

# Boko Haram in Nigeria: R2P and Non-State Armed Groups <sup>1</sup>

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Over the last two decades—especially since it was unanimously adopted at the 2005 United Nations (UN) World Summit—the ‘Responsibility to Protect’ (R2P) has challenged the traditional notion of state sovereignty by bringing to the fore the question of the protection of populations as a core objective. Nevertheless, in this twenty-year period the development of R2P as an international norm has vastly remained within the framework of state-led crimes, and hence state-centric (Welsh 2018, p. 361). Although most often state authorities are the main perpetrators of mass atrocity crimes, we have been observing the rise of non-state armed groups (NSAGs) also as perpetrators.

The consequences of the existence of a variety of actors as perpetrators manifests itself in the case of Nigeria and specifically the actions of Boko Haram. This terrorist group has been active for almost twenty years. It acts as if it is an independent state since it has claimed certain territories and imposes its own laws and regulations (Elden 2014; Oyewole 2013). So far, its actions have resulted in the death of more than 35,000 people (GlobalR2P 2020). According to the Humanitarian Response Plan for Nigeria, an estimated 7.7 million people depend on humanitarian assistance in the three most affected states namely Borno, Adamawa and Yobe (OCHA 2017). Overall, more than 21 million people have been impacted by the conflict in Lake Chad Basin Region. Two million of these people constitute the seventh largest internally displaced population in the world. They have been present in north-east Nigeria but since January 2019 134,000 people have been forced to flee due to the escalation of the conflict (Eku-  
maoko and Ezemenaka 2020).

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Although several studies discuss the Boko Haram uprising and related human rights abuses in Nigeria (see for instance, Adesoji 2010; Aghedo and Osumah 2012; Walker 2012; Oyewole 2013; Elden 2014; Aka 2016; Oko et al. 2018), only a few studies establish a link between those and R2P (see, Ajigboye 2014; Welsh 2018; Ekumaoko and Ezemenaka 2020). Yet, in order to better understand the NSAGs' place in R2P and the standing issues as to R2P implementation, there is need for further studies. Hence, focusing on the case of Nigeria, with the aim to understand what has been missing in terms of the protection of the Nigerian population and the role the NSAGs play, this Chapter asks to what extent and how R2P has been implemented in response to the Boko Haram insurgency in Nigeria?

To this end, the Chapter proceeds in three sections. First, it provides a brief background on the roots of the conflict in the country and the scope of Boko Haram's influence in the region. The second section explores R2P's implementation in the case of Nigeria through a pillar-by-pillar analysis. It first studies the national response with the aim to understand the extent and nature of the Nigerian State's failure to protect its population with respect to Pillar One. This is followed by an overview of the international responses to the ongoing humanitarian crisis in Nigeria in relation to R2P under Pillar Two, as a discussion of the applicability of the forceful measures under Pillar Three. The final section reflects on the lessons that can be drawn from the case of Nigeria.

## The Roots of the Conflict in Nigeria

Despite declaring independence in 1960, Nigeria continued to experience conflicts stemming from its colonial roots. The country is mainly divided between a Muslim population concentrated in the northern part and a Christian population mostly inhabiting the southern part. Reportedly, there have been serious socio-economic differences between the northern and southern parts of the country due to varying levels of welfare and corruption (Elden 2014, p. 419). Emanating from social inequality, poverty, low levels of education and disregard to core human security priorities, civilians in Nigeria have been threatened for many years by the recurring violence in the 'middle belt' and Niger Delta regions, as well as Boko Haram's extremist actions (Adesoji 2010; Aghedo and Osumah 2012, p. 856).

With regard to Nigeria's 'middle belt' and Niger Delta regions, the primary causes of the clash are identified as land disputes, burglary and blocked grazing routes (Bagu and Smith

2017). Between January 2016 and October 2018, the conflict between nomadic cattle herders of Muslim faith and Christian settled farming populations has caused the death of 3,641 people along with 406 injured, 5,000 houses razed down to the ground, and 182,530 people displaced (Amnesty International 2018a). As of 2021 the conflict has escalated, and both parties have been complaining about the lack of protection and lack of accountability for the crimes committed (Tom Lantos Human Rights Commission 2017). Nevertheless, to date, neither the Nigerian government nor the international community has been able to remedy the situation. The death toll continues to increase and the failure of the authorities to find a permanent solution puts more civilians at risk.

