

THE PROTECTION OF CIVILIANS IN ARMED CONFLICTS: A CASE STUDY OF BOKO HARAM INSURGENCY

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ABSTRACT

International Humanitarian Law (IHL) plays a very important role in all armed conflicts. It dictates the means and methods of warfare and protects the innocent civilians from the effects of hostilities. Despite being protected by IHL, civilians in the Boko Haram armed conflict continued to be at risk of being directly targeted. This resulted from the failure of parties to the Boko Haram armed conflict to observe the basic IHL principles protecting civilians in armed conflicts. It is against this background that the research examined the laws protection of civilians in the Boko Haram armed conflict. It also gave an overview of who a civilian is in an armed. The research relied on doctrinal methodology. This methodology assisted in appraising the relevant literature on principles of law applicable to armed conflicts. The research revealed amongst other things that parties to the Boko Haram armed conflict have not been observing the basic IHL rules protecting civilians in the armed conflict.

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This has resulted in the wanton killings of civilians not taking a direct part in hostilities, destruction of civilian's properties and the displacement of many civilians. The research recommended that adequate and prompt steps should be taken by the government to compensate the victims and families of the victims of the Boko Haram armed conflict.

Keywords: Boko haram, Nigerian security forces, IHL, civilians, Geneva Conventions e.t.c.

1. Introduction:

During armed conflict, civilians and combatants who are rendered *hors de combat* (out of combat) are entitled to a specific protection under International Humanitarian Law (IHL). IHL requires parties to an armed conflict to at all times distinguish between civilians and combatant, and between civilian objects and military objectives. Attacks should be directed only against combatants and military objectives and constant care should always be taken to protect the innocent civilians who are not taking a direct part in hostilities.

Boko Haram armed conflict has been of recent times one of the most deadly armed conflicts. The conflict has raised serious issues with regards to the protection of civilians and their properties, which is one of the principles of IHL. From 2009, when the conflict started to 2015 alone, the conflict has claimed many lives, properties worth millions of naira destroyed and millions of civilians have been displaced. This resulted from the failure of the parties to the conflict to observe the IHL principles in the armed conflict. It is important to mention that, Nigeria is a State party to the four Geneva Convention of 1949 and their Additional Protocol of 1977 and has also domesticated the convention. Nigeria is also a State party to the Rome Statute of the ICC (International Criminal Court). As such, the ICC has jurisdiction over crime (as prescribed by its Statute) committed on Nigerian territory or by Nigerian Nationals from 1st July 2002 onwards. In a situation of non-international armed conflict, (such as the Boko Haram armed conflict), Nigeria is bound by

its obligations under the aforementioned treaties. All parties to the conflict, including Boko-Haram are bound by rules of international humanitarian law.²

2. Boko Haram Armed Conflict and the Threshold of an Armed Conflict

An armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.³ There are two distinct types of armed conflicts recognized by International Humanitarian Law (IHL), these are; International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC). IACs are defined as those conflicts in which at least two states are involved, while NIAC often involves internal armed conflict restricted to the territory of a single state and involves at least one armed non-state actors (ANSA).⁴ In case of an International armed conflict, the threshold for it to exist is very low. It exist whenever two or more states recourse to armed force against another regardless of the reasons of intensity of this confrontation.⁵ While in the case of a Non-International Armed Conflict there are two aspects for determining its existence, these are; intensity of the armed conflict and organization of the parties.

The criteria for determining the intensity of an NIAC includes the seriousness of attacks and whether there has been an increase in armed clashes, the spread of clashes over a territory

² Amnesty International, 'Nigeria: more than 1,500 killed in Armed Conflict in North Eastern Nigeria in Early 2014' 2014 *Amnesty International Publications*, at P. 24

³ Abdulalli, I., 'Observance of the Legal Protections for Women in Armed Conflicts: A Terrible Beauty?' (2014) Vol.2:2) *International Journal of Peace and Conflict Studies* (IJPCS) at P.46

⁴ Dayana, J., 'International Humanitarian Law Applicability to Armed Non-State Actors' A Graduate Paper of Faculty of Law University of Stockholm. At Pp. 26-36

