

Boko Haram: A Race between Amnesty and Criminal Tribunal

Dr Ebere R Adigbuo

Department of History and International Studies, PMB 1, Abraka, Delta State, Nigeria

Email: pecilljob@gmail.com / adigbuo@deltastate.edu.ng

Abstract

From 2002 an insurgent group declared war on Nigeria. To advance understanding of the challenges to Nigeria's security, this article analyses the radical Islamic sect popularly called "Boko Haram". This was done by addressing the question: What is the best measure in handling the Boko Haram insurgency. Current literature is inconclusive. On the one hand, some canvass conciliatory measures like amnesty; on the other hand are those that re-emphasize the realist axiom: war is a continuation of policy. It is in the midst of this uncertainty, that this article recommends the establishment of a criminal tribunal. Boko Haram insurgency has claimed thousands of lives.

Keywords: Sectarian Conflict, Ethnicity, Corruption, Terrorism, Amnesty, Criminal Tribunal

Introduction

Nigeria is an amalgam of ancient Kingdoms, Caliphates, Empires and City-states with a long history of organized societies. The name Nigeria was adopted in 1898 to designate the British Protectorates on the River Niger. In 1914, the Protectorate of Northern Nigeria, and the Colony and Protectorate of Southern Nigeria were merged by Sir Frederick Lugard. On October 1, 1960, Nigeria gained independence from Britain. But the joy and excitements experienced in 1960, has today waned with cracks occasioned by conflicts. Nigeria has been wracked by periodic episodes of violence for decades, with a civil war that raged from 1967 - 1970.

Many explanations have been advanced for the continued conflict. The country's 160 million people are divided between Christians and Muslims and further splintered into about 350 ethnic groups. Mistrust among these ethnic groupings and fundamentalist yearnings in religion have seasoned the violence. Besides the sectarian conflicts, eight military regimes had governed the country beginning in 1966. The last military regime left power on May 29, 1999, when a former military dictator, now a politician was installed as the democratically elected president of the country. Nigeria has been known for ethno-religious conflicts even before 1999. Notable among such crises was the Maitatsine religious disturbances in parts of Kano and Maiduguri in 1980. That year, Maitatsine ("the one who curses") mobilized the impoverished youths and rebelled against state representatives in the north. Over 4200 people died. Ideologically, the group wanted to cleanse Islamic religion in Nigeria of western influences. Other religious conflicts were the Jimeta-Yola religious disturbances (1984), and Zango Kataf crises in Kaduna State (1992); the Kafanchan College of Education Muslim Christian riots; Kaduna Polytechnic Muslim-Christian skirmishes (1981-1982); and the cross vs. the crescent conflict at the University of Ibadan (1981-1985). The ethno-religious conflicts include the Bulumkutu Christian-Muslim riots (1982); Usman Danfodio University Sokoto (1982); and the Muslim-Christian Clash during an Easter Christian procession in 1986 at Ilorin, Kwara State (Salawu, 2010).

With the end of military rule in 1999, numerous violent clashes have taken place in the north as a result of ethnic and religious tensions, communal competition over grazing and farming lands, and tensions over the dubious distinction between indigenes and settlers, particularly in the Jos metropolis. Religion has been crucial in the definitions of these conflicts. Since the 1999 election, Nigeria has remained distinctly divided on issues of religion and ethnicity (Tayo, 2007:4). The interests of the political class in *Sharia* (Islamic law) has exacerbated these tensions, which previous military regimes would have quashed (Tayo, 2007:4).

The struggle for resources has broadened the specter of insecurity most especially in the southern part of the country. Besides the civil war that was fought between 1967 and 1970, the Ife-Modakeke crises of 1981 and 1987 highlight the fragility of communal relations in the country. The age long Aguleri-Umeleri can be traced to bitter struggle over land. With the return to democratic rule, the Niger-Delta insurgency championed by the Movement for the Emancipation of the Niger Delta, had been quite threatening. Although an agreement was reached with the government in 2009, the grievances persist and attacks on oil installations have continued till date. Conscious of her military past, it is modest to describe Nigeria as a country of armed conflict; it was an ethno-religious conflict that translated into a civil war in the past; now it is a Boko Haram phenomenon, the type that questions like the civil war, the existential relevance of the country. Nigeria is a country where it is difficult to distinguish between politically motivated terrorism on the one hand, and armed criminality on the other. There is an inseparable bond between terrorism and criminality. This study notices that bond in Boko Haram since there is a direct linkage between its terrorist activities and armed violence. The first task is an attempt to clear the conceptual morass associated with labeling terrorists.

