Violation of International Humanitarian Law by Parties to the Armed Conflict in the Northeast Nigeria

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ABSTRACT
The armed conflict in North–Eastern Nigeria dates back to 2009 when the Islamist insurgent movement Jama’atu Sunnah Lida Awali Wali Jihad popularly called Boko Haram waged a violent campaign against the Nigerian State. The Nigerian Security Forces reacted by taking the war to this set in defence of the nation and its people against internal aggression through counter–insurgency strategic combat. The conflict has spread and intensified in dimension as a result of different factors. This work exposes the phalanges of violations perpetrated by all the parties in their zest to prosecute or continue the prosecution of this armed conflict. It argues that these reproachable breaches deserve accountability and punishment in compliance with the principles of international humanitarian law and in accordance with the provisions of the Rome Statute of the International Criminal Court.
Keywords: International humanitarian law, Boko Haram, Nigerian Security Forces, violations, armed conflict.

INTRODUCTION
Boko Haram emerged as a local Islamic radical Salafist group which transformed into a Salafi–jihadist organization after 2009.¹ Boko Haram was founded by Yobe state born Muslim Cleric, Mohammed Yusuf in 2002 with its headquarters in Maiduguri, Borno State. Boko Haram, is not only opposed to interaction with the western world which it forbids in its teaching, it is also against the muslim establishment and government of Nigeria. In pursuit of their objectives, they initially fought for the establishment of a Sharia government in Borno State under the regime of Senator Ali Modu Sheriff as Governor. However after 2009, subsequent to the murder of their founder, their aim was directed towards the Islamisation of the entire country – Nigeria. After the killing in police custody of Mohammed Yusuf on July 30, 2009, Boko Haram declared war against the state of Nigeria. The sect carried out monumental and horrendous attacks that shocked the conscience of the world. These attacks resulted in massive and unspeakable fatalities.
In response to the Sect’s macabre actions of murder and madness, the Nigeria Security forces typically engaged the policy of “revenge”. There was massive state murders and destruction of properties of both Boko Haram members, sympathizers and a motley huge number of innocent civilians. The Nigerian military forces committed various humanitarian law violations, war crimes and acts which constitute crimes against humanity.² Also Military Forces have carried out numerous extra–Judicial executions of suspected Boko Haram members and sympathizers. In many cases arbitrary arrests are made and in many

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cases the arrests were made without reasonable suspicion or without investigations. Torture and other ill-treatment by the police and security forces were widespread. Demolitions of informal settlements led to the forced eviction of thousands of people.\(^3\) \textit{Boko Haram} sect and the Nigerian Military Forces have continued to commit war crimes and crimes against humanity in North–Eastern Nigeria. They have both committed various violations of international humanitarian law and must be held to account for same in order to fight impunity.

The fighting in the North–Eastern Nigeria has reached the threshold of a non–international armed conflict. Non–international armed conflict has been defined as ‘conflict of armed confrontation occurring within the territory of a single state and in which the armed forces of no other state are engaged against the central government…’\(^4\) Again, it has been defined as:

\[\text{… armed conflicts … which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations…}\(^5\)

Also, in 2013, the office of the Prosecutor in International Criminal Court (ICC) determined the fighting in North–East Nigeria to have attained the threshold of non–international armed conflict. Nigeria became a state party to the Rome Statute on 27 September 2001 and as such under the jurisdiction of this court. The court has jurisdiction over crimes allegedly committed by all the parties in the North–East conflict. In a situation of Non–International armed conflict, Nigeria remains bound by its obligations under international humanitarian law and other armed conflict and international human rights treaties.

\textit{Boko Haram} Combat Activities

\textit{Boko Haram} atrocities, intensified violence and violations of laws of armed conflict went on crescendo. The sect indiscriminately killed civilians, abducted women and girls, forcibly conscripted young men and boys and destroyed villages, towns and schools. It also tortured, raped and forcefully took girls into marriages.\(^6\) The sect perpetrated killings, razed and looted homes, businesses, schools, churches, markets and health facilities in Borno, Yobe and Adamawa States. Since 2009, there have been about 6,000 civilian deaths perpetrated by \textit{Boko Haram}. Within the same time, the sect has destroyed at least 211 schools in Borno state alone, and abducted more than 500 women and girls from the Northeast, of which at least over 100 either escaped, were rescued by Security Forces or were released by them. Some abductees suffered other abuses as sexual violence, forced marriage or and force conversion.\(^7\) In the largest abduction, the sect captured 276 female students from a secondary school in Chibok, Borno State. Out of this figure, 219 school girls are still in captivity. The sect massacred more than 100 male students in Buni Yadi and Potiskum, Yobe State. \textit{Boko Haram} combatants have continued to attack towns and villages without military presence. The sect has frequently rounded up residents, shot those who tried to escape and executed men and boys. It also vandalized any supplies they needed and set fire to peoples’ homes, shops and markets as earlier stated. One of the most lethal attacks occurred on 2 July, 2015 when

