

Emerging Conflict Trends and the Potential for Transitional Justice in Nigeria: A Case Study of Boko Haram

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INTRODUCTION

The paper focuses and examines the emerging conflict trends and the potential for transitional justice in Nigeria under the related laws looking through the issue of Boko Haram in Nigeria.

In the past two decades, scholars and practitioners have focused increasing attention on the question of how countries and societies can come to terms with a history of violence and war, oppression and human rights violations. The concept of transitional justice (TJ) has come to play a prominent role in academic debates on democratization, nation-building and state reconstruction, and has gained widespread support from international organizations.¹ The issue of Boko Haram conflict in Nigeria most especially in the Northern Nigeria has been mostly viewed in social, economic and religious terms whereby the concept of transitional justice had offered important

insights. Transitional justice as seen to be the set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.² Thus, there is several transitional justice mechanisms available to deal with all sought of conflict that could arise within a particular country but the failure to implement a proper transitional justice mechanism could lead to impunity.

Impunity has become a norm in Nigeria, leading to excessive forms of violent, conflict and crimes. The hallmark of this is defined by the elite use of power in a dishonest or illegal way largely to take advantage among other competing interests. The significant character of Nigeria's culture of impunity is inequality before the law and lack of accountability. Therefore, this paper shall examine the concept of transitional justice, the mechanisms involved and the role of the transitional justice in dealing with conflict by resolving it most especially the conflict established by

¹ The United States Institute of Peace (Kritz 1995, 2009), the International Center for Transitional Justice, the South African Centre for the Study of Violence and Reconciliation, Swisspeace and the Center for Justice and Reconciliation in The Hague have conducted research and extensively published on TJ issues. The International Peace Research Institute in Oslo and the University of Wisconsin-Madison has set up TJ databases.

² De Greiff, P and Duthie, R.; *Transitional Justice and Development: Making Connections*, Social Science Research Council, (2009), p. 177.

the group of Boko Haram members in Nigeria.

MEANING OF TRANSITIONAL JUSTICE

The term ‘Transitional Justice’ is often used to describe the political choices made by States that are undergoing governance transition, which they adopt in order to deal with human rights violations and/or past abuses and atrocities committed by former governments and non-state actors. In addition to being, a response to widespread or systemic violations of the past, it also seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy and the rule of law usually in a post-conflict environment.³ The United Nation (UN) also opined on the same notion that transitional justice refers to “the full set of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuse, in order to secure accountability, serve justice and achieve reconciliation”.⁴

Transitional justice is also said to be the set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.⁵ According to this concept, transitions

can only take place when conflict or repression has ended and should include all human rights, not only civil and political rights. More so, transitional justice as a “field” constituted by “an international web of individuals and institutions, whose internal coherence is held together by common concepts, practical aims, and distinctive claims for legitimacy”,⁶ most of which are articulated as a result of the need to resist and respond to mass atrocities in contexts of significant political change. Thus, they all highlight the fact that transitional justice implies a particular set of approaches to deal with the legacy of gross human rights violations and international crimes. Some of these approaches are driven by the international law paradigm, meaning international human rights law, international humanitarian law, international criminal law, and international refugee law, which becomes “the normative foundation” of transitional justice.⁷

From the foregoing definitions, transitional justice could be generally understood as an approach to systematic or massive violations of human rights that both provides redress to victims and creates or enhances opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses. Thus, it

³ See definition by International Centre for Transitional Justice, <<http://www.ictj.org/en/tj>>. Accessed 15/08/2014.

⁴ Annan, K; *The Rule of Law in Conflict and Post-Conflict Societies*, (2004) NY: United Nations.

⁵ Roht-Arriaza, N. and Mariezcurrena, J., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, (2006) Cambridge: Cambridge University Press.

⁶ Arthur, P. *How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice*, (2009), *Human Rights Quarterly*, p. 324.

⁷ Office of the High Commissioner of Human Rights, *Analytical Study on Human Rights and Transitional Justice*, A/HRC/12/18, Geneva: United Nations. (2009).

should be observed that transitional justice is not a special form of justice rather, justice adapted to the often unique conditions of societies undergoing transformation away from a time when human rights abuse may have been a normal state of affairs.

