

BOKO HARAM AND THE DEPLOYMENT OF FEMALE SUICIDE BOMBERS IN NIGERIA: IMPLICATIONS FOR GENDER AND INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

Boko Haram deployment of female suicide bombers in the on-going war against Terror in Nigeria has had far-reaching implications for gender and International Humanitarian Law. The trend, which has seen the “weaponization” of women seems gendered, and betrays the age-long discrimination against the female gender, which is contrary to the provisions of international human rights and humanitarian law. The aims and objectives of this paper is to examine and explore the implications for gender and IHL, of Boko Haram deployment of female suicide bombers, in the Nigerian War on Terror. Certain Islamic principles on gender in relation to the involvement of women in violence and armed conflict specifically, were examined. So also were the principles of international humanitarian law considered, in relation to the deployment of female suicide bombers. The paper employs the doctrinal research methodology which yields relevant information from books, journals and internet sources. Such information shows that the deployment of female suicide bombers is contrary to Islamic principles of Jihad; while the suicide bombers are also not entitled to engage in warfare as combatants, whether as “unprivileged” or “unlawful” combatants or “fighters” under IHL. Their deployment is also not consistent with IHL provisions on Means and Methods of Warfare. To that extent, they should therefore be treated as common criminals under the law enforcement approach; and in appropriate cases, as war criminals under the armed conflict approach.

Keywords: Boko Haram, Armed Conflict, Female Suicide Bomber, Gender and International Humanitarian law.

INTRODUCTION

The phenomenon of “suicide bombing”, though ever harrowing, is not new. What is new, is the increasingly widespread deployment of suicide bombers as fighters and as weapons of war. In this regard, Boko Haram insurgents have plumbed the depths of terror, by deploying female suicide bombers, both women and girls, in unprecedented proportions, in the armed conflict in Nigeria. This has had far-reaching implications for gender and International Humanitarian Law.

The first known female suicide bomber, is said to be a Russian pilot named Yekaterina Zelenko, who brought down a German Messerschmit jet fighter with her own plane, in a ramming mission, during the Second World War.ⁱ In more recent times, women have predominantly assumed the operational role of suicide bombers in asymmetric warfare. This has been the case in groups like the Liberation Tigers of Tamil Eelam (LTTE) (during the Sri Lankan civil war), the Chechen Black Widows, and the Iraqi-affiliated movements, like Al-Qaeda and the Islamic State of Iraq and Syria (ISIS)ⁱⁱ, but Boko Haram’s record seems to have surpassed all of theirs put together.

In this paper, it is proposed to examine and explore the implications for gender and international humanitarian law, of Boko Haram deployment of female suicide bombers in the Nigerian war against terror. To that effect, this paper shall proceed as follows: 1. Introduction; 2. Conceptual framework; 3. Brief History of Boko Haram insurgency; 4. Gender and International Humanitarian Law (IHL) Implications of Deploying Female Suicide Bombers; and 5. Conclusion.

CONCEPTUAL FRAMEWORK

For an effective exposition on the subject matter of this paper, certain concepts need to be defined, or at least described. Such concepts which constitute the conceptual framework for

this paper include: Terrorism; War on terrorism; Suicide bomber; Suicide attack; Weapon and weapons system; Gender; and International Humanitarian Law.

Terrorism: “Terrorism” is difficult to define, because there is no unanimity as to its exact meaning. Its use is often subjective and pejorative, as it is often meant to convey the condemnation of adversaries.ⁱⁱⁱ In this vein, Wardlaw observes that it is difficult to generate a definition, which is both ‘precise enough to provide a meaningful analytical device yet general enough to obtain agreement from all participants,^{iv} because terrorism engenders such extreme emotions. This is partly as a reaction to the horrors associated with it and partly because of its ideological context.^v For Laquer, the difficulty in defining terrorism stems from the fact that the character of terrorism has changed greatly over the years. He declares: ‘Terrorism is not an ideology but an insurrectional strategy that can be used by people of very different political convictions... it is not merely a technique... its philosophy transcends the traditional dividing lines between political doctrines. It is truly all-purposed and value-free’.^{vi}

For the purpose of this paper, it is necessary to present a few working definitions of terrorism, at this point. The World Book Dictionary defines the term as:

- 1) The act of terrorizing; use of terror, especially the systematic use of terror by a government or other authority against particular persons or groups.
- 2) A condition of fear and submission produced by frightening people.
- 3) A method of opposing a government internally through the use of terror.^{vii} It goes on to describe a person who uses or favours terrorism as a “terrorist”

The definition offered by the Oxford Dictionary of Law presents “Terrorism” as ‘the use or threat of violence for political ends, including putting the public in fear.’^{viii} In this process, the dictionary alludes to the *English Terrorism Act, 2000* and reproduces the definition of the *Act* as follows:

- a) The use or threat of action that involves serious violence against a person or serious damage to property, endangers a person’s life, creates a serious risk to the health or safety of the public or a section of the public, or is designed to interfere with or disrupt an electronic system, or
- b) The use or threat of violence designed to influence the government or intimidate the public or a section of the public in both cases, the use or threat of such action

or violence is made for the purpose of advancing a political, religious, or ideological cause^{ix}

The Black's Law Dictionary defines terrorism in much same way as the Oxford Dictionary of Law, except that it goes on to define such typologies, as "cyber terrorism", "domestic terrorism" and "international terrorism".^x There are so many other definitions by scholars, and governmental agencies, like the Nigerian Economic and Financial Crimes Commission.^{xi}

However, in Nigeria, the most authoritative definition of "Terrorism" is that by the *Terrorism (Prevention) Act, 2011* (as amended in 2013). It defines "acts of terrorism" as, among other things:

an act which is deliberately done with malice, aforethought and which:

- a) may seriously harm or damage a country or an international organization;
- b) is intended or can reasonably be regarded as having been intended to –
 - i) unduly compel a government or international organization to perform or abstain from performing any act;
 - ii) seriously intimidate a population,
 - iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization, or
 - iv) otherwise influence such government or international organization by intimidation or coercion; and^{xii}

War on Terrorism: This phrase or concept has been used 'to describe a range of measures and operations aimed at preventing and combating terrorist attacks.'^{xiii} The measures have included intelligence gathering, financial sanctions, and judicial cooperation, and could also involve armed conflict. 'The legal classification of what is often called the 'global war on terror' has been the subject of considerable controversy'.^{xiv} It is not necessary to examine that controversy here.

Suicide bomber: Merriam-Webster Dictionary defines a suicide-bomber as 'a person who commits suicide by exploding a bomb in order to kill other people'.^{xv} Such a person usually straps on him/herself an improvised explosive device (IED), which he/she detonates in order to kill, destroy, incapacitate, harass or distract their targets.^{xvi}

Suicide attack: ‘A suicide attack is any violent attack in which the attacker accepts his/her own death as a direct result of the method used to harm, damage, or destroy the target’.^{xvii}

Suicide bombing has been described as ‘an act in which an individual personally delivers explosives and detonates them to inflict the greatest damage, killing himself or herself in the process’.^{xviii} Suicide bombings are particularly shocking on account of their indiscriminate nature, clearly intending to kill or injure anyone within range of the explosion, the victims being mostly unsuspecting civilians (though political figures and military personnel are frequently the main targets). It is also particularly shocking, because of the evident willingness of the bombers to die by their own hands. Virtually all suicide bombings are linked to political causes or grievances.

