

# RELIGION, LAW AND SECURITY IN AFRICA

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Conference rap

*Religion, Law and Security in Africa*

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First edition 2018

ISBN 978-1-928314-42-4

ISBN 978-1-928314-43-1 (e-book)

Set in 10/13 Palatino Linotype

Cover design and typesetting by AFRICAN SUN MeDIA

Conference-RAP is an imprint of AFRICAN SUN MeDIA. Conference proceedings are published under this imprint in print and electronic format. This publication may be ordered directly from [www.sun-e-shop.co.za](http://www.sun-e-shop.co.za)

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FOREWORD .....	ix
<i>Mark Hill</i>	

INTRODUCTION .....	xi
<i>M. Christian Green</i>	

## I. COUNTERING RELIGIOUS RADICALISATION AND EXTREMISM

1	Curbing religious extremism of Boko Haram insurgency in Nigeria: Judicial interventionism and human rights absolutism .....	3
	<i>Wahab O. Egbewole &amp; Hanafi A. Hammed</i>	
2	Religious radicalism and security threats in the Sahel .....	21
	<i>Seyni Moumouni</i>	
3	The role of religion and religious freedom in responding to violent extremism .....	31
	<i>Brett G. Scharffs</i>	

## II. BLASPHEMY, RELIGIOUS FREEDOM AND FREEDOM OF EXPRESSION

4	Nigeria's blasphemy laws and the competing rights: Taming the self-appointed god avengers through judicial process .....	49
	<i>Musa Usman Abubakar</i>	
5	Blasphemy, religious defamation and hate speech: A comparison of the European Court of Human Rights and the Rabat Plan of Action .....	63
	<i>Burkhard J. Berkmann</i>	
6	Freedom of expression and freedom of religion: Drawing the lines between hate speech, blasphemy and free speech .....	81
	<i>Cristiana Cianitto</i>	
7	Secularity and exercise of religious freedoms in public service media in Côte d'Ivoire .....	97
	<i>Célestin Gnonzion</i>	

### III. RELIGIOUS EXTREMISM AND COUNTERTERRORISM LAWS IN KENYA

- 8 Socio-legal implications of the laws to combat religious  
extremism in Kenya ..... 111  
*Fathima Azmiya Badurdeen*
- 9 (Re)framing terror attacks in Kenya: Contrastive frames  
from the National Council of Churches of Kenya (NCCCK)  
and the Evangelical Alliance of Kenya (EAK) ..... 131  
*Loreen Maseno*
- 10 The need for a substantive *fatwa* institution in countering  
violent extremism in Kenya ..... 147  
*Tito Kunyuk*

### IV. JUST WAR AND PEACE IN AFRICA

- 11 Religious foundations of the notion of *bellum iustum* ..... 165  
*Johan D. van der Vyver*
- 12 Counterterrorism and religious violence in Nigeria:  
A just war perspective on the doctrine of necessity ..... 177  
*Simeon O. Ilesanmi & Kate E. Temoney*
- 13 The “Spirit of Assisi”, or when religions commit to peace ..... 195  
*Jean-Baptiste Sourou*

### V. SECULARISM AND SECURITISATION OF SPACE AND LAND

- 14 Religion and the secular state order: The Ethiopian  
experience ..... 205  
*Mohammed Dejen Assen*
- 15 Securing body, space and structure through the  
powers of law and state: Some South African urban  
examples of displacement and reconciliation ..... 223  
*Yolanda van der Vyver*
- 16 Religion and law: The promise and perils of the  
Cameroon Land Law ..... 233  
*Elias Kifon Bongmba & Tanto Richard Talla*

## VI. WITCHCRAFT AND SECURITY IN THE SOCIOJUDICIAL SPHERE

- 17 An anthropological study of “witch camps” and human rights in northern Ghana ..... 251  
*Saibu Mutaru*
- 18 *Divisi* witchcraft in contemporary Zimbabwe: Contest between two legal systems as incubator of social tensions among the Shona people ..... 269  
*Bernard Pindukai Humbe*
- 19 “He then became a lion”: Witchcraft accusations in rural Mozambique ..... 283  
*Júlio Machele*
- 20 The legality of witchcraft allegations in colonial and postcolonial Zimbabwe ..... 297  
*Fortune Sibanda*

## VII. MARRIAGE, FAMILY AND SOCIAL SECURITY

- 21 Conflictual insertion of marriage ordinances in British colonial Africa: The Ghanaian experience ..... 317  
*John G. Esubonteng*
- 22 Domestic violence legislation in Zimbabwe: Probing into the security of women in rural communities ..... 335  
*Elias G. Konyana*
- 23 Socio-cultural, economical and organisational determinants of child marriage in Cameroon ..... 351  
*Helen Namondo Linonge-Fontebo*

