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Systemic Violence and Impunity: Between the Rhetoric and Reality of Atrocity Prevention in Nigeria



Frank O. Okyere

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Cover Photo: Nigerian soldiers free more than 300 schoolboys abducted by Boko Haram.

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About the Kofi Annan International Peacekeeping Training Centre

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Abstract

Nigeria is a well-known proponent of the Responsibility to Protect norm on the international stage. However, its domestic actions sharply contrast its external posture, judging from empirical evidence of state duplicity and complicity in the commission of atrocity crimes in the country. Having recorded over a decade of serious violations spanning extra-judicial killings, torture, arbitrary arrests, gender-based violence and other violent identity-based crimes committed by both state and non-state actors, there is little indication that the state is willing or able to take any tangible steps to address systemic violence and the culture of impunity prevailing in the country. Nigeria's atrocity crimes profile presents a major dilemma to the international community, that has so far remained silent and indifferent to the unfolding situation. This paper presents some thoughts on how this worrying trend can be reversed or managed.

Keywords: *insecurity; crimes against humanity; impunity; Nigeria; atrocity prevention.*

Introduction

Nigeria's present situation is characterized by the incidence of insecurity, mass violence and impunity. While a significant number of fatalities have been documented through the war against the Islamic State in the West Africa Province (ISWAP),¹ commonly known as Boko Haram, it has also recorded enormous fatalities outside of war fighting. According to a report by Global Rights, a non-governmental organisation (NGO) based in Abuja, 4,556 fatalities were recorded in Nigeria in 2020 through acts described as war crimes or crimes against humanity, indicated by violent crimes against identifiable groups, extrajudicial killings, terrorism and kidnappings.² With more than 40 percent increase in atrocity crimes over 2019 figures, the current situation paints a worrying picture of worsening risk of mass atrocity crimes.³ Nigeria has consistently featured as at-risk country in several global mass atrocity risk assessment indices, and appear in the top 10 countries by risk of new mass atrocity crimes. In West Africa, Nigeria is listed together with countries like Mali, Burkina Faso, Niger, Guinea, and Cote d'Ivoire as at risk of mass atrocity crimes.⁴

The above notwithstanding, there is very little visible sign of the Nigerian state⁵ taking concrete action to prevent and respond to the risk factors that make the country prone to mass violence. The empirical evidence points to a state that is neither willing nor able to act to stop atrocities. In most cases, the Nigerian state is the obvious perpetrator or complicit in serious abuses against a population it is obliged to protect. And while local and international actors have called for accountability for perpetrators of serious violations, there is little optimism that this will be realized, given the deteriorating security situation in the country. This study assesses the state of implementation of atrocity prevention or the Responsibility to Protect (R2P) in Nigeria, with a view to unravelling the complex intervening factors engendering atrocity crimes, as well as proposing effective response measures. The study relies on both primary and secondary information to assess the risks, actors, triggers and enablers of atrocity crimes as well as the structures and impediments to atrocity prevention in the country. Through interviews with state officials, civil society practitioners and activists, as well as analysis of published reports, legal texts and other sources, this report highlights the potential, progress and problems confronting atrocity prevention efforts in Nigeria. The report reiterates the need to elicit accountability from perpetrators of atrocity crimes in order to end the prevailing culture of impunity in the country, and concludes, among others, that in spite of the state's apparent failure, Nigeria's current predicament challenges the conventional three-pillar approach to prevention and thus requires a response that reflects the country's unique circumstance.

¹According to the UN, almost 350,000 fatalities have been recorded and three million displaced since the insurgency began.

²Global Rights, 2020, Mass Atrocities Casualty Tracking

³See "Countries at Risk for Mass Killing 2020-21, Simon-Skjoldt Center for the Prevention of Genocide. Available at <https://earlywarningproject.ushmm.org/storage/resources/1393/Early-Warning-Project-Statistical-Risk-Assessment-2020-21.pdf>

⁴See 'Populations at risk', Global Centre for the Responsibility to Protect.

⁵'State' is used in this paper at two related but distinct levels. Unless specifically referring to one of the 36 semi-autonomous geographic units, 'state' depicts the institutions of the Federal government or authority.

