

AN APPRAISAL OF THE PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW THROUGH THE PRISMS OF THE FIGHT AGAINST TERRORISM IN NIGERIA

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Abstract

Armed conflicts are common and involve the developed, developing and underdeveloped nations of the world. All continents are involved in one armed conflict or the other. Some of the wars are stirred by religion, territorial disputes, control of resources, terror, drugs, civil and many more. The total number killed in armed conflicts throughout all of human history is staggering, particularly women and children. Global military expenditure and recruitment into the armed groups by state and non-state actors have also increased. Even the very nature of these wars today has been transformed from traditional combat between nation-states to inter-communal conflicts within states involving a wide variety of state and non-state actors thereby blurring the lines of conflict and increasing the exposure of more civilians. In all of this, International Humanitarian Law sought to impose limits on the destruction and suffering caused by armed conflicts and establishes that the right of belligerents to adopt means of injuring the enemy is not unlimited. The paper appraised the core principles of International Humanitarian Law in place to limit the effects of armed conflicts with particular emphasis to the fight against terrorism in Nigeria. The paper adopted the doctrinal research methodology and is structured into seven parts covering introduction, conceptual and theoretical framework, legal and institutional framework, appraisal of the core principles of International Humanitarian Law, failure of accountability in the fight against terrorism and concluding issues. The paper suggested strengthening of institutions and impartial implementation of existing laws in Nigeria.

1.0 Introduction

Nigeria is a nation plagued with insecurity even when the primary aim of government is the security and welfare of the people.¹ Armed conflicts are part of the history of mankind and a major subject of historic analysis.² There is rarely only one cause of dispute and the reasons advanced for these conflicts are as shocking as the results of the conflicts.³ Many complex factors lead to armed conflicts within States like the inability of Governments to provide basic good governance and protection for their own populations. History is replete with

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¹ Constitution of the Federal Republic of Nigeria (CFRN) 1999, s. 14(2)(b).

² P. Paret, *The History of War*, [1971] (100)(2) *Daedalus*, 376-396.

³ M. O. Jackson and M. Morelli, *The Reasons for Wars – An Updated Survey*, In: C. J. Coyne and R. L. Mathers (eds.), *The Handbook on the Political Economy of War*, (Edward Elgar Publishing, 2011).

armed conflicts prosecuted in the name of God, 'The Holy Wars.'⁴The long standing conflict between the Israelis and Palestinians is the most obvious example of a holy war as all parties to the Israeli-Palestine conflict lay claim to the disputed territories as the "promised land." Amanpour highlights this troubling trend of the three Abrahamic faiths:

I have covered one religious conflict after another. From the Middle East to Sarajevo, Afghanistan, to Iraq, Rwanda to Somalia, the bloodshed often had something to do with religion. Jews, Christians and Muslims in some combination would fight one another to the death.⁵

Again, armed conflicts are waged as a means of revenge and a famous example is the motivation of the Achaeans' in the Trojan War according to the description in the Iliad.⁶ Another motivation for armed conflicts is the agenda for ethnic cleansing and other ideological mass killings and the example of Adolf Hitler had the affirmation of the dominance of his race as a primary objective.⁷ The Congo conflict encompasses a battle for its mineral resources and the alleged invasion by Rwanda, the case of looting a neighbour's resources without attempting to conquer the neighbour.⁸ After the 11 September 2001 attacks on the United States, Bush declared "a war against all those who seek to export terror, and a war against those governments that support or shelter them."⁹ A war that has cost \$6.4 trillion, more than 801,000 fatalities, more than 335,000 of the casualties have been civilians and another 21 million people displaced due to violence since 2001.¹⁰ The main theatres of war on terror are in Afghanistan, Iraq, Nigeria and Syria.¹¹ This paper looks at the principles of IHL through the prisms of the fight against terrorism in Nigeria.

2.0 Conceptual Framework

The subject of IHL has provoked statutory, judicial and juristic responses at national and international levels. Before diving into the theoretical framework of this study, it is proper to define some concept which we will be meeting all through the study.

⁴ R. Hassner and M. Horowitz, Debating the Role of Religion in War, [2010] (35)(1) International Security, 201

⁵ C. Amanpour, Retracing Bible's 'Story of a Family', 10 December 2012 <<https://abcnews.go.com/International/christiane-amanpour-exploring-common-traditions-judaism-christianity-islam/story?id=17924552>> 10 January 2023.

⁶ Finley et al, The Trojan War, [1964] (84) The Journal of Hellenic Studies, 1-20.

⁷ M. Hauner, Did Hitler Want a World Dominion? [1978] (13)(1) Journal of Contemporary History, 15

⁸ E. Kisangani, Conflict in the Democratic Republic of Congo: A Mosaic of Insurgent Groups, [2003] (20)(3) International Journal on World Peace, 51-80; L. Huening, Explaining the Congo Wars, [2009] (41)(2) African Historical Review, 129-150.

⁹ Text: Bush on State of War, The Washington Post, 11 October 2001 <https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bush_text101101.html> Accessed 16 January 2023

¹⁰ N. C. Crawford, United States Budgetary Costs and Obligations of Post-9/11 Wars through FY2020: \$6.4 Trillion, Watson Institute of International and Public Affairs, Brown University, 13 November 2019

¹¹ Institute for Economics and Peace. Global Terrorism Index 2019: Measuring the Impact of Terrorism, Sydney, November 2019 <<http://visionofhumanity.org/reports>> Accessed 10 January 2023

a. Armed Conflict

There is no consensus about what constitutes armed conflict.¹² The social science definition of armed conflict is the one developed by Uppsala Conflict Data Program. Three categories of armed conflicts were identified with at least 25 battle related deaths within the year:

Minor armed conflict, where the number of battle-related deaths during the course of the conflict is below 1,000 in any given year. *Intermediate armed conflict*, with more than 1,000 battle-related deaths recorded during the course of the conflict, but fewer than 1,000 in any given year. *War*, with more than 1,000 battle-related deaths in any given year.¹³

International Humanitarian Law (IHL) distinguishes two types of armed conflicts: International Armed Conflicts (IAC), and Non-International Armed Conflicts (NIAC).¹⁴ When one or more States have recourse to armed force against another State, in spite of the rationale behind the confrontation. Geneva Conventions (GCs) 1949 provide that:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.¹⁵

The International Criminal Tribunal for the former Yugoslavia (ICTY) proposed a general definition of IAC in the Tadic case thus: "*an armed conflict exists whenever there is a resort to armed force between States.*"¹⁶ NIAC is defined under Common Article 3 to the GCs to apply to "*armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties*". These include armed conflicts in which one or more non-governmental armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only. In order to distinguish an armed conflict, in the meaning of common art. 3, from

¹² M. O'Connell, Defining Armed Conflict, [2008] (13)(3) Journal of Conflict and Security Law, 393-400.

¹³ P. Wallensteen and M. Stoltenberg, Armed Conflict and Regional Conflict Complexes, 1989-97, [1998] (35)(5) Journal of Peace Research, 621-634

¹⁴ S. Vite, Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations, [2009] (91)(873) International Review of the Red Cross, 69 – 94.

¹⁵ Common art. 2 GCs. Art. 1(4) Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts extends the definition of IAC to include armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation) in line with the UN Charter. J. Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, 32.

¹⁶ The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70. See also The Prosecutor v. Boskoski (Para 175), 2015; D. Schindler, The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols, [1979] (163)(2) RCADI, 119 – 163 @ 131. H. P. Gasser, International Humanitarian Law: An Introduction, in: Humanity for All: The International Red Cross and Red Crescent Movement, H. Haug (ed.), Paul Haupt Publishers, Berne, 1993, 510 - 511.

less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation. It has been generally accepted that the lower threshold found in art. 1(2) Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (AP II),¹⁷ which excludes internal disturbances and tensions from the definition of NIAC, also applies to common art. 3 GCs. Two conditions apply: the crisis must reach a minimum level of amount of a collective character to warrant the use of military instead of the police to quell the rebellion and non-state actors involved in the crisis must possess organized armed forces under a certain command structure and have the capacity to sustain military operations.¹⁸

This study classifies the BH war in Nigeria as a NIAC even though the BH conflict and refugee crisis has spilled across borders including Northern Cameroun, Niger and Chad, requiring a multinational National Joint Task Force (MNJTF) to combat the activities of BH.¹⁹ NIAC is distinguished from IAC not by the territorial scope but by the parties involved in the conflict.²⁰

b. Armed Forces

Customary International Humanitarian Law (CIHL) provides that in IAC, the “armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates”.²¹ For purposes of the principle of distinction, it may also apply to State armed forces in NIAC. IHL provides:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.²²

It is important to note that the above definition of armed forces now generally applies to all forms of armed groups who belong to a party to an armed conflict to determine whether they

¹⁷ Art. 1(2) AP II provides that “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”

¹⁸ ICTY, *The Prosecutor v. Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para. 94-134

¹⁹ I. Albert, *Rethinking the Functionality of the Multinational Joint Task Force in Managing the Boko Haram Crisis in the Lake Chad Basin*, [2017] (42) (3) *Africa Development*, 119-135. J. J. Hentz, *The multidimensional nature of the Boko Haram conflict*, [2018] (29)(5-6) *Small Wars and Insurgencies* 839-862

²⁰ L. Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge: Cambridge University Press, 2002, 136. M. Sassoli, “Transnational Armed Groups and International Humanitarian Law”, Program on Humanitarian Policy and Conflict Research, Harvard University, [2006] (6) *Occasional Paper Series*, 8 - 9.