## VIII. GENDER, VULNERABILITY AND AGENCY

- 24 Women’s rights and religion: Political and legal complexities affecting the domestication of CEDAW and the AU Women’s Protocol in Nigeria ..... 369  
*Abiola Akiyode-Afolabi*
- 25 Female circumcision as an African problem: Double standards or harsh reality? ..... 385  
*Sohail Wahedi*

- INDEX ..... 405

This timely and impressive volume represents the happy confluence of vision and industry. The vision is that of the founders of the African Consortium for Law and Religion Studies who gathered in Ghana (2013) for an inaugural symposium and subsequently reconvened in South Africa (2014), Namibia (2015), Ethiopia (2016) and Morocco (2017). Under the dedicated presidency of Professor Pieter Coertzen of the Stellenbosch University, and generously resourced by the International Center for Law and Religion Studies of the J Reuben Clark Law School at Brigham Young University in Provo, Utah, ACLARS, as it has affectionately become known, was envisaged as a forum where experts in issues of law and religion throughout the world could direct their attention to the entire continent of Africa and collaborate on matters of common concern.

The primary focus of ACLARS has been its annual conferences, where leading scholars come together to share their learning and experience, augmented by hand-picked law and religion experts from Europe and North America, and by political and religious leaders of the host country. The vision has included identifying young scholars from Africa likely to become influential opinion makers in future generations.

The industry has been that of organisers of the Rabat 2017 conference, particularly Dr T Jeremy Gunn, Professor of Law and Political Science, Mr Nouredine Labiad of the International University of Rabat, and Professor Amal Idrissi of the Faculty of Law and Political Science, University of Moulay Ismail, Meknès. Their meticulous planning and warm hospitality provided the fertile ground in which the academic activity of the conference could thrive. I recall launching the call for papers at the conclusion of the Addis Ababa conference in 2016. The response was immediate and enthusiastic, leading to the highest number of abstracts being submitted for any ACLARS conference before or since. The quality was uniformly high and many were disappointed at not being selected for inclusion. In total, however, more than one hundred scholars and government and religious leaders attended Rabat representing Algeria, Benin, Botswana, Cameroon, Egypt, Ethiopia, Germany, Ghana, Italy, Ivory Coast, Jordan, Kenya, Morocco, Mozambique, Netherlands, Niger, Nigeria, Sierra Leone, Slovakia, South Africa, Turkey, United Kingdom, United States and Zimbabwe.

This volume has been painstakingly collated and edited by M Christian Green, who, collectively with other committee members, has worked tirelessly in support of ACLARS. This commitment reflects the significance we ascribe to the venture which, for many of us, is an expression of our witness of faith. By no means have all the papers from the conference been included in this book. Some have found homes in other edited volumes or as journal articles, while others remain work in progress. Deftly edited and thematically arranged, the following chapters truly represent the best of the best.

The subject of the conference was *Religion, Law and Security* and it was intended to be broadly interpreted, while focusing particularly on religious extremism, blasphemy, violence and terrorism. Christy Green's editorial Introduction, which follows this Foreword, will help guide the reader through the enervating topography created by the various approaches of contributors to the breadth and significance of the theme. Radicalisation, terrorism, blasphemy, hate speech, freedoms of religious freedom and just war theories rub shoulders with issues of witchcraft, female genital mutilation circumcision, child marriage, displaced communities and additional issues besides. This unique collection of papers is both challenging and inspiring, providing illumination in troubled times, and forming a sound foundation for future scholarship in the years ahead.

On behalf of everyone who will have occasion to consult this volume, I express my admiration for the people of vision who set ACLARS on its journey, my thanks for the industry of those who converted that vision into the reality of shared fellowship in Rabat in May 2017, leading to this magnificent book, and my prayer that a fuller understanding of the rule of law and the unhindered pursuit of religious pluralism will in some small way contribute to a more secure world.

***Professor Mark Hill QC***

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St George's Day, 2018

Security is a key topic of our time. But how do we understand it? Do law and religion take different views of it? To address these questions and others, the topic selected for our sixth annual African Consortium for Law and Religion Studies (ACLARS) conference, held in Rabat, Morocco, in May 2017 at the Université Internationale de Rabat, was “Religion, Law and Security”. The call for papers for the conference featured prominently such topics as religious extremism, blasphemy, violence, terrorism, and human and sustainable security. Important subtopics included the Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence (2013) and the Marrakesh Declaration on the Rights of Religious Minorities in Predominantly Muslim Majority Communities (2016). The names of these international declarations are a lengthy mouthful, but their focus on hate speech and incitement and on the plight of religious minorities, invokes two of the most significant issues when it comes to religion, law and security today.

The language of security has great resonance in our time of terrorism, war and political upheaval, even in advanced democracies. It addresses people’s legitimate fears about – some would even say human right to – circumstances of safety and freedom. Indeed, the Four Freedoms invoked by United States President Franklin Delano Roosevelt in his famous 1941 State of the Union Address include, freedom of speech, freedom of worship, freedom from want and freedom from fear. But there is risk, as well, of investing too much in the language of security and securitisation. For such language can also risk creating or inflaming fears – and thus becoming a self-fulfilling prophecy.