Notwithstanding, arguably terrorism constitutes by far the most serious threat to Nigeria's stability and its population (Popovski and Maiangwa 2016, p. 159). Boko Haram—which means 'western education is forbidden'—was founded in 2002, but its origins can be traced back to the Shabaab Muslim Youth Organization, which was founded in 1995 under the leadership of Abubakar Lawal who was replaced by Mohammed Yusuf in 1999 (Anugwom 2019, p. 46). The group's main intention is to overthrow the existing state structure, and to function as an Islamist sect under Sharia law. In 2015, Boko Haram was ranked first in the Global Terrorism Index as 'the world's deadliest terrorist group' (The Institute for Economics and Peace 2015). Since its establishment, it has shaken Nigeria as a whole, even though the group is mainly concentrated in the north-east part of the country. The idea of religious revivalism in the secular and independent Nigerian society was present before as manifested in the actions of Yan Tatsine—the followers of Nigerian Islamic leader Maitatsine. Nonetheless, different from before, Boko Haram has been able to maintain its large-scale attempts to prompt Islamic revivalism by means of well-planned attacks and strong chain of command (Adesoji 2010, p. 97). In order to obtain more recognition and heighten the fear in the Middle East and North Africa (MENA) region through media, and to showcase the inadequacy of the Nigerian government, Boko Haram strategically attacks civilians, especially minors (Popovski and Maiangwa 2016, p. 163). While the main motivation of Boko Haram is centred on religious factors, as Adesoji (2010, p. 98) notes, other underlying issues such as youth unemployment, deprivation, inequality, poor political leadership and poverty have contributed to the group's consolidation and ever-increasing terrorist attacks.

## Implementing R2P in Nigeria

All things considered, Nigeria remains a prominent R2P concern. Therefore, it is important to explore to what extent and how R2P has been implemented by national authorities and the international community. This section seeks an answer through a pillar-by-pillar analysis, following the three-pillar implementation strategy devised in the 2009 report of the United Nations (UN) Secretary-General, which was based on the 2005 consensus on R2P. Hence, it first studies the response of the national authorities ...

### *Pillar One: Protection Responsibilities of the State*

Different from a vast majority of the cases analysed in this edited volume, in the case of Nigeria the failure to fulfil Pillar One responsibilities under R2P mainly stems from the inability of the national authorities rather than sheer unwillingness. Over the years, the Nigerian government has declared multiple states of emergency and conducted military operations to combat Boko Haram insurgency. Yet the group has remained functional and active with attacks targeting civilians.

From 2002 to 2009, the early crimes of Boko Haram included physical assault on women, burning down police stations, attacking Christian villages and murdering those who oppose them (Oyewole 2013, p. 256). It was in 2009 that with their leader Mohammed Yusuf killed Boko Haram almost went silent for more than a year without committing major crimes (Oyewole 2013, p. 257). As can be inferred from the change of approach under their new leader Abubakar Shekau, it is believed that they spent this quiet time training and planning long-term actions (Walker 2012, p. 4). After 2010, Boko Haram became active again. It conducted assassinations, carried out suicide bomb attacks during Christian holidays, and bombed the UN headquarters in the Nigerian capital, Abuja. These led to increasing concern over the Nigerian government's ability and capacity to fight against Boko Haram. Nevertheless, in the Regional Policy Seminar on R2P organised by the Economic Community of West African States (ECOWAS), the Nigerian Minister for External Affairs, Ambassador Olugbenga Ashiru argued that the situation was yet to yield to the international community's responsibility to protect since the government has not forsaken its Pillar One responsibilities (Ojeme 2012). Meanwhile, upon receiving numerous communications pertaining to Article 15 of the

Rome Statute, on 18 November 2010 the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) started a preliminary examination in relation to the alleged crimes committed by Boko Haram in Nigeria (ICC, 2011).

While such development seems rather related to the international community's efforts, it is noteworthy that the alleged crimes committed by the Nigerian Security Forces (NSF) since June 2011 were also included within the scope of the examination (ICC, 2011). Hence, it has implications regarding the compliance of the national authorities to their Pillar One responsibilities. In responding to increasing Boko Haram insurgency, the Nigerian government employed counter-terrorism measures including the use of military force. Indeed, major military operations made the problem worse instead of solving it (Oyewole 2013, p. 258). In general, Nigerian government forces were accused of using excessive force against terrorists. For instance, the video footage that the Amnesty International released on 5 August 2014 not only provided evidence of alleged war crimes committed by Boko Haram but also revealed that Boko Haram militias were being subjected to violent repression by members of the Nigerian military and the Civilian Joint Task Force (CJTF)—i.e., the state-sponsored militias (Amnesty International 2015a). Such measures included the killing of the members of the terrorist organisation as well as many civilians who were simply in the wrong place at the wrong time. Moreover, coercive measures, especially the use of military force, have been considerably restricting the rights of those Nigerian citizens who were living in Boko Haram controlled areas. Oyewole (2013, p. 258) argues that Nigerians have been uneasy about the strict mode of 'war on terror' because they believe that the government has been using excessive power not only in its fight against terrorism but also in protests, elections, and other public matters.

