

Hidden in Plain Sight, An Empirical Study of Sexual Violence in Armed Conflict from a Boko Haram Perspective.

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Abstract

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This dissertation explores the widespread occurrence of sexual violence during armed conflict (SVAC), focusing on the *Boko Haram* insurgency in Nigeria. It examines the Nigerian and international legal frameworks related to armed conflict, particularly those aimed at safeguarding vulnerable groups such as women and children. The research explores the development and application of International Humanitarian Law (IHL) to protecting civilians during armed conflict and identifies the shortcomings within Nigeria's judicial system in addressing sexual violence amidst the *Boko Haram* crisis. It highlights the necessity of understanding the societal and power structures perpetuating such violence both within armed groups and in society.

Existing theories advanced to explain conflict-related sexual violence have been criticized for not adequately explaining variations observed in the incidences of sexual violence in armed conflict and for over-predicting such violence. The Patriarchal Militarized Masculinity concept, developed

in this dissertation as a theoretical framework to analyze sexual violence in the *Boko Haram* armed conflict, aims to intersect two seemingly parallel and conflicting theories. This concept seeks to explain sexual violence in armed conflict by utilizing the arguments of militarized masculinity and patriarchal masculism in a way that maximizes their strengths, minimizes their weaknesses, and creates a comprehensive explanatory framework for sexual violence in armed conflict. By adapting the Patriarchal Militarized Masculinity framework to the *Boko Haram* conflict, this dissertation argues that the continued operation of a combination of these factors leads to the proliferation of sexual violence. In so doing, the study expands existing explanations of sexual violence in armed conflicts and introduces additional theoretical frameworks based on feminist critiques of power and Islamic feminism.

The research addresses the question: What are the factors responsible for the continued perpetration of sexual violence in the *Boko Haram* armed conflict? The findings argue that a combination of factors leads to the proliferation of sexual violence: the masculinized military socialization of *Boko Haram* combatants and a pre, during, and post war community culture steeped in male-dominated, androcentric religio-cultural ideologies and power structures. These structures institutionalize discrimination against women and are operationalized through normative institutions like marriage. The data shows that the issue is not entirely due to the failure of the current legal landscape in deterrence and enforcement, as has been the focus of the international community's efforts. Instead, *Boko Haram* combatants were indoctrinated not to view their acts as illegal because the acts of sexual violence were framed within the context of marriage, rendering force and coercion irrelevant to them.

The overarching purpose of this study was to fill a gap in the knowledge base by contributing interdisciplinary empirical research that focuses on understanding sexual violence in armed conflicts in an in-depth investigation of the *Boko Haram* armed conflict, through the eyes and perceptions of those accused of perpetrating this crime against humanity. Qualitative methodological approaches and mixed methods were utilized to collect, analyze, and report the data. This included doctrinal research, a literature review, and analysis of existing legal frameworks (domestic and international), supported by empirical data collected from primary and secondary sources. Semi-structured interviews were conducted in Gombe, FCT, Kwara, Kaduna, and Borno states in Nigeria, including the Mallam Sidi camp for rehabilitated *Boko Haram* adherents and a displaced persons camp in Maiduguri, alongside focus group discussions in Ilorin, Abuja, and Gombe. Data collection involved audio recordings, field notes, secondary document reviews, and reflective journaling.

The study reveals deeply rooted power structures that foster a culture of violence and insecurity, highlighting the critical need to understand the specific dynamics of sexual violence within this conflict. The dissertation suggests that significant challenges exist in applying IHL to prevent sexual violence during armed conflict, particularly in areas influenced by patriarchal institutions and religious ideologies. It stresses the need for continuous development of IHL to adapt to the changing nature of modern conflicts. The socio, political and legal implications discussed, and recommendations proffered, should provide empirical data-supported tools for policymakers to assist in the effort to prevent sexual violence and stem this scourge. Therefore, this research is potentially an invaluable tool for law and policy makers in working towards achieving this goal.

Obinna (Obinneya) Uchegbu. This is for you. I love you!

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Acronyms

AEPB: Abuja Environmental Protection Board

BBC: British Broadcasting Corporation

CCA: Criminal Code Act

CEDAW: Convention On The Elimination Of All Forms Of Discrimination Against Women

CRA: Child's Right Act

DDR: Disarmament, Demobilization, And Reintegration Program

ECOWAS: Economic Community Of West African States

FBI: Federal Bureau Of Investigation

GII: Gender Inequality Index

HIV: Human Immunodeficiency Virus

ICC: International Criminal Court

ICRC: International Committee Of The Red Cross

ICTR: International Criminal Tribunal For Rwanda

IDP CAMPS: Internally Displaced Persons Camps

IHL: International Humanitarian Law

ISAC: Inter-Agency Standing Committee

ISIS: Islamic State

ISWAP: Islamic State West Africa Province

JEM: Justice And Equality Movement

MNJTF: Multinational Joint Task Force

PC: Penal Code

POWS: Prisoners Of War

RPGS: Rocket-Propelled Grenades

SAPCLN: State And Community-Based Policing And Law Enforcement NETWORK

SLM: Sudan Liberation Movement

STDS: Sexually Transmitted Diseases

SGBV: Sexual And Gender-Based Violence

SVAC: Sexual Violence In Armed Conflict

UNIFEM: United Nations Development Fund For Women

US: United States

WANEP: West African Network For Peacebuilding

Introduction

This research contributes to the broader debate of why sexual violence persists in armed conflict despite the proliferation and expansion of the norms of war by the international community, embodied in International Humanitarian Law (IHL); by determining the factors that are responsible for creating an enabling environment for the widespread occurrence of sexual violence within the context of the *Boko Haram* armed conflict¹ in northern Nigeria and neighboring countries in the Chad Basin.²

The focus of the international community in tackling violations of IHL rules has mainly been centered on accountability through the doctrine of command responsibility,³ whereby commanders are held responsible for the actions of the soldiers under their effective command and control.⁴ However, this focus and strategy appears to be failing to prevent, and indeed has yet to end, the widespread use of sexual violence by armed combatants and groups in armed conflict. This study goes beyond the command responsibility doctrine and its apparent inability to emphatically address the pervasiveness of sexual violence in armed conflicts by seeking socio-legal solutions

¹ For a detailed analysis of the Boko Haram conflict, history, evolution, causes, etc. see Iyi, John-Mark. *On the Brink? The Nigerian State and the Making of Boko Haram* in Iyi, John-Mark & Strydom, Hennie. (2018). *Boko Haram and International Law*. The book offers an in-depth analysis of various aspects of the Boko Haram conflict within the context of international law in general and IHL in particular.

² Boko Haram, translated from Hausa to mean ‘Western education is forbidden’, is a militant Islamic group operating mainly out of northeastern Nigeria and surrounding countries in the Chad Basin. See Boko Haram Fast Facts, CNN (2019), <https://www.cnn.com/2014/06/09/world/boko-haram-fast-facts/index.html> (last visited Apr 27, 2019).

³ United Nations Security Council, *Report of the Secretary-General on women, peace and security (S/2002/1154)* page 4, <https://www.un.org/womenwatch/ods/S-2002-1154-E.pdf> (last visited Apr 15, 2019). The United Nations Secretary-General noted in the Report that “The determination of individual command responsibility for many of the offences involving sexual violence against women and girls in armed conflict has been a major advance and has undermined the culture of impunity that previously pervaded discussion in this context.”

⁴ Jeremy Dunnaback, *Command Responsibility: A Small-Unit Leader's Perspective*, 108 *Northwestern University Law Review* 1385 (2014). The doctrine of command responsibility operates on the basis of the principal-agent relationship, whereby commanders are held responsible for the actions of the soldiers under their effective command and control. They are accountable for the actions of soldiers under their command and control, in obedience to their orders. Sexual violence is a crime in international and most domestic jurisdictions and where it is shown that there was a widespread, systematic pattern of sexual violence that formed part of a provable strategy, the command-and-control structure can be held accountable for those acts and can be prosecuted in domestic and international tribunals.

through centering armed combatant soldiers themselves to understand their perspectives in relation to their explanations for their actions.

Explaining this phenomenon through the theory of power that men exert over women, their bodies and sexuality, I carry out a gendered analysis of patriarchal structures expressed in institutionalized discriminations that oppress and subjugate women on all levels—society, state and armed groups. I primarily focus on patriarchal structures at societal and armed group levels. In this dissertation, the research question that I grapple with and answer is as follows: what are the factors responsible for the continued perpetration of sexual violence in the *Boko Haram* armed conflict?

I argue that the continued operation of a combination of these factors leads to the continued proliferation of the use of sexual violence in the *Boko Haram* armed conflict: the masculinized military socialization of armed combatants by the armed group (*Boko Haram*); and a pre, during and post-war community/culture that is steeped in male-dominated, androcentric religio-cultural ideologies/attitudes and power structures expressed in the institutionalization of discrimination against women, and operationalised through the mechanism of age-old normative institutions like marriage.

The data clearly bears out as shown in this work, that the issue is not quite that the current legal landscape and norms are failing in deterrence/enforcement, as has been the focus of the international community's efforts against sexual violence in armed conflict, but that the *Boko Haram* combatants were indoctrinated not to view their acts as illegal, because the acts of sexual violence were mostly framed within the context of marriage and hence force and coercion apparently becomes irrelevant to them. Therefore, it is pertinent to note that despite the current, robust prohibitory, sexual violence norms aimed at protecting women and girls, and despite the legal framework and more enforcement regimes against sexual violence in armed conflict, it is still

prevalent, and this largely accounts for how we can explain the operationalization within the *Boko Haram* armed group, as the research reveals.

I triangulate the research data sourcing and collection to ensure the validity of the data and findings of the study, using a mixed methods approach. I collected and developed a dataset of a variety of data types that include audio recordings and transcripts of interviews, spreadsheets, and other secondary data. I did an in-depth, qualitative analysis of the data, with the aid of data analysis software like Atlas.ti, Microsoft Excel, etc. I carried out focus group sessions, observations, and interviews with relevant stakeholders including but not limited to religious and political leaders, military leaders of both state and non-state armed groups, armed group combatants, and survivors of sexual violence, to gain a well-rounded, comprehensive understanding of this phenomenon from the perspectives of major stakeholders. In addition, there were basic statistical analyses of the data collected.

Further, I extensively reviewed theories advanced to explain conflict-related sexual violence in the existing literature. Then I developed the Patriarchal Militarized Masculinity theoretical framework—a theoretical framework that is as an intersection between two seemingly parallel theories seeking to explain sexual violence in armed conflict. I utilize the Patriarchal Militarized Masculinity framework to converge military and feminist explanations of sexual violence in armed conflict to maximize their strengths, minimize their weaknesses and to use one to complement the other in a way that creates a comprehensive and more holistic explanatory framework for sexual violence in armed conflict. Then, I analyzed the research data using this theoretical framework as is relevant to the discourse.

The crux of this research is to show that the answer to the research question in the context of the *Boko Haram* conflict, is significant in our quest to prevent the use of sexual violence in armed conflict, especially as scholars in this field have emphasized that understanding this phenomenon will enhance and better focus the collective efforts of the international community to prevent and mitigate the use of sexual violence against civilians in armed conflicts. The research is potentially an invaluable tool in the hands of law and policy makers in working towards achieving this laudable goal.

The findings of this research contribute to the explanation of the problem of sexual violence in armed conflict and, juxtaposed with existing law, suggests that the laws of war have not succeeded in dealing with this problem. It further suggests that part of the missing link in the efforts of the international community in ending this menace, within the context of the *Boko Haram* armed conflict, can be found in the explanation being offered by this study in answer to the research question. The socio-political and legal implications discussed, and recommendations proffered should provide empirical data-supported tools to policy makers to assist in the effort to prevent sexual violence and stem the tide of this scourge.

Finally, this study is driven by grave concerns about the continued pervasiveness of sexual violence in wartime. Although the International Humanitarian Law (IHL) prohibition of sexual violence in armed conflict has expanded over the years, it appears to be failing to prevent the use of sexual violence in armed conflict, both as a strategy by armed group commanders and as a practice of foot soldiers, as some modern armed conflicts are showing. This research contributes towards understanding the reasons for the continued existence of this phenomenon with a view to facilitate policy changes that will hopefully lead to a reduction in the rate of the occurrence of this gruesome crime. The study concludes with an exploration of broader implications of the

persistence of sexual violence in armed conflict despite the proliferation and expansion of the norms of war embodied in IHL, with particular emphasis on the context of the *Boko Haram* armed conflict.

Chapter One of this dissertation contains the introduction and motivation of this research with an overview of the conflict situation and sexual violence in the *Boko Haram* Armed Conflict. It provides an overview of the *Boko Haram* armed group, the violent conflict in Nigeria, and sexual violence in armed conflict. It discusses the history of armed conflict in Nigeria, highlighting inter-communal and inter-ethnic conflicts. This chapter emphasizes the weaknesses in political institutions and security forces that often lead to violence as the perceived solution to security threats. It is also an examination of the *Boko Haram* insurgency and armed banditry in Nigeria, shedding light on the prevalence of violence as a response to security challenges. This chapter also examines sexual violence in armed conflict, particularly within the context of *Boko Haram*, underscoring the impact of such violence on women in Nigeria.

Chapter One paints the backdrop of the story by describing the *Boko Haram* armed conflict in northern Nigeria. It provides an in-depth description of the conflict, highlighting the key players, dynamics, and impact on the region. It discusses the origins and evolution of the *Boko Haram* insurgency, detailing its strategies, tactics, and the challenges faced by the Nigerian government in addressing the conflict. It explores the humanitarian consequences of the conflict, including displacement, human rights violations, and the use of violence by various parties involved.

Chapters Two and Three explore historical norms and recent developments in International Humanitarian Law concerning the norms of war and combatting sexual violence. They provide explanations for sexual violence in armed conflict and identify gaps for further research to address. They explore how International Humanitarian Law has evolved in its approach to combatting

sexual violence and discuss the factors that contribute to the persistence of sexual violence in armed conflicts. Additionally, Chapters Two and Three shed light on the limitations of existing legal frameworks in preventing sexual violence and highlight the need for policy changes to reduce the occurrence of this crime.

Chapter Four focuses on an empirical study and analysis of the factors that enable sexual violence to spread throughout an armed conflict. It examines how armed fighters commit sexual violence based on fieldwork conducted in various locations in northern Nigeria. It explores the enabling elements that facilitate the commission of sexual violence in armed conflicts. In addition, it discusses the historical norms and recent developments in International Humanitarian Law related to combatting sexual violence. It also provides explanations for sexual violence in armed conflict and identifies gaps for further research in this area. The chapter also analyzes the effectiveness of International Humanitarian Law in addressing sexual violence, particularly in the context of the *Boko Haram* armed conflict in northern Nigeria.

Chapter Five explores feminist critiques, organizational structures, and religious ideologies within armed groups, shedding light on the intersection of these factors in perpetuating SVAC. It discusses the significant contributions of feminist researchers, activists, and scholars in addressing sexual violence as arising from power disparities. This chapter argues that the culture of subjugation of women leads to the institutionalization of discrimination against women, which in turn gives way for sexual violence during armed conflict. It examines the justification of sexual violence in armed conflict through religious ideologies, with a specific focus on Islamic feminist critiques and feminist critiques of marriage. The Chapter introduces the concept of patriarchal militarized masculinity, offering an intersectional approach to understanding SVAC. In this chapter the framework of patriarchal militarized masculinity is analyzed in the context of the Boko Haram

armed conflict, providing insights into the dynamics of SVAC. Chapter Five aims to deepen our understanding of the complex nature of sexual violence in armed conflict and the role of the intersectional concept of patriarchal militarized masculinity in explaining SVAC.

Chapter Six analyzes the effectiveness of International Humanitarian Law (IHL) in addressing sexual violence in armed conflict on a broader scale and in the context of the *Boko Haram* armed conflict in northern Nigeria. The chapter discusses the legal and policy implications of the focus of the international community and IHL on accountability for international crimes, as means of tackling the scourge of sexual violence in armed conflict. It examines the factors that contribute to the persistence of sexual violence despite IHL norms and prohibitions; and discusses how *Boko Haram* continues to commit war crimes and crimes against humanity related to sexual violence, despite existing international legal frameworks. It also highlights the limitations of IHL in deterring *Boko Haram* from engaging in such atrocities and suggests areas for improvement in addressing sexual violence in armed conflict. Chapter Six discusses conclusions and recommendations drawn from the research data and analysis that can strengthen legal frameworks towards eliminating sexual violence. The implication of the research findings in this dissertation present an empirical contribution to the international community in the effort to eliminate the crime of sexual violence in armed conflict and in society at large.

Chapter One: Overview Of Boko Haram, Violent Conflict In Nigeria, And Sexual Violence In Armed Conflict

1.1. Armed Conflict in Nigeria: Armed Banditry and the Boko Haram Insurgency

Nigeria has a long and regrettable history of inter-communal and inter-ethnic conflicts.⁵ Unfortunately, such dangers to stability are often not addressed until violence is a foregone conclusion due to several weaknesses in the institutions of politics and the security forces.⁶ Violence ought not be the answer to every dispute because in most cases the result is nothing but more violence. However, due to security organizations' inherent weakness, violence appears to be the only way to address any threat to security.⁷ This appears to form part of what is responsible for sustaining the *Boko Haram* conflict till today.

The terrorist jihadist organization *Boko Haram* is situated in northeastern Nigeria.⁸ In Arabic, *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad* means "People Committed to the Propagation of the Prophet's Teachings and Jihad".⁹ This is the group's official name. Speaking Hausa, the name *Boko Haram* means "Western education is forbidden" and is a colloquial term used to describe the group.¹⁰ Neighbors, who disapproved of their way of life and teachings, called them *Boko Haram*

⁵ Ibiang Okoi, "The Impact of Internal Boundaries and Ethnic Conflicts on Nation Building in Nigeria," *Journal of Contemporary Research* 18 no 2 (2010) 55 -73, accessed 31 August 2023, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjmsu_al4mBAxVgQkEAHclpBQkQFnoECCYQAO&url=https%3A%2F%2Fwww.ajol.info%2Findex.php%2Flwati%2Farticle%2Fview%2F210130%2F198092&usg=AOvVaw2kWw9dyhx7wvjvU0Vpz0qW&opi=89978449.

⁶ Ibid,7.

⁷ Ibid.

⁸ Salisu Salisu Shuaibu and Mohd Afandi Salleh, "Historical Evolution of Boko Haram In Nigeria: Causes And Solution," *International Conference on Empowering Islamic Civilization in the 21st Century, Malaysia* (September 2015).

⁹ Ibid.

¹⁰ Ibid.

and the name stuck.¹¹ Boko Haram means, “Westernization is sacrilege”, and was in turn translated into the general language to mean that “Western education is a sin”.¹² This group opposes Western education from an ideological standpoint because it believes it undermines Islamic principles.¹³ Mohammed Yusuf established *Boko Haram* in the Nigerian city of Maiduguri in 2002.¹⁴ The organization first appeared as a radical Islamic movement that supported imposing Sharia rule in Nigeria. *Boko Haram* was initially a nonviolent group that prioritized religious doctrine and opposed Western education.¹⁵

The group originated as a non-violent Islamic group founded and led by Mohammed Yusuf in the early 2000s.¹⁶ Its main objectives were the promotion of Islamic values, community outreach, and religious instruction.¹⁷ *Boko Haram* ran social and educational initiatives while pushing for a literal interpretation of Islamic law under Yusuf’s direction. The organization refrained from using violence during this time, focusing instead on teaching religious principles and fostering community growth.

