodge the terrorists.²⁴ Furthermore, as Defence Head Quarters said they are looking for Turji and announced a ₦5 million price on him, the notorious bandit leader was exercising his authority in his area of control by imposing ₦20 million “protection levy” on Moriki Community which is located 33 kilometers along Kaura Namaoda – Shinkafi road, Turji imposed ₦20 million levy on the villagers and asked them to pay the money on or before Sunday 27th November 2022 or face his wrath... The villagers imposed ₦ 6,500 on every household to raise the money. The villagers were able to raise ₦10.6 million which they took to the place where Turji requested them to bring it. On reaching the spot where the money was to be delivered, seven Turji boys who rode on motorcycle appeared and demanded for the ₦20 million but ₦10.6 million was given to them. When the attention of Turji was drawn to the amount the villagers brought, Turji became angry and ordered that those who brought the incomplete money should be arrested and taken to one of his camps at Jirariforst stranding Zurmi and Shinkafi Local Government Areas.²⁵ Their activities in Nigeria since 2009 have been concerted and sustained military operation. From all ramifications, the armed conflict between the Federal Government of Nigeria and the dissident terrorists group known as *Boko Haram* Terrorists and its off short ISWAP, can be safely described as Non-International Armed Conflict.

It is obvious from the examination above that armed conflict between the Federal Government of Nigeria and the dissident group known as *Boko Haram* terrorists/ISWAP meets all the criteria for non-international or internal armed conflict. Accordingly, the International Humanitarian Law principles governing non-international conflicts apply *Mutatis Mutandis* to non-international armed conflict in Nigeria. Consequently, all individuals or groups that offend the International Humanitarian Law should be prosecuted and punished by the state or by the International Criminal Court where the state is not willing to do so.

C. Crimes Against Humanity

Crimes against humanity has been variously defined by statutes and scholars. According to Schweb, crime against humanity is defined as a crime against the humaneness that offends certain general principles of law and which becomes the concern of the International

²⁴ Ndahi Marama, *Boko Haram in Control of Two Bornu Local Government Areas, Speaker Cries Out*, VANGUARD NEWSPAPER (Dec. 11, 2022).

²⁵ Ndahi Marama, *Turji Imposes ₦20 Million Protection Levy on Residents*, VANGUARD NEWSPAPER (Dec. 3, 2022).

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

Community.²⁶ The terminology crimes against humanity was used in non-technical sense as far back as 1915 in the declaration of May 28, 1915 of the Governments of France, Great Britain and Russia denouncing the massacres of Armenian population by the Turkish government as crimes against humanity and civilization for which all the members of the Turkish Government were held responsible.²⁷ Crimes against humanity were prosecuted at Nuremberg and Tokyo trials after the Second World War.²⁸

The Black's Law Dictionary defined Crime Against Humanity as a brutal crime that is not an isolated incident but that involves large and systematic actions, often cloaked with official authority and that shocks the conscience of humankind.²⁹

The Rome Statute of the International Criminal Court defines crimes against humanity in art. 7³⁰ in the following words:

(1) For the purpose of this Statute, Crime Against Humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The enumerated acts are.

- (a) Murder,
- (b) Extermination
- (c) Enslavement
- (d) Deportation or forceful 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 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 inhuman acts of a similar character intentionally causing great suffering or serious injury to the body or to mental or physical health.

For avoidance of doubt, the Statute goes further in paragraph 2 to define and give meanings to the terms, concepts, phrases, and words used in defining crimes against humanity to paragraph 1 of Article 7. In this direction, Article 7 (2)³¹ provides:

For the purpose of para. 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population pursuant to or in furtherance of a state or organizational policy to commit such attack.

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia*: the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.

²⁶ Egon Schwelb, *Crimes Against Humanity*, BRITISH YEARBOOK OF INTERNATIONAL LAW (1946), at 178.

²⁷ *Id.*, at 181.

²⁸ KITTICHAISAREE, *supra* note 14, at 85.

²⁹ BLACK'S LAW DICTIONARY, *supra* note 7, at 453.