Able to continue its attacks despite the government's extreme measures, in 2014 Boko Haram committed its infamous act of kidnapping 276 schoolgirls from Chibok (BBC News 2017). This incident promoted a heightened international awareness of the notorious crimes of Boko Haram. Eventually, prominent figures such as Michell Obama, the former first lady of the United States (US) urged the international community for action (McVeigh 2014). While the current president of Nigeria Muhammadu Buhari and his predecessor Goodluck Jonathan have expressed in separate interviews that they would welcome international help to fight against Boko Haram (Al Jazeera 2014; Reuters 2016), they also claimed that they have defeated Boko Haram in other platforms (BBC News 2015a, 2015b; France24 2015). That said,

the Nigerian government has been failing to pursue an effective policy to permanently resolve the situation, and such failure has been accompanied by related outstanding issues. For instance, Amnesty International (2015b) highlighted that ‘more than 7,000 civilians have died, and more than 1,200 people were unlawfully killed in military custody between 2011 and 2015 [and] prompt[ed] calls for senior members of Nigerian military to be investigated for war crimes.

Poor Nigerian leadership on the one hand, and Boko Haram’s resilience on the other have fuelled the protection crisis. Given its expansionist structure, various branches and headquarters with changing names, Boko Haram has become a hard to exterminate organisation. Moreover, in 2015, Boko Haram pledged allegiance to the Islamic State of Iraq and the Levant (ISIS) and changed its official name to *Wilayat Gharb Afriqiya*, which translates into Islamic State West Africa Province (ISWAP). However, in a short time, the group fractured as its leader Shekau failed to adhere ISIS guidance (Onuoha 2016, p. 3). In August 2016, ISIS appointed Abu Musab al-Barnawi as the new leader and this further intensified the clashes within the group. Al-Barnawi accused Shekau of harming their jihadist campaign by targeting Muslims and living in luxury while their fighters were coping with starvation (Onuoha 2016, p. 4). Consequently, ISIS-West Africa split into two factions: al-Barnawi’s faction, ISWAP and Shekau’s faction, Boko Haram (UNSC 2020). It is estimated that ISWAP has around 3,500 to 5,000 fighters, who have carried out several terrorist attacks and committed identity-based violence in Nigeria including a midnight attack against Nigerian troops in the village of Kamuya in January 2017; abduction of 110 schoolgirls in February 2018; abduction of three humanitarian aid workers in March 2018; killing of 18 people and leaving 84 wounded on the outskirts of Maiduguri in April 2018; attacking an army base in the village Metele, killing over 100 Nigerian soldiers in November 2018; and taking over the commercial town of Baga in December 2018 (UNMCPR, 2020). Yet again, the Nigerian government failed to prevent/stop such violent attacks. Taking stock of the overall situation, the 2018 Amnesty International (2018b) in its report titled ‘Willingly Unable’ reiterated the need for the ICC Prosecutor to open a full investigation given the absence of any significant measures by the Nigerian authorities to investigate and/or prosecute either the crimes of Boko Haram or the NSF.

In the light of the recent developments, while presenting her country’s statement during the formal UN General Assembly (UNGA) debate on R2P, Nigerian representative Ninikanwa

Olachi Okey-Uche called for ‘full implementation of the three pillars of R2P including reviewing and strengthening existing preventive capacities’ (UNGA 2018, p. 27). Condemning the attacks on civilians, humanitarian workers, journalists, and peacekeepers, she noted the Nigeria’s appointment of a national R2P focal point (UNGA 2018, p. 28). She also highlighted that the proliferation of small arms and light weapons help terrorist activities of Boko Haram, so the government set up a presidential committee to tackle this issue (UNGA 2018, p. 28). Moreover, Catherine Imaji Udida of the Nigerian Permanent Mission to the UN in the 96<sup>th</sup> plenary meeting at the UNGA, reaffirmed Nigeria’s commitment to R2P and urged the international community to support regional and subregional endeavours in protecting populations from atrocious crimes (UNGA 2019, p. 8). Although these efforts and statements may be evaluated as signs of willingness on the part of the Nigerian government to fulfil its responsibility to protect and prevent further casualties, their words did not turn into successful implementation as terrorist attacks continued in the country.

