

CHILD'S RIGHT TO EDUCATION IN ISLAMIC LAW: REFLECTIONS ON BOKO HARAM INSURGENCY

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ABSTRACT

Child access to education and protection of educational facilities are generally guaranteed under Islamic law. Parties to armed conflict, whether International Armed Conflict (IAC) or Non-International Armed Conflict (NIAC), are required to observe and protect child's right to education. This paper focuses on Child's right to education during Boko Haram conflict. The paper adopts a qualitative method of legal research. This involved analysis of existing literature and interviews. The paper observed that, the non-state armed groups adopted a disturbing method of deliberate attack on civilian's object and particularly, violation of child's right of access to education and educational facilities. This phenomenon has called for the need to strengthen the existing legal and institutional frameworks towards ensuring the accountability of non-state armed groups for human rights violations and the violation of the child's right to education. The paper concludes that, the conduct and method of warfare used by Boko Haram insurgents does not comply with mainstream

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Islam and therefore violates *Shari'ah*; child's access to education is a fundamental right and therefore guaranteed in Islamic law even during hostilities. Thus, it is recommended amongst others that, there is need for constructive dialogue with the armed groups within the confine of international humanitarian law and *Shari'ah* for positive sustainable child's capacity development.

Keywords

Child's Right, Education, Boko Haram, Islamic Law, International Humanitarian Law

1.0 Introduction

In armed conflict, some purposefully targets civilians and civilian objects. This is a form of aggression, in addition to other methods that include guerilla tactics in combat, often constitute a component of warfare and its strategies which has resulted in increased in the number of victims especially children.¹ Islamic law of Armed conflict contains the general notion that children are entitled to special respect and protection, in addition to the more general rules which apply to all persons (adult) in armed conflict.² Early historical precedents of the Islamic state since the seventh and eighth centuries indicates the use of norms and values in regulating the use of force during armed conflict and a diplomatic relationship between Islamic states and the enemy states (*Al-Siyar*).³

The term 'armed conflict' exists when there is armed violence between State Actors (the Government) and Non-State Actors (the Armed Groups) or an armed violence between such groups within a state.⁴ Armed conflict has a significant impact on children and impedes their development as a result of many factors that may hinder access to

¹ Khaled A. F, *Rebellion and Violence in Islamic Law*, (Cambridge University Press, Cambridge, 2006) p. 152

² Nasrin M, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts?" Vol. 8, Issue 1, (2011) *Muslim World Journal of Human Rights* p.

³ Ahmed A, *The Islamic Law of War: Justifications and Regulations*, (New York, Palgrave Macmillan, Vol. 2, Palgrave 2011) pp. 111–114

⁴ International Crisis Group, *Curbing Violence in Nigeria (II): The Boko Haram Insurgency* (Africa Report No. 216), 3 April 2014.

education because of closure of schools, insecurity, concomitant psychological effects and more. These circumstances have a very deep effect on children.⁵

Armed conflict destroys private and public infrastructure thereby affecting children's access to education. Islamic law of Armed conflict and other relevant International Humanitarian laws have directed for the legal protection of students, educational staff, and educational facilities in armed conflict.⁶ However, there are several obstacles to the realization of the right to education during armed conflict, such as lack of teachers and inadequate infrastructure. Gender-related violence is a specific barrier and a challenge for children in armed conflict that may prevent access to education.⁷

Boko Haram conflict has negatively affected Child's right to education in Borno, Yobe and Adamawa (BAY) states as a result of attacks on schools, students and their teachers.⁸ children have also been killed, abducted, displaced, forcefully conscripted, and internally displaced. Many children have sought refuge in neighbouring countries thereby disrupting their access to education.⁹ Based on this background, this paper examines Armed Conflict from Shari'ah perspective with emphasis on the child's right to education and its protection during armed conflict.

2.0 Background of Boko Haram Conflict

The precise date of Boko Haram's emergence in the polity and political life of Nigeria is marred in controversy.¹⁰ This is so because violent armed groups by their nature often originate in secrecy and the usual manner of learning about them is through unreliable media accounts.¹¹

⁵ Ibid

⁶ Nasrin M, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts?" op.cit p.

⁷ Ibid

⁸ Human Rights Watch, "They Set the Classrooms on Fire": Attacks on Education in Northeast Nigeria, April 2016.

⁹ Ibid

¹⁰ Adibe J 'What do we really know about Boko Haram' in I Mantzikos (ed) Boko Haram: Anatomy of a Crisis (2013) p. 11.

¹¹ Onuoha F.C 'Boko Haram: Nigeria's Extremist Islamic Sect' (2012) 2, Report Commissioned by Aljazeera Centre for Studies.