³⁰ Rome Statute (July 17, 1998), See also Darryl Robinson, *Defining Crime Against Humanity at the Rome Conference*, 93(1) AMERICAN JOURNAL OF INTERNATIONAL LAW 43 (1999), at 43.

³¹ Rome Statute (July 17, 1998).

- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under International Law.
- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.
- (g) “Persecution” means the intentional or severe deprivation of fundamental rights contrary to the international law by reason of the identity of the group or collectivity.
- (h) The crime of apartheid means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.
- (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of law for a prolonged period of time.³²

The essential ingredients for crime against humanity, flowing from the above definition and elucidation of concepts are as follows: (i) the perpetrator, through his actions, must have caused serious physical or mental suffering; (ii) the acts must be part of a wide spread or systematic attack; (iii) the attack must be directed against a civilian population; (iv) the act must be on discriminatory ground; (v) the perpetrator must possess intention and knowledge of the wider context in which the offence takes place.³³

D. Elements of Crime against Humanity

1. *Actus Reus*

The *actus reus* of crime against humanity comprise commission of an attack that is inhumane in nature and character, causing great suffering, or serious injury to body or mental or physical health; the act is committed as part of a widespread or systematic attack and the act is committed against members of the civilian population.³⁴

Implicit in the *actus reus* of crime against humanity is that the inhumane act must be committed as part of a wide spread or systematic attack directed against any civilian population. A widespread attack is an attack directed against a multiplicity of victims while systematic attack is an attack carried out pursuant to a pre-conceived policy or plan.³⁵

³² Rome Statute (July 17 1998).

³³ ICTR, Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Trial Chamber, Judgment (Sept. 2, 1998).

³⁴ ICTR, Prosecutor v. Alfred Musema, ICTR-96-13--T, Trial Chamber, Judgment (Jan. 27, 2000), para. 201

³⁵ ICTY, Prosecutor v. Dusko Tadic, Appeals Chamber, *supra* note 11, para. 648.

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

In other words, wide spread attack means massive, frequent, large-scale action, carried out collectively with considerable seriousness directed against a multiplicity of victims while systematic means thoroughly organized and following a regular pattern on the basis of a common policy. Furthermore, the act(s) must be committed in armed conflict. An act as well as an omission can constitute the *actus reus* of crime against humanity³⁶.

D.2 *Mens Rea*

According to Kriangsak, in addition to the specific elements contained in each individual crime against humanity, in order to transform a crime into a crime against humanity, the perpetrator must knowingly commit the crime in the sense that he must understand the overall or broader context in which his act occurs.³⁷ Such a perpetrator must have actual or constructive knowledge that his act or acts are part of a widespread or systematic attack on a civilian population and pursuant to a policy. Article 7(1) of the International Criminal Court is very eloquent on this. It provides that crime against humanity must be committed by the perpetrator with the knowledge of the attack directed against a civilian population.³⁸ Article 30 provides that for the purposes of this Article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.³⁹ Knowledge is therefore, an awareness or understanding a fact, a state of mind in which a person has no substantial doubt about the existence of a fact.⁴⁰ Thus, knowledge entails that the perpetrator understands clearly his actions and consciously and deliberately embarks on the prohibited act.

D.3 Civilian Population

Armed conflict involves diverse participants and affects all in the geographical space in which it occurs.⁴¹ To appreciate the nitty-gritty of the rule of International Humanitarian law with regard to the protection of civilians during armed conflict, it is pertinent to understand the legal concept of the term civilian.

Civilians are persons who are not members of organized armed forces or armed group of a party to an armed conflict and do not participate directly in the hostilities.⁴² A civilian for the purposes of armed conflict is a person who is not a member of armed forces or group and does not directly participate in hostilities. The Geneva Conventions and their Protocols in 2009 clarified the import of the concept of direct participation in hostilities. The Guidance issued by the 2009 Geneva Convention distinguished between members of an organized armed group or groups and persons who did not directly participate in hostilities or who do so on temporal, spontaneous and sporadic basis.⁴³ Under the rule formulated by the Guidance, the most decision point in distinguishing civilian groups participating in direct hostility is the concept of

³⁶ ICTY, Prosecutor v. Dushko Tadic, IT-94-1-A, ICTY Appeal Chambers, Judgment (July 15, 1999), para. 271.

