



ASSER PRESS

International Criminal Justice Series

Volume 34

Criminal Justice Responses to the Boko Haram Crisis in Nigeria

Victoria Ojo-Adewuyi



Springer

International Criminal Justice Series

Volume 34

Series Editors

Gerhard Werle, Berlin, Germany

Moritz Vormbaum, Münster, Germany

The *International Criminal Justice Series* aims to create a platform for publications covering the entire field of international criminal justice. It, therefore, deals with issues relating, among others, to:

- the work of international criminal courts and tribunals;
- transitional justice approaches in different countries;
- international anti-corruption and anti-money laundering initiatives;
- the history of international criminal law.

It is peer-reviewed and seeks to publish high-quality works emanating from excellent scholars.

Editorial Office

Prof. Dr. Moritz Vormbaum
University of Münster
Faculty of Law
Bispinghof 24-25
48143 Münster, Germany
vormbaum@uni-muenster.de

Victoria Ojo-Adewuyi

Criminal Justice Responses to the Boko Haram Crisis in Nigeria



ASSER PRESS



Springer

Victoria Ojo-Adewuyi
Berlin, Germany

ISSN 2352-6718 ISSN 2352-6726 (electronic)
International Criminal Justice Series
ISBN 978-94-6265-614-7 ISBN 978-94-6265-615-4 (eBook)
<https://doi.org/10.1007/978-94-6265-615-4>

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the author 2024

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE, part of Springer Nature.

The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

Paper in this product is recyclable.

*To my children, Latoyo and Olanrewaju, be
audacious.
to my forever love, Ololade, thank you,
and
to everyone that helped me along the way,
my gratitude.*

Acknowledgements

I am grateful to the Deutscher Akademischer Austauschdienst (DAAD), with support from the German Federal Foreign Office, for the funds with which the research for parts of this book was written. The research was conducted under the South African-German Centre for Transnational Criminal Justice, a cooperation programme between the University of the Western Cape, Cape Town, South Africa and the Humboldt Universität zu Berlin, Germany and completed at the Faculty of Law, Humboldt Universität zu Berlin, Germany.

I appreciate the support of Prof. Dr. Moritz Vormbaum of the Faculty of Law, Institute of Criminal Sciences, University of Münster, who was there from the beginning of this work, providing useful insights and firm guidance.

Similarly, I express my gratitude to Prof. Dr. Gerhard Werle, who provided immense intellectual guidance throughout this process. I also appreciate his wife, Dr. Werle, for her care and support. My appreciation to Frau Anja Schepke, for her constant support, excellent administrative assistance and speedy help. She was a reliable help in many ways and for that I am grateful. I similarly appreciate Anna Krey, Dr. Yao Li, Dr. Aziz Epik and Nella Sayatz who coordinated and were involved in the programme at different times and were always helpful and supportive.

I appreciate Prof. Gerhard Kemp for his resources, useful comments and discussion on the research that led to this book. I also acknowledge and appreciate the useful comments of Prof Dr. Florian Jeßberger of the Chair of Criminal Law, Criminal Procedure Law, International Criminal Law and Contemporary Legal History at the Humboldt Universität zu Berlin for the useful insights.

I am also grateful for the useful comments by Prof Vormbaum's team at the Criminal Science Institute, University of Münster, particularly Frau Jara Streuer and Frau Rebecca Ohnesorge.

I also appreciate my colleagues and friends, Dr. Marshet Tessema, Dr. Seada Hussein Adem, Dr. Marian Yankson-Mensah and Dr. Nicksoni Filbert; our many spirited debates, inter-cultural meals and your friendship made the process of completing this book easier.

I acknowledge the assistance of the members of staff of the CLEEN Foundation in Abuja, Nigeria, where I visited on a research trip in 2017. I tested my ideas on the third

chapter with them and received useful engagement and feedback. Particularly worthy of mention are Dr. Benson Olugbuo, Ms. Ruth Olofin, Ms Chigozirim Odinkalu-Okoro and Dr. Wole Ojewale.

This acknowledgement would be incomplete without mentioning the support of my family—my dear husband, Ololade Adewuyi, whose encouragement has been unwavering. My children, Latoyo and Olanrewaju, who endured substantial time apart and did not enjoy my full attention when together as a result of this work. My outstanding parents, siblings and in-laws who support me despite my missing many family milestones; the Adewuyis, the Makindes, the Adekolas, the Tagurums, the Adewumis, the Ojos, the Odejides and the Olarogbas. I am immensely grateful for your sacrifices.