Boko Haram: the Problem of Labeling

Some analysts are of the opinion that in Nigeria, Boko Haram is not the problem. In an article in the New York Times, Jean Herskovits stated that since “the inauguration of President Goodluck Jonathan, a Christian from Niger Delta in the country’s south, Boko Haram has been blamed for virtually every outbreak of violence in Nigeria. But the news media and American policy makers are chasing an elusive and ill-defined threat; there is no proof that a well – organized, ideologically coherent terrorist group called Boko Haram even exists today”(2012). Herskovits declaration has raised some interesting points previously assumed about “terrorist” groups such as Boko Haram. In the first instance, little is indeed known about the present day leadership arrangement and inner workings of Boko Haram as an organization. According to The Economist, Boko Haram “comprises an ever-greater number of malcontents with a variety of aims. Some are criminals using the Boko Haram label to disguise the motives for attacks. At the other end of the spectrum are diehard Islamists who fervently desire the demise of the secular state and want to bring Boko Haram under al-Qaeda’s umbrella.” (2012). The second point is how to classify Boko Haram. It is difficult to categorize armed non-state actors since any form of labeling is reflective of political persuasion of those labeling or those often labeled (Carlton, 2009:525). The third problem is structural. From this perspective, terrorism is an irregular and seemingly disorganized kind of violence that targets primarily the civilian population. As terrorism does not make the classical military methods, neither the plans nor the capabilities of the actors can be assessed concretely. Terrorism requires a specific training and selective techniques but no regular and permanent mechanism exists to that end. Whereas consensus prevails that it is a form of violence there is not a general consensus as to which forms of violence could or should be considered as terrorist acts (Dedeoglu, 2005). Abdul Moten notes that “the way terrorism is perceived has a direct bearing upon how it is defined and the nature of response conceived to address it (Moten, 2010).

Some scholars have gone further to state that labels used in describing armed groups like Boko Haram are numerous and often misleading (Allen, 2008). In effect, some have labeled them insurgents, resistance movements, armed bands, militia, guerilla fighters, terrorists and in some non western world, freedom fighters. Hoffman attributes these “semantic obfuscations” on how armed organizations label themselves and how policy makers and scholars label them (Hoffman, 2009). It is in the midst of this conceptual confusion that many scholars have proffered varied definitions of terrorism. In these definitions, terrorism is not legally defined in all jurisdictions; the statutes that do exist, however, generally share some common elements. Wilkinson understands terrorism as the “systematic use of coercive intimidation, usually to service political ends. It is used to create and exploit a climate of fear among a wider target group than the immediate victims of the violence and to publicize a cause, as well as to coerce a target to acceding to the terrorists’ aims. Terrorism may be used on its own or as part of a wider unconventional war (Wilkinson, 2006). While this definition is a bold attempt at a highly contentious concept, it is deficient in blaming political violence on maladjusted individuals rather than a deficient political system that scuttles any legitimate complaints of the insurgents. Nigeria espouses liberal democracy. Alex Schmid proposes four intrinsic factors, which affect a liberal democracy’s response to non-state terrorism: freedom of movement, freedom of association, abundance of targets, and the constraints of the legal system. Democratic norms also stress openness, tolerance, legality and the high value of each individual human life (Schmid, 1993). The manner Nigeria’s democratic setting [unlike the military regimes] has heightened the upsurge of terrorism is yet to be appreciated. What is certain is that extremists in Nigeria have actually exploited Western liberties on which Nigeria’s fourth Republic is established. Defining terrorism opens the opportunities for counter terrorism’ strategies. In “Political Terrorism”, Schmidt and Jongman asked their respondents what issues in the definition of terrorism remain unresolved. Some of the answers are relevant to any study in terrorism:

The boundary between terrorism and other forms of political violence; Whether government terrorism and resistance terrorism are part of the same phenomenon; Separating “terrorism” from simple criminal acts, from open war between “consenting” groups, and from acts that clearly arise out of mental illness; Can terrorism be legitimate? What gains justify its use? The relationship between guerilla warfare and terrorism; and crime and terrorism (Schmidt & Jongman, 1988).

This study realizes the inseparable link between terrorism and criminality. A working definition relevant to a study on Boko Haram must recognize that terrorism is a tactic used by armed groups to instill fear not just within the direct victims but among a wide audience. The extent to which it relies on fear distinguishes terrorism from both conventional and guerilla warfare. The working definition provided by Lutz and Lutz is useful in this study. According to these analysts, terrorism includes six elements. It involves (1) the use of violence or threat of violence (2) by an organized group (3) to achieve political objectives. The violence (4) is directed against a target audience that extends beyond the immediate victims, who are often innocent civilians. Further (5), while a government can be either the perpetrator of violence or the target, it is considered an act of terrorism only if one or both actors are not a government. Finally, (6) terrorism is a weapon of the weak (Lutz & Lutz, 2008). Boko

Haram appreciates the importance of being organized. Unlike Jean Herskovits, Lutz and Lutz recognize that organization is essential for a successful campaign to bring about the political goals that are being sought (Lutz & Lutz, 2013). This is true of Boko Haram, like any other terrorist organization. As this study is tidied, the US has classed both Boko Haram and its offshoot Ansaru as terror groups.

Theoretical Framework

Many scholars have written about terrorism. Works on Boko Haram are still ongoing. Since Boko Haram has attacked police and military installations, it can be figured that the goal of the group is to destroy Nigeria's sense of security in the places most familiar to them. Notable areas of attacks by Boko Haram include important economic or socio-political symbols, such as church buildings, embassies (UN Headquarters in Abuja) or military installations, police and military offices and the media houses. The hope of the terrorists is that the sense of terror these acts engender will induce the population to pressure political leaders toward a specific political end. In some instances it is difficult to separate the political motivations of terrorists from simple criminal activity. For example, in the United States the Federal Bureau of Investigation (FBI) describes terrorism as "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" (FBI, 2005). The element of criminality, however, is problematic, because it does not distinguish among different political and legal systems and thus cannot account for cases in which violent attacks against a government may be legitimate. A good example is the African National Congress (ANC) of South Africa, which fought against the apartheid Minority Government and received simultaneously accolades and sympathy throughout the world. In Nigeria, religion has caused and continues to exacerbate conflict.