Nigeria and Atrocity Prevention: The Rhetoric

As is widely known and established, the responsibility to protect the population from genocide, war crimes and crimes against humanity lies with the state. Nigeria embraced this responsibility having supported the adoption of the R2P norm at the 2005 World Summit. In his statement at the Summit, President Olusegun Obasanjo emphasized how the language on R2P, as contained in paragraphs 138 and 139 of the Outcome document, “crystallized a commitment to make sure there was no repeat of Rwanda, Darfur, and other terrible events which had characterized the past decade”.⁶ Since then, Nigeria has demonstrated strong support for the norm through its pronouncements at various international fora. The country is also party to several international treaties that promote the prevention of atrocity crimes including the Geneva Conventions, the Genocide Convention, the Rome Statute of the International Criminal Court, the African Charter on Human and Peoples Rights, and the Convention against Torture, among others. As part of the international response to the Arab Spring crises, Nigeria supported the United Nations (UN) Security Council’s referral of the Libyan situation to the International Criminal Court (ICC) in spite of the tension between the African Union (AU) and the former. Nigeria was also one of the Security Council members to have voted for Resolutions 1973(2011) and 1975(2011) to authorize military intervention under the rubric of R2P and protection of civilians in Libya and Cote d’Ivoire respectively.

In 2014, Nigeria declared the prevention of atrocity crimes as a national priority.⁷ This commitment was further demonstrated by the appointment of a national R2P Focal Point, a high level government official, to oversee the promotion of R2P at the national level and ensure international cooperation for mass atrocity crimes prevention. Further, in his address to the International Criminal Court on the occasion of the celebration of the 20th anniversary in 2018, President Buhari renewed Nigeria’s commitment to the prevention of atrocity crimes and human rights abuses.⁸ Based on the above actions alone, Nigeria’s dedication to atrocity prevention at the global stage is indisputable, even if rhetorically.

At the continental and regional levels, Nigeria has demonstrated political commitment to atrocity prevention through, for instance, ECOWAS’ preventive deployments to Guinea-Bissau in 2012 and the Gambia in 2016, where it has played leadership roles in efforts to restore constitutional rule in countries that were rapidly descending into mass violence. In January 2017, Nigeria opposed an AU proposal for collective withdrawal of its member states from the ICC during the 28th Summit in Addis Ababa.⁹ While the AU resolution was not considered binding, it symbolized a disturbing setback to international efforts to ensure accountability for mass atrocity crimes on the African continent, especially at a time when several AU member

⁶Obasanjo, O. 2005. United Nations General Assembly. *World leaders pledge wide-ranging steps on poverty, terrorism, human rights, UN reform, as 2005 Summit concludes in New York*. 16 September 2005. GA/10385 [online]. Available at: <https://www.un.org/press/en/2005/ga10385.doc.htm>

⁷Statement by Nigeria at ‘Genocide: A Preventable Crime’ on 15 January 2014. Available at <https://s156658.gridserver.com/media/files/statement-by-nigeria.pdf>

⁸Remarks by His Excellency Muhamadu Buhari, President of the Federal Republic of Nigeria. Available at www.icc-cpi.int

⁹BBC. (2017, February 1). *African Union backs mass withdrawal from ICC*. Retrieved from BBC News: <https://www.bbc.com/news/world-africa-38826073>

states were being investigated by the ICC for potential international crimes. Nigeria's resolute position in opposing the AU decision signaled a refreshing demonstration of the government's commitment to preventing atrocity crimes on the continent and in Nigeria.

However, there is a stark contrast between Nigeria's international posture and its domestic actions. As one respondent remarked, "Nigeria as a country likes to look good on the outside, and strives to 'put its best foot forward' internationally".¹⁰ Domestically, the rhetoric at the international level has not translated into concrete commitment. Nigeria's positive international posture has not resulted in the anticipated policy and practical interventions for mass atrocity prevention in the country, leading the Speaker of the House of Representatives, Aminu Waziri Tambuwal, to remark to legislators in 2014 that: "Nigeria [has run] out of excuses for our failure to live up to our responsibility to protect our citizens."¹¹ In further criticism of the state's failure to protect the population, human rights organization, Amnesty International, in its 2018 report labelled Nigeria as "willingly unable" to address impunity for international crimes, suggesting a deliberate disregard for its protection responsibilities.¹² The report documents state complicity and failure to prevent serious abuses in the country. The ICC re-echoed the above sentiments when the Prosecutor, Fatou Bensouda, announced in December 2020, after a decade of preliminary investigations, that the statutory criteria for conducting full investigations into allegations of war crimes and crimes against humanity in Nigeria had been met. Even so, Nigeria's subsequent actions after the ICC announcement, which is discussed below, has raised further questions about the commitment of the state to atrocity prevention.

Chronic State Failure and Complicity

The reality of Nigeria's failure in tackling the atrocity crimes situation confronting it can be largely attributed to state incapacity and indifference towards protecting its population. Utilizing an atrocity lens, this section analyzes the degree to which years of state failure and a deliberate lack of political will continue to engender atrocity crimes in Nigeria.

