

TRANSITIONING FROM BOKO HARAM INSURGENCY: THE IMPERATIVE NEED FOR
TRANSITIONAL JUSTICE IN NIGERIA*

Abstract

Recently, while Nigeria appears to be winning the battle against the Boko Haram insurgency, it is experiencing a new dimension of armed banditry. Thus, it is arguable whether Nigeria is actually transiting from a conflict situation. Notwithstanding such debate, while Nigeria is still embattled with the internal challenges to security across the nation, it is also left to grapple with the aftermath of the Boko Haram insurgency, especially in areas that have been directly affected by the conflict. Previous studies have focused on various dimensions of the conflict from different perspectives however, not so much has been said on the implementing transitional justice mechanisms that may be applicable in the Nigerian context. Transitional justice incorporates measures which aim at addressing the massive violations of human rights and redressing victims' harm after a repressive past/conflict situation. Although there have been purported attempts tagged as transitional justice, it is doubtful whether such measures equate to transitional justice. Given the impact of the conflict on the physical, social, economic and political landscape, especially in north-eastern Nigeria, it is imperative to interrogate questions about transitional justice in Nigeria. This study examines Nigeria's need for transitional post-boko haram insurgency and the purported attempt at transitional justice. The study adopts a doctrinal approach in examining the concept of transitional justice and the need to implement transitional justice measures following the Boko Haram insurgency in Nigeria.

Keywords: Post-conflict, Human Rights Violations, North-East, Nigeria,

1. Introduction

Transitional justice is important in transitioning and post-conflict societies to entrench sustainable peace. Nigeria has a history of unaddressed gross human rights violations.¹ From the massacre during the 1967-1970 civil war to the human rights repressions of the successive military regimes before 1999, Nigeria seems to have a culture of ignoring the past. Purported attempts at transitional justice following past repressions seemed like attempts to keep up an appearance of genuine interest in entrenched peace and stability. Barely ten years after the transition to a democratic regime, Nigeria began to experience threats to its precarious and nascent democracy, peace and stability.² There are several narratives to the origin, nature and dimensions of the Boko-Haram insurgency.³ Yet, the common position shows that the Boko-Haram insurgency started as a religious agenda and supposed opposition to Western education as the name of the group suggests.⁴ However, the insurgency soon transformed to a political and economic terrorist agenda graduating into a full-blown internal armed conflict between the Boko Haram insurgents and the Nigerian military troops.⁵ By 2012, the Boko-Haram insurgency became the main security threat in Nigeria which Nigeria countered primarily with military force. Thereafter, the insurgency metamorphosed into an armed conflict with transnational dimensions,⁶ with the group disbanding and breaking out into splinter groups, popular among which are ISWAP and JAS.⁷ Aside from the internal dimensions of the conflict in the north-eastern region of the country, the conflict seems to take a nuanced dimension in north-central Nigeria occasioning violent rural farmer-herder conflicts, armed banditry, abductions, kidnappings, etc.⁸ While there is no

*By **Deborah D. ADEYEMO, LLB (Ife), LL.M (Cape Town), PhD (Ibadan), BL**, Department of Public Law, Faculty of Law, University of Ibadan. Phone Number: +234(0)8037395771, Email address: deborahdadeyemo@gmail.com

¹ Adeyemo, Deborah Damilola, 2013, *Transitional Justice after the Military Regimes in Nigeria: A Failed Attempt?*, LL.M. Dissertation, South African -German Centre for Transnational Criminal Justice, Faculty of Law, University of the Western Cape, Cape Town, South Africa, (i-viii) +1-73pp.

² Andrew Walker, *What is Boko Haram?* (Washington, DC: US Institute of Peace 2012). Before 2009, there had been bouts of violence and communal clashes in different communities across Nigeria. From the Odi massacre in 1999 to the violent conflicts in Gbaramatu in 2009.

³ Olabanji Akinola, 'Boko Haram Insurgency in Nigeria: Between Islamic Fundamentalism, Politics, and Poverty' [2015] (8)(1) *African Security*, 1-29. Omobuwajo Olufemi Ajibola, 'Terrorism and Insurgency in Northern Nigeria: A Study of the Origins and Nature of Boko Haram' [2015] (5)(12) *Journal of Law, Policy and Globalization* 6-15. Olaide Ismail Aro, 'Boko Haram Insurgency in Nigeria: Its Implication and Way Forwards Toward Avoidance of Future Insurgency' [2013] (3)(11) *International Journal of Scientific and Research Publications* 1-8.

⁴ Translated in English to mean 'Western education is forbidden'. The group is originally named as *Jamā'at Ahl as-Sunnah lid-Da'wah wa'l-Jihād* which translates as 'people committed to the propagation of the Prophet's teachings and *Jihad*'.

⁵ Wisodm Oghosa Iyekekpolo, 'Political Elites and the Rise of the Boko Haram Insurgency in Nigeria' [2020] (32)(4) *Terrorism and Political Violence* 749-767. Omobuwajo Olufemi Ajibola, [2015] *op. cit.* (n.3).

