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## **PENAL REPRESSION FOR BREACHES OF IHL: PROBING THE "BOKO HARAM" WAR CRIMES AND CRIMES AGAINST HUMANITY**

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**ABSTRACT:** International humanitarian law (IHL) requires States Parties to the Geneva Conventions and the Additional Protocols to enact penal legislations in their domestic legal systems for the purpose of repressing and suppressing violations of the law committed in their territories. The law considers penal repression for violations of IHL as one of the mechanisms through which the law can be enforced. IHL does not seek to prosecute every violation of its rules but seeks to prosecute grave breaches of the Geneva Conventions and the Protocols as well as serious violations of the laws and customs applicable in armed conflicts. Boko Haram as an armed group engaged in fighting the Government of Nigeria and seeks to establish Islamic state in the country is alleged to have committed several breaches of IHL. Therefore, this article intends to examine the grave breaches of the Geneva Conventions and the Protocols committed by Boko Haram in the conflict in Northern Nigeria. It equally examines other serious violations of the laws and customs applicable in armed conflicts that were committed by Boko Haram. The article posits that the violations of the rules of IHL committed by Boko Haram constitute among other crimes the core international crimes of war crimes and crimes against humanity. The perpetrators of such crimes deserve to be prosecuted and the commission of the crimes must equally be suppressed. It is recommended that members of Boko Haram who perpetrate the core international crimes should be held responsible and be allowed to face the full wrath of the law through penal repression.

**KEYWORDS:** *Serious Violations, IHL, Boko Haram, Nigeria, Common Article 3*

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## **INTRODUCTION**

IHL mandates States Parties to the Geneva Conventions and the Additional Protocols to put in place certain relevant mechanisms and national legislation that are necessary for the

enforcement of the law of armed conflict.<sup>1</sup> Accordingly, the Geneva Conventions mandate States Parties to enact penal legislation that provides proactive and effective penal sanctions to deal with grave breaches. States are further required to take measures necessary for the suppression of all acts contrary to the provisions of the Conventions other than the grave breaches. This means that the obligation of States to suppress violations of IHL is not limited to grave breaches of the Conventions but to all acts that violate the law of armed conflict.<sup>2</sup> The Conventions have further urged each High Contracting Party to search for the violators of the law and either prosecute them in their domestic courts or hand them over to a concerned state that has made out a *prima facie* case for prosecution.<sup>3</sup>

In the Nigerian context, the Geneva Conventions and the Additional Protocols have been ratified but only the Conventions that have been domesticated pursuant to the Constitution of the Federal Republic of Nigeria.<sup>4</sup> Today in Nigeria, the Geneva Conventions Act has criminalised grave breaches of the Geneva Conventions and has imposed severe penalty. For instance, the Act provides that any person who commits a grave breach as contained in the provisions of the Geneva Conventions shall be punished with death, if the grave breach involved willful killing of a person who is protected under the Conventions.<sup>5</sup> Whereas, if the grave breach is other than 'willful killing', the culprit may be punished with imprisonment not exceeding

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<sup>1</sup> See also Antonio Cassese, "On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law" vol. 9 (1998) *European Journal of International Law*, at 5-7

<sup>2</sup> Amichai Cohen and Yuval Shany, "Beyond the Grave Breaches Regime: The Duty to Investigate Alleged Violations of International Law Governing Armed Conflicts" in *Yearbook of International Humanitarian Law*, vol. 14 (2011) edited by Michael N. Schmitt and Louise Arimatsu, at 42. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, it came into force December 7, 1978, 1125 U.N.T.S. 3, reprinted in 16 I.L.M. 1391 (1977) (hereinafter 'Additional Protocol I'), Article 86 (1). It is important to note that grave breaches of the Geneva Conventions also constitute grave breaches of Additional Protocol I. And grave breaches of the Geneva Conventions and the Protocol should be regarded as war crimes. See Additional Protocol I, Article 85(2) and (5).

<sup>3</sup> Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, it came into force October 21, 1950, 75 U.N.T.S. 31 ( hereinafter 'Geneva Convention I'), Article 49; Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at the Sea, it came into force October 21, 1950, 75 U.N.T.S. 85 (hereinafter 'Geneva Convention II'), Article 50; Convention Relative to the Treatment of Prisoners of War; and Convention Relative to the Protection of Civilian Persons in Times of War, it came into force October 21, 1950, 75 U.N.T.S. 335 (hereinafter 'Geneva Convention III'), Article 129; Convention Relative to the Protection of Civilian Persons in Times of War of August 12, 1949, 75 UNTS 287, (hereinafter 'Geneva Convention IV'), Article 146

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1990 (as amended), Section 12 (hereinafter 'the 1999 Constitution'). "The Geneva Conventions of 1949 and their Additional Protocols" <<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/>> viewed on 10 March 2014. See also Geneva Conventions Act, 2004 (CAP G3 Laws of the Federation of Nigeria) (hereinafter 'Geneva Conventions Act')

