

# Exploring the Legal Obligation of Nigeria Concerning the Right to the Truth as Restorative Justice within the Context of the Boko Haram Conflict

Eunice Gandiba Tali\*

## Abstract

*The right to the truth for victims of gross human rights abuses is important to help victims find justice in the quest to address post conflict in the Boko Haram violence in North East Nigeria through non judicial means. The State has an obligation to provide a framework for victims to know the truth as an effective remedy for restorative justice. The right to the truth is an Internationally recognized right in International Law and International Humanitarian Law and has been a viable discussion in International jurisprudence. This article explores the existence of the right to the truth as contained in the International Instruments and the role non judicial measures through the Truth commissions plays in addressing past human rights violations, and available remedies like, Compensation of victims by the State, or the Perpetrators, Seriously, investigating Human right violations, identifying perpetrators and Punishing them, which the Nigerian State can effectively embrace. The article recommends that victims of such human rights violations should be actively involved in the investigation and reintegration process of the perpetrators of Boko Haram violence through effective sensitization and an open trial to help victims of human rights abuses, find justice, strengthen the rule of Law and build a strong democratic system.*

**Keywords:** Right to the truth, Transitional Justice, Truth Commission, Boko Haram

## 1. Introduction

The right to the truth applies to serious violations of Human Rights and International Humanitarian Law breaches to families of victims who have been missing and suffered Human rights abuses to know the truth about the abuses they suffered. It is the obligation of

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\* LLM,BL,LLB, Research Fellow, Nigerian Institute Of Advanced Legal Studies Abuja, Email; eunicechris02@gmail.com, Phone Nos: 08063132334,07057740774

the State to uphold such rights. By the provisions of Section 14(2)(b) of the 1999 Constitution of the federal Republic of Nigeria ,which states “the security and welfare of the people shall be the primary purpose of government “ The essence of a democratic governance is to ensure that it takes care of the welfare and security of its people<sup>1</sup>. To this end the State has an obligation to provide security to its citizens and also provide remedies where there is breach of the rights as contained in the Constitution. The question then arises does the State have an obligation to an individual and the society a legal right to know the truth about the circumstances surrounding serious human rights violations a loved one has suffered or to investigate and punish perpetrators? This has been a big task for governments especially in developing countries such as Africa. The International Law Instrument have established that investigation of atrocities is an integral remedy for the truth. The right to the truth is born out of the anguish and patterns of gross human rights violations by person or persons whose freedom and rights have been infringed, either by agents of the States or by persons independent of the State. This is occasioned by an absence of information or a refusal to acknowledge that there is a deprivation of freedom, or a willful refusal to give information on the whereabouts of a loved one or relative by the government thereby impeding his or her recourse to the applicable legal remedies and procedural rights <sup>2</sup> The right to the truth applies to the legal concept at the national, regional and international levels, and relates to the obligation of the state to provide information to victims or to their families or society as a whole about the circumstances surrounding serious violations of human rights and to investigate and punish such acts.

Justice in a Criminal process is about finding recourse for alleged wrongs committed by individuals base on the evidence put before a judge while in a civil matter it is based on weight of evidence all to one end justice. The right to the truth is more of a compensatory concept way above and beyond merely finding guilt or

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<sup>1</sup> Section 14(2)(b) 1999 Constitution of the Federal republic of Nigeria

<sup>2</sup> Thomas A,'Truth as Right and Remedy in International Human Rights Experience'(2002)<<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1352&context=mjil>> Accessed on 16<sup>th</sup> February 2023

innocence of particular individuals. They range from such high goals as to contributing to the restoration and maintenance of peace and the process of National reconciliation.

It is a way of fighting against impunity, deterring or preventing future violations, satisfying victims' needs and upholding their rights, removing dangerous political players from the political scene, re-establishing the rule of law and reaffirming the principle of legality. Knowing the truth leads to accountability ensures proper investigation of crimes and transparency, melt broken relationships and builds history.<sup>3</sup>

The right is an aspect of restorative justice that deals with the truth. this article will not be looking at the difference between restorative Justice and retributive Justice measures of Transitional justice however for further discuss see<sup>4</sup>The article will discuss the measures taken in Nigeria and advocate for re-introduction of truth commission in reintegration of Boko haram perpetrators as well as addressing pass wrongs. The paper seeks to identify the legal status of the right to the truth and its provisions in International instruments and establish that State has the responsibility to protect the rights of victims in the midst of conflict and after conflict. The study is divided into four parts the first part is the introduction. The second part is a brief on the Boko Haram conflict in Nigeria Part three defines the right to the truth and Transitional Justice, explaining the Truth commission as a concept of transitional justice to investigating the truth about pass atrocities as well as the obligation of States to uphold the rights and the Nigerian response to the right. Part four is the conclusion and recommendation