Over time, hostilities and confrontations erupted due to growing tensions with the Nigerian administration. A significant struggle broke out in 2009 between Nigerian security forces and *Boko*

¹¹ Jideofor Adibe, “Explaining the Emergence of Boko Haram,” *Brookings* (Blog), May 6, 2014, accessed on March 6 2023, <https://www.brookings.edu/blog/africa-in-focus/2014/05/06/explaining-the-emergence-of-boko-haram/>.

¹² Victoria Hamilton, “The Christian Medical Missionary’s Response to the Health Needs of Northern Nigerian Women Due to Boko Haram Terrorism,” (Honours Program thesis, Baylor University 2016), accessed 30 August 2023. <https://baylor-ir.tdl.org/server/api/core/bitstreams/778bea1d-fa8d-46f2-bae0-af34a5afb3af/content>.

¹³ Alex Thurston, “The disease is unbelief”: Boko Haram’s religious and political worldview,” (Analysis Paper, Brookings Institution, 2016), 5, https://www.brookings.edu/wp-content/uploads/2016/07/brookings-analysis-paper_alex-thurston_final_web.pdf.

¹⁴ Anneli Botha and Mahdi Abdile, “Understanding Boko Haram in Nigeria – Reality and Perceptions,” (2007). *The Network for Religious and Traditional Peacemakers* <https://www.peacemakersnetwork.org/wp-content/uploads/2016/07/Understanding-Boko-Haram-in-Nigeria-%CC%B6-Reality-and-perceptions-WEB.pdf>

¹⁵ Jideofor Adibe, “Explaining the Emergence of Boko Haram,” *Brookings* (Blog), May 6, 2014, accessed on March 6 2023, <https://www.brookings.edu/blog/africa-in-focus/2014/05/06/explaining-the-emergence-of-boko-haram/>.

¹⁶ Ibid.

¹⁷ Ibid.

Haram.¹⁸ Mohammed Yusuf was apprehended and subsequently passed away in police custody. This incident was a turning point that caused the gang to become more radicalized and militarized. Following Yusuf's demise, Abubakar Shekau assumed leadership of the group, and *Boko Haram* redirected its attention to armed insurgency and terrorism. The gang started attacking people, law enforcement, and government buildings.¹⁹ *Boko Haram* gained notoriety for often employing suicide bombers as a tactic.²⁰ The gang frequently used young girls and women as suicide bombers, taking advantage of their gullible victims.²¹

Boko Haram gained notoriety and drew international attention after their high-profile 2014 abduction of 276 schoolgirls from Chibok.²² The event garnered international attention and gave rise to the #BringBackOurGirls campaign. Beyond Nigeria, *Boko Haram* extended its operations and launched attacks in neighboring nations like Cameroon, Chad, and Niger.²³ In order to combat the cross-border danger, a Multinational Joint Task Force (MNJTF) was established.²⁴ *Boko Haram* swore loyalty to the Islamic State (ISIS) in 2015.²⁵ The Islamic State West Africa Province (ISWAP) is the new official name of the group.²⁶

¹⁸ Ibid.

¹⁹ Jacob Zenn, "Case Not Quite Closed on the Assassination of Nigerian Salafi Scholar Jafaar Adam," <https://www.cfr.org/blog/case-not-quite-closed-assassination-nigerian-salafi-scholar-shaikh-jaafar-adam>.

²⁰ Mia Bloom and Hilary Matfess, "Women as Symbols and Swords in Boko Haram's Terror," 6 no1 (2020) 105, accessed 31 August 2023, <https://www.inclusivesecurity.org/wp-content/uploads/2016/03/Women-as-Symbols-and-Swords.pdf>.

²¹ Ibid.

²² BBC News. "Nigeria abducted girls: Celebrities support Twitter campaign." (2014) Retrieved from <https://www.bbc.com/news/world-africa-27296019>.

²³ Al Jazeera. "Boko Haram 'expands' into Niger, Cameroon, and Chad" (2015) Retrieved from <https://www.aljazeera.com/news/2015/2/2/boko-haram-expands-into-niger-cameroon-and-chad>.

²⁴ United Nations Office for West Africa and the Sahel (UNOWAS). "Cross-border security challenges in West Africa and the Sahel: the role of the United Nations" (2015) Retrieved from <https://reliefweb.int/report/niger/cross-border-security-challenges-west-africa-and-sahel-role-united-nations>.

²⁵ Blanchard, L. E., & Husted, T. F. Nigeria's Boko Haram: Frequently Asked Questions. Congressional Research Service, 7-5700. (2015) Retrieved from <https://fas.org/sgp/crs/row/R43558.pdf>.

²⁶ Ibid.

There have, however, occasionally been internal conflicts and autonomous operations by group factions. At its height, *Boko Haram* created a de facto Islamic state over large swaths of northeastern Nigeria. Since then, a large portion of this territory has been re-gained by Nigerian and regional military forces, with assistance from foreign allies. Due to the horrific humanitarian effects of *Boko Haram*'s actions, millions of people have been forced to flee their homes and endure great hardship.²⁷ The Nigerian government is still fighting the group, but it is still difficult to completely eradicate its influence and deal with the underlying causes of the war, even with the support of regional and international allies.²⁸

The members of *Boko Haram*, while targeting the educational system of Nigeria, have destroyed a good number of schools. In order to establish a 'pure' Islamic state governed by Sharia law, it wishes to wage war against the Federal Republic of Nigeria completely.²⁹ While some people are abducted and coerced into being part of the group, other people willingly decide to join for various reasons that may be related to the rate of unemployment and poverty in Nigeria.³⁰ Even if unemployment and poverty are not the primary causes of *Boko Haram*'s radicalization in Nigeria, it has been argued that "the tendency to produce suicide bombers is greater in a community defined by mass misery and joblessness than in one in which basic needs of food, education, health, housing, and sanitation are met for the majority of the people".³¹

²⁷ Walker, Andrew. "What is Boko Haram," *United States Institute of Peace Special Reports* (2012), 1-16. Accessed 17 August 2023. <https://www.usip.org/sites/default/files/SR308.pdf>.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Freedom C. Onuoha, "Why Do Youth Join Boko Haram?," *United States Institute of Peace: Special Report* (2014), accessed 6 September 2023, https://www.usip.org/sites/default/files/SR348-Why_do_Youth_Join_Boko_Haram.pdf.

³¹ Kayode Komolafe, "Boko Haram: A Crisis in Search of Strategy," *Thisday*, January 25, 2012.

In a society where there is a high level of poverty and unemployment, the rate of crime and violent activities is bound to be high, as³² poverty and crime share a strong relationship. Individuals who find themselves in deplorable environments with little or no means to earn a living can resort to anything, including crime, just to survive. Economic hardship is a crucial component that has fueled the desire for violent extremism, recruitment, and support for *Boko Haram*.³³ The grievances of individuals and groups, such as those related to poverty, unemployment, illiteracy, discrimination, and economic marginalization, can be utilized as recruiting tools by *Boko Haram* to gather support for their violent terrorism.

Furthermore, with the rejection of Western education, we can presume, according to the findings of Humphrey and Weinstein, that the lack of access to education is an important factor that acts like a catalyst for people joining the *Boko Haram* group.³⁴ As traced historically, the teachings in the various madrasas and some Islamic centers raise concerns about the content of Western education received. This phobia I suggest reinforces the theory of Humphrey on the role the lack of access to education has on the joining of militant groups.

Generally, there exist a number of potential motivators that have led people to join *Boko Haram* and they include factors such as poor socio-economic conditions in northern Nigeria, which is known to have one of the worst socio-economic conditions in Africa, especially among poor youths, who have been the hardest hit in the society.³⁵ Another factor relates to financial incentives,

³² Abraham Ejogba Orhero, "Poverty, Unemployment And National Insecurity In Nigeria's Fourth Republic," *International Journal Of Legal Studies*, (December 31, 2019), accessed 6 September 2023, <https://ijols.com/resources/html/article/details?id=197231&language=en>

³³ Olojo, A., "Nigeria Trouble North: Interrogating the Drivers for Public supports of Boko Haram," *International Centre for Counter-terrorism the Hague* (2013), accessed 31 August 2023, <http://www.icct.nl/download/file/ICCT-Olojo-Nigerias-Troubled-North-October-Pdf>.

³⁴ Humphreys, Macartan, and Jeremy Weinstein. "Demobilization and reintegration in Sierra Leone: Assessing progress." In *Security and Post-Conflict Reconstruction*, pp. 67-89. Routledge, (2008).

³⁵ Onuoha, F. (2014). *Why Do Youth Join Boko Haram?* [online] Available at: https://www.usip.org/sites/default/files/SR348-Why_do_Youth_Join_Boko_Haram.pdf.

where some members of *Boko Haram* are paid to assassinate law enforcement and military personnel and destroy essential facilities in the country.³⁶ Thirdly, is that of kinship, whereby because they are connected to *Boko Haram* militants, some northern Nigerians, especially politicians, may associate with them. There is also the issue of religious and political conflict between Muslims and Christians in northern Nigeria that has lasted for several years, which *Boko Haram* and other Muslim armed bandits take advantage of to terrorize Christian communities. Finally, there is the case where members of the armed group may have been radicalized by Nigerian imams.³⁷

The majority-Muslim northern part of Nigeria appears to offer the group a consistent source of recruits; impoverished youths and Almajiris are eager to join any movement in search of an alternative to the country's existing economic and political inequalities; they believe that the sect's radical Salafism is the only efficient solution to their problems.³⁸ The group could be said to have started exhibiting its intentional killings after the assassination of the popular Islamic scholar and preacher Sheikh Ja'afar Mahmoud Adam, which was linked to the group in 2007.³⁹ The assassination was said to have been carried out at the behest of Muhammad Yusuf as the Sheikh was criticizing the group for its extremist ideology.⁴⁰ The violence of the group took a different turn after the arrest, detention, and eventual killing of Muhammad Yusuf in police custody.⁴¹ Since then, attacks from *Boko Haram* have increased tremendously. These attacks were initially targeted

³⁶ Bureau of Democracy, Human Rights and Labor. United States Department of State. *Country Reports on Human Rights Practices for 2022 United States Department of State. Human Rights Report Executive Summary.* (2022) Available at: https://www.state.gov/wp-content/uploads/2023/03/415610_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf.

³⁷ Ibid, 25.

³⁸ Ibid.

³⁹ Jacob Zenn, "Case Not Quite Closed on the Assassination of Nigerian Salafi Scholar Jafaar Adam," <https://www.cfr.org/blog/case-not-quite-closed-assassination-nigerian-salafi-scholar-shaikh-jaafar-adam>.

⁴⁰ Ibid, 7.

⁴¹ Ibid.

at federal and state agents, but they even started attacking schools, churches, mosques etc.⁴² Based on estimates more than 5,000 people have died in *Boko Haram*-related violence since 2009 with at least 2,000 in the first half of 2014.⁴³ There have been several cases of abductions, killings, suicide bombings, and a series of other activities all pointing towards *Boko Haram*. It is safe to conclude that *Boko Haram* is one of the deadliest terrorist organizations in the world.

1.1.1. Defining Armed Conflict

In the Geneva Conventions, two kinds of armed conflicts are recognized: international armed conflict and non-international (or internal) armed conflict.⁴⁴ While international armed conflict involves an incompatibility contest between two or more countries, internal conflict, on the other hand, is one between two parties, one being the government of the state, within the same country, without the support of the external countries.⁴⁵ This is provided for under common Article 3 of the Geneva Convention, which reads as follows:

In addition to the provision which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Parties, even if the said occupation meets with no armed resistance.

⁴² AfeikHena Jerome, “Lessons From Colombia For Curtailing The Boko Haram Insurgency In Nigeria,” *Prism* 5, no 2 (2015) 95, accessed 1 September 2023, https://cco.ndu.edu/Portals/96/Documents/prism/prism_5-2/PRISM5_2_Lessons_From_Colombia_2015031902.pdf.

⁴³ Ibid.

⁴⁴ “Defining Armed Conflict in International law” op. cit.

⁴⁵ Ibid.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power if the latter accepts and applies the provisions thereof.

Hence, in cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, it is irrelevant that the state of war is not recognized by one of the parties if such conflict involves two independent countries that have signed the Convention.⁴⁶ Examples include the armed conflict between North Korea and South Korea of 1950,⁴⁷ and the current, ongoing armed conflict between Russia and Ukraine.⁴⁸

The Convention also applies to conflicts between two parties, one of whom may not be a party to the Convention. This is otherwise known as an internal armed conflict. An example of this kind of conflict is the Nigerian civil war of 1967, which was between the Nigerian Government and the former secessionist Republic of Biafra, the latter itself not a signatory to the Geneva Convention at the time of the war. The ongoing Syrian civil war is a modern example of internal armed conflict as it involves conflict between the Syrian Arab Republic under the leadership of President Bashar al-Assad and various domestic forces within the country.

According to UNCDP/PRIO Dataset, armed conflict is:

⁴⁶ Shushmita Choudhary, “Internal Armed Conflict under International Humanitarian Law” <<https://blog.ipleaders.in/international-armed-conflict-international-humanitarian-law/>> accessed on March 28, 2022.

⁴⁷ United Nations Command. 2020. “United Nations Command > History > 1950-1953: Korean War (Active Conflict).” Unc.mil. 2020. <https://www.unc.mil/History/1950-1953-Korean-War-Active-Conflict/>.

⁴⁸ “International Armed Conflict in Ukraine.” n.d. Www.rulac.org. <https://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine#:~:text=Overview>.

a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths.⁴⁹

From this definition, it is evident that for a conflict to qualify as an armed conflict, there must be use of armed forces in the contest by the parties, as well as one of the parties must be the government of a state. Finally, 25 deaths must have been recorded as a result of such conflict. It is apparent that this definition of armed conflict focuses on the deaths recorded during the conflict to determine whether the contest qualifies as an armed conflict or not. A more general perspective was proffered by Pictet, who defined armed conflict as “any difference arising between states and leading to the intervention of members of the armed forces...”⁵⁰ Similarly, the Appeal Chambers in Tadic’s case explained that “An armed conflict exists whenever there is a resort to armed force between governmental authorities and organized armed groups or between such groups within a State”.⁵¹ This position is in contrast with the Somalian situation in which the absence of an identifiable government precluded the classification of the conflict as an ‘armed conflict’.⁵²

It is inferable from these definitions that, while the definition given by the UNCDP/ PRIO Dataset looks at the definition of armed angle from the perspective of the number of deaths recorded, the other definition given by Pictet and the Appeal of ICTY gives an insight to the notion that any hostility between two sovereign states or within a state where armed forces are involved can be said to be armed conflict. Thus, armed conflict in this discourse may simply be conceptualized as

⁴⁹ Ref. 2 UCDP/PRIO (1 September 2006) Armed Conflict Dataset Codebook v.4-2006: https://www.prio.no/cwp/armedconflict/current/Codebook_v4-2006b.pdf.

⁵⁰ J. Pictet, *Commentary on the Geneva Conventions of 12 of August 1949*, (1952) Vol. 1 p. 29.

⁵¹ Case No: IT-94-15T, Para. 70.

⁵² Wallensteen, Peter, and Margareta Sollenberg. “Armed Conflict, 1989-2000.” *Journal of Peace Research* 38, no. 5 (2001): 629-644.

a state of physical altercation between two or more parties involving the use of arms and/or ammunition and the involvement and/or intervention of states forces.

Drawing from the examples above, the *Boko Haram* conflict can be said to be an internal armed conflict. Though *Boko Haram*, a non-state armed group in Nigeria, is not a party to the Geneva Convention, it is bound by the provisions of the Convention in addition to Nigeria, which is a state party. This position therefore provides a strong premise for the investigation of this research to explain the reasons behind the seeming inefficacy of IHL in curbing sexual violence during armed conflicts. It has also been suggested that most conflicts after the Second World War were internal armed conflicts.⁵³ For instance, after the Second World War ended in 1945, there has hardly been armed conflict between two contracting parties to the Geneva Convention. What has been obtainable is conflict between the government of the contracting party and another group. For instance, the Biafran War between the Nigerian government and the people of Biafra; the Syrian civil war referenced above; the Darfur war which was between the Sudan government and Sudan Liberation Government (SLM) and Justice and Equality Movement (JEM).

1.1.2. Boko Haram Insurgency and Banditry

Insurgency in Nigeria could be understood in the context of *Boko Haram* terrorism and armed banditry. *Boko Haram* is a militant organization based in northeastern Nigeria, Cameroon, Niger, and Chad. The sect originated in the Borno and Yobe states of Nigeria, but its activities are now pronounced across northeastern Nigeria.⁵⁴ Armed Banditry on the other hand operates in the northwest part of the country.

⁵³ Chris C. “Win the case”, *International Humanitarian Law*, (Ghana: Readwide Publishers, 2010), 323.

⁵⁴ K Meagher ‘Beyond Terror: Addressing the Boko Haram challenge in Nigeria’ (K Meagher) (2014) Norwegian peacebuilding resource center policy brief <https://reliefweb.int/sites/reliefweb.int/files/resources/Beyond%20terror.pdf> [accessed 28 November, 2021].

Although the group's insurgency initially started as a band of passionate Islamic fundamentalists devoted to the enthronement of Sharia, the group's skirmishes with State actors made it evolve into one of the deadliest terrorist groups in the world.⁵⁵ Thus in 2002, Nigeria was faced with a new security challenge arising from the activities of *Boko Haram*.⁵⁶ Only when Yusuf died in police custody, along with his father-in-law and sect financier, Ustaz Buji Foi, and after members were imprisoned by state authorities did grave worries about its violent tendencies intensify.⁵⁷ In light of this, the BBC speculated in 2012, that the sect's degree of radicalization and terrorism may be due to the replacement of its original leader with Abubakar Shekau, a native of Kanuri who once boasted, "I enjoy killing any one that Allah commands me to kill the way I enjoy killing chickens and rams", and his subsequent crackdown.⁵⁸ In order to wreak havoc on the Nigerian state, the new leadership resorted to using deadly weapons like rocket-propelled grenades (RPGs), anti-tank missiles, improvised explosive devices (IEDs), surface-to-air missiles armored tanks, A-K 47 assault rifles, as well as machetes and daggers. Given the high rate of property and human casualties, these actions have had a negative impact on the country's economy.

Over 13,000 civilians were killed by *Boko Haram* between 2009 and 2015, including about 10,000 in attacks that mostly affected northeastern Nigeria.⁵⁹ Over 1.5 million people have been displaced as a result of the conflict.⁶⁰ The current *Boko Haram* insurgency in Nigeria's northeast geopolitical

⁵⁵ Ibid; Institute for Economics & Peace (2015). Measuring and understanding the impact of terrorism. Available at: <https://privacyinternational.org/sites/default/files/2018-02/Global%20Terrorism%20Index%202015%2C%20Institute%20for%20Economics%20%26%20Peace.pdf>.

⁵⁶ Walker, A. (2012). *United States Institute Of Peace Special Report: What Is Boko Haram?* [online] Available at: <https://www.usip.org/sites/default/files/resources/SR308.pdf>.

