

# Terrorism and Armed Conflict in Nigeria: A Case Study of Boko Haram

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**Abstract:** The North-East region of Nigeria has been the epicenter of Boko Haram attacks and killings since 2002. Recently, the group has extended its menace to the North-West and North-Central regions. Compounding the menace of Boko Haram in these regions, are the activities of the Islamic State's West African Province (ISWAP), a breakaway terrorist group from Boko Haram and the administrative division of the Islamic States (IS). These armed groups' renewed attacks on helpless Nigerians, facilities, and institutions have worsened the situation in Northern Nigeria, as they attack both public and private facilities, including the civilian populations and objects. The armed forces of the Federal Republic of Nigeria and other security agencies engage these armed groups, as both parties fight for supremacy. Nigeria is a State Party to some international instruments regulating the conduct of war and human rights. How far have the country and the armed groups respected and observed the rules of these international instruments in their hostilities? This research paper, therefore, examines these situations and evaluates the activities of these armed groups and the responses by the government of Nigeria with a view to determining whether they have reached the threshold of armed conflict. Chapter one examines the evolution and ideology of Boko Haram and defines certain key terms, whilst chapter two deals with the status of Boko Haram under international humanitarian law. Chapter three discusses the effects of the activities of the groups. In chapter four, the paper examines the efficacy of the responses and interventions by the government, international community, and non-governmental bodies, whilst chapter five concludes with some far-reaching recommendations.

**Keywords:** Terrorism, Armed Conflict, Banditry, Insurgency, Boko Haram, Terrorist Attacks, Terrorists, Armed Group

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## 1. Introduction

### 1.1. Emergence of Boko Haram: Ideology, Mission, and Agenda

The term, Boko Haram, is derived from two different words; “*Boko*” an Hausa word, meaning, “western or secular education”, and “*Haram*” an Arabic word, meaning “forbidden” or “sin”. Thus, the term means “western education is a sin”, “western education is forbidden”, or “westernization is sacrilege”. Boko Haram is also known, in Arabic, as “*Jama at Ahl al-Sunnah li-l Da 'awah wa al-Jihad*” which means “people committed to the prophet's teachings for propagation and Jihad”. The group was founded in 2002 by Muhammed Yusuf in Maiduguri, Borno State, North-East region of Nigeria. Yusuf was, however, killed in 2009 together with other members of the sect in an offensive with the Nigerian military

and security forces. Ideologically, the group is opposed to westernization which it views as negatively impacting Islamic values in Nigeria, as it blames the Western influences for the corruption in Nigeria, and, thus, has as its mission the total Islamization of the country. At its formative stage, the group's main goal was to ‘purify’ Islam in Northern Nigeria, believing that Jihad should be delayed until the group was strong enough to overthrow the Nigerian government [1]. The group's increased radical approach to Islam and disregard for constituted authorities led to confrontations with government security agencies in 2009, resulting in serious violence and attacks on police and other security formations, wherein the sect was ‘technically’ suppressed, leading to the arrest and incarceration of its founder and leader, Mohammed Yusuf by the Nigerian Police. The group became more violent after the arrest and murder of its leader in Police detention in 2009. Thereafter, Yusuf's Second-in-Command, Abubakar Shekau,

became the group's new leader and vowed to avenge the death of their founder and foremost leader and other members killed by the Nigerian security forces.

In 2015, the group pledged allegiance to the Islamic State in Iraq and Levant (ISIL<sup>1</sup>) and became Islamic State's West African Province (ISWAP<sup>2</sup>). However, in 2016, the group split into two, with one group now known as "Boko Haram" and the other as "ISWAP" under different leadership and command structures. The two different groups now unleash their terror on the Nigerian populace.

In 2010, Boko Haram attacked a prison in Bauchi State and released over 700 inmates of the prison, including its members who were arrested and detained by the Nigerian government. Also, in December 2010, the group attacked and detonated explosives on two churches in Maiduguri, killing hundreds of worshippers who gathered to celebrate the Christmas Day. Since 2009/2010, the group's attacks increased in frequency and magnitude, first in the North-East region, and, later, in the North-West and North-Central regions of Northern Nigeria. The groups attack police, military, and prison facilities as well as other government institutions, establishments, and facilities. Religious institutions and facilities as well as international agencies and non-governmental organizations are not spared, as the armed groups attack these establishments and their facilities, killing thousands of worshippers and staff. In August 2011, Boko Haram attacked (through a suicide bomber) the United Nations building in Abuja, the Federal Capital Territory, killing scores of staff and injuring hundreds of others. Also, in January 2012, the group unleashed one of its deadliest attacks when its members launched coordinated attacks in Kano State, targeting police formations and government establishments, where about 200 people were immediately killed. Since the mass abduction of the Chibok School girls in April 2014<sup>3</sup>, the group has intensified its effort in attacks on schools and abduction of students and pupils, including primary, secondary, and tertiary academic institutions. No day passes without news of attacks on schools and abduction of pupils and students in their numbers. The Dapchi attacks and abduction<sup>4</sup> are some of the uncountable attacks on

schools and abduction of students by these deadly armed groups. Parents, guardians, and relatives of these kidnapped students and pupils are forced to pay humongous amounts of money in ransoms for the release of their children and wards. Many of these kidnapped students are being held in captivity for months and years, as their parents and relatives have been unable to raise the money demanded by the terrorist Boko Haram groups. Today, in Northern Nigeria, many schools, places of worship (including churches and mosques), police and military formations and facilities, other government facilities, as well as private establishments have been forced to shut down following renewed attacks by these deadly terrorist groups. The groups have intensified their brutal attacks on the military and other security agencies and are now in control of some territories in Northern Nigeria, thereby becoming a major threat to peace and security not only in Nigeria but also the entire Lake Chad region<sup>5</sup>.