However, unlike suicidal tactics born of desperation in war, such as Japan’s Kamikaze attacks during World War II, suicide bombing is deliberately employed by terrorists for calculated political effect. Indeed, because suicide bombers have the ability to move, avoid security measures, and choose their targets, they have been likened to a human “smart bomb” (or “poor man’s smart bomb”).^{xix}

Weapon: The term “weapon” does not seem to have received adequate definition in IHL or relevant legal instruments. According to Liu, this is because reliance has been placed, in lieu of a legal definition, on ‘the constellation of stable and identifiable characteristics’ that shape the term.^{xx} Thus, it is necessary to begin any search for its meaning by consulting its lexical definitions, as rendered in dictionaries. The Oxford Dictionary of English defines it primarily as ‘a thing designed or used for inflicting bodily harm or physical damage and secondarily as ‘a means of gaining an advantage or defending oneself in a conflict or contest.’^{xxi} On the other hand, the World Book dictionary defines it as ‘any object or instrument used in fighting’ or figuratively speaking ‘any means of attack or defence’.^{xxii}

However, it seems that the meaning of “weapon” has been taken for granted under international humanitarian law. None of the relevant instruments define the term.^{xxiii} The Additional Protocol 1 to the Geneva Conventions, which discusses the “Methods and Means of Warfare” alludes to the use of weapons, but fails to define the term.^{xxiv} Even in the commentaries for Article 36, Jean de Preux makes numerous references to the term “weapon” without elaborating upon its

characteristics or attempting to provide a definition.^{xxv} Nonetheless, some text writers in International law have attempted to define “weapons”.

William Boothby sees weapons as “tools of warfare, of killing, maiming, and destruction”,^{xxvi} while Justin McClelland sees a weapon as connoting an offensive capability that can be applied to a military object or enemy combatant.^{xxvii} Importantly, though, as has been observed by Liu, the ICRC Guide to the Legal Review of New Weapons, Means and Methods of Warfare:

...refers to national military documents to further illuminate the term, with those from Australia and the United States in particular providing definitions that are not self-referential. The Australian Instruction provides that a ‘weapon’ is ‘an offensive or defensive instrument of combat used to destroy, injure, defeat or threaten. It includes weapon systems, munitions, sub-munitions, ammunitions, targeting devices, and other damaging or injuring mechanisms.’^{xxviii}

However, US Department of Defense’s Law of War Working Group differentiates between the terms ‘weapon’ and ‘weapon system’.^{xxix} According to Liu, the former refers to ‘all arms, munitions, materials, instruments, mechanisms, or devices that have an intended effect of injuring, damaging, destroying or disabling personnel or property, while the latter is more broadly conceived to include the weapon itself and those components required for its operation, including new, advanced or emerging technologies.’^{xxx}

Gender: Defining “gender” has become more challenging. Traditionally, the English language recognizes four genders, namely masculine, feminine, common and neuter genders, though the most recognized are male and female, otherwise known as gender binary.^{xxxii} Samantha McLaren insists that gender is not a binary, but a spectrum, since there are more than two genders. She observes that it is important to recognize this distinction because ‘binary thinking around gender can exclude a large – and overlooked part of the workforce’ or population.^{xxxiii}

Implicit in McLaren’s position is the fact that “sex” and “gender” are not the same thing, nor are they necessarily correlated, notwithstanding the fact that they have sometimes been used interchangeably as synonyms. In fact language and gender theorists have generally made a distinction between sex as physiological, and gender as a cultural or social construct.^{xxxiii} For

this reason, gender has been seen as a broader, more encompassing and complex term, as it may better account for the many different life experiences of women and men than biological differences between the sexes.^{xxxiv} Unlike sex which is differentiated by biological attributes of the human person, which is innate, and mostly characterized by the genitalia, gender seems to be dynamic, and increasingly becoming a matter of choice and law. Thus, the realities of today are that a person may choose to be a man or woman or neither or somewhere in between, thereby giving rise to the challenge of gender identity.^{xxxv}

Traditionally, the social construction of biological differences has been used to ‘justify male privileges or reassert traditional family and gender roles, for example, women’s so-called “natural role as mothers and nurturers”. The tension between the “conservative” social construction of biological differences and the present concept of gender identity is being mediated by law. On the other hand, gender has come to be viewed as a useful vehicle for the analysis of law. According to the report of an expert group: ‘What it does is to demonstrate how the law creates and reinforces a certain type of gender differentiation’.^{xxxvi} For instance, in the US, most Federal courts have consistently rejected claims that transgender-inclusive policies violate the rights of others. In other words, the courts are interpreting the law to accommodate transgenders and other phenomena of gender expression. For instance, in *Doe v Boyer town Area School District*,^{xxxvii} the court rejected arguments that a school policy protecting transgender students violated other student’s rights. This reasoning was also followed in the more recent case of *Parents for Privacy v Barr*.^{xxxviii}

It is pertinent, however, to observe that rights affecting lesbians, gay, bisexual and transgender (LGBT) people vary greatly according to countries or jurisdictions. They range from the legal recognition of same-sex marriages to the death penalty for homosexuality.^{xxxix} For instance, the Federal High Court of Nigeria, Abuja Division threw out an action, contesting the constitutionality of the *Same-Sex Marriage (Prohibition) Act 2013*, which prohibited same-sex marriages at the pain of the death penalty.^{xl} The court’s ruling endorses the traditional notion of gender as binary, and along the lines of male or female. However, “gender” has also been defined in some jurisdictions, to capture the evolving legal trend which endorses the right of choice or gender identity. Hence, it has been defined as: ‘Gender is the range of characteristics pertaining to, and differentiating between masculinity and femininity. Depending on the

context, these characteristics may include biological sex, sex-based social structures, or gender identity.^{xli}

International Humanitarian Law: International Humanitarian Law (IHL), otherwise referred to as law of armed conflict and law of war ‘regulates relations between States, international organizations and other subjects of international law’,^{xlii} (including protected persons), especially in times of war or armed conflicts.^{xliii} It does this by providing rules that limit, for humanitarian reasons, the resort to force in armed conflicts between States or in intrastate conflict situations.^{xliiv} These rules also limit the right of parties to an armed conflict to choose methods or means of warfare, and prohibit the use of force against persons who are not or who are no longer taking part in hostile acts, as the civilian population and individual civilians, military and civilian prisoners or detainees known as ‘protected persons’, and against civilian property, known as ‘protected objects’.^{xliv} Furthermore, international humanitarian law imposes on a party to the conflict, the obligation to provide, if necessary, assistance to persons under its control or to allow relief operations to be undertaken by third parties, including non-governmental humanitarian organizations.^{xlvi}

It is important, at this point, to state the definition of IHL as posited by the International Committee of the Red Cross (ICRC), especially because of their pivotal role in the promotion of the law. For the committee, international humanitarian law consists of:

International rules established by treaties or custom, which are specially intended to solve humanitarian problems, directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods, and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict.^{xlvii}

BRIEF HISTORY OF BOKO HARAM INSURGENCY

There has been no consensus as to the exact date of the emergence of Boko Haram sect, but the group has been known to the Nigerian government, since 1995, as a fundamentalist Muslim sect known as *Ahlulsunna wa’jama’ahhijra*.^{xlviii} The sect began as a group of harmless young Muslims with radical inclinations, that are based on Islamic fundamentalism.^{xlix} They usually

converged at Muhammadu Indimi Mosque in Maiduguri, where they worshipped and advocated the boycott of secular and western education and its influences. They held their meetings under Muhammad Ali, their leader.¹

In 2002, Muhammad Ali declared Borno State corrupt and irredeemable. The State governor at the time was El-haji Ali Modu Sheriff, who was later declared an enemy of *Boko Haram*, and whose cousin was killed in an attack, which targeted Modu Sheriff himself.^{li} Having declared the society decadent and helplessly corrupt, Muhammad Ali and his followers decided to perform the traditional *Hijra* which is a withdrawal before *Jihad*.^{lii} From their new base in Kanama, where they had withdrawn to in preparation for a Jihad – a forceful revival of Islam, Muhammad Ali called for the running of Borno and Yobe states according to strict Islamic principles and not along the lines of what he dismissed as ‘political shariah’ which the state governors in the north were practicing.

In December 2003, when the sect brazenly confronted the Nigeria Police Force, Muhammad Ali was killed, with his estimated two hundred members nearly wiped out. At this time, they were not known as *Boko Haram*; they were known and called the “Nigerian Taliban” by the local people in Kanama, Yobe state, probably because Ali and his people called their base Afghanistan.^{liii} A few members of the “Nigerian Taliban”, who survived, quietly went back to Maiduguri in Borno state under a new leader, Muhammad Yusuf, who began all over again to rebuild the group. The new leader, who proved to be more organized, moved the group to a new location, where they built their own Mosque called Ibn Tiamiyah Masjid. The Mosque was more of a village which housed the poor and the uneducated (in western education) masses of Hausa, Kanuri and Fulani origin, while a number of the members were from nearby countries of Niger, Chad and Cameroon. In the course of time, they were, however, joined by a number of educated people. The group so grew under Yusuf, that it became known as “Yusufiyya Islamic Movement”^{liv}.