⁵⁷Anthony Uviekovo, "Boko Haram Insurgency In Nigeria: A Philosophico-Religious Evaluation," (Masters Dissert. University of Ibadan, 2016), https://www.academia.edu/35846624/BOKO_HARAM_INSURGENCY_IN_NIGERIA_A_PHILOSOPHICO_RELIGIOUS_EVALUATION

⁵⁸ Ibid.

⁵⁹Newman, P. *The Encyclopaedia of Etymology*. London: Mega Chad Research Network. (2003).

⁶⁰ Ibid, 62.

zone began as sectarian religious violence but has since evolved into terrorist activities.⁶¹ Because of its international connections and affiliations, the insurgency is relatively challenging for the Nigerian government to contain. Most Nigerians living in the northeast have fled for safety and security as a result of the rise of the radical Islamic group, notably Christians.⁶² Since the cult started its terrorist activities, they have used a variety of techniques to terrorize the populace. The majority of northern Nigerian states have also been affected by these heinous actions; however, Adamawa, Bauchi, Borno, FCT (Abuja), Kaduna, Kano, Plateau, and Yobe have been the worst affected.⁶³ The group is frequently referred to as a religious cult in Nigeria, in part because of ambiguity surrounding the group's classification or identity and the dread it has instilled.⁶⁴ For instance, Nigerian President Goodluck Jonathan refuted US President Barack Obama's claim that the group is a terrorist organization, stating that its members are not terrorists.⁶⁵ *Boko Haram* was first an Islamic organization but eventually split out from mainstream Islam due to its own set of beliefs and practices.⁶⁶

By August 2014, 650,000 people had left the fighting zone, up 200,000 since May, and 1.5 million by the end of the year. Since 2009, *Boko Haram* has kidnapped over 500 men, women, and children, notably the kidnapping of 276 schoolgirls from Chibok in April.⁶⁷ *Boko Haram* members' vicious attacks have prevented Nigerians from enjoying their basic human rights because of the severe security challenges they have created.⁶⁸ This is especially true in certain

⁶¹ Gilbert, L. The Prolongation of Boko Haram Insurgency in Nigeria: The International Dimensions. *Research on Humanities and Social Science*, 4 (2014). (11) 150-156.

⁶² Nwakaudu, M. Boko Haram and National Development. (2012)

⁶³ Ibid.

⁶⁴ Okemi, M. Boko Haram: A Religious Sect or Terrorist Organization. *Global Journal of Politics and Law Research*, (2013). 3 (9) 237-241.

⁶⁵ Ibid, 62.

⁶⁶ Ibid.

⁶⁷ Ibid,62.

⁶⁸ Aro, O. Boko Haram Insurgency in Nigeria: Its Implication and way forward toward avoidance of Future Insurgency. *International Journal of Scientific and Research Publications*, (2013). 3 (11) 1-8).

parts of northern Nigeria, where they have all but taken control of the area through bomb planting and vicious attacks on unarmed civilians. As a result, the three most impacted states in Nigeria—Borno, Yobe, and Adamawa—were placed under a state of emergency by the federal government.⁶⁹ Curfews are typically enforced in these states' volatile areas. This also contributes to underdevelopment because so many people who operate enterprises during the day, such as taxi drivers, nightclubs, motels, bars, and restaurants, are forced out of business. Between July 27, 2009 and February 17, 2012, Boko Haram carried out 53 attacks in northern Nigeria, resulting in the deaths of 1,157 individuals and hundreds of injuries.⁷⁰ Calculating the exact number of people lost and the extent of Boko Haram's destruction is challenging because any statistic given is only an estimate.⁷¹

Boko Haram is well-known for using sexual violence as one of its repertoires of violence and terrorism in many of their operations. They have used women and girls, especially those from underprivileged backgrounds and those kidnapped and kept in slavery, as tools to terrify and control people, sabotage societal cohesiveness, and spread their ideology, for instance, by sending girls wearing bomb vests to marketplaces, parks and other densely populated areas. *Boko Haram* has carried out mass kidnappings of females, most famously the well-publicized 2014 abduction of over 200 schoolgirls from Chibok.⁷² These kidnappings are used as a pretext for forced sexual enslavement, forced marriages, and forced recruitment of girls. While in captivity, several women and girls are subjected to different forms of sexual abuse and violence. In addition, *Boko Haram*

⁶⁹ Ibid, 62.

⁷⁰ Nwanegbo, C and Odigbo, J. (2013). Security and National Development in Nigeria: The Threat of Boko Haram. *International Journal of Humanities and Social Science*, 3 (4), 285 – 391.

⁷¹ Ahokegh, A. (2011). Boko Haram: A 21st Century Challenge in Nigeria. *European Scientific Journal*, 8 (21), 46-55.

⁷² Human Rights Watch. "Those Terrible Weeks in Their Camp": Boko Haram Violence against Women and Girls in Northeast Nigeria. (2014). Retrieved from <https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls>.

strikes villages where women and girls are subsequently the victims of sexual crimes such as forced marriage, rape, and enslavement. Major humanitarian problems, internal displacement, and the need for substantial psychiatric care for survivors have been brought on by this heinous campaign of sexual violence.

Finally, banditry, prevalent in the northwest zone of Nigeria is a type of organized crime that includes kidnapping, armed robbery, murder, rape, cattle-rustling, and exploitation of environmental resources.⁷³ It has caused the deaths and displacement of thousands⁷⁴ and has threatened democratic governance.⁷⁵ Severe changes in the environment, which have caused land and water scarcity, have been confirmed as a primary cause of the crisis, leading to violent competition over resources.⁷⁶ Over the past decade, banditry has evolved from communal miscreants into lethal militia groups. It is now considered an enterprise in northwest Nigeria where bandits now make more than enough money.⁷⁷ A lot of Nigerians have fled to neighboring countries while the majority of those displaced are in desperate need of necessities.

1.2. Sexual Violence in Armed Conflict and SVAC by Boko Haram

Any sexual act, attempt to get a sexual act, unwanted sexual remarks, or activities to traffic, directed against an individual's sexuality through compulsion by anyone, irrespective of their

⁷³ West African Network for Peacebuilding (WANEP) "Addressing armed banditry in the north-west region of Nigeria: Exploring the potentials of a multi-dimensional conflict management approach" (2020), accessed 28 November, 2021 https://www.wanep.org/wanep/files/2020/Feb/POLICY_BRIEF_ON_ARMED_BANDITRY_IN_NIGERIA_-_18022020.pdf [

⁷⁴ Megan Bastick et al., "Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector," *Geneva Centre for the Democratic Control of Armed Forces* (July 2007), accessed 6 September 2023, https://www.dcaf.ch/sites/default/files/publications/documents/sexualviolence_conflict_full.pdf

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Kingsley Omonobi, 'Banditry is Business: Security Agents Working with Bandits, Gumi Alleges', Vanguard, June 24, 2021 accessible at <https://www.vanguardngr.com/2021/06/banditry-is-business-security-agents-working-with-bandits-gumi-alleges/> (accessed 30 November, 2021). Also see, Adebayo Obajemu, 'Banditry: Inside Nigeria's Flourishing Multi-billion Naira Industry', Business Hallmark, March 8, 2021. <https://hallmarknews.com/banditry-inside-nigerias-flourishing-multi-billion-naira-industry/> last accessed 30 November, 2021.

relationship to the victim, in any context, including at home or at work, is considered sexual violence.⁷⁸ The term ‘rape’ is frequently employed to refer to the first category of sexual violence, which involves coercive or forced sexual relations. Rape is defined as non-consensual sexual penetration, no matter how small, of the victim’s anal or genital hole with any item or other part of the body, or of any part of the victim's body with a sexual organ.

These six aspects to sexual violence are relevant to this discourse of SVAC: prevalence, offenders, targeting, form, location, time, and form.⁷⁹ The definition of sexual violence based on the International Criminal Court (ICC) includes (1) rape, (2) sexual slavery, (3) forced prostitution, (4) forced pregnancy, and (5) forced sterilization/abortion.⁸⁰ Following Wood,⁸¹ I conceptualize sexual violence to also include among others, (6) sexual mutilation, and (7)sexual torture.⁸² Importantly, the definition is gender neutral and does not preclude the existence of female perpetrators or male victims.

Sexual violence in armed conflict describes acts of sexual abuse, such as rape, forced prostitution and sexual slavery, which occur during armed conflicts.⁸³ It is acknowledged as a grave transgression of both human rights legislation and international humanitarian law.⁸⁴ Violent, chaotic, and social structure-breaking armed conflicts create an ideal environment for the use of

⁷⁸ Jansen, H. Violence Against Women Key Terminology - *kNOwVAWdata*. Bangkok: UNFPA Asia and the Pacific Regional Office. (2016) <https://www.svri.org/research-methods/definitions>.

⁷⁹ Cohen, Dara Kay and Ragnhild Nordas, Sexual violence in armed conflict: Introducing the SVAC dataset 1989-2009, *Journal of Peace Research* 51, no.3 (2014) 51(3):418-428

⁸⁰ ICC (International Criminal Court) (2000) International Criminal Court, Elements of Crimes, Article 8 (2)(e). UN document, PCNICC/2000/1/Add.2

⁸¹ Wood, Elisabeth. Armed groups and sexual violence: When is wartime rape rare? *Politics and Society* (2009) 37(1): 131–161.

⁸² Ibid.

⁸³ United Nations. (2015). Report of the Secretary-General on Conflict-Related Sexual Violence. Retrieved from <https://undocs.org/S/2015/203>.

⁸⁴ International Committee of the Red Cross (ICRC). (2008). Customary International Humanitarian Law. Retrieved from: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93#:~:text=Serious%20violations%20of%20international%20humanitarian,rules%20of%20international%20humanitarian%20law.

sexual violence as a weapon by those who commit it.⁸⁵ Although men and boys can occasionally become victims, women and girls appear to be the most frequently targeted during armed conflicts.

Sexual violence during an armed conflict has serious and wide-ranging repercussions.⁸⁶ Survivors of SVAC face a plethora of severe consequences, including physical, psychological and emotional harm.

1.2.1. Defining Sexual Violence in Armed Conflict

Regardless of the nature of the conflict, a common occurrence documented across the various conflicts mentioned has been that of sexual violence. As previously mentioned, sexual violence is widespread in most armed conflicts. Sexual violence is an arm of Sexual and Gender-Based Violence, which is a uniform term for all kinds of gender violence. It has wider connotations, but it is suggested that, when referring to sexual violence in relation to armed conflict, it should be given a narrow and restricted definition.⁸⁷

Thus, it is imperative to investigate the narrow definition that has been provided for the purpose of this discourse. In this regard, the International Committee of the Red Cross (ICRC) defines sexual violence as:

acts of a sexual nature committed against any person by force, threat of force or coercion. It includes rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization or any other act of a sexual nature of comparable gravity.⁸⁸

⁸⁵ Ibid.

⁸⁶ United Nations Children's Fund (UNICEF). (2016). Missing Childhoods: The Impact of Armed Conflicts on Children in Nigeria. Retrieved from <https://www.unicef.org/publications/files/UNICEF> .

⁸⁷ International Committee of Red Cross, "Engaging with Armed Forces to Prevent Sexual Violence in Armed Forces" (4400_002_Engaging_to_prevent_sexual_violence_WEB.pdf), 20.

⁸⁸ Ibid.

It may be inferred from this definition that any sexual act with a component of force, coercion, or threat of both, can be categorized as sexual violence. That is, the use of force is what makes any sexual act against another sexual violence;⁸⁹ with the exception of cases of statutory rape of underaged children, as the law views children as lacking capacity to give consent to carnal knowledge or sexual activity.⁹⁰ These treaties notably prohibit sexual child abuse in their child-specific clauses.⁹¹ In fact, to commit sexual violence, there need not be physical contact or penetration.

In *Akayesu's case*, the Trial Chamber held the instruction given to a schoolgirl to perform gymnastics naked in public was an act of sexual violence.⁹² This shows that the acts of sexual violence are wide and cannot be strictly restricted to physical sexual acts alone. Sexual violence includes any sexual act obtained by the use of force or threat.

Another broad definition of this term was given by the Inter-Agency Standing Committee (ISAC) Task Force on Gender and Humanitarian Assistance.⁹³ According to the Committee, sexual violence can be defined as

... any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person's sexuality,

⁸⁹ See the judgement in the *Akayesu* case where the Trial Chamber defined said that sexual violence includes "any act of sexual nature which is committed on a person under circumstances which are **coercive**," at page 598.

⁹⁰ European Commission for Democracy Through Law, Report on the Protection of Children Rights: International Standards and Domestic Constitutions (Adopted by the Venice Commission).

⁹¹ Child Specific Provisions includes Article 77 of Additional Protocol I and Article 4(3) of Additional Protocol II of the Geneva Conventions; See also *The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (the AFRC Accused), SCSL-04-16-T, Special Court for Sierra Leone, P. 323 20 June 2007, available at: <https://www.refworld.org/cases,SCSL,467fba742.html>.

⁹² *Ibid.* p. 688.

⁹³ Inter-Agency Standing Committee Task Force on Gender and Humanitarian Assistance, Created by United Nations General Assembly Resolution 46/182 in 1991. The Inter-Agency Standing Committee (IASC) is the longest-standing and highest-level humanitarian coordination forum of the United Nations system. It brings together the executive heads of 18 organizations and consortia to formulate policy, set strategic priorities and mobilize resources in response to humanitarian crises.

using coercion, threats of harm or physical force, by **any person regardless of relationship to the victim, in any setting, including but not limited to home or work.**⁹⁴

While the definition given by the International Committee of the Red Cross (ICRC) stipulates that any act of a sexual nature with the use of force or coercion amounts to sexual violence, the definition given by the Inter-Agency Standing Committee (ISAC) Task Force on Gender and Humanitarian Assistance (ISAC) further includes that even an attempt at obtaining sexual acts or unwanted sexual comment or trafficking one's sexuality by force amounts to sexual violence. Apart from that, the latter definition is significant in that it also categorizes any act of sexual violence between a husband and wife or master and servant, having the element of coercion, as sexual violence.

A plethora of international instruments, rather than giving an outright definition of sexual violence on women's rights and those on armed conflict,⁹⁵ have provided descriptions of acts that constitute sexual violence.⁹⁶ An important element of the definition is the use of force or coercion to achieve sexual objectives. An example, by the Article 7(g) of the Rome Statute, after mentioning sexual slavery, rape, enforced prostitution, enforced sterilization, the law adds "or any other form of sexual violence..." This implies that the provision agrees that all those acts mentioned qualify as acts of sexual violence and thus any other acts of sexual violence, if achieved through force, would also qualify as acts of sexual violence under the provision.

⁹⁴ Inter-Agency Standing Committee Task Force on Gender and Humanitarian Assistance, *The Guidelines for Gender Based Violence in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, 2008, p. 8. (Bold mine).

⁹⁵ This may be inferred to prevent the exclusion of any future situations that may arise.

⁹⁶ Article 27 (2) Geneva Convention relative to the Protection of civilian persons in Time of War; Article 76 (1) Additional Protocol I of The Geneva Conventions; Rule 93 of Customary Rules of International Humanitarian Law; Article 8 (2) of the Rome Statute of the International Criminal Court.

1.2.2. The Prevalence of Sexual Violence in Armed Conflict

The phenomenon of sexual violence continues to loom large in armed conflict. Sexual violence in all its facets is construed to be a strong weapon in warfare and continues to dehumanize girls and women. The prevalence of SVAC, according to Cohen, spans beyond militia groups with state militaries having more prevalence.⁹⁷ However, the often-available data does not seem to represent this theory. A reason could be the efforts of states to ensure that such information is not disclosed.

The strategic use of sexual violence in war remains a long-standing problem that has existed for as far back as armed conflict itself, despite outcry against it and despite the evolving domestic and international prohibitions and recent criminalization of the acts. Taking Africa *broadly* as a case study, the activities of several non-state actors like the Lord Resistance Army, *Boko Haram* and other militias across the continent provide clear examples of the menace of sexual violence and its potency in warfare. The International Criminal Court in the Thomas Lubanga Dyilo⁹⁸ and Jean Pierre Bemba⁹⁹ cases both noted the efficacy of sexual violence as an instrument of war. This was, until recently, the dominant narrative in existing literature.¹⁰⁰

A majority of currently existing armed conflicts are non-international and between state-armed forces and rebel-armed groups, or between non-state armed groups within the territory of a sovereign state(s). This involves warfare that increasingly uses unconventional, asymmetrical,

⁹⁷ Cohen, D. K., & Nordås, R. (2014). Sexual violence in armed conflict: Introducing the SVAC dataset, 1989–2009. *Journal of Peace Research*, 51(3), 418-428. <https://doi.org/10.1177/0022343314523028>

⁹⁸ Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, 14 March 2012. Judgment pursuant to Article 74 of the Rome Statute. Available at, icc-cpi.int/CourtRecords/CR2012_03942.PDF.

⁹⁹ Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, 21 March 2016. Judgement pursuant to Article 74 of the Rome Statute. Available at, icc-cpi.int/CourtRecords/CR2012_03942.PDF.

¹⁰⁰ United Nations Security Council, *Report of the Secretary-General on women, peace and security* (S/2002/1154) page 2, <https://www.un.org/womenwatch/ods/S-2002-1154-E.pdf> (last visited Apr 15, 2019). The United Nations Secretary-General noted in the Report that “The use of sexual violence as a *strategic and tactical weapon of war* places women and girls at increased threat of contracting sexually transmitted infections and HIV/AIDS. This is heightened by systematic gender-based discrimination, which reduces their potential to protect themselves from such infections.” (*Italics mine*).

guerrilla tactics. This implies that not all armed groups and combatants are as trained in the rules of conventional warfare and IHL as others, nor do they all necessarily feel that they are bound by those rules, as the actions of some groups and their members suggest.

There have been efforts made at an international level to address the scourge of sexual violence in armed conflict. UN Security Council Resolution 1325 on Women and Peace and Security was adopted in October 2000. This four-page document most importantly addresses and reaffirms the role of women in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response and in post-conflict reconstruction.¹⁰¹ It also stresses the importance of equal participation of women in efforts to maintain peace and security.¹⁰² Importantly, the Resolution in paragraphs 10 and 11 calls for the prevention of gender-based sexual violence in armed conflict, setting out several operational mandates that directly implicate UN member states and UN agencies. Paragraph 10 calls on parties to take special measures to protect women and children from gender-based sexual violence, whereas Paragraph 11 emphasizes the responsibility of states to prosecute such crimes, and to exclude these sexual crimes from amnesty agreements.

Paragraph 16 of Resolution 1325 further calls upon the Secretary-General to carry out a study on the impact of armed conflict on women and children, in addition to including women in peacekeeping and maintenance. The report commissioned by paragraph 16 of the Resolution, entitled 'Report of the Secretary-General on women, peace and security'¹⁰³ (the 2002 Report), rehashes facts already known of the pervasiveness of sexual violence in armed conflict. Although

¹⁰¹ Landmark resolution on Women, Peace and Security (Security Council resolution 1325), United Nations, <https://www.un.org/womenwatch/osagi/wps/> (last visited Apr 15, 2019).

¹⁰² Ibid.

