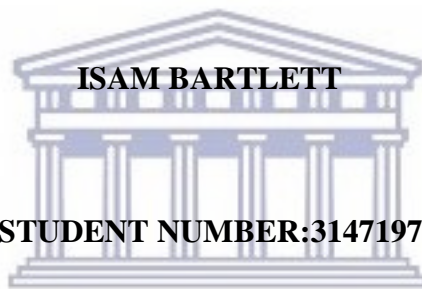


**BRING BACK OUR GIRLS: A HUMAN RIGHTS ANALYSIS OF CHILD
ABDUCTIONS BY BOKO HARAM.**

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
DEGREE OF MASTER OF LAW (LLM (II)) IN INTERNATIONAL AND HUMAN
RIGHTS LAW**

BY



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DECLARATION

I, Isam Bartlett declare that 'Bring Back our Girls: A human rights analysis of child abductions by Boko Haram', is my work and has not been submitted for any degree or examination in any other University or academic institution. All sources and materials used are duly acknowledged and properly referenced.



Student's Signature: _____

Date: 27/6/2018

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Signature: _____

Date: 27/6/2018



LIST OF ABBREVIATIONS

ACRWC- African Charter on the Rights and Welfare of the Child

CEDAW- Convention on the Elimination of all Forms of Discrimination Against Women

CRA- Child's Rights Act 2003

CRC- Convention on the Rights of the Child

CJTF- Civilian Joint Task Force

ICESCR- International Covenant on Economic, Social and Cultural Rights

ICCPR- International Covenant on Civil and Political Rights

ICC-International Criminal Court

JTF- Joint Task Force

TPA- Terrorism Prevention Act

UDHR- Universal Declaration of Human Rights

UN- United Nations

UNICEF- United Nations Children's Fund



KEY WORDS

Armed conflict

Abductions

Boko Haram

Children

Child Rights

Human rights

ISIS

Nigeria

Shariah law

Women

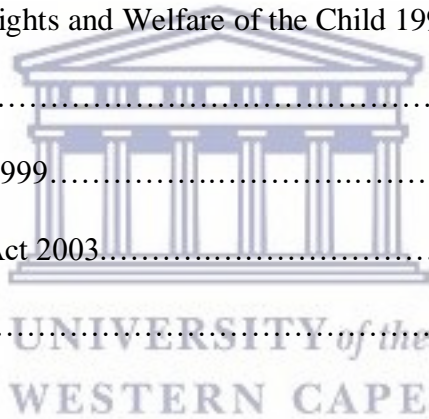


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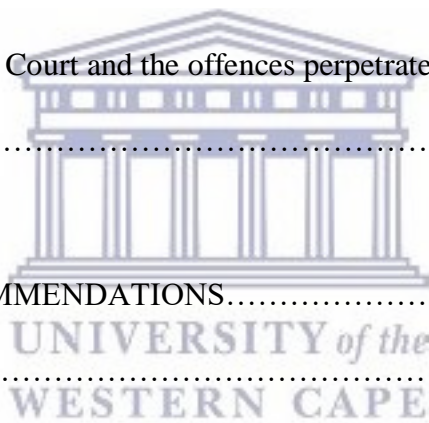
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We owe our children – the most vulnerable citizens in any society – a life free from violence and fear. – Nelson Mandela



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The information in this paper is as at December 30, 2017.

CHAPTER 1- INTRODUCTION

1.1. Background to the study

As the world evolves new perils emerge which pose a significant threat to human and child rights, it is imperative that the protection of these rights is prioritised. Human rights can be defined as the rights that every human being is entitled to.¹ The Universal Declaration of Human Rights (UDHR) was one of the first international legal instruments which set forth the basic human rights of citizens which are applicable irrespective of race, culture, sex or economic standing highlighting the universal applicability of human rights.²

Human rights violations have been prevalent on the African continent due to regimes such as apartheid and the innumerable armed conflicts which have played out in states such as Sierra Leone, Angola, South Sudan and Uganda.³ Over the past century a variety of insurgent groups have emerged, and their actions has resulted in catastrophic human rights violations across continent. Insurgent groups such as the Lord's Resistance Army in Uganda, Al-Shabab in Somalia, M 23 in the Democratic Republic of Congo and the Tajoura Battalion in Libya are some of the armed factions at the forefront of current conflicts.

During situations of armed conflict children are subject to grave violations of their rights despite the fact that they are not at the forefront in the majority these conflicts. Armed conflicts generally tend to have a calamitous impact on the civilian population including children, the provision of services including food, health and education, infrastructure and tend to affect persons who are relevant to the child, such as parents and siblings.⁴ It is difficult to envision a

¹ McFarland S 'Human Rights 101: A Brief College-Level Overview' (2015) American Association for the Advancement of Sciences: Science and Human Rights Coalition available at https://www.aaas.org/sites/default/files/content_files/AAAS%20Coalition%20Human%20Rights%20101_0.pdf (accessed 10 May 2017) 2.

² Article 2 of UN Declaration of Human Rights provides that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty'.

³ Marshall M 'Conflict Trends in Africa, 1946-2004 A Macro-Comparative Perspective' (2005) Report prepared for the Africa Conflict Prevention Pool (ACPP) Government of the United Kingdom available at <http://www.systemicpeace.org/vlibrary/ConflictTrendsAfrica2006MGMarshall.pdf> (accessed 14 May 2017) 12.

⁴ Brett R 'Child soldiers: Law, politics and practice' (1996) 4(2) *International Journal of Children's Rights* 116.

conflict which has played out on the African continent which is not relevant to children and their rights.⁵

Currently the Boko Haram insurgency poses the most significant threat to the national stability of Nigeria since the Biafran civil war in 1970.⁶ Boko Haram has waged a reign of domestic terror that undermines national institutions, government authority and proves to be a significant obstacle to economic development and the protection of human and child rights in Nigeria.⁷

The rise of Jama'atu Ahlis Sunna Lidda'awati wal-Jihad (People Committed to the Propagation of the Prophet's Teachings and Jihad) or Boko Haram which the group is commonly known as, poses the greatest threat to human rights in Nigeria.⁸ Boko Haram is an Islamic extremist sect that has led a campaign of terror and extreme violence in the north of Nigeria for almost a decade.⁹ The group has become notorious due to numerous attacks on the civilian population resulting in thousands of murders and the abduction of women and children.¹⁰

The ideology of Boko Haram is based on the stricter enforcement of Sharia law, which emanates from the Quran as the 'Word of God', across the north of Nigeria.¹¹ The objective of the group is ideally to destroy the governance and introduce an Islamic state in Nigeria.¹² To reach its objective, the group has carried out violent attacks against the civilian population and anything it considers to be adopted from the western world including schools, churches and communities.¹³

Since Nigeria became a democratic state in 1999, the Boko Haram insurgency has become the most significant source of violence in the country.¹⁴ According to Human Rights Watch, it is estimated that between 2009 and 2014 more than 7000 civilians have died as a result of the

⁵ Brett (n4 above) 116.

⁶ Popovski V & Maiangwa B 'Boko Haram's attacks and the people's response: a 'fourth pillar' of the responsibility to protect?' (2016) 25(2) *African Security Review* 159.

⁷ Baamidele O 'Under Threat of Domestic Terrorism: Addressing and Overcoming the Boko Haram Jama'atu Ahlis Sunna Lidda'awati wal-Jihad in the North-Easter region of Nigeria' (2014) 44(3) *African insight* 97.

⁸ Ogoloma FI & BN Sampson 'Boko Haram and Human Rights Violation in Nigeria' (2014) 1(1) *ARC Journal of Social Sciences and Humanities (ARC-JSSH)* 2.

⁹ Watchlist on Children and Armed Conflict "'Who will care for us?' Grave Violations against children in armed conflict' (2014) available at https://watchlist.org/wp-content/uploads/2111-Watchlist-Nigeria_LR.pdf (accessed 25 May 2017) 12.

¹⁰ Watchlist on Children and Armed Conflict (n9 above) 12.

¹¹ Ogoloma & Sampson (n8 above) 2.

¹² Mauro R 'Boko Haram: Nigeria's Islamist Group' (2014) The Clarion Project available at http://clarionproject.org/wp-content/uploads/ClarionProject_FactSheet%20-%20BOKO%20HARAM.pdf (accessed 30 May 2017) 7.

¹³ Mauro (n12 above) 8.

¹⁴ Bloom M & Matfess H 'Women as Symbols and Swords in Boko Haram's Terror' (2016) 6(1) *PRISM* 105.

Boko Haram insurgency.¹⁵ Significant attention has been drawn to the Islamic state or ISIS as the group is commonly known, for their reign of terror across the world without acknowledging the fact that Boko Haram is equally as dangerous. During 2014, ISIS was responsible for a total of 6,073 deaths worldwide, while Boko Haram was responsible for 6,664 killings in Africa alone.¹⁶

In the objective to introduce an Islamic state, Boko Haram has used extreme violence as a method to achieve its goals, with no distinction between civilians and combatants.¹⁷ The Nigerian states of Borno, Yobe and Adamawa located in the north have experienced countless attacks by the group.¹⁸ The Borno state where the group originates from has been the worst affected by the insurgency.¹⁹

Boko Haram has adopted the abduction of civilians as a tactic within its ranks. The terrorist group has become egregious for the use of hostages as leverage against the state. The group has been responsible for countless abductions of women and children in Nigeria, many of which remain unaccounted for. The most horrendous set of abductions carried out by the group took place in the province of Chibok.²⁰ On 14-15 April 2014 Boko Haram gained worldwide infamy when it launched an attack on a government girl's school and abducted over 200 female pupils.²¹ The abductions led to the establishment of the world-renowned '#BringBackOurGirls' campaign, which attempted to raise awareness about the abductions in an effort to recover the girls.

Boko Haram has targeted various schools causing extreme insecurity within the education system in the north of Nigeria.²² According to reports from the United Nations Children's Fund (UNICEF) it is estimated that 211 schools in Borno and 21 schools in Yobe have been destroyed since the insurgency began.²³ The attacks on education institutions by Boko Haram

¹⁵ Human Rights Watch "Those Terrible Weeks in their Camp" Boko Haram Violence against Women and Girls in Northeast Nigeria' (2014) available at http://features.hrw.org/features/HRW_2014_report/Those_Terrible_Weeks_in_Their_Camp/assets/nigeria1014web.pdf (accessed 21 June 2017) 13.

¹⁶ Searcey D and Santora M 'Boko Haram Ranked Ahead of ISIS for Deadliest Terror Group' available at http://www.nytimes.com/2015/11/19/world/africa/boko-haram-ranked-ahead-of-isis-for-deadliest-terror-group.html?_r=0 (accessed 21 June 2017).

¹⁷ Mauro (n12 above) 6.

¹⁸ Human Rights Watch (n15 above) 13.

¹⁹ Human Rights Watch (n15 above) 13.

²⁰ Mauro (n12 above) 6.

²¹ Awojobi ON 'The Socio-Economic Implications of Boko Haram Insurgency in the North-East of Nigeria' (2014) 11(1) *International Journal of Innovation and Scientific Research* 148.

²² Watchlist on Children and Armed Conflict (n9 above) 19.

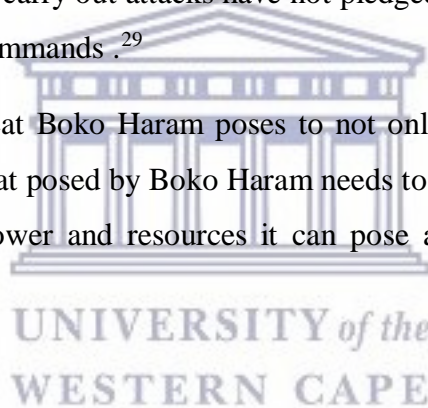
²³ Human Rights Watch (n15 above) 17.

has put students and educators at risk and in light of the danger, there has been a mass closure of schools across the north of Nigeria.²⁴

In response to the Boko Haram insurgency, the Nigerian government has launched numerous operations aiming to combat the activities of the group.²⁵ Operation Restore Order I, which ran from June 2011 and ran until May 2013 was the first major operation undertaken by the Nigerian government as a result of the insurgency.²⁶ About 4000 military personal in conjunction with members of other security forces and policemen formed the Joint Task Force (JTF), upon which the task force was deployed in the state of Borno in attempt to provide protection for civilians.²⁷

Another terrorist tactic employed by Boko Haram is the use of suicide bombers and there has been a growing concern as the terrorist organisation has increased the use of young women and children to carry out these attacks.²⁸ An often overlooked aspect is that the majority of children being used by Boko Haram to carry out attacks have not pledged allegiance to the sect but are coerced to comply with the commands.²⁹

This paper highlights the threat Boko Haram poses to not only the Chibok girls but young women and children. The threat posed by Boko Haram needs to be extinguished immediately, for as the group grows in power and resources it can pose a threat to the entire African continent.³⁰



1.2 Objectives of the study

The objective of this study is to analyse the danger Boko Haram poses to the protection and promotion of child and human rights in the north of Nigeria in light of the Chibok abductions. The study will examine the human rights violations perpetrated by Boko Haram against the abducted girls.

²⁴ Watchlist on Children and Armed Conflict (n9 above) 20.

²⁵ Amnesty International 'Stars on their shoulders, blood on their hands: War crimes committed by the Nigerian military' (2015) available at www.amnestyusa.org/sites/default/files/report.compressed.pdf (accessed 25 May 2017) 20.

²⁶ Amnesty International (n25 above) 25.

²⁷ Amnesty International (n25 above) 25.

²⁸ Bloom & Matfess (n14 above) 105.

²⁹ Bloom & Matfess (n14 above) 105.

³⁰ Umar AM Nigeria and the Boko Haram Sect: Adopting a Better Strategy for Resolving the Crisis (unpublished M Thesis, Naval Post Graduate School) (2013) 4.

The paper highlights the magnitude of sexual violence perpetrated against the Chibok girls by examining offences such as the use of the girls as sex slaves with the ranks of Boko Haram, the forced marriage of these young women stemming from their abduction. Furthermore, the paper will analyse involuntary participation of young women and girls in hostiles by scrutinising tactics used by Boko Haram.

During an internal armed conflict most of the focus is placed on the armed group causing havoc and minimal scrutiny is given to state armed forces. This study draws attention to the conduct of the Nigerian armed forces combating the insurgency and the subsequent violations of international law and human rights by members.

1.3. Research Questions

(i) What human rights violations have been perpetrated against the Chibok girls as a result of Boko Harams abductions?

(ii) What are the child rights implications as a result of the abductions of the girls by Boko Haram and the response there to by the government of Nigeria?

1.4. Methodology

The first aspect which will be examined is the rise of Boko Haram in Nigeria. There will be a focus on the structure, leadership and ideology of the religious sect. The fundamental sources for this section will be academic writings and reports that have been published by human rights organisations such as Amnesty International and Human Rights Watch.

The paper then proceeds to review the fundamental human rights instruments which set forth the rights and protection of children such as, the Convention of the Rights of the Child (CRC), Optional Protocol on the Involvement of Children in Armed Conflict, International Covenant on Civil and Political Rights (ICCPR), UDHR and the International Covenant on Social Economic and Cultural rights (ICESCR). The paper then examines regional and domestic instruments relating to the rights of the child; these include the African Charter on the Rights and Welfare of the Child (ACRWC), the Child Rights Act of Nigeria (CRA) and the Nigerian Constitution.

The next approach is to analyse the response to the Boko Haram insurgency by the Nigerian government and the specific child rights that have been violated by Boko Haram combatants in relation to the abduction of the Chibok girls. Despite this paper placing a specific focus on

human and child rights, based on the existing interlinks between human rights, International Humanitarian Law (IHL) and international criminal law where applicable, reference is made to other branches of international law. Finally, the study concludes and provide recommendations on a way forward.



