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THE IMPERATIVE OF JUSTICE FOR VICTIMS OF BOKO HARAM INSURGENCY IN NIGERIA: ANY ROLE FOR THE ICC?

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ABSTRACT

In 2009, a group of armed jihadists called Boko Haram revolted against the Nigerian government and unleashed terror, deaths and destruction on civilians, mainly in the northeast of the country. The Nigerian security forces, backed by a militia, responded with great force. In the attacks and reprisal, war crimes and crimes against humanity have allegedly been committed by all sides. National prosecutions are slow or non-existent, with a handful of detainees facing prosecution in makeshift courts located at military bases. Individuals culpable for the monstrous crimes still elude arrest. The ICC in a preliminary examination identified eight cases of potential war crimes and crimes against humanity in the conflict but has not preferred charges. Amidst this passivity, the victims are yearning for justice. It is recommended that the ICC should augment the initiatives of the Nigerian government by prosecuting the leaders and sponsors of the group, especially those taking refuge outside Nigerian territory. The Court can deploy its expertise and international warrants to secure their arrest and prosecution. For the victims of the conflict, justice is imperative and the assured path to peace, stability and reconciliation.

INTRODUCTION

One of the most remarkable achievements of contemporary international law is the advancement in the doctrine which renders individuals culpable for offences perpetrated in situations of armed conflict (Sliedregt, 2012). Thus, individuals who perpetrate such grievous crimes or order to be committed or participate in their commission are liable for their actions, notwithstanding the categorisation of the conflict. The establishment of the *ad hoc* tribunals in the defunct Yugoslavia, Rwanda and Sierra Leone two and half decades ago, and the creation of the International Criminal Court (ICC) in 1998 heralded a great epoch in the crusade to institute accountability in armed conflict (Mettraux, 2010). However, national courts are entrusted with the primary responsibility to prosecute perpetrators of war crimes, crimes against humanity and genocide. In most cases, states fail or refuse or are unable arraign the felons within their territories. Where this happens, the jurisdiction of an international criminal tribunal may be invoked. The insurgency in Nigeria has taken great toll on civilians and their property since 2009 (Montclos, 2014); and violations of all kinds have disappointingly occurred and with great impunity. Thousands of suspects have been detained without trial since the inception of the armed rebellion. In the mass trial conducted in 2017, most of the suspects were charged with minor offences.

While their arraignment was seen as a positive development by some human rights watchdogs, the trials were impaired by legal and institutional interstice, thus making justice for the victims implausible (Human Rights Watch, 2018). A handful of individuals have been arraigned in Nigerian courts for the heinous crimes committed. While on the battlefield the killings, bombings, rapes, torture and other serious crimes continue unabated. The ICC launched a preliminary examination into the situation in Nigeria in 2010 and issued a report in November, 2015 identifying eight potential cases of war crimes and crimes against humanity committed in the conflict (Ibekwe, 2015). So far no individual has been indicted or charged. This work makes a case for the prosecution of all parties implicated in heinous crimes and justice for victims of the conflict. It argues that where the Nigerian authorities have failed to implement their principal duty of prosecution, the ICC should assume this responsibility without further delay. This is imperative for enthronement of accountability and pacification of the blood of innocent Nigerians yearning for justice.

Campaign of violence by Boko Haram and counterinsurgency operations: Nigeria is not a stranger to the activities of violent Islamic groups. The Maitatsine and Yan Tatsine movements were active in the 1980s. They instigated riots and uprisings that resulted in thousands of death of innocent Nigerians (Isichei, 1987). The violence was often fuelled by several factors, principally the desire to implement

