THE NIGERIAN 'JOS CRISIS' FROM THE PERSPECTIVE OF INTERNATIONAL CRIMINAL LAW

A RESEARCH PAPER SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF THE WESTERN CAPE IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE DEGREE OF MASTERS OF LAW

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PLAGIARISM DECLARATION

'I declare that **'The Nigerian "Jos Crisis" from the Perspective of International Criminal Law'** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references'.

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Key Words/Phrases

- Jos crisis
- Indigenship and ethnicity
- Religious persecution
- International crimes
- Genocide
- Crime against humanity
- War crimes
- Prosecution of international crimes
- Jurisdiction
- Principle of complementarity

LIST OF ABBREVIATIONS

BBC	British Broadcasting Corporation
CNN	Cable News Network
HRW	Human Rights Watch
ICC	International Criminal Court
ICRtoP	International Coalition for the Responsibility to Protect
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
NCICC	Nigerian Coalition of International Criminal Court
NGO	Non-Governmental Organisations
OTP	Office of the Prosecutor
STF	Special Task Force
UN	United Nations
USCRIF	United State Commission on International Religious Freedom
WANEP	West Africa Network for Peace Building

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CHAPTER ONE

INTRODUCTION

1.1 General Introduction

The Jos crisis refers to a series of violent attacks by the Hausa/Fulani ethnic groupsin Jos on the Jos indigenes and Christian residents and counter attacks by the Jos indigenes on the Hausa/Fulanis. In the last 18 years Jos, the capital city of Plateau State, Nigeria, has been plagued by incessant spurts of violence resulting from conflict between the rival groups. This happened in 1994, 2001, 2002, 2004, 2008, 2010, 2011 and in 2012. These incidents of violence are characterised by gross violations of human rights and the perpetration of heinous crimes such as mass murders, bombings, arson, looting and destruction of public and private property. Victims, including children, women and the aged are usually 'hacked to death', 'burned alive', and murdered in a chain of cruel and indiscriminate killings, while some are 'disappeared and never found'.[1] The systematic and organised manner in which most of these attacks were executed shows clearly that they were well planned and sponsored. Although the horrific crimes committed in Jos spread to neighbouring towns and villages within Plateau state, they are all referred to as 'the Jos crisis' because the violence occurred mainly in Jos. This paper will discuss the events in the neighbouring towns and villages where relevant.

The recurrent violence in Jos is attributable to a number of immediate and remote, direct and indirect causes, chief among which are the dispute over the ownership of Jos and the issue of indigene status which has manifested in a long-standing communal suspicion, distrust and

[1] *HRW Report* (2011)- Nigeria: New Wave of Violence Leaves 200 Dead.

bitterness among the indigenes and the Hausa/Fulani community in Jos.[2] The ethno-religious difference between the two rival groups further magnifies the conflict.[3]

Records show that the alleged crimes are perpetrated on a wide scale and repeatedly, resulting in the deaths of over 7000 persons since the inception of the crisis.[4] Many more have been wounded and hundreds of thousands of people displaced. In addition, public and private properties worth billions of Naira have been destroyed in the violence.[5]

Unfortunately, the Nigerian authorities did not make much effort to prosecute these crimes either as domestic or international crimes until 2010. As at December 2010, in all but a handful of cases, only 17 Hausa/Fulani men had been convicted by the Federal High Court for crimes committed during the crisis.[6] Though different Commissions of Inquiry have been set up by both the federal and state governments in 1994, 2001, 2008 and 2010, when atrocities occurred, their reports have been consistently shelved and the recommendations made in them were never implemented. Some of the alleged perpetrators were arrested, but then were released again or the prosecutions initiated against them were abandoned for no apparent reason. Consequently, criminals roamed freely in Plateau State for a long time, committing more serious crimes with impunity, thereby perpetuating the crisis.

[2] *Solomon Lar Report* (2010) 2.
[3] *Ajibola Report* (2009) 33.
[4] Figures of death range between 3800 and 8000. Human Rights Watch in January 2012 puts it at over 3800, Kalu 'A Cycle of Reprisal'- Vanguard, 1 January 2012. Another report states 8000- 'Jos Crisis: A Crime Against Humanity'- 247ureports; Yet another states 7000 – Higazi (2011) 18.
[5] *Amnesty International Annual Report* (2011).
[6] 'Jos Violence' –THEWILL, 31 January 2011; *HRW Report* (2010).

Another response by the Federal government has been the deployment of the Special Task Force to man the city whenever there was crisis. However, this has equally not succeeded in putting an end to the violence.[7]

The crisis has had a staggering negative impact on the social, political and economic life of Jos and of Plateau State as a whole. Jos, which had long been known as a 'home of peace and tourism',[8] became a home of terror, desolation, haunted by ghosts of its past. Its reputation as a tourist state has become a thing of history. It is indeed, as Higazi describes it, 'a recurrent Nigerian tragedy'.[9]

Nigeria ratified the Rome Statute of the International Criminal Court[10] on 27 September 2001.Consequently the International Criminal Court (hereafter ICC) has (at least complementary/subsidiary) jurisdiction over international crimes committed in the territory of Nigeria or by its nationals from 1 July 2002 onwards.[11] In addition, Nigeria is currently a non-permanent member of the United Nations (hereafter UN) Security Council, and plays a vital role in the promotion of international justice in Africa.[12] However, Nigeria is yet to incorporate the Rome Statute into its domestic laws in order to enable it to prosecute the crimes defined under the Statute. Nigeria's non-implementation of the Rome Statute creates many otherwise avoidable complications in dealing with cases where international crimes have been committed in the country.

[7] NCICC Newsletter: Vol.2 (2011) 22.
[8] This is the slogan of Plateau State, Nigeria.
[9] Higazi (2011) 1.
[10] Adopted on 10 November 1998, came into force on 1 July 2002 (hereafter Rome Statute).
[11] OTP Report on Preliminary Examination Activities (2011) 12.
[12] NCICC Newsletter: Vol2 (2011) 1.

In the light of the foregoing, this paper studies the origins and causes of the Jos massacres. It considers the nature of the crimes committed; whether they qualify as international crimes under the Rome Statute and whether the ICC may exercise jurisdiction to prosecute them.

1.2 Research Question and Objective of Study

This research paper seeks to answer the following questions:

1. Do the crimes committed during the Jos crisis constitute international crimes?
2. Is there is a legal basis for Nigeria to prosecute the crimes committed?
3. Does the ICC have jurisdiction to investigate and prosecute perpetrators of crimes committed in Jos?

In finding answers to these questions the author seeks to identify a way to ensure that impunity does not prevail for the crimes committed in Jos and that international criminal law is enforced in appropriate situations.

1.3 Significance of the Research

This research will contribute to international jurisprudence on question of the determination of whether an act meets the required threshold to qualify as an international crime under the Rome Statute. This question is still being tested by cases on current situations before the said court today as international criminal law is still a relatively new and developing phenomenon.[13] The topic is also important as it relates to the issue of combating impunity for grave crimes of concern to the international community, which is a fundamental goal of the ICC and the entire international human rights community.

[13] Since the Nuremberg trials, which established the concept of criminal responsibility of individuals at international level, followed by the cases before the International Criminal Tribunal for the former Yugoslavia (hereafter ICTY) and the International Criminal Tribunal for Rwanda (hereafter ICTR) some 50 years later, only the current cases before the court are available to test the question of what constitutes an international crime as defined by relevant international instruments and, more particularly, the Rome Statute.

Furthermore, there has been no prior academic work of this nature on the Jos crisis. Existing literature and reports have dealt only with the origins and causes of the Jos crisis and have given a record of the incidence of crimes committed and loss, both of lives and property thereby incurred.[14] Although the issue of whether international crimes have been committed in Jos has been referred to the prosecutor of the ICC by a coalition of civil societies in Nigeria,[15] the situation is currently under preliminary observation and a full report is yet to be issued by the court on the matter.

1.4 Research Methodology

The research methodology to be employed is basically desktop research. There is a dearth of academic sources or authorities on this subject. But the enormity of the situation cries for attention and, of course, someone has to start somewhere. In the course of this research, I shall be working with news extracts and reports on the internet regarding the Jos situation. I shall also make extensive use of the available reports of the commissions of inquiry and panels set up by the governments to investigate the crisis. In addition, there is an abundance of literature on what constitutes international crimes under the Rome Statute and on the duty of States Parties to the Rome Statute to prosecute such crimes. There is also enough literature, both primary and secondary, regarding situations in which special cases may be referred to the ICC. These sources, which include international conventions, treaties, national laws, cases, books, articles and electronic references, will be referred to in the course of the study.

[14] Some writers have described the situation as a case of genocide or crime against humanity. However, no legal analysis or argument on how they arrived at such conclusion has been made. See Jos Crisis: A Crime Against Humanity -247ureports. Ugwueyeand Umeanolue (2012) 223-226 discuss the crisis as a case of genocide from the biblical angle.

[15] See 'NGO Communiqué on January 2010 Jos Crisis' - ICRtoP.

1.5 Overview of Remaining Chapters

Chapter Two

This chapter does an historical overview of the Jos crisis from 1994 to 2012. It discusses how successive governments have reacted to the Jos situation, the causes of the crisis and what impact it has had on the social, political and economic fabric of Plateau State. It also considers the legal implications of the failure and delayed investigation and prosecution of the crimes committed in the Jos crisisby the Nigerian criminal justice system.

Chapter Three

This chapter analyses the nature of the crimes perpetrated in Jos and environs under national and international law, using the Rome Statute and the decisions of other international bodies as templates.

Chapter Four

This chapter discusses prosecution of international crimes committed in Jos under national and international jurisdictions. The discussion here will focus on the principle of complementarity as it relates to the instant case, examining whether, in the case of Jos, the ICC has jurisdiction over the crimes in question.

Chapter Five

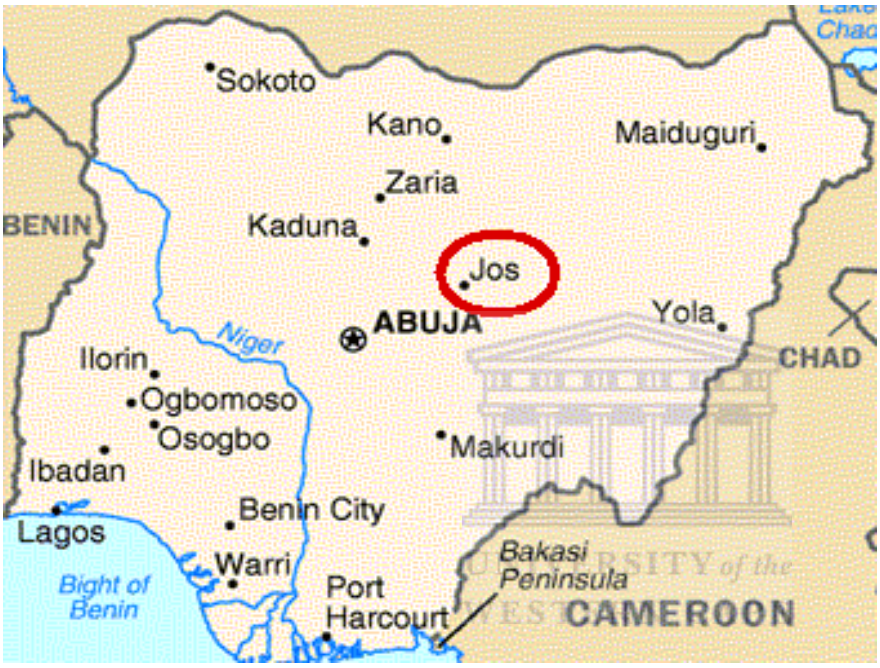
This chapter covers the conclusion and recommendations.

CHAPTER TWO

BACKGROUND, CAUSES AND IMPACT OF THE JOS CRISIS

2.1 Historical Background to the Jos Crisis

Jos is the capital of Plateau state, which is located in the north-central part of Nigeria.