<sup>5</sup> Ibid, Section 3(1) (i)

14 years.<sup>6</sup> Interestingly, the Geneva Conventions Act has recognised the universal nature of these crimes in the sense that the *ratione loci* of the crimes covers violations made both within and out-side Nigeria.<sup>7</sup>

Thus, the violations of the law of armed conflict committed in the conflict in Northern Nigeria can be prosecuted in a different territory other than Nigeria provided that the country has national legislation to that effect.<sup>8</sup> Likewise, violations committed along the border axis or the neighbouring countries such as Niger, Cameroun and Chad can be prosecuted in Nigeria based on the doctrine of universal jurisdiction.<sup>9</sup> Therefore, the violations of the law of armed conflict committed in the conflict in Northern Nigeria may constitute a crime against humanity or war crimes, which deserves to be prosecuted without impunity. It is against this background that the paper discusses the background of the Boko Haram conflict and the various atrocities committed by the group, which amounts to war crimes and crimes against humanity.

## 1. BRIEF BACKGROUND OF THE BOKO HARAM CONFLICT

The conflict in Northern Nigeria started in July 2009 by a group called *Jamā 'atu Ahlus-Sunnah Lidda'wati wal Jihād'* which literally means "people committed to the propagation of the Prophet's teachings and Jihad". The group is popularly known as Boko Haram, the phrase 'Boko Haram' in Hausa means "western education is forbidden".<sup>10</sup> On 11 July 2009, the members of Boko Haram refused to abide by the new traffic rule that mandates the wearing of helmets by all motorcyclists.<sup>11</sup> The Nigerian police felt that the sect members should be taught a lesson for their usual open defiance of constituted authority.<sup>12</sup> The police brutally dealt with the sect members by shooting 17 of them who did not die and they were rushed to the University of Maiduguri Teaching Hospital for treatment.<sup>13</sup> Consequently, the anger of the sect members heightened and opted to retaliate, which triggered the 26 July attack.<sup>14</sup>

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<sup>6</sup> Ibid, Section 3(1) (ii)

<sup>7</sup> Ibid, Section 3(2)

<sup>8</sup> Cohen and Shany, at 42

<sup>9</sup> See William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge: Cambridge University Press, 2004, at 20

<sup>10</sup> Ahmed S. Hashim, et al., "Western Ways Are Evil": The Emergence and Evolution of Boko Haram" vol. 4, Issue 7, (July 2012) *Counter Terrorist Trends and Analysis*, at 5

<sup>11</sup> Okpaga, et al., at 83

<sup>12</sup> Ibid

<sup>13</sup> Human Rights Watch, *Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria*, USA: Human Rights Watch, 2012, at 33 (hereinafter 'Human Rights Watch')

<sup>14</sup> James J.F. Fores, *Confronting the Terrorism of Boko Haram in Nigeria*, Florida: The JSOU Press, 2012, at 63

In the morning hours of 26 July, the sect members attacked and destroyed several police stations within the Maiduguri metropolitan, which include state police headquarters, Ibrahim Tayo police station, Police Mobile College barracks and Makera police station.<sup>15</sup> Other places attacked were maximum security prison where inmates were released and some churches and primary schools across the metropolitan were burnt down. Similar attacks were launched in Gamborun Gala near the border and Lamisla area. The conflict immediately sprayed across some northern states such as Yobe and Kano.<sup>16</sup> In Yobe state, the sect attacked several places such as the National Population Commission (NPC) building, the Federal Road Safety Commission (FRSC) office and a Baptist Church.<sup>17</sup> In Bauchi state, the attack destroyed the Dutsen Tanshi police station, while in Kano state the attack affected Wudil police station.<sup>18</sup> The sectarian attack persisted and lasted for four days until the Nigerian Army was deployed to assist the police forces to suppress the violence. The group has taken Nigerian security forces to ransom for three days and subsequently, the Nigerian Army was able to overpower the group, dislodged them and captured the leader Muhammed Yusuf in one of his Father-in-law's residence.<sup>19</sup>

After the July 2009 event, the group went into hidden, re-organised itself and formed a formidable armed group dedicated to campaign of assassination.<sup>20</sup> This time around the group has metamorphosed from a local sect that lack sophistication to a more organised armed group that carries sophisticated and coordinated attacks. It started using locally produced explosives and bombs,<sup>21</sup> propelled grenades and AK 47 rifles, rocket launchers, etc., to carry out its operations.<sup>22</sup> The targets of the group are mainly the Security Forces such as police, prison wardens, civil defence corps, soldiers, custom officers and Secret Security Service (SSS).<sup>23</sup> Other targets include places of worship such as Mosques and Churches, religious leaders who did not

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<sup>15</sup> Alao David Oladimeji, et al., "Boko-Haram Insurgence in Nigeria: The Challenges and Lessons" vol. 1, No.4 (2012) Singaporean Journal of Business Economics, and Management Studies, at 7