²¹ ICRC, *Customary International Humanitarian Law*, Volume I: Rule 4; J. Henckaerts, “Annex to Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict”, [2005] (87)(857) *International Review of the Red Cross*, 198-212

²² Art. 43(1) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

constitute armed forces. It is therefore no longer necessary to distinguish between regular and irregular armed forces upon fulfilling the conditions in art. 43 AP I are armed forces.

The CFRN 1999²³ and the Armed Forces Act²⁴ provide for the establishment of the Nigerian Armed Forces (NAF) which shall comprise of the Navy, Army and Air Force. NAF for the function of protecting Nigeria from external aggression and to assist civil authorities to reinstate order at all times. Apart from the Nigerian Civil War,²⁵ the absence of war with other states around the world, in maintaining Nigeria's territorial integrity and securing its borders, the NAF has been deployed more to suppress insurrections and assisting, mostly the police and civil defence corps in the blizzard of ugly disturbances in different parts of Nigeria ranging from the BH insurgency to other unpleasant security challenges.²⁶

c. Boko Haram

Boko Haram (BH) means western education is forbidden²⁷; is an offshoot of Jama'atu Izalat al-Bid'a wa iqamat al-Sunna (JIBWIS) that propagated Salafism in Nigeria sometime in 1970s. Mohammed Yusuf, spearhead a movement for Islamic law to be thought in schools in Northern Nigeria when he gained momentum in the 1990s at the al-Haji Muhammadu Ndimi Mosque in Maiduguri, Borno State.²⁸ When that movement failed, the BH sect perceived the government in power as a barrier to them propagating their religious views and subsequently they began targeting Nigerian police and military which to them were representing the central and state government. Later, a more violent group relocated to Yobe State under the leadership of Abubakar Shekau.²⁹ Mohammed Yusuf was murdered by the Nigerian Police in 2009, the BH's tactics evolved to mass and more indiscriminate attacks against government and civilians, which were increasingly lethal and targeted far wider geographical areas. For example, in July 2009, BH allegedly murdered over 700 people in the two north-eastern cities of Maiduguri and Bauchi targeting mainly non-Muslims rather than government positions. From 2011, the group began to indiscriminately target any and all Nigerians with hit and run attacks, bombings and

²³ Ss. 217 (I) & (2) CFRN 1999

²⁴ ss. 1 & 291 Armed Forces Act, Cap. A20, LFN 2004.

²⁵ Civil war took place from 6 July 1967 to 15 January 1970. Perham, Reflections on the Nigerian Civil War, [1970] (46)(2) International Affairs (Royal Institute of International Affairs 1944-), 231-246; R. Akresh et al, "War and Stature: Growing Up during the Nigerian Civil War," [2012] (102)(3) American Economic Review, 273-77.

²⁶ Editorial, The military and Nigeria's security, Guardian Newspaper, 24 January 2017, Accessed <<https://guardian.ng/opinion/the-military-and-nigerias-security/>> 10 January 2023; S. C. Ukpabi, The Changing Role of the Military in Nigeria, 1900-1970, [1976] (110(1) Africa Spectrum, 61-77.

²⁷ M. Abdulkareem, The Paradox of Boko Haram, Moving Image Limited: Nigeria, 2010; A. Adesoji, The Boko Haram Uprising and Islamic Revivalism in Nigeria, [2010] (45)(2), Africa Spectrum, 95-108; A. Adesoji, Between Maitatsine and Boko Haram: Islamic Fundamentalism and the Response of the Nigerian State, [2011] (57)(4), Africa Today, .98 – 119

²⁸ Office of the National Security Adviser, Policy Brief: Religious and Ideological Dimensions of Radicalisation, 2015, 4; M. Sani Umar, The Roles of the Ulama in Radicalization, Counter-Radicalization and De-radicalization, NSRP project on Radicalization, Counter-radicalization and De-radicalization in Northern Nigeria, NSRP: Abuja, 2014; and M. Sani Umar and D. Ehrhardt, Pathways to Radicalization: Life Histories of JAS Members, NSRP Project on Radicalization, Counter-radicalization and De-radicalization in Northern Nigeria, NSRP: Abuja, 2014

²⁹ A. T. Abubakar, Nigeria's Boko Haram leader Abubakar Shekau in profile, British Broadcasting Corporation News, 9 May 2014, Retrieved <<https://www.bbc.com/news/world-africa-18020349>> 31/7/18

suicide attacks, focusing on soft targets - churches, mosques, schools, markets, or assaulting and destroying entire villages.³⁰

In January 2012, a newly formed splinter group, known as Ansaru, announces Abu Usmatul Al-Ansari as its leader.³¹ On 4 June 2013, former President Goodluck Ebele Jonathan by the Terrorism (Prevention) (Proscription Order) Notice 2013, approved the proscription of BH and splinter group Ansaru as terrorist organizations pursuant to s. 2, Terrorism Prevention Act, 2011 (As Amended).³² The US followed suit and declared BH and Ansaru as Foreign-based Terrorist Organisations (FTOs) under s. 219 Immigration and Nationality Act, and as Specially Designated Global Terrorists under section 1(b) of Executive Order 13224 on 13 November 2013.³³ By 2014, BH sought to establish control over territory, and by early 2015, BH controlled almost half of the 27 Local Government Areas (LGAs) in Borno State, and a considerable number in other states³⁴

On 7 March 2015, in an audio message allegedly from Shekau, BH pledges allegiance to the *Islamic State of Iraq and Syria (ISIS)*.³⁵ The affiliate is named "Wilayat Gharb Afriqiyya" or "Wilayat Gharb Afriqiyyah," which means the Islamic State of West Africa.³⁶ Despite this alliance, BH has largely continued to operate independently.³⁷ On 12 March 2015, ISIS announced that the caliphate has expanded to western Africa and that former ISIS leader Abu Bakr al-Baghdadi has accepted BH's pledge of allegiance and on 3 August 2016, IS leadership recognized Sheikh Abu Musab al-Barnawi,³⁸ whose father Muhammad Yusuf, founded BH, as the new leader ISWAP or new *Wali* (governor) theoretically replacing Shekau. Shekau never

³⁰ O. N. Awojobi, The Socio-Economic Implications of Boko Haram Insurgency in the North-East of Nigeria, [2014] (11)(1), International Journal of Innovation and Scientific Research, 144-150 @ 147.

³¹ R. Pantucci and S. Jespersen, From Boko Haram to Ansaru: The Evolution of Nigerian Jihad, Royal United Services Institute, April 2015 <https://rusi.org/sites/default/files/201504_op_from_boko_haram_to_ansaru.pdf> Accessed 10 January 2023

³² T. Usman, Jonathan officially declares Boko Haram a terrorist organization, Premium Times, June 4, 2013 <<https://www.premiumtimesng.com/news/137586-jonathan-officially-declares-boko-haram-a-terrorist-organisation.html>> Accessed 11 January 2023

³³ C. N. Okereke, The Resilience of Boko Haram: Myth or Reality? [2014] (6)(7) Counter Terrorist Trends and Analyses. 8-12. US Department of State, Terrorist Designations of Boko Haram and Ansaru, Office of the Spokesperson, Washington, DC, 13 November 2013 <<https://2009-2017.state.gov/r/pa/prs/ps/2013/11/217509.htm>> Accessed 11 January 2023

³⁴ J. Muir, Nigeria's Boko Haram pledges allegiance to Islamic State, British Broadcasting Corporation News, 7 March 2015 <<https://www.bbc.com/news/world-africa-31784538>> Accessed 11 January 2023

³⁵ Also known as The Islamic State of Iraq and the Levant (ISIL) officially known as the Islamic State (IS). F. Al-Istrabadi and S. Ganguly, (Eds.), *The Future of ISIS: Regional and International Implications*. Washington, D.C.: Brookings Institution Press, 2018, 1 – 300. F. Gerges, Introduction: Down the Rabbit Hole and into the History of ISIS In *ISIS: A History*, Princeton University Press, 2016, 1 – 22.