CHAPTER 2– A BACKGROUND TO BOKO HARAM INSURGENCY AND THE ABDUCTION OF THE CHIBOK GIRLS

2.1. Introduction

The concept of terrorism can be defined as the premeditated use of violence or threat to use violence by organisations or an individual with the purpose to obtain an objective.³¹ The objectives of the organisations carrying out these attacks are often political and social in nature.³²

The threat posed by terrorism has escalated substantially over the 20th century and has had a significant impact on the rights of children around the world. The media and various governments have centred their attention in combating the threat currently posed by ISIS, while not enough attention has been drawn to Boko Haram who has carried out its own campaign of terror on the African continent.

In this chapter the paper examines the Boko Haram insurgency in Nigeria, focusing on a history of the jihadist sect, provide some insight to their ideology, structure and provides an analysis the abduction of the Chibok girls.

2.2 Origins of Boko Haram

Nigeria is a state which is rich in natural resources and is the biggest producer of petroleum on the African continent. The Nigerian population is comprised of an estimated 170 million people with Muslims and Christians represented equally, while traditional African religions represents a small total of the population.³³ Despite having significant natural resources, the majority of the Nigerian population live in poverty.³⁴ The governance and development by the Nigerian government since democracy has been significantly inadequate, as a result there has been a drastic rise in ethnic militias and millenarian religious movements that have pressed forth their own ideologies.³⁵ There has been a history of conflicts of a communal nature in Nigeria, that

³¹ Gaibulloev K & Sandler T 'Assessing the Evolving Threat of Terrorism' *Published Articles & Papers*. (2011) Paper 146 2.

³² Gaibulloev & Sandler (n31 above) 3.

³³ Ezeanokwasa JO, Ewulum BE and Mbanugo OO 'Religious Freedom and its Limitation under 1999 Constitution of Nigeria' (2016) 7 *NnamdiAzikiwe University Journal of International Law and Jurisprudence* 55.

³⁴ International Crisis Group (ICG) 'Curbing Violence in Nigeria (II): The Boko Haram Insurgency' (2014) Africa Report No 216 available at <https://d2071andvip0wj.cloudfront.net/curbing-violence-in-nigeria-ii-the-boko-haram-insurgency.pdf> (accessed 23 June 2017) 1.

³⁵ International Crisis Group (ICG) (n34 above) 1.

have escalated and resulted in ethno-religious violence between various groups.³⁶ A clear example of this is the numerous outbreaks of violence in the Plateau state between various religious communities since democracy was reached in 1999.³⁷

In 2000, Sharia law was adopted by 12 states located in the north of the country which subsequently led to violent clashes between Muslims and Christian minorities in the region.³⁸ People pride themselves on their religious beliefs and there have been several conflicts throughout history that have taken place where religion has been a central undertone. As a result of the violent inter-communal clashes in Nigeria between Muslims, Christians and other ethnic groups it is estimated that more than 3800 people have been killed between 2000 and 2010.³⁹ This illustrates that the insurgency by Boko Haram is not the first source of violence where an ideology of a religious nature is forcibly placed on a secular community by making use of radical tactics.⁴⁰

It is estimated that the Boko Haram insurgency has affected more than 6 million people in Nigeria and neighbouring countries including Niger, Cameroon, and Chad.⁴¹ In Nigeria, attacks by Boko Haram on numerous villages have left more than 300,000 people displaced.⁴² This has resulted in thousands of IDPs in the territory of Nigeria and neighbouring states.

The Boko Haram insurgency is result of political, social, religious and economic factors in Nigeria.⁴³ The early origins of the group date back to 1995, when an Islamic youth organisation emerged operating under the title Shabaab led by Mallam Lawal.⁴⁴ Upon the departure of Mallam Lawal to further his education at the University of Medina in Saudi Arabia, a hard-line position was adopted and the radicalization of the group began under the leadership of Mohammed Yusuf.⁴⁵ The change in leadership saw a substantial increase in the popularity of

³⁶ Walker A 'What is Boko Haram?' (2012) United States Institute of Peace Special Report 308 available at <https://www.usip.org/sites/default/files/SR308.pdf> (accessed 23 June 2017) 2.

³⁷ Walker (n38 above) 2.

³⁸ Oftedal E Boko Haram: A Transnational Phenomenon? (unpublished thesis University of Oslo 2013) 30.

³⁹ Oftedal (n38 above) 30.

⁴⁰ Adesoji A 'The Boko Haram Uprising and Islamic Revivalism in Nigeria' (2010) 45 (2) *Africa Spectrum* 96.

⁴¹ Shuaibu SS & Salleh MA 'Historical Evolution of Boko Haram in /Nigeria: Causes and Solutions' (2015) Proceedings of ICIC – *International Conference on Empowering Islamic Civilization in the 21st Century* 217.

⁴² Shuaibu & Salleh (n41 above) 217.

⁴³ Ahokegh AF 'Boko Haram: A 21st Century Challenge in Nigeria' (2012) 8(21) *European Scientific Journal September edition* 47.

⁴⁴ Ogoloma & Sampson (n8 above) 2.

⁴⁵ Adesoji (n40 above) 99.

the organisation and an interest towards politics and public affairs was subsequently developed.⁴⁶

Prior to establishing Boko Haram, Mohammed Yusuf was involved in other Islamic organisations.⁴⁷ He was a student of the spiritual leader Sheik Abubakar Gumi of the Izla movement during the early 1990s and he was under the mentorship of Sheik Jafaar Adam.⁴⁸ Mohammed Yusuf was also in a leadership position at the Ndimi and Daggash mosques situated in Maiduguri however, both institutions expelled him due to his extremist character.⁴⁹

Boko Haram was initially a non-violent movement that posed no serious threat to the Nigerian government and population, as a result the group was largely left alone by authorities.⁵⁰ Overtime the non-violent stance was abandoned, with the group launching numerous violent attacks against the civilian population.

As the leader, Mohammed Yusuf established a mosque and school in the northern city of Maiduguri to act as a stronghold for the sect in which many poor families in the north of Nigeria and neighbouring states enrolled their children.⁵¹ The motive behind the establishment was to use the teachings of Boko Haram to indoctrinate primary and secondary school students, to such an extent that they would reject so called westernized schools, in the belief that “Western education is sinful” which is a direct translation of the Boko Haram.⁵² The religious complex functioned as a recruitment centre for Boko Haram to acquire prospective members in the rebellion against the state.⁵³

By preaching radical sermons against the Nigerian government and the Islamic movements to which he was once a member, Mohammed Yusuf gained a wide following who were committed to his message and vision.⁵⁴ During Boko Haram’s transitional period from a non-violent group

⁴⁶ Ogoloma & Sampson (n8 above) 2.

⁴⁷ Ogoloma & Sampson (n8 above) 2.

⁴⁸ Pate A “Boko Haram: An Assessment of Strengths, Vulnerabilities, and Policy Options.” Report to the Strategic Multilayer Assessment Office, Department of Defense and the Office of University Programs, Department of Homeland Security (2014) available at https://www.start.umd.edu/pubs/START_%20SMA-AFRICOM_Boko%20Haram%20Deep%20DiveJan2015.pdf (accessed 16 July 2017) 11.

⁴⁹ Pate (n48 above) 11.

⁵⁰ Asfura-Heim P & McQuaid J ‘Diagnosing the Boko Haram Conflict: Grievances, Motivations, and Institutional Resilience in Northeast Nigeria’ (2015) Centre for Naval Analyses, Alexandria, VA available at www.dtic.mil/get-tr-doc/pdf?AD=ADA613302 (accessed 16 July 2017) 20.

⁵¹ Okemi ME ‘Boko Haram: A Religious Sect or Terrorist Organization’ (2013) 1(1) *Global Journal of Politics and Law Research* 3.

⁵² Pate (n48 above) 11.

⁵³ Okemi (n51 above) 3.

⁵⁴ Pate (n48 above) 11.

to an Islamic extremist movement, Mohammed Yusuf preached to his followers to exclude themselves from conventional society by residing in secluded areas of Nigeria.⁵⁵ Residing in isolation provided the foundation for radicalising and conceptualising the proposed rebellion against the state.⁵⁶

The sect eventually elevated to a level where they have become a direct threat to the Nigerian population and action had to be taken to nullify the danger posed. During a crackdown operation by the state, Mohammed Yusuf was eventually captured and killed in the city of Maiduguri.⁵⁷ The death of Mohammed Yusuf was extremely controversial as he was killed while in the custody of Nigerian authorities and this led to various human rights organizations calling for an investigation into the circumstances surrounding his death.⁵⁸

Following the death of their founder, the group went into hiding and re-emerged with Abubakar Shekau as the new leader.⁵⁹ Under the leadership of Abubakar, Boko Haram evolved from a religious sect, to an armed terrorist organisation.⁶⁰ The change in leadership has seen a substantial increase in attacks on military compounds, churches, schools and government buildings.⁶¹ The group has become more fierce and dangerous under the command of Abubakar Shekau, carrying out more killings than ever before.⁶²

A recent division has emerged within the ranks of Boko Haram due to an ongoing dispute in relation to the leadership of the organisation.⁶³ During 2015, Boko Haram pledged its allegiance to ISIS and subsequently adopted the title of Caliphate to the Islamic State of West Africa.⁶⁴ Abu Musab al-Barnawi was appointed by ISIS as the new leader of the north African

⁵⁵ Onuoha FC & George TA 'Boko Haram's use of Female Suicide Bombing in Nigeria' (2015) Al Jazeera Center for Studies available at <http://studies.aljazeera.net/mritems/Documents/2015/3/18/20153189319985734Boko-Harams-Female.pdf> (accessed 17 July 2017) 3.

⁵⁶ Onuoha & George (n55 above) 3.

⁵⁷ Gorman G 'Nigerian Taliban leader killed in custody' (2009) The Long War Journal available at https://www.longwarjournal.org/archives/2009/07/nigerian_taliban_lea.php (accessed 19 July 2017).

⁵⁸ The death of Mohammed Yusuf was extremely controversial as video emerged of his summary execution which displays Nigerian authorities celebrating around his body and one police official can be heard saying that the leader of Boko Haram would have been brought to justice if he was brought to court to face charges.

⁵⁹ Asfura-Heim & McQuaid (n50 above) 26.

⁶⁰ Asfura-Heim & McQuaid (n50 above) 26.

⁶¹ Awojobi (n21 above) 146.

⁶² Ajayi Y 'What we know about Boko Haram's new leader, Abu Musab al-Barnawi'

<http://www.vanguardngr.com/2016/08/know-boko-harams-new-leader-abu-musab-al-barnawi/> (accessed 21 July 2017).

⁶³ Ajayi Y (n62 above).

⁶⁴ Oyewole S 'Rescuing Boko Haram's schoolgirl victims' (2016) 41 (1) *New Zealand International Review* 25.

jihadist group.⁶⁵ According to reports, Abu Musab al-Barnawi is the son of the founder of Boko Haram Mohammed Yusuf.⁶⁶ The division has seen certain members aligned to Abu Musab al-Barnawi while others have remained loyal to Abubakar Shekau.

2.3 The Ideology of Boko Haram

During the era of colonialism, colonisers forcefully introduced Christianity and western education on most African states including Nigeria.⁶⁷ This served as the instrument to push forward socio-cultural transformation and the economic exploitation of African states.⁶⁸

The ideology of terrorist organisations serves as an important catalyst to mobilize persons with similar views to fight towards achieving a specific objective.⁶⁹ The origins of Boko Haram's ideology stem from the beliefs of Mohammed Yusuf and the strict literal Islamic interpretations of the Quran and the Hadith, which is the word of the Prophet Muhammed.⁷⁰

The name Boko Haram originates from a mixture of the Hausa word "Boko" which translates to the word "book" and the term "Haram" which in Arabic refers to something which is considered to be sinful or ungodly.⁷¹ The concept of "Boko" doesn't solely deal with the denunciation of western education, it serves as a judgement of the failure of this type of education to provide opportunities for the people of Nigeria to better their lives.⁷²

The nature of the organisations name is much deeper than the direct translation. The fundamental meaning of Boko Haram is that education that has been adopted from the western world is sinful and should be forbidden in Nigeria.⁷³ The ideology is not only limited to opposing western education, but any interaction deemed to be derived from the western world is forbidden.⁷⁴ Ibn Taymiyya's formulation of a right to rebel against leaders who act contrary

⁶⁵ Maclean R 'Isis tries to impose new leader on Boko Haram in Nigeria' 5 August 2016 <https://www.theguardian.com/world/2016/aug/05/isis-tries-to-impose-new-leader-on-boko-haram-in-nigeria> (accessed 21 July 2017).

⁶⁶ Busari S' Boko Haram's new leader is son of executed founder, insider says' <http://edition.cnn.com/2016/08/04/africa/nigeria-boko-haram-leader/> (accessed 24 July 2017).

⁶⁷ Ahokegh (n43 above) 51.

⁶⁸ Ahokegh (n43 above) 51.

⁶⁹ Asfura-Heim & McQuaid (n50 above) 29.

⁷⁰ Asfura-Heim & McQuaid (n50 above) 29.

⁷¹ Tonwe DA & Eke SJ 'State fragility and violent uprisings in Nigeria: the case of Boko Haram' (2013) *African Security Review* 234.

⁷² Isa MK 'Militant Islamist groups in Northern Nigeria' in Okumu W and Ikelegbe A (eds) *'Militia, Rebel and Islamist Militants: Human Insecurity and State Crisis in Africa'* (2010) Institute for Security Studies Pretoria, South Africa 333.

⁷³ Adesoji (n40 above) 100.

⁷⁴ Okemi (n51 above) 3.

and violate Islamic law has also been adopted by the terror group and is seen as a key instrument in the recruitment process.⁷⁵

At the cornerstone of Boko Haram's founding principles is the concept of Salafism, which stems from the first generation of Muslims that are referred to as al-Salaf al-Saleh.⁷⁶ The term al-Salaf al-Saleh refers to devout predecessors which include the followers of Prophet Muhammad, the theme behind the concept of Salafism is to restore and return to the practice of what is viewed to be the original form of Islam.⁷⁷

An argument can be put forward that the dogma of Boko Haram is not necessarily Salafism, but ultra-Salafi radicalism that demands a return to what is considered to be the founding principles of Islam and the rebuff of everything adjudged to be contrary to these principles.⁷⁸

Based on ultra-Salafi radicalism, Boko Haram views women to be inferior to men and classifies women who follow Christianity as members of an infidel outcast, the group uses this as a frail justification for their attacks against Christian women.⁷⁹ This concept has placed women in the northern region of Nigeria in a particularly vulnerable position. Christian women are particularly at risk and there has been a substantial increase in gender-based violence perpetrated against Christian women by Boko Haram in the northern regions.⁸⁰ Christian women are punished more severely than Muslim women because they are deemed not to be pure on the basis of their religion.⁸¹ Violent attacks targeting Christians by Boko Haram have become a component of the group's modus operandi.⁸² The reason behind discussing the view of women is to highlight how this view influenced the Chibok abductions.

⁷⁵Umar (n30 above) 24.

⁷⁶ Barkindo A & Gudaku B 'Our Bodies, Their Battleground Boko Haram and Gender-Based Violence against Christian Women and Children in North-Eastern Nigeria since 1999' (2013) available at https://www.researchgate.net/publication/277890094_Our_Bodies_Their_Battle_Ground_Boko_Haram_and_Gender_Based_Violence_Against_Christian_Women_and_Children_in_North-Eastern_Nigeria_Since_1999 (accessed 26 July 2017) 16.

⁷⁷ Barkindo & Gudaku (n76 above) 16.

⁷⁸ Barkindo & Gudaku (n76 above) 16.

⁷⁹ Maiangwa B & Agbibo D 'Why Boko Haram kidnaps women and young girls in north-eastern Nigeria' (2014) 3 *Conflict Trends* 5.