One of the most compelling descriptions of security I have encountered was provided by a U.S. military officer at a panel that I attended, convened by the National Endowment for Democracy in Washington, DC, in 2014. The topic of the panel was “Fostering Democracy, Good Governance, and Human Rights in Africa Through Security Sector Assistance” and the U.S. military officer whose presentation opened the panel had extensive experience in the field leading initiatives for the U.S. military and its Africa partners. Religion was nowhere mentioned in the presentation, but when it became time for questions and answers, I could not resist asking members of the panel what role, if any, religion might play, whether negative or positive, in resolving conflict and promoting security and peace in Africa. The military officer was the first panelist to reply, immediately dispelling the idea that religion was inevitably a negative factor and promoter of conflict. Indeed, he argued, his security and peacekeeping missions could not succeed, absent the formation of strong relationships with local religious leaders. The positive participation of religious leaders was, in his view, a key factor in achieving any kind of meaningful security and peace in Africa.

In fact, in his panel presentation, the same military officer had spoken particularly about the difference between “security” and “human security”. The last term may



sound curious or redundant, but it refers to a broad definition of security taking hold in a number of security professions and academic disciplines, including law and religion. One definition of human security is as follows: “Human security is an emerging paradigm for understanding global vulnerabilities whose proponents challenge the traditional notion of national security by arguing that the proper referent for security should be the individual rather than the state.”<sup>1</sup> Another definition reads: “The concept of human security represents a departure from orthodox security studies, which focus on the security of the state. The subjects of the human security approach are individuals, and its end goal is the protection of people from traditional (i.e., military) and nontraditional threats such as poverty and disease.”<sup>2</sup> Still another definition states: “Many important aspects of human development relate also to people’s security: loosely defined as people’s freedom from fear and freedom from want in a broad sense . . . . Human security relates to much more than security from violence and crime. A report team wanting to look at the security of people’s livelihoods (economic, food, environment or health security) might apply a human security approach. Human security can also be used to look into personal, community and political security.”<sup>3</sup>

These and other broad definitions of human security seem especially appropriate for law and religion studies in Africa. To be sure, Africa faces many security threats, in a traditional military sense, from war and conflict and from religious extremism and terrorism. But it also faces security threats from blasphemy accusations and hate speech, from seizures and securitisation of land and public spaces, from marriage and family practices that risk particular harm to women and girls, and from the phenomenon of witchcraft practices and accusations and the power they wield over individuals and communities, as well as forces of poverty, inequality, ill-health, climate change and food insecurity. Indeed, a key term in our consideration of security at ACLARS has been the concept of “vulnerability”, a term well theorised in law by Emory University legal theorist Martha Fineman,<sup>4</sup> but now one which, along with related terms of “resilience” and “agency”, has become central to the now interdisciplinary field of vulnerability studies. All of these themes interweave in the present volume, with particular attention to the role of law and religion.

In the book’s opening section on “Countering Religious Radicalisation and Extremism”, legal scholars Wahab O Egbewole and Hanafi A Hammed address what is perhaps the best-known threat to security in Africa today, namely the Boko Haram terrorist insurgency in Nigeria. They argue for a humanitarian and human rights approach to the conditions and problems underlying the insurgency, but

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1 “Human Security”, Wikipedia.

2 Gregoratti C. 2013. “Human Security”, *Enclopedia Britannica*.

3 Gomez OA and Gasper D. 2013 “Human Security: A Thematic Guidance Note for Regional and National Human Development Report Teams”. New York: United Nations Development Program (UNDP). Online at: [http://hdr.undp.org/sites/default/files/human\\_security\\_guidance\\_note\\_r-nhdrs.pdf](http://hdr.undp.org/sites/default/files/human_security_guidance_note_r-nhdrs.pdf)

4 Fineman MA. 2011. “The Vulnerable Subject and the Responsive State”, *Emory Law Journal* 60:251-275.

also a robust role for judicial and police intervention. Seyni Moumouni of Niger, addressing the problem of religious radicalism and emerging security threats in Africa's Sahel region, provides a detailed description of the process of radicalisation and where it might be possible to intervene. Brett G Scharffs analyses the duality of the process by which religious freedom can both propagate and resolve violent extremism. Scharffs discusses the role that religious freedom can play in both Christianity and Islam in countering religious extremism through interpretation of religious texts, challenging misuse of blasphemy laws and standing for religious majorities taking a more active role in protecting minorities.

