IS THERE AN “ORGANIZATIONAL POLICY” WITHIN THE MEANING OF ARTICLE 7(2)(a) OF THE ROME STATUTE BEHIND BOKO HARAM’S ATROCITIES COMMITTED ACROSS NIGERIA?

A MASTER THESIS IN FULFILMENT OF LLM
IN
INTERNATIONAL OPERATIONAL LAW
SPRING 2023

AUTHOR: CHUKWU NKECHINYERE FLORENCE
SUPERVISOR: PROFESSOR JANN KLEFFNER
Declaration

I declare that this proposal is my original work except where sources have been cited and acknowledged. The work has never been submitted, nor will it ever be submitted to another university for the award of a degree.

Student’s Name: CHUKWU NKECHINYERE FLORENCE
Date: 26/05/2023
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Dedication

I dedicate this thesis to God Almighty and my family for their valued support and encouragement in making everything possible.
### ACRONYMS AND ABBREVIATION

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<td>Al-Qaeda in the Islamic Maghreb</td>
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<td>BH</td>
<td>Boko Haram</td>
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<td>CAH</td>
<td>Crime Against Humanity</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICL</td>
<td>International Criminal Law</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IDP</td>
<td>Internally Displaced Persons</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>MUJAO</td>
<td>Movement for Unity and Jihad in West Africa</td>
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<td>MNJTF</td>
<td>Multinational Joint Task Force</td>
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<td>OTP</td>
<td>Office of The Prosecutor</td>
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ABSTRACT

Crimes against humanity have become a global concern, garnering widespread media coverage over the past decade. Boko Haram's actions pose a threat to both domestic and international security, with frequent attacks on civilians, churches, security forces, and even international organizations like the United Nations. The group's impact is felt across all 36 states of Nigeria, impacting the country's socio-political and economic development.

The absence of agreement on whether non-state actors can be held responsible for crimes against humanity in the same way as states, can create a potential risk of serious crimes going unpunished. As non-state actors are increasingly gaining influence and have the capacity to plan and execute widespread atrocities, it is crucial to address this issue.

This research project aims to investigate whether there is an Organizational Policy behind Boko Haram’s atrocities and how it can be categorized as committing crimes against humanity under Article 7(2)(a) of the Rome Statute.

KEYWORDS: International Criminal Court, Boko Haram, Crimes against Humanity, Rome Statute, Organizational Policy, Atrocities.
CHAPTER 1: INTRODUCTION

1.1 Introduction

This chapter presents the background of the study. This chapter further presents the statement of the problem, research objectives, and research questions. In addition, the scope of the study and limitations of the study are provided.

1.2 Background of the Study

Boko Haram gained widespread exposure in July 2009. For over a decade till date, Boko Haram has caused immense suffering and destruction to countless individuals, especially civilians. The violence, loss, deprivation, and abuse associated with these atrocities, have traumatized and injured entire generations, leaving them with shattered hopes and lives. The harsh reality of these atrocities leaves those who experience it deeply shaken, tormented, and destabilized. Boko Haram's atrocities have raised questions about the organization's policy. While the group's attacks may appear random, some observers argue that the group's actions are part of a broader strategy to establish an Islamic state in Nigeria. The group has also targeted government officials and security forces, suggesting that it seeks to undermine the Nigerian government's authority. There is clear evidence to suggest the existence of an organizational policy behind the group’s atrocities committed across Nigeria.

This study will examine Boko Haram's leadership structure, ideology, and tactics to determine whether there is evidence of a coordinated and systematic policy behind the group's attacks.

1.3 Statement of the Problem

The problem of this research lies in the question which asks: Is there an Organizational Policy within the meaning of Article 7(2)(a) of the Rome Statute behind Boko Haram’s atrocities committed across Nigeria? This study will examine whether Boko Haram has a clear and consistent policy guiding its actions or if the organization is simply a loose coalition of actors carrying out attacks for individual motivations. This study will also analyze the role of the leadership of Boko Haram in determining and executing this policy.

The research aims to locate a link between Boko Haram, Crimes against humanity, and organizational policy.
1.4 Research Objectives

The study seeks to investigate the possible existence of an "organizational policy" within Boko Haram, including the presence of a centralized command structure, planning, and coordination of attacks, and the dissemination of orders or directives to commit atrocities. Overall, this research aims to provide a comprehensive analysis of the Boko Haram insurgency in Nigeria and its commission of crimes against humanity, with a specific focus on the potential existence of an "organizational policy" within the group.

1.5 Research Questions

This study seeks to answer the following research questions:

i. What factors contributed to the emergence and growth of Boko Haram in Nigeria, and how have these factors influenced the group's policies and actions?

ii. To what extent have Boko Haram's atrocities in Nigeria been coordinated or planned, and how does this factor into the determination of an "organizational policy"?

iii. Do the crimes committed by Boko Haram fulfill the criteria of a widespread or systematic attack?

1.6 Scope of the Study

The scope of this study is focused on providing a comprehensive analysis of Boko Haram's atrocities, including attacks on civilians, kidnappings, sexual violence, forced displacement. The study will further analyze the patterns and trends of these crimes, as well as the motivations and ideologies of the group behind them. In addition, the study will explore the organizational structure of Boko Haram, including its leadership, financing, and recruitment strategies, in order to determine whether there is evidence of an organizational policy behind its crimes.

1.7 Limitations of the Study

The major study limitation is the limited literature in the study area in the African context. Most of the literature on Crimes against humanity and Organizational policy has focused on developed economies with a less empirical focus on developing economies. A review of local content will however be thoroughly done to ensure deep analysis of the concept.
CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

The chapter presents a review of related theoretical as well as empirical literature. A theoretical framework that will guide the study is also being presented.

This chapter explores a number of different writings, scholarly works, and views of different writers and authors in the field of crimes against humanity, and organizational policy on different aspects of the subject matter. It takes a look at the views and opinions of different writers which are contained in journal articles and books which are related to the research. This chapter highlights the general overview of the meaning of crimes against humanity and organizational policy, the causes and trends of crimes against humanity and insurgency carried out by Boko Haram, and the role of international organizations with a focus on the potential existence of an "organizational policy" within the group. Diverse scholars have taken a look at this concept from different angles. Crimes against humanity is seen to have no particular geographical region in which its carried out, it takes place in different parts of the globe with reasons and circumstances best known to the groups in order to achieve their goals.

2.2 Theoretical Framework

It is important to note that the Boko Haram activities in Nigeria is a NIAC. A certain degree of internal organization is a prerequisite for the ability to implement the rules contained in Common Article 3. As a result, a party to a non-international armed conflict must be a collective entity having a certain organizational or command structure that allows it to launch military-style operations or armed conflict-like violence and enables the group to implement the minimum rules of IHL. Similarly, the ICC’s Pre-Trial Chamber I and Trial Chamber I in the Lubanga case, and Trial Chamber III in the Bemba case, argued that an organized armed group under the ICC Statute must ‘have a sufficient degree of organization, in order to enable them carry out protracted armed violence’. To determine whether non-state entities are sufficiently organized to become party to a NIAC, a variety of indicators has been examined in practice. In its case law, the ICTY has examined five groups of factors: (1) the presence of a command structure; (2) the ability to carry out operations in an organized manner; (3) the group’s level of logistics; (4) the group’s level of discipline and its ability to implement the basic obligations of Common Article 3; (5) and the group’s ability to speak with one voice.

1 Schindler, Dietrich, The Different Types of Armed Conflict, in Andrew Clapham & Paola Gaeta (eds.), The Oxford Handbook of International Law in Armed Conflict (Oxford University Press 2014) 147.
2 Lubanga Dyilo, ICC-01/04-01/06, para. 536; Bemba Gombo, ICC-01/05-01/08, para. 134. (Contrary to Trial Chamber II, Trial Chamber III considered the ability to impose discipline an indicative factor only and not a strict criterion.)
3 Haradinaj et al, IT-04-84bis-T, para 395; Boskoski and Tarculovski, IT-04-82-T, paras 199-203.
This study identifies socio-economic and political factors as the key variables responsible for the emergence and growth of the Boko Haram insurgency in Nigeria. In this context, the study refers to poverty, unemployment, illiteracy, false religious doctrine, marginalization, bad governance occasioned by leadership deficit and failure, non-fulfilment of the social contract as regards the provision of basic amenities to the citizenry by the political state, corruption, greed, political deceit and injustice as the offshoot of Boko Haram in Nigeria.