A few of them who had University degrees and Polytechnic diplomas destroyed their certificates because the sect believed the certificates to be *haram* and therefore forbidden by true Muslims. The term *Boko Haram* is derived from the combination of the Hausa word, *boko* meaning ‘western or non-Islamic education’, and the Arabic word *haram*, meaning ‘sin’ or ‘evil’. Thus, *Boko Haram* literally means, ‘western or non-Islamic education is sin’.^{lv}

The frequent allusion to the term, “*Boko Haram*” by the leader of the sect, in his speeches, made people to begin to refer to them as *Boko Haram*. However, the sect has insisted that its name is *Jama’atu Ahlissunnah lidda’awati wal jihad*, meaning a group advocating for righteousness and holy war.^{lvi}

When again, the sect became even more violent, both in its advocacy and actions, Muhammad Yusuf was killed in July 2009. Muhammad Abubakar Shekau emerged as leader of *Boko Haram*, after the death of Yusuf. Very little was known of him until he surfaced in a video almost one year after the death of Muhammad Yusuf. He was Yusuf’s deputy. Many people thought that he was also killed along with Yusuf, but it turned out that he was only injured and decided to go underground for a while.

Under his leadership, since 2010, *Boko Haram* has carried out regular bombing and shooting missions in many parts of northern Nigeria and has daringly confronted the Nigerian Armed Forces. His forces have only recently been significantly ‘degraded’, they are still fighting on, in guerrilla warfare strategy and bombing soft targets, especially civilian objects, using especially, the female suicide bombers.

The fore-going account shows that the *Boko Haram* insurgency has passed through the following three faces, under its three leaders: firstly, Islamist religious fundamentalism (under Muhammad Ali; secondly Islamic religious extremism (under Muhammad Yusuf)^{lvii}; and Islamist insurgency/belligerency (under Muhammad Abubakar Shekau).

GENDER AND INTERNATIONAL HUMANITARIAN LAW (IHL) IMPLICATIONS OF DEPLOYING FEMALE SUICIDE BOMBERS

Boko Haram deployment of female suicide bombers has far-reaching implications for gender and international humanitarian law. Some of those implications would be discussed here-under, under implications for Gender, and Implications for International Humanitarian Law (IHL).

Implications for Gender: Ironically, deploying female suicide bombers in aid of terrorism seems to run contrary to patriarchy^{lviii} and the Islamic religion, which reinforces it.^{lix} This is so,

because patriarchy and the Islamic religion condemn and eschew every manifestation of female violence. For this reason, ‘the Qur’an reinforces the tenets of natural female domesticity and incapacity by emphasizing the need for men to serve as guardians over women’.^{lx} It states:

Men are guardians over women because Allah had made some of them excel others and because they spend on their wealth. So virtuous women are those who are obedient....

And as for those on whose part you fear disobedience, admonish them and leave them alone in their beds and chastise them. Then if they obey you seek not a way against them. Surely Allah is High, Great.^{lxi}

This Qu’ranic postulation imports a divinely ordained social order, wherein men are superior to women and thus, in control of their lives and body. It condemns any form of female insubordination, which threatens the divine order and also seems to caution against the female frenetic sexuality, against which chastening violence may not be out of place. Thus, for Islam and many other religions, ‘the female body has been perceived historically as a source of dangerous power to be purified, controlled, and occasionally destroyed by men...’^{lxii} in order ‘to counter the force of disorder’.^{lxiii} This dread of the female body does not end with death, as ‘female suicide bombers will in death reveal their bodies, and unaccompanied young attractive females are not permitted among men’,^{lxiv} as happens in the case of the female suicide bombers. This religious ideology underlies the Salafi Jihadi groups’ endorsement of male suicide bombing, and prohibition of female violence.^{lxv}

Generally, the ‘perception of the protagonists in warfare has been shaped by stereotypes of men as the aggressors and women as peace-loving and passive by-standers’^{lxvi} and this accords with fundamentalist Islamic world view.^{lxvii} *Boko Haram*’s unprecedented massive deployment of female suicide bombers negates this world view, thereby generating huge shock waves of terror, and religious indignation in some Islamic quarters.

The first *Boko Haram* female suicide attack was carried out in June, 2014 at a military barracks in Gombe State.^{lxviii} This was sequel to the abduction of more than two hundred girls from their school in Chibok, on the night of April 14, 2014. This raised fear that the abducted girls had been coerced or brainwashed into participating in suicide bombing.

By late 2015, ‘the scale of *Boko Haram* female suicide attacks was already globally unprecedented.’^{lxi} According to Pearson: ‘As of February 28, 2018, a recorded 469 female “suicide bombers” have been deployed or arrested in 240 incidents and they have killed more than 1,200 people across four countries: Nigeria, Niger, Chad and Cameroon. Almost 3000 people have been injured.’ On the other hand, Galehan asserts based on the Global Terrorism Database and other Scholarly research, that there have been over 150 incidents of female suicide bombings by *Boko Haram*.^{lxx} However, according to the New York Times of March 13, 2020, Pearson now puts the number of female suicide bombers deployed till date at more than 540 women and girls, showing *Boko Haram*’s preference for the deployment of female bombers.^{lxxi}

However, ‘The number of suicide bombings have declined in recent times, as *Boko Haram* and its factions have focused on targeting military forces. Yet the incidents persist’^{lxxii} as a woman suicide bomber killed nine people in January 2020 in neighbouring Chad, while two female bombers blew up a market in Nigeria, killing two people in the same January.

Clearly, this trend which has seen the “weaponization” of women is gendered and betrays the age-long discrimination against the female gender. This discrimination manifests in all manner of violence against the female gender. The UN Declaration on the Elimination of Violence Against Women^{lxxiii} captures this in its preamble, when it recognizes violence against women as ‘a manifestation of historically unequal power relations between men and women.’^{lxxiv} It further acknowledges that, it is this unequal power relations that leads to discrimination against women and the consequent domination over them.^{lxxv}

The fact that violence is ‘one of the crucial social mechanisms by which women are forced into subordinate position’,^{lxxvi} and one dares say, pliant position, is exemplified by the *Boko Haram* leaderships’ deployment of female suicide bombers. These female suicide bombers are mostly forcefully recruited through violent campaigns of abduction and kidnapping as symbolized by the raiding and abduction of the Chibok School girls.^{lxxvii} They have been known to be victims of forced marriages, enforced sexual slavery, which includes miscellaneous sexual abuses, and above all “weaponization”, as suicide bombers.

The mortal objectification of women and girls as weapons or weapon systems (suicide bombers) derives from *Boko Haram's* exploitation of their gender qualities. It is thus, a strategic and tactical maneuver, which they have deployed, with astounding military success. The deployment of the female suicide bombers seems to be effective for the following reasons:

1. Their attacks generate a higher propaganda value, and thus more likely to be more sensationalized by the media than attacks by men. Besides, it attracts a higher shock wave, and better media coverage because, it involves a female “martyr”.^{lxxviii}
2. In relation to their low social status in Islam, women, to the terrorists are considered cheap, expendable, and willing or pliant casualty of the latest Jihadi trend.^{lxxix}
3. They are effective smugglers (in this case bombs) and arouse less suspicion, while moving in civilian areas, or comingling with the public.^{lxxx}
4. In cushioning the effect of shortages of male recruits ‘amid, for example, an intensification of external pressure’, in an act of “desperation”.^{lxxxi}
5. To shame men into fighting.

The implication of this mortal deployment of female suicide bombers, for gender, is that women have increasingly been turned into weapons of mass destruction destined to be destroyed themselves, in the process, without any hope of earthly or paradisiac reward.^{lxxxii} Unlike ‘a handful of cases of Arabic language claims of high-profile attacks by men/boys in Boko Haram’,^{lxxxiii} no ‘female suicide attacker has been eulogized as a fighter for God.’^{lxxxiv} Whereas the men may be entitled to virgins, as rewards in paradise, there does not seem to be any such reward for the female suicide bomber. She dies in anonymity, without her basic demographic details being made known. Hers might be construed as the ultimate gender-based violence that is founded on gender inequality.