In May and June 2019 respectively, al-Barnawi’s ISWAP conducted an attack on a military base in the town of Gubio resulting with the death of three Nigerian soldiers, and on two military bases in the towns of Marte and Kirenowa (UNMCPR, 2020). More recently, on 9 February 2020, at least 30 people were killed by Shekau’s Boko Haram in Auno, Borno State (BBC News 2020). After this attack, President Buhari has felt the pressure more than ever. Many citizens along with some members of the Parliament as well as the Borno State Governor Babagana Zulum requested Buhari to replace his security chiefs as well as a change of strategy to fight Boko Haram (BBC News 2020). This implies the dissatisfaction with the government’s way of handling the insurgency, and arguably the inadequacy of the government. Meanwhile, the NSF has continued to violate human rights in the country. Amnesty International (2020a) in a news article dated February 2020 highlights how excessive use of force by the Nigerian military leads to the destruction of entire villages and civilian homes. Furthermore, in its December 2020 report, it documents the atrocities committed by both Boko Haram and the Nigerian military forces against older people in the form of abuse, repression, unlawful military detention, and obstruction of humanitarian aid (Amnesty International 2020b). These news and reports not only reveal the gravity of the situation, but also document the inability of the Nigerian government to protect its population.

While several efforts to establish a dialogue between the conflicting parties proved unsuccessful—due to reasons such as Boko Haram’s unreasonable demands, killing of Boko Haram’s negotiating team, and the government’s premature releases of information to the media—(Olojo 2019), politically speaking, it is now argued that Nigeria is very close to being a ‘failed state’ because Boko Haram fully controls certain territories in the country, which results in substantial insecurity for the people living in the region (Financial Times 2020; Oko et al. 2018).

Ekumaoko and Ezemenaka (2020) explain how security has become a bargaining chip for huge budgetary allocations in Nigeria and argue that the end of Boko Haram would also mean the end of the allocations, which mostly have been turned into politicians’ personal gains. The UN Development Programme (UNDP) data reveals that the money allocated to the fight against Boko Haram has been increasing since 2009, whereas Boko Haram instigated deaths have also been increasing each year (UNDP 2018, p. 34).

On the one hand, Nigerian officials seem no longer to deny the situation. In an international interview, President Buhari acknowledges the security problems<sup>2</sup> in the country, considering it ‘very, very disturbing’. Furthermore, addressing the military, the police and other law enforcement agencies, he states that ‘they could do much better’ (The Guardian 2020). Moreover, (now former) Chief of Army Staff, Lieutenant General Tukur Buratai, on his verified Facebook account, posted that ‘there is likelihood of terrorism persisting in Nigeria for another 20 years’ (AllAfrica 2020). As Walker (2012, p. 3) puts it, Boko Haram has established a ‘state within a state’. Besides tactical disadvantages, the lack of adequate transportation infrastructures makes troop deployment difficult in the north-east Nigeria while members of Boko Haram can easily cross borders and flee to the neighbouring countries Chad, Niger, and Cameroon wherein they are deployed to a large extent (Popovski and Maiangwa 2016, p. 159). Besides the dismal security situation, Popovski and Maiangwa (2016, p. 165) observe that the Nigerian government not only failed to protect its people from mass atrocities but also from other anticipated dangers such as economic misery, natural disasters, and health threats.

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<sup>2</sup> Campbell and Rotberg (2021) report that President Buhari, in a meeting with the US Secretary of State Antony Blinken, requested the headquarters of the US Africa Command to be moved from Germany to Nigeria to get the US more involved in the fight against jihadi groups. It is unclear, however, whether or not the US would like to be drawn into such a conflict and if the President Buhari is inclined to address the allegations of corruption and economic mismanagement in the country.



On the other hand, on 11 December 2020 Prosecutor Fatou Bensouda of the ICC announced the conclusion of the decade-long preliminary examination of the situation in Nigeria. It was found that

members of the Nigerian Security Forces have committed the following acts constituting crimes against humanity and war crimes: murder, rape, torture, and cruel treatment; enforced disappearance; forcible transfer of population; outrages upon personal dignity; intentionally directing attacks against the civilian population as such and against individual civilians not taking direct part in hostilities; unlawful imprisonment; conscripting and enlisting children under the age of fifteen years into armed forces and using them to participate actively in hostilities; persecution on gender and political grounds; and other inhumane acts' (ICC 2020).

Following from this, it can be established that besides its inability to protect its population from the atrocities committed by Boko Haram, the national authorities have also failed to protect some part of the population with the crimes against humanity and war crimes that they have committed themselves during the fight against terrorism. Given the manifest failure of the State as to its Pillar One responsibilities, it is important to understand to what extent and how the international community has been engaged in this humanitarian crisis in relation to Pillars Two and Three.