Nigeria is Africa's most populous country, with a diverse population of over 400 ethnolinguistic groups.¹³ Like many developing countries in sub-Saharan Africa, the state is unable to exercise effective sovereignty over its territory, but this inability is often argued to be self-inflicted. Inequality and corruption are endemic, depriving large sections of the population of critical social services that promote a decent way of life. The country ranks at the bottom of 157 countries in terms of commitment to reducing inequality, according to a global index by Oxfam and Development Finance International (DFI).¹⁴ This state of deprivation has permitted the development of alternative governance structures in marginalized regions of the country. The consequence is the perennial struggles for control and clashes between the state and other sub-state and non-state actors, leading to several recorded cases of abuse. Most notably, Nigeria's security agencies have been heavily cited for some of the most serious abuses

¹⁰Interview with a civil society practitioner, 14 April, Abuja-Nigeria

¹¹Ekott, I. (2014, March 11). *Boko Haram killings: Nigerian government has exhausted its excuses – Tambuwal*. Retrieved from Premium Times: <https://www.premiumtimesng.com/news/156559-boko-haram-killings-nigerian-government-exhausted-excuses-tambuwal.html>

¹²Amnesty International, 2018, *Willingly Unable: ICC Preliminary Examination and Nigeria's Failure to Address Impunity for International Crimes*

¹³Internal Displacement Monitoring Centre, 2013, *Nigeria: Fragmented response to internal displacement amid Boko Haram attacks and flood season*. Oslo: Norwegian Refugee Council.

¹⁴Commitment to Reducing Inequality Index 2018. Available at <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620553/rr-commitment-reducing-inequality-index-2018-091018-en.pdf?sequence=30&isAllowed=y>

against civilians and suspected Boko Haram fighters. Combined with historical factors such as a law enforcement agency that inherited a culture of violence against civilian populations from the colonial administration, the Nigeria Police Force is noted for its propensity to unleash serious abuses at the least provocation.¹⁵ Insecurity in Nigeria presents a multifaceted challenge for security forces whose responses have largely been without recourse to international humanitarian and human rights laws. The Nigerian Armed Forces have been known to have a poor human rights record.¹⁶ Nigerian security forces have severally been cited for failing to protect at risk populations from Boko Haram's pillaging and destruction of local communities, and for committing extra-judicial killings, arbitrary arrests, detentions and torture.¹⁷ In spite of President Muhammadu Buhari's promise in his inauguration speech in May 2015 to "overhaul the rules of engagement to avoid human rights violations in operations"¹⁸, widespread abuses continue to characterize the performance of counter terrorism activities within the security services. One such instance of large-scale extrajudicial executions occurred in December 2015 when more than 350 men, women and children affiliated to the Islamic Movement in Nigeria (IMN), a Shi'ite Muslim minority group, were murdered by the Nigerian military in Zaria, Kaduna State.¹⁹ This was followed by a calculated effort by the military to cover up, leading to the discovery of mass graves by investigators.²⁰ Similar instance of Nigerian security forces opening fire on, killing and injuring nonviolent protesters connected to the IMN in Abuja in 2018 has been recorded.

Yet another disturbing aspect of the atrocities perpetrated against citizens in Nigeria has been the response to Boko Haram's insurgency. The activities of ISWAP or Boko Haram, and the intervention by government forces have drawn a sharp contrast between atrocity prevention and counter-insurgency operations, revealing the deficiency in employing military tactics for complex internal security functions in volatile security contexts. Worryingly, the principles of atrocity prevention seem to take a distant backseat in the urgency of countering the terrorist or extremist threat, permitting serious violations. The general approach to combatting the Boko Haram insurgency amply demonstrates how atrocity prevention usually gives way to counter-insurgency strategies. Human Rights Watch (HRW) has noted serious war crimes and crimes against humanity committed by the Multinational Joint Task Force (MNJTF), comprising military units from Nigeria, Cameroon, Chad, Benin, and Niger.²¹

Security forces have continued to exact systematic violence against civilians, most recently during the #EndSARS protests²² in October 2020 where Nigerian army and police forces openly fired into a crowd of protesters at Lekki Toll Gate and Alausa in Lagos. At least 12 people are reported to have been killed by security forces.²³ Reports of government officials removing CCTV cameras and cutting electricity supply shortly before the shooting at the Lekki toll gate indicate a clear and deliberate attempt to conceal evidence. The protests against the

¹⁵Interview with a law enforcement Expert, 16 April 2021, Abuja.

¹⁶Amnesty International, 2018, op. cit.