¹⁰³ United Nations Security Council, *Report of the Secretary-General on women, peace and security* (S/2002/1154), <https://www.un.org/womenwatch/ods/S-2002-1154-E.pdf> (last visited Apr 15, 2019).

it recommended strengthening the existing body of international human rights and humanitarian law, it can hardly be accused of innovating ways to prevent sexual violence in armed conflict. It is noteworthy that the UN Security Council, almost twenty years after the 2002 Report, just recently passed a resolution sanctioning sexual violence, which in many respects, adopted the recommendations of the Secretary-General in the 2002 Report.¹⁰⁴

Several studies have been carried out in the area of sexual violence in armed conflicts, with different schools of thought and debates, but it is worth emphasizing that sexual violence is not inevitable in armed conflict, as data from studies of several armed conflicts have shown; not all armed groups engage in sexual violence as part of their repertoire of violence.¹⁰⁵ Knowing this is comforting as it leaves hope that since sexual violence is not synonymous with armed conflict, it can be prevented, or at least be minimized. It has also been widely argued that sexual violence is usually employed as a weapon of war, a deliberate strategy used by armed groups against civilians for a wide variety of reasons, usually because of the systematic, widespread, pattern of the behavior. However, recent studies are moving beyond this explanation, as the more the phenomenon in its variations are being documented and analyzed, the more the data appears to evince more explanations.¹⁰⁶

This raises salient issues explored in the course of this research. Seeing the persistent occurrence and lack of abatement of the use of sexual violence in armed conflict, despite the expansion of IHL to criminalize and sanction it, it is puzzling why international humanitarian law has *arguably* not

¹⁰⁴ UN Adopts Sexual-Violence Resolution Amid Abortion Dispute With U.S., <https://www.msn.com/en-us/news/world/un-adopts-sexual-violence-resolution-amid-abortion-dispute-with-us/ar-BBWdDCA?ocid=spartanntp> (last visited Apr 22, 2019).

¹⁰⁵ Elisabeth Jean Wood, *Armed Groups and Sexual Violence: When Is Wartime Rape Rare?* 37 *Politics & Society* 131–161, 132 (2009).

¹⁰⁶ *Ibid.*

yet been able to prevent the widespread perpetration of sexual violence in armed conflict.¹⁰⁷ Further, as much as the prosecution of high-level commanders of armed groups accused of widespread sexual violence is welcome, it is grossly limited in reach and scope, it is slow and has not achieved much in efforts to not only combat sexual violence in armed conflict, but more importantly, to prevent it.¹⁰⁸ This leaves much to be desired and necessitates other socio-legal interventions in the attempt to ensure the prevention of sexual violence in armed conflicts.

Further, it has been argued that the effectiveness of an armed group's command-and-control structure is particularly important for the effective prohibition of sexual violence.¹⁰⁹ This is premised on the likelihood or otherwise that an armed group will engage in sexual violence, depending on what is conceptualized as an armed group's repertoire of violence.¹¹⁰ This repertoire of violence is determined to a large extent on how effectively the armed group's leadership offers their combatants sufficient incentives to either promote or prohibit the behavior. Further, in cases where there are no:

effective sanctions promoting or discouraging sexual violence..., the degree of sexual violence... by combatants depends on whether the group has access to civilians... or not, whether small units promote norms prohibiting or endorsing sexual violence, and whether [combatants] have such norms.¹¹¹

¹⁰⁷ See generally, Amelia Hoover Green, Dara Cohen & Elisabeth Wood, *Is Wartime Rape Declining on a Global Scale? We Don't Know — And It Doesn't Matter* Political Violence at a Glance (2012), <http://politicalviolenceataglance.org/2012/11/01/is-wartime-rape-declining-on-a-global-scale-we-dont-know-and-it-doesnt-matter/> (last visited Jan 22, 2019).

¹⁰⁸ Elisabeth Jean Wood, *Rape During War is not Inevitable: Variation in Wartime Sexual Violence*, in *Understanding and Proving International Sex Crimes*, p.389-419, 404 (Morten Bergsmo, Alf B. Skre & Elisabeth Jean Wood, eds., 2012).

¹⁰⁹ Elisabeth Jean Wood, *Sexual Violence during War: Toward an Understanding of Variation*, in Laura Sjoberg & Sandra Via, *Gender, war, and militarism: feminist perspectives*, 124-137, p.135-136 (2010).

¹¹⁰ *Ibid.* See also Elisabeth Jean Wood, *Armed groups and sexual violence: when is wartime rape rare?* 37 *Politics and Society* 131-161, p.132 (2009) for a conceptual clarification of the repertoire of violence of an armed group. See also Charles Tilly, *The Politics of Collective Violence* (2003).

¹¹¹ *Ibid.*

It is therefore pertinent to investigate whether the armed group *Boko Haram* and its combatants share norms that encourage or prohibit sexual violence.

1.2.3. The Nigerian Context: Boko Haram and Sexual Violence Against Women

Armed attacks in Nigeria's northeast zone in the past decade have resulted in the displacement of over two million persons.¹¹² In response, the government has built internally displaced persons (IDP) camps to temporarily accommodate people displaced by the crises. These people are vulnerable to SVAC both during conflict situations and also in post-conflict settings due to the loss of socioeconomic opportunities, lack of institutional protection, and familial separation. There is currently a dearth of empirical, scholarly research on the explanations for the large-scale, systematic pattern of sexual violence that *Boko Haram* engages in.

Human Rights Watch revealed that during raids on local towns, *Boko Haram* kidnapped many women and girls from their homes or streets between 2009 and 2013.¹¹³ The majority of these kidnappings occurred in the capital cities of adjacent Damaturu in Yobe state, and Borno State, which were then the strongholds of *Boko Haram*.¹¹⁴ Married women were kidnapped in the majority of recorded cases as punishment for not adhering to the group's doctrine, while single women and girls were seized as brides after rebels quickly provided a 'dowry' to the families, who were afraid to oppose.¹¹⁵ Eight incidences of sexual violence committed by members of *Boko Haram* were reported by Human Rights Watch and the majority of the violence inflicted

¹¹² Centre for Population and Reproductive Health 'Sexual and gender-based violence assessment in northeast Nigeria (2016).

¹¹³ Human Rights Watch. (2014). "Those Terrible Weeks in Their Camp": Boko Haram Violence against Women and Girls in Northeast Nigeria. Retrieved from <https://www.hrw.org/report/2014/10/27/those-terrible-weeks-their-camp/boko-haram-violence-against-women-and-girls>.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

on the women happened after the victims were coerced into marriages with the members.¹¹⁶ The report also revealed that Human Rights Watch was informed by social workers that had worked with some of the victims of sexual violence in armed conflict in Borno and Adamawa that some rapes remain unreported because of the conservative culture in the predominantly Muslim northern Nigeria, as well as the secrecy, stigma and shame surrounding sexual violence.¹¹⁷

The 2014 kidnapping of almost 200 schoolgirls near Chibok was one case that drove a tremendous level of publicity. Two survivors of the kidnap, who were taken in through the American Embassy and now have US college degrees, shared the tragic story of their experience on April 14, 2014.¹¹⁸

Joy Bishara, one of the survivors, said:

At the heat of that moment we were all in the back of the truck, they took us in three different trucks. I just remember wondering if I will be able to see my family or loved ones again. I remember thinking of what my mum would do at that moment and my answer came back to be prayer. So I did pray and like five minutes after my prayers there was a car that is a moke and the boko haram people were in and it couldn't move anymore so they needed to fix it and due to that fact they drove far away from town and we were far away, they couldn't go back and steal another car so they

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ GMA3, "Boko Haram kidnapping survivors share their story," aired 7, May 2021, ABC tv, YouTube Video 7:43, uploaded May 7, 2021. accessed 31 August 2023, <https://www.youtube.com/watch?v=JwiQnfm6S84> .

had to go back to fix it and so I was in the last truck and jumped out.

Lydia Pogu, another survivor who escaped, said:

After I jumped out, I personally decided that am not going to go back to school anymore because they advised us that wherever we go they are going to find us. So I was under the impression that okay like school is no longer in my picture because if I go to school they are gonna find me. I decided to stay with my parents until we got called, Joy and I to come to American Embassy to talk to Congress Wilson and Congress Joy. That was how I was able to come here because they did tell us that America is a safe country.

Women are reported to make up more than 50% of the IDP population in Nigeria and as they are forced to survive on less than ₦780 (approximately US\$1.90), their livelihoods are largely dependent on goodwill donations from charitable and government organizations.¹¹⁹ Indeed, the kidnapping of 276 girls at Government Secondary School Chibok, Borno State on 14 April 2014, is arguably the most gruesome and notorious manifestation of sexual violence in armed conflict (SVAC) in times of crisis in Nigeria. Consequently, due to overlapping vulnerabilities related to economic security and protection, many find themselves at risk of sexual and gender-based violence in the camps.¹²⁰

¹¹⁹ J Ugwa, 'Sexual abuse thrives in Nigeria's IDP camps with no recourse for Victims' <https://www.icirnigeria.org/sexual-abuse-thrives-in-nigerias-idp-camps-with-no-recourse-for-victims/> (assessed 28 November, 2021).

¹²⁰ J Ugwa (n 75 as above).

SVAC, especially against women and girls, is practiced across *Boko Haram*'s factions. Although Muslim and non-Muslim women-captives may be treated differently across cases, they still both experience SVAC.¹²¹ *Boko Haram* uses SVAC against civilians. For example, Abubakar Shekau, the now-deceased *Boko Haram* leader, on May 6, 2014, reiterated the 'commitment and obligation' of his group towards the perpetuation of SVAC against women, regardless of their religious leanings. According to him:

Yes, we will capture slaves. Who told you there are no slaves in Islam? ...Any female who has attained the age of 12, I will marry her off. Any girl who has attained the age of 9, I will marry her off, the same way they married the Mother of the Believers, the daughter of Abu Bakr, Aisha, to the Prophet Muhammad at the age of 9 ... My brothers, you should cut the unbelievers' necks. You should capture slaves.¹²²

Sexual violence in armed conflict also presents in other non-normative forms that frequently go unreported, leading to these forms of sexual violence during armed conflicts to remain hidden and under-accounted for. In the context of *Boko Haram*, Nigerian women are vulnerable to sexual and gender-based violence on a much broader scale, before, during and after a state of armed conflict. As conceptualized throughout this study, the power theory recognizes how women are subjected to sexual violence even in situations where they are in protective custody or similar situations where they are meant to be protected. For instance, displaced women who are kept in IDP camps are not spared violation in those camps. Since many of the camp residents are elderly women and girls vulnerable to *Boko Haram* attacks, their vulnerability requires that they obtain a movement

¹²¹ J Ugwa (n 75 as above).

¹²² A Kassim & M Nwankpa 'The Boko Haram reader: From Nigerian Preachers to the Islamic state, 302-303.

permit to move around and outside the camp.¹²³ This has increased the risk of abusive behaviors from Nigerian security officers who are supposed to guard the camp residents within the enclaves. This also hinders their access to economic and other psycho-social resources sponsored by the political class, and further perpetrates SVAC on these survivors of violent armed conflict.¹²⁴

Although the restricted freedom of movement within the restricted zones works to protect these displaced females, it also restricts their freedom of movement to easily access food and health services and other resources.¹²⁵ In Maiduguri and other camp locations, vulnerable females often line up to enter nutrition clinics to access scarce food and water for their children.¹²⁶ Consequently, the increased food and water insecurity at these camps provides loopholes for opportunistic security workers to force females to either die of starvation or be sexually violated in exchange for basic needs, economic and psycho-social support from the government and their freedom of movement.

Reports show that security officers and male camp residents that were supposed to protect the vulnerable females at seven of those camps in Maiduguri, raped and exploited 43 of the females.¹²⁷ Consequently, in October 2016, it was reported that in a camp of 10,000 residents, HIV cases more than doubled from 200 cases in 2014 to 500 in 2016.¹²⁸ More worrisome is the phenomenon of

¹²³ Ripples Nigeria 'Sexual violence in IDP camps on the rise, as 30 girls raped in Yobe in Sept. Alone, (Oct.19, 2017), <http://www.ripplesnigeria.com/sexual-violenceidp-camps-arise-30-girls-raped-yobe-sept-alone/> Last accessed 28th November, 2021.

¹²⁴ Daily trust; Some female Boko Haram victims in IDPs Camps forced to sell sex as food runs out, <https://www.dailytrust.com.ng/female-boko-haram-victims-inidps-camps-forced-to-sell-sex-as-food-runs-out.html> Last accessed 28th November, 2021.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Channels Television; HRW reports sharp rise in HIV prevalence in IDPS camp, (Oct. 31, 2016) <https://www.channelstv.com/2016/10/31/hrw-reportssharp-rise-hiv-prevalence-idps-camp/> last accessed 28th November, 2021.

¹²⁸ AbdulkareemHaruna, Grief in Borno IDP as 8-year-old Orphan reportedly dies of HIV, Premium Times, (November 2, 2017) <https://www.premiumtimesng.com/news/headlines/248111-grief-borno-idp-camp-8-year-old-orphan-reportedly-dieshiv.html> Last accessed 28 November, 2021.

defilement, which resulted in the grief which struck the Borno IDP camp when Bana Losoraye, an eight-year-old orphan, died of HIV. She had been defiled and infected with the virus. Further, the abuse of security officers also increases the fear, distrust, and lack of confidence in the law enforcement system and undermines their willingness to access social services (e.g., mental health and medical services).

In summary, Nigeria is steeped in patriarchy, which has ostensibly led to the institutionalization of these discriminations against women in most facets of both public and private life. This is expressed in power structures that devalue and subjugate women, resulting in these norms and gender-based discriminations creating an enabling environment of gender-based violence pre to post armed conflict. These power structures are in the social, cultural, economic, religious, political, and legal spheres. This study will primarily focus its investigation on the socio-legal and religio-cultural power structures.

In addition, in Nigerian society, certain discriminations are still rooted within systems of governance and policies.¹²⁹ Another endemic problem arising from the patriarchal society that is relevant to this discourse is domestic violence. Domestic violence or abuse is generally prohibited by law in Nigeria.¹³⁰ Nevertheless, domestic violence in various forms and levels is endemic and plagues most marriages in Nigeria.¹³¹ In the Nigerian context, it manifests in physical, emotional, sexual and other forms of abuse. The Violence Against Persons (Prohibition) Act of 2015 offers victims of domestic abuse legal protection against all types of abuse, including financial, emotional, sexual, and physical abuse.¹³² However, despite available initiatives to address

¹²⁹ Makama Godiya Allanana, "Patriarchy and Gender Inequality in Nigeria: The Way Forward," *European Scientific Journal* 9, no.17(June 2013), accessed 6 September 2023, <https://core.ac.uk/download/pdf/236407158.pdf> .

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

domestic violence in the country, its high prevalence continues to be a grave social challenge in Nigeria.¹³³ It is reported that about 30% of Nigerian women have suffered violence of some kind, according to a national survey done by the National Population Commission and the Ministry of Women Affairs and Social Development in Nigeria.¹³⁴

In conclusion, sexual violence in armed conflict as well as other forms of sexual violence by other state-sanctioned and non-state sanctioned armed groups in Nigeria can be seen as multidimensional. There are a plethora of laws in Nigeria that have been enacted to confront the scourge of sexual violence and recent amendments have been noted in the Violence Against Persons Prohibition Act, as well as regional and international treaties to which Nigeria is a signatory. The most notable and comprehensive treaty for protecting against sexual violence is the Maputo Protocol to the African Charter on Human and Peoples' Rights.

It is, however, salient to note that as much as there are extensive prohibitory laws and norms seeking to protect women and girls from sexual violence in Nigeria, there exists a lacunae, which the leadership of *Boko Haram* is arguably taking advantage of and utilizing as part of its strategy of sexual violence. Within the Nigerian domestic legal framework, sexual violence within marriage, commonly known as marital rape, is neither prohibited nor criminalized. This research argues that the *Boko Haram* leadership, in particular, as espoused by the then leader Abubakar Shekau,¹³⁵ employs sexual violence as a strategy and operationalizes this through the mechanism

¹³³ Aihie, O. N." Prevalence of Domestic Violence in Nigeria: Implications for Counselling,"Edo Journal of Counselling 2, No. 1(2009) 2.

¹³⁴ Alordiah C.O, et al, "Socio-cultural norms encouraging violence against women (VAW) from a popular ethnic group in the Niger Delta region of Nigeria and the roles of schools in preventing VAW," Cogent Social Sciences 8, 1(2022), <https://www.tandfonline.com/doi/full/10.1080/23311886.2022.2102299> .

¹³⁵ BBC News, "Boko Haram 'to sell' Nigeria girls abducted from Chibok," May 5, 2014.

of the arguably oldest, normative institution of marriage to enslave and sexually violate women and girls, to achieve their military objectives.

Chapter Two: Legal Frameworks Under International and Nigerian Laws

This chapter offers a historical framework of analysis of the norms of war and the approach of IHL in protecting the most vulnerable during war – women and children – in particular, protecting women from sexual violence during hostilities, especially within the concept of the *Boko Haram* armed conflict in Nigeria. It conceptualizes International Humanitarian Law (IHL) and it offers a conceptual analysis of the norms of war. The chapter also provides an overview of the relevant legal context under Nigerian law, as a backdrop for sexual violence and the *Boko Haram* armed conflict.

2.1 Norms of War – International Humanitarian Law and Protection Against Sexual Violence in Armed Conflict

The body of regulations known as IHL looks for humanitarian ways to lessen the effects of armed conflict. IHL limits the tools and techniques of warfare while protecting those who are not or are no longer engaged in hostilities. IHL, also known as the law of war and the law of armed conflict, has the foundational tenets of neutrality, impartiality, and humanity. Under IHL, rape and other types of sexual violence are forbidden in both international and non-international armed conflicts. Sexual violence is a war crime and a significant breach of IHL. As part of a systematic and widespread attack against any civilian population, rape and certain other types of sexual violence are included in the list of crimes against humanity and war crimes under the Statute of the International Criminal Court. Under some conditions, such as when torture or a constitutive act of genocide is committed, rape and other types of sexual violence may also be considered international crimes.

‘Norms’ of war implies that there are certain things that are to be expected in war, and things that are not. According to the Merriam Webster dictionary, norm means “a principle of right action binding upon the members of a group and serving to guide, control, or regulate proper and acceptable behavior”. Similarly, according to the Cambridge English Dictionary, the word connotes “an accepted standard or a way of behaving or doing things that most people agree with”.

From these definitions, a norm can be taken to mean a standard way or principle of doing things. In other parlance, a norm can mean a rule that regulates the way things should be done. Thus, norms of war can be said to be the ways of conducting warfare as laid down by the law. It can also be said to be the standard laid down by the law that must be followed by parties to a war. Simply put, norms of war can be said to be the rules dictating the rights and the wrongs of war. It is important to examine the norms relating to war to determine the interplay of sanctions in operation within an armed conflict, and which armed groups have to reckon with, pre, during and post armed conflict. This is also relevant as the centralization of the law, especially IHL, appears not to be most helpful in the diffusion of laws to grassroots armed combatants, who are also expected to comply with the provisions of these laws in the conduct of armed conflict.

It is noted from the outset that warring parties routinely engage in sexual violence as a strategy during war and conflict situations do not qualify sexual violence as a norm. This taken in line with the position of Visseur, who noted that:¹³⁶

Sexual violence was outlawed in conformity to the shifting legal cultural values of patriarchal society. The article posits that sexual violence, particularly rape, is prohibited, along with other war

¹³⁶ Sellers, Patricia Visseur. "Sexual violence and peremptory norms: The legal value of rape." *Case W. Res. J. Int'l L.* 34 (2002): 287.

crimes, in order to preserve the functioning of Medieval society and to allow, whoever won the war, the possibility to reap an intact society. Waves of rape and other forms of destruction crippled the civil societies that were fated to function in an age of endemic wars.