While most media accounts trace its origin back to 2002 when its activities became known, particularly with the emergence of Mohammed Yusuf as its leader, the group started as a non-violent religious group in Maiduguri, Borno State.¹² Of course, the group might have been operating in secrecy prior to 2002. However, the group become visible when its leader¹³ declared conventional education, democracy and its paraphernalia as *Haram* (sin) in 2002.¹⁴ Boko Haram is a non-State armed group, which operate in Nigeria and in the Lake Chad Basin region in general, notably in Cameroon, Chad and Niger.¹⁵ From 2002 to date the Boko Haram was tagged with different names that include *Yusufiyyah*, Taliban and Boko Haram. However, the group ascribed “*Jama’atu Ahlissunnah lidda’awati wal Jihad*” as its name (JAS).¹⁶ The word Boko Haram is a Hausa language which means western education is forbidden, and this is a pointer to one of the driving objectives of the group. However, the name Boko Haram was ascribed to the group by the mainstream media.¹⁷

After a four-day battle between Boko haram sect and the Nigerian security forces in 2009, Yusuf was captured and extra-judicially killed alongside more than 1,000 members of the sect in Maiduguri the Borno state capital.¹⁸ Some security experts believe that, the extra-judicial killing of Muhammad Yusuf is the major factor for the escalation of the insurgency and indeed, one of the immediate consequences was the fragmentation of the sect and the enthronement of the warmongers

¹² Ibid

¹³ Muhammad Yusuf

¹⁴ Abdulmumin, M.S. et al, *Moderation in Dialogue: An Alternative Narrative from Borno* (Wisdom Publishers, Abuja, 2019), pp. 7-15.

¹⁵ Ruth Maclean, “Boko Haram Launches Series of Attacks in North-east Nigeria,” *Guardian*, December 28, 2018, <www.theguardian.com/world/> accessed on 16th November, 2023.

¹⁶ Personal interaction with group of Borno Muslim Scholars. The name is widely reported and acknowledged by the group in mainstream media as well as the videos and messages usually released by the group.

R Loimeier ‘Boko Haram: The Development of a Militant Religious Movement in Nigeria’ vol.47 (2012) *Africa Spectrum*, pp. 2-3.

¹⁷ Murtada, A. (2013). *Boko Haram in Nigeria: It's beginning Principles and Activities in Nigeria*. Salafi Manhaj, <www.salafimanhaj.com/pdf/SalafiManhaj_BokoHaram> accessed on January 16th November, 2023.

¹⁸ Ojo E, ‘Boko Haram: Nigeria’s Extra-Judicial State’ (2010) 12 *Journal of Sustainable Development in Africa* p.13

within the sect, led by Abubakar Shekau.¹⁹ Abubakar Shekau assumed leadership of the sect after the 2009 incidence and the extra-judicial execution of Yusuf, the leader of the group. It was a turning point in the struggle and ideology of the group, as it became a rebranded violent group.²⁰ Scholars have described this turn as one 'from peaceful origin to violent extremism'.²¹ While Yusuf had sought to establish his 'Islamic State' through preaching the faith, Shekau on the other hand opted for violent as a means of Jihad.²² It is for this reason that, the official name of Boko Haram is *Jama'atu Ahlissunnah lidda'awati wal Jihad* (JAS) which comprises of the concept of Yusuf's idea of preaching the faith (Da'awa) and Jihad.²³

The group later broke apart and two prominent leaders emerged. Late Abubakar Shekau as leader of JAS while late Mamman Nur became the leader of the Islamic State in West African Province (ISWAP). The brutal massacre of humans and destructions of properties by BH/ISWAP fighters in the region for over a decade has unleashed untold hardship on innocent civilians. Particularly, women and children.²⁴ The massacre has denied children of their right of access to education thereby depriving them of capacity and mental development. The two groups BH/ISWAP would be referred to as BH in the subsequent parts of this paper.

The Office of the Prosecutor of the International Criminal Court (ICC), considers and declared Boko Haram conflict as a non-international armed conflict in 2013.²⁵ Furthermore, in 2015, the Global Terrorism Index declared Boko Haram "the deadliest terrorist group in the world"

¹⁹ Ibid

²⁰ 'Curbing violence in Nigeria (II): The Boko Haram Insurgency' International Crisis Group Report 216, April 2014, <www.crisisgroup.org/africa/west-africa/nigeria/> accessed on 3rd October 2023. p.1

²¹ Barna J, 'Insecurity in context: The Rise of Boko Haram in Nigeria' <www.europarl.europa.eu> accessed on 4th October 2023

²² 'Curbing violence in Nigeria (II): op.cit

²³ Barna J, 'Insecurity in context: The rise of Boko Haram in Nigeria' op.cit

²⁴ Ishaq, A. S. Paper Presented at the University of Maiduguri titled "The Impact of Borno Model in the Fight Against Terrorists in Borno State" on 24 October 2023, (Un-published). The Presenter is Brigadier General Abdullahi Sabi Ishaq (Rtd), Adviser to His Excellency, Professor Baba Gana Umara Zulum, The Executive Governor of Borno State on Security.