⁸⁰ Zenn J & Pearson E 'Women, Gender and the evolving tactics of Boko Haram' (2014) 5(1) *Journal of Terrorism Research* 49.

⁸¹ Maiangwa & Agbibo (n79 above) 5.

⁸² The religious war being waged by Boko haram has resulted in attacks being carried out indiscriminately against the Christian people of Nigeria. The Christmas Eve bombing in 2010 during Christmas mass resulted in the death of 32 churchgoers in the cities of Jos and Maidiguri. A year later the sect carried out coordinated attacks on churches across Nigeria in response to Christmas celebrations on Christmas day murdering 40 churchgoers in the process.

2.4 The abduction of the Chibok girls

The education system in the north of Nigeria is experiencing serious challenges as a result of the insurgency. Prior to the abduction, a general insecurity existed amongst educational institutions due to previous attacks which saw numerous schools closed as a precautionary measure. This led to the Government Secondary School situated in the province of Chibok being set up as a gathering point for certain students to complete their final examinations.⁸³

On the night of the 14-15 of April 2014, Boko Haram members invaded the school and entered into a shoot-out with the security guards before abducting the girls from their residence and driving off into the forest.⁸⁴ Following the abduction, different information emerged regarding the circumstances surrounding the abduction and the number of girls that were abducted, however none were able to provide an accurate information.

During the preliminary stages following the abduction, the Nigerian government failed to acknowledge the atrocity committed by Boko Haram. It took efforts from Ibrahim M Abdullahi a lawyer from Nigeria and a few others to raise awareness of the abductions by sending out the hash tag #BringBackOurGirls on social media.⁸⁵

The abductions led to public outrage with many Nigerian citizens taking to the streets to protest and call for the safe return of the girls.⁸⁶ News of the abductions soon spread to social media platforms where the hash tag #BringBackOurGirls trended across the globe.⁸⁷ The campaign grew rapidly with thousands of social media users using the hashtag and saw the former first lady of the United States of America Michelle Obama along with numerous celebrities joining the call for the safe return of the girls.⁸⁸

Instead of viewing the crime against these young females with the degree of importance required, the abductions led to a fully-fledged war propaganda on the part of the Nigerian government. The former President Goodluck Jonathan and his administration viewed the

⁸³ Oyewole (n64 above) 27.

⁸⁴ Melvin D 'Boko Haram kidnapping of 200 Nigerian schoolgirls, a year later' (2014) available at <http://edition.cnn.com/2015/04/14/africa/nigeria-kidnapping-anniversary/> (accessed 3 August 2017).

⁸⁵ Nti NB 'Silence on the Lambs: The Abducted Chibok Schoolgirls in Nigeria and the Challenge to UNSCR 1325' (2014) Kofi Annan International Peacekeeping Training Centre Policy Brief available at <https://www.africaportal.org/documents/12356/Nana-KAIPTC-Policy-Brief-3---The-Abducted-Chibok-S.pdf> (accessed 10 June 2017).

⁸⁶ Smith C 'The Technology of Hope: Twitter and the #BringBackOurGirls Campaign' (unpublished thesis Royal Roads University Victoria) 4.

⁸⁷ Smith (n86 above) 4.

⁸⁸ Nti (n85 above).

abduction as a ploy by members of the opposition party to discredit the work of the ruling government.⁸⁹ The Senior Special Assistant on Public Affairs came out and stated that the abduction was in fact a gimmick that was being used to drive a campaign against the Jonathan administration by placing it in a negative light.⁹⁰ The former first lady Patience Jonathan, even accused protestors vying for the return of the girls of attacking the administration and requested that leaders of the #BringBackOurGirls campaign be placed in detention.⁹¹ The public were only addressed properly regarding the abductions two weeks after the horrendous act had been perpetrated.⁹²

The concealment on the exact number of abducted girls can be viewed as a method by the Nigerian government to prevent further negative reactions to abductions in light of the mass protest which followed the offence.⁹³ Realising that action needed to be taken quickly, Former President Goodluck Jonathan established the Presidential Fact-Finding Committee on the abducted Chibok girls and only once the findings were published were the accurate number of victims revealed.⁹⁴ A total of 276 girls were abducted, 57 had escaped and 219 girls remained unaccounted for.⁹⁵ In a video posted following the abductions, Abubakar Shekau claimed responsibility for the atrocity and suggested that the girls will be sold off if the government fails to comply with his demands.⁹⁶

Since the abduction in 2014, there had been minimal information regarding the well-being of the girls, until a video was released in August 2016 by Boko Haram.⁹⁷ A member of Boko Haram appears in the video standing in front of an estimated 50 of the abducted girls and demands the release of fellow members who have been captured by Nigeria's task force in

⁸⁹ Edogor IO & Dike K 'Nigerian Audience Appraisal of Propaganda in Reportage of the Kidnapped Chibok Girls' (2015) 20(7) *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 2.

⁹⁰ Edogor & Dike (n89 above) 2.

⁹¹ Nti (n85 above).

⁹² Nti (n85 above).

⁹³ Edogor & Dike (n89 above) 5.

⁹⁴ Usman T 'Presidential committee on Chibok schoolgirls submits report' 20 June 2014 available at <http://www.premiumtimesng.com/news/163201-presidential-committee-chibok-schoolgirls-submits-report.html> (accessed 3 August 2017).

⁹⁵ Human Rights Watch (n15 above) 21.

⁹⁶ Peters MA' "Western education is sinful" Boko Haram and the abduction of Chibok schoolgirls' (2014) *Policy Futures in Education* 186.

⁹⁷ Maclean R 'Boko Haram releases video appearing to show Chibok schoolgirls' (2016) available at <https://www.theguardian.com/world/2016/aug/14/boko-haram-releases-video-chibok-schoolgirls-nigeria> (accessed 3 August 2017).

exchange for the girls.⁹⁸ According to information which was deciphered from the video about 40 of the abducted girls have been married off to Boko Haram members with some of them having children, while others have allegedly lost their lives due to the offensive operations by the military against Boko Haram.⁹⁹

In October 2016, 21 of the abducted girls were released by Boko Haram.¹⁰⁰ The release of the girls came following intense negotiations brokered by the International Committee of the Red Cross and the Swiss government between the Nigerian government and Boko Haram.¹⁰¹ Given the severity of the situation and the fact that there are children involved, the Nigerian government should have taken proactive measures to accelerate the process of negotiations to ensure the safe return of the girls.¹⁰² Another breakthrough was reached in May 2017 following negotiations between the Nigerian government and key figures of the sect, which saw the release of 82 of the abducted girls after spending three years living in captivity.¹⁰³

2.5 Conclusion

Violence of an ethnic or religious nature is not a new phenomenon in Nigeria. Prior conflicts however have not posed such a grave danger to the Nigerian population as the Boko Haram Insurgency.

Initially founded by Mohammed Yusuf, Boko Haram was a non-violent organisation and posed no real danger to the state and the civilian population. While being considered as a non-violent organisation, Mohammed Yusuf preached the idea of establishing a state that will be governed entirely by Sharia law. He exploited the frailties on the part of the Nigerian government in order to recruit new members within the ranks of Boko Haram. Following the death of Mohammed Yusuf while in state custody, the group adopted a violent identity under the new

⁹⁸ Fenton S 'Boko Haram releases new video showing kidnapped Chibok schoolgirls' (2016) available at <http://www.independent.co.uk/news/world/africa/boko-haram-video-nigeria-chibok-schoolgirls-latest-news-terrorism-islamist-group-a7189831.html> (accessed 3 August 2017).

⁹⁹ Dixon R 'Boko Haram releases new video of abducted Chibok girls' (2016) <http://www.latimes.com/world/africa/la-fg-nigeria-boko-haram-chibok-20160814-snap-story.html> (accessed 7 August 2017).

¹⁰⁰ Burke J & Akinwotu E 'Boko Haram frees 21 schoolgirls from group abducted in Chibok' available at <https://www.theguardian.com/world/2016/oct/13/boko-haram-frees-21-schoolgirls-from-group-abducted-in-chibok> (accessed 7 August 2017).

¹⁰¹ Burke & Akinwotu (n100 above).

¹⁰² Quist-Arcton O 'That Amazing Moment When 82 Chibok Girls and Families Reunited' available at <http://www.npr.org/sections/goatsandsoda/2017/05/22/529536577/that-amazing-moment-when-82-chibok-girls-and-families-reunited>(accessed 8 August 2017).

¹⁰³ Maclean R & Ross A '82 Chibok schoolgirls freed in exchange for five Boko Haram leaders' available at <https://www.theguardian.com/world/2017/may/07/chibok-schoolgirls-families-await-as-82-are-freed-by-boko-haram-exchange-prison>(accessed 8 August 2017).

leadership of Abubakar Shekau. During his reign the Boko Haram have carried out more violent attacks than ever before.

Boko Haram has emerged as one of the most lethal terror organisations in the world. The brutality and total disregard for human rights was once again demonstrated by the abduction of 276 girls from the secondary school situated in the province of Chibok. The girls were only reunited with the families approximately three years after the horrifying abduction. The delayed response on the part of the Jonathan administration in relation to the abductions was worrisome.

In the next chapter, the paper examines the history of legal instruments which provide for the protection of children at an international and regional level.



CHAPTER 3- INTERNATIONAL, REGIONAL AND NATIONAL CHILD RIGHTS OBLIGATIONS OF THE GOVERNMENT OF NIGERIA

3.1 Introduction

In the 21st century violations of child rights are persistent, including in states where several human and child rights instruments have been ratified.¹⁰⁴ The violations currently facing children must be examined carefully and addressed in a constructive manner, which will provide better protection for all children. Some of the injustice practices which children are currently exposed to include the utter disregard of a child's right to freedom of speech, the on-going practice of child labour, recruitment of children for participation in armed conflicts, limited or no access to education, sexual violence and forced marriage of children under the age of 18.¹⁰⁵

Child rights can be defined as universal legal entitlements that every child under the age of 18 years possess irrespective of race, sex, age or culture. Since the adoption of the CRC, the progression of the protection and recognition of child rights has substantially amplified and there is now more accountability than ever, but improvements are required to ensure that a suitable standard of protection is afforded and maintained. Too often during situations of conflict child rights have essentially become oblivious and the individuals who carry out these transgressions against children are too often not held accountable for their actions.

This chapter evaluates the various legal frameworks for the protection of child rights at an international level and at a regional level.

3.2 International and national legal framework for the protection of children's rights

The threat posed by terrorism has never been as prevalent as it is currently, and children have become casualties to the objectives that terror organisations like Boko Haram seek to achieve. Vulnerable groups have been subjected to the severe economic, social and environmental

¹⁰⁴ Viljoen F *International Human Rights Law in Africa* 2 ed (2012) 33.

¹⁰⁵ Ekundayo O 'Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions?: Examining the Similarities and the Differences between the ACRWC and the CRC' (2015) 5(7) *International Journal of Humanities and Social Science* 143.

effects and because of the physical and mental constraints of children they are particularly vulnerable to the impact of activities of terrorist organisations and armed militias.¹⁰⁶

Previously, law made the presumption that children lack the capacity of adults and based on this, children were placed under the control of their parents or guardians.¹⁰⁷ The evolution of child rights has positively progressed over the years to the point where children are currently viewed as separate entities who are no longer under the control of their parents and possess a degree of capacity.¹⁰⁸ Although the rights of children are now recognised individualistically as opposed to falling within the ambit of parental control, there are areas in the realm of child rights that need to keep evolving to maintain a high standard of protection of the rights of the child.

3.2.1 Declaration of the Rights of the Child 1924

The first attempt to address child rights at an international level came with the enactment of the Declaration of the Rights of the Child in 1924. The Declaration of the Rights of the Child, which is also known as the Declaration of Geneva became the first legal instrument to draw the attention of the international community to the recognition and protection of the rights of the child.¹⁰⁹ Although this Declaration was not as ground breaking as other treaties that preceded it, nevertheless it did set in motion the process of the eventual recognition of child rights.

The Declaration of the Rights of the Child was the first international instrument to recognised in its preamble, that children form part of a vulnerable group and require special protection which includes “appropriate legal protection, before as well as after birth”.¹¹⁰ This established the principle that special protection is to be afforded to children as part of a vulnerable group and provided the foundation for the enactment of future instruments relating to the protection of child rights.

3.2.2 The Universal Declaration of Human Rights 1948

The UDHR is one of the founding legal treaties in the sphere of human rights law. It is the first international human rights legal instrument to be enacted in 1948 and established key principles

¹⁰⁶ Olawuyi DS ‘Terrorism, Armed Conflict and the Nigerian Child: Legal Framework for Child Rights Enforcement in Nigeria’ (2015) 13 *Nig. J. R* 12.

¹⁰⁷ Ekundayo (n105 above) 143.

¹⁰⁸ Ekundayo (n105 above) 143.

¹⁰⁹ Ekundayo (n105 above) 145.

¹¹⁰ League of Nations Geneva Declaration of the Rights of the Child (1924).

of international human rights law.¹¹¹ Article 1 of the UDHR established the principle of equality by providing “All human beings are born free and equal in dignity and rights”.¹¹² Article 2 sets forth the principle of non-discrimination, which forms a key principle within the context of human rights law.¹¹³

Although the UDHR does not address children specifically, it does recognise the concept of childhood.¹¹⁴ Article 25(2) provides that “Motherhood and childhood are entitled to special care and assistance”.¹¹⁵ The UDHR in turn recognises that “All children, whether born in or out of wedlock, shall enjoy the same social protection”.¹¹⁶

The adoption of the UDHR was a landmark in the realm of child rights as children were recognised as a separate entity and the need for special protection was recognised.

3.2.3 Declaration on the Rights of the Child 1959

After the adoption of the UDHR in 1948, the United Nations General Assembly made the decision to adopt the Declaration on the Rights of the Child in 1959. The instrument is an expansion of the Declaration adopted in 1924 and in the preamble acknowledges and refers to both the UDHR and the United Nations Charter.¹¹⁷

The Declaration on the Rights of the Child contains a reaffirmation of the pledge that “mankind owes to the child” and consequently sets forth the duties which organisations and governments should follow towards the progressive realisation of the rights of the child.¹¹⁸ The Declaration places an onus on governments to implement its provisions by using “legislative, and other measures progressively taken” to provide better protection for children.¹¹⁹

¹¹¹ Iguh NA & Nosike O ‘An examination of the child rights protection and corporal punishment in Nigeria’ (2011) 2 *NnamdiAzikiwe Journal of International Law and Jurisprudence* 99.

¹¹² Article 1 of the UDHR.

¹¹³ Article 2 provides “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

¹¹⁴ Article 25 of the UDHR.

¹¹⁵ Article 25 of the UDHR.

¹¹⁶ Article 25 of the UDHR.

¹¹⁷ United Nations, Charter of the United Nations 1945.

¹¹⁸ Taime K ‘The Foundations of Rights in the African Charter on the Rights and Welfare of the Child: A Historical and Philosophical Account’ (2009) 3 *Afr. J. Leg. Stud.* 122.

¹¹⁹ Taime (n118 above) 122.

3.2.4 International Covenant on Civil and Political Rights 1966

The ICCPR was adopted on 16 December 1966 and is viewed as one of the most influential treaties in international law.¹²⁰ The adoption of the ICCPR came nearly two decades after negotiating and following the ratification by thirty-five state parties, the instrument has gained recognition as a part of international law.¹²¹

The treaty consists of 53 Articles setting out a host of fundamental human rights.¹²² The preamble of the ICCPR recognises the principle of inherent dignity and inalienable rights, which are civil and political in nature and form the foundation of freedom, justice and peace.¹²³

Article 24 of the instrument is particularly relevant to children as it recognises the position of children in the realm of human rights law. It provides measures of protection for children and expresses that this protection should apply to all children in a non-discriminative manner.¹²⁴ The importance of Article 24 is that it previews the protection which children would eventually be awarded once the CRC was adopted.