The chapters in the second section, on "Blasphemy, Religious Freedom and Freedom of Expression", take up questions of blasphemy and religious minorities directly in connection with the Rabat Plan of Action and Marrakesh Declaration. Musa Abubakar of Nigeria writes on Nigeria's blasphemy laws and misuse of them by "self-appointed god avengers." With rich analysis of both Nigerian and international law, Abubakar analyses the implications of the Rabat Plan for Nigeria, a context in which the seemingly small matter of an inappropriate joke can lead to mob violence and even death. German law scholar Burkhard J Berkmann provides an equally cogent analysis comparing the approaches of the Rabat Plan of Action and the European Court of Human Rights on questions of blasphemy, defamation of religion, and hate speech and incitement. Berkmann provides a particularly helpful analysis of how content, speaker, intent and other elements drawn from the Rabat Plan figure into analysis of these problematic forms of speech. Cristiana Cianitto's chapter addresses the intersection of freedom of religion and freedom of expression. Like Berkmann, Cianitto draws on the infamous *Charlie Hebdo* massacre and the elements of Rabat Plan, but she further connects the Rabat Plan and the Marrakesh Declaration in discussing the ongoing challenge, in many parts of the world, of protecting the rights of religious minorities. The last chapter in the section, authored by Célestin Gnonzion, takes up the problems of freedom of religion and freedom of expression in the context of a decision of the government of Côte d'Ivoire to restrict religious access to broadcast media and the differential effects that this had on Christian, Muslim, and African traditional religion groups. For religious groups, as for secular actors, access to the medium turns out to be central to the ability to propagate the message.

With the Boko Haram and Sahelian insurgencies in West and North Africa well chronicled in the volume's first section, the third section on "Religious Extremism and Counterterrorism Laws in Kenya", takes up the topic of terrorism in Kenya, particularly the threat posed by Somalia-based Al-Shabaab. In the first chapter, Fathima Badurdeen discusses Muslim perspectives on Kenya's 2012 and 2014 counterterrorism laws. Rich in ethnographic research, Badurdeen describes Kenya's delicate and sometimes imperfect attempts to balance security interests and respect for human rights. Loreen Maseno's chapter uses a framing approach to analyse responses to terrorist acts by the National Council of Churches in Kenya (NCCCK) and the Evangelical Alliance of Kenya (EAK). Drawing on the frame, or framing, theory that appears in several other chapters in this year's volume as an

interesting trend, Maseno's chapter provides rich documentary and rhetorical analysis of the response of two Christian organisations to terrorist attacks in Kenya. Maseno describes both groups as decrying terrorist violence and calling on the Kenyan government to do more, but she also contrasts the NCKK preference for judicial resolution with the EAK's call for vigorous self-defence. Tito Kunyuk, a Kenyan Kadhi's Court magistrate, proposes the use of *fatwas* as a legal institution to address problems to counter violent extremism in Kenya. Perhaps associated most in the West with the Ayatollah Khomeini's *fatwa* against novelist Salman Rushdie, these non-binding Islamic legal decisions, Kunyuk argues, can be used to link faith, identity and citizenship in ways that provide an effective, interpretive counterweight to terrorist radicalisation.

No discussion of security would be complete without discussion of concepts of war and peace, the subject of the book's fourth section on "Just War and Peace in Africa". Therein, Johan van der Vyver situates African perspectives on war within the long arc of the development of the concept of "just war" in the Christian and Islamic traditions, culminating in discussion of ISIS and the Islamic State. Simeon Ilesanmi and Kate Temoney apply just war analysis to the Nigerian counterterrorism efforts of the government of Nigeria against Boko Haram. Their particular focus is the doctrine of necessity and how the government justifies extraordinary countermeasures against the group. They describe an ambiguous relationship between the doctrine of necessity and human rights, raising questions about the point at which the government itself may lose authority in being seen to violate universal human rights norms. A more positive possibility for religion and peace is set forth in Jean-Baptiste Sourou's comparison of the interfaith "Day of Prayer for Peace", convened by Pope John Paul II in 1986 in Assisi, the town made famous by St. Francis, and thirty-year follow-up organised by Pope Francis. These events captured and catalysed a "Spirit of Assisi" that has become an important model for religion peace within and beyond the Catholic Church.

Secularism, space and land combine in this book's fifth section on matters concerning how the state defines religion and its access to public space. Mohammed Dejen Assen writes on how the public role of religion was conceived in Ethiopia, historically and up to the present day. Assen describes how the Ethiopian government, following on the harsh secularism of the preceding revolutionary Marxist government, has sought to manage a post-1991 legal framework balance of secularism and religious freedom and how these have been used to address a "religious renaissance" that includes religious groups of a notably fundamentalist nature. The chapter by Yolanda van der Vyver – neither a law nor religion scholar, but an architect – examines the definition of the power of law and the state through body, space and structure. A notable confrontation between former South African President Jacob Zuma and opposition forces at the 2017 State of the Nation Address at the Cape Town parliament building serves as a departure point for a discussion of how the South African state has used space for division, fortification, discrimination and segregation, past and present. On the topic of land, a subject of ongoing contestation in many African nations, Elias Kifon Bongmba and Tanto Richard

Talla discuss the use of the 1974 Cameroon Land Law to manage disputes between village groups. Far from being merely a question of property and land tenure laws, the management of land in Cameroon turns out to have a deep religious dimension, given the religious and ritual importance of land for traditional leaders.