³⁷ KITTICHAISAREE, *supra* note 14, at 90.

³⁸ Art. 7(1) of ICC Statute.

³⁹ Art. 30(3) of the ICC Statute.

⁴⁰ GARNER, *supra* note 29, at 1003.

⁴¹ Okebukola, *Calibrating the Legal Obligation*, *supra* note 8, at 253.

⁴² *Id.*

⁴³ Jelena Pejic, *Extra-Territorial Targeting by Means of Armed Drones: Some Legal Implications, Scope of the Law in Armed Conflict*, INTERNATIONAL REVIEW OF THE RED CROSS (2015).

continuous combat function.⁴⁴ Under the principle of continuous combat function, a person is considered liable to attack if he performs a continuous operation for the group involved in the hostilities.⁴⁵ Conversely, where such a person engaged in continuous combat function terminates his association with a group participating in Non-international Armed Conflict, such a person immediately becomes a civilian and is protected from a direct attack arising from the conduct of hostilities.

All persons who are not taking part in hostilities are to be humanely treated and are protected from acts that threaten their health, physical and mental wellbeing. Such prohibited acts include torture, mutilation, any form of corporal punishment, collective punishment, acts of terrorizing, hostage taking, degrading treatment, rape, enforced prostitution, and slavery in all forms.⁴⁶ Common Article 3 provides *inter alia*:

Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wound, detention or any other course shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex or wealth or any other similar criteria. Thus, “civilian must be given a broad definition to cover not only the general population, but also members of the armed forces who are *hors de combat*.”⁴⁷

III. Criminal Responsibility for Crimes against Humanity

Criminal responsibility is defined as the quality or condition of being answerable or accountable. It means liability to punishment as for an offence.⁴⁸ The underlying basic assumption of individual criminal responsibility is founded upon the principle of personal culpability, that is, no one may be held criminally responsible for acts or transactions in which he has not personally engaged or in some other participated (*nulla poena sine culpa*).⁴⁹ Thus, criminal responsibility envisages a breach of the moral standard of the community before such a person could be held criminally responsible.

Under Customary International Law and general principles of criminal law, individuals may be held criminally liable for their participation in the commission of offence in any of the several capacities or modes of participation.⁵⁰ Art. 7(1) of the ICTY Statute and art. 6(1) of the ICTR Statute under the heading “Individual Criminal responsibility” stipulate:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in these Statutes shall be individually responsible for the crime.⁵¹

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Art. 4(1)(2) of Additional Protocol II to Geneva Convention (June 8, 1977).

⁴⁷ ICTY, Prosecutor v. Tadic, *supra* note 31, para. 636.

⁴⁸ GARNER, *supra* note 29, at 1506.

⁴⁹ ICTY, Prosecutor v. Dusko Tadic, *supra* note 36, para. 264.

⁵⁰ ICTR, Prosecutor v. Clement Kayishema and Obed Ruzindana, ICTR-95-1-T, Chamber II, Judgment (May 21, 1999), para. 195.

⁵¹ *Id.*

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

Art. 25 of the International Criminal Court, under the heading “Individual Responsibility” provides in paras. 1 and 2 that, the ICC shall have jurisdiction over natural persons, and that a person shall be individually responsible for a crime within the ICC’s jurisdictions.

The obvious implication of the Statutes and authorities examined above is that perpetrators of crime against International Humanitarian Law can be individually held liable for the offence such perpetrator(s) committed under ICC Statute as well as under the domestic Law. Capturing this point more pungently, the Nuremberg International Military Tribunal observed as follows: art. 25 of the ICC Statute recognizes individual criminal responsibility for International Crimes. Crimes Against International Law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of International Law be enforced.⁵²

Accordingly, the ICC is empowered and obliged, if satisfied beyond reasonable doubt that the accused has committed the crimes as charged in the indictment, to convict the accused under the appropriate head of criminal responsibility. Consequently, the *Boko Haram* Terrorists/ ISWAP are liable to be tried and punished by the ICC for any breach of the International Humanitarian law as provided in the ICC Statutes for crime against humanity.