³⁶ J. Ogbogu, Analysing the Threat of Boko Haram and the ISIS Alliance in Nigeria, [2015] (7)(8), Counter Terrorist Trends and Analyses, 16-21; J. Zenn, The Islamic State's Provinces on the Peripheries: Juxtaposing the Pledges from Boko Haram in Nigeria and Abu Sayyaf and Maute Group in the Philippines, [2019] (13)(1), *Perspectives on Terrorism*, 87-104. S. Almkhatar, How Boko Haram Courted and Joined the Islamic State, New York Times, 10 June 2015 <<https://www.nytimes.com/interactive/2015/06/11/world/africa/boko-haram-isis-propaganda-video-nigeria.html>> Accessed 10 January 2023

³⁷ A. Withnall, Boko Haram renames itself Islamic State's West Africa Province (I swap) as militants launch new offensive against government forces, Independent, 26 April 2015 <<https://www.independent.co.uk/news/world/africa/boko-haram-renames-itself-islamic-states-west-africa-province-iswap-as-militants-launch-new-10204918.html>> Accessed 11 January 2023

³⁸ J. Zenn, Boko Haram's Ultra-Extremist Side Resurfaces: From the Execution of Mamman Nur to Humanitarian Workers, [2018] (16)(20) Terrorism Monitor, 8 – 10. Boko Haram in Nigeria: Abu Musab al-Barnawi named as new leader, BBC, 3 August 2016 <<https://www.bbc.com/news/world-africa-36963711>> Accessed 11 January 2023; S. Busari, Boko Haram's new leader is son of executed founder, insider says, CNN, 4 August 2016 <<https://edition.cnn.com/2016/08/04/africa/nigeria-boko-haram-leader/index.html>> Accessed 11 January 2023

renounced his allegiance to IS.³⁹ ISWAP, like other jihadist groups, is prone to internal leadership purges.⁴⁰ On Monday, IS sacked leader of its operations in West Africa, Abu Mus'ab Al Barnawi and named Abu Abdullah Ibn Umar Al Barnawi, the leader of ISWAP, otherwise called Ba Idrisa.⁴¹ Lawan Abubakar Ba Lawan is the new leader of ISWAP after an early February 2020 coup that led to the overthrow of Ba Idrisa.⁴²

3.0 Theoretical Framework

The sociology of law consists of various sociological approaches to the study of law in society, which empirically examines and theorizes the interaction between law and legal institutions, on the one hand, and other (non-legal) social institutions and social factors, on the other. All the classical thinkers of sociology have one thing in common regarding the sociology of law; their theories were part and parcel of a more fundamental sociological perspective and theory of society. Eugen Ehrlich on his part hassled the necessity for studies of the law to be located within a societal context.⁴³ Pound conceived the law to be a specialized agent of social control.⁴⁴ In other words, to him, law is a means of effective social engineering. For Pound, social engineering connotes a description of a neutral process rather than prescriptive of pragmatic reforms. This also means that law was made to secure societal ends and nothing else. When Pound combines the two words, “social” and “engineering”, it means that the effect of law should be concerned with social integration and togetherness. *Jhering*, one of the sociological philosophers posited that the concept law came into existence in order to protect both societal and individual interests. But, just normal as it appears, the two interests are often not at per. When such situation plays out, law coordinates in the social conflict between them. Law serves as a mediator and resolves the competing interests. in spite of such conflict, he stressed the affinity of both interests because, after all the object of the society is to secure and guarantee the satisfaction of human wants. This study will look at how law can be used as a tool for social engineering to protect the rights of persons during armed conflicts.

³⁹ L. P. Blanchard and K. T. Cavigelli, Boko Haram and the Islamic State's West Africa Province, June 28, 2018.

⁴⁰ J. Zenn, Islamic State in West Africa Province's Factional Disputes and the Battle with Boko Haram, [2020] (18)(6) Terrorism Monitor Volume, 6 – 8.

⁴¹ J. Zenn, Boko Haram Factionalization: Who are Islamic State in West Africa Province (ISWAP) Fighters in Niger and Chad? [2019] (17)(12) Terrorism Monitor, 8 – 11. F. Kelly, Islamic State enforced leadership change in West Africa province, audio reveals, The Defence Post, 15 March 2019 <<https://thedefensepost.com/2019/03/15/new-islamic-state-west-africa-leader-audio-nigeria/>> 11 January 2023.

⁴² B. Al-Hussaini, ISWAP, terror group in Nigeria, Rebrands, Reversing Tradition, Premium Times, February 27, 2020 <<https://www.premiumtimesng.com/news/headlines/379362-iswap-terror-group-in-nigeria-rebrands-reversing-tradition.html>> Accessed 23 July 2020. B. Al-Hussaini, New ISWAP boss slays five rebel leaders, silences clerical tones, 3 March 2020 <<https://www.premiumtimesng.com/news/headlines/379975-new-iswap-boss-slays-five-rebel-leaders-silences-clerical-tones.html>> Accessed 11 January 2023

⁴³E. G. Nalbandian, Introductory Concepts on Sociological Jurisprudence: Jhering, Durkheim, Ehrlich, [2010] (4)(2) Mizan Law Review, 348 – 354. E. Ehrlich, 'The Sociology of Law' [1922], 36 *Harvard Law Review* 130. E. Ehrlich, *Fundamental Principles of the Sociology of Law*, Cambridge, Massachusetts: Harvard University Press, 1936.

⁴⁴ Pound's concern with social control can be traced to his association with two Sociologists-Small and Ross. For an examination of their influence on his work see G. Geis, 'Sociology and Sociological Jurisprudence: Admixture of Law and Lore,' (1964) (54) *Kentucky Law Journal*, 267-293. For a consideration of the conservative and procapitalist nature of their theories; D. Smith, 'Sociology and the Rise of the Corporate State' (1965) (29) *Science and Society Journal*, 401-418

4.0 Legal and Institutional Framework of IHL

The sources of international law are of a primary and secondary nature - the former consist of conventions or treaties, customary law, and general principles recognized by civilized nations while the latter includes judicial decisions and the teachings of highly qualified publicists.⁴⁵

a. Treaties

The history of the GCs and the APs is traced to the Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims convened by the Swiss Federal Council from 21 April - 12 August 1949 with representatives of sixty-three governments, fifty-nine of whom had full voting powers and the remaining four (4) attended as observers. The conference built on the earlier treaties for the protection of war victims,⁴⁶ revising and updating them into four new conventions.⁴⁷ The GC have been adopted by all nations in the world .and expanded and supplemented by three Additional Protocols (AP) and contain specific rules to safeguard the armed combatants captured as prisoners of war, shipwrecked, wounded or sick and civilians, support staff of the military and military chaplains. The GC and AP are as follows: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I), Geneva, 12 August 1949;⁴⁸ Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (GC II), Geneva, 12 August 1949;⁴⁹ Geneva Convention relative to the Treatment of Prisoners of War (GC III), Geneva, 12 August 1949;⁵⁰ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV), Geneva, 12 August 1949;⁵¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I), Geneva, 8 June

⁴⁵ Article 38(1) ICJ

⁴⁶ The earlier IHL treaties before the four GCs of 1949 were: Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864; Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, 29 November/11 December 1868; Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, The Hague, 29 July 1899; Review and development of the 1864 leading to the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 6 July 1906; Review of The Hague Conventions of 1899 and adoption of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907; Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Geneva, 17 June 1925; Review and development of the 1906 Convention relative to the Treatment of Prisoners of War, Geneva July 27, 1929. What Treaties make up International Humanitarian Law? International Committee of the Red Cross, 31 October 2002 <<https://www.icrc.org/en/doc/resources/documents/misc/5kzge6.htm>> Accessed 11 January 2023

⁴⁷ F. Bugnion, The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium, [2000] (76)(1) International Affairs (Royal Institute of International Affairs 1944-), 41-50; R. Yingling and R. Ginnane, The Geneva Conventions of 1949, [1952] (46)(3) The American Journal of International Law, 393-427.