The topic of witchcraft proves also to be integrally related to security, given the numbers of people accused of witchcraft in many African societies – producing two full panels at the Morocco conference. In his chapter on Ghana, Saibu Mutaru describes the dual functions of “witch camps” to which those accused of witchcraft are sent, either for banishment or reintegration into their communities. Drawing on sociologist Erving Goffman’s concept of the total institution and Michel Foucault’s influential studies of prisons, Mutaru describes how these camps serve as places of punishment, but also refuge, particularly for women, who are especially likely to be accused of witchcraft. Bernard Pindukai Humbe describes a troubling witchcraft practice in Zimbabwe, known as *divisi*, whereby fathers engage in incestuous relationships with chosen daughters in order to secure agricultural success. The practice has long-lasting effects for the girls, who are then deemed unmarriageable and often lack access to mechanisms of law and justice. *Divisi* is illegal under Zimbabwean law, but it continues to be practised and defended as a means of addressing food insecurity and distribution. Júlio Machele describes practices of witchcraft in Mozambique including stories of people turning themselves into animals to accomplish their occult tasks. Supplementing mostly anthropological inquiries into these practices, Machele examines historical factors, particularly the context of revolutionary war, in which the new government took as hard a line as the colonial administration against witchcraft, in ways that often failed adequately to address the problems associated with displaced populations and demobilised soldiers returning home to fractured communities. Fortune Sibanda begins his chapter with an epigrammatic observation of Nigerian poet Ben Okri that, “The magician and the politician have much in common: They both have to draw our attention away from what they are really doing.”<sup>5</sup> Sibanda examines the political and social role of witchcraft in Zimbabwe, particularly the nature, purpose, extent and implications of witchcraft accusations for public order and security, with a keen eye for the framing of witchcraft as an exercise of political power, a use of power that has been attributed even to politicians at the highest levels of government.

Relationships of marriage and family also turn out to be very important for security of individuals, families and entire communities. This is a theme that we saw developing in proposals for our ACLARS 2016 conference in Ethiopia, and we were delighted to put together a panel of papers on the topic for the Morocco conference. John G Esubonteng describes the conflictual effects of a 1884 Marriage Ordinance enacted by the British colonial administration of Ghana. The ordinance was largely rejected by the Ghanaian people as a hegemonic force and disruptive of existing religious and traditional arrangements, in a way that led to noncompliance and open flouting of the law. Elias G Konyana’s chapter addresses the topic of domestic

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5 “Ben Okri: 10 Quotes”, *This Is Africa*, 15 March 2017.

violence, particularly among rural women in Zimbabwe. Konyana details the customary marriage practices that led to the promulgation of Zimbabwe's Domestic Violence Act of 2007, but also the difficulties that women and girls experience in seeking legal remedies under the law. Rounding out the chapter, Helen Namondo Linonge-Fontebo discusses the problem of child marriage in Cameroon. Child marriage is an Africa-wide problem, and Linonge-Fontebo describes attempts to address it under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women, as well as under Cameroonian law and through innovative international programmes in place in Cameroon that prepare girls for alternatives to child marriage.

The book's final section on "Gender, Vulnerability and Agency" picks up some of the themes of the previous section. Nigerian human rights law scholar and practitioner Abiola Akiyode-Afolabi describes the obstacles that have hindered the Nigerian incorporation of CEDAW and the African Union Women's Protocol into Nigerian law. It is a context in which traditional religions seem all too often to be an obstacle to progress, but where women are also pushing to interpret religious texts and traditions in ways that further women's rights. Taking up another important Africa-wide topic, Sohail Wahedi describes male and female circumcision as religious practices, while focusing particularly on the construction of female circumcision as a peculiarly African problem. In fact, Wahedi maintains that it is not only an African problem, but a global one, including many African and Asian diaspora communities, but that liberal approaches all too often abstract from the religious dimension in a move that creates "double standards" around exemption without seriously examining the "harsh realities" of religious practice and arguing against these in a publicly accessible way.

This is a volume that traverses a wide landscape of security issues at the intersection of law and religion in Africa. It confirms the importance of attending to the religious dimension of human security, as well as how the law addresses and constructs the security and securisation of states. It is an apt predecessor to the papers that will be presented at the next ACLARS conference in Abuja, Nigeria, in May 2018, on "Law, Religion and Human Flourishing".