Historically, “in the checkered evolutionary trend of Nigeria's political entity, there has been the emergence of a number of religious groups with Islamic undertone and induced violence, but the case of Boko Haram strikes as an extraordinary one because of their operational tactics, strategy, targets, destructive capacity, fanaticism, and world view” 4

Boko Haram grew out of a number of a group of radical Islamist youth who worshipped at the Alhaji Muhammadu Ndimi Mosque in Maiduguri, capital of Borno state, Nigeria in the 1990s. 5 The real name of Boko Haram is the Group of Al-sunna for Preaching and Jihad. This is the English translation of Jama'atu Ahlis Sunna Lidda' awaiti Wai-Jihad. Because of the philosophy and operational tactics of the group which is opposed to western education and civilization, it is nicknamed Boko Haram by the people of Borno State where its activities stalled. Boko Haram itself is derived from the Hausa language which means; "Western education is a sin or forbidden". Boko means book, while Haram means forbidden, hence the group is tacitly and vehemently against Western education which it regards as a sin. According to the group, they are people, committed to the propagation of the prophet's (Mohammed) teachings and Jihad (Jama'atu Ahlis Sunna Lidda'awati Wai-Jihad). It is committed to the destruction and obliteration of constitutional laws, democracy, and other institutions of the state of Nigeria through importing of orthodox puritanical Sharia law all over the country and clean Nigerian state polluted by Western education and civilization. 6

Nigeria can best be described as a rich country with poor people, which has caused a lot of anger and frustration among its citizenry hence the radicalization by frustrated citizens. Nigeria is a country with the possibility and opportunity for a lot of growth if governed properly.

There are a number of conflict theories that are used to analyze Boko haram’s strategies and tactics. One theory that can be applied is the resource mobilization theory, which suggests that social movements are a result of the mobilization of resources, such as people, money, and media attention, to achieve specific goals. In this instance, it can be argued that the group

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has been able to mobilize resources through its networks and connections with other militant groups in the region, as well as through its use of propaganda and social media. It is important to know that some politicians are fully involved with the funding of Boko Haram and this has made it impossible for justice to truly prevail. This is generally because of the backing they get indirectly.

Another theory that can be applied is the political process theory, which suggests that social movements are a result of political opportunities and constraints. Boko Haram's emergence can be attributed to a combination of political, economic, and social factors, including poverty, corruption, and political marginalization. The group has been able to exploit these factors to gain support and recruit new members. In Nigeria, it is a fact that the North has the least educated and this has resulted to a high rate of poverty which is the reason why there are numbers of people being recruited.

The massive rate of ever-growing unemployed and illiterate youth in the northern Nigeria who are economically deprived constitutes a vulnerable target of Boko Haram recruitment. There are scholars who have stated that the connection between poverty, illiteracy and terrorism is indirect and complicated. The huge number of young people living on the margins intensified these linkages. Undoubtedly, there are strong reasons to agree -that these socio-economic problems in the country particularly in the north where it is worst contributed to the escalation of Boko Haram insurgency in the north-eastern part of the country. The deprived youths and Almajiris are willing to join any movement for them to find an alternative to the economic and political inequalities that exist in the country thereby finding solace in radical extremism as the solution to their challenges.  

In terms of conflict theories, the Marxist theory can be used to analyze the role of socioeconomic factors in the emergence and growth of Boko Haram. According to this theory, social conflicts arise from the unequal distribution of resources and power in society. Boko Haram's ideology, which is based on opposition to Western education and values, can be seen as a response to the socioeconomic inequalities and marginalization that are prevalent in Nigeria.

Another conflict theory that can be applied is the social identity theory, which suggests that conflicts arise from the formation of group identities and the perceived threats to these identities. Boko Haram's ideology is based on the belief that Islam is under threat from

Western influences and values. The group has been able to use this ideology to mobilize support and recruit members who feel a sense of identity and belonging to the group. Overall, these theories provide useful frameworks for understanding the emergence and growth of Boko Haram and the strategies and tactics that the group has used to achieve its goals.

To assess the extent to which Boko Haram's atrocities have been coordinated or planned, the theoretical framework could draw on theories of organizational behaviour, such as resource dependence theory and institutional theory. These theories could help to explain how the group's structure and internal dynamics may have influenced its decision-making and actions.

Although there has been an argument on when Boko Haram was established this is because of the low profile it had until 2003 when Boko Haram was headed by Mohammad Yusuf. Mohammad Yusuf’s death prompted the leadership of Abubakar Shekau. The organizational structure of Boko Haram resembles that of other jihadist groups, especially Al Qaeda. In terms of the typology of organizational structures of radical organizations, it combines hierarchical and network structures. The Consultative Council (shura) occupies the main position in this structure. In the period under analysis, the Council was headed by the commander (emir) Abubakar Shekau. Shekau was one of the two deputies of Mohammad Yusuf as leader. Operating activities were the responsibility of a network structure of units (or operational hubs). Their number in the period analyzed is difficult to assess. Each of them had its own commander who received instructions from Shekau. Each commander had completed military training outside Nigeria (in jihadist camps in Libya, Mali, or Sudan). The entire operational territory of Boko Haram was divided into zones in which individual local structures (micro-networks) operated.

It is important to note that there is varying and even contradicting information regarding the organizational structure and internal characteristics of Boko Haram, which makes assessing the structural and organizational situation of the group rather difficult. One school argues that Boko Haram is a decentralized organization and operates in independent cells, while some argue that it is a centralized organization, unified under the leadership of Abubakar Shekau. The secretive nature of Boko Haram makes the establishment of this analysis difficult and the groups internal structure remains unclear.

However, I am of the thought that Boko Haram is a centralized organization. This point of view emanates from the fact that instructions and directives are given by the leader who sets

goals and determines the final say in the organization. These rules are followed strictly by its members.

Following Yusuf’s death, one of his former lieutenants, Abubakar Shekau, assumed leadership of the group. Shekau promised to avenge Yusuf’s death and to ensure the Islamization of Nigeria under a caliphate system. With their former base destroyed, Boko Haram members fled into other parts of Nigeria and neighbouring states, including rural communities in Yobe, Adamawa, and Borno states. Given the weak presence, and in many cases the complete absence, of security agencies and personnel in most rural communities in northeastern Nigeria, Boko Haram began coordinating and attacking the pockets of scattered police outposts, military formations, and prisons where some of its members were held after the 2009 crackdown. Some of the initial post-2009 attacks occurred in and around rural communities where Boko Haram members had resettled. 10

Resource Dependence Theory (RDT) can be applied to analyze how Boko Haram's atrocities are influenced by the group's access to resources. RDT posits that organizations are dependent on external resources such as funding, information, and expertise and that this dependence can shape their behavior.

In the case of Boko Haram, the group has been able to access resources such as weapons, funding, and safe havens through a variety of means, including theft, smuggling, and outside support from extremist groups.

In 2009, Boko Haram became economically powerful by receiving support from Al Qaeda through its regional branch of AQIM and multiplying its fund-collecting strategies. Thus, a BH spokesman in 2011 announced that the organization was aligned with Al-Qaeda, which would supply every type of support they required.11 Clear pieces of evidence confirm that Al Qaeda supports Boko Haram by providing funding, building the fighters’ capacity, and logistics, as well as counsel.12 In addition to support from affiliate terrorist groups, including Al Qaeda, Boko Haram’s funds also come from charity and donations, hostages for ransom, and illicit trade.