Religion is a value laden concept. Any study on a religious organization such as Boko Haram must be confronted with some analytical problems; with half of Nigerians professing the Islamic religion, there is greater need for respectful objectivity. Moreover the post 9/11 world reminds students of contemporary history of the need for caution particularly in the face of accusation of aggression against the Muslims. The study on Boko Haram presents another problem. There is the need for a "comprehensive strategy tackling both the manifestations and underlying causes of terrorism, such as political alienation and radicalization. After all, as many analysts attest, people are not born as terrorist, they become one (Solana, 2005). From the foregoing, this study needs a descriptive framework that is free from religious bias; to that effect, it will be guided by Peter Sederberg's work that terrorism can be considered in three fold typologies (Sederberg, 2003).

The first perspective takes a realist posture by regarding terrorists as enemies to be defeated. This war analogy recommends the full deployment of military forces in a fight that must be won. The deployment of military forces to fight terrorists is not unique to Nigeria. It is common in liberal democracies where states have used their armed forces to fight terrorism-notably Israel against Hamas in the Gaza Strip, Britain in Northern Ireland from 1969-98, or indeed America and its allies against al-Qaeda and affiliated groups both in Iraq and Afghanistan. The second perspective sees terrorism as a crime that must be handled by the police forces. This criminal analogy, Sederberg postulates has two variants: it suggests that terrorism like any other crime can only be contained; it cannot be wiped out completely. The other variant is a reactive one which maintains that terrorists like other criminals are only caught after their nefarious acts. The third perspective is to see terrorism as a disease, displaying certain symptoms and root causes. It assumes the possibility of healing the disease through long term strategies. Sederberg's exposition is not mutually exclusive; rather it explains the overriding ways terrorism is viewed. The expose can enrich ones understanding of terrorism. It is a treatise that allows the examination of the government position on Boko Haram and the strategies deployed to curb the insurgency. It gives the analyst the leverage to examine the root causes of a militant Islamist group, Jama'at Ahl al-Sunna li al-Da'wa wa al-Jihad, popularly known as Boko Haram. Finally it offers the palliative sought in this study – the establishment of criminal tribunal for the insurgents. The criminal proceeding presumes the accused innocent until proved guilty.

Boko Haram: Evolution

Peter Chalk identifies three ways of looking at Islam in present-day Nigeria: conservatism, modernism and fundamentalism. Fundamentalism is by far the most marginal of the three, and is today in vehement opposition to the "federal government, established (and perceived ineffectual) religious elites, modern-oriented Muslim identity, and foreign-mainly Western-influences" (Chalk, 2004). The fundamentalists cite the dysfunctional condition of the Nigerian state as a reason for their actions. Their aim is a society guided by the Sharia that enunciates the rules and principles of Islam; commitment to Sharia is shown in their readiness to struggle, suffer and actively embrace martyrdom to achieve their mission (Chalk, 2004:420-421). Boko Haram is assuredly a product of an age-old tradition of such Islamic fundamentalism in Nigeria, fuelled by increasingly puritan views on Islam, and increasingly intolerant views regarding the role and place of Islam in a modern secular state (Tande, 2012). Boko Haram, a depreciatory name that the Jama'atu Ahlis Sunnah Lidda'awatiw'al Jihad, (Group

Committed to Propagating the Prophet's Teachings and Jihad) bears in Nigeria, is a combination of Hausa and Arabic languages that, literally translates into Western education is forbidden or is a sin.

Boko Haram, as an Islamist organization, started with the name Shahaba in 1995. When its founder, Abubakar Lawan, left to pursue further studies at the University of Medina, the clerics [sheikhs] sought for an erudite person to lead the group; the lot fell on Ustaz Mohammad Yusuf, who later turned to accuse his appointees of not properly interpreting the Quran. In 2003, Mohammad Yusuf finally ousted the sheikhs on charges of corruption and failure to preach "pure Islam" (Chukwulaka, 2009). In 2004, it moved to Kanamma, Yobe State, where it set up a base called "Afghanistan"; the same year the group attacked nearby police outposts, killing some police officers and carting away police arms and ammunitions to create their own arsenal. Yusuf was bent to destroy the country's Western-imported institutions and was therefore hostile to democracy and the secular education system, vowing that "this war that is yet to start would continue for long" if the political and educational system was not changed (Al Jazeera, 2009). The organization sought for a government with defined territorial boundaries, within which it could practice its own religious and political ideology (Chukwulaka, 2009).

Yusuf attracted followers from the unemployed youths by speaking against political and police corruption. Boko Haram is seen by many as a Sunni Salafi Jihadist group (Cook, 2001). Salafi is known for strict Islamic practices. It rejects any innovations or modern influence on Islam. Boko Haram questions the notorious corruption among the political elite and the increasing poverty of the citizens over the past years in Nigeria. Corruption among the political elite exhibited in stolen elections had led to growing disenchantment with the Western system of governance particularly among the jobless young men (McConnell, 2009). Boko Haram intends to replace modern Nigerian state formation with an Islamic state, since western values [the pillar of the Nigerian state] corrupts Islamic ideas and beliefs. The ideological underpinning is that evil, present in Nigeria, is as a result of embracing the Western culture which can only be remedied by an Islamist state. But there is the other side of the coin. The Nigerian 1999 Constitution expects the leadership both at the federal and regional levels to harness the resources of the nation and promote national prosperity for the benefits of all the citizens based on equality of opportunity. Section 16(1) (b) specifically expects the leaders to "control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity".