⁵ ICRC, 'How The Term "Armed Conflict" Defined in IHL' (2008) *International Committee of the Red Cross Opinion Paper* at P.1

and over a period of time, any increase in the number of governmental forces and mobilization and the distribution of weapons among both parties to the conflict, whether the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed.⁶ While on organization, factors that determines the organisation of armed groups include; factors signifying the presence of a command structure, factors indicating that the group can carry out organised operations, factors indicating a level of logistics, factors relevant to determining if the group possessed a level of discipline and the ability to implement IHL.⁷ In May 2013, the office of the Chief Prosecutor (OTP) states that the ongoing confrontation between the Nigerian security forces and the Boko Haram has reached the threshold of NIAC.⁸ The OTP's conclusion is based on the examination of whether the two contextual requirements for NIAC have been met, these requirements are; (i) intensity of the conflict and (ii) organisation of Boko Haram. In considering these requirements, the OTP has apparently analysed a set of criteria that broadly reflects those set out by the appeal Chamber in the *Tadic's* case.⁹ With respect to the level of intensity of the armed confrontation between Boko Haram and Nigerian security forces, the OTP has analysed over 200 incidents that have occurred between July 2009 and May 2013. The OTP assessed the intensity, sustainability, seriousness, geographical spread, number of personnel involved on the side of Boko Haram and Nigerian military, movement of arms and frequency of attacks by the Boko Haram in the North-Eastern Nigeria, as well as the declaration of a state of emergency in some states, a surge for

⁶ *Prosecutor V Boskoski* (2008) ICTY No.IT-04-82-T

⁷ Haruna, A, L., 'Defining the Libyan Crisis: International or Non-International Armed Conflict or Internationalized Internal Armed Conflict?' (2010) Vol. 2 No1 *Bayero University Journal of Public Law* at P.123

⁸ Fortin, K., 'Does the Conflict Between Boko Haram and Nigerian Security Forces Amount to A Non-International Armed Conflict' available at <<http://www.armedgroups.internationalallaw.org/2013/12/06/does-the-violence-between-boko-haram-the-Nigeriansecurity-forces-amount-to-a-non-international-armed-conflict/>> Accessed on 5/9/15

⁹ Ibid. see also *Prosecutor V Limaj* (2005) case No.IT-03-66-T, Judgment (Trial Chamber) para 84

foreign troops, and the extent to which the situation has attracted the attention of the UN Security Council.¹⁰ The Boko Haram armed conflict has satisfied the requisite of an NIAC, hence the application of IHL. It is worthy of note that Nigeria has ratified the Geneva Conventions and the two Additional Protocols. Nigeria is bound by its obligations under these laws to protect the civilians in the Boko Haram armed conflict from the effects of the conflict.

3. Who is a Civilian in An Armed Conflict?

Civilians in an armed conflict are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians.¹¹ The term ‘civilian’ covers all non-combatant persons.¹² In other words, all those who are not members of the armed forces are civilians. In circumstances where civilians take part in armed conflict as irregulars, who illegally take up arms, they should be considered as civilians during the time that they do not actively participate in the armed conflict as irregular combatants.¹³ In cases where there is doubt as to the civilian or non-civilian status of a person, the person should be presumed civilian.¹⁴

¹⁰ The Will, ‘Boko Haram: International Criminal Court Declares Conflict as Civil War’ <available at <https://www.Thewillnigeria.com/news/boko-haram-international-criminal-court-declares-conflict-as-civil-war/>> accessed on 16\11\2016

¹¹ Henckaerts JM, Beck LD, *Customary International Humanitarian Law: Volume I: Rules* (Cambridge, Cambridge University Press, 2000) at P.17

¹² Article 50(1) of the Additional Protocol I to the Geneva Convention (herein after Additional Protocol I)

¹³ Kolb, R, and Hyde, R, *An Introduction to the International Law of Armed Conflicts* (USA, Hart Publishing, 2008) at P.223. see also Article 4 of The Geneva Convention IV of 1949; *Prosecutor V Brdjanin* (2004) Trial Judgment IT-99-36-T para 125

¹⁴ Ibid. see also Article 50 (1) of the Additional Protocol I to the Geneva Convention (herein after Additional Protocol I)

In its judgment in the *Blaskic case*, the International Criminal Court (ICTY) defined civilians as “persons who are not, or no longer, members of the armed forces”¹⁵

In non-international armed conflict, civilians are those who are not members of the armed forces. Excluded from this category of civilians are persons who take direct part in hostilities individually or as members of an organised armed group.¹⁶