IV. Examination of the Activities of *Boko Haram vis-a-vis* the Elements of Crime Against Humanity

This Segment examines the criteria for crime against humanity as stipulated in art. 7(1) of the ICC Statute against the activities of *Boko Haram* in Nigeria with a view to ascertaining whether they are within the ambit of Crimes Against Humanity.

A. *Actus Reus* of the Offence of Crime against Humanity

As articulated above, the *actus reus* of crime against humanity comprises the commission of an attack that is inhumane in nature and character, causing great suffering or serious injury to the body or mental or physical health. The act is committed as part of a widespread or systematic attack and committed against civilian population. While widespread attack implies massive, frequent, large-scale action, carried out collectively with considerable seriousness directed against multiplicity of victims, systematic means thoroughly organized and following a regular pattern on the basis of a common policy and must be committed in an armed conflict.

A panoramic survey of the activities of the *Boko Haram* Terrorists in Nigeria shows that their activities are in tandem with the *actus reus* of the crime against humanity. The killing of 199 people by *Boko Haram* Terrorists with explosive devices on 20th of September, 2015 at Munguno Onion market, Borno State is a widespread attack directed against civilian population.⁵³ Also, the killing of 75 persons by *Boko Haram* Terrorists by the use of explosive at a mosque and viewing centre near Ajilari Cross, Maiduguri on 20th September, 2015 is also a widespread attack on the civilian population.⁵⁴ On Sunday, June 5, 2022, *Boko Haram*

⁵² Nuremberg International Military Tribunal, Judgment (Sept. 30, 1945); *Two Hundred and Seventeenth Day. Monday. 30 September 1946*, in TRIALS OF MAJOR WAR BEFORE THE INTERNATIONAL MILITARY TRIBUNAL VOL. 22 (1947), at 411.

⁵³ Amnesty International Report, *Boko Haram: Civilians Continues to be at Risk of Human Rights Abuses by Security Forces*, AFR 44/2428/2015 (Sept 24, 2015).

⁵⁴ *Id.*

Terrorists launched a ferocious attack on Catholic Faithful at St. Francis Catholic Church, Owo, Ondo State killing scores and injuring many others.⁵⁵ In April 2014, 270 girls from government college, Chibok were attacked, kidnapped and taken to unknown destination by the *Boko Haram* terrorists.⁵⁶ No fewer than 28 persons have been reportedly killed by rampaging bandits in Southern Kaduna communities on Sunday 18th of December, 2022 and also razed several houses. The affected communities include Malagum and Sokwong of Lagro in Kaura Local Government of Kaduna.⁵⁷

These attacks by the *Boko Haram* terrorists are inhumane in nature and character. It is also a truism that it must have caused great suffering and injuries to the victims mentally and physically. Many of them were killed and therefore died untimely and in pains. Further, the attacks were a part of widespread attacks directed on a civilian population. All the attacks as shown were attacks on civilian population. Furthermore, the *Boko Haram* attacks on the civilian population are systematic pursuant to preconceived policy/plan. According to the founder Mohamed Yusuf, the preconceived plan/policy of the *Boko Haram* Terrorists is mainly to Islamize Nigeria and expunge the present secular nature of the country as stipulated in the constitution. The group's objective is also to change the current Western system of education and replace it with Islamic education. The group hate anything Western education and are prepared to do anything possible to ensure the realization of the objectives. It is very obvious that the group is superbly organized and has a very clear plan/policy which they are pursuing, that is the Islamization of Nigeria.

The *Boko Haram* Terrorists belong to the *Salafists* Jihadists group that propagate a version of Islam that forbids any interaction with the Western world. Its philosophy and ideology are not embraced by other Muslims and they have been criticized for their use of force.⁵⁸ The present insistent wave of terrorists' attacks on Nigerians and the Nigerian State usually ascribed to be the work of *Boko Haram* has called the Nigerian national Security apparatus to arm, challenging them and testing them to the brink ever than before.⁵⁹ All these attacks were committed in the course of armed conflict. The dastard acts of the *Boko Haram* Terrorists are in tandem with the *actus reus* of the crimes against humanity. Accordingly, the activities of the *Boko Haram* terrorists satisfied the *actus reus* of crimes against humanity. The ICC should, therefore, prosecute and punish them where the Nigerian government failed to try them as it is the case in Nigeria today.