\(^5\) Article I (Part I) Additional Protocol II
\(^7\) Human Rights Watch, \textit{Ibid}; 3
the sect killed in Kukawa town, Borno State. The sect ordered residents out of their homes and assembled approximately 58 people outside the village heads house. They told the people to lie down on the street and shot them. They set fire on buildings before finally leaving. Bomb attacks also continued to kill and cause injury to civilians across the North–East Nigeria. They have routinely targeted locations with no military objectives. Since the start of 2015–2016, there have been over 14 bomb attacks which killed over 222 civilians. Young women and girls are used by the sect as suicide bombers in different attacks. Also cities in Borno and Yobe states have suffered regular bomb attacks. In Maiduguri, a bomb at an abattoir killed at least 12 people on June 2, 2015. Bomb attacks at Baga Road Motor Park on 3 and 22 June, 2015 killed at least 16 civilians. On 31 July, 2015, a bomb on a motorized tricycle exploded in traffic near Gamboru Market Maiduguri and at least 4 civilians died in the explosion. Again, more than 75 civilians were killed in four explosions at a Mosque and viewing centre near Ajilari Cross, Maiduguri on 20 September 2015 and same at Onion Market in Monguno, Borno State. In Damaturu, Yobe State, a bomb killed at least five worshipers celebrating the end of Ramadan on 17 July 2015 and about 17 people died as they queued to enter Damaturu main market. Later on August 25, 2015, a bomb at the central bus station killed about 5 civilians and 8 worshippers inside the Redeemed Church in Potiskum were also killed by a bomb.

*Boko Haram* used Improvised Explosive Devices (IEDs), including car bombs, and suicide bombers to kill. The sect raided towns and villages in North–East and terrorized civilians and disrupted ordinary people’s livelihoods. Some attacks were carried out by just two or three gunmen on a motorcycle, some by hundreds of fighters who shot civilians in the streets and in their homes. In some attacks, the sect quietly entered villages or towns and assassinated specific individuals identified in advance. On 6 August, 2014, *Boko Haram* attacked Gwoza, Borno State. They overran the 350 soldiers stationed in Gwoza and killed at least 600 civilians. Thousand of residents fled Gwoza and hid for several days in nearby mountains, waiting for the sect to leave. However, instead of leaving, over the following day, *Boko Haram* hunted down and executed people they found hiding in the mountains.

Since at least May 2013, the situation in North-East Nigeria has constituted a non–international armed conflict. In this context, *Boko Haram* is bound by international humanitarian law. From the concatenation of accounts rendered herein, *Boko Haram* has committed serious violation of IHL amounting to war crimes and crimes against humanity. These include murder, attacks on civilians and civilian objects, indiscriminate and disproportionate attacks. Included are torture, rape, sexual violence, sexual slavery, forced marriages and recruitment of child soldiers. *Boko Haram* attacks also constitute a wide–spread, as well as systematic attack on the civilian population in furtherance of an organizational policy. The sect has committed crime against humanity (torture, persecution, imprisonment, rape, enslavement, and sexual slavery).

**Nigerian Security Forces**

Nigerian Security Forces was constituted to respond with lethal power to the *Boko Haram* insurgency in the North–East of Nigeria. In consequence to that about 4 (four) major operations were set up to combat the sect. From June 2011 until May 2013, Operation Restore Order I (ORO I) was the first to be constituted. Under the above banner, a Joint Task Force (JTF) of 4,000 personnel strength comprising the

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Military, police and members of other security forces\textsuperscript{16} was established to serve in Borno State. In Yobe State, ORO III was formed in December 2011 to August 2013. This troop had about 2,000 men. ORO I was replaced by operation BOYONA which covered Borno, Yobe and Adamawa States.\textsuperscript{17} Operation BOYONA was launched when the state of emergency was announced in May 2013 and had some 10,000 troops. Both ORO I and its successor operation BOYONA reported to the Chief of Defense Staff.\textsuperscript{18}