In the *Kayishema* case, the International Criminal Tribunal for Rwanda (ICTR) trial chamber opined that “a wide definition of civilian is applicable and, in the context of the situation of Kibuye prefecture where there was no armed conflict, includes persons except those who have the duty to maintain public order and have the legitimate means to exercise force. Non-civilians would include, for example members of FAR (forces armées rwandaïses), the RPF (Rwandan Patriotic Front), the police and the gendarmerie nationale.”¹⁷

Civilians benefit from protection associated with their status. IHL generally provides that they are protected from dangers arising from military operations and are not to be the object of an attack. Even where they are not directly the object of an attack, their proximity to a valid military objective may result in it not being attacked if the civilian casualties would be excessive in relation to the military advantage to be granted. Civilians enjoy this protection until and for such time as they take a direct part in hostilities.¹⁸ During the Boko Haram armed conflict, civilians despite being protected by IHL were deliberately being targeted by both the Nigeria security forces and Boko Haram. Boko Haram deliberately attack innocent civilians in their houses, mosques, markets, and sometimes through suicide attacks. There are also campaign of sexual

¹⁵ Ibid, at P. 18

¹⁶ Tsagourias, N, ‘Amicus Curiae for International Co-Investigating Judge 2016, the University of Sheffield, School of Law.at P. 4

¹⁷ *Prosecutor V Kayishema* (1999) Case No. 95-1, Trial Chamber Judgement.

¹⁸ Watkin, K, W, ‘Combatant, Unprivileged Belligerent and Conflict in the 21st Century’. 2003 Harvard Program on Humanitarian Policy and Conflict Research. At P. 13

violence against women and young girls.¹⁹ Boko Haram directly attack civilians and civilian property. In May 2014 for instance, Boko Haram attacked Gamboru in Ngala local government of Borno State and killed four hundred civilians. While in August 2014, Boko Haram attacked Gwoza local government and killed atleast six hundred civilians.²⁰ In July 2015, Boko Haram has killed more than 120 civilians in another raid on Kukawa town in Borno State. Suicide bomb attacks were also deployed by Boko Haram. These suicide bomb attacks killed and injured many civilians across the North-eastern Nigeria. Boko Haram use young girls and women as suicide bombers in most of the incidents of suicide attacks. They routinely targeted locations of civilian objects such as civilian houses, markets, schools, transport hubs, and places of worship.²¹

The Nigerian security forces on the other hand, extra-judicially execute innocent civilians, torture them, and unlawfully detain them. During raids in communities aftermath Boko haram attacks, the Nigerian security forces set ablaze houses, shops, cars and unlawfully arrest innocent civilians, and in some cases execute them in front of their houses or shops.²² These incidents happened in some part of Maiduguri and in some local government area in Borno state. In July 2011, for instance, more than forty civilians were killed (including a staff of University of Maiduguri) at Kaleri ward of Maiduguri. Houses of civilians were also burnt. While in Budum area of Maiduguri twenty-three civilians were killed and the Budum Market was burnt down. There are numerous cases of such incidents at Zannari

¹⁹ Diram, A, H, and Diram, B, H, 'Protection of Civilians in Armed Conflict: Can Victims of Boko Haram Benefit? *University of Maiduguri Law Journal* at P.119

²⁰ Ibid, at P.4

²¹ Amnesty International, 'Boko Haram: Bombing Campaign Sees Civilian Death Spiral' (2015) Amnesty International Publication, at P.2. see also Amnesty International, 'Boko Haram: Civilians Continue to be at Risk of Human Right Abuses by Boko Haram and Human Right Violations by State Security Forces' (2015) A Written Statement to the 30th Session of the UN Human Rights Council, at P.2

²² Human Rights Watch, 'Spiraling Violence: Boko Haram Attacks and Security Forces Abuses in Nigeria' (2012) *Human Rights Watch*, P.59

ward, Gwange ward, Dala Alamderi, Bulumkuttu, and Baga fish Market.²³

Civilian's objects are not also spared. A large number of civilian's properties comprising of houses, shops, Mosques, schools e.t.c. were destroyed.²⁴ States have an obligation to respect and protect the right to life of individuals under their jurisdiction from attacks by armed groups and counter insurgency operations of its armed forces. This includes taking measures to prevent the commission of offences, promptly, thoroughly and independently investigate human rights abuses and IHL violations and prosecuting those found responsible, providing adequate and effective remedies, and preventing the recurrence of violations.²⁵

4. The Legal Framework Protecting Civilians in the Boko Haram Armed Conflicts

Nigeria is a state party to the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, the principal IHL instruments.²⁶ Nigeria has also domesticated the Geneva Convention. In a NIAC, such as the Boko Haram armed conflict, the parties to the conflict are bound to comply with the norms contained in the above IHL instruments.²⁷ Other laws protecting civilians in armed conflicts include; Human Rights law and Islamic law.