## **2. Boko Haram Conflict in Nigeria and Right to the Truth**

The Boko Haram conflict in Nigeria started in 2009 in Bauchi State Northeast and spread in some parts of the North initiating and recruiting members. It is an Islamic terrorist group operating and are spread in Borno, Yobe and some parts of Adamawa state. They spread terror, bombing government buildings, individual properties,

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<sup>3</sup> ibid

<sup>4</sup> Howard Zehr, Ali Gohar'the little book of Restorative Justice' available at <<https://www.amazon.com/Little-Restorative-Justice-Books-Peacebuilding/dp/1561483761>>

mass execution and kidnapping. The word Boko Haram is a Hausa language 'Boko' means western education and 'Haram' means Forbidden. They promote the ideology that western education is forbidden and it is forbidden for any Muslim to take part in a political or social activity associated with western education<sup>5</sup>The official name is Jama'atu Ahlis Sunna Lidda'awatiwal-Jihad an Arabic word meaning People Committed to the Propagation of the Prophet's Teachings and Jihad.

The group launched attacks in Maiduguri the Borno state capital in 2009 which led to the capture of its leader Yusuf Mohammed and was later killed in police custody. The Nigerian State declared Boko Haram a terrorist group in 2013. The sect later regrouped under another leader Abubakar Shekau.<sup>6</sup>The group has launched several attacks in the north and some parts of Nigeria including the United Nations Building and ECOWAS headquarters in the capital city of Abuja, bombed churches, mosques, Police stations, Schools, Government buildings and other social gatherings. Boko Haram has outlived so many terrorist groups in Nigeria and has killed over 32,000 people, destroyed properties worth billions and displaced over 2 million people in the country. In 2013 the United Nations declared the Boko Haram as a terrorist organization following their link with Al-Qaeda that named it a faction in sub-Saharan Africa. From 2010 the Islamic jihadist group became more deadly and began taking territories changing tactics from attack and retreat. In 2014 they kidnapped 270 school children from a secondary school which attracted a wide outcry from the world<sup>7</sup> They also kidnapped school children in a small town of Dapchi in Yobe state, released some girls and kept Leah one of the girls because of her faith (a Christian).<sup>8</sup>

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<sup>5</sup> Who are Nigeria Boko Haram terrorist group? 24th November 2016 <https://www.bbc.com/news/world-africa-13809501> accessed on 21/10/2023

<sup>6</sup> 10 years of radicalization Boko Haram <https://www.dw.com/en/10-years-of-radicalization-boko-haram/a-49781704> accessed on 22/04/2023

<sup>7</sup> Boko Haram: behind the rise of Nigeria's armed group 22 November 2016 <https://www.aljazeera.com/programmes/specialseries/2016/11/boko-haram-rise-nigeria-armed-group-161101145500150.html> 22/04/2023

<sup>8</sup> *ibid*

### 3. Right to the Truth

Right to the truth is a medium to find justice in post conflict resolution and mostly invoked in International Humanitarian Law. The International Court of Transitional Justice has defined the right to the truth as characterized by various legal system it is recognized in terms of enforced disappearance and victims of gross violations of Human Rights and International Human Law, and that their families have the right to know the truth about such crimes, the identity of the perpetrators as well as the cause that gave rise to such violations, the whereabouts of the forcible disappearance and an effective remedy. Juan Mendez defined the right as:

*a State obligation to reveal to the victims and society everything known about the facts and circumstances of massive and systematic human rights violation of the past including the identity of the perpetrators and instigators.*<sup>9</sup>

This right is often associated in the context of gross violations of human rights, grave breaches of International Humanitarian Law. Victims of summary executions, enforced disappearance, missing persons, abducted children and torture victims. It tends to ask questions as to what happened to their relations so they can mourn their death and find justice in most cases.<sup>10</sup> When heinous atrocities and human rights violations are committed, knowing the truth about what happened to the victims matters. When conflicts around the world arise the legal norms meant to protect civilians are being deliberately disregarded so when the dust of war settles, victims of such gross violations should have the right to know what caused sufferings to them, their families and the society or community where these violations took place.<sup>11</sup>