<sup>16</sup> Human Rights Watch, at 34

<sup>17</sup> Okey Uzoechina, "Revisiting *Boko Haram*: Changing the rules of Engagement" No.10 (September 2011) Conflict, Security and Development Group (CSDG), Kings' College London, at 1

<sup>18</sup> Fores, at 64

<sup>19</sup> Danjibo, at 12; Okpaga, et al., at 83

<sup>20</sup> Walker, at 5. See also Patrick Meehan and Jackie Speier, 'Boko Haram: Emerging Threat to the U.S. Homeland' (November 2011), U.S. House of Representatives Committee on Homeland Security Subcommittee on Counterterrorism and Intelligence (hereinafter 'US House Committee on Homeland Security')

<sup>21</sup> The sect has sent some of its members to Afghanistan to receive training on local bomb making, this was disclosed by a detained member of Boko Haram who confessed that he was among those sent for the training. See *This Day*, "[Boko Haram Bomb Expert Trained in Afghanistan](http://nigeriaworld.com/news/archive/2009/sep/3.html)", 3 September, 2009, at 1 < <http://nigeriaworld.com/news/archive/2009/sep/3.html> > viewed on 3 March 2014

<sup>22</sup> Danjibo, at 11; Fores, at 64

<sup>23</sup> Okpaga, et al., at 83

support the armed group, politicians and civilians who oppose their ideology, particularly after the July 2009 conflict have been considered as enemies.<sup>24</sup>

The group has adopted guerilla warfare and population-centric method of attack as well as using acts of terrorism.<sup>25</sup> The aftermath of employing these unconventional methods of warfare and the avoidance of direct confrontation has caused the death of thousands innocent civilians and destruction of properties beyond estimation.<sup>26</sup>

## 2. THE CONCEPT OF WAR CRIMES

War crime is one of the heinous crimes that constitute a wide spectrum of offences to be committed in time of armed conflict and it forms one of the core international crimes. It is a serious violation of "a rule of international humanitarian law that creates direct criminal responsibility under international law."<sup>27</sup> Presently, in international criminal law, war crimes constitute the offences contained in Article 8 of the Rome Statute. The crime encompasses grave breaches of the Geneva Conventions, the Additional Protocols as well as other serious violations of the laws and customs applicable in armed conflicts, provided that the violations are "committed as part of a plan or policy or on a large scale."<sup>28</sup> Article 8 of the Rome Statute has provided for the definition of war crimes by outlining the various offences and violations that constitute the crimes.

The Rome statute has considered war crimes from different perspectives i.e. grave breaches of the Geneva Conventions and Additional Protocols, war crimes in international armed conflict and war crimes in non-international armed conflict.<sup>29</sup> On one hand, Grave breaches of the Geneva Conventions cover certain proscribed acts when they are directed "against persons or property protected under the provisions of the relevant Geneva Convention."<sup>30</sup> The proscribed acts *inter alia* include willful killing, torture, willfully causing great suffering, unlawful extensive destruction and appropriation of property, compelling a prisoner of

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<sup>24</sup> Onuoha, at 104. See Agaptus Nwozor, "National Security, Religious Anarchism and the Politics of Amnesty in Nigeria" vol. 1, No. 1 (Maiden Edition, September, 2013) CUJPIA,

<sup>25</sup> Adenrele, at 21; Uzoechina, at 2

<sup>26</sup> Zenn, at 3; Adenrele, at 21

<sup>27</sup> Gerhard Werle and J. Bung, "War Crimes- Summary" at 1 <werle.rewi.hu-berlin.de/05\_War%20Crimes-Summary.pdf> viewed on 10 March 2014

<sup>28</sup> Rome Statute, Article 8

<sup>29</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol. 1: Rules, Cambridge: Cambridge University Press, 2005, Rule 156 (hereinafter 'ICRC Customary Study'). For the categorisation of war crimes into four perspectives, see Knut Dormann, "War Crimes under the Rome Statute of the International Criminal Court, with a Special Focus on the Negotiations of Elements of Crimes" vol. 7 (2003) Max Planck UNYB, at 343-345

<sup>30</sup> Article 8(2)(a), Rome Statute

war or other protected person to serve in the forces of a hostile Power, taking hostages, etc.<sup>31</sup> Thus, commission of any of these acts jointly or severally constitute grave breaches of Geneva Conventions, which is a war crime. On the other hand, Article 8(2)(b) of the Rome Statute has outlined the unlawful acts that constitute war crimes in international armed conflict.<sup>32</sup>

