



Nigeria: Paper presented at the 55th session of the Nigerian Bar Association conference

'Counter-Insurgency: Is human rights a distraction or *sine qua non*?'

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I would like to thank the Nigeria Bar Association (NBA) for the honour of inviting Amnesty International (AI) to participate in this panel discussion. AI is a global movement of more than 8 million people in over 150 countries and territories, who campaign to end abuses of human rights. I am sure you all know, AI was founded in 1961 by Peter Benenson, a lawyer and legal practitioner like most of you. It is for this reason, I suppose, I should feel at home addressing this distinguished audience.

The question posed for this panel is, whether in counter-insurgency respect for human rights is necessary. AI would simply and emphatically answer, "Yes". Respect for human rights is not only a fundamental constitutional and international legal obligation, but also an intrinsic element of any effective counter-insurgency operation. Insurgents seek to undermine the authority of the State and often operate with total disregard for rule of law and respect for human rights. When a State reciprocates by violating human rights and the rule of law, it weakens the very values that form the basis of its authority. In practical terms, when states make arbitrary arrests, detain suspects without trial, use torture and unlawfully kill, they harm the very people and values they are supposed to protect.

The essence of this paper is to bring into focus the devastating impact of the conflict in north east Nigeria on peoples' lives, liberty and security, and to dismiss the false dichotomy between security and human rights. It submits that respect for human rights could and should be embedded in Nigeria's counter-insurgency strategy. There is widespread belief that the campaign against Boko Haram insurgency shouldn't have any place for human rights compliance because the country's military are fighting a group of ruthless terrorists. Accordingly, summary executions, torture, denial of food or water, inhuman and degrading treatment of Boko Haram suspects are thought to be a lawful and acceptable conduct. However, all these violations are manifestly unlawful under International Humanitarian Law (IHL).

THE CASE OF NORTH-EAST NIGERIA

From 2009, Amnesty International has been following closely the atrocities committed by Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, more popularly known as Boko Haram, mainly in north east Nigeria. In 2012 AI released its report, "Nigeria: Trapped in the Cycle of Violence" showing the devastating consequences for the people trapped in the middle of the cycle of attacks and counter attacks by both Boko Haram and the Nigerian military. Since then, AI has issued several reports on the atrocities of Boko Haram, the latest of which was in April 2015 titled, **"Our Job is to Shoot, Slaughter and Kill' Boko Haram's reign of terror in north-east Nigeria"**.¹ This report showed that in addition to abducting at least 2,000 women and girls, Boko Haram had killed at least 5,500 civilians and brutalized tens of thousands between 2014 and March 2015. Since the report was released, Boko Haram had killed at least 1,400 civilians in Nigeria and neighbouring countries, during raids on towns and bomb attacks in cities. According to the UN this violence has forced more than 1.5 million people to flee their homes, resulting in heavy social and economic dislocation in the entire north-east. This is only the most recent in our series of reports that had condemned human rights abuses by Boko Haram. Based on extensive research and incontrovertible evidence, AI has concluded that Boko Haram committed war crimes and crimes against humanity. IHL has long accepted that armed non-state actors like Boko Haram, are bound by it, even though they may not be parties to the relevant treaties.

Sadly, AI has also documented horrific human rights violations, war crimes and possible crimes against humanity committed by the Nigerian military in their campaign against Boko Haram. I am hopeful most of you would recall our report issued in June 2015 – **"Stars on their Shoulders. Blood on their Hands: War crimes committed by the Nigerian military"**² – a report which was a product of years of research based on extensive field visits, more than 412 interviews (with victims, their relatives, eyewitnesses, human rights activists, doctors, journalists, lawyers, and military sources), as well as analyses of hundreds of documents and more than 90 videos. In this report we have revealed that not less than 7,000 people had died in military detention as a result of starvation, thirst, extreme overcrowding that led to the spread of diseases, torture and denial of medical assistance, as well as the use of fumigation chemicals in unventilated cells. We believe that about 20,000 were arbitrarily arrested, while about 1,200 were extrajudicially executed by the military, sometimes in collaboration with the Civilian JTF members, during the period covered by our report. In a ten-minute presentation, I shall be unable to summarize effectively the two reports of over 200 pages. I shall, however, leave behind 20 copies of the reports for your Secretariat, as well as the Internet link that would give you access to them.

¹ <https://www.amnesty.org/en/documents/afr44/1360/2015/en/>

² <https://www.amnesty.org/en/documents/afr44/1657/2015/en/>

NIGERIA: HUMAN RIGHTS COMPLIANCE IN COUNTER-INSURGENCY STRATEGY

As outlined from the beginning, the conduct of the Nigerian military, that led to the unlawful murder, arbitrary arrests, mass detention and torture, were in many ways gross violations of Nigeria's obligations under IHL, Nigerian Constitution and other domestic legal safeguards. IHL comprises rules that seek to mitigate the effect of wars on civilians and humanity by limiting the means and methods of conducting military operations. It is essentially predicated on the delicate equilibrium between the competing demands of military necessity and humanity. The major sources of IHL to which, Nigeria is a State-Party, are the Geneva Conventions and their Protocols, and customary international law. In a non-international armed conflict, such as the one in the north-east Nigeria, the parties to the conflict are bound to comply with the norms contained in Common Article 3 of the Geneva Conventions, Protocol II to the 1949 Geneva Conventions and customary international law, which consists of rules that are binding on all states. Nigeria acceded to both the Geneva Conventions and their Protocols.