### *Pillars Two and Three: The International Community's Response*

Since the earlier stages of the situation, the international community's responsibility to protect could have been invoked in Nigeria, even at times that the Nigerian authorities were claiming to have control over the situation. Considering that there is a prevailing situation of inability rather than unwillingness on the part of the national authorities, within the R2P framework international assistance and capacity-building seems like the primary path to follow in order to support the Nigerian State. Nevertheless, as the Secretary-General reminds, the three-pillars are not sequential, and there is not always a clear division between the mechanisms that can be adopted under Pillars Two and Three (UNGA 2009). While the adoption of a specific peaceful measure may qualify as a preventive measure pertaining to Pillar Two,

under different circumstances and with regard to the timing it may be considered as an action under Pillar Three. Accordingly, this section scrutinises several efforts and/or decisions by various international actors in relation to Boko Haram in order to understand the level and scope of international involvement in terms of prevention and reaction.

We see that the first responses have been in the form of defining the status of Boko Haram. In 2011, the US House of Representatives Committee on Homeland Security described Boko Haram as ‘an emerging threat to U.S. interests and the U.S. homeland’ (2011, p. 4). Later in 2012, the US named Abubakar Shekau, Khalid al-Barnawi, and Abubakar Adam Kamar as ‘Specially Designated Global Terrorists’ (US Department of State 2012). Similarly, in 2013 the United Kingdom (UK) added Boko Haram to its list of ‘proscribed terrorist groups or organisations’ (UK Home Office 2013). In 2014, the EU formally recognised Boko Haram and Al-Qaeda association (European Commission, 2014). Moreover, the same year the Heads of State of Nigeria, Benin, Cameroon, Niger, and Chad agreed to wage ‘war’ against Boko Haram in the Paris Summit (BBC News 2014a). While these individual developments do not seem to directly relate to R2P, the recognition of Boko Haram as a terrorist organisation arguably strengthens the position of the Nigerian authorities in their fight against terror.

At the level of the UN, in 2014, the UNSC decided for sanctions against Boko Haram. Moreover, the Al-Qaeda Sanctions Committee—which is tasked with determining the entities and individuals to be subjected to an arms embargo and/or financial sanctions in relation to Al-Qaeda—added Boko Haram to its list of ‘Al-Qaeda-linked organisations’ as well as its leader Abubakar Shekau. While this can be considered as a supportive step in the fight against Boko Haram, it is also noteworthy that these sanctions do not have much practical or decisive impact since the members of Boko Haram neither travel with passports nor officially own personal assets (BBC News 2014b).

On 19 January 2015, the UNSC released a statement that made specific references to the situation in Nigeria. The statement went on to say:

The Security Council strongly condemns and deplores all abuses of human rights and, where applicable, violations of international humanitarian law by the terrorist group Boko Haram, since 2009, including those involving violence against civilian populations, notably women and children, kidnappings, killings, hostage-taking, pillaging, rape, sexual slavery and other sexual

violence, recruitment of children and destruction of civilian property. The Security Council expresses serious concern over the reported violations and abuses of human rights and large-scale displacements of civilian population, including into Nigeria's neighbouring countries (UNMCPR 2015).

Furthermore, the human rights abuses and violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) by Boko Haram in the Lake Chad Basin region were condemned by the UNSC with a statement on 13 May 2016 (UNMCPR 2016). In March 2017, the UNSC (2017a) with Resolution 2349 pledged the UN's full support for populations suffering from violence by terrorist groups and acknowledged that Boko Haram attacks caused large-scale displacement and the risk of famine in north-east Nigeria. With this resolution, the UNSC (2017a) condemned the terrorist group's activities and underlined the threat posed by Boko Haram to international peace and security. Although it does not make any explicit reference to the norm, from an R2P point of view, the resolution is of significance in many respects. For instance, it expresses concern about the civilians who are affected by the actions of Boko Haram and 'reiterates the primary responsibility of Member States to protect civilian populations on their territories, in accordance with their obligations under international law' (UNSC 2017a). It calls UN entities such as the UN Regional Office for Central Africa (UNOCA), the UN Office for West Africa and the Sahel (UNOWAS), and the UN Office to the African Union (UNOAU) to support the region's governments as well organisations to counter acts of violence by Boko Haram and ISIL (UNSC 2017a). These aspects are of importance in terms of reminding Member States and related entities of their protection responsibilities under Pillars Two and Three.