The concept of a society intact would then be plausible in this context since women are construed to be the nucleus of any society.

2.1.1. Evolution of International Humanitarian Law: the Geneva Conventions, their Additional Protocols and the Protection of the Vulnerable in War.

Etymologically, the principle of humanity, impartiality and neutrality formed the basis for the establishment of International Humanitarian Law. It has its roots in the historic concepts of justice as encoded in Babylon's Hammurabic Code – a code that represents the Justinian from the Byzantine Empire and the Lieber Code employed during the United States civil war.¹³⁷ Some historical backdrops attribute the development of modern international humanitarian law to the inalienable efforts of Henry Dunant, a 19th-century Swiss businessman.¹³⁸ Dunant bore witness to the aftermath of a bloody battle between French and Austrian armies in Solferino in 1859 and exerted valiant efforts to mobilize aid for soldiers but, finally, the surviving armies would left the battlefield littered with wounded and dying men, while thousands of soldiers were recorded to have died.¹³⁹ Hence, perturbed by the suffering of injured soldiers he witnessed, he established the

¹³⁷ Schindler, 'International Humanitarian Law: Its Remarkable Development and Its Persistent Violation,' 5 *Journal of the History of International Law (J Hist Int'l L)* (2003), 165 at 167. Lieber Code, General Order no. 100 (24 April 1863).

¹³⁸ Greenwood, 'Historical Development and Legal Basis' in D. Fleck and M. Bothe (eds), *The Handbook of International Humanitarian Law* (2008) 1, at 11; H. McCoubrey, *International Humanitarian Law: Modern Developments in the Limitation of Warfare* (1998), P. 1.

¹³⁹ *Ibid.* P.1.

Red Cross movement,¹⁴⁰ and the movement would go on to promote and become a custodian of the humanitarian idea which in turn initiated the primary transition into international humanitarian law.¹⁴¹

“A Memory of Solferino” documented Dunant’s experience and proposed that trained volunteer relief groups be granted protection during war to cater for injured victims, including soldiers and civilians.¹⁴² Consequently, the proposition instigated the formulation of a group known as the Committee of Five, which later became the International Committee of the Red Cross, which then led to the drafting of the 1863 Convention which upheld relief for the wounded in war.¹⁴³ The proposition of Dunant further suggested that there should be a formal agreement between nations to uphold the relief of the wounded.¹⁴⁴

1949 saw the coming together of diplomats across 16 countries, with the aid of the committee, and various representatives of military medical services and humanitarian societies to create the Geneva Convention which, amongst others, contained the following provisions:¹⁴⁵

- a) Ambulances, military hospitals, and the personnel serving with them are to be recognized as neutral and protected during conflict;
- b) Citizens who assist the wounded are to be protected;

¹⁴⁰ Ibid. p. 22.

¹⁴¹ Meyer M.A. & McCoubrey, H. (eds), *Reflections on Law and Armed Conflicts*. *The Selected Works on the Laws of War by the Late Professor Colonel G.I.A.D Draper* (1998). P. 69.

¹⁴² American Red Cross. “International Humanitarian Law: Summary of the Geneva Conventions of 1949 and Their Additional Protocols”. www.redcross.org/ihl (2011). Accessed: 29th March, 2022.

¹⁴³ Meyer M.A. & McCoubrey, H. (eds), *Reflections on Law and Armed Conflicts*. *The Selected Works on the Laws of War by the Late Professor Colonel G.I.A.D Draper* (1998). P. 69.

¹⁴⁴ Henckaerts, J.-M. and Doswald-Beck, L. for the International Committee of the Red Cross, *Customary International Humanitarian Law* (2005), P.9.

¹⁴⁵ American Red Cross. “International Humanitarian Law: Summary of the Geneva Conventions of 1949 and Their Additional Protocols”. www.redcross.org/ihl (2011). Accessed: 29th March, 2022.

- c) Wounded or sick combatants are to be collected and cared for by either side in a conflict; and
- d) The symbol of a red cross on a white background (the reverse of the Swiss flag in honor of the origin of this initiative) will serve as a protective emblem to identify medical personnel, equipment, and facilities.

This gave way to the Geneva Conventions which form the bedrock of International Humanitarian Law, and gave life into what is known today as the Geneva Convention, which marked the start of the Geneva tradition of humanitarian law.¹⁴⁶ There are also other humanitarian instruments: the 1907 Hague Convention,¹⁴⁷ the four Geneva Conventions of 1949, and the three 1977 Additional Protocols.¹⁴⁸

The 1949 international conference, which was constituted of diplomats, was built on prior treaties for the protection of war victims, hence, they were able to revise and update the previous protective tools into what we now have as the four Conventions comprising 429 articles of norms.¹⁴⁹ Since the Conventions came with Additional Protocols, it became easier for the Conventions to be applicable in all war cases, or in any other armed conflict between nations. However, the principles and protection embodied in the conventions and the protocols were premised on war conditions no

¹⁴⁶ Alexander, A. 'A Short History of International Humanitarian Law' *European Journal of International Law*, Volume 26, Issue 1, February 2015, Pp. 109 – 138 PDF.

¹⁴⁷ Solf, W.A. 'Protection of Civilians against the Effects of Hostilities under Customary International Law and under Protocol I', 1 *American University Journal of International Law and Policy (Am U J Int'l L & Policy)* (1986) 117, p. 123; Hague Convention for the Pacific Settlement of International Disputes 1907, 2 *AJIL Supp.* 43 (1908). The Hague Conventions are not technically part of this tradition, but as the Hague and Geneva Conventions are now merged, they tend to be listed as part of this history.

¹⁴⁸ Jaworski, "Military Necessity" and "Civilian Immunity": Where is the Balance?, 2 *Chinese J Int'l L* (2003) 175 pp. 179–180.

¹⁴⁹ American Red Cross. "International Humanitarian Law: Summary of the Geneva Conventions of 1949 and Their Additional Protocols". www.redcross.org/ihl (2011). Accessed: 29th March, 2022.

longer representative of many contemporary armed conflicts. This is particularly notable with regards to sexual violence in armed conflict.

The first Geneva Convention, i.e. The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, was ratified on August 12, 1949.¹⁵⁰ The Convention is aimed at protecting soldiers who are known as the *hors de combat* “out of the battle”.¹⁵¹ The 10 articles which sought to protect a number of rights under the original 1864 version were expanded in the First Geneva Convention of 1949 to 1964 and it protects: wounded and sick soldiers, medical personnel, facilities and equipment, wounded and sick civilian support personnel accompanying the armed forces, military chaplains, and civilians who spontaneously take up arms to repel an invasion.

Article 12 recognizes that the wounded and sick shall be respected and protected without any form of discrimination on the grounds of sex, race, nationality, religion, political beliefs or other criteria,¹⁵² just as they cannot be exterminated, tortured or used for biological experimentations.¹⁵³

Article 15 ensures that the wounded and sick enjoy adequate treatments, while they cannot be subject to pillage and ill-treatment.¹⁵⁴ A community reading of this provision with Article 16 ascertains that conflicting parties must see to the fact that they search for and collect the wounded and sick after the battle, while they also provide information to the Central Tracing and Protection Agency of the International Committee of the Red Cross (ICRC).¹⁵⁵

¹⁵⁰ Lindsey, C., Bruno D., Jean-Marie, H., Eve La Haye & Heike N. “Commentary on the First Geneva Convention – a new tool for generating respect for international humanitarian law” *International Review of the Red Cross* (2015), 97 (900), 1209–1226. The evolution of warfare doi:10.1017/S181638311600045X.

¹⁵¹ IHL Database. “Rule 47. Attacks against Persons Hors de Combat”. https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule47

¹⁵² Article 12, The First Geneva Convention, 1949.

¹⁵³ *Ibid.*

¹⁵⁴ Article 15, The First Geneva Convention, 1949.

¹⁵⁵ Article 16, The First Geneva Convention, 1949.

The Second Geneva Convention deals with the amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.¹⁵⁶ This particular Convention was used to adopt the protections proffered by the First Geneva Convention in reflection of the conditions at sea.

The Third Geneva Convention was made relative to the Treatment of Prisoners of War of August 12, 1949.¹⁵⁷ It sets out specific rules for the treatment of prisoners of war (POWs). The Convention's 143 articles require that POWs be treated humanely, adequately housed and receive sufficient food, clothing and medical care. Its provisions also establish guidelines on labor, discipline, recreation and criminal trials.

Articles 13, 14 and 16 recognize that POWs must not be subjected to torture or medical experimentation, and hence must be protected against violent acts, insults, and public curiosity.¹⁵⁸ By Article 17, POWs may only provide their names, ranks, date of birth and military service number to their captors.¹⁵⁹ Finally, Article 23 stipulates that female POWs must be treated with the regard due to their sex,¹⁶⁰ as captors are refrained from engaging in any reprisals or discrimination on the basis of race, nationality, religious beliefs, political opinions or other criteria.¹⁶¹

¹⁵⁶ ICRC. "Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949: Treaties, State parties and Commentaries". <https://ihl-databases.icrc.org/ihl/full/GCII-commentary> accessed: 12/04/2022.

¹⁵⁷ ICRC. "Convention (III) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949: Treaties, State parties and Commentaries". <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary> accessed: 12/04/2022.

¹⁵⁸ Articles 13, 14 and 16, Third Geneva Convention, 1949.

¹⁵⁹ Article 17, Third Geneva Convention, 1949.

¹⁶⁰ Article 23, Third Geneva Convention, 1949.

¹⁶¹ Articles 25, 26, 27 & 30, Third Geneva Convention, 1949.

Although rape and other types of sexual abuse are not specifically mentioned in Article 3 of the Geneva Conventions, it is forbidden to commit “violence to life and person” including “outrages upon personal dignity” and cruel treatment and torture.¹⁶² According to Article 2 of the Third Geneva Convention, prisoners of war are always entitled to “respect for their persons and their honor”.¹⁶³

The Fourth Geneva Convention is specifically targeted at protecting civilian persons in the time of war.¹⁶⁴ It contains 159 provisions protecting civilians in areas of armed conflict and occupied territories.

Articles 13 and 32 recognize that civilians should not be subjected to murder, torture, or brutality, and should not be discriminated against on the basis of race, nationality, religion or political opinion.¹⁶⁵ The convention also recognizes the establishment of hospital and safety zones for the wounded, sick, and aged, children under 15, expectant mothers and mothers of children under seven.¹⁶⁶ Article 18 protects civilian hospitals and their staff,¹⁶⁷ and Articles 24 and 25 provide for the care of children who are orphaned or separated from their families, as the ICRC is authorized to transmit family news and assist with family reunifications.¹⁶⁸

All four Geneva Conventions contain an identical Article 3, extending general coverage to “conflicts not of an international character”. In the case of armed conflict not of an international

¹⁶² Geneva Conventions, common Article 3.

¹⁶³ Third Geneva Convention, Article 14, first paragraph.

¹⁶⁴ ICRC. “Convention (IV) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949: Treaties, State parties and Commentaries”. <https://ihl-databases.icrc.org/ihl/full/GCIV-commentary> accessed: 12/04/2022.

¹⁶⁵ Articles 13 & 32, The Fourth Geneva Convention, 1949.

¹⁶⁶ Article 14, The Fourth Geneva Convention, 1949.

¹⁶⁷ Article 18, The Fourth Geneva Convention, 1949.

¹⁶⁸ Article 24 & 25, The Fourth Geneva Convention, 1949.

character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

...(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment...

Additional Protocols I and II establish a ban on “outrages upon personal dignity” as a basic protection for civilians and people *hors de combat*.¹⁶⁹ While Article 4 of Additional Protocol II expressly adds ‘rape’ to this list, Article 75 of Additional Protocol I states that this restriction encompasses in particular “humiliating and degrading treatment, enforced prostitution, and any form of indecent assault”.¹⁷⁰

Women and girls gain equitable access to the judicial system as a way of redressing injustice, including gender-based violence. Exercising and further safeguarding these rights involves an examination of the procedural and substantive issues of IHL investigation, prosecution, and adjudication.¹⁷¹

Sexual violence, particularly rape, provides a starting point and a yardstick for analyzing and determining the ability of women and girls to access justice during war, national emergencies, or

¹⁶⁹ Additional Protocol I, Article 75(2) (adopted by consensus) (cited in Vol. II, Ch. 32, § 996); Additional Protocol II, Article 4(2) (adopted by consensus).

¹⁷⁰ Additional Protocol I, Article 75(2) (adopted by consensus) (*ibid.*, § 1558); Additional Protocol II, Article 4(2) (adopted by consensus).

¹⁷¹ *Ibid.*

in their immediate aftermath. The hard law victories of specialized international courts and tribunals continue to necessitate a watchful, even-handed application of the sex-based crimes and culpability forms.¹⁷² Due diligence on the part of judges to reject any sexist interpretations of the laws, elements, procedural rules, and evidence remains vital to the effort of building a non-discriminatory international justice system. Equality, security, dignity, self-worth, and the fundamental freedom to be free of gender discrimination, including gender-based violence, are central to human rights under IHL and international criminal law.¹⁷³

For more than a century, rape and other sexual violence against women during armed combat have been forbidden by international law.¹⁷⁴ Protections for civilians, prisoners of war, and other non-combatants during internal and international armed conflicts are outlined in international humanitarian law, sometimes referred to as the laws of war.¹⁷⁵ Rape and other sexual violence can be prosecuted as war crimes, crimes against humanity, or acts of genocide, depending on the larger context in which the crimes are perpetrated.¹⁷⁶ The four Geneva Conventions and their two

¹⁷² Patricia Viseur Sellers, “The Prosecution of Sexual Violence in conflict: The Importance of Human Rights as Means of Interpretation.” https://www2.ohchr.org/english/issues/women/docs/paper_prosecution_of_sexual_violence.pdf

¹⁷³ United Nations “Womens’ Rights are Human Rights.” *Human Rights Office of the Commissione*. Accessed 7 September 2023.

<https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>

¹⁷⁴ Kelly D. Askin and Dorean M. Koenig, eds., *Women and International Human Rights Law* (Ardsley, NY: Transnational Publishers, 1999), Volume 1, p. 50.

¹⁷⁵ See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 31, entered into force October 21, 1950. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 85, entered into force October 21, 1950. Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 135, entered into force October 21, 1950. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978. Other sources of international humanitarian law are the 1907 Hague Convention and Regulations, decisions of international tribunals and customary law.

¹⁷⁶ Rape and other forms of sexual violence can be defined as constituent elements of genocide. Genocide is defined under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide as “acts committed with the

Additional Protocols denounce sexual violence, including rape, as grave breaches of humanitarian law in both internal and external conflicts. These offenses are serious violations of the Geneva Conventions and are classified as war crimes in international armed conflicts.

Ensign and Thompson argued that when rape is used consistently by armed groups in an attempt to eradicate a specific ethnic or national group, it qualifies as a genocide act. The authors also examined particular instances, like the genocide in Rwanda, and offered proof to support their findings.¹⁷⁷ Verdier investigated the prevalence of sexual violence in some African conflicts and made the case that sexual violence ought to be classified as a war crime. The scholar gave instances of sexual violence against civilian populations occurring in times of armed conflicts in Sierra Leone, Liberia, and the Democratic Republic of the Congo.¹⁷⁸ Ni Aoláin contended that sexual violence ought to be classified as a war crime by examining the gendered aspect of torture and other cruel, inhuman and degrading treatments. The author drew attention to the case involving Yugoslavia and the International Criminal Tribunal because of the country's admission that sexual violence is against international humanitarian law.¹⁷⁹

Buckwalter sought to explore the gender paradigm in international criminal law and made the case for more accountability in cases of sexual violence during armed conflicts. The scholar emphasizes the significance of addressing both male and female victims by featuring a number of international criminal tribunals and their efforts to prosecute sexual violence as a war crime; while Sivakumaran, in his discussion of the neglected problem of sexual violence against

intent to destroy, in whole or in part, a national, ethnic, racial or religious group." Genocide has attained jus cogens status (a norm that preempts other norms) and is prohibited both in its own right and as a crime against humanity. Convention on the Prevention and Punishment of the Crime of Genocide, approved December 9, 1948, entered into force January 12, 1951.

¹⁷⁷ Ensign, D. M., & Thompson, D. J. (2006). Rape as an act of genocide. *Humanity & Society*, 30(3), 329-356.

¹⁷⁸ Verdier, P. (2012). Sexual violence in African conflicts. *Cambridge Review of International Affairs*, 25(3), 379-397.

¹⁷⁹ Ní Aoláin, F. (2017). Gendering the lens: Towards a feminist analysis of torture, cruel, inhuman, and degrading treatment. *The European Journal of International Law*, 28(3), 849-876.

men during armed conflict, makes the case that it ought to be classified as a war crime. Sivakumaran supplied instances of armed conflicts in the Middle East, Africa and the Balkans, where men have reported being raped and subjected to other forms of sexual violence.¹⁸⁰

Armed opposition groups are included in the categories of parties to an internal armed conflict covered by Common Article 3 of the Geneva Conventions. Common Article 3 implicitly denounces sexual violence by outlawing “outrages upon personal dignity, in particular humiliating and degrading treatment”. The definition of the protections offered under Common Article 3 is based on the Fourth Geneva Convention on the protection of civilians in international armed conflicts. Article 27 provides for the protection of women against any form of sexual violation.¹⁸¹

According to Article 147, there are two significant violations of the conventions: “torture or inhuman treatment” and “willfully causing great suffering or serious injury to body or health”.¹⁸²

Rape and other types of sexual violence are regarded as severe violations by the International Committee of the Red Cross (ICRC). Sexual violence can be considered a war crime even in the case of a single act.¹⁸³ IHL is far from the only legal framework that can be utilized to address various forms of such violence. The law is only one of many tools used to manage human behavior, and no field of law, international or local, can be expected to completely regulate a phenomenon as complicated as violence on its own. While IHL tries to limit specific behaviors in armed conflict,

¹⁸⁰ Sivakumaran, S. (2012). Sexual violence against men in armed conflict. *European Journal of International Law*, 23(3), 711-736.

¹⁸¹ Fourth Geneva Convention, art. 27 (2). Article 76 of Protocol I extends this protection of protected persons to all women. Protocol I, art. 76.

¹⁸² Fourth Geneva Convention, art. 147.

¹⁸³ Theodor Meron, “Rape as a Crime Under International Humanitarian Law,” *American Journal of International Law* (Washington D.C.: American Society of International Law, 1993), vol. 87, p. 426, citing the International Committee of the Red Cross, *Aide Mémoire*, December 3, 1992.

there will always be states, non-state armed groups, and individuals who will not be discouraged from breaking the norms, no matter the consequences.¹⁸⁴

The Geneva Conventions were supplemented with two additional protocols in 1977 to aid their interpretation and understanding. Based on recent reports, 170 nations as of 2010 have ratified Protocol I, while 165 of them have ratified Protocol II.¹⁸⁵ It must however be noted that any ratification by any nation regarding the Geneva Conventions but not the Protocols, still makes the nation bound by all provisions of the Conventions.¹⁸⁶ Protocol I, which contains 102 articles, is aimed at supplementing the Protections the of Victims of International Armed Conflicts as it expands protection for the civilian population as well as military and civilian medical workers in international armed conflicts.¹⁸⁷ Protocol II, which contains 28 articles, supplements the protection of Victims of Non-International Armed Conflicts, as it elaborates on protections for victims caught up in high-intensity internal conflicts such as civil wars.¹⁸⁸ It does not include mere internal disturbances, for instance, riots, demonstrations, and isolated acts of violence. It further expands and complements the non-international protections contained in Article 3 that are peculiar to all four Conventions of 1949.