In the sphere of child rights, the ICCPR has established the foundation on which a child-specific legal instrument could be enacted. Essentially, the structure and content of the ICCPR was instrumental in the eventual enactment of the CRC.

3.2.5 The Convention on the Rights of the Child 1989

Undoubtedly, the most important legal instrument relating to child rights at an international level is the CRC.¹²⁵ The CRC was adopted in 1989 at the United Nations General Assembly after a unanimous vote.¹²⁶ The adoption of the CRC is as a revolutionary development in the recognition of child rights, as the Convention is the only human rights treaty that has achieved

¹²⁰ International Covenant on Civil and Political Rights Adopted by the General Assembly of the United Nations on 19 December 1966.

¹²¹ Abrahams K & Matthews T 'Promoting Children's Rights in South Africa: A Handbook for members of Parliament Cape Town: Parliament of the Republic of South Africa' (2011) available at <https://www.parliament.gov.za/storage/app/media/BusinessPubs/PromotingChildrensRights.pdf> (accessed 25 August 2017) 22.

¹²² ICCPR (n120 above).

¹²³ Abrahams & Matthews (n121 above) 22.

¹²⁴ Article 24 of the ICCPR.

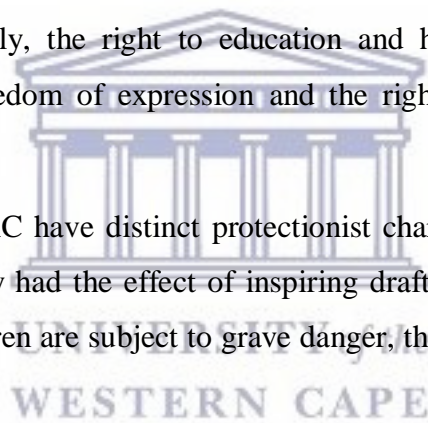
¹²⁵ The Convention on the rights of the child was ratified by Nigeria on 16 April 1991.

¹²⁶ Lee Y 'Child Rights and Child Well Being' (2009) The 3rd OECD World Forum on "Statistics, Knowledge and Policy" Charting Progress, Building Visions, Improving Life OECD World Forum <http://www.oecdworldforum2009.org> (accessed 27 August 2017) 2.

almost universal ratification.¹²⁷ Prior to the adoption of the Convention, children were viewed as part of the most invisible segment of society in the realm of international human rights law.¹²⁸ The enactment of the CRC changed this view, along with ‘A World Plan of Action’ which included the objectives which the CRC seeks to achieve within a decade of its enactment.¹²⁹ Although the drafting process of the Convention exceeded a period of 10 years, the CRC was entered into force within less than a year.¹³⁰

The CRC is comprised of various political, civil, social, economic and cultural rights.¹³¹ The central theme of the convention, is that children require distinct protection and the care of children should be prioritised because they are in the developmental stage in their lives.¹³² The CRC is comprised of forty-two provisions which detail the rights that apply regardless of race, nationality or sex.¹³³ Similar to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹³⁴, the CRC does not make use of a hierarchy of rights like other instruments.¹³⁵ No distinction is made between socio-economic rights, civil and political rights, essentially, the right to education and health are viewed as equally important as the right to freedom of expression and the right to be free from abuse and violence.¹³⁶

The provisions within the CRC have distinct protectionist characteristics.¹³⁷ The vulnerable position of children in society had the effect of inspiring drafters to add specific protection against situations where children are subject to grave danger, these include situations where a



¹²⁷ The CRC has been ratified by 193 countries with the United States of America and Somalia being the states that have failed to ratify the Convention.

¹²⁸ Goonesekere S ‘Introduction and Overview’ in UNICEF *Protecting the World’s Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems* (2007) 1.

¹²⁹ Goonesekere (n128 above) 1.

¹³⁰ Weissbrodt D & Rumsey M *Vulnerable and Marginalised groups and Human Rights Law* 520.

¹³¹ Rosa S & Dutschke M ‘Children’s rights at the core: The use of international law in South African cases on children’s socio-economic rights’ (2006) 22 *SAJHR* 228.

¹³² Rosa & Dutschke (n131 above) 230.

¹³³ UN General Assembly, Convention on the Rights of the Child 1989.

¹³⁴ Convention on the Elimination of Discrimination against Women Adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1989.

¹³⁵ Goonesekere S ‘Law Reform and Children’s Rights in Plural Legal Systems: Some Experiences in Sub-Saharan Africa’ in UNICEF *Protecting the World’s Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems* (2007) 210.

¹³⁶ Goonesekere (n135 above) 210.

¹³⁷ Willems JCM *Developmental and Autonomy Rights of Children: Empowering Children, Caregivers and Communities* (2007) 16.

child is subject to abuse and the involvement of children in drug activities and child trafficking.¹³⁸

The CRC includes two Optional Protocols, which were adopted on 25 May 2000.¹³⁹ The first protocol limits the involvement and participation of children in armed conflict¹⁴⁰, while the second protocol places a prohibition on the sale of children, child pornography and child prostitution.¹⁴¹

Once a state has made the decision to ratify the CRC they are bound to take the necessary measures to implement the provisions at a national level.¹⁴² Article 4 of the CRC places an obligation on state parties like Nigeria, to undertake every appropriate administrative, legislative and other measure to implement the rights which are recognised by the Convention.¹⁴³ A specialised committee monitors the implementation of the Convention. Article 43 of the CRC establishes the Committee on the Rights of the Child, who is responsible for monitoring the implementation of the CRC by state parties.¹⁴⁴

The Committee has identified four cardinal principles that are imperative for the implementation of the CRC. The first principle is what is known as the best interest of the child.¹⁴⁵ This principle provides children with the right to have their best interest examined and taken into account when taking any action or decision that concerns him or her, both in the private and public sphere.¹⁴⁶ The principle seeks to ensure the full and effective enjoyment of the rights in the Convention and the development of the child.¹⁴⁷ The best interest of the child

¹³⁸ Willems (n137 above) 17.

¹³⁹ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000.

¹⁴⁰ Optional Protocol on the Involvement of Children in Armed Conflict 2000.

¹⁴¹ Tajudeen OI 'Legal Framework for The Protection of Child Rights in Nigeria' (2015) 3 *AGORA International Journal of Juridical Sciences* 4.

¹⁴² On 16 April 1991, the Nigerian Government ratified the Convention on the Rights of the Child. Nigeria has also ratified numerous international treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

¹⁴³ Article 4 of the CRC.

¹⁴⁴ Article 43 of the CRC set out the election process of members for the Committee of the rights of the Child. The Committee is composed of 18 experts of high moral standing and recognized competence in the field of child rights where they serve for a term of 4 years.

¹⁴⁵ Article 3 of the CRC.

¹⁴⁶ UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) 3.

¹⁴⁷ UN Committee on the Rights of the Child (CRC), General comment No. 14 (n146 above) 3.

is a legal concept that has been used previously in various domestic legal systems, particularly in the context of family law.¹⁴⁸

The second cardinal principle is that of non-discrimination.¹⁴⁹ Member states are required to take all appropriate measures to ensure that the principle of non-discrimination is upheld and that children are protected against all forms of discrimination.¹⁵⁰ This principle is not limited to a specific situation and must be applied to all aspects relating to children.

The next is that of participation.¹⁵¹ Based on this notion, member states have an obligation to ensure that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child.¹⁵² The views of the child must be being given due weight in accordance with the age and maturity of the child.¹⁵³ The fourth and final principle is the right of every child to their development and maximum survival.¹⁵⁴ This principle requires states to recognise the inherent right to life that every child possesses and take the necessary action to ensure the survival and development of children.¹⁵⁵

The reason why this paper examines the various cardinal principles which have been identified by the Committee on the Rights of the Child is to highlight how the Boko Haram insurgency has diminished the cardinal principles and the application of the efficient CRC in Nigeria.

Article 38 of CRC is of great significance to many African countries. It relates to situations of armed conflict and provides that “States Parties undertake to respect and to ensure respect for rules of international humanitarian law, applicable to them in armed conflicts which are relevant to the child”.¹⁵⁶ The wording used in this phrase is adopted from common Article 1 of the four Geneva Conventions.¹⁵⁷ The interpretation is far reaching and on the basis of this state parties cannot leave the responsibility of implementing the detailed provisions of IHL solely to its armed forces, state parties have to ensure that the underlying humanitarian principles of IHL are applied universally.¹⁵⁸

¹⁴⁸ Weissbrodt & Rumsey (n130 above) 532.

¹⁴⁹ Article 2 of the CRC.

¹⁵⁰ Article 2 of the CRC.

¹⁵¹ Article 12 of the CRC.

¹⁵² Article 12 of the CRC.

¹⁵³ Article 12 of the CRC.

¹⁵⁴ Article 6 of the CRC.

¹⁵⁵ Article 6 of the CRC.

¹⁵⁶ Article 38 of the CRC.

¹⁵⁷ *Ang F Article 38: Children in Armed Conflicts* (2005) 30.

¹⁵⁸ *Ang* (n157 above) 32.

The CRC recognises the importance that IHL plays by prohibiting practices that are particularly harmful to children, such as the use of children in active hostilities, forced recruitment and sexual violence.¹⁵⁹ Similarly to IHL, the Convention sets the age limit of enlisting children into the armed forces and having an active role in hostilities at 15.¹⁶⁰ While this provides protection for children aged 15 and younger it negates the fact that persons between 16 and 18 years old are still children. In the ICTR *Akayesu* judgement, the view was established that there is no material difference between active and direct participation in hostilities.¹⁶¹ On the basis on this judgment children who are aged 15 and above, can essentially be soldiers on the frontline during conflicts. Another important aspect arising from Article 38 is found in the fourth section. This section places a duty on member states to undertake appropriate measures to provide necessary care and protection to children who are negatively affected by armed conflict.¹⁶²

The crime of abduction is addressed under Article 35 of the CRC, which obliges states to exercise all appropriate measures including national, bilateral and multilateral processes in order to prevent abductions and the sale and trafficking of children from occurring.¹⁶³ This is particularly relevant given the abductions of innocent children by Boko Haram.

3.2.6 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was adopted on the 25 May 2000.¹⁶⁴ Nigeria has ratified the Optional Protocol to the Convention on the Rights of the Child in 2012 and on the basis of this the state is obliged by the Protocol to afford better protection to children during hostilities.¹⁶⁵

The adoption of the Protocol seeks to address the growing trend of recruitment and the active participation of children during international and internal armed conflicts.¹⁶⁶ The Protocol

¹⁵⁹ Article 38 of the CRC reaffirms the Protection afforded to children by the Geneva Conventions and the 2 Additional Protocols.

¹⁶⁰ Article 38 of the CRC.

¹⁶¹ Ang (n157 above) 40.

¹⁶² Article 38 of the CRC.

¹⁶³ Article 35 of the CRC.

¹⁶⁴ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000).

¹⁶⁵ Akinwumi OS "Legal Impediments on the Practical Implementation of the Child Right Act 2003," (2009) *The International Journal of Legal Information* 37(3) 389.

¹⁶⁶ Harvey R 'Children and Armed Conflict Unit, published by the International Bureau for Children's Rights' (2003) available at https://www1.essex.ac.uk/armedcon/story_id/000044.pdf (accessed 29 August 2017) 13.

acknowledges the harmful and widespread impact armed conflicts have on children and the subsequent long-term mental and physical consequences.¹⁶⁷

State parties are obliged to increase the protection afforded to children during times of conflict by taking the necessary measures to ensure that children under the age of 18 do not have an active role in hostilities.¹⁶⁸ While the Optional Protocol provides much needed guidance on the role of children during an armed conflict, it fails to prohibit the voluntary recruitment by states of children under the age of 18.¹⁶⁹ State parties are also required to prohibit the compulsory enrolment of children into their own forces.¹⁷⁰ This section is of particular relevance to the Civilian Joint Task Force, which will be discussed later in the paper.

3.2.7 African Charter on the Rights and Welfare of the Child 1990

The ACRWC was adopted in 1990 by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU).¹⁷¹ The motivating factor behind the adoption of the ACRWC, was that African member states were aggrieved as they felt that the CRC failed to reflect the economic and cultural diversity that represents the reality of African children.¹⁷²

The four pillars identified by the Committee of the Rights of the Child can also be found in ACRWC and it can be established that these principles form the “soul” of child rights treaties and must be the basis points when interpreting any instrument pertaining to child rights.¹⁷³

Although the ACRWC and the CRC have provisions that may seem repetitive and overlapping, the intention is that these two instruments should be used in conjunction with each other as both provide content where the wellbeing of the child is prioritised.¹⁷⁴

¹⁶⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000).

¹⁶⁸ Article 1 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000).

¹⁶⁹ Harvey (n166 above) 28.

¹⁷⁰ Article 2 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000).

¹⁷¹ ACRWC was initially adopted in July 1990 however the charter only came into effect in November 1999.

¹⁷² Rosa & Dutschke (n131 above) 230.

¹⁷³ Gose M 'The African Charter on the Rights and Welfare of the Child' An assessment of the legal value of its substantive provisions by means of a direct comparison to the Convention on the Rights of the Child (2002) Community Law Centre, University of the Western Cape available at <http://dullahomarinate.org.za/childrens-rights/Publications/Other%20publications/The%20African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf> (accessed 29 August 2017) 16.

¹⁷⁴ Rosa & Dutschke (n131 above) 230.

The ACRWC seeks to address continental issues that have plagued African states such as harmful cultural and social practices, the position of children where the primary caregiver has been imprisoned, birth registration and the prohibition against the use of children below the age of 18 in armed conflicts, to name a few.¹⁷⁵ The instrument mirrors the CRC in certain aspects for example both instruments include the fundamental principle of the best interest of the child and numerous others.¹⁷⁶

The offence of abduction is addressed in Article 29 of the ACRWC. The article highlights the dangers of the abduction, sale and trafficking of children.¹⁷⁷ This section is particularly significant when looking at the context of the numerous civil wars and armed conflicts that have taken place on the African continent, where abduction of children has formed a characteristic to the conflict.¹⁷⁸ These conflicts have a negative impact on the survival and development of the African child and prove to be detrimental to their future.¹⁷⁹

3.3 Domestic legal framework

3.3.1 Constitution of Nigeria 1999

The basic recognition and protection of human rights in Nigeria is enshrined in the country's constitution. From the first post-independence Constitution of Nigeria, there has been due recognition afforded to human rights.¹⁸⁰ The Constitution of 1999 is composed of two chapters which are dedicated to human rights.¹⁸¹ Chapter four sets forth the fundamental rights which are guaranteed under the Constitution.¹⁸² These include the right to life¹⁸³, freedom of expression¹⁸⁴ and the right of human dignity¹⁸⁵. Issues relating to the protection of children is contained on the residual list which essentially allows states to regulate the jurisdiction and application on issues relating to the protection of children.¹⁸⁶ This can prove to be problematic

¹⁷⁵ Sloth-Nielsen J 'Children's Rights Litigation in the African Region: Lessons from the Communications Procedure Under the ACRWC' in Liefwaard T and Doek JE (Eds.) *Litigating the Rights of the Child The UN Convention on the Rights of the Child in Domestic and International Jurisprudence* 251.

¹⁷⁶ Sloth-Nielsen (n175 above) 251.

¹⁷⁷ Article 29 of ACRWC.

¹⁷⁸ Article 29 of ACRWC.

¹⁷⁹ Murray R *Human Rights in Africa from the OAU to the African Union* (2004) 179.

¹⁸⁰ Dada JA 'Human Rights under the Nigerian Constitution: Issues and Problems' (2012) 2(12) *International Journal of Humanities and Social Science* 34.

¹⁸¹ Dada (n180 above) 34.

