

EXAMINING THE LEGAL FRAMEWORK FOR TRANSITIONAL JUSTICE IN ADDRESSING THE *BOKO HARAM* INSURGENCY IN NIGERIA*

Abstract

The *Boko Haram* insurgency in Nigeria has caused considerable humanitarian crises, human rights abuses, and socio-economic devastation. Current military and legal responses have demonstrated inadequacy in tackling its underlying causes. This work assesses Nigeria's legal framework for transitional justice, suggesting its possible use to address the consequences of the insurgency. It addresses deficiencies in the existing legal framework, especially with reparations, accountability, and victim-centered methodologies. The work analyses transitional justice methods, including truth commissions, amnesty, reparations, and community reconciliation. The article promotes the reform of Nigeria's legal and institutional frameworks to integrate these systems, ensuring a holistic approach to justice and reconciliation. Integrating these mechanisms into Nigeria's current legal frameworks can promote enduring peace, rectify the grievances of victims, and restore confidence in state institutions. It advocates for the formation of a National Commission on Transitional Justice, the construction of specialised courts, and the implementation of victim protection programs to promote healing and prevent future conflict.

Keywords: Transitional Justice, *Boko Haram* Insurgency, Legal Framework, Accountability, Human Rights

1. Introduction

Boko Haram has posed significant security threats to the Nigerian state since its inception. The considerable implication of *Boko Haram* is not only on Nigeria's national security and the West African Sub-region's security but also on the number of human casualties recorded since the start of the insurgency. For instance, The Human Rights Watch (HWR) Report revealed that in 2011 alone, *Boko Haram* struck 115 times and killed 550 people. Within the first three weeks of the year 2012, the sect killed 250 people, with the deadliest being the coordinated bombings in the ancient city of Kano, which claimed 185 lives.¹ Presently, it is estimated that *Boko Haram* terrorists have claimed more than 37,500 people since May 2011,² and it has been claimed that the *Boko Haram* insurgency has displaced 2.4 million people and has put more than 7 million people at the risk of starvation, leaving the country with the worst humanitarian crisis in the African continent.³ Despite various military and legal measures, such as the establishment of the Terrorism (Prevention and Prohibition) Act 2022.⁴ The legislation addresses the prevention and prohibition of terrorism in Nigeria. It also provides for domesticating international conventions that deal mainly with terrorist prevention and financing. However, these efforts have fallen short of addressing the insurgency's root causes, including systemic injustices, poverty, and political marginalization.

Transitional justice procedures include reparations, prosecution, truth-seeking, institutional reform, or an appropriate combination and serves as a form of redress for situations where mass human rights violations have occurred, which, due to the large number of people involved, the justice system might be unable to cope.⁵ Transitional justice, as a framework for addressing mass atrocities and promoting reconciliation, offers a complementary approach to existing strategies. Transitional justice mechanisms have been deployed in different contexts. Such contexts include erstwhile authoritarian regimes in Latin America and elsewhere, Eastern European states post-collapse of the Soviet Union, and various post-conflict societies in Africa, Asia, and Europe. Also, other contexts of jurisdictions undergoing a transition like the Arab Spring, ongoing conflicts like those in the Middle East, and in more established democracies, including the USA and the U.K.⁶ It has been effectively implemented in countries like South Africa, Rwanda, and Colombia to foster accountability, reconciliation, and institutional reform.

However, in Nigeria, the absence of a coherent legal framework for transitional justice limits its potential application. This work examines the existing legal frameworks in Nigeria, highlights their inadequacies, and explores how transitional justice mechanisms can be adapted to address the *Boko Haram* insurgency.

2. Conceptual Framework

Transitional Justice generally refers to addressing massive human rights violations during periods of political transition. In most of the literature on transitional justice, authors describe the phenomenon through its mechanisms. The method

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³Adebayo, Anthony Abayomi. *Implications of 'Boko Haram' Terrorism on National Development in Nigeria: A Critical Review*. no. 16, 2014, pp. 480–89.

⁴John Campbell and Asch Harwood, 'Boko Haram's Deadly Impact.' Council on Foreign Relations, 20 August 2018 <https://www.cfr.org/article/boko-harams-deadly-impact>. Accessed 8 December 2019.

⁵ *Ibid.*

⁶The Terrorism Prevention Act 2011 was signed into law by President Jonathan in June 2011. However, the Terrorism (Prevention) (Amendment) Act 2013 replaced the Terrorism Prevention Act of 2011.

⁷ United Nations. 'What Is Transitional Justice?' *United Nations*, February, 2008, pp. 1.

⁸ Cheryl Lawther and Luke Moffett, 'Introduction – Researching transitional justice: The highs, the lows and the expansion of the field' in Lawther, Cheryl, et al (Eds). *Research Handbook on Transitional Justice*, 2017.

commonly used consists of enumerating all the measures agreed to be constitutive of some form of transitional justice to try to give a global picture of what transitional justice refers to. Scholars and even the Secretary-General of the United Nations have continuously pointed out this lack of a shared understanding. In 2004, the then U.N. Secretary-General Kofi Annan defined Transitional justice as: The full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice, and achieve reconciliation. It consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform, and national consultations.⁷

Transitional justice generally includes five broad components: accountability, truth recovery, reparations, institutional reform, and reconciliation. Accountability ensures responsibility for human rights abuses, war crimes, and crimes against humanity, thus restoring the rule of law.⁸ When perpetrators are too many or societal fracturing runs too deep, truth recovery must be employed in place of universal prosecution, providing some dignity to victims through acknowledgement of suffering and abuse. Different reparations provide partial material restoration for or to victims, and institutional reform seeks to address the underlying causes of conflict or the organisational bodies responsible for crimes. Finally, reconciliation builds from the other pillars to restore trust among victims towards the perpetrators.⁹ Transitional justice mechanisms are particularly relevant in post-conflict settings, where they address grievances, prevent reoccurrence, and rebuild trust in institutions. The Rome Statute of the International Criminal Court (1998) and the African Charter on Human and Peoples' Rights (1981) provide legal bases for accountability and justice, which are central to transitional justice.