⁴⁸ Came into force on 21 October 1950 in accordance with art. 153 GC I <<https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-973-English.pdf>> Accessed 10 Jan 2023

⁴⁹ Came into force on 21 October 1950, six months after the deposit with the Swiss Federal Council of the second instrument of ratification, in accordance with article 57 GC II <<https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-971-English.pdf>> Accessed 10 Jan 2023

⁵⁰ Came into force on 21 October 1950, six months after the deposit with the Swiss Federal Council of the second instrument of ratification, in accordance with article 138 GC III <<https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-972-English.pdf>> Accessed 10 Jan 2023

⁵¹ Came into force on 21 October 1950, six months after the deposit with the Swiss Federal Council of the second instrument of ratification, in accordance with article 138 GC III <<https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-972-English.pdf>> Accessed 10 Jan 2023

1977;⁵² Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (AP II), Geneva, 8 June 1977⁵³ and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (AP III), Geneva, 8 December 2005.⁵⁴

IHL now includes several treaties that outlaw specific weapons created largely because these weapons cause deaths and injuries long after conflicts have ended. These conventions include: Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III);⁵⁵ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction Oslo, 18 September 1997;⁵⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000 ⁵⁷ and Convention on Cluster Munitions, Dublin, 30 May 2008.⁵⁸

b. Customary International Law

In addition to treaty law such as the Geneva Conventions and their Additional Protocols, Customary International Humanitarian Law (CIHL) is a major source of rules applicable in times of armed conflict. While treaty law is based on written conventions, customary international humanitarian law derives from the practice of States as expressed, for example, in military manuals, national legislation or official statements. A rule is considered binding CIHL if it reflects the widespread, representative and uniform practice of States accepted as law. In late 1995, the International Conference of the Red Cross and Red Crescent commissioned the ICRC to carry out the study. It was researched by ICRC legal staff and dozens of experts representing different regions and legal systems, including academics and specialists drawn from governments and international organizations. The experts reviewed State practice in 47 countries as well as international sources such as the UN, regional organizations and international courts and tribunals. Following more than eight years of

⁵² Came into force on 7 December 1978 six months after the deposit with the Swiss Federal Council of two instruments of ratification or accession, in accordance with art. 95(1) OP-GC I <<https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>> Accessed 23 Jan 2023

⁵³ Came into force on 7 December 1978, i.e., six months after the deposit with the Swiss Federal Council of two instruments of ratification or accession, in accordance with article 23 (1) OP-GC II <<https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17513-English.pdf>> Accessed 23 July 2020

⁵⁴ Came into force on 14 January 2007, in accordance with article 11 OP-GC III <<https://treaties.un.org/doc/Publication/UNTS/Volume%202404/Part/volume-2404-I-43425.pdf>> Accessed 10 Jan 2020

⁵⁵ The Convention came into force on 2 December 1983 in accordance with article 5 (1) and (3). <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XXVI-2&chapter=26&lang=en> Accessed 10 January 2023.

⁵⁶ The Ottawa Treaty or the Mine Ban Treaty, entered into force on 1 March 1999, in accordance with article 17(1) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtsg_no=XXVI-5&chapter=26&clang=_en> Accessed 10 January 2023

⁵⁷ An amendment to the Convention on the Rights of the Child, 1989, entered into force on 12 February 2002, in accordance with article 10(1). <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-11-b&chapter=4&lang=en> Accessed 10 January 2023

⁵⁸ Entered into force on 1 August 2010, in accordance with article 17(1) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XXVI-6&chapter=26&lang=en> Accessed 10 January 2023

research, the ICRC President, Dr. Jakob Kellenberger in unveiling the study on CIHL applicable during armed conflict stated:

This is especially the case in non-international armed conflict, for which treaty law is not particularly well developed... Yet civil wars often result in the worst suffering. The study clearly shows that customary international humanitarian law applicable in non-international armed conflict goes beyond the rules of treaty law. For example, while treaty law covering internal armed conflict does not expressly prohibit attacks on civilian objects, customary international humanitarian law closes this gap. Importantly, all conflict parties – not just States but also rebel groups, for example – are bound by customary international humanitarian law applicable to internal armed conflict.⁵⁹

c. Institutional Framework

i. International Criminal Court

The Rome Statute of the International Criminal Court⁶⁰ establishes the International Criminal Court (ICC) as a permanent institution with power to exercise its jurisdiction over persons for the most serious crimes of international concern.⁶¹ The ICC is headquartered at the Hague in the Netherlands⁶² vested with international legal capacity⁶³ and jurisdiction limited to the most serious crimes of concern to the international community to genocide; crimes against humanity, war crimes; crime of aggression.⁶⁴ Sexual violence of any form and enlisting children under the age of fifteen years into armed groups is a war crime.⁶⁵ Based on the principle of complementarity, the ICC will assume jurisdiction in situations where a State is unable or unwilling to carry out investigation or prosecution.⁶⁶ Thus, States must adopt legislation enabling them to prosecute the perpetrators of such crimes in order to take advantage of this principle and to ensure repression at the national level.

ii. The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) was created in 1863 to ensure protection and assistance for victims of armed conflict and strife with headquarters in Geneva,

⁵⁹ F. Westphal, "Customary law study enhances legal protection of persons affected by armed conflict", ICRC, 17 March 2005 <<https://www.icrc.org/en/doc/resources/documents/news-release/2009-and-earlier/6akdpf.htm>> Accessed 10 January 2023

⁶⁰ Adopted in Rome on 17 July 1998 and entered in force on 1 July 2002 in accordance with art. 126 Rome Statute. Nigeria signed the Rome Statute on 1 June 2000, ratified on 27 September 2001 and entered into force on 1 July 2002 <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en> Accessed 10 Jan 2023

⁶¹ Rome Statute, art. 1

⁶² Rome Statute, art. 3(1)

⁶³ Rome Statute, art. 4

⁶⁴ Rome Statute, arts. 5 – 8

⁶⁵ Rome Statute, art. 8 (2) (b) (xxii) & (xxvi)

⁶⁶ Rome Statute, art. 17; T. McHenry, Complementarity Issues, [2011] (105) Proceedings of the Annual Meeting (American Society of International Law), 157-160; L. E. Carter, The Principle of Complementarity and the International Criminal Court: The Role of Ne Bis in Idem, [2010] (8)(1) Santa Clara Journal of International Law, 165.

Switzerland. The Statutes of the International Committee of the Red Cross provide for the workings of the ICRC. The ICRC story is about the development of humanitarian action, GCs, Red Cross and Red Crescent Movement. The ICRC has a mandate in the GCs and APs to protect and help people affected by armed conflict and violence. ICRC is unique as it is neither an NGO nor an international, intergovernmental, or transnational organization, but “in a class of its own”. ICRC enjoys a status same to that of an international organization and has international legal personality in carrying out its humanitarian mandate. The international legal status of the ICRC is explicitly acknowledged in the *Prosecutor v. Blagoje Simić et al.*,⁶⁷ recognizing the customary international law-based right of the ICRC to decline to provide evidence. ICRC works on the core values of humanity, impartiality, neutrality, independence, voluntary service, unity and universality to protect the lives and dignity of victims of armed conflict and other situations of violence.

5.0 The Fight Against Terrorism and the Principles of International Humanitarian Law

IHL applies from the initiation of such armed conflict and extends beyond the cessation of hostilities until a general conclusion of peace is reached, or, in the case of internal conflicts, a peaceful settlement is achieved.⁶⁸ Amnesty International (AI) and Human Rights Watch (HRW) have blamed BH and the NAF for violations of the principles of IHL.⁶⁹

a. The Principle of Distinction Between Civilians and Combatants

The principle of distinction supports many rules of IHL and is a necessary compromise that IHL provides for in order to protect civilians in armed conflict. Without the principle of distinction, there would be no limitation on the methods of warfare. The principle of distinction provides that the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.⁷⁰ In IAC, the armed forces of a party to the conflict are combatants, except medical and religious personnel. CIHL provides that in the distinction between civilians and combatants in IAC and NIAC, attacks may only be directed against combatants and acts or threats of violence aimed to spread terror among the civilian population are prohibited. Civilians are persons who are not members of the armed forces and are protected against attack, unless and for such time as they take a direct

⁶⁷ In the Trial Chamber, Ex parte confidential, Decision on the prosecution motion under rule 73 for a ruling concerning the testimony of a witness, 27 July 1999 <https://www.icty.org/x/cases/simic_blagoje/tdec/fr/90727EV59549.htm> Accessed 11 January 2023

⁶⁸ A. Alexander, A Short History of International Humanitarian Law, [2015] (26)(1) European Journal of International Law, 109–138

⁶⁹ Our Job is to Shoot, Slaughter and Kill’ Boko Haram’s Reign of Terror in North-East Nigeria, AI 2015 <<https://www.amnesty.org/download/Documents/AFR4413602015ENGLISH.PDF>> Accessed 11 January 2023.