HISTORY OF TRANSITIONAL JUSTICE

Transitional justice as a field emerged in the late 1980s and early 1990s, mainly in response to the political transitions that took place in Latin America and Eastern Europe—and the claims for justice advanced during those transitions.⁸ At this time, human rights activists and others were concerned with the question of how to address effectively the systematic abuses of former regimes but still reinforce and not derail the political transformations that were underway. Since these changes were popularly called “transitions to democracy,”⁹ people started calling this new multi-disciplinary field “transitional justice” or “justice in times of transition.” Transitional justice measures that were adopted included prosecutions, usually of regime leaders; truth-telling initiatives, such as opening up state archives and establishing official truth commissions; the creation of reparations programs for victims; and the vetting of public employees, especially members of the security forces.¹⁰

Transitional justice emerged as part of recognition that is dealing with systematic or massive abuses require a distinctive approach that is both backward- and forward-looking: transitional justice measures aim not only to dignify victims, but also to help prevent similar victimhood in the future. The long-term goals of transitional justice measures are to promote peace, democracy, and reconciliation, with the idea that these conditions help to prevent the systematic or massive violation of human rights.¹¹

Transitional Justice Today

Transitional justice today is a diverse and vibrant field. As it has grown, it has found common ground with social justice movements, as well as the fields of conflict resolution, peace building, and historical memory, to name a few.¹²

As transitional contexts have shifted from the post-authoritarian societies of Argentina and Chile to the post-conflict societies of Bosnia and Herzegovina, Liberia, and the Democratic Republic of the Congo, new practical challenges have forced the field to innovate and expand its boundaries. Ethnic cleansing and displacement, the reintegration of ex-combatants, reconciliation among communities, and the role of justice in peace

⁸ De Greiff, P. and Duthie, R., (2009), Op cit, p. 180.

⁹ Kritz, N., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Washington DC: United States Institute for Peace Press. (1995), p. 25.

¹⁰ Ibid, p. 26-27.

¹¹ Ibid, p. 29.

¹² Ki-Moon, B., UN Secretary-General., *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, A/63/881-S/2009/304, NY: United Nations. (2009), p. 4.

building—these have all become important new issues for transitional justice practitioners to tackle.¹³ The reintegration of ex-combatants, for example, is an important issue for several reasons. First, among the ranks of ex-combatants may be perpetrators or even masterminds of massive human rights violations. Second, in general, ex-combatants often receive money and job training as incentives to disarm, whereas victims typically receive little or nothing at all in order to help rebuild their lives.¹⁴ Such imbalances are morally reprehensible, and also unwise. They may foster resentment, making receiving communities more reluctant to reintegrate ex-combatants, and they may also threaten post-conflict stability.

As transitional contexts have shifted geographically from Latin America and Eastern Europe to Africa and Asia, transitional justice practitioners have also engaged with local sometimes called “traditional” justice measures, which can offer an important complement to transitional justice. In some countries, such as Sierra Leone and Uganda, communities may wish to use traditional rituals in order to foster reconciliation of warring parties or reintegrate ex-combatants which Nigeria had once exercise such through the grant of amnesty to the Niger-delta Militant during the Yar’adua Administration.

In such cases, the role of transitional justice is to ensure that a holistic approach is

taken one that may include the traditional means, but that neither excludes the possibility of criminal justice for those most responsible for serious crimes, nor the implementation of other justice measures, such as reparations, to provide additional forms of redress.

Globally, from Australia and the United States to Guatemala and South Africa, social justice movements have adapted transitional justice measures in order to gain redress for legacies of systematic injustice.¹⁵ These movements often focus their efforts on abuses relating to long-term exclusions generated by socio-economic, racial, or gender inequality, instead of the physical abuses, such as murder and forced disappearance, that were at the heart of many early transitional justice efforts.

THE PROCESSES OF TRANSITIONAL JUSTICE

Processes of transitional justice are said to constitute only four processes that are believed to be the core ones, even if there is disagreement about what each of them entails and the relationship that should exist between them. Usually, a transition encompasses a justice process, to bring perpetrators of mass atrocities to justice and to punish them for the crimes committed; a reparation process, to redress victims of atrocities for the harm suffered; a truth process, to fully investigate atrocities so that

¹³ Ibid, p. 5.