However, there have been two narratives of female involvement as suicide bombers in Boko Haram attacks, namely, those of the passive victims and the active participants. Both narratives have been viewed as not mutually exclusive, but rather a reflection of the complexity of gender in insurgencies, which should contribute insights into post-conflict policies.^{lxxxv} This reality does not discount the fact that most of the suicide bombers are either coerced or deceived into participating or too young to understand the nature of their involvement in the attacks. Thus, they are more or less victims, that deserve the protection of the law. The law had scarcely been

protective of women as virtually all the laws were insensitive to women's plight, until the past few decades.

The international community has since then responded to the plight of women by drafting and adopting relevant gender-sensitive international legal instruments that among other things prohibit violence against women. Such instruments include both international human rights, and international humanitarian law Conventions, and Declarations. The Commission on the Status of Women (CSW) had as far back as 1974, adopted a Resolution on the protection of women and children from violence in times of emergency or war.^{lxxxvi} On the strength of that Resolution, the General Assembly of the UN, in turn adopted the 1974 *Declaration on the Protection of Women and Children in Emergency and Armed conflict*.^{lxxxvii} That *Declaration* criminalized cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories.^{lxxxviii}

Though the fore-going provisions have been described as vague, they have been acclaimed as raising, for the first time, some of the 'broader issues facing women, as a result of armed conflict'.^{lxxxix} To this extent, it is relevant to the plight of the female suicide bombers. However, given the realities of armed conflict for women, it is clear that the 1974 General Assembly Declaration is inadequate in identifying and responding to the distinctive impact of armed conflicts on women.^{xc} 'Notwithstanding the aforesaid limitations, and the fact that the *Declaration* is not a binding legal instrument, the *Declaration* is significant for being the very first time the United Nations identified the issue of women and armed conflict, and made some effort to improve the situation'.^{xcii}

The effort to improve the situation of women generally culminated in the drafting and adoption of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* on 18th December, 1979. The *Convention* encourages the application of equality norms in different countries and legal systems of the world.^{xciii} It has been acclaimed as the foremost international human rights instrument that establishes international standards of equality between men and women.^{xciii} The *Convention* outlines certain specific prohibitions, which include trafficking in women for prostitution and other forms of exploitation.^{xciv} Unfortunately,

it does not specifically prohibit violence against women.^{xcv} However, the gap was filled in 1993 when the Committee on the Elimination of All Forms of Discrimination Against Women, (the monitoring body for the Convention) drafted and adopted General Recommendation on violence against women.^{xcvi}

Not being satisfied with the token recommendations on violence against women, the United Nations Commission on the Status of Women recommended the formulation of an international instrument specifically on violence against women.^{xcvii} Consequently, the Declaration on the *Elimination of Violence Against Women* was drafted and unanimously adopted by the United Nations General Assembly, in 1994. Though sexual violence remained a central focus of the international community, by mid-1990s, international concern had begun to expand to include other consequences of armed conflict for women.^{xcviii} Thus, at the Beijing Women Conference of 1995, women and armed conflict was identified as one of the twelve critical areas of concern addressed by member States, the international community and the civil society.^{xcix} The *Platform for Action* enjoined ‘governments, the international community and civil society, including non-governmental organizations and the private sector... to take strategic action’ in relation to the ‘effect of armed or other kinds of conflict on women, including those living under foreign occupations’.^c Particularly, among other things, it acknowledges that while entire community may suffer the consequences of armed conflict and terrorism, women and girls are specifically affected because of their gender.^{ci}

The Declaration, therefore, recommends that governments take the following actions: i) adopt and implement legislations to end violence against women; ii) work actively to ratify and implement all international agreements related to violence against women, including the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women*; iii) provide shelter, legal aids and other services for girls and women at risk, and provide counseling and rehabilitation for perpetrators of violence against women; and iv) setup national and international cooperation to dismantle networks engaged in the trafficking of women.^{cii}

Besides the fore-going *Declarations* and *Conventions*, the United Nations Security Council has also adopted specific Resolutions on women and armed conflicts, which include Resolution 1265 (1999); Resolution 1325 (2000); Resolution 1820 (2008); and Resolution 1889 (2009). These Resolutions have been acknowledged for contributing to the development of

humanitarian law applicable to women, and for underscoring the value of active participation of women in peace efforts.^{ciii}

However, the thematic and declaratory resolutions on which the law is largely based are not binding but they have been acknowledged as relatively effective with regards to the provisions that are directed at the United Nations bodies.^{civ} It has therefore, been suggested ‘that the Council’s role could be better accomplished through situational resolutions than through resolutions declaratorial of international law’.^{cv}

Major international humanitarian law instruments have also made specific provisions for the protection of women in times of armed conflicts. They include the 1949 *Geneva Conventions* and their *Additional Protocols*; the *Rome Statute of International Criminal Court* (1998); and the *Statutes of the Adhoc International Criminal Tribunals for the former Yugoslavia*; and *Rwanda*, respectively.

Generally, the *Geneva Conventions* are not gender-sensitive, but they embody specific provisions on the treatment of women in special circumstances.^{cvi} For instance, it provides that women shall be especially protected against rape, enforced prostitution, or any form of indecent assault. Historically, the term “honour” is said to be a carryover from knightly and chivalric traditions.^{cvi} It has therefore been criticized as archaic and semantically vague, but ‘it does create a binding legal norm that prohibits such attacks upon women’.^{cvi} Besides, the term is elastic enough to accommodate any conceivable sexual offence against women, as exemplified in the fore-going list of offences, which the law protects them from. However, some feminists have viewed the special circumstances in which the law ostensibly protects women as those circumstances, which involve the interests of third parties, namely, the interests of the unborn child (in pregnancy); dependent children (as mothers); and the interests of the husband (as wife).

In addition to protecting women in the circumstances stated above, *Additional Protocol I* to the *Geneva Conventions* also provides for their protection in circumstances of detention or internment during pregnancy, ‘for reasons related to armed conflicts’^{cix} as their cases shall be considered with utmost priority. It also protects women who are pregnant or nursing infants from having the death penalty pronounced against them, for any offence that is related to the armed conflict; or the death penalty executed on them.^{cx} Women are also not to be held

hostage,^{cxix} as Boko Haram has routinely done. In fact, if arrested or captured, ‘they must be given all the procedural rights recognized as indispensable by civilized people’.^{cxii} Many other provisions of the *Geneva Conventions* and the *Additional Protocols* are aimed at protecting women as expectant mothers and mothers of dependent children.^{cxiii}

The *Rome Statute of International Criminal Court* also made specific provisions for the protection of women in its *article 7*, under crimes against Humanity. They include torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or other forms of sexual violence of comparative gravity.^{cxiv} It also provides for war crimes that have implications for gender, and particularly women.^{cxv}

The *Statutes of the International Criminal Tribunals for former Yugoslavia and Rwanda*, provides for certain crimes against women, as crimes against humanity. They include “enslavement” and “rape”, which are mostly directed against women.^{cxvi} However, the wordings of the relevant article are different, and the difference has been noted as largely due to the different nature of the conflicts.^{cxvii} Though both tribunals have jurisdiction over grave breaches of the Geneva Conventions, including common *Article 3*, *Article 4* of the *Statute of International Criminal Tribunal for Rwanda* makes explicit provisions for sexual violence.^{cxviii}

Implications for IHL: As has been observed earlier, the deployment of female suicide bombers by the Boko Haram terrorist group, also has far-reaching implications for IHL. For instance, it has implications for IHL with respect to their Status (whether they be “civilians”, or “fighters”, “unlawful” or “unprivileged combatants), under IHL; their method of warfare; and their means of warfare. This subsection shall therefore examine the implications of their deployment, for IHL, along the aforementioned parameters.