¹⁷Nossiter, A. (2015, June 3). Abuses by Nigeria's Military Found to be Rampant in War against Boko Haram. Retrieved from The New York Times: <https://www.nytimes.com/2015/06/04/world/africa/abuses-nigeria-military-boko-haram-war-report.html>

¹⁸Segun, M. (2015, July 15). Dispatch: *Will Nigeria's New Military Chiefs Prioritize Rights?* Retrieved from Human Rights Watch: <https://www.hrw.org/news/2015/07/15/dispatch-will-nigerias-new-military-chiefs-prioritize-rights>

¹⁹Amnesty International, 2016, *Nigeria-'Unearthing the Truth': Unlawful Killings and Mass Cover-Ups in Zaria*. Available at <https://www.amnesty.org/download/Documents/AFR0138832016ENGLISH.PDF>

²⁰BBC. (2015, December 23). Mass graves for '300 Shia Nigerians' in Zaria. Retrieved from BBC Africa: <https://www.bbc.com/news/world-africa-35168211>

²¹Human Rights Watch (HRW) (2019) *Nigeria: Country Summary*

²²The End SARS protests is a series of mass demonstrations against police brutality in Nigeria, involving calls for the disbandment of the Special Anti-Robbery Squad (SARS), a notorious division of the Nigerian Police with a long history of abuses.

²³Lawal, S., & Mark, M. (2020, October 21). *A Dozen Protesters in Nigeria Reported Killed by Security Forces*. Retrieved from New York Times: <https://www.nytimes.com/2020/10/21/world/africa/nigeria-shooting-protesters-SARS-Lekki.html>

Special Anti-Robbery Squad (SARS), which had long been accused of engaging in the unlawful arrests, torture and extrajudicial killings of youth, started years ago, precisely in 2017.

The magnitude of crimes perpetrated against the population has prompted the ICC to open investigations against the state. In December 2020, the Prosecutor issued a remarkable statement concerning the extent of atrocity crimes in the country, stating:

While my Office recognises that the vast majority of criminality within the situation is attributable to non-state actors, we have also found a reasonable basis to believe that members of the Nigerian Security Forces (“NSF”) have committed the following acts constituting crimes against humanity and war crimes: murder, rape, torture, and cruel treatment; enforced disappearance; forcible transfer of population; outrages upon personal dignity; intentionally directing attacks against the civilian population as such and against individual civilians not taking direct part in hostilities; unlawful imprisonment; conscripting and enlisting children under the age of fifteen years into armed forces and using them to participate actively in hostilities; persecution on gender and political grounds; and other inhumane acts. These allegations are also sufficiently grave to warrant investigation by my Office, both in quantitative and qualitative terms.²⁴

The varying degrees of state-sponsored violence have persisted for many years, creating a culture of impunity that promotes more brazen violations. In this regard, political office holders are said to be contributing to the atmosphere of impunity prevailing in Nigeria.²⁵ As a result of the constitutional immunities granted to members of the executive, legislature and the judiciary, many analysts have argued that the immunity clause has been abused and misused to the detriment of peace, security and development.²⁶ Indeed political leaders have been noted for inciting ethnic hatred and violence by engaging in hate speech, as well as supporting or promoting militancy in the country. In spite of these, there has not been any effective action by the state to bring perpetrators or instigators of atrocity crimes to account. Even though several internal investigations have been opened in the wake of violent incidents, the findings are often suppressed, buried or disregarded.²⁷ A report by Amnesty International indicates that over 20 different forms of inquiries have been established by various authorities and government agencies to investigate allegations of grave crimes and violations perpetrated by Boko Haram, security forces and the Civilian Joint Task Force (CJTF) between 2009 and 2018. However, these inquiries are argued to be merely procedural or cosmetic, and not intended to identify perpetrators, establish culpability or recommend criminal prosecutions.²⁸ In almost all cases, the findings are either not made public, or concluded that there was no evidence to substantiate allegations of human rights violations against the military. In further display of apathy, ex-military

²⁴International Criminal Court. (2020, December 11). *Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria*. Retrieved from ICC: <https://www.icc-cpi.int/Pages/item.aspx?name=201211-prosecutor-statement>

²⁵Interview with a law enforcement expert, 9 April 2021, Abuja-Nigeria.

²⁶Nzeribe, A., & Imosemi, A. (2017). Who Is Immuned; the Office Holder or His Assets? A Legal Analysis of Immunity in the Three Arms of Government in Nigeria. *Abia State University Journal of Jurisprudence, International and Public Law*, 15.

²⁷Samuel, O. (2020, December 9). *It is time to end impunity in Nigeria*. Retrieved from Aljazeera: <https://www.aljazeera.com/opinions/2020/12/9/this-is-why-the-lekki-massacre-could-happen>

²⁸Amnesty International, 2018, *Willingly Unable: ICC Preliminary Examination and Nigeria’s Failure to Address Impunity for International Crimes*.