Similarly, under secular law, the Nigerian constitution guarantees the right to freedom of religion and prohibits forced marriages. However, the enforcement of these provisions, especially in regions where Islamic law holds sway, can be influenced by cultural, social, and political factors. Secular legal frameworks in the countries affected by *Boko Haram*, such as Nigeria, have

¹⁸⁴ International Committee of the Red Cross, “International Humanitarian Law and the challenges of contemporary armed conflicts.” *30th International Conference of the Red Cross and Red Crescent, Geneva 89*, no.867(2007)26-30.

¹⁸⁵ American Red Cross. “International Humanitarian Law: Summary of the Geneva Conventions of 1949 and Their Additional Protocols”. www.redcross.org/ihl (2011). Accessed: 29th March, 2022.

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

established laws addressing forced marriages and emphasizing the importance of individual consent. These laws are crucial in upholding human rights and protecting individuals from coercion in the context of marriage.

In Nigeria, for instance, the Constitution serves as the supreme law, and various statutes complement its provisions. The 1999 Constitution of the Federal Republic of Nigeria guarantees the right to dignity,¹⁸⁹ personal liberty,¹⁹⁰ and freedom from discrimination.¹⁹¹ Forced marriages orchestrated by groups like *Boko Haram* would likely be considered a violation of these constitutional provisions. Additionally, the Child Rights Act of 2003, applicable in many Nigerian states, explicitly prohibits child marriage¹⁹² and emphasizes the need for free and full consent. Although *Boko Haram's* actions extend beyond child marriages, the Act reflects the broader legal sentiment regarding the necessity of genuine consent in marriage.

Nigeria is signatory to international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁹³ which reinforces the principles of equality and non-discrimination. Forced marriages violate these international standards and could be subject to legal scrutiny under such conventions. It provides that:

For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women,

¹⁸⁹ Constitution of Federal Republic of Nigeria (1999 as amended), s34.

¹⁹⁰ CFRN (1999 as amended), s36.

¹⁹¹ Ibid, s42.

¹⁹² Child Rights Act 2003, s22, s23 and s31.

¹⁹³ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979, <https://www.refworld.org/legal/agreements/unga/1979/en/13757> [accessed 17 May 2024]

irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁹⁴

This provision clearly articulates the broad scope of discrimination against women, emphasizing that any distinction or restriction based on sex that hinders women's enjoyment of human rights on an equal basis with men is considered discrimination under the CEDAW. The Convention aims to eliminate such discrimination and promote freedom of personal liberty and dignity.

2.1.2. IHL and SVAC

It could be conceded that sexual violence in armed conflict was not initially recognized as a humanitarian issue. This is because in the four Geneva Conventions, no provision is specifically dedicated to the protection of sexual violence against women as a humanitarian consideration in the corpus of the law. This must have influenced scholars like Alexander to believe that international humanitarian law did not start with the Geneva Conventions, rather it started with the making of the Additional Protocols to the Convention. After giving a historical basis for this point, Alexander concludes:

As this short history of international humanitarian law demonstrates, international humanitarian law did not begin in the mist of time. Nor was it fashioned by Dunant when he created the ICRC. Rather, the history of international humanitarian law was forged into two rapid periods of change. It began in the 1970s when it was suddenly posited as a field of law whose precepts

¹⁹⁴ Convention on the Elimination of All Forms of Discrimination Against Women 1979, Article 1.

were outlined (in somewhat ambiguous terms) in the Additional Protocols to the Geneva Conventions.¹⁹⁵

Thus, an additional protocol was made to the conventions in 1977. The 1977 protocol gives women the right to be protected against any form of sexual violence.¹⁹⁶ This is provided in Article 76(1) of the Protocol, which provides that:

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault.

While this Article could be said to be a giant step towards addressing the issue of sexual violence in armed conflict, in a text produced by the ILUNAD and UNIFEM on International Humanitarian law, International Criminal Law and the International Criminal Court, it is argued that this provision is not sufficient as it does not prohibit the acts per se by placing a positive obligation on state parties to the Convention to make effort towards putting the acts of sexual violence into check, as done under the Maputo Protocol.¹⁹⁷ The Maputo Protocol by the provision of Article III(4) provides that ‘States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.’ This shows the *lacuna* in the Protocol with respect to the protection of persons against sexual violence in armed conflict.

It appears that the gap in the provision of Article 76 of the Protocol spurred the United Nations Security Council to adopt Resolution 1325 in 2000. This resolution provides that parties to armed

¹⁹⁵ Amanda Alexandra, “A Short History of International Humanitarian Law” *The European Journal of International Law* 26, No. 1 (2015), 136.

¹⁹⁶ Protocol to the Geneva Convention on the protection of War Victims, 1977, Art. 76. (Protocol 1).

¹⁹⁷ *International Humanitarian Law, International Criminal Law, International Criminal Court*, 17.

conflict “should take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse and all other forms of violence in situation of armed conflict”.¹⁹⁸ This shows the start of genuine efforts towards the eradication of sexual violence in armed conflicts. Also, the landmark decision handed down by the United Nations Ad-hoc Tribunal for the trial of war criminals during the Rwanda internal conflict between 1993-1994 further boosted the fight against sexual violence in armed conflict. The ICTR gave a verdict, for the first time, that sexual violence during armed conflicts amount to war crimes and crimes against humanity.¹⁹⁹

In this case, Paul Jean Akayesu was charged before the Tribunal with war crimes and crimes against humanity. The relevant facts were that Jean Paul Akayesu was appointed the *bourgmestre* of the Taba Commune between 1993-1994. Between this period, there was a state of internal armed conflict in Rwanda. As a *bourgmestre*, he had the duty to ensure that laws were obeyed, and he was saddled with the responsibility of administering justice within his commune, Taba. By virtue of his position, he had control over the communal police. While the armed conflict was ongoing, hundreds of civilians, who were mostly Tutsis, sought refuge in the commune. While seeking refuge, female civilians were exposed to sexual violence from the local militia and local communal police. This violence was followed with threats to life. In fact, it was received as evidence in court that some of these acts were committed near Akayesu’s office in Taba and he did not do anything to avert the situation. He was found guilty by the Trial Chamber for the offences of crimes against humanity.

¹⁹⁸ Osagi, ‘Landmark Resolution on Women, Peace and Security’ <<https://www.un.org/womenwatch/osagi/wps/>> accessed on the March 25, 2022.

¹⁹⁹ Jane Leatherman, “Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization” International Journal of Peace and Studies, Vol. 12(1), 2007, 56.

The court relied heavily on the provision of Article 3(g) of the Statute creating the Tribunal, which includes acts amounting to sexual violence as crimes against humanity. Instructively, finding Akayesu responsible and guilty was supported by the international criminal justice principle of command responsibility. This doctrine places responsibility on an individual who is in sufficient control to ensure that violations are not perpetrated or who supervises such commissions of an act. According to Jeremy,²⁰⁰ The doctrine of command responsibility posits that, when military commanders fail to effectively prevent, suppress, or punish their subordinates' war crimes, the commander may be punished for the crimes.

It is therefore believed that in the IHL liability protocol, states and non-state actors can be held liable for all non-positive actions of stopping violations of their agents during armed conflicts. The establishment of regional and international tribunals, such as the ones created for the former Yugoslavia, Rwanda, Nuremberg, Tokyo etc., to try offenders of different war crimes speaks to international commitments towards combating different crimes committed during armed conflict. However, according to Phillips Kirsh, these tribunals, as international mechanisms for holding perpetrators of war crimes accountable for their actions during armed conflict, suffered from certain limitations that inhibited their efficacies.²⁰¹ This created an impetus for the establishment of the ICC by the Rome Statute of 2000, which Kirsh explained to be “the first and only tribunal that was created by an international treaty”.²⁰²

²⁰⁰ Dunnaback, Jeremy. "Command responsibility: A small-unit leader's perspective." *Nw. UL Rev.* 108 (2013): 1385.

²⁰¹ Peter Kirsh, “The Role of the International Criminal Court in Enforcing International Criminal Law”, *American University International Law Review*, 22 No 4 2007 539-548. He explains that the fact that states who participated in the establishment of Tribunals were not as many as desired; the limitation in the geographical location covered by these tribunals; the limitation in its temporal jurisdiction and the somewhat political will to the establishment of tribunals, as those mentioned, when the need arose inhibit the capability of the tribunal to punish offenders of international crimes, such as sexual violence in armed conflict and to deter future perpetrators of these crimes see p. 541.

²⁰² *Ibid.*

Thus, to achieve its aim of punishing and deterring future perpetrators of international crimes, crimes such as war crimes and crimes against humanity have been criminalized under the Statute of 2000.²⁰³ Thus, it is not out of place to say that classifying sexual violence as crimes against humanity²⁰⁴ and war crimes²⁰⁵ was intended to have a deterrent effect on the potential perpetrators of acts of sexual violence.

Some offences are classified as “grave breaches” under the 1949 Geneva Conventions and Additional Protocol I.²⁰⁶ When a crime is classified as a grave breach, states are required to look for those suspected of committing the crime and, if they are discovered on their soil, to bring them before their courts or, if that is not possible, to extradite them so they can face charges.²⁰⁷ The grave breach system has the effect of establishing a hierarchy wherein certain infractions of the rules of armed conflict are regarded as more serious than others.²⁰⁸ Although it is not specifically listed as a grave breach, it is increasingly accepted that sexual violence falls under other categories, such as “willfully causing great suffering or serious injury to body or health” and “torture or inhuman treatment”.²⁰⁹ However, the failure of the international community to recognize the gravity of sexual violence during armed conflict is reflected in the lack of explicit reference to it as a grave violation.²¹⁰ This is highly problematic, and since sexual harassment is a result of and

²⁰³ Ibid.

²⁰⁴ Rome Statute, Article 7(g).

²⁰⁵ Rome Statute, Article 8(b) XXII.

²⁰⁶ United Nations, “Women 2000: Sexual Violence and Armed Conflict: United Nations Response,” (April 1998) <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf> Accessed November 24, 2023.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

exacerbates the social imbalances that exist between men and women, MacKinnon contended that it constitutes sex discrimination.²¹¹

How the Geneva Conventions and Additional Protocols define rape and other types of sexual violence as assault on women's "honor" or, at most, as an affront to one's personal dignity, is another issue with these rules.²¹² The idea is that men provide women with "honor" or dignity, and that a woman who has been raped has therefore been dishonored. One major barrier to addressing sexual violence against women is the inability of these instruments to classify the crime as one of violence against bodily integrity. It both directly represents and encourages the dehumanization of these offenses.

However, reports of sexual crimes committed during the armed conflict in the former Yugoslavia shocked the world toward the end of 1992.²¹³ "Massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" was mentioned in Security Council Resolution 798 of December 18, 1992.²¹⁴ Subsequent resolutions were made, and the Security Council formed the Yugoslav Commission, a commission of experts, as part of its reaction to the conflict to examine human rights abuses that had occurred in the former Yugoslavia. The Yugoslav Commission deemed systemic sexual violence as a major part of its ongoing investigations in its Interim Report. The commission gathered data on almost 1,100 documented occurrences of sexual abuse. In Bosnia and Herzegovina, the majority of the reported cases had taken place between April and November 1992.²¹⁵ "Serbian 'rape camps': Evil Upon

²¹¹ MacKinnon, C. A. (1979). Sexual Harassment of Working Women: A Case of Sex Discrimination. *Yale Law Journal*, 82(4), 721-745.

²¹² Ibid.

²¹³ United Nations, "Women 2000: Sexual Violence and Armed Conflict: United Nations Response," (April 1998) <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf> Accessed November 24, 2023.

²¹⁴ Ibid.

²¹⁵ Ibid

Evil” and “Serben vergewaltigen aufobersten Befehl” (Serbs rape on highest commands) were among the condemnatory headlines in newspapers.²¹⁶

The UN Commission on Human Rights appointed Mr Tadeusz Mazowiecki as Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia. In January 1993, the Special Rapporteur dispatched an international team of medical experts to investigate rape,²¹⁷ and in February 1993 he endorsed the team’s findings that rape had been used as an instrument of ethnic cleansing in Bosnia and Herzegovina and Croatia, and that persons in positions of power appeared to have made no effort to prevent these abuses.²¹⁸ According to media reports, Bosnian Serbs’ systematic drive for war success included acts of rape and other sexual atrocities.²¹⁹ There was a sense that rape policies had been designed at the highest levels of the Bosnian Serb military hierarchy, and that detention centers had been established expressly to rape women.²²⁰

Globally, there were resounding and unwavering calls for a decisive reaction to these atrocities. Usually, as the propaganda value of these women’s suffering declines and with fading chances of receiving justice, the seeming care for them disappears.²²¹ It is arguable that the international community was not prompt in showing a strong willingness to address the issue of sexual violence during armed conflict.

²¹⁶ The Miami Herald, 18 December 1992, and Die Welt, October 1, 1992, cited in C. MacKinnon, "Crimes of War, Crimes of Peace", in S. Shute & S. Hurley (eds), *On Human Rights: The Oxford Amnesty Lectures 1993*, New York, Basic Books, 1993, p.83.

²¹⁷ United Nations, *Rape and Abuse of Women in the Territory of the Former Yugoslavia*, Report of the Secretary-General, (E/CN.4/1994/5), 30 June 1993, para. 8.

²¹⁸ United Nations, *Report on the Situation of Human Rights in the former Yugoslavia*, Submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission of Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, (E/CN.4/1993/50), 10 Feb 1993, para. 84.

²¹⁹ *Ibid*, 127.

²²⁰ *Ibid*.

²²¹ *Ibid*.

Sexual atrocities during the war in the former Yugoslavia marked a turning point in the early 1990s, and it appears that the subject has now come to the attention of the international community.²²² Presently, many of the actions made to combat sexual violence against women in times of armed conflict have taken place within UN frameworks. The beginning of the 1990s saw major developments as the international community finally acknowledged that sexual violence and other human rights crimes against women during armed conflict go against the core tenets of international humanitarian law and human rights. According to Patrick Cammaert, “It is perhaps more dangerous to be a woman than a soldier in an armed conflict”.²²³

One of the worst horrors of our day and one of the worst silences in history is sexual violence during wartime. Sexual violence is frequently a purposeful tactic of combat rather than just the deed of renegade soldiers.²²⁴ It reaches unimaginable depths of cruelty against women of all ages, from newborns to grandparents, uprooting, frightening, and destroying people, families, and entire communities. In addition to physical harm, unintended pregnancies, social stigma, and STDs like HIV, survivors may experience emotional anguish and psychological harm. Communities are held captive by the fear of sexual violence, which also keeps women and girls from going to school or engaging in public life. Generations are affected by the expenses and repercussions.²²⁵ Frequently, mass rape persists even after peace treaties are signed and the guns are put down.

²²² Ibid.

²²³ Cammaert, P. (2008). United Nations Peacekeeping Operations: Improving Security for Women. *International Peacekeeping*, 15(4), 488-493.

²²⁴ United Nations Funds for Women, “Rape as a Tactic of War.” *Conflicts and Post-conflicts* https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/UNIFEM/EVAWkit_06_Factsheet_ConflictAndPostConflict_en.pdf Accessed November 23, 2023.

²²⁵ Ibid.

Sexual violence during conflicts is now commonly recognized as a threat to global security and as a tool for genocide, ethnic cleansing, and warfare.²²⁶ According to recent studies, there is a high likelihood of sexual violence occurring in any conflict, albeit the incidence and severity might vary greatly. Nonetheless, the majority of research that has already been conducted focuses on particular conflicts in which extensive violations are thought to have taken place.²²⁷

In 1993, the United Nations (UN) Commission on Human Rights (replaced in 2006 by the UN Human Rights Council) declared systematic rape and military sexual slavery to be crimes against humanity, punishable as violations of women's human rights.²²⁸ Rape committed during a war by armed organizations is considered a war crime, according to a 1995 UN Fourth World Conference on Women resolution. Rape was included in the jurisdiction of the international tribunals set up to try crimes related to the conflicts in Rwanda and the former Yugoslavia, making these tribunals some of the first in the world to try cases involving sexual violence as a war crime.²²⁹ The Rwandan tribunal declared in a historic judgment in 1998 that "rape and sexual violence constitute genocide".²³⁰ Following its establishment in 1998, the International Criminal Court was given jurisdiction over a number of women's issues, including forced pregnancy and rape.²³¹

IHL has been tested in international courts and tribunals with respect to the war crime of sexual violence in armed conflict. The first case to be considered was the *Tadic* Case. In this case, Dusko

²²⁶ Carpenter, R Charli (2006) Recognizing gender-based violence against civilian men and boys in conflict situations. *Security Dialogue* 37(1): 83–103.

²²⁷ Wood, Elisabeth (2010) Sexual violence during war: Lever-aging variation toward change. In: Alette Smeulers & Eliesvan Sliedregt (eds) *Collective Crimes and International Criminal Justice: An Interdisciplinary Approach*. Antwerp: Intersentia, 297–324
(17) (PDF) *Sexual violence in armed conflict: Introducing the SVAC dataset, 1989-2009*. Available from: https://www.researchgate.net/publication/274301025_Sexual_violence_in_armed_conflict_Introducing_the_SVAC_dataset_1989-2009 [accessed Nov 23 2023].

²²⁸ United Nations Commission on Human Right 2006

²²⁹ <https://www.britannica.com/topic/rape-crime/Rape-as-a-weapon-of-war> Accessed 24 September, 2023.

²³⁰ Ibid.

²³¹ Ibid.

Tadic was the president of the Local Board of the Serb Democratic Party in Kozarac (Bosnia and Herzegovina). On the April 30, 1992, the Serb Democratic Party took over control of the town known as Prijedor. On May 24, 1992, a nearby town in Kozarac was attacked, claiming the lives of about 800 civilians. Following this, Serb forces detained non-civilians in prisons and there were allegations of sexual violence. Consequently, Tadic was prosecuted and was found guilty of crimes against humanity, among which was sexual violence premised on the fact that rape and sexual violence may never be an acceptable tool.²³² What is more notable of the Tadic case is that in its first case, *Prosecutor v. Tadic*, Case No. IT-94-1-T, Judgment, 7 May 1997, the Yugoslav Tribunal ruled that acts of male sexual violence, including as mutilation, fellatio, and indecent violence, constituted cruel treatment as crimes against humanity and inhumane acts as war crimes.

Another case of sexual violence during armed conflict is the case of *Prosecutor v. Kvocka*,²³³ which is related to Tadic's case outlined above. This was concerned with the camps established by Serb forces after taking over Prijedor located in the northeastern part of Bosnia and Herzegovina. The camps were meant to be places where those who were against the Serb authorities were to be collected. During the camping, allegations of several acts of sexual violence were also reported and proved in court. The court found Kvocka guilty of these offences, relying on the principle that sexual violence by its very nature degraded a person and subjected them to inhumane treatment.²³⁴

It is commonly accepted that widespread and systematic acts of rape during a conflict constitute both war crimes and a crimes against humanity. After a conflict, it is to be expected that those who committed the crimes will face justice and the victims are entitled to get assistance, justice, or compensation. Apart from the cases discussed above, there are other known cases of sexual

²³² *Prosecutor v. Tadic*, Judgment, Case No. IT-94-16T, 7 May 1997, para. 536.

