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A Legal Appraisal of the Rights of Children and the War against Terrorism in Nigeria

Obugheni William Arugu*

Kate Ighoomo Owamagbe**

Abstract

In armed conflicts, pregnant women, children, immune-compromised and elderly are the greatest victims. The fight against terrorism in Nigeria has caused grave humanitarian crisis with attacks on civilian population in the epicentre of the insurgency. The parties in the armed conflict have defied human rights and the principles guiding the conduct of war under International Humanitarian Law. A direct result of the terrorism war is death, rape, displacement and carnage. The Nigerian child is the highest casualty of the war – killed, survivors denied education, abducted and used as child soldiers, enslaved, sexually assaulted and married to fighters against their will. Government has budgeted billions of dollars on the spiralling insurgency with no end in sight. The paper addressed the rights of the child and interrogated the laws and institutions under Nigerian law for the protection of the child in armed conflicts. This paper adopted the doctrinal research methodology. The study is structured into six parts covering introductory issues, conceptual framework, legal and institutional framework, defending the rights of the child in the terror war in Nigeria and concluding remarks. The paper found a lack of willingness on some states to enact appropriate laws and policies to defend the rights of the child in Nigeria and recommended strict implementation of existing laws relating to rights of child by building virile institutions.

Key Words: Child, Human Rights, Terrorism and Nigeria

1.0 Introduction

The safety and wellbeing of the people are the main goals of the government.[1] The northern part of Nigeria since 2009 has witnessed spiralling insurgency leading to wanton destruction of lives, property, vital infrastructure, the displacement of millions of people and the instability of the economic, health, educational institutions. The insurgency started with Mohammed Yusuf, the founder of Boko Haram (BH) in Borno State in the 1990s with the intention of advancing the implementation of sharia law and outlawing western education in Northern Nigeria. BH is also known by its Arabic name *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, which means "People Committed to the Propagation of the Prophet's Teachings and Jihad." After Mohammed Yusuf passed away while in the custody of the Nigerian Police in July 2009, Abubakar Shekau took over as the head and started the indiscriminate attacks on the government and civilians. A splinter group called *Ansaru* was created in January 2012.[2] BH changed to *"Wilayat Gharb Afriqiyya"* which is Arabic for "the Islamic State of West Africa (ISWA)" when it swore allegiance to the Islamic State

* Dr. Obugheni William Arugu, LL. B (RSU); BL (Abuja); LL.M (Ife); PhD (Nig.) Senior Lecturer, Department of Business Law, Faculty of Law, Rivers State University, Port Harcourt, Nigeria. Email: obugheni.arugu@rsu.edu.ng Mobile Phone; +234(0)8033409766

** Kate Ighoomo Owamagbe, LL. B (NOUN); LL.M (in view), Rivers State University, Port Harcourt, Nigeria

[1] CFRN 1999, s. 14(2)(b)

[2] E. Loimeier, Boko Haram: The Development of a Militant Religious Movement in Nigeria, [2012] (47)(2/3), Africa Spectrum, 137; T. Hanna et al, Assessing the Impact of Conflict on Development in North-East Nigeria, UNDP 2021<https://www.undp.org/sites/g/files/zskgke326/files/migration/ng/Assessing-the-Impact-of-Conflict-on-Development-in-NE-Nigeria---The-Report.pdf> Accessed 30 May 2023

of Iraq and Syria (ISIS). [3] For the third year in a row, ISWA has surpassed BH as the most violent terrorist group in Nigeria since killing Shekau in May 2021. BH was in charge of thousands of fatalities in Nigeria, Cameroon, Chad, and Niger between 2011 and 2022. BH's attacks have the greatest impact on Nigeria and the north-eastern states record the most fatalities with over 35,000 people killed in Borno is by far the most dangerous state. Nigeria experienced the highest economic impact of terrorism in Africa between 2007 and 2019 with an estimated 142 billion US dollars.[4] Children are vulnerable during armed conflicts, and the 13 years old North East insurgency has continued unabated. Data from verified sources shows that the thirteen year-long spiralling insurgency in the north-east has produced over 2,400 incidents of grave violations affecting over 6,800 children with the most common violation of recruitment or use of children by armed groups reaching 700 cases, abductions of children, with 693 incidents, and killing and maiming, with 675 incidents. More than 1.9 million children have been uprooted by the violence, despite the fact that Nigeria is now ranked eighth on the Global Terrorism Index 2023, up from fourth place it held since 2017.[5] The Federal Government of Nigeria (FGN) outlawed BH and on November 2013, the United States of America (USA) designated BH and its splinter groups as terrorist organizations with overseas bases.[6]

International law has provided essential human rights that are protected by the law even during armed conflicts. The insurgency just like any other armed conflict has witnessed flagrant abuse of international law on the part of the terrorists and the agents of the FGN which are the Armed Forces, Nigerian Police Force and the Civilian Joint Task Force (CJTF). For the purpose of this paper, attention shall be focused on three grave human right abuses with a focus on the employment of child soldiers by the warring parties, sexual assault and restrictions on the right to education in Nigeria. This paper interrogates the law and institutional framework and make recommendations that will help stem the tide of impunity and serve as a deterrent to others.

Conceptual Framework

In a study of this nature, it is important to define and classify the key concepts that permeate the entire body of the study – child, human rights and terrorism.