²³ Mohammed, K., 'The Message and Methods of Boko Haram' De montclos, P, M., eds. *Boko Haram: Islamism, Politics, Security and the State in Nigeria* (Leiden, African Studies Centre, 2014), at Pp. 26-27

²⁴ United Nations Human Rights Council, 'Violations and abuses committed by Boko Haram and the impact on human rights in the countries affected' (2015) *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General* at P10

²⁵ Ibid at P.11

²⁶ Amnesty International, op.cit, at P.24

²⁷ Ibrahim, M., 'Counter-Insurgency: Is Human Right Distraction or *Sine qua non*? 2015 A Paper Presented at the 55th session of the Nigerian Bar Association Annual Conference. Held at International Conference centre, Abuja. At P.3

The Article 3 Common to the Four Geneva Conventions

The Article 3 common to the four Geneva Conventions apply to all armed conflict not of an international character. The Article is called the Common Article because it has the same text in all the four Geneva Conventions of 1949.²⁸ The article contains minimum rules for the conduct of hostilities and thus constitute a mini-convention for NIACs. The International Court of Justice (ICJ) reinforced this view by stating that the rules in Article 3 reflects elementary considerations of humanity applicable under customary international law to any armed conflict.²⁹ The provisions of the Article 3 common to the Geneva Conventions stipulates humane treatment and care of civilians as well as combatants no longer taking part in hostilities, and prohibits acts that are degrading, violent, and humiliating.³⁰ In other words, it uphold the principle of humanity without adverse distinction, i.e all civilians and *hors de combat* should be treated humanely without discrimination on the basis of colour, race, sex, religion, birth, wealth.³¹ It also prohibits the passing of sentences and the carrying out of execution without judgement being provided by a regularly constituted court providing all judicial guarantees recognised as indispensable. It also imposes an obligation on the parties to collect the wounded and sick and care for them.³² The purpose of the Common Article 3 was therefore, to ensure respect for the few essential rules of humanity which civilised nations consider as valid everywhere and under all circumstances.³³ The rules in

²⁸ Kolb, R., and Hyde, R., op.cit at P.261

²⁹ Omoruyi, I, O., and Fenemigho, A, I., op.cit at P.25. see also *Nicaragua v United States* (1986) ICJ Reports at Para-218-219

³⁰ Lindstrom, F, 'Asymmetric Warfare and Challenges for International Humanitarian Law' Master's Thesis in Public International Law, Uppsala Universitet, at P.17

³¹ Kolb, R., and Hyde., op.cit, at P.262

³² Abuah, A., and Abuju, U., 'International Humanitarian Law (IHL) and the conduct of Non-International Armed Conflict' (2015) Vol.5:2 *Global Journal of Human-Social Science* at P.34

³³ Jink, D., 'The Temporal Scope of Application of International Humanitarian Law in Contemporary Conflict' (2003) *Harvard Program on Humanitarian Policy and Conflict Research* at P.16

the Common Article 3 provide for protections for civilians in the Boko Haram armed and all NIAC.

The Additional Protocol II

Apart from Article 3 common to the Geneva Conventions, the Additional Protocol II³⁴ was the first major attempt to legally control of NIACs. In other words, it was the first attempt to regulate by treaty the means and methods of warfare in internal conflicts.³⁵ According to the Protocol, a NIAC is an armed conflict which occurs in the territory of a party to the Protocol between its armed forces and dissident armed forces or other organised groups.³⁶ The Additional Protocol II does not apply to wars of national Liberation, which are equated with IACs by virtue of the provisions of Additional Protocol I. NIAC within the meaning of Additional Protocol II can only exist if the situation attains a degree of violence that sets it apart from cases of internal tensions and disturbances.³⁷ For Protocol II to apply, the insurgent forces or armed groups must be under responsible command and must control part of the territory in such a way as to be able to carry out sustained and concerted military operations and to implement the Protocol.³⁸