## 1.2. Understanding Certain Key Terms

### 1.2.1. Banditry

There is a dearth of academic definitions of the term, "banditry", which has resulted into an imbalance in our knowledge of the subject vis-à-vis other forms of violence and crimes. Few sources have, however, given insights on the nature and scope of the term. According to the Great Soviet Encyclopedia, banditry "consists in the organization of armed bands for the purpose of attacking state or social institutions or enterprises or individual persons. Participation in such bands and in the attacks committed by them is equally regarded as banditry. A band is conceived to be a stable group of armed individuals who are intimately linked with each other by aims of criminal activity and who unite expressly to commit one or more attacks on state or social institutions or enterprises or individual persons"<sup>6</sup>. Thus, three features are usually present in banditry, namely; the participation of two or more people, the possession of arms by a member(s) of the band, and the cohesion and organization of the participants to commit crimes. The crime of banditry is, therefore, considered committed from the moment an armed band is organized, even when attacks are yet to be launched, as the mere existence of an armed band constitutes a great danger to the state<sup>7</sup>. Wikipedia<sup>8</sup> defines banditry as "a type of organized crime committed by outlaws typically involving the threat or use of violence. A person who engages in banditry is known as a 'bandit', and, primarily commits crimes such as extortion, robbery, and murder, either as an individual or in groups". Bandits metamorphose to insurgents and terrorists, and, ultimately to non-state actors when their activities graduate to situations of armed conflicts.

1 Also known as the Islamic State in Iraq and Syria (ISIS), a transnational Sunni insurgent group operating primarily in Western Iraq and Eastern Syria. With the initial name of ISIL, the group, in 2014, launched an offensive that drove the Iraqi government out of key western cities and fought both government forces and rebel factions in Syria.

2 ISWAP is the umbrella body for all IS factions in West Africa and it is actively fighting in the Chad Basin of Nigeria, Niger, Cameroon, and Chad Republics.

3 On the night of 14-15 April 2014, about 276 mostly Christian female students of the Government Girls Secondary School, Chibok, in Borno State, Nigeria, were kidnapped in their hostels by the terrorist group, Boko Haram, forcing the government of Borno State to close down the school till date. Some of the students later escaped from the terrorists' camp and others were released by the group in exchange for the release of their members held in detention. However, many of the female students are still held in captivity by the group and have since married off to some high-profile members of the group.

4 Boko Haram also attacked the Government Girls' Science and Technical College (GGSTC), Dapchi, in Yunusari local government area of Borno State, in February 2018 and kidnapped about 110 schoolgirls. Five schoolgirls died on the day of abduction. In March, 2018, it was reported that the group released all the

schoolgirls after ransom was paid by the government, except Leah Sharibu, a Christian schoolgirl who refused to denounce her Christianity to forcefully convert to Islam. Till date, Leah Sharibu is still held in captivity by the group and has since been married off.

5 Comprising the Republics of Chad, Cameroon, and Niger

6 See Article 77 of the Criminal Code of the RSFSR

7 See the Great Soviet Encyclopedia, 3<sup>rd</sup> ed. (1970-1979)

8 The free Encyclopedia

### 1.2.2. Insurgency

Like banditry, there is also a paucity of definitions of the term, “insurgency” in international scholarship. The term has, however, been defined as “an uprising or rebellion by an organized group against their government or governing authority”.<sup>9</sup> Dkokalia describes the term as “a war of citizens against the state for the purposes of obtaining power in the state in whole or in part [2]. According to him, for a conflict to amount to insurgency, it should not be a mass of discontented and individual acts of terrorism (bombardments of planes, etc.) but a coordinated struggle with the objective of obtaining power in the state in whole or in part. On his own part, Rineheart [3] describes and characterizes insurgency as “an organized movement of a group which, at the same time, leads to a protracted violent conflict; the involved group’s aim is to overthrow the constituted government, or fundamentally change the political and social order in the state or region, or weaken the control and legitimacy of the established government. The means of an insurgent group to reach their aims are subversion, armed conflict, sustained violence, social disruption, and political actions”.

Thus, there appears to be a minimal line of difference between insurgency, terrorism, and armed conflict or belligerency. However, insurgency is not an armed conflict, as it does not cross the threshold required to be classified as one, although it can translate into an armed conflict. Insurgency is an internal disturbance in a state which is regulated by the domestic criminal laws and justice system of the state. Insurgents are not subject to the rules of international law regulating the conduct of wars or the means and methods of warfare, that is, the rules of the international humanitarian law. However, when the activities of the insurgents intensify and translate into an armed conflict of a non-international character, rules of international humanitarian law become applicable. These rules of international humanitarian law are discussed in part 1.2.4 below.

### 1.2.3. Terrorism

It must be emphasized that there is no generally accepted definition of terrorism, as the term has defied a universal, generic, or uniform definition. Thus, scholars, practitioners, and bodies have defined it in many ways<sup>10</sup>, albeit with some similarities. Sir Jeremy Greenstock<sup>11</sup> describes the term as follows: “there is common ground amongst all of us on what constitutes terrorism. What looks, smells, and kills like terrorism is terrorism”. The International Convention for the Suppression of the Financing of Terrorism<sup>12</sup> defines terrorism

as “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”.

In the wake of 9/11 attacks, the United Nations Security Council urged States to adopt and ratify existing and pending conventions on terrorism as well as adopt exceptional measures to combat terrorism and financing of terrorism. Thus, Article 2 of the Draft Comprehensive Convention<sup>13</sup> defines terrorism as “unlawfully and intentionally causing death or serious bodily injury to any person; serious damage to public and private property, including a state, government, or public facility; or other such damage where it is likely to result in major economic loss, the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act”.

In 2004, the United Nations Security Council passed a resolution<sup>14</sup> that provides a definition of terrorism as follows: “Recalling that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing an act, and all other acts which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature”.