Meanwhile, the UN Secretary-General has been seized of the situation in Nigeria and reported to the UNSC regarding specific instances and/or issues. His 'Report on Children and Armed Conflict in Nigeria' dated 10 April 2017, documented the conflict's impact on children. Accordingly, out of the 17,073 persons killed in a total of 1,156 incidents during the reporting period in north-east Nigeria, 3,909 were children whereas of the 28,788 others who were wounded 7,333 were children (UNSC 2017b, p. 9). Later in September, with his report the Secretary-General reminded that 'some 10.7 million people across the Lake Chad Basin Region currently need humanitarian assistance, including 8.5 million in Nigeria. Some 5.6 million

children also need life-saving assistance, and 2.7 million children need psychosocial support' (UNSC 2017c, p. 2).

In parallel, on 6 July 2017, the UN Committee on the Rights of the Child called Boko Haram out for the abduction of children and their appalling use of children, especially girls as suicide bombers (OHCHR 2017). In addition, the UN Committee on the Elimination of Discrimination against Women in the concluding observations on the combined seventh and eighth periodic reports on Nigeria observed that Boko Haram is a big obstacle to the development of women's rights in the country since the terrorist group has committed crimes such as rape, sexual slavery, forced marriage, impregnation, and denying children their right to education (OHCHR 2018). That said, these reports on their own cannot trigger change other than presenting fatality numbers unless the international community delivers a satisfactory and decisive response. Also, there is no way to fairly demonstrate psychological trauma stemming from grave violations against children, discrimination, suicide attacks, abduction, violent killings, rape, and other forms of sexual violence.

At the regional level, the African Union Peace and Security Council (AUPSC) has also condemned Boko Haram attacks on innocent civilians and urged the international community to be more involved in this issue in the 'Communique of the 639<sup>th</sup> PSC meeting on Boko Haram Terrorist Group', dated 29 November 2016 (AU 2016). The meeting on Peace and Security in Africa held by the UNSC, on 22 March 2018, addressed the root causes of the Boko Haram crisis, and drew attention to prominent factors such as youth unemployment, water scarcity, chronic drought, desertification, land degradation, extreme poverty, food insecurity, exclusion, and inequality. The outcome of the meeting was the affirmation of the UN's support for the African Union (AU) and the Lake Chad Basin Commission (LCBC) in the fight against Boko Haram (UNSC 2018). Initially designed as an intergovernmental organisation to regulate and control the natural resources in the basin, LCBC became a political forum that is responsible for the coordination of regional security matters due to the economic instability created by terrorism (Galeazzi et al. 2017, p. 3). Moreover, on 20 August 2018, UN Secretary-General António Guterres, condemning the killing of dozens of people in violence in Borno State, called the international community for increased support to regional actors for the fight against Boko Haram (UNMCPR 2018a). The UNSC released two press statements following the abduction of schoolgirls from the Government Girls Science and Technical Secondary School in Dapchi,

Yobe State on 19 February 2018, and the terrorist attack on 16 June 2019 at Konduga village resulting in at least 30 killed. Both statements condemned the terrorist attacks while the former specifically recognised the threat posed by Boko Haram in the region (UNMCPR 2018b; UNSG 2019). On 1 April 2020, the UNSC reiterated its commitment to fight against terrorism in a press statement released after the acts of terrorism in the Lake Chad Basin Region (UNMCPR, 2020).

Previously, in September 2019, after visiting Nigeria, UN Special Rapporteur Agnes Callamard had highlighted increasing violence across the country and lack of accountability for perpetrators such as Boko Haram (OHCHR 2019). Such observation was of significance in terms of the ongoing ICC processes. As mentioned in the previous section, the OTP initiated its preliminary examination of the situation in Nigeria in 2010. This was followed by several progress reports published, which concurred many times the crimes that Boko Haram committed amounting to crimes against humanity such as murder and persecution, which are respectively defined under Article 7 Paragraphs 1(a) and 1(h) of the Rome Statute (ICC 2012; 2013; 2014). In addition, several non-governmental organisations (NGOs) took the initiative to increase awareness and invited the international community to help the victims of this conflict such as the letter of the Global Justice Centre (2015) to the ICC indicating that the actions of Boko Haram should be considered as genocide.

A milestone was reached on 11 December 2020 as Fatou Bensouda announced that the ICC has found enough evidence of crimes against humanity and war crimes in Nigeria (ICC 2020), which could lead to a comprehensive investigation (Amnesty International 2020c). Accordingly, the OTP determined that

members of Boko Haram and its splinter groups have committed the following acts constituting crimes against humanity and war crimes: murder; rape, sexual slavery, including forced pregnancy and forced marriage; enslavement; torture; cruel treatment; outrages upon personal dignity; taking of hostages; intentionally directing attacks against the civilian population or against individual civilians not taking direct part in hostilities; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance; intentionally directing attacks against buildings dedicated to education and to places of worship and similar

institutions; conscripting and enlisting children under the age of fifteen years into armed groups and using them to participate actively in hostilities; persecution on gender and religious grounds; and other inhumane acts (ICC 2020).