Status of the female suicide bombers: generally, the fighting forces of parties to an armed conflict are known as combatants.^{cxix} But this appellation is limited to members of the armed forces of a party to an international armed conflict, to the exclusion of medical and religious personnel who are exclusively engaged in their humanitarian functions.^{cxx} However, participants in a *levee’ en mass* are the only weapon bearers or fighters, who may be regarded as combatants without being members of the armed forces.^{cxxi} Besides the afore-mentioned persons, other fighters, such as mercenaries, or civilians, who take a direct part in hostilities

are not entitled to combatant status.^{cxxii} So also are militias, volunteer corps, or organized resistant movements belonging to a belligerent party, not formally regarded as combatants, as they are not generally regulated by domestic law, and can be reliably determined only on the basis of functional criteria, which is whether they have been engaged in “continuous combat functions”.^{cxxiii} This same consideration is what applies to the status of members of non-State armed groups in non-International armed conflicts.

On the basis of the foregoing consideration, members of the *Boko Haram* armed group can only be described as “fighters”, or at best, “unprivileged combatants” or, to borrow the American government’s term, “unlawful combatants”,^{cxxiv} if they have been engaged in “continuous combat functions”. However, determining the status of the female suicide bomber is more challenging, as it is doubtful, whether she engages in a continuous combat function, as her deployment is fatalistic, and without any hope of her survival, and thus not expected to be continuous. Besides, they do not, like combatants or lawful fighters, bear arms openly, or distinguish themselves, in keeping with IHL.^{cxxv} In fact they should be regarded as “human bombs” or other “weapons system”, which role is not contemplated in the existing rules of IHL; and which should be banned for humanistic and humanitarian reasons. Therefore, they should not be entitled to prisoner-of-war status, when captured. They should be regarded as downright terrorists, and treated as such. But, if found to be coerced or otherwise influenced with psychotropic substances, they should be subjected to necessary treatment and rehabilitation.

Female Suicide Bombers and Means and Methods of Warfare: It is important to consider the implications of the activities of the *Boko Haram* female suicide bombers to IHL regulations on Means and Methods of warfare. One thing is clear, that is that ‘the right of the parties to the conflict to choose methods or means of warfare is not unlimited’.^{cxxvi} The right of choice of means and methods of warfare is limited by ‘an extensive body of rules prohibiting or regulating the development, possession and use of certain weapons (means of warfare) and prohibiting or restricting the ways in which such weapons can be used or hostilities can be conducted (methods of warfare)’.^{cxxvii} The importance of distinguishing between “means” and “methods” of warfare has been acknowledged, because ‘any weapon (means) can be used in an unlawful manner (method), whereas the use of weapons that have been prohibited because

of their inherent characteristics is unlawful regardless of the manner in which they are employed'.^{cxxviii}

Clearly, the deployment of the female suicide bomber or any suicide bomber, for that matter, negates the existing rules of IHL on means and methods of warfare. Invariably, the female suicide bomber straps improvised explosive devices (IED's) upon herself, which she detonates, thereby constituting herself into a weapon or a weapon system. Though there is no ban on the use of improvised explosive devices (IED's), the female suicide bomber uses it in such a way as to cause unlawful and disproportionate harm and suffering. In the first place, the suicide bomber is herself inevitably killed in the process, while the civilian population is also harmed, because of its indiscriminate nature. This goes against the spirit of St. Petersburg Declaration, which states as follows in its preamble:

That the only legitimate object (...) during war is to weaken the military forces of the enemy; that for this purpose it is sufficient to disable the greatest possible number of men; that this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable; that the employment of such arms would, therefore, be contrary to the laws of humanity.

The fore-going logic formed the basis of the prohibition by the Hague Regulations of 'weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering'.^{cxxix} This has given rise to the prohibition of certain weapons 'the effects of which are considered to be excessively cruel regardless of the circumstances, such as blinding laser weapons, expanding bullets and weapons that injure by means of non-detectable fragments'.^{cxxx} Arguably, the effects of deploying female suicide bomber approximates the effects of the fore-going prohibited weapons.

Furthermore, the female suicide bomber operates as an indiscriminate weapon. She usually attacks military objectives and civilians or civilian objects without distinction, contrary to the principle of distinction.^{cxxxii} The principle of distinction enjoins combatants or fighters to distinguish between fighters and civilians in non-international armed conflicts. Whereas civilians are supposed to 'enjoy general protection against the dangers arising from military operation',^{cxxxii} the fighters may be legitimately targeted. Thus, IHL prohibits direct attacks

against the civilian population and individual civilians, ‘along with acts or threats of violence, the primary purpose of which is to spread terror among the civilian population’ as usually done by the female suicide bomber. Even the perfidious infiltration of the civilian population by the female suicide bomber is also prohibited.^{cxxxiii} This does not however prohibit ruses of war. Ruses of war are those acts that are intended to mislead the enemy or ‘to induce him to act recklessly, but which do not mislead him with respect to IHL protection and do not otherwise violate IHL’.^{cxxxiv} Such ruses of war include use of camouflage, decoys and misinformation.^{cxxxv}

Be that as it may, the concealment of the strapped on bomb, under the *hijab* of the female suicide bombers runs contrary to the IHL rule, which stipulates that combatants, and by extension, fighters must carry their arms openly.^{cxxxvi} However, ‘the requirement of visible distinction from the civilian population and respect for IHL are no longer considered to be constitutive elements of the armed forces *per se*, but have become individual obligation, the violation of which may entail consequences for the individual combatant, most notably loss of the privilege of combatancy and prisoner –of – war status (non-compliance with the visibility requirement)’.^{cxxxvii} Thus, the female suicide bomber will not be entitled to prisoner –of – war status, if she is captured or falls into the hands of an adverse party, for reason of non-visibility. She is most likely to be taken into custody as a criminal detainee.

This situation seems to have posed a dilemma for the judiciary in cases involving application for bail for the detained suspects. This is so, as the courts are faced with the need to choose between a law enforcement approach and an armed conflict approach in adjudicating cases involving the detention of terrorist. The law enforcement approach seeks to prevent criminal conduct through specific and general deterrence, which may include indefinite detention for terrorists, while the armed conflict approach seeks to provide for the “common defense” of the nation and its people by employing armed forces and related intelligence assets of the nation to combat States or armed groups that pose a security threat to the nation or its allies.^{cxxxviii} However, the Nigerian constitution and the *International Covenant on Civil and Political Rights* limit the State’s power to detain an individual while the *Geneva Conventions* which have implications for the armed conflict approach allows the detention of prisoners of war, and by extension, detainees in non-international armed conflicts till the end of hostilities.^{cxxxix}

This challenge came up in the cases of *State v Mohammed & Ors.*^{cxl}, *Mohammed Yunus v the State*^{cxli}, and *Umar v Federal Republic of Nigeria & Ors*^{cxlii}. The cases were all brought under the *Terrorism (Prevention) Act, 2011* (as amended in 2013) and the courts, based on the law enforcement approach, denied the accused and defendants bail, and ordered that they be remanded, pending the determination of their cases. It is however important to observe that the Court of Appeal, Abuja Division took the opportunity of *Umar v Federal Republic of Nigeria & Ors*^{cxliii}, to thoroughly espouse the law with regard to right to bail, for the *Boko Haram* terrorist suspects.

The Appellant in the case was charged with two others for breach of several provisions of the *Terrorism (Prevention) Amendment Act, 2013*, as reflected at pages 1-3 of the Record of appeal. He (the Applicant at the trial court) applied to be admitted to bail pending the hearing and determination of the charge(s) against him pursuant to *Section 34* and *35* of the *1999 Constitution* (as amended) and *Section 118(2)* of the *Criminal Procedure Act*, and under the inherent jurisdiction of the Court. The trial judge, in his considered ruling refused the application, whereupon, the Appellant instituted this appeal.

