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CRIMINALISING STATE TERRORISM IN NIGERIA: TOWARDS A LEGAL FRAMEWORK FOR MILITARY ACCOUNTABILITY DURING ARMED CONFLICTS

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ABSTRACT

Terrorism is conventionally associated with non-state actors such as insurgents, separatists, and extremists, while state actors like the military are generally regarded as lawful enforcers of peace. However, this dichotomy ignores the possibility of terrorism committed by state forces, particularly during armed conflicts. Nigeria's legal framework largely omits the possibility of attributing terrorist acts to state actors, despite recurring reports of military excesses, including extrajudicial killings, indiscriminate bombing of civilian areas, and torture. These acts, while often categorised as breaches of military conduct or humanitarian law, fall within the scope of terrorism under international legal standards. This paper employed a doctrinal research methodology, drawing from statutes, case law, scholarly texts, and international legal instruments. It found that although Nigeria has ratified the Geneva Conventions, domestic military laws and the Terrorism (Prevention) Act do not explicitly criminalise acts of terrorism by military personnel. The study examined notable incidents such as the Odi, Zaki-Biam, and Baga massacres, which exhibited characteristics of state terrorism. Despite court judgments and public outcry, accountability has remained elusive because of legal and institutional gaps. The paper concluded that Nigeria's failure to criminalise state terrorism perpetuates impunity and undermines human rights. It therefore recommended urgent legal reforms, including amending existing anti-terrorism laws to cover state actors, incorporating international humanitarian law into military training, and establishing an independent body to investigate and prosecute acts of terrorism by the armed forces.

Keywords: *State Terrorism, Nigerian Military, Legal Framework, Accountability, Armed Conflict.*

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1. INTRODUCTION

In discussing the crux of this paper, this work is divided into four parts. The first part defines the key terms associated with this topic. Here, the paper examines definitions of terms related to terrorism, the Nigerian Army's responsibility as a state actor, and other related concepts. In part two, the paper examines Nigerian laws on the military, terrorism, and armed conflict. In part three, the paper discusses the justification for criminalising terrorism as an offence under Nigerian military law. In part four, the paper concludes by recommending what the Nigerian government should do to discourage acts amounting to terrorism committed by the Nigerian army.

2. CONCEPTUAL CLARIFICATION OF TERMS

2.1 Definition of Terrorism

The term terrorism has many meanings and interpretations. This cuts across the views from various disciplines, including social sciences, politics and law. This research focuses on the legal perspective on terrorism. This is because it analyses the concept from a legal perspective. In doing so, this work will explore scholarly definitions as well as judicial and statutory definitions (which include international and national legislation). The expositions of these definitions are examined in the next part of this work

Jonathan Ishaku[1] is of the view that there is no precise definition of terrorism. The evidence of the challenge associated with defining terrorism is that, during negotiations for the treaty establishing the Rome Statute, delegates could not agree on a definition of terrorism. This ultimately led to the exclusion of terrorism as one of the crimes contemplated under the Rome Statute.[2] In other words, the definition of terrorism cannot be fixed or ascribed to a particular meaning as the final definition. Rather, he viewed terrorism from three perspectives.

First, he viewed it through the liberation-movement approach. By this, he refers to the classification of people as terrorists in situations where they engaged in armed struggle, such as freedom fighters. Here, it refers to categories of people who are classified by their opponents as terrorists because they engaged in armed struggle for political liberation. He based his

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1. Jonathan Ishaku, "*Boko-Haram and Armed Herdsmen Violence: The Theory and Politics of Terrorism and Counter-Terrorism in Nigeria*" (CCLBOOKS, Courier Communication Ltd, Jos) P.34. Definitional problems has been of the conceptual definitions characterizing the concept of terrorism. Thus, as an alternative, many scholars resort to operational definitions. See Wafula Okumu and Annelli Botha, "Domestic Terrorism in Africa: Defining, Addressing and Understanding its Impact on Human Security"(Edn.) *Terrorism Studies and Research &Research Program,* Vols.5 and 6, 2007, pp. 5- 7 and Alex Schmid, "Terrorism-The Definitional Problem", 36 Case W. *Reserve J. Int'L* 375(2004) <https://scholarlycommons.law.case.edu/jil/vol36/iss2/8> Accessed on May 2, 2021. However, the consolation of this dissertation is that it adopts legal definitions which are fixed in nature. This is because various legislations and conventions have defined and spelt out what amounts to terrorism, and judicial pronouncements have acted on it.

2.Emeka Iwegbulam, "International Terrorism and the Global Peace: A critical Appraisal", *International Journal of Science and Sustainable* Development, Vol.3, NO.3,2013 Center For Advanced Studies and Research P.125

argument on the interface between Nelson Mandela and the Apartheid regime in South Africa, where Nelson Mandela was once tagged as a terrorist by the Apartheid South Africa.[3] Other instances where freedom fighters are tagged as terrorists include cases involving Jonas Savimbi of the United Front for the Total Independence of Angola (UNITA) [4] and Ahmed Ben Bella in a similar way; non-state actors like the Independent People of Biafra (IPOB), Eastern Security Network (ESN) and Niger-Delta Militants and Niger Delta Avengers were, at one point in time, tagged as terrorists.