¹⁸² Constitution of the Federal Republic of Nigeria 1999.

¹⁸³ Section 33 CFRN (n182 above).

¹⁸⁴ Section 39 CFRN (n182 above).

¹⁸⁵ Section 34 CFRN (n182 above).

¹⁸⁶ Isokpan AJ *The Boko Haram Insurgency and The Child's Right to Education in Nigeria* (unpublished LLM thesis University of the Western Cape 2016) 20.

as local authorities are given to much freedom in relation to upholding child rights within their jurisdiction.

3.3.2. Nigeria's Child Rights Act 2003

As a member state to both the CRC and ACRWC, the Nigerian government is required to take proactive measures to fulfil its obligations. The rights contained in the CRC only become beneficial to children once the country takes the necessary measures to incorporate the provisions of the CRC in their domestic laws.

Passionate appeals by NGO's at a national and international level eventually led to the National Assembly, enacting the CRA into law in September 2003.¹⁸⁷ Currently the CRA is the principle law relating to children in Nigeria, it establishes legal obligations on duty bearers such as the government, parents and NGO's to uphold the rights of children in Nigeria.¹⁸⁸

Although the enactment of the CRA has been a revolutionary achievement in Nigeria, it is not without its own shortfalls. As noted earlier, legislation relating to children is not on the Exclusive List of law, the National Assembly may make laws to implement the CRA, but the laws are subject to ratification by a majority of the Houses of Assembly.¹⁸⁹ States are encouraged to adapt and implement the provisions of the Act and most states have.¹⁹⁰ The process of states adopting the CRA has led some states to change the definition of who is considered to be a child in terms of the act.¹⁹¹ In certain states the definition of a child has been altered by the legislature, with some states adopting a new definition where a child is considered to be any person below the age of 16 years old and certain states have even lowered the age of a child to 13 years old.¹⁹²

The fact that the responsibility of implementing the most important domestic child rights instrument in Nigeria has been left to the various local governments has proved to be a major defect in the standard of regional protection. For the Act to be implemented nationally without local authorities being able to dictate the degree of implementation, the CRA will need to be

¹⁸⁷ Ogunniran I 'The Child Rights Act versus Sharia Law in Nigeria: Issues, Challenges & a Way Forward' (2010) 30 *Child. Legal Rts. J.* 62.

¹⁸⁸ Ekundayo O 'The Nigerian Child Rights Act 2003: Its Strengths and Weaknesses' (2014) 2(2) *The International Journal of Humanities & Social Studies* 181.

¹⁸⁹ Ogunniran (n187) 62.

¹⁹⁰ Most States of the Nigeria Federation like Abia, Anambra, Bayelsa, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Rivers, Taraba, have adopted the CRA.

¹⁹¹ Iguh & Nosike (n111 above) 98.

¹⁹² Iguh & Nosike (n111 above) 98.

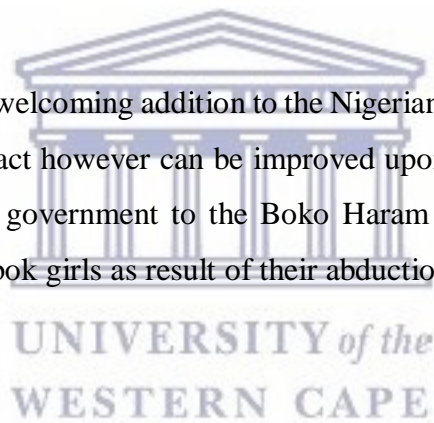
passed into law by a total of 36 federating states in their respective Houses of Assembly.¹⁹³ The freedom given to states relating to implementation and regulation of the CRA has placed major constraints in ensuring the advancement of child rights in Nigeria.

3.4 Conclusion

In evaluating the history of child rights, it can be established that there has been significant progress. The growth can clearly be illustrated by examining the content of the first human rights instruments, such as the UDHR, which merely recognises the concept of childhood, in relation to the CRC, which is an entire instrument, dedicated to the rights of the child.

Despite this progression, there is considerable improvements which need to occur particularly in relation to children who find themselves in situations of conflict. The evolving tactics of warfare has had a significant impact on the rights of children around the world and this must be scrutinised to establish a higher degree of protection for children who find themselves in situations of armed conflict.

The adoption of the CRA was welcoming addition to the Nigerian legal system. Certain aspects on the implementation of the act however can be improved upon. The next chapter examines the response by the Nigerian government to the Boko Haram insurgency and examine the violations suffered by the Chibok girls as result of their abduction.



¹⁹³ Ojo E 'A multi-disciplinary analysis of the protection of children against harmful practices in Nigeria' (Unpublished dissertation University of Pretoria 2014) 14.

CHAPTER 4- THE RESPONSE BY THE NIGERIAN GOVERNEMENT TO THE INSURGENCY AND CHILD RIGHTS VIOLATIONS BY BOKO HARAM PERPETRATED AGAINST THE CHIBOK GIRLS

4.1 Introduction

The abduction of the Chibok girls has received worldwide attention and there have been numerous campaigns advocating for the safe return of the girls. While in captivity not enough attention has been drawn to the various human and child rights violations that have been perpetrated against these girls by Boko Haram. For almost 3 years these young women lived in an environment where there was a total disregard of their rights.

In this chapter the paper analyses the response by the government of Nigeria to the Boko Haram insurgency. The chapter then examines the various violations which have been perpetrated against the Chibok girls and evaluates the alarming trend of the use of female suicide bombers by Boko Haram.

4.2 State Responsibility and the Concept of Due Diligence

During situations of armed conflict and counter terrorism operations, the responsibility of states is a critical aspect in relation to the protection of the civilian population. The human rights and livelihoods of the civilians come under threat during these situations and state parties have a responsibility to provide adequate protection to civilians. The basis of state responsibility is founded on omissions or acts which have been carried out by state actors, or by individuals acting vicariously through the state.¹⁹⁴ A state may be held liable in situations where the state has failed to exercise the necessary due diligence in preventing or responding to certain actions or omissions carried out by state and non-state actors.¹⁹⁵

The concept of state responsibility emerges from the framework of the international legal system, which places an obligation on states to formulate and implement the rules of international law.¹⁹⁶ The first attempt to codify the regulations applicable to state responsibility

¹⁹⁴ Manjoo R 'Report of the Special Rapporteur on violence against women, its causes and consequences' (2013) A/HRC/23/49 available at <https://documentsddsny.un.org/doc/UNDOC/GEN/G13/143/02/PDF/G1314302.pdf?OpenElement> (accessed 15 June 2017) 3.

¹⁹⁵ Manjoo (n194 above) 3.

¹⁹⁶ Chirwa DM 'The Doctrine of State Responsibility as a potential means of holding private actors accountable for human rights' (2004) 5(1) *Melb. J. Int'l L.* 5.

came from the International Law Commission, however success was only achieved in 2001 when the complete series of Draft Articles were adopted.¹⁹⁷ The Draft Articles do not possess the same legal power as treaties, but they have been able to codify existing case law and practices of states, displaying evidence of evolving and established customary international law.¹⁹⁸

A ground-breaking decision that has solidified the principle of due diligence and state responsibility in relation to human rights violations by non-state actors was delivered by the Inter American Court of Human Rights in the *Velázquez Rodríguez* judgement.¹⁹⁹ In the judgement the court held that “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person, or because the person responsible has not been identified) can lead to international responsibility on the part of the State, not on the basis of the act itself but because of the lack of due diligence to prevent the violation, or to respond to it as required by the Convention”.²⁰⁰ The obligation on state parties to act was reinforced once again in the decision deliberated by the European Court of Human Rights in the judgement of *Osman v U.K.*²⁰¹ In the case the court confirmed in its decisions that under circumstances where there is a real immediate risk, a positive obligation exists on state parties to take measures to prevent violations of human rights.²⁰²

The reason for providing jurisprudence from the various international human rights courts is to illustrate the standard of how states have previously been held responsible for failing to act with the necessary due diligence when it comes to the protection of citizens. If an investigation were to be carried out, as to whether Nigeria has fulfilled its positive obligation stemming from state responsibility and the principle of due diligence in relation to the insurgency and the Chibok abductions, it is more than likely that the outcome would be that Nigeria has failed to uphold the required international standard of due diligence.

¹⁹⁷ Chirwa (n196 above) 5.

¹⁹⁸ Chirwa (n196 above) 5.

¹⁹⁹ Jabiri A, Aziz ZA & Moussa J ‘Due Diligence and State Responsibility to Eliminate Violence Against Women - Region: Middle East & North Africa’ (2014) Due Diligence Project available at <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20Z.pdf> (accessed 24 September 2017) 2.

²⁰⁰ *Velázquez Rodríguez v. Honduras 1988, Inter-Am. Ct. H.R*

²⁰¹ Jabiri, Aziz & Moussa (n199 above) 3.

²⁰² *Velázquez Rodríguez v. Honduras 1988, Inter-Am. Ct. H.R*

4.3 Response by the Nigerian Government to the Boko Haram insurgency

The response to the plague of human rights violations as a result of the Boko Haram insurgency has been worrisome on the part of the Nigerian government.²⁰³ A combination of lacklustre leadership, poor governance and corruption has allowed Boko Haram to terrorise thousands of innocent civilians and essentially pose the greatest threat to human rights in Nigerian history.²⁰⁴

The Nigerian government has tried to nullify the threat posed by the insurgency by making use of different approaches. The initial response by the Nigerian authorities to resolving the Boko Haram crisis was a soft-handed approach, in which attempts were made to engage key figures within the ranks of Boko Haram in political negotiations.²⁰⁵ The former president Goodluck Jonathan established the Amnesty Committee on Dialogue and Peaceful Resolution of Security Challenges to try and negotiate a peace agreement and offer Boko Haram members amnesty.²⁰⁶ The 26 member committee was prescribed with a 3 month mandate to attempt to convince key figures of the organisation to surrender their arms in exchange for a pardon by the state for transgressions committed by the group.²⁰⁷ The Committee was comprised of current and former government officials, various religious authorities and human rights activists.²⁰⁸

The offer of amnesty by the Nigerian government was outright rejected by Abubakar Shekau, he was quoted saying "Surprisingly, the Nigerian government is talking about granting us amnesty. What wrong have we done? On the contrary, it is we that should grant you [a] pardon".²⁰⁹ Following the rejection of the amnesty agreement Boko Haram waged two catastrophic assaults, in the first incident Boko Haram murdered 55 people and freed over 100 prisoners and the second attack saw the murder of 53 people and the torching 13 Villages in Nigeria's Benue State.²¹⁰

The offer of amnesty by the Nigerian government to one of the most notorious terrorist groups must be carefully examined due to the fact that the offences perpetrated by Boko Haram does

²⁰³ Hassan MB 'Boko Haram Insurgency and the Spate of Insecurity in Nigeria: Manifestation of Governance Crisis' (2014) 4(18) *Research on Humanities and Social Sciences* 9.

²⁰⁴ Hassan (n203 above) 9.

²⁰⁵ Agbiboa D 'Resistance to Boko Haram: Civilian Joint Task Forces in North-Eastern Nigeria' (2015) *Conflict Studies Quarterly Special Issue* 11.

²⁰⁶ Agbiboa (n205 above) 11.

²⁰⁷ Agbiboa D 'The Ongoing Campaign of Terror in Nigeria: Boko Haram versus the State' (2013) 2(3) *Stability: International Journal of Security & Development* 11.

²⁰⁸ Agbiboa (n207 above) 11.

²⁰⁹ BBC 'Nigeria's Boko Haram rejects Jonathan's amnesty idea' 11 April 2013 available at <http://www.bbc.com/news/world-africa-22105476>(accessed 20 May 2017).

²¹⁰ BBC (n209 above).

not only amount to transgressions of national law but contravene numerous international laws. When evaluating amnesty offers by state parties, it must be noted that an amnesty agreement which does not violate a state's international legal duties, is more likely to be approved by the international community.²¹¹

The UN Security General provided clarifying comments on the granting of amnesty by state parties in the Report of the Secretary-General, on the Establishment of Special Court for Sierra Leone. The Secretary General provided that "While recognizing that amnesty is an accepted legal concept and a gesture of peace and reconciliation at the end of a civil war, or an internal armed conflict, the United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity or other serious violations of international humanitarian law".²¹² The commentary regarding amnesty puts forth a strong argument that Nigeria's offer of amnesty to Boko Haram does not comply with the country's international obligations.²¹³

Following the failure of the amnesty proposal, the Nigeria government abandoned the soft handed approach, adopting a tougher stance.²¹⁴ This was done by declaring a state of emergency in the states of Borno, Adamawa and Yobe, the three states where Boko Haram have been most active in an attempt to reclaim the territory that has been captured and restore some order in affected areas.²¹⁵ Despite the different approaches used by the Nigerian government, Boko Haram remains active and a threat to the people of Nigeria.

4.4 Strengthening domestic terrorism legislation and the adverse impact on human/child rights in Nigeria

The counter terrorism campaign against Boko Haram has been extremely costly on the Nigerian government. The state has substantially increased the defence budget from 100 billion Naira in 2010, to 1 trillion Naira in 2012 and 2013 respectively following several attacks by Boko Haram.²¹⁶ The substantial funding has seen the enactment of domestic terrorism legislation, the

²¹¹ Majzub D 'Peace or Justice? Amnesties and The International Criminal Court '(2002) 3(2) *Melbourne Journal of International Law* 252.

²¹² United Nations Secretary- General, Report of the Secretary-General on the Establishment of Special Court for Sierra Leone (2000) UN Doc S/2000/915 available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2000/915(accessed 30 June 2017) 5.

²¹³ United Nations Secretary- General, Report of the Secretary-General on the Establishment of Special Court for Sierra Leone (n212 above) 5.

²¹⁴ Agbibo (n205 above) 12.

²¹⁵ Agbibo (n205 above) 12.

²¹⁶ International Crisis Group (ICG) (n34 above) 30.

establishment of various task forces and increasing the capabilities of the military, however nearly a decade later Boko Haram remains an active threat.

In response to the evolving threat of Boko Haram, the Nigerian government enacted the Terrorism (Prevention) Act (TPA) in 2011.²¹⁷ The legislation was enacted with the purpose of targeting terrorism and establishing measures for the prohibition, prevention, combating acts of terrorism, the subsidizing of terrorism in the state of Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of the Financing of Terrorism.²¹⁸

The TPA provides a broad definition of what constitutes a terrorist act and it includes the kidnapping of an individual.²¹⁹ The definition of kidnapping is broad enough to include the abduction of children however, not enough consideration was afforded to the position of children in relation to terrorism and counter terrorism operations.²²⁰ According to report findings, it is estimated that Boko Haram has been liable for the abduction of at least 4,000 girls, boys and young women since the insurgency began.²²¹ The TPA fails to acknowledge the vulnerability of children to abductions and the importance of protecting the rights of all Nigerian children during counter-terrorism activities.²²² Another major shortfall of this legislation, is the failure to offer the necessary protection and care to children who have been adversely affected by terrorism.²²³ The act is silent regarding the reintegration and rehabilitation of children who have become victims of terrorist activities. It is apparent that the rights of the child which are recognised in the CRC, CRA and the Constitution of Nigeria did not receive strong enough consideration during the enactment and promulgation of the TPA.²²⁴

The TPA has come under severe criticism from both domestic and international organisations as the instrument has essentially allowed for substantial human rights abuses by state and non-state forces in the fight against Boko Haram. Following immense criticism, the Terrorism

²¹⁷ The Terrorism (Prevention) Act 2011 and Terrorism (Prevention) (Amendment) Act, 2013 were enacted to counter the Boko Haram insurgency.

²¹⁸ Terrorism (Prevention) Act 2011.

²¹⁹ Terrorism (Prevention) Act 2011.

²²⁰ Olawuyi (n106 above) 17.