The UN-Sponsored High-Level Independent Panel [4] defines terrorism as “any action, in addition to actions already specified by existing conventions on aspects of terrorism, the Geneva Conventions, and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, 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”. Further, the International Convention for the Suppression of Acts of Nuclear Terrorism<sup>15</sup> defines a terrorist as “any person who unlawfully and intentionally possesses radioactive material or makes or possesses any nuclear or explosive or dispersal

<sup>9</sup> Oxford Public Int’l Law

<sup>10</sup> There are over 100 definitions of terrorism by different scholars, practitioners, and bodies. See the UN Special Rapporteur on Terrorism and Human Rights during the 9/11 attacks in UN Doc. E/CN.4/Sub.2/2001/31, June 27 2001, p. 8

<sup>11</sup> The then UK Permanent Representative to the United Nations, when questioned on the lack of a definition of terrorism in October 2001. See UN Doc. A/56/PV.12, Oct 1 2001, p. 18

<sup>12</sup> See Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism 1999, UN Doc. A/Res/54/109, entered into force on April 10 2002

<sup>13</sup> See the Informal Text of Article 2 of the Report of the Working Group on Measures to Eliminate International Terrorism, UN Doc. A/C.6/56/L.9, Annex I. B

<sup>14</sup> UNSC Res. 1566, S/RES/1566 (2004), para. 3

<sup>15</sup> International Convention for the Suppression of Acts of Nuclear Terrorism, New York, April 2005, UN Doc. A/RES/59/290. This Convention which entered into force on July 7 2007, addresses nuclear terrorism and is referred to as the ‘Nuclear Terrorism Convention’

device (or attempts to do so) with the intent to cause death or serious bodily injury, or substantial damage to property or the environment, commits an offence under the Convention”.

These definitional guides serve as a framework to assist States in providing for appropriate definitions of terrorism in their domestic criminal laws and making the offence of terrorism punishable by appropriate penalties that take into account its grave nature. Thus, in Nigeria, the Terrorism (Prevention) (Amendment) Act (“TPAA”)<sup>16</sup> defines a terrorist as “a person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly does, attempts or threatens any acts of terrorism; commits an act preparatory to or in furtherance of an act of terrorism; omits to do anything that is reasonably necessary to prevent an act of terrorism; assists or facilitates the activities of persons engaged in an act of terrorism or is an accessory to any offence under this Act; participates as an accomplice in or contributes to the commission of any act of terrorism or offences under this Act; assists, facilitates, organizes, or directs the activities of persons or organizations engaged in any act of terrorism; is an accessory to any act of terrorism; or incites, promises, or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences referred to in this Act; commits an offence under this Act, is liable on conviction to maximum of death sentence”.

Thus, the Act prohibits all acts of terrorism and financing of terrorism<sup>17</sup>, including holding terrorist meetings<sup>18</sup>, soliciting and giving support to terrorist groups<sup>19</sup>, harboring terrorist(s) or hindering the arrest of a terrorist<sup>20</sup>, providing training or instructions to terrorists or terrorist groups<sup>21</sup>, concealing information about acts of terrorism<sup>22</sup>, provision of devices to terrorists<sup>23</sup>, recruitment of persons for membership of a terrorist group or participation in terrorist acts<sup>24</sup>, incitement, promotion, or solicitation of property for the commission of acts of terrorism<sup>25</sup>, provision of facilities in support of terrorist acts<sup>26</sup>, financing of terrorism<sup>27</sup>, dealing in terrorist property<sup>28</sup>, hostage taking<sup>29</sup>, membership of a

terrorist group or proscribed organization<sup>30</sup>, conspiracy<sup>31</sup>, as well as aiding and abetting acts of terrorism<sup>32</sup>, among other punishable acts under the Act<sup>33</sup>, which provides punishment, upon conviction, ranging from death penalty to life imprisonment and other terms of imprisonment.

It must be noted that acts of terrorism may be committed both in peacetime and during situations of armed conflicts. This distinguishes terrorism from armed conflicts, which occur only in situations of war.

#### 1.2.4. Armed Conflict

Although the term, ‘armed conflict’, is not defined in the International Humanitarian Law (IHL<sup>34</sup>) treaties, the rules of IHL apply during armed conflicts. In other words, the rules of IHL apply only in situations of armed conflict and during military occupation<sup>35</sup> and not in peacetime. The term, ‘armed conflict’ has been defined as follows: “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed group or between such groups within a State”<sup>36</sup>. The question of whether there is the existence of an armed conflict is essentially a factual assessment which attaches no relevance whether or not there is an actual declaration of war or acknowledgments by the parties that they are in a state of war. Therefore, the important feature of any armed conflict is the resort to the use of force between the parties involved. An armed conflict may be either an International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC). The former exists where there is a resort to force between two or more States (countries). Here, the use of force is directed by one State(s) against another or others. Thus, a military occupation (total or partial) by one State on the territory of another, whether or not met with an armed resistance constitutes an IAC for the purposes of IHL [5]. On the other hand, a NIAC refers to a

16 See Section 2 (2) of the Terrorism (Prevention)(Amendment) Act No. 25 of 2013, LFN. This Act amended the Terrorism Prevention Act No. 10 of 2011 and became operative on Feb 21, 2013

17 See Section 2 (1) of the Act

18 See Section 4 of the Act, which provides that “any person who arranges, manages, assists in arranging or managing, participates in a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group; collects or provides logistics, equipment, information, article or facility for a meeting or an activity, which in his knowledge is concerned or connected with an act of terrorism or terrorist group; or attends a meeting, which in his knowledge is to support a proscribed organization or to further the objectives of a proscribed organization, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years”.

19 See Section 5 of the Act

20 See Section 6 of the Act

21 See Section 7 of the Act

22 See Section 8 of the Act

23 See Section 9 of the Act

24 See Section 10 of the Act

25 See Section 11 of the Act

26 See Section 12 of the Act

27 See Section 13 of the Act

28 See Section 14 of the Act

29 See Section 15 of the Act

30 See Section 16 of the Act

31 See Section 17 of the Act

32 See Section 18 of the Act

33 See Sections 19 (escape of persons or aiding and abetting escape of persons suspected to have committed acts of terrorism under the Act); 20 (attempt to commit an offence under the Act); 21 (preparation to commit terrorist acts); 22 (unlawful assumption of character of officer of law enforcement or security agency); 23 (tampering with evidence and witnesses); 24 (obstruction of officers of law enforcement or security agency); and 25 (commission of offences by an entity or officers of an entity)

34 The law regulating the means and methods of conduct of hostilities or warfare as well as the treatment and protection of victims of armed conflict or warfare, including civilians and non-combatants, and combatants who are wounded, sick, or shipwrecked, or demobilized by the opposing force, or combatants who surrender to the opposing force. It is usually referred to as the law of armed conflict.