3. The Legal Framework for Transitional Justice

Domestic Instruments

Nigeria's legal framework for addressing insurgency primarily focuses on punitive measures.

Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended): The Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended, is the supreme law of the land, which the validity of all other laws is gauged. In other words, for all other laws to be valid, they must conform to or be in accordance with the Constitution.¹⁰ If any law fails to conform to the Constitution, such a law will be rendered null, void and of no effect whatsoever.¹¹ The 1999 Constitution of Nigeria includes provisions that can be leveraged in transitional justice mechanisms addressing the *Boko Haram* insurgency. Sections such as Chapter IV (Fundamental Rights) are critical, as they guarantee rights to life¹², dignity¹³, and personal liberty¹⁴, which are often violated during insurgencies like that of *Boko Haram*. These rights are foundational for claims of justice and reparations for victims of human rights violations. Transitional justice mechanisms such as truth commissions or reparative processes can utilise these constitutional guarantees to advocate for accountability and redress for victims of *Boko Haram*'s atrocities. The Constitution also empowers the National Assembly to make laws for the Federation or any part of it to maintain and secure public order and safety.¹⁵ The chief law that governs terrorism in Nigeria, the Terrorism (Prevention and Prohibition) Act, 2022, was enacted by the National Assembly of the Federal Republic of Nigeria in the exercise of the powers conferred on it by the Constitution of the Federal Republic of Nigeria, 1999, as amended. Section 6 of the Constitution provides for establishing judicial bodies, which can be utilised in setting up special tribunals under the Tribunals of Inquiry Act to investigate human rights abuses and hold perpetrators accountable for crimes committed. This principle aligns with the international legal frameworks, and integrating it with the Constitution strengthens the legal foundation for transitional justice. Research has shown that the effectiveness of transitional justice in addressing insurgencies like *Boko Haram* is often tied to such legal provisions, highlighting the importance of constitutional rights in Nigeria's response to insurgency-related human rights violations.¹⁶ The *Boko Haram* insurgency has exposed gaps in the Nigerian legal framework, particularly regarding reparations for victims and the protection of human rights during counter-insurgency operations. For example, the failure to fully implement constitutional protections for citizens has been highlighted as a significant issue, particularly in the government's response to *Boko Haram* through military operations that often result in human rights abuses.¹⁷ The Constitution's provisions, when strictly adhered to and effectively enforced, can provide a legal basis for addressing these grave abuses and help in implementing transitional justice measures.

⁷ UN Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc S/2004/616 (2004).

⁸ Ibid. 113.

⁹ Ibid.

¹⁰ Section 1(1) of the CFRN, 1999 (as amended).

¹¹ *Abacha v Fawehinmi* (2000) LPELR-14 (SC) and *Zamfara State House of Assembly Service Commission v Governor of Zamfara State* (2015) LPELR-24718 (CA).

¹² Section 33

¹³ Section 34

¹⁴ Section 35

¹⁵ Section 11 (1) and 11(3) CFRN, 1999.

¹⁶ Godwin, Onu and Kolapo Quadri Abayomi. 'Investigating the Legacies of Violence and Conflict in Transitional Justice and Peace.' *African Journal of Political Science*, vol.10, no.1, 2022, pp. 77.

¹⁷ Afolabi, O., Marumo, P.O. The Responsibility to Protect and International Community Response to the Boko Haram Insurgency in Nigeria. In: Erameh, N.I., Ojajorotu, V. (eds) *Africa's Engagement with the Responsibility to Protect in the 21st Century. Africa's Global Engagement: Perspectives from Emerging Countries*. Palgrave Macmillan, Singapore, 2024, pp. 147 https://doi.org/10.1007/978-981-99-8163-2_9

Terrorism (Prevention and Prohibition) Act 2022 (TPPA, 2022): This is Nigeria's principal legislation on terrorism and provides a comprehensive framework for detecting, preventing, prosecuting, and punishing terrorism, terrorism financing, and the proliferation of weapons of mass destruction, in alignment with international counterterrorism standards,¹⁸ including measures for the implementation of financial measures¹⁹, extraterritorial jurisdiction²⁰, and compensation for terrorism victims.²¹ The Act includes provisions for implementing regional and international conventions, granting extraterritorial jurisdiction to courts in terrorism cases, and compensating victims of terrorism, all of which are commendable additions to anti-terrorism efforts. The Act prohibits acts of terrorism and financing of terrorism²², imposing liability and punishment on individuals or entities involved in various forms of terrorism-related activities.²³ The Terrorism (Prevention and Prohibition) Act 2022 offers critical provisions that can be leveraged for transitional justice mechanisms, especially in addressing the *Boko Haram* insurgency in Nigeria. The Act strengthens the legal framework for prosecuting individuals involved in terrorism, including financiers and collaborators, with Sections 4 and 12 criminalising direct involvement in terrorism and its financing, which can be applied in transitional justice processes to ensure accountability for *Boko Haram* insurgents and their accomplices for crimes such as war crimes and crimes against humanity.²⁴ The Act also provides for victim compensation and restitution either by the perpetrators or through state-managed funds.²⁵ This can be very crucial in transitional justice to support reparative measures for communities affected by *Boko Haram*, addressing the long-term socio-economic impacts of their insurgency on displaced populations and victims of violence. The Act includes provisions on the rehabilitation and reintegration of former terrorists through deradicalisation programs. This is particularly relevant for the *Boko Haram* conflict, where former fighters and abductees (such as child soldiers and abducted girls) can be reintegrated into society through transitional justice mechanisms aimed at reconciliation and peacebuilding.²⁶