Second, he talked about delegitimisation and criminalisation.[5] By this, he meant that an act can be termed as terrorism when it is delegitimised; that is, it lacks legal support by the government of the day. Also, an act can be criminalised as terror whenever law prohibits and penalises it. As such, a tribal association or a political association may be termed as terrorist once a state proscribes them as such and penalises or criminalises their activities. It was from this prism that the Nigerian government are contending with the Independent People of Biafra (IPOB) and also Boko Haram.

Third, he sees terrorism as a multifaceted approach to instilling violence in the state and its citizens.[6] It is from this perspective that individuals, religious and ethnic groups, perpetrate acts of terrorism in expressing their dissatisfaction with an existing social order. Thus, terrorism can be deployed via religious, tribal, patriotic and other means of self-determination with the aim of instilling violence in civilians and the state.

Banks[7] Further looks at terrorism as an act of violence that is aimed at political gain and targeted towards an intended audience. It is the use of violence to either appease the political expectations of certain groups or undermine the political authority of those in power. It refers to using terrorism to gain political power or make a request. Furthermore, Imobighe views terrorism from four (4) prisms. He believes that for an act to qualify as terrorism, it must contain four elements. These elements are:

(a) Environment of conflict,

(b) Response to a conflictual relationship,

(c) Rampant targets, and

3.Josh K. Elliot, "Why Anti-Apartheid hero Nelson Mandela was Once labelled a terrorist", *Global News,* April 27,2019 <globalnews.ca> Accessed on May 2,2024.

4.Institute for Policy Studies, "Jonas Savimbi: Washington's Freedom Fighter Africa's Terrorist" Institute for Policy Studies, February 2,2002 <fpiif.org> Accessed on May 2, 2021.

6. Jonathan Ishaku, "*Boko-Haram and Armed Herdsmen Violence: The Theory and Politics of Terrorism and Counter-Terrorism in Nigeria*" (CCLBOOKS, Courier Communication Ltd, Jos) P.35

7. Ibid P.36.

10. Richards R. Banks, "Racial Profiling And Anti-Terrorism Efforts" Cornell Law Review,VOL.89, Iss.5,2004 <http://scholarship.law.cornell.edu/clr> Accessed on 5 May, 2021.

(d) Multiple and varied objectives.[8]

By an environment of conflict, he means terrorism is an act of hostility that occurs in a conflict environment. It relates to a situation where a particular geography or location, such as a state, region or community, becomes a theatre of terrorism. This means that certain places or locations are prepared as dens for terrorist acts. The mere mention of these places evokes fear in people's minds. This theory of the environment of conflict aligns with places like concentration camps and torture dens built by people like Hitler, Idi Amin, Saddam Hussein, Muammar Gaddafi and other dictators.

In response to conflictual relationships, he also means that terrorism is a negative relationship that leads to an exchange of hostilities. It may occur in response to an act of marginalisation by the state, organisation, or certain individuals. These states, organisations or individuals might have been the first to unleash terror on certain persons. This, in turn, can lead to reprisal by the terrorist, thereby unleashing terror. Conflictual relationships can be expressed in three categories in tandem with the classification of armed conflicts under international humanitarian law. The classifications are:

(a) Conflictual Relationships between one independent state and another: International armed conflict.
(b) Conflictual Relationship between an Independent state and non-state actors: Non- -Non-Internationalised Armed Conflict, and
(c) Conflictual Relationship between two non-state actors with an Independent State: Internalised Armed Conflict.

The notion of terrorism being characterised by rampant military targets means that the terrorists don't have particular military objectives. This further implies that they could kill civilians, seize and destroy civilian objects/properties, deploy child soldiers and use human shields in armed conflict. They don't necessarily need to vent their anger or hostility towards the government they are fighting. At times, the government whom they may be fighting could be their targets, as well as innocent civilians who knew nothing about the sources of the conflict. In other words, terrorists don't observe the principle of distinction in armed conflict. Thus, they treat parties and non-parties to the conflict as targets. There is no recognition of combatant and non-combatant status or *hors de combat*, medical neutrality or respect for civilians such as women and children.

11.Thomas Imobighe, "Challenges in Categorising Domestic Terrorism" in Wafula Okumu and Anneli Botha (edn.) In *Domestic Terrorism in Africa: Defining Addressing and Understanding its Impacts on Human Security*,Vols.5 and 6 Institute For Security Studies, p.14.