[16]

Jos has a population of about one million people.[17] As a result of its early commercialisation as a tin mining city, it has a high population of settlers from different parts of Nigeria.[18] The recurrent struggle that has engulfed Jos over the last 18 years has been a struggle between the Berom, Anaguta and Afizere ethnic groups, on the one hand, and the Hausa/Fulani ethnic groups[19] on the other hand, over political and economic control of resources in the state. This has degenerated

[16] http://naijainfoman.files.wordpress.com/2012/07/nigeria_map.gif&imgrefurl
[17] Krause (2011) 19; the 2006 census puts Jos population at 821 618- GeoNames Geographical Database.
[18] This includes the Hausas, Yoruba, Igbo, Fulani and the Niger-Delta among others. These settlers, mostly Christians, have been involved in the violence and suffered tremendous losses to it. From available statistics, 630 Yoruba, 604 Igbo and 430 Niger-Delta people lost their lives to the crises which had lingered for over a decade. – Kalu 'A cycle of reprisal' –Vanguard.
[19] The Hausa and the Fulani are two distinct ethnic groups but are mostly associated together because they share culture and religion and are the two major ethnic groups in the North-west and North-east Nigeria.

into ethno-religious violence of a magnitude never before witnessed in Nigeria. The issue of 'indigenship' also features prominently in the crisis. Although not defined expressly in the 1999 Constitution,[20] classification as indigene and non-indigene is a discriminatory practice deeply rooted in the policy and administration of virtually every state in Nigeria. It determines distribution of a state's resources, including political appointments, elections to office, job distribution, scholarship and, most importantly, land ownership at the local and community level in a state.[21] Hence the indigenes of a state are the primary beneficiaries of a State's limited resources, thus making indigenship a covetous status.[22] Notwithstanding the claim of the Hausa/Fulani Muslims' to indigenship of Jos, the various Commissions of Inquiries setup to investigate the Jos crisis and the 2004 Plateau Peace Conference have ascribed the ownership and indigenship of Jos to the Berom, Anaguta, and Afizere ethnic groups only.[23] This division is further clearly defined and expanded by the religious differences between the rival groups: the indigenes who are mainly Christians and the Hausa/Fulanis who are predominantly Muslims. Christians and Muslims, indigenes and non-indigenes thus become both perpetrators and victims in a series of retaliatory attacks.[24]

2.2 Jos Crisis 1994-2011

The Jos situation has not been a case of continuous violence. As stated above, the first outbreak of violence occurred in 1994. This was followed by recurrent violence since 2001 which gained frequency and intensity over the years and has persisted to date. The nature of the crisis is such

[20] An indigene is not defined in the Constitution of the Federal Republic of Nigeria, 1999 Cap C23, Laws of the Federation of Nigeria, 2004 (hereafter 1999 Constitution). However, Sections 25(1) provides for indigenship as condition for citizenship by birth if a person is born before independence and Section 143 thereof makes indigenship a condition for appointment of a person as minister from a state.
[21] *HRW Report* (2011).
[22] Krause (2011) 25.
[23] *Solomon Lar Report* (2010) 2.
[24] *Ajibola Report* (2009) 33.

that each succeeding incident of violence was more organised and the interval between the outbreaks became shorter with the passing years. The 1994 crisis was a case of a riot that resulted in the death of four persons and the destruction of several public and private properties.[25] The 2001, 2004 and 2008 crises, which were the high points of violence, were manifested in the mass and gruesome killings of the indigenes/Christians by Hausa/Fulani Muslims and vice-versa;[26] and in the wounding, maiming as well as destruction of properties especially churches, houses and business premises. According to reports, attacks and communal clashes, particularly in Shendam, Qua, Pan, Wase and Langtang in Jos South led to the death of between 1000 and 2000 persons between 2002 and 2004.[27] On 24 February 2004, a group of Hausa/Fulani Muslims, who arrived at the COCIN church in pick-up trucks chanting religious slogans, massacred about 100 Christians using machetes and guns. About 700 Hausa/Fulani Muslims were killed in a well-planned and coordinated retaliatory attack from Christian groups two months later.[28] There were few incidents of attacks from 2004 to 2008. On 28 November 2008, Jos erupted in intense post-election violence initiated by Hausa/Fulani Muslims that lasted two days. The report of the commission set up shows that much planning and resources were put into these attacks.[29]

However, from January 2010 the attacks became more frequent. Indigenes from the Berom ethnic group attacked Hausa/Fulani dominated villages in Bukuru, Jos. There are strong indications that this was not a spontaneous attack as according to Higazi's account of the crisis,[30]

[25] See *Fiberesima Report* (2004).
[26] According to the reports of the commissions of inquiries and panel set-up, 903 persons were killed in the 2001 crisis, about 800 persons in 2004 and 781 persons in 2008.
[27] There was a series of attacks by Hausa/Fulani militias on residents of Etobaba in Jos North on 2 May 2002. Danfulani (2006) 3.
[28] Krause (2011) 36-37.
[29] *Ajibola Report* (2009) 22-257.
[30] See Higazi (2011) 20-35.

Berom youths armed with guns and machetes, were brought into Bukuru in Toyota Hi-Lux vehicles. This led to violent clashes between rival groups.[31] Places like KuruJenta, SabonGidaKanar, Gero, Timtim and others in Jos were destroyed almost completely. The attacks on all the above-mentioned places occurred simultaneously.[32] The victims, ranging in age frommonths to 100 years were brutally murdered. There have been allegations that the attacks were sponsored by politician and the district heads. Most reports put the number of persons killed at over 200, with more than 700 seriously injured and about 10 000 displaced.[33] Subsequently, on Sunday 7 March 2010, over 300[34] Berom villagers were brutally murdered and their houses burnt down in a massive attack by Fulani Muslims, which attack nearly wiped out the villages of DogoNahauwa, Zot and Ratsat in Jos South LGA. Victims, mostly women and children, were macheted, stabbed and hacked to death.[35] The few survivors were seriously wounded. Reprisal killings continued in Jos[36] between March and December 2010, culminating in a bomb attack on Christmas Eve that killed over 80 people and injured more than 120.[37]

The year 2011 did not bring a break in this violent bloodshed as killings, maiming, disappearances, displacement and destruction of properties continued.[38]Villages in and around Jos were 'raided in commando-like operations by heavily-armed people, leavcing many dead and

[31]Ekpunobi and Ailemen 'Nigeria: 460 killed in Jos crisis'- Daily Champion, 21 January 2010.
[32] The youths had been incited through bulk SMSes by assertions of imminent attack by Muslims coming *en masse* from the North (Maiduguri and Kano) to kill Christians in Jos. The bodies of two Berom boys killed in the Sunday violence and brought back to their village in Heipang district had reignited angers. -Higazi (2011) 27.
[33]HRW Report (2011) -Nigeria: New Waves of Violence Leaves 200 Dead; WANEP January 2010 Press Release on the JOS Crisis.
[34]Kalu 'A cycle of reprisal' -Vanguard; Duffield 'Nigeria ethnic violence leaves hundreds dead' –BBC News.
[35]Higazi (2011) 29.
[36] Prior to the Christmas attack, over 120 people had been killed in main and retaliatory killings. See Umeha 'Nigeria: Jos Crisis'- Daily Champion, 27 June 2010.
[37]'Amnesty International Annual Report (2011).
[38]Jos Crisis Escalates, Overwhelms Nigeria Military -Republic Reports, 29 January 2011.

injured'.[39] Ninety six persons were killed in reprisal attacks on both sides of the conflict in January 2011.[40]

Another attack by Christians on Izala Muslims, who were celebrating Eid-el-Fitri on 29 August 2011 in Jos, led to a violent clash that claimed the lives of at least 70 people and threw the state into fresh upheaval.[41] In September, more than 120 persons, including five entire families were brutally murdered in retaliatory killings.[42] Through the rest of 2011, the violence would subside briefly only to erupt again.[43]

2.3 Current Status of the Jos Crisis

The year 2012 has witnessed a new dimension in the Jos crisis: the involvement of Boko Haram. Boko Haram, a fanatical religious sect turned terrorists organization, has been a major security threat in Nigeria since 2004. It has launched numerous bomb attacks on churches, the police, the military, government institutions and, most recently, primary schools. Now, it has extended its terror campaign to Jos.[44] Claiming vengeance for the death of its Muslim brothers who have been killed in the Jos crisis, it has carried out five suicide bomb attacks in 2012, killing many and injuring even more. This has led to clashes between indigene Christians and Hausa/Fulani Muslims but had not escalated into a major crisis as the Special Task Force (hereafter STF)[45]

[39] Kalu 'A cycle of reprisal' –Vanguard.
[40] Ethno-Political Killings in Plateau State of Nigeria –www.intersociety-ng.org.
[41] The Muslims attempt to resume the use of an abandoned prayer ground in a Christian-dominated area turned violent. Kalu 'A cycle of reprisals' -Vanguard.
[42] NCICC Newsletter (2011:22).
[43] Gukas 'Nigeria: 15 killed in fresh Jos crisis' –Daily Champion, 25 November 2011.
[44] The sect seeks the imposition of sharia Islamic law throughout Nigeria, opposes western education, western culture and modern science and demands the release of its imprisoned members. It has claimed responsibility for the death of thousands in a series of bomb attacks over the years – Nkeiru 'Boko Haram History and Current Attacks in Nigeria' -http://www.employmentnigeria.com; Mark 'Boko Haram vows to fight until Nigeria establishes sharia law' –The Guardian, 27 January 2012.
[45] The Special Task Force is composed of the best units in the Nigerian security forces, to which the central government has entrusted the task of restoring law and order in Jos and other parts of Northern Nigeria. They have been constantly present in Jos since 2010.

usually reins in the situation before it escalates.[46] Starting with the Boko Haram bomb attack on Jos and other states on 25 December 2011,[47] there have been attacks on 26 February and 11 March 2012.[48] There were bomb attacks on 8 April[49] and 24 April 2012,[50] and again on 10 June 2012.[51] However, on 4 July 2012, the STF allegedly burnt 50 Fulani homes in Bakin Ladi village in Jos after one of its members was killed and his weapon stolen by some of the villagers suspected to be Fulanis.[52] In the resulting tension created, on 6 July 2012, 63 indigenes/Christians were killed in Jos in an attack for which Boko Haram claimed responsibility.[53] The following day a Senator and a House of Assembly member (both indigenes/Christians) were killed by gun-men along with several people at the burial of the deceased indigenes. In reprisal attacks that followed, the Berom youths went berserk, killing anybody identified to be Hausa or Fulani within the Riyom and Barkin Ladi areas of Jos. The death toll rose to about 200 on both sides[54] and about 5 500 persons were displaced in these attacks.[55] The government imposed a 12-hour curfew and the STF ordered the evacuation of the residents of the affected villages to enable security personnel to conduct operations to root out those responsible for the attacks.[56] Following these incidents, a rocket was fired at an Islamic school on 18 July 2012 from the Bukuru area of Jos.[57]

[46]Bello 'Reprisals kill 10 after church bomb'-Reuters.
[47] Mark 'Nigeria:Boko Haram Militants Strike on Christmas day' –Time, 25 December 2012.
[48]Klamser 'Boko Haram Attack on Christian in Jos' -http://www.cricon.org; 'Nigeria attack targets Catholic church in Jos' - http://www.bbc.co.uk/news/world;
[49]Bomb Blast Rocks Central Nigerian City of Jos- http://beegeagle.wordpress.com.
[50] Bomb explosion rocks Jos football viewing centre- www.vanguardngr.com.
[51]Gunmen, Suicide Bomber Attack Churches in Jos -http://www.thisdaylive.com.
[52] The STF denied this allegation-'Jos: STF burn Fulani Houses' -www.dailytrust.com.ng.
[53] 10-year-old boy killed in Jos Fresh Attack- http://www.channelstv.com; War on Christians Escalates- http://www.strategypage.com. There were however allegations by indigenes that the attack was carried out by gunmen suspected to be Fulanis –'Soldiers raid Fulani Settlement' -http://beegeagle.wordpress.com.
[54] 'Birom Christian youth revenge attacks raise Jos death toll' -http://newsrescue.com.
[55] Jos attack: Assistance still sought for displaced 5 500- www.dailyindependentnig.com.
[56] The evacuated residents had been quatered at camps provided by the state government. –Plateau: Residents Return too Evacuated Communities- www.thisdaylive.com
[57] 10-year-old boy killed in Jos Fresh Attack- http://www.channelstv.com;

2.4 Government Response to the Jos Crisis

2.4.1 Commissions of Inquiry

The Federal Government and the Plateau State Government have responded by setting up commissions of inquiries, panels and committees to investigate the causes of the crisis, to identify those responsible for the crimes committed and to make recommendations to help prevent future violence. The following bodies were set up in respect of the Jos crisis:

1. The Commission of Inquiry into the Riots of 12th April, 1994 in Jos Metropolis, (Fiberesima Commission);
2. The Judicial Commission of Inquiry into the Civil Disturbances in Jos and its Environs, 2001 (Niki Tobi Commission);
3. Plateau Peace Conference 2004 (18 August - 21 September 2004);
4. The Commission of Inquiry into the Unrest of 28 November 2008 in Jos North Local Government area of Plateau State (Ajibola Commission); and
5. The Presidential Advisory Committee on Jos Crisis, 2010 (Solomon Lar Advisory Committee).

The Commissions carried out their mandates by receiving memoranda from members of the public and interviewing witnesses. They identified and indicted certain individuals and groups in their reports as responsible for the crimes. They also traced the origins and causes of the crisis and made several recommendations.[58] However, their reports have been consistently shelved and the recommendations made were unimplemented.