²⁵ International Criminal Court (ICC) Office of the Prosecutor, Report on Preliminary Examination Activities—2013, November 2013, paras 214-218.

and still classifies it among the four most violent groups.²⁶ However, Boko Haram attacked across the Northeast and beyond, and, at its peak, controlled significant territory, including parts of Borno, Adamawa and Yobe states.²⁷ It committed war crimes and crimes against humanity, including the murder of thousands of civilians, through bombings and other unlawful killings; widespread abductions, especially of girls, boys, and younger women; rape and other sexual violence; widespread attacks on schools; and recruitment and use of child soldiers.²⁸

The group's ideology is founded upon the principles that conventional education and all its paraphernalia including the present Nigerian governance structure is against the teaching of Shari'ah.²⁹ Boko Haram ideology considers non-members as infidels, unbelievers or wrongdoers. The translation of the name Boko Haram; western education is a sin, is one of the guiding philosophies of the group which challenge the concept of formal education and subsequently children's right to education in the region.³⁰

In 2013, the Nigerian military intensified its campaign against Boko Haram. Yet its indiscriminate tactics failed to degrade the group's capacity and deeply alienated the region's civilian population. A state of emergency imposed on Borno, Yobe, and Adamawa States only deepened the cycle of violence.³¹ In high-level statements and meetings, both the U.S. and European governments stressed the need to improve civilian protection and address the root causes of violence.³² Despite these warnings, the then Nigerian government pushed for more

²⁶ Ishaq, A. S. Paper Presented at the University of Maiduguri titled "The Impact of Borno Model in the Fight Against Terrorists in Borno State" on 24 October 2023, (Un-published).

²⁷ Barna J 'Insecurity in context: The Rise of Boko Haram in Nigeria' op.cit

²⁸ Ibid

²⁹ Opeloye M, 'The Boko Haram insurgency in Nigeria: A Critical Study of the Movement's Ideological Posture and Implications' (2012) 51 Doi: 10.7763/IPEDR 38 pp. 172-181.

³⁰ Onyebuchi E, and Chigozie C, 'Islamic fundamentalism and the problem of insecurity in Nigeria: The Boko Haram phenomenon' (2013) Vol. 15 IOSR Journal of Humanities and Social Science (IOSR-JHSS) Pp 43-53.

³¹ International Crisis Group, Facing the Challenge of the Islamic State in West Africa Province (Africa Report No. 273), 16 May 2019, pp. 1-3.

³² International Crisis Group, "Curbing Violence in Nigeria (II): The Boko Haram Insurgency," Op. cit p. 2

security assistance while downplaying the degree of dysfunction within the military and the worsening humanitarian crisis.³³

Boko Haram armed conflict affects the entire populace but it makes a special impact on children as a vulnerable group, thereby making them the most affected and major victims of the conflict.³⁴

Boko Haram ideological opposition to conventional education resulted in attack on educational facilities, which undoubtedly affect Nigeria's educational sector. Thereby limiting access to education.³⁵

3.0 Impact of Boko Haram Armed Conflict on Child's Access to Education

Adverse consequences are key identities of conflict, particularly during the period of the conflict and even after. It is described as anti-development.³⁶ The capacity of conflict to reverse gains of many years is well known, irrespective of whether the conflict continues for a lengthy period or not. The impact is graver and more severe in African countries, where the capacity to withstand the effect of conflict is stifled by mass poverty and underdevelopment.³⁷ The disruptive impact of armed conflict on education represents one of the greatest developmental setbacks for countries affected by conflict.³⁸ Boko Haram armed conflicts has vigorously impacted on child's access to education in a negative way.³⁹

The attacks by Boko Haram have led to the deaths of many students mostly children, the group invaded a government-owned boarding school in Mamudo village, Yobe state in July, 2013 where 42 people

³³ Ibid

³⁴ Ibid

³⁵ Opeloye M, 'The Boko Haram insurgency in Nigeria: op.cit pp. 172-181, Dan Murphy, "Boko Haram' doesn't really mean 'Western Education is a Sin', (2014) vol. 6 Christian Science Monitor, p.23, GCPEA, "I Will Never Go Back to School"; Report of the Secretary-General on children and armed conflict in Nigeria, 10 April 2017

³⁶ UNESCO commissioned report titled 'The Hidden Crisis: Armed Conflict and Education' (2011) <www.unesdoc.unesco.org/> accessed on 10 October, 2023 p. 131

³⁷ UN Doc A/51/306 (1996) 'Promotion and Protection of the Rights of Children: Impact of Armed Conflict on children' para 186.