***M Christian Green***

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# I. Countering religious radicalisation and extremism

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# 1 CURBING RELIGIOUS EXTREMISM OF BOKO HARAM INSURGENCY IN NIGERIA: JUDICIAL INTERVENTIONISM AND HUMAN RIGHTS ABSOLUTISM

**Wahab O. Egbewole<sup>1</sup>**  
**Hanafi A. Hammed<sup>2</sup>**

## INTRODUCTION

The violent activities of the extremist Islamic sect Boko Haram have made Nigeria a ruptured state, eliciting security concern for the international community and heightened fears among the populace. The consequence led to decline in internal security, high rate poverty, bad governance among political office holders and reactions precipitated from the state raised questions about the effectiveness of governance and security agencies in Nigeria. These were demonstrated in the declining capacity of its institutions to deliver public goods, such as safety, transportation, water, medical care, electricity power supply and education.<sup>3</sup> Key human development sectors like education, health, economy, judiciary and security agencies are poorly funded or underperforming.<sup>4</sup> In the north, millions of *almajiri* students are sent to Quranic schools, far from their parents and required to beg for alms or work as domestic helpers to pay for their upkeep.<sup>5</sup> The people involved in the *almajiri* system are often imagined to oppose modern developments and even as the quintessential challenge to a modern Nigeria.<sup>6</sup> Many take the fact that the *almajiriai* do not conform to blueprints of modern childhood as a sure indication of

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  - 2 Senior Lecturer, HOD, Public & International Law, Al-Hikmah University, Ilorin, Nigeria.
  - 3 International Crisis Group. 2014. "Curbing Violence in Nigeria (III): The Boko Haram Insurgency", Report No. 216, 3 April, 8.
  - 4 In Gombe, Borno, Kebbi, Niger and Kwara States, UBE funds are being funnelled into pockets of multiple contractors. "How UBE Money Becomes Slush Fund", *Daily Trust*, 16 October 2011.
  - 5 *Almajiri* is the Hausa derivative of Arabic *al-Muhajirin*, the emigrants, which refers to those who followed the Prophet Mohammed's migration from Mecca to Medina. Sending children to Islamic teachers is a longstanding practice, especially of fathers with many children. Many parents prefer sending their children to imams who teach them the Quran and Arabic rather than Western-style schools they believe have "corrupting" influences.
  - 6 Hoechner H. 2014. "Traditional Islamic Students (Almajirai) in Nigeria: Fair Game for Unfair Accusations?", in Perouse de Montclos M-A (ed): *Boko Haram: Islamism, Politics, Security and the State in Nigeria*. Leiden: African Studies Centre, West African Politics and Society Series, 2:63.

their potential for violence and inability to become functional members of society. In a context of urbanisation, this practice is open to abuse and criminality.<sup>7</sup>

The eruption of the Boko Haram insurgency in July 2009 stands out unique because of nebulous nature of their demands, the mystery surrounding their agenda and the faceless features of the perpetrators.<sup>8</sup> Boko Haram got involved in dirty politics immediately Mohammed Yusuf became popular and was potentially able to bring votes to the then governor of Borno State. Poverty and bad governance in Borno state helped Mohammed Yusuf to become popular and politicised his struggle.<sup>9</sup> A series of clashes between Boko Haram members and police escalated into an armed insurrection in 2009, with soldier troops crushed the rebellion, killing hundreds of followers and destruction of their principal mosque. Mohammed Yusuf was captured, handed over to the police and shortly thereafter extrajudicially executed.<sup>10</sup>

Boko Haram is one of the several profound security threats to Nigeria's stability and has quickly grown to be a challenge because it taps into wide discontent with bad governance, corruption and official impunity. Though, the security agencies claimed that they have subdued the insurgent, but reality must be faced, they are still much on ground and continuing to wreak havoc on daily basis. Within January to March 2017, eight different attacks have been launched. The last one was on 1 March 2017, at the NNPC depot in Maiduguri. No doubt, the capacity of Boko Haram has been seriously reduced, but there is still a lot to be done.

Boko Haram insurgency in Nigeria requires policy makers to look beyond Western security templates of Islamic terrorism to grasp the underlining causes of what is primarily a Nigerian conflict. This policy should examine the four explanatory factors behind the insurgency: Economic marginalisation, governance failure, extremist operations and security failures. Economic causes are traced to poverty, unemployment and extreme inequality among citizenry, while governance failures relate to national religious polarisation, political brinkmanship among religious elite and rampant corruption in the face of mass poverty. Recommendations for international policy interventions focus on four areas of constructive engagement.

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7 Last M. 1991. "Adolescent in a Muslim City: The Cultural Context of Danger and Risk", *Kano Studies*. Special Issue. Kano: Bayero University, Kano.19. According to a former Education Minister, Ruqayyatu Ahmed Rufai, Nigeria had an estimated 10.5 million out-of-school children in 2012, 3.6 million or more than in 2000 and 42% of the primary school age-population. "Nigeria: Declining Enrolment in primary Education in Nigeria – Who Bears the Responsibility?", *Premium Times*, 4 April 2013.