These rights are also linked to investigative verification of facts, reparations and the right to commemorate and mourn human

<sup>9</sup> Anna Oriole 'Right to the Truth and International Jurisprudence as the Conscience of Humanity: Comparative Insights from the European and Inter-American Courts of Human Rights' (2016) 16 Global Jurist 175 <<https://heinonline.org/HOL/License>>accessed on 19 April 2023

<sup>10</sup> ibid

<sup>11</sup> Right to the truth Available at <[conversation.com/why-victims-and-survivors-of-atrocities-need-a-right-to-the-truth-73338](https://conversation.com/why-victims-and-survivors-of-atrocities-need-a-right-to-the-truth-73338)>Accessed on 12/05/2023

loss according to their cultures and belief. Deducing from the forgoing definition in summary the right to the truth is a right that paves way for remedial justice to victims of human rights violations after or during conflict, through investigatory process and making available such information to victims by the government as part of measures of Transitional Justice.

This right is provided for under International Humanitarian Law particularly regarding the rights of families to know the fate of their relatives who are missing, the obligation of parties to armed conflict and the State's obligation to find justice for victims.<sup>12</sup>

Even though the basis of the right to the truth has not actually been an object of a specific International convention some have argued it is intertwined with the rights to a remedy, right to receive information and the right to due process. Nonetheless the basic elements of the right to the truth are well accepted.<sup>13</sup>

It was first recognized in the set of principles for the protection and promotion of human rights through action to combat impunity known as Set of principles<sup>14</sup>It is also defined in international humanitarian law in article 32 of the Additional Protocol I to the Geneva Conventions, of 12 August 1949.<sup>15</sup> The Geneva Conventions, of 12 August 1949 and the Additional Protocol I, also talks about missing persons. The International Red Cross and Red Crescent Movement has also made it explicit that the right to know the truth about the fate suffered by victims of forced disappearance applies both to situations of international armed conflict as well as those of internal armed conflict.<sup>16</sup> It was recognized in the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (entered into force in 2010)<sup>17</sup>

The right to the truth is in two fundamental aspects first it is an individual right that relates to victims and family members secondly

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<sup>12</sup> Report of the UN high commissioner for human rights for Promotion and protection of human rights study on the rights to the truth accessed at

<sup>13</sup> *ibid*

<sup>14</sup> (E/CN.4/2005/102/Add.1)

<sup>15</sup> *Ibid* at 1

<sup>16</sup> *ibid*

<sup>17</sup> Anna Oriolo, 'Jurisprudence & conscience right to the truth, Comparative Insights from the European and Inter-American Courts of Human Rights' *Global Jurist* (2016) (16) <<https://heinonline.org/HOL/License>>.

it deals with a general societal rights.<sup>18</sup> Knowing the truth has been described as inalienable and imprescriptible the first requirement of justice.<sup>19</sup> The concept was always explored from cases of disappearance of combatants caused by the State brought by relatives. The new development emerge as conflicts are not in a conventional manner thereby most disappearance are caused by non - state actors who are rebels and militias which obligation falls on State to seriously investigate such and bring perpetrators to book. In handling and justifying the right to the truth of victims International actors like inter American human rights commission, the European Human rights commission and the African human right commission in applying the provisions of conventions have explored the right to the truth not only as a thing of pity to attract sympathy but to invoke the rights of victims of these violations.<sup>20</sup>

In finding justice there has been reports by the United Nations bodies charging International courts to be bold to identify the rights as the first step of justice and present the right as a direct remedy itself and for the avoidance of future occurrence the State is obliged to keep its citizens informed.<sup>21</sup>

The elements of the right are in two faces it concerns the individual and the State. In the individual state it is to the relatives and families of victims for their psychological state of mind and the society for maintenance of order and avoid reoccurrence.<sup>22</sup> For the individuals according to the human rights commission it is to uphold the right of family and the right to health as guaranteed in Article 23 of the International Covenant on Civil and Political Rights. The Human Rights Commission of the UN first urge States in most of its cases described the obligation to inform relatives in cases of execution the exact time of execution and in the case of disappearance the place of burial. it will be noticed that these rights is connected to just State actors in an armed conflict but it the

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<sup>18</sup> Thomas Antkowiak 'Truth as Right and Remedy in International Human Rights Experience' 23 *MICH. J. INT'L L.* 977 (2002) p 993 <<http://digitalcommons.law.seattleu.edu/faculty/421>> Accessed on 16<sup>th</sup> January 2023

<sup>19</sup> *ibid*

<sup>20</sup> *Ibid* n 39

<sup>21</sup> *ibid*

<sup>22</sup> 'Promotion and Protection of Human Rights being a United Nations Report of the Office of the United Nations High Commissioner for Human Rights' february 2006 available at

responsibility of State to thoroughly investigate human rights violations within their territory which could be, by their agents or by other militants rebels and to punish.