It is therefore partly the failure on the part of the northern leadership and government to uphold the tenets of the constitutions as contained in sections 16 and 17 of the 1999 constitution that has produced the social upheavals and terror that confronts the country. This is what informed many analysts to argue that the principal cause of the zealotry of the Boko Haram is the systemic failure of the political leadership to solve the nagging problem of poverty in the land. Surprisingly while the Northern region might be the least developed in Nigeria, it is undoubtedly the region that has produced nine out of the fourteen Nigerian Heads of State between 1960 and 2013. The menace occasioned by Boko Haram is fundamentally a by-product of the anomaly in the Nigerian dysfunctional society where less than 10 percent garner the wealth of the nation to the detriment and resentment of the vast majority that lurch in poverty. Boko Haram thrived in the midst of a devastating poverty and unemployment. To reverse the trend, Yusuf encouraged the wealthy to make large donations for weapons and food, and for the poor to take part in the "divine vision" of the group and exercise their religious membership by surrendering themselves to the organization. In effect, some people sold their property to contribute to the coffers of fighting the cause of Allah to save Islam from the clutches of Western influences and domination (Abolurin, 2011:171). Besides the Nigerian members, Boko Haram attracts followers from the neighbouring states and in particular Niger, Chad and Cameroon. The group's leader, Malam Muhammad Yusuf, was killed on July 30, 2009 after he was captured by the army and turned over to the police in Maidiguri (BBC News, 2009). Yusuf's death gave rise to a more violent leadership under Abubakr Shekau in 2010. Shekau tied Boko Haram to the international jihad movement in his statements by adopting anti-American rhetoric and showing support for jihadists in the Sahel region, like Algeria, Iraq, Somalia and Yemen. Under Shekau, Boko Haram also stepped up its attacks in the country.

Operational Activities of Boko Haram

Two weeks after the death of Yusuf, Boko Haram declared its war against the Nigerian state in order to Islamize the country; to this effect, the insurgents promised to make the country ungovernable and asserted that "no force on earth can stop" their mission:

We have started a Jihad in Nigeria, which no force on earth can stop. The aim is to Islamize Nigeria and [to] ensure the rule of the majority Moslems in the country. We will teach Nigeria a lesson, a very bitter one.

From the month of August [2009], we shall carry out a series of bombings in Southern and Northern Nigerian cities, beginning with Lagos, Ibadan, Enugu and Port Harcourt. The bombings will not stop until Sharia is established and western civilization wiped off from Nigeria. We will not stop until these evil cities are tuned into ashes. We shall make the country ungovernable, kill and eliminate irresponsible political leaders of all leanings, hunt and gun down those who oppose the rule of Sharia in Nigeria and ensure that the infidel does not

go unpunished (Kamal, 2009).

In September of the same year Boko Haram attacked a prison in Bauchi, freeing some 700 inmates, including roughly 100 followers of Boko Haram (Walker, 2012). Boko Haram has never hidden its targets. Its aim is to destroy the presently constituted Nigerian state. To destroy the state, the group maintains its hostility against the police, soldiers, politicians and other symbols of state authority; they have also added the youth vigilante movements established to track the insurgents to their kill-list.

We have established that the youth in Borno and Yobe states are now against our course. They have connived with security operatives and are actively supporting the government of Nigeria in its war against us. We have also resolved to fight back (Premium Times, June 18, 2013).

In its resolve to dismember the country, Boko Haram has continued to perpetrate acts of violence including bomb blasts and suicide attacks against the State. The epitome of the attacks occurred on 16 June 2011 when the national police headquarters was bombed. The powerful explosion in the police headquarters is believed to be the first suicide bombing by the Islamist extremists in Nigeria. It ripped through the police headquarters car park, killing a police officer and the bomber, wounding several others and destroying dozens of cars (PM News, 2011). The penetration into the police headquarters was a demonstration of the group's capability to strike at any target of choice in the country. Two months later, Boko Haram attacked the United Nations (UN) office in Abuja on the 26 August 2011 through another suicide attack (Ndahi Marama, 2011). In November 2011, series of deadly attacks were launched by the insurgents in Maiduguri, Borno State and Potiskum, Yobe State. The sect targeted police stations, churches and banks in those attacks. Both the United Nations Security Council and the Organization of Islamic Conference were among the international groups that condemned the attacks. On 25 December 2011, the notorious 'Christmas bombings' was launched by the group in a church service at Madalla in Abuja (Nduka Nwosu, 2011).

Attacks on churches like St. Theresa's Catholic Church, Madalla, Deeper Life Church, Okene had resulted to the death of many civilians. Boko Haram intends to drive Christians out of northern Nigeria. In a January 2012 video statement credited to Boko Haram, Shekau called on Christians to repent and to know that "Jesus is a servant and prophet of God".

He [Jesus] is not the son of God. This religion of Christianity you are practicing is not a religion of God –it is paganism. God frowns at it. What you are practicing is not religion. Aside that, you Christians cheated and killed us to the extent of eating our flesh like cannibals! You did all you wanted to us. We are trying to coerce you to embrace Islam, because that is what God instructed us to do. Even at that, without provocation, you slaughtered us and took our wives and humiliated us! (...) [T]o you Christians, repent! This path we're taking is God's path" (Abubakar Shekau, 2012).