³⁸ Ibid

³⁹ Ibid

lost their lives including students and teachers.⁴⁰ Also in February, 2014 Boko Haram insurgents invaded Federal Government College, Buni Yadi, Yobe State and gruesomely murdered about 59 students and burnt several buildings in the school.⁴¹ Another attack on school by Boko Haram is the abduction of over 200 Chibok girls from their school dormitory in 2014, some of which escaped while many remain in Boko Haram captivity to date.⁴² The Chibok girls abduction represented the largest single incident of abduction of students by Boko Haram. A Boko Haram suicide bomber entered a secondary school by disguising himself as a member of the school and killed about 47 school pupils and injured many others during their morning assembly.⁴³ Similarly, Boko Haram sect abducted more than 100 schoolgirls from Dapchi, another town in Yobe state.⁴⁴

A reports by UNICEF indicate that as a result of the incessant attacks on schools by Boko Haram, over 1.4 million children have been forced out of school.⁴⁵ Teachers have also been forced to stay away from school.⁴⁶ Many schools are forced to shut down and the deserted school buildings have been converted into shelters for internally displaced persons.⁴⁷ The children who were supposed to populate the schools have either sought refuge along with their families in neighboring countries or have been internally displaced.⁴⁸ Several schools have

⁴⁰ Nigeria: Boko Haram Attack on Yobe School, "You'll Burn in Hell", Jonathan Tells Sect <www.allafrica.com/stories/> accessed 8th November, 2023.

⁴¹ The Buni Yadi Students Massacre in Yobe State <www.sunnewsonline.com/new/buni-yadi-students-massacre-yobe> accessed on 8th November, 2023.

⁴² Chibok Abductions in Nigeria: "More than 230 seized" BBC News <www.bbc.com/news/world-africa> accessed on 13th November, 2023.

⁴³ Nigerian School Blast Kills Dozens <www.theguardian.com> accessed on 18th November, 2023.

⁴⁴ Busari & B Adebayo 'Most of kidnapped schoolgirls freed, Nigeria says' <www.edition.cnn.com/africa/nigeria-kidnapped-girls-boko-haram-intl/index.html> accessed on 30th November, 2023.

⁴⁵ Annual Report of the Secretary General: Children and Armed Conflict A/69/926-S/2015/409 (2015) para 235

⁴⁶ Atsua TG and Abdullahi U "Impact of Boko Haram Insurgency on Principals, Teachers and Students in Senior Secondary Schools in Borno State, Nigeria" (2015) Knowledge Review P. 1-8

⁴⁷ UNICEF Press Centre 2015 <www.unicef.org/media/media> accessed on 8th November, 2023.

⁴⁸ Children and Armed conflict: Report of the Secretary-General, UN Doc. A/73/907-S/2019/509, 20 June 2019, para. 211.

been burnt down in conflict affected areas of Borno, Adamawa and Yobe states, forcing several children out of formal education, which portends grave consequences for effective teaching and learning as a result of inadequacy of educational facilities.⁴⁹ Many schools in the BAY states, particularly in Borno state between 2013 and 2017, have closed down as a result of insecurity thereby stopping school age children from developing the educational skills that support future stability.⁵⁰ An educational needs study conducted in Northeastern Nigeria at the beginning of 2019 reported that 28% percent of the (260) school sites located in the area were destroyed by bombs or bullets, 32% percent had been robbed, 29% percent were near sites where terrorist groups or the military had their base and 20% percent were intentionally set ablaze.⁵¹

The Nigerian Demographic and Health Survey (NDHS)⁵² report showed that states of Borno and Yobe states which were being ravaged by Boko Haram, have the highest proportion of out-of-school Children.⁵³ Yobe State in particular had the worst rate among all the states in Nigeria in terms of school attendance for both male and female children in primary and secondary schools, with just 12 percent attendance.⁵⁴ A recent study conducted in some schools in Damaturu, the capital city of Yobe State, revealed that the insecurity in the region has caused a further reduction in school attendance.⁵⁵ Borno State has the most devastating experience since the Boko Haram insurgency, with a huge negative impact on basic education. Despite the ordinarily low primary and secondary school attendance level in the state to 35% and 28% percent respectively,⁵⁶ a recent study revealed that the

⁴⁹ AS Ekereke 'The effects of Boko Haram insurgency and the school system: A case study of selected states in Northern Nigeria' (2013) *Science Journal of Sociology and Anthropology* 1.