²⁹Iroanusi, Q. (2021, February 23). *Senate ignores petitions, complaints, confirms Buratai, others as ambassadors*. Retrieved from <https://www.premiumtimesng.com/news/headlines/444740-breaking-senate-ignores-petitions-complaints-confirms-buratai-others-as-ambassadors.html>

chiefs who had been accused of war crimes and crimes against humanity committed under their command²⁹ were appointed by President Buhari as non-career ambassadors, and confirmed by the Senate, giving them diplomatic immunity.³⁰ Mass trials against low-level captured Boko Haram fighters, which have been conducted since 2017, have also been claimed to be flawed and tainted with violations of the fundamental rights of the suspects.³¹

Alternative Forms of Violence and Control

State failure is evident in the multiple forms of violence and criminality manifesting in many parts of Nigeria. This is especially heightened in the fight against the militant group, Boko Haram, which has been cited for war crimes and egregious crimes against humanity spanning countries in the Lake Chad basin, comprising of Nigeria, Cameroon, Chad and Niger. Boko Haram's brutality covers war crimes and crimes against humanity, reflecting in indiscriminate targeting of civilian populations, abductions and kidnappings, extrajudicial killings, forced marriages, rape, sexual violence, use of child soldiers and deliberate destruction of civilian spaces such as religious centres, schools and marketplaces. According to the UN Children's agency, UNICEF, over a thousand children have been abducted by Boko Haram in the north east of Nigeria since 2013, including the infamous abduction of the 276 Chibok girls.³² As a consequence of insecurity in the country, Nigeria has the highest number of out-of-school children in the world.³³ In response to state collapse and insecurity, several paramilitary and community self-defense groups have sprung up across the country, some with the tacit approval of the government, contrary to provisions of the Constitution of the Federal Republic.³⁴ Several other groups, particularly communal militia in northern and central Nigeria have been responsible for abductions and forced disappearances which increased dramatically in 2020.³⁵ In the North East of the country, where entire populations in Adamawa, Borno, and Yobe states are directly impacted by a complex and evolving security challenge brought about by the Boko Haram insurgency, feelings of injustice, marginalization and abandonment have prompted groups and communities to develop coping strategies to ensure their protection, often generating other forms of violence. For instance, the formation of a CJTF, a group of militants armed to support the fight against Boko Haram in Maiduguri, has culminated in abuses including systematic sexual violence.³⁶ Additionally, the CJTF has assumed functions previously ascribed to the state, such as manning checkpoints and refugee camps in Borno state, which is the worst affected by the insurgency. The poise of the CJTF, coupled with their recognition by the local community and even state security forces, is ample indication of the vacuum created by the absence of the state.

Insecurity in North Central Nigeria, where organized criminal activities including kidnapping

²⁹Interviews with human rights experts, 12 April 2021, Abuja-Nigeria. See also Adenekan, S. (2021, February 24). *PDP berates Senate over confirmation of ex-service chiefs as ambassadors*. Retrieved from Premium Times: <https://www.premiumtimesng.com/news/top-news/444963-pdp-berates-senate-over-confirmation-of-ex-service-chiefs-as-ambassadors.html>

³⁰Human Rights Watch. (2018, September 17). *Nigeria: Flawed Trials of Boko Haram Suspects*. Retrieved from HRW: <https://www.hrw.org/news/2018/09/17/nigeria-flawed-trials-boko-haram-suspects>

³²UNICEF. (2018, April 13). *More than 1,000 children in northeastern Nigeria abducted by Boko Haram since 2013*. Retrieved from UNICEF: <https://www.unicef.org/press-releases/more-than-1000-children-northeastern-nigeria-abducted-boko-haram-since-2013>

³³Williams, J. (2017, July 25). *No Education for Kids: Nigeria Leads the World in Uneducated Children*. Retrieved from Newsweek: <https://www.newsweek.com/nigeria-education-children-school-country-641696>

³⁴Article 227 of the 1999 Constitution explicitly prohibits any association from organizing, training or equipping any person or group of persons for the use or display of physical force or coercion in promoting any political objective or interest. See Constitution of the Federal Republic of Nigeria 1999.

³⁵ACLEDA. (2021). *Mapping Nigeria's Kidnapping Crisis: Players, Targets and Trends*. Retrieved from <https://acleddata.com/2021/05/20/mapping-nigerias-kidnapping-crisis-players-targets-and-trends/>

³⁶The Economist. (2016, September 29). *Nigerian vigilantes: The Home Guard*. Retrieved from The Economist: <https://www.economist.com/middle-east-and-africa/2016/09/29/the-home-guard>

for ransom are rampant, have prompted the formation of similar civilian joint task forces. These 'quasi-military'³⁷ actors largely function as security task force or community self-defense groups with state backing, and are known to commit serious crimes and abuses with impunity.³⁸ Such hybrid forms of governance and authority, in areas of contested authority have further contributed to weakening the legitimacy of the state and creating avenues for alternate sources of power and control. Boko Haram's rise, which has long been attributed to marginalization of citizens and state failure to provide critical social services, highlights the inadequacies of the state-centric approach to atrocity prevention. The devastations caused by Boko Haram and other non-state armed groups in the region is evidence that the Weberian notion of the state, as possessing the sole monopoly on the control and use of force has proved elusive in Nigeria.