Between January and December 2012, Boko Haram-related attacks occurred in 14 of the country's 36 states, including all the 12 Sharia northern states, Plateau State and Abuja, the Federal Capital. Armed attacks by Boko Haram, led to the death of over 900 people in 2012, in about 290 separate attacks, making 2012 the deadliest year since the group began its attacks in 2009 (Ndujihe C, 2013). And before mid 2013, over 550 people have been killed in Boko Haram-related attacks and incidents. In August 2013, six months after an emergency rule has been imposed in Borno, Yobe and Adamawa states, thirty-five people, including two soldiers and a policeman were killed in two separate gunfights between security forces and members of the Boko Haram, in Borno State. The killings took place when the sect launched attacks on a riot police base in Bama, a town close to the Cameroun border, and the Multi-National Joint Task Force (MNJTF) base in Malam Fatori. Boko Haram launched a similar attack in Bama on May 7 2013, killing 55 persons, including 22 policemen and 14 prison officials. Arms and ammunitions of different categories were recovered from the insurgents during the counter attacks (Soriwei & Adepegba, 2013).

Foreigners and media houses were not spared in these attacks. On 16 February 2013, gunmen kidnapped seven foreign construction workers – a Briton, an Italian, a Greek and four Lebanese – in Jama'are, killing a security employee; six days before the kidnapping of the construction workers, three North Korean doctors were killed by the Boko Haram insurgents in Potiskum in northeastern Yobe State. The media houses attacked simultaneously by the blasts from the insurgents. include the Abuja office of This Day Newspaper, The Sun and The Moment offices in Kaduna.

On Schools: Boko Haram has owned its name by attacking public schools. Since Western education is a sin, the insurgents had unleashed jihad on the perpetrators of that sin. On July 2013, 29 students, and one teacher were murdered in Yobe state. The previous month, June 2013, nine students were killed in a private school in the Jajeri suburb of the city of Maiduguri. The same month, 13 people, including secondary school students and teachers, were killed when Boko Haram gunmen attacked a boarding school in Damaturu, the capital of Yobe state. Boko Haram burnt down countless number of primary schools in northern Nigeria. In addition, in late April, more than 16 people were killed in attacks on two Sunday services at Bayero University in Kano State. The administrative block of Gombe State University was not spared in these attacks (Arenyeka Laju, 2013).

Boko Haram's attacks on public schools started to yield fruits instantaneously. Governor Ibrahim Geidam of Yobe State, reacting to the series of massacres directed that "all secondary schools in the state be closed down from Monday July 8, 2013 until a new academic session begins in September (Arenyeka Laju, 2013). The government also ordered an indefinite closure of the University of Maiduguri, prompting many state governments including Kaduna, Edo, Ondo, Ogun and Lagos to evacuate their citizens, especially students, from the state.

Governmental Response

Boko Haram's defiance of the Nigerian state is demonstrated by its relentless attacks on policemen and soldiers. In many instances prisons had been assaulted and the inmates freed. Initially, the government watched feebly as the insurgents terrorized the nation. The perplexed President Jonathan lamented that the dreaded Islamic sect, Boko Haram, had infiltrated his government. He claimed some of members of the group, were in the executive, legislative and judiciary arms of government as well as the police and armed forces. Since the insurgency has seriously challenged the capacity of the government to secure the nation, the administration believes its fight against the terrorists must be multidimensional. Both military and non-military measures were deployed in fighting the insurgents.

Military Measures

As Boko Haram has threatened Nigeria's sovereignty, its citizens and basic human rights provisions, the responsibility of the state to protect its sovereignty and its people has been challenged. To this effect, President Jonathan who earlier had been severely criticized for his tepid approach to the Boko Haram insurgents finally imposed a state of emergency in the three Northern states of Yobe, Borno and Adamawa where the terrorists' activities had been most pronounced. The state of emergency was a military response to the spate of terrorist activities. It did not in any legal or constitutional sense affect the position or legitimacy of the state governors. The states were not taken over by the Federal Government. They remain governors and will continue to perform their functions as governors (Dapo Fafowora, 2013). Though state security had never been the responsibility of the governors, but that of the Federal Government, the strict imposition of curfew makes a lot of difference. To achieve the purpose, Joint Task Force code named Operation Restore Order and the Special Task Force also known as Operation Safe Heaven were established. Nigeria's military attacked Boko Haram Islamist strongholds across the northeast, launching counter air strikes on the insurgents. The operation is the largest against Boko Haram since 2009, the very year Yusuf was killed in a faceoff with the police. Soldiers surrounded the town of Krenuwa in Marte district, also in northern Borno and one of the areas where Boko Haram has taken power, chased away all government officials and removed the Nigerian flag (Vanguard, May 17, 2013). The military measures have been taken; there is doubt that the insurgents will be crushed within the stipulated time. "I want an end to the Boko Haram (sect) within the next three months" (Bayo Oladeji, 2013) remains a presidential dream.

Meanwhile, as the three months target has expired without accomplishing the objective, Nigeria has established a Special Military Division to fight the insurgents. The takeover of the operations by an Army Division means that the Nigerian Army will now be solely in charge of the operations, even though it remains under the routine guidance of the Defence Headquarters. Code-named Operation Boyona, Maiduguri is the headquarters of the new army division (Africa Eagle, 20 Aug 2013). Caging Boko Haram militarily has been a tough work for the Nigerian army. Army spokesman, Brigadier General Attahiru attested that "nobody is going to say the entire campaign being executed is a very simple operation. It is quite complicated... The entire process of fighting terrorism cannot be over simplified because essentially, it is asymmetric warfare. But one thing with warfare is that you cannot run away from challenges" (Omonobi, K 2013). Besides the challenges, the Nigerian military has been accused of human rights violations.