In June 2013, the Borno State government constituted civilian militia which was code named ‘Civilian Joint Task Force (CJTF)’. Its duty was to work with the security forces in Borno State by identifying and helping to arrest \textit{Boko Haram} members.\textsuperscript{19} This militia consists of boys and young men between the ages of 14 and 35, paid for their services by the Borno State government and trained at the National Youth Service Corp camp by the military and Mobile Police. The Militia’s strength is about 1,700 registered and being monthly remunerated by the government. There are in addition thousands of other unregistered militia groups who assisted the Nigerian Military in their expedition. Initially, this militia group had no lethal arms rather they armed themselves with sticks and machetes. However since 2014 they armed themselves with locally made guns standing at various checkpoints.\textsuperscript{20} Civilian JTF members play a key role in “screening” operations and mass arbitrary arrests, in beatings and killings of detainees after arrests. The military relied heavily on this militia for its successful operation in the North–East. For instance, in its August 2013 report, the army’s Joint Investigation Team (JIT) mentioned the contribution of the Civilian JTF to the success of military operation:

\begin{quote}
The involvement of these youth volunteers crowned the operation with success not envisaged in the past. Their efforts complemented that of the JTF which brought substantially sanity, restoration of social and economic activities to Maiduguri metropolis.\textsuperscript{21}
\end{quote}

\textbf{SECURITY FORCES CONDUCT OF OPERATIONS}

Government security forces response to \textit{Boko Haram} violence in the North–East was legally abominable as they eroded and fretted away the golden principles of humanitarian law. The Nigerian Military forces in conjunction with its Civilian JIF routinely abused \textit{Boko Haram} suspects, tortured them and held them incommunicado in abusive detention conditions without charges or trial. When \textit{Boko Haram} attacked the Giwa Military Barracks in March 14, 2014, in Maiduguri freeing over one thousand inmates, the Nigerian Security Forces recaptured the Barracks and then rounded up and shot more than 640 escaped detainees. The Civilian JTF assisting the security forces to combat \textit{Boko Haram} are implicated in the recruitment and use of child soldiers. Amnesty International Report revealed that not less than 7,000 people had died in military detention as a result of starvation, thirsty, extreme overcrowding that led to wide spread disease, torture and denial of medical assistance, as well as the use of fumigation chemicals in unventilated cells. Over 20,000 were arbitrarily arrested while about 1,200 were extra-judicially executed by the military in collaboration with the Civilian JTF.\textsuperscript{22}

\textsuperscript{16} The other security services included Department of State Security (DSS), Nigeria Immigration Services (NIS) and Defense Intelligent Agency (DIA).
\textsuperscript{17} The acronym was derived from the names of the three states.
\textsuperscript{18} Amnesty International, “Stars on their Shoulders. Blood on their Hands” War crimes committed by the Nigeria Military, \textit{ supra}, 22
\textsuperscript{19} \textit{Ibid}, 24
\textsuperscript{20} \textit{Ibid}, 25
\textsuperscript{22} Amnesty International, ‘Stars on their Shoulders. Blood on their Hands…’ \textit{supra}
The Nigerian Security Forces have committed war crimes and crimes against humanity in its response to Boko Haram insurgency. These were constituted by the shocking levels of deaths in military custody, extrajudicial executions, torture, unlawful detention and arbitrary arrests by the military.  

**Humanitarian Law Violations Committed**

The office of the Prosecutor at the International Criminal Court at The Hague, identified Eight (8) cases of crimes against humanity and war crimes under Article 7 and 8 of the Rome Statute, perpetrated by both Boko Haram and the Nigerian Security Forces. Six of those crimes were by Boko Haram while two were by the Nigerian security forces.

**BOKO HARAM**

The Prosecutor’s report held that Boko Haram’s policy of indiscriminate attacks on civilians constituted the first instance of crime against humanity.  

**Crime Against Humanity**

(a) **Attack On Civilians**

This case includes attacks conducted against civilians when taking control of towns and villages as well as bomb attack launched against civilians in civilian areas. Article 7 of the Rome Statue defines crime against humanity as:

- any of the following acts when knowingly committed as part of wide spread or systematic attack directed against any civilian population: murder, extermination, enslavement, deportation or forcible transfer of a population, imprisonment or sever deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy etc…

Since July 2009 Boko Haram launched a widespread and systematic attacks against civilians pursuant to an organizational policy. Boko Haram combat activities as graphically described earlier met the definition of Article 7 and as such accountable to these crimes pursuant to the Rome Statute provisions.