²³³ Case No: IT-98-30/1-T.

²³⁴ *Ibid* Paragraph 88.

violence. However, countless cases have remained unknown and unreported for years. Due to trauma, societal shame, and a host of other reasons, survivors of sexual violence are frequently reluctant to disclose abuse and provide testimony. Also, in areas of conflict, it can be challenging to compile enough evidence for a conviction even when survivors do come forward. Nevertheless, the cases of Kvočka and Tadić appear to be a well of hope to draw from in trying several other cases of sexual violence.

2.1.3 IHL and Pluralistic Legal Systems: The Limitations of IHL

IHL does not operate in a vacuum, but rather it operates within the context of societies that have pluralistic legal regimes. In light of the recognition of the pluralistic legal regimes that IHL is competing with, Twining's Law as Institutionalized Social Practice (LISP) theory, which rejects legal centrism and refutes the utility of the concept of law as an analytical concept, presents itself as a key tool through which one is better able to dissect the incidence of sexual violence in the *Boko Haram* armed conflict.²³⁵ LISP envisions a 'thin functionalist' definition of law, in which:

that law refers to species of social norms or institutionalized social practices oriented towards ordering ... relations between subjects ... at different levels of relations and ordering... and that what is an appropriate way of conceptualizing law and drawing a workable distinction between legal and non-legal phenomena depends largely on context.²³⁶

This study also invokes Galligan's

²³⁵ See William L. Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, 116-121, p.103 (2009).

²³⁶ William Twining, *Normative and Legal Pluralism: A Global Perspective*, 20 *Duke Journal of Comparative & International Law* 473-518, p.498 (2010).

empirical questions about the extent to which a given state's claims to ultimate authority are accepted by all groups in a society and the extent to which claims are in fact made for superiority or primacy over state law, for instance by adherents to a particular religion.²³⁷

In the context of the *Boko Haram* armed conflict, this research brings IHL into discourse with competing pluralistic legal regimes (i.e., international, national, state, and religious) that the *Boko Haram* combatants are subjects of, to investigate the interplay of sanctions these combatants grapple with. The continued abduction of girls in Nigeria and their subjection to sexual slavery clearly signal an imminent need to better understand the phenomenon to be able to prevent it. Investigating the persistence of sexual violence in the *Boko Haram* conflict necessarily entails exploring how religious and cultural ideology and norms interact with Twining's Westphalian duo.²³⁸ Twining theorized that the description of international law includes *non-state law*, (i.e., different kinds of religious and customary law) and emerging laws (such as the *lex mercatoria*), which fall outside the classical conception of international law as 'nation-state law' and 'public international law'; the Westphalian Duo, which deals with relations between states.²³⁹

This investigation therefore focuses on whether, how and to what extent these competing forms of socialization undermine this Westphalian Duo and elevates the discourse of whether religio-cultural considerations might be a missing link in the conversations around updating the norms of war for more efficacy in preventing sexual violence in armed conflict. To achieve this purpose,

²³⁷ Ibid., p.501.

²³⁸ William Twining, Normative and Legal Pluralism: A Global Perspective, 20 *Duke Journal of Comparative & International Law* 473-518, p.476 (2010). See also, William Twining, *A Post-Westphalian Conception of Law*, 37 *Law and Society Review* 199-258 (2003).

²³⁹ William Twining, *Globalisation and Legal Scholarship*, Montesquieu Lecture, p.12 (2009), https://lapa.princeton.edu/sites/default/files/2011-0210_Twining_Paper.pdf (last visited Jan 31 2019). Twining uses the term the 'Westphalian duo', alluding to the Treaty of Westphalia, considered in mainstream international legal discourse to lay the foundation of modern international law). In this case, the Nigerian Sovereign State (with its domestic laws) and IHL are characterized as the '*Westphalian Duo*.'

this study explores the factors responsible for fomenting an enabling environment for sexual violence in the *Boko Haram* armed conflict.

International Humanitarian Law is occasionally referred to as a missing link.²⁴⁰ This is because there is arguably a perception of dissatisfaction with IHL for apparently falling short of its mandate of addressing the intricacies and dynamic character of contemporary armed conflicts.²⁴¹ Hence, it is noteworthy that conventional international humanitarian law frameworks may find it difficult to adequately control and safeguard all parties to armed conflicts that involve non-state actors and increasingly grow asymmetrical.²⁴²

Furthermore, some contend that the absence of accountability procedures and enforcement mechanisms under IHL contributes to the idea that it is not properly applied or enforced.²⁴³ This could lead to breaches of the provisions of international humanitarian law going unpunished, thereby eroding the system's legitimacy and efficacy. Moreover, various actors may interpret and apply IHL differently, resulting in uneven application and possible protection gaps²⁴⁴ Consequently, this may give rise to the impression that IHL is not always followed by all parties to conflicts or that some parties take advantage of these existing legal gaps. Therefore, IHL is often referred to as the 'missing link' because of doubts about its capacity to resolve modern day humanitarian issues, compel adherence, and guarantee uniform application across all parties

²⁴⁰ Paul R. Williams and Meghan E. Stewart, Humanitarian Intervention: The New Missing Link in the Fight to Prevent Crimes against Humanity and Genocide, 40 Case W. Res. J. Int'l L. 97 (2008)

²⁴¹ International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts." *30th International Conference of the Red Cross and Red Crescent, Geneva 89*, no.867(2007)26-30.

²⁴² Ibid.

²⁴³ International Committee of Red Cross, How does Law Protect: Implementation Mechanisms (2023). <https://casebook.icrc.org/law/implementation-mechanisms> .

²⁴⁴ Ibid.

engaged in hostilities in armed conflicts.²⁴⁵ To understand the reasons behind the apparent ineffectiveness of International Humanitarian Law (IHL) in curbing sexual violence during armed conflicts, it is crucial to delve deeper into the broader context in which these conflicts take place.²⁴⁶

This context comprises various factors such as societal norms, power dynamics, and the complexities of implementing and enforcing IHL on the ground. One of the main challenges is the deeply rooted patriarchal norms and gender inequalities that persist in many societies affected by armed conflicts. These norms perpetuate the subordination of women and reinforce the idea that sexual violence can be used as a weapon to exert power, instill fear, and degrade communities.²⁴⁷

Such norms create an environment where sexual violence is normalized and perpetrators often enjoy impunity. Furthermore, armed conflicts disrupt social structures and institutions, leading to a breakdown of law and order.²⁴⁸ In these chaotic environments, armed groups and individuals take advantage of the power vacuum to commit acts of violence without fear of prosecution. These groups often operate outside the law and are not held accountable for their actions.

Another crucial aspect is the lack of adequate preventive and protective measures for vulnerable populations, particularly women and girls. Despite the existence of IHL provisions aimed at protecting civilians, including specific provisions regarding sexual violence, the implementation and enforcement of these measures remain challenging.²⁴⁹ Insufficient resources, weak

²⁴⁵ Rocznik Choleswiska J. , “ Socialisation of International Rules. Exploring Alternative Mechanisms for Securing Compliance with International Humanitarian Law by Armed Groups,” *Biblioteka Nauki* (2019), Accessed November 28, 2023, <https://bibliotekanauki.pl/articles/2141079.pdf> .

²⁴⁶ ICRC, *Sexual Violence in Armed Conflict: A violation of international humanitarian law and human rights law as unlawful killing.*” <https://international-review.icrc.org/sites/default/files/irrc-894-gaggioli.pdf> Accessed November 28, 2023.

²⁴⁷ Makama Godiya Allanana, “Patriarchy and Gender Inequality in Nigeria: The Way Forward,” *European Scientific Journal* 9, no.17(June 2013), accessed 6 September 2023, <https://core.ac.uk/download/pdf/236407158.pdf> .

²⁴⁸ United Nations, “Armed Conflicts and their Consequences,” <https://www.un.org/esa/socdev/rwss/docs/2001/15%20Armed%20Conflict.pdf>

²⁴⁹ International Committee of the Red Cross, “International Humanitarian Law and the challenges of contemporary armed conflicts.” *30th International Conference of the Red Cross and Red Crescent, Geneva 89*, no.867(2007)26-30.

institutional frameworks, and a lack of political will all contribute to the failure to effectively prevent and respond to sexual violence. Additionally, the rules and principles of IHL themselves may need further development to address the changing nature of armed conflicts. Contemporary conflicts are often characterized by non-state actors, asymmetrical warfare, and the blurring of lines between combatants and civilians.²⁵⁰ These complexities present unique challenges for implementing IHL and effectively curbing sexual violence.

It is however puzzling that, despite the provisions of the law against these acts, sexual violence remains a perennial problem during armed conflict.²⁵¹ Apart from *Boko Haram*, in contemporary ongoing conflicts, reports are coming out about SVAC of civilians,²⁵² adding ballast to the claim that sexual violence is dangerously appearing to be a pattern during armed conflict, as Wood argued.²⁵³ Cohen and Nordas argued that this pattern even involves government forces.²⁵⁴ This perceived pattern is what is described in this research as finding a footing in religious philosophy of mind conditioning and patriarchy supremacy premised on religious belief.

²⁵⁰ Ibid.

²⁵¹ Paragraph 12 and 13 of the Mission report Official visit of the Office of the SRSO-SVC to Israel and the occupied West Bank 29 January – 14 February 2024 Mission report Official visit of the Office of the SRSO-SVC to Israel and the occupied West Bank 29 January – 14 February 2024; International Committee of Red Cross, “Sexual Violence in armed Conflict” <https://casebook.icrc.org/highlight/sexual-violence-armed-conflict/>

²⁵² Adebola Shoberu, “Ukraine: Russian Forces are Raping our Women- Ukraine Foreign Minister” <<https://insightlinks.net/ukraine-russian-forces-are-raping-our-women-ukraine-foreign-minister/>> accessed on the March 28, 2022. “Screams Without Words’: How Hamas Weaponized Sexual Violence on Oct. 7” available at <https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html> (accessed May 28 2024). Lucy Williams, (2024) “ Isreal Gaza: Hamas raped and mutilated women on 7 October available at <https://www.bbc.com/news/world-middle-east-67629181> (accessed May 28, 2024).

²⁵³ Wood, Elisabeth Jean. "Conflict-related sexual violence and the policy implications of recent research." *International Review of the Red Cross* 96, no. 894 (2014): 457-478. In furtherance to this claim, Woods is of the opinion that the persistent presence of sexual violence takes more of a pattern as opposed to strategy.

²⁵⁴ Cohen, Dara Kay, and Ragnhild Nordås. "Do states delegate shameful violence to militias? Patterns of sexual violence in recent armed conflicts." *Journal of Conflict Resolution* 59, no. 5 (2015): 877-898. Interestingly, Cohen and Nordas appear to take a different approach while restating that the pattern-like nature of sexual violence is not peculiar to non-state actors but also to governments.

The seeming inefficacy of IHL in curbing sexual violence during armed conflicts can be attributed to a combination of factors. These include deeply rooted societal norms, the breakdown of social structures during conflicts, a lack of preventive measures, and the need for continuous development of IHL to adapt to evolving conflict dynamics. Addressing these challenges requires a comprehensive and multidimensional approach that strengthens legal frameworks, promotes gender equality, provides adequate resources, and enhances the accountability of perpetrators.

2.2. Sexual Violence and the Legal Response Under Nigerian Law

As stated earlier, sexual violence in times of armed conflict is not a recent development. It has endured for the duration of hostilities. Men and women are equally affected by sexual violence during armed conflict.²⁵⁵ That being said, it is certain that women are more likely than men to experience sexual violence.²⁵⁶ In addition, women are targeted for different reasons than men, and the encounter has a very different impact on them. Several legislations have been put in place to tackle the rate of sexual violation encountered during *Boko Haram* conflicts in Nigeria.

However, it may be argued that these laws have not handled the issues effectively so far. As will be discussed later, even though Nigerian law provides some protection against sexual violence, it is lacking in certain critical respects, primarily in excluding sexual violence under the guise of marital relations from its scope.²⁵⁷ As observed earlier, Nigeria is steeped in patriarchy, which has *ostensibly* led to the institutionalization of discrimination against women in public and private

²⁵⁵ United Nations, “Women 2000: Sexual Violence and Armed Conflict: United Nations Response,” *Department of Economic and Social Affairs* (1998). <https://www.un.org/en/preventgenocide/rwanda/pdf/sexual-violence-and-armed-conflict-1998-UN-report.pdf>. Accessed November 24, 2023.

²⁵⁶ *Ibid.*

²⁵⁷ Umoren, E. (2023). The Need for The Entrenchment of Marital Rape in Nigeria’s Criminal Jurisprudence. *Global Journal of Politics and Law Research*, [online] 11(6), pp.1–8. doi: <https://doi.org/10.37745/gjplr.2013/vol11n618>.

life.²⁵⁸ This is expressed in power structures that devalue and subjugate women, resulting in these norms and gender-based discriminations creating an enabling environment of gender-based violence pre to post armed conflict.²⁵⁹

This section examines various dimensions of sexual violence under Nigerian law and the punishment therewith. Considering that the Nigerian legal system is popularly pluralistic, this section will examine the various geo-political laws across the two major regions in Nigeria, namely the northern part and the southern part of Nigeria. Also, since Nigeria's legal pluralism also incorporates Islamic Law ('Shariah') through the instrumentality of the penal code, efforts shall be geared in this chapter towards determining the response of Islamic Law based on the uniqueness of the penal code to cases and acts of sexual violence.

Specifically, sexual violence or rape within the context of marriage, which is arguably the primary repertoire of sexual violence being perpetrated by *Boko Haram*, is a grave problem arising from the historically deep throes of patriarchy in Nigeria. The Nigerian criminal and penal code do not specifically make marital rape a crime, which leaves a huge legal protection vacuum for partners who are sexually abused while married.²⁶⁰ Misconceptions in society and cultural expectations frequently support the notion that husbands are entitled to have sex in marriage, even if the woman does not consent.²⁶¹ This results in the crime of marital rape not being recognized and acknowledged. The inability of the law to specifically address marital rape restricts survivors'

²⁵⁸ Makama, G.A. (2013). Patriarchy And Gender Inequality In Nigeria: The Way Forward. *European Scientific Journal*, [online] 9(17), pp.1857–7881. Available at: <https://core.ac.uk/download/pdf/236407158.pdf>.

²⁵⁹ Anele, K.A. (2010). Patriarchy and Institutionalised Sexism in the Nigerian University System: The Case of the University of Port Harcourt. *African Anthropologist*, [online] 17(1-2), pp.63–80. doi:<https://doi.org/10.4314/aa.v17i1-2>.

²⁶⁰ Stanley Alieke, "Marital or Spousal Rape: What the Law says about It," *The Cable* (January 17, 2022), <https://www.thecable.ng/marital-spousal-rape-what-the-law-says-about-it>

²⁶¹ Ibid.

access to justice.²⁶² In the absence of legal recourse, survivors could encounter obstacles while reporting and pursuing justice. This might make awareness-raising efforts, support systems, and the general efficacy of legislative frameworks in combating violence against intimate partners more difficult.²⁶³

2.2.1. Nigeria's Domestic Legal Framework Protecting Against Sexual Violence.

According to a World Health Organization survey, one in four women may encounter sexual violence from an intimate partner in some nations, and one third of teenage females say they were coerced into having their first sexual experience.²⁶⁴ Although it is recognized that sexual violence occurs worldwide, several countries pay little attention to the issue. Reports of sexual violence against women and children are not common in Nigeria.²⁶⁵ Despite receiving little media attention, it has grown to be a major concern.

In order to assess whether or not Nigerian laws are effective in preventing sexual violence, this chapter looks at the country's legal framework on the subject. In addition to the family, workplace, streets, and schools, rape and other forms of sexual abuse against boys and men can also happen in the military, in jails during times of conflict, and in police and prison custody. Any kind of sexual violence is an offense against a person's honor and personal dignity.²⁶⁶ It goes against the Constitution of the Federal Republic of Nigeria and, in fact, appears to be the ultimate kind of

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ WHO, "Violence Against Women," (March 9, 2021) Accessed on November 24, 2023. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> .

²⁶⁵ Ajayi, A.I., Alex-Ojei, C.A. and Ahinkorah, B.O. (2023). Sexual violence among young women in Nigeria: a cross-sectional study of prevalence, reporting and care-seeking behaviours. *African Health Sciences*, [online] 23(1), pp.286–300. doi:<https://doi.org/10.4314/ahs.v23i1.31>..

²⁶⁶ Akpoghome, Theresa. "Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria," *Journal of Law and Criminal Justice* December 2016, Vol. 4, No. 2, pp. 17-30. http://jlcjnet.com/journals/jlcj/Vol_4_No_2_December_2016/3.pdf Accessed November 24, 2023.

torture. It is cruel and dehumanizing, and victims have either died or had psychological damage as a result. In essence, every kind of sexual violence violates the victim's fundamental rights.²⁶⁷ In addition, acts that would be considered torture or a violation of human dignity are not defined under the Nigerian constitution. Sexual violence is therefore not just unlawful under the Nigerian constitution but is a punishable offence under Violence against Persons (Prohibition) Act of 2015, Criminal Code Act, Penal Code etc.

A. The Nigerian Constitution

The Constitution of the Federal Republic of Nigeria ('The Constitution') is the *Grund norm* and foundation of all laws in Nigeria. It is through the constitution that all authorities and powers are derived.²⁶⁸ It binds all authorities and persons within Nigeria or subject to Nigerian laws. By the provisions of Section 1(1) and (3) of the constitution, the constitution prevails over any other law in Nigeria. Where any law contravenes the provisions of the constitution, such law shall be found inconsistent and be declared void to the extent of its inconsistency.²⁶⁹

It has been noted that the only provision in the constitution that generally deals with sexual violence is Chapter IV. This chapter is the foremost provision on fundamental rights. It has been decided in the case of *Ransom Kuti v. Attorney General of the Federation*²⁷⁰ that fundamental rights stand above every other right and the ordinary laws of Nigeria. More particularly, section 34 of the constitution provides for the right to dignity of human person which protects against all acts of sexual violence. Section 34 provides that:

²⁶⁷ Ibid.

²⁶⁸ Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁶⁹ Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

²⁷⁰ *Ransom Kuti v. Attorney General of the Federation* (1985) 2 NWLR (Pt. 6) 211.

Every individual is entitled to respect for the dignity of his (her) person and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment.

In the case of *Iheme v. Chief of Defence Staff and Ors.*,²⁷¹ The Nigerian Court of Appeal held that the purport of this provision is that no one is to be inflicted with pain either of the mind or the body nor subjected to mental cruelty which endangers his life or health. The court noted further that any act that amounts to brutality or harassment which degrades any person falls under section 34 of the constitution and therefore is made unconstitutional.²⁷²

Considering that the constitution did not enlist the acts that constitute a violation of this fundamental right to human dignity, it has been deduced by some scholars that sexual violence in any form is an act against the personal dignity and honor of any person. It is inhuman and degrading and may lead to the death or psychological trauma for victims.²⁷³ Basically, sexual violence in whatever form is an infringement of a fundamental right of the victims. This position further finds credence in the case of *Njamanze v FGN*²⁷⁴ decided by the ECOWAS court where the Federal Government of Nigeria was found to have violated the rights of a number of commercial sex workers who were arrested and violated by agents of the state in a routine raid in Abuja, Nigeria. In addition to the arrests grounded as a violation of the right to freedom of

²⁷¹ *Iheme v. Chief of Defence Staff and Ors.* (2018) LPELR-45354 pp.14-18, Para D-B.