Some media houses have reported the death of hundreds of people in military detention from shootings, suffocation or starvation as Nigeria's security forces battle the Islamic uprising in the northeast. Amnesty International claimed that more than 950 people died in military custody in the first six months of 2013. Among other allegations in the report, which includes testimony from freed detainees, some prisoners "were reportedly shot in the leg during interrogations, provided no medical care and left to bleed to death." If the report by Amnesty International is accurate, that means Nigeria's military has killed more civilians than the Boko Haram extremists did during the first half of 2013 (World Digest 15 Oct 2013). Besides the humanitarian concerns, Nigeria has spent well over N1 trillion in the fight against the Boko Haram and other terrorist groups in the country since 2009 (Africa Eagle 23 Aug 2013).

The Nigerian Senate has extended the emergency rule to another six months. Extensions encourage anti-democratic structures, particularly by restraining the individual rights and freedom of suspects. Counter terrorists efforts adds to refugee problems. According to a report from the UN Office for Humanitarian Affairs (OCHA), "37,332 people fleeing clashes in the states of Borno, Yobe and Adamawa in the north of Nigeria (...)

have been registered in Diffa, southeast Niger”. The number of refugees fleeing to Niger has increased six fold since June, a month after the imposition of the state of emergency in order to crush an insurgency that has left thousands dead (PM News, Nov 2013). Borno, Yobe and Adamawa states in north east Nigeria lie along the border with Niger. The war against Boko Haram is yet to be won. On Monday, December 2, 2013, Boko Haram assumed a new turn as members of the sect set ablaze two aircrafts belonging to Nigeria’s Air-force base in Maiduguri, Borno State. A similar attack also was carried out by the sect at a Police Barracks in Maiduguri (Agbambu, 2013). The Nigerian government has taken non-military measures in order to curb the Boko Haram insurgency. These include:

Expulsion of 19,000 aliens over Boko Haram

Nigeria’s Minister for Interior, Mr. Abba Moro has disclosed that the Federal Government has deported over 19,000 illegal immigrants. He said the illegal persons came into the country through porous border inlets. Moro asserted that the deportation was part of the measures adopted by the government to check the incursion of strangers into the country and to further contain the security threat posed by Boko Haram (Emewu, 2013). The expulsion of aliens is taking place in tandem with Nigeria’s porous borders. Nigeria’s Inspector General of Police, M D Abubakar, has declared that his country has the most porous borders in the world (Omonobi, 2013). The existence of ill-delimited and un-demarcated border frontiers between Nigeria and her West African neighbours obviously affects the utility of this measure. Moreover, this measure contradicts the Economic Community of West African States (ECOWAS) policy that has moved to liberalize trade by gradually reducing restrictions on the movement of goods, services, and people between member states. Nigeria is a member of the ECOWAS and hosts the secretariat.

Building of Almajiri Model Schools

The government is aware that the Almajiri system has remained an important and a cheap source of recruiting membership for the Boko Haram. Almajiri school is “an ancient tradition. [In it] poor families from rural areas across West Africa send their children to a network of Islamic boarding schools in the cities of northern Nigeria” (Emelike, 2013). The schools provide cheap education and in turn indoctrinate the pupils with a radical interpretation of Islam; thus from childhood, an ideological orientation that divides the world between true believers and infidels is instilled to the youths. It is against this backdrop that the Almajiris has come to be instruments of sectarian violence, biddable pawns in the hands of mischief makers. In numerous, episodic and seemingly unprovoked attacks in the North, these Almajiris have been freely unleashed against people,”(Purefoy, 2010). The government is building 400 Almajiri Model Schools across the 19 Northern states; 124 of such schools started in September 2013. The building of model Almajiri schools is geared towards remodeling and integrating the Qur’anic learning system into Nigeria’s mainstream educational system (Kumolu, 2012).

Amnesty

As most of the measures taken by the government to curb the Boko Haram menace have defied solution, the government has been pressurized by the northern leaders to granting an amnesty to the insurgents. The quest for amnesty is a call for the forgiveness of wrongs done to the state by Boko Haram. It is a call that says the perpetrators of the Boko Haram killings should be rewarded with compensation while their victims are ignored. The government in response set up a committee to work out the modalities for granting amnesty to members of the sect and a framework through which disarmament[of the sect] could take place within a 60-day time frame (jaguda.com, 2013).

The call for amnesty to the Boko Haram insurgents has heightened national discourse, to the extent of dividing the country; it is a call that has questioned the delicate ethnic and religious composition of the country. On the one hand, the Muslim Rights Concern, a religious non-governmental organization is of the opinion that the granting of amnesty to members of the Boko Haram remains the only option available to the Federal government to curb the insurgency in the North. “We believe that the Nigerian president is now thinking like the president of the whole country. Only by granting amnesty to the Boko Haram can the president reposition the country for peaceful coexistence (Sani Tuku, 2013). It is yet to be understood whether the ideologically driven Boko Haram will accept the principle of coexistence, particularly outside its Islamic doctrinaire. On the other side of the discourse is the leadership of the Christian Association of Nigeria that has challenged the institution of the amnesty committee. The association, whose members have been the primary targets of Boko Haram attacks, has queried the wisdom of granting amnesty to a group that is responsible for the killing of people, most of who are Christians (The Sun, April 14, 2013). Other Nigerian observers frown at the governments parley with the Boko Haram. It has been established that “the sect is ready to take head on the Nigerian state. The demands that it has made so far are pointers to the fact that the sect is highly contemptuous of constituted authorities. Whatever the enormity of grievances is, it is high time to make the sect realize that it is not above the law, its wings of pride shall be clipped for good (The Nation, June 26, 2011). Boko Haram is unlike the Niger Delta

militants that were confined to the Delta region. In Boko Haram's case, membership of the group is uncertain and the insurgents have found themselves in all the northern states of the country.