A critical appraisal of these definitions reveals that terrorism is a multifaceted approach aimed at causing public harm to the state and its citizens to achieve a political goal or negotiate a compromise. However, these definitions are deficient in the fact that a state can also commit terrorism against its citizens, as well as the fact that the state itself can also be a victim of terrorism. States can commit terrorism when their armies engage in extrajudicial killings of civilians during armed conflicts, forcefully evacuating civilian populations, rape, torture and other inhumane treatment carried out against civilians, prisoners of war and the wounded and the sick. [9]

Furthermore, various United Nations Conventions and international legal instruments prohibit terrorism at the international level. Nigeria, as a member of the international community, also signed some of these treaties. Thus, in compliance with international campaigns against terrorism, Nigerian law recognises some international conventions as part of Nigerian legislation against terrorism.[10]

The United Nations General Assembly Resolution titled "Measures to Eliminate International Terrorism"[11] described terrorism as:

> Criminal acts directed against a state and intended to or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic.

This definition appears to portray the state to be the victim of terrorism, rather than citizens.[12] Thus, it is capable of making or tagging freedom fighters in the struggle for self-determination as terrorists. [13] It is from this prism that nationalists like Nelson Mandela, Robert Mugabe, Jomo Kenyatta and Ahmed Benbella were once tagged as terrorists. However, the consolation is that the United Nations General Assembly Resolution titled "Measures to Eliminate International Terrorism" is no longer a legal instrument that commands much jurisprudential value. This stemmed from the fact that the League of Nations.

12.Bruce Broomhall, "State Actors in An international Definition of Terrorism From Human Rights' Perspective", *Case Western Journal of International Law200, 4* Vol. *36 Issue2* <https://scholarlycommon.law.case.edu/jil/volume36/iss2/9> Accessed on January 2023.

13.This position is seen in the provision of section 19 of the Terrorism (Prevention) Act, 2011 (As amended) which made references to international conventions prohibiting terrorism.

14. (Agenda Item 107) Resolution68\119A\69\209

13.EmekaIwegbulam, "International Terrorism and The Globa Peace: A Critical Appraisal", *International Journal of Social Sciences and Sustainable Development*, Vol .3 NO.3. Centre For Advanced Training and Research,2013.P.125.

14. Ibid.

2.2 Features of Terrorism

There are many features of terrorism. Scholars tend to analyse what essential elements they believe constitute terrorism. In all their contributions, there are five distinct elements that can be gleaned. These five elements are;

a) The use of threat or violence,
b) Political objectives,
c) Intention to spread fear,
d) Targeting civilian populations or soft targets,
e) It does not operate as conventional warfare.

2.2.1 *The Use of Threats or Violence*

This refers to a situation where the terrorists threaten their audience or adversaries through the use of violence or the use of intended violence. This is usually achieved through video clips of threats shared on social media. Violence is also actualised via killing, raping and kidnapping of people. The threats of violence against the civilian population sometimes instil psychological terror in the lives of people.

2.2.2 *Political Objectives*

Terrorists usually have political objectives. These include particular political demands such as freedom for the state of Palestine from the Israeli government, and the Taliban and Boko Haram's demands for theocratic States in Afghanistan and Nigeria. Similarly, when Air France Flight 139 was hijacked by terrorists belonging to the Popular Front for the Liberation of Palestine, they demanded the political liberation of Palestine.[14]

2.2.3 *Intention to Spread Fear*

The terrorists bargain their demands with the intention of spreading violence and fear. Thus, if their offer is not accepted, they will deploy killings and torture of the people under their capture. This spreads fear across the populace.

2.2.4 *Targeting Civilians in Populations or Soft Targets*

Most terrorists prefer to use civilians who are unarmed and defenceless.[15] They prefer them to fully armed combatants. They also target civilian installations such as malls, schools, transportation centres, and other places of civilian activity.

18. Jonathan Spyer, "The Hijackers of Entebe-The Full Story". The Jerusalem Post, July 23,2020 <www.jpost.com> Accessed on May 5, 2021.

15Thomas Imobighe, "Challenges in Categorising Domestic Terrorism" in Wafula Okumu and Anneli Botha (edn.) In *Domestic Terrorism in Africa: Defining Addressing and Understanding its Impacts on Human Security*,Vols.5 and 6 Institute For Security Studies, p.14.

2.2.5 *Terrorism does not operate as conventional warfare*

This is a non-conventional method of warfare. This means those terrorists don't observe the rules of engagement governing armed conflicts. They violate such laws with impunity. They have no regard for the Geneva Conventions, which is why they can kill women, children and other vulnerable members of society.

Finally, on the features of terrorism, Jessica S. observed that:[16]

> A student of terrorism is confronted with hundreds of definitions...But only two characteristics of terrorism are critical for distinguishing it from other forms of violence.... First, terrorism is aimed at non-combatants... Second, terrorists use violence for dramatic purposes; instilling fear in the target audience is often more important than the physical result...

2.3 Types of Terrorism

There are different types of terrorism. These include[17]: political terrorism, state terrorism, war terrorism, religious terrorism and psychopathic terrorism.

2.3.1 *Political Terrorism*

This is terrorism that occurs as a political movement. It seeks to promote political ideology such as freedom from oppression, justice, equality, the right to self-determination and reprisal.[18] This type of terrorism squarely deals with agitation towards a political movement. They see force as a viable means of making the government meet their demands or compromise in their favour. They also use force to change the government or restore the status quo. Examples of such terrorist groups are Hezbollah, Al-Qaeda, Boko Haram, Al-Shabaab, etcetera.