The European Court of Human Rights (ECHR) being one of the international bodies recognized the right to the truth as the freedom from torture, the right to effective remedy and the right to effective investigation and the right to be rightly informed of the result. In determining cases regarding disappearance the court has held the State liable for not properly investigating the act and human rights violations as a failure to protect the right to life of citizens<sup>23</sup>. European court of Human Rights have been able to look beyond what is judicial and non-judicial and considered a suitable interpretation in public conscience as a yardstick for the assessment of such rights.<sup>24</sup>

The African Commission on Human and Peoples' Rights has also identified the rights in its principles and guidelines and infers that the right forms a constitutive aspect of the right to remedy.<sup>25</sup>

The Inter-American Commission on Human Rights has for a long time recognize the right to the truth in its decisions and projected the right as both for victims and their relatives with regards to forced disappearance. In case of violations, torture and extra judicial killings the commission states the overall importance of States to protect and guarantee the rights to fair hearing, by a competent and impartial tribunal the, right to effective remedy and the right to seek proper information. The Inter-American Court of Human Rights in its proceedings has invoked the provisions of these elements of the right in the cases of *Quinteros v. Uruguay* the UN Human Rights Commission found that the woman the mother of the deceased in the case has endured so much pain owing to the disappearance of her daughter and her whereabouts. The uncertainty

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<sup>23</sup> These obligation of the state entails a thorough investigation and fishing out perpetrators of such acts with the aim of finding the whereabouts and fate of the missing persons who disappeared in life-threatening circumstances. And describe effective remedy by virtue of the provision of Article 13 of the European convention on human rights to mean payment of appropriate compensation where necessary, and effective investigation to identify and punish perpetrators as well as access to the relatives for the investigatory process

<sup>24</sup> Thomas Antkowiak 'Truth as Right and Remedy in International Human Rights Experience' 23 *MICH. J. INT'L L.* 977 (2002) p 992-993.

<<http://digitalcommons.law.seattleu.edu/faculty/421>> Accessed on 21<sup>st</sup> January 2023

<sup>25</sup> *ibid*



and pain was describe as a cruel and inhuman act thereby the right to know the true whereabouts of her daughter is her right and the government has the duty to find the daughter investigate the act, fish out the perpetrators and punish them. Truth served to assuage the suffering of the mother by at least ending the uncertainty regarding her daughter's fate<sup>26</sup>

In the *Ellacuria* case which was a case of assassination of a priest in El Salvadoran military in 1989 the IACHR found the violation of the right to know the truth. The commission stated that the private right to know the truth is also linked to article 25 of the American Convention. Because El Salvador's amnesty law impeded access to information relating to the facts and circumstances surrounding the violations, the truth was not available for the relatives, and because of the provisions of the domestic amnesty laws remedy was not available under domestic jurisdiction.<sup>27</sup> In 2010 the court in the case of *Lund v Brasil* the court in *Strasbourg* stated that the right to the truth was identified as a legal basis in Article 13 of the 1969 convention to the right to seek and receive information The right of victims to know what happened to their relatives is a step to finding justice for survivors<sup>28</sup>

The right to know has been recognized by various international actors and the African human rights commission recognized it to be an aspect of remedy. Other actors in the International field see it as basis for justice as identified in the ECHR and IAHCR and have successfully applied the provisions of conventions and the Article on the protection of persons who disappears the Inter-American Commission presents the right to the truth as a direct remedy in itself. In the Commission's passing reference to article 25, the right was described as privilege of *access*, a procedure to initiate and the first step to seek remedies in domestic legal mechanisms such as an investigation and prosecution.<sup>29</sup>

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<sup>26</sup> Ibid p993

<sup>27</sup> ibid

<sup>28</sup> Ibid n 44

<sup>29</sup> Ibid 29 p994

#### 4. Transitional Justice

Transitional Justice is an aspect of International Law Jurisprudence that has been accepted by actors in the International community to help transitioned societies deal with past atrocities.<sup>30</sup> This process comes with different models, the overall outcome and intention is to explore trial conceptions of justice associated with punitive measures, reconciliation by State and non-state actors, semi-judicial and non-judicial techniques like the Truth commissions which are non-judicial in nature<sup>31</sup>