²⁷² Also see *Kalu v. State* (1998) 13 NWLR (Pt. 538).

²⁷³ Ryan McIlroy, 'Prosecuting Rape and Other Forms of Sexual Violence as Acts of Torture Under § 2340' <https://law.stanford.edu/wp-content/uploads/2016/07/McIlroy-Prosecuting-Sexual-Violence-as-Torture-DOJ-Part-I.pdf> Last accessed 21st November, 2021.

²⁷⁴ Judgment N°: ECW/CCJ/JUD/08/17.

movement and liberty, the court further found that abusive language and branding of women as prostitutes constitutes a violation of the right to dignity.²⁷⁵

Although it has not been found in the records of Nigerian courts that sexual violence constitutes inhuman or degrading treatment or indeed a violation of the right to human dignity; on the international scene, there have been declarations which categorize sexual violence as a gross infringement of this fundamental right.²⁷⁶

B. The Criminal Code

The Criminal Code Act ('The CCA') is a federal legislation in Nigeria.²⁷⁷ It however only applies to the southern part of Nigeria even though states have the powers and authorities under the constitution to enact their circumstance-specific criminal laws.²⁷⁸ The major provision on sexual violence in the Criminal Code Act is however on rape. Within the Criminal Code Act, rape is defined as:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent

²⁷⁵ It can be implied from the provision of subsection 2 of this section however of what may constitute an affront to the right to human dignity. In the subsection, the drafters of the constitution highlighted indicators of forced or compulsory labour. Some scholars have argued that this list should be adopted in the construction of Section 34 (1)(a). However, it has been found that the subsection does not particularly highlight the indicators of forced or compulsory labour. Rather, it enlists what would not amount to such labour including, *(a) any labour carried out in consequence of the sentence and order of a competent court, (b) labour required in training or serving as members of the Nigerian armed forces, (c) any labour as may be considered reasonably necessary in the circumstances of any calamity threatening the life and well-being of a community, inter alia.*

²⁷⁶ It is on record that in 1986, the United Nations Special Rapporteur on Torture, Peter Kooijmans, moved that rape and all forms of sexual violence indeed should be regarded as torture or inhuman treatment.

²⁷⁷ Criminal Code Act, CAP C38 Laws of the Federation of Nigeria, 2004.

²⁷⁸ Section 4(6) of the Constitution allows the States Houses of Assembly to make laws for the peace, order and good governance of the state or any part thereof.

representation as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.²⁷⁹

The elements of the offense of rape in Nigeria evidence a key tension. On one hand, the offense includes sexual intercourse with a woman or girl, against their will and that the act of intercourse was unlawful; but on the other hand, intercourse between husband and wife is excluded.

This provision of the law has been reflected in some notable Nigerian cases. For example, *Adeoti v. State*,²⁸⁰ where the Court of Appeal held that a man is considered to have committed rape if he has illicit sexual knowledge of a woman or girl without that person's consent, or if that consent is acquired through coercion, threats, intimidation, fear of death, potential bodily harm, or deception, falsehood, or fraudulent representation of the act's nature.

It is apparent that men and boys are not recognized as victims of rape under the definition of the crime in section 357 of the Criminal Code.²⁸¹ Marital rape is not recognized by the Criminal Code either. According to the requirements of the Criminal Code, only men are capable of committing rape. For these reasons and more, though the provision appears female friendly, it remains problematic and, arguably, perhaps inadvertently contributes to the enabling of the continued SVAC in the *Boko Haram* armed conflict. To date, there have been no conviction on charges of sexual violence stemming from the *Boko Haram* armed conflict, and there have been little to no related prosecutions either. The apparent lack of accountability measures for SVAC in this context speaks volumes to the lack of mechanisms to hold perpetrators legally accountable for SVAC.

²⁷⁹ Section 357 Criminal Code Act.

²⁸⁰ (2009) All FWLR (Pt 454) 1450.

²⁸¹ Uloaku Ekwegh, "Rape and the provisions of the law in Nigeria," *Business Day* (June 30, 2020).

<https://businessday.ng/opinion/article/rape-and-the-provisions-of-the-law-in-nigeria/> Accessed November 24, 2023.

C. The Penal Code

While the Criminal Code Act applies to the southern part of Nigeria, the Penal Code (PC) is a federal legislation applicable only in the northern states of the federation.²⁸² It has been observed that the Penal Code is replete with an array of provisions against sexual violence. Under the Penal Code, rape can only be committed where a man has sexual intercourse with a woman in any of the following circumstances:²⁸³ (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or hurt; (d) with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; or (e) with or without her consent, when she is under 14 years of age or of unsound mind. According to the Code, all that is required for a sexual encounter to qualify as rape is basic penetration.

Another provision is that which provides against violence or criminal force towards women with intent to outrage modesty.²⁸⁴ This section provides that whoever uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with three-year imprisonment, a fine, or both. However, no specific amount of fine was stated, neither was any minimum or maximum year of imprisonment stated. This therefore leaves sentencing to the discretion of the judge. Based on findings of this research, what appears to be the reason for a blanket sentencing is that the Penal Code was enacted to incorporate Islamic Law based on the *Maliki School* into the northern region of Nigeria.²⁸⁵

²⁸² Penal Code, CAP P3 (NORTHERN STATES) Laws of the Federation of Nigeria, 2004.

²⁸³ Section 282 Penal Code.

²⁸⁴ Section 268 of the Penal Code.

²⁸⁵ Philip Ostien, 'Nigeria's Shariah Penal Codes' in P. Ostien, ed., *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Ltd., 2007), Volume IV, Chapter 4, pp. 3-21.

Interestingly, the Penal Code in section 275 also makes provision for protection of minor girls.

The Penal Code states that:

Whoever, by any means whatsoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to 10 years and shall also be liable to a fine.

Carefully perused, this section reveals that although the law permits imprisonment, the imprisonment term is still left to the discretion of the court. Furthermore, the Penal Code makes provisions against the importation of girls under the age of 21 with the intent that they will be forced or seduced to have illicit intercourse with another. This trafficking in women for illegal purposes, which includes gratifying the passion of another person without their consent, is an offence punishable with seven years' imprisonment and a fine.²⁸⁶

Despite existing gaps in the legal frameworks discussed above, over many years the country has progressively made efforts to pass essential legislations to reduce sexual violence. Worthy of note among these legislations is the Violence against Persons (Prohibition) Act of 2015, signed on May 25, 2015, by former President Goodluck Jonathan. This legislation has made a tremendous impact on the narrative of sexual violence in Nigeria, as is detailed in the next section.

²⁸⁶ Section 281 Penal Code.

C. Violence Against Persons Prohibition Act, 2015

The Violence Against Persons Prohibition Act ('VAPP') is the most recent and most comprehensive of Nigerian laws on sexual violence.²⁸⁷ To some extent, the VAPP represents progress towards broader recognition and protection of sexual and gender-based violence. The VAPP was signed into law on May, 25, 2015.²⁸⁸ Violence is defined under Section 46 of VAPP as:

Any act or attempted act which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situation.

The VAPP particularly deals with sexual violence in sections 1, 6, and 26 respectively. Rape is addressed and the VAPP provides under section 23 that a person commits the offence of rape if:

- (a) He or she intentionally penetrates the vagina, anus, or mouth of another person with any other part of his body or anything else;
- (b) The other person does not consent to the penetration; or
- (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent representation as to the nature of the act or

²⁸⁷ Cheluchi Onyemelukwe, *Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015*, 5 *DePaul J. Women, Gender & L.* (2016) <https://via.library.depaul.edu/jwgl/vol5/iss2/3> Last accessed 20th November, 2021.

²⁸⁸ Uniga Ovenaone, Yakubu Danladi, 'Effective Implementation of The Violence Against Persons Prohibition (VAPP) Act, Curbing the Impunity of Perpetrators of Gender Based Violence (GBV) and Promoting Socio-Economic Development In Nigeria', *International Journal of Management, Social Sciences, Peace and Conflict Studies (IJMSSPCS)*, Vol.4 No.2 June, 2021.

the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

It is noticeable from the VAPP that there is an expansion on the definition of rape and its prohibition. While other laws examined above may have restricted their definition of rape to protect only females in relation to vaginal penetration without consent,²⁸⁹ the VAPP has taken a quantum leap by expanding the meaning and scope of rape. Going by the definition of rape in the VAPP, it is clear that both males and females can be raped and are protected by the VAPP.²⁹⁰ This new dawn is particularly important in light of the existing arguments on the fact that rape has become or has been a gender-biased offense, as existing laws before the VAPP failed to recognize instances where a man could be raped.^{291,292}

²⁸⁹ The CCA and the Penal Code.

²⁹⁰ The VAPP further provides that where the offense has been proved and the accused found guilty, he is to be sentenced to life imprisonment. (Okonkwo–Ogabu Lilian, Steve Wordu, ‘Economic Inequality: An Examination of the Violence Against Persons Prohibition (VAPP) Act with regard to Women in Rivers State,’ *International Journal of Innovative Social Sciences & Humanities Research* 6(4):51-62, Oct. Dec., 2018) However, where the offender is less than 14 years of age, the punishment is a maximum term of 14 years imprisonment. (Section 2(1) (a) of the VAPP Act, 2015.), In other cases, a minimum of 12 years imprisonment is provided by VAPP (Section 2(1) (b) of the VAPP Act, 2015.) and for gang rape, the offenders are liable jointly to a minimum term of 20 years without an option of fine. (Section 2(1) (c) of the VAPP Act, 2015) VAPP also recommends the award of appropriate compensation to the victim by the court) Uniga Ovenaone, Yakubu Danladi, *ibid.* (no. 32.) and finally on this VAPP mandates that a register of sexual offender be maintained.

²⁹¹ Importantly, the VAPP now recognizes that sex now goes beyond the use of the primary sexual organs and extends the scope to anus and mouth. Thus, the restriction of penetration *per vaginam* is reformed. What only needs to be established is slight penetration. Interestingly, this penetration need not only be by the primary sexual organ (penis) of the offender but by any part of his body or anything else. This is an improvement on the Criminal Code Act and Penal Code that requires sexual intercourse. Another act of sexual violence dealt with by VAPP is female circumcision or genital mutilation. Section 6 VAPP Act, 2015. Another act of sexual violence dealt with by VAPP is female circumcision or genital mutilation. (Section 6 VAPP Act, 2015.) VAPP provides that, ‘*The circumcision or genital mutilation of the girl child or woman is hereby prohibited.*’) Section 6 (1) VAPP Act, 2015.) This offense is punishable by a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both. (Section 6 (2) VAPP Act, 2015.) An attempt to commit the offense attracts a term of imprisonment not exceeding 2 years or to a fine not exceeding N100, 000.00 or both upon conviction (Section 6 (3) VAPP Act, 2015). Where a person incites, aids, or counsels another to commit the offence of FGM, upon conviction, the person is sentenced to a term of imprisonment not exceeding 2years and to a fine not exceeding N100, 000.00 or both. (Section 6 (4) VAPP Act, 2015).

Generally, it can be argued that the VAPP contains provisions on effective remedies, including the right to assistance for victims. By the provisions of section 38:“Every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through government agencies and/or non-governmental agencies providing such assistance.”

Victims are to have access to the available legal, health and social services and any other relevant assistance they may need. They are further entitled to re-integration and rehabilitation programmes of the state as this will enable the victims to acquire necessary pre-requisite skills in any vocation of their choice in addition to necessary formal education and access to micro-credit facilities.²⁹³Also, the VAPP makes provision for a protection order against the respondent.²⁹⁴

D. Child Rights Act, 2003

The Child’s Right Act (‘The CRA’) was enacted in 2003 to protect the rights of children. The CRA incorporates the principle of best interest of a child and states that every action concerning a child must be in their best interest. The CRA defines a child as any person below the age of 18.²⁹⁵ By the provision of section 31 of the CRA, no person is permitted to have sexual intercourse with a

²⁹³ It is apparent from the wordings of the Act that the concept of rape and its ban have been expanded. The Act has made a significant advancement by extending the definition and application of rape, when other laws may have limited their definition to protect exclusively women against vaginal penetration without consent.²⁹³ Based on the Act's definition of rape, it is noteworthy that it is now recognized that both men and women are capable of being raped and are covered by the Act. This advancement was to remedy the gap in then existing laws that did not recognize situations in which a man could be raped, leading to the problem of gender bias in rape, which has been prominent in Nigerian legal doctrine for years. However, the Act does not resolve the issues raised by excluding marital rape from legal protection.

²⁹⁴ Section 31(1) of the VAPP Act, 2015. Section 28 of VAPP allows for an application to be brought to the High Court for it to grant a Protection Order which is effective throughout the Federal Republic of Nigeria with no time limit or prescription preventing the applicant from making the application. Another laudable contribution is that the applicant need not bring the application for Protection Order personally. An application may be brought by any other person including a police officer, accredited service provider, a counsellor, health service provider, social worker or teacher who has interest in the well-being of the complainant.²⁹⁴ The court by its protection order may prohibit the respondent from: committing any act of domestic violence, enlisting the help of another person to commit the violence, entering a shared household, entering the complainant's home or place of employment or shared household, alienating or renouncing his or her shared household except in favour of the complainant or committing any such act as may be specified in the Protection Order

²⁹⁵ Section 21 of the Child’s Right Act.

child. Where there is a violation of this law, upon conviction the offender is to be sentenced to life imprisonment.²⁹⁶ Section 11 (a) of the CRA also prohibits subjecting a child to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse. However, there is no punishment for violation.

Similarly, sections 21-23 prohibit the betrothal or marriage of children below the age of 18. It must be noted that some states in Nigeria have a problem with these provisions in the VAPP as they view them as contrary to their culture and custom if not religion.²⁹⁷ States, irrespective of their opinions, have been enjoined to enact their states Childs Right Law.²⁹⁸ Only 26 out of the 36 states in Nigeria have been able to enact their own state laws as at May 2014.

2.2.2 Nigeria's International Legal Framework Protecting Against Sexual Violence

In Nigeria, Section 12 of the 1999 Constitution shows Nigeria as a dualist state to which the domestication of all treaties must be achieved before they can apply within the country. Hence, logically, treaties after domestication should occupy the same place occupied by other Nigerian statutes; all being subject to the Nigerian Constitution.²⁹⁹ In the case of *General Sanni Abacha v. Gani Fawehinmi*,³⁰⁰ where the issue of the supremacy of the Constitution over the African Charter on Human and Peoples Rights came up for consideration, the Supreme Court held that treaties once domesticated are statutes with an international flavor. Thus, where the treaty

²⁹⁶ Section 31 (2) Childs Right Act.

²⁹⁷ Theresa Uzoamaka, *Op. Cit.* (no. 16 above).

²⁹⁸ Theresa Uzoamaka, *Ibid.* no. 49 above.

²⁹⁹ Longjohn, Claribel Diebo, Implementation and Application of Treaties in Nigeria, Submitted To The Nigerian Institute Of Advanced Legal Studies School Of Post-Graduate Studies University Of Lagos Campus, Akoka, Yaba-Lagos.

³⁰⁰ *General Sanni Abacha v. Gani Fawehinmi* [2001]51 WRN 29.

conflicts with a domestic law, its provision will prevail over those of that other statute because it is presumed that the legislature does not intend to breach an international obligation.

A. Convention On the Elimination of Discrimination Against Women (CEDAW)

The United Nations Convention on the Elimination of All Forms of Discrimination against Women ('The CEDAW') was adopted by the United Nations General Assembly in 1979 and entered into force on September 3, 1981.³⁰¹ The CEDAW makes provision for the recognition of sexual violence as part of modes of discrimination against women.³⁰² By the provisions of Article 5 of the CEDAW, nations and state-parties are encouraged to modify the social and cultural patterns of conduct both for men and women. This is with a view to eliminating inferiority views and stereotypes of either sexes, particularly women.³⁰³ The CEDAW provides for ways in which state parties are to eliminate discrimination by making appropriate legislation prohibiting discriminations, ensuring the legal protection of women's rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions. It requires affirmative action on the part of the state.³⁰⁴

It must be noted however that the CEDAW does not explicitly prohibit violence against women, but rather "discrimination against women in all its forms". Recommendations issued by the

³⁰¹ Sarah Bott, Mary Ellsberg & Andrew Morrison, 'Preventing and Responding to Gender-Based Violence in Middle and Low-Income Countries: A Multi-Sectoral Literature Review and Analysis', 20 (World Bank, Working Paper No. 3618, 2005).

³⁰² Committee on African Affairs of the New York City Bar, 'Gender-Based Violence Laws in Sub-Saharan Africa', http://www.reproductiverights.org/sites/default/files/documents/GBV_Laws_in_Sub_Saharan_Africa.pdf Last accessed the 25th November, 2021.

³⁰³ Osao Ojigho, 'A First for Women under the Maputo Protocol', Institute fir African Women in Law <https://www.africanwomeninlaw.com/posts/A-First-for-Women-under-the-Maputo-Protocol> Last accessed the 26th November, 2021.

³⁰⁴ Zalesne, D 'The Effectiveness of the Employment Equity and the Code of Good Practice in Reducing Sexual Harassment' (2001) 17 SAJHR 503.

Committee on the Elimination of Discrimination Against Women, which oversees states' compliance with the treaty, have however clearly defined "discrimination" to include violence against women.³⁰⁵ It is noted that implementation and compliance with the CEDAW and other international law treaties remain at a low ebb due to a lack of political commitment from states. The compliance of state reporting and also abiding with various concluding observations still looms large.

The Nigerian government ratified the CEDAW in 1985 without reservation. The government signed the Optional Protocol to the Convention in 2000 and ratified it in 2004.³⁰⁶ As a state party, Nigeria is obliged to implement the Convention by using all appropriate means to eliminate all forms of discrimination against women. Unfortunately, the CEDAW does not enjoy automatic enforcement in Nigeria due to constitutional constraints. Section 12 of the Constitution of the Federal Republic of Nigeria specifically requires legislative domestication through the National Assembly of international conventions before they can be legally enforced.³⁰⁷ Nigeria has not passed any enabling legislation to domesticate the Convention, which has greatly hindered the observance and performance of its provisions. However, the Convention is actionable in international courts.

³⁰⁵ CEDAW General Recommendation 19, ¶ 1 (1992), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> Last accessed the 25th November, 2021.

³⁰⁶ International Women's Development Agency, 'CEDAW at a Glance' <https://iwda.org.au/assets/files/CEDAW-at-a-Glance.pdf> Last accessed the 27th November, 2021.

³⁰⁷ Shahrul Mizan, 'The CEDAW Committee and The Protection of Women's Rights', file:///C:/Users/USER/Downloads/NottinghamforGenderSexuality_HumanRights2005_TheCEDAWCommitteeandProtectionofWomensRights.pdf Last accessed the 27th November, 2021.

B. Maputo Protocol to The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples Rights forbids every form of discrimination against everyone, including women. Article 2 of the Charter provides as follows:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

An improvement on this charter is the Maputo Protocol ('The Protocol') to the African Charter on Human and Peoples' Rights