I sincerely acknowledge my colleagues at Future Challenges e.V. and Better Place Lab gGmbH, a consortium executing the Digital Human Rights Lab, with whom I had the pleasure of working in the final years of this work. I am grateful for the flexibility of the team and a remarkable working experience.

I appreciate my sister and friend, Olubusola Afolabi, for her constant support and a reliable listening ear. I also acknowledge Odejimi Ojo for his friendship and for helping to navigate government bureaucracy in Berlin at various times.

I also appreciate the entire membership of the Stone Church Berlin and the Junior Church where I serve, for providing me with a family in the city of Berlin.

Above all, I give all the glory to God, the giver of wisdom, he is, before all things, and by him, all things consist.

Berlin, Germany
June 2023

Victoria Ojo-Adewuyi

Contents

1	Introduction and Overview	1
1.1	Context	1
1.2	Background	8
1.3	Methodology and Research Questions	10
1.4	Literature Survey	11
1.5	Significance and Contribution to Scholarship	14
1.6	Organisation of the Chapters	15
	References	15
2	The Boko Haram Crisis: An Overview	21
2.1	Introductory Remarks	22
2.2	Historicising the Development of Boko Haram	23
2.2.1	Islam in Northern Nigeria	23
2.2.2	Political Islam in Northern Nigeria	26
2.2.3	Development of Islamic Fundamentalism in Northern Nigeria	28
2.2.4	Islamic Education and the Influence of the Almajiri System in Northern Nigeria	32
2.2.5	Terror for Religion's Sake	34
2.3	Factual Background to the Boko Haram Crisis	37
2.3.1	Trajectory of the Development of Boko Haram	37
2.3.2	Structure of Boko Haram	39
2.3.3	Ideology of Boko Haram	40
2.3.4	The Practice of Jihad by Boko Haram	43
2.3.5	Spreading the Germ: Boko Haram Evolution into Transnational Terrorism	45
2.4	Boko Haram Crisis by Typology	46
2.4.1	Killings of Civilians	46
2.4.2	Sexual and Gender-Based Violence	48
2.4.3	Abductions/Hostage Taking	52

2.4.4	Violence Against Children/Conscripting and Enlisting of Children	53
2.4.5	Attacks Against Civilian and Protected Objects	54
2.5	Impacts of the Boko Haram Crisis	56
2.5.1	Forced Displacement and Refugee Crisis	56
2.5.2	Educational Crisis	58
2.5.3	Healthcare Crisis	58
2.5.4	Socio-economic Impact	59
2.5.5	Threat to Regional Stability	60
2.6	Summary and Conclusion	60
	References	61
3	Domestic Criminal Legal Responses to the Boko Haram Crisis	71
3.1	Introductory Remarks	72
3.2	Brief Overview of Nigeria's Legal History	73
3.3	Substantive Criminal Law	77
3.3.1	The Nigerian Criminal Code	77
3.3.2	The Nigerian Penal Code	85
3.3.3	The Economic and Financial Crimes Commission (Establishment) Act 2004	89
3.3.4	Terrorism Prevention Act (2011)	90
3.3.5	Rome Statute Implementation	94
3.3.6	Domestic Legal Framework for Crimes Committed Between 2009 and 2011	95
3.4	Criminal Procedure	97
3.4.1	Criminal Procedure (Northern States) Act and the Criminal Procedure Code	98
3.4.2	Administration of Criminal Justice Act 2015	99
3.5	Justice Delivery Challenges	100
3.5.1	Prosecutions	102
3.6	Victims Participation and Protection?	104
3.7	Summary and Conclusion	105
	References	109
4	The Boko Haram Crisis and the International Criminal Court	115
4.1	Introductory Remarks	116
4.2	Jurisdictional Requirements	120
4.2.1	Jurisdiction <i>Ratione Temporis</i>	121
4.2.2	Jurisdiction <i>Rationae Materiae</i>	122
4.2.3	Jurisdiction <i>Ratione Loci and Ratione Personae</i>	123
4.3	Admissibility Requirements	125
4.3.1	Complementarity	127
4.3.2	Gravity Determination of Boko Haram Violence	132
4.4	Interests of Justice	136
4.5	Boko Haram Crimes Within the Jurisdiction of the ICC	138
4.5.1	Conducts Amounting to Crimes against Humanity	139