¹⁴ Gilbert, G., Hampson, F. and Sandoval, C., *The Delivery of Human Rights*, London: Routledge, (2010), p. 116.

¹⁵ Ferstman, C., Goetz, M. and Stephens, A., *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, The Netherlands: Martinus Nijhoff Publishers, (2009), p. 248.

society discovers what happened during the repression/conflict, who committed the atrocities, and where the remains of the victims lie; and an institutional reform process, to ensure that such atrocities do not happen again.¹⁶ Therefore these processes are very important in the curb of violence within the country. Thus, this paper shall focus on the core processes of transitional justice, namely: **justice, reparation, truth and institutional reform.**

The Justice Process:

A key belief of transitional justice is that alleged perpetrators of genocide, crimes against humanity, and war crimes should be prosecuted, tried and, if found guilty, punished for the atrocities they committed.¹⁷ This approach is supported by three main arguments: a) that the international law paradigm obliges states to investigate, prosecute and punish such crimes; b) that adequate reparation under international law includes bringing perpetrators to account; and c) that accountability for past crimes is crucial to prevent such atrocities in the future.¹⁸

Indeed, domestic trials are taking place in countries such as Argentina, Colombia and Chile, both as a response to victim demands and in order to protect and enforce their rights, but also to comply with what the

justice sector in these countries considers to be binding international obligations.¹⁹ For example, Article IV of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide and Article IV of the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establish an international obligation in relation to genocide and torture, respectively.²⁰ Thus, this obligation is claimed to have the status of customary international law in relation to such crimes.

Equally, although human rights treaties, such as the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights, do not expressly incorporate such an obligation, all of them do expressly include the right to a remedy, which has been understood by their respective monitoring bodies to raise an obligation in relation to human rights violations, such as disappearances, torture and arbitrary killings.²¹ Besides these sources of International Human rights law, international criminal law has also developed in important ways to fight impunity. For instance, Ad hoc tribunals

¹⁶ Waddell, N. and Clark, P. (2008), *Courting Conflict: Justice, Peace and the ICC in Africa*, London: Royal African Society.

¹⁷ Ibid

¹⁸ Snyder, J. and Vinjamuri, L. (2004), „Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice“, *Annual Review of Political Science*, 7: 346.

¹⁹ Ibid

²⁰ UN General Assembly (2005), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Res 60/147, NY: UN.

²¹ Orentlicher, D. (1991), „Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime“, *Yale Law Journal*, 2537-2615.

have been established by the Security Council to deal with the atrocities committed in the former Yugoslavia and Rwanda (the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda).²² The Rome Statute establishing the International Criminal Court was agreed and entered into force in 2002. To-date, the Statute has 113 ratifications, almost twice what it had in 2002. It grants jurisdiction to the ICC over crimes against humanity, war crimes, genocide, and aggression, also making individuals accountable for such crimes at the international level.²³ This development and others show an important domestic and international trend to fight impunity. Thus, this means that if states fail to fulfill their international obligation to make the perpetrators of such crime accountable within their own jurisdictions, the international community can take action to ensure that justice is done.

An important challenge to the justice element of transitional justice is the perception that it can be an obstacle to peace, truth and/or reconciliation in the aftermath of conflict or repression. Those who support this view often claim that in such periods of change, the international law paradigm is not applicable given the exceptional circumstances faced by states, or that international law does not fully rule out amnesties for past crimes, as is often

believed.²⁴ For them, peace (or any of the other goals mentioned) has to be sought first, even at the expense of justice. Therefore, amnesties (and also statutes of limitation) are an important necessity to allow a society to move forward, even if they potentially breach the obligation to investigate, prosecute and, if applicable, punish. At the international level, the tension between these objectives is also visible.²⁵

Justice processes face other challenges that need urgent clarification and response. In relation to the existence of an international obligation to investigate, prosecute and, if applicable, punish, the following are pertinent questions in need of answers: assuming that this obligation exists, what is its scope?;²⁶ is it sufficient to investigate and prosecute but not to punish?; should punishment be proportional to the gravity of the crimes committed?; how can the compliance of traditional justice mechanisms with international standards be measured?; and is there an international obligation to cooperate with countries undergoing a transition so that they are able to fulfill this international obligation?