The determination of whether the crimes committed by Boko Haram fulfill the criteria of a widespread or systematic attack can be analyzed using criminological theories. Additionally, theories of international criminal law can be used to analyze the legal framework for

determining the nature and scope of the crimes committed by Boko Haram.

‘Widespread’ indicates a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. This requirement is satisfied if the attack has been executed on a large scale affecting many people or a multiplicity of victims. In Prosecutor v Dusco Tadic, the Appeals Chamber of the ICTY acknowledged that crimes which are unrelated to widespread or systematic attacks on civilians should not be prosecuted as crimes against humanity. Nevertheless, a singular massive act of extraordinary magnitude; would be regarded as being widespread.

Boko Haram has carried out numerous attacks targeting specifically Christian churches and Christians in northern and central Nigeria since 2009, including torching and blowing up churches, and carrying out abductions, forced conversions, and attacks in markets and during religious services using guns, improvised explosive devices, or suicide bombers. According to Human Rights Watch, the attacks on Christians in northern and central Nigeria appear to be part of a systematic plan of violence and intimidation. It appears that the alleged conduct of BH is of a widespread nature, given that the incidents have been reported in multiple states of northern Nigeria where security forces were present, particularly in and around the city of Maiduguri in Borno State, which is believed to be the stronghold of operations for Boko Haram.

The fact that an attack must be part of a widespread or systematic attack against a civilian population is described by the ICTY’s trial chamber as the material criterion. The trial chamber emphasized in the Blaškić case that it in practice may be hard to differentiate between the two, as a large-scale attack will require a certain degree of preparation and planning.

The ICTY’s trial chamber took this stance with support from writings in a report from the Secretary-General. This is also in line with article 18 of the ILC’s Draft Code of Crimes Against the Peace and Security of Mankind, which states that the two prerequisites are alternative in nature. If the attack is proven to fulfill one of the requirements, the tribunal does not need to consider if it also fulfills the other. However, the notion of widespread or

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13 Prosecutor v Seromba, (ICTR Trial Chamber), 13th December 2006, para. 356.
14 Prosecutor v Kayishema and Ruzindana, (ICTR Trial Chamber), 21st May 1999, para. 123.
16 Prosecutor v Kordic (ICTY Trial Chamber), 26th February 2001, para. 176.
18 Blaškić, T. Ch., ICTY, 3 March 2000, p. 65 [199].
19 Blaškić, T. Ch., ICTY, 3 March 2000, p. 70 [207].
21 Tadić, T. Ch., ICTY, 7 May 1997, para. 647.
22 Kunarac, Kovac and Vukovic, A. Ch., ICTY, 12 June 2002, para. 93.
systematic is a relative assessment. The tribunal must first identify the targeted population of civilians, and then measure “the means, methods, resources, and result of the attack” to be able to decide if the attack was widespread or systematic.  

The OTP has identified potential cases involving allegations against BH members.

(i) Attacks against civilians;
(ii) Abductions of thousands of civilians and detention of civilians in camps and in towns under BH control;
(iii) Attacks on buildings dedicated to education, teachers, and students;
(iv) Attacks on women and girls;
(v) Intentional targeting of buildings dedicated to religion; and
(vi) Attacks on personnel or objects involved in humanitarian assistance and the taking of hostages.

Factually, OTP’s broad descriptions of these cases give rise to substantial potential overlap. For instance, the abduction of the Chibok girls falls within at least two, three, and five, and possibly others. The cases are also potentially tied together by ‘the policy defined at the leadership level of Boko Haram aiming at establishing an Islamic system of government in Nigeria’ under which the ‘primary targets’ of BH were ‘members of (the) Christian community, local politicians and community leaders, Muslims who are perceived as opposing BH, and members of the international community.

2.3 Conceptual Framework of ‘Organizational Policy’ in International Criminal Law

Drawing on the ordinary meaning of the word ‘Organization’, as well as on article 2(a) of the United Nations Convention against Transnational Organized Crime, Judge Kuniko Ozaki, argued that an organization under article 2(2)(a) ICC Statute should be understood as;

At a minimum: (i) a collective number of three or more persons; (ii) existing for a certain period of time, which at least, transcends the period during which the policy was formed and implemented; (iii) with a particular aim or purpose, whether it is criminal or not, and (iv) with a certain structure.
Looking at the contextual elements of Crimes against humanity, under article 7(2)(a) ICC Statute, the ‘organizational policy’ is linked to the commission of the attack. An organization must at least be able to provide a policy, pursuant to or in furtherance of which a course of conduct involving the multiple commission of certain acts against any civilian population are committed. This raises the question of whether it suffices that an organization simply adopts and promotes a policy to commit the attack, or whether the organization also needs to implement the policy. In the latter case, implementation of the policy could mean that the organization needs to have the capacity to organize and implement the attack with its own resources.  

In a dissenting opinion on Pre-Trial Chamber II’s decision to authorize investigations in the Kenya situation, Judge Kaul strongly advocated for a more restrictive interpretation of the organization behind Crimes against humanity under the ICC Statute. Kaul argued that to adopt and implement a policy behind CAH, a ‘private entity must have the means and resources available to reach the gravity of systemic injustice in which parts of the civilian population find themselves’. Where he drew the line, however, was in defining what the required ‘systemic injustice’ caused by CAH is; in other words, ‘What is the underlying rationale or raison d’être of crimes against humanity?’ Analysing the emergence of CAH as an international crime since 1945, Kaul’s view, not the mere scale of the crimes but ‘the presence of a policy element elevated those crimes to the international level’.  

Different Pre-Trial Chambers (PTCs) have held that ‘an attack which is planned, directed or organized as opposed to spontaneous or isolated acts of violence will satisfy the policy criterion’. While planning, directing, or organizing could set the threshold rather high, Robinson suggests emphasizing the policy’s function of excluding ‘random acts of individuals acting on their own criminal initiatives’: ‘to be an attack’, the acts must be directed, instigated or encouraged by some source other than individuals acting independently’, which in his view signifies a policy. A policy does not need to be formally adopted but can be inferred from how crimes are committed. In essence, the policy behind CAH interlinks the underlying crimes, guides the attack, and thereby distinguishes CAH from ordinary crimes. In addition, as the Trial Chamber argued in the Katanga case, the policy behind the crimes ‘refers essentially to the fact that a State or Organization intends to carry

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36 ibid, para 56.
37 ibid, para 59-61
38 Gbagbo, ICC-02/11 (n79) para 215.
39 Robinson, ‘Crimes against humanity; A better policy on policy” (n 19) 710.
40 Katanga, ICC/01/07 (n 4) para 1109
41 Ambos kai, Crimes against humanity (n54) 286; Katanga, ICC-01/04-01/07 (n 4) para 1114.
out an attack against a civilian population, whether through actions or deliberate failure to take action’. 42 Thus, the policy also links the attack to the entity behind it.

The capacity required for implementing a policy providing broader guidance for attack varies according to the circumstances. In some cases, such policy is adopted by an organization’s chain of command 43. Accordingly, a leadership able to adopt a policy and structures to promulgate it among the rank and file would be needed. In other cases, however, a policy may evolve more organically. For example, an attack might be guided by an organization’s broader ideology marking the targeted population as an enemy, or as ‘oppressors and potential invaders’ who shall be wiped out. 44

2.4 Summary of Literature

With the notable exception of the Kenya situation, in most cases before international courts and tribunals, non-state entities behind CAH have been parties to armed conflicts. Undisputedly, these groups possess the capacity to commit widespread or systematic attacks against a civilian population and have therefore been considered sufficiently organized to commit CAH. Looking at this group from a conceptual or systemic point of view, it has been argued that international criminal law should address crimes committed by parties to armed conflicts because such groups either control part of a state’s territory or have otherwise destabilized the state in which they operate to an extent that the state is unlikely to be able to address these crimes. 45 Thus, different commentators have argued that applying a definition of the organization criterion could have practical results:

In this way, we make large-scale and systematic crimes that place in a wide variety of situations deserving of international investigation and prosecution if the concerned state fails to act or is unwilling or unable to do so. 46

Therefore, in a world in which different non-state organizations direct or instigate large-scale human rights violations against victim populations, these crimes should be labelled as harming humanity and prosecuted accordingly.47

By questioning whether there is an organizational policy within the meaning of Article 7(2)(a) of the Rome Statute behind Boko Haram’s atrocities committed across Nigeria, this research project thus aims to move in this direction.