2.3.2 *Religious Terrorism*

This deals with a situation whereby a religious belief served as an instigation for terrorist acts.[19] Terrorism is classified as religious when the main essence of that terrorism is to propagate, promote and instigate the use of that religious ideology through violence and not persuasion. Examples are Boko Haram and Al-Qaeda, which want a religious state.

20.Innocent Okoronye, "International Humanitarian Law and the Principle of Distinction" (2022) <https://www.journalonlawandconflict.org/vol10-issue2> Accessed May 10, 2024. P.12.
26. "Definition, History, and Types of Terrorism", Online Degree Programs, Eastern Kentucky University <https://ekuonline.eku.edu> Accessed May 6, 2021.
18. Innocent Okoronye, (n 20) 25-28.
28.Ibid.

2.3.3 *War Terrorism*

War terrorism occurs in a situation whereby the belligerent party inflicts unnecessary harm on civilians and combatants alike. It also occurs where the combatants employ disproportionate means and methods of warfare in the course of armed conflict, which results in harm and injury to civilians and civilian property alike.

2.3.4 *State Terrorism*

This is where one state's government uses its apparatus of force to perpetrate terrorism.[20]It could take place in two ways: during armed conflicts and during peacetime. In armed conflict, the state spreads terrorism when it violates the Geneva laws governing armed conflict, where it attacks civilians, the sick and wounded, rapes, forcefully evicts civilians, etcetera. That is why the Terrorism Act included acts that occurred in the course of armed conflict as capable of constituting terrorism.[21]

Additionally, in peaceful times, state terrorism can be committed where security personnel engage in spreading terror, fear, extrajudicial killings and harassment of civilians. This mostly takes place in cases of low-intensity conflict (LIC). One of the typical examples of State Terrorism is the case of Saddam Hussein against the Kurds. This is a case wherein the Kurds of Iraq were massacred via the use of chemical weapons under the direction and supervision of the government of Iraq when Saddam was President.[22]

2.3.5 *Psychopathic Terrorism*

Psychopathic terrorism is a situation whereby individuals engage in acts of terrorism by inflicting harm on other members of society or by causing terror. This classification seeks to attribute the individual terrorist as somebody suffering from psychological aggression, which expresses itself in terrorism.[23] It involves instances like suicide bombings and mass shootings.

2.3.6 *Cyber Terrorism*

This is a recent development. This type of terrorism deploys cyberspace to cause fear and intimidation among cyber users. Second, it also serves as a medium for terrorists to gain attention in active areas of operation. The use of cyber sites and links to promote terrorists'

30.Grothaus, "Causes of Terrorism" (2011) *International Terrorism and Security* in Mary Jennifer Omachi, "Appraisal of The Terrorism (Prevention) Act 2011 (as Amended): A Focus On Boko Haram Activities*" JILJ* Vol.4. NO.1, 2018 P.168.

30. Section 4 (c) of the Terrorism Act, 2021 prohibits any unlawful acts of attacked or used of violence against any person not taking part in armed conflict.

31.Grothaus, (n 30) 168.

33.Armanado Piccini, Donattella Marrazzitti and Antonello Veltrii, "Psychopathology of Terrorists" CNS Spectrum, Cambridge Core, 2018 <https://www.cambridge.org> Accessed on May 6,2021.

activities has been on the rise. Hence, many nations have extended the scope of terrorism to include cyber-terrorism.

2.3.7 *Eco-Terrorism*

This refers to terrorism that affects the natural environment. It is an act of hostility aimed at the natural environment, such as waters, forests, mountains, and space.[24]It can also mean violence perpetrated to protect the environment. [25]Such acts are mostly seen as the aftermath of armed conflict by state actors and terrorists alike. Thus, both terrorist and state actors can cause cyberterrorism. That is why International Humanitarian Law prohibits state actors from deploying any weapon that will negatively affect the natural environment. This is reflected in the Environmental Modification Convention (ENMOD) and Articles 35(1) and 6 of the 1st Additional Protocol, which clearly prohibit weapons that may affect the natural environment.

2.4 Meaning And Types of Armed Conflicts

Armed Conflict is a state of hostilities that exists between two or more belligerent parties. It is an official declaration of a state of hostilities between two parties that are governed by the Geneva Conventions and their Additional Protocols. Armed conflict does not need to start with an official declaration of war; it can begin when one party launches an attack or aggression. Armed conflicts can also exist between two parties that are not bound by the Geneva Conventions. From this angle, armed conflict is classified as international armed conflict, non-international armed conflict, and internal armed conflict.

International armed conflict involves hostilities between state actors under the Geneva Conventions. It involves hostilities between two or more countries. For example, the Iran-Iraq War of 1988, the Ethiopian–Somali Ogaden War of 1978 and the Gulf War. Non-international armed conflict refers to armed conflict between State actors and non-state actors. It is an armed confrontation between state actors and rebel groups, insurgents, terrorists, or freedom fighters. These types of armed conflict are reflected in situations such as civil war, insurrections, and other related internal disturbances.