The Act establishes the National Counter-Terrorism Centre as the coordinating body for counter-terrorism and terrorism financing in Nigeria, responsible for developing policies, strategies, and plans to prevent and eliminate terrorism.²⁷ Additionally, the Act mandates the establishment of a Joint Terrorism and Analysis Branch (JTAB) within the Centre, tasked with conducting research, analysis, and intelligence support, coordinating legal reviews of counter-terrorism cases, and facilitating capacity building and partnerships with civil society and international organisations.²⁸ However, the Committee and JTAB's activities or functions are hindered by the lack of access to technology and communication in areas where terrorist acts often occur. The Act empowers law enforcement and security agencies to gather intelligence,²⁹ investigate offences, execute search warrants, seize properties, and take measures to identify, freeze, and seize terrorist assets.³⁰ Additionally, Section 92 of the Act establishes the Special Victims Trust Fund Committee to receive and disburse funds to victims of terrorism. The Special Victims Trust Fund, domiciled in the Office of the Attorney-General, aims to pay compensation, restitution, and damages to victims of acts of terrorism.³¹ The establishment of the Special Victims Trust Fund is an essential step towards achieving transitional justice in Nigeria by providing compensation and restitution to victims of terrorism. This can foster social cohesion and lower the likelihood of future violence. However, the section's title have raised certain concerns, implying that only some victims are considered 'special'. The composition of the Committee is another concern, as the involvement of both the Attorney General and the Solicitor General may be redundant and unnecessary. Additionally, questions arise about how the Committee will determine the distribution of funds.³²

Terrorism (Prevention and Prohibition) Act, 2022, is vital for addressing terrorism-related offences and promoting transitional justice in Nigeria. While the Act contains a wide range of provisions and aims to boost counterterrorism measures, concerns remain regarding certain sections that may infringe on constitutional rights and procedural fairness. It is crucial to strike a balance between effectively combating terrorism and upholding fundamental principles of justice and human rights in implementing and interpreting the TPPA. It is prescribed that continuous dialogue and critical assessment of the Act's provisions can contribute to its improvement and ensure that it effectively serves its purpose in promoting transitional justice.

¹⁸ Section 1(a) TPPA, 2022.

¹⁹ Sections 1(b), 1(c) & 1(d) TPPA, 2022.

²⁰ Section 1(e) TPPA, 2022.

²¹ Section 1(h) TPPA, 2022.

²² Section 2(1) TPPA, 2022.

²³ Section 2(1) TPPA, 2022.

²⁴ Anya, S., S. Nwatu, and J. Olorunfemi. 'Eradicating Boko Haram Insurgency in Nigeria through the Complementarity of the ICC'. *South African Yearbook of International Law*, vol. 48, 2023, p. 34 pages, doi:10.25159/2521-2583/10990.

²⁵ Section 24 TPPA 2022.

²⁶ Owonikoko, S. B. 'Take them to Government House or Aso Rock': Community receptivity to reintegration of Operation Safe Corridor's deradicalised Ex-Boko Haram members in Northeastern Nigeria', *Cogent Social Sciences*, vol. 8, no. 1, 2022, pp. 2. doi: 10.1080/23311886.2021.2015884.

²⁷ Section 6(1) TPPA, 2022.

²⁸ Section 6(2) (a) to (h) TPPA, 2022.

²⁹ Section 1 A (3) TPAA, 2022.

³⁰ Section 1 A (6) TPAA, 2022.

³¹ Soso-Muhammed, Ojochenemi N. Statement by Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development during session for Rehabilitation, Assistance and Support at the United Nations Global Congress of Victims of Terrorism, United Nations Headquarters, New York on Friday, September 9, 2022.

³² Tijani, Nasiru. 'The Effective Prosecution of the Crime of Terrorism and Terrorism Related Offences in Nigeria: Challenges and Prospects.' *Beijing Law Review*, vol. 14, no. 1, pp. 300-323. doi: 10.4236/blr.2023.141017 Accessed 18 August 2023.

Tribunals of Inquiry Act: The Tribunals of Inquiry Act (TIA) is a legislative instrument that provides for establishing tribunals to inquire into any matter in which an inquiry would, in the opinion of the authority having power to appoint a tribunal, be for the public welfare. Evaluating it in the context of transitional justice requires understanding its provisions, strengths, limitations, and practical application in Nigeria. The Act provides for the establishment of tribunals by the President or Governor of a State to inquire into matters of public interest.³³ The Act outlines the powers and procedures of the tribunals, including the power to summon witnesses, require the production of documents, and administer oaths.³⁴ Tribunals are required to report their findings and make recommendations to the appointing authority.³⁵ The Tribunals of Inquiry Act has direct impact on transitional justice and can serve as a fact-finding and truth-telling mechanism in transitional justice processes, helping to uncover the truth about past abuses. The tribunals' findings can lead to accountability measures, although the Act does not provide prosecutorial powers. The Act encourages public participation in the inquiry process, ensuring that the voices of victims and affected communities are heard as mandated by transitional justice.