(b) **Detention and Deprivation of Liberty**

Boko Haram detains thousands of civilians in its camps and in towns under its control in Borno State including Sambisa Forest around Lake Chad and near the Gorsì Mountains in Cameroon. Also in Bama town, hundreds of men were reportedly held by Boko Haram in the town’s prison for several weeks before being executed.

(c) **Schools and Educational Building**

The third instance of crime against humanity against Boko Haram is the propensity of attacking schools and other educational buildings as well as attacks on students and teachers. School buildings were bombed, attacked with firearms and or burnt down. “Between January 2012 and October 2013, 70 teachers and more than 100 school children and students were reportedly killed or wounded. In May 2014, Nigerian Union of Teachers reported that at least 173 teachers had been killed between 2009 and 2014. At least 50 schools were either burned down or badly damaged and 60 more were forced to close.

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23Ibid.
26Ibid.
down. In March 2014, the Borno State government decided to close all secondary schools in the state in order to protect students and teachers from further attacks. This also constitutes war crime.

(d) Recruitment of Child Soldiers
The sect’s policy of recruiting child soldiers constituted another instance of commission of war crime and crime against humanity. Boko Haram abducted boys and girls as young as twelve (12) years and pressure these youngsters to join their group by threatening their families. Some families are given case payments and others recruited through Islamic Schools. Most of the children are used for intelligent gathering, tracking the movements of enemy forces, transportation of weapons and for participating in the attacks including the torching of buildings dedicated to education and religion.

(e) Abduction and Attacks on Girls and Women
According to the Prosecutor of ICC, the sect’s attacks on girls and women constituted crime of against humanity. The increasing attacks on female subjects were for punitive reasons such as attendance of school and for cooking, cleaning and other operational reasons. The most notable instance of this crime was the abduction of 276 girls from Government Girls Secondary School in Chibok, Borno State on 14 April 2014. In addition to the above was the increasing use of women and girls as suicide bombers.

(f) Attacks on Places of Worship
The ICC report held that the sect’s incessant attacks on places of worship constituted a commission of war crime offence. This was by intentionally targeting buildings dedicated to religion, such as churches and mosques. The number of destructions of civilian buildings including churches and mosques had seen been resonating and in intensity from January 2014 and until late 2015.

State Military Forces
The ICC alleged that the Nigerian Security Forces Committed crimes against humanity and war crimes by its indiscriminate arrest, detention, torture and extrajudicial killings of people suspected to be members of Boko Haram or its sympathizers. There was horrendous and staggering number of arbitrary targeting and arrest by the state forces. These incidences happened in Borno, Yobe and Adamawa States since 2009.

(a) Arbitrary Arrest and Unlawful Detention
There have been mass arbitrary arrests and detention by Nigerian Security Forces since 2009. Soldiers have arrested people without reasonable suspicion that they have committed a crime. According to military source, between January 2012 and July 2013, more than 4, 500 people have been arrested. The civilian detainees were held in Giwa and Mai Malari barracks in Maiduguri, and in the Multinational JTF facility in Mile 4, Baga, in sector Alpha (“Guantanamo”), Presidential Lodge in Damaturu and the JTF base (“Rest House”) in Potiskum (Yobe State) and in 23 Brigade Barracks in Yola (Adamawa State).

(b) Torture
Torture is routinely and systematically used by the Nigerian Security Forces to extract confessions or as a form of punishment. Former detainees described being beaten, suspended from metal poles and shocked with electric batons by soldiers among other methods. Victims of torture or other ill–treatment rarely have access to medical assistance and many die as a result of their injuries.

(c) Extrajudicial Killing
It has been noted of the numerous condemnable and atrocious incidents of extrajudicial killing and executions carried out by the security forces of government in the North–East. At least about 27 of those

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27 Ibid.
28 Ibid.
29 Ibid.
30 Amnesty International “Stars on their Shoulder…” ibid 75–85
32 Ibid.
incidents are recorded that were committed between 2012 and 2014. At least 1, 200 men and boys were killed in these incidents. These individuals were killed by Nigerian Security Forces after capture and when they presented no danger, in gross violation of international humanitarian law (IHL). One of such horrific mass extrajudicial executions occurred on 14 March, 2014 in Maiduguri, Borno State. This happened after the attack by Boko Haram on the military detention facility at Giwa Barracks during which detainees were released. Nigerian Security Forces slaughtered about 649 men and boys who ran away from Boko Haram attack and were recaptured. In many occasions most of these executions are carried out by the military in collaboration with the civilian JTF members. Again, in Bama, after the security forces took over in March, 2015, shot and killed everyone who was not cleared by the Civilian JTF as a resident and who has no link or sympathy to Boko Haram. Extrajudicial executions of members of Boko Haram suspects and sympathizers were routine practice for the Nigerian Military. This is for persons who were captured and who presented no more danger. Others uncountable were shot dead inside detention facilities, while others were either shot or had their throats cut right after being captured during cordon–and–search operations.