In relation to the role of law and social change: should justice be limited to retributive justice, or should it also incorporate issues of distributive justice? and, if so, how can distributive justice best be achieved?

²² Ibid

²³ Jon Elster, "Introduction," in *Retribution and Reparation in the Transition to Democracy*, ed. (Cambridge: Cambridge University Press, 2006).

²⁴ Mallinder, L. (2008), *Human Rights and Political Transitions: Bridging the Peace and Justice Divide*, London: Hart Publishing.

²⁵ Waddell, N. and Clark, P. Op cit, p.25

²⁶ Mendez, J. (1997), „Accountability for Past Abuses“, *Human Rights Quarterly*, 19(2): 255-282.

As for the fight against impunity and the delivery justice: how can evidence be secured to facilitate the course of retributive justice?; how can evidence be secured that not only explains the circumstances of the crimes but that also helps to identify the perpetrators?; how can effective victim and witness protection mechanisms be created?; how can international cooperation between states be secured, so that the perpetrators of crimes can be prosecuted and punished?; how can the evidence of crimes be preserved and shared? and how can the required expertise and capacity to conduct complex investigations and prosecutions be ensured in fragile countries with fragile institutions?²⁷

The majority of these questions are in the process of being addressed, but more comparative, multidisciplinary and interdisciplinary studies are needed to highlight both the problems and the achievements of the domestic and international justice processes that have already been put into motion worldwide.²⁸

Lastly, the causal connection claimed to exist between justice and prevention is still to be proven, despite the way this connection is asserted by international law in treaties such as the Genocide Convention or the Torture Convention, and by international

organizations like the UN.²⁹ Also since transitional justice processes take time, even more than one generation, it is not easy to measure the impact that domestic or international trials can have on prevention. Nevertheless, it is important to conduct further research in this area to better ground any justification for retributive justice as a means of preventing further atrocities.

The reparation process:

Transitional justice is also based on the assumption that gross human rights violations cause serious harm to its victims and should therefore be redressed. This assumption is widely upheld in relation to state responsibility and in relation to individual criminal responsibility. Under international law, any state that breaches its international obligations (by action or omission) has the obligation to produce reparation.³⁰ Also, international law recognizes individual criminal responsibility for crimes against humanity, war crimes, genocide and aggression. Perpetrators of such crimes should also repair the harm they caused to their victims³¹ whereby these two forms of reparation (state and individual) are well founded in international law.

²⁷ Eric A. P. and Adrian V., "Reparations for Slavery and Other Historical Injustices," *Columbia Law Review* 103, no. 3 (2003): 689, cited in Atuahene, "From Reparation to Restoration."

²⁸ Ibid, p. 691.

²⁹ Teitel, Ruti G.. *Transitional Justice*. New York: Oxford University Press. (2000), p. 45.

³⁰ International Law Commission., *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, NY: United Nations (2001). in Clara S.V., *Briefing Paper on Transitional Justice: Key Concepts, Processes and Challenges*. IDCR (2011), p. 4.

³¹ Roht-Arriaza, N. and Mariezcurna, J., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, Cambridge: Cambridge University Press. (2006), p. 25.

It is also common to see states engaging on a reparations process without acknowledging any legal responsibility for the human rights violations or crimes that were committed, but rather appearing to act in order to help their own people or others to move forward.

Although there is a consensus that there is a legal foundation to claim reparations under international law, both from states and individuals, the standard required is that of “adequate reparation” and this standard is yet to be fleshed out. Clearly, reparations have the primary aim of returning the status quo ante. In periods of transitional justice this is almost impossible, given the nature of the violations that have been committed. Equally, reparations should be proportional to the harm suffered. Important guidelines have been agreed by states, such as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN General-Assembly, 2005), which indicate important principles to regulate reparations by

The Truth Process:

Transitional justice processes are also built on the belief that individual victims and their societies need to know what happened. Therefore, since most of the atrocities committed in periods of repression or conflict happen in secrecy or denial, there is an inherent need to clarify what happened

and who was responsible. Equally, the UN Convention on the Protection of all Persons from Enforced Disappearances, not yet in force, establishes, the right of victims to “know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”.³² The UN Working Group on Disappearances has recently confirmed the existence of this right under international law, and not only in relation to disappearances.³³