42 Katanga, ICC -01/04-01/07 (n 4) para 1108.
43 Ntaganda, ICC-01/04-02/06 (n 87) paras 19-21.
44 Katanga, ICC-01/04-01/07 (n 4) para 1143.
45 Claus kress, Actes de terrorisme: nouvelles formes de crimes contre l'humanité? (manuscript with the author 2016)
CHAPTER 3: RESEARCH METHODOLOGY

3.1 What is the concept of Crimes against humanity?

Crimes against humanity have been a significant issue in the last century, with a staggering number of people losing their lives due to various conflicts and oppressive regimes. This has resulted in the highest death toll in history, with most victims fitting the criteria for crimes against humanity.

The very first definition of crimes against humanity is provided by the International Military Tribunal in Nuremberg in 1945, which defined the term in Article 6(c) as referring to “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

Article 2(1)(c) of the Allied Control Council Law defines crimes against humanity as; “Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.”. Crimes against humanity definition by the ICL was produced in 1991 in which it was renamed the Draft Code of Crimes Against the Peace and Security of Mankind. The Draft states, under an article with the heading “Systematic or Mass Violations of Human Rights” as follows; “An individual who commits or orders the commission of any of the following violations of human rights: murder; torture; establishing or maintaining over persons a status of slavery, servitude or forced labor; persecution on social, political, racial, religious or cultural grounds, in a systematic manner or on a mass scale; or deportation or forcible transfer of population shall, on conviction thereof, be sentenced.”

The International Law Commission adopted another definition of crimes against humanity in 1996 which provides that: “Any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: Murder; Extermination, Torture, Enslavement, Persecutions on political, racial, religious or ethnic grounds, Institutionalized discrimination on racial, ethnic or religious

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48 Agreement for the prosecution and punishment of the major war criminals of the European axis, art. 6(c), Aug 8, 1945, 82 U.N.T.S 279, 287-88 (1945).
49 Control Council Law No. 10; Punishments of Persons Guilty of War Crimes Against the Peace and Against Humanity, art 2(1)(c), 20 December 1945.
grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population, Arbitrary deportation or forcible transfer of population, Arbitrary imprisonment; Forced disappearance of persons, Rape, enforced prostitution and other forms of sexual abuse, Other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.”

The Trial Chamber in The Katanga case states that the analysis of the contextual elements of crimes against humanity requires a three-stage approach. The first stage of reasoning concerns the existence of an attack within the meaning of Article 7 and entails not only the establishment of the existence “of an operation or course of conduct involving, notably, the multiple commission of acts referred to in Article 7(1)” but also that the attack be directed against a civilian population and that there is sufficient proof that the attack took place pursuant to or in furtherance of a State or organizational policy. The second stage then involves the characterization of the attack as being widespread or systematic. Finally, the last stage requires the establishment, firstly, of a nexus between the widespread or systematic attack and the punishable acts within the ambit of Article 7(1) and, secondly, of the knowledge of that nexus by the perpetrator of the act.

Crimes against humanity signify large-scale crimes committed in accordance with a group policy and taking place in a societal context in which the territorial state is either actively or passively involved in the crime, or unable to prevent or halt it. With regard to the element that CAH are mass atrocities targeting a victim population, a non-state entity would need to be able to develop and promulgate a policy that directs crimes against a victim group. It also needs to be sufficiently organized and equipped to execute this policy, meaning that it has the capacity to instigate or sustain large-scale human rights violations. With regard to the societal context of CAH, at least two scenarios are conceivable. On one hand, perpetrators would either need to constitute themselves as the governing authority or be capable of co-opting the governing authority, in order to enable the commission of large-scale crimes and avoid prosecution. On the other hand, irrespective of the non-state entity’s capacity, CAH can also be committed if the state is simply unable to fulfil its protective obligations towards the victim population. While the former case requires a certain political power on the part of the non-state entity, in the later case, it is the incapacity of the state that enables the commission of the crime.

52 Prosecutor v. Germain Katanga, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07, Trial Chamber II, 7 March 2014, paras. 1097-1099.
3.2 Overview of the Rome Statute and its Provisions on crimes against humanity

Article 7(1) of the Rome Statute defines "Crime against humanity" as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder, Extermination, Enslavement, Deportation or forcible transfer of population, Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, Torture, Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, Enforced disappearance of persons, The crime of apartheid, Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.

Article 7 of the Rome Statute provides a well-defined definition of crimes against humanity, specifying the various sub-classes of acts that constitute such a crime. Notably, it is different from the charter provisions of the Nuremberg Tribunal and the ICTY in that it does not require crimes against humanity to be committed in connection with an armed conflict, reflecting current international law. The ICC Statute also explicitly includes offenses such as enforced prostitution, forced pregnancy, and enforced disappearance of persons, which are often linked to policies of repression against civilian populations. Additionally, the sub-class of crimes against humanity termed 'other inhuman acts' is restricted in the ICC Statute to those of a similar nature to other subclasses and intentionally causing great suffering or serious injury to the body or mental or physical health, highlighting the importance of specificity.

3.3 Elements of Crimes against humanity

The Elements of Crimes against Humanity serve as a complementary tool to the provisions outlined in Article 7 of the Rome Statute. They provide a detailed description and interpretation of the specific acts that amount to crimes against humanity.

By Article 7 of the Statute of the ICC, crimes against humanity are constituted by: (a) the enumerated acts (b) committed as part of a widespread or systematic (c) attack directed

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against a civilian population, (d) with knowledge of the attack and (e) pursuant to or in furtherance of a State or organizational policy to commit such attack. The actus reus of a crime against humanity consists of an attack that is inhumane in nature and character, causing great suffering, or serious injury to the body or mental or physical health, committed on a widespread basis against a civilian population. To actuate the jurisdiction of the ICC, there must be; an attack, a nexus between the specific crimes and the attack, the attack must be committed against any civilian population, and, the attack must be committed on a widespread or systematic basis. From the wording of Article 7 (1) of the ICC Statute, a differentiation is made between a required macro-criminal context eo ipso- the chapeau; and a micro-criminal participation in the crime by the perpetrator. The larger context is codified as a widespread or systematic attack directed against any civilian population). The Micro-criminal participation is codified through the phrase- any of the following acts followed by a catalogue of offences. The notion ‘committed as part of…with knowledge of the attack‘ was incorporated to serve as a nexus between the macro - and micro criminal sections of crimes against humanity. It is important to note that for crimes against humanity to thrive, that the attack should be ‘widespread or systematic‘.