[58] *Fiberesima Report* (2004) 2-23; *Niki Tobi Report* (2002); Plateau Resolves (2004); *Ajibola Report* (2009) and *Solomon Lar* Report (2010).

2.4.2 Deployment of Military Troops

Another response by the Federal government has been the deployment of the Special Task Force to ensure and maintain peace in Jos. However, this has not succeeded in putting an end to the violence. Indeed,several reports from victims and survivors indicate that the military officers are complicit in the killings as they are alleged to assist assailants.[59] Several extra-judicial killings by government security forces were also alleged.[60] These accusations persist despite denial by the STF.[61]

2.5 Causes of the Crisis

The recurrent violence in Jos is attributable to a number of immediate and remote, direct and indirect causes. The commissions and committees discussed above identified the following factors as being primarily responsible for the incessant crisis in Jos and its environs.

2.5.1 Ownership of Jos

Ownership of Jos and dispute over land ownership is one of the root causes of the crisis. The findings of all the commissions and committees established revealed that the Berom, Anaguta and Afizere groups are the true founders and indigenes of Jos.[62] The problem of ownership of Jos was generated by dispute over ownership of scarce land which is much needed since the indigenes are mostly farmers and the Fulanis are cattle rearers.[63]

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[59] *Ajibola Report* (2009) 182-186; 'Nigeria: Eight Killed in Fresh Jos Crisis - Women Protest, Demand Removal of Soldiers' -http://allafrica.com.
[60] *HRW Report* (2009).
[61] Kalu 'A cycle of reprisals'- Vanguard; Gomper 'Protracted Security Breaches in Plateau State' - http://www.impactnigeria.org.
[62] *Fiberesima Report* (2004) 12,17; *Niki Tobi Report* (2002) 24; *Ajibola Report* (2009) 24.
[63] Danfulani (2006) 3.

2.5.2 Indigenship

Indigenship claims are linked to the ownership claim discussed above. Plateau Resolve defined an indigene as:

> 'those people whose ancestors were the first to have settled permanently in a particular area and who are often considered as natives and have rights to their lands, traditions and culture.'[64]

Hence, a finding that the Hausa/Fulani ethnic groups are not the original settlers or founders of Jos implies that they are not indigenes since their ancestors did not originate from Jos.

2.5.3 Creation of Jos North Local Government/Delineation of Electoral Wards

The division of Jos local government into Jos North and South local governments by the then Federal Military Government of Nigeria, headed by General Ibrahim Babangida, in 1991 created enmity between the indigenes and the Hausa/Fulanis. The indigenes claimed it put them in Jos South while 'the Hausa-Fulani communities were carved into Jos North LGA where Jos metropolis is located'.[65]They saw it as a ploy by the Hausa/Fulani community to seize Jos town from them.[66] The Hausa/Fulani in Jos had enjoyed political advantage over appointments during most of the Hausa/Fulani-led military era in Nigeria which lasted from 1966 to 1978 and 1983 to 1999.[67] The delineation of the electoral wards in Jos North was also done in an inequitable manner which gives the larger indigene population fewer electoral wards compared to the Hausa/Fulani dominated areas which have a much smaller population.[68]

[64] *Ajibola Report* (2009) 49; *Fiberesima Report* (2004) 21.
[65] *Fiberesima Report* (2004) 5.
[66] *Ajibola Report* (2008) 78,187.
[67] Though substantially in the minority, they sometimes have more portfolios than the indigenes in terms of appointments. Danfulani (2006) 4.
[68] Mulders (2010)1; *Niki Tobi Report* (2002) 50.

2.5.4 Ethnicity and Religious Conflict

Ethnic difference is an apparent cause of the crisis in Jos. Nigeria is a country of diverse people that is highly polarised along ethnic and religious lines. Ethnicity and religious affiliation is placed before state or national allegiance.[69]That a purely religious motive is present in the crisis is evident in attacks carried out by perpetrators against members of their own ethnic group, making religion, not ethnicity, the primary reason for such brutal attacks.[70]

2.5.5 Political Factors

Political motive is manifested in the problems of indigenship and creation of Jos North LGA. Indeed, immediate causes of the crisis in 1994, 2001 and 2008 were appointments into political posts and elections respectively. Some politicians in Plateau State and the North[71] have capitalised on the crisis to pursue their own agendas by sponsoring and inciting indigene youths to execute the attacks. Competition between the indigenes and the Hausa/Fulanis for political and economic control of Jos are the root causes of conflict in Jos with each contributing to fuel the crisis.[72]

2.5.6 Fulanis Trespassing on Farmlands in Plateau State

Another cause of the recurrent Jos crisis which has led to violent attacks on a number of occasions including, 1999, 2001, 2004 and 2010,[73] is Fulanis trespassing on farmlands in Plateau

[69]Ellsworth (1999) 11-19; Danfulani (2006) 1.
[70]Higazi (2011) 27; *Niki Tobi Report* (2002) 44; *Solomon Lar Report* (2010) 5. Mulder is of the opinion that religious persecution of Christians by Muslims is the main cause of the Jos crisis as the Hausa/Fulani Muslims seek to gain political control of the whole of Northern Nigeria through conversion of all to Islam. See Mulder (2010) 3.
[71]Mulders (2010) 2.
[72]Modibbo (2012) 3.
[73]Niki Tobi Report (2002) 63-64; Higazi (2011) 29.

State. The 2010 Solomon LarCommittee, however, found that conflict between herdsmen and farmers is attributable to encroachment on grazing reserves by farmers as well.[74]

2.5.7 Economic Factors

Factors such as youth unemployment and poverty, the quest for economic dominance of Jos North, as well as the absence of private sector participation in economic activities in Plateau State were identified by the various commissions as some of the causes of the crisis.[75] Human Rights Watch is of the opinion that the Jos crisis is caused by purely economic factors. It states that 'religious, political and ethnic disputes often serve as mere proxies for the severe economic pressures that lie beneath the surface'.[76] The Commission corroborates this by stating that '[i]f there is the need to struggle, even violently, to gain control and dominate Jos North, it is for the purpose of gaining the economic upper-hand'.[77]

2.5.8 Failure to Implement Commission Reports

The failure of government to implement the reports of the Commissions of Inquiry has contributed significantly to the persistence of the crisis.[78]

2.6 IMPACT OF JOS CRISIS ON PLATEAU STATE

The 18 years of protracted and recurrent violence in Jos have no doubt had a serious negative impact on Jos and Plateau State as a whole. It has led to a colossal loss of lives and property worth billions of Naira. Jos is hardly a shadow of its former self as the tragedy has affected life in Plateau State legally, socially, politically and economically.

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[74] *Solomon Lar Report* (2010) 7,8.
[75] *Ajibola Report* (2009) 89,103; *Solomon Lar Report* (2010) 6.
[76] *Ajibola Report* (2009) 89. Human Rights Watch conclusion in 2001 that the crisis was caused by a combination of both political and economic factors with religion employed as an excuse to incite the people to violence is more apt. see *HRW Report* (2001) .
[77] *Ajibola Report* (2009) 89-90.
[78] *Niki Tobi Report* (2001) 74; *Ajibola Report* (2009) 55, *Solomon Lar Report* (2010) 7; Review of the Judicial Commissions of Inquiry report- Right to Know Nigeria (2010) 3.

2.6.1 Legal Implications

The failure of the Nigerian authorities to implement the provisions of the law to prosecute the perpetrators of the Jos crimes, thereby redressing the inhumanity and gross human rights violations perpetrated, has given rise to a culture of 'entrenched impunity', insecurity and a perpetuation of the crisis. Criminals therefore have no regard for the law whatsoever. This is exactly what played out in the Jos situation for years. Until December 2010, when 17 Hausa/Fulani men were convicted by the Federal High Court in Jos, painfully few prosecutions had been undertaken by the Nigerian authorities in respect of the crimes committed in the Jos crisis. This led to an undermining of the rule of law.[79] However, a report shows that the situation gradually began tochange in 2011 when the Federal High Court tried at least 39 more suspects. Thus far, in trials before the Federal High Court, 26 more persons were convicted and 93 acquitted. As of 1May 2012, the office of the Plateau State Director of Public Prosecution, in co-operation with the office of the Attorney-General of the Federation, is currently prosecuting 315 people in state courts for crimes relating to events associated with the series of crises in Jos.[80]

2.6.2 Socio-Political Implications

The reality of the Jos crisis is markedly pronounced in the social life of the society. Families, as the basic units of society, are the most affected. Women and children (who managed to escape being slaughtered during the several massacres that took place in Jos) are mostly at the receiving end of the crises as they have become homeless, husbandless and fatherless. Umeha states that:

> 'Some of them who saw their husbands or fathers killed… burnt alive are still being haunted by the image which makes them incapacitated. They need to be rehabilitated but …most of them are left without basic requirements for living.'[81]

[79]'Jos Violence' –THEWILL, 31 January 2011; *HRW Report* (2010).
[80]Analysis of ICC Report on Nigeria Situation- http://jubileecampaign.org.
[81]Umeha 'Nigeria: Jos Crisis'- Daily Champion.

The crisis has created an unbridgeable chasm and strong hatred between the rival groups. Reports state that the situation has degenerated to a level where there are specific Christian-dominated areas, which means that it will be tantamount to committing suicide for a Hausa/Fulani Muslim to visit one such area, and *vice versa*.[82] Markets are totally divided. Christians buy from Christians, Muslims buy from Muslims.[83] The state of security in Jos calls for attention as sophisticated weapons such as guns became accessible thereinas a result of the incessant crisis.[84] The recent Boko Haram attacks on Jos have made the situation even worse. Politically, the state appears to be stable but the political issues that led to the crisis are still largely unresolved.

2.6.3 Economic Implications

The Jos crisis has had a devastating impact on the economy of the state. A major happening that characterised each of these crises, besides the bloodshed, was the wanton and indiscriminate destruction of property including markets, government buildings and private properties.[85] Thousands of people have thereby lost their sole sources of livelihood due to the recurrent violence and they have not been compensated for their losses. The crisis has stalled state development in all areas of civic life. As stated by Famoriti, the inescapable conclusion is that in this condition, education and invention would be unattainable and social life, commerce and industry would be impossible.[86]

[82]Kalu 'A cycle of reprisal' –Vanguard.
[83]Higazi (2010) 7.
[84]Higazi (2010) 3.
[85]*Fiberesima Report* (2004) 9-10; *Niki Tobi Report* (2001)169-214; Appendix in Vol 1A, Ajibola *Report* (2009).
[86]Famoroti 'Seeking justice and restitution for victims of Jos crisis'-National Mirror, 9 February 2011.

CHAPTER THREE

THE JOS CRISIS AND INTERNATIONAL CRIMES

This chapter will address the first objective of this research, which is to establish whether or not international crimes have been committed in the Jos crises. The chapter will study the facts and draw a conclusion in the light of international criminal law. It however begins with an analysis of crimes under Nigerian domestic law.

3.1 Nature of Crimes Committed

The recurrent and protracted violence in Jos has naturally been characterised by the commission of various heinous and atrocious crimes in violation of the nationally and internationally recognised fundamental human rights of the individual victims, in particular, the right to life. Each of the commissions of inquiry established in respect of the crisis generally identified the following crimes as having been committed in the course of the crisis: murder; assault/infliction of grievous bodily injury; rape; arson; and unlawful possession of firearms.[87] The Niki Tobi Whitepaper Report specifically highlighted the following crimes as characterising the 2001 crisis: homicide; arson; rape; illegal stock piling of arms; illegal possession of firearms; house breaking, theft; conspiracy; and mischief.[88] The crimes were perpetrated through the use of weapons such as guns, cutlasses, swords, clubs, machetes, bows and arrows, mob beatings, strangulation, and burnings. It led to the death of over 7000 persons on the average.[89] The number of the wounded and or maimed has not been summed-up but they are definitely more than the dead. Hundreds of thousands have equally been displaced as a result of the attacks.[90]

[87] *Fiberesima Report* (1994) 7-10; *Niki Tobi Report* (2002) 77-79; *Ajibola Report* (2009) 25-33
[88] *NikiTobi Report* (2002) 77-79.
[89] *Niki Tobi Report* (2002)149-169; Dada 'Genesis of the Crisis'-Nigerian Tribune, 14 March 2010; Danfulani (2006) 3; *Ajibola Report* (2009) 293; Higazi (2011)23.
[90] '*Amnesty International Annual Report* (2011).