The idea of transitional justice started during the Nuremberg trials which gave birth to the International human rights, it was meant to discard National Laws with International and to what extent the Germans should be punished for their crimes. This system was seen not to have deterred future occurrences as it was left to the Germans to decide. The main objective of the International Criminal Law was based on accountability and the extension of the applicability beyond states to individuals.<sup>32</sup> The administration of the post-World War I model of transitional justice was punitive justice, and was characterized by failed national trials by Germany. This brought about economic frustration and fueled Germany's active role in the Second World War, the formation of transitional justice occurred through legal transplants of treaties, conventions, and constitutionalism.<sup>33</sup>

The second phase came as a result of the collapse of the Soviet Union that ushered in the cold war. This phase is the Post-cold-war transitional justice.<sup>34</sup> This era brought about conflict regarding the stage at which to apply this system. In the new democracies that emerged in South America following the collapse of repressive military juntas whether to apply the Phase I or the second phase associated to military junta. The rule of law was equaled with trials

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<sup>30</sup> International Institute for Democracy and Electoral Assistance 'Traditional Justice and Reconciliation after Violent Conflict Learning from African Experiences'(2008)<[https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_0.pdf](https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_0.pdf)> accessed on 23<sup>rd</sup> March 2023

<sup>31</sup> *ibid*

<sup>32</sup> *Ibid* page 6

<sup>33</sup> *Ibid* n5

<sup>34</sup> *ibid*

by nation-state to legitimize.<sup>35</sup> Despite the absence of the International trial this phase reviewed transitional jurisprudence and demonstrates that International Law can play a constructive role, providing an alternative source of rule of Law to guide national trials in a transitional society. It was about how to heal an entire society and incorporate diverse rule-of-law values, such as peace and reconciliation, a move from judgment related justice to a political condition of nation building

The third phase of transitional justice is describe as a steady state of Transitional justice and globalization with a combination of Humanitarian Law and International Human Rights Law. The discuss at this stage has moved from the surface normally associated to post conflict to the center to mean laws even in time of peace , political fragmentation, weak states, small wars, and steady conflict all associated to temporary political conditions .<sup>36</sup> Growing from Phase I with the International Criminal Court trials transitional Justice has metamorphose to having a permanent Ad hoc tribunal that has tried the Rwandan genocide the creation of a permanent International tribunal appointed to prosecute war crimes, genocide, and crimes against humanity as a routine matter under International Law and gave rise to terrorism law with an expansion of the Law of war. Which enables the International community to hold a regime's leadership accountable and condemn a systematic persecutory policy, even outside the relevant State.

The application tends to be conflicting and problematic due to the inadequacy of the analogies between terrorism and war or political crisis. However Transitional justice tends to look backward in responding to Past conflict.<sup>37</sup> Transitional justice helps to deal with the past by investigating past human rights abuses by the State or non-state actors i.e, militants political and ethnic unrest and Terrorist (in the case of the North East Nigeria Boko Haram).

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<sup>35</sup> Ibid page 9

<sup>36</sup> Ibid page 25

<sup>37</sup> ibid

#### 4.1 Truth Commission

Truth commission is a non-judicial body created by a national government, to investigate, document, and report upon human rights abuses within a country over a specified period of time.<sup>38</sup> It is an investigative process and steps States take as part of restorative justice system. At the initial stage of restorative justice. The main purpose of Transitional justice is to construct an alternative history of past abuses. It later grew to be a merge of truth and justice<sup>39</sup>

Trials in the Truth commissions were largely eschewed upon finding the truth and mending relationships. But the focus of Truth Commissions later grew beyond addressing violations of physical crimes but also to violations of economic, social and cultural rights including those of women, children and indigenous peoples.<sup>40</sup> Truth Commissions can give victims an opportunity to talk about their experiences, and allow perpetrators to acknowledge responsibility. Truth-seeking efforts can acknowledge that victims have a right to know the truth about the abuses they suffered, and that the government has a duty to facilitate a process for establishing a historical record. Around the world this forms of tribunal have been accepted and have been successful in many part of the world.