4.5.2	Existence of and Legal Qualification of the Armed Conflict	150
4.6	Serious Violations of Common Article 3 Article 8(2) (i)–(iv)	157
4.6.1	Violence to Life and Person	158
4.6.2	Outrages Upon Personal Dignity	160
4.6.3	Hostage Taking	161
4.7	Other Serious Violations of the Law and Customs in Armed Conflict Not of an International Character	162
4.7.1	Intentional Attacks Against Civilian Population	162
4.7.2	Attacks Against Installation and Personnel Using the Distinctive Emblem	163
4.7.3	Attacks Against United Nations and Associated Personnel	164
4.7.4	Attacks Against Protected Objects	165
4.7.5	Pillaging	166
4.7.6	Rape and Other Forms of Sexual Violence	167
4.7.7	Using, Conscripting and Enlisting of Children	168
4.8	The Need for Accountability	169
	References	172
5	Beyond Criminal Prosecutions: Alternatives and Adjuncts	183
5.1	Introductory Remarks	183
5.2	Why Does Transitional Justice Matter in the Boko Haram Discourse?	186
5.3	Transitional Justice for Boko Haram: Problems Arising	188
5.4	A Closer Look at Nigeria’s De-radicalisation, Rehabilitation and Reintegration Programme	192
5.5	Reconciliation and Restorative Justice: Problematic Concerns	197
5.6	Lessons from Nigeria’s Past Adventure and Misadventure with Transitional Justice Mechanisms	199
5.7	Concluding Remarks	206
	References	206
6	Concluding Remarks: Towards a Victim-Centred Approach	215
6.1	Concluding Remarks	215
6.2	Towards a Victim-Centred Approach	217
	References	219
Index		223

Abbreviations

AC	Appeals Chamber
ANC	African National Congress
Art(s)	Articles
ASP	Assemblies of States Parties
AU	African Union
BBC	British Broadcasting Corporation
CNN	Cable News Network
CTJF	Civilian Joint Task Force
DRR	De-radicalisation, Rehabilitation and Reintegration
DTM	Displacement Tracking Matrix
ECOWAS	Economic Community of West African States
Ed(s).	Editor(s)
edn.	Edition
et al.	And others (et alia)
et seq.	And the following (et sequens; et sequentes)
FATF	Financial Action Task Force
HRVIC	Human Rights Violation Investigation Commission
i.e.	That is (id est)
Ibid./ibid.	In the same place (Ibidem)
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for (the former) Yugoslavia
IMF	International Monetary Fund
IMT	International Military Tribunal (at Nuremberg)
IOM	International Organisation for Migration
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
ISWAP	Islamic States' West Africa Province
JIBWIS	Jama'at Izalat al-bid'a wa Iqmat al-Sunna
JTI	Jama'atul Tajdidi Islam

LCBC	Lake Chad Basin Commission
MEND	Movement for the Emancipation of the Niger Delta
MNJTF	Multinational Joint Task Force
NEDC	North East Development Commission
NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OTP	Office of the Prosecutor
PCNI	Presidential Committee on the North East Initiative
PINE	Presidential Initiative on the North East
SACP	South African Communist Party
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
SWAPO	South West Africa People's Organisation
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
VSF	Victims Support Fund

Chapter 1

Introduction and Overview



Contents

1.1 Context	1
1.2 Background	8
1.3 Methodology and Research Questions	10
1.4 Literature Survey	11
1.5 Significance and Contribution to Scholarship	14
1.6 Organisation of the Chapters	15
References	15

Abstract This chapter sets the context and provides a general overview for the crisis perpetrated by the *Jama'atul Alhul Sunnah Lidda'wati Wal Jihad* (Boko Haram) group in Nigeria and in areas around the Lake Chad Basin region. It provides a critical background to the crisis while exploring the methodology, answering the research questions and situating the crisis firmly within the context of international criminal law. The chapter also addresses the objectives and provides a general outline of the book.

Keywords African Union · Boko Haram · Civilian Joint Task Force (CJTF) · Criminal Code · Kidnapping · Penal Code · Terrorism Prevention Act · International Criminal Court

1.1 Context

On 19 January 2015, the president of the United Nations Security Council (UNSC) condemned the escalation of the Boko Haram attacks and acknowledged that the violence constituted threats to international peace and security.¹ By 2015, Boko Haram had developed from what was regarded as a local irritation into an international phenomenon with a recognisable name. Its violence had become recurrent in

¹ United Nations Security Council 2015.