Despite the legal recognition of this right in relation to disappearances, it continues to be disputed in relation to other gross human rights violations since there is no express legal recognition of such right. Even if it is accepted that the right to know the truth exists under international law, there continues to be a dispute as to who its right-holder is. Is it the victims of gross human rights violations or is it society as a whole, or both of them? Further, what is the scope of such a right? and what are states obliged to do? International tribunals, like the Inter-American Court of Human Rights, have argued that there is no autonomous right to know the truth under the American Convention on Human Rights but, rather, that the right to know the truth is equivalent, or is “subsumed in the right of victims and families to obtain clarification of the facts through judicial investigation and

³² See, Article 24 of UN Convention on the Protection of all Persons from Enforced Disappearances, cited in Roht-Arriaza, N. and Mariezcurrena, J, Op cit, p. 28.

³³ Ibid, note 1.

adjudication”³⁴ in relation to any kind of gross human rights violation. This only reinforces elements of the justice dimension already explained, since the only way to fulfill the right to know the truth is if the state complies with its obligation to investigate, prosecute and, if applicable, punish perpetrators of such atrocious crimes. The most common way to deal with the truth of past atrocities is through a truth and reconciliation commission (TRC). A TRC is a commission of enquiry created by the state (usually the executive or parliament) to investigate heinous crimes committed during conflict or repression and to produce recommendations for dealing with the consequences.³⁵

While the three processes described so far (justice, reparation and truth) are clearly connected, there can be tension between them. In Sierra Leone, for example, a TRC and the Special Court for Sierra Leone were established to deal with the legacy of mass atrocities. Tensions between the two bodies were visible, for example, in relation to the amnesty included in the Lomé agreement. The TRC upheld the amnesty, since it was approved by negotiators of the agreement and because it was the only way to stop the conflict. The Special Court, however, which considered the amnesty contrary to

international law³⁶ and this was also a similar situation in Nigeria during the Administration of Late President Umar Musa Yar’ Adua.

The work of TRCs faces other important challenges on how the truth can best be reconstructed when human and financial resources are limited, and mandates restrict their reach (for example, to clarify only gross human rights violations, but not the root causes of a conflict) which also require the adoption of clear legal procedures, to deal with the truth revealed (Freeman, 2006). Also TRCs need important outreach policies and structures, so that all victims can tell their stories and participate actively in the process of social change and truth building. Otherwise, TRCs can be criticized for being unable to achieve their goal of truth seeking. In the same vein, TRC reports need to be widely disseminated to build a common narrative of what happened and why, and to eradicate inaccurate preconceptions. In this way, TRCs play a crucial role in returning dignity to victims in the eyes of the societies to which they belong.³⁷

The process of institutional reform:

Reforming state institutions involved in, or that failed to prevent, the commission of heinous crimes is an essential element of the transitional justice processes. Without the reform of institutions, transitional justice

³⁴ Cassel, D., *The Inter-American Court of Human Rights* in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington DC: Due Process of Law Foundation, (2007), p.162.

³⁵ Freeman, M., *Truth Commissions and Procedural Fairness*, NY: Cambridge University Press. (2006), p. 45.

³⁶ Schabas, W., “The Sierra Leone Truth and Reconciliation Commission” (2006), in Roht-Arriaza, N. and Mariezcurrena, J., *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, Cambridge: Cambridge University Press, p. 32.

³⁷ Freeman, M. Op cit, p, 52.

would be unable to prevent such crimes and human rights violations from occurring again.³⁸ Institutional reform is closely linked to guarantees of non-repetition (reparations process), an obligation required from states that have breached international obligations by the international community as an assurance that what happened will not happen again. The key concern of such measures is prevention.³⁹

In processes of transition, states are dealing with the atrocities that were committed but also with the structures that made them possible. Therefore, in order to prevent their recurrence it is essential to identify and transform such structures. In particular, but not exclusively, the process of institutional reform aims to transform the security sector and the justice sector. Security sector refers to “the structures, institutions and personnel responsible for the management, provision and oversight of security in a country”.⁴⁰ It includes the police, military personnel, intelligence services, customs, certain segments of the justice sector, and non-state actors with security functions. Since the justice sector is not fully included in this concept, it is also

an element of institutional reform that should be at the heart of transitional justice processes.