⁵⁰ Ibid

⁵¹ Ibid

⁵² 2013

⁵³ National Population Commission and ICF International Nigeria Demographic and Health Survey 2013 pp. 26-27.

⁵⁴ National Population Commission, ICF International, Nigeria Demographic and Health Survey Op.Cit p. 27

⁵⁵ UNICEF Press Centre 2015 Op.Cit

⁵⁶ Amnesty International, "Keep away from schools or we'll kill you": Right to education under attack in Nigeria (Index: AFR 44/019/2013)

insurgency has affected basic education, as school attendance has been drastically reduced owing to attacks on schools.⁵⁷

In Borno State alone BHT/ISWAP fighters have destroyed over N1.9 trillion worth of properties. In which educational facilities takes the highest share of destruction. Such include 5,000 classrooms, 800 villages, 201 health facilities, 1630 water facilities and 728 power distribution stations and transformers. Also, over 800 public structures such as offices, prison, police stations and other structures were destroyed.⁵⁸

4.0 Child's Right to Education Under the Conventional Legal Instruments

The Universal Declaration of Human Rights (Universal Declaration)⁵⁹ lays the template and serves as guiding principles for many other subsequent instruments that include binding provisions on the right to education.⁶⁰ Universal Declaration places the right to education at the forefront of the promotion and protection of other rights. Not only does it provide that 'everyone has the right to education,⁶¹ but it further provides that 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms'⁶²

Primarily, the right to education in armed conflict is protected under international humanitarian law, which consist of Fourth Geneva Convention and its two Protocols.⁶³ Additional Protocol I to the Fourth Geneva Convention provides that; "Children shall be the object of special respect and shall be protected against any form of ... assault.⁶⁴ In the same vein, Additional Protocol II to the Geneva Conventions

⁵⁷ Ibid

⁵⁸ Ishaq, A. S. Paper Presented at the University of Maiduguri titled "The Impact of Borno Model in the Fight Against Terrorists in Borno State" on 24 October 2023, (Un-published).

⁵⁹ Adopted by UN General Assembly on 10 December 1948

⁶⁰ Dada J, 'Human rights under the Nigerian Constitution: Issues and problems' (2012) Vol. 2 International Journal of Humanities and Social Science, p. 12

⁶¹ Article 26(1) Universal Declaration of Human Right 1948

⁶² Article 26(1) Universal Declaration of Human Right 1948

⁶³ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 1949 and its two additional Protocols of 1977

⁶⁴ Article 77(1) of Additional Protocol I

states in respect of children that; “They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care”.⁶⁵ Additional Protocol II further provides among its fundamental guarantees of children rights that; “The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason”.⁶⁶

The protection of education during armed conflict, however, is not limited to the Geneva Convention and its Protocols. The same protection can be seen from other provisions in certain instruments relating to international humanitarian law and international human rights law. The Convention on the Rights of the Child (CRC)⁶⁷ enshrines the rights, among many others, to education, to the highest attainable standard of health, to protection from physical or mental violence, to protection from arbitrary detention, and to protection from torture and other ill-treatment.⁶⁸ In situations of armed conflict, it requires states parties ‘to respect the rules of international humanitarian law in armed conflicts, which are relevant to the child,⁶⁹ and to take all feasible measures to ensure the protection and care of children who are affected by armed conflict’.⁷⁰

Equally, special considerations for children include “Protection against all forms of violence including access to education,⁷¹ and evacuation from areas of combat for safety reasons.”⁷²

⁶⁵ Article 4, Paragraph 3 (a), of Additional Protocol II to the Geneva Conventions

⁶⁶ Article 4(3) Additional Protocol II to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts 7 December 1978,

⁶⁷ Adopted by the UN General Assembly in 1989.

⁶⁸ Articles. 24, 28, and 37 Convention on the Rights of the Child (CRC), Nigeria ratified the CRC on 19 April 1991.

⁶⁹ Articles 38 (1) Convention on the Rights of the Child (CRC) op.cit

⁷⁰ Articles 38 (4) Convention on the Rights of the Child (CRC) op.cit

⁷¹ Rule 59 of Customary International Humanitarian law (IHL) volume I (rules) of the ICRC’s study on customary IHL, originally published by Cambridge University Press in 2005

⁷² Rule 129 (b) chapter 39 (b) of Customary International Humanitarian Law (IHL), International Committee of the Red Cross (ICRC), study on Customary IHL, originally published by Cambridge University Press in 2005.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict which Nigeria has ratified, requires states to ensure their armed forces not to have compulsory recruitment of children and take all feasible measures to ensure children are not used in hostilities and to protect them from being conscripted or use by armed groups.⁷³