Under Article 7 (3) of Introduction to the Elements of Crimes against Humanity adopted by the Preparatory Commission for the International Criminal Court, the acts comprising the attack need not constitute a military attack. It includes any mistreatment of the civilian population. Article 7 (2) of the ICC Statute states that for the purpose of paragraph 1(a), an attack directed against a population means a course of conduct involving the multiple commissions of acts referred to in paragraph 1 against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such an attack. International case law: The Tadic case, asserts that a non-state actor which has de facto control over, or is able to move freely within a defined territory can be the author of the policy. Although the policy element does not negate the disjunctive test, systematic is a high threshold while policy is a low threshold to be deduced from the manner in which the acts occurred. It is necessary in this regard to reproduce the decision of the ICC on this matter: With regard to the term organizational:

‘ the Chamber notes that the Statute is unclear as to the criteria pursuant to which a group may qualify as an organization for the purposes of Article 7(2) (a) of the Statute. Whereas

58 Prosecutor v Vasiljevic, (ICTY Trial Chamber), 29th November 2002, paras. 29, 30.
60 Cryer et al., op cit, p. 196.
some have argued that only State-like organizations may qualify, the Chamber opines that the formal nature of a group and the level of its organization should not be the defining criterion. Instead, as others have convincingly put forward, a distinction should be drawn on whether a group has the capability to perform acts that infringe on basic human values: the associative element, and its inherently aggravating effect, could eventually be satisfied by purely private criminal organizations, thus not finding sufficient reasons for distinguishing the gravity of patterns of conduct directed by territorial entities or by private groups, given the latter's acquired capacity to infringe basic human values. The Chamber deems it useful to turn to the work of the ILC which determined in the Commentary to the Draft Code adopted during its 43rd session that one shall not confine possible perpetrators of the crimes to public officials or representatives alone. Admittedly, they would, in view of their official position, have far-reaching factual opportunities to commit the crimes covered by the draft article; yet the article does not rule out the possibility that private individuals with de facto power or organized in criminal gangs or groups might also commit the kind of systematic or mass violations of human rights covered by the article; in that case, their acts would come under the draft Code. The Chamber finds that had the drafters of the Statute intended to exclude non-State actors from the term organization, they would not have included this term in Article 7 (2) (a) of the Statute. The Chamber thus determines that organizations not linked to a State may, for the purposes of the Statute, elaborate and carry out a policy to commit an attack against a civilian population. In the view of the Chamber, the determination of whether a given group qualifies as an organization under the Statute must be made on a case-by-case basis. In making this determination, the Chamber may take into account a number of considerations, inter alia: (i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; (vi) whether the group is part of a larger group, which fulfils some or all of the abovementioned criteria. It is important to clarify that, while these considerations may assist the Chamber in its determination, they do not constitute a rigid legal definition, and do not need to be exhaustively fulfilled.61

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Article 7 of the Statute of the ICC demands that an attack is to be made in pursuance of a State or organizational policy. The requirement that the attack must be committed against a civilian population inevitably demands some kind of plan and, the discriminatory element of the attack is, by its very nature, only possible as a consequence of a policy. Although there is no requirement that the policy must be adopted formally by the state, there must be some conceived plan or policy. Furthermore, the policy need not be formally adopted, nor expressly declared, nor even stated clearly and precisely.

3.4 What is its place in the ICC and IHL system?

The ICC’s aim is not to prosecute and end impunity for state crimes but for the most serious crimes of concern to the international community as a whole. Over the decades, one important justification for prosecuting crimes against humanity as such has been the fact that these atrocities generally escape prosecution in the state that normally exercises jurisdiction, under the territorial or active personality principles, because of the state’s own involvement or acquiescence. The ICC has jurisdiction over crimes against humanity when they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The ICC can prosecute individuals who are accused of committing or being involved in crimes against humanity, regardless of their official capacity or affiliation. Boko Haram has fulfilled the prerequisite for CAH, hence the ICC is without fear or favour obligated to do the needful since the Nigerian government even though have prosecuted some of the offenders are unable to completely bring all the offenders to book. This is where the principle of complementarity Comes in.

There was an offer of amnesty by the Nigerian government to Boko Haram insurgents and it was rejected on account of distrust on both sides and the leadership of the group’s different cells. Nonetheless, it would seem that blanket amnesties and pardons granted prior to investigation and prosecution do not pose a problem for the ICC, as they would constitute a clear case of a State’s unwillingness to carry out investigation or prosecution for the purpose of Article 17 (1) (a) of the Rome Statute.

International tribunals, such as the International Criminal Tribunal for the former Yugoslavia

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64 Prosecutor v. Rutaganda, (ICTR Trial Chamber), 6th December, 1999, para. 69; Prosecutor v. Musema, (ICTR Trial Chamber), 27th January 2000, para. 204.
65 Prosecutor v. Dusko Tadic (ICTY Trial Chamber) 7th May 1997 para. 653.
66 ICC Statute, preamble, para. 4.
(ICTY) and the International Criminal Court (ICC), play a vital role in enforcing individual criminal responsibility in IHL. These tribunals have jurisdiction over IHL violations and are responsible for prosecuting and adjudicating cases involving war crimes, crimes against humanity, and genocide. It is important to note that IHL emphasizes that individuals bear personal responsibility for their actions. They cannot evade responsibility by claiming to act on behalf of a state or under superior orders. Individuals, not states, are the subjects of criminal responsibility in IHL. This simply ensures that those responsible for IHL violations can be held accountable regardless of their official capacity. IHL also recognizes the principle of universal jurisdiction, enabling states to prosecute individuals for IHL violations regardless of the nationality of the perpetrator or the location where the crime was committed. By upholding individual criminal responsibility, IHL seeks to deter future violations, promote accountability, and protect the rights and dignity of individuals affected by armed conflicts. The ICC in holding individuals accountable aims to ensure justice for victims and prevent impunity for those who commit crimes against humanity.

3.5 Mens Rea

Some scholars are of the opinion that the atrocities committed by BH are terrorist acts but I beg to differ and argue that Boko Haram’s atrocities fulfill the criteria of CAH. The ICC Statute requires a specific mens rea for crimes against humanity, which is that the perpetrator of the attack had knowledge that it was being carried out on a widespread or systematic basis. The attack contemplated by the ICC Statute must have been part of a state or organizational policy involving the multiple commissions of the prohibited acts. As earlier pointed out, the ICC has held that sub-state actors can be held responsible for crimes against humanity. The decision is made on a case-by-case basis taking into account a number of considerations including (i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; (vi) whether the group is part of a larger group, which fulfills some or all of the abovementioned criteria. It is important to clarify that, while these considerations may assist the Chamber in its determination, they do not constitute a rigid legal definition, and do not need to be...
exhaustively fulfilled.\textsuperscript{71} As far as the knowledge of the attack is concerned, Article 7(1) requires proof that the perpetrator of the act knowingly participated in the attack. For Trial Chamber II, such knowledge constitutes the foundation of a crime against humanity as “it elucidates the responsibility of the perpetrator of the act within the context of the attack considered as a whole”. For the perpetrator’s act to be characterized as a crime against humanity, it suffices to establish knowledge of the overall context in which his or her acts took place.\textsuperscript{72}

As far as Boko Haram is concerned, the existence of a nexus between the criminal acts perpetrated by the accused and the systematic and widespread attack directed against the civilian population is established. The recurring common features shared by these crimes show how, in planning and carrying out a crime, each perpetrator responds to the direct orders of their leaders.

Boko Haram’s targets include churches, mosques, schools, markets, bus terminals, etc. The attacks are widespread; massive, frequent, large-scale action, and are carried out collectively with considerable seriousness and directed against a multiplicity of victims. The group has attacked civilians in Abuja, Kogi State, Borno State, Yobe State, Adamawa State, Plateau State, Kaduna State, Kano State, Gombe State, Jigawa State, Bauchi State, and Taraba State and their targets are civilians. BH’s atrocities were committed with full knowledge and intent, and they knew the consequences of their actions but because they have some backing from people of influence, they do these things and get away with it most of the time.

\textsuperscript{71} ICC Pre-Trial Chamber II, Situation in the Republic of Kenya (Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya), No.: ICC-01/09, 31 March 2010, paras. 90-93, pp. 38-40.

\textsuperscript{72} Prosecutor v. Germain Katanga, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/07, Trial Chamber II, 7 March 2014, paras. 1125.
CHAPTER 4: CASE STUDY ANALYSIS

4.1 Case study: Boko Haram's atrocities in Nigeria

Boko Haram is an Islamic group that is seeking to transform, especially the northeast region into an Islamic state with the aim of infusing and enforcing strict Islamic law in the northeast region. The group’s activity initially started with the spreading of Islamic ideologies before a series of events that led to the group’s change of tactics - taking up arms and violence. Between 2000 and 2009, Boko Haram engaged in a low-level conflict with local police officers and non-compliant villagers, until its leader, Mohammed Yusuf who was captured on 30th July 2009 in a battle with Nigerian security forces in Maiduguri, was extra-judicially murdered in detention.