⁶ James J. Hentz, 'Nigeria and the War Across States in Northwest Africa', in James J. Hentz and Hussein Solomon (eds.) *Understanding Boko Haram: Terrorism and Insurgency in Africa*, (Taylor & Francis, 2017), 273-283.

⁷ ISWAP fully refers to Islamic State's West Africa Province while JAS fully means *Jama'atu Ahl al-Sunnah lil-Dawa wal-Jihad*. Ansaru is one faction which broke out from Boko Haram in 2012 but was short-lived and the group was reportedly dissolved in 2016. Rafael Prieto Curiel and Olivier Walther and Neave O'Clery, 'Uncovering the internal structure of Boko Haram through its mobility patterns' [2020] (5)(1) *Applied Network Science*, 1-23.

⁸ Leif Brottem, 'The Growing Complexities of Farmer-Herder Conflict in West and Central Africa' *Africa Security Brief*, 39. (12 July 2021) <<https://africacenter.org/publication/growing-complexity-farmer-herder-conflict-west-central-africa/>> Accessed 20 November 2023. Some of the fleeing victims of the armed conflict in the north-east are nomads whose migration to the north-central occasioned

accurate record in respect of the number of victims of the insurgency, there are reports showing thousands of deceased persons and millions of internally displaced persons as a result of the insurgency.⁹ The insurgency created a huge deal of humanitarian crises¹⁰ in addition to the violent killings and destruction of public infrastructure¹¹ with adverse economic and political effects.¹²

This paper examines Nigeria's need for transitional justice in light of the aftermath of the Boko Haram Insurgency. It attempts to answer the question of whether Nigeria should undertake transitional justice. The paper argues that given Nigeria's antecedent of ignoring the past and the implications thus, far, it would be in Nigeria's best interest to genuinely undertake a comprehensive transitional justice programme. This is especially imperative, given the new dimensions of criminality and armed banditry evolving in different regions of the country. The paper is divided into six sections. Section one provides a cursory overview of the Boko Haram insurgency and provides a background to the study. Section two highlights the reports on human rights violations during the conflicts and reported social, economic and humanitarian impacts of the conflicts. The third section assesses Nigeria's response to the insurgency thus far in light of legal obligations under international and domestic framework. The fourth section x-rays Nigeria's history of ignoring the past and 'letting bygones be bygones'. In the fifth section, the paper examines Nigeria's need to genuinely confront the aftermath of the insurgency and adopt a structured and comprehensive transitional justice programme. The sixth section gives concluding remarks and re-emphasises Nigeria's need to depart from its historical antecedent of ignoring the past and just moving forward.

2. Human Rights Violations and the Devastating Impacts of the Boko Haram Insurgency

The insurgency was concentrated in the states in the North-east and North-west regions of Nigeria covering Borno, Yobe, Bauchi, Gombe, Adamawa, Kano, Kaduna, Katsina states etc. The insurgency also had significant impacts on neighbouring states in the North-central states and even across the Nigerian border into countries like Cameroon, Chad, Niger and Mali. Boko-Haram and splinter groups have claimed responsibility for different attacks at different times.¹³ The attacks by the group have been against both civilians and belligerent and non-belligerent armed forces. Aside the loss of lives, displacement of persons and the devastating effects of the conflict, there are records of heinous crimes such as sexual and gender-based violence, torture, forced marriage, abductions etc.¹⁴ There are reportedly over 60,000 deceased persons and over two million persons displaced by the insurgency.¹⁵ These numbers do not account for other victims affected by the insurgency in terms of loss of livelihood, loss of body parts, insurgency-induced cross-border migration, victims of sexual violence, etc. It may be impracticable to fully capture the devastating effects of the insurgency, especially when post-insurgency criminality is still unfolding. Apart from the crippling and damaging impact

the conflict. Although farmer-herder conflict has always been a major form of conflict in the north-central region of Nigeria, it might have been aggravated by the armed conflict in the north-east.

⁹ John Campbell and Asch Harwood 'Boko Haram's Deadly Impact' *Council on Foreign Relations* (20 August 2018) <<https://www.cfr.org/article/boko-harams-deadly-impact>> Accessed 11 December 2023. Kunle Adebajo 2023, 'Investigation: Nigeria's War with Boko Haram may have Killed Thousands of Innocent People' *News Lines Magazine* (18 September 2023) <<https://newlinesmag.com/reportage/investigation-nigerias-war-with-boko-haram-may-have-killed-thousands-of-innocent-people/>> Accessed 7 December 2023.

¹⁰ Okoli, AI Chukwuma and Iortyer, Philip, 'Terrorism and Humanitarian Crisis in Nigeria: Insights from Boko Haram Insurgency' [2014] (14)(1) *Global Journal of Human Social Science* 39-49.

¹¹ UN OCHA 'Nigeria: Humanitarian Dashboard (January-March 2017)' *UN OCHA* (21 April 2017) <<https://www.unocha.org/publications/report/nigeria/nigeria-humanitarian-dashboard-january-march-2017>> Accessed 7 December 2023.