The Rome Statutes of the International Criminal Court (ICC) also prohibits intentionally directing attacks against educational facilities and buildings dedicated to education provided they are not military objectives.⁷⁴ Attacks on students, educational staff, and educational facilities in armed conflict are prohibited.⁷⁵

The International Labour Organisation (ILO) Convention⁷⁶ on Child Labour also provides that attacks on schools, abduction of students and conscription of children for use in armed conflict is a gross violation of the Convention .⁷⁷

The International Covenant on Economic, Social and Cultural Rights (ICESCR), also provides for the right to education, which has been interpreted as protecting the right to education even during armed conflict.⁷⁸ The ESCR Committee declared that ‘The obligation to protect requires state parties to take measures that prevent third parties from interfering with the enjoyment of the right to education’.⁷⁹ Third parties here include non-state armed groups.

The African Charter on the Rights and Welfare of the Child (ACRWC)⁸⁰ contains a similar provision and requires that children

⁷³ Articles 1- 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (CRC-OP-AC), signed by Nigeria in 2000 and ratified on 25 September 2012.

⁷⁴ Article 8(2)(e)(vii) of the Rome Statutes of the International Criminal Court (ICC) ratified by Nigeria on 27 September 2001.

⁷⁵ Ibid

⁷⁶ No. 182

⁷⁷ Article 3(a) of the ILO Convention 182 on Child Labour

⁷⁸ Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

⁷⁹ ESCR Committee General Comment 13

⁸⁰ Is the regional treaty in Africa on the child’s rights,

must be protected from abuse and from participating in hostilities.⁸¹ It further, provides that “the best interests of the child shall be the primary consideration”.⁸² It has provided for most of the rights guaranteed by the global legal instruments during armed conflict and for displaced children.⁸³

Fundamental Objectives and Directive Principles of State Policy as provided by chapter II of the Constitution of Federal Republic of Nigeria (CFRN)⁸⁴ contains provisions on the right to education and other socio-economic rights known as non-justiciable rights.⁸⁵ Such cannot be enforced by citizens or legally hold the government accountable for its violation.⁸⁶ However, Federal High Court held that chapter II of the Nigerian Constitution which provides on right to education is enforceable.⁸⁷ Equally, The Court gave similar verdict in the case of Legal Defence and Assistance Project (LEDAP) v The Federal Ministry of Education.⁸⁸ The Court is of the view that the combined effect of sections 18(3)⁸⁹ and 1⁹⁰ is that the right to basic education is enforceable in Nigeria.

The Nigeria's Child Rights Act⁹¹ also guarantees the right to “free, compulsory and universal basic education,”⁹² in addition to protection from abduction,⁹³ forced labour,⁹⁴ and taking part in military

⁸¹ Article 22 of the African Charter on the Rights and Welfare of the Child (ACRWC), Nigeria ratified the on 23 June 2001.

⁸² Article 2 and 4 of the African Charter on the Rights and Welfare of the Child (ACRWC), Nigeria ratified the on 23 June 2001.

⁸³ Articles 22, 23 and 25 of the African Charter on the Rights and Welfare of the Child (ACRWC)

⁸⁴ 1999

⁸⁵ Dada J ‘Human rights under the Nigerian Constitution: Issues and problems’ (2012) op.cit p.45

⁸⁶ Sec 6(6)(c) of the Constitution of the Federal Republic of Nigeria.

⁸⁷ See the case of Odafe & Others v Attorney-General & Others (2004) AHRLR 205 (NGHC 2004)

⁸⁸ FHC/ABJ/CS/978/15 (Unreported)

⁸⁹ Constitution of Federal Republic of Nigeria, 1999

⁹⁰ Compulsory Free Universal Basic Education Act, 2004

⁹¹ 2003

⁹² Section 15 Nigeria's Child Rights Act (2003)

⁹³ Section 27 Nigeria's Child Rights Act (2003)

⁹⁴ Section 28 Nigeria's Child Rights Act (2003)

hostilities.⁹⁵ The Child Rights Act calls for state governments to “safeguard and promote the welfare of the children in need.” The word “in need” in the section was defined “to include children with disabilities and those who are “internally displaced or otherwise in especially difficult circumstances”.”⁹⁶

Compulsory, Free Universal Basic Education Act⁹⁷ requires all tiers of government in Nigeria to provide free, compulsory and Universal basic education for every child of primary and junior secondary school age. This accounts for nine years of schooling and must be free as name of the Act suggests.⁹⁸