1.1 Child

A person under the age of majority is referred to as a child.[7] There is a consensus in international law that any person under the age of 18 is considered a child.[8] For recruiting into armed groups, the Optional Protocol to the United Nations Convention on the Rights of the Child of 2000 sets the age at 18 years, while the United Nations Convention on the Rights of the Child of 1989 sets the age at 15 years.[9] Article 22 of the 1990 African Charter on the Rights and Welfare of the Child

[3] J. Ogbogu, Analysing the Threat of Boko Haram and the ISIS Alliance in Nigeria, [2015] (7)(8), Counter Terrorist Trends and Analyses, 16-21

[4] D. D. Sasu, States most affected by Boko Haram's deadly attacks in Nigeria from 2011 to 2022, Statista, 30 May 2022 <https://www.statista.com/statistics/1197570/deaths-caused-by-boko-haram-in-nigeria/> Accessed 30 May 2023; L. Kamer, Economic impact of terrorism in Africa 2007-2019, by country, Statista 31 August 2022 <https://www.statista.com/statistics/1197888/economic-impact-of-terrorism-in-africa/> Accessed 30 May 2023

[5] Institute for Economics & Peace, Global Terrorism Index 2023: Measuring the Impact of Terrorism, Sydney, March 2023 <http://visionofhumanity.org/resources> Accessed 30 May 2023

[6] Immigration and Nationality Act 1952, s. 219 and s. 1(b) of Executive Order 13224.

[7] Labour Act, Cap. L1 LFN, 2004, s. 91

[8] African Charter on the Rights and Welfare of the Child (ACRWC) 1999, art. 2; The Child Rights Act 2003, s. 277; The Paris Principles, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups February 2007. The United Nations Convention on the Rights of the Child (UNCRC) 1989, art. 1

[9] UNCRC, art. 38; OPAC, arts 3 & 4

prohibits armed groups from using children as recruits. The term "child associated with an armed force or armed group" means:

> *Any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.*[10]

1.2 Human Rights

Human rights according to Cranston are "universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human."[11]Human rights are basic in the mere fact of being human, do not have to be earned, purchased or granted generally as belonging to every human being without discrimination, interconnected, interdependent and inseparable. The cornerstones of human rights are the Universal Declaration of Human Rights (UDHR) 1948 and the United Nations (UN) Charter 1945. Wasserstrom set the basic requirements of human rights succinctly:

> *First, it must be possessed by all human beings, as well as only by human beings. Second, because it is the same right that all human beings possess, it must be possessed equally by all human beings. Third, because human rights are possessed by all human beings, we can rule out as possible candidates any of those rights which one might have in virtue of occupying any particular status or relationship… And fourth, if there are any human rights, they have the additional characteristic of being assertable, in a manner of speaking, 'against the whole world.*[12]

1.3 Terrorism

There is no agreed definition of terrorism, which may be why the international community has been unable to develop a single international convention on terrorism.[13]The Russians who attacked Ukraine in 2022 see any retaliatory attacks on Russian interest by the Ukrainian soldiers as a terrorist attacks irrespective of their destruction on Ukrainian cities like Karkiv, Mariupol, Bakmut and many more. The Russian terrorist tag on Ukraine is in tandem with the 20th century major colonial powers like the French and British labelled their opponents in Africa as "terrorists" in an effort to undermine the goals of pro-independence movements as a pretext for harsh retaliatory measures to maintain control. The rise of radical Islam culminating in the bombings of 9/11 terror attacks on the United States of America (USA) has western perception of terrorism shifted almost to Islamist jihad. The closest thing to a definition of terrorism in Nigeria is the anti-terrorism legislation in Nigeria[14] which forbids acts of terrorism and the interpretation section which states that an act of terrorism *"means any act specified in section 2 of this Act."*[15] UN Security Council defined terrorism to include:

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[10] Paris Principles, Annual Report of the UN Secretary General on Children and Armed Conflict, 2017
[11] M. Cranston, Are There Any Human Rights? [1983]. (112)(4) Daedalus, 1
[12] R. Wasserstrom, Rights, Human Rights, and Racial Discrimination, [1964] (61)(20) Journal of Philosophy, 628
[13] A. Schmid, Terrorism - The Definitional Problem, [2004] (36)(2) Case Western Reserve Journal of International Law 375
[14] Terrorism (Prevention and Prohibition) Act 2022, S. 2 (2)
[15] Terrorism (Prevention and Prohibition) Act, 2022, s. 99

> *criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.*[16]

2.0 Legal Framework on the Rights of the Child

The part of the paper considers the major international conventions and treaties on the rights of the child. The FGN in line with the s. 12 CFRN has domesticated these international conventions and treaties to local legislations in Nigeria thereby making them justiciable. The parts will be discussed from international conventions, regional conventions and local legislation.