¹² Emmanuel Egobiambu 'Nigeria has lost \$100 bn to north-east conflict, says UNICEF' *Channels TV* (7 September 2023) <<https://www.channelstv.com/2023/09/07/nigeria-has-lost-100bn-to-north-east-conflict-says-unicef/>> Accessed 7 December 2023.

¹³ Aljazeera, 'ISWAP Claims Nigeria Bombing, Says about 30 Killed or Hurt' *Aljazeera* (21 April 2022) <<https://www.aljazeera.com/news/2022/4/21/isil-group-claims-nigeria-bombing-says-about-30-killed-or-hurt>> Accessed 11 November 2023. Timothy Obiezu 'Boko Haram Claims Responsibility for Kidnapping of Nigerian School Boys' *Voice of America* (15 December 2020) <https://www.voanews.com/a/africa_boko-haram-claims-responsibility-kidnapping-nigerian-schoolboys/6199617.html> Accessed 11 November 2023. Aljazeera, 'Boko Haram Claims Attack in Niger that Killed Dozens' *Aljazeera* (14 December 2020) <<https://www.aljazeera.com/news/2020/12/14/boko-haram-claims-bloody-attack-in-niger>> Accessed 11 November 2023. BBC News, 'What Now after Nigeria's Boko Haram Ceasefire Fiasco?' *BBC News* (3 November 2014) <<https://www.bbc.com/news/world-africa-29881291>> Accessed 11 November 2023.

¹⁴ Doris Dokua Sasu, 'Death Caused by Boko Haram in Nigeria from 2011-2023' *Statista* (5 September 2023) <<https://www.statista.com/statistics/1197570/deaths-caused-by-boko-haram-in-nigeria/>> Accessed 7 December 2023. Global Centre for the Responsibility to Protect, 'Nigeria: Population at Risk' *Global Centre for the Responsibility to Protect* (20 November 2023) <<https://www.globalr2p.org/countries/nigeria/>> Accessed 11 December 2023.

¹⁵ UN News, 'Boko Haram Violence Displaces 1.4 Million Children in Nigeria and Beyond' *UN News Center* <<https://www.un.org/africarenewal/news/boko-haram-violence-displaces-14-million-children-nigeria-and-beyond-%E2%80%93-unicef>> Accessed 7 December 2023. Abul Azad, Emily Crawford, Heidi Kaila, 'Conflict and Violence in Nigeria: Results from the North-East, North Central and South-South Zones' *National Bureau of Statistics and World Bank* <<https://www.nigerianstat.gov.ng/nada/index.php/catalog/55/download/503>> Accessed 11 December, 2023.

on peace and security in and around Nigeria,¹⁶ the insurgency caused downward plunges in the economy and political landscape of the states directly affected and by inference, the entire federation.¹⁷

The heinous crimes perpetrated by the Boko-haram insurgents are not the only sources of human rights violations. Both the Boko-Haram insurgents and the armed forces of Nigeria reportedly perpetrated massive violations of human rights and international crimes in the course of the armed conflict.¹⁸ Both parties violated political and civil rights and socio-economic rights of direct and indirect victims, especially in the states directly affected. These rights vary from the right to life, the right to dignity of human persons, the right against torture to the rights to food, shelter and decent living. etc. The massive violations of human rights are not only criminal but they also constitute gross contravention of the constitutional provisions on fundamental human rights and socio-economic obligation of the Nigerian State.¹⁹ While it may be argued that the insurgents and members of armed forces bear criminal responsibility for the crimes they perpetrated, the pervasive human rights violations raise questions on the obligations of Nigeria to address the impact and the aftermath of the insurgency.

3. Nigeria's Response to the Aftermath of the Boko-Haram Insurgency

In response to the impact of the insurgency, successive regimes since 2009 have implemented different programmes, some of which were tagged transitional justice. The section focuses on the approach of the federal government without referring to attempts by the respective states in the north-eastern region to respond to the ills of the insurgency. The Presidential Committee on Victims Support Fund (PCVSF) was one of the earliest initiatives of the federal government. The PCVSF was established in 2014 as a victims' trust fund pooled from both state and non-state institutions with the overarching mandate of addressing the humanitarian needs of victims of the insurgency in the North-east. Since its establishment, the PCVSF has implemented various programmes to provide support for victims.²⁰ As of 2023, the PCVSF reported that over 1.7 million victims had benefitted from the various programmes. While this study is not aimed at assessing the activities of the PCVSF, a cursory examination of the estimated number of victims of the insurgency and the number of victims who have reportedly benefitted from the programme of the trust fund reveals the wide impact gap of the trust fund in almost a decade.