One of the most notable uses of the Tribunals of Inquiry Act was the establishment of the Human Rights Violations Investigation Commission, commonly known as the Oputa Panel. Set up by President Olusegun Obasanjo in 1999, the panel was mandated to investigate human rights abuses during military rule in Nigeria from 1966 to 1999.³⁶ Regarding reconciliation, the commission also worked towards unifying communities previously in conflict. The investigation was to be carried out and completed over three months. Still, over some time, the commission shifted its primary focus to 'gross human rights violations'. It demanded more time to carry out its investigation and extend the period under investigation to include the events that occurred from 1966 to 1990. The commission submitted its final report to President Obasanjo in 2002, but the government did not act on it. The report remained unpublished until 2005, when two activist groups, the Nigerian Democratic Movement and the Nigeria-based Civil Society Forum, released it to the public.³⁷ The Tribunals of Inquiry Act can play a role in transitional justice processes in Nigeria, serving as a fact-finding mechanism to uncover the truth about past abuses. The Oputa panel Commission report contains eye revealing testimonies about human rights abuses during Nigeria's military regime. The report is an important historical document that can help prevent future abuses. However, its application and effectiveness in achieving the goals of transitional justice can be influenced by various factors, including political interference and the broader legal framework in Nigeria.

International Instruments

United Nations Charter: The United Nations (UN) Charter is the founding document of the United Nations, which aims to maintain international peace and security, promote cooperation and human rights, and uphold the principles of sovereign equality and self-determination of peoples. The UN Charter does not explicitly mention transitional justice, but it provided legal basis for the UN to support transitional justice processes in countries emerging from conflict or authoritarian rule. The UN approach to transitional justice is guided by the 2010 Guidance Note of the Secretary-General³⁸. The Guidance Note outlines the main principles, objectives, and modalities of UN engagement in transitional justice and the roles and responsibilities of different UN actors. It emphasized that transitional justice processes should be context-specific, nationally owned, and focused on the needs of victims. The Guidance Note also recognises that transitional justice can sustain peace, development, and human rights.³⁹ The United Nations (UN) plays an important role in the promotion of transitional justice worldwide through advocacy, policy development, technical assistance, and capacity-building. It collaborates with governments, civil society, and other stakeholders in countries like Afghanistan, Colombia, Iraq, Sri Lanka, and Tunisia.⁴⁰ While the UN Charter does not specifically address human rights violations or accountability in insurgencies,⁴¹ it contains provisions for promoting human rights and prohibiting the use of force.⁴² The UN Security Council can take actions to restore peace, including sanctions and military intervention. Mechanisms such as international tribunals and domestic courts are mostly used to ensure accountability for crimes during conflicts, with the ICJ and ad hoc tribunals, such as those for Yugoslavia and Rwanda, playing significant roles in addressing international crimes.⁴³

³³ Section 2, Tribunal of Inquiry Act, CAP. T21, Laws of the Federation of Nigeria, 2004.

³⁴ Sections 5, 6, 7, 8, & 9, TIA, CAP. T21, LFN, 2004.

³⁵ Section 19, TIA, CAP. T21, LFN, 2004.

³⁶ Yusuf, Hakeem O. 'Human Rights Violations Investigations Panel (Oputa Panel).' *Encyclopedia of Transitional Justice*, edited by Stan, Lavinia and Nedelsky, Nadia, vol. 3. Cambridge: Cambridge University Press, 2013, pp. 161.

³⁷ Yusuf, Hakeem O. 'Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria.' *International Journal of Transitional Justice*, vol. 1, no. 2, July 2007, pp. 268–286, <https://doi.org/10.1093/ijtj/ijm023>

³⁸ United Nations. 'Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice.' March, 2010. <https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-approach-to-transitional-justice/> Accessed 15 March 2020.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Article 1(3) UN Charter 1945

⁴² Article 2(4) UN Charter 1945

⁴³ Article 39 UN Charter 1945

The Rome Statute: The Rome Statute is the treaty that established the International Criminal Court (ICC). Avalanche of sections of the Rome Statute of 1998 play crucial role in transitional justice, establishing a legal framework for prosecuting serious international crimes and contributing to post-conflict reconciliation and justice efforts. One significant provision is Article 5, which defines the core international crimes under the jurisdiction of the International Criminal Court (ICC), including genocide, crimes against humanity, war crimes, and crimes of aggression. These crimes are central to transitional justice efforts, as they deal with the most serious violations of human rights, providing legal avenues to hold perpetrators accountable and prevent future atrocities.⁴⁴ The Rome Statute recognises victims' rights in several articles covering different aspects of their participation, representation and reparation in the proceedings. For example, victims have the right to make representations to the Pre-Trial Chamber when the Prosecutor intends to initiate an investigation on his or her initiative⁴⁵ or to challenge the admissibility or jurisdiction of a case before the same chamber.⁴⁶ They also have the right to present their views and concerns to the Court, where their interests are affected, at appropriate stages of the proceedings and in a manner that respects the rights of the accused and a fair and impartial trial.⁴⁷ In addition, Article 53 of the Rome Statute grants the ICC Prosecutor the discretion to decide whether to prosecute based on the 'interests of justice,' allowing for flexibility in integrating truth commissions or other non-prosecutorial mechanisms that can work alongside retributive justice processes in transitional societies.⁴⁸ Article 75 of the Rome Statute, which covers reparations to victims, is another cornerstone of transitional justice under the Rome Statute, enabling the ICC to order reparations such as restitution and compensation to victims of serious crimes. This provision aligns with the broader goal of addressing harm, promoting reconciliation, and facilitating healing in societies recovering from conflict.⁴⁹