(d) Deaths in Custody
The Nigerian Security Forces have been responsible for various deaths of detainees in detention facilities scattered in the North East. Since March 2011, more than 7, 000 men and boys have died in detention facilities. The highest death rate was recorded in Giwa Barracks in May, June and July 2013 when about 180 deaths were reported. The major causes of deaths in detention were starvation, thirst, severe overcrowding that led to spread of disease, torture and lack of medical attention, and the use of fumigation chemicals in unventilated cells. According to High Commissioner for Human Rights, evidence found that ‘… detainees were deprived of food and water and kept in overcrowded conditions which resulted in death’.

LEGAL RESPONSIBILITY FOR VIOLATIONS
At the present, there is consensus that the confrontation in the North East Nigeria has reached the threshold and is therefore denominated non–international armed conflict (NIAC). Thus parties to this conflict (Nigerian Security Forces and Boko Haram combatants) are responsible for any violation of international humanitarian law. Serious violations of international humanitarian law constitute war crimes and thus entail individual criminal responsibility. Certain crimes, when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack constitute crimes against humanity, which also warrant individual criminal responsibility. The major sources of international humanitarian law are the Geneva Conventions and their Additional Protocols, and customary international law. In a non–international armed conflict, the parties are bound to comply with the norms contained in common Article 3 of the Geneva Conventions, Additional Protocol II to the Geneva Convention and customary international humanitarian law.

34 Ibid.
35 Amnesty International, ‘Stars on their Shoulder’ supra, 40–41
36 Ibid 42
40 ICRC Customary IHL Study, Rule 156
41 The Prosecutor v Tadic, Case No. IT – 94 I-AR 72, ICTY Appeal Chambers, 2 October, 1995
42 Nigeria ratified this protocol on 10/10/1988. Many provisions of the Protocol are considered to reflect customary international law
43 Customary International Law consists of rules that are binding on all states and can be defined as “general practice accepted as law. See also ICJ Statute, Article 38 (1) (b)
International humanitarian law has developed clear rules that set limits on the conduct of hostilities, designed to protect, to the maximum extent possible, civilians and others who are no longer participating, or can no longer participate in hostilities. The basic principle is one of distinction: all possible measures must be taken to distinguish between military targets and civilians or civilians objects. The rules include a prohibition on any direct attacks against civilians. Attacks on civilian objects are also prohibited, unless these objects are being used in such a way that they lose their civilian character and quality as a military objective. The rules also require the humane treatment of any person in the power of the enemy and oblige the parties to care for the wounded without discrimination.

States have responsibility for all violations of IHL committed by their troops or those acting under their authority. This responsibility constitutes duty on the state to ensure reparation for losses or injuries sustained. While the question as to whether armed groups are under an obligation to make full reparation for violations of IHL is still unsettled, practice indicates that such groups are required to provide a measure of appropriate reparation. Violations of IHL are considered serious especially if they endanger protected persons or objects or if they breach important values. Article 8 of the above Rome Statute defines war crimes during armed conflict not of an international character to include violations of Article 3 common to the Geneva Conventions (acts against people taking no active part in the hostilities, including violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture). The Rome Statute also criminalizes attacks targeted at the civilian population or against individual civilians not taking part in the hostilities and attacks. While the Rome Statute does not expressly criminalize indiscriminate and disproportionate attacks during non-international armed conflicts, these are war crimes under customary international law and amounts to attacks on civilians.

Individuals whether civilians or military and regardless of rank, can be criminally responsible for serious violations of IHL. Superior orders cannot be invoked as a defense for war crimes although there is some authority that may be taken into account to mitigate punishment. Commanders may be responsible for crimes under IHL for committing, planning, ordering, aiding and abetting as well as command responsibility. Command responsibility is a mode of individual criminal responsibility under customary law, where a military commander or civilian superior may be held responsible for acts of his subordinates if he is aware of the crime or ought to be aware and fails to prevent or punish them.