full Sharia law in some parts of northern Nigeria. These disturbances were, however, sporadic and often short-lived. An extremist Islamic movement known as Boko Haram set up an uprising against the Nigerian government in 2009. Unlike the civil and religious disturbances of the past, the violence perpetrated by the group became protracted. Though initially fragmentary, the hostility escalated, and the group evolved into a formidable force with capacity to hold territory and engage the military in a conventional warfare. The hostility has undoubtedly acquired the character of non-international armed conflict and rendered the relevant rules of international humanitarian law (IHL) applicable (Ibanga and Archibong, 2018). Whereas the Maitatsine movement was religiously motivated, it is not clear what is driving the Boko Haram insurrection (Adesoji, 2011). It is in this respect that Okemi (2013) poses the query as to whether the group is a religious sect or terrorist organisation. One observation is however incontestable: the group opposes mundane laws and western education. It has been postulated that the insurgency has strong religious undertone – an agenda to institutionalise Sharia law in their areas of control. In 2014, Boko Haram proclaimed an Islamic Caliphate in some parts of northeast Nigeria and imposed Sharia law (Sotubo, 2014). This postulation is not conclusive as Muslims have been targeted and killed and several mosques bombed by the militants. Regardless of the factors propelling the insurgency, Campbell (2014) asserts that it is a reflection of “Nigeria’s history of poor governance and extreme poverty in the north.”

The conflict in northeast Nigeria, which is on-going, has been inundated with violations of human rights and IHL by all sides (US Department of State, 2014). It has been described as one of Africa’s deadliest conflicts (Campbell and Harwood, 2018). Boko Haram attacks on civilians have been indiscriminate, deliberate and concerted and left thousands dead, maimed and displaced (Okpaga *et al*, 2012: 86-89). Civilian property has not been spared (Amnesty International, 2014). The attacks have also left trails of killings and destruction in neighbouring Cameroon and Niger. Abduction has been employed widely by the insurgents. In April, 2014, the group abducted over than 200 girls from a secondary school in Chibok, Borno State, (Barna, 2012). The militants again abducted more than 100 schoolgirls from their school premises in Dapchi, Yobe State in February, 2018. The group returned 105 of the Dapchi girls and held back Leah Sharibu, reportedly for declining to convert to Islam. Apart from Nigerians, foreigners have also been kidnapped most of them for ransom (American Foreign Policy Council, 2013:8). The insurgents have attacked schools, students and teachers on regular basis, resulting in fatalities and adverse impact on academic programme (Campbell and Harwood, 2018). The engagement of child soldiers by the insurgents is rampant, many of them girls clad in *Hijab* and used as suicide bombers (The Clarion Project, 2014). According to the United Nations Children’s Fund, UNICEF Boko Haram enlisted 2,000 child soldiers in 2016 (*Vanguard*, 2017). Public buildings, markets and many soft targets are constantly being attacked and destroyed, resulting in degradation of infrastructure and closure of schools. Places of worship have been bombed, killing worshippers and destroying property (The Clarion project, 2014). The Nigerian security forces, in collaboration with the Civilian Joint Task Force (CJTF), a pro-government militia, launched counter-insurgency operations to dislodge and incapacitate the militants. In the discharge of their mandate to end the insurgency, the security forces have been accused of

indiscriminately killing young men (Campbell and Harwood, 2018), extrajudicial executions, arbitrary arrests, unlawful detentions, mass incarcerations, torture, extortion and intimidation (Amnesty International, 2012:257).

Violation of human rights and humanitarian norms: An armed conflict, whether international or internal, is usually dominated by breakdown of law and order. The atmosphere is often chaotic thereby creating the impression that civilians and combatants can act with impunity devoid of any consequences. The conflict in northeast Nigeria is an intra-state within the ambit of IHL. The applicable laws, therefore, are Common Article 3 of the four Geneva Conventions of 12 August, 1949; Additional Protocol II of 1977; the Rome Statute of ICC; and a several other legal instruments and standards. The Statute of the ICC also categorises as a war crime in an intra-state armed conflicts acts “intentionally directing attacks against the civil population as such or against individual civilians not taking direct part in hostilities” (Article 8(2)(e)(i)). The prohibition of attacks on civilians is at the heart of the legal establishment protecting civilians. Customary law provides that parties to a conflict “must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians” (Rule 1).