Then lastly, the Rome Statute designated certain acts as war crimes when committed during non-international armed conflict. Importantly, this research is dealing with the conflict in Northern Nigeria, which is a non-international armed conflict. Thus, the unlawful acts that constitute war crime in the context of non-international armed conflict are the category of crimes alleged to have been committed in the conflict in Northern Nigeria. According to the Rome Statute, war crimes in non-international armed conflict are the serious violations of Common Article 3 to the Geneva Conventions, which cover unlawful acts directed against persons who are not taking active part in hostilities.<sup>33</sup> Serious violations of Common Article 3 that constitute war crimes include: murder, mutilation or torture;<sup>34</sup> committing outrages upon personal dignity;<sup>35</sup> and taking hostages.<sup>36</sup> Each of these unlawful conducts must be directed against persons who are not taking active part in hostilities before it constitutes a war crime. Other acts that amounts to war crimes in this context include: intentional attacks on individual civilian or civilian population not taking an active part in hostilities;<sup>37</sup> intentional attacks against civilian objects which have not been used for military purpose;<sup>38</sup> and rape, sexual slavery and other form of sexual violence.<sup>39</sup>

At this juncture, it is significant to mention that all the aforementioned violations of the law can only constitute war crimes if committed during armed conflict and must have nexus with an armed conflict.<sup>40</sup> The ICTY has asserted in the case of *Tadic*<sup>41</sup> that an act can constitute

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<sup>31</sup> Ibid

<sup>32</sup> It constitutes war crimes in international armed conflict to: direct attack against civilians population and civilian objects; bombard towns, villages, dwellings or buildings which are undefended; kill or wound a combatant who have laid down his arms; direct "attacks against buildings dedicated to religion, education", etc.; declare no quarter will be given; commit pillage; commit rape or sexual slavery; use civilian shield; starve civilians; enlist children less than 15 years in the armed forces; etc. It is important to mention that this is not exhaustive list of the acts that constitute violations of the laws and customs of the law applicable in international armed conflict as contained in the Rome Statute. See Article 8(2)(b)(i)-(xxvi)

<sup>33</sup> Ibid, Article 8(2)(c)

<sup>34</sup> Ibid, Article 8(2)(c)(i)

<sup>35</sup> Ibid, Article 8(2)(c)(ii)

<sup>36</sup> Ibid, Article 8(2)(c)(iii). See also Rome Statute, Article 8(2)(c)(iv)

<sup>37</sup> Ibid, Article 8(2)(e)(i)

<sup>38</sup> Ibid, Article 8(2)(e)(iv)

<sup>39</sup> Ibid, Article 8(2)(e)(vi). See Article 8(2)(e) for other acts of war crimes. For a detailed discussion on a war crime of pillage, see James G. Stewart, *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*, New York: Open Society Institute, 2011

<sup>40</sup> Werle and Bung, at 2; Rome Statute, Article 8(2)(f); Charter of the International Military Tribunal (IMT), Article 6(b), (hereinafter 'Nuremberg Charter')

a war crime only if it is closely related to the armed conflict as a whole. In addition, the "violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim".<sup>42</sup>

It is equally important to mention that mere existence of an armed conflict is not sufficient to qualify every act of criminality committed to constitute a war crime. It is expected that the armed conflict must have influenced and played a vital role in the commission of the crime.<sup>43</sup> The ICTY in its decision in the *Kunarac case*<sup>44</sup> has reiterated that:

The armed conflict need not have been casual to the commission of the crime, but the existence of an armed conflict, must at a minimum, have played a substantial part in the perpetrator's ability to commit, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.

This has aptly emphasised the need for nexus between the crime committed and the armed conflict before the crime qualifies as a war crime. The ICTR has shared a similar opinion in the case of *Kayishema*<sup>45</sup> where it states the need for "a direct link between crimes committed" against the victims and the armed conflict. It is important to state that where a nexus between the alleged violations and the armed conflict cannot be established, the violations of the law will not constitute war crimes but may amount to crimes under domestic criminal law or international criminal law.<sup>46</sup>

### 3. WAR CRIMES OF BOKO HARAM

The issue before hand is whether there were serious violations of Common Article 3 as well as the laws and customs applicable in non-international armed conflict, which were committed by Boko Haram. Considering the various arbitrary attacks, killings and destructions recorded in the conflict suggest that serious violations of Common Article 3 as well as laws and customs applicable in non-international armed conflict have been committed. Boko Haram has carried out uncountable attacks against individual civilians and civilian population. Recently, a bomb attack in post office area of Maiduguri has killed over 30 people and injured more than 50

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<sup>41</sup> *Prosecutor v. Tadic*, Case IT-94-1-AR72, ICTY Judgement (October 2, 1995), 35 I.L.M. 32, 54 (hereinafter '*Prosecutor v Tadic*')

<sup>42</sup> *Ibid.* See *Prosecutor v Zejnil Delalic et al*, Case No. 96-21-A, ICTY Judgement, 20<sup>th</sup> February 2001 (hereinafter '*Prosecutor v Delalic*')

<sup>43</sup> *The Prosecutor v Dragoljug Kunarac and Others*, Appeal Chambers, Judgement, IT-96-23, para 58