the Nigerian security sphere since it started in 2009.² Regarded as a domestic terrorist group, the Boko Haram crisis defied predictions including the report of a technical defeat by the Nigerian government.³ From the government's initial lukewarm reaction towards the group's violence, to recognising the impacts of its activities, the anti-terror efforts mainly consisted of an armed offensive against the group. While Boko Haram gained its early members due to its provisions of social and other critically required services,⁴ it grew to become increasingly confrontational and utilised terror to achieve its aims of holding territory from its operational base in North-eastern Nigeria and the Lake Chad Basin region. Boko Haram combatants carried out large-scale violent attacks on civilians, government agents and public and private infrastructure alike. Its violence was the focus of a number of United Nations resolutions and statements, reports of international governmental and non-governmental organisations, countless anti-terror efforts and strategic high-level security conferences.⁵ However, civilians in Northeast Nigeria bore the brunt of the Boko Haram campaign of terror and violence. Domestically and internationally, Nigeria's response to the Boko Haram violence led to far-reaching challenges. Access to arms for this purpose was at the centre of a diplomatic incident between Nigeria and the United States for a number of years.⁶ The lack of progress in addressing the violence was arguably one of the factors responsible for the loss of the second term bid by the then incumbent President Goodluck Jonathan in 2015.⁷ Commentators have provided varying perspectives for the rise of the group and suggested a number of approaches to combat Boko Haram's violence.⁸ However, not much appreciable progress was made, and the group continued to reinvent its strategies to fit new tactics utilised by the Nigerian government.

In its anti-terror efforts, the Nigerian military operated jointly with the police and other law enforcement agencies. A Civilian Joint Task Force (CJTF) was also set up. The CJTF included members of the affected communities tasked with assisting in

² From a relatively unknown religious group into one based on expressing local grievances, Boko Haram grew to commit large scale violence responsible for destabilising Northeast Nigeria since 2009. The group's history and early activities are well documented in articles, news reports and reports of international non-governmental organisations operating in Northeast Nigeria. See generally Cook 2011, p. 3, Onuoha 2010, p. 55, and Walker 2012.

³ See BBC 2015, and Punch Newspaper 2018.

⁴ Apart from preaching the Q'uran, Boko Haram gained its early following especially among the youth due to the lure of the social services it provided. The group provided free Islamic education, business loans and arranged marriages among its members without the lengthy and expensive traditional processes. See generally, Washington Post 2016, TRT World 2017, Mercy Corps Report 2016, and Matfes 2017a.

⁵ United Nations Human Rights Council Resolution on the atrocities committed by the terrorist group Boko Haram and its effects on Human Rights in the affected states. Adopted by the Human Rights Council at its twenty-third special session, 1 April 2015 A/HRC/RES/S-23/1. United Nations Security Council Resolution 2349 2017, and United Nations Human Rights Office of the High Commissioner 2017.

⁶ See generally, BBC 2014, The New York Times 2015, and The New York Times 2016a, b.

⁷ See VOA 2015, and The Guardian 2015.

⁸ See Forest 2012, Solomon 2012, and Agbiboa 2013.

the identification of suspected members and/or sympathisers of Boko Haram.⁹ Thousands of detainees with alleged Boko Haram links were remanded in custody, in jails and military facilities. A few cases were also instituted. However, a minute percentage of these cases were completed in a timely manner. In response to these challenges, the Nigerian government in 2017 set up special courts with civilian judges sitting in military facilities exclusively for trials of Boko Haram related suspects and detainees. On the whole, although the violence has been described as ‘localised’¹⁰ and its activities an ‘African insurgency rather than a prototypical terrorist organization’,¹¹ at the beginning, the sustained nature of the violence and the sheer resilience of Boko Haram attacks since 2009 suggests that the characterisation has since changed.

In the domestic sphere, majority of the egregious acts of violence committed by Boko Haram fits the characterisation as crimes of terrorism and may be addressed partly by domestic legislation.¹² However, depending on categorisation, whether or not terrorism, which lacks a definition for the purpose of international criminal justice, should be considered as a crime within the contemplation of international criminal law has been a subject of spirited academic debate. It is settled that there is no *sui generis* crime of terrorism in the sense of a *delicta juris gentium*. The traditional view is that terrorism committed in peacetime is a crime within the domestic jurisdiction. Additionally, terrorist crimes have been described as amounting to acts of national criminal law which may or may not be of international concern.¹³ The necessity of international prosecution of terrorism has been called into question as terrorism is viewed as a crime against the ‘security, stability, sovereignty and integrity, institutions and structures or economy and development’ of the state.¹⁴ The idea of terrorism as a form of political violence was legitimised by the 1994 Declarations on Measures to Eliminate International Terrorism where a distinction of acts of terrorism from other acts of violence through its ‘political aims’ was made by the General Assembly in the annexed declaration.¹⁵ The definition of terrorism in the United Nations Convention for the Suppression of the Financing of Terrorism is widely recognised partly due to its abstract nature¹⁶ and it also received judicial acknowledgement by the Appeal

⁹ Agbibo [2018](#), Bamidele [2016](#), and Omenma and Hendricks [2018](#).

