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Violations of Rules of Engagement and Human Rights in Boko Haram Insurgency in Nigeria

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Abstract
Boko Haram insurgency that erupted in the northeast Nigeria has led to a serious security challenges in the country. Efforts have been made by governments to counter the insurgence. On the basis of which military operations have been launched severally to quell the insurgence and to regain territories already seized by Boko Haram group, to stabilize and assert state authority in the region. The attacks by the group and counter operations by the armed forces have led to deaths of many including but not limited to unarmed civilian populations both women and children in the region. The quantum loss of lives and destructions of property have raised humanitarian concerns. Against this backdrop, the study examines the violations of rules of engagement and human rights by the group and armed forces. It considers among other things, the causes and effects of the insurgency on Nigeria's economy. The study employs doctrinal research method and relies on both primary and secondary sources of material relevant to the study. The study finds a clear case of violation of human rights and rules of engagement by the parties involved, resulting to various degrees of war crimes and crimes against humanity. The study recommends an adoption of non-force approach such as genuine dialogue with the insurgent group as use of military force will only increase level of violence in the region. It concludes that failure to address the root causes of the insurgency would amount to waste of efforts and resources by the government.

Keywords: Violations, Rules of Engagement, Human Rights, Boko Haram, Insurgency

1. Introduction
The body called *Jama'tu Ahlis Sunna Lidda'awati wali jihad* popularly known as Boko Haram reared its ugly head in Nigeria in 2002 in Maiduguri.[1] The English interpretation of the term Boko Haram means western education is evil, sin or forbidden[2]. The original aim of Boko Haram group was to resist everything western which it understands as making nonsense of Islamic teachings and also enslaving Africans. It is on this that the group decided to root out any effort to westernize the north that is dominatingly Muslims. The origin of the group has been traced to the Yan Tatsine (the one who damns) violent outburst of lawlessness close to the beginning of early 1980s.[3]

Yan Tatsine was about the rise of Mohammed Buba Marwa, a Cameroonian who inspired thousands of his followers to revolt against the existing political and religious order in Nigeria. The objective of the group was the purification of Islam which, according to them was corrupted by the west and its civilizations. As the support of the group increased, so did the number of confrontations between its members and the security agencies leading to the deaths of thousands of people and destructions of property.[4] The aftermath of Yan Tatsine riots was that some fanatical Islamic groups emerged and started gaining popularity in Borno State. One of them was Mohammed Yusuf, a school dropout who had undertaken religious studies in Niger and Chad before coming back to Nigeria and later established local Mosque and religious school in Maiduguri the capital of Borno State.

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[1]Jama' atu Ahlis Sunna Lidda' awati wali-jihad is Arabic language which means people committed to the propagation of the prophet's teachings and jihad
[2]CNN, 'Boko Haram Fact Facts' (8 September 2019) <https://www.cnn.com/world/boko-haram-fact-facts> accessed 10 December 2019.
[3]A Adesoji, 'The Boko Haram Uprising and Islamic Revivalism in Nigerian' [2010] (2) *African Spectrum* 95.
[4]E Isichel, 'The Maitasine Rising in Nigerian 1980-85: A Revolt of the Disinherited' [1987] (xvii) (3) *Journal of Religion in Africa* 1.

At that point, Mohammed Yusuf assumed the leadership of one of the group known as *Jama'atul Tajdidi* Islam (a revival group) before he left due to misunderstanding over the group logistic and tactics. As time went on, the disciples of Yusuf became known in Islam with a powerful name called the *Jama'atul Alhul Sunnah Lidda Wati Jihad*.[5] Due to sheered hatred for western education, Mohammed Yusuf castigated in clear terms some Islamic scholars of his days for mixing up Islamic teachings with western education. As a result of this open criticism of Western education and its associated evil connotations, Mohammed Yusuf was able to attract many followers in his area of operations, who joined his group to carryout public censure of western education. In 2004 some students in technical colleges in Damaturu and Maiduguri who had been brainwashed by Yusuf tore their educational certificates and left schools to join the teaching and lessons of Qur'an. It was against this backdrop that the group grew in both strength and popularity.[6]

The turning point of Boko Haram insurgence violence began when the police clashed with mourners in funeral procession on 11 June 2009 over the refusal of participants to wear helmets while operating motorcycles in Borno State. As a result of the altercation, seventeen of Yusuf's followers were shot by police officers. Other surviving followers detested police brutality and vowed to avenge the deaths of their group members. Police later invaded a Boko Haram member house and confiscated bomb making equipment.[7] This conflict escalated to social unrest and eventually led to the burning down of police stations, prisons, schools and churches. The series of attacks by the group members led to loss of many lives and destructions of property in the region. Nigerian security forces on the other part launched countless counterinsurgency operations in the view of curbing the insurgency. The manners of the attacks and counterinsurgency operations have raised human rights and humanitarian concern.[8] Yes, the government owes a duty to maintain peace and order in a state but in doing that it must respect human rights and its obligations under international instruments entered into. The study takes a look at compliance with rules of engagement and respect to human rights by the group and security forces.