Articles 25 and 27 of the Rome Statute provide individual criminal responsibility and the non importance of official capacity. These are essential for ensuring that even high-ranking officials and leaders are held accountable for crimes committed under their purview. These principles are vital in transitional justice contexts, where accountability for leadership figures is often key to justice and reconciliation.⁵⁰ Article 17, which introduces the principle of complementarity, allows the ICC to defer to national jurisdictions if they are willing and able to prosecute, thereby encouraging domestic judicial capacity building—a critical aspect of post-conflict transitional justice strategies.⁵¹ The Rome Statute empowers the International Criminal Court (ICC) to establish principles for reparations to victims, including restitution, compensation, and rehabilitation, which can be awarded individually or collectively.⁵² Reparations may be facilitated through the Trust Fund for Victims (TFV), established under Article 79, which is managed by a Board of Directors appointed by the Assembly of States Parties. The TFV has two main roles: (a) to implement Court-ordered reparations and (b) to provide physical, psychological, or material support to victims and their families.

The above provisions that collectively support transitional justice efforts by combining prosecution, reparations, and flexible justice mechanisms aimed at promoting peace and healing in post-conflict societies. The Rome Statute, however, also faces challenges and limitations as a legal instrument for transitional justice. For instance, it only applies to crimes committed after it entered into force or after a state becomes a party to it unless a state accepts its jurisdiction retroactively. It also depends on the cooperation of states and other actors to execute arrest warrants, provide evidence, protect witnesses, and enforce sentences. The case of Omar Al Bashir, the former Sudanese President at the ICC, is a glaring example of the inability of the statutes to enforce arrests.

Convention on the Prevention and Punishment of Crimes of Genocide 1948: The Convention obligates State Parties to take measures to prevent and punish genocide, including enacting relevant laws and holding perpetrators accountable, whether they are government leaders, public officials, or private individuals.⁵³ The Convention also obligates State Parties not to commit genocide, to prevent genocide, and to punish genocide.⁵⁴ Its adoption marked a crucial step towards developing international human rights and criminal law as we know it today.⁵⁵ Article VI grants jurisdiction to national courts or international tribunals for prosecuting those accused of genocide. The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) are examples of transitional justice

⁴⁴Buitelaar, T. The ICC and the Prevention of Atrocities: Criminological Perspectives. *Hum Rights Rev* 17, 285–302 (2016). <https://doi.org/10.1007/s12142-016-0414-6>

⁴⁵ Article 15(3) Rome Statute 1998

⁴⁶ Article 19(3) Rome Statute 1998

⁴⁷ Article 68(3) Rome Statute 1998

⁴⁸ King, Elizabeth B Ludwin. 'Does Justice Always Require Prosecution? The International Criminal Court and Transitional Justice Measures.' *The George Washington International Law Review* 45 (2013): 85.

⁴⁹ Mégret, Frederic. 'The Case for Collective Reparations before the ICC.' Jo-Anne Wemmers (ed.), *Reparation for Victims of Crimes against Humanity*, Routledge, 2014, pp. 1-18. <https://doi.org/10.2139/SSRN.2196911>. Accessed 20 December 2021.

⁵⁰ Chappell, Louise. 'The Role of the ICC in Transitional Gender Justice: Capacity and Limitations.' (2012).

⁵¹ Lachowski, Tomasz. 'International Criminal Court-The Central Figure of Transitional Justice? Tailoring Post-Violence Strategies, with Special Reference to Ukraine.' *The Polish Quarterly of International Affairs* 24 (2015): 39.

⁵² Article 75 Rome Statute 1998

⁵³ Article IV Geneva Conventions 1949

⁵⁴ Article I Geneva Conventions. See, Anderson, Rachel J. 'Redressing Colonial Genocide under International Law: The Hereros' Cause of Action against Germany.' *California Law Review*, vol. 93, no. 1155, 2005, pp. 1155. <https://doi.org/10.15779/Z38XD86>. Accessed 12 July, 2020.

⁵⁵ United Nations Office on Genocide Prevention and the Responsibility to Protect. <http://www.un.org/en/genocideprevention/genocide-convention.shtml> Accessed 12 July, 2020.

mechanisms set up to prosecute genocide under the Genocide Convention. These tribunals have also set precedents for national prosecutions, particularly in Rwanda, where numerous cases have been prosecuted domestically.⁵⁶ The Genocide Convention is a cornerstone instrument of international law, deeply important in the transitional justice framework. However, its success depends heavily on state compliance with preventive and punitive obligations. As transitional justice continues to evolve, the Convention provides a legal foundation, but its full potential is realised only when states are willing to uphold their responsibilities under the law.

Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts 1949: The Geneva Conventions protecting victims of non-international armed conflicts serve as a cornerstone of international humanitarian law. Common Article 1 is present in all four Geneva Conventions of 1949. It states that ‘the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.’ This article requires states to first respect the provisions of the Conventions and then ensure that others, including non-state actors within their territory or under their control, also respect the Conventions. The phrase ‘in all circumstances’ underscores the unconditional nature of this obligation. It means that regardless of the situation – whether in times of peace, conflict, or any other problem – the provisions of the Conventions must be upheld.⁵⁷

The concept of ‘grave breaches’ is introduced in the Geneva Conventions to categorise the most serious violations of International Humanitarian Law.⁵⁸ These breaches are considered so severe that they warrant international attention and response, including prosecution and punishment.⁵⁹ The Geneva Conventions and their Additional Protocols define grave breaches as serious crimes such as willful killing, torture, and unlawful deportation, which all states are obligated to prosecute or extradite under the principle of universal jurisdiction. This ensures accountability for these offences, even if the state where the crime occurred is unwilling or unable to take action.⁶⁰ The grave breaches regime also emphasises ensuring victims’ and witnesses’ safety, physical and psychological well-being, dignity, and privacy during investigations and prosecutions.⁶¹ The concept of ‘belonging to a Party’ is vital in the Geneva Conventions, particularly in the Third Geneva Convention, which regulates how prisoners of war (POWs) are treated in conflict situations. The convention specifies that individuals are classified as such in order to grant them specific protections.⁶² The concept of ‘belonging to a Party’ is a foundational principle in the Geneva Conventions, determining the status and protections of individuals in armed conflicts. Its interpretation and application, especially in modern warfare, remain crucial for upholding the principles of international humanitarian law.

Convention Against the Taking of Hostages 1979: The International Convention against the Taking of Hostages, adopted in 1979, is primarily focused on the act of hostage-taking, particularly in the international context, and the measures states should undertake to prevent, punish, and cooperate in addressing this crime. The relevance and applicability of the covenant as an instrument for Transitional Justice is hinged on its provisions. The Convention requires states to criminalise the act of taking hostages in their domestic legal systems.⁶³ States are obligated to either prosecute individuals responsible for hostage-taking found within their territory or extradite them to another state that is willing to do so. The Convention emphasises cooperation between states to prevent and address hostage-taking, including sharing information and assisting in investigations.⁶⁴ The Convention provides a framework for holding individuals accountable for hostage-taking, which can be a component of broader human rights abuses or war crimes in conflict settings. By criminalising and addressing hostage-taking, the Convention indirectly contributes to the protection of victims, a core principle of transitional justice. The Convention promotes the rule of law by emphasising the need for legal measures against hostage-taking and international cooperation, which is foundational for transitional justice processes.

African Charter on Human and Peoples’ Rights: Articles of the African Charter on Human and Peoples’ Rights outline fundamental civil and political rights, including the right to life,⁶⁵ liberty,⁶⁶ and fair trial.⁶⁷ These provisions are central to transitional justice mechanisms, ensuring that post-conflict societies establish legal and institutional frameworks to uphold individual freedoms and provide fair judicial processes. The African Commission has ruled on many cases, notably regarding violations of these rights during periods of conflict.⁶⁸ The Charter also provides provisions that address peoples’ rights, such as the right to self-determination⁶⁹ and the right to dispose of natural resources freely.⁷⁰ These rights are crucial in transitional justice,

⁵⁶ W. Schabas et al. ‘National Courts Finally Begin to Prosecute Genocide, the ‘Crime of Crimes.’ *Journal of International Criminal Justice*, 1 (2003): 39-63. <https://doi.org/10.1093/JICJ/1.1.39>. Accessed 13 October 2022.

⁵⁷ Boisson De Chazournes, Laurence & Condorelli, Luigi. ‘Common Article 1 of the Geneva Conventions revisited: Protecting collective interests.’ *International Review of the Red Cross*, vol.82, no. 837, March 2000, pp. 67 – 87.

⁵⁸ O’Keefe, Roger. ‘The Grave Breaches Regime and Universal Jurisdiction.’ *Journal of International Criminal Justice*, vol. 7, no. 4, 2009, pp. 811–831. <http://dx.doi.org/10.2139/ssrn.3496592> Accessed 12 July, 2020.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Article 4A (2) Third Geneva Convention 1949

⁶³ Article 1 Convention against Taking of Hostages 1979

⁶⁴ Article 7 Convention against Taking of Hostages 1979

⁶⁵ Article 4 ACHPR

⁶⁶ Article 6 ACHPR

⁶⁷ Article 7 ACHPR

⁶⁸ Manby, Bronwen. ‘Civil and Political Rights in the African Charter on Human and Peoples’ Rights: Articles 1–7.’ In Malcolm Evans and Rachel Murray (Eds.) *The African Charter on Human and Peoples’ Rights: The System in Practice 1986–2006*. Cambridge: Cambridge University Press, 2008. 171–212. Print.