35 There is a military occupation when a territory is actually placed under the authority of the hostile or opposing army or armed force, with intent to occupy and displace existing government. See Article 42 of the Hague Regulation 1907. Military occupation occurs only in international armed conflicts and does not occur in non-international armed conflicts.

36 This definition of armed conflict was set down by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Tadic*, Case No. IT-94-1. AR72, decision on the Defense motion for interlocutory appeal on jurisdiction on October 2 1995

situation of violence between the government armed forces and one or more organized armed groups, or between such organized armed groups, arising on the territory of a State Party to the Geneva Conventions<sup>37</sup>. In contrast to an IAC which involves the armed forces of two or more sovereign States, in a NIAC, at least one of the two opposing sides or parties is a non-State actor, that is, an organized armed group or irregular armed force and not the regular armed force of the government or State. For there to be a NIAC under IHL, there must be a degree of organization by the armed groups involved and the armed confrontation must reach a minimum level of intensity, which is usually determined by the duration and gravity of the armed clash or violence, the type of government force(s) involved, the number of fighters and troops involved, the types of weapons used, and the extent of the casualties and damage caused by the fighting. On the other hand, the degree of organization of an armed group is assessed by factors such as the presence of a command structure of the armed group, the capacity to enforce orders, the ability to plan and launch coordinated attacks, and the capacity to recruit, train, and equip members or fighters [6]. These criteria distinguish an armed conflict from banditry, unorganized and short-lived insurrections, insurgency, or terrorist activities, which are not subject to international humanitarian law. These offences are ordinarily regulated by the domestic criminal laws of a State, although they may precipitate into a full-blown armed conflict when the activities of these armed groups reach the intensity threshold and the groups become more organized. It must be noted, therefore, that a non-international armed conflict is different from internal disturbances, tensions, and civil unrest, such as riots, violent protests, or other forms of isolated or sporadic acts of violence<sup>38</sup>. During a situation of armed conflicts, the rules and obligations of IHL apply equally to all parties to an armed conflict, notwithstanding the reason or justification for the conflict. Three basic principles govern any armed conflicts. First, the principle of necessity, which is an obligation to use only the amount of force needed to obtain a military objective. Second, the principle of distinction, which is an obligation to attack only legitimate military targets and not to deliberately or intentionally attack civilians, civilian populations, or civilian objects. Third, is the principle of proportionality, which is an obligation to ensure that any incidental, ancillary, or collateral loss, injury, or damage to civilians is not excessive in relation to the anticipated military objective of an attack. Thus, both parties to an armed conflict, including in a NIAC, are obliged to comply with these principles in the conduct of their hostilities.

## 2. Status of Boko Haram Under International Humanitarian Law

As discussed earlier in part 1.2.4 above, a non-international armed conflict (NIAC) exists in a situation of violence between the government armed forces and one or more organized armed groups, or between such organized armed groups, arising on the territory of a State Party to the Geneva Conventions<sup>39</sup>. In other words, at least one of the two opposing sides or parties is a non-State actor, that is, an organized armed group or irregular armed force and not the regular armed force of the government or State. Boko Haram is an organized armed group, and, thus, a non-State actor, fiercely engaged in an armed conflict with the armed forces of the Federal Republic of Nigeria. It is the deadliest armed group in Nigeria, Chad, Cameroon, and Niger Republics as well as one of the deadliest armed organizations in the world. The deadly sect satisfies the two factors that determine the existence or otherwise of a NIAC, namely; the intensity and duration of violence and the nature and organization of the group. With respect to the former factor, there is a factual use of armed force and violence by Boko Haram, since its inception in Nigeria in 2002, of a level that distinguishes it from incidental use of force. The group carries out its operations and attacks in very coordinated manners and for a protracted period of time, using highly sophisticated artilleries.

Boko Haram attacks government armed forces, facilities, objects, and property as well civilians, civilian populations, and civilian objects. They equally attack private and public facilities and property as well as international organizations, including aid agencies and workers. Thus, the sect does not respect the means and methods of warfare in accordance with the rules of conventional and customary international humanitarian law. Boko Haram attacks and kills civilians and civilian populations at will; they invade schools, churches, and farms, kidnap students/pupils, worshippers, and farmers, rape girls and women, slaughter their victims, and take many others hostages and demand exorbitant amounts of money as ransom. Many of the kidnapped victims have been in the custody of Boko Haram for months (even years), with the female victims among them, serially and ruthlessly raped to death. As earlier said, some of the Chibok girls kidnapped as far back as 2014 are still held in the custody of Boko Haram and married off to some of the group's commanders.

The group employs both asymmetric<sup>40</sup> and symmetric<sup>41</sup> warfare in their armed engagement with the armed forces of the Federal Republic of Nigeria. In fact, many members of

37 The four Geneva Conventions entered into force on August 12 1949. The First Geneva Convention relates to the wounded and sick on Land; the Second Geneva Convention relates to the wounded, sick, and shipwrecked at sea; the Third Geneva Convention relates to the treatment of prisoners of wars; and the Fourth Geneva Convention relates to civilians. The first, second, and fourth Geneva Conventions apply to international armed conflicts, whilst the third Geneva Convention alone applies to non-international armed conflicts.

38 Article 1 (2), AP I, GC

39 See discussions in Part 1.2.4 (supra).

40 Asymmetric warfare is a situation whereby an armed group endeavors to compensate for its military, economic, or other deficiencies by resorting to the use of methods or means of warfare that are not in accordance with the laws of armed conflict or other rules of public international law. It presupposes that the regular armed forces of the government are superior in military powers or might than the irregular armed force(s) or group(s).

41 A situation of armed conflict involving parties who have equal military capacities, etc.

the armed forces and security personnel of Nigeria engaged in hostilities against the irregular armed forces of Boko Haram, have often raised the alarm that the sect uses more sophisticated weapons than they do and appealed to the government of Nigeria to save their lives by purchasing modern artilleries. The sect had, on many occasions, taken the fight to the domain of the Nigerian armed forces. On August 24, 2021, Boko Haram attacked [7] the Nigerian Defense Academy (a citadel of military fortification and tertiary institution for the training of senior military personnel in Nigeria), killed two senior military officers and abducted another senior officer. Many other officers were hospitalized following varying degrees of gunshot wounds they received. It was learnt that members of the sect operated for hours before leaving this 'highly military fortified' institution. It was learnt that the military authorities paid huge amount of money to the Boko Haram terrorists for the release of the senior military officer abducted.