²²¹ Report of the Secretary-General on children and armed conflict in Nigeria (S/2017/304) available at <https://reliefweb.int/sites/reliefweb.int/files/resources/N1709682.pdf> (accessed 1 September 2017) 13.

²²² Report of the Secretary-General on children and armed conflict in Nigeria (n221 above) 13.

²²³ Olawuyi (n106 above) 17.

²²⁴ Olawuyi (n106 above) 17.

Prevention Act was amended to address some of its shortcomings that have been exploited by Nigerian security forces in the fight against Boko Haram.²²⁵

During counter terrorism operations and attempts to recover the abducted girls, the conduct of Nigerian security forces has contravened numerous international laws. The actions by the various task force members has been condemnable from a human rights perspective.²²⁶ Some of the tactics used by security forces in the fight against Boko Haram include enforced disappearance, torture, extrajudicial execution and prolonged detention without trial.²²⁷ The Terrorism Prevention Act has provided power to security forces to enter the homes of persons, bar them from their homes without a warrant and the right to confiscate property.²²⁸

Amnesty International has documented that hundreds of people who have been suspected of having links to Boko Haram have been arbitrarily detained by security forces, without any conclusive evidence of affiliation to the terrorist organisation.²²⁹ Suspects have remained in detention without being charged with an offence or going on trial, without proper notification to their family members of their detention, without appearing before a judicial authority and without access to a legal representation.²³⁰ There is no judicial oversight relating to these acts and minimal retrospective action has been taken against agents who are guilty of these offences. The Nigerian government has placed its objective of eradicating Boko Haram above protecting the human rights of its own people. The TPA has essentially aided Nigerian security forces in the violations of international law and human rights while attempting to combat the insurgency.

4.4.1 Joint Task Force

Feeling overwhelmed by Boko Haram's violent attacks in the northern region, drastic action was required to combat the jihadist insurgency. In an attempt to nullify the grave danger posed to the civilian population, the Nigerian government established a special Joint Task Force code-named JTF Operation Restore Order I.²³¹ The JTF is comprised of various personnel from the

²²⁵ Pate (n48 above) 25.

²²⁶ Esq Al 'Anti-Terrorism Laws and Fundamental Rights: The Nigeria Example' (2017) 3(2) *Journal of Humanities and Social Policy* 17.

²²⁷ Esq (n226 above)17.

²²⁸ Pate (n48 above) 26.

²²⁹ Amnesty International 'Nigeria: Trapped in the cycle of violence' (2012) available at <https://www.amnesty.org/en/documents/AFR44/043/2012/en/> (accessed 3 September 2017) 18.

²³⁰ Amnesty International (n229) 18.

²³¹ Agbiboa D 'Peace at Daggers Drawn? Boko Haram and the State of Emergency in Nigeria' (2014) 37(1) *Studies in Conflict & Terrorism* 60.

armed forces including the Nigerian Police Force, the Department of State Security, Nigerian Customs Service, Nigeria Immigration Service and the Defence Intelligence Agency.²³²

One of the key factors leading to the establishment of the JTF is that primary institutions responsible for internal security including the police force, have been extremely overwhelmed with the spike in violence as a result of the insurgency.²³³ The police in Nigeria have suffered from inadequate resources, expertise in counter terrorism operations and have been unable to provide a solid resistance against the insurgency.²³⁴ Following the inception of the JTF, the Nigerian government deployed 8000 soldiers to regions most affected by the insurgency signifying the largest deployment of military officials since the Nigerian Civil War.²³⁵

During counter operations against Boko Haram, JTF officials have unlawfully detained suspects, carried out extrajudicial executions, acts of torture and according to reports submitted by the International Criminal Court, members of the JTF perpetrated acts of rape, pillage and destruction of property belonging to the civilian population.²³⁶ The ICC has acknowledged the human rights violations by members within the ranks of the JTF, however based on current information it does not amount to a state policy launching an attack on the civilian population.²³⁷

Despite the JTF being established as a response to the threat of Boko Haram, the task force has come under the international spot light, not for their valiant efforts but their grievous conduct in the fight against the insurgency. Human Rights Watch has monitored the JTF and documented grave violations of human rights and IHL by its members.²³⁸ The excessive violations by members within the ranks of the JTF, has contradicted the international honour and responsibility of security forces in protecting and preserving the rights of the civilian population.²³⁹

²³² Mbah P & Nwangwu C 'The Counter-Insurgency Operations of the Joint Task Force and Human Rights Abuses in Northern Nigeria, 2011-2013' (2014) 4(5) *Journal of Educational and Social Research* 73.

²³³ Itiri NU 'Civilians in Counter-Insurgency Operations in Nigeria' (2015) 3(11) *The International Journal of Humanities & Social Studies* 53.

²³⁴ Itiri (n233 above) 53.

²³⁵ Agbibo (n205 above) 12.

²³⁶ International Criminal Court 'Situation in Nigeria Article 5 Report' (2013) available at <https://www.icc-cpi.int/iccdocs/PIDS/docs/SAS%20-%20NGA%20-%20Public%20version%20Article%205%20Report%20-%202005%20August%202013.PDF> (accessed 7 September 2017) 27.

²³⁷ International Criminal Court 'Situation in Nigeria Article 5 Report' (n236 above) 27.

²³⁸ Human Rights Watch 'Spiralling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria' (2012) available at https://www.hrw.org/sites/default/files/reports/nigeria1012webwcover_0.pdf (accessed 6 September 2017) 58.

²³⁹ Mbah & Nwangwu (n232 above) 74.

4.4.2 Civilian Joint Task Force

In June 2013, authorities in Borno State established a civilian militia known as the Civilian Joint Task Force.²⁴⁰ The CJTF was founded in order to assist security forces within the Borno State by identifying and arresting alleged Boko Haram members.²⁴¹ The structure of the group is significantly different compared to the JTF, as the CJTF is by no means a unified body, it is comprised of a collection of various vigilante groups who seek to provide security to their communities.²⁴²

Within the ranks of the CJTF are men and boys between the ages of 14 and 30 who are subsequently remunerated for their services by the Borno State, members receive training from the military and the mobile police at the National Youth Service Corps.²⁴³ The vigilante group has had some success against the Boko Haram, partly due to its numerical strength and their local knowledge of the terrain where the sect operates.²⁴⁴

Despite the marginal successes achieved against Boko Haram, the CJTF has been guilty of extrajudicial killings of suspected insurgents, detaining of suspected members without trial and raiding of numerous communities suspected of harbouring members of Boko Haram.²⁴⁵ The absence of a regulatory body has allowed the CJTF to spiral out of control and instead of combating the threat of Boko Haram, the vigilante group has contributed towards the magnitude of human rights violations in Nigeria.²⁴⁶

A disturbing trend within the ranks of the CJTF is the number of children under the age of 18 who have been recruited to have a role in combatting the insurgency. Initially when the group was formed no formal age restriction was placed on members until a rule was created stating “No child below the age of 15 will be allowed to join the Civilian Joint Task Force”.²⁴⁷ Despite the existence of this rule, young boys have been forcibly recruited for supplying information regarding suspected members, spying and for the participation in hostilities.²⁴⁸ With the

²⁴⁰ International Criminal Court ‘Situation in Nigeria Article 5 Report’ (n236 above) 27.

²⁴¹ Amnesty International (n25 above) 24.

²⁴² Report of the Secretary-General on children and armed conflict in Nigeria (n221 above) 5.

²⁴³ Amnesty International (n25 above) 24.

²⁴⁴ Isokpan AJ & Durojaye E ‘Impact of the Boko Haram Insurgency on the Child's Right to Education in Nigeria’ (2016) *PER / PELJ* 2016(19) 17.

²⁴⁵ Odomovo AS ‘Insurgency, Counter- Insurgency and Human Rights Violations in Nigeria’ (2014) 3 *The Age of Human Rights Journal* 55.

²⁴⁶ Odomovo (n245 above) 55.

²⁴⁷ Report of the Secretary-General on children and armed conflict in Nigeria (n221 above) 5.

²⁴⁸ Watchlist on Children and Armed Conflict (n9 above) 5.

recruitment of children by the CJTF, minors are essentially being used in combat terrorism in Nigeria and this is extremely concerning.²⁴⁹

The Nigerian administration are failing fulfil its international obligation as a member state to the CRC and Optional Protocols. Better preventative measures need to be adopted to bring an end to the recruitment of children within the ranks of the CJTF.

4.5 Child rights violations perpetrated against the Chibok girls by Boko Haram.

The abduction of the Chibok girls has been well documented worldwide however, not enough attention has been drawn to the violations perpetrated against the girls at the hands of Boko Haram. There have been countless violations of civil and political rights and socio-economic rights, due to the complexity of the offences and constraints of the paper only a select few of violations which have been drawn to my attention will be investigated.

4.5.1 The right to be protected from abduction

The first right that will be examined is the right to be protected from abduction, which is the primary violation perpetrated against the Chibok girls that has subsequently led to several other violations of their basic rights. Article 35 of the CRC places an obligation on state parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or trafficking of children for any purpose or in any form”.²⁵⁰ This right is reiterated in the ACRWC under Article 29 which requires state parties to take all measures necessary in order to impede the abduction, the sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child.²⁵¹ In examining the standard set forward by the two most important legal treaties relating to children, it is clear that a positive obligation exist on the Nigerian state to prevent abductions such as which took place in Chibok.

Abductions is not only an offence in terms of domestic law, the act is recognised as an offence under international law. In terms of the jurisdiction within the ICC, abduction is viewed as a

²⁴⁹ In reports published by the Secretary-General on children and armed conflict in Nigeria children as young as 9 years old were reported to be assisting the CJTF.

²⁵⁰ Article 35 of CRC.

²⁵¹ Article 29 of ACRWC.

part of an “enforced disappearance” which is categorized as a crime against humanity under the Rome Statute.²⁵²

The abduction of the Chibok girls can be viewed as the inception of the several other human rights violations which they have subsequently suffered. The inability of the Nigerian government to put in place better security measures for the girls given the circumstances surrounding the abduction, has resulted in a violation of the right to be protected from abduction.

4.5.2 The right of the child to be protected from the participation in armed conflict and the use of child suicide bombers

The act of suicide bombing has formed a fundamental element of terrorism. Suicide bombing is an act that utilises the human body as a weapon to unleash large-scale destruction upon the intended targets, in the majority of instances innocent civilians lose their lives.²⁵³ The deployment of suicide bombers became notorious during the early 1980’s, when suicide bombers were used to carry out attacks against American, French and Italian Marines in Lebanon.²⁵⁴

A disturbing trend has emerged where various terrorist groups have adopted the sinister tactic of using children as suicide bombers. Boko Haram is just one of the numerous terrorist organisations that have deployed this cowardly tactic. Boko Haram views suicide bombing as a cost-efficient tactic that is well suited to the sect’s environment.²⁵⁵ Poverty is a central theme to the insurgency, based on a lack of funds and resources the use of suicide bombings fits with the ambit of what is affordable.²⁵⁶

Boko Haram has preyed on children to carry out attacks in the name of the sect mainly because children, due to their innocent nature are easier to indoctrinate into their ideology. Given the diminutive cognitive development of children and young teens, Boko Haram has found it easier

²⁵² Article 7 of the Rome Statute 1998.

²⁵³ Sawicki J ‘A Tragic Trend. Why Terrorists Use Female and Child Suicide Bombers’ (2016) 97(4) Health Prog.Jul; 40.

²⁵⁴ Sawicki (n253 above) 40.

²⁵⁵ Warner J & Matfess H ‘Exploding Stereotypes: The Unexpected Operational and Demographic Characteristics of Boko Haram’s Suicide Bombers’ 2017 Combating Terrorism Centre (CTC) (2017) available at <https://ctc.usma.edu/v2/wp-content/uploads/2017/08/Exploding-Stereotypes-1.pdf> (accessed 25 October 2017) 7.

²⁵⁶ Warner & Matfess (n255 above) 7.

to coerce them into carrying out attacks.²⁵⁷ Young women and girls have been previously used as couriers for resources and for domestic work at the groups strongholds, however the deployment of young girls as suicide bombers has become more frequent.²⁵⁸ A key characteristic to the use of children by the sect, is the severe shock that these attacks cause.²⁵⁹ These attacks have been severely condemned by numerous states and human rights organisations around the world.

Due to previous suicide bombings in the north of Nigeria, security has increased substantially in public areas. Attacks that have been carried out by men or boys previously have resulted in security forces and civilians becoming accustomed to males carrying out these attacks.²⁶⁰ A man who is acting suspiciously in public will attract security forces making it challenging to complete an attack and as a result Boko Haram have begun to make use of young women and girls.²⁶¹

The use of young women and girls as suicide bombers highlights the sect's sexist perception of females being inferior and therefore they are considered more eligible to carry out jihad than their male counterparts.²⁶² Out of 81 identified child soldiers who have carried out attacks in the name of Boko Haram, only 16 were males.²⁶³ As a member state to the ACRWC and CRC, the Nigeria has an obligation to prevent the use of children during armed conflicts which includes children carrying out terrorist attacks.

The CRC like IHL sets an age limit of enlisting children into the armed forces and having an active role in hostilities at 15.²⁶⁴ While this provides protection for children under the age of 15 it negates the fact that persons between 16 and 18 years old are still children.

Nigeria has also ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.²⁶⁵ The Protocol seeks to improve the protection, which is afforded to children during armed conflicts. Evaluating the immoral trend of the use of children during armed conflicts by state and non-state actors, the Optional Protocol addresses a major shortcoming, which is the age limit placed on recruitment. Under the

²⁵⁷ Warner & Matfess (255 above) 33.

²⁵⁸ Onuoha & George (n55 above) 6.

²⁵⁹ Warner & Matfess (n255 above) 33.

²⁶⁰ Onuoha & George (n55 above) 6.

²⁶¹ Onuoha & George (n55 above) 6.

²⁶² Warner & Matfess (n255 above) 33.

²⁶³ Warner & Matfess (n255 above) 35.

²⁶⁴ Article 38 of the CRC.

²⁶⁵ The Optional Protocols of the CRC was ratified by Nigeria in 2010.

protocol “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”, this extends protection from 15 to 18.²⁶⁶

The use of children directly or indirectly during hostilities is a heinous a crime that contravenes numerous international laws. The fact that young children are being used as pawns to carry out suicide attacks on the population is a violation their human dignity and more importantly their right to life. Although there is no conclusive proof that the Chibok have been used as suicide bombers, they been forcibly used by Boko Haram in various situations resulting in indirect participation in the conflict.

4.5.3 Sexual and gender-based violence against girls

Females generally suffer the most during situations of conflict with gender-based violence occurring in nearly every armed conflict throughout history. Despite most participants on the frontline of hostilities being males, women are subject to grave violations of their human dignity and bodily integrity as a result of the sexual/gender-based violence perpetrated against them. The UN defines gender-based violence as the sexual, physical or mental suffering of women and children, including coercion, threats of such acts or arbitrary deprivation of liberty, irrespective of whether such acts committed in public or private life.²⁶⁷ Gender-based violence is not just a crime against the bodies of females but is characterized as a manifestation of discrimination on the basis of sex.²⁶⁸

Sexual violence against women during situations of armed conflict is recognised as a crime under international law. In terms of the Rome Statute, the crime of rape is recognised as a war crime and a crime against humanity.²⁶⁹ Sexual slavery and forced pregnancy fall within the definition of crimes against humanity.²⁷⁰ The provisions of the CRC and its Optional Protocol on trafficking and exploitation²⁷¹ establishes protection for children against sexual violence by

²⁶⁶ Article 1 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

²⁶⁷ Zenn & Pearson (n80 above) 47.