3.2 Crimes under Domestic Laws

All the above-mentioned crimes are defined and punished as offences under the domestic criminal laws in Nigeria applicable in plateau state. These are punishable under Sections: 220 and 221 (Murder/Culpable Homicide); 247 (Grievous Hurt); 283 (Rape); 337 (Mischief by fire); 106 (Unlawful assembly and Rioting); 346 and 347 (House Breaking); and 96 (Conspiracy) of the Penal Code Law[91]and Sections: 316 and 319; 335; 358; 443; 283; 69; 411; and 516 of the Criminal Code Act[92] respectively for these offences.

These individual offences are crimes within the exclusive jurisdiction of the Plateau State High Court. Due to the dual regime applicable in Nigeria, which categorises offences into federal and state offences, the federal government has no jurisdiction under the 1999 Constitution to prosecute murder or other serious offences committed during the Jos violence.[93] Hence, the federal government has only been able to prosecute these crimes as federal offences. The case of the 17 Fulanis and 3 Beroms prosecuted by the Federal government in respect of the Jos crisis in 2010 were based on charges of acts of Terrorism,[94] Unlawful possession of firearms,[95] Unlawful assembly and arson.[96] The first two are purely federal offences over which the state government had no jurisdiction. The crimes identified above are equally triable as acts in breach of the fundamental rights of citizens to life, dignity of human person, right to freedom of thought, conscience and religion.[97] Such action may only be brought by victims or their families either before the Plateau state high court or the federal high court of Nigeria.

[91] This is the law applicable in the State Courts.
[92] This is the law applicable in the Federal High Court.
[93] See See S.251(1) & (3) and Schedule 1 of the 1999 Constitution.
[94]S.1, Terrorism (Prevention) Act, 2011.
[95] Secs.3 and 4 of the , Firearms Act, 2004.
[96]Obateru, Ige 'Nigeria: Jos Crisis' –Daily Champion.
[97] See Secs.33, 34 and 38, of the 1999 Constitution.

3.3 Crimes under International Law

It is a well-known and accepted fact that the crimes committed in the Jos crisis are crimes under Nigerian domestic laws as they are, too, obtainable in other jurisdictions. However, the crucial question which needs to be answered here is whether they also constitute international crimes within the jurisdiction of the international criminal court.

Article 5 of the ICC Statute provides for the following international crimes as crimes under the jurisdiction of the court: the crime of genocide; crimes against humanity; war crimes and the crime of aggression. In determining whether or not international crimes within the jurisdiction of the ICC have been committed in the Jos crisis, the 1994 and 2001 crisis shall be excluded from the discussion since the Rome Statute came into force only on 1 July 2002.

3.3.1 Genocide

Genocide involves the commission of specific acts with intent to destroy in whole or in part a national, ethnic, racial or religious group. These acts, as defined in Art. 6 Rome Statute,[98] include: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent birth within the group; and (e) Forcibly transferring children of the group to another group.

[98] Art.II, Genocide Convention (1948) as reproduced in Art.6, Rome Statute.

3.3.1.1 Protected Group

The crime of genocide protects the biological-physical and social existence of a group.[99] The national, ethnic, racial or religious groups[100] are so selected because they are stable groups, the membership of which is involuntary and permanent and are often vulnerable to attacks.[101] Hence, political groups are excluded from the definition. Emphasis is on the protection of group existence as against individual existence because an individual is attacked on the basis of his/her membership of the group. Judicial authorities show that membership of a group is determined by not only the above objective elements (nationality, ethnicity, race and religion) as required by the statute, but by additional subjective elements as well. This subjective element is determined by whether the group itself or the perpetrator perceives it to be a distinct group[102].

The victims of the Jos violence, who are the indigenes and settlers from other States, as well as the Hausas and the Fulanis, are members of recognised ethnic groups in Nigeria. They can equally be classified by religion into Christian and Muslim groups, thereby fulfilling the definitional requirement of ethnic and religious groups. A challenge that rears its head here is the fact that the victims of the attacks do not belong to single group. The indigenes consist of the different indigenous ethnic groups. Other settler groups like the Igbos, Yorubas and Urhobos were also subject to attacks alongside the indigenes. The Hausa/Fulani are equally two distinct ethnic groups. A negative definition of a target group is, however, not acceptable in a case of genocide. As was held in the case of*Stakic,*[103] a group consisting of all groups which the perpetrator does not consider to be a part of his or her own defined group cannot constitute a

[99]Werle (2009) 256 699; Ambos and Wirth in Fischer, Kress and Ludereds (2001) 783-797; But see Cassese (2008)130 which states that the Genocide Convention protects only the physical existence of a group.
[100]*Akayesu*ICTR (1998) para.512-515.
[101]*Akayesu* ICTR (1998) para.469; *Jeslic*ICTY (1999) para.69; Cassese (2008) 130.
[102]*Kayishema and Ruzindana* ICTR (1999) para.98; *Rutaganda*ICTR (1999) para.56; *Musema* ICTR (2000) para.161; Werle (2009) 259 713; Cassese (2008) 141.
[103]*Stakic* ICTY (2006) para.16-28.

group envisaged in the definition of genocide as provided under Art. II of the Genocide Convention, of which Art.6 of the Rome Statute is a replica. It was held that unlike positive groups, 'negatively defined groups have no unique distinguishing characteristics that could be destroyed.'[104] In such instances, the groups constitute a civilian population. It is arguable that the two factions constitute two distinct groups of Christians and Muslims who are killing each other. However, the fact that the Hausa/Fulani Muslims have often included the indigene Muslims and other settler Muslims in their attacks on Christians[105] blurs the clear distinction between Muslim and Christian groups. However, the victims of the attack by Fulani herdsmen on the village of DogoNahauwa, who were predominantly Beroms, constitute a protected group which may be subject of genocide.[106] The attack, which resulted in the death of over 300 persons, nearly wiped out the whole village and the victims were targeted on the basis of their ethnicity (Beroms) and religion (Christianity).

3.3.1.2 Individual Acts

These consist of the acts which constitute the crime of genocide. They are highlighted in sub-paragraph a-e above of paragraph 3.3.1 above. The commission of any of these acts with a *specific intent* to destroy in whole or in part gives the crime its international character.[107]

The killings, maiming and wounding of several thousands of persons committed during the crisis fall under the first two individuals acts provided under Articles 6(a) and (b) of the Rome Statute, namely, killing and causing serious bodily or mental harm.

[104] *Stakic*ICTY (2006) para.23.
[105] *Ajibola Report* (2009). The indigenes have equally allegedly killed fellow indigenes of the same ethnicity because they are Muslims.
[106] Higazi (2011) 29.
[107] Werle (2009) 256 701; *Jelisic*ICTY (1999) para.66.

3.3.1.3 The Mental Element of the Crime of Genocide

While the material element of the crime is expressed in the definition of the group and the commission of the individual act(s), the mental element of genocide is found in the 'specific intent (*dolusspecialis*) to destroy' and the intent and knowledge required for the commission of a crime as stipulated under Art.30 of the Rome Statute. According to Werle, the Elements of Crimes and customary law in some cases require a lower threshold mental element in comparison to the requirements under Art.30 in order to satisfy the elements of the crime.[108] The existence of a plan or policy as required for crimes against humanity is not legally required for the commission of genocide, although it will be relevant in establishing the intent to destroy.

In juxtaposing the above with the Jos situation, the mental requirement stipulated under Art.30 for proof of the individual acts perpetrated may be fulfilled since from the facts of the cases, the perpetrators deliberately committed the atrocities, knowing the consequences of their actions.

However, the challenge here is proof of the *specific intent* to destroy in whole or in part, the ethnic groups identified above. *Dolusspecialis* demands a very high threshold of proof. Proof of intent is a particularly knotty task and is incapable of positive proof.[109] Proof of specific genocidal intent can only be inferred from factual circumstances surrounding a case. It may be proved by documents[110] or utterances[111] or conduct or a combination of all. Behrens is of the view that although the consideration of motive in proving commission of genocide has been subject to criticism by the *ad hoc* tribunals, the requirement of *dolusspecialis* by the Convention shows that proving mere 'voluntative element' is not enough, but that the reason behind the

[108] Werle (2009) 274 751.
[109] Behrens in Henham and Behrens eds (2007) 127.
[110] *Eichmann* Trial (1961).
[111] *Kayishema and Ruzindanda* ICTR (2001) para.149.

genocidal acts must be examined to prove specific intent.[112]However, proof of political or economic motive has been held not to automatically negate *dolusspecialis*.[113]

The Jos crisis killings have been largely retaliatory and perpetrated with a desire to gain dominance over the opposing group. The indigenes in particular have often been provoked into violence by the Hausa/Fulani Muslims' killing of their people. The fact that they only intend to expel the Hausa/Fulanis from Jos is evident in their several attempts to forcibly displace them from their communities by burning their houses and cattle whenever crises broke out and chasing them out of their villages. The Hausa/Fulanis' violent attacks have equally being largely motivated by revenge, and they followed the same pattern. Although the crisis became more deadly, and escalated as the years passed on, it can hardly be said to have been characterised by a genocidal intent, as the opposing groups lived together and tolerated each other for up to many years in some instances before violence erupted again. In this regard, the 2004 UN Commission of Inquiry into the Dafur Situation stated in its report as follows:

> 'Generally speaking the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. Rather, it would seem that those who planned and organized attacks on villages pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare.'[114]

The ICJ also distinguished between killing with intent to remove a group from a region and killing with intent to destroy the group in whole or in part, holding that the former constitutes '***ethnic cleansing***'.[115] Hence, in the instant case, the killings that have taken place in Jos on both sides may best be described as a case of ethnic cleansing. Ethnic cleansing has been defined as 'a

[112] Behrens in Henham and Behrens (eds) (2007) 131.
[113] *Kayishema and Ruzindana* ICTR (2001) 161); *Jeslic* ICTY (2001) 49.
[114] *Dafur Report* note 8 cited in Schabas (2008) 96.
[115] *Bosnia and Herzegovina v. Serbrenica and Montgomery*, ICJ (2007) 70,190.

purposeful policy designed by one ethnic group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas'.[116] Ethnic cleansing can be prosecuted as 'deportation or forcible transfer of population' under Art.7(1)(d) Rome Statute.[117]

3.3.2 Crimes against Humanity

A crime against humanity is defined in Art.7(1) of the Rome Statute as one which occurs when any of the crimes specified therein is committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack. Crimes against humanity have been described as odious offences that constitute grave humiliation, degradation or a serious attack on the dignity of man.[118] They affect not only the state of commission but all human communities because they violate the shared core of humanity that distinguishes man from other beings, thus making the perpetrator a *hostishumani generis*.[119]

3.3.2.1 Commission of Individual Acts

The first requirement for establishing the commission of crimes against humanity following Art.7 Rome Statute is an individual act. These include: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other deprivation of physical liberty; torture; rape; sexual slavery; enforced prostitution; enforced sterilisation or other commensurate forms of sexual violence; persecution on specified grounds; enforced

[116] *Final Report of the Commission of Experts for the former Yugoslavia* cited in May (2005) 117.
[117] Schabas (2008) 105.
[118] Cassese (2008) 98.
[119] Ambos (2011) 281.

disappearance; apartheid; or other inhumane acts causing serious suffering or injury to body, mental or physical health[120]

The commission of the following individual acts has specifically characterized the violence in Jos: murder; extermination; forcible transfer of population[121]; or other inhumane acts causing serious suffering or injury to body mental or physical health.

3.3.2.2 Civilian population

Unlike genocide, the protection of crimes against humanity goes beyond specific groups to cover any civilian population. A civilian population refers to any group (excluding military combatants)[122] bound together by nationality, ethnicity, religion, political affiliations or other identifiable characteristics.[123] These shared characteristics make the group a target for an attack.[124]

The majority of the victims of the Jos crisis aptly fit the definition of a civilian population stated above. Many of them are Christian and Muslim residents of Jos who are targeted by the perpetrators because of their religious and ethnic affinity. Many attacks took place suddenly in the night while the victims were sleeping and defenseless.[125]

3.3.2.3 The Nature of an Attack

An important threshold required for an individual act to amount to crimes against humanity is that the 'attack on a civilian population' through the commission of any of the individual acts

[120] Art.7(1), Rome statute.
[121] The massive destruction of the property (houses) of rival ethnic/religious groups which led to the displacement of over 300 000 people constitutes the forcible transfer of a civilian population. See *Kenya Authorization Decision* (2010) 156-165.
[122] *Blaskic* ICTY (2004) para.115.
[123] *Bemba* ICC (2012) para.76; *Ruto and Sang* ICC (2012) para.164.
[124] Werle (2009) 293 793.
[125] An example is the January and March 2010 attack –Higazi (2011) 27-29.

must be *'widespread or systematic'*.[126] Art.7(2)(a) defines an attack as the multiple commissions of any of the individual acts pursuant to a state or organisational policy to commit such an attack. Widespread, here, refers to 'the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims'.[127] It may also be determined by its spread over a large geographical area.[128] A systematic attack is, on the other hand, an organised attack following a regular pattern in execution of a common plan and involving substantial fund.[129] It has been argued that Art.7(2)(a) makes the optional requirement of widespread ***or*** systematic superfluous.[130] For when the attack is only widespread, the requirement of a policy element necessarily makes the attack systematic, thus making both thresholds a requisite.[131]

Widespread is measured quantitatively. The recurrent attacks in Jos claimed the lives of about 2000 persons in the rural fighting which took place between 2002 and 2004. The attacks resulted in the deaths of at least 800 people in 2004, about 781 in 2008, and over 1000 in 2010.[132] The recurrent attacks in Jos since 2002 were therefore certainly widespread and systematic in the manner of their execution. They were also widespread because they often covered an extensive geographical area. The Jos crisis in 2008 began in the Ali Kazaure area of Jos North and soon spread to 14 other locations in the city.[133] In many instances whole villages were destroyed.