¹⁰ See Thomson [2012](#), p. 57.

¹¹ Matfes [2017b](#), p. 1.

¹² Terrorism is specifically addressed in Section 15 of the Economic and Financial Crimes Commission (Establishment) Act 2004 and wholly in the Terrorism Prevention Act 2011 and the Terrorism (Prevention) (Amendment) Act 2013.

¹³ UNODC Handbook on Criminal Justice Responses to Terrorism [2009](#).

¹⁴ Margariti [2017](#), p. 7.

¹⁵ ‘Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them;’ UN General Assembly Resolution 49/60 1990.

¹⁶ ‘Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties

Chamber of the Special Tribunal for Lebanon.¹⁷ The Tribunals' basis for the finding that terrorism is a crime under customary international law especially during peace time includes: commission of a criminal act or the threat of such an act, the intent to spread fear, coerce an authority to take action or refrain from taking an action and a transnational element.¹⁸ According to the Chamber, purely domestic attacks do not qualify to be regarded as crimes under international law.¹⁹ Some commentators rejected the approach of the Special Tribunal for Lebanon on the existence of a customary international crime of terrorism.²⁰

Boister²¹ proposes a transnational criminal legal framework for accountability for the crime of terrorism by utilising the structure inherent in the international anti-terrorism conventions which oblige states to criminalise prohibited terrorist acts. In his view, transnational criminal law consists of horizontal treaty obligations between states and vertical application of criminal law by states to individuals to meet its

listed in the annex; or(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.' Article 2(1) United Nations Convention for the Financing of Terrorism 1999 UN General Assembly Resolution 54/109 of 9 December 1999. The annex specifies the following conventions: Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970. 2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

¹⁷ Special Tribunal for Lebanon Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging 2011.

¹⁸ Werle and Jessberger 2014.

¹⁹ Special Tribunal for Lebanon Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging 2011.

²⁰ See compelling arguments in Ambos 2011, and Saul 2011.

²¹ Boister 2012, See similar arguments in Boister 2003, p. 14, Bossard 1990, and Luban et al. 2014.

treaty obligations and this may be applied regarding responsibility for terrorism.²² However, the need for an international mechanism for terrorism has been highlighted to prevent the possibility of terrorist offenders escaping accountability. This might occur should third states make decisions regarding the obligation of ‘*aut dedere aut judicare*’²³ for political reasons rather than a due consideration of the intent of criminal justice. While consensus seem to have been achieved regarding acts of terror committed in peacetime within the borders of one state, the same cannot be said for the applicability of terrorism in time of armed conflict²⁴ or with regards to acts of terror that results in a situation of armed conflict within the borders of a state.

Depending on the context, acts of terror may amount to a specific war crime, when committed during an armed conflict or crimes against humanity, when committed in peacetime, as part of a widespread or systematic attack against a civilian population with the required mental element.²⁵ Generally, for definitional purposes, a number of international instruments, while avoiding a general definition of terrorism, describe the phenomenon either in terms of prohibited acts committed or threat of violence

²² Boister 2012, p. 13.

²³ Deriving from several multi-lateral conventions, ‘*aut dedere aut judicare*’ refers to the legal obligation of States under international law either to surrender a suspect accused of serious international crimes to another State with the jurisdiction and willingness to prosecute or to adjudicate the cases before its national courts. It is often commonly expressed as the obligation to ‘extradite or prosecute’ and has been described as a *jus cogens* principle. See generally Bassiouni and Wise 1995. See also International Law Commission 2014.

²⁴ For example, see Cassese 2006. See also Scharf 2004.

²⁵ Article 7 The Rome Statute of the International Criminal Court 2002 hereinafter referred to as the Rome Statute.

utilised.²⁶ This approach was also used in a number of national legislations addressing terrorism.²⁷

Whether the crimes committed by Boko Haram may be addressed by Nigeria's domestic criminal legal regime notwithstanding, the transnational dynamics to the conflict is also especially noteworthy. Similar to its violent campaign within Nigeria, Boko Haram committed egregious crimes in states outside the territorial borders of Nigeria most especially Cameroon, Niger and Chad. In this vein, it may be inadequate to only envision the response of Nigeria's domestic legal framework to the Boko Haram violence; rather, a more broad-based perspective may be more appropriate.