2. Implications of Boko Haram Insurgency in Nigeria

No doubt that Boko Haram insurgency has some serious implications on the country. The economic implication is very indicative in the commercial life of Nigeria. Commercial activities in the northeast have been seriously reduced due to outrageous attacks and counter-attacks carried out by the group and security agents on different occasions. Markets, shops and financial institutions such as banks do not open businesses regularly for fear of being attacked. These incessant and coordinated attacks are undermining economic development in the affected areas leading to migration of people out of the region. Many investors have relocated their investments and business ventures from the area to other saver places in the country while some even left the country entirely.[9]

For instance, the Maiduguri Monday Market said to be the biggest market in the city is reported to have been seriously affected as hundreds of shop owners, especially southerners, dominantly Igbos closed down their businesses.[10] The relocation and abandonment of businesses by traders have a dire consequence on the government revenue in the affected states. The implication of this is the dalliance in developmental activities such as execution of capital projects and payment salaries of workers in the States. This may also lead to retrenchment of worker and further increase the unemployment profile that is already high.[11]

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[5] Isichel, (n 4).

[6] N D Danijibo, 'Wamic Fundamentalism and Sectarian Violence: The Maitatine and BokoHaram Crises in Northern Nigeria', [2012] <http://www.fra.Nigeria.org-wamic-fundamentalism-and-sectarian> accessed 28 August 2019.

[7] O Idahosa 'Boko Haram and the Nigerian State: A Different Perspective' [2015] (3) *Journal of Culture, Politics and Innovation 9*

[8] K N Akani, 'Efforts to Curtail Abuses of Human Rights during Insurgency and Counterinsurgency' [May 2019] <www.reseachgate.net/publication/33653625> accessed 20 May 2021

[9] L E Udu and J N Edeh, 'Implication of Terrorism and Insurgency for Sustainable Socio-Economic Development in Nigeria' [2019] (24) (5) *Journal of Humanities and Social Science 18*.

[10] ibid

[11] VE Dike, 'Addressing Youth Unemployment and Poverty in Nigeria: A Call for Action, not Rhetoric' [2009] (11) (3) *Journal of Sustainable Development in Africa* 129.

The social impacts of the insurgency are huge and cannot be quantified. Social institutions such as schools, churches, hospitals and mosques have been serially attacked and bombed down while the few left remains potential targets by the sects. The insurgency has affected greatly the educational sector. Students are abducted at will by the sect members almost on the daily basis. Most times huge ransoms are needed by the sect and sometimes the children are killed when their demands are not meant on time. Parents are now afraid of sending the children to school these days while the average rich ones send their children overseas for studies. The attacks on churches led to the deaths of many members while some were injured during the attacks. This has led to marathon relocation of church branches from the affected areas to other less violent States.[12]

That is not all there is also issue of political instability brought about by the insurgence. The worst implication for insecurity in a nation is political instability. It is so because the criminal elements in the society will take advantage of the situation to perpetrate all manner of crimes. This is exactly what is playing out not only in northeast but throughout the country. Nigerian security apparatus is said to have been overwhelmed by the series of attacks launched by the group.[13] This has impacted governance in the country. Government programmes and policies have been distorted due to the insurgence. Government attention is now focused on fighting insecurity at the expense of other critical issues. Given the security challenges occasioned by the Boko Haram insurgency and its activities in general the Nigerian government decided to counter the insurgency by unleashing troops of security forces on the insurgents. The roles and operations of the armed forces will be discussed in due course in this study.

3. Rules of Engagement and Human Rights

Humanitarian law is the principal law applicable to armed conflict while human rights law applies in time of peace. Both set of laws can overlap each other in a given circumstance. This is so because combatants are also expected to respect human rights in the battle field. Rules of engagement (ROE) refers to the internal rules or directives among armed forces (including individuals) that define the circumstances, conditions, degree and manner in which the use of force or actions might be construed provocative. ROE provide authorization for and/or limit on, among other things, the use of force and the employment of certain specific capabilities.[14]

It does not dictate how a result is to be achieved, but indicate what measure may be unacceptable. Rules of engagement are applicable in both international and non-international armed conflicts. Also basic principles of human rights protections are to be observed in both conflicts too. The ROE describe appropriate actions regarding unarmed mobs, the property of local civilians, use of force in self-defence, the returning of hostile fire, the taking of prisoners, the level of hostility (that is, whether the country is at war). The possibility that a minor incident could result in nuclear warfare inspired a need to establish procedures defining allowable actions.[15]

The ROE are embodied in many international legal instruments regulating warfare. The principal instrument in this regard is the Geneva Conventions of 1949 and its Additional Protocols I and II. The Conventions contain both common, specific provisions and concepts. It is instructive to note that while the Conventions are generally applicable in international armed conflicts, the common Article 3 and Additional Protocol II specifically apply in non-international armed conflicts. The Conventions serve to provide protection for all those who as a consequence of an armed conflict have fallen into the hands of the adversary and protection against the arbitrary use of power which one party acquires in the course of an armed conflict over persons belonging to the other party.