[126]Boot (2002) 477.
[127]*Bemba* ICC (2008) para.84; *Akayesu* ICTR (1998) para.96.
[128]Werle (2009) 298 804.
[129]*Kenya Authorization Decision* para.96;*Kordic and Cerkez* ICTY (2004) para.94; *Blagojevic and Jokic* ICTY (2005) para.545.
[130] Schabas (2011)110.
[131] Werle (2009) 298 804,805.
[132] Krause (2011) 38-41; Higazi (2011) 23.
[133]*Ajibola Report* (2009) 17,33.

Militia groups from both rival groups reportedly attacked and destroyed over 100 villages by 2004.[134] This applies to attacks in 2010 as well.

The organized manner in which the attacks are executed in some instances also manifests a systematic attack. This is evident in the attacks that took place in 2004 and 2010, as recounted above. The perpetrators were, according to Higazi, 'generally small, highly mobile, well-armed groups with excellent local knowledge and familiarity with the bush'.[135] They employed weapons such as 'AK-47s, machine guns and sub-machine guns, G3 rifles, Mark 4 rifles, single- and double-barrel shotguns, pistols, obsolete firearms ('Dane guns'), and locally made guns'.[136] The nature of the attack on the civilian population in 2011 was more systematic than widespread. There were selected reprisal killings of perceived members or supporters of rival groups on both sides, organized attacks by Hausa/Fulani Muslims on Christians and *vice versa*. In January alone, over 100 deaths were recorded from such attacks.[137] This continued throughout 2011 despite the presence of security forces (STF) in the state. The series of bomb attacks by Boko Haram in Jos in 2012 has been both widespread and systematic. The attacks have been on solely Christians and it is always executed by suicide bombers on churches. In the July 2012 attack in which a Senator was killed, the perpetrators were said to have been dressed in military uniform, wearing bullet proofs and carrying very sophisticated weapons. They executed the massacre with precision and expertise.[138]

[134] Krause (2011) 36.
[135] Higazi (2008) 3-4.
[136] Krause (2011) 36.
[137] On 7 January 2011, eight Muslims were killed in BarkinLadi, Jos. In retaliation 48 Igbo traders (Christians) were killed in Dlimi market by Muslims on 8 January 2011. By evening same day, over 14 Muslims were killed in and around Jos. 11 indigene/Christians were killed by Muslims in Wareng village, Jos South and at least 15 persons were reported killed in Jos and surrounding villages from 28-30 January 2011. Furthermore, between January and February 2011, over 42 Muslim motorcycle operators and 51 Christians were reported missing. See 'Ethno-Political Killings in Plateau State of Nigeria' –www.intersociety-ng.org; *HRW Report* (2011).
[138] 'Nigeria Senator Killed'- Reuters, 8 July 2012.

3.3.2.4 The Policy Element

As noted above Art.7(2)(a), the Rome Statute states that an attack must be 'in furtherance of a state or organisational policy'. The essence of the state or organisational policy element is to exclude cases of isolated sporadic acts of violence.[139] According to the interpretation of the international *ad hoc* tribunals, the policy element 'need not be explicit or clearly and precisely stipulated nor decided upon at the highest levels'.[140] It is inferable from the manner in which the crimes are perpetrated.[141] The policy element has a strong base in customary international law which is traceable to Nuremberg. It distinguishes crimes against humanity from other categories of mass victimization or domestic crimes.[142] It emphasises the planned and directed nature of the classes of crimes against humanity.

A careful consideration of the issues generated by the Jos crisis shows that these attacks were carried out with the goal of eliminating or dominating the opposing group so as to gain economic and political control of the state.[143] They manifest a pattern and plan which shows the existence of a policy pursuant to which these attacks are carried out. The policy is executed through the killing, wounding and displacement of members of rival groups.[144] Although much of the violence was motivated by revenge, the crisis has its genesis in the struggle for dominance, and religious differences have been exploited to fuel the crisis.

However, this policy must be attributable to a state or organisation as Art.7(2)(a) provides that an attack must be 'in furtherance of a state or organisational policy to commit such attack'. This is

[139] *Kayishema and Ruzindana*(1999) 124-126; Kittichaisaree (2001) 97.
[140] Werle (2009) 301 811,812.
[141] *Tadic* ICTY (1997) 653; Werle (2009) 301 811,812; Kittichasaree (2001) 98. This position was confirmed by the ICC in *Bemba* ICC (2008) para.81
[142] Bassiouni (1999) 243.
[143] *Ajibola Report* (2009) 26-28, 92, 95, 132&151.
[144] Note that as stated above, the existence of a policy may be inferred from the manner in which the crimes are perpetrated.

contrary to what is stated in the statutes of the international *ad hoc* tribunals, in which there is no legal requirement for a state or organisational policy, hence making the policy requirement an element only required for proof of the systematic nature of an attack.[145]

The challenge in this case is whether the Hausa/Fulani muslims (constituting groups such as Jasawa and the Miyetti Cattle Rearers associations) on the one hand, and the various indigene associations[146] on the other hand, whose members are also responsible for attacks, constitute an organisation within the meaning of Art.7(2)(a) of the Rome statute.

1. Definition of an Organisation

While the definition of a state is explicit, the definition of an organisation has been subject to a lot of controversy as it is neither defined in the Rome Statute nor in the Elements of the Crimes. Bassiouni insists that it refers to a state and excludes non-state actors like the al Qaeda and the Mafia.[147]Schabas posits that such organization may include 'bodies like the RepublikaSrpska, the FARC, and the Palestinian Authority, excluding societies and trade unions'.[148] It is a well-established fact that non-state actors can perpetrate international crimes as the majority of the ICTY and ICTR judgments have acknowledged commission of international crimes by non-state actors.[149] The ICC Pre-Trial Chamber II, in the case of *Muthaura and Kenyatta* settled the controversy in its decision on confirmation of charges in the Kenya situation. It held:

[145]See Art.5, ICTY Statute; Art.3, ICTR Statute; *Kunarac*ICTY (2002) 98; *Tadic* ICTY (1997) 658. Nevertheless, Hansen argues that by its decision on the authorization of investigation into the Kenyan situation, the ICC Chamber implies that crimes against humanity under customary law are not different from under the Rome Statute, and by holding that proof that a group has carried out a systematic attack is evidence of an organisational policy, the ICC has also once more made the policy element dependent on the 'systematic attack requirement as held in the *Tadic*case. See Hansen (2011) 10.

[146] This includes the Plateau Youth Council, Afizere Cultural and Community Development Association, Anaguta Development Association and Berom Elders Council- *Niki Tobi Report* (2002)15-16.

[147]Bassiouni (2005)151-152. C/f Kittichaisaree (2001) 98.

[148]Schabas (2008) 972.

[149]*Jeslic*ICTY (1999) 80-82; *Kupreskic*ICTY (2001) 654; Peter Finell (2002) 7.

'The formal nature of a group and the level of its organization should not be the defining criterion. Instead, a distinction should be drawn on whether a group has the capability to perform acts which infringe on basic human values… had the drafters intended to exclude non-State actors from the term 'organization', they would not have included this term in article 7(2)(a) of the Statute'.[150]

Hence, 'organisations not linked to a State may, for the purposes of the statute, elaborate and carry out a policy to commit an attack against a civilian population'.[151] In concluding that the Mungiki constitute 'an organisation', the court found that it was a hierarchically structured organisation which had an effective system of ensuring compliance by the members with the rules and orders imposed by higher levels of command.[152] It highlighted the characteristics of a group which may constitute an organisation under Art.7(2)(a) as follows:

> '(i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; (vi) whether the group is part of a larger group, which fulfils some or all of the abovementioned criteria. It is important to clarify that, while these considerations may assist the Chamber in its determination, they do not constitute a rigid legal definition, and do not need to be exhaustively fulfilled.'[153]

In elaborating the above-mentioned characteristics of a group constituting an organisation, the majority of the court also referred to the decisions of the international *ad hoc* tribunals on the policy element[154] and the 1991 International Law Commission (hereafter ILC)'s Draft Code of Crimes against the Peace and Security of Mankind, which included criminal gangs or groups among probable perpetrators of crimes against humanity.[155]

[150] *Muthaura and Kenyatta* ICC (2012)para.112.
[151] Kenya Authorization Decision (2010) para.92.
[152] *Muthaura and Kenyatta* ICC (2012) 186; *Kenya Authorization Decision* (2010) para.90.
[153] *Ruto and Sang*ICC (2012) para.186.
[154] The Majority held that it deemed it 'useful and appropriate to consider their definition of the concept in earlier cases.' *Kenya Authorization Decision* (2010) 86.
[155] Kress (2011) 859.

Judge Kaul, in a dissenting judgment, however, opined that only an organisation that has the character of a state (state-like) can qualify as an organisation under Art.7(2)(a).[156] According to him, international crimes must be distinguished from human rights infractions or ordinary domestic crimes since the ICC's jurisdiction is limited to grave crimes which are of the most serious concern to the international community and threaten world peace and security.[157] He concludes that from an historical perspective, a teleological interpretation of crimes against humanity meant that only a state or a state-like organisation can commit the crime. He stressed that the state or organisational policy requirement which is expressly provided for in the Rome Statute is not a legal requirement under the statutes of both the ICTY and ICTR, hence a reliance on their interpretation of the policy element cannot be in order. A state-like organisation must according to him be:

> '(a) a collectivity of persons; (b) which was established and acts for a common purpose; (c) over a prolonged period of time; (d) which is under responsible command or adopted a certain degree of hierarchical structure, including, as a minimum, some kind of policy level; (e) with the capacity to impose the policy on its members and to sanction them; and (f) which has the capacity and means available to attack any civilian population on a large scale.'[158]

Kress makes a strong case against the court's interpretation of organisational policy and argues that it is not in consonance with customary international law. According to him, the decisions relied on in *Kunarac* do not, on a closer look, support the reasoning of the court, while the ICTY's judgment in *Tadic* was solely based on the commentary of the 1999 ILC Draft Code which was neither law, nor in conformity with state practice or *opiniojuris* at that.[159]

[156] *Kenya Authorization Decision*- Dissenting Opinion (2010) 65, 66 and 67.
[157] He referred to Art.1(1), 5(1) and to preambles 4 and 5 of the Rome Statute to support his position.
[158] *Kenya Authorization Decision*- Dissenting Opinion (2010) 51. These qualities must be cumulative.
[159] Kress (2011) 870.

Notwithstanding the above objections, the interpretation of the organisational policy element as far as the Rome Statute is concerned is as contained in the majority decision which remains the judgment of the court. The decision of the court follows a progressive development in the international crime of 'crimes against humanity'. This development includes the removal of the link to international armed conflict; the inclusion of crimes such as apartheid, torture, enforced disappearance, deportation, rape, sexual slavery and other forms of sexual offences[160] in its definition; and the expansion of the classes of possible perpetrators to non-state actors or private organisations. Indeed, from a teleological perspective, the crime was enacted in response to the novel case of atrocities committed by a state against its own citizens, the very citizens which it has the duty to protect during war. If an attack of the same magnitude, amounting to grave crimes of the most serious concern to the international community, launched by a state against a civilian population, pursuant to its own policy, will amount to crimes against humanity, why would the same crime suddenly change character simply because it was perpetrated by an organisation which, though lacks the qualities of a state, has the capacity to commit the same atrocities? This presents an absurd situation in the face of the express provision of the statute and may give room for the perpetuation of impunity in cases where the responsible state is unwilling or unable to prosecute. Indeed, Judge Kaul himself acknowledges the fact that the means or capacity to commit this type of crime is germane in determining whether it has been committed when he stated that the 'private entity must have the means and resources available to reach the gravity of systemic injustice in which parts of the civilian population find themselves'.[161]

[160]Schabas (2008) 105-106.
[161]*Kenya Authorization Decision*- Dissenting Opinion (2010) 66.