The Additional Protocol II developed the protections contained in Article 3 common to the Geneva Conventions. Its contents are twofold; firstly, it adds more details to the minimum provisions set out in Article 3, and secondly, it introduces Hague Regulations provisions regulating the means and methods of warfare, into the conventional law applicable to

³⁴ The Additional Protocol II of 1977 (For the Protection of Victims of Non-International Armed Conflict)

³⁵ Cullen, A., *The Concept of Non-international Armed Conflict in International Humanitarian Law* (Cambridge, Cambridge University Press, 2010) at P.87

³⁶ Green, L. C., *The Contemporary Law of Armed Conflict* 2nd ed. (Manchester, Manchester University Press, (2000) at Pp320-321

³⁷ Vite, S., 'Typology of Armed Conflict in International Humanitarian Law: Legal Concepts and Actual Situations' (2009) Vol.91 no.873 *International Review of the Red Cross* at P.79

³⁸ Junod, S., 'Additional Protocol II: History and Scope' (1983) Vol.33:39 *American University Law Review* at P.29

NIACs.³⁹ The Additional Protocol II aim is to ensure that in an event of a NIAC, both parties should conduct themselves in a manner consistent with the law of armed conflict with regards to the protection of civilians and *hors de combat*, and attacks should be directed at combatants and military objectives. Precautions should also be taken to avoid unnecessary or excessive injury to civilians.⁴⁰ The protection provided by the Additional Protocol II can be Summarise as follows;

Firstly, the Additional Protocol II provides for the protection of all persons not participating in the armed conflict and those who have ceased from doing so having been rendered *hors de combat* are entitled to be treated humanely without any adverse distinction on the basis of colour, race, sex, religion, and wealth as provided for in Article 4 of the Additional Protocol II.⁴¹

Secondly, the Additional Protocol II also contains provisions regarding the treatment and care of the wounded, sick and shipwrecked. All persons wounded, sick, and shipwrecked whether or not they have taken part in the armed conflict shall be respected and protected.⁴² Finally, the Additional Protocol II, also contains provisions concerning the protection of civilian population and civilian objects from attack.⁴³ Civilians shall enjoy these protections as unless and for such time that they take a direct part in hostilities.⁴⁴

³⁹ Kolb, R., and Hyde, R., op.cit at P.262

⁴⁰ Green, L,C, op.cit at P.326

⁴¹ Article 4 of the Additional Protocol II. See also Green, L, C., op.cit at P.323

⁴² Article 7-8 of the Additional Protocol II to the Geneva Convention (hereinafter Additional Protocol II)

⁴³ Article 13-18 of the Additional Protocol II to the Geneva Convention (hereinafter Additional Protocol II)

⁴⁴ Kolb, R and Hyde, R, op.cit at Pp.262-264

International Human Rights Law

The philosophical basis of human rights law is that human rights are shared by all, both in time of war and peace.⁴⁵ International human rights law is a system of international norms designed to protect and promote the human rights of all persons. These rights, which are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.⁴⁶ International human rights law lay down obligations on States to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups.⁴⁷ The protection of civilians in armed conflict builds upon the provisions of the Universal Declaration of Human Rights (UDHR) of 1948 and the confirmation of its applicability in situations of armed conflict. The United Nations General Assembly Resolution No.2444 on respect for human rights in armed conflicts states that the basic principle for the protection in armed conflict are fundamental human rights as accepted in international law and laid down rules which continue to apply in situations of armed conflict.⁴⁸ Both IHL and international human rights law (IHRL) share a common goal concerning the protection of civilians against infringements. IHL protects civilians in armed conflicts by imposing obligations and prohibitions on military personnel, while IHRL protects civilians against abuses in time of war and in peace.⁴⁹ IHRL is embodied in laws either established by treaty law,

⁴⁵ Layton, R., and Bannon, V., 'International Law and Armed Conflict: Implications for Emergency and Humanitarian Organisations.' (2002) Vol.15 No.2 *Australian Journal of Emergency Management* at P.59

⁴⁶ United Nations, 'International Legal Protection of Human Rights in Armed Conflict' 2011 United Nations High Commission for Human Right Publication, at P.5