B. *Mens rea*

The basic mental element in the crime against humanity is that the perpetrator must knowingly commit the crime in the sense that he understands the overall or broader context in which his act occurs.⁶⁰ Such a perpetrator's knowledge may be actual or constructive. In other words, the perpetrator must be aware and clearly understands his actions and consciously and deliberately embark on the prohibited act(s). Harping on the *mens rea* of the offence of crime against

⁵⁵ Amaechi, *supra* note 4.

⁵⁶ Aondofa Aligba, *Human Rights and Terrorism in Nigeria: A Focus on the Boko Haram Insurgency*, 17(1) THE CALABER LAW JOURNAL 147 (2016), at 147.

⁵⁷ Ibrahim Hassan, *Bandits Kill 28 in Kaduna, Security Personnel, Terrorists Die in Zamfara State*, VANGUARD NEWSPAPER (Dec. 20, 2022).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ ICTY, *Prosecutor v. Tadic*, *supra* note 35; see also KITTICHAISAREE, *supra* note 14, at 90.

humanity, the Appeal's Chamber in the case of *Prosecutor v. Dusko Tadic*⁶¹ held that the perpetrator must have actual and constructive knowledge that his act or acts is or are a part of a widespread or systematic attack against a civilian population and pursuant to a plan/policy.

The *Boko Haram* Terrorists who commit the *actus reus* of the Crime Against Humanity do so with the full knowledge of the consequences of their actions and that their acts forms part of a widespread or systematic attack directed against the civilian population. That is the islamization of Nigeria. The knowledge of the *Boko Haram* Terrorists of the consequences of their actions/acts are underscored by their courage and boldness in claiming responsibility for attacks in various parts of Nigeria, especially in large scale attacks where many people were killed and abducted. The group claimed responsibility for the attacks and abduction of the Chibok girls as well as the Abuja-Kaduna Railway attack.

The fact that the *Boko Haram* terrorists are fully aware and knowingly commit the act of a wide spread or systematic attack directed against a civilian population is further depicted by the quantum of joy exuding/exhibited by them whenever they succeed in a large horrendous attack on civilian population, killing, maiming and abducting hundreds of them which they take into captivity and treat with the crudest indignity ever imagined with impunity. Also, their exclamation or praise whenever they succeed in large operation such as *Allahuakbar*, meaning that Allah is the greatest, shows that they are praising and thanking Allah for giving them success in their plan or policy, which is the Islamization of Nigeria.

Having established the fact that the *actus reus* of the *Boko Haram* Terrorists acts are in tandem with the requirement of the offence and that they have necessary *mens rea* of the offence implies that one of the fundamental elements of the criminal law, the coincidence of the *actus reus* and the *mens rea* in order to culminate to crime has been established. Consequently, it could be safely concluded that the *Boko Haram* Terrorists have committed the offence of crime against humanity via their acts which they knowingly committed. In his own observation Fatou Bensouda, prosecutor of ICC after his investigation concluded, that there is reasonable basis to believe that *Boko Haram* Terrorists have committed crime against humanity, especially murder and persecution.⁶²

This conclusion is predicated on the fact that the *Boko Haram* Terrorists attacks on civilian population are massive, frequent and carried out collectively with considerable seriousness and directed against a multiplicity of victims. Furthermore, the attack on civilian population is thoroughly organized and followed a regular pattern on the basis of a common policy since 2009. Alive to this feature of *Boko Haram* activities, Bloom posited, that women and girls have become swords mobilized and weaponised to carry out attacks, while also been used as powerful *Boko Haram*'s ideology.⁶³

C. Murder

Murder as a crime against humanity under the ICC Statute is seen as the unlawful killing of a human being as a part of widespread or systematic attack against a civilian population of which the victim is a member. The requisite elements of this crime are that the victim is dead as a result of an unlawful act or omission of the accused or his subordinate who, at the time of

⁶¹ ICTY, *Prosecutor v. Dusko Tadic*, *supra* note 36, para. 273.