<sup>44</sup> *Ibid*

<sup>45</sup> *The Prosecutor v Clement Kayishema et al.*, Case No. ICTR-95-1-T, 21 May 1999, para 185 (*Prosecutor v Kayishema, et al.*)

<sup>46</sup> See Kai Ambos and Steffen Wirth, *The Current Law of Crimes Against Humanity: An Analysis of Untaet Regulation 15/2000*, Netherland: Kluwer Law International, 2002, at 5, 49-50

civilians who were caught in the episode.<sup>47</sup> They also claimed the responsibility for the bomb blast in Gomari-Bulunkutu within the Maiduguri metropolitan, which has killed over 35 civilians and injured several others.<sup>48</sup> In April 2014, Boko Haram has similarly claimed the responsibility for the attack of a civilian motor park in Nyanya, Abuja where it used explosives that killed over 88 civilians and injured more than 200 as well as many vehicles were damaged.<sup>49</sup> In May of the same year, another bomb blast suspected to have been detonated by Boko Haram on civilian car park in Nyanya, Abuja has killed more than 30 people and injured several others.<sup>50</sup> These bomb attacks were attacks directed against civilian population, which constitute war crimes under the Rome Statute.

In an attack in Konduga, Boko Haram killed over 120 civilians including women and children and abducted some female students from a secondary school. The members of the group set fire on more than 80 percent of the buildings in the town including the central Mosque of the town.<sup>51</sup> The group has equally unleashed its outrages on Izghe village in Gwoza local government where the members of Boko Haram assembled the male members of the village on a market day and opened fire on all of them killing more than 100 civilians who are not taking part in hostilities. Thereafter, they went into individual houses to kill those who did not come out and set several houses and shops ablaze.<sup>52</sup> The group also attacked Bama town and they killed over 100 civilians including women and children and sets over 300 houses ablaze including the Emir of Bama's residence.<sup>53</sup> All these Boko Haram attacks were in furtherance of the war they are waging against the Government of Nigeria. Thus, these attacks against civilians who are not taking a direct part in hostilities as well as attacks against civilian buildings that are not used for

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<sup>47</sup> Fidelis Soriwei, et al., "Suicide Bomber Kills 30 in Maiduguri", *Punch*, 15 January, 2014, at 1 <<http://www.punchng.com/news/suicide-bomber-kills-30-in-maiduguri/>>

<sup>48</sup> *Leadership*, "Bomb Blasts Kill 35 in Maiduguri", 2 March, 2014, at 1 <<http://t.co/cakmcgkssd>> viewed on 2 March 2014

<sup>49</sup> Kingsley Omonobi, "88 Killed Over 200 Injured in Abuja Bombing", *Vanguard*, 14 April, 2014, at 1 <<http://www.vanguardngr.com/2014/04/88-killed-200-injured-abuja-bombings/>> viewed on 14 April 2014

<sup>50</sup> Niyi Adebode, "May Day Tragedy: Fresh Abuja Blast Kills 30", *Punch*, 2 May, 2013, at 1 <<http://www.punchng.com/news/may-day-tragedy-fresh-abuja-blast-kills-30/>> viewed on 2 May 2013

<sup>51</sup> Kayode Idowu, "B' Haram Kills 74 in Church Village", *Punch*, 28 January, 2014, at 1; *Punch*, "B' Haram Kills Over 53 in Borno", 13 February, 2014, at 1 <[www.punch.com-news-b'-haram-kills-over-53-in-borno](http://www.punch.com-news-b'-haram-kills-over-53-in-borno)> viewed on 13 February 2014

<sup>52</sup> *Premium Times*, "Scores Killed in Fresh Boko Haram Attack in Borno", 16 February, 2014, at 1 <<http://gamji.com/>> viewed on 17 February 2014; Godwin Isenyo and Olalekan Adetayo, "B'Haram Better Armed Than Soldiers –Borno Gov.", *Punch*, 18 February, 2014, at 1 <<http://www.punchng.com/news/bharam-better-armed-than-soldiers-borno-gov/>> viewed on 18 February 2014

<sup>53</sup> *BBC World News*, "Nigeria Boko Haram Crisis: Emir's Palace Burnt in Bama", 20 February, 2014, at 1 <<http://www.bbc.co.uk/news/world-africa-26275207>> viewed on 26 February 2014

military purpose constitute serious violations of the laws and customs applicable in non-international armed conflict.<sup>54</sup>