8 Uzoigwe JC. n.d. "The Constraints of Government Security Agencies in Tackling Terrorism in Nigeria – A Case of Boko Haram". Online at: [http://www.academia.edu/4210854/The\\_constraints\\_of\\_Government\\_security\\_agencies\\_in\\_tackling\\_terrorism\\_-\\_A\\_case\\_Study\\_of\\_Boko\\_Haram](http://www.academia.edu/4210854/The_constraints_of_Government_security_agencies_in_tackling_terrorism_-_A_case_Study_of_Boko_Haram)

9 See Perouse Montclos M-A. 2014. "Boko Haram and Politics: From Insurgency to Terrorism", in Perouse Montclos (ed). *Boko Haram: Islamism, Politics, Security and the State in Nigeria*, 2.

10 International Crisis Group, "Curbing Violence in Nigeria (III)", 6.



These include diplomatic pressure on the Nigerian government to demonstrate adequate political will to address the insurgency and to provide human rights training and appropriate equipment for the military.<sup>11</sup> This chapter examines the evolution of Boko Haram, human rights abuses by Boko Haram and soldiers troops, and how judicial intervention can be the best mechanism to curb religious extremism (Boko Haram) insurgency in Nigeria. The chapter also assesses negotiation as political alternative measure to halt Boko Haram atrocities in Nigeria and s finally highlighted humanitarian consequences of Boko Haram insurgency.

## EVOLUTION OF BOKO HARAM INSURGENCY IN NIGERIA

The menace of insurgency is not novel in Nigeria. The first known insurgency attempt in Nigeria was the movement to liberate the Niger Delta people led by Major Isaac Jasper Adaka Boro. On 23 February 1966, he declared the Niger Delta Republic and rebelled against the Federal Government. Their anger was on perceived exploitation and total disregard of the Niger Delta region.<sup>12</sup> Another case of insurgency in Nigeria was the Biafrans' attempt to secede from Nigeria because of perceived marginalisation. The group, led by late Colonel Odimegwu Chukwuemeka Ojukwu, declared the Republic of Biafra on 27 May 1967. This action led to Nigerian Civil War, known as the Biafran War, which was one of the most brutal wars witnessed on the African continent.<sup>13</sup> More than thirty years after the demise of Major Isaac Adaka Boro, there was a resurgence of armed protest against both the federal government and the multinational companies conducting oil exploration in the Niger Delta in the early 1990s. This insurgency, led by a human rights activist, Ken Saro-Wiwa, was decidedly unfocused as it targeted oil companies, the government and even the chieftains and their middlemen. The killing of Ken Saro-Wiwa led to a fully-fledged insurgency that claimed many lives and wanton destruction of properties. The insurgency lasted for months before then Nigerian President, Rtd Gen Olusegun Obasanjo, used military force to silence majority of them. Finally, late president Umaru Musa Yar'adua employed dialogue and granted amnesty to the militants to arrest the situation.

The most recent and appalling insurgency in Nigeria is the *Jama'atu Ahlil Sunna Lidawati Wal Jihad*, popularly known as Boko Haram. It is, without doubt, the most sophisticated and complex insurgency that Nigeria has ever experienced. In describing it, Mohammed Yusuf said that the first open challenge to government authority in this area was a tiny group of people who withdrew from the urban

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11 Meagher K. 2014. "Beyond Terror: Addressing the Boko Haram Challenge in Nigeria". NOREF Norwegian Centre for Conflict Resolution Policy Brief, 11 November.

12 Ngozi G, Egbue NG, Nwankwo IU and Alichie BO. 2015. "Curbing Boko Haram Terrorist Insurgence in Nigeria: Imperatives of Quadruple Action Package of Limited Military Response, Improved Social Services, Conflict Resolution Initiatives and Modified Pacifism", *British Journal of Arts and Social Sciences* 20(1):18.

13 Egbue et al., "Curbing Boko Haram Terrorist Insurgence in Nigeria".

landscape of Maiduguri to the rural Kanama in the Yunusari local government area of Yobe State in the North-Eastern Nigeria in December 2003. They referred to themselves as the Nigerian Taliban.<sup>14</sup> The militants launched attacks on police stations, government buildings and generally wreaked havoc on the Yunusari, Tarmuwa, Bosari, Geidam and Damaturu local government areas of Yobe State between 21 December 2003 and 1 January 2004.<sup>15</sup> Members of this group were mostly young people in their twenties. This was a very diverse group, which also included females assigned domestic chores such as cooking and fetching fire wood and water. Some of them were children of notable public figures, including a nephew of the then governor of Yobe State, a son of the secretary to Borno State government and five children of a local wealthy contractor.<sup>16</sup>

The primary internal causes of radicalisation leading to violent conflicts in the Northern Nigeria were the retreating state and declining economic fortunes of the 1980s consequent upon Structural Adjustment Programmes, which pauperised Nigerians.<sup>17</sup> These conditions and the mismanagement of the limited resources and crass display of wealth by the ruling class in the midst of widespread poverty are all conducive to anger and frustration, which were expressed in religious terms.<sup>18</sup> Frustrations caused by poverty and unemployment played a critical role in making some youths fall victim to the appeals of violent extremist ideologies.<sup>19</sup> Boko Haram mobilised and radicalised unemployed, unskilled and poverty-stricken youths to join its cause and dislodge the secular, Boko-controlled state in Nigeria. The sect believed that the solution was to overthrow the secular Nigerian state and introduce strict application of *sharia* as moral societal cleanser to effectuate the creation of an Islamic state devoid of corruption.<sup>20</sup>

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14 Interview with anonymous security officer who took part in the investigations at Kanama, Nigeria, 11 April 2010.