Furthermore, adequate educational training of security sector and justice sector personnel is essential, to ensure they understand the rights of all individuals, that certain conducts are forbidden, and that a culture of impunity will not be tolerated. Particular attention should be given to generate awareness of the way such crimes affect different members of society and, in particular, women, and of the obligation they have to act in a gender-sensitive way.⁴¹ Institutional reform faces various challenges in processes of transition. Firstly, lack of political will to carry out the political/structural reforms necessary where the reform might also entail accountability. Second, while the international community participates actively in such processes through international cooperation and assistance, it is not always in a consistent and harmonious way, this can reduce the effectiveness of reforms, and opportunities for much-needed reform can be missed. Thirdly, important opportunities for local capacity building, as well as for local ownership of the reform process, can also be missed.⁴²

³⁸ Office of the High Commissioner of Human Rights., *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*, Geneva: United Nations. (2006), p. 20.

³⁹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, NY: United Nations, (2001), p. 10.

⁴⁰ UN General Assembly., *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Res 60/147, NY: UN, (2005), p. 25.

⁴¹ Davis, L., *Transitional Justice and Security System Reform, Initiative for Peacebuilding*, NY: ICTJ. (2009), p. 32.

⁴² Fletcher, L., „Context, Timing, and the Dynamics of Transitional Justice: A Historical Perspective“, *Human Rights Quarterly*, 31(1): (2009), p. 173.

THE EMERGENCE AND EVOLUTION OF BOKO HARAM

In the early 2000s, a group appeared in the North East initially referred to as the Yusufiyya or Nigerian Taliban and later as Boko Haram, it also rejected all secular authority.⁴³ Over time its position hardened, until it clashed with the police. While it is comparable to the Maitatsine group, Boko Haram draws ideas and inspiration from newer radical Muslim entities. Importantly, it has concrete links with not only al-Qaeda, but a number of radical African Muslim jihadi groups as well. The skills they have imparted have made Boko Haram a much more significant threat than Maitatsine.⁴⁴

Boko Haram's principal goal is to create a strict Islamic state in the north that it believes would address the ills of society, including corruption and bad governance. The sect's core beliefs are strict adherence to the Quran and the Hadith (sayings of the Prophet Muhammed), and their interpretation as sanctioned by Ibn Taymiyyah (the preferred scholar of Mohammed Yusuf, the sect's leader).⁴⁵

Like the majority of Salafi organizations,⁴⁶ it is most concerned about what it means to be a good Muslim, defined

by observance of the prescriptions of the faith, notably the categorical distinction between what is licit (halal) and what is forbidden (haram).⁴⁷ Abu Qaqa, the group's best known spokesman, explained: "Our objective is to place Nigeria in a difficult position and even destabilize it and replace it with Sharia". He also said that the group's agenda is to "take Nigeria back to the pre-colonial period when the Sharia law was practised".⁴⁸

Yusuf,⁴⁹ was always political, wanting an Islamic government, but not violent. That changed over time as more

⁴⁷ The "pious ancestors" – *al-Salaf al-Salih* – are invoked mainly as exemplars of the good Muslim, but also as validators of conservative readings of scripture. Crisis Group Report, *Understanding Islamism*, op. cit., p. 11.

⁴⁸ Ibid, pp. 61-62. Sharia as practised in Nigeria had always been limited to civil matters. The northern states that adopted it in the early 2000s sought to extend it to criminal matters. Boko Haram's agenda is to implement Sharia fully in both areas.

⁴⁹ His full name is Abu Yusuf Mohammed Yusuf; he was born in 1970 in Girgir, Jakusko area of Yobe state. Waldek and Jayasekara, "Boko Haram", op. cit., p. 170. Salafis invoke the founding fathers of Islam, the so-called "venerable ancestors" (*al-Salaf al-Salih*, hence the movement's name), notably the Prophet Mohammed and the first four "rightly-guided" Caliphs – *al-Rashidun* – of the original Muslim community in seventh century Arabia in order to identify the fundamental principles of Islam in their original pristine purity. Since the 1960s, the Salafi movement has been closely identified with puritanism, based on literalist readings of scripture, of the Wahhabi tradition in Saudi Arabia. Crisis Group Middle East/North Africa Report N°37, *Understanding Islamism*, (2005), pp. 9-14.