⁴⁷ Ibid

⁴⁸ Iwuh, H, O., 'Protecting Civilians in Armed Conflict: Human Rights and Humanitarian Law' available at <<http://www.e-ir.info/2011/07/06/protecting-civilians-in-conflicts-human-rights-and-humanitarian-law/>> accessed 11/05/2017

⁴⁹ Knable, P., 'The Relationship between International Humanitarian Law and International Human Rights Law in Situation of Armed Conflict' (2005) Issue4 *The New Zealand Postgraduate Law E-Journal* at P.1

derived from customary practices of the state or resolutions issued by international organisations. The main treaty laws of IHRL are; the Universal Declaration of Human Rights of 1948, International Covenant on Civil and Political Rights of 1966 (ICCPR)⁵⁰, International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR)⁵¹, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) of 1979⁵², Convention on the Rights of the Child of 1989⁵³, e.t.c. These are the applicable human rights laws that are applicable to the Boko haram armed conflict.

A number of fundamental rights guaranteed by IHRL via treaty correspond to the rights of combatants and civilians protected by IHL. IHRL can, therefore, be a complementary and reinforcing source of obligations on parties to armed conflict or belligerent occupation. For instance, the right to life, prohibition of torture or degrading treatment, right to a fair trial or prohibition of discrimination are reasonably applicable in most situations of armed conflict. Some rights may exclusively be a matter of IHL, for instance the conduct of hostilities, the treatment of the wounded and sick person. While others are exclusively regulated by IHRL, for instance the freedom of the press, and the right to assembly, whereas others are regulated by both branches of law, for instance, the prohibition of Torture.⁵⁴ The International Covenant on Civil and Political Rights provides for when there could be derogation from human rights such as in time of public emergency which threatens, the life of the nation

⁵⁰ The International Covenant on Civil and Political Rights of 1966 was ratified by Nigeria on 29th July 1993

⁵¹ The International Covenant on Economic, Social and Cultural Rights of 1966 was ratified by Nigeria on 29th July 1993

⁵² Convention on the Elimination of all forms of Discrimination Against Women of 1979 was ratified by Nigeria on 23rd April 1984

⁵³ Convention on the Rights of the Child (CRC) of 1989 was ratified by Nigeria on 19th April 1991

⁵⁴ Siatitsa, I., and Titberidze, M., 'Human Rights in Armed Conflict from the Perspective of the Contemporary State Practice in the United Nations: Factual Answers to Certain Hypothetical Challenges' available at <<http://www.adh-geneva.ch/RULAC/pdf/HRL-In-AC.pdf>> Accessed on 27/02/2017 at P.11

and the existence of which is officially proclaimed.⁵⁵ However, there are some human rights that cannot be derogated from even in time of emergencies. These are called the non-derogable human rights, they include the right to life and the right to freedom from torture. A NIAC is an emergency that allows human rights that are derogable to be suspended.⁵⁶

The relationship between IHL and IHRL is complementary. Their concurrent application leads to the same result and has the potentials to offer greater civilian protection. Each body of law can enhance the other body of law to strengthen areas of relative weakness. For instance, the provisions for fair trial in IHL are vague, but IHRL can provide guidance and interpret the rules in question.⁵⁷ The United Nations Human Rights Council, in its resolution 9/9, further acknowledged that IHRL and IHL were complementary and mutually reinforcing. The Council considered that all human rights required protection equally and that the protection provided by human rights law continued in armed conflict, taking into account when international humanitarian law applied as *lex specialis*.⁵⁸ The Council also reiterated that effective measures to guarantee and monitor the implementation of human rights should be taken in respect of civilian populations in situations of armed conflict, including people under foreign occupation, and that effective protection against violations of their human rights should be provided, in accordance with international human rights law and applicable international humanitarian law.⁵⁹ Therefore, Human Rights Law serves as one of the vital laws that provide protection to civilians in the Boko

⁵⁵ Article 4 of the ICCPR, see also Alubo, A, O., and Piwuna, M., 'observance of Human Right and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations' (2015) Vol.9 *International Journal of Humanities and Social Sciences* at P.143

⁵⁶ Kolb, R., and Hyde, R., op.cit, at P.261

⁵⁷ Haidar, H., 'International Legal Framework for Humanitarian Action (2013) International Development Department, College of Social Science, Birmingham University, at P.21

⁵⁸ *Lex Specialis* Means the Law Governing a Specific Subject Matter

⁵⁹ United Nations, op.cit, at P.6

Haram armed conflict. It functions as a complementary to the IHL rules applicable in the conflict.