On many instances, members of the sect had engaged the government armed forces face-to-face in deadly duels, with both parties recording casualties. On July 19, 2021, the Boko Haram fighters shot down a Nigerian Airforce fighter plane. The Pilot escaped capture by the sect as he ejected and used 'survival instincts' to avoid capture [8]. Further, on November 13, 2021, members of ISWAP, the breakaway Boko Haram group, launched an attack against the Nigerian Military and killed the Commander (a Brigadier General) of the 28 Task Force Brigade, a Nigerian Army Special Force, and four other military officers [9]. Thus, the activities of Boko Haram have both prolonged over an extensive period of time and crossed the intensity threshold to amount to a non-international armed conflict.

With respect to the second criterion, the nature and organization of the parties in an armed conflict, it must be emphasized that Boko Haram has and maintains a good organizational and command structure. From their mode of operation, the Boko Haram groups have some degree of internal organization. The indicative factors for some degree of internal organization come in the following inexhaustive forms: existence of a command structure and disciplinary rules and systems within the group; potentially, but not necessarily, the existence of an operational headquarters; the ability to procure arms and to plan and carry out controlled military operations; and the extent, seriousness, and intensity of military operations<sup>42</sup>. One cannot rightly argue that the Boko Haram and ISWAP armed groups lack all of these indicators. Since 2015 when the sect pledged allegiance to the ISIS, a terrorist group with a high degree of organizational and command structure and disciplinary rules, the Boko Haram groups have become more organized and sophisticated in their organization as well as maintained certain level of disciplinary measures amongst their members. Of course, they are not expected to have the extent of organizational and command structure and disciplinary systems as the regular armed forces of a State. Recently, the Boko

Haram groups took over some territories in the Northern Nigeria, controlled, 'occupied' them, and subjected inhabitants of those territories to pay some form of taxation and loyalties to them. Although under international humanitarian law, control of territory is not a requirement to constitute a party to a NIAC and it is also a known fact that a non-State actor cannot effectively occupy a territory in the real sense of military occupation, it is a jurisdictional threshold for the application of one of the applicable treaties, the Additional Protocol II<sup>43</sup>.

Although compliance with the IHL rules is not in itself a criterion, Boko Haram fighters, as a party to a NIAC with the armed forces of the government of Nigeria are obliged to observe the rules of IHL. This is, however, not the case, as the irregular forces target both the Nigerian armed forces and security personnel as well as civilians, civilian populations, and civilian objects. As earlier discussed, Boko Haram now targets and attacks schools, churches, farms, markets, and other heavy civilian populations and objects. Many villages and communities have been deserted and thousands (if not millions) of civilians displaced. Credits must, however, be given to the armed forces of Nigeria in their engagements with these dare devil groups. The Nigerian armed forces have killed many commanders and other fighters of Boko Haram and destroyed their caches of ammunition; but because they have their means of recruiting and training new members as well as purchasing artilleries, the armed groups have continued to engage the Nigerian armed forces and other security agencies. It must be emphasized here that members of the armed groups may be lawfully targeted and killed during the conduct of hostilities, but when captured alive by the regular armed forces, should not be arbitrarily killed. Rather, they should be tried and prosecuted in accordance with the domestic criminal laws of Nigeria. This is because, they are not entitled to the Prisoners of War status<sup>44</sup> as provided in Common Article 3 to the Geneva Conventions. However, they may be considered combatants engaged in an armed conflict just as the regular armed forces of Nigeria for the purposes of the conduct of hostilities, although they are classified as civilians under the rules of IHL.

### 3. Effects of the Activities of Boko Haram

#### 3.1. Violations of Rules of International Humanitarian and Human Rights Law

As earlier discussed, the rules of IHL apply to both parties

42 See *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgment of November 30 2005; See also *Prosecutor v. Haradinaj*, Case No. ICTY-04-84-T, Judgment, April 3 2008

43 The Additional Protocol II to the 1949 Geneva Conventions applies to non-international armed conflict, whilst the Additional Protocol I applies to international armed conflict. See also Helen Duffy, "The War on Terror' and the Framework of International Law", 2<sup>nd</sup> ed., Cambridge Uni Press, 356 (2015)

44 In an international armed conflict, members of the armed forces who are captured by the armed forces of the enemy or opposing party, or who are wounded, sick, or shipwrecked, or who surrendered to the enemy party, or otherwise made *hors de combat*, are entitled to the prisoners of war status and cannot be tried in the local courts of the enemy armed forces. They should be treated humanely and not subject to any form of torture or ill-treatments.

to a NIAC, the State party and the non-State actor; in this case, the Boko Haram groups. Thus, a non-State actor, as the State actor, is bound by the body of rules of IHL applicable to a NIAC [10]. Both parties are, therefore, prohibited from attacking civilians, civilian populations, and civilian objects, nor spreading terror among the civilian populations. Civilians enjoy this protection and only become lawful targets of attacks for such time as they directly participate in hostilities<sup>45</sup>. Attacks by both parties to the conflict are to be directed at specific military objectives anticipated by the parties, and indiscriminate<sup>46</sup> and reprisal attacks are prohibited<sup>47</sup>.

In clear violations of the rules of IHL, the Boko Haram groups launch their lethal attacks on civilians, civilian populations, and civilian objects, including attacking and bombing individual civilians, residential and commercial buildings, religious places (including churches and mosques), farms, markets, schools, recreational facilities, parks, gardens, among other areas of civilian populations and objects. Also, some times, the armed forces of Nigeria, in their bid to counter the attacks by the armed groups, indiscriminately attack the civilian populations and objects, thereby causing excessive collateral damage. Further, both parties violate the rules of IHL by killing members of the opposite party captured alive. Whilst it is true that States parties do not consider members of non-State actors as combatants, when captured alive by the regular armed forces, they should not be killed but detained and prosecuted in accordance with the domestic criminal laws of the State party. However, the armed forces of Nigeria, more often than not, kill members of the Boko Haram captured alive, thereby violating the rules of IHL. In the case of the Boko Haram armed groups, they kill members of the armed forces and other security personnel fighting them whether or not in battlefield. The armed groups do not observe any of the rules of the IHL in the conduct of their hostilities against the armed forces of Nigeria.