²⁶ See for example Article 1(2) of the Arab Convention for the Suppression of Terrorism 2002 which states that Terrorism is 'Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment, or to public or private installations or property, or to occupying or seizing them, or seeking to jeopardize a national resources.' Article 1(3) of the OAU Convention on the Prevention and Combating of Terrorism 1999 describes Terrorist acts as 'any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or (iii) create general insurrection in a State; (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in para (a) (i) to (iii)'. Article 1(2) of the Convention of the Organisation of Islamic Conference on Combating International Terrorism 1999 states, "'Terrorism" means any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States'. See also Article 2(1) (a) and (b) of the United Nation's International Convention for the Suppression of the Financing of Terrorism. It states that '1. Any person who commits an offence within the meaning of this Convention, if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act'.

²⁷ A number of national anti-terrorism legislation in both civil and common law countries also defines terrorism along this line. See for example Section 1(2) Nigeria's Terrorism (Prevention) Act 2011, Section 2(1) Kenya's Prevention of Terrorism Act, No. 30 of 2012 (Rev 2015). Article 137 of Belgium's Terrorism Offences Act of 29 December 2003 defines a terrorist offence as acts which 'by its nature or context may cause serious harm to a country or an international organization.'

In the international sphere, some of the crimes committed by Boko Haram may also fulfil the requirements as crimes within the contemplation of the Rome Statute.²⁸ This necessitates an exploration of the potential jurisdiction of the International Criminal Court ('the ICC'). The possibility of the exercise of jurisdiction of the ICC is worthy of investigation, particularly due to the focus of the Rome Statute of the ICC on the individual perpetrator specifically and generally on individual criminal responsibility as international crimes are not committed by abstract entities.²⁹ Conversely, mechanisms available under public international law are typically more focused on the general obligations on states to create measures to address terrorism. Should the state not carry out its treaty obligations effectively, it may be logical to explore the response of international criminal justice to hold those who commit grave crimes accountable.

Generally, the International Criminal Court does not have the mandate to address all crimes, rather, investigating and prosecuting the 'most serious crimes of international concern'.³⁰ Accountability for international crimes is the driving force of its activities and the jurisdiction of the International Criminal Court is 'complementary to national criminal jurisdiction'.³¹ Cases may be admissible before the ICC if the state with primary jurisdiction is 'unwilling or unable to genuinely carry-out the investigation or prosecution' according to the principle of complementarity.³² The crimes within the jurisdiction of the Court include the crime of genocide, crimes against humanity, war crimes and the crime of aggression.³³ The jurisdiction of the ICC may be triggered by a state party referral in accordance with Article 12 of the Rome Statute,³⁴ by the Security Council under Chapter VII of the United Nation Charter,³⁵ or by the prosecutor acting *suo motu* in accordance with Article 15.³⁶ Its jurisdiction extends not only to the individuals accused of the crimes, but others who may be liable through aiding and abetting or otherwise assisting in the commission of the crimes as provided for in Article 25. The jurisdiction of the ICC may be exercised when the accused is a national of a state party or a state otherwise accepting the jurisdiction of the court, and when the conduct in question occurred in the territory of a state party or a state otherwise accepting the jurisdiction of the court.³⁷ The jurisdiction is non-retroactive and its temporal jurisdiction may be applied only in

²⁸ Rome Statute of the International Criminal Court 2002.

²⁹ Article 1, 25, Rome Statute of the International Criminal Court 2002. Determined to put an end to impunity for the perpetrators of international crimes, the Rome Statute has a mechanism for establishing degrees of responsibility elaborately provided for in Article 25. See generally Van Sliedregt 2012, and Werle and Burghardt 2014.

³⁰ Preamble, Rome Statute of the International Criminal Court 2002.

³¹ Preamble, Rome Statute of the International Criminal Court 2002.

³² Article 17 (1)(a), Rome Statute of the International Criminal Court 2002.

³³ Article 5, Rome Statute of the International Criminal Court 2002.

³⁴ Article 13(a), Rome Statute of the International Criminal Court 2002.

³⁵ Article 13(b), Rome Statute of the International Criminal Court 2002.

³⁶ Article 13(c), Rome Statute of the International Criminal Court 2002.