⁷⁰ Arts 48 and 52 AP 1

part in hostilities.⁷¹ Any direct attack against a civilian or civilian object is not only a violation of IHL but a grave breach and war crimes.⁷²

Weapon incapable of distinguishing between civilians/civilian objects and fighters/military objects are prohibited. Parties to a conflict must at all times distinguish between civilian objects and military objectives and attacks directed against military objectives. Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. Civilian objects are all objects that are not military objectives and are protected against attack, unless and for such time as they are military objectives. IHL forbids attack against and on “objects indispensable to civilian survival”⁷³ and indiscriminate attacks⁷⁴ like ‘area bombardment’.⁷⁵ The ICTY in the *Prosecutor v. Milan Martić*⁷⁶ deals with use of explosive weapons by the forces of the self-proclaimed ‘Republic of Serbian Krajina’ against Zagreb in May 1995.

BH launched has launched a systematic attack against teachers and students with over 2,295 teachers killed and 1,400 schools destroyed.⁷⁷ BH gruesomely murdered 58 harmless school boys in Buni Yadi, Yobe State, while asleep in their hostels on 24 February 2014,⁷⁸ kidnapped innocent 276 girls aged 12 to 17 from the Government Girls Secondary School Chibok, Borno State on 14 April 2014⁷⁹ and raided Government Girls Science and Technical College Dapchi, kidnapping 110 students of the college on 19 February 2018.⁸⁰ In a brazen display of impunity, Abubakar Shekau claimed responsibility in a video message and vowed to sell the ‘Chibok

⁷¹ Article 13(3) AP II and Rule 6 CIHL. For a detailed analysis of the term ‘participation in hostilities’, see D. Akande, Clearing the Fog of War? The ICRC’s Interpretive Guidance on Direct Participation in Hostilities, [2010] (59)(1) The International and Comparative Law Quarterly, 180-192.

⁷² ICRC, “Customary Law Study Enhances Legal Protection of Persons Affected by Armed Conflict” 17 March 2005 <available on <http://www.icrc.org>> Accessed 11 January 2023

⁷³ AP II, arts. 10, 11, 13, 14 and 16, arts. 53 and AP I, art. 56

⁷⁴ AP I, article 51(4): “Attacks which are not directed at a specific military objective; which employ a method or means of combat which cannot be directed at a specific military objective; or which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction”. United Nations. Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law, 13

March 2016 <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/indiscriminate_weapons_legal_note_-_final_new_format_-_en_3.pdf> 11 January 2023.

⁷⁵ Rule 13 CIHL Article 51(5)(a) AP I, Article 3(9) Amended Protocol II to the Convention on Certain Conventional Weapons,

⁷⁶ Case No IT-95-11-T

⁷⁷ M. Winsor, Boko Haram has abducted over 1,000 children, killed more than 2,000 teachers, ABC News, 14 April 2018 <<https://abcnews.go.com/International/boko-haram-abducted-1000-children-killed-2000-teachers/story?id=54442518>> Accessed 11 January 2023

⁷⁸ J. Hembra, Nigerian Islamists kill 59 pupils in boarding school attack, Reuters, 26 February 2014 <<https://www.reuters.com/article/us-nigeria-violence/nigerian-islamists-kill-59-pupils-in-boarding-school-attack-idUSBREA1P10M20140226>> Accessed 11 January 2023

⁷⁹ Chibok schoolgirls kidnapping: Timeline, The Guardian Sunday Magazine, 13 April 2018 <<https://guardian.ng/features/chibok-schoolgirls-kidnapping-timeline/>> Accessed 11 January 2023; Nigeria Chibok abductions: What we know, BBC, 8 May 2017 <<https://www.bbc.com/news/world-africa-32299943>> Accessed 11 January 2020

⁸⁰ S. Hegathy, Dapchi kidnappings: Nigeria families’ heartbreak and despair, BBC, 1 March 2018 <<https://www.bbc.com/news/world-africa-43240495>> Accessed 11 January 2023; J. Gopep and D. Searcey, In Nigeria, Another Mass Kidnapping Stirs Painful Memories and Anger, The New York Times, 25 February 2018 <<https://www.nytimes.com/2018/02/25/world/africa/nigeria-kidnapping-girls-dapchi-chibok.html>> Accessed 11 January 2023.

girls' as slave brides,⁸¹ the kidnapping sparked international outrage culminating in the BringBackOurGirls Campaign.⁸² BH fighters kidnapped 20 young women at the nomadic Garkin Fulani settlement on 7 – 8 June 2014⁸³ and held the village of Kummabza, Borno state hostage for four days, abducted more than 60 females, including children, and killed 30 men in the raid between 18-22 June 2014 BH.⁸⁴

b. The Prohibition of Attacks Against Persons *Hors de Combat*

Attack on persons *hors de combat* is a war crime.⁸⁵ In IAC, attack on persons *hors de combat* is prohibited.⁸⁶ In NIAC, “those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely”⁸⁷ even as “it is prohibited to order that there shall be no survivors.”⁸⁸ One of the oldest commonly accepted rules of warfare is that the killing, injury or capture of an adversary by simulating being placed *hors de combat* is a violation of the IHL which prohibits on the use of perfidy.⁸⁹ A person is 'hors de combat' if:

(a) he is in the power of an adverse Party; (b) he clearly expresses an intention to surrender; or (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself; provided that in any of these cases he abstains from any hostile act and does not attempt to escape⁹⁰

Atrocities captured on video where persons in the power of the adverse party have been murdered, dehumanized and tortured abound in the BH war in Nigeria. BH executed a soldier and policeman in their custody 11 June 2020⁹¹ and five aid workers on 22 July 2020.⁹² AI video

⁸¹ A. Abubakar and J. Levs, 'I will sell them,' Boko Haram leader says of kidnapped Nigerian girls, CNN, May 6, 2014 <<https://edition.cnn.com/2014/05/05/world/africa/nigeria-abducted-girls/index.html>> Accessed 11 January 2023, Boko Haram 'to sell' Nigeria girls abducted from Chibok, BBC, 5 May 2014, Accessed <<https://www.bbc.com/news/world-africa-27283383>> 11 January 2023

⁸² A diverse group of citizens advocating for speedy and effective search and rescue of all our abducted girls and for a rapid containment and quelling of insurgency in Nigeria <<https://bringbackourgirls.ng/>> Accessed 11 Jan 2023; M. Shearlaw, Did the #BringBackOurGirls Campaign make a Difference in Nigeria? The Guardian, 14 April 2014 <<https://www.theguardian.com/world/2015/apr/14/nigeria-bringbackourgirls-campaign-one-year-on>> Accessed 11 Jan. 2023

⁸³ Nigeria Boko Haram crisis: '20 women abducted' in north, BBC, 10 June 2014 <<https://www.bbc.com/news/world-africa-27774239>> Accessed 11 January 2023; “Those Terrible Weeks in Their Camp”: Boko Haram Violence against Women and Girls in Northeast Nigeria, Human Rights Watch, 27 October 2014 <<https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls>> Accessed 11 January 2023

⁸⁴ E. Brenya and O. K. Kuffour, Regional Organizations and Response to Political Threat: A Review of the Role of ECOWAS in Ebola and Boko Haram Crises, [2015] (2)(3) Asian Journal of Social Sciences and Management Studies, 82-88

⁸⁵ ICC Statute, article 8(2)(e)(x)

⁸⁶ Hague Regulations, article 23(c); AP I, arts. 41(1) and 85(3)(e); ICC Statute, art. 8(2)(b)(vi)

⁸⁷ Common Art. 3 GCs; UN, Persons Hors de combat in Non-International Armed Conflicts, September 2007 <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_hors_de_combat_-_legal_note_en.pdf> Accessed 11 January 2023

⁸⁸ AP II, art. 4

⁸⁹ Hague Regulations, article 23(b); ICRC, Customary International Humanitarian Law, Volume I: Rule 65

⁹⁰ AP I, art. 41(2); ICRC, Customary International Humanitarian Law, Volume I: Rule 46;

⁹¹ A. Haruna, In New Video, Boko Haram Executes Abducted Soldier, Policeman, Premium Times, June 12, 2020

<<https://www.premiumtimesng.com/regional/north-east/397311-breaking-in-new-video-boko-haram-executes-abducted-soldier-policeman.html>> Accessed 11 January 2023

⁹² A. Haruna, Boko Haram Executes Five Aid Workers, Premium Times, 22 July 2020 <<https://www.premiumtimesng.com/news/headlines/404486-breaking-boko-haram-executes-five-aid-workers.html>> Accessed 11 January 2023

footage showed soldiers slitting the throats of men accused of being members of BH.⁹³ HRW has alleged that the over 950 suspected BH fighters died in military custody in 2013.⁹⁴ Residents allege murder of 18 men arrested by soldiers after being taken into custody.⁹⁵

c. The Prohibition on the Infliction of Unnecessary Suffering

IHL permits violence but prohibits the infliction of unnecessary suffering and superfluous injury in IAC and NIAC.⁹⁶ “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”⁹⁷ and “the use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited.”⁹⁸ This CIHL principle inspired the prohibition on the use of blinding laser weapons under the Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects 1995,⁹⁹ adopted to 'counter the silent and invisible threat to human sight posed by the threat of blinding laser weapons', deemed to cause unnecessary suffering or superfluous injury.¹⁰⁰

It is important to note that there is no report of use by parties to the Boko Haram war of Blinding Laser Weapons but the stories of BH attacks on soft targets bring doom and gloom as raids in local communities like Damboa left a death toll of 66 and 15,000 displaced on 17 – 20 July 2014¹⁰¹ and Baga and adjoining villages suffered a casualty of 2,000 deaths on 3 January 2015.¹⁰² Most of BH attacks have resulted to unnecessary suffering for persons not involved in the hostilities.