One basic principle of IHL is that of "distinction" – all possible measures must be taken to distinguish between military targets and civilians or civilian objects. The rules also require the humane treatment of any person in the power of the enemy and obligate the parties to care for the wounded without discrimination. Arbitrary deprivation of liberty in times of conflict is also prohibited under IHL and all detentions must be authorized by domestic law and be in compliance with international human rights law. It should also be noted that international human rights law, as affirmed by the ICJ and UN Human Rights Committee, applies in time of armed conflict as well as in peacetime. This brings to mind an argument we are likely to hear in this seminar, that Art.4 of the ICCPR provides for derogation from its observance under "Public Emergency", like the State of Emergency declared in the north east. However, the validity of this exceptional measure is subject to a number of requirements set by the Treaty Law, such as "qualifications of severity, temporariness, proclamation and notification, legality, proportionality, consistency with other obligations under international law, non-discrimination, and lastly non-derogability of certain rights recognized as such in the relevant treaty. The relevant treaty provisions provide a list of rights that in absolute terms cannot be derogated from, i.e. **the right to life, the prohibition of slavery, prohibition of torture or cruel, inhuman or degrading treatment or punishment and prohibition of retroactive penal measures**. As such, international and Nigerian laws protect people in detention, even in times of conflict, and prohibit extrajudicial executions and torture and other cruel, inhuman and degrading treatment. It's worth mentioning also that the African Charter on Human and People's Rights (ACHPR), which Nigeria has not only ratified, but also domesticated, does not make derogations from the rights mentioned above. In effect, the arbitrary mass arrests and detention of civilians and suspected members of Boko Haram made outside the battle field, with no access to the court and no evidence, are contrary to Nigeria's Constitution and international human rights obligations. The bitter fact is that the Nigerian security

forces have a history and pattern of human rights violations, and these go on across the country, even in regions not under the State of Emergency. The massacres in Odi and Zaki Biam by the Nigerian military did not take place in a State of Emergency.

Despite these clear legal obligations, some claim that respecting human rights would make it more difficult to defeat Boko Haram. AI fully rejects these assertions and insists that Nigeria, as a nation, needs to resist the temptation to subvert human rights and the rule of law in the name of fighting terrorism. As the UN General Assembly stated (Res. 60/288 of 8/9/2006) "counter-terrorism measures and the protection of human rights are not conflicting, but complementary and mutually reinforcing goals, and that human rights and the rule of law should be the fundamental basis of Member-States' counter-terrorism strategies. Indeed, if arrest were based on reasonable suspicion and adequate investigations, it is more likely that Boko Haram members would be brought to trial and convicted, instead of evading justice. There's no moral, tactical or legal justification for denying detainees, including Boko Haram members or supporters, their basic human dignity. There is no excuse for torture, no reason for unlawful murders and nothing to be gained from trading Boko Haram's evil for military atrocities against civilians.

RECOMMENDATIONS

Our reports on the conflict in the north-east contain extensive recommendations to the Federal Government of Nigeria and stakeholders. But today, I shall highlight three recommendations in conclusion:

- (i) The Government needs to initiate a prompt, independent, impartial, and effective investigation into the gross human rights violations by both the Nigerian military and Boko Haram in north-east Nigeria. In this regard, AI welcomes the commitment made by President Buhari, and we believe the realization of this commitment will be an essential first step toward providing justice for the thousands of Nigerians who have suffered as a result of actions by Boko Haram and the military;
- (ii) Actions must also be taken to strengthen safeguards against such violations by the military in the future. Many of these safeguards will be familiar to this audience. The military needs to fully respect the laws of war; detainees should be brought before a court within a reasonable time, they should be able to contest the legality of their detention and allowed access to their lawyers and families. In this regard, AI welcomes the President's call on the new Service Chiefs to re-professionalize and train Nigeria's troops and we believe this is one of the necessary measures. But much more needs to be done to instill strong safeguards;

- (iii) The Government also needs to provide an effective remedy to victims of human rights violations and their families, including compensation and reparations, as well as humanitarian relief to all affected communities.

Finally, to this audience – lawyers, as always, have a vital role to play in ensuring the respect for human rights. You or your members may be involved in investigations into crimes under international law and implementing due process safeguards against unlawful detention and other violations. AI hopes that the Nigerian Bar Association will be able to find a common cause in advocating for these measures. I hope you will agree, as this paper has argued, that one can support both respect for human rights and counter-insurgency.

Thank you.