In the light of these developments, it can be argued that the situation in Nigeria remains an imminent R2P concern, and that the international community's endeavours so far to find a permanent solution to the problem in Nigeria have proven insufficient.

Although influential state actors such as the US do not hesitate to draw attention to the gravity of the situation and often remind regional powers to assist Nigeria, they prefer not to get directly involved in the conflict. We also observe that the UNSC has not invoked R2P and has failed to trigger timely and decisive international action that would take effect under Paragraph 139 of the WSOD.

From an R2P point of view, the ongoing ICC processes are of vital importance in terms of ending impunity and holding the perpetrators accountable for their actions, and hence for long-term prevention. Nevertheless, to achieve immediate protection for the civilian population there is need for continued and simultaneous implementation of Pillar Two and Three measures. In assisting the Nigerian authorities to meet their protection responsibilities, the international community may utilise measures including 'confidential or public suasion, dialogue, education, and training on human rights and humanitarian standards and norms, and military assistance to deal with armed non-state actors threatening both the state and its population' (UNGA, 2009). Meanwhile, considering that there is the manifest failure of the state authorities as well as the international failure to prevent the atrocities, coercive measures under Pillar Three may also be considered. The fact that the main perpetrator of the mass atrocity crimes is an NSAG that operates on different territories complicates the process of devising an appropriate response. As discussed previously, sanctions have not proved to be very effective, and the ICC process is open-ended while international assistance and capacity-building is not enough to stop the actions of Boko Haram. In this regard, there remains the question, can the use of force be a remedy to the ongoing humanitarian crisis?

As former UN Secretary-General Ban Ki-moon underlines, when persuasive measures and positive incentives are insufficient, international military assistance, in compliance with all three pillars, can be a part of the solution to support states (UNGA 2009) in addressing the

challenge posed by NSAGs. In the case of Nigeria, a legally sanctioned international military response against Boko Haram can be undertaken with the consent of the Nigerian government. An external intervention conducted with the invitation of the Nigerian government would also be a consistent measure since the consent of the host state would eliminate the reservations about the legality of the use of force and concerns as to the violation of state sovereignty. Ekumaoko and Ezemenaka (2020) point out that the local population in north-east Nigeria has been increasingly vocal about the necessity of external military intervention. Yet, as Campbell (2014, p. 3) notes, there is a possibility of the Muslim majority perceiving any interference of the international community—especially by the states of the Global North—in the region as an attack on Muslim values, regardless of the fact that Boko Haram has been primarily targeting the Christian community of Nigeria and forcing people to convert to Islam in contravention to fundamental human rights and freedoms (Campbell 2014, p. 3). More significantly the alleged human rights violations conducted by the NSF constitutes an obstacle before the international community to help the government to counter terrorism in the country, as any external involvement is prone to be interpreted as becoming an accomplice in human rights violations (Welsh 2018, p. 371).

Furthermore, it is observed that regional efforts carried out by the Multinational Joint Task Force (MNJTF)—founded by Benin, Cameroon, Chad, Niger, and Nigeria to prevent criminal activities in the border areas—has not yielded to the desired outcome. The MNJTF has been conducting military operations with the authorisation of the AU since 2015 (European Commission 2019), yet Boko Haram still holds under control a significant portion of territory and continues to pose a considerable threat to civilian populations in Nigeria and neighbouring countries. In this regard, if an international military operation is to be carried out, it needs to be well-planned taking into consideration the potential harm it may cause and should have reasonable prospects for success in order not to cause more suffering to the population.

In the current state of affairs, since there is no visible prospect for or willingness in the UNSC to consider the last resort of the use of force, the attention can be focused on the ongoing ICC proceedings. State Parties to the ICC as well as non-party States must ensure that they provide all the resources that ICC needs to conduct its investigations and arrest the perpetrators (Amnesty International 2020c). Respectively, in an environment where the government is unable to protect its people and the international community's efforts are insufficient,

initiating a formal inquiry for the war crimes and crimes against humanity in Nigeria would mean an encouraging step forward to bring justice for victims of the atrocious crimes committed.