2.1 International Conventions

2.1.1 The Convention on the Rights of the Child (CRC) 1989

The CRC protects the child from any kind of discrimination regardless of race, skin colour, sex, language, religion, political opinion, national, ethnic, socioeconomic origin, property, disability, birth or other status.[17] Every child is guaranteed the right to life under the CRC, which also forbids the forced removal of children from their parents with some exceptions and protects their freedom of speech, opinion, conscience, and religion. The CRC recognizes each child's right to a standard of living appropriate for their physical, mental, spiritual, moral, and social development as well as their right to freedom of association and peaceful assembly. The CRC protects children against all sorts of sexual exploitation and abuse, torture, and other cruel, inhuman, or humiliating treatment. It also affirms their right to an education based on equal opportunity.[18]

The CRC requires States Parties to uphold International Humanitarian Law (IHL) provisions pertaining to minors in armed conflicts and take all necessary measures to prevent recruitment of or participation by children under the age of 15 in hostilities or military service. The CRC forbids all forms of physical or psychological abuse and outlines policies to support the physical and mental healing as well as the social reintegration of children who have experienced any of the following: abuse, neglect, or any other form of cruel, inhumane, or degrading treatment; torture; or participation in armed conflict. The Committee on the Rights of the Child was founded by the CRC, and it is made up of ten specialists who have a strong moral character and are acknowledged as experts in the areas the CRC covers.[19]

2.1.2 Geneva Conventions (GCs) and Additional Protocols (APs)

The GCs and APs primarily protect the right to respect to the person, honour, convictions and religious practices for those who choose not to participate directly in hostilities. Violence in the form murder and torture, beheadings, collective punishment, hostage kidnapping, terrorism, sexual violence, enslavement, looting and many more are all prohibited by IHL.[20] Children are shielded from indecent assault and given the proper care and assistance. Those under the age of fifteen (15) are not directly involved in hostilities or recruited into the armed forces, and military recruitment

[16] UN Security Council Resolution 1566 (2004)
[17] CRC, art. 2
[18] CRC, arts. 6(1), 9(1), 13 (1), 14 (1), 15 (1), 27(1), 28-29, 34 & 37
[19] CRC, arts. 38, 39 & 44
[20] Art. 4(2) AP II

of those aged between 15 and 18 is prioritized starting with the oldest.[21]One delegation had suggested that the age restriction for non-recruitment be raised from fifteen to eighteen years during the negotiations of the GCs and APs. However, in order to not completely disregard this proposal, it was stated that in the case of recruitment of persons between the ages of fifteen and eighteen, priority should be given to the oldest. A significant number of the delegates were opposed to extending the prohibition of recruitment beyond fifteen years.[22]The occupying authority is not permitted to enlist children in formations or organizations that are under its control.[23]Except in cases when families are housed together, children detained during an armed conflict must be placed in facilities separate from those used by adults[24]and a child cannot be executed for crimes related to an armed conflict. [25] Outside of sending its own citizens abroad, it is against the law to remove children, unless it is for temporary medical or safety reasons.[26]A child has a right to education, which includes religious and moral instruction; hasten the reunion of families who were momentarily split apart by the war.[27]Children under the age of fifteen should be given special consideration, including placement in hospitals and other secure areas, to protect them from the devastation of war. Humanitarian relief organizations are to be allowed to continue their work and efforts are to be made to reach agreements to relocate children from encircled regions.[28]

2.2 Regional Conventions and Treaties on Human Rights

The two main documents that protect children's rights in Africa are the African Charter on Human and Peoples' Rights (ACHPR) [29] and the African Charter on the Rights and Welfare of Children (ACRWC). By developing a regional system for human rights in Africa, the ACHPR follows the lead of the European and Inter-American systems and recognized the majority of what are seen as fundamental civil, political, economic, social, and cultural rights. The ACRWC, like the CRC, is a thorough document that outlines rights and establishes common standards and norms for the status of children.[30]

The African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC) are the key instruments that carter for the rights of the child in Africa. The ACHPR followed the footsteps of the European and Inter-American[31] systems by creating a regional human rights system for Africa[32] and recognizes most of what are regarded

[21] API, arts. 77(2); APII 4(3)(e); H. Mann, International Law and the Child Soldier, [1987] (*36)*(1) *The International and Comparative Law Quarterly,* 32-57.
[22] D. Francis, 'Paper Protection' Mechanisms: Child Soldiers and the International Protection of Children in Africa's Conflict Zones, [2007] (45)(2), The Journal of Modern African Studies, 207-231.
[23] GC IV, art. 50
[24] AP I, arts. 75 & 77(4)
[25] AP I, art. 77(5)
[26] AP I, art. 78
[27] AP II, art. 4(3)(b)
[28] AP II, art. 18
[29] Also known as the Banjul Charter, was Adopted in Kenya on 1 June 1981 and entered into force on 21 October 1986 <https://au.int/en/treaties/african-charter-human-and-peoples-rights> Accessed 30 May 2023.
[30] ACRWC, arts. 3 – 22; D. Olowu, Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child, [2002] (10)(2) The International Journal of Children's Rights, 127–136
[31] European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November, 1950 <https://www.echr.coe.int/Documents/Convention_ENG.pdf> Accessed 30 May 2023; American Convention on Human Rights, 22 November 1969 <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf> Accessed 30 May 2023
[32] A. B. Akinyemi, The African Charter on Human and Peoples' Rights: An Overview, [1985] (46)(2) The Indian Journal of Political Science, 207 - 238

universally accepted civil, political economic, social and cultural rights.[33]The ACRWC like the CRC is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. Although the ACRWC was created to legislate on the child's rights, it also contains regulations regarding the obligations on the child. Every obligation has an associated right. With a mandate to advance and defend the rights established by the ACRWC, the ACRWC formed the African Committee of Experts on the Rights and Welfare of Child. [34]

2.3 Nigerian Legislation on the rights of the Child

This part of the paper will consider the provisions of the CFRN 1999, Child's Right Act and the African Chatter on Human and People's Rights (Ratification & Enforcement) Act. These are main legislation on the rights of the child in Nigeria.