⁶² Imani Gandy, *If Boko Haram Sells Nigerian's Girls, Is That a Crime?*, REALITY CHECK (Aug. 10, 2022) <http://rhrealitycheck.org/article/2014/05/30/boko-haram-sells-nigerias-girls-crime>.

⁶³ Mia Bloom, Hilary Matfess, *Women as Symbol and Swords in Boko Harams Terror*, 6(1) PRISM 104 (2016), at 105.

killing, intended to kill or cause grievous bodily harm to the deceased with the knowledge that such bodily harm was likely to cause the victim's death, and was reckless whether death ensued or not.⁶⁴

The activities of the *Boko Haram* Terrorists in Nigeria since 2009 are in tandem with the elements of murder as required under the ICC Statute. The intentional killing and causing of grievous harm on thousands of Nigerians, especially civilians amount to murder under the ICC Statutes. Capturing this aspect of the *Boko Haram* activities, the ICC prosecutor, Fatou Besoude reported that, members of the *Boko Haram* sect have committed crime against humanity of murder and persecution.⁶⁵ The *Boko Haram* attack on Federal Government College Damaturu is very horrifying and tingle the ears. The commissioner of police in the State, and Sanisu Reofai reported that: the gunmen from Islamist group short or burnt to death 59 pupils in a boarding school in the North-East Nigeria, overnight, some of the students bodies were burnt to ashes⁶⁶: fresh bodies have been brought in, more bodies were discovered in the bush after the students that escaped with bullets died from the injuries.⁶⁷ The schools 24 buildings, including staff quarters were completely burnt to the ground.⁶⁸ Since 2012, more than 10,000 women and girls have been abducted, with the most horrifying cases been the attacks on the Girls Secondary School Chibok in which about 276 girls were abducted in April 2014 and the replica attack on the Girls Secondary School in Dapchi leading to the abduction of over a hundred girls in February, 2018.⁶⁹

On Sunday, June 5, terrorists launched a ferocious attack on Catholic faithful's at St. Francis Catholic Church, Owo, Ondo State killing scores and injuring many others. The terrorists strike at any location of their choice, killing and maiming law-abiding citizens, and government pretends to be helpless.⁷⁰ The *Boko Haram* Terrorists indeed have committed crimes against humanity and should be punished accordingly.

D. Torture

Torture is proscribed as a crime against humanity.⁷¹ Torture is defined as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from inherent or incidental to, lawful sanction.⁷² The requirement of official involvement is not an element of torture under art. 7(1)(f). This is due to the fact that torture could be inflicted on victims by non-state actors. This definition of torture is in all fours with the activities of the *Boko Haram* Terrorists, who have inflicted service pains and suffering upon Nigerian citizens for over a decade now. In Gombe, the *Boko Haram* terrorists rounded up residence out of their homes, approximately 58 people outside the house of the village head. The gunmen told the people to lie down on the street and short them. Others were shot in their

⁶⁴ Rome Statute.

⁶⁵ Gandy, *supra* note 62.

⁶⁶ Ibrahim Mselizza, *59 Students Attack in Nigeria – Some Burnt to Ashes*, GLOBAL POST AMERICA WORLD NEWS, (Feb. 25, 2014).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Sam Olukoya, *Women and Girls Preyed on as the Spoils of War*, GLOBAL ISSUES (Apr. 25, 2019), <https://www.globalissues.org/news/2019/04/25/25239>.

⁷⁰ Amaechi, *supra* note 4.

⁷¹ Art. 7(1)(f) of the ICC Statute.

⁷² Art. (7)(2)(e) of the ICC Statute

homes as they tried to flee.⁷³ This mode of execution of innocent citizens of Nigeria by the terrorists constitute cruelty of the highest order and amount to dehumanizing treatment and physical torture to the victims of the attack, as well as psychological torture to eyewitnesses and members of the families that watched their loved ones executed in this cruel manner, by *Boko Haram* Terrorists.⁷⁴

The insurgents had in a new viral video released week end, flogged the remaining 41 passengers abducted aboard the Abuja-Kaduna Train attack on 28 March, 2022, and threatened that the hapless victims in their den would be sold off as slaves, if their demands were not met by the government.⁷⁵ By these acts, the *Boko Haram* Terrorists' have committed the offence of torture under ICC Statute and should be accordingly, prosecuted and sanction in the accordance with the law. Again, taking civilians into captivity demanding for ransom as well as torturing them amounts to imprisonment and severe deprivation of their physical liberty.