The learned justices of the Court observed that the Appellant is charged with terrorism, a capital offence which must be taken with caution, because death sentence is the highest of all penalties, but failed to see the wrong committed by the trial judge in taking judicial notice of the terrorist acts in the North Eastern States of Nigeria. According to the Court, this is because, it owes a duty to protect the society. Thus, the learned justice of the Court of Appeal observed that even though bail is a constitutional right, it is not granted as a matter of course. The Court affirmed that there must be placed before it, sufficient materials disclosing exceptional circumstances to warrant a grant of bail, and went on to outline the criteria for granting bail, as provided by the Supreme Court in *Suleiman v C.O.*^{Pcxliv}, as follows:

- a. The nature of the charge.
- b. The strength of the evidence which supports the charge.
- c. The gravity of punishment in the event of conviction.
- d. The previous criminal record of the accused if any.
- e. The probability that the accused may not surrender himself for trial.
- f. The likelihood of the accused interfering with witnesses or suppressing any evidence that may incriminate him.

- g. The likelihood of further charge being brought against the accused; and
- h. The necessity to procure medical or social report pending final disposal of the case.

The court observed that the first three criteria listed above are relevant to the instant case and that bail pending trial is not normally granted *ex-debito justitia*, where the offence is a capital offence. In dismissing the appeal, the learned justice held that it is his view that the trial court exercised its discretion judicially and judiciously, and that the case of *Suleiman v C.O.P*^{cxlv} relied on heavily by the Appellant is not of any assistance to his case.

Clearly, from the nature of the charges brought against the Boko Haram suspects, in the cases, what the courts adopted was the law enforcement, rather than the armed conflict approach, which has implications for the enforcement of IHL. This is so, as the cases were treated as terrorism *simpliciter* in spite of the armed conflict nexus. No mention was made of war crimes or crimes against humanity in the various charges, even when the facts point to them. Furthermore, the specific provisions of IHL prohibiting “measures” of terrorism and “acts” of terrorism were not invoked in the charges.^{cxlvi} Thus, their continued detention and denial of bail were based on the first three criteria for grant of bail and not on the provisions of IHL. This is probably why many suspected Boko Haram terrorists, both male and female, have continued to languish in detention. Unfortunately, the female detainees are far more than the male, because of the female suicide bomber phenomenon. For instance, statistics state: ‘Some 4,826 females including 2,438 children have reportedly been arrested for links to Boko Haram – more females than males.’^{cxlvii}

CONCLUSION

Having examined and explored the implications for gender and international humanitarian law, of Boko Haram deployment of female suicide bombers, in the on-going armed conflict in Nigeria, certain conclusions become inescapable. Prominent among them, is the fact that though the deployment of female suicide bombers is gendered and betrays the age-long discrimination against women, for Boko Haram terrorists, it is a military strategy, which has been used to great effect. Beyond, this, its implication for IHL involves the issue of combatant status and the provisions on means and methods of warfare. With regard to the question of status, it has been established, in this paper, that the female suicide bomber is neither a

combatant nor a fighter, but a terrorist, which could in extenuating circumstances be regarded as a victim. On the other hand, this paper has equally established that Boko Haram deployment of female bombers is inconsistent with IHL provisions on means and methods of warfare. Thus, the female suicide bomber should be treated as a common criminal under the law enforcement approach of criminal justice; and in appropriate cases, as war criminals, under the armed conflict approach.

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ENDNOTES

ⁱ “Yekaterina Zelenko”, available at <https://www.em.m.wikipedia.org> (accessed on 30-3-2020).

ⁱⁱ *Ibid.*

ⁱⁱⁱ Noritz, J.H. (ed), *op.cit.*,402.

^{iv} Wardlaw, G., *Political Terrorism*, Cambridge, Cambridge University Press, as cited in Okoronye, I., *Terrorism in International Law*, Okigwe, Whytem Publishers Nigeria, 2013,7.

^v *Ibid.*

^{vi} *Ibid.*,8

^{vii} Barnhart, C.L. and Barnhart, R.K. (eds.), *The World Book Dictionary*, (vol.2), Chicago, Field Educational Cooperation, 1976, 2167.

^{viii} Martin, E.A., *A Dictionary of Law* (5th ed.), Oxford, Oxford University Press, 2003,495.

^{ix} *Ibid.* 495-496.

^x Garner, B.A. (ed), *Black’s Law Dictionary* (8th edn.), St.Paul, MN., West, a Thompson business, 2004, 1512-1513.

^{xi} Section 40, *Economic and Financial Crimes Commission (Establishment) Act No.5 of 2002*.

^{xii} Section 1(2)(a)-(b)(i)-(iv), *Terrorism (Prevention) Act*, Nigeria, 2011 (as amended, 2013).

^{xiii} ICRC, *International Humanitarian Law: Answers to your Questions*, Geneva, ICRC, 2014, 82.

^{xiv} *Ibid.*

^{xv} Merriam-Webster Dictionary, available at <https://www.merriamwebster.com/dictionary/suicide%20bomber>. (accessed 13 April, 2020).

^{xvi} See ‘News & Terrorism: Communicating in a Crisis’ – A fact sheet from the National Academies and Department of Homeland Security, USA. (undated)

^{xvii} ‘Suicide attack’, available at <https://en.m.wikipedia.org/wiki>. (accessed 13-4-2020)

^{xviii} *Ibid.*

^{xix} *Ibid.*

^{xx} Liu, H., ‘Categorization and legality of autonomous and remote weapons system’, [2012], *IRRC* (vol.94, No.885), 627 at 634.

^{xxi} See Oxford Dictionary of English, Oxford, Oxford University Press, 2005.

- ^{xxii} Barnhart, C.L. & Barnhart, R.K., *The World Book Dictionary* (vol.2), Chicago, Field Enterprises Education Corp., 1976, 2370.
- ^{xxiii} For instance, the Convention on Prohibition or Restriction on the use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects (as amended on 21 December 2001 does not define “weapon”.
- ^{xxiv} See Articles 35 and 36 of *Additional Protocol I*.
- ^{xxv} Pilloud, C et al., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC and Kluwer, 1987, paras. 1463-1482. See also Liu, *op.cit*, 635, fn.32.
- ^{xxvi} Liu, *ibid*.
- ^{xxvii} *Ibid*.
- ^{xxviii} *Ibid*.
- ^{xxix} *Ibid*.
- ^{xxx} *Ibid*.
- ^{xxxi} McLaren, S., ‘15 Gender Identity Terms You need to know to Build an Inclusive Workplace’ available at <https://teentalk.ca/learnabout/gender> (2019) (accessed 20-4-2020).
- ^{xxxii} *Ibid*. McLaren reports that there are an estimated 1.4 million transgender adults in the US today, representing about 0.6% of the adult population. In UK, a recent survey found that 13% of the country’s LGBTQ + Community identified as transgender. The report further states that 2.7% identify as transgender, gender queer, or gender fluid or are unsure of their gender identification.
- ^{xxxiii} Litosseliti, L., *Gender & Language: Theory and Practice*, Hodder Arnold Education, London, 2006, 10. See also Ibezim, E.C, ‘Legal Protection of Women in Armed Conflicts in Nigeria, Democratic Republic of Congo and Sierra-Leone’ (an unpublished PhD Thesis), 2020, 80.
- ^{xxxiv} *Ibid*.
- ^{xxxv} This challenge has spun concepts such as sexual orientation, gender expression, gender queer, transgender, intersex, gender-neutral or agender, gender transition etc.
- ^{xxxvi} See Reports of the expert Group Meeting, ‘Promoting Women’s Enjoyment of their Economic and Social Rights’, Abo/Turku, Finland, UN Doc. EGM/WESR/1997. Report (Dec 1997).
- ^{xxxvii} 897 F.3d518 (3rd Cir.2018).
- ^{xxxviii} No.18.35708 (9th Cir.Feb.12, 2020).
- ^{xxxix} Many countries in Europe and the West tend to recognize the rights of LGBT people, while those in Africa reject them, and even legislate against such rights, and prescribe the death penalty for homosexuality. For instance, Nigeria passed the “Same-sex Marriage (Prohibition Bill)”, by the Senate (29-Nov.2011) and by the House of Representatives (30 May, 2013) respectively. Uganda passed its own in Dec.2013. In 2014, Denmark became the first European Country to allow transgender people to obtain official documents reflecting their gender identity without needing to be diagnosed with a mental disorder or undergo surgeries resulting in irreversible sterilization. Malta passed an even more comprehensive law guaranteeing transgender and intersex human rights, recognizing that ‘gender identity is considered to be an inherent part of a person, which may or may not need surgical or hormonal treatment or therapy [and that] sex characteristics of a person vary in nature and all persons must be empowered to make their decisions affecting their own bodily integrity and physical autonomy’, [See ‘ The state of LGBT’ available at www.amnestyusa.org (accessed on 20-4-2020). In the same vein, India’s Supreme Court took proactive action, recognizing transgender people as a legal third gender and granting transgender Indians status as an official minority requiring protection from discrimination, the Court rules: ‘it is the right of every human being to choose their gender’ [see *National Legal Services Authority v Union of India* (available at <https://en.m.wikipedia.org/wiki>).
- ^{xl} See *Mike Enahoro Ebah v AG Fed.* (2013) [unreported]
- ^{xli} ‘Meaning of “gender” ’, available at <https://en.m.wikipedia.org/wiki> (accessed on 20-4-2020)
- ^{xlii} See *International Humanitarian Law: Answers to Questions*, Geneva, ICRC, 2014, 4.
- ^{xliii} As established in *Prosecutor v Tadic* (IT-94-1-4) May, 1997, an armed conflict is said to exist ‘whenever there is a resort to armed forces between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State’. Treaty law does not define the term; it merely regulates permissible means and methods of warfare.
- ^{xliv} Gasser, H., ‘Humanitarian Law’, [2009], *Encyclopedia of Human Rights* (vol.2), 462. See also, Gasser, H., *International Humanitarian Law: An Introduction*, Haupt, Henry Dunant Institute, 1993, 15-20.
- ^{xlvi} *Ibid*.
- ^{xlvi} *Ibid*.
- ^{xlvi} Pictet, J., et al(eds), *Commentary on the Additional Protocols of 8 June (1977) to the Geneva*, ICRC, 1987, xxvii.
- ^{xlviii} Oviesogie, F.O., and Duruji, M.M., ‘State failure, Terrorism and Global Security: An Appraisal of the Boko Haram Insurgency in Northern Nigeria’, [2013], *Journal of Sustainable Society*, (vol.2, No.1), 20. Available at <http://worldscholars.org> (Accessed on 10-4-19).