2.3.1 The Constitution of the Federal Republic of Nigeria (CFRN) 1999

The CFRN 1999 is the supreme law of the land and the cornerstone of the Nigerian legal system, outlining essential human rights that are protected by the law in Nigeria. The CFRN 1999 establishes Fundamental Objectives and Directives Principles of State Policy, a domestication of the 1948 Universal Declaration of Human Rights (UDHR), though not actionable in court and are only aspirations that the State can achieve if and when it has the necessary funds.[35] The rights to privacy, good health, recreation and play, family life, education, non-discrimination and defence against economic exploitation are some of the fundamental rights that apply to children.

The federal structure established under the CFRN 1999, makes domesticating conventions pertaining to the child a cumbersome task in Nigeria as majority of the federating states must agree before any child-related legislation which is on the concurrent legislative list must be domesticated at the federal level and subsequently re-enacted in the thirty six federating states, unlike Conventions on issues relating to the matters provided under s. 251 CFRN 1999 which are within the exclusive purview of the FGN. It is challenging to come to agreement on child rights laws in large part because of the various legal systems and varied religious and cultural beliefs that exist in childhood. [36]

2.3.2 The Child's Rights Act

The Child's Rights Act (CRA) 2003 is the primary legal document governing the child's rights in Nigeria. The CRA serves multiple roles as it domesticates the child the CRC and ACHPR into local legislation in line with the provisions of s. 12 CFRN 1999 and also as anti-human trafficking law in Nigeria.[37]According to the CRA, no matter who or which institution is involved, whether it be a person, institutions, a court of law, an administrative or legislative authority, the best interest of the child must always come first.[38] The CRA incorporates the right to survival and development as well as the provisions of Chapter Four CFRN 1999.[39] The CRA also states that every child has the right to privacy, freedom of movement, freedom from discrimination, health and health

[33] ACHPR, arts. 2 - 24
[34] ACRWC, art. 32 & 42
[35] CFRN 1999, ss. 33 – 44; 15 – 23, 6(6)(c)
[36] D. Ogunniyi, The Challenge of Domesticating Children's Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children, [2018] (62)(3) Journal of African Law, 447-470.
[37] S. N. Achilihu, Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child, Universal-Publishers, 2010, 1 – 280; K. Cullen-DuPont, Human Trafficking, Infobase Publishing, 2009, 1 – 350
[38] CRA, s. 1
[39] CRA, ss. 3 & 4

services, parental care, protection, and maintenance, as well as free, universal and compulsory primary education. It also states that every child has the right to association and peaceful assembly. The CRA forbids child marriage, child betrothal, tattoos, skin markings, exposing children to drugs, as well as the production and trafficking of narcotics.[40]The CRA forbids using children in criminal activity, kidnapping, removing, and transferring them from legal custody, exploitation of workers, and purchasing, selling, hiring, or otherwise dealing in children for the purpose of hawking, pleading for alms, prostitution and many more. The CRA outlaws sexual contact with children, sexual assault, and the enlistment of minors in the armed forces.[41]The religious and cultural diversity militated against the prompt implementation of this momentous piece of legislation in northern part of Nigeria. The fervent advocacy of the Federal Ministry of Women Affairs turned the tide favourably and the CRA has been fully domesticated in thirty four (34) out of the thirty six (36) States in Nigeria.[42]

2.3.3 African Chatter on Human and People's Rights (Ratification & Enforcement) Act

The first comprehensive human rights treaty adopted in Nigeria is the African Chatter on Human and People's Rights (Ratification & Enforcement) Act,[43] which was enacted to give the ACHPR legal effect in Nigeria.[44] The Nigerian Supreme Court declared that the ACHPR is a component of Nigerian law and must be upheld by the courts in the case of *General Sani Abacha and Others v. Chief Gani Fawehinmi.* [45]

3.0 Institutional Framework on Human Rights in Nigeria

In accordance with UNGA Resolution 48/134 of December 1993, which urged member states to establish and strengthen national institutions for the promotion and protection of human rights and fundamental freedom in their countries, the National Human Rights Commission (NHRC) was established by the National Human Rights Act of 1995.[46] The NHRC (Amendment) Act 2010 expands the NHRC's mandate by giving it broader authority to do a wide range of additional tasks related to the promotion, protection, and enforcement of human rights. The CFRN 1999, ACHPR, UN Charter, UDHR and many more treaties give the NHRC the power to handle all issues relevant to the protection of human rights in Nigeria. By virtue of the 2010 amendment, the NHRC now possesses quasi-judicial powers, including the ability to call witnesses, gather evidence, determine damages, and uphold judgments. The NHRC now has the authority to inspect any facility used for custody in order to confirm that no one's rights are being infringed. In order to win over the hearts and minds of the civilian population without violating the rights of the civilian population the army seeks to protect, the NHRC assisted the UNHCR and the Nigerian Army in training them on human rights and civil protection during counterinsurgency in the northeast.[47] In order to ensure that their legal rights were upheld, the NHRC advised the FGN to remove the 475 terror suspects who had