E. Attack on civilian objects

The *Boko Haram* Terrorists contrary to the International Humanitarian Law governing Non-international Armed conflicts and the ICC Statute most of the time directed their widespread attack on civilian objects and civilians. The common places where citizens of Nigeria assemble often are marketplaces, restaurants, churches, mosques, motor parks, schools and colleges. Unfortunately, it is these places that became targets by the *Boko Haram* Terrorists, thereby committed the offence of crime against humanity.⁷⁶ The attacks on Western schools, colleges and kidnapping of pupils and teachers of these school amounts to crime against humanity.⁷⁷ The attack on Kuje Correctional Centre by the *Boko Haram* Terrorists which is a civilian object is very horrifying.

In the dastardly night-time assault, the terrorists who were armed with explosive and automatic weapons shattered the gates of the prison without any resistance, freely opened fire on anyone who tried to struggle with them before taking charge of the facility for more than two hours. When the dust cleared, the scene was a mess, the blood of the five persons slain by the terrorists was splattered on all of the ground.⁷⁸

Also, two persons were killed by the bandits in the early morning invasion of Abdulsalam Abubakar General Hospital, Gulu in Lapai Local Government Area of Niger State on the 18th day of October, 2022.⁷⁹ These attacks were directed against civilian objects.

F. Rape and Sexual Slavery

⁷³ Amnesty International Report, *supra* note 53.

⁷⁴ Aligba, *supra* note 5, at 142.

⁷⁵ Johnsobosoco Agbakwuru, *Terrorists Flog 40 Kidnapped, Train Victims in Fresh Video*, VANGUARD NEWSPAPER (July 25, 2022).

⁷⁶ Aligba, *supra* note 5, at 146

⁷⁷ *Id.*

⁷⁸ Jannamilu Luminous, *Moles of Terrorists in Security Forces Behind Prison Breaks*, VANGUARD NEWSPAPER (June 23, 2022).

⁷⁹ Wole Mosadomi, *Bandits Invade, Kill 2, Abduct Scores in Niger*, VANGUARD NEWSPAPER (Oct. 19, 2022).

Rape and Sexual slavery are prohibited under art. 7(1)(g) of the ICC Statute. Rape is defined as a physical invasion of a sexual nature committed on a person under circumstance which are coercive. It may or may not involve sexual intercourse. Rape is also defined as:

- (i) Penetration, however slight:
 - (a) of the vagina or anus by the penis of the perpetrator or any other object used by the perpetrator;
 - (b) of the mouth of the victim by the penis of the perpetrator.
- (ii) by coercion or force or threat of force against the victim.⁸⁰

On the other hand, sexual slavery entails the perpetrator taking hold of the victims and confined them in a particular place, treating the victims as personal property and subject them to repeated rapes and sexual assault. Confirming the commission of crime against humanity under this subheading, rape and sexual slavery by *Boko Haram* Terrorists, Olusola,⁸¹ maintained that:

With extreme ideology of total domestication of females, the sect has wantonly and systematically targeted women and girls with many either abducted or killed. As compared to their male counterpart, the anguish, cruelty, and suffering that the group directs at females are of a different kind.⁸²

Key aspects include the degrading and inhuman treatments meted out to women such as rape and sexual molestation of different gradients, repeated sexual intercourse and other forms of depravity.⁸³

It is a notorious fact that *Boko Haram* Terrorists abduct woman, young and old, took them to their den where they converted them to their personal property and repeatedly have sexual intercourse with them forcefully with guns without the victims' consent who are afraid of being killed. Leah Sharibu is a case in point. It is very obvious that the *Boko Haram* Terrorists copiously committed crime against humanity for rape and sexual slavery as constituted under art. 7(1)(g).

G. Imprisonment or other Severe Deprivation of Physical Liberty.

Art. 7(1)(e) of the ICC Statute proscribes imprisonment or other severe deprivation of physical liberty in violation of Fundamental Rules of International law. The abduction of girls and women by the *Boko Haram* Terrorists which is done on regular basis since 2009 amounts to imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of International Law. This in turn amount to crime against humanity.