- ^{xlix} Islamic fundamentalism is ‘a movement that has gained momentum in recent decades within several Muslim nations...’ It opposes ‘the infiltration of secular and westernizing influences and seek to institute Islamic law, including strict codes of behavior.’ Available at [https://www.dictionary.com>browse](https://www.dictionary.com/browse) (accessed on 20-4-2020).
- ^l N.I.O & D.I.B., *Boko Haram: Between Myth and Reality*, 10 (for security reasons the author’s real names, and even the name and addresses of the publishers are not indicated in the book).
- ^{li} *Ibid*
- ^{lii} Whereas the Prophet Muhammad withdrew from Mecca to Medina, Muhammad Ali and his followers withdrew from Maiduguri (the Borno State capital) to Kanama in nearby Yobe State. From there, they mobilized an Islamic organization which would carry out a Jihad – a revival of Islam by force.
- ^{liii} *Op cit.*
- ^{liv} *Ibid.*,11.
- ^{lv} Oviesogie and Duruji, *op.cit.*,26. See also, Okoronye, I., *Terrorism in International Law*, Okigwe, Whytem Publishers, Nigeria, 2013, 217.
- ^{lvi} Oviesogie and Duruji, *ibid.*, 25.
- ^{lvii} While religious extremism is ‘misuse of religion, often but not always resulting in violence, religious fundamentalism is meticulous adherence to a set of religious beliefs’ (available at [https://www.dictionary.com>browse](https://www.dictionary.com/browse)). (Accessed 21-4-2020).
- ^{lviii} The World Book Dictionary describes “patriarchy” as ‘a form of social organization in which the father is head of the family and in which descent is reckoned in the male line, the children belonging to the father’s clan.’ [Barnhart, C.L & Barnhart, R.K., (ed.), *World Book Dictionary*, vol.2]. in other words, “patriarchy” is a gender power relation in which the male is in control.
- ^{lix} Most religions, including Hinduism, Judaism, and Christianity are patriarchal.
- ^{lx} Ibezim, E.C., et al., ‘Gender Issues in Nigerian Law: Developments and Need for Changes, Umzurike, U.O & Ngwakwe, E.C., *Law and the Challenge of Nation Building in the 21st Century* (Conference Proceedings of the 42nd Annual Conference of NALT).
- ^{lxi} See The Qu’ran 4:35.
- ^{lxii} Freeman, J. (ed), *Women: Feminist Perspective*, Mountain View, Mayfield Publishing Company, 1989, 403.
- ^{lxiii} *Ibid.*
- ^{lxiv} Pearson E., “Wiliyat Shahidat: Boko Haram, the Islamic State, and the question of the Female Suicide Bomber”, Zenn, J. (ed.), *Boko Haram Beyond the Headlines: Analyses of Africa’s Enduring Insurgency*, West Point, Combating Terrorism Centre, 2018, 33.
- ^{lxv} According to Pearson, this is despite historical precedent for the female fighter from the time of the Prophet Mohammed. [see Pearson, E., *ibid*, where she cited Lahoud, N., “The Neglected Sex: The Jihadi’s Exclusion of Women from Jihad”, *Terrorism and Political Violence*, 26:5 (2014), 780-802.
- ^{lxvi} Hermann, I and Palmier, D., ‘Between Amazons and Sabine: a historical approach to Women and War’, [2010], *International Review of the Red Cross (IRRC)* (vol.92, No.877), 19.
- ^{lxvii} Fundamentalist Islamic world view promotes and adheres strongly to women’s “natural” role as child-bearers, a role that forbids them from participating in such violence as killing and taking lives that characterize war.
- ^{lxviii} See Blogger, Q and Campbell, J., ‘Women and the Boko Haram Insurgency’, available at <http://blogs.cfr.org/Campbell/2015/08/11/women-and-the-boko-haram-insurgency/>(accessed on 10th April, 2016).
- ^{lxix} Pearson, E., *op.cit.*
- ^{lxx} Galehan, J.N., ‘Boko Haram deploys lots of Women Suicide Bombers: I found out why’ (13 June 2019) available at <https://theconversation.com>, (accessed on 6 May, 2020).
- ^{lxxi} Searcey, D., ‘They ordered Her to Be a Suicide Bomber. She Had Another Idea’, in The New York Times, March 13, 2020, available at www.nytimes.com (accessed 7 May, 2020).
- ^{lxxii} *Ibid.*
- ^{lxxiii} U.N. GAOR, 3d Comm., 48th Sess., Res.48/104, U.N.Doc.A/48/629(1994)
- ^{lxxiv} See the Preamble to the Declaration on the Elimination of violence Against Women,
- ^{lxxv} *Ibid.* see also Steiner, J., and Alston, P., *International Human Rights in Context: Law, Politics and Morals (Texts and Materials)*, New York, Oxford University Press Inc.,1996, 167
- ^{lxxvi} See the Preamble of the Declaration, *op.cit.*
- ^{lxxvii} Blogger, Q and Campbell, J., *op.cit.*
- ^{lxxviii} Blogger, Q. and Campbell, J., *op.cit.* See also, ‘Boko Haram Turn Nigerian Girls to female Suicide Bombers’, available at <https://www.naija.com/275853-boko-haram-nigerian-girls-suicide-bombers.html>. (accessed 20th May, 2019). Pearson, E., *op.cit.*, 36.
- ^{lxxix} ‘Boko Haram Turns Nigerian Girls to Female Suicide Bombers’, *ibid.*
- ^{lxxx} Pearson, E., *op.cit.* see also Zenn, J. cited in Winsor, M., “Boko Haram Enlists Female Suicide Bombers to kill 100,000: violence now akin to ISIS”, *International Business Times*, December 6, 2014.