Hostilities between state security agents and the Indigenous People of Biafra (IPOB) separatist group further highlights the growing breakdown of state control on the use of force amid complex and multiple security challenges.³⁹ Violence has escalated between state security forces and the IPOB since August 2020,⁴⁰ with a paramilitary group, the Eastern Security Network formed ostensibly to protect Igbo interest against Fulani herders.⁴¹

Atrocity crimes also manifest through cyclical violence amongst farmers and herders, and related cattle banditry in the Middle Belt and northern states such as Kaduna and Zamfara which continue to spread rapidly to southern states and pose severe threats to peace and security. Whereas, the violence is essentially competition over land and other natural resources, it often acquires religious and ethnic overtones. Nevertheless, it manifests in inter-communal clashes taking the form of reprisal attacks and retaliation between farmers and herdsmen, with recorded fatalities including women and children. This is a common phenomenon in Plateau, Benue, Adamawa and Taraba states. The severity of the farmer-herder conflict, which is argued to be claiming more lives than the Boko Haram insurgency⁴², depicts a disturbing trend of the insecurity engulfing many states, with associated mass casualty. Responses by the state have been haphazard and inadequate at best, and perceptions of state complicity and bias have deepened mistrust and recourse to community self-help.

The proliferation of ethnic-based paramilitary groups is particularly worrying. Mobilization along ethnic lines, and the active use of 'us' and 'them' rhetoric as a mobilizing tool have bred the sort of hate speech prevalent in the country. These are a clear indicator of the presence of risk factors underpinning identity-based violence. And the sheer brazenness of these groups signal a rapid drive towards a reversal of roles between the state and these non-state actors. Given the multiplicity of grave challenges confronting Nigeria, the inability to devise more effective policy tools to address the challenges presented by non-state armed groups has

³⁷CJTF are said to be backed by states within the federation.

³⁸Interview with a civil society activist, 13 April 2021, Abuja-Nigeria.

³⁹Campbell, J. (2021, February 9). *Security Deteriorating in Nigeria's Former "Biafra"*. Retrieved from Council on Foreign Relations: <https://www.cfr.org/blog/security-deteriorating-nigerias-former-biafra>

⁴⁰Young, P. (2020, August 26). *Nigeria: New clashes after security forces break up meeting of Biafran separatists*. Retrieved from The Observers: <https://observers.france24.com/en/20200826-nigeria-clashes-security-forces-biafra-separatists>

⁴¹Campbell, J. (2021, February 9). Op. cit.

⁴²CG. (2018, July 26). *Stopping Nigeria's Spiralling Farmer-Herder Violence*, Report No. 262. Retrieved from International Crisis Group: <https://www.crisisgroup.org/africa/west-africa/nigeria/262-stopping-nigerias-spiralling-farmer-herder-violence>

created a protection vacuum that engenders the commission of atrocity crimes. However, through the chaos, civil society continues to play an active role in drawing attention to these almost daily occurrences even under hostile conditions. Non-governmental organisations both local and international, private media, traditional authorities, religious leaders and most importantly social media activists have led calls for accountability, often documenting instances of abuse and unearthing evidence of fatalities and attempts by the state to cover up. As the environment free expression continues to be poisoned, the critical work of civil society will become untenable if measures are not put in place to protect the civil society space.

An Apparent International Failure to Respond

If the Nigerian state has demonstrated clearly that it is unwilling and unable to prevent war crimes and crimes against humanity in the country, it is the lack of tangible international effort to elicit accountability or respond to these atrocity crimes that should be of serious concern. In light of glaring state failure, the international community has a responsibility to respond in a timely and decisive manner as enshrined in the World Summit Outcome document. However, despite the clear evidence presented by numerous human rights organisations, the international response has been mostly non-existent, and where initiated, ineffectual. The ICC's preliminary investigations have been ongoing for over a decade, and only concluded in December 2020 that a case had been established for substantive investigations, as it sought to support state authorities in "investigating and prosecuting these crimes domestically."⁴³ However, as has now become apparent, none of the domestic efforts of the state responded to the egregious violations being investigated by the ICC.

As a tactic to ward off criticism, the Nigerian government seems to hide under the pretext of conducting internal investigations following reports of systematic violence by state actors. In some instances, it casts an intimidating posture by, for instance, warning the international community against "rushing to judgement and making hasty pronouncements" in the days after the EndSARS massacre.⁴⁴ Perhaps that approach appears to be effective, as the international community has done little beyond the issuing of scant statements.