[12]N S Amalu, 'Impact of Boko Haram Insurgency on Human Security in Nigeria' [2015] (14) *Global Journal of Social Services* 35.
[13]L Jannamike, C Agwam and I H Wuyo, 'Military Overwhelmed by Security Challenges-Govs' *Vanguard Newspaper*. (Lagos, 3 December 2020) 5.
[14]R Kingsley, 'What are "Rules of Engagement"? Military Mandate and Instructions for the use of Force' (21 April 2017)<https: //www.military-cavert.com>accessed 30 Septembesr 2019
[15]R Kingsley (n 14)

Human rights on the other hands are rights one is entitled to for being a human being.[16] Most of those rights have been statutorily provided for in both national and international legal instruments. They are a whole range of them such as right to life, right to privacy and family life, right to freedom of association, right against forced disappearance, and right against torture, inhuman and degrading treatment or punishment among others. These are further classified are derogable and nonderogable. Underogable rights are rights that cannot be violated even in warfare situation.[17] Besides national legislations Nigerian government had ratified so many international and regional instruments on human rights[18]

These international instruments provide for classes of human rights among which are right to life, rights not to be subjected to torture and degrading treatment, right to religion and association, right to quality environment, right to fair trial, among other host of rights which are not to be violated under the guise of armed conflicts whether international or non-international armed conflict. Nigeria has not only ratified most of these international instruments but has also domesticated some of them and as such should be bound by their provisions. The National Assembly in addressing armed conflicts has enacted the following laws:

i. Geneva Conventions Act (GCA) of 1960[19]
ii. Constitution of Federal Republic of Nigeria 1999 (as amended)
iii. Violence against Persons (Prohibition) Act 2015
iv. Anti Torture Act 2017

Under international law for a treaty to be enforced in a state, it must be ratified by the government of that state.[20] In Nigeria for such ratified treaty to be enforceable, it has to be domesticated.[21] However, a state that has only ratify a treaty may still enforce its obligations under the treaty and punish any breach under it by relying on the customary rule of international law, despite the fact that the state has not domesticated the treaty.[22]

4. Violations of Human Rights and Rules of Engagement in Boko Haram Insurgency

The clash between the police and the followers of Mohammed Yusuf in 2009, led to the increase in the group attacks on public and private places. In fact, in that 2009 incident no fewer than 700 people were reportedly killed during clashes in Maiduguri, Bauchi and Potiskun. As a follow up to the unrest, the leader of the group Mohammad Yusuf allegedly died in the police custody.[23] The extra–judicial killing of Mohammed Yusuf marked another turning point in the radicalization of the activities and operations of the group as its members regrouped under a more dangerous and radical leader called Abubakar Shekau who was formerly Yusuf's deputy. Since his assumption of the leadership of the group they have carried out more violent attacks ranging from killings, conscription of under-aged youths into the group membership to suicide bombing across northeast and north-central Nigeria.[24] On 6 January 2011, the group attacked Mubi in Adamawa State and killed 20 Igbo men and women. Also, on 25 December 2011 the group bombed St. Theresa's Catholic Church Madalla, Niger State where about 48 persons died and over 200 worshipers were hospitalized.

The Boko Haram further went on to issue three days ultimatum to southerners dominantly Christians to leave northern part of the country.[25] Also, in June, 2012 three more churches were bombed in Kaduna by Boko Haram group. The bombing attracted some reprisal attacks by Christians who have been

[16]O Nweke, 'Understanding Human Rights' (July 2020) < https://www.researchgate.net,3429> accessed 20 May 2021.
[17]Constitution of Federal Republic of Nigeria 1999 (as Amended) ss 33 and 45
[18] Such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention against Torture, Inhuman, and Degrading Treatment or Punishment (CAT), International Convention on the Rights of the Child (ICRC). Etc.
[19]GCA 1960 is the statute that domesticated the four Geneva Conventions of 1949 in Nigeria.
[20]Vienna Convention on the Law of Treaty 1969 <https://www.legal.un.org>.Arts. 13, 14 and 15
[21]Constitution of Federal Republic of Nigeria 1999 (as amended) s.12 (1)
[22]MI Anushiem, 'Implementation of Treaty as Basis for Regional Cooperation VIS-À-VIS Absolute Sovereignty: Nigeria in Perspective [2017] (8) (1) *NAUJILI* 1.
[23]Okoroafor and Ukpabi, (n 11)
[24]Ibid
[25]Ibid.

enduring the violent activities of the group, and they took up arms against Muslims. As a result, Christians blocked the Kaduna/Abuja road in search of Muslim passersby and killed all those they caught on the road. Another reprisal attacks that took place on 19 June 2012 in Kaduna State saw the death of over 70 people while more than 130 persons were severally wounded.[26]

The group also razed down churches such as St. Mary's Catholic Church, All Saints Anglican Church, Cherubim and Seraphim Church among others in the attacks. There was serial of attacks by the group in the following towns, Michika Local Government Area, Kuborshosho, Kubi, Garta among others at different periods.[27] One of the most acclaimed onslaughts of the group that attracted international outcry was the abduction of over 240 students of Government Secondary School girls in Chibok town of Borno State in April 2014.[28] Since then kidnapping of school children have become a reoccurring decimal in the country. In 2018 about 50 loggers were abducted by the group at Gamboru after killing 49 in the previous attacks in the area. Later on 40 more loggers were kidnapped killing three persons.[29]