- ^{lxxxix} Ness, C.D., 'In the Name of the Cause: Women's Work in Secular and Religious Terrorism', *Studies in Conflicts & Terrorism* 28:5 (2005), 357 cited in Pearson, E., *op.cit.*
- ^{lxxxii} Boko Haram deployment of female suicide bombers contradicts 'the aims, meanings, and symbolism of martyrdom in the caliphate, as well as the majority view of the Salafi-jihadi scholars that women should neither fight nor engage in suicide bombings. It transgressed the "double binary" of the Islamic State gender doctrine ...'
- ^{lxxxiii} Pearson, E., *op.cit.*, 45.
- ^{lxxxiv} *Ibid.*
- ^{lxxxv} Blogger, Q & Campbell, J., *op.cit.*
- ^{lxxxvi} Gardam, J.G., and Jarvis, M.J., *Women, Armed Conflict and International Law*, the Hague, Kluwer Law International, 2001, 137-138. See CSW Res XIII of 1974 included in the draft *Declaration* for consideration by the ECOSOC. ECOSOC Res 1861 (LVI) of 16 May 1974 recommended that the GA adopt a *Declaration on the Protection of Women and Children in Emergency and Armed conflict*. The GA considered the ECOSOC recommendation and adopted the *Declaration on the Protection of Women and Children in Emergency and Armed conflict* in GAREs 3318 of 1974 (Hereinafter 1974 GA Declaration).
- ^{lxxxvii} *Ibid.*
- ^{lxxxviii} 1974 Declaration, *supra*, at para 5
- ^{lxxxix} Gardam, J.G and Jarvis, M.J. *op.cit.*, 142. See also Ibezim, E.C., *Legal Protection of Women in Armed Conflict*, *op.cit.*, 147
- ^{xc} Ibezim, E.C., *ibid.*
- ^{xcii} *Ibid.*
- ^{xciii} The Convention entered into force as a binding treaty, on the 3rd of September, 1981. For the full text of the Convention, see Gandhi, S (ed), *Blackstones International Human Rights Documents (6th edn)*, Oxford, Oxford University Press, 2008, 62-70.
- ^{xciiii} Ibezim, E.C., 'The Beijing Conference and the Human Rights Protection of Women: A Critical Review', (2000) (Being an LL.M Dissertation presented to the Faculty of Law, Abia State University in partial fulfilment of the requirements for the award of LL.M degree).
- ^{xcv} Gardam and Jarvis, *op.cit.*, 146.
- ^{xcvi} *Ibid.*
- ^{xcvii} See UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), Eleventh Session, General Recommendation 19, UN Doc.CEDAW/C/1992/L.I.
- ^{xcviii} The Commission made the recommendation to the Economic and Social Council. It recommended that the instrument be prepared in conjunction with the 'Committee on the Elimination of Discrimination Against Women' and the 'United Nations Committee on Crime Prevention and Control'.
- ^{xcix} Gardam and Jarvis, *op.cit.*, 163. See also Ibezim, E.C., *Legal Protection of Women in Armed Conflict*, *op.cit.*, 151
- ^c See report of the Fourth World Conference on Women, Actions for Equality Development and Peace, otherwise known as the *Beijing Declarations and Platform for Action*, UN Doc.A/Conf.177/20 (1995) [hereinafter referred to as the *Beijing Declarations, and Platform for Action*].
- ^{ci} *Ibid.*, at para 44.
- ^{cii} *Ibid.*, at para 135.
- ^{ciii} For these Recommendations, see *Beijing Declaration and the Platform for Action* produced and published by the United Nations Development Fund for Women (UNIFEM) and the United Nations Information Centre, Nigeria (UNIC).
- ^{ciiii} Tachou-Sipowo, A., 'The Security Council on Women in War: between peace building and humanitarian protection', [March 2010], *International Review of the Red Cross (IRRC)*, (vol,92, No 877), 197.
- ^{civ} *Ibid.*
- ^{cv} *Ibid.*
- ^{cvi} The *Geneva Conventions* I and II specify in *Article 12* that women shall be treated with all consideration due to their sex
- ^{cvi} Ibezim, E.C., *Legal Protection of Women in Armed Conflict*, *op.cit.*, 141.
- ^{cvi} Durham, H. and Gurd, T. (eds), *Listening to the Silences: Women and War*, Boston, Martirius Nijhoff Publishers, 2005, 98. See Ibezim, *Ibid.*
- ^{cix} *Article 76, Additional Protocol I* of 1977.
- ^{cx} *Ibid.*
- ^{cxii} *Articles 3 (1)(a), Geneva Convention IV.*
- ^{cxii} *Articles 3 (1)(d), Geneva Convention IV.*
- ^{cxiii} Such provisions include *Article 14, Geneva Conventions IV*, *Articles 103 and 108, Geneva Convention III*; *Articles 16, 25, 29, 49, 88, 97 and 108 of Geneva Convention III and Additional Protocol I*; *Articles 8(a), and 75(5).*
- ^{cxiv} *Article 7(1)(a)-(k).*

- cxv Article 8(1)(b)(xxi) and (xxii), 8(1)(c)(ii) and (iii); and 8(1)(e)(iv). See Than, C.D., and Shorts, F.C., *op.cit.*, 355.
- cxvi Article 5(c) and (g)
- cxvii Than, C.D and Shorts, F.C., *op.cit.*, 355.
- cxviii *Ibid.*
- cxix Melzer, N., *International Humanitarian Law: A Comprehensive Introduction*, Geneva, ICRC, 2016, 81.
- cxx *Ibid.*
- cxxi *Ibid.*
- cxxii API, Art.51 (3)
- cxxiii Melzer, N., *op.cit.*, 82.
- cxxiv The US Military Commissions Act explicitly provides for the concept of “unlawful combatants”, but it is doubtful that the Geneva Conventions contemplate it. See *Hamdan v Rumsfeld* No 05-184 Supreme Court of the United States of America, 29 June 2006. Incidentally, some commentators see the Military Commission Act (2006) as a pointer that the case of *Hamdan* was used by the US Congress as an opportunity to remove detainees’ access to stronger legal protections, such as US Constitutional rights and habeas corpus remedies.
- cxxv See Articles 4A(1) and (2) of Geneva Convention III.
- cxxvi Additional Protocol 1, Article 35 (1).
- cxxvii Melzer, N., *op.cit.*, 104.
- cxxviii *Ibid.*
- cxxix Hague Regulations, Article 23(e). Additional Protocol 1, Article 35(2); Customary International Humanitarian Law (CIHL, Rule 70).
- xxx See section V.4.
- xxxi Additional Protocol I, Article 51 (4); CIHL, Rule 12.
- xxxii Geneva Convention I-IV, Common Article 3; Additional Protocol II, Article 1(1) and 13(1).
- xxxiii Additional Protocol I, Article 37.
- xxxiv Melzer, N. *op.cit.*, 108.
- xxxv Additional Protocol I, Article 37 and CIHL, Rule 57.
- xxxvi Article 4A(2) of Geneva Convention III. See also Article 1 of Hague Regulations.
- xxxvii Additional Protocol I, Article 44(3) and 46; CIHL, Rules 106 and 107
- xxxviii Norwitz, J.H. (ed), *Pirates, Terrorists, and Warlords: the History, Influence, and Future of Armed Groups Around the World*, New York, Skyhorse Publishing, 2009, 105
- xxxix See Geneva Convention III
- cxli (Unreported case), available at custodyvanguard.ngr.com, sourced, 20-4-17.
- cxlii [2004] LPELR-24051(CA), Court of Appeal Abuja Division.
- cxliii FHC/ABJ/CR/13/2014.
- cxliiii *Supra.*
- cxliv (2008) 8 NWLR (Pt.1089)298 SC.
- cxlv *Supra.*
- cxlvi Article 33 of the Fourth Geneva Convention states that “collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Article 4 of Additional Protocol II prohibits “acts of terrorism” against persons not or no longer taking part in hostilities. Additional Protocol I and II also prohibits acts aimed at spreading terror among the civilian population: “Acts or threats of violence” the primary purpose of which is to spread terror among the civilian population are prohibited (see Article 51, paragraph 2, of Additional Protocol I; Article 13, paragraph 2, of Additional Protocol II. These provisions according to ICRC do not prohibit lawful attacks on military targets which may spread fear among civilians.
- cxlvii Pearson, E. *op.cit.*, 36.