The regional bloc, Economic Community of West African States (ECOWAS) has been largely, and perhaps strategically, silent on the security situation in Nigeria and accompanying violations by state and non-state actors. Likewise, various governments, including the United Kingdom and United States, have continued to provide assistance to security forces accused of committing extra-judicial killings. The UK government is said to have been involved in training the Nigerian police force, and provided equipment to SARS units from 2016 to 2020, raising questions of moral responsibility and collusion.⁴⁵ Though the US government had imposed a ban on arms

⁴³Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria, 11 December 2020.

⁴⁴Adenekan, S. (2020, October 22). *#EndSARS: 'Don't rush to judgement,' Buhari tells International Community*. Retrieved from Premium Times: <https://www.premiumtimesng.com/news/top-news/422535-endsars-dont-rush-to-judgement-buhari-tells-international-community.html>

sales to Nigeria, citing human rights abuses by Nigerian security forces, President Trump lifted the ban in 2018 and resumed arms sales to Nigeria without reference to the stated abuses.⁴⁶ The lack of international action signals that the Nigerian state, which often shows more concern for its international reputation than its domestic predicament, is living up to its responsibility to protect under international law and thus, requires no major change of course to ensure the protection of its vulnerable populations. Yet, in spite of the apparent state failure and unwillingness, Nigeria presents a complex challenge to the three-pillar approach to atrocity prevention, which stresses timely and decisive response, including military response in situations of state failure. From a practical perspective, it is difficult to argue for any form of coercive external intervention beside those designed to elicit accountability, given Nigeria's strategic importance to the stability of the entire (West) African region. Put bluntly, Nigeria is too enormous and complex for external military intervention. The international community needs to devise a tailored response that will help reverse the prevailing culture of impunity.

Improving Structural and Proximate Prevention Domestically

Most analysts and practitioners interviewed readily admit that the mechanisms to prevent war crimes and crimes against humanity, or to respond to them wherever they occur, are simply non-existent. Beside the 1999 Constitution, which contains provisions for the protection of fundamental human rights,⁴⁷ Nigeria has not created any specific legal, or institutional framework to address the worrying levels of mass violence in the country. The Nigerian government established two probes, the Special Board of Inquiry (SBI), by the Chief of Army Staff in March 2017, and the Presidential Investigation Panel (PIP) by the Presidency in August 2017 to review compliance of the Armed Forces with human rights obligations and rules of engagement. While these measures are argued by the government to signify frank actions to investigate allegations made against the military and the allied CJTF members, both processes failed to identify culprits and recommend further criminal investigations or prosecutions.⁴⁸ The judicial mechanisms for investigating and prosecuting suspected perpetrators of atrocity crimes have neither proved effective.

The closest Nigeria has come to legislating a human protection regime is the 2006 National Action Plan for the Promotion and Protection of Human Rights in Nigeria and the enactment of the National Human Rights Commission (NHRC) Act as amended in 2010, which is dedicated to the promotion and protection of human rights as guaranteed by the Constitution.⁴⁹ Even so, it is admitted that the NHRC rarely focuses on atrocity crimes prevention or response in its mandate.⁵⁰ Thus, utilizing a human rights regime only marginally fulfils the requirements for preventing atrocity crimes. Recent enactments of the Anti-Torture Act (2017) and revision of the Police Force Act 2020 to make the law enforcement agencies more effective and responsive, have not yet reaped the anticipated benefits.

⁴⁵Samuel, O. (2020, December 9). *It is time to end impunity in Nigeria*. Retrieved from Aljazeera: <https://www.aljazeera.com/opinions/2020/12/9/this-is-why-the-lekki-massacre-could-happen>

⁴⁶AFP. (2018, May 1). *Trump vows to help Nigeria in fight against Boko Haram*. Retrieved from France24: <https://www.france24.com/en/20180501-trump-vows-help-nigeria-aircraft-fight-boko-haram-buhari-visit>

⁴⁷Article 14(b) states that the 'security and welfare of the people' is the primary purpose of the government

⁴⁸Amnesty International, 2018, *Willingly Unable: ICC Preliminary Examination and Nigeria's Failure to Address Impunity for International Crimes*.

⁴⁹National Human Rights Commission (Amendment) Act, 2010.

⁵⁰Interview with a Human Rights expert, 16 April 2021, Abuja-Nigeria.

The challenges facing Nigeria in the prevention of mass atrocity crimes are by no means a simple one. The multifaceted nature of the problems confronting the country makes it testing to induce workable solutions. To create the necessary conditions for effective prevention of atrocity crimes, as well as help reverse the prevailing culture of impunity, this paper proposes a number of recommendations for state and international action:

Strengthen the legal frameworks: Of immediate concern is the need to enact legislation that will prioritize atrocity prevention in the country. The NHRC of Nigeria is not mandated explicitly to prevent atrocity crimes, and is thus not equipped with the capacity to apply such a lens to abuses and violations committed by security forces and other actors. Further, the practice of allowing the leadership of security agencies to establish committees of inquiry to investigate incidence of serious violations by security agents has proved ineffectual. Efforts must be made to enact a national legislation to complement the work of the NHRC. Such legislation would provide the basis for the establishment of an independent commission with prosecutorial powers dedicated to the prevention, investigation and punishment of atrocity crimes in Nigeria. An independent commission will further facilitate proper historical documentation of past atrocities and their management in order to provide useful lessons to curtail their recurrence.