Amnesty is an executive prerogative as contained in section 175 of the 1999 Constitution. Though the president can exercise prerogative of mercy, are terrorist groups bent on destroying the very fabric of nationhood entitled to the largesse? Any effort towards granting amnesty to the Boko Haram sect can lead to anarchy in Nigeria. The consequences are obvious. Many rebellious and criminal groups will surface to terrorize Nigerians with the hope of being granted an amnesty. It is against this background that the National Assembly has criminalized terrorism.

The Anti-terrorism Act

Terrorism is viewed as a crime whether at the national, regional or global levels. At the regional level, Nigeria spearheaded passage of the New ECOWAS Counter Terrorism Strategy. Nigeria is a member state of the United Nations. With the other member states, the General Assembly adopted in September 2006, The United Nations Global Counter-Terrorism Strategy. This Strategy comprises a Plan of Action, including condemnation of terrorism in all its forms and manifestations as it constitutes "one of the most serious threats to international peace and security" (Resolution 60/288). At the national level, the Anti-terrorism Act has been passed. The Nigerian Terrorism (Prevention) Act, 2011 seeks to provide measures for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism in Nigeria; it also prescribes penalties for violating any of these provisions. But the problem is whether the provisions of The Nigerian Terrorism (Prevention) Act, are adequate in addressing the Boko Haram insurgency. Ironically, there are no provisions to prevent people from turning to terrorism by tackling the factors or root causes of terrorism such as economic deprivation, unemployment and religious fundamentalism. From the judicial angle, the only court with jurisdiction over terrorist related offences is the Federal High Court. Considering the present congestion of the Federal High Court and the number of years it takes to get judgment, it is expected that the Act should have made provisions for the establishment of special courts specifically for trial of terrorists and terrorism related matters. Boko Haram and other insurgents are constantly improving their techniques to outwit the governmental measures. MD Abubakar, Nigeria's Inspector General, aptly describes the frustrations encountered by his police unit in the fight against Boko Haram;

Terrorism is not something you can exterminate, and you know that nobody can exterminate crime anywhere in the world...In the war against terror show me any country that has fought crime and said it is finished., no more terrorism anywhere. There isn't any country, including the United States, where they have the best facilities, the best trained officers and equipment (Omonobi, 2013).

Abubakar regretted that officers and personnel of the security agencies, the police, the military and paramilitary agencies are dying daily in their belief that Nigeria must remain united by defeating the Boko Haram insurgents. He affirmed that these military officers will continue to do everything to protect the country. In viewing terrorism as a crime, it is expedient to understand the working relationships of all the agencies: the police, the court and the prison. The police are responsible for dictating the crime and apprehending people who violate the criminal law; the courts decide the guilt or innocence, and sentence those who are convicted or those who plead guilty; and the prisons as correctional institutions carry out the sentence of the court and rehabilitate criminals. The police provide the entry point into the criminal justice system either through crime reports from the public or its own discovery (Abdul-Rahman Dambazu, 2011: 177-178). The fight against terrorism requires that a combination of anti-terrorism, counter-terrorism and other measures be adopted to at least ensure some containment of the menace. It is against this backdrop that a criminal tribunal is recommended.

The Case for Criminal Tribunal

The 2011 Nigerian Terrorism Prevention Act examined in the previous paragraph, carries a prison sentence of not less than 20 years for those suspected of aiding terrorists; it indeed has added an important criminal justice dimension to the fight against the Islamist fundamentalists. Boko Haram insurgency is a breach of Nigeria's constitutional and criminal laws. The breaches can be classified into acts of murder, treason and crimes against humanity, since the insurgents have violated the basic human rights of Nigerians. These breaches as outlined hereunder, justify the creation of a special criminal tribunal to try terrorists and terrorism related matters. It also violates an international statute which the International Criminal Court has jurisdiction. It is against this backdrop that the following breaches are examined.

(a) Murder: Many unarmed Nigerian civilians have been killed unlawfully by Boko Haram. Murder is a criminal offence as defined in Sections 315 and 316 of Criminal Code of Nigeria. It also violates Section 33(1) of the 1999 Nigerian Constitution which provides that "every person has a right to life". Section 316(1)-(3) of the Criminal Code is specific in what constitutes the offence:

Except as hereafter set forth, a person unlawfully kills another under any of the following circumstances that is to say; (1) If the offender intends to cause the death of the person, or that of some other person, (2) If the offender intends to do to the person killed or to some other person some grievous harm; (3) If death is caused by means of an act done in prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life.

Besides civilians, many security operatives such as police officers, soldiers, custom officers and prison officials have been murdered through the activities of Boko Haram.