Application of the law of armed conflict: The Nigerian authorities are bound by relevant legal instruments and must ensure compliance with international humanitarian law. Nigeria has ratified the 1949 Geneva Conventions and the 1977 Additional Protocols and domesticated the penal provisions of the Conventions (Geneva Conventions Act LFN 2004). As regards the ICC Statute, Nigeria ratified the instrument in September 2001. Efforts to domesticate the Statute in Nigeria are in progress. When the Bill becomes law, it will ensure synergy between Nigeria and the ICC in the prosecution of war criminals in Nigeria or The Hague (The Nigerian Coalition for the International Criminal Court, 2014). In order to address the upsurge in acts of violence, the government enacted the Terrorism (Prevention) Act, 2011 to prevent, prohibit and fight the scourge. The Terrorism (Prevention)(Amendment) Act 2013 reinforces the provisions concerning financing of terrorism and admits extra-territorial application of the Act (Nwosu, 2018). The Nigeria’s Military Manual 1994 offers precaution for the protection of the civilian population, civilians and civilian objects. It provides that “For both the conduct of operations and behaviour in action, the main aim for all commanders and individual combatants is to distinguish combatants and military objectives from civilian persons and objects at all times”(Nigeria’s Military Manual, 1994).

Has Nigeria fulfilled its obligation to prosecute?: Persons who commit serious infractions of IHL and human rights law are liable to answer for their misdeeds under international criminal law (Sliedregt, 2012). The government of Nigeria has a duty to prefer charges for crimes that “deeply shock the conscience of humanity” irrespective of the perpetrator of such crimes (*Daily Sun*, 2015). The Statute of the ICC vests national governments with the primary responsibility to prosecute perpetrators of serious international crimes. In pursuit of justice for victims of the conflict, a handful of Boko Haram members were prosecuted and convicted during the administration of President Goodluck Jonathan. In July, 2013, five members of the sect were convicted for the 2011

bombings in Niger and Nasarawa States. A notable figure in the group, Kabiru Sokoto was found guilty and given life imprisonment in December 2013 for orchestrating the Christmas day bombing in Madalla Niger State in 2011. The perpetrator of SOJ Plaza bombing, Mustapha Umar, was convicted in November 2013 and jailed for life. Three other members of the group were convicted and sentenced them to 25 years behind bars by a Federal High Court in Lagos. The federal Attorney General said in November 2013 that 11 Boko Haram members were convicted in the last one year. Again in February, 2014 the Attorney General remarked that more than 40 militants had been found guilty of terrorism-related offences (*Vanguard*, 2014). Some members of the Nigerian Army were prosecuted for aiding Boko Haram, an offence punishable under the Armed Forces Act (Cap A20 L FN 20). In Jos, north central Nigeria, 18 Soldiers faced a General Court Martial for insubordination and indiscipline (*The Punch*, 2015). However, none has been tried for violation of IHL in the conflict.

The issue of accountability and challenges of prosecution:

The issue of criminal responsibility of sect members remains a thorny one as bringing them to justice has been fraught with difficulties. Under the Jonathan administration, there was lackadaisical attitude towards investigation and prosecution of Boko Haram fighters. While the victims of Boko Haram atrocities yearned for justice, there were numerous impediments associated with the prosecution of the insurgents. Trials were impaired by frequent interruptions and long adjournments. Delay owing to lack of legal representation for defendants or the absence of prosecutor has stalled trials. Transfer of defendants to unknown locations outside the court's jurisdiction has precipitated and adversely affected trials. The trend observed in the prosecution of captured members of Boko Haram was the secrecy of the trials, conviction and sentencing. In October, 2014, three Boko Haram members were convicted in a secret trial and sentenced to 25 years in prison each by a Federal High Court. (P. M. News Nigeria,)

Intervention by the International Criminal Court: The ICC is an independent institution that seeks to promote peace, security, well-being and the best interests of the global community (Ferencz, 2013). The Court which commenced sitting on 1 July 2002 was created to adjudicate on war crimes, crimes against humanity, genocide and crimes of aggression. It has assumed the status of a pioneer permanent international criminal court conceived to shape the conduct of individuals and ensure accountability during armed conflicts. The chief intention of the ICC is to make culprits answerable for their actions and reaches directly to the individuals, either as perpetrators, victims or witnesses. The ICC Statute provides that "the jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole" (Article 5).