In 2016, Nigeria established the Presidential Committee on North East Initiative (PNI) as part of the federal government's earliest response to the devastating effect of the insurgency in the north-east.²¹ The Committee had the mandate of coordinating the infrastructural and socio-economic rehabilitation in the North-eastern states. The Committee had the duty of coordinating humanitarian interventions from both state and non-governmental organisations in the North-east. It does not appear the Commission's work made any significant impact before it was overtaken by another commission, NEDC established in 2017. Subsequently, the federal government established the North East Development Commission (NEDC).²² The Commission was saddled with the responsibility of coordinating programmes and initiatives for rehabilitation and rebuilding of the infrastructure and institutions during the insurgency in the North-east.²³

Nigeria inaugurated a 'deradicalisation' programme named 'Operation Safe Corridor' (OSC) in 2016, purportedly to rehabilitate and reintegrate repentant and former Boko Haram members.²⁴ Subsequently, in 2020, the Nigerian government introduced an amnesty bill to grant amnesty to former Boko Haram members.²⁵ Although the programmes are supposedly tagged as transitional justice measures, they may not necessarily be so described. The OSC is a

¹⁶ Salisu Salisu Shuaibu and Mohd Afandi Salleh and Abdullahi Yusuf Shehu, 'The Impact of Boko Haram Insurgency on Nigerian National Security' [2015] (5)(6) *International Journal of Academic Research in Business and Social Sciences* 254-266.

¹⁷ Beatrice E. Awortu, 'Boko Haram Insurgency and the Underdevelopment of Nigeria' [2015] (5)(6) *Research on Humanities and Social Sciences* 213-220. Oladayo Nathaniel Awojobi, 'The Socio-Economic Implications of Boko Haram Insurgency in the North-East of Nigeria' [2014] (11)(1) *International Journal of Innovation and scientific research* 144-150.

¹⁸ Amnesty International, 'Nigeria: Military Razes Villages as Boko Haram Attacks Escalate' *Amnesty International* (14 February, 2020) <<https://www.amnesty.org/en/latest/news/2020/02/nigeria-military-razes-villages-as-boko-haram-attacks-escalate/>> Accessed 11 November 2023. Aljazeera, 'UN: Nigerian Forces Committing Human Rights Abuses' *Aljazeera* (14 March 2014) <<http://america.aljazeera.com/articles/2014/3/14/human-rights-nigeriasecuritybokoharam.html>> Accessed 11 November 2023.

¹⁹ Chapters II and IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁰ The PCVSF outlined six general programmes which focused on women economic empowerment, educational support, foster care, reconstruction and infrastructural development, health systems and peace building and research.

²¹ Ayodele Oluwagbemi, 'Buhari Inaugurates Presidential Committee on North-East Initiative [Full Speech]' *Punch Newspaper* (26 October, 2016) Accessed 11 November 2023.

²² The Commission was established by the North-East Development Commission (Establishment) Act 2017.

²³ Section 8 NEDC Act makes a long list of laudable functions of the Commission but it remains to be seen how much the Commission works in line with the provisions. These functions include assessing, coordinating, harmonizing and reporting all intervention programmes in the North-east states.

²⁴ BBC News, 'Nigeria Boko Haram Militants Offered Olive Branch by Army' *BBC News* (7 April 2016) <<https://www.bbc.com/news/world-africa-35989401>> Accessed 7 December 2023.

²⁵ Perez Brisibe, 'Amnesty for Boko Haram Repentant Insurgents is Unfortunate – PANDEF, Monarch' *Vanguard Newspaper* (23 February 2023) <<https://www.vanguardngr.com/2020/02/amnesty-for-boko-haram-repentant-insurgents-is-unfortunate-pandef-monarch/>> Accessed 7 December 2023.

disarmament, rehabilitation and reintegration programme which has been disfavoured by many Nigerians, especially the victims from the communities directly affected by the insurgency.²⁶ Ironically, the Nigerian government focused on alleged perpetrators in a purported attempt at transitional justice without providing any measures for victims of gross human rights violations committed by the perpetrators.²⁷ In 2017, the Nigerian government commenced the prosecutions of apprehended Boko Haram Militants under the Kainji Prosecution Project. The prosecution resulted in the conviction of three hundred and sixty-six (366) convictions while eight-hundred and ninety-six (896) others were discharged for lack of evidence.²⁸ The prosecution spanned till 2018 and was halted afterwards.²⁹ However, none of the prosecutions involved major perpetrators although some sponsors of Boko Haram were convicted in December 2023.³⁰ In 2021, the National Human Rights Commission (NHRC) introduced a programme tagged the 'Promoting Reconciliation, Reintroduction and Transitional Justice in Borno and Yobe State as a measure to address the aftermath of violence in the two north-eastern states of Nigeria.³¹ Just as the NHRC observed the indigenous communities in the affected areas found it appalling and offensive that the government was offering amnesty to ex-militants and even rehabilitating them.³²

An examination of Nigeria's response thus far, reveals that until 2014, there was no significant initiative to address the human rights violations of the insurgency when it established a trust fund. Over the years, it is commendable that Nigeria has attempted to implement several other programmes and efforts towards addressing the ills of the insurgency. Ironically, however, these programmes seem like an attempt not to appear apathetic and perhaps court international favour. First, even though many of the programmes are reportedly targeted at rehabilitation and reconstruction, they appear discordantly executed. This is especially clear in the case of the several programmes which were launched with similar mandates but do not necessarily seem to be concerted in the execution. It is not exactly clear how the states of the north-east which are directly affected by the insurgency and the federal government coordinate their efforts in addressing the aftermath of the insurgency. Second, ordinarily, the severity of the humanitarian crises created by the insurgency may be quite overwhelming for the federal government to tackle all at once especially financially. While Nigeria enjoys the support of humanitarian organisations and non-governmental domestic and international organisations, transparency and accountability in execution seem lacking. There is no widespread awareness of the various programmes and it is not clear how the level of public participation engaged and the victims' access to some of these programmes. This may account for the absence of public participation, support and widespread impact of the programmes.