Recently, the group claimed responsibility for the kidnap of over 300 schoolboys in Katsina State. The abductees were taken away against their consent and/or will by the group. Sometimes the abductees are kept in the forest for months without food or water. They are made to go through all kinds of inhuman treatment with the associated physical and mental trauma. The female ones raped in reckless abandon.[30] The group had also killed unarmed farmers working in the farms without any form of provocation. Killing of farmers by the group has been linked with current food scarcity in the country.[31] Report has shown that the group has killed tens of thousands of people and forced the disappearance of over 2. 3 million people from their homes[32] while about 40 villages have been attacked in the northeast states of Borno, Yobe and Adamawa including other states such as Kano, Abuja.[33]

In a bid to quell insurgency, successive governments since 2009 adopted one measure or the other at any given time. One of the measures adopted by the government was the deployment of armed forces for counterinsurgency operations in the region. In line with statutory provisions in force such as Armed Forces Act. Section I of the Act[34] established for the federation armed forces made up of the Nigerian Army, Nigerian Navy and Nigerian Air Force. The armed forces under section I (3) of the Act are changed with the defence of the Federal Republic of Nigeria by land, sea and air and such other duties which may be conferred on it by the National Assembly from time to time. By the Act, the President shall determine the operational use of the armed forces, but may under general or special directives delegate his responsibility for the day to day operational use. The Constitution also provides for the establishment of armed forces and other branches of the armed forces in the country.[35] Under section 218 (1)[36] the President is empowered to determine the operational use of the armed forces. It is on this basis that the successive Nigerian Presidents had on different occasions deployed armed forces including other para-military to the northeast for counterinsurgency operations since the emergency of the Boko Haram sect.

In June 2011, the Nigerian government set up a Joint Task Force known as JTP Operation Restore Order Comprising Personnel from Armed Forces, Nigerian Police Force (NPF), the Department of State Security (DSS), Nigeria Customs Service (NCS), Nigerian Immigration Service (NIS) and the Defence

[26]Ibid
[27]'Boko Haram Tactics Similar to What Happened in Chad' Daily Sun (Lagos, 14 September 2014) 31
[28]Inuwa Bawa (n 32)
[29]'Boko Haram Kidnaps 40 loggers and kill three in north-east Nigeria' *the Guardian Newspaper* (Lagos, 26 December 2020) 10
[30]Ibid
[31]'Boko Haram Kills Dozens of Farm Workers in Nigeria' *the Guardian Newspaper* (Lagos, 28 November 2020) 7
[32]M Afzal, 'From "Western Education is Forbidden" to the World's Deadliest Terrorist Group Education and Boko Haram in Nigeria' (April 2020) <https://media.africaportal org> accessed 20 May 2021
[33]O Awojobi, 'The Socio-economic Implications of Boko Haram Insurgency in the North-East of Nigeria' [2014] (11) (1) *International Journal of Innovation and Scientific Research* 144.
[34]CAP A9 LFN 2004.
[35]See generally s. 217 (1)(2)(3) of the Federal Republic of Nigeria Constitution 1999 (as amended).
[36]ibid

Intelligence Agency (DIA). The mandate of the JTF was for the restoration of law and order in the northeast part of Nigeria. In 2012, the mandates of the MNJTF were extended to conclude counter-terrorism fight. The MNJTF co-existed with the JTF in Borno and other northeast States.[37]

Also, due to the transnational in nature of the insurgency as the group attacks extended to neigbouring countries like Cameroon, Niger, and Chad. An arrangement was made for both bilateral and multilateral counterinsurgency measures by the affected nations. Then in 2015, there was a cooperation agreement involving Cameroon, Benin, Nigeria and Chad resulting to robust joint military operations against the sect[38]. In the same year, there was regional coordination by the African Union that culminated to the formation of Multinational Joint Task Force to fight Boko Haram made up of armed forces from Benin, Cameroon, Chad, Niger and Nigeria with the major aim of defeating the sect even if it means wiping them out of the earth surface.[39] The MNJTF was also formed to tackle problem of cross-border crimes and arms in-flow orchestrated by illegal foreigners and also worsen by porous nature of the borders.[40] Since its formation many suspected members of Boko Haram had been killed in several operations carried out by them.[41]For instance, in 2017, the Nigerian Air Force bombed the internally displaced person (IDPs) camp at Ram Borno State that resulted to the deaths of more than 100 civilians including humanitarian workers. Upon admission of responsibility by both Air Force authorities for the bombing an investigation was conducted internally by Nigerian Air Force but no findings or indictments have been made public till date.[42]

In 2017, the Nigerian Army set up a military operation code named 'Operation *Lafiya Dole for the War on terror in Northeast*'. This code name literally translates to 'Peace by force' in Hausa language. The operation was set up to counter terrorism and insurgency. It was later expanded to specialized operations including 'operation crackdown', operation '*Gama Aiki*' meaning peace by all means and operation "Safe corridor".[43] Operation Gama Aiki was launched to clear the remnants of Boko Haram in Borno State and the border regions with Chad and Niger Republic. It was a joint operation with the Nigerian military and the regional Multinational Joint Task Force. In 2018 the Nigerian army launched another operation code named operation Last Hold in Borno State. The design was to deploy personnel and equipment to showcase the combat efficiency of the Nigerian Army and thereafter conduct operations to totally destroy Boko Haram locations in the Lake Chad Basin.[44] There had also been operations Long Reach, and operations *Ruwan Wuta* (rain of fire) I, II and III in the northeast to degrade the capability of the remnants and routing out criminal elements in the northeast from their hideout.[45] It was said that the armed forces through all these serials of operations had achieved a huge success in the fight against Boko Haram as was announced sometimes that the sect was technically defeated and most of the communities seized by them regained.[46]