In Africa Truth commission was premiered in South Africa in 1994 by an act of parliament and Rwanda. South Africa is the third country in the world after Chile and Argentina that successfully initiated Truth Commission for transitional regimes to investigate the violations of rights and gross human rights the incidence of violations and gross human rights abuses that happened between march 1960 and 10<sup>th</sup> may 1994. Africa has been engulfed for a long time with undemocratic and authoritarian rule in order to deal with past violations and accountability. Truth and reconciliation methods through the Truth Commission has recorded a good percentage of successfully decided cases in South Africa. One of the objective of the commission was for reconciliation. In its proceedings it collected 21,000 testimonies granted 849 amnesties and rejected 5,392 amnesty cases. It also had three committees working with the

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<sup>38</sup> Ibid n 6

<sup>39</sup> Ibid n 16

<sup>40</sup> Ibid n1

commission the human rights violations committee, the amnesty committee and the reparations and rehabilitation committee all working at different levels of the proceedings to ensure its success. In Rwanda it was called the Gracaca court to investigate the 1994 Genocide in the country it has had five different transitional programs in the country but the main aim of the commission was to educate the people, reconcile and foster peaceful co-existence it was later established by law No.03/99 of March 1999. The court now works as a permanent institution established by Law and reports annually on its activities. it is saddled with investigating the crimes that occurred between the October 1990 and 31<sup>st</sup> December 1994 and expected to work closely with the national prosecutor's office.<sup>41</sup>

Given the examples of the two commissions both have their peculiarities in accordance to the traditional system of resolving dispute and has recorded successful cases of mediation and prosecution as the case maybe, healing is a process and it starts with the truth.

In Nigeria there was the Oputa panel in 1999 when the military seceded power to democratic rule and there was an outcry for justice by civil organizations and the people to investigate past abuses, identify perpetrators, and suggest ways to prosecute them for the human rights abuses during the military regime the commission was mandated to look into the killings from 15<sup>th</sup> January 1966 to May 1999. After the findings nothing was heard of the recommendations until in 2002 when an unofficial report was published where the commission recommended, sensitization of human rights issues to citizens, compensation to victims, restructuring of the military and reduction in its size that never saw the light of day.<sup>42</sup>

## **5. Obligation of States to Protect the Concept of the Right to the Truth and the Nigerian Experience**

International law confers on States the obligation to prosecute certain specific offences on human rights violations in an

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<sup>41</sup> Charles Manga'Transitional Justice in Africa: The Experience with Truth Commissions' <[https://www.nyulawglobal.org/globalex/Africa\\_Truth\\_Commissions.html](https://www.nyulawglobal.org/globalex/Africa_Truth_Commissions.html)> Accessed on 30<sup>th</sup> July 2020

<sup>42</sup> *ibid*

International armed conflict or non- International armed conflict. The preamble of the International Criminal Court statutes states in paragraphs three(3) that: “*State parties should recognize that such grave crimes threaten the peace, security and well-being of the world,* and Paragraph five (5) ‘*Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes*’.<sup>43</sup>The International Covenant on Civil and Political Rights (ICCPR) also enjoins all States to punish all abusers of Human Rights. These offences range from Genocide, rape, ill treatments and other heinous inhuman treatment. International law also allows States to protect certain persons and ensure all individuals within its territory and jurisdiction protective and effective remedy for violations of their rights.<sup>44</sup>

To buttress this obligation the American committee on human rights interpreted it to mean State’s obligation to investigate, seriously identify, punish offenders, compensate victims and in general discourage the granting of blanket amnesties for violators of International Human Rights Law and International Humanitarian Law.<sup>45</sup> The United Nations political bodies in 1993 during the world conference on human rights and the Human Rights commissions called on all States to prosecute Human Rights abuses. Even though these general duties are allowed to refrain from investigating atrocities in the interest of justice by virtue of Article 53(1)(C) of the International Criminal Court which states :<sup>46</sup>

*“Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice. If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is*

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<sup>43</sup> Rome statutes of the International criminal court

<sup>44</sup> International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966<<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>> accessed 23rd March 2023

<sup>45</sup> David Rutherford/State’s obligation under International human rights Conventions 2018 <<https://thecommonwealth.org/sites/default/files/inline/States%20Obligations%20Under%20International%20Human%20Rights%20Conventions.pdf>>Accessed on 20<sup>th</sup> March 2023

<sup>46</sup> Rome statutes International Criminal court <<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>>