It is doubtful if the attempts so far should be regarded as transitional justice. Rather than address the human rights violations of the insurgency, the programmes targeted at the victims are merely humanitarian assistance which do not necessarily target the specific needs of victims. The programmes do not appear widespread or systematic as a comprehensive transitional justice programme would be designed. It is difficult to categorise some of the programmes into conventional transitional justice mechanisms. Transitional justice programmes do not need to fit perfectly into the conventional mechanisms, provided they can achieve the ends of transitional justice. This is especially true given that the African Union Transitional Justice Policy recognises other mechanisms which do not necessarily fit into any of the conventional mechanisms of transitional justice. However, in the case of Nigeria, the programmes do not fit into conventional or indigenous transitional justice mechanisms.

This study further argues that transitional justice programmes should not only be responsive but should also include mechanisms which are proactive and guide against non-recurrence. The programmes implemented in response to the insurgency are reactive and do not elicit any attempt to address structural issues that led up to the insurgency. It is arguable that given that the insurgency is still marginally active, it might be difficult to undertake proactive measures. However, this study posits that where reactive measures are honestly implemented, they may entrench short-term proactive effects.

²⁶ Femi Owolabi, 'Take Them to Govt House or Aso Rock'- Borno Residents Reject 'Reformed' Boko Haram Fighters' *The Cable* (24 July 2020) <<https://www.thecable.ng/take-them-to-govt-house-or-aso-rock-borno-residents-reject-reintegration-of-ex-boko-haram-fighters>> Accessed 7 December 2023.

²⁷ The Victims Support Fund established in 2014 does not exactly mirror any form of transitional justice measure. The reparative component appears shallow when examined in line with the ideals of reparation.

²⁸ Kingsley Omonobi, 'FG Resumes Trial of Boko Haram/ISWAP Terror Suspects' *Vanguard Newspaper* (4 December 2023.) <<https://www.vanguardngr.com/2023/12/fg-resumes-trial-of-boko-haram-iswap-terror-suspects/>> Accessed 7 December 2023.

²⁹ In 2022, the Nigerian government announced that it would resume prosecution of captured and detained insurgents and reportedly resumed prosecution in December, 2023. Vivian Chime, 'Malami: FG to Resume Prosecution of Boko Haram Suspects in Niger' *The Cable* (22 January 2022) <<https://www.thecable.ng/malami-fg-to-resume-prosecution-of-boko-haram-suspects-in-niger>> Accessed 7 December 2023.

³⁰ Ikechukwu Nnochiri, 'Court Convicts, Sentences 4 Boko Haram Financiers' *Vanguard Newspaper* (5 December 2023) <<https://www.vanguardngr.com/2023/12/breaking-court-convicts-sentences-4-boko-haram-financiers/>> Accessed 7 December 2023.

³¹ National Human Rights Commission, 'Transitional Justice at a Glance', *National Human Rights Commission* (27 August 2021) <<https://www.nhrc.gov.ng/nhrc-media/data-and-infographics/205-transitional-justice-project-at-a-glance.html>> Accessed 7 December 2023.

³² National Human Rights Commission, 'Restoring Peace in the North-East Via Transitional Justice' *National Human Rights Commission* (26 July 2022) <<https://www.nigeriights.gov.ng/nhrc-media/opinion-pieces/364-restoring-peace-in-the-north-east-via-transitional-justice.html>> Accessed 7 December 2023.

For instance, where prosecutions are timely and unaccompanied by blanket and indiscriminate amnesty programmes, they may deter prospective perpetrators.

4. A History of Unaddressed Past in Nigeria

Nigeria has a history of massive human rights violations which dates as far back as the first republic.³³ Following the civil war which lasted from 1967-1970, there was no transitional justice initiative aimed at addressing the human rights violations during the war despite the allegations of gross human rights violations.³⁴ The post-civil war response typified the position of 'letting bygones be bygones.' After the war, the proclamation of 'No victor, no vanquished' further reinforced the position that Nigeria would rather ignore the aftermath of the war under the guise of entrenching peace over justice. Rather than confront the structural issues which led up to the war and address the human rights violations during the war, the government implemented the 3Rs' policy of reconciliation reconstruction and rehabilitation. The policy included a nine-point agenda and one of the fallouts of the policy is the National Youth Service Corps Programme. The policy has been widely criticised as largely flawed and non-inclusive.³⁵ It would seem that the relative peace which survived the civil war was negotiated and grounded in a precarious foundation. The successive events in various regions of the country and across the political scene would later reveal that the unaddressed issues following the civil war further festered on Nigeria's disregard for the past.