⁴³ Andrew Walker, "What is Boko Haram?", U.S. Institute of Peace (USIP), (2012), p. 3.

⁴⁴ Ibid, p 3-4.

⁴⁵ "Insurgency in Nigeria: Islamism and Militancy in Northern Nigeria", discussion paper presented at the National Institute of Policy and Strategic Studies (NIPSS), Kuru, Plateau state, 10 July 2012.

⁴⁶ Kala Kato and Darul Islam. "The Popular Discourses of Salafi Radicalism and Salafi Counter-radicalism in Nigeria: A Case Study of Boko Haram", *Journal of Religion in Africa*, vol. 42 (2012), p. 120.

radical lieutenants pushed the movement in more confrontational directions. State harassment and perceptions that agreements had gone unfulfilled escalated into vicious conflict, and after Yusuf was killed in 2009 in police custody, all restraint was lifted, and Boko Haram morphed into the brutal organization it is today.

APPLICATION OF THE MECHANISM TO CURB BOKO HARAM INSURGENCY

Practically and conceptually, the various measures of transitional justice call for one another. This logic becomes clear when one considers the possible consequences of implementing any one of them in isolation from the others. Without any truth-telling, institutional reform, or reparation efforts, punishing a very limited number of perpetrators can be viewed as scape-goat or a form of political revenge. Truth-telling, in isolation from efforts to punish abusers, reform institutions, and repair victims, can be viewed as nothing more than words.⁵⁰ Similarly, reforming institutions without any attempt to satisfy victims' legitimate expectations of justice, truth, and reparation, is not only ineffective from the standpoint of accountability, but unlikely to succeed in its own terms.⁵¹

In this regard, Nigeria's Federal Government should discontinue heavy-

handed military and police methods that risk pushing yet more restless, jobless and frustrated youths into violence and extremism. Also, they begin to address impunity (and a main Boko Haram demand) by completing prosecution of the police officers alleged to have extra-judicially executed Mohammed Yusuf; and investigate and prosecute crimes allegedly committed by the security services, government officials (state and federal) and Boko Haram members.⁵²

Furthermore, state governments in the north should work with northern political, traditional and religious elites to disarm, deradicalise and re-integrate Islamist militants. In doing such, Nigerian government will continue to build bi- and multinational security ties and networks in the region. Intensifying mixed patrols at Nigeria's borders to curtail the movement of armed groups and criminals. Likewise share and exchange intelligence information on a more regular basis.

CONCLUSION/RECOMMENDATIONS

Boko Haram is one of several profound threats to Nigeria's stability. It has grown quickly to be a major security challenge because it taps into wide discontent with bad governance, corruption and official impunity. To address this challenge, the

⁵⁰ Crisis Group interview, senior journalist and publisher, Abuja, (2012), in Crisis Group Africa Report N°216, *Curbing Violence in Nigeria (II): The Boko Haram Insurgency*, (2014), p. 17.

⁵¹ Ibid.

⁵² Yusuf H O 'Travails of Truth—Achieving Justice for Victims of Impunity in Nigeria' International Journal of Transitional Justice, 1 (2), (2007), p.268

federal and state governments, as well as the region, must develop and implement comprehensive plans to tackle not only physical security but also the grievances that fuel the insurgency through the transitional justice mechanism. Ultimately radical reform of governance and the country's political culture is required. Therefore for an effective application of the transitional justice mechanisms to the matter arising, the paper recommends that the Federal Government recognizes that unless issues of bad governance and systemic corruption are addressed vigorously and transparently, all other measures will be nothing but stop-gaps. Also, the necessary national resources should be free up to address sustained economic hardship, rising inequality and social frustration by expanding and strengthening the anti-corruption agencies, and ensure they work effectively at state and local levels, free of political manipulation. Likewise begin to tackle the root causes of growing radical Islamic and ethnic militancy by fully developing and implementing a Far North Development Commission, similar to the Niger Delta Development Commission, with a mandate that includes coordinating anti-desertification campaigns, developing large-scale irrigation, agriculture, power and road projects and promoting small businesses that could create jobs for youths; and do so in a transparent, consultative and accountable manner.