⁹³ N. Ibekwe, Video shows Nigerian soldiers commit extra-judicial killings – Amnesty International, Premium Times, 5 August 2014 <<https://www.premiumtimesng.com/news/166071-video-shows-nigerian-soldiers-commit-extra-judicial-killings-amnesty-international.html>> Accessed 11 January 2023

⁹⁴ Nigeria: Deaths of hundreds of Boko Haram suspects in custody requires investigation, HRW, 15 October 2013 <<https://www.amnesty.org/en/latest/news/2013/10/nigeria-deaths-hundreds-boko-haram-suspects-custody-requires-investigation/>> Accessed 11 January 2023

⁹⁵ Boko Haram Suspects Found Dead after Arrest by Nigerian Army, BBC News, 6 November 2014 <<https://www.bbc.com/news/world-africa-29939378>> Accessed 11 January 2023

⁹⁶ Article 23(e) Hague Regulations 1899; Article 23(e) Hague Regulations 1907, Article 6(2) Protocol II to the Convention on Certain Conventional Weapons 1980; Preamble to the Ottawa Convention on Anti-Personnel Mines 1997, Article 8(2)(b)(xx) ICC Statute 1998.

⁹⁷ AP I, article 35(2)

⁹⁸ ICRC, Customary International Humanitarian Law, Volume I: Rule 86

⁹⁹ Protocol IV, entitled Protocol on Blinding Laser Weapons, Vienna, adopted 13 October 1995 and entered into force on 30 July 1998 in accordance with article 2 of the Additional Protocol <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-2-a&chapter=26> Accessed 11 January 2023; Articles 1 & 4 Protocol IV to the Convention on Certain Conventional Weapons 1995; B. M. Carnahan, Unnecessary Suffering, the Red Cross and Tactical Laser Weapons, [1996] (18) Loyola and Los Angeles International and Comparative Law Review, 705

¹⁰⁰ B. Carnahan and M. Robertson, The Protocol on "Blinding Laser Weapons": A New Direction for International Humanitarian Law, [1996] (90)(3) The American Journal of International Law, 484-490; Anderberg et al, Blinding Laser Weapons and International Humanitarian Law, [1992] (29)(3) Journal of Peace Research, 287- 297

¹⁰¹ E. I. Onah, Boko Haram Insurgency and the 2015 General Elections in Nigeria, [2015] (11) Journal of International Studies, 15-28. S. Weeraratne, Theorizing the Expansion of the Boko Haram Insurgency in Nigeria, [2017] (29)(4) Terrorism and Political Violence, 610-634.

¹⁰² Boko Haram seizes army base in Nigeria town of Baga, BBC, 4 January 2015 < <https://www.bbc.com/news/world-africa-30672391> > Accessed 11 January 2023; Cole et al, Breaking Boko Haram and Ramping Up Recovery Making Peace Possible, US Institute for Peace, 2017 <<https://www.usip.org/sites/default/files/3D-Lessons-Case-Lake-Chad-Region.pdf>> Accessed 11 January 2023

d. The Principle of Proportionality

The principle of proportionality (PP) limits and protects potential harm to civilians by demanding that the least amount of harm is caused to civilians, and when harm to civilians must occur it needs be proportional to the military advantage. The PP is applicable to IAC and NIAC. For IAC, the PP has been codified in IHL treaties.¹⁰³ For NIAC, AP II makes no direct mention of the PP other than a mere mention of it in its preamble though other treaties applicable to NIAC have filled the lacuna.¹⁰⁴ The principle of CIHL provides:

Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.¹⁰⁵

The most recent demonstration of the PP is the US military use of the most powerful non-nuclear bomb, GBU-43/B Massive Ordnance Air Blast Bomb (MOAB) nicknamed the "mother of all bombs," a 30-foot-long, 21,600-pound, GPS-guided munition, estimated \$170,000 per bomb, targeted ISIS cave, tunnel complex and personnel in the Achin district of the Nangarhar province in Afghanistan.¹⁰⁶ The US forces took every precaution to avoid civilian casualties with this strike; world leaders raised concern about the necessity of using such a weapon.¹⁰⁷ BH has no MOAB in their arsenal; it has been involved in massacres that have left behind a trail of decomposed corpses of over 400 men, women and children in Damasak¹⁰⁸ and the 30 stranded travelers set on fire in a roadblock in Auno Village on 12 February 2020.¹⁰⁹

e. The Principle of Military Necessity

The principle of military necessity has a close affinity with the principle of proportionality and permits only measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by IHL. In IAC and NIAC, only legitimate military purpose is to weaken the military capacity of the other parties to the conflict. The principle of military necessity runs through the entire corpus of IH which lists those objects that can be subject to

¹⁰³ Articles 51(5)(b) and 57 of AP I; Article 3(3) Protocol II to the Convention on Certain Conventional Weapons; art. 3(8) Amended Protocol II to the Convention on Certain Conventional Weapons; art. 8(2)(b)(iv) ICC Statute.

¹⁰⁴ Article 3(8)(c) Amended Protocol II to the Convention on Certain Conventional Weapons.

¹⁰⁵ ICRC, Customary International Humanitarian Law, Volume I: Rule 14

¹⁰⁶ H. Cooper and M. Mashal, U.S. Drops 'Mother of All Bombs' on ISIS Caves in Afghanistan, New York Times, 13 April 2017 <<https://www.nytimes.com/2017/04/13/world/asia/moab-mother-of-all-bombs-afghanistan.html>> Accessed 11 Jan 2023; B. Starr and R. Browne, US drops largest non-nuclear bomb in Afghanistan, CNN, 14 April 2017 <<https://edition.cnn.com/2017/04/13/politics/afghanistan-isis-moab-bomb/index.html>> Accessed 24 Jan 2023

¹⁰⁷ Pope Francis angered by America's 'mother of all bombs' name, BBC, 6 May 2017 <<https://www.bbc.com/news/world-europe-39830311>> Accessed 11 January 2023

¹⁰⁸ Badly decomposed bodies of 400 men, women and children discovered in Nigerian town of Damasak in suspected Boko Haram massacre, Independent, 28 April 2015 <<https://www.independent.co.uk/news/world/africa/badly-decomposed-bodies-of-400-men-women-and-children-discovered-in-nigerian-town-of-damasak-in-10208712.html>> Accessed 24 July 2020

¹⁰⁹ B. Adebayo, Caught between roadblocks, they were sitting ducks for Boko Haram massacre, CNN, 15 February 2020 <<https://edition.cnn.com/2020/02/15/africa/nigeria-boko-haram-fire-auno-intl/index.html>> Accessed 11 Jan 2023

lawful attacks.¹¹⁰ In both IAC and NIAC, IHL provides for the special protection of the following category of person: medical and religious personnel and objects, humanitarian relief personnel and objects, personnel and objects involved in peacekeeping mission, journalists, protected zones, cultural property, works and installations containing dangerous forces, natural environment.¹¹¹

There is no military necessity in the recruitment of child soldiers by BH and the Civilian Joint Task Force.¹¹² On BH gunmen dress in military uniforms and stage a fake checkpoint near Benisheik in Borno, burning vehicles and executing travellers, leaving at least 143 people dead.¹¹³ On 20 May 2014, twin explosions in the city of Jos kill 118 people.¹¹⁴ The NAF made a regrettable tactical mistake after a NAF jet mistakenly bombed an IDP camp that killed at least 54 people in Rann, Kala-Balge Local Government Area, Borno State, during an offensive against BH on 17 January 2017. The Defence Headquarters claimed the attack was carried out on the location because it was not “reflected in the operational map as a humanitarian base.”¹¹⁵

f. The Principle of Humanity

The immutable words of Donne: “any man's death diminishes me, because I am involved in mankind...”¹¹⁶ evokes the principle of humanity. Kant, the natural law theorist opined: “So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means”¹¹⁷ Not many philosophical theories have been so widely accepted and severally interpreted as Kant’s injunction to treat humanity as an end in itself.¹¹⁸ The Founder of ICRC, Henry Dunant, was inspired by the principle of humanity after he witnessed firsthand the carnage in the battle of Solferino of 1859.¹¹⁹ The principle provides that noncombatants, combatants out of action due to injury and combatants, unnecessary injury or suffering is forbidden at all times. It provides an essential counterbalance