The gross human rights violations by repressive military regimes from 1966-1979 and 1983-1999 have equally been largely ignored even after the transition to a democratic dispensation in 1999. The transition government of Gen. Abdulsalami Abubakar could not have legitimately implemented an effective transitional justice programme. However, the democratic government under the first civilian government after the transition underutilised the opportunity to implement a comprehensive transitional programme. Although it sought to establish a similitude of a truth commission by establishing the Human Rights Violations Investigation Commission of 1999 (HRVIC), the anticipated success of the Commission was short-lived. The Commission³⁶ struggled to fulfil its mandate although it enjoyed widespread public support. The Commission had the mandate to investigate human rights violations between the period of 1966-1999, determine the role of the State and make recommendations on pursuing justice and preventing future recurrence. The Commission faced ranging from challenges to its constitutionality through litigations from alleged perpetrators to funding challenges which initially delayed its work.³⁷ The Commission did not enjoy the full support of the government that established it. Eventually, when it submitted its report, there was no official acknowledgement of the report neither was the report ever officially published. Thus, it was not surprising that the recommendations of the Commission have remained unimplemented. Attempted prosecutions and similar measures after the 1999 transition were rather an ostentatious show by the immediate democratic government to appeal to the public.³⁸

Implementing a successful and comprehensive Transitional justice programme requires a huge measure of political will and capacity, neutrality and transparency which is often lacking in many transitioning States. Hence, attempts at implementing transitional justice programmes by successive governments after a repression or armed conflict appear as victor's justice. While there are obvious challenges to implementing a successful transitional justice programme, the challenges are not insurmountable provided the government shows unwavering commitment to the substantive and procedural pillars of transitional justice within the context of its situation. There have been several challenges to implementing transitional justice in Nigeria. From lack of political will to questions of legitimacy and constitutionality, previous attempts at transitional justice have been stillborn.

Given Nigeria's attitude to the violent and repressive past before 1999 and the operative disposition post-1999, Nigeria has not been committed to transitional justice in its quest for sustainable peace. It would seem that its failure to address the repressive past of the military regimes has culminated in the recurrence of violence even after the transition to a democratic dispensation. One question that lingers is whether transitional justice is necessary and required now that it cannot be said that the conflict is completely over. Would attempts at addressing the violence perpetrated in the affected territories of the North-east of Nigeria not appear pre-emptive since peace and stability are just emerging? Could transitional justice help broker peace and entrench stability in the country? Regardless of the prevalent state of peace and

³³ This is without prejudice to records of human rights violations which predates independence. Yusuf, Hakeem O. *African Transitional Justice Research Project: Case Study in Transitional Justice in Nigeria*. (Centre for the Study of Violence and Reconciliation, South Africa 2018)

³⁴ Arua Oko Omaka, 'Victor's Justice: Atrocities in Post-war Nigeria. [2016] (32)(3) *Medicine, conflict and Survival* 228-246.

³⁵ George Chimdi Mbara, G.C. and Nirmala Gopal, 'Peacebuilding Trajectories in Post-conflict African States: A Re-examination of the "3Rs" in Post Nigeria-Biafra War' [2021] (10)(1) *African Journal of Peace and Conflict Studies* 9-32.

³⁶ Widely referred to as the Oputa Panel named after the chairman of the panel, Justice Chukwudifu A. Oputa.

³⁷ Hakeem O. Yusuf, 'Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria' [2007] (1)(2) *The International Journal of Transitional Justice* 268-286. Emmanuel Zwanbin, 'The Challenges of Transitional Justice in Nigeria: Echoes from the Oputa Panel, 1999' [2017] (8)(2) *Journal of Language, Technology & Entrepreneurship in Africa* 73-91.

³⁸ Adeyemo, D. D., 2013, *op. cit.* (n. 1). Supposed amnesties for Niger-Delta militants, failed prosecutions of alleged perpetrators of human rights violations and Disarmament Rehabilitation and Reintegration (DRR) programmes were poorly implemented and later abounded.

stability in the region and the country at large, the north-eastern region has witnessed a great decline in conflict and violence. There are areas in the North-east where the conflict is completely over but the relics of the conflict are evident. Hence, it is apt to interrogate questions surrounding the possibility of transitional justice to the Nigerian situation.

5. A Case for Transitional Justice in Nigeria

Transitional justice is a concept which captures how a society addresses the human rights abuses and legacies of a repressive or violent past. Transitional justice is often recommended and pursued by societies in transition. Conventionally, transitional justice may be pursued via two routes- retributive or restorative approaches through recognised judicial and non-judicial mechanisms of prosecutions, amnesty, reparations, lustrations truth commissions, etc. The retributive mechanisms focus primarily on the perpetrators and engendering accountability for their role in the violations. The restorative mechanisms focus on victims of human rights violations and providing remedies for the violations they have suffered. Both approaches may be mutually pursued by a State within the context of its transitional justice programme or a State may be more inclined to adopt one approach while reaching a compromise on the other. While transitional justice does not proffer an all-encompassing solution to the repressive/violent legacies of the past in a State, it offers viable options for entrenching a stable and peaceful society where it is successfully implemented. Transitional justice should not be considered in the context of restoring the rule of law after a repressive or violent past. Transitional justice mechanisms should also be explored as a tool for transformative justice.