[40] CRA, ss. 6-15, 21-25.
[41] CRA, ss. 26-33
[42] S. Anya, FG: 34 States Have Domesticated Child's Rights Act, Thisday Newspaper, 29 November 2022 <https://www.thisdaylive.com/index.php/2022/11/29/fg-34-states-have-domesticated-childs-rights-act/> Accessed 30 May 2023.
[43] Cap A9, Laws of the Federation of Nigeria, 2004.
[44] C. N. Ojukwu, Enforcement of the African Charter on Human and Peoples' Rights as a Domestic Law in Nigeria, [2000] (25) International Legal Practitioner, 140
[45] (2000) 6 NWLR 228,
[46] NHRC Act Cap. N46 LFN, 2004, amended in 2010 by the NHRC (Amendment) Act 2010.
[47] NAN, Insurgency: NHRC, UNHCR train Nigerian Army on human rights protection, 10 July 2019 <https://www.premiumtimesng.com/regional/nnorth-east/340079-insurgency-nhrc-unhcr-train-nigerian-army-on-human-rights-protection.html > Accessed 30 May 2023

been released by the court in Wawa Cantonment, Niger State, from military facilities. The NHRC also advised the FGN to expedite the trial of suspected terrorist held in Borno State so that they can know their fate rather than detaining them for a very long time without a trial.[48]

Important international organizations in charge of promoting and defending human rights include the African Commission on Human and Peoples' Rights and the UN Human Rights Council.[49] In carrying out its humanitarian mission, the International Committee of the Red Cross (ICRC), which has the character of an international organization and international legal personality, serves as the "guardian" of IHL, was founded in 1863.[50]Human rights concerns in Nigeria have been brought to the attention of the world community by non-governmental organizations (NGOs) including Amnesty world (AI) and Human Rights Watch (HRW).[51]

4.0 The Legal Appraisal of the Rights of the Child in the War against Terrorism in Nigeria

The employment of child soldiers, sexual assault and restrictions on the right to education in Nigeria will be the main topics of this section of the paper. Despite the fact that children have no place in war, they are nonetheless enlisted and used as soldiers all over the world, leaving permanent scars. Again, the gladiators have used sexual violence—including rape, attempted rape, sexual abuse, and sexual exploitation—against vulnerable people including women and children in Nigeria's fight against terrorism. The child's constitutional right to free and compulsory basic education has been violated by terrorist organizations who view Western education as bad, the use of school grounds as military camps and conflicts that cause indiscriminate destruction.

4.1 The Menace of Child Soldiers

Estimates suggest that as many as 300,000 child soldiers are active in conflicts in at least twenty countries[52]and about forty percent of state armed forces and non-state armed actors in the world use children.[53]In Nigeria, the use of the child soldiers in the insurgency is troubling as about eight thousand children are believed to have been recruited and used by the insurgents since the commencement of the conflict.[54]Social injustice and high levels of poverty, illiteracy and unemployment in Nigeria has provided a fertile ground for the recruitment of child soldiers. The terrorists used some Islamic teachers (*Mallams*) who operate schools used as major platforms for children indoctrination and recruitment. These children become ideological mouthpieces for the terrorist groups to the point of challenging their parents and peers on aspects of belief and propagating radical views. It is reported that children as young as four years old are with

[48] E. Olafusi, Human Rights Council seeks speedy trial of Boko Haram suspects, The Cable, 28 May 2018 <https://www.thecable.ng/human-rights-council-seeks-speedy-trial-of-boko-haram-suspects>Accessed 30 May 2023

[49] ACHPR, arts. 45 & 46

[50] GC III, arts 73, 122, 123; GC IV, arts 76, 109, 126, 137, 140 and 143; art. 3, 9/9/9/10 common to the GCs; *Prosecutor v. Blagoje Simiç et al,* 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

[51] K. Appiagyei-Atua, 'Human Rights NGOs and their Role in the Promotion and Protection of Rights in Africa' [2002].(*9)*(3), *International Journal on Minority and Group Rights,* 265-289.

[52] B. Briggs, 10 countries where child soldiers are still recruited in armed conflicts, Theirworld, 28 February 2017 <https://theirworld.org/news/10-countries-where-child-soldiers-are-still-recruited-in-armed-conflicts> Accessed 25 May 2023

[53] For Child Soldiers, Every Day is a Living Nightmare, Forbes, 9 December 2012 <https://www.forbes.com/sites/realspin/2012/12/09/for-child-soldiers-every-day-is-a-living-nightmare/> Accessed 26 July 2020

[54] United Nations Security Council, The Report of the Secretary-General on Children and Armed Conflict in Nigeria (S/2017/304), 10 April 2017, 6.

terrorist.[55]At the age of 10 some children are forced to serve and those not forced to be soldiers volunteer themselves because of the societal pressure and the mistaken belief that volunteering will provide a form of income, food or security, and willingly join the group.[56]A child born into and raised in a conflict zone is vulnerable and more likely to be desensitized to violence. Children are easier to convince and control, and often require little or no payment, making them targets for terror groups and militias. Membership of terrorist groups is seen as a 'meal ticket' and a place for refuge [57]as those who refuse to join in their terrorist acts are abused and killed.[58] The terror groups primarily recruits its members among disgruntled young, unemployed high school and university graduates, and orphans, primarily but not exclusively from northern Nigeria. Some well-off, educated, and powerful people are also part of it.[59]