## Conclusion

This chapter has demonstrated that the ongoing situation in Nigeria is a significant R2P concern, and the current level of implementation is not enough to end the suffering of the Nigerian population. The conflict between herders and farming communities in the 'Middle Belt' as well as the terrorist activities of Boko Haram has been at the heart of the humanitarian crisis in Nigeria. Indeed, the crimes committed by Boko Haram has destabilised Africa's most populous country. Meanwhile, its extremist violence has become a threat to international peace and security with the attacks carried out in neighbouring countries and the consequent refugee flows and internal displacement (Welsh 2018, p. 375).

Although Boko Haram being an NSAG may have placed it under the focus mainly as a national and international security issue, the presence of mass atrocity crimes as established by the OTP undoubtedly makes the case of Nigeria an R2P concern requiring utmost attention. In the light of the analysis provided in the previous section, it is possible to talk about the failure of the national authorities as well as the international community to provide the necessary protection for the Nigerian population despite clear efforts to tackle the issue. While it remains a question if the international community has consciously attempted to implement R2P but without expressly stating so, various reactions studied in the previous section, which nonetheless can be linked to the norm, still imply that national and international security concerns were the main drive. In this vein, one important implication of this case is the complexity created by the involvement of the NSAGs in the picture and the state-centric approach leading the international R2P response.

Taking stock of the two decades of R2P implementation, especially since the 2009 Report of the Secretary-General which laid out the three-pillar implementation strategy, there is still need to challenge States and policy-makers to acknowledge the fact that States are not the only actors committing atrocity crimes and R2P's focus is not limited to States. As the first advisor to the UN Secretary-General on R2P Edward Luck notes (2015) such concern has been raised in different UN platforms, as in the occasion of the Arria formula meeting of the UNSC



that took place in December 2015, wherein officials from Spain and Chile raised concerns about R2P being too state-centric, hence failing to address other perpetrators of atrocity crimes. Moreover, Ban Ki-moon has drawn attention to this issue in his 2015 Report arguing for the presence of two new challenges to R2P's present state: the terrorist activities of non-state armed groups and the impact of technology (UNGA 2015). In his 2016 Report, Ban mentions 'non-state actors' in six different paragraphs, urges the international community to acknowledge that they are a factor in R2P, and remarks: 'Today we face a more challenging context, in which some states and non-state actors routinely threaten populations and make calculated decisions to disregard their legal obligations and protection responsibilities' (UNGA 2016, p. 2). While there is a common understanding that NSAGs enjoy impunity because attributing responsibilities might imply effectively legitimising them, international criminal law establishes the responsibility of individual members of NSAGs for their crimes in order to provide more robust protection to populations (Welsh 2018, p. 365). Moreover, as part of customary international law, common Article 3 to the Geneva Conventions of 1949, along with the Additional Protocol II (1977), requires all parties to Non-International Armed Conflicts (NIACs), including NSAGs, to respect and protect civilian populations.

In the current state of affairs, the impact of NSAGs cannot be overlooked. With globalisation and advancements in technology, such groups have become more and more powerful, omnipresent, and visible in the international system. As Whiteside (2015, p. 232) points out, the rise of non-state actors and the growing number of weak states introduced to us a new phenomenon: 'terrorism as genocide'. As Ban indicates, mass murders take different forms and they are committed by different types of perpetrators, hence, it cannot be ignored that certain terrorist activities of NSAGs make it necessary to adopt R2P implementation strategy to better respond to human rights violations for the sake of people in urgent need (UNGA, 2015).

Eventually, a possible R2P mandate must follow the three-pillar implementation strategy. It is no secret that the Nigerian government has failed to fulfil its Pillar One responsibility which is protecting its population from the atrocities of Boko Haram. This requires the international community to act under Pillar Two and where relevant under Pillar Three considering that the three pillars may also be implemented simultaneously in a way to complement efforts under each pillar. Accordingly, the international community has a duty to support the government

of Nigeria for its counter-terrorism measures, while keeping it accountable for its actions too. The fact remains that the Member States of the UNSC repeatedly determined the threat posed by Boko Haram to international peace and security and imposed sanctions. However, ineffective responses failed to ensure sustainable peace for the people affected by this threat and resulted in more misery, rendering international community in a state of failure to uphold its protection responsibilities. Overall, when we look at the big picture, we see neither the Nigerian State nor the international community has internalised the R2P norm. While it has been relentlessly striving to deal with Boko Haram to end the suffering of the population, the lack of an R2P mentality at the backdrop of the actions resulted in mass atrocity crimes by the state forces. As for the international community, the UN and its Member States have been too much focused on classical notions of national and international security rather than human security, and thus, failed to utilise available tools in the R2P toolkit to provide the necessary protection to the Nigerian population.

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