However, in keeping with humanitarian concerns, the opinion had been widely held that the counterinsurgency measures of Nigerian armed forces have themselves been source of insecurity, dislocation, suffering, severe and widespread human rights abuses.[47] Most of the operations methods before 2015 involved collective punishment of entire villages suspected of harboring Boko Haram sect or having fallen under Boko Haram rule. Their clearing operations usually resulted to violent reprisals

[37]Ibid.
[38]O Alubo and M Piwuna 'Observance of Human Rights and International Humanitarian Law by Nigerian Armed Forces in Internal Security Operations' [2015] (5) *International Journal of Humanities and Social Sciences* 141.
[39]Alubo and Piwuna, (n 38)
[40]P Mbah and C Nwangwu, 'the Counter-Insurgency Operation of the Joint Task Force and Human Rights Abuses in Northern Nigeria, 2011-2013' [2014] (4) (5)*Journey of Educational and Social Research 73.*
[41]Ibid
[42]FC Onuoha, 'The Islamist Challenges: Nigeria's Boko Haram Crisis Explained' [2010] (2) *African Security Review* 54.
[43]M Ejeh, 'Accessing Military Operations around Nigeria' *Vanguard Newspaper* (Lagos, 1 December 2017) 10.
[44]A Haruna . 'Nigerian Army Launches Operation to Totally Destroy Boko Haram' *the Premium Times* [Lagos: 20 April, 2018]12.
[45]Ibid
[46]D Searcey, 'Boko Haram is Back with Better Drones' *the New York Times* (New York City, 13 September 2019) 15
[47]I O Ewa, 'Nigeria's Insurgency and Counterinsurgency: Implications, Issues, and Lessons for National Security' [2018] (6) (1) *Review of History and Political Science 33.*

and local dwellers that could not flee to the bush were randomly killed on suspicion of being Boko Haram members. Both women and children were among those killed through the counter-operations of the armed forces.[48] There were cases of widespread extrajudicial killings and torture of civilians by the members of armed forces. Between 2013 and 2014, the Nigerian armed forces unlawfully killed more than 1000 people, at times up to hundreds per day.[49]

Nigerian Army reprisal attack on Baga area in 2015, on the basis that an army officer was allegedly killed claimed the lives of 185 civilians while about 200 houses were razed down.[50] Another issue of concern was the formation of Civilian Joint Task (CJTF) or Kato da Gora (man with a stick) by the security forces in early 2013 in northeast which was often described as self-help or self defence interest group. This group assisted the armed forces in identifying and arresting Boko Haram suspects, controlling checkpoints, providing information and monitoring movement of people. As time went on the group members became lords onto themselves as there was allegations of beatings, detention of suspects, bribery, food deprivation, tortures, killings and the recruitment of children by the group. The group had been alleged to have killed some falsely–identified Boko Haram suspects, including a person with disability.[51] The army authority is to take responsibility for the actions of members of CJTF since they worked directly under them.

The Amnesty International has issued a report titled, Nigeria Human Rights Agenda a twenty-page indictment of human right violations by state and non-state actors but with the emphasis on the armed forces. The report described the human rights violation by the armed forces in the northeast as perennial. The report revealed that the armed forces committed arbitrary and unlawful killings. They were said to have used lethal and excessive force on the suspected Boko Haram members arrested by them. It was reported[52] that the Nigerian Air Force used excessive force in responding to inter-communal violence in December 2017 in Numan Local Government Area in Adamawa State as their response resulted in fire and destruction in the town which led to multiple civilian deaths.

In March 2017, the army convened a Board of Inquiry (BOI) to investigate allegations of human right violations committed by the army during its campaigns against the insurgency in the northeast, including the conditions of detention centers[53]. In May 2017 the BOI presented its findings to the Chief of Army Staff. While the full report was not made public the Board briefed the press on some of conclusions and recommendations of the report. The Board documented conditions at military detention facilities, including the center at Giwa Barracks, and found instances of overcrowded cells and unsanitary conditions. The BOI concluded that the conditions of detention facilities and delays in trials of alleged Boko Haram members sometimes results to deaths while in custody. It also found that the denial of access to legal representation was a violation of human rights.