Children coerced to be in the forefront of the battle against the Armed Forces are used strategically for ambush and suicide bombing.[60]The Armed Forces had reportedly captured children who were forced to take up arms against the State on several occasions with some of them behaving abnormal due to indoctrination and inducement through the use of hard drugs. It is suggested that the rules of engagement have to be observed by the Armed Forces even in situations where militants recruit children for spying on them and inciting them to engage in hostilities against innocent citizens and the Armed Forces.[61]There exist shocking figures in use of children, especially girls, as 'human bombs' by the terror groups. The number of kids, mostly girls, used as "human bombs" and the number of youngsters used to carry out terrorist attacks in north-eastern Nigeria increased by four times since January 1, 2017. Out of eighty-eight children fifty-five of them were girls, majority were under 15 years old. One was a baby strapped to a girl, and the other twenty seven were boys.[62]Other factors that contribute to children becoming child soldiers include parents giving their children to terror groups for financial gains and in exchange for security guarantees, financial incentives in the absence of educational or employment opportunities, false religious indoctrination, peer pressure, personal threats and threats to their family and familial ties, and peer pressure.[63] Cooks, porters, messengers, lookouts, informers, guards, manning check points and IDP camps are common support roles done by child soldiers. Even though they are kind, these roles put the child at risk. Terrorist groups train the children they used as child soldiers to get them ready for battle.[64] To break their links with their villages, the child soldiers are compelled to destroy

[55] Perceptions and Experiences of Children Associated with Armed Groups in Northeast Nigeria, Nigeria Stability and Reconciliation Programme (NSRP) and UNICEF, Research Report 2017 <http://www.nsrp-nigeria.org/wp-content/uploads/2017/03/Research-Report-Children-Associated-with-Armed-Groups.pdf> Accessed 30 July 2020
[56] Child Soldiers International, "Louder than words: An Agenda for Action to end state use of Child Soldiers. Retrieved <http://www.child-soldiers.org/global_report_reader.php?id=562> 28 July 2020
[57] Rule 6, Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007
[58] G. Van Burren, International Law and the Right of the Child, Martinus Nijhoff Publications London, 2006, 91
[59] F. C. Onuoha, Why Do Youth Join Boko Haram? [2014] US Institute of Peace, 1 – 12
[60] G. Olaleye, C. Children and Conflict in a Changing World, Spectrum Books Ibadan, 2003
[61] R. Brett, "Contribution for Children and Political Violence in WHO Global Report on Violence in Nigeria, [2012] (2)(8), Journal of Child Soldiering, 11
[62] Child Soldiers International, Monthly news round-up: Child 'bombs' in Nigeria <https://www.child-soldiers.org/News/monthly-news-round-up-boko-haram-use-of-child-human-bombs-rises-mali-child-soldiers-released-and-more> Accessed 30 May 2023
[63] Motivations and Empty Promises: Voices of Former Boko Haram Combatants and Nigerian Youth, April 2016 <https://www.mercycorps.org/sites/default/files/201912/Motivations_and_Empty_Promises_Mercy_Corps_Full%20Report.pdf> Accessed 28 May 2023
[64] F. C. Onuoha, Why Do Youth Join Boko Haram? [2014] US Institute of Peace, 1 – 12

property in their own villages or kill members of their own families or towns.[65] They are also brainwashed to wreak havoc on their villages. Developing the next generation of terrorists involves using girls.[66]

4.2 Sexual Violence

The terms sexual assault and sexual violence are frequently used interchangeably.[67] Sexual violence is defined as any sexual act, attempt to have a sexual act, unwanted sexual comments or advances, or acts to traffic a person's sexuality, committed by anyone, regardless of relationship to the victim, in any setting, including but not limited to the victim's home or place of employment, using coercion, threats of harm, or physical force.[68] A variety of behaviors are included in sexual assault, such as forced exposure to pornography, forced genital mutilation, rape by strangers, organized rape in conflict, sexual harassment (including demands for sex in exchange for jobs or grades), and rape of children.[69] The implications of sexual assault, which can take many different forms aside from physical violence, such as verbal or physical abuse, as well as any act that compels someone to engage in unwelcome sexual activity.[70]Both men and women can be victims of sexual assault; there is no distinction based on sex in sexual assault, however studies have indicated that there are much more female victims of sexual assault than male victims.[71]

The terrorists kidnapped at least 4,000 children since 2009, and thousands more were caught after they took over the north-eastern towns.[72]Girls are more likely to experience sexual assault and are frequently forced into prostitution by the terrorists. Children have been kidnapped by the terrorist during attacks on villages and towns in north-eastern Nigeria and held captive in terrorist camps and cities under their control. The terrorist typically picked up children after seizing control of a town and imprisoned them in sizable homes under armed guard. Those who managed to flee from the terrorists have said that many of the girls were forced to marry their captors. In northeast Nigeria, women and girls make up 99 percent of the victims of recorded sexual assault. A whopping 38% of sexual assault cases that were reported were committed as a result of trafficking, forced enlistment, kidnapping, or other types of incarceration.[73] In October 2017, the FGN started the trial of alleged terrorists, despite claims that the plan and the trial processes did not follow constitutional protections and global norms.[74] The courts released 97 suspects without a trial,