The Nigerian Security Forces and Boko Haram sect have conducted their military expedition in the Northeastern Nigeria with gross violations of the laws of armed conflict of non–international in character. The contents of their military engagement constituted crass breach of IHL and war crime offences, as they satisfied all the ingredients and species as defined by Common Article 3 Additional Protocol II, Article 7 and 8 of the Rome Statute. They are bound to comply with these norms including customary international law. These groups (Nigerian State and Boko Haram) vagrantly

44 Prosecutor V. Milosevic, Case No. IT–98–29-A, Judgment, 12 November 2009; see also Articles 13 and 14 AP II.
45 ICRC Customary IHL Study, Rule 1; AP II, Article 13(2) and the Statute of the ICTY which defines the following as a war crime: ‘Internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities’ in non–international armed conflicts.
46 ICRC Customary IHL Study, Rule 7; ICJ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J.
47 Reports 1996, 226; AP II, Article 15.
48 Customary IHL Study, Rule 10.
49 AP II, Articles 5 and 7.
50 Customary IHL Study, Rule 150.
52 Rome Statute, Article 33.
53 Customary IHL study, Rule 155.
54 Command responsibility is part of Customary International Law and has been included as a mode of responsibility both in the ad hoc tribunals and in the ICC. For instance, ICTY Statute, Article 7 (3) and the Rome Statute; see also Mettraux G., The Law of Command Responsibility, (OUP, 2008), 21

violated all the indices and ingredients of
violated all the indices and ingredients of international humanitarian law and other treaties of non-international armed conflict as shown minutely earlier in this work. The Nigerian Security forces and Boko Haram combatants have a duty to conduct their operations in conformity with these rules and in breach be held individually accountably, including command liability.

CONCLUSION

International humanitarian law and other armed conflict treaties violations in the North-East Nigeria demands urgent attention of both the Federal Government of Nigeria and the international community. The Nigeria Government should meet their obligations under IHL and other international treaties and ultimately ensure that the conflict’s victims can learn the truth and have access to justice. In this regard, the Government should urgently initiate thorough, independent, impartial and transparent investigations into these crimes committed by all parties to the conflict. The evidence emanating from these investigations will assist in the preparation of the cases for prosecution by an independent prosecutorial authority. Moreso, the Nigerian government must ensure further reform of the military’s operating procedures to ensure non-recurrence of these violations. This work is gladdened that the Office of the Prosecutor of the International Criminal Court has concluded that there is sufficient evidence to warrant investigations by Nigerian authorities. The office is presently analyzing the relevance and genuineness of national proceedings by the competent national authorities before deciding whether to open its own investigation. This work also believes that Nigeria has the enormous capacity to investigate these crimes and prosecute, only if it will assert the required political will.

However, Article 17 of the Rome Statute provides thus;

Having regard to paragraph 10 of the preamble and article I, the court shall determine that a case is inadmissible where: (a) the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable generally to carry at the investigation or prosecution; (emphasis mine), (b) the case has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute…

The Nigerian government pledged repeatedly to investigate these crimes and IHL violations committed in the North-East by the warring parties, but there have been no concrete commitment towards translating these promises into positive actions. Infact, to assist the Nigerian government in this task, Amnesty International had named Nine (9) high-ranking military officials in charge of operations in North-East between 2012 and 2015 who should be investigated for potential individual and command responsibility for these crimes. Six of the individuals are currently retired, one was reinstated in January 2016 following an unrelated suspension and is awaiting posting. Nigeria government’s attitude of playing with the issue as a result of lack of commitment in the investigation and prosecution of these offenders may be accounted or attributed to her as “… unwilling or unable genuinely to carry out the investigation and prosecution”. The obvious consequence of this is the swinging into action of the Office of the Prosecutor to activate article 17 of the Rome Statute. This will be for the interest of the victims and their relatives also to attack the posturing of impunity.

56 In July 2015, President Buhari retired the Chief of Defence Staff, Air Chief Marshal Alex Badeh and the Chief of Army Staff, Lt. General Kenneth Minimah (both named). ACM Badeh was arrested in February 2016 on unrelated charges (corruption). Former service Chiefs named are Lt. Gen. Azubuike Ihejirika and Admiral Ola Sa’ad Ibrahim, who retired in June 2015. Major Gen. Ahmadu Mohammed was reinstated in January 2016. Others also named in the report are still in active service: Brig-Gen. Rufus O. Bamigboye and Brig-Gen. Rufus O. Bamigboye
57 Rome Statute 1998, Article 17(1) (a)