When new leadership took over after the death of the leader Yusuf, they embarked on a revenge and retaliation mission. Boko Haram began to target churches, schools, media outlets, and journalists in increasing levels of acts of violence and began kidnapping individuals. The Nigerian government had to declare a state of emergency as BH began systematically murdering and executing people, beginning with individuals in the North who were Christians. Their operations include the strategic killing of civilians in churches, mosques, police stations, military barracks, educational institutions, government, and private properties. They also indulge in kidnapping, arson, killing of innocent people, cattle rustling, raping, stealing and banditry, hostage-taking, and enforcement of strict Sharia jurisprudence in their caliphate and areas of control. The progressively brutal attacks by Boko Haram, which now also targeted civilians, spread fear and terror throughout the country and over 32,000 people have been killed over the years.

Boko Haram is led by an Amir ul-Aam (Commander in Chief) of which Mohammed Yusuf was the leader, after his death, Abubakar Shekau took over. He is however, answerable to a Shura (Council) of trusted Kwamandoji (Commanders in the Hausa language). Significantly, the Shura includes not only Boko Haram’s senior regional commanders but also representatives of Ansaru, AQIM, MUJAO and others. The Shura is Boko Haram’s highest decision-making body, and the Amir ul-Aam cannot launch major operations, formulate strategy or issue communiqués without the approval of the Shura. The Shura is functioning efficiently though, given the realities on the ground, not frequently. Very little is known about the members of the Shura or even its size - estimated at 6-8 members. The only two known members are Mamman Nur, who is Shekau’s second-in-command, and Ansaru’s

Khalid al-Barnawi. Other reported Shura members include Ibrahim Tada Ngalyike from Gwoza, member of the original Nigerian Taliban Aminu Tashen-Ili, and a factional leader known only as Abu Sumayya. There are conflicting reports about whether Abu Kaka or Abu Qaqa - the media face of Boko Haram - is a Shura member. The identity of past members should be indicative. The three known members are Habibu Yusuf (killed in early 2013), Momodu Bama (aka Abu Saad, heavy-weapons expert and the son of Mallam Abatcha Flatari who provided charms for the soldiers until both were killed in late 2013), and Mohammed Zangina (who was involved in coordinating suicide attacks before his arrest in early 2013). The main problem of the Boko Haram command and control system seems to be at the localized level. As a populist movement immersed in fratricidal violence all over the land, Boko Haram must be represented in every region and city. To achieve this, Boko Haram has a system of local Amirs who are in charge of specific areas. Large cities and densely populated areas are subdivided into Lajna (Sectors in the Hausa language) each of which is being run fairly autonomously by a sub-Amir. The Amirs and sub-Amirs are supported by Kwaman-doji who run operations on a localized level. Each Commander is in turn assisted by a Nabin (Deputy in the Hausa language). Each Nabin controls at least one Mu’askar (Lieutenant) who is the real leader and commander of the violent armed gangs that carry out Boko Haram’s murderous raids. Known commanders include Abdulmalik Bama, Umar Fulata, Alhaji Mustapha (aka Massa Ibrahim), Abubakar Suleiman Habu, Hassan Jazair, Ali Jalingo, Alhaji Musa Modu, Bashir Aketa, Abba Coroma, Ibrahim Bashir, Abubakar Zakariya and Tukur Ahmed Mohammed. There are also new zonal commanders for Borno, Yobe, and Adamawa States who are unknown. Significantly, only a few of the more senior Amirs and Kwamandoji are members of the Boko Haram Shura.

In 2021, Abubakar Shekau was killed. At the moment, a new leader of the group has not been made public as the group’s atrocities are minimal.

4.2 Overview of the Boko Haram Insurgency and its Impact on Civilians in Nigeria

The term ‘civilian’ is used to indicate persons who are not involved in counter-insurgency. Even military, paramilitary, and other law enforcement agents would still be regarded as civilians under Article 7 (2) of the ICC Statute since they are not involved in any armed hostilities. Thus, they constitute non-military targets. Civilians are seen as people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons placed hors de combat by sickness, wounds, detention, or

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any other cause.\textsuperscript{77} Boko Haram's attacks have resulted in the loss of thousands of lives, with civilians bearing the brunt of the violence. Men, women, and children have been indiscriminately targeted, leading to a high number of casualties and widespread trauma within affected communities. The group has also been responsible for the abduction of hundreds of schoolgirls, including the well-known abduction of the Chibok girls in 2014, which garnered international attention. The impact of the insurgency extends beyond immediate physical harm. It has disrupted education, healthcare, and livelihoods, leaving communities vulnerable and struggling to rebuild their lives. Boko Haram's ideology and tactics have instilled fear and created divisions within society, contributing to a breakdown of trust and social cohesion. The Boko Haram insurgency in Nigeria has had a devastating impact on civilians, leading to widespread violence, displacement, and human suffering. The atrocities in Nigeria has reached the point that it is a critical threat to the health, security, and safety of the citizenry. These types of attacks prevent the community from having the basic needs, e.g. Food, water, shelter, and healthcare are difficult to come by. This extensive violence has led to massive loss of lives and displacement of internal populations.

4.3 Analysis of the nature and scale of the attacks perpetrated by Boko Haram

Boko Haram’s history of violence dates back to December 24, 2003, when it attacked police stations and public buildings in the towns of Geiam and Kanamma in Yobe state. The activities of the group however became even more worrisome in 2004 when students, mainly from tertiary institutions in Borno and Yobe states withdrew from school, tore up their certificates, and joined the group. The group continued with intermittent hit and run attacks on security posts in some parts of Borno and Yobe states until the July 2009 anti-government uprising in Nigeria.\textsuperscript{78}

A notable example of the Boko Haram attack occurred in the United Nations Headquarters in Abuja on August 26, 2011 where a number of civilians were murdered and an attack in the Chibok village where 278 school girls were abducted and till date, not all the girls have been released. The attack was magnified when the international community and social media campaigns called on the Nigerian military to act more aggressively to find the girls. Protests erupted within Nigeria and around the world demanding the return of the girls with a social media campaign branded with the slogan “#BringBackOurGirls.” The inability of the Nigerian military to find the girls quickly weakened its and the Nigerian government’s legitimacy and credibility. Boko Haram’s leader, Shekau, was emboldened and claimed

\textsuperscript{77} Prosecutor v Bisengimana, (ICTR Trial Chamber), 13th April 2006, para. 48.
responsibility in videos and other media and announced his intention to continue kidnapping girls whom he claimed should not be wasting their time in school. The typical nature BH possess is the use of Nigerian military uniforms, carrying weapons, driving pickup trucks, and initially saying they are there to protect them. The deception allowed the BH fighters to gain momentary trust and facilitated moving the girls to the vehicles for transport. False checkpoints set up by Boko Haram fighters in military uniforms is another variant of this technique. In September 2013, Boko Haram militants dressed in military uniforms set up a false checkpoint in the Benisheik area in Borno State, shooting Nigerians in their cars and as they attempted to flee on foot after voluntarily stopping for what they thought was an official checkpoint. On 31st August 2013, Boko Haram gunmen, dressed as traders, attacked a market in Gajiran, killing 15 people. On 6 April 2015, Boko Haram fighters dressed as Islamic religious leaders pretending to preach Islam in the rural village of Kwajafa in Borno State. After a crowd gathered to listen, the false preachers opened fire, killing 24 and wounding others. Boko Haram’s use of government military uniforms, religious garb, or local clothing allows BH to gain the trust of the local population and closer proximity to those it intends to attack. Boko Haram members will also dress as women or preachers as a means of escape from Nigerian security forces.