Also, in August 2017 Acting President Yemi Osinbajo set up a civilian led Presidential Investigative Panel to review compliance of the armed forces with human rights obligations and rules of engagement in the northeast. The penal conducted hearing across the country and submitted its findings to the presidency in February 2018, but up till the conclusion of this study the report was not yet made public[54]. Besides this, in her Annual Report on Preliminary Examination Activities 2018, Fatou Bensouda, the International Criminal Court (ICC) Prosecutor found reasonable basis to believe that Nigerian security forces have committed war crimes through their activities in counterinsurgency operations. The ICC confirmed it has received a total of 169 communications from Nigeria and its assessment has shown that

[48]Ibid.
[49]F Vanda, 'the Limits of Punishment: Transitional Justice and Violent Extremism Nigeria Case Study' (31 May, 2018)<https://www.cpr.unu.edu>accessed 5 September 2019.
[50]'Nigerian Military Announces Recapture of Baga from Boko Haram'<www. Theguardian.com/world/2015/feb/21/Nigerian-military-announces-recapture-of-baga-from-boko-haram>accessed 9 December 2019.
[51]F Vanda, (n.54)
[52]'Nigeria 2018 Human Rights Report' <https://www.state gov/nigeria-2018-human-right-report> accessed 9 December 2019.
[53]A Haruna, (n 49).
[54]E B Mamman, 'Public Policy Response to Violence: Case Study of Boko Haram Insurgency in Nigeria' (PhD Thesis, Walden University 2020).

the armed forces in Nigeria have committed war crimes ranging from murder, torture and intentionally attacking the civilian population[55],Who they were supposed to protect as a matter of duty and moral.

Another issue of concern is the detention approach adopted by the security forces in the northeast. During raid operations of the armed forces in the northeast, those who escaped being killed by the security forces were incarcerated in the detention centres sited in remote areas of the states.[56] Detainees remain in custody for months or years without any evidence of a crime or prospect of a trial. It was found[57] that between 2009 and 2015 members of armed forces arbitrarily arrested about 20,000 people including children who were just nine. The detainees were tortured and sometimes extra judicially killed, while some died due to lack of medical care. Since 2011 more than 7000 young men died in military detention while more than 1,200 people including the former leader of Boko Haram sect late Yusuf were illegally murdered in custody.[58] No formal records appeared to have been kept by concerned authorities as to who has been arrested, detained or killed in detention. The sanitary conditions of the detention centers were poor and inadequately maintained. The cells were heavily overcrowded and lack basic necessities like food and water supplies.[59]

Besides military operations government had adopted mild approaches too in responding to the insurgency. One of such approaches is dialoguing with the leadership of Boko Haram group. The former President Goodluck Jonathan and the Muhammadu Buhari administrations repeatedly sought to negotiate a peace deal with the insurgents, by offering to grant them amnesty on the condition that they surrender arms. A huge capital was invested by Jonathan government in the negotiations. However, the manner of the negotiations was temporary and not publicly done, though same did not produce meaningful result. For instance, in President Jonathan's regime there were more than 5 attempts to strike a deal with the Boko Haram group through negotiations but all failed as the group refused to comply. The group insisted that they would not relent in fighting until Nigerian government established an Islamic emirate in the country.[60] According to the group it was Nigerian government that needs an amnesty for the atrocities it has committed and not them. The group rejected the negotiations on many grounds among which was that it was wrong for the Nigerian government to announce a deal with them to the public without first showed any seriousness nor the details of the deal work out.

Secondly it was alleged that many members of the presidential negotiating teams were rather interested in political and economic advantages they were getting from being members of the team than in striking a deal with the group. Opinion was divided as to why Nigerian government should even embark on negotiation deal with Boko Haram in the first place[61]. There were many objections to the amnesty moves made by governments.[62] Some see the amnesty offer as government negotiating with criminals. Southerners view it as using the resources from the south to lavish on group members who are from northern extraction. While others see the amnesty offer as encouraging criminality in the country.[63] Also online poll conducted in the year 2013 did not favour granting amnesty to Boko Haram members[64]. Former President Jonathan despite these reactions went on to constitute a 26 member Presidential Committee sometimes in April 2013 to explore the idea of amnesty; the Committee was named

[55]Juliet Kwamboka, 'Impunity and the Nigerian Security Forces: it is Time for Accountability' [22 January, 2019]<https://medium.com@amnesty usa/impunity andthe nigerian forces...>accessed September 5, 2019.
[56]Kingsley Nnamdi Akani, 'Counter-Insurgency and Human Rights Violations in Nigeria' [2019] (85) *Journal of Law, Policy and Globalization 15*
[57]Ibid
[58]Ibid.
[59]Akani, (n 61)
[60]O E Ubhenin, 'Federal Government's Amnesty Programme in the Niger Delta: An Appraisal' [21 November, 2013]<https:// dergipark gov. tr download/article-file/46280:179-2013>accessed 10 September 2019.
[61]Vanda (n.54)
[62]World Politics Review: The Many Questions Around Nigeria's Mooted Offer of Amnesty to Boko Haram' (23 March 2018) <www.worldpoliticsreview.com/24444-the-many-question-around-nigeria's-mooted-offer-of-amnesty> accessed 10 December 2019.
[63]Ewa, (n 52)
[64]M Amina, 'Nigerians Reject Amnesty for Boko Haram' Premium Time (Lagos, 16 May 2013)15.