The African Union Policy on Post-Conflict Reconstruction and Development recognised the need for transitional justice in its provisions by outlining human rights, justice and reconciliation as part of the elements of its policy.³⁹ In 2019, the African Union (AU) adopted the Transitional Justice Policy to serve as guidelines for member states to develop their own specific and context-based transitional justice policy.⁴⁰ The policy highlighted eleven main principles underlying transitional justice. In addition to recognised conventional transitional justice mechanisms, the principles of African transitional justice mechanisms and diversity management are highlighted as some of the templates States may adopt. The principles are not meant to replace the conventional transitional justice mechanisms however they appear to be designed within the African context and its specific needs. The policy provides a template for member states of the AU like Nigeria which may guide their decision on the design and implementation of transitional justice.

The Boko Haram insurgency has created a context which necessitates transitional justice. While it is arguable whether Nigeria has fully transitioned, it is clear that Nigeria is transitioning from an intense conflict situation which has lasted more than a decade. Hence, Nigeria has a lot to grapple with to entrench lasting peace and stability across the country. First, Nigeria has an alarming statistic of victims of the insurgency which are in dire need of redress beyond humanitarian assistance. Second, the political and economic landscapes of the states directly affected by the conflict demand urgent attention. Third, Nigeria needs to address the root cause(s) of the conflict and make adequate provisions to prevent recurrence, especially in light of various forms of criminality that have erupted from the conflict. A survey revealed that there is massive support and clamour for transitional justice which includes accountability for the massive human rights violations perpetrated during the insurgency.⁴¹ Arguably, the successful application of transitional justice to the Nigerian situation post-insurgency may assist in entrenching lasting peace and stability in the affected region and the entire country. Given the historical antecedents in Nigeria in post-conflict situations, Nigeria must begin to actively explore possible transitional justice measures applicable post-insurgency and invest in implementing transitional justice, especially in north-eastern Nigeria.

Legal provisions on human rights in international regional and domestic legal documents do not only make provisions for human rights but obligate State parties to recognise and respect those rights. The obligation to protect and promote human rights within a State is inferred from the provisions guaranteeing such rights. This obligation includes protection from violations. Where violations occur, there is an obligation to provide an appropriate remedy. The obligation to provide appropriate remedy is an intrinsic part of international legal provisions on human rights and international humanitarian law.⁴² While there is little or no contention about the obligation to provide appropriate remedy in the case of violations by the State, it is often contested whether States have such obligation over violations by non-state actors especially in individualised cases of violations. In situations of systematic massive human rights violations, whether

³⁹ Paragraphs 38-42.

⁴⁰ Section 1 (1).

⁴¹ National Bureau of Statistics, 2018, 'Conflict and violence in Nigeria: Results from The North-East, North Central and South-South Zones', *op. cit.* (n.15). Idayat Hassan and Justin Tyvoll, *After Boko Haram: Prospects for Transitional Justice in North-East Nigeria* (Centre for Democracy and Development, Nigeria 2018).

⁴² The provisions of some regional and international legal instruments emphasize the right to an effective remedy for human rights violations. Article 8 of the Universal Declaration of Human Rights 1948; Article 2 (3) of the International Covenant on Civil and Political Rights 1966; Article 7 of the African Charter for Human and Peoples' Rights 1986; Article 25 of the American Convention on Human Rights 1969, Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Principle 3 (d) of the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the African Charter on Human and Peoples Rights 2005.

attributable to the State or non-state actors, the obligation to provide effective remedy lies with the State, while criminal liability lies with respective perpetrators. The rationale for this position is drawn from the State's obligation to protect human rights within its territory. Where there is such widespread systemic failure to protect persons within their territory against gross human rights violations over a period, the State cannot abdicate its obligations to provide effective remedy. The obligation to respect and protect also includes the right to investigate and prosecute and the right to provide reparations to victims.⁴³

The obligation of States to prevent the recurrence of massive atrocities perpetrated during conflict or repressive regimes can also be inferred from the provisions of international documents which emphasize the role of the State in taking measures which guarantee non-repetition.⁴⁴ Although the provisions are largely exhortatory in nature and may not elicit binding obligations on state parties, they are arguably, the basis for making a case for transitional justice. These obligations are captured by transitional justice mechanisms which seek to reckon with and address human rights violations of the past by seeking to establish the truth, establish accountability by perpetrators, provide effective remedy for victims and prevent recurrence of such violent or repressive past. Hence, it is arguable that Nigeria has legal obligations under regional and international legal instruments to address the consequences of the Boko Haram conflict.