Baga has also been targeted a number of times, in part because it is the location of the former headquarters of the Multinational Joint Task Force (MNJTF). In the quest by the people to secure their territory, they positioned strategically for the protection of their people. Attacks from multiple directions quickly overwhelmed the outmanned and outgunned defenders of Baga. The attackers began killing people on sight, as well as looting and burning homes and businesses. Local residents, who fled in all directions, were purposefully targeted and killed. Multiple reports stated that Nigerian soldiers in the town stripped off their uniforms to avoid being targeted by the advancing militants. Residents that fled toward Lake Chad, to the east, attempted to cross the lake by boat. Some succeeded in crossing the lake to nearby Chad, while others drowned or were shot by the attackers. Having created chaos, fear, and mayhem in Baga, Boko Haram easily exploited the situation to continue the attack on Doron Baga and several surrounding villages, easily taking control of the area. With no defense, area residents and security forces hid in the bush or attempted to cross Lake Chad. Boko Haram fighters combed the bush seeking those hiding and many were drowned when their overloaded canoes tipped in Lake Chad. Hundreds of people and possibly as many as 2,000 were killed during the extended attack (the official Nigerian government casualty figure is only 150), with

80 ibid, p. 15.
81 ibid p. 16.
witnesses reporting bodies lying on the ground throughout the area. Thousands more have become either refugees in Chad or internally displaced persons (IDPs) in Maiduguri. Based on satellite imagery, Amnesty International estimates that around 3,700 buildings were destroyed in Baga and Doron Baga during the attack. At least 16 towns, villages, and settlements were attacked and destroyed during the five-day period.82

Boko Haram imprisoned thousands of civilians in its camps and in towns under its control in Borno state and other areas in the north-east. These civilians were often detained in large houses, prisons or other buildings, under armed guard. At other times civilians were allowed to remain in their houses, but those caught leaving their homes or the town without permission were flogged or executed.

A notable aspect of Boko Haram’s attacks is their deliberate targeting of civilians. The group has shown a complete disregard for human life, often targeting crowded places such as markets, schools, places of worship, and residential areas. This intentional targeting of non-combatants is a clear violation of international humanitarian law and constitutes a grave crime against humanity.

4.4 Examination of Boko Haram's statements and actions to determine whether there is evidence of a deliberate plan or policy to commit crimes against humanity.

Analysis of its actions and statements suggests that Boko Haram’s strategy may simply be to destabilize the north so that it can one day push out the traditional northern elites who control the government and establish an Islamic caliphate in their place. Once this has been accomplished, they can use their gains as leverage to compromise and eventually overthrow the national government.83 Mostly likely, Boko Haram’s strategy is rooted in creating as much chaos as possible to weaken the government, while at the same time accelerating Nigeria’s centrifugal forces (ethnoreligious divides, power politics, and economic grievances) sufficiently to cause the state to collapse from within. Abu Qaqa, the group’s best-known spokesman, put it succinctly: “Our objective is to place Nigeria in a difficult position and even destabilize it and replace it with Sharia.” 84

In a bid to save its face, the Nigerian government has denied some of the attacks committed by BH. Following all these denials by the federal government and its supporters, Shekau then posted a statement in a video of the girls on YouTube as proof to his audiences that his group had successfully abducted them, and that the Nigerian government was not telling the truth

84 ibid
about the abduction. To prove the veracity of his group’s successful abduction of the Chibok girls, he released a video showing the girls squatting on the ground, wearing black veils over their heads, and reciting the Quran. In the video, Shekau spoke in Hausa, Arabic, and English. For the first fourteen minutes of the fifty-seven-minute video, he took a swipe at the concept of democracy, Western education and efforts by Muslims and Christians to live in peace. To persuade his audiences that Boko Haram was strong and that the Nigerian government lied about the abduction, he said: “I abducted a girl at a Western education school and you are disturbed. I said Western education should end. Western education should end. Girls, you should go and get married.” Shekau further said: “I will repeat this: Western education should fold up. I abducted your girls. I will sell them in the market by Allah. I will marry off a woman at the age of twelve. I will marry off a girl at the age of nine.”

Boko Haram’s attacks is considered widespread and systematic and these acts can be said to have violated Article 7 of the Rome statute. From the statements above, you can tell that BH did not just make the statements for a threat but deliberately acted on it. In 2013 Boko Haram conducted more than 100 deadly attacks, killing more than 1,350 civilians. In 2014, there were at least 230 raids and attacks against civilians, killing more than 4,000 civilians. While some were claimed by Boko Haram, and some weren’t, the residents and local authorities believe that all of the attacks have been perpetrated by Boko Haram.

Boko Haram forced thousands of civilians to live in camps and towns under its control, where it imposed its rules through harsh punishments, including public floggings and executions. They subjected many women and girls to rape and forced marriages, while men and boys were compelled to join the group. The group mercilessly enforced its ideology, considering anyone who opposed it as "unbelievers" and legitimate targets of violence.

4.5 Application of the Rome Statute provisions on crimes against humanity to the case study

The Rome Statute requires that the crimes committed be as part of a widespread or systematic attack. Boko Haram's history of violence, spanning over a decade and affecting various regions in Nigeria, demonstrates a pattern of systematic attacks on the civilian population. The group has consistently targeted schools, marketplaces, places of worship, and other crowded areas, resulting in a significant number of civilian casualties.

Amnesty International is of the view that Boko Haram is a well-organized and efficient force,
training recruits and using sophisticated weaponry, such as armoured tanks. The sect has a fleet of vehicles, including motorcycles, flat-bed trucks and armoured personnel carriers, which it is able to supply; service and deploy. It also holds and administers territory and has a command structure that imposes discipline on its forces and directs hostilities, and the existence of an organizational policy to attack a civilian population can be determined both by public statements made by Boko Haram leaders and inferred from the widespread or systematic nature of the attacks.\footnote{Amnesty International, “Our Job is to Shoot, Slaughter and Kill: Boko Haram's Reign of Terror in North-East Nigeria” (London, April 2015), p. 25.}

Article 7 (2)(a) of the Rome Statute states; "Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.\footnote{UN General Assembly, Rome Statute of the International Criminal Court, Art 7(2)(a), UN Doc A/CONF.183/9 (last amended 2010), 17 July 1998, 2187 UNTS 90.}

Following the elements of CAH in paragraph 1, A widespread or systematic attack on a fundamental human right is also a threat to peace in a broader sense, affecting the world's security and well-being.\footnote{Werle, Gerhard, Florian Jessberger, Burghard B, Volker Nerlich, et al., Principles of International Criminal Law (Oxford; New York: Oxford University Press, 2014).} The attack particularly, must be designed to infringe a civilian population's protected human rights. The widespread or systemic nature of the attack may be linked to the expansion of the attacks to a wide geographic area or the number of victims involved. It must be massive, frequent, collectively carried out with considerable seriousness and directed against a variety of victims.\footnote{Bemba (ICC-01/05-01/08), Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo (2009), para. 83. (ICC, 2009)} The assault is deemed to be systemic because, it lasted for over five years, and the acts of violence that included it followed a similar trend to a considerable extent. The way in which the attacks on Boko Haram took place also points to the widespread and systematic element. Most of the attacks on Boko Haram was carried out with sophisticated weapons, suspects usually dressed in military uniforms with evidence of the bullet and carried out in an organized way.

4.6 Analysis of whether the evidence supports the existence of an "Organizational Policy" within the meaning of Article 7(2)(a) of the Rome Statute

Article (7)(2)(a) clarifies that a policy cannot be any policy but must be one to commit such attack.\footnote{Ruto et al, ICC-01/09-01/11 (n10), para. 213.} However, the Rome Statute did not give a clear definition of State or organizational policy. Decisions by judges has given us an understanding of organizational policy. In the Situation in Kenya, Judge Hans-Peter Kaul in a dissenting opinion criticized the
interpretation adopted by the majority for being too broad, thereby concluding that the ICC has no jurisdiction ratione materiae in the Kenya Situation. By denouncing the ’banalisation’ of crimes against humanity, the Dissent argues that any organization within the meaning of Article 7(2)(a) of the ICC Statute should ‘partake of some characteristics specific to the State’, such as the following: (i) a collectivity of persons; (ii) which was established and acts for a common purpose; (iii) over a prolonged period of time; (iv) which is under responsible command or adopted a certain degree of hierarchical structure, including, as a minimum, some kind of policy level; (v) with the capacity to impose the policy on its members and to sanction them; and (vi) which has the capacity and means available to attack any civilian population on a large scale.’ This Dissenting Opinion seems to reintroduce, through the back door, the requirement that crimes against humanity have to be committed during an armed conflict.