With respect to the observance of the rules of international human rights law, both parties to a non-international armed conflict are obliged to conduct their operations within the framework of international human rights law, respecting the rights to life, liberty and human dignity, and prohibition against torture and other cruel, inhuman, and degrading treatment and punishment. However, as have discussed earlier, the Boko Haram groups do not observe any of the rules of international human rights law, as they kill both civilians and members of the Nigerian armed forces at will. The armed groups have deprived many citizens of Nigeria of their lives, maimed thousands of others, destroyed buildings, businesses, farms, and other means of livelihood, as well as displaced thousands (if not millions of Nigerians) who are now internally displaced persons in their fatherland, managing shelter in some internally displaced camps made available by the governments of the affected States in

Northern Nigeria. This state of affairs has worsened the economic situation in Nigeria, as the country grapples to meet their daily basic needs.

### ***3.2. Recruitment of Child Soldiers and Implications Under International Law***

Under international humanitarian law, children under the age of eighteen years are prohibited from being recruited or conscripted as soldiers during armed conflicts<sup>48</sup>. It is, therefore, a war crime<sup>49</sup> to recruit children under the age of eighteen as soldiers during armed conflict or hostilities, by either party to the conflict. Contrary to this prohibition, the Boko Haram groups mostly use children (including female children) abducted in schools, farms, churches, mosques, etc., as their fighters, including using them as suicide bombers, spies on espionage missions, and targets. The Nigerian armed forces, of course, do not employ child soldiers. However, because they may not know when children are used by Boko Haram as fighters, they have killed many of these children in the process. Up till this day, the Boko Haram terrorists still recruit and use children for some of their operations [11].

### ***3.3. Humanitarian and Socio-Economic Development Crisis***

The extent of humanitarian crisis in the Northern States of Zamfara, Bornu, Yobe, Niger, Katsina, Kaduna, Taraba, Kebbi, Sokoto, among others, cannot be over-emphasized. Thousands (if not millions) of citizens of these States in Northern Nigeria have been rendered homeless, as their buildings have been razed down, destroyed, and damaged by the Boko Haram terrorist groups. The governments of these States have established camps for the Internally Displaced Persons (IDPs). Despite the efforts of the State governments to ameliorate the hardships faced by these IDPs, the conditions under which they live in these IDP camps can only be imagined than felt. Although international humanitarian agencies, such as the International Committee of the Red Cross (ICRC), Christian Aids, donor agencies, the United Nations humanitarian bodies, and other national humanitarian bodies, assist the IDPs with relief materials, including food, mattresses, water, drugs, etc., these IDPs still suffer malnutrition, neglect, illnesses, and other pitiable worsening conditions. Many of these IDPs have died whilst in the IDP camps as a result of the conditions under which they live. Worse still, some officials of the governments, including security officers, who superintend these camps, have been reported to have abused some female inmates of these IDP camps by indecently assaulting, sexually exploiting, raping, and impregnating these vulnerable citizens. The government is not doing enough, in this regard, to protect displaced women and girls and to ensure that they have access to basic rights and services or to sanction the

45 See the provisions of Articles 51 and 52, AP I 1977, GC

46 See also Art. 51 (5), AP I

47 See also Art. 51 (6), AP I

48 See the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

49 See the Rome Statute for the International Criminal Court penalizing child soldier in armed conflict or hostilities

abusers, including camp leaders, vigilante members, policemen, and soldiers [12].

The Northern States of Nigeria are the States with the lowest rate of literacy in Nigeria. There is unwillingness among the citizens to enroll in formal education, as most children and youths prefer (or rather are used by the bourgeois and elite minority) for herding as herdsmen. One can, therefore, imagine the extent to which the menace of these armed groups has impacted on education and social orientation. The very few who accepted formal education are now out of classrooms and joined their peers in herding cows in other safer States. Many of the female students aged between ten and eighteen years, have been kidnapped and forcefully married off to the commanders and members of Boko Haram. Some who were released after payment of exorbitant ransoms, came back with pregnancies, whilst many others who had already given birth in captivity, were not allowed to come back with their children<sup>50</sup>. The effects on education and general social wellbeing of these people are debilitating. The story of one Um Haleema who was just sixteen years old when she was abducted by Boko Haram is pitiable. She was abducted alongside some of her family members and taken into captivity for almost a year. Whilst in the Boko Haram captivity, she was married off to a commander who abused her sexually and got her impregnated. Miraculously, she escaped from captivity and returned to her village only to discover that the armed groups had killed her father and other members of her family. She became an object of stigma as people avoided and derided her, saying she was carrying a 'Boko Haram pregnancy'. She, however, refused to abort the pregnancy in spite of the stigmatization from her own people [13]. Another pitiable case is that of Leah Sharibu, the lone Christian Dapchi schoolgirl abducted, together with other schoolgirls, in February 2018 by the Boko Haram terrorists. She refused to renounce her Christian faith and convert to Islam. Consequently, she has remained in the Boko Haram captivity since her abduction till date and has since been married off to some commanders of Boko Haram. It is reported that she has given birth to her second child while still in captivity. All her co-abductees had been released after payment of heavy ransoms and/or release of some Boko Haram commanders arrested and held in custody by the Nigerian government [14].

Since the terrorist groups target both government and private establishments, many offices, companies, businesses, and other enterprises, have been destroyed, thereby rendering citizens who work in these places jobless. The multiplier effects of these man-made joblessness are better imagined than felt. Thus, the worsening condition of living of the citizens of Northern Nigeria, who are among the world's poorest dwellers, has quadrupled. It would take years to rebuild these infrastructures and establishments destroyed by these armed groups, and the future effects would be catastrophic.