⁶⁹ Article 20 ACHPR

⁷⁰ Article 21 ACHPR

where marginalised communities seek autonomy or reparations for resource exploitation. For example, in transitional justice contexts like post-apartheid South Africa or Rwanda, addressing collective grievances and promoting community reconciliation are vital components of the healing process.⁷¹ The ACHPR guarantees the right to a satisfactory environment,⁷² and upholds the right to development.⁷³ These provisions often engage in transitional justice scenarios where environmental degradation or the denial of development opportunities has contributed to conflict. In post-conflict settings, rebuilding sustainable economies and addressing the impact of environmental damage are crucial aspects of achieving long-term peace and justice.⁷⁴ The African Commission on Human and Peoples' Rights⁷⁵ and the African Court on Human and Peoples' Rights are the key bodies overseeing the Charter's implementation. The Commission has been instrumental in receiving complaints and ensuring state accountability for violations during and after conflict. In transitional justice contexts, these institutions provide victims with access to justice and state accountability mechanisms, as seen in cases concerning breaches during civil wars or oppressive regimes.⁷⁶ The African Charter on Human and Peoples' Rights has shaped African transitional justice processes. Its integration of individual and collective rights and its emphasis on duties as enumerated earlier provide a unique legal framework that addresses the complexities of post-conflict rebuilding, ensuring accountability and reconciliation.

African Charter on the Rights and Welfare of the Child: The African Charter on the Rights and Welfare of the Child encompasses a broad spectrum of children's rights, including civil, political, economic, social, and cultural rights, guaranteeing that children have the safeguards and opportunities essential for their development and welfare.⁷⁷ The Charter underscores the significance of familial, communal, and cultural values throughout Africa. The Charter acknowledges the pivotal function of the family in a child's development and mandates states to safeguard and assist families,⁷⁸ and delineates parental obligations in child-rearing.⁷⁹ These laws underscore the African perspective on child welfare, which is profoundly entrenched in family and community systems. The Charter's provisions clearly outlaw detrimental social and cultural practices like as child marriage,⁸⁰ and safeguards children from recruitment and engagement in armed wars.⁸¹ These sections are crucial in addressing issues faced by children in conflict zones or under restrictive cultural norms. Additionally, the Charter shields children from all sorts of abuse, torture, and inhumane treatment,⁸² and outlaws exploitative child labor.⁸³ The Charter also stresses the importance of children's engagement in topics affecting them, ensures children the freedom to express their thoughts freely,⁸⁴ and supports their engagement in leisure, recreation, and cultural activities.⁸⁵ These laws empower children to contribute to decision-making processes that touch their lives, an important component of transitional justice. The Charter underlines the necessity of legal measures to preserve children's rights, which can help to broader rule-of-law initiatives in transitional justice contexts. For example, the Charter mandates fair treatment of minors in confrontation with the law, highlighting alternative methods to incarceration.⁸⁶ Similarly, it covers the prevention of sexual exploitation,⁸⁷ and outlaws the trafficking, sale, and abduction of children.⁸⁸ These rules correspond with transitional justice goals of accountability and institutional reform. The article also discussed the African Child Policy Forum's Child-Friendliness Index, emphasising the importance of politics, laws, and budgets in promoting children's rights.⁸⁹

4. Boko Haram Insurgency: Impacts and Transitional Justice Potential

Transitional justice is crucial to confronting the intricate legacy of the *Boko Haram* insurgency, given the significant human rights abuses perpetrated by both the terrorists and state security forces. *Boko Haram* has perpetrated extensive crimes, including mass executions in both rural and urban locales, notably the notorious Baga and Gwoza assaults. The group has systematically conducted abductions, including the kidnapping of the Chibok and Dapchi schoolgirls, and has forcibly recruited children and teenagers into its ranks. *Boko Haram* has employed sexual violence as a calculated strategy, inflicting rape, coerced marriages, and sexual enslavement upon women and girls. Their campaign of terror has involved the purposeful destruction of property and infrastructure, including the incineration of homes, schools, and markets, resulting in devastated and displaced communities.⁹⁰ State security forces addressing the insurgency have also been implicated in considerable human rights violations. Reports show

⁷¹ Kiwanuka, Richard N. 'The Meaning of 'People' in the African Charter on Human and Peoples' Rights.' *American Journal of International Law*, vol. 82, no.1, 1988, pp. 80–101. <https://doi.org/10.1017/S0002930000074170>. Accessed 14 April, 2020.

⁷² Article 24 ACHPR

⁷³ Article 22 ACHPR

⁷⁴ Ssenyonjo, Manisuli. African Charter on Human and Peoples' Rights. In Ssenyonjo, Manisuli (Ed), *International Studies in Human Rights*, vol. 107, Brill, Nijhoff, 2012, pp. 481-495. https://doi.org/10.1163/9789004218154_022. Accessed 13 July 2020.

⁷⁵ Article 30 ACHPR

⁷⁶ Bart Szewczyk. 'The African Human Rights System.' *The Rules, Practice and Jurisprudence of International Courts and Tribunals*, Brill, Nijhoff, 2011, pp. 393-412. https://doi.org/10.1163/9789004194830_015.

⁷⁷ Article 3 of the ACC forbids all types of discrimination, yet Article 4 of the ACC mandates that the best interests of the child be a top consideration in all activities that impact them.

⁷⁸ Article 18 ACC

⁷⁹ Article 19 ACC

⁸⁰ Article 21 ACC

⁸¹ Article 22 ACC

⁸² Article 16 ACC

⁸³ Article 15 ACC

⁸⁴ Article 7 ACC

⁸⁵ Article 12 ACC

⁸⁶ Article 17 ACC

⁸⁷ Article 27 ACC

⁸⁸ Article 29 ACC

⁸⁹ Bequele, Assefa. 'Monitoring the Commitment and Child-friendliness of Governments: A New Approach from Africa.' *Child Abuse & Neglect*, vol. 34, no. 1, 2010, pp. 34-44 <http://doi.org/10.1016/j.chiabu.2009.08.007> Accessed 30 April 2022.