Investigations and prosecution of cases by the ICC: The prosecutor can launch an investigation in the following instances: referral from any State Party; referral from the UN Security Council; and investigations commenced *proprio motu* based on information from individuals and organizations (Douglass Cassel, 1999). The Court has been investigating situations in the Democratic Republic of the Congo (DRC), Uganda, the Central African Republic (CAR), Kenya, Libya, Sudan, Cote d'Ivoire and Mali. Four States parties – D.R.

Congo (DRC), Uganda, the Central African Republic and Mali – have referred situations to the Court. The UN Security Council has also referred the situations in Darfur, Sudan and Libya – none of which are States parties. The prosecutor initiated investigations *proprio motu* in respect of the situations in Kenya and Cote d'Ivoire. The first case to go to trial at the ICC was that of Thomas Lubanga Dyilo, leader of the Union of Congolese Patriots (*The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06). He was charged with war crimes, particularly recruitment and use of child soldiers in combat duties. The Court convicted Thomas Lubanga and sentenced him to 14 years imprisonment, thus making him the person to be so convicted (Smith, 2012). The second person to be tried at the ICC was Germain Katanga, former leader of the Forces for Patriotic Resistance, (FRPI), and an armed group in Ituri Province of DR Congo (*The Prosecutor v Germain Katanga* ICC-01/04-01/07). He was accused of war crimes and crimes against humanity and convicted for role in tribal massacre. Several other individuals have been indicted by the Court, including high-profile cases against President Uhuru Kenyatta of Kenya, ex-Vice President of D R Congo, Jean-Pierra Bemba, deposed President of Sudan, Omar Al Bashir, and former President Laurent Gbagbo of Cote d'Ivoire.

The ICC Preliminary Examination on the situation in Nigeria Nigeria is a State Party to the Rome Statute having ratified the treaty in 2001. The ICC therefore has jurisdiction in cases involving Nigeria. It is in this regard that the jurisdiction of the Court was invoked in connection with the conflict in northeast Nigeria. The Office of the Prosecutor (OTP) received 59 Article 15 correspondence concerning Nigeria between 10 November, 2005 and 30 October, 2012, alleging various forms of violations (OTP Report, 2013). The ICC began a preliminary examination of the Nigerian situation in 2010. Officials of the Court led by its Prosecutor, Fatou Bensouda, visited Abuja to examine the conflict in July, 2012 (OTP, 2013:8). For the ICC to have jurisdiction, Article 8 of the Rome Statute requires the existence of an armed conflict (*The Prosecutor v Thomas Lubanga Dyilo*, Judgment pursuant to Article 74 of the Statute, ICC - 01/04-01/06 14 March 2012, Para 533). The Prosecutor's Report (2013) stated that:

The required level of intensity and the level of organization of parties to the conflict necessary for the violence to be qualified as an armed conflict of non-international character appear to have been met. The Office has therefore determined that since at least May 2013 allegations of crimes occurring in the context of the armed violence between Boko Haram and Nigerian security forces should be considered within the scope of article 8 (2) (c) and (e) of the Statute. The Prosecutor came to the conclusion that Boko Haram has satisfied an ample amount of applicable benchmark to be regarded as organized non-state armed group with capacity to plan and execute military operations. In confirmation of the degree of intensity of the armed confrontations, the Prosecutor's Office has documented over 200 incidents that occurred between July 2009 and May 2013. The Report stated further that: In particular, the Office has assessed the extent and sustained nature of such incidents, as well as their seriousness; the frequency and intensity of armed confrontation; their geographical and temporal spread; the number and composition of personnel involved on both sides; the mobilisation and the distribution of weapons; and the extent to which the situation has attracted the attention of the UN Security Council (OTP, 2013: 8). Eight potential war crimes