The revitalization of the armed conflict requirement seems also to be foreshadowed by the Decision on the Authorisation of an Investigation into the Situation in Côte d’Ivoire. In this Decision, Pre-Trial Chamber III noted the disagreement within the jurisprudence of the Court on the criteria required for a group to constitute an organization for purposes of Article 7 of the Statute. For what is concerned the Côte d’Ivoire situation, the Chamber held that the pro-Ouattara forces fulfilled the criteria for an organized armed group as a party to a non-international armed conflict and so inevitably it qualifies as an organization within the context of Article 7(2)(a) of the Statute.

A systematic attack is one that is carried out pursuant to a preconceived plan or policy. From the previous discussion in this study, I argue that BH fulfills the elements as provided by Article 7(2)(a) as their attack was systematic, widespread, possess a policy, and was targeted at civilians (even though the military was targeted as well). The requirement that the attack must be committed against a civilian population’ inevitably demands some kind of plan and, the discriminatory element of the attack is, by its very nature, only possible as a consequence of a policy.

Answering the question ‘Is there an organizational policy within the meaning of Article 7(2)(a) of the Rome Statute behind Boko Haram’s atrocities committed across Nigeria? I would rely on the opinion of the decision of the trial judges.

1. A collectivity of persons: Boko Haram is a group comprised of individuals who share a common ideology and purpose. It consists of leaders and supporters who are united under the banner of extremist Islamist ideology.

2. Established and acts for a common purpose: They operate with a clear common purpose, which is the establishment of an Islamic state in Nigeria and the imposition of its radical interpretation of Sharia law. The group carries out coordinated attacks and engages in systematic activities to achieve its objectives.

3. Over a prolonged period of time: The group’s existence and activities have spanned over a significant period. The group has been active since its formation in 2003 and has continued its operations with varying intensity over the years, demonstrating its long-term engagement in violent activities.

4. A responsible command or adopted a certain degree of hierarchical structure: Boko Haram exhibits a certain level of hierarchical structure, with leaders and commanders responsible for decision-making and issuing orders. The group has shown evidence of having a leadership structure that guides its operations and sets policies, albeit with some internal divisions and power struggles.

5. The capacity to impose the policy on its members and to sanction them: Boko Haram has demonstrated its ability to enforce its policies and ideologies on its members. It employs strict discipline and severe punishments, including executions and public floggings, to maintain control and enforce compliance within its ranks.

6. The capacity and means available to attack any civilian population on a large scale: Boko Haram has repeatedly carried out large-scale attacks targeting civilian populations. The group has shown the capacity to launch coordinated assaults on villages, towns, markets, schools, and other public places, resulting in significant casualties and widespread fear.
CHAPTER 5: CONCLUSION

5.1 Summary and Conclusion of the Study

The analysis of this study has been able to support the existence of an organizational policy within Boko Haram. The group's consistent and widespread acts of violence against civilians, the deliberate targeting of specific groups, and the adoption of a radical ideology demonstrate a calculated and systematic approach. The thesis scrutinized the nature and scale of Boko Haram's attacks, highlighting the intentional targeting of civilians, including women and children, and the use of brutal tactics such as abductions, killings, and sexual violence.

Based on the analysis of international criminal law principles, the study concludes that Boko Haram's atrocities can be attributed to an organizational policy as defined by Article 7(2)(a) of the Rome Statute. The group's actions, characterized by a consistent pattern and shared objectives, reflect a deliberate plan to commit crimes against humanity.

The implications of this finding are significant for international criminal law and the pursuit of justice. The identification of an organizational policy strengthens the case for holding Boko Haram leaders and members accountable for their crimes. It emphasizes the need for robust legal mechanisms and international cooperation to ensure that those responsible are brought to justice. Article 14 is clear on the issue of complementarity and as in the case of Nigeria, the country has jurisdiction over crimes committed within its territory. However, there has been flaws in some of the trials of the culprits even international bodies have attested to that. This is the reason ICC asked the Nigerian government to cooperate with its investigations to ensure crimes in the context are properly investigated and prosecuted.

The Nigerian government has been unable genuinely to investigate and prosecute these atrocities. My reason for this analysis is that the government drafted a bill to implement the Rome Statute ‘Crimes against Humanity, genocide, and related offences Bill 2012’ The bill successfully passed the 1st reading. The bill went further for Second reading in the Nigerian senate as A ‘Bill for an act to provide for the enforcement and punishment of crimes against humanity, war crimes, genocide, and related offences and to give effect to certain provisions of the Rome Statute of the International Criminal Court in Nigeria 2013’. Till date, this bill did not go further and has been abandoned. This and more is enough to tell how non-challant these atrocities are taken.
In conclusion, this thesis establishes that Boko Haram's atrocities across Nigeria are driven by an organizational policy within the meaning of Article 7(2)(a) of the Rome Statute. The cases examined demonstrates a systematic and deliberate approach to carry out acts of violence, with civilians being the primary targets. By examining the group's history, actions, and adherence to a radical ideology, it is clear that Boko Haram operates under a structured and consistent policy.

The thesis contributes to a better understanding of Boko Haram's activities and their classification as crimes against humanity. By shedding light on the existence of an organizational policy, it serves as a foundation for future legal proceedings and efforts to address the atrocities committed by the group. In addition, it is important to note that the functionality of the ICJ perspective cannot be over-praised. Insisting on a State nexus would amount to a high threshold demand which most sub-state actors would fall short of, despite appalling statistics of human rights abuses, which would allow such groups to slip through the grips of international accountability regimes. In recent times, most conflicts are fought not between States but between States and armed rebel groups or between rebels.

5.2 Recommendations and Contributions

Sequel to the findings and analysis of crimes against humanity, organizational policy and the Boko Haram insurgency in Nigeria presented in this study, it is imperative to propose the following recommendations in order to effectively prevent and prosecute the mass killing of civilian populations:

1. The Nigerian government should intensify its efforts to incorporate the provisions of the Rome Statute into its domestic legislation. The establishment of the International Criminal Court (ICC) and its system of international criminal jurisdiction is based on the underlying assumption that national courts have the primary responsibility to investigate and prosecute international crimes. This complementarity principle emphasizes the role of domestic jurisdictions in addressing such crimes. Given the limited resources of the ICC, it is crucial for States to fulfill their primary obligation in this regard. The fundamental requirement for States to effectively fulfill their duty of imposing punitive measures for crimes against humanity is the enactment of legislation that incorporates the crimes and legal principles delineated by the Rome Statute into their national laws.
2. The primary aim of the Boko Haram insurgency is the establishment of an Islamic caliphate within a society characterized by religious diversity. The current crisis can be traced back to a longstanding history of religious intolerance prevalent in northern Nigeria. Sufficient measures were not implemented to effectively counteract this threat. It is imperative to consistently uphold the constitutional guarantee of the right to freedom of religion or non-belief. I recommend that the government undertakes measures to address the religious, cultural, and socio-economic factors prevailing in Nigeria, as they contribute to the emergence and escalation of insurgencies. By doing so, the government can take the initial step in effectively tackling crimes against humanity and safeguarding the civilian population from acts of mass violence.

Furthermore, the State should proactively pursue initiatives aimed at improving the socio-economic conditions of Nigerians, thereby diminishing the appeal of radical Islamic ideologies and reducing the susceptibility of the populace to unorthodox sources of support.
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