Committee on Dialogue and Peaceful Resolution of Security Challenges in the North.[65] The Committee later submitted some recommendations which included; continuing talks with the group through an advisory committee, creating a victims fund, granting amnesty to Boko Haram members who renounce violence and agree to disarm, reintegrate, and rehabilitate the CJFT and other vigilante groups to prevent their becoming a new security threat.[66]

As part of the amnesty debate, the federal government established the office of Deradicalisation, Rehabilitation and Reintegration of Defectors domiciled in the office of National Security Advisor (NSA). The programme aimed to counter Boko Haram's mobilization and recruitment, and to facilitate defections. The programme employed many aspects of traditional disarmament, demobilization and reintegration (DDR) processes.[67] However, in 2017 President Mohammed Buhari adopted a Policy Framework and National Action Plan for preventing and countering violent extremism and reiterated the defectors programme under the name Operation Safe Corridor (OSC) the framework provides overreaching policy guidelines for the defectors programme, as well as the Nigerian Prison De-radicalization Programme. It stipulates that combatants captured in the battle field should be prosecuted promptly according to the law. The Framework was just a policy document without any enabling statute. Not being legally binding, its implementation was a challenge.[68]Against all the approaches adopted by the government, the insurgency persists unabated till date defying all measures put up by the government with its resultant implications.

5. Liability for Violations of Human Rights and Rules of Engagement

As already shown that both the armed forces and Boko Haram group were in violation of rules of engagement by their activities. Human rights of people were also violated.[69] The act of mass killings without trial violates right to life recognized in Article 4 ACHPR, Article 6 of ICCPR and section 33 of the 1999 Constitution. The mass arrest, torture and detention without trial by the security agencies violate the peoples' rights to personal liberty and security as well as right against torture enshrined in Articles 6, 7 of ACHPR, Articles 9, 14 of ICCPR, section 35 of the Constitution and Article 5 of ACHPR, Article 7 of ICCPR and section 2 of Anti-Torture Act 2017. Section 3 (2) of the Act prohibit secret detention of persons by security agencies. Under this section there is no justification for torture, not even a state of war.[70]

The security agencies and the Boko Haram sect have also violated rules of engagement through their series of coordinated attacks on unarmed civilians including children and women. Conscription of children into armed groups. Section 3 of Geneva Conventions Act (GCA) 1960[71] provides for punishment of grave breaches of the 1949 Geneva Conventions. Those breaches have ready been highlighted above. Section 3 (2) of GCA Act gives Nigerian courts universal jurisdiction over grave breaches of the Conventions committed within and outside Nigeria. Under the Act willful killing of persons protected by the Conventions attracts death sentence upon conviction while other grave breaches attracts imprisonment not exceeding 14 years. The security agencies and Boko Haram sect by their conducts and serial attacks on the unarmed civilians in the northeast insurgency have breached the provisions of the Act.

As noted earlier, the office of the prosecutor of the International Criminal Court (ICC) has identified eight possible cases of crimes against humanity in relation to the conflict in northern region. These include six possible cases against Boko Haram and two against the armed forces. The armed forces

[65]T M Ebiede, 'Amnesty and Disarmament, Demobilization and Reintegration for Boko Haram' [11 June, 2015]<https://www.africanargments.org>accessed 10 September 2019.
[66]U Talatu, 'Boko Haram Amnesty Committee: Jonathan Approves Inclusion of New Member' Premium Time Nigeria (Lagos, 23 April, 2013)17.
[67]I Mules, and M Alamin, Boko Haram: Nigeria Moves to De-radicalize Former Fighters' [8 August 2019] <https: //m. dw. Com>accessed 13 August 2019.
[68]Ibid.
[69] Human Rights Watch: 'Nigeria Flawed Trials of Boko Haram Suspects' [17 September, 2018] <https://www.human rights watch.org> accessed September 9, 2019.
[70]J J Eluyode, 'Enforcement of International Humanitarian Law in Nigeria [2003] (3) *African Human Rights Law Journal 264.*
[71]Geneva Conventions Act CAP. 160 LFN 2004.

authority has not made public any of its members or commanders court-mashed in relation to that, if any, or even to acknowledge the existence of such records. Twelve soldiers sentenced to death by General Court Martial in 2014 were charged for mutiny and attempted murder by shooting at their commanding officer and 70 others awaiting court martial are being charged for indiscipline.[72]

To determine persons to be held liable for war crimes and crimes against humanity committed by the armed forces in their counterinsurgency operations in the northeast recourse should be made to mandate framework governing the deployment of members of armed forces in the event of armed conflict. A mandate is broadly defined as an instruction or command from a higher body that demands compliance. A mandate is tantamount to a legal order, often involving a moral obligation too, so that parties in question may only act within the mandate it has received.[73] However, in the areas of military operations, mandates can be conceived as politico-legal instructions that authorize and conversely constrain what armed forces may legitimately do when deployed on operation.[74] Being a legally binding documents, deployed armed forces will be held accountable to their mandate under military domestic and even international law.