and crimes against humanity. In 2013, the ICC concluded that Boko Haram was an armed group within the meaning of the 1949 Geneva Conventions and Additional Protocol II of 1977, and that the conflict was one of a non-international character (OTP, 2013). This implies that rules of IHL are applicable and the jurisdiction of the Court can be invoked against perpetrators of war crimes and crimes against humanity in the conflict. The ICC commenced an inquiry into alleged violations of human rights and humanitarian law in the conflict in northeast Nigeria and thereafter issued a Preliminary Examination Report which identified eight possible war crimes and crimes against humanity perpetrated by Boko Haram and the Nigerian security forces (Ibekwe, 2015). The crimes are covered by articles 7 and 8 of the Rome Statute, and six of the instances are attributed to Boko Haram while the security forces are responsible for two. The crimes linked to Boko Haram are indiscriminate attacks on civilians; abductions; attacks on schools, students and teachers; use of women and girls as suicide bombers; and attack on places of worship. There are two instances of crimes allegedly committed by Nigerian security forces, according to the ICC. The first is haphazard arrest, detention, torture and extra judicial killings of people believed to be Boko Haram fighters. The second is attack on civilian populations and recruitment of child soldiers by pro-government militia known as Civilian Joint Task Force (Ibekwe, 2015)).

A different strategy under the Buhari Administration: The advent of the Buhari administration on May 29, 2015, ushered in a new approach and a clear departure from the lackadaisical posture of its predecessor. The administration had promised to decimate the insurgency during the electioneering campaign. In order to achieve this objective, the government increased support to the security forces and encouraged sect members to lay down their weapons. Though the military objective of decimating the insurgents has not been achieved, the group has been degraded and evicted from the territories it controlled. In spite of the setbacks in the field, Boko Haram still poses a serious danger to the peace and security of the nation. Sect members have resorted to asymmetric warfare, relying chiefly on sporadic attacks and employing young girls as suicide bombers to hit soft targets.

Launch of new policy direction: The federal government adopted two significant programmes in 2017 to combat extremism and reinforce the criminal justice system. It adopted the “Policy Framework and National Action Plan for Preventing and Countering Violent extremism”. The policy is intended to deal with violent extremism and bolster current exercise in the management of persons involved in violent extremism. It is also principally aimed at enhancing access to justice and respect for human rights and rule of law. In 2017, the Nigerian government took another gargantuan step in the campaign against terrorism in the northeast of the country. It launched the “Action Plan on Strengthening Criminal Justice Responses to Terrorism in Northeast Nigeria” in partnership with the United Nations Office on Drugs and Crime (UNODC) and the United Nations Security Council’s Counter Terrorism Committee Executive Directorate (CTED) and the European Union (EU). This is designed to shore up Nigeria’s capacity to screen, conduct inquiries and arraign in a manner that is consistent with international best practices. It is basically to ensure that human rights and rule of law are respected in the prosecution of terrorism-related cases. The Action Plan is also conceived to enhance the potentials of the Nigerian criminal

justice system and to achieve a smooth transformation from confession-based to evidence-based litigation concerning cases of terrorism (UNODC, 2019). In a bid to chart a new direction in tackling the problem of insurgency, the Action Plan will prop up the operation of another federal government policy christened the “National Demobilisation, Disassociation, Reintegration and Reconciliation Programme (DDRR). Deradicalisation, rehabilitation and reintegration for ‘repentant’ fighters. The government has in addition to other measures instituted a programme of de-radicalization, rehabilitation and reintegration for ‘repentant’ members of Boko Harams as an alternative to prosecution. A camp has been established in Gombe State where they undergo ideological re-orientation, renunciation of violence and subscribe to an oath of allegiance to the federal government. This gives the militants who capitulated willingly the opportunity to return to normal civilian life without fear of prosecution. The programme has been described as controversial, misplaced and unnecessary as it gives soft landing to the terrorists and ignores the interest of their victims (Punch, 2017). According to the *Punch* Editorial: “The crux of the matter is: should terrorists who have shed blood and massacred thousands of people re-enter the society under the guise of deradicalisation? What of their victims, and the innumerable widows and orphans they have created” (Punch, 2017). The law, the Editorial concludes, should be allowed to take its course.