Internalised armed conflict refers to conflict that arises within a particular territory. It is a type of armed conflict that occurs between two or more types of armed groups that are not state actors. For example, two rebel groups may fight each other, as in the Liberian Civil War and the Sierra Leone Civil War.

34. Chad Nilson and Tod Burke, "Environmental Extremist and the Eco-terrorism Movement", ACJS Today, February 2002 <https://www.unl.edu.eskridgeec...> Accessed May 6, 2021.
35. Spadora, Paola Andrea, "Climate Change, Environmental Terrorism, Eco-Terrorism and Emerging Threats", Journal of Strategic Securities 13NO.4 2020.P.59 <Https://scholarscommons.Usf.Edu>... Accessed on May 6, 2021.

3. THE INTERFACE BETWEEN THE ROLE OF THE ARMY AND STATE TERRORISM IN ARMED CONFLICT

Since armed conflicts are executed by state actors like the military, the tendency to commit terrorism is high. They can commit acts of terrorism whenever they engage in acts that could amount to war crimes, genocide, crimes against humanity and aggression. Also, acts carried out by military operators that could amount to a violation of the Geneva Conventions and their Additional Protocols could amount to terrorism. Flowing from this argument, the interface between the roles of the army in terrorism during armed conflict could be:

(a) Where military personnel engaged in disproportionate acts in armed conflicts

(b) Where they engaged in inflicting unnecessary harm on non-combatants

(c) Where the military committed grave breaches

The above indices are some ways the role of the army may lead to terrorism. Thus, even in international and non-international armed conflicts, if armies commit egregious acts contrary to IHL, they could be held liable for terrorism.[26]

4. INCIDENTS OF TERRORISM IN NIGERIA

Incidents of terrorism by state actors abound in Nigeria. Thus, it is appropriate to discuss some of these incidents of terror perpetrated by state actors. Some of these acts of terrorism occurred as a result of violations of the basic principles of humanitarian law such as proportionality, distinction and humanity. Some of the incidents include:(a) the Nigerian Civil War, 1967, (b) the Odi Massacre, 1999, (c) the Zaki-Biam Massacre, 2002, (d) the Baga Massacre, 2013, (e) the Kadarko Massacre, 2014, (f) the Shi'ite Massacre, (g) the Lekki Toll Gate Massacre (ENDSARS Massacre), and (h) 2017 Military Complicity in Mkievowro.

(a) *The Nigerian Civil War*

The first instance was in the Nigerian Civil War. It was established that the Nigerian Army and the Biafran Army engaged in violations of the laws of armed conflict, which is tantamount to terrorism.[27] The Massacre of innocent civilians at Asaba by the Biafran Army during the Armed Conflict was adjudged as a terrorist Act. [28] The Nigerian Army also committed a lot of atrocities that were terrifying during the Nigerian Civil War. This includes the looting of civilian properties and the killings of unarmed civilians by Nigerian Army

26. Article 33 of the Fourth Geneva Convention of 1949.

27 Adebayo Adedoyin, "Nigeria-Biafra Civil War and Law of Armed Conflict", Journal of Society For Peace Studies and Practice, (2014) Pp.4-11@https://www.researchgate.net>3345<accessed on September 17, 2023>

28Emmanuel Ibezim, "Redressing Atrocities of War in Biafra: A Matter of Amnesia or Prosecutions?",Commonwealth Law Review Journal, Vol.2, (2021) Pp.82-88

officers.[29] The terrifying acts of the Nigerian Army were reported by many sources. Silverman noted that when the Federal Troops chased the Biafran Army, they entered Asaba City and spent 3 days killing innocent civilians. [30]These atrocities were committed under the command of Murtala Mohammed and some of the Nigerian Army officers. Bird and Ottanelli observed that acts of terrorism were covered up and not made known until after the civil war. [31] The atrocity was so grave that former President Yakubu Gowon had to apologise to the people of Asaba decades later.[32]

It is unfortunate that, despite these acts of terror by the Nigerian Army, their acts were further covered by the 'No victor, No vanquished' mantra. Thus, those who violated these laws of international humanitarian law were not interrogated or prosecuted for their acts. This was quite unfortunate because, even before the civil war, Nigeria had signed and enacted the Geneva Conventions in 1960. This gave birth to the Geneva Conventions (Enforcement and Ratification) Act.[33] The only limitation is that Nigerian legislators have not enacted the Additional Protocols to the Conventions. [34] Thus, some vital IHL provisions in the Additional Protocols remain unimplemented.