5.0 Child’s Rights to Education under Islamic Law

Knowledge is not only significant in Islamic law, but it is mandatory upon every Muslim to seek and acquire knowledge. The Prophet, peace and blessings of Allah be upon him, was reported to have said that “seeking knowledge is compulsory upon every Muslim.”⁹⁹ Therefore right to education under *Shariah* is not only a simple right, but an obligatory duty upon the parent, community and the government to prepare and provide conducive learning environment for their children to earn a better education.¹⁰⁰ Islam has placed a high premium on knowledge seeking and knowledge (*‘ilm*) occupies a significant position. Thus, Allah said: “Say, ‘How can those who know be equal to those who do not know?’ Only those who have understanding will take heed.”¹⁰¹

Muslim scholars are unanimous that pursuit of knowledge of the religion is obligatory upon every Muslim in order to worship Allah in accordance with His commands. They also stated that acquisition of

⁹⁵ Section 34(2) Nigeria’s Child Rights Act (2003)

⁹⁶ Schedule 7 (10) (a) (iii) of Nigeria’s Child Rights Act (2003)

⁹⁷ Compulsory, Free Universal Basic Education Act, 2004

⁹⁸ Sections 2-3 of Compulsory, Free Universal Basic Education Act, 2004 See also Universal Basic Education Commission (UBEC), “Who We Are,” accessible at <https://www.ubec.gov.ng/about/who-we-are/>.

⁹⁹ Reported by Abu Sa’eed Al-Khudry, Al-Jami’ Al-Sagheer No. 5246, Al-Tabrany in Mu’jam Al-Ausat No. 8567 and Al-Baihaqi No. 1667, Tirmidhi No. 2785, Hadith No. 1365, < www.fiqh.org > accessed on 3rd November, 2023

¹⁰⁰ D Olowu. Protecting Children’s Rights in Africa: A Critique of the African Charter on the Rights of the Child. (2002) The International Journal of Children’s Rights, p.72

¹⁰¹ Qur’an: chap 39 verse 9

non-religious knowledge can either be obligatory, recommended, permissible, disliked or forbidden. All types of knowledge critical for the survival needs of a just society are considered essential and its acquisition a collective religious obligation on Muslims.¹⁰²

Based on the foregoing authorities from the Qur'an and Sunnah together with the consensus of Muslim scholars on the importance of seeking knowledge generally, Islamic law of armed conflict prohibits deliberate and intentional attack on civilian objects including schools, hospitals and other vital infrastructure in conflict situation be it International or Non-International Armed Conflict. Detailed rules developed by classical Muslim jurists in the context of the wars of the seventh and eighth centuries provide for the protection of civilians, civilian objects and educational facilities.¹⁰³

Islamic law addresses the need and importance of access to education generally, Islamic law of Armed conflict on the other hand, provide for the protection of right to education in conflict situation.¹⁰⁴ It prohibits attack on schools, students, teachers and other education facilities during armed conflict or become subject of target, unless and for such time as they directly participate in hostilities or become a military objects.¹⁰⁵ Even in such situation all feasible precautions must be taken to avoid or minimize harm and destruction because, attacks expected to cause excessive harm to civilians and civilian objects are prohibited.¹⁰⁶ Parties to an armed conflict have obligations to take all feasible precautions to protect the civilian population (including students and teachers) and civilian objects under their control (such as schools) against the effects of attack.¹⁰⁷

The scenario demonstrated by the prophet, may the peace and blessings of Allah be upon, with *Quraish* in handling the captives of *Badr* is

¹⁰² This was put forward by Imam al-Nawawi when he said; whatever that is not a religious knowledge but Muslims need it for their worldly subsistence, such as medicine and mathematics, are considered as collective obligations (fard kifayah).

¹⁰³ Saleem M, "Islam and International Humanitarian Law", (2003) Vol. 15, Sri Lanka Journal of International Law, p. 26

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Nasrin M, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts?" op. cit P.

worth emulating in the period of hostilities. The captives bailed themselves out by teaching unlettered Muslims as compensation for their freedom.¹⁰⁸ Some narrations stated that each captive is to teach ten Muslim's children as compensation for freedom. Muslims selected in Madinah at that time to be benefit from such gesture for the freedom of *Badr* captives include children. However, the number of children specified could neither be verified nor authenticated.