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[65] Perceptions and Experiences of Children Associated with Armed Groups in Northeast Nigeria, Nigeria Stability and Reconciliation Programme (NSRP) and UNICEF, Research Report 2017 <http://www.nsrp-nigeria.org/wp-content/uploads/2017/03/Research-Report-Children-Associated-with-Armed-Groups.pdf> Accessed 30 May 2023

[66] B. Maiangwa and O. B. Amao, Daughters, Brides, and Supporters of the Jihad: Revisiting the Gender-Based Atrocities of Boko Haram in Nigeria, [2015] (12)(2) African Renaissance, 117 - 144

[67] U O. Eze, "Prevention of Sexual Assault in Nigeria." [2013] (11)(2) *Annals of Ibadan Postgraduate Medicine*, 65

[68] World Report on Violence and Health. World Health Organization, 2002.

[69] U O. Eze, "Prevention of Sexual Assault in Nigeria." [2013] (11)(2) *Annals of Ibadan Postgraduate Medicine*, 65

[70] U.S. Department of Health and Human Services Sexual Assault, Office of Women's Health, Sexual Assault, 14 March 2019, Accessed <https://www.womenshealth.gov/relationships-and-safety/sexual-assault-and-rape/sexual-assault> 30 May 2023

[71] P. J. Isely and D. Gehrenbeck-Shim, Sexual Assault of Men in the Community, [1997] (25)(2) Journal of Community Psychology, 159–166.

[72] 'They Betrayed Us' Women Who Survived Boko Haram Raped, Starved and Detained in Nigeria, Amnesty International, 1 – 86, 2018 <https://www.amnesty.org/download/Documents/AFR4484152018ENGLISH.PDF> Accessed 30 May 2023

[73] Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Nigeria, United Nations, 23 May 2019 <https://www.un.org/sexualviolenceinconflict/countries/nigeria/> Accessed 30 May 2023

[74] Nigeria: Flawed Trials of Boko Haram Suspects, HRW, 17 September 2018 <https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects> Accessed 30 May 2023

acquitted 5 and found 113 defendants guilty. None of the terror suspects were accused of sexual assault. Given that sexual assault is a major component of BH operations and methods, the conclusion is quite concerning.[75]

The heightened risk of rape is one of the most critical problems that all vulnerable persons including children face during armed conflicts including prostitution, sexual assault and other forms of gender-based violence. Despite the fact that women of all ages are targeted, teenage girls are frequently particularly vulnerable because it is believed that they are immune to sexually transmitted diseases like the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS). Despite the fact that the majority of the victims of these heinous crimes are females, young boys are also subjected to rape or coerced into prostitution. Even while this paper asserts that rape and other forms of gender-based violence are commonly used intentionally as weapons of war, these crimes might instead be seen as the outcome of general societal breakdown. Yet such violence is rarely treated with the seriousness it merits. A girl who has been the victim of rape experiences the trauma for almost the rest of her life, may be shunned by those who found out, or even by society as a whole, and may lose the chance to be married as a result. Even after the fight, the potential of these lives will never be realized.[76]

43 Right to Education

An educated, aware, and informed populace, according to Mandela, is one of the best methods to support the health of a democracy.[77] Every major international treaty and national law recognizes the human right to education.[78] The assurance of inclusive, egalitarian, high-quality education and the promotion of opportunities for lifelong learning for everyone are the objectives of the fourth Sustainable Development Goal. Free, universal, and required basic education must be available to every kid of primary and junior secondary school age. In an effort to improve access to and ensure the quality of basic education across Nigeria, the FGN launched the Universal Basic Education Program (UBE) in 1999 that guarantees every child of school-age has unhindered access to a formal, 9-year, free, and compulsory basic education and failure to comply results in an offense, which carries a penalty that could include jail or a fine.[79]

BH opposes western education and has killed and targeted educators, students and teachers. In the north-east of Nigeria, there have been over 2,400 incidents of grave violations since 2014, including 693 kidnapping incidents, 675 killing and maiming incidents, and 700 cases of child recruitment by armed groups, according to the United Nations International Children's Emergency Fund (UNICEF). Between 2009 and 2022, 1,295 teachers were killed in attacks, displacing over 19,000 instructors, destroying 910 schools, closing 1,500 schools owing to insecurity, and forcing 1,500 schools to liquidate. The insurgency's negative impact on education is already evident and is likely to persist for years.[80]

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[75] C. O. Oba, "Prosecuting Offenders for Rape Committed in Armed Conflict: Interrogating the Accountability of the Nigerian State," [2020] (23)(1) Human Rights Brief, 43

[76] C. Card, "Rape as a Weapon of War." [1996] (11)(4) Hypatia, 5–18.