(b) *The Odi A Massacre 1999*

This incident occurred during President Olusegun Obasanjo's regime. The people of Odi Community are Nigerians from the Kolokuma-Opokuma Local Government Area of Bayelsa State. The Niger Deltans protested against the harmful environmental activities of some oil companies and the Federal Government of Nigeria's neglect. These developments led to protests and violence by civilians against the oil companies and security forces and, consequently, gave rise to militant groups.[35] In response to the actions of the Odi Community, the Nigerian government invaded the Odi community with a joint team of Police and Army and killed unarmed civilians. During the Odi Massacre, acts of terrorism such as rape of women, extrajudicial killings, razing down of communities, looting and destruction of property were perpetrated by the soldiers.[36] Churches and health facilities were also destroyed. [37]These

29 GreenbergResearch,OP.Cit@P.6
30 Jon Silverman, "Plans for an Asaba massacre memorial are Stirring Passions in Nigeria", the Conversation, March 2,2020@https://theconversation.com>plans-.<accessed on September 18, 2023>
31 Ibid
32 Ibid
33 CAP G3, L.F.N, 2004
34 Jide-James Eluyode, " Enforcement of International Humanitarian Law in Nigeria's", Ahrj vol.3 no.2, 2003, P.264@https://www.ahrj.up.ac.za>a...PDF<accessed on September 17, 2023>
35Zua B.," Citizens Without Security in Nigeria's Democratic Dispensation", IJESSR,5,3@https://ijessr.com>ijessr_05_....[PDF]<accessed on August 9, 2023>
36 Ibid.
37 Human Rights Watch, "The Destruction of Odi and Rape in Choba", December 22, 1999@https://www.hrw.org>report>de...<accessed on August 10, 2023>

acts were no doubt an act that amounts to terrorism under international humanitarian law.[38] However, the Nigerian government was later asked to pay the Odi community N37.6 billion in compensation.[39] The court convicted the Nigerian Government of violating the fundamental rights of the Citizens of Odi by the acts of the Military. While delivering the Lead Judgment, Justice Lambi Akanbi held as follows:

> The destruction of Odi was comprehensive and complete: no aspect of the community was spared, as shown in the pictures. The respondents violated the fundamental human rights of the people of Odi by the Massacre. The people are entitled to fundamental rights to life, dignity and fair play; the destruction of Odi was not as a result of a gun battle but clear bombardment; the destruction was malicious.[40]

(c) *The Zaki-Biam Massacre, 2001*

This is another incident of state terrorism perpetrated by Nigerian Soldiers. The background to that massacre was that the soldiers were deployed by the Federal Government to restore law and order following a communal crisis between the Tiv and Jukun. However, the Tiv Militias were alleged to have killed 19 soldiers of the Federal Government of Nigeria on the suspicion that the soldiers were Jukuns who impersonated the soldiers. The mutilated bodies of the soldiers were found in the town of Zaki Biam. [41]In a reprisal attack, on October 23, 2001, the Nigerian soldiers rounded up the village of Gbeji. They asked the residents to sit down on the ground for a "meeting". The soldiers separated the men from women and Children and then opened fire indiscriminately on innocent, unarmed men sitting on the ground. Soldiers further invaded the villages of Vaase, Anyinin, Iorja, Ugba, Sankeera and Zaki Biam. This follows the destruction of property and civilian buildings in a terrifying manner.[42] The victims of Zaki Biam were alleged to be about 200. This is adjudged to be another instance of terrorism perpetrated by state actors.

In pursuit of legal redress, the Federal High Court, Enugu, entered a judgment of ₦41.8 billion against the Nigerian Government. The amount was eventually reduced to ₦8 billion through a compromise agreement. [43]Despite this agreement, the victims have yet to be paid

38 Ibid
39Vanguard News, "Odi Invasion: Court Orders FG to pay ₦37.6bn Compensation", @www.vanguardngr.com<accessed on August 10, 2023>
40 Ibid
41 Human Rights Watch, "Nigeria: Soldiers Massacre Civilians in Revenge Attack in Benue State", hrw.org/news/2001/01/25/<accessed on August 10, 2023>
42 Ibid
43 Duru P.," Zaki Biam Invasion: Victims yet to be paid 15 years after court ordered FG to Pay Compensation", August 12, 2022>

their compensation as directed by the court.[44] This may be due to the government's failure to pay as agreed, or to corruption among stakeholders.

(d) *The Baga Massacre 2013*

The Baga massacre was another reprisal attack against the terrorists following the death of some army officers and innocent civilians by the dreaded sect Boko Haram. What informed the attack was intelligence reports that some of the Boko Haram members were mixed up with the civilians, acting as informants and spies against the Nigerian army.[45] Thus, civilians were threatened not to disclose the Boko Haram elements among them. If they did, the civilians would face the wrath of the dreaded sect. Therefore, in one of their military campaigns against Boko Haram in 2013, the military gathered the civilians in Baga and told the civilians that they had come to assist them in fighting Boko Haram.[46] So the Civilians should cooperate with them to point out Boko Haram members who were hiding amongst them. When that demand was not actualised, the army opened fire on the civilians. It was estimated that over 200 people were killed as a result of that military operation. There were also accounts of the burning of houses of civilians, detentions of women and children and 'accidental' bombing of civilian centres, resulting in the death of about 90 civilians.