³⁷ Article 12, Rome Statute of the International Criminal Court 2002.

respect to crimes committed after July 1, 2002.³⁸ Although, terrorism does not exist as a stand-alone crime within the Rome Statute, commentators have proposed that terrorist acts and conducts may be prosecuted if they amount to prohibited acts within the definition of crimes in the Rome Statute regardless of legal characterisation.³⁹

Although, the Boko Haram crisis is ongoing as at the time of writing, Nigerian authorities are also exploring certain measures that may amount to classic transitional justice mechanisms⁴⁰ as a response to the crisis. The contribution of these mechanisms to restorative justice will be further explored later in this book.

1.2 Background

Officially named *Jama'atul Ahul Sunnah Lidda'wati Wal Jihad*,⁴¹ the moniker, Boko Haram, is generally expressed to mean 'western education is forbidden'.⁴² Since the group became a phenomenon in Nigeria, it has imprinted itself into national and international consciousness through grave acts of violence and terror. From systematic murders, inflicting grievous bodily harm, to suicide bombings optimised for large-scale casualties, abductions of women and girls, malicious destruction of properties, the group has acquired a reputation as a law unto itself. Since 2009 when Boko Haram began to wage violent conflict against Nigeria and its nearest

³⁸ Article 11(1) Rome Statute of the International Criminal Court 2002.

³⁹ See generally Arnold 2004, Cohen 2012, and Kenny 2017.

⁴⁰ Transitional justice mechanisms are typically utilised in post-conflict societies or post-authoritarian societies. Classic transitional justice mechanisms include judicial proceedings, utilising truth commissions, reparations for victims, vetting and lustrations, including amnesties. Regarding the Boko Haram crisis, the Nigerian government made a declaration promising amnesty for repentant Boko Haram members. The process commenced through the De-radicalisation, Rehabilitation and Reintegration Program (DRR) and Operation Safe Corridor (OSC) inaugurated by the Defense Headquarters in 2015. The programme has been widely criticised by commentators. See generally Hassan 2018, and Punch Newspaper 2017.

⁴¹ "People committed to spreading the heritage of the prophet and Jihad or people committed to preaching of the Sunnah and Jihad".

⁴² There is no generally acceptable meaning of the word Boko Haram. The term "boko" is usually rendered as a translation of the Hausa word for "book", while "haram" is generally accepted to connote the Arabic word for "forbidden" or "sinful". Although this interpretation has been disputed, the idea that western education is forbidden has come to be generally accepted as embodying the ideology of the group. Paul Newman in his dissent examined the etymology of the word "boko" and opines that it does not connote the Hausa word for "book" but rather means "sham", "fraud" or "inauthentic" which, according to him, the group uses to represent western education and learning. See Newman 2013, 1–13. In a 2009 statement, a so-called spokesperson for the Boko Haram group also affirmed that the name did not imply 'Western education is forbidden' but rather implies that 'western civilization' is forbidden. He also asserted that the focus of the group is to stress the supremacy of Islamic culture over all others. See Vanguard 2009. The name has also been described as a dismissive name for members of the group by its early neighbours as a critique of its activities. The argument is that Boko Haram could not connote the sinful nature of western civilisation as the group still utilised modern tools such as phones, cameras, social media platforms and the internet including vehicles and modern weapons. See Walker 2012, p. 7.

neighbours, the group became ‘sophisticated, coordinated and menacingly daring in its operations’.⁴³ As of early 2017, about two million Nigerians were reportedly displaced⁴⁴ as a result of the violent conflict. The healthcare and educational system was also completely shut down in a number of states during the period due to Boko Haram’s campaign of terror.⁴⁵ Additionally, humanitarian workers in 2017 warned of a hunger and famine crisis as major challenges in the region.⁴⁶

The Nigerian government’s response to the crisis was lukewarm in the beginning. It took mass international attention for significant anti-terror action to begin. The government declared a state of emergency first for six months in 2011; another for twelve months in 2013, but rather than the situation improving, it worsened considerably and the civilian casualty figures tripled during the period.⁴⁷ A number of cases were instituted against suspects on terror-related charges in Nigeria during the period. A large percentage of accused persons also remained in custody for years without the cases being charged to court or the matters dispensed with. Additionally, there were allegations of mistreatment of suspects and detainees including reports of summary executions of Boko Haram suspects in custody in Cameroon and Chad.⁴⁸

Attempts have been made by the Nigerian government to negotiate with the group,⁴⁹ the efforts seemed successful as it facilitated the exchange of eighty-two of the infamously abducted Chibok girls with some alleged senior Boko Haram detainees in custody in May 2017.⁵⁰ While this achieved a temporary pause in the violence, the group returned to the commission of violent acts thereafter. The terms of the agreement and whether the negotiations were related to putting an end to the violence or were merely utilised to facilitate the return of some of the hostages remained unclear.