Attack on civilians and civilians' formations during hostilities and in conflict zones is not allowed. It attracts sanctions. Educational facilities and places of worship are part of such exemptions. In observing this, Islamic law requires absolute compliance by preserving such institutions and all its paraphernalia, and attachments. This include students, teachers and other support staff of the institution.¹⁰⁹

Major Islamic International conventions on human right has this to say on the provision and protection of education and educational facilities in armed conflict. Cairo Declaration on Human Rights in Islam (1990), provides that right to education is a duty for society and the State.¹¹⁰ The Cairo Declaration on Human Rights in Islam further makes provision on the right of a Child including right to education in the following;

Every child shall have, without discrimination of any kind, irrespective of his or her parent's or legal guardian's race, color, sex, language, religion, sect, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, the right to such measures of protection as are required by his status as a minor, including nursing, education as well as material, and moral care, on the part of his family, society and the State.¹¹¹

¹⁰⁸ Reported by Imam Ahmad in Musnad and Al-Baihaqi, Ibn al-Qayyim S. A. M. Zad Al-Ma'ad Vol.II (Al-Qudus, Cairo, 2008) P. 273.

¹⁰⁹ Al-Garyani, A. A. Mudawwanatu Al-Fiqhu Al-Maliki Wa Adillatuhu Vol.II (Dar Ibn Hazm, Beirut, 2015) Pp.833-838

¹¹⁰ Article 9 paragraph (a) and (b) of Cairo Declaration on Human Rights in Islam (1990)

¹¹¹ Article 7 paragraph (a) and (b) of Cairo Declaration on Human Rights in Islam (1990)

In the same vein, the Rights to Education for Children in Islam was accepted by the Organization of the Islamic Conference (OIC) in 2005, under the Rabat Covenant on the Rights of the Child in Islam which reaffirms the States Parties' commitment to the provision of free compulsory primary education for all children on equal footing so as to allow him or her to contribute fully in the society.¹¹² Another relevant provision of Rabat covenant makes it mandatory upon the states parties to develop education through enhancement of school curricula, training of teachers, and providing opportunities for vocational training.¹¹³ The covenant also makes special provision for the protection of children at risk, such as children in conflict areas,¹¹⁴ by not involving them in armed conflicts or wars.¹¹⁵

Similarly, the declaration recognized the need for fair treatment of civilians and civilian objects including Students, Teachers and school facilities during situations of war and armed conflict subject to national legislation and obligations of member states under international and regional human rights treaties. The Cairo Declaration provides in the following.

Everyone has the right to exercise and enjoy the rights and freedoms set out in the present declaration, without prejudice to the principles of Islam and national legislation.¹¹⁶and also Nothing in this declaration may be interpreted in such a way as to undermine the rights and freedoms safeguarded by the national legislation or the obligations of the Member States under international and regional human rights treaties as well as their sovereignty and territorial integrity.¹¹⁷

Both Islamic law of Armed conflict and International Humanitarian Law (IHL) identify children as a category of persons who are placed at particular risk and are entitled to special respect and protection, in addition to the more general rules which apply in situations of armed

¹¹² Article 12(2) (i) of the 2005 Rabat Covenant on the Rights of the Child in Islam

¹¹³ Article 2(4) of the 2005 Rabat Covenant on the Rights of the Child in Islam

¹¹⁴ Article 16 of the 2005 Rabat Covenant on the Rights of the Child in Islam

¹¹⁵ Article 17(5) of the 2005 Rabat Covenant on the Rights of the Child in Islam

¹¹⁶ Article 25 paragraph (a) of Cairo Declaration on Human Rights in Islam (1990)

¹¹⁷ Article 25 paragraph (b) of Cairo Declaration on Human Rights in Islam (1990)

conflict. It's based on that the Cairo Declaration on Human Rights in Islam and Rabat Covenant on the Rights of the Child in Islam allowed for the applicability of Humanitarian principles and norms contained in IHL in protecting and safeguarding the rights of all persons including but not limited to non-combatants, older persons, persons with disabilities, women, children, civilians, journalists, humanitarian workers and prisoners of war in situations of armed conflicts.

6.0 CONCLUSION

This paper examined the legal framework for the protection of child's right to education during emergencies and armed conflicts under Islamic International law. The analysis is narrowed down to Boko Haram conflict and its impact on child's right to education. The paper examined the historical antecedents of Boko Haram and its ideological beliefs that to the massacre. Human rights violations in general and the violation of the child's right to education which were perpetrated by the Boko Haram were explored. The paper concludes that, the conduct and method of warfare used by Boko Haram insurgents does not comply with mainstream Islam and therefore violates Shari'ah; child's access to education is a fundamental right in Shari'ah and therefore guaranteed under Islamic law even during hostilities.

Thus, it is recommended that, the existing legal and institutional frameworks that guarantees child's right to education generally and during armed conflicts need to be strengthen towards ensuring the capacity and mental development of a child for positive sustainable peace and development; the need for legal framework for constructive dialogue with the armed groups within the confine of international humanitarian law and Shari'ah for positive sustainable child's capacity development; government at all levels need to take necessary action against anything that hinders child's access to education; devote the maximum available resources to education.