Mass trial of Boko Haram fighters: The Buhari administration has also adopted a robust approach to the issue of accountability by bringing to justice persons suspected to have committed offences under the Terrorism Prevention (Amendment) Act 2013. Thousands of suspects had been in detention without trial since 2009. Amnesty International Report (2017/2018) observed that “By April, the detention facility at Giwa barracks, Maiduguri, held more than 4,900 people in extremely overcrowded cells. Disease, dehydration and starvation were rife and at least 340 detainees died. At least 200 children, as young as four, were detained in an overcrowded and unhygienic children’s cell. Some children were born in detention.” In pursuit of justice for victims of the conflict, the Buhari administration designated special courts to try captured fighters of the Boko Haram. Individuals implicated in various attacks have been prosecuted before the special courts and imprisoned. The trial was conducted in stages. In October, 2017, a Federal High Court designated as one of the special courts and located in Kainji, Niger State, found 45 members of the group guilty and sentenced them to various terms of imprisonment ranging from 3 to 31 years (Vanguard, 2017). This was the first stage of the hearing involving 575 members of the sect. The Court freed 468 accused persons, upholding a no case submission in their favour. It ruled however that they should be subjected to de-radicalization and rehabilitation. Captured members of the group numbering 1,669 had earlier been remanded by the court. Another set of insurgents was tried and convicted by another specially constituted Federal High Court located at a military base in New Busa, Niger State (Ikhilae, 2018). The 113 convicts whose ages ranged from 16 to 73 were given different prison sentences depending on the gravity of their offences. The Court discharged 111 suspects for lack of sufficient evidence.

Flawed trials: Human rights organizations, including the National Human Rights Commission and Amnesty

International attended the trials as observers. The reactions from the observers were mixed. Amnesty International said, through its Country Director, that the trial was “good progress for the Justice sector” (Punch, 2018). While it was good progress for some suspects who had been in detention since 2009, the trial itself was criticised by other observers. Human Rights Watch described it as flawed (Human Rights Watch, 2018). The fairness of the trial was called into question due to the secrecy surrounding it. The victims who suffered in the hands of the militants were denied participation in the trials. They could not observe or give evidence during the trial. (Human Rights Watch, 2018). An inconsequential number of charges involved murder, kidnapping and other crimes. Many of the suspects were arraigned merely for rendering material and non-violent assistance to the militants. These include mechanical services for their vehicles, provision of edibles, laundry and other sundry services. Human Rights Watch (2018) further described the proceedings as very brief, taking just about 15 minutes in some instances. Many of the charges were equivocal and lacking vital particulars of the offence allegedly committed like date, place and other details. The suspects had no access to their lawyer until the day of trial, thereby creating the problem of inadequate defence. Other flaws were the absence of official interpreters; dependence on alleged confessions; arraigning persons for the same offences that they had already been discharged (Human Rights Watch, 2018).

Taking a leave from other jurisdictions: Many of those presented for the mass trial were accused of providing services to the insurgents and never participated in violent activities. It has been submitted that for this category of offenders, the Nigerian government can take a leaf from other jurisdictions and devise a means of dealing with persons accused of minor, non-violent offences (Human Rights Watch, 2018). In this regard, the government can establish truth and reconciliation to attend to their cases. Truth commissions have acquired notoriety for addressing minor offences in a post conflict environment without subjecting accused persons to the judicial process (Hayer, 2006). This will allow the government to concentrate on perpetrators of grievous crimes (Human Rights Watch, 2018). Sierra Leone utilized the truth and reconciliation commission effectively after the civil war to achieve peace, stability and national reconciliation. Other countries where the truth commission was efficiently employed include South Africa and Timor-Leste (Sooka, 2006). After the 1994 genocide in Rwanda, the country adopted a traditional judicial process known as *Gacaca* to achieve forgiveness and national reconciliation for thousands of detainees associated with minor offences (BBC, 2012).

Nigeria can replicate this for the thousands of detainees accused of providing sundry services to the insurgents. The leaders of Boko Haram and other militants who bear the greatest responsibility are still at large, directing hostile operations from their hideouts. This is where the Nigerian authorities should collaborate with the ICC to bring them to justice for war crimes and crimes against humanity, instead of dissipating energy, time and resources on mechanics and food vendors.