The crisis has had wide-ranging political and diplomatic implications for Nigeria. Additionally, since the group’s evolution into transnational terrorism, Boko Haram has metamorphosed from a wholly Nigerian problem into a regional concern. The African Union boosted Nigeria’s anti-terror efforts by contributing to renaming and improving the erstwhile Multinational Joint Security Force created by the Lake Chad Basin Commission (“the LCBC”) in 1994.⁵¹ The mandate of the new Multinational Joint Task Force (“the MNJTF”) was expanded to include the fight against Boko

⁴³ Aghedo and Osumah 2012, p. 859.

⁴⁴ See International Organization for Migration 2017.

⁴⁵ See generally Human Rights Watch Report 2016, UNICEF ‘Nigeria Co-Situation Report’ 2016, UNHCR 2016, Médecins Sans Frontières 2015, and The Guardian 2014.

⁴⁶ Food and Agriculture Organisation of the United Nations 2017.

⁴⁷ New York Times 2012, BBC 2013, and Deutsche Welle 2014.

⁴⁸ Amnesty International Report 2016, and Vanguard Nigeria 2015.

⁴⁹ New York Times 2016a, b.

⁵⁰ Vanguard Nigeria 2017.

⁵¹ The Lake Chad Basin Commission (LCBC) is a regional inter-governmental organisation comprising of countries jointly bordering the Lake Chad. It was established in 1964 and its members include Nigeria, Niger, Chad, Cameroon, Libya and Central African Republic. The Boko Haram violence is rife in the region around the Lake Chad in Nigeria, Northern Cameroon and Niger due to a number of factors including porous borders and high mobility. See Galeazzi et al. 2017.

Haram in 2012. Troops were contributed by the LCBC countries to assist Nigeria and its nearest neighbours in the fight against Boko Haram. The Multinational Joint Task Force was effectively operationalised in 2015⁵² with its operative headquarters in N'Djamena, the Republic of Chad.⁵³

The conduct of the Boko Haram group was first addressed by the International Criminal Court in its 2012 report of preliminary examination activities. It is clear that the jurisdiction of the International Criminal Court may be triggered if the State which possess jurisdiction over the crimes committed is unwilling or unable to genuinely carry out investigation or prosecution.⁵⁴ The Office of the Prosecutor received communications under Article 15 of the Rome Statute and opened preliminary examinations in Nigeria inclusive of the Boko Haram violence. The preliminary examination was completed in December 2020, a decade after they started, with the prosecutor's acknowledgement that there was a reasonable basis to believe that conduct amounting to war crimes and crimes against humanity were committed within the context. Throughout the preliminary examination, the Office of the Prosecutor placed its focus on assisting Nigeria to strengthen its investigative and prosecutorial abilities through its complementarity activities. The decision of the Pre-Trial Chamber with regards to the request of the prosecutor for the authorisation of full investigation is at the time of rounding up this book, being awaited.

1.3 Methodology and Research Questions

In conducting this normative study, the assessment of the Boko Haram crisis was approached in a number of ways. While the main purpose of the book is to conduct an evaluation, and legal analysis of the Boko Haram problem, the utilisation of a multi-disciplinary approach in the early chapters became crucial. The historical, theological and socio-legal perspectives were analysed to assist in addressing the context and overview of the Boko Haram crisis. This aided in the understanding of the Boko Haram situation, including providing answers to the pertinent research questions.

Regarding the analysis chapters, while relying on both primary and secondary sources, this study described and prescribed the challenges of the domestic, regional and international criminal legal regime as a response to the crisis. This study interpreted the lesser-known domestic regime in accordance with established jurisprudence of international criminal law. Empirical data was also utilised particularly in the assessment of the efforts of the domestic legal system in relation to the crisis. With regards to potential crimes under the jurisdiction of the ICC, contextual elements of the crimes against humanity and war crimes were specifically and systematically addressed.

⁵² African Union 2015b.

⁵³ For more on the MNJTF, see generally African Union 2015a, and Institute for Security Studies West Africa Report 2016.

⁵⁴ Article 5, Rome Statute of the International Criminal Court 2002.