(b) Treason: Is an act viewed with all seriousness by the Nigerian state; treason is any offence which tends to threaten state's stability or safety by acts of levying war against the State. In section 37 of the Criminal Code, it is an offence for any person to levy war against the State in order to intimidate or overawe the President or the Governor of a State. This is covered under section 410 of the Penal Code. The punishment for treason is death. Borno, Bauchi, Kano, Yobe and the Federal Capital Territory Abuja are among the territories Boko Haram has traumatized with bombings and other terrorist acts. The intention is to make Nigeria ungovernable.

There are many instances foreigners have aided the invasion by Boko Haram in contravention to Section 38 of the Criminal Code, which precludes "instigating invasion of Nigeria." "Any person who instigates any foreigner to invade Nigeria with armed force is guilty of treason, and is liable to the punishment of death." Many nationals from Niger Republic, Chad, Cameroon, Iran and Lebanese Hezbollah have been incriminated in these dastardly acts of criminality. These illegal acts by aliens informed the deportation of some of them by the Nigerian government.

(c) Section 10 of Nigeria's constitution prohibits in an unambiguous manner the adoption of State religion. Oblivious of the secularity of the Nigerian state, Boko Haram wishes to forcefully Islamize the entire country. Thus, another form of constitutional violation is derived from the doctrinal ambition of Boko Haram. Religious jihad as outlined by Boko Haram contravenes Section 38 (1) of the 1999 Nigerian Constitution which provides that "every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in conveniently with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance".

In its bid to achieve its ideological ambition, Boko Haram targets civilian "unbelievers" of the society, with the hope of making paradise. Killing unarmed civilians purely on religious grounds has attracted the watchful eyes of the International Criminal Court, the international judicial institution that has jurisdiction on war crimes, genocide, and crimes against humanity. A report issued by the office of ICC Prosecutor Fatou Bensouda, has found a reasonable basis to believe that Boko Haram committed the acts of murder and persecution in furtherance of its organizational policy of attacking civilians. The scale and intensity of the atrocities have increased over time. These attacks constitute crimes against humanity (Vanguard, August 06, 2013).

The ICC stated that it was now assessing whether the national authorities are conducting genuine proceedings in relation "to those who appear to bear the greatest responsibility for such crimes, and the gravity of such crimes" (hrbrief.org, 2012). Has Nigeria the judicial institution and capability to try the Boko Haram members?

As observed earlier, there is the urgent need to create special criminal tribunal with jurisdiction over terrorism and terrorist related matters. This special criminal court will enhance the examination of the root causes of terrorism in Nigeria. Terrorism though an age long problem, is one of the newest criminal offences in Nigeria, with very few legal precedents. Unlike the situation in the presently constituted High Courts, a well staffed and equipped special tribunal will help speed up the prosecution of terrorist suspects. The tribunal will also help restore confidence between prosecutors and police officers; instances abound when some police and military officers were accused of human rights abuses and the extrajudicial killing of terrorist suspects. Equally, the 2011 Anti Terrorist Act will be implemented through the establishment of these special criminal tribunals.

A special criminal tribunal to try Boko Haram members will end the impunity associated with the group. The impunity is articulated by President Jonathan in a graphic manner: "What we are facing is not just militancy or criminality." [It is] "a rebellion and insurgency by terrorist groups which pose a very serious threat to national unity and territorial integrity. We will hunt them down, we will fish them out, and we will bring them to justice." (sharpedgenews.com, 2013). This declaration does not give room to amnesty. It is a rejection of the idea of talking with the Boko Haram insurgents, as a necessary step toward defeating them. It is a renewed call for the establishment of special criminal tribunal to bring the Boko Haram insurgents to "justice".

Conclusion

Nigeria is the most populous country in Africa, with about 160 million inhabitants. The population is relatively young. Greater number of the youths is unemployed, even with their university degrees. Despite the enormous

wealth from oil proceeds, about 70% of the population lives below the poverty line. The country's wealth has not been spent to fight the pervasive poverty and inequality between the haves and have not's. The country's enormous wealth has been siphoned through a mismanaged economy and pervasive corruption. The Transparency International's Corruption Perceptions Index 2012 testifies to this statement. In that report, Nigeria occupies the 139th position on a list of 176 countries. This makes Nigeria the 35th most corrupt in the world (Abdulrahman Abdulmalik, 2012). In the midst of pervasive poverty, Nigeria is known for its weak institutions. The legislative house as an example is almost the highest paid in the world. While a country like Pakistan, for instance, pays its lawmakers \$3,500, Bangladesh pays \$4,000 and Sri Lanka pays \$5,100, Nigeria pays \$189,500 (about N30 million) in average annually to each Senator or member of the House of Representatives; the salary excludes the jumbo allowances the legislators pay themselves. (Ini Ekott, 2013). This makes Nigeria's national legislative house, the highest paid besides Australia in the entire world. It is a source of wonder how lawmakers in poorer countries in Africa and in particular Nigeria should enjoy the heftiest salaries in the world (The Economist, 2013). Is there any wonder why the populace is aggrieved? In the Northern part of the country, the aggression has found an expression in Islamic jihad, bent on destroying the western culture that introduced the apparent inequality into the country.

Be that as may, the article focuses on how to deal with the Boko Haram menace. Is granting amnesty to the insurgents the most viable path to peace? Talks with Boko Haram are not cheap. Initiating talks with Boko Haram leadership has proved difficult. This study recommends the institution of a criminal tribunal to checkmate not only the atrocities of Boko Haram but also, the excesses of corrupt elite that has inflicted untold hardship to millions of Nigerians.

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