According to residents interviewed in Maiduguri, a survivor of the conflict said when he was attacked; Boko Haram members thought they have killed him, while they shot his pregnant wife who died instantly and he was left in a pool of blood.<sup>55</sup> Several civilians were murdered by Boko Haram. In some occasions, they murdered their victims in a dehumanising manner by using knife or hacksaw to slaughter the victims. Some of these humiliations took place during several attacks against passengers along the Maiduguri-Damaturu, Maiduguri-Damboha and Maiduguri-Gwoza high ways.<sup>56</sup> Similar mutilation and violence to life and person took place during the devastating attacks by Boko Haram against a secondary school in Buni-Yadi, Yobe state. They murdered over 59 secondary school children who were sleeping in their hostel without any resistance. The members of Boko Haram slaughtered some of the children, while others were burnt down beyond recognition and they went further to set fire on classrooms and hostels including over 40 houses in the town.<sup>57</sup> Therefore, it is clear that this type of massacre, cruel treatment and humiliation amount to serious violations of Common Article 3, which constitute war crimes under the Rome Statute.<sup>58</sup> The United Nations Office of the High Commissioner for Human Rights has equally reiterated that the violations of the law committed by Boko Haram on several occasions may constitute war crimes.<sup>59</sup>

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<sup>54</sup> Carolin Wuerzner, "Mission impossible? Bringing Charges for the Crime of Attacking Civilians or Civilian Objects Before International Criminal Tribunals" vol. 90, No. 872 (2008) *International Review of the Red Cross*, at 911. See Rome Statute, Article 8(2)(e)(i)(ii) and (iv)

<sup>55</sup> BKM, Interview by Author, Maiduguri, Borno State, 21 August 2013. See also Amnesty International Report, at 11-27.

<sup>56</sup> In Benisheik town, over 161 passengers were massacred and others were slaughtered by Boko Haram. See Hamza Idris, "[Benisheik Attack Death Toll Now 161](#)", *Daily Trust*, 20 September, 2013, at 1 <<http://dailytrust.info/index.php/top-stories/5960-benisheik-attack-death-toll-now-161>> viewed on 20 November 2013. Boko Haram attacked a wedding convoy and murdered 29 civilians, while other victims were slaughtered along Maiduguri-Gwoza. See James Azania and Sodiq Oyeleke, "Massacre in Borno: B' Haram Attacks Wedding Convoy, Kills Groom, 29 Others", *Punch*, 6 November, 2013, at 3 < [www.punchng.com/.../massacre-in-bornobharam-attacks-wedding-convoy-kills-groom-29-others](http://www.punchng.com/.../massacre-in-bornobharam-attacks-wedding-convoy-kills-groom-29-others)> viewed on 7 November, 2013

<sup>57</sup> Sam Eyoboka, et al., "Yobe Massacre: How My Mates Were Killed – Survivor", *Vanguard*, 27 February, 2014, at 1 <<http://www.vanguardngr.com/2014/02/yobe-massacre-mates-killed-survivor/>> viewed on 27 February 2014

<sup>58</sup> Rome Statute, Article 8(2)(c)(i)(ii) and Article 8(2)(e)(iv)(vi). The element of the crime in Article 8(2)(c)(i) requires that the perpetrator killed one or more persons and that such person or persons were taking no active part in the hostilities.

<sup>59</sup> Abiodun Oluwarotimi, "Boko Haram: US Caution Nigerian Security on Illegal Use of Force", *Leadership*, 19 May, 2013, at 1 <<http://leadership.ng/news/190513/boko-haram-us-cautions-nigerian-security-illegal-use-force>> viewed on 20 May 2013; See also the United Nations Office of the High Commissioner for Human Rights <[www.ohchr.org/EN/.../Pages/Publications.aspx](http://www.ohchr.org/EN/.../Pages/Publications.aspx)> viewed on 12 April 2014

In terms of civilian displacement, Boko Haram has forced civilians to run away from their towns and villages in Adamawa and Borno states to the neighbouring communities that are presumed to be safe.<sup>60</sup> This has contributed to the significant increase in the number of the Internally Displaced Persons (IDPs). By the end of the year 2013, about 300,000 civilians were displaced by the conflict in Northern Nigeria. To order the displacement of civilian population for reasons related to the conflict, unless imperative military necessity demands their displacement obviously constitutes a serious violation of the laws and customs applicable in non-international armed conflict and it is a war crime.<sup>61</sup>

#### 4. CONCEPT OF CRIMES AGAINST HUMANITY

Crime against humanity as the term suggests is a crime that does not only infringe or aggrieve its victims as well as the immediate community, but rather is an offence that affects the entire humanity as a whole and it threatens the world peace.<sup>62</sup> The crime has been defined in several legal instruments but the definitions contained in different legal instruments vary from one statute to another.<sup>63</sup> Perhaps, the historical antecedent and development of crime against humanity may be accountable for the uncertainty and lack of uniformity in the definition of the crime before its final adoption in the Rome Statute.<sup>64</sup> However, it is certain that the criminalisation of crimes against humanity serves as "a penal protection against the transgression of the most basic laws protecting our individuality as political beings and our sociability as members of [...] political communities."<sup>65</sup> Accordingly, crimes against humanity operate as a norm of customary international law recognised as a crime by every civilised nation, which fills in the gap in IHL in situations where a state commits crimes against its own citizens.<sup>66</sup>