ICC’s failure to prosecute and victims’ yearning for justice: In the light of these flaws, can one convincingly say that Nigeria has conducted trials that meet minimum international standards? The issue which therefore arises

relates to whether the Nigerian authorities have done enough to bring members of the sect to justice so as to warrant the exclusion of the ICC from the process. A research worker with Human Rights Watch, Anietie Ewang, has noted that “Nigeria needs to pursue justice for those responsible for Boko Haram’s atrocities and end the prolonged detention of thousands of suspects” (Human Rights Watch, 2018). The ICC opened a preliminary examination on the situation in Nigeria in 2010, but has so far not preferred charges. With the ongoing mass trials, can it be inferred that the government of Nigeria is willing, ready and able to bring violators of IHL to justice. In other words, has Nigeria fulfilled its duty to prosecute the insurgents for the monstrous crimes perpetrated in the conflict?

The ICC has not dropped the cases it has been investigating against Boko Haram and the Nigerian military. It has instead stepped up the investigations, generating tension and causing serious concern to the Nigerian authorities. The Attorney General of Nigeria, while receiving the President of the ICC, Professor Chike Osuji in Abuja, decried the Court’s continued pursuit of the eight cases against Nigeria. According to him, “This is worrisome, as Nigeria has demonstrated beyond doubt and in absolute cooperation with the ICC that it is willing and able and, as a matter of fact, it is indeed arresting, investigating and prosecuting anyone that commits any offence that falls within the Rome Statute of the ICC” (Punch, 2018).

Since the Court initiated the preliminary examination on Nigeria, and identified eight potential cases of war crimes and crimes against humanity, no progress has been recorded in the area of indictment and prosecution. In the mean time, the violations and impunity continue unabated. Though the sect has been largely degraded, it still retains capacity to mount sporadic attacks. Its increasing deployment of young girls as suicide bombers is quite alarming. Amid these sporadic attacks, the Nigerian authorities prefer the carrot and stick approach. While the armed forces are constantly engaging the insurgents in counterinsurgency operations, they are also pursuing the policy of rehabilitation and re-radicalization for those who surrender. It is a fact to state that while Nigeria appears willing and able to arrest, investigate and prosecute the perpetrators of grave international crimes in the conflict, not much has been achieved in this regard. The prominent leaders of the group will not surrender and still evade capture. Many of them operate outside the territory of Nigeria, making their apprehension futile. It is therefore significant for the ICC to take its investigations to a logical conclusion, and also commence immediate prosecution of the leaders of the sect to reinforce the initiatives of the Nigerian government.

Persons alleged to have committed grievous crimes in the conflict are only charged for terrorism-related crimes and not for crimes related to the law of armed conflict (war crimes and crimes against humanity) because of the absence of domestic legislation to sustain such charges. The bill to domesticate the Rome Statute of the ICC is still pending before the National Assembly. This lack of enabling law to facilitate prosecution means that Nigeria is presently handicapped as far as prosecution of war crimes and crimes against humanity is concerned. With regard to allegations against the security forces, there has been not any prosecution of their members implicated in violations of the law of armed conflict. This makes the ICC intervention imperative, especially with regard to war crimes and crimes against humanity. The Court can through its complementary effort or assistance prosecute the most heinous crimes committed in the conflict.

Conclusion

The armed confrontation in northeast Nigeria has persisted since 2009 in spite of the overwhelming fire power of the Nigerian security forces. The human and material losses have been colossal and yet the end is not in sight. The Nigerian authorities claim that Boko Haram has been defeated and uprooted from its stronghold in the Sambisa forest. Sporadic attacks and suicide bombings, however, persist. Amid serious human rights violations, very few prosecutions of perpetrators have been actualized. The authorities appear unable or unwilling to prosecute them.

Boko Haram is responsible for the massacre of thousands of Nigerians and displacement of millions of others. The group turned hitherto peaceful communities into killing fields, while perpetrators, masterminds and sponsors go scot-free. There is need to bring to an end one of the bloodiest chapters in Nigeria's history, and bring to justice those responsible for the bloodbath. A diligent investigation and prosecution by the ICC can contribute to justice, deterrence and reconciliation. This will end impunity and contribute to a measure of felt justice for victims of the conflict. It is therefore recommended that the ICC initiative should be encouraged and supported by all Nigerians.

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