The Baga Massacre by the Nigerian Army is tantamount to double jeopardy for the citizens of Baga. This is because before the Baga attack of 2013 by the military, there was an attack by the Boko Haram terrorists who seized a military base and killed soldiers. Thus, in reprisal, the Nigerian Army attacked civilians, including women and children.[47] This violates the principle of distinction under International Humanitarian Law.[48] One soldier prided himself on the killing of children when he said, "*I don't see them as children, I see them as Boko Haram…If I get my hands on them, I won't shoot them; I will split their throats"*.[49] The role of the Nigerian army in its failure to exhibit professionalism in counter-insurgency operations, leading to crimes against humanity, is recognised by the United Nations Human Rights Council.[50] However, there is no record of the prosecution of the Nigerian army for the atrocities

44 Ibid
45 Searcy D., 'They Told Us They Were Here to Help Us'. Then Came Slaughter, The New York Times, February 28, 2017, https://www.nytimes. com/Africa (accessed on August 11, 2023).
46 Ibid
47 Carsten P., Lewis D., Levinson R. and George B., "Smothered, Poisoned and Shot: Nigerian Army Massacred Children in its war against insurgents, witness say Reuters, HTTPs://www.reuters.com>Nigeria… <accessed on August 12, 2023>
48 Ibid
49 Ibid
50 Human Rights Council, "Violations and Abuses committed by Boko Haram and the Impact on Human Rights in the Countries affected", December 9, 2023, @Ohchr@https://www.ohchr.org>HRC[DOC] <accessed on August 12, 2023>

committed in Baga. It all ended with an investigation at the National Human Rights Commission.[51]

(e) *The Kadarko Massacre 2015*

This is another incident where the military engaged in reprisal attacks. The military accused the civilians of Wase Local Government in Plateau State of killing their colleagues.[52] The soldiers were angry about the deaths of their colleagues who were alleged to have been killed by the local militia. As a result of the above incidents, the army invaded the civilian communities and wreaked a lot of havoc on them. The military invaded and rounded up the community with 40 heavy truck convoys and killed the civilians. [53] The military operations resulted in the death of about 80 civilians. These death tolls include children and women.[54]There were attacks on civilian centres. There was no rule of engagement during that attack. It was a shoot-at-sight order.[55]

(f) *The Shi'ite Massacre*

The Shi'ite massacre was a confrontation between the Nigerian Army and the followers of the Shi'ite movement in Nigeria. The first instance was the confrontation in Zaria that ensued in the Killings of Shi'ites by the Nigerian Army. In 2016, members of the Shi'ite community were holding a religious procession where they blocked people from passing through that lane. Then, when the Nigerian Army came with their convoy to pass through the blocked lane, they collided with members of the Shi'ites. During that clash, the Nigerian Army killed over 300 Shi'ite members. Among the deaths were children and women. The Nigerian Army was accused of extrajudicial killings through the use of disproportionate force against civilians.

The second clash, which resulted in many casualties, occurred in October 2017. This followed a protest by the members of the Shi'ites over the arrest of their leader, Sheikh Ibrahim El-Zakzaky and his wife. El–Zakzaky and his wife were arrested and detained beyond the constitutionally required time. When the court granted them freedom through a fundamental rights enforcement procedure, the Nigerian military, in conjunction with the State Security Services, refused to honour the Federal High Court's order to release El-Zakzaky.

51 Ibekwe N., "Nigeria Human Rights Body indicts Military On Baga Killings", Premium Times, June 30, 2013@https://www.premiumtimesng.com<accessed on August 12, 2023>

52BBC NEWS, "Nigerian Troops accused of Killing Civilians in Plateau States ",May 14, 2015@https://www.bbc.com>news>wo..<accessed on August 12, 2023>

53 Daily Trust, "The killings in Wase", May 14, 2015@https://dailytrust.com>Killings-i...<acccessed on August 12, 2023>

54 Ibid

55 Ibid

(g) *2017 Military Complicity in Mkievowro*

Mkievowro is a community in Borno State. It suffered terrorist onslaughts at the hands of the military and Fulani. In 2017, the Nigerian military, in an attempt to use military force, used Air Force rockets on innocent civilians in the Village of Mkievowro.[56] This led to a lot of widespread condemnation by Nigerians and civil liberty organisations. In the same community, soldiers were alleged to have collected bribes from Fulani terrorists as the soldiers allowed them to go and kill 29 villagers who were taking shelter in schools. [57]The soldiers did nothing to stop them. This further draws widespread condemnation for the complicity of the military in the mass killings.