## 4. Responses and Interventions

### 4.1. Legislative Interventions

Following the intensity of the terrorist attacks by the Boko Haram groups and the aftermath of the 9/11 terrorist attacks on the United States of America and globally, the Federal Government of Nigeria deemed it necessary to amend the existing Terrorism (Prevention) Act 2011 (TPA)<sup>51</sup>. Thus, the National Assembly amended the TPA with the enactment of the Terrorism (Prohibition)(Amendment) Act 2013. This Act did not repeal the TPA but strengthened its provisions and operates side-by-side with the TPA. It expanded the definition of the offence of terrorism and provides for stiffer sanctions or punishments thereto<sup>52</sup>. Thus, unlike the TPA, the TPAA makes the offence of terrorism in Nigeria a capital offence with a death penalty upon conviction<sup>53</sup>.

Responding to the terrorist attacks on the complex of the United Nations in the Capital of Nigeria, the Act provides that "any person who intentionally murders, kidnaps or commits other acts on the person or liberty of an internationally protected person, or carries out a violent attack on the official premises, private accommodation or means of transport of an internationally protected person in a manner likely to endanger his person or liberty, or threatens to commit any such attack, commits an offence and is liable on conviction to life imprisonment"<sup>54</sup>. The Act also makes other far-reaching provisions and penalized more criminal activities as offences under the Act<sup>55</sup>. The punishments provided for these offences range from death penalty, life imprisonment, to other terms of imprisonment, and imprisonment for ten years in respect of concealment of information on acts of terrorism<sup>56</sup>. The Act provides for a term of not less than twenty years imprisonment for any person convicted for being involved in any terrorist meeting<sup>57</sup>. Section 5 of the Act also provides for a term of not less than twenty years imprisonment for the offence of soliciting and giving support to terrorist groups for commission of acts of terrorism. Harboring terrorists or hindering the arrest of terrorists attracts a term of not less than twenty years imprisonment<sup>58</sup>. A conviction of any person who engages in providing training and instructions to terrorist groups or terrorists is also punishable with imprisonment of a term of not less than twenty years<sup>59</sup>. Further, section 9 of the TPAA also provides for a term of not less than twenty years imprisonment for the offence of providing devices to terrorists or terrorist groups. Also, any person who engages in

51 This Act came into force on June 3, 2011. It was assented to on the same date with the Money Laundering (Prohibition) Act 2011 by the former President Goodluck Jonathan, both Acts aimed at fighting terrorism and financing terrorism

52 See the definition of terrorism as defined in the TPAA 2013 and punishments provided in Part 1.2.3, p. 11 (supra)

53 See section 2 (2)(a)-(h) of the TPAA as reproduced at p. 11 above

54 See section 3 (3) of the TPAA

55 See a full list of these offences at p. 12, above

56 See section 8 of the TPAA

57 See section 4 of the Act

58 See section 6 of the Act

59 See section 7 of the Act

50 See ABC News, supra.



the recruitment of persons for membership of any terrorist group or for participation in terrorist attacks commits an offence and is liable on conviction to a term of not less than twenty years imprisonment<sup>60</sup>. Incitement, promotion, or solicitation of property for the commission of terrorist attacks attracts a term of not less than twenty years imprisonment<sup>61</sup>. Further, provision of facilities in support of terrorist acts by the owner, occupier, lessee, or any other person in charge of the said property attracts a term of life imprisonment on conviction<sup>62</sup>. The Act also prohibits the financing of terrorism and prescribes life imprisonment for any person convicted of financing terrorism<sup>63</sup>. Dealing in any terrorist property or funds attracts a term of imprisonment of not less than twenty years<sup>64</sup>. Section 15 of the Act provides for a term of life imprisonment for the offence of hostage taking, kidnap, or abduction of any person, whilst belonging to a terrorist or proscribed group attracts a term of not less than twenty years imprisonment on conviction<sup>65</sup>. Conspiracy to commit the act of terrorism (and where the act is actually committed) is punishable with a term of life imprisonment<sup>66</sup>, whilst aiding and abetting the offence attracts a term of not less than twenty years imprisonment<sup>67</sup>. The punishment for escaping from lawful custody or aiding and abetting such escape is a term of life imprisonment as provided in section 19 of the Act. Under section 20, an attempt by any person to commit an act of terrorism is punishable on conviction to a life imprisonment. Also, punishable with a life imprisonment is the act of preparation to commit terrorist acts<sup>68</sup>. The following acts attract a term of five years imprisonment each, namely; impersonation or unlawful assumption of the character of officer of any law enforcement or security agency<sup>69</sup>, tampering with evidence and witnesses<sup>70</sup>, and obstruction of officers of law enforcement or security agencies from carrying out their duties<sup>71</sup>.

There have also been legislative interventions by the various State governments which have either enacted or amended their existing kidnapping laws with a view to expanding the acts and offence of kidnapping as well as providing stiffer penalties thereto. While some of these States laws provide for a term of life imprisonment for any person convicted of the offence of kidnapping, others went some steps further in providing for a death penalty as punishment for the offence of kidnapping, especially where the kidnapped victim dies in captivity. Delta State government, however, reversed its earlier death penalty for the offence of kidnapping and reduced it to a term of life imprisonment,

citing respect to the right to life. In addition to the death penalty imposed in States like Rivers, Enugu, and Edo States, any property traceable to an arrested and convicted kidnapper would be demolished by, or forfeited to, the State governments. These laws may sound good and capable of bringing to a halt, the activities of these groups. However, the extent to which they have been effectively implemented by the Nigerian authorities, especially in the North-West, North-East, and North-Central regions of Nigeria where the Boko Haram groups wield power, attack, kidnap, rape, and kill people in their numbers, is a matter for serious concern.

#### ***4.2. Military, Security, and Civilian Interventions***

The armed forces of Nigeria, comprising the Army, Navy, and Air Force, have continued to engage the Boko Haram and ISWAP armed groups and terrorists in aerial, sea, and land hostilities. Many officers, including senior officers of the Nigerian Military, have paid the supreme price fighting these dreaded sect. Also, the Nigerian armed forces and security agents have killed many Boko Haram and ISWAP fighters, who keep recruiting and multiplying in their numbers. The governments of Nigeria, Niger, Chad, and Cameroon Republics also formed a Multi-National Joint Taskforce (MNJTF) which has tremendously assisted in the armed conflict against the Boko Haram groups. Further assistance to these armed forces come from civilians who have formed themselves into Civilian Joint Task Forces, including local hunters, who have aided in the warfare. Some of them have been killed in the battlefield but this has not demoralized civilians who have continued to fight for their lives for, according to them, it is better to fight and die in the battlefield than to stay in the comfort of their homes and get gruesomely murdered.