¹¹⁰ AP I, art. 52

¹¹¹ C. J. S. Forrest, *The Doctrine of Military Necessity and the Protection of Cultural Property during Armed Conflicts*, [2007] (37)(2) *California Western International Law Journal*, 177 – 219. Rules 25-45 Jean-Marie Henckaerts, “Annex to Study on Customary International Humanitarian Law: A contribution to the Understanding and Respect for the Rule of Law in Armed Conflict” [2005] (87)(857) *International Review of the Red Cross*, 198

¹¹² A. B. Bukarti, *Nigeria’s Child Veterans Are Still Living a Nightmare*, French Press, 15 August 2019 <<https://foreignpolicy.com/2019/08/15/children-boko-haram-nigeria-borno-cjtf/>> Accessed 11 January 2023

¹¹³ *Nigeria’s Boko Haram Unrest: Scores Dead in Benisheik Raid*, BBC, 19 September 2013 <<https://www.bbc.com/news/world-africa-24169992>> Accessed 11 Jan 2020. L. Ola, *Nigerian Islamists kill at least 159 in two attacks*, Reuters, 20 September 2013, <<https://www.reuters.com/article/us-nigeria-violence-toll/nigerian-islamists-kill-at-least-159-in-two-attacks-idUSBRE98J0SP20130920>> Accessed 11 Jan 2023. E. I. Onah, *Boko Haram Insurgency and the 2015 General Elections in Nigeria*, [2015] (11) *Journal of International Studies*, 15-28

¹¹⁴ M. Mark, *Nigeria bombings leave scores dead in city of Jos*, *The Guardian*, 21 May 2014 <<https://www.theguardian.com/world/2014/may/20/nigerian-city-jos-two-deadly-explosions>> Accessed 11 Jan 2023; D. Kedmey, *Double Car Bombs Kill More than 100 in Central Nigeria*, *Time*, 20 May 2014 <<https://time.com/106490/double-car-bombs-kill-dozens-in-central-nigeria/>> Accessed 11 January 2023

¹¹⁵ S. Isuwa and F. Okoye, *7 Months After, DHQ Releases Report On Rann IDPs Bombing*, *Leadership Newspaper*, 22 July 2017 <<https://leadership.ng/2017/07/22/7-months-dhq-releases-report-rann-idps-bombing/>> Accessed 11 January 2023

¹¹⁶ J. Donne, ‘No Man is an Island’ <<https://web.cs.dal.ca/~johnston/poetry/island.html>> Accessed 19 July 2020

¹¹⁷ I. Kant, *Groundwork of the Metaphysics of Morals*, translated and edited by M. Gregor, Cambridge University Press, United Kingdom, 1997 @ 38. E. Atwell, *The Principle of Humanity*. In: *Ends and Principles in Kant’s Moral Thought*, [1986] (22) *Nijhoff International Philosophy Series*, 105

¹¹⁸ T. Hill, *Humanity as an End in Itself*, [1980] (91)(1). *Ethics*, 84-99.

¹¹⁹ H. Dunant, *A Memory of Solferino*, *International Committee of the Red Cross*, 1 - 150

to the principle of military necessity.¹²⁰ The principle stipulates that all humans have the capacity and ability to show respect and care for all, even their sworn enemies.¹²¹

The theme of humanity runs through the entire corpus of the GCs but it is nowhere defined.¹²² The GCs provide that “shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usage established among civilized peoples, from the laws of humanity and the dictates of the public conscience”¹²³ In *Nicaragua v. USA*, the ICJ held that the US, by failing to make known the existence and location of the mines laid by it, has acted in breach of its obligations under customary international law in this respect.¹²⁴ The same principles were expressed by the ICJ in the *Corfu Channel*¹²⁵ case as follows “certain general and well recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”. The principle of humanity finds expression in the Martens Clause,¹²⁶ named after Professor Fyodor Fyodorovich Martens,¹²⁷ Russian delegate who introduced the clause for the first time as a compromise in discussions on the treatment of fighters not accorded prisoner-of-war status:

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.¹²⁸

BH attacked an IDP camp in Rann, Borno State, killing three Nigerian aid workers and injuring three others on 1 March 2018 and abducted three ICRC aid workers rendering humanitarian services in breach of the hallowed principles of IHL. One of the abducted female aid worker Saifura Hussaini Ahmed Khorsa was killed by BH on 17 September 2018¹²⁹ and Hauwa

¹²⁰ G. S. Com, *Principle of Humanity* (2013: Oxford School of Public International Law, 2013)

¹²¹ K. Larsen, ‘A ‘Principle of Humanity’ or a ‘Principle of Human-Rightism’? In K. Larsen, C. Guldahl Cooper, & G. Nystuen (Eds.), *Searching for a ‘Principle of Humanity’ in International Humanitarian Law*, Cambridge: Cambridge University Press, 2012, 124-148

¹²² For the definition of the principle of necessity, see R. Coupland, *Humanity: What is it and how does it Influence International Law?* [2001] (83)(844) *International Review of the Red Cross*, 969 - 989

¹²³ Art. 63 GC I; art. 62 GC II; art. 142 GC III; Art. 158 GC IV

¹²⁴ ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986.

¹²⁵ I.C.J. Reports 1949, 22

¹²⁶ R. Ticehurst, *The Martens Clause and the Laws of Armed Conflict*, [1997] (37)(317) *International Review of the Red Cross*, 125-134

¹²⁷ The life and history of F. F. Martens is chronicled by V. V. Pustogarov, “Fyodor Fyodorovich Martens (1845-1909) - A Humanist of Modern Times”, [1996] (36)(312) *International Review of the Red Cross*, 300-314.

¹²⁸ The Martens Clause has been adopted by other IHL instruments as follows: Preamble to the Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, The Hague, 29 July 1899, Preamble Review of The Hague Conventions of 1899 and adoption of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, the four 1949 GCs for the protection of war victims (art. 63 GC I; art. 62 GC II; GC III: art. 142 GC III; art. 158 GC IV), art. 1(2) AP I, Preamble AP II and Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons 1980.

¹²⁹ B. Adebayo, *Kidnapped International Red Cross aid worker killed in Nigeria*, CNN, September 17, 2018 <<https://edition.cnn.com/2018/09/17/africa/nigerian-female-aid-worker-killed/index.html>> Accessed 11 Jan 2023.

Mohammed Liman, the abducted midwife was executed after a deadline for negotiations expired on 16 October 2018,¹³⁰ In Nigeria, funerals are very solemn ceremonies that unify even feuding neighbours, yet BH attacked a funeral gathering leaving at least 65 people dead on 27 July 2019.¹³¹ AI accused the NAF of burning and forcibly displacing entire villages in response to a recent escalation in attacks by BH with no imperative military grounds as possible war crimes.¹³²

6.0 The Failure of Accountability in the Boko Haram War in Nigeria

The BH uprising remains a huge security challenge for Nigeria and its Lake Chad basin neighbours. Nigeria has an obligation under the CFRN 1999 and international law to investigate, prosecute and punish all crimes and other serious violations of IHL, whether committed by BH, Nigerian military and the CJTF. Apart from a few isolated cases, not much has been achieved by way of holding the perpetrators of the alleged war crimes and crimes against humanity committed by parties in Nigeria. Claims of human rights abuses in the fight against BH have sparked investigations by the ICJ and hindered Nigeria's ability to purchase arms.¹³³ Barack Obama blocked the sale of 12 Super Tucano A-29 planes and other weapons to Nigeria after the NAF bombed a refugee camp though it was overturned by Donald Trump who decided to press on with the transaction to support Nigeria's efforts to fight BH militants.¹³⁴

The ICC's Office of the Prosecutor opened a preliminary examination in 2010 and identified eight potential cases of war crimes and crimes against humanity perpetrated by both sides of the conflict.¹³⁵ The heads of UN counter-terrorism bodies - UN Office of Counter-Terrorism and Counter-Terrorism Committee Executive Directorate - concluded a joint visit to Nigeria and complimented the strong legal framework to combat terrorism and offered more assistance

¹³⁰ S. Busari and B. Adebayo Second aid worker held by Boko Haram executed as negotiation deadline expires, CNN, October 16, 2018 <<https://edition.cnn.com/2018/10/16/africa/second-nigerian-aid-worker-killed-intl/index.html>> Accessed 10 January 2023

¹³¹ S. Busari, I. Abrak, S. Sherry and B. Goyette, Suspected Boko Haram attack on a funeral leaves 65 dead in Nigeria, CNN, 29 July 2019 <<https://edition.cnn.com/2019/07/28/africa/boko-haram-attack-nigeria/index.html>> Accessed 10 January 2023

¹³² Nigeria: Military razes villages as Boko Haram attacks escalate, Amnesty International, 14 February 2020 <<https://www.amnesty.org/en/latest/news/2020/02/nigeria-military-razes-villages-as-boko-haram-attacks-escalate>> Accessed 10 January 2023.