While there are no explicit domestic legal provisions which obligate Nigeria to explore transitional justice, the legal obligation to protect and promote human rights within its territory is constitutional and compelling. The Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees and protects certain human rights (civil and political) as inalienable within its territory.⁴⁵ The gross violations of such rights invoke the positive duty to protect and promote the rights violated beyond the individual's responsibility to enforce their rights. In the context of massive violations of guaranteed human rights, the constitutional duty to protect and promote implies the duty to investigate and provide effective remedies for violations. While social, economic and cultural rights are not necessarily guaranteed by the Constitution, nevertheless, they are enacted by the provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.⁴⁶ Chapter II of the Constitution imposes duties on the government in respect political, social, economic, educational and cultural objectives of the Nigerian State.⁴⁷ The provisions of chapter II hold the Nigeria government to the highest level of responsibility on the welfare and security of citizens.⁴⁸ However, the provisions are labelled under chapter II which provides for 'Fundamental Objectives and Directive Principles of State policy' and regarded as non-justiciable.⁴⁹

While there are several debates on the import and relevance of chapter II of the Constitution and whether any rights can be inferred from them, this study aligns with the view that rights are inferable from the duties imposed by the chapter. Judicial pronouncements have established that the Nigerian government would be derogating from constitutionally imposed obligations where they act in contempt of the provisions of chapter II of the Constitution.⁵⁰ Hence, the provisions of chapter II are a guide and template to direct the focus of the government.⁵¹ Even though the directive principles are non-justiciable, the provision on non-justiciability is neither total nor sacrosanct as it is made subject to other provisions of the constitution.⁵² This indicates that where there are other constitutional provisions which run ancillary to any of the provisions in chapter II, they are rendered enforceable.⁵³ Notwithstanding the debates surrounding the enforceability of socio-economic rights in Nigeria, the constitutional duty of the Nigerian government to address gross violations of such rights is glaring and indisputable.

6. Conclusion

The intensity and gravity of the violence and human rights violations Nigeria has witnessed in the last one and half decades over the Boko-Haram insurgency is too overwhelming to be ignored. The inexpedient attitude of just moving on from the past and refusing to confront it has set the country in a cyclical motion of the recurrence of massive human rights violations. From the failure to address the legacies of the civil war to the ostentatious attempt at confronting the

⁴³ Principles 3 (b-d) and 4 of the Basic Principles and Guidelines on the Right to a Remedy, *ibid*.

⁴⁴ Principle 23 of the United Nations Principles and Guidelines on the Right to a Remedy, *ibid*. Principles 35 – 38 of the United Nations Economic and Social Council Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, 2005.

⁴⁵ Chapter IV, ss.33-46.

⁴⁶ CAP A 9, LFN, 2004.

⁴⁷ Ss. 16-18 and 21.

⁴⁸ Sec. 13 and 14 (2).

⁴⁹ Sec. 6 (6) (c). *Archbishop Anthony Olubunmi Okogie [Trustee of Roman-Catholic School] v. Attorney-General of Lagos State* (1981) 1 NCLR 2181.

⁵⁰ *Attorney General of Ondo State v. Attorney General of the Federation* (2002) 9 NWLR pt 772, 222 @ 382.

⁵¹ Awolowo, O., 2017. Fundamental Objectives and Directive Principles of State Policy as Panacea for National Transformation and Sustainable Development in Nigeria. *Journal of Law Policy & Globalization*, 65, pp.23-27.

⁵² *Federal Republic of Nigeria v Aneche & 3 Ors.* (2004) 1 SCM p.36 @ 78. per Niki Tobi (JSC)

⁵³ *Olafisoye v Federal Republic of Nigeria*, (2005) 51 WRN 52. Nnamuchi et al. argue that given the provisions of international human rights law, socio-economic rights are rather justiciable. Obiajulu Nnamuchi, and others, 'Justiciability of Socioeconomic Rights in Nigeria and its Critics: Does International Law Provide any Guidance?' [2022] (19) *The Age of Human Rights Journal* 137-164.

repressive legacies of successive military regimes before 1999, the monstrous history of gross human rights violations is continually repeated under different labels. Nigerian owes legal obligations under international law and constitutional duty to confront the ills of the Boko Haram insurgency. While Nigeria may not have fully transitioned from the insurgency yet, there is an opportunity for Nigeria to genuinely attempt to confront the violent legacies of the insurgency and adopt context-specific mechanisms to address them. Perhaps, this may also address structural issues which predate the insurgency. Given the current approach of establishing committees and implementing various programmes without proper evaluation and widespread public consultations, Nigeria may just be on the verge of losing another opportunity to effectively confront its past. It is not sufficient that successive governments design programmes targeted at rebuilding the North-east, Nigeria must undertake a comprehensive transitional justice programme designed to address structural issues that instigated the insurgency and focus on redressing the harm perpetrated through the insurgency.

A significant step towards the design and implementation of a comprehensive transitional justice programme is to undertake widespread consultations and engage public participation, especially by victims, grassroots leaders and residents of the affected North-eastern states. While it is impossible to capture all the victims of the insurgency, an inclusive representation of the different categories of victims would have far-reaching impact. Compromises and decisions made based on such broad-based consultations are more likely to enjoy public support and acceptance. The federal government must engage state governments of affected states and neighbouring states in designing a comprehensive transitional justice programme. In addition to public consultations, it is important to evaluate the capacity of the government to implement a transitional justice programme effectively. The evaluation must examine the human, resource, legal and institutional capacities of the Nigerian government to undertake an effective transitional justice programme. Such evaluation will inform the direction and approach the government should adopt in undertaking a transitional justice programme. The choice of transitional justice mechanisms which will be adopted will be founded on broad-based consultations and Nigeria's capacity to devotedly implement the programme.