Mandates form a strong and unbreakable link between the political and armed forces spheres, whereby armed forces are clearly controlled and restrained in their activities by decisions made by policy makers at the highest political levels. This highest policy makers in Nigerian context represent the Service Chiefs of the three branches of armed forces on one hand and the Nigeria presidents both former and present from whom the service chiefs get security instructions before deploying troops to the conflict areas. Therefore once the deployed troops operate within the mandates issued to them in armed conflict, then their commanding superiors as noted earlier are the ones to be held liable for war crimes resulting from the activities of the troops in the armed conflict. It is only when the contrary is established that the troops deployed went outside the mandates issued to them that they could be individually responsible to their actions and may be subjected to a trial over the crimes they committed.

The next question is which court has the jurisdiction to try those suspected to have committed war crimes in Boko Haram insurgence. As noted earlier, section 3 (2) of Geneva Conventions Act gives national courts universal jurisdiction over offences committed under the Act. Therefore, the armed forces are to be trialed by Court Martial while the Boko Haram combatants are to be trialed by the regular courts of Nigeria. However, Nigeria having ratified the Rome Statute in 2001 submitted to the jurisdiction of International Criminal Court (ICC). The jurisdiction of ICC is limited to most serious crimes of concern to the international community as a whole. The ICC has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression.[75]

It should be noted that ICC operates on the principle of complementarity[76] which places the primary obligation to investigate and prosecute international crimes on state parties. Meaning that is only when the state in question is unwilling or unable to prosecute, that ICC can assume jurisdiction to try offenders.[77] Since 2015 there have been several reports indicting Nigerian armed forces for violating both human right and rules of engagement in the northeast insurgency but up till date no single military officer has been tried for the atrocities committed against the unarmed civilians in the northeast. The government has displayed lack of political will and inability to try the offenders and may not do so in the nearest future. It is on this basis that ICC is called upon to assume jurisdiction to try war criminals committed during the armed conflict in northeast since no single prosecution in this regard is going on the national courts.

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[72]The Cable, 'Army to Try 70 Soldiers Who Erred in the Fight against Boko Haram' (7 November 2019) <https://www. the cable.ng/army-to-try-70-soldiers-who-erred-in-fighr-against-boko-haram> accessed 12 December 2019

[73]A Heywood, 'Key Concepts in Politics' (3rd edn, New York, Palgrave Macmillan 2007) 252.

[74]Ibid

[75]Rome Statute. Article 5

[76]Ibid. Arts. 17 and 53

[77]The Principle of Complementarity and the Exercise of Universal Jurisdiction for Core International Crimes (4 September 2009) <http://www.fichl.org/activities/complementary-and-the-exercise-universal-jurisdiction-for-core-intal-crimes> accessed 14 December 2019.

6. Conclusion

The study has shown that upsurge of violence and attacks by the insurgents resulted in massive deployment of armed forces to quell the situation in the northeast. However, the extraordinary measures supposedly designed to achieve peace, order and security have rather increased the level of violence leading to countless casualties of mostly unarmed civilians who were often trapped in the cycle of retaliatory violence perpetrated by both the armed forces and insurgents. The counterinsurgency operations of the security forces deployed were characterized by brutal show of force that triggered retaliatory violence from the insurgents. There is no doubt that both the armed forces and insurgents have violated human rights and rules of engagement. Many civilians who did not take part in hostilities were killed while others lost their property in the course of the conflict. The worrisome aspect is the fact that the war criminals have not been brought to book and the government has not shown any serious commitment to give justice to the victims of the crimes which makes it expedient for the ICC to step in and assume jurisdiction in order to prosecute the war criminals.

The insurgency currently is far from being won by the government as attacks still go on almost on daily basis. Addressing the root causes of the insurgency is the way to go by the government. But in doing that, the use of military operation does not seem to be the best option in tackling the insurgency. Rather government in all sincerity needs to reconsider a dialogue approach. This approach is to be genuinely pursued eschewing away political propagations. The dialogue approach does not necessarily mean giving money to the group members as doing so may encourage other section of the country to embark on armed conflict. Rather it aim will be to find out the underline causes of the continued attacks by the group. Such approach will require the integration of the traditional institutions in finding a lasting solution to the armed conflict. It is understood that members of Boko Haram come from families and villages. Therefore, it will be easier to identify and engage the group members in discussions through their traditional rulers. Government should also re-evaluate its activities and utterances regarding its actions over the insurgency fight.

Information about the insurgency should be centrally managed by the Defence Ministry taking into account the need not to put every security effort in the public corridor. A situation where Ministry of Defence says one thing and the Ministry of information says another has only of effect which is to escalate the insurgency and attract public sympathy for the group. Another issue of concern is the recruitment of allegedly repented Boko Haram members into the armed forces. Government has to take a second took at such exercise. There are serious questions craving for answers. How do you determine who has genuinely repented? Is it by one merely saying I have repented? How do you determine if such action is borne out of ill motive to spy and sabotage military efforts? The proper thing to do by the government once any of the group members alleged to have repented is to rehabilitate the fellow and after which he could be trained on any skill acquisition of his choice. Upon conclusion of the training government can set up business venture for the person. Compromising national security in the name of recruiting alleged repented members of the group may mar every wise security efforts in the country. Going forward, the issue of lack of job opportunities, poverty and illiteracy should be addressed by the government too. Creation of jobs to engage the youths in the country will reduce the number of those who go into crimes such as insurgence. When jobs are made available the issue of poverty and illiteracy will be indirectly taken care of.