It is important to start by stressing that the initial requirement for nexus between armed conflict and crime against humanity has whittled down. Crime against humanity is a crime that

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<sup>60</sup> Issac Anumihe, "Boko Haram: 1,000 Die in Borno, Adamawa, Yobe in 3 Months", *Sunnews*, 26 March, 2014, at 1 <<http://sunnewsonline.com/new/?p=57533>> viewed on 2 April 2014

<sup>61</sup> Rome Statute, Article 8(2)(e)(viii). It is significant to point out that war crimes can only be established by satisfying the requisite mental elements of the offences. See Ingrid Detter, *The Law of War*, 2<sup>nd</sup> ed., Cambridge: Cambridge University Press, 2000, at 419-423

<sup>62</sup> Kai Ambos, "Crime Against Humanity and the International Criminal Court" in *Forging a Convention for Crimes Against Humanity*, edited by Leila Nadya Sadat, Cambridge: Cambridge University Press, 2011, at 282

<sup>63</sup> Thomas Obel Hansen, "The Policy Requirement in Crimes Against Humanity: Lessons From and for the Case of Kenya" vol. 43 (2011) *The Geo. Wash. Int'l L. Rev.*, at 7-9

<sup>64</sup> Ambos, *Crime Against Humanity and the International Criminal Court*, at 282; Ambos and Wirth, *The Current Law of Crimes Against Humanity: An Analysis of Untaet Regulation 15/2000*, at 7-13

<sup>65</sup> *Ibid*

<sup>66</sup> Patricia M. Wald, "Genocide and Crimes Against Humanity" vol. 6 (2007) *Washington University Global Studies Law Review*, at 632; Joan Sánchez, "Inter-American Court, Crimes Against Humanity and Peacebuilding in South America" (2010) *Institut Català Internacional per la Pau Working Paper No.2*, Barcelona, at 22

can be committed at any time without necessary nexus or connection with the existence of any type of armed conflict.<sup>67</sup> The ICTY has made it clear in its decision in the *Tadic Case*<sup>68</sup> that crimes against humanity could be committed during armed conflict or peace time. The Tribunal has described the requirement for nexus between offences committed and armed conflict as 'obsolescent' and abandoned since 'there is no logical or legal basis for the requirement.' This was the beginning of the obliteration of the war nexus requirement in crimes against humanity. Therefore, the nexus requirement set out in Article 5 of the ICTY Statute has been described to be purely a jurisdictional matter restricted to the ICTY.<sup>69</sup>

Under the Rome statute, the requirement for nexus between crimes against humanity and armed conflict did not feature. According to the Rome Statute, crime against humanity means any acts "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" constitute crimes against humanity.<sup>70</sup> The Statute goes further to clarify the meaning to be attached to the phrase 'attack directed against any civilian population'. According to the Statute, the phrase refers to a course of conduct involving the multiple commissions of the unlawful acts against any civilian population, "pursuant to or in furtherance of a State or organisational policy to commit such attack."<sup>71</sup> Thus, the attacks against civilian population have to be widespread or systematic attacks that are in furtherance of a State or organisational policy.<sup>72</sup>

The word 'widespread' mentioned in this context refers to the scale of the offences or quantity of victims affected by the inhumane acts, while the term 'systematic' attack refers to a pattern or methodical plan used in committing the crimes.<sup>73</sup> The essence of this interpretation is

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<sup>67</sup> Ambos and Wirth, *The Current Law of Crimes Against Humanity: An Analysis of UNTAET Regulation 15/2000*, at 7-9

<sup>68</sup> *Prosecutor v Tadic*, para 140

<sup>69</sup> Aydin, at 10. See David Hirsh, *Law Against Genocide: Cosmopolitan Trials*, Australia: GlassHoue, 2003. Article 5 of the ICTY Statute states that: "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed *in armed conflict*, whether international or internal in character, and directed against any civilian population". (Emphasis added)

<sup>70</sup> Rome Statute, Article 7(1). The following acts constitute crimes against humanity: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty; torture; "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity"; "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender"; enforced disappearance of persons; crime of apartheid; and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health". See Rome Statute, Article 7(1)

<sup>71</sup> Article 7 (2)(a), Rome Statute. See Hilaire McCoubrey, *International Humanitarian Law: The Regulation of Armed Conflicts*, Aldershot: Dartmouth Publishing Company Limited, 1990, at 216-219

<sup>72</sup> See Hansen, at 7

<sup>73</sup> See Peter T. Burns, "Aspect of Crimes Against Humanity and the International Criminal Court" (2007) Paper prepared for the symposium on the International Criminal Court, Beijing Organised by

to exclude from crime against humanity any random acts or inhumane acts perpetrated by an individual out of personal initiative against a particular victim.<sup>74</sup> It is important to point out that it is not a requirement of the law that the plan be formally adopted as a policy of the state or the organisation.<sup>75</sup> It suffices if the policy is "adopted by regional or even local organs of the State."<sup>76</sup> It is equally significant to clarify that although the Statute of ICTY does not require that crimes against humanity be "committed as part of a widespread or systematic attack" but this has been clearly mentioned in the Statutes of the ICTR and the Rome Statute as a requirement of the law.<sup>77</sup>

## 5. CRIMES AGAINST HUMANITY COMMITTED BY BOKO HARAM

In the context of the conflict in northern Nigeria, crimes against humanity can be among the crimes alleged to have been perpetrated within the period of the armed conflict by Boko Haram. Considering crimes against humanity from Boko Haram atrocities, the crimes have been committed by the group on several occasions. For instance, the widespread and systematic murders of innocent civilians carried out by Boko Haram on several occasions as earlier discussed under war crimes may equally constitute crimes against humanity.<sup>78</sup> Other acts such as the abduction of more than 200 girl students in Chibok town and Warabe village, who could be subjected to all forms of sexual violence or slavery, equally amount to crimes against humanity.<sup>79</sup> The general persecution of the entire people of Maiduguri by Boko Haram based on religious and political reasons is unacceptable under the international law, it thereby constitute a crime against humanity.<sup>80</sup> The various atrocities committed have prompted the ICC prosecutor to observe that the massacres Boko Haram has done provide a reasonable ground

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International Centre for Criminal Law Reform and Criminal Justice Policy, at 9; *Prosecutor v. Musema*, Case no. ICTR-96-13-T, ICTR Judgment and Sentence, 27 January 2000, para. 2

<sup>74</sup> Phyllis Hwang, "Defining Crimes Against Humanity in the Rome Statute of the international Criminal Court" vol. 22, Issue 2 (1998) Fordham International Law Journal, at 487

<sup>75</sup> *Prosecutor v. Akayesu*, Case no. ICTR-96-4-T, ICTR Trial Chamber, September 2, 1998, para. 579 (hereinafter '*Prosecutor v. Akayesu*'); *Prosecutor v Kayishema, et al.*, para. 123

<sup>76</sup> *Situation in the Republic of Kenya*, Case No. ICC-01/09, 31 March 2010, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, paras. 89. See also Claus Kress, "On the Outer Limits of Crimes against Humanity: The Concept of Organisation Within the Policy Requirement: Some Reflections on the March 2010 ICC Kenya Decision" vol. 23 (2010) Leiden Journal of International Law, at 856-857

<sup>77</sup> See the following provisions: ICTY Statute, Article 5; Rome Statute, Article 7(1); ICTR Statute, Article 3.

<sup>78</sup> Rome Statute, Article 7 (1)(a)

<sup>79</sup> *Ibid*, Article 7 (1)(g). See *Sahara Reporters*, "Bring Back Our Girls: Christian Association of Nigeria Releases List of Abducted Chibok High School Girls", 4 May, 2014, at 1 <<http://bit.ly/1kyzxm>> viewed on 5 May 2014; *BBC News Africa*, "Chibok Abductions in Nigeria: More Than 230 Seized", 21 April, 2014, at 1 <<http://www.bbc.com/news/world-africa-27101714>> viewed on 5 May 2014. Since the emergence of civilian JTF, Boko Haram has made it clear that they will kill every individual from Maiduguri. This may be construed as policy the group.

<sup>80</sup> *Ibid*, Article 7(1)(h)

to believe that crimes against humanity have been committed in the conflict in Northern Nigeria.<sup>81</sup> Therefore, unlawful conducts of Boko Haram as well as the JTF on various occasions constitute crimes against humanity because the conducts form widespread and systematic attacks against civilian population, which were in furtherance of the policy of the group or the State.

## **CONCLUSION**

It is crystal clear that IHL has imposed an obligation on belligerents to respect the rules and principles of the law during their conduct of hostilities. The law has designated certain acts or violations as war crimes or crimes against humanity for the fact that they are considered as serious breaches of the law, which need to be repressed. The conflict in Northern Nigeria has witnessed serious violations of the law from Boko Haram members who have been waging their war without recourse to the laid down humanitarian principles. The failure of Boko Haram to comply with the basic rules of IHL has resulted in the commission of serious violations of Common Article 3 of the Geneva Conventions and, laws and customs applicable in non-international armed conflict. As such the breaches of IHL committed by Boko Haram amount to war crimes and crimes against humanity to which States are under an obligation to suppress and repress such violations. States are mandated by the law to ensure effective penal repression of violations of IHL. It is suggested that members of Boko Haram responsible for the commission of war crimes and crimes against humanity should be made to face penal repression for the crimes they have committed. The international community should also play their role in ensuring that those who violated IHL are prosecuted either in national courts or ICC.

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<sup>81</sup> US Religious Freedom, at 294