(h) *The Tudun Biri Bombing of December 2023*

In December 2023, the Nigerian Army bombed civilians in the town of Tudun Biri in Kaduna State. The incidents occurred when the Nigerian Army, via its drone, targeted civilians, thinking they were terrorists. This led to the death of 120 people.[58] The army claimed it was a mistake because its initial targets were the terrorists. Relief and compensation were given to assuage the victims of the bombing. [59] The President of Nigeria, Ahmed Bola Tinubu, has launched an investigation into the bombing with a view to sanctioning the culprits. [60]

5. APPRAISAL OF REGULATORY FRAMEWORKS IN NIGERIA TO SEE WHETHER TERRORISM IS PRESCRIBED IN MILITARY LAWS.

The legal frameworks regulating terrorism by state actors in Nigeria are not specific legislation. Rather, they are general legislations that seek to prohibit acts that amount to terrorism. Thus, the laws examined here include the Armed Forces Act, the Terrorism (Prevention) Act 2023, and the Geneva Conventions (Enforcement and Ratification) Act.[61] The Armed Forces Act, I, in section 51 prohibits indecent treatment of dead persons. It prohibits the inhumane treatment of dead persons in armed conflicts, such as stealing from the dead body, committing the offence of looting and should be sanctioned with seven years' imprisonment. A similar offence of looting is described as pillage or spoliation, which refers to the systematic and violent removal of property belonging to the wounded, the sick and the dead in armed conflict; such an act is prohibited and penalised as a war crime.[62]

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56 Mitchel Charlie, "Extrajudicial Killings in Nigeria are a symptoms of weak governance", September 15, 2019
57 Ibid
58 AlJazeera, 'Nigerian Military Drone Attack Kills 85 Civilians Error',December 5, 2023@www.aljazeera.com<accessed on December 20, 2023>
59 Abubakar Ahmadu Maishanu, 'Northern Governors Donate N180 million to victims of Tudun Biri Bombing', December 16, 2023 @ www. premiumtimesng. com <accessed on December 20, 2023>
60 Ibid
28. .CAP G3, LFN, 2004.
29.Article 2Є(v) of the Rome Statute. See Prosecutor V Jeannep-Piere Bemba Gombo ICC Trial Chamber IIII. No:.:ICC-01/05-01/08.

The Terrorism Act, as specific legislation dealing with terrorism, does not apply the offence of terrorism to military officers. The persons, groups or bodies corporate do not include the Army. The interpretation of the section of the Act does not include the Army. As such, this Act does not include the Army in the category of persons who could qualify as terrorists.

The Geneva Conventions, ratified by Nigeria, prohibit terrorism. For example, Article 33 of the Fourth Geneva Convention states that 'collective penalties and likewise all measures of intimidation or terrorism are prohibited'. Similarly, Article 4 of the Additional Protocols prohibits acts of terrorism against persons no longer taking part in armed conflicts. The fact that Nigeria has ratified the Geneva Conventions, one would have thought that State Terrorism should have been criminalised by Nigerian law, where armies would be held accountable for the specific offence of terrorism. However, this is not done. It is this concern that prompts this paper to call for the need to criminalise state terrorism.

6. JUSTIFICATIONS FOR LEGISLATING ON STATE TERRORISM

Having examined the conceptual and legal frameworks relating to terrorism, this paper believes that there is justification for the Nigerian government to criminalise terrorism by state actors for the following reasons:

(a) Ensure Compliance with IHL: This will ensure compliance with the provisions of the Geneva Conventions. Since Article 33 of the Fourth Geneva Convention as well as Article 4 of the Additional Protocol to the Geneva Conventions criminalised terrorism, Nigeria, as a signatory to the Geneva Conventions, ought to have complied with it based on the principle of *pacta sunt servanda*. [63]

(b) Accountability: When state terrorism is criminalised by state actors, perpetrators will be held accountable. The state itself will be held accountable. This will make it impossible for perpetrators to go scot-free.

(c) Ease of Interpretation: When state terrorism is criminalised as an unlawful act committed by military personnel during armed conflicts, the court will find it easy to apply the law. The Court will rely on the legal principle of "generalibus *specialibus, non derogante*", meaning that courts are inclined to attach meanings to words that are specific in nature, as seen in specific legislation. In this context, the meaning of terrorism will not be based on the Terrorism Prevention Act, 2022, but on the specific law criminalising state terror in military law.

(d) It accords with the Principles of Attribution and State Responsibility under International Law: this is because the acts of the agents of the state will be deemed as the acts

30.Article 27, VCLT, 1969.

committed by the state. Thus, where security personnel, in the course of their duties, engage in acts of terror, it could be deemed an act perpetrated by the state.

7. CONCLUSION AND RECOMMENDATIONS

In conclusion, this paper submits that despite the criminalisation of terror in armed conflict, Nigerian laws have refused to criminalise such acts against their security personnel, thus giving rise to impunity and noncompliance with international treaties governing military operations. It is based on these concerns that this paper is calling on policymakers to specifically include terrorism as an offence under Nigerian security and military laws.

In light of the issues raised in this article, the writer makes the following recommendations:

1. Amend the Terrorism (Prevention) Act to explicitly include state actors (e.g., the Army) within the definition of "persons" who can commit terrorism.
2. Insert provisions in the Armed Forces Act that criminalise acts of terror such as extrajudicial killings, torture, and mass civilian displacement.
3. Establish an independent investigative body to monitor and report acts of state terrorism.
4. Incorporate training on International Humanitarian Law and the Geneva Conventions for all military personnel.
5. Develop a victims' reparations framework for survivors of state violence.