¹³³ Boko Haram Crisis: Nigeria Fury Over US Arms Refusal, BBC, 11 November 2014 <<https://www.bbc.com/news/world-africa-30006066>> Accessed 10 January 2023. Nigeria's military razed villages in war on Islamist insurgents: Amnesty International, February 14, 2020 <<https://www.reuters.com/article/us-nigeria-security-amnesty/nigerias-military-razed-villages-in-war-on-islamist-insurgents-amnesty-international-idUSKBN208009>> Accessed 11 January 2023

¹³⁴ P. Carsten, Nigeria says U.S. agrees delayed \$593 million fighter plane sale, Reuters, 27 December 2017 <<https://www.reuters.com/article/us-nigeria-usa/nigeria-says-u-s-agrees-delayed-593-million-fighter-plane-sale-idUSKBN1EL1EN>> Accessed 10 January 2023

¹³⁵ Willingly Unable: ICC Preliminary Examination and Nigeria's Failure to Address Impunity for International Crimes, AI, 2018 <<https://www.amnesty.org/download/Documents/AFR4494812018ENGLISH.PDF>> Accessed 28 March 2020; N. Ibekwe, ICC lists 8 possible war crimes against Nigerian military, Boko Haram, Premium Times, 14 November 2015 <<https://www.premiumtimesng.com/news/headlines/193142-icc-lists-8-possible-war-crimes-against-nigerian-military-boko-haram.html>> Accessed 10 January 2023.

in accordance with UNSC Resolution 2395 (2017)¹³⁶ and to implement this framework in an inclusive manner and in accordance with international standards.¹³⁷

The Special Board of Inquiry (SBI) to investigate claims of gross violations of human rights, inaugurated on 8 March 2017 by the Chief of Army Staff (COAS), Lieutenant General Tukur Buratai and headed by Major General Ahmed T. Jibrin (rtd).¹³⁸ The SBI found nothing incriminating against the senior military officers suspected to have committed crimes under international law.¹³⁹ A 7- man Judicial Commission, headed by Justice B. A. Georgewill, to review compliance of the NAF with human rights obligations and rules of engagement, especially in local conflict and insurgency situations.¹⁴⁰ The Presidential Investigation Panel (PIP) to Review Compliance with Human Rights Obligations and Rules of Engagement by the Nigerian Armed Forces has indicted the military for rape and extra-judicial killings in the course of fighting insurgents in the north-east.¹⁴¹ The PIP was a fulfilment of the promise made by President Buhari in June 2015 to end impunity and ensure justice for the victims of crimes under international law committed by the armed forces. In August 2017 the then Acting President Osinbajo set up the PIP who submitted its report in February 2018.¹⁴² In 2019, a Special Military Court convicted Flight Lieutenant M. I. Enwerem the defilement of a 14-year-old Zara Ali, while she and her friends were out searching for firewood at the outskirts of Maiduguri on 29 September 2018 and ordered the dismissal and reduction in rank of the soldier.¹⁴³

¹³⁶ United Nations, S/RES/2395 (2017) – Threats to International Peace and Security Caused by Terrorist Acts – Counterterrorism Committee Executive Directorate Mandate Renewal, 21 December 2017 <[https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2395%20\(2017\)&referer=http://www.un.org/en/documents/index.html&Lang=E](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2395%20(2017)&referer=http://www.un.org/en/documents/index.html&Lang=E)> Accessed 10 January 2023

¹³⁷ Heads of United Nations Counter-Terrorism Bodies Conclude Joint Visit to Nigeria, UN, 26 July 2018 <https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/20180726_Joint-Press-Release-visit-to-Nigeria_Final.pdf> Accessed 10 January 2023

¹³⁸ News Agency of Nigeria, Amnesty International Report: Nigerian Army sets up Committee to Investigate Rights Violations, Premium Times, 8 March 2017 <<https://www.premiumtimesng.com/news/top-news/225572-amnesty-international-report-nigerian-army-sets-committee-investigate-rights-violations.html>> Accessed 10 January 2023

¹³⁹ The Senior Military Officers are Rtd Major Generals John Ewansiha, O.T. Ethan, A. Mohammed, A.O. Edokpayi and Brigadier General R.O. Bamigboye. News Agency of Nigeria, Nigerian Army's own panel clears it of wrongdoings in treatment of IPOB, Boko Haram members, Premium Times, 15 June 2017 <<https://www.premiumtimesng.com/news/headlines/234167-nigerian-armys-panel-clears-wrongdoings-treatment-ipob-boko-haram-members.html>> Accessed 10 January 2023.

¹⁴⁰ Other members of the commission are Major General Patrick Akem, Wale Fapohunda, Hauwa Ibrahim, Jibrin Ibrahim, Ifeoma Nwakama and a representative of the Office of the National Security Adviser. I. Ibrahim, Osinbajo sets up judicial commission to probe human rights abuses by Nigerian military, Premium Times, 4 August 2017 <<https://www.premiumtimesng.com/news/headlines/239297-just-osinbajo-sets-judicial-commission-probe-human-rights-abuses-nigerian-military.html>> Accessed 10 January 2023.

¹⁴¹ T. Soniyi, Presidential Panel Indicts Military for Rape, Extra-judicial Killings, Thisday, March 31, 2019 <<https://www.thisdaylive.com/index.php/2019/03/31/presidential-panel-indicts-military-for-rape-extra-judicial-killings/>> Accessed 10 January 2023

¹⁴² Nigeria: Release presidential panel report to ensure transparency and accountability, Amnesty International, 11 September 2018 <<https://www.amnesty.org/en/latest/news/2018/09/nigeria-release-presidential-panel-report-to-ensure-transparency-and-accountability/>> Accessed 10 January 2023

¹⁴³ A. Haruna, Military court dismisses air force officer who raped 14-year-old, Premium Times, 5 April 2019 <<https://www.premiumtimesng.com/news/top-news/324126-military-court-dismisses-air-force-officer-who-raped-14-year-old.html>> Accessed 10 January 2023.

7.0 Conclusion

Nigerian law and IHL has imposed a duty on parties to prosecute their BH war efforts within the ambit permitted by the law. Arrested BH fighters should be presumed innocent until proven guilty, a universal principle of justice. The notoriety of the security agencies in Nigeria for extrajudicial killings has not helped matters. The death of Yusuf Mohammed, the founder of BH is seen as one of the reasons for the escalation of the BH insurgency. Impunity and sustainable peace are irreconcilable BH's lawlessness should never be a reason for the NAF to derogate from international obligations to respect the principles of IHL. Nigeria has ratified and domesticated all the IHL treaties and conventions but in the process of implementation of these laws, Nigeria has fallen short. There is all the need to build strong institutions that will withstand ethnic and political biases to ensure the smooth application of IHL in Nigeria. The office of the Attorney General should be properly funded and insulated from partisan politics to fulfil the sacred mandate of prosecuting terror suspects.¹⁴⁴ The Federal High Court should designate judges to speedily try terror cases in Nigeria.¹⁴⁵ Based on the principle of complementarity, the ICC should assume jurisdiction since Nigeria is unwilling to carry out investigation or prosecution.¹⁴⁶

In closing, poverty and corruption dampen hope, drain institutions, exhaust resources, weaken leadership and ultimately contribute to rising insecurity. Institutions responsible for security in Nigeria are corrupt. Government must work hard to reduce the twin monsters of poverty and corruption Nigeria. There is no justification for dwindling fortunes of the NAF in the war against BH when there is evidence to show improved budgetary allocations to the Federal Ministry of Defence in the last one decade in Nigeria. Corruption is a social danger because it feeds organized crime and destroys faith in legitimate authority.

¹⁴⁴ s. 174(1) CFRN 1999 and Terrorism (Prevention and Prohibition) Act, 2022, s. 3

¹⁴⁵ Terrorism (Prevention and Prohibition) Act, 2022, s. 76

¹⁴⁶ Rome Statute, art. 17