International community should support state action to elicit accountability: Related to the above, and given the evident failure of the state to act to prevent atrocity crimes, the major hurdle remains ensuring accountability for atrocity crimes in order to deter their future occurrence. So far, domestic judicial mechanisms for ensuring accountability have failed. The ICC has been supporting national efforts to address alleged crimes for the past decade without success, prompting it to open full investigations. The lack of accountability leading to widespread injustices, have led to the existing culture of impunity. The international community, including the UN, European Union (EU), AU, ECOWAS, International Monetary Fund (IMF), World Bank and the World Trade Organization (WTO) should collectively support actions to hold perpetrators and facilitators of atrocity crimes to account. This could be achieved through targeted sanctions, travel bans, asset freeze, and trade restrictions on suspected perpetrators as well as their collaborators.

Reform the security sector: The enactment of the new Nigeria Police Force (Establishment) Act, 2020 offers a vital opportunity to end impunity and protect the fundamental human rights of persons as provided for by the 1999 Constitution. But this muse be implemented to the fullest if it is to serve the laudable purpose envisaged by its architects. Beyond the Police, Nigeria's security agencies need to be transformed into a service-oriented and human rights-compliant institution. The military and other security agencies should be re-oriented to operate within the confines of the law, and capacitated to carry out their legal mandates. Similarly, civilian protection should be placed at the core of military strategy in order to mitigate civilian harm especially during counter-terrorism and counter-extremism operations. This requires that the use of military forces to engage in the performance of civil functions for which they are ill-trained should be discouraged. Above all, any drive to professionalize the security services will be fruitless if it is not accompanied with demand for criminal accountability in cases of excesses and serious abuses.

Address socio-economic factors engendering resource competition and violence: Most importantly, is the need for an atrocity-sensitive development approach to addressing issues of marginalization, exclusion and dispossession to curtail conditions that may give cause to or precipitate mass atrocity crimes. Such an approach may include non-military policies that prioritize socioeconomic development in key regions of the country, the lack of which has enabled non-state armed groups to thrive.

Decentralize atrocity prevention: Given the magnitude of identity-based mobilization at the local levels where serious abuses have also been recorded, it is essential to locate traditional rulers and local authorities at the core of preventive interventions. With state failure in hindsight, customary and religious leaders offer the next best opportunity to improve atrocity prevention locally, leveraging their legitimacy and ability influence large segments of their population. Such a role should, however, be linked with the issues of inclusive development and social equity which underpin a significant aspect of the structural causes of violence. Recourse to decentralized atrocity prevention will prove ineffective if traditional and local authorities are not empowered and resourced to address the socio-economic challenges confronting people in their localities.

Conclusion

The political commitment made by Nigeria at the 2005 World Summit gathering is yet to translate into meaningful action at home. Evidently, it is the state that presents a major threat and impediment to atrocity prevention efforts. The complexity of Nigeria's atrocity crimes situation demands an equally intricate, multilayered and multi-actor response. But any effective response action must by necessity revolve around the state, which bears the primary responsibility for protecting the population. Nonetheless, given the apparent complicity of the state, such efforts will not succeed without some form of collective pressure from external actors. Thus, whilst urging the state to implement measures to address structural inequalities, developmental deficits and marginalization of identifiable groups, efforts should be made to ensure accountability for past atrocity crimes. In December 2020, Nigeria's Chief of Army Staff, Lt Gen Tukur Yusuf Buratai admitted the possibility that it will take another 20 years to defeat Boko Haram.⁵¹ The state of violence accompanying the fight against Boko Haram implicitly means another two decades of extra-judicial killings, torture, pillaging, identity-based violence, and other serious violations by state and non-state armed groups. The deliberate ploy to conduct internal investigations into allegations of war crimes and crimes against humanity has become a common feature of the government's strategy to mask these crimes and evade responsibility. Without concrete action by the state or the international community, it is not difficult to envisage that atrocity crimes in Nigeria will continue to be discussed for a long time to come.

⁵¹Larnyoh, M. T. (2020, December 3). Terrorism likely to last in Nigeria for the next 20 years. Retrieved from Business Insider Africa: <https://africa.businessinsider.com/local/lifestyle/terrorism-likely-to-last-in-nigeria-for-the-next-20-years/90pmz7m>

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