²⁶⁸ Sellers PV ‘The Prosecution of Sexual Violence in conflict: The Importance of Human Rights as Means of Interpretation’ (2008) OHCHR available at http://www.ohchr.org/Documents/Issues/Women/WRGS/Paper_Prosecution_of_Sexual_Violence.pdf (accessed 4 June 2017) 1.

²⁶⁹ Article 7 of the Rome Statute.

²⁷⁰ Article 7 of the Rome Statute.

²⁷¹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).

providing that children must enjoy protection from acts such as torture, inhumane and degrading treatment.²⁷²

According to reports submitted by the UN it estimated that at least 7,000 girls and women have suffered from sexual violence perpetrated by Boko Haram since the insurgency began.²⁷³ The number of perpetrations by Boko Haram is by no means completely accurate, as the reporting mechanisms has not been available to thousands of victims.²⁷⁴

Under IHL acts of sexual violence including rape are prohibited under the Geneva Conventions and the Additional Protocols.²⁷⁵ Article 27 of the 4th Geneva Convention provides special protection against sexual violence by stating, “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”.²⁷⁶ This protection is broad enough to include children. The UN Security Council has added sexual violence committed against children as an additional trigger, for listing parties to the conflict in the Secretary-General’s Annual Report on Children and Armed Conflict in resolution 1882 of 2009.²⁷⁷ There has been accounts from members of the negotiation operations who have encountered some of the girls while trying to negotiate their release. Steven Davis, one of the negotiators stated that abducted girls would tell how they were raped and used as sex slaves repeatedly while being held captive by Boko Haram.²⁷⁸

The abducted girls have been forced to marry Boko Haram members which is recognised as an offence in terms of international law.²⁷⁹ The crime of forced marriage was addressed by the Special Court for Sierra Leone which defined it as “words or other conduct intended to confer a status of marriage by force or threat of force or coercion, such as that caused by fear of

²⁷² UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict, Working Paper No. 1, The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation (2009) available at https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf (accessed 4 June 2017) 16.

²⁷³ Report of the Secretary-General on children and armed conflict in Nigeria (n221 above) 11.

²⁷⁴ Report of the Secretary-General on children and armed conflict in Nigeria (n221 above) 11.

²⁷⁵ UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (n272 above) 16.

²⁷⁶ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949, 75 UNTS 287.

²⁷⁷ UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (n272 above) 16.

²⁷⁸ Buba IA ‘Terrorism and Rape in Nigeria: A Cry For Justice’ (2015) 4(11) *Journal of Business and Management Review (OMAN Chapter)* 8.

²⁷⁹ Agbambu C ‘Chibok girls: Many killed, 40 married off, Boko Haram claims’ available at <http://www.tribuneonlineng.com/chibok-girls-many-killed-40-married-off-boko-haram-claims/> (accessed 5 June 2017).

violence, duress, detention, psychological oppression or abuse of power against the victim, or by taking advantage of a coercive environment, with the intention of conferring the status of marriage".²⁸⁰ The acts which are classified as forced marriage are distinct from sexual acts, as an individual is forced into the appearance of marriage by threat or other forms of coercion.²⁸¹ What makes the forced marriage by Boko Haram members to some of the Chibok girls particularly disturbing is the fact that the girls in all likelihood were minors when the offence was committed.

Jurisprudence regarding forced marriage has emerged from the International Criminal Tribunal for the former Yugoslavia (ICTY) which was established to prosecute atrocities committed against the civilian population during the Yugoslav wars. The ICTY delivered a groundbreaking judgment in relation to the offence of forced marriage during armed conflict in the case of *Prosecutor v. Kvočka et al.* In the judgement, the ICTY became the first tribunal to recognise that forced marriage during armed conflict, is a prosecutable crime.²⁸²

The acts of sexual violence carried out against the Chibok girls' highlights the grave danger Boko Haram poses to the children of Nigeria, particularly females. Not only does sexual violence violate their basic rights of bodily integrity and human dignity but sexual violence has been recognised as amounting to torture at international level.²⁸³ International tribunals for Rwanda, the former Yugoslavia, and the European Court of Human Rights have all established that rape amounts to torture and there is an absolute prohibition on this conduct.²⁸⁴ Based on the jurisprudence stemming from these international courts it can be established that the Chibok girls are victims of torture.

The abducted Chibok girls have been subjected to unimaginable infringements on their rights due to the sexual violence by Boko Haram. The futile attempts by the Jonathan administration to provide a safe return for the girls is a key contributory factor in degree of sexual violence suffered by the girls.

²⁸⁰ *The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (the AFRC Accused)*, SCSL-04-16-T, Special Court for Sierra Leone 2007.

²⁸¹ *The Prosecutor vs. Alex Tamba Brima* (n280 above)

²⁸² *Prosecutor v. Miroslav Kvočka et al.*

²⁸³ UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (n272 above) 16.

²⁸⁴ UN Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (n272 above) 16.

4.5.4 The right to education

The insurgency by Boko Haram has proved to be a substantial obstacle to the ability of children being able to freely exercise their right to education in the Nigeria. The right to education is a basic human right, which is recognised in the UDHR²⁸⁵, CRC²⁸⁶, ICCPR²⁸⁷, ACRWC²⁸⁸ and the Nigerian Constitution.²⁸⁹

Article 28 of the CRC requires state parties to recognize the child's basic right to education and the achievement of this right must be done progressively based on equal opportunity.²⁹⁰ States are required to take the necessary steps and make primary school education free and available to all.²⁹¹ On a continental level the ACRWC recognises the basic right to education of the child in Article 11.²⁹² The ACRWC differs from the CRC, as the right to education does not require progressive realisation.²⁹³

Initially, Boko Haram threatened to carry out attacks on non-Islamic schools and resorted to the intimidation of students and teachers.²⁹⁴ The jihadist group shifted its tactics to where members carried out violent attacks targeting what they perceive as schools which teach "western education".²⁹⁵ Destruction of schools, abduction of students and teachers has had a catastrophic impact on the educational system in the north. The right to education of Nigerian children has been severely affected as a result.

According to Amnesty International it is estimated that at least 70 teachers, and over 1000 school children have been murdered or wounded in attacks by Boko Haram.²⁹⁶ UNICEF has conducted extensive research on the impact that Boko Haram has had on the education system in Nigeria and because of aggressive attacks on schools, teachers and children it is estimated

²⁸⁵ Article 18 of the Universal Declaration of Human Rights.

²⁸⁶ Article 14 of the CRC.

²⁸⁷ Article 18 of the ICCPR.

²⁸⁸ Article 9 of the ACRWC.

²⁸⁹ S18 CFRN (n182 above).

²⁹⁰ Article 28 of the CRC.

²⁹¹ Article 28 of the CRC.

²⁹² Article 11 of the CRC.

²⁹³ Isokpan & Durojaye (n244 above) 4.

²⁹⁴ Human Rights Watch 'They Set the Classrooms on Fire' (2014) available at https://www.hrw.org/sites/default/files/report_pdf/nigeria0416web.pdf (accessed 14 September 2017) 17.

²⁹⁵ Human Rights Watch (n294 above) 17.

²⁹⁶ Ugwumba EU & Odom TC 'Boko Haram insurgency: A peril to the achievement of education for all in Nigeria' (2014) 3(1) *International Journal of Education, Learning and Development* 2.

that over one million children are unable to attend school and effectively access their right to education.²⁹⁷

During the duration of their captivity the right to education of the abducted girls was virtually non-existent. Based on the fact that there was no access to education the aims of education cannot be realised for these girls. The aims of education set out objectives that member states education systems should strive to achieve. Article 29(1) of the CRC provides the aims of education which are “The development of the child's personality, talents, mental and physical abilities to their fullest potential: the development of respect for human rights, fundamental freedoms and for the principles enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin and the development of respect for the natural environment”.²⁹⁸

The aims of education are to support, endorse and protect the core values of the Convention which are the human dignity innate in every child and his or her equal and inalienable rights.²⁹⁹ All of the aims of education have a direct link to the realisation of the child's rights and human dignity, the aims take into account a child's special developmental needs and the diverse evolving capacities possessed by children.³⁰⁰ The child's right to education requires a level of education which provides and develops life skills, strengthens the capacity of the child to be capable of enjoying a full range of human rights and to promote a culture that combines appropriate values coming from human rights.³⁰¹

Boko Haram's abduction of the Chibok girls has not only deprived them of their basic right to education, but the key skills and characteristics arising from the aims of education that strengthens the capacity of children to be able to enjoy their basic human rights have been diminished. The absence of education and the foundations built by aims education will

²⁹⁷ Isokpan & Durojaye (n244 above) 10.

²⁹⁸ Article 29 of the CRC.

²⁹⁹ General Comment No. 1 (2001) Article 29 (1): The Aims of Education CRC/GC/2001/1 2.

³⁰⁰ General Comment No. 1 (n299 above) 2.

³⁰¹ General Comment No. 1 (n299 above) 2.

undoubtedly prove to be detrimental to these girls. Boko Haram have not only violated the right to education of the Chibok girls but that of thousands of children residing in Nigeria.

4.5.5 The right to the highest attainable standard of health

The next right which has been infringed upon is the right to highest attainable standard of health. The CRC under Article 24 provides “State Parties to recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”.³⁰² States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”.³⁰³ The right to health is also recognised under various international instruments such as the ICESCR³⁰⁴, ACRWC³⁰⁵, ICCPR³⁰⁶, the Nigerian Constitution³⁰⁷ and the CRA of Nigeria.³⁰⁸

The insurgency has undoubtedly had a severe impact on the physical and mental health of the abducted girls. Most of the abducted girls have been held captive for over two years and while in captivity the access to a reasonable standard of healthcare facilities has been non-existent. Due to the vicious nature of Boko Haram, these girls have witnessed events that will have extreme ramifications on their mental health. It has been well documented that children who are subjected to a radical environment or witnessed killings are more likely to have mental health difficulties following such travesties.³⁰⁹ The physical health of the girls has been significantly impacted as well due to the absence of proper health care facilities while in captivity.

Children who find themselves in situations of armed conflict commonly suffer from Post-Traumatic Stress Disorder (PTSD). PTSD is a psychosomatic condition that develops from situations where an individual has witnessed or experienced a traumatic or threatening event that invokes fear, panic or terror.³¹⁰ The Chibok girls have been living in a radical environment for over two years where killings, torture and sexual violence have become a part of their daily lives. It is indisputable that the abducted girls will suffer from PTSD at some time in their lives.

³⁰² Article 24 of the CRC.

³⁰³ Article 24 of the CRC.

³⁰⁴ Article 12 of the ICESCR.

³⁰⁵ Article 14 ACRWC.

³⁰⁶ Article 18 of the ICCPR.

³⁰⁷ S37 CFRN (n182 above).

³⁰⁸ Article 13 of the CRA.

³⁰⁹ Olawuyi (n106 above) 9.

³¹⁰ Olawuyi (n106 above) 9.

Boko Haram have violated their right to health as a result of the abduction and the inability of the part of the Nigerian government to implement adequate mental health programs to assist the girls with the rehabilitation any of PTSD which they might suffer from is depriving them of the highest attainable standard of healthcare.

4.5.6 The right to privacy

The right to privacy is guaranteed by the CRC, ACRW³¹¹, the Nigerian Constitution³¹² CRA³¹³ and the ICCPR.³¹⁴ In terms of the CRC, Article 16 provides that no child should be subjected to unlawful or arbitrary intrusion on his or her right to privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.³¹⁵ Article 16 of the CRC must be applied in a manner which is free from discrimination and the privacy of the child must be protected in every situation which includes privacy with the family setting, legal proceedings, alternative care and all institutions, facilities and services.³¹⁶

Article 40 (2)(b)(vii) of the CRC relates to the privacy of the child when in conflict with the law and requires that in situations where a child is alleged or accused of having committed an infringement of penal law, his or her right to privacy must be respected at all stages of the proceedings.³¹⁷ The Committee on the Rights of the Child has also provided that the respect of the right to privacy must extend equally to children who are victims of violence.³¹⁸ A degree of special protection is needed in instances when a child is a victim of sexual violence because of the nature of the offence.

In a video released on 14 August 2014, a masked member of group claims about 40 of the girls have been married off to members of Boko Haram.³¹⁹ One of the girls who managed to escape

³¹¹ Article 10 provides “No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks”.

³¹² S37 CFRN (182 Above).

³¹³ Article 8 of the CRA.

³¹⁴ Article 17 of the ICCPR.

³¹⁵ Article 16 of the CRC.

³¹⁶ Hodgkin R & Newell P *Implementation handbook for the Convention on the Rights of the Child* (2007) 205.

³¹⁷ Article 40(2)(b)(vii) of the CRC.

³¹⁸ Hodgkin & Newell (n316 above) 203.

³¹⁹ Dixon (n99 above)

the stronghold of Boko Haram in the Sambisa forest has been interviewed where she revealed, most of the girls have been made into sex slaves or married off to members.³²⁰

The Committee on the Right of the Child has come out and stated that the media have a responsibility to not abuse children and the integrity of every child must be protected during reporting of offences such as sexual abuse and criminal activities.³²¹ Based on the above information and accounts from girls who have managed to escape, the abducted girls are to be classified as victims of sexual violence. The media has failed to respect the severity of the trauma suffered by the girls, their status as victims of sexual violence and have subsequently violated their right to privacy.

Articles have been published where the pictures and names of the abducted girls have been disclosed.³²² UNICEF has developed guidelines which the media should follow when dealing with children who are victims of sexual violence. When reporting on victims of sexual violence under the age of 18 the name of the child must always be changed and the visual identity of any child who falls into this category must be obscured.³²³ Journalists covering the abduction have failed to exercise the guidelines set forth by UNICEF and no consideration has been given to the effect these publications will have on these girls in the future.

Regrettably for the Chibok girls, the media has placed these girls in danger of being stigmatized by revealing personal information and pictures of the girls who are victim's sexual violence. This will make the process of reintegrating these girls back into a positive social environment even more challenging.

4.5.7 Freedom of Religion

One of the central aspects to the Boko Haram insurgency is religion. As noted earlier Boko Haram seek to enforce Shariah law across the northern region of Nigeria. The reason for drawing attention to right to freedom of religion is because the girls who were abducted come

³²⁰Attoh NR 'The Right of the Chibok Girls to Privacy in International and Municipal Law' (2014) available at <https://ssrn.com/abstract=2462277>(accessed 22 May 2017).

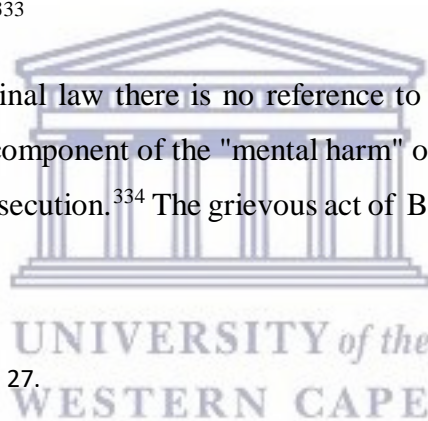
³²¹ Day of Discussion the Child and the Media Committee of the Rights of the Child Excerpted from CRC/C/50, Annex IX, 13th Session (1996) available at <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/media.pdf> (accessed 22 May 2017) 1.

³²² Baffour K 'Names, Photographs of Chibok Girls Abducted By Boko Haram Made Public' available at <https://www.naija.ng/68514.html> (accessed 7 July 2017).