15 Kyari M. 2012. "The Message and Methods of Boko Haram", in Perouse Montclos M-A (ed). *Boko Haram: Islamism, Politics, Security and the State in Nigeria*, 12. Online at: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/23853/ASC-075287668-3441-01.pdf?sequence=1>

16 Nephew to Bukar Abba Ibrahim, Governor of Yobe State (1999–2007), now a serving Senator; son of Abba Gana Terab, Secretary to the Borno State government; and five sons of Alhaji Kamar Adam. Interview with anonymous security officer who took part in the investigation at Kamar, on 11 April 2010.

17 Adamu SH and Abba A. 2000. *The Living Conditions of the Talakawa and Sharia in the Northern Nigeria*. Zaria, CEDDERT.

18 Adamu and Abba, *The Living Conditions of the Talakawa and Sharia in the Northern Nigeria*.

19 Isa MK. 2010. "Militant Islamic Groups in Northern Nigeria", in Okumu W and Ikelebe A (eds). *Militias, Rebels and Islamist Militants: Human Security and State Crises in Africa*. Pretoria: Institute of Security Studies, 313-340.

20 Onuoha F. 2012. "Boko Haram and the Evolving of Salafi Jihadist, Threat in Nigeria", in Onuoha CF (ed). *Boko Haram: Nigeria's Extremist Islamic Sect*. Doha: Al-Jazeera Centre for Studies, 182.

## JUDICIAL INTERVENTIONISM AND CONFLICT MANAGEMENT

Conflict resolution can be conceptualised as the method and process employed in facilitating the peaceful ending of conflict situations and retribution as the essence and goal of the judiciary in any society including Nigeria.<sup>21</sup> The issue to be interrogated is whether the judicial intervention is imperative and whether the intervention is being explored to curb religious extremism. It should be appreciated that every conflict has a specific context, history and background which deserves to be acknowledged in resolving the conflict situation.<sup>22</sup> Often times, conflict resolution aims at finding a “win-win” solution or mutually satisfying standpoint for everyone involved.<sup>23</sup> Nonetheless, achieving such compromise can be very difficult. Even more so, direct communication between conflicting parties that overtly addresses issues at stake in the conflict can be perceived as very rude, making the conflict worsen and delaying resolution. Involving religious, tribal or community leaders, communicating indirectly through a third party and making suggestions through stories are some useful options in conflict resolution.

In contemplating solutions to terrorism, terrorists have been divided into absolute and traditional categories. In the absolute type, parties are not willing to enter into political discourse. Their demands are immediate, unconditional and universal, often using suicide attacks to draw attention to their issues like Boko Haram. In contrast, traditional terrorists focus mostly on ethnic and ideological courses, such as changing a specific political structure in a particular location.<sup>24</sup>

Notwithstanding that Boko Haram terrorist insurgency in Nigeria is a typical example of absolute terrorism with hidden leaders and unclear objectives, it must be emphasised that the effective appropriate strategy should be non-violent. Absolute reliance on the use of force is a less reliable approach to subdue terrorists.<sup>25</sup> It is in the light of the foregoing that the prospects of resolving Boko Haram terrorist insurgency in Nigeria are bright, provided that an appropriate, effective and broader set of conflict resolution strategies is applied. Such conflict resolution options will stimulate much desired peace and put Nigeria back on the path of socio-economic development.<sup>26</sup> In our view, one such mechanisms is to establish justice through the instrumentality of the law, judicialism and constitutionalism.

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21 Constitution of the Federal Republic of Nigeria, 1999, sec 6(6) provides for the powers of the judiciary in the resolution of disputes.

22 Obiajulu AO. 2011. “Social Conflicts: Determinants and Resolution Methods”, in Ezeah PC (ed). *Fundamental Issues in Sociological Studies*. Akwa: Fab Anieh.

23 Ury F and Rodger F. 1981. *Getting a Yes: Negotiating Agreement without Giving*. New York: Penguin Group.

24 Hayes RE, Kaminski Stacey RB and Steven M. 2003. “Negotiating the nonnegotiable: Dealing with Absolutist Terrorist”, *International Negotiation* 8(3):9-24.

25 Post JM, Ruby KG and Shaw ED. 2002. “The Radical Group in Context: Identification of Critical Elements in the Analysis of Risk for terrorism by radical Group Type”, *Studies in Conflict and Terrorism* 55:101-126.

26 Egbue et al., “Curbing Boko Haram Terrorist Insurgence in Nigeria”, 23.