2. Application to the Jos Situation

In the light of the majority decision on the Kenya situation referred to above, the Jasawa Development Association may (depending on further investigations) qualify as an organisation under this head.[162] It constitutes and controls the Hausa/Fulani Muslim population in Jos. Hence paragraphs (i), (ii), (iv) and (v) of the qualities listed in the majority decision are attributable to the association, thus making it qualify as an organisation. The Miyetti Cattle Rearers Association, an association of Fulani Herdsmen with a structured leadership, may also qualify under this head. They have been very involved in the crisis and have suffered tremendous losses of lives and cattle deaths as a result. They have also been allegedly responsible for several attacks on the indigenes and Christians in Jos.[163] However, there exists no identifiable umbrella body of Jos indigenes with a structured leadership like the Jasawa Development association. Yet they have been reportedly responsible for many attacks against the Hausa/Fulani Muslims, with evidence showing planning, organisation and funding. An investigation of the issue may reveal a structured organisation of indigenes responsible for perpetrating these attacks. In the absence of such organisation, the crimes cannot constitute crimes against humanity under the Rome Statute.

A stricter interpretation of the situation would arise if the opposing groups of perpetrators were to be considered as members of one ethnic group attacking another. In this instance, would an ethnic group constitute an organisation within the meaning of Art.7? This will depend on the hierarchical structure and how members of the ethnic group in a given territory are organised, as well as on the degree of control over the members. Most ethnic groups in Nigeria have a

[162] The Association and its leadership have been indicted in the reports of the commissions of inquiry set up in 1994, 2001 and 2008, respectively, which held it responsible for some of the crimes committed during the crises and instigating its members to attack Christians.

[163] These were attacks between 2002 and 2004; the March 2010 slaughter in DogoNahauwa; and many more recent attacks. –'Soldiers raid Fulani Settlement' –Daily Trust, 13 July 2012.

recognised leadership consisting of kings and chiefs. An example is the Gbong-Gwom, who is the paramount leader of the Jos indigenes. He has, however, not been implicated in the reports on the crisis. Some community leaders have nevertheless been arrested in connection with the crisis.[164]

However, Boko Haram's recurrent bomb attacks on Christians in Jos in 2012 can very well constitute crimes against humanity. Boko Haram is a structured religious organisation with capacity and control to execute a widespread or systematic attack on a civilian population. Their bomb attacks on Christians in Jos constitute the crime of terrorism.[165] Terrorism as a crime is not defined in the Rome Statute. Nevertheless, it is manifested in the commission of individual acts like murder or extermination in the context of a widespread or systematic attack against a civilian population. This scenario, as played out in the Jos situation, will constitute crimes against humanity where it is carried out by a structured organisation like Boko Haram.

3.3.2.5 State Involvement in the Jos Crisis

Another issue that needs to be established is whether government's delayed response to the situation which is aggravated by the allegation of extra-judicial killings of Hausa/Fulani Muslims[166] by security forces, can be said to cloth the attack as a 'state policy'? In this regard, footnote six to the Elements of crimes states that 'Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack'.[167]

[164] Plateau Arrests 3 Community Leaders -http://www.thisdaylive.com
[165] S.1&2, Terrorism (Prevention) Act, 2011.
[166] Ajibola (2009) 183; *HRW Report* (2009).
[167] Cited in Hansen (2011) 1.

The Report of the Preparatory Commission for the ICC further states: 'The existence of such a policy cannot be inferred solely from the absence of governmental or organisational action'[168] A critical look at the attitude of both the federal and Plateau state governments to the crisis cannot be described as encouraging the attack. Although they deserve condemnation for their initial patent reluctance to prosecute the criminals and for failing to implement the recommendations made by the Commissions - a factor that has contributed to the recurrence of the violence -their response is not a case of total inaction. They have in fact set up Commissions of inquiry on most occasions when there was an escalation of the crisis. The year 2012, too, has been marked by an increase in the rate of domestic prosecutions of the Jos crimes.[169]

However, the allegation of arbitrary killings by the police and army as well as the complicity of the STF in the crisis, demands investigation and if proved, the killings will constitute a breach of the victims' fundamental right to life, which is protected under national and international law. Extra-judicial execution does not form part of crimes against humanity but may amount to persecution if people were being systematically killed on account of their religious, ethnic or political affiliation. However, a state policy to carry out this purpose is not deducible from the actions of either the Plateau State or the federal government.

3.3.2.6 Mental Element of Crimes against Humanity

The mental element required is equally mere knowledge[170] of the attack as against 'specific intent' required for genocide. The mental element required for crimes against humanity is thus a combination of the *mensrea* requisite for the commission of the individual acts and the

[168]Doc. PCNICC/2001/1/Add. 9 cited in Kittichasaree (2001) 102.
[169] See para.2.6.1 above.
[170] That is, the perpetrator need not know the details of the organisational policy. Kittichasaree (2001)102.

awareness of the contextual element (widespread or systematic nature of the attack).[171] From the fact of this case, one can conclude that the perpetrators are aware of the context in which they attack the civilian population as being either widespread or systematic. However, further investigation of the individual cases is necessary to better prove this point. Motive is not a requirement for the crime under the ICC Statute although it may be relevant in proving its commission.[172]

3.3.3 War Crimes

War crimes are acts in violation of international humanitarian law which defines the scope of acceptable practices in an armed conflict. International humanitarian law mainly addresses the way the enemy civilian population must be treated by combatants in cases of international or internal armed conflict. Violations of these laws are said to be grave breaches and are regarded as war crimes. War crimes are codified in at least 71 international legal instruments.[173] The most prominent and comprehensive of these are the 1949 Geneva Conventions.

3.3.3.1 War Crimes in Non-international Armed Conflict under the Rome Statute

Art.8(2) Rome Statute defines acts that constitute war crimes in international armed conflict [Art.8(2)(a) and (b)] and non-international (internal) armed conflict [Art.8(2)(c) and (e)]. Since no foreign state is involved in the Jos situation, the conflict can be adjudged internal. The discussion here will therefore be limited to international humantarian law insofar as it relates to internal armed conflict. Art.8(2)(c) of the Rome Statute incorporates the provision of common article 3 of the Geneva Conventions. It provides that war crimes in internal armed conflict mean 'serious violations of article 3 common to the four Geneva Conventions of 12 August 1949,

[171] Cassese (2008) 114.
[172] Schabas (2011) 115.
[173] Bassiouni (2003) 141.

committed against persons taking no active part in the hostilities'. Under Art.8(2)(e) war crimes includes 'other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law.' Although not expressly stated as contained in Art.8(2)(c) of the Rome Statute, Art.8(2)(e) is also essentially a codification of Additional Protocol II to the Geneva Conventions.[174] Additional Protocol II was adopted in 1977 as a supplement to common article 3 to the Geneva Conventions to create more elaborate provisions protecting victims of internal armed conflicts.

War crimes are committed within or in the context of an armed conflict. Hence in finding whether war crimes have been committed in the Jos crisis, the existence of an armed conflict must be established. The Rome Statute does not define an armed conflict, nor does it state when it exists. Hence, recourse will be made to case law and interpretive notes on the matter.

3.3.3.2 Armed Conflict

According to the ICTY Appeal chambers, 'an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.'[175]

3.3.3.3 Determining the Existence of an Internal Armed Conflict

The ICRC commentary on 'common article 3' highlights the following conditions as determining its applicability and consequently the existence of an internal armed conflict:

a) Party in revolt should have: an organized military force; an authority responsible for its acts within a specific territory; and means of ensuring compliance with the convention.

[174] Werle (2009) 362 971; Schabas (2008) 131.
[175] *Tadic* ICTY (1995) 70.

b) The *dejure* government is forced to resort to use of military force against the insurgents who are organised as military in possession of part of the State's territory.

c) The *dejure* government recognised the insurgents as belligerents[176] or accorded them such recognition for the purposes of the convention; the insurgents claimed the right to be treated as belligerents.

d) The UN Security Council or General Assembly has acknowledged the dispute as posing a threat to international peace.[177]

Further, Art.1 of Additional Protocol II makes the protocol applicable only where:

> 'conflict takes place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them carry out sustained and concerted military operations and to implement this protocol.'[178]

The ICTR in *Akayesu*applied these conditions in establishing the existence of an internal armed conflict in Rwanda.[179] The ICTY equally referred to military operations, ceasefires and taking control of a territory as proof of the existence of an armed conflict.[180]

In the Jos situation, however, there is no *known* self-declared or government-recognised military force or armed group belonging to either of the conflicting parties. Hence, it is impossible to determine whether an unknown armed force has a responsible authority and means of ensuring compliance with Common Article 3 or implementing Additional Protocol II. The conflict has also not involved much combat or 'sustained and concerted military operations' between the

[176]Participants in a warfare recognised by international law- Encarta Dictionaries- http://encarta.brothersoft.com.
[177]Para.4438, Commentary on Additional Protocol II; *Akayesu* ICTR (1998) 619.
[178]Art.1 of Additional Protocol II.
[179]*Akayesu* ICTR (1998) 619-626.
[180]*Tadic* (1995) 70.

parties in conflict. The violence in Jos has been rather perpetuated by attacks and counter attacks on the civilian population of opponent groups by militias.[181] Victims are often attacked at night and burned alive in their homes or places of refuge[182], or are, shot, butchered or stabbed. The only major instances of violent clashes between rival groups are as witnessed in 2001 and 2008.[183]

With respect to the requirement of the use of force by the government against the insurgents who are organised as military force in possession of part of the state, the presence of the STF in Plateau State is indeed to control the situation, ensure peace and confront the dissidents should the need arise. However, while the Nigerian army could have been forced to engage armed perpetrators in gun-battle during major violence such as the type that occurred in 2001, 2008[184] and part of 2010 in a bid to curb the violence, there have not been reported cases of confrontations between the attackers and the government. None of the rival groups has possession of any part of the State over which the government has no control.

Although it is stated that these conditions are not indispensible in determining whether an armed conflict has occurred,[185] the existence of armed forces groups engaged in intense fighting is indispensible.[186] As held by the ICTR, 'the term, armed conflict in itself suggests the existence of hostilities between armed forces organised to a greater or lesser extent'. Indeed in all the war crime cases concerning internal armed conflict tried by the international criminal tribunals including the latest ICC case of *Lubanga,* there are recognised military forces carrying out

[181] Krause (2011) 38-41.
[182] *Ajibola Report* (2009) 131.
[183] *Niki Tobi Report* (2002) 9-20; *Ajibola Report* (2009) 33.
[184] *Ajibola Report* (2009) 227.
[185] Dormann (2004) 386-387.
[186] Greenwood (1995) 48. See also Pictet, CommentaryIV, Art. 3, p. 36 cited in Dormann (2004) 387.

military operation for the conflicting groups.[187] This is not the case in Jos. The crimes committed can therefore not constitute war crimes.

[187] Examples of rebel armed groups include the Rwandan Patriotic force (RPF) and the Force Patriotiquepour la Liberation du Congo (FPLC).

CHAPTER FOUR

PROSECUTION OF CRIMES COMMITTED

This chapter considers the question of the prosecution of crimes perpetrated in the Jos crisis as international crimes under Nigerian laws and deals with the question of whether the ICC can exercise its jurisdiction to prosecute international crimes committed in Jos under the principle of complementarity.

4.1 Prosecution as International Crimes under Nigerian Law

Nigeria is a party to the Rome Statute, the Geneva Conventions and the Genocide Convention but it has domesticated none of these. This makes the prosecution of international crimes difficult.[188] However, the federal government has approved a draft 'Crimes Against Humanity, War Crimes, Genocide and Other Related Offences Bill 2012' which presently awaits enactment.[189]

4.2 The Complementarity of the ICC Jurisdiction

The principle of complementarity as applicable to the ICC implies *inter alia*that the jurisdiction of the court is only exercisable where it is not in conflict with the jurisdiction of a state to investigate or prosecute an international crime. Exceptions are provided in cases where a state is unwilling or unable to genuinely undertake investigation or prosecution; or where Art.20(3) of the Rome Statute does not operate to bar the court's jurisdiction to try a person already tried forconduct which is the subject of complaint before the court.[190]National courts therefore take precedence over the ICC in the prosecution of international crimes while the court acts in place

[188] See United Nations Treaties Collection- http://treaties.un.org.
[189] 'Nigeria: F.G Approves Bill on War Crimes, Genocide and others' - http://allafrica.com/stories/201206030096.html.
[190] Art.17(1)(a) (b) & (c), Rome Statute.

of national jurisdictions in circumstances permitted by the statute.[191] This makes prosecution by the ICC, the exception and not the rule.[192]

Complementarity is entrenched in the preambles, Art.1, and Articles 17-19 of the Rome Statute. The substantive provision is mainly captured in Art.17. Complementarity has been described as the underlying principle and corner stone of the Rome Statute which distinguishes the jurisdiction of the court from that of national courts and determines when such jurisdiction is exercisable.[193]A number of reasons have been given as justification for the entrenchment of this principle in the Rome Statute. These include: respect for state sovereignty; prevention of impunity for international crimes where states fail to prosecute and the deterrence of future commission of such crimes[194]; prudency, due to the limited resources of the court and the fact that it is easier for states of commission to gather evidence and prosecute crimes within their territory.[195]Complementarity determines when a case is admissible before the ICC for prosecution and thus functions as a bar to its exercise of jurisdiction. In the Jos situation, consideration of the issue of complementarity is particularly relevant since the Nigerian authorities have been investigating and prosecuting cases arising from the Jos attacks and the case is under preliminary investigation by the ICC.