⁹⁰ Roth Kenneth. World Report 2019. *Human Rights Watch*. <https://www.hrw.org/world-report/2019/country-chapters/nigeria>, Accessed 11 May, 2023.

occurrences of extrajudicial killings, wherein alleged *Boko Haram* members or sympathizers were slain without due process. Civilians alleged to have connections with the group have reportedly endured arbitrary incarceration and cruel treatment in military facilities. Furthermore, the excessive application of force in counterinsurgency operations has led to collateral damage, inflicting harm on innocent civilians and further eroding public trust in the state.⁹¹ Addressing these violations through transitional justice processes is crucial for forging reconciliation, rebuilding faith in state institutions, and ensuring long-term peace. Transitional justice provides an opportunity for victims to relate their stories and seek acknowledgment of their suffering, facilitating individual and social healing. Mechanisms such as criminal trials ensure responsibility for the most egregious transgressions, while institutional reforms targeted at enhancing the court and security sector can avoid future abuses. Reparative methods, including financial compensation, community restoration, and psychosocial support, acknowledge victims' losses and help to society rebuilding. Furthermore, reconciliation activities at the community level can reestablish social cohesiveness and decrease the likelihood of repeated conflict.⁹²

Transitional justice offers a complete framework for addressing the combined involvement of insurgents and state actors in committing crimes. By combining truth-telling, accountability, restitution, and institutional reforms, Nigeria may address the core causes of violence, rebuild trust, and set the framework for permanent peace and stability.⁹³ For instance, a truth commission could document the atrocities committed by both *Boko Haram* and state actors, providing a platform for victims to share their experiences. Reparations programs could offer financial and psychosocial support to victims, fostering healing and rebuilding trust within affected communities.

5. Challenges of Having a Legal Framework on Transitional Justice in Nigeria

One of the foremost challenges in implementing transitional justice in Nigeria is the lack of consistent political will. Successive Nigerian governments have shown limited commitment to fully adopting and implementing transitional justice mechanisms, often focusing on military responses rather than reconciliation and justice.⁹⁴ Nigeria's legal system suffers from significant delays in case adjudication, underfunded investigative bodies, and insufficient resources within the judiciary, undermining efforts to prosecute mass atrocities or ensure victims' access to reparations. The absence of specialized courts for handling transitional justice cases further exacerbates these issues.⁹⁵ While Nigeria has enacted various laws, such as the Terrorism (Prevention and Prohibition) Act 2022, there is still no comprehensive legal framework dedicated specifically to transitional justice. This lack of a cohesive and detailed framework hinders the systematic pursuit of justice for victims of conflicts like the *Boko Haram* insurgency.⁹⁶ While some legal provisions exist, they are fragmented and not tailored to the specific requirements of transitional justice. The successful implementation of transitional justice mechanisms requires substantial financial resources, which Nigeria lacks, especially given the competing priorities of the government. The costs of establishing truth commissions, providing reparations, and protecting witnesses is often capital intensive.⁹⁷

6. Conclusion and Recommendations

The absence of a robust legal framework for transitional justice in Nigeria has impeded initiatives to confront the ramifications of the *Boko Haram* insurgency and other previous conflicts. While current laws give a starting point, a unified and victim-centred approach is vital for attaining justice, reconciliation, and long-term peace. Strengthening political resolve, augmenting legal institutions, assuring accountability, and tackling resource limitations are essential for the implementation of successful transitional justice processes. By reforming the legal framework and integrating international best practices, Nigeria may build a more inclusive and sustainable post-conflict recovery process, ensuring that the needs of victims are prioritised and that accountability is upheld. To address the challenges, the following measures are recommended: The Nigerian government ought to institutionalise transitional justice by including it into national peacebuilding initiatives and establishing a National Commission on Transitional Justice to guarantee sustainability. Civil society organisations and foreign partners ought to promote enhanced governmental accountability in the execution of transitional justice programs. A comprehensive Transitional Justice Act should be established that provides legal support for truth commissions, reparations, and the prosecution of mass atrocities. Prioritising specialised transitional justice courts and augmenting judicial budget is essential to accelerate case resolution and enhance victims' access to justice. Nigeria should consolidate its current laws into a cohesive legislative framework for transitional justice, guaranteeing conformity with international human rights and humanitarian law. Furthermore, a witness protection program ought to be instituted to protect victims and promote their involvement in judicial proceedings. The government should form a National Transitional Justice Fund, drawing financial support from national budgets, international donors, and public-private partnerships. Cost-effective community-based transitional justice procedures, such as restorative justice programs, should also be introduced to promote broad participation and localised solutions.

⁹¹ Ibid.

⁹² De Greiff, P. *The Handbook of Reparations*. Oxford University Press, 2006, pp. 27.

⁹³ Kritiz, N. J. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. United States Institute of Peace Press, 1995, pp. 45.

⁹⁴ Daibu, Abdulrazaq Adelodun. 'Traditional Justice Systems in the Nigerian Administration of Justice: Lessons from Kenya.' *Journal of Comparative Law in Africa*, vol. 10, no. 1, 2023, pp.133-168.

⁹⁵ Ibid.

⁹⁶ Yusuf, H.O. *Transitional Justice, Judicial Accountability and the Rule of Law* (1st ed.). Routledge, 2010. <https://doi.org/10.4324/9780203851753>

⁹⁷ Ibid.