[77] Address by Nelson Mandela at St. John's School, Johannesburg, November 2003 <http://www.mandela.gov.za/mandela_speeches/2003/0311_stjohns.htm> Accessed 29 July 2020

[78] CFRN 1999, s. 18; ACHPR, art. 17 (1); ACRWC, art. 11; CRC, art. 28 29; ICESCR, art. 13 – 14; UDHR, art. 24; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

[79] Compulsory, Free Universal Basic Education Act 2004, s. 2 & 4

[80] UNICEF, "Devastating Reality": 9 years after Chibok abductions, children in Northeast Nigeria continue to suffer the brutal consequences of conflict, 14 April 2023 <https://news.un.org/en/story/2023/04/1135662> Accessed 30 May 2023

A breakdown of the atrocities of the terrorist shows that two Hundred and seventy six (276) girls were abducted from their secondary school in the town of Chibok in 2014.[81]The terrorist abducted 276 girls aged 12 to 17 from the Government Girls Secondary School Chibok in Borno State on 14 April 2014, two months after killing 58 schoolboys in Buni Yadi, Yobe State, while they slept in their dormitories. The terrorist claimed responsibility for the kidnapping of the Chibok girls and pledged to sell the women as slave brides. On 19 February 2018, the terrorists invaded the Government Girls Science and Technical College in Dapchi and abducted 110 students.[82]

The Universal Basic Education Commission (UBEC) asserts that there are slightly over 10 million out-of-school children in Nigeria, however the United Nations Educational, Scientific and Cultural Organization (UNESCO) estimates that there are over 20 million. The UNESCO data is based on Primary and Senior Secondary School students aged six to eighteen years, however UBEC data relates to students aged Six to Eleven. No matter whose statistics are used, it is still true that Nigeria has one of the largest numbers of out of school students in the world.[83] The aforementioned statistics are terrible, and the FGN only chance of saving the situation will be to stop the ravaging impact on schools and instructors by the terrorists.

6.0 Concluding Remarks

The successive bad administrations in Nigeria characterised by lack of legitimacy, pervasive corruption, retrogressive democratic policies and flagrant human rights abuses are responsible for the rise of violent extremism. The internal dynamics of inequality exist as a result of the concentration of State power in hands of a few at the expense of the majority weakened by poverty and vulnerable to exploitation. The FGN has a duty to prevent, investigate and punish human rights violations perpetrated by state and non-state actors and address the human right abuses perpetrated against children with impunity by agents of the FGN and the terrorist groups in Nigeria. The fight against the insurgency should also be a fight for the protection of the rights and dignity of children who are mostly caught in the web of the insurgency and counter-insurgency measures. Many kidnapped children are found when the FGN reclaims significant areas of land from the terrorists. In addition to helping children heal from their experiences, it is crucial that an effective program of reintegration is in place. The FGN should collaborate with the families and communities of the affected children to expedite the safe return and reintegration, or to resettle the child if return is not possible. Despite the fact that the terrorists have continued to attack schools, teachers and children, it is important that any humanitarian aid must prioritize addressing the educational needs of children who are still living in conflict zones. The FGN, States, international development partners and NGOs must work to find answers to the chronic problem of out-of-school children in Nigeria. The establishment of alternative classroom locations, with frequent venue changes, should be a part of the planning process because schools, teachers, and students are likely to be targets of the terrorist in line with the Machel Report.[84] The FGN's Operation Safe Corridor programme for

[81] Nigeria: Nine years after Chibok girls' abducted, authorities failing to protect children, 14 April 2023 <https://www.amnesty.org/en/latest/news/2023/04/nine-years-after-chibok-girls-abducted/> Accessed 30 May 2023

[82] A. A. Maishanu, Timeline of school abduction in Northern Nigeria under President Buhari, Premium Times, 28 May 2023 <https://www.premiumtimesng.com/news/headlines/601059-timeline-of-school-abduction-in-northern-nigeria-under-president-buhari.html> Accessed 30 May 2023

[83] K. Umeh, Tackling menace of out-of-school children in Nigeria, Guardian, 26 February 2023 <https://guardian.ng/news/out-of-school-childrens-figure-drops/> Accessed 30 May 2023

[84] G. Machel Report, Impact of Armed Conflict on Children, UN, 1995, 55 - 56

the de-radicalization, rehabilitation and reintegration for terrorist defectors should include a part to address the child's particular requirements.

The NHRC must establish procedures that are easy to understand and use for reporting sexual assault. These systems must also include victim assistance programs and give victims access to sufficient medical and mental health care. All instances of rape and sexual torture committed during hostilities should be tried as war crimes and perpetrators given the maximum punishment. The swift trial of terror members suspected for crimes against humanity such rape, sexual slavery and allied offences is advocated. To avoid public rejection and ensure that there is full support for reintegration with a focus on girls, the FGN should take firm, decisive action against those responsible for the recruitment of child soldiers and stop disclosing the identities of former child combatants. To help stop these abuses, all military and peacekeeping personnel must get particular training on their responsibilities to children. The ICC should supervise and evaluate the FGN's efforts to fairly and credibly hold all parties accountable in accordance with the Rome Statute and complementarity principle, and it should also make sure that anyone suspected of committing serious crimes that violate international law is investigated and prosecuted in accordance with international norms. It is advised that the CRA and other local legislation pertaining to rights of the child be passed and put into effect. For state and non-state actors that commit significant crimes in violation of national and international law during the war against terrorism, the judiciary should provide a platform for the investigation and prosecution based on international fair trial norms.