³²³ Day of Discussion the Child and the Media Committee of the Rights of the Child (n321 above) 2.

from predominantly Christian backgrounds and were coerced to convert to Islam.³²⁴ The right to freedom of religion is a basic human right which is guaranteed under the ICCPR³²⁵, ACRWC³²⁶ the CRA³²⁷ and the Nigeria Constitution.³²⁸ A child's right to freedom of religion is protected under Article 14 of the CRC, this is an absolute right in which every child is able to manifest his or her religion, with this right only being allowed to be restricted in limited instances.³²⁹ The structure of Article 14 has been based on Article 18 of the ICCPR which guarantees religious freedoms.³³⁰ In addressing the right to freedom of religion Article 18(1) of the ICCPR provides in the second paragraph that, "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".³³¹ Article 18(2) places a prohibition on any form of coercion which would impair any individual's freedom to have or adopt a religion of his or her choice.³³² The Human Rights Committee has provided commentary on the subject of religious coercion and established that the threat of the use of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs is prohibited.³³³

In terms of international criminal law there is no reference to the "religious coercion," but coercion encompasses a tacit component of the "mental harm" or "conditions of life" elements of genocide, or of religious persecution.³³⁴ The grievous act of Boko Haram forcing the Chibok



³²⁴Human Rights Watch (n15 above) 27.

³²⁵ Article 18 of the ICCPR.

³²⁶ Article 9 of the ACRWC.

³²⁷ Section 7 of the CRA guarantees the right to freedom of thought, conscience and religion.

³²⁸ S38 provides that '(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian. (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination. (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society'.

³²⁹ Article 14 of the CRC.

³³⁰ UNICEF, Implementation Handbook for the Convention on the Rights of the Child (2007) available at https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf (accessed 10 July 2017) 186.

³³¹ Article 18 of the ICCPR.

³³² Article 18 of the ICCPR.

³³³ Human Rights Committee General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18) (1993) para 5.

³³⁴ Llewellyn D & Conde HV 'Freedom of Religion or Belief under International Humanitarian Law and International Criminal Law' (2004) 12(39) *Trinity L. Rev.* 59.

girls to convert to Islam is not viewed as a crime under international law or prosecutable as such, but it is a violation of their right to freedom of religion.

4.6 The International Criminal Court and the offences perpetrated by Boko Haram.

The ICC was established in 2002 with an objective to prosecute perpetrators of the most serious offences of concern to the international community and act as a preventative measure for such crimes.³³⁵ With ratification on 27 September 2001, Nigeria became a member state to the Rome Statute giving the ICC jurisdiction with its territory.³³⁶

The offences that fall within the jurisdiction of the ICC are set out in Article 5 of the Rome Statute.³³⁷ Article 5 establishes that the jurisdiction of the ICC will be limited to the most serious offences committed against the international community.³³⁸ These offences include war crimes, crimes against humanity, genocide and the crime of aggression.³³⁹

Article 7 of the Rome Statute defines crimes against humanity as “acts when committed as part of a widespread or systematic attack directed against any civilian population”.³⁴⁰ The acts which are categorised as war crimes include enslavement, torture, murder, sexual violence, enforced disappearance of persons, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health.³⁴¹

War crimes are defined under Article 8 of the Rome Statute, as grave violations of the Geneva Conventions and its Additional Protocols.³⁴² The Geneva Conventions and its Additional Protocols provide the fundamental framework for IHL and state and non-state actors must adhere to it during times of conflict. Article 8 list acts which are war crimes, which include the taking of hostages, wilfully causing great suffering, or serious injury to the body or health, torture or inhuman treatment and unlawful deportation or transfer or unlawful confinement.³⁴³

³³⁵ Gegout C ‘The International Criminal Court: limits, potential and conditions for the promotion of justice and peace’ (2013) 34(5) *Third World Quarterly* 800.

³³⁶ International Criminal Court ‘Situation in Nigeria Article 5 Report’ (n236 above) 6.

³³⁷ Rome Statute of the International Criminal Court 1998.

³³⁸ Article 5 of the Rome Statute.

³³⁹ Article 5 of the Rome Statute.

³⁴⁰ Article 7 of the Rome Statute.

³⁴¹ Article 7 of the Rome Statute.

³⁴² Article 8 of the Rome Statute.

³⁴³ Article 8 of the Rome Statute.

The ICC possesses jurisdiction over individuals irrespective of civilian or military status and regardless of rank, who are guilty of serious violations of IHL during times of conflict.³⁴⁴ Perpetrators can be found guilty in their individually capacity and likewise, commanders and superiors can be held vicariously liable for crimes committed under their command.³⁴⁵

The establishment of the ICC is a critical contribution to the international community however, the court is not without its own deficiencies. An aspect which has been brought into contention is the independency of the court as there has been attempts by member states to control its operations.³⁴⁶ There is a the fear that the ICC can become biased in its duties, particularly in situations where state leaders request assistance from the ICC to act against insurgents in order to reinforce their own regime, effectively using the ICC as a political instrument.³⁴⁷

The ICC possess the legal power to hold Boko Haram liable for the offences perpetrated against the Chibok girls. This will be challenging given the fact that the whereabouts of the sect are not entirely known but with the assistance of the international community and Nigeria it is probable that accountability will be established in respect of the various violations committed by the terrorist group. In addition, the ICC should display its impartiality by holding members of Nigeria's armed forces accountable for their contraventions of international law in their fight against Boko Haram.

4.7. Conclusion

The chapter examined the carious approaches by the Nigerian government to combatting the insurgency and role of the various task forces were analysed and the effects these had on human rights in Nigeria.

Since their abduction, the girls from the secondary school in Chibok suffered grave violations of their basic rights. While in captivity the range of violations substantially increased to a point where these young girls were suffering violations of their fundamental human rights on a regular basis.

The chapter proceeded to highlight some of the rights which were violated by Boko Haram. The right to the highest attainable standard of heath is one of the rights that was examined by

³⁴⁴ Olugbenga OS & Ayooluwa AE 'Boko Haram Insurgency and Its Implications On The Rights Of The Female Gender In Nigeria' (2017) 1 *AGORA International Journal of Juridical Sciences* 51.

³⁴⁵ Olugbenga and Ayooluwa (n344 above) 51.

³⁴⁶ Gegout (n335 above) 804.

³⁴⁷ Gegout (n335 above) 805.

illustrating the hostile environment the girls were living in and the high degree of possibility that these girls will suffer from PTSD as a result of this.

There has been a total disregard for the right to privacy of these young girls. The chapter looked at the role of the media and how they failed these girls by publishing their personal information including pictures of without considering that these girls are in fact victims of sexual abuse. In turn the media violated the right to privacy of these girls instead of drawing attention to the additional violations they have suffered during captivity. Revealing the identities of these young women can prove to be detrimental towards the reintegration back into their communities.

The girls have also suffered violations of their freedom of religion. While being held by Boko Haram the girls who are mainly Christians, were coerced to convert to Islam by the jihadist. For the duration of the captivity the girls were completely unable to exercise their freedom of religion. The Chibok girls were also victims of sexual violence and gender-based violence by members of the jihadist group. Many of the girls have been made into sex slaves and some have been forced to marry Boko Haram members.

The education system in Nigeria has been adversely affected by numerous attacks on schools by Boko Haram. Not only have the Chibok girls been deprived of their right to education while in captivity but thousands of children's right to education has been affected by the insurgency. The girls have not been able to attend school for the duration of their abduction, the absence of education accompanied with living in a radical environment will have a negative impact on the development of these young women.

The next chapter provides the conclusion and recommendations of this paper.

CHAPTER 5 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The conflicts that have played out on the African continent over the past century has had, and is currently having, a detrimental effect on the development of child rights. Children are killed, left orphaned, displaced or forcibly recruited to have an active role in hostilities during conflict situations and suffer inconceivable violations of their rights during situations of armed conflicts. Considering the above, this paper examines Boko Haram insurgency, with a focus on the abduction of the Chibok girls and proceeds to draw attention to the current dangers facing the children of Nigeria and neighbouring states as a result of Boko Haram insurgency.

Over the past decade Boko Haram has waged an all-out assault in the northern region in attempts to establish an Islamic state. The terrorist organisation has become one of the biggest threats to children living in the north of Nigeria and surrounding areas. Mass abductions, attacks on schools, forced marriage and rape are just some of the threats currently facing children as a result of the insurgency.

The abduction of the girls from the secondary school in Chibok is a clear example of the danger Boko Haram poses to children. While the mass abduction has been well documented by the international community, not enough attention has been placed on the basic child rights violations suffered by these innocent young girls.

The purpose of this study has been to place a central focus on the abducted girls and the grave violations which they have suffered as a result of their abduction by Boko Haram.

A breakdown of the history of ethnic conflict between various religious groups in Nigeria is provided before analysing the structure of Boko Haram by looking at the early origins and the ideology of the terrorist organisation. A brief background of Mohammed Yusuf was provided by looking at his various affiliations to different Islamic organisations prior to establishing Boko Haram. Boko Haram's shift to a fully-fledged terror organisation under the leadership of Abubakar Shekau was the next aspect discussed. The abduction of the 276 girls, known as the "Chibok girls", was analysed and insight was provided to the circumstances surrounding the offence. Insight is provided to the #BringBackOurGirls campaign and how this was used to create international awareness of the mass child abductions perpetrated by Boko Haram.

The legal framework for the protection of child rights was analysed by looking at the history of international legal instruments that provides protection for children. Beginning with one of

the founding human rights instruments the Declaration of the Rights of the Child, then examining other international instruments which contributed to the eventual adoption of the CRC such as the UDHR and the ICCPR.

An examination was done on how children were viewed prior the enactment of the CRC. An analysis of the structure of the Convention is provided before examining the four cardinal principles set out by the Committee of the Rights of the Child which are imperative for the implementation of the Convention and other treaties relevant to child rights. The discussion on the CRC includes an analysis on the Optional Protocols. A history of the circumstances surrounding the enactment of the ACRWC was investigated before moving onto Nigeria's domestic legislation, the Constitution of the Federal Republic of Nigeria and the domestic child rights instrument the CRA.

A key aspect of this paper was the examination of the response by the Nigerian government to Boko Haram insurgency and the subsequent impact on human rights in Nigeria. Attention is drawn to the inadequate responses on the part of the Nigerian government by looking at the various approaches taken in an attempt to bring an end to the insurgency. The next aspect discussed was the response of the former Nigerian administration to the Chibok abduction. This was done by investigating the inadequate action taken following the abduction and how this has been a contributory factor to the grave violations which have been suffered by these young girls.

In addition, the role of the CJTF and JTF in combating the insurgency was reviewed. This is done in relation to the subsequent human rights violations perpetrated by members of both task forces and the alarming trend of the recruitment of children for participation in hostilities examined as well.

A review is undertaken in relation to the violations which has been perpetrated against these the girls by Boko Haram following the abduction and the disturbing trend of the use of children as suicide bombers within its ranks. Not enough attention has been drawn to the violations suffered by these young women, the paper attempted to highlight the violations which are often overlooked.

The jurisdiction of the ICC and the Rome Statute is examined in relation to the offences perpetrated by Boko Haram and state task forces. The purpose of this was to establish that offences committed by Boko Haram and the anti-terrorism task forces are in violation of international criminal law and prosecutable by the ICC.

5.2 Recommendations

It is recommended that the Government of Nigeria should undertake a thorough investigation into the offences perpetrated by Boko Haram in relation to the abduction of the girls. If the Nigerian government fails to bring those guilty of gross human rights violations to justice, the ICC should then intervene and hold those who are found guilty accountable.

The ICC should investigate the recruitment of children and use of children in hostilities by Boko Haram, the CJTF and JTF. A disturbing trend where the terrorist group makes use of children as suicide bombers to carry out their attacks has become more prevalent and requires international assistance to hold those responsible liable and attempt to bring this disturbing practice to an end. The CJTF has also recruited children in its campaign against Boko Haram and its suspected members. Accountability must be established for those who are guilty of recruiting children play an active role in hostilities within the ranks of the various task forces. Children who had and are having an active role in hostilities need to be withdrawn and their rehabilitation and reintegration back into their communities must be prioritised.

To the National Human Rights Commission of Nigeria and non-government human rights organisations, establish proactive measures which will provide the abducted girls and their families access to justice and reconciliation.³⁴⁸ Another aspect which needs to be examined is the omissions by the Nigerian government in relation to the abductions and how this negligence was a contributory factor to the violations suffered by these girls.

It is recommended to the National Human Rights Commission of Nigeria to create a child specific complaints mechanism, where children who are victims of the Boko Haram insurgency can come forward with their families and lay complaints, which will be formally investigated. This mechanism should be child sensitive and prioritise the rehabilitation of children who have suffered trauma as a result of the insurgency.

To the Nigerian government, a review of the education system should be undertaken to establish whether the current education system gives effect to the aims of education contained in both the CRC and the ACRWC. The education system must be brought in line with the aims of education contained in Article 29 of the CRC and Article 11 of the ACRWC. The aims of education set out the objectives, which education should aspire to achieve. The education system should highlight the importance of child and human rights and make learners aware of

³⁴⁸ Amnesty International (n25 above).

the dangers of Boko Haram. This will not only provide children with knowledge of their rights, additionally the aims of education would instil tolerance amongst the children of Nigeria.

The security provided to schools must be reviewed and policies should be implemented that prioritise the safety of learners and educators to ensure that the right to education of children is protected. Education plays an integral part in the development of every child and this right should never be held hostage by a terrorist group who resorts to cowardly attacks on the education system to push their own agenda. The right to education is extremely important and the Nigerian government have to implement measures which will protect children teachers and schools in areas where Boko Haram has undermined the education system

It is recommended that the Government of Nigeria conduct a review into their domestic child rights legislation in relation to their obligations under the CRC and the ACRWC. The CRA which was enacted in 2003, requires strengthening to ensure that all children residing in the territory of Nigeria benefit from the rights and protections afforded by the CRC and ACRWC at domestic level. A major shortfall of the CRA is that Nigerian legislation on issues pertaining to children is found on the residuary legislative list, making the enforcement of the instrument entirely dependent on the local government as opposed to national government.³⁴⁹ The Nigerian government must give the CRA the legislative status that will establish a general standard that must be adhered to in every state.

It is recommended to the Nigerian Minister of Defence, to conduct a review of the training provided to police and military officials is required. The state needs to implement a compulsory training program aimed at educating members of the police and military on the principles of international law which must be respected in the fight against the terror. The program should include aspects of child rights which will equip police and military officials with knowledge on the rights of the child and the necessary degree of care to be shown towards child victims and suspects. Any program which will be implemented should centralise upholding the rule of law in all operations. Counter insurgency operations should never be prioritised over human rights and the Nigerian government must ensure the military and the CJTF carry out their operations in line with the rule of law.³⁵⁰

The girls from Chibok who have been abducted by Boko Haram have suffered severe physical and psychological trauma. Living in a radical environment for over 2 years has had a damaging

³⁴⁹ Iguh & Nosike (n111 above) 98.

³⁵⁰ Isokpan (n186 above) 70.

impact on the girls, whether they are aware of it or not. The Nigerian government must establish a health program where these girls and their families will receive rehabilitation for the trauma which they suffered. Undoubtedly, the traumas suffered will plague these young women for the rest of their lives. It is of utmost importance that the proper measures are taken to ensure that reintegration back into society will be easier.

Lastly, the Nigerian government and the international community must come together and bring an end to the conflict in Nigeria, which has lasted nearly ten years. Bringing the conflict to an end is the only way to ensure that the children of Nigeria can fully exercise their rights, without Boko Haram impeding them from doing so. The resolution of the conflict will also significantly prevent the abductions such as, the one that was committed in the province of Chibok.



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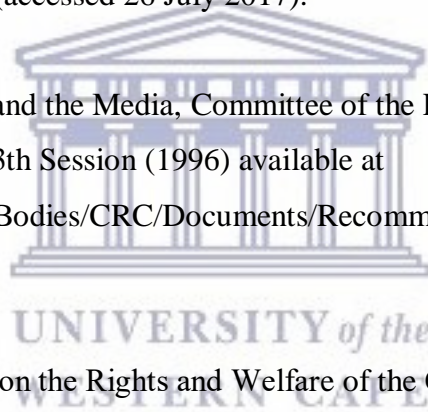
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