5. Protection of Civilians under Islamic Law

The Islamic law of war forms part of the Islamic jurisprudence (Shariah). The primary sources of Islamic law are the Qur'an, and the *Sunnah* (Traditions) of the Holy Prophet (PBUH).⁶⁰ The rules of conduct of Muslims during war time are strictly regulated by the Holy Qur'an, the *Sunnah* of the Holy Prophet (PBUH) and commands of the four rightly guided *khalifahs*, and those who followed the *Sunnah* after them.⁶¹ Islamic humanitarian law regulates the legality or otherwise of engaging in armed conflict as well as the actual conduct of belligerents during hostilities. It has prohibited the use of certain means of warfare that are perceived to be destructive and barbaric.⁶² The Holy Qur'an provides:

Fight in the way of Allah against those who fight
you but begin not hostilities. Lo! Allah loveth not
aggressors⁶³

The phrase "those who fight you" in the verse refers to fighting only the enemies who are engaged in fighting Islam and its followers. The word "transgression" according to the translation by Al-Basri means the prohibition of mutilating the dead, theft, killing of women, children, and old people who do not participate in warfare, killing of priests and residents of houses

⁶⁰ Ali, N, M., et.al 'When Civilians "Cross the Line" the International and Islamic Law Perspective' (2011) Vol.1 No.21 *International Journal of Humanities and Social Science* at P.228

⁶¹ Badar, M, E., 'Jus in Bello under Islamic International Law' (2013) *International Criminal Law Review* at P.604

⁶² Ishan Jan, M, N and Haruna, A, L, *International Humanitarian Law* 1st ed. (Malaysia, IIUM Press, 2015) at P.203

⁶³ Holy Qur'an Chapter 2 Verse 190

of worship, burning down trees and killing animals without real benefit.⁶⁴

A famous *Hadith* of the Holy Prophet (PBUH) about his commandments to his commanders which form the basis of Islamic *jus in Bello* (law of war) states as follows: ‘.... Do not break your pledge, do not mutilate dead bodies and do not kill the children.’ The first Caliph of Islam was reported to have given commandments as follows:

I prescribe Ten Commandments to you: stop people, that I may give you ten rules for guidance on battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies, do not kill a woman, a child or an aged man, do not cut down fruitful trees, do not embezzle (misappropriation of booty or spoils of war) nor be guilty of cowardliness.⁶⁵

Umar, Ali and Khalid bin walid (a famous general of Islam) were also reported to have given the same instruction to their subordinates.⁶⁶ These humanitarian principles were established centuries ago (during the early Islamic period) are equally relevant today. It prohibits the terrorizing of civilians such as women, children, and other non-combatant. They are recognised as persons entitled to various degrees of immunity and their property must be protected as well.⁶⁷ In another *Hadith* of the Holy Prophet (PBUH) members of the clergy

⁶⁴ Haruna, A, L., and Jimeta, A, U., ‘Similarities of International Humanitarian Law and Islamic Law of Warfare: An Appraisal of the Principle of Distinction During Armed Conflict’ (2015) Vol.42 Issue 1 *Journal of Malaysian and Comparative Law* at Pp.5-6. See also Ibn Kathir., *Abridged by a Group of Scholars Under the Supervision of Al-Mubarakpuri, S S.*, 1st ed. (Riyadh, Darussalam Publishers and Distributors, 2000)

⁶⁵ Ahmed, A, D., ‘Al-Sarakhsi’s Contribution to the Islamic Law of War’ (2015) Vol.1(1) *UCLA Journal of Islamic and Near Eastern Law* at P.11