#### ***4.3. Shutdown of Telecommunications Services and Implications***

Following the geometric rise in the attacks, kidnaps, and demands for ransom by the bandits, insurgents, and Boko Haram groups in the North-East, North-West, and North Central regions of Northern Nigeria, some State governments, including Kaduna, Katsina, Niger, Zamfara, Kebbi, Sokoto, Yobe, and Borno States, shut down telecommunications services in the regions. This, they argued, would aid them in their fights against insurgency, terrorism, and kidnappings for ransom. Thus, since September/October 2021, there have been no telecommunications services in Kaduna State and other States except in the capital cities [15]. Although this has yielded some results in the onslaught against the armed groups<sup>72</sup>, the disadvantages and human rights implications cannot be over-emphasized. Citizens of the affected States cry out that they are now being attacked and killed in their numbers without any assistance from the military and security agents. They complain that it has now become

60 See section 10 of the Act

61 See section 11 of the Act

62 See section 12 of the Act

63 See section 13 of the Act

64 See section 14 of the Act

65 See section 16 of the Act

66 See section 17 of the Act

67 See section 18 of the Act

68 See section 21 of the Act

69 See section 22 of the Act

70 See section 23 of the Act

71 See section 24 of the Act

72 See the statement of the Zamfara State Governor, Bello Matawalle, reported on Punch Newspaper titled, "Telecoms Blackout: Killings, Abductions continue in Zamfara, Two-week Shut Down Extended", Sept 26 2021

difficult to contact and/or give information to the military and security agents whenever there are attacks in their communities, as they have been cut off from all the telecommunications networks. Also, the insurgents and terrorists have adopted different measures in their tactics, such as delivering letters to the communities and families whose relatives have been kidnapped, relocating to areas where they can access some network services, resort to use of Walkie Talkie, and other means of communication. Following pleas and call by the affected communities for the restoration of telecoms services, the Kaduna State on November 26, 2021, announced a partial restoration of telecoms services to some parts of the State<sup>73</sup>. Although the order for a shutdown of telecoms services may be laudable, it infringes on the human rights of the citizens to free expression, association, privacy, and communication. Also, more people have been killed by the armed groups since September 2021, although the armed forces and other security agents have equally succeeded in killing many of the Boko Haram fighters. It is now left for the authorities to weigh the advantages and disadvantages of the directives and adopt the international best practices in the fight against terrorism and armed conflict.

#### **4.4. Responses by International Community and Non-Governmental Organizations**

The international community, donor agencies, humanitarian organizations, and other non-governmental organizations have played greater roles in ameliorating the sufferings of the IDPs in Nigeria. These organizations, including the ICRC, Amnesty International, Human Rights Watch, Christian Aids, Action Aids, and the United Nations agencies, provide relief materials and medical services to the IDPs and victims of the conflict, including officers of the armed forces and security agencies of Nigeria, Cameroon, Niger, and Chad Republics fighting the Boko Haram groups. Also, the concerted efforts of the international community cannot be over-emphasized. Recently, the United States of America sold and delivered twelve A-29 Super Tucano attack aircrafts to Nigeria to assist in its fight against terrorism and armed conflict with the Boko Haram and ISWAP groups. Whilst delivering the last batch of the fighter planes, the US government, however, warned the Nigerian authorities not to use the planes against the secessionist Biafran agitators, who are merely expressing their right to self-determination [16].

## **5. Conclusion and Recommendations**

The attacks and armed engagements by the Boko Haram and ISWAP groups in Nigeria have reached the intensity threshold of an armed conflict of a non-international character. Thus, there is a non-international armed conflict between the armed forces of Nigeria and the Boko Haram

and ISWAP armed groups. This has caused dire consequences on the socio-economic space of Nigeria, with uncountable number of citizens gruesomely killed, millions of houses, farms, and businesses destroyed, and millions of citizens rendered internally displaced, with no means of livelihood. The armed forces and security agencies of Nigeria as well as the multi-national and civilian joint task forces have tried in their fight against the Boko Haram and ISWAP groups. However, more sincere and concerted efforts and strategies are needed in order to win this war. First, the armed forces of the Republics of Niger, Chad, Cameroon, and Nigeria would need to adopt more modern intelligence gathering and security strategies aimed at identifying the main locations and camps of the armed groups, with a view to surrounding and neutralizing them. Second, there is the urgent need for more budgetary allocations to the Nigerian military, police, and other security and intelligence agencies in Nigeria. Corollary to this is the need to boost the morale of the rank-and-file officers who are fighting the terrorists, by increasing their salaries and allowances, and institutionalizing a comprehensive medical and life insurance scheme for them. Also, rather than shutting down telecoms services and thereby worsening the plights of citizens of the affected regions, the Nigerian armed forces should adopt modern military and security intelligence gathering mechanisms in the fight against terrorism. The Nigerian government should also urgently publish the list of sponsors of Boko Haram which it claims it has and diligently prosecute them in line with the extant terrorism laws. The government should monitor and examine top government officials and military/security officers with a view to ridding the system of bad eggs, as it is widely believed among Nigerians that some of these persons are sponsors of Boko Haram. There is no doubt that Boko Haram has infiltrated the Nigerian military and the corridor of power through the unpatriotic activities of some top government and security officials. Also, it is time for Nigeria to seek military cooperation and assistance from other willing countries, including employing mercenaries to help in the fight against insurgency, terrorism, and armed conflict. Finally, it must be emphasized that unless the government is sincere in its fight against terrorism and armed conflict, no meaningful progress would be made.

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<sup>73</sup> See Vanguard Newspaper titled, "Kaduna Lifts Suspension of Telecoms Services", Nov 26 2021. On November 27, 2021, the Zamfara State government also announced a partial restoration

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