4.3 Conditions for Prosecution by the ICC

Art.17(1) provides that the ICC shall determine that a case is inadmissible where:

i. a state (party or non-party to the Rome Statute) which has jurisdiction, is investigating or prosecuting the case or has duly investigated and decided not to prosecute;

[191]Cassese (2008) 342; Sheng (2006) 2.
[192]Werle (2009) 82 229.
[193]Benzing (2003) 593.
[194]Benzing (2003) 595-597. See also Preamble 5&6 to the Rome Statute.
[195]Cassese (2008) 343.

ii. the person concerned has been previously tried for the same conduct for which prosecution is being sought; or

iii. the case is not of sufficient gravity.

However, the article further provides that the court shall exercise jurisdiction on the basis of complementarity where:

i. despite investigating or prosecuting, a State is unwilling or unable to genuinely carry out the investigation or prosecution or its decision not to prosecute after investigation resulted from such unwillingness or inability;

ii. the exception to the *nebis in idem* rule applies as stipulated under Art.20(3); or

iii. the case is of sufficient gravity to warrant action by the court.

The Nigerian authorities attempted to prosecute the perpetrators of the Jos violence only in 2010. The federal government has prosecuted for terrorism and unlawful possession of firearms while the state government, which only began prosecution in 2012, has been prosecuting for murder, causing grievous hurt, arson etc. However, both Plateau State and the federal government have always claimed they are investigating the cases relating to the violence. In the circumstances, an analysis of the above conditions in line with the Jos situation is done below.

4.3.1 Unwillingness

Art.17(2) provides that the ICC may find that a state is unwilling where proceedings are: held to shield a person from responsibility for international crimes under Art.5 of the Rome Statute; unjustifiably delayed; not conducted independently or impartially in conformity with due process recognized by international law; and conducted in a manner inconsistent with an intent to bring the accused to justice.

It has been argued that the fact that a state undertakes prosecution to prevent the court from stepping in does not amount to shielding if the state genuinely has intent to establish relevant facts, evaluate and impose adequate punishment for crimes committed.[196] Shielding may however occur where a bogus trial is conducted or inadequate punishment imposed in order to prevent the court from assuming jurisdiction over the case or to enable the accused to raise the defence of double jeopardy against the court.[197]

From available facts, prosecution in the Jos situation can neither be described as a sham nor an attempt to shield the accused persons from prosecution by the court. As at December, 2010, 17 persons were convicted by the federal high court for attacks carried out on the village of DogoNahauwa. A total of 15 were sentenced to 10 years in prison, one for 21 years (for terrorism) and the last person for one year for unlawful possession of firearms. Prosecutions are on-going and have considerably increased with the current participation of the Plateau state authority.[198] These are, however, prosecution of ordinary crimes. The question whether the prosecution of the crimes within the ICC jurisdiction as ordinary crimes will suffice to make a case inadmissible before the court will be discussed below under 4.4.

Furthermore, international criminal law envisages prosecution of the core leaders responsible for organising and directing these types of attacks. This does not really appear to be the case in the federal and State authorities' attempt at prosecution as they appear to have concentrated on prosecution of the 'fungible foot soldiers', hence the persistence of the violence. Whether this could amount to 'shielding' is debatable as Nigeria could easily claim investigation into the situation is still on- going. However, the persistence of the violence may serve as a ground for

[196]Benzing (2003) 610.
[197]Schabas (2008) 184.
[198]Analysis of ICC Report on Nigeria Situation- http://jubileecampaign.org.

the ICC to infer unwillingness and thus step in to investigate, find out and prosecute the commanders and sponsors of the attacks. This is easily inferable since Nigerian authorities have been unable to establish through their prolonged investigation who the sponsors or commanders of the perpetrators of these outbreaks of violence are. The few prominent leaders who were identified in the reports of the commissions of inquiry have not been charged with any crime.[199]

The criminal justice authorities can also not be accused of unjustifiably delaying prosecutions, as proceedings conducted so far have, as the records show, been concluded within reasonable time. Unjustifiable delay may occur in a case where a state commences an investigation or prosecution with no intent to conclude it so as to frustrate the trial.[200] Lack of impartiality, independence or intent to bring the accused to justice are from the foregoing also inapplicable to the Jos situation. In determining whether a state is unwilling, based on these conditions, the court must give regard to 'the principle of due process recognised by international law' as stated in Art.17(2). This implies that the court must be objective in considering national procedure[201] and assess the quality of justice from the standpoint of procedural and even substantive fairness'.[202] In the circumstances stated above, Nigeria can therefore not be said to be unwilling to prosecute.

4.3.2 Inability

Inability is determined where due to 'a total or substantial collapse' or 'unavailability' of a state's judicial system, it is unable to apprehend the accused, obtain necessary evidence or ultimately carry out prosecution.[203] The judicial system of Nigeria is certainly fully functional

[199] *Niki Tobi Report* (2002)185; See persons indicted in *Ajibola Report* (2009) 187-257.
[200] Schabas (2008) 184.The Federal High Court records of trial show 93 person acquitted, 26 more conviction and 3 appeals.- Information received by Jubilee Campaign from the Office of the Attorney General on 8 May 2012 stated in the Analysis of ICC Report on Nigeria Situation- http://jubileecampaign.org.
[201] Holmes (1999) 53-54; Benzing (2003) 610.
[202] Schabas (2008) 184.
[203] Art.17(3) Rome Statute.

and the state can apprehend the accused. The alterative condition of 'unavailability' is addressed under 4.4.4 below.

4.4 Prosecution of International Crimes as Ordinary Crimes

As stated above, while some jurists have argued that national prosecution of international crimes as ordinary crimes cannot satisfy the conditions for complementarity, others have argued that it may and should satisfy the complementarity principle though with a cliché that prosecution for international crimes is the best means of combatting impunity for crimes of this nature.

4.4.1 Arguments for 'Unwillingness'/'Inability' Despite Prosecution as Ordinary Crimes

Those against posit that the ICC was established for the punishment of 'the most serious crimes of concern to the international community'[204] which are limited to the specific international crimes defined in the Rome Statute. Hence, their prosecution as ordinary crimes is against the spirit and intent of the statute. For there to be a successful prosecution, domestic laws must, therefore, be in line with the international definition of the relevant crime.[205] Opponents also argue that international crimes are by their very nature of such graveness that ordinary crimes like murder or rape cannot conceivably capture the international community's abomination and total condemnation of them.[206] Amnesty International opines that a likely consequence of states' failure to incorporate the Rome Statute crimes in their domestic laws is their 'being considered as unwilling and unable to prosecute.'[207]

[204] See preamble 4 Rome Statute.
[205] See Sedman (2010) 266; Philippe (2006) 390; The ICTY Appeal Chambers holding in *Tadic* that international tribunals are primarily established and international crimes created to prevent their trivialisation and avoid revisionism concurs with this view. See *Tadic* ICTY (1995) 58.
[206] Ellis (2003) 224-225.
[207] Amnesty International 'The International Criminal Court: Checklist for Effective Implementation' (2000) http://www.amnesty.org.

4.4.2 Arguments against 'Unwillingness'/'Inability'

Those who argue that prosecution for serious ordinary crimes fulfills the complementarity condition posit that the Statute imposes no express obligation on states to implement the international crimes defined therein.[208] Rather, what is demanded are measures at national level and state cooperation in combating impunity for international crimes and contributing to the prevention of such crimes.[209] Hence, where a state has no provision for international crimes in its domestic laws, it can 'enforce the prohibition of core crimes by reference to ordinary domestic crimes'.[210]

Criticising the ICTR's decision to disallow Norway from prosecuting the accused in *Bagaragaza*[211] on the basis that though it can prosecute for murder, it has no provision which allows for prosecution of international crimes in its national laws, Schabas argues that since the aim of international prosecution is to combat impunity, the desire to hold the accused 'accountable for serious crimes should satisfy the requirement of international law'[212]. According to him:

> There was no inherent virtue in prosecuting international crimes; rather, they were required in order to justify the exercise of jurisdiction, a problem that does not generally arise when the offence is being dealt with by the courts of the territory where it was committed.[213]

4.4.3 Arguments of Heller

Heller analyzes both arguments thoroughly, describing the first view as the Hard Mirror Thesis (HMT) and the latter view as the Soft Mirror Thesis (SMT).[214] He proposes a sentence-based theory of complementarity, which makes prosecutions of ordinary crimes sufficient for

[208] Stahn (2008) 92.
[209] See preamble 4 and 5 of the Rome Statute.
[210] Kleffner (2008) 39.
[211] *Bagaragaza* ICTR (2006).
[212] Schabas (2008) 183.
[213] Schabas (2008) 183.
[214] The two phrases are attributed to Fredric Megret. See Megret (2011) 363, 372.

inadmissibility criteria as long as a sentence as heavy as the ICC would impose in the circumstance is given to the accused.[215]

With respect to 'unwillingness', Heller argues that it is wrong to automatically conclude that a state is unwilling to prosecute simply because it chose to prosecute international crimes as ordinary crimes.[216] And since the national prosecution of ordinary crimes does not amount to unjustified delay, or necessarily manifest lack of impartiality or independence, the only question is whether such a prosecution amounts to shielding an accused from criminal responsibility for an international crime committed. He submits that to make such conclusion will be contrary to the intent of Art.17(2)(a) where a state charges an accused for a serious ordinary crime like murder which, in most jurisdictions, usually attracts graver liability than that provided for international crimes under the Rome statute.[217] However, with regard to 'inability', he argued that nothing in the legislative history of the statute or in its provision makes prosecution of international crimes as ordinary crimes a condition for inability. Inability, he states is limited to cases where a state's judicial system has totally or substantially collapsed, as evident in Rwanda after the genocide, thus making it impossible for it to obtain or prosecute the accused.[218] He did not, however, address the alternative condition of 'unavailability', on which some writers have hinged their arguments to hold that a state's prosecution of an international crime as an ordinary crime due to lack of an enabling legislation amounts to 'inability' as discussed below.

[215] See Heller (2012) 88-107, 110.

[216] This choice could have been informed by a number of legitimate reasons such as political instability which prevents implementation of international criminal law, lack of expert personnel in the field of international criminal law, cost of prosecution and probability of conviction among others. See Heller (2012) 103-104.

[217] Heller (2012) 90.

[218] Heller (2012) 92. After the genocide, the situation in Rwanda was such that most of the court facilities and building have been destroyed, the Judges and Lawyers have either being killed or fled the country and the government was unsettled in the aftermath of the war.

4.4.4 Unavailability

Writers have argued that the second condition for inability: 'unavailability of national judicial system'[219] is fulfilled where the judicial system, though functional, cannot handle a case because of legal or factual reasons, for example lack of domestication of the Rome Statute or other international instruments which make it impossible to prosecute international crimes.[220] It is, however, logical to conclude that in the light of the foregoing arguments canvassed in favour of prosecution of international crimes as ordinary crimes, an exclusive interpretation of unavailability in this manner does not conform to the general context and intent of article 17.

Going by the general conditions provided under article 17 for unwillingness and inability, unavailability of a national judicial system cannot without more be interpreted as lack of provision for international crimes in the national law. Where a State is not found to be unwilling and is equally able to obtain the accused, gather necessary evidence and prosecute, the drafters of the Rome statute could not have intended the ICC to disregard these facts and exercise its jurisdiction to prosecute international crimes solely on the basis of the absence of an implementing legislation in a State's law. This is more so since 'lack of an enabling legislation' is nowhere expressly stated as a condition for inability or unwillingness and especially in the light of the provision of Art.17(1)(c) which bars the jurisdiction of the court where the accused has been tried for 'conduct' which is the subject of complaint before the court.