⁶⁶ Ibid

⁶⁷ Chiroma, M., Oseni, U, A., and Ansari, G, U., ‘An Analytical Review of Islamic and International Law on Civilian Right to Life and Human Dignity. (2013) Vol.11 Issue 4 *IOSR Journal of Humanities and Social Science* at P.27

and hired labourers (*al-usafa*) are added to the list of those who cannot be targeted in warfare. While within the discourse of Islamic jurist regarding the justification of war, or *jus ad bellum*, jurist extend the list of those who have non-combatant immunity to include those living with physical or mental disabilities, farmers, craftsmen and traders. Majority of the jurist are of the view that if these categories of person engage in combat, they will lose their immunity.⁶⁸ Islamic humanitarian concepts as regards to the protection of civilian population and objects includes, distinction between civilians and combatants, protection of civilians from indiscriminate attacks, dangers of hostilities, and military operations.⁶⁹ The wars that took place under the Holy Prophet's (PBUH) leadership observed the importance of protecting the civilians. Where it involves the entering of a city for instance, in the case of opening of Makkah, the Holy Prophet (PBUH) attempted to distinguish civilians from combatants by declaring that those who sought shelter in Ka'abah, Abu sufyan's house or in their dwelling will not be attacked. The above is applicable only when civilians do not take part in the battle.⁷⁰

A non-combatant, who is not taking part in warfare, whether by action, opinion, planning or supplies, must not be attacked. Attacks should only be directed against enemy combatant as provided by the Holy Qur'an.⁷¹ It was also reported in a *Hadith* that the Holy Prophet (PBUH) during war saw a corpse of a woman lying on the ground and he said: she is not fighting. How then was she killed? From this statement of the Prophet, Muslim jurists have drawn the principle that those who are non-combatant should not be killed during and after war.⁷²

⁶⁸ Ahmed, A, D., 'op.cit at Pp. 32-33

⁶⁹ Chiroma, M., et.al, op.cit, atP.29

⁷⁰ Ali,N, M., et.al, op.cit

⁷¹ Holy Qur'an Chapter 2 Verse 190

⁷² Haruna, A, L., Bukar, L., and Karumi, B., 'War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities' (2014)

Both the Holy Qur'an and *Hadiths* of the Holy prophet prohibits attacking some specific categories of non-combatant such as women, children, the aged, the blind, the sick, the incapacitated, the insane, the clergy and *al-asif* i.e. farmers, craftsman, and traders.⁷³ However, under Islamic humanitarian law, not only the civilian population that enjoys immunity from direct attacks but also civilian objects. It is prohibited to direct attacks against civilian objects because they enjoy equal immunity with civilian population against direct attack. The Holy Prophet was reported to have given instructions to the Muslim troops deployed against the advancing Byzantine army and he said: 'in avenging the injuries inflicted upon us, molest not the harmless inmates of domestic seclusion, spare the weakness of the female sex, injure not the infant at the breast or those who are ill in bed. Refrain from demolishing the houses of the unresisting inhabitants, destroy not the means of their subsistence, nor their fruit trees and touch not the palm and do not mutilate bodies and do not kill children.'⁷⁴ The destruction of civilian property in warfare is prohibited under Islamic humanitarian law except for military necessity.⁷⁵

6. Conclusion

During armed conflict, civilians and combatants who are rendered *hors de combat* (out of Combat) are entitled to a specific protection under International Humanitarian law (IHL), provided that they are not, or are no longer, taking a direct part in hostilities. IHL requires parties to an armed conflict to always respect and protect civilians in armed conflicts. The Boko Haram armed conflict on the other hand has satisfied the requisite of an armed conflict, hence, the application of IHL norms to the conflict. Parties to the Boko Haram armed conflict however, have not strictly adhered those rules. This have resulted in the wanton killings of civilians not taking a direct

Vol.4 No.5(1) *International Journal of Humanities and Social Science* at P.232

⁷³ Badar, E, M., op.cit, at Pp.605-606

⁷⁴ Haruna, A, L, et.al, op.cit. at P.234

⁷⁵Ibid

part in hostilities, destruction of civilian's properties worth millions of Naira and the displacement of many civilians. Nigeria has ratified both the Geneva Conventions and the Additional protocols, hence, Nigeria is bound by its obligation under these laws to respect the norms contained therein.

Recommendations:

- I. The Nigerian government should provide effective remedies to victims and families of victims of Boko Haram armed conflict. Families of victims should also obtain fair and adequate reparation from the government, including compensation.
- II. The federal and state governments should establish support foundations through which victims will be compensated.
- III. Prompt and adequate steps should be taken to relocate, rehabilitate and resettle the Internally Displaced Person (IDPs)
- IV. Prompt and thorough investigation and trial of violators of IHL by the government

There is the need for the Nigerian government to domesticate the Rome Statutes being an important treaty that can assist in the prosecution of the perpetrators of IHL violations committed during the Boko Haram armed conflict.