V. Conclusion

This paper examined Crimes Against Humanity in Nigeria *vis-à-vis*, the activities of *Boko Haram* Terrorists. It is very obvious from our discourse in this paper that the *Boko Haram*

⁸⁰ ICTY, Prosecutor v. Furundzija, IT-95-17/1, Trial Chambers, Judgment (Dec. 10, 1998), para. 185.

⁸¹ Olusola Adegbite, Oreoluwa Oduniyi, Ayobami Aluko, *International Human Rights Law and the Victimization of Women by Boko Haram Sect*, 11(2) AFRICAN JOURNALS ONLINE 44 (2020), at 48.

⁸² Joan Mbagwu, Anne O. Alaiyemola, *Gender Issues and the Boko Haram Insurgency in Nigeria*, 9(2) AFRICA JOURNAL OF GENDER AND DEVELOPMENT 87 (2015), at 91

⁸³ *Id.*

Crimes Against Humanity in Nigeria: A Case of the Activities of *Boko Haram*/Islamic State in West African Province

Terrorists have committed basic elements and features of crimes against humanity as provided under art. 7 (1) of the ICC Statute. This is manifestly clear from their activities which are in breach of art. 7 (1) of the ICC Statute and all the Additional protocols on the conduct of armed conflict in a non-international armed conflict. These include: it is an aggressive terrorist group fighting the government of Nigeria with a view to overthrowing the government of Nigeria in order to establish an Islamic state, the armed conflict by the *Boko Haram* Terrorists is copiously protracted, commencing since 2009 till date. It is widespread and systematic attacks directed against civilian population and civilian objects pursuant to a preconceived policy or plan.

The *Boko Haram* terrorists abducted, raped and sexually enslaved Nigerian girls and women. The group also, murdered thousands of civilians via their bombs attacks and sacking villages, churches, mosques, schools and correctional centers. The attack on Kuje Correctional Centre, the attack and abduction of Abuja-Kaduna bound train as well as the attack at St. Francis Catholic church Owo, Ondo State are cases on this point.

It is also clear from our discourse that the Nigerian criminal justice System and processes are unable and unwilling to prosecute and sanction these *Boko Haram* perpetrators. The Federal Government appears to be empowering and encouraging them. Government pays them huge sums of money in the name of ransom. Those who were arrested were given amnesty under the guise of rehabilitating them while those charged to court were set free for reasons best known to the government.

The Federal Government of Nigeria under Mohammadu Buharis is handling the terrorists with kid-glove. Alive to thus attitude of the government, Fasan wrote that:

what needs to be added is that, there is something mysterious about the attitude of the Buhari administration has adopted towards them. This attitude explains the clear ambivalence at the heart and the manner the so-called war against terrorism, banditry and the general insecurity in the country, has been conducted.⁸⁴

The latest star in this circus is Alhaji Lai Muhammed, the Minister of Information, who has been tantalizing Nigerians with statistics that bear no name tags. He had the nerve to tell us that no less than 96 names have been identified as sponsors of terrorism in Nigeria. Yet, he lacked the balls to name even one of them. This strengthens the notion out there that many of the sponsors have direct and indirect connections in the highest places in government if they are not themselves politicians of note.⁸⁵

VI. Recommendations

In view of the fact that the government of Buhari administration is treating the *Boko Haram* Terrorists with kid-glove and consequently, unable and unwilling to prosecute and sanction them in accordance with the laws of the land, we hereby highly recommend that the International Criminal Court should appoint a prosecutor to investigate and prosecute the terrorists for crimes against humanity which they committed with absolute impunity.

The Federal Government of Nigeria should desist from romancing dinnering and encouraging the terrorists but should re-strategies and employ all resources within its disposal to decimate the terrorists to save Nigerians from the killings, abductions, rapping and displacement of innocent Nigerians.

⁸⁴ Rotimi Fasan, *Abuja's List of Sponsors of Terrorism*, VANGUARD NEWSPAPER (Feb. 9, 2022).

⁸⁵ *Id.*