4.4.5 Submission on Arguments

This paper supports the soft mirror thesis position, namely that although practically, the prosecution of perpetrators for ordinary crimes will address the problem of impunity and

[219] Art.17(3) Rome Statute.
[220] Benzing (2003) 614; Condorelli (1999) 7.

deterrence of future commission of international crimes, the ideal situation will be to prosecute international crimes as such. Otherwise, many states will, for unjustifiable reasons, continue to fail to incorporate international law in their domestic statutes. Hence, the gravity, import, and merits which prosecution of international crimes presents especially with regard to leadership/command responsibility, under Article 28 of the Rome Statute and which prosecution of ordinary crimes does not usually capture, will remain a limitation of such prosecutions and may well result in impunity.

Further, certain modes of participation such as indirect perpetrator's liability as a principal offender which is recognised under Article 25 of the ICC statute is not provided for in some domestic laws. The wide-net advantage which this liability mode offers will be very useful in the successful prosecution of the sponsors of the Jos violence who might be so distanced from the crimes committed that holding them responsible as principal offenders might be very difficult.[221]

On a general level, international criminal law equally provides for some offences that are also not covered by domestic law but which occur in national situations. These include persecution, apartheid and certain war crimes. Implementation of an international treaty like the Rome Statute will address this limitation.

4.5 The *Ne bis in idem* Principle

Article 20 of the Rome Statute provides the rule against double jeopardy, otherwise referred to as the *nebis in dem*principle. Article 20(3) specifically bars prosecution by the ICC where a person 'has been tried by another court for conduct also proscribed under article 6, 7 or 8 of the statute.'

[221] However the conspiracy and abetment provisions which carry the same penalty as the substantive offence provided under Sections 85 & 97 of the Penal Code Law, (applicable in Plateau State) may provide a broader base to prosecute the leaders and organisers of the attacks for ordinary crimes. Prosecution under the Terrorism Act also provides a broad basis for prosecution. See Sections 1-6 Terrorism (Prevention Act) 2011.

This provision cannot be divorced from Art.17(1)(c) which bars the exercise of the court's jurisdiction under the principle of complementarity where 'the person concerned has already been tried for conductwhich is the subject of the complaint, and a trial by the court is not permitted under article 20, paragraph 3'. The text of both provisions specifies trial for 'conduct' as against trial for 'an international crime' as contained in articles 17(2)(a), 20(1) and (2) Rome Statute. This distinction clearly shows that the drafters of the statute envisaged and intended to include prosecution of international crimes as ordinary crimes among cases which can bar the exercise of the court's jurisdiction over an international crime.[222]

Interpreting this provision, the ICC Pre-Trial Chamber I has held in *Lubanga*[223] that 'for a case arising from the investigation of a situation to be inadmissible, national proceedings must encompass both the person and the conduct which is the subject of the case before the court'.[224]Benzing adds that a national trial of ordinary crime which does not capture the seriousness of the offence committed by the accused, or which procedure allows for unduly broad defences may be inconsistent with an intent to bring the perpetrator to justice and may amount shielding him from criminal responsibility.[225]

In this regard, since Nigeria through the Plateau State High Court, has been prosecuting perpetrators of the crimes committed in the Jos violence for the serious ordinary crimes of murder, infliction of grievous bodily harm, arson among others, which constitute the conduct proscribed in the definition of the international crimes under articles 6, 7 and 8, the case should be inadmissible for prosecution by the ICC under the complementarity principle. The Federal High Court's prosecution for terrorism should also suffice because though it does not form part

[222] See Benzing (2003) 616; Heller (2012) 91.
[223](ICC-01/04-01/06-08).
[224]*Lubanga*ICC (2006) 38-39.
[225]Benzing (2003) 616.

of the proscribed conduct, the conduct (murder and infliction of grievous harm) constituting terrorism are the same conducts which will be the subject of a case before the court. Terrorism *inter alia* includes acts which 'seriously intimidate a population; and involves or causes, as the case may be– an attack upon a person's life which may cause serious bodily harm or death'.[226] Furthermore, an application of Heller's sentence-based approach will equally support this argument since terrorism is a serious offence which attracts a heavy sentence.

4.6 Gravity

Gravity is the last condition for the determination of the admissibility of a case under Art.17 of the Rome Statute. Art.17(1)(d) makes a case inadmissible where it is not of sufficient gravity to justify the court's exercise of its jurisdiction. This is a requirement that applies to all cases challenged under the complementarity regime whether or not the state is unwillingly or unable to investigate or prosecute. This is also in conformity with the preamble which limits the ICC's jurisdiction to prosecution of 'the most serious crime of concern to the international community.'[227] According to the ICC Pre-trial Chamber I, for a case to be of sufficient gravity, '…the conduct which is the subject of a case must be either systematic (pattern of incidents) or large-scale… and due consideration must be given to the social alarm such conduct may have caused in the international community'.[228] In assessing the Uganda case as being of sufficient gravity, the ICC prosecutor, Moreno Ocampo stated as follows:

> 'We selected our first case based on gravity. Between July 2002 and June 2004, the Lord Resistance Army was allegedly responsible for at least 2200 killings and 3200 abductions in over 850 attacks. It was clear that we must start with the Lord's Resistance Army.'[229]

[226] S.2(b)(ii) and (c)(i) Terrorism (Prevention) Act, 2011.
[227] Preamble 4, Rome Statute. See Schabas (2008) 186.
[228] *Lubanga*ICC (2006) 46.
[229] Letter of Prosecutor dated 9 February 2006 (Iraq),8 cited in Schabas (2008) 190.

However, in concluding that the case against the United Kingdom troops in Iraq, although constituting international crimes, were not of sufficient gravity, he stated that there are only four to twelve victims of willful killing and about 20 victims of inhuman treatment.[230]

The perpetrators of the Jos violence are responsible for the killing of over 7000 persons, severely injuring more and displacing hundreds of thousands of persons. The incidence has also had a reverberating effect on the whole country, and has given Nigeria a negative image in the international community such that the United State Commission on International Religious Freedom (USCRIF) has repeatedly recommended it be declared a country of particular concern in its several reports.[231] The case can thus in the circumstances, be said to be of sufficient gravity. However, since the gravity criteria cannot from the provision of article 17 solely make a case admissible to the ICC, the exercise of the court's jurisdiction will depend on its finding in the Jos case as to whether or not Nigeria is willing or able to prosecute. The foregoing arguments conclude that it is.

In further conclusion, although Nigeria cannot prosecute international crimes committed in Jos, its prosecution of the real sponsors and organisers of the violence alongside the direct perpetrators can serve the cause of justice and end the crisis.

[230] Letter of Prosecutor dated 9 February 2006 (Iraq),9.
[231] See USCIRF Annual Report (2012).

CHAPTER FIVE

Conclusion and Recommendation

This chapter concludes the foregoing arguments, findings and submission and makes viable recommendations.

5.1 CONCLUSION

From the facts elicited and the points discussed above, it is my conclusion that crimes against humanity as defined under Article 7 of the Rome Statute have been committed in the Nigerian situation in Jos. The serious breaches of internationally recognised human rights laws through the mass killings, maiming and displacement perpetrated in the raging violence that took place, and may still continue in Jos are criminalised as crimes against humanity.[232] The arguments and submission made under paragraph 3.2.2 above establish this position.

The challenge, however, remains the determination of the organisations responsible for these attacks and the persons in control of the organisation. Notwithstanding, it is evident from the situation that the attacks are intense, planned and perpetrated by organised groups which are investing much resources into achieving their set objectives. Proper and sincere investigation could bring out facts that are necessary to determine the responsible organisations and their leaders. A foundation has already been laid in the reports of the commissions of inquiry in which certain top echelons within the conflicting groups have been indicted or implicated in witnesses' testimony.[233]

[232] Pocar in Politi and Nesi (2001) 68.
[233] See note 197 above. Further, suspect or likely organisations have been identified under para.3.3.2.4 (2) above.

Another challenge is the proper authority to prosecute the crimes committed. This paper concludes that the Nigerian authorities only have jurisdiction at the moment to prosecute the crimes committed as ordinary crimes[234] due to the absence of an existing legal framework for Nigeria to prosecute international crimes under its domestic laws. In the circumstances, Nigeria has the option of speeding up the Rome Statute implementation process which has already begun, or referring the situation to the ICC as some States had already done.[235] Nigeria may also undertake prosecution for crimes against humanity under customary international law since these classes of crimes are *jus cogens* crimes.[236] Otherwise, the ICC may well assume jurisdiction to investigate and prosecute possible international crimes in Jos should Nigeria continue to fail to prosecute the real leaders/sponsors, on grounds of unwillingness if the violence persist.[237] Either way, the truth remains that there is an urgent need to do more regarding the Jos situation in order to dispense justice to the victims in this case and to combat impunity effectively.[238]

Prosecution for international crimes is preferable, given the nature of the atrocious and inhumane crimes committed in the Jos crisis which has unjustifiably destroyed thousands of lives physically, psychologically, and economically. This is because international criminal law concentrates on prosecution of the most responsible persons who are answerable for engineering, sponsoring or organising the attacks. Until such persons are brought to justice, there may be no true and sustainable peace in Plateau State. Evidence of this is seen in the fact that despite the current prosecutions of perpetrators (most of whom are under detention) being conducted by the federal and state prosecuting authorities, even more serious and organised attacks have taken

[234] These prosecutions are currently in progress.
[235] Art.14 Rome Statute.
[236] *Almonacid Arellano v. Chile* (2006) para.106.
[237] Art.17 Rome Statute.
[238] This is the main goal of prosecution- Criminal Justice: International Centre for Transitional Justice (ICTJ)- http://ictj.org.

place in Jos this year. The attack in which a Senator and a Member of Plateau State House of Assembly (both indigenes) were killed alongside several others was executed by gunmen in camouflage military uniforms, carrying very sophisticated weapons and wearing bullet proofs.[239] The assertion by indigenes that the claim that Boko Haram was responsible for the attack is a ruse and that Fulani herdsmen were responsible for the attack[240] is worthy of investigation. For indeed prior Boko Haram attacks have always been by suicide bombings and the perpetrators are not dressed as military men but always wear religious garbs. Other merits of prosecution for international crimes are as discussed under paragraph 4.4.5 above.

5.2 RECOMMENDATIONS

Besides prosecution and investigation stated above, the Nigerian government needs to direct efforts at other equally important issues to adequately address the grave consequences of the recurrent violence in Jos. Key among such options include the implementation of useful recommendations contained in the report of the various bodies set up to look into the Jos crisis. These recommendations are specifically directed at addressing the root causes of violence in Jos. However, this paper recommends that priority should be given to addressing the following issues:

5.2.1 Indigenship

Prominent among the root causes of violent conflict between the two rival groups is the question of indigenship.[241] The distinction between indigenes and non-indigenes is not a practice peculiar to Jos alone,[242] and while it has the advantage of preserving the cultural identity of a people, it is creating more problems for the peaceful existence of the country. Indeed in the case of Jos, the

[239] Nigeria Senator Killed at mass burial-http://www.swissinfo.ch
[240] 'Soldiers raid Fulani Settlement'–Daily Trust, 13 July 2012.
[241] *Fiberesima Report* (1994) 21*; Ajibola Report* (2009) 49; *Solomon Lar Report* (2010) 3.
[242] See para.2.1 above.

claim of the Hausa/Fulanis (who have lived in Jos for nearly a century and have known of only Jos as home) to indigenship status is very understandable, although it does not in any way justify resorting to violence. The Nigerian parliament needs to enact proper laws on indigenship, including laws allowing persons who have resided in a place for a considerable number of years to be considered as indigenes of the geographical area in which they have lived.

5.2.2 Victim Compensation

The compensation of victims[243] is equally not only necessary in this case because it is just and proper but it will go a long way in calming aggrieved victims from being easily tempted to resort to vendetta attacks, thus creating an endless circles of violence.

5.2.3 Truth Commission

Another important option is the establishment of a truth commission.[244] This has proved to very useful tool to help a society in transition deal with the pains and horrors of past violence and discover the real truth.[245]

5.2.4 Control by Religious Institutions

Religious Institutions should also endeavour to guide their followers properly in practicing their faith within the ambit of the law.

5.2.5 Adoption of Customary Law Definition of Crimes against Humanity

Beyond implementation of the Rome Statute, Nigerian authorities may consider incorporating the customary law definition of crimes against humanity as established under the ICTY and ICTR jurisprudence which does not require the existence of an organization, much less of a state-

[243] Ajibola Report (2009) 298.
[244] Solomon Lar Report (2010) 9.
[245] Truth commissions have been established in South Africa, Chile, Guatemala, Sierra-Leone, Germany, Argentina among others.

like one for crimes against humanity to be committed.[246] This will enable it to deal better with mass crimes of this nature without the challenges which the 'Organisational Policy' requirement under Art.7(2)(a) of the Rome Statute may raise.

Word Count: 17 973

[246] See paragraph 3.2.2.4 and note 145 above.

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