*based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.’<sup>47</sup>*

Notwithstanding these provisions States can decide not to prosecute such domestic crimes base on domestic amnesty laws. Such derogations have been a challenge in prosecuting international crimes despite its achievements. Conferring these obligations on States brings to board issues of accountability by States to individual offenders within a State which has to do with moral, social and political consideration.<sup>48</sup> It is important to give victims of atrocities and their relations a sense of justice and the possibility of moving on with their lives. Respecting these rights also helps in repairing the damage done in a society ravaged by trauma of such violations and brings nations reconciliation if it is an ethno crisis through investigation. It can hinder future occurrence by punishing heinous crimes thereby promoting the rule of law, strengthen institutional reforms in government. Although this depends on the kind of crisis, the theory of accountability can be retributive and punishment<sup>49</sup>

Narrowing down the responsibility of State to investigate and punish violations of human right abuses by any government either by State and non- state actors in an internal armed conflict. The Nigerian government is not exempted from such responsibility. By virtue of the provisions of the grand norm the 1999 Constitution of the federal Republic of Nigeria Chapter II provides that the ‘security and welfare of the people’ is its primary purpose,<sup>50</sup> Under the International Convention on Civil and Political Rights (ICCPR) Article 6 the right to life of individuals is the obligation of State to protect.<sup>51</sup> Other international instruments as identified above like the European commission and African commission has provided that the responsibility of the State is to Protect the rights of its citizens

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<sup>47</sup> ibid

<sup>48</sup> Ibid 34

<sup>49</sup> Promotion And Protection Of Human Rights being a United Nations Report of the Office of the United Nations High Commissioner for Human Rights’ February 2006 available at <https://www.refworld.org/docid/46822b6c2.html> accessed on 12/ 03/2023

<sup>50</sup> OluwafifehanO, ‘State responsibility Boko Haram and human rights law’ (2019) <<https://lawnigeria.com/CONSTITUTIONHUB/Constitution.html>> Accessed on 7 may 2023

<sup>51</sup> Ibid n 33

The boko haram crisis ravaging some parts of the north has left so many people in pains caused by the activities of members of the boko Haram sect. The government of Nigeria have been accused of not leaving up to its obligation as the Constitution provides and based on the provision of International Humanitarian Law and International Law as best international practice, in the protection of victims of the Boko Haram crisis. Especially the victims who in most cases just accept their fate and learn to live with the pains and hurt of losing their loved ones without any recourse from the government.

The red cross in 2017 stated that the number of missing persons in Nigeria is estimated to be 22,000 a number it has not recorded anywhere in the world.<sup>52</sup>The report states this consist of basically women and children. Parents, relatives and Spouses are traumatized each passing day not knowing the whereabouts of loved ones. Boko Haram has ravaged the entire State of Borno with terror kidnapping and killing their victims. In 2019 when school girls were abducted in Dapchi Yobe state and a girl of 16 years Leah Shuaibu was not released (and until date still in captivity) because of her faith the father Shuabu said to a journalist

‘I am sad beyond explanation to have my daughter still being held by complete strangers, I plead with the [federal government] and the international community to please do their best to free her. The government in particular should do everything within its powers to fulfill the promise made to us that our daughter would return to us<sup>53</sup>

The right to the truth for survivors to know what happened to their relatives is the obligation of government any act short of this obligation is in contravention of the International provisions if justice is required. The traumatizing and hurtful experience of the Chibok girls in Borno State is another traumatizing experience for these parents not knowing the whereabouts of their children. When School girls were kidnapped in 2013 from their Doometry by the Sect. Some of the girls were later found after much campaign by the Bring back

<sup>52</sup> Mercy Abang editor Aljazeera News 12 September 2019<<https://www.aljazeera.com/news/2019/09/22000-nigerians-missing-boko-haram-crisis-began-red-cross-190912131830103.html>> Accessed 21<sup>st</sup> July 2020

<sup>53</sup> RafiuAjakayeAndola agency May 2019<<https://www.aa.com.tr/en/africa/pressure-on-nigeria-to-free-boko-haram-captives/1478315>>Acessed 21<sup>st</sup> May 2023



our girls campaign other internal and external organizations and NGOs without investigation. Such is the fate of 60 percent of most relatives after the war in the North east. In the Red Cross report Amnesty international has received over 1200 of pictures of people missing in 2011 whose whereabouts remain unknown according to their relatives some are scared to identify because they believe the military are responsible for some of the disappearance.<sup>54</sup>

The Nigerian Government has fallen short of its obligation as far as the elements of protection of the right of Victims is concern in terms of seriously investigating and punishing violations of crime in the boko haram crisis.

The Nigerian State in their effort to punish perpetrators brought under the provisions of the Terrorism Prevention Act of 2014 summary trials which was organized by the Federal government in collaboration with the Military in three phases. In 2015 the Nigerian government in collaboration with the ministry of justice had what was a hush trial of perpetrators under the Terrorism Prevention Act of 2014 for suspect in the north east. The Nigerian institute of Advance legal studies, Nigerian Bar Association, with the Legal Aid Council of Nigeria (representing the suspect) where observers. The trial was only centered on the suspect to give them amnesty a form of retribution and reconciling them back into the society without the victims present. Most suspect where discharge for lack of evidence and due investigation without any of these victims whose rights, livelihood have been violated this is no process of healing and investigatory obligation of the State.<sup>55</sup> It is important for the government to uphold its value system and look into the plights of victims whose livelihoods and dignity have been broken. Just recently there was a bill in the Parliament proposing a de-radicalization process for the perpetrators through an agency named DRR(National Agency for De-radicalisation Rehabilitation and Re-integration Agency) in addition to three de-radicalisation programmes in Nigeria namely :The prison Program, Yellow

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<sup>54</sup> <<https://www.icrc.org/en/document/nigeria-22000-people-registered-missing-after-decade-war-icrcs-highest-caseload-world>>

<sup>55</sup> OluchiAzoro–Amadi'Nigerian Institute of advanced legal Studies Report On Kainji Trial (Third Phase) '2018

Ribbon initiative and Operation Safe corridor<sup>56</sup>. These programs are not centered on the victims the focus is on reintegrating these perpetrators back into their communities by engaging them Psychologically, using the religious leaders (the Imams) to help them come out of their extremist ideology of Islam. What will be the state of the security of the society when they return, the same one that has not been given justice? It is the society that is most hurt by their activities without remedy and proper investigation? A lot needs to be done yet still.

In the words of a parliamentarian who represents the southern part of Borno Ndume said the timing of de-radicalisation of Boko haram members is wrong <sup>57</sup>The right of victims of Boko Haram conflict in the North East has been given little attention as the attention is solely on the perpetrators and the victims are left to their fate. Having visited some Internally Displaced Camps within Abuja environs and some parts of Nasarawa State in Gurku through interviews and questionnaires. Some of the victims express their displeasure and felt neglected by the government. They believe with a show of concern by the government on their plight they might give forgiveness a chance. The idea of forgiveness and compensation in restorative Justice gives room for peaceful co-existence. But until there is a platform for the process to begin victims will not accommodate the repentant Boko haram terrorist. Because the government cannot force them on the community they have inflicted pains on. The truth as discussed earlier on the whereabouts of victims can bring not only closure but also compensate the victims. If the perpetrators are prosecuted, government investigate violations accordingly and compensations are paid to victims in some cases, allowing them mourn their loved ones appropriately in accordance with their culture then justice will be seen to be done. Restorative justice is about mending relationship and restoring communities and stop violations from future re-occurrence. Just focusing on one transitional justice measures which is reparation in the case of

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<sup>56</sup> Nigeria Considers DRR agency amidst Boko Haram setbacks March 18 2020  
<<https://www.cfr.org/blog/nigeria-considers-national-drr-agency-amid-boko-haram-setbacks>> accessed on 11<sup>th</sup> march 2023

<sup>57</sup> <https://www.youtube.com/watch?v=EVsUrGrRaRs>

Nigeria will not help address the atrocities accassioned by activities of the Boko haram sect.

## **6. Conclusion**

The right to the truth does not only include the right to access information but it is also the obligation of States to take necessary measures in protecting the human rights of its citizens particularly through seriously investigating human right violations. This does not only give justice to relations of victims and the victims themselves but it addresses and fight the impunity of criminals who perpetrate heinous crimes against humanity. The right also entails making information available and accessible to victims which strengthens a democratic State. Where a national government response to serious violations of human rights by thoroughly investigating violations of human rights helps in maintaining public confidence in their adherence to the rule of law and non- tolerance of unlawful acts.

## **7. Recommendation**

The rot in our criminal justice system has birthed the failed altitude of our government to properly investigate crimes within its territory and has given rise to increase crimes within the society. This is not to say all hope is lost the government should be sincere and not ignore the plight of victims by proactively making efforts to investigate such crimes and give victims voices as to what transpired. There should be the Truth Commission Act to have a tribunal like what is obtainable in South Africa and Rwanda which paves way for the judicial process of investigation, prosecution and punishment such tribunals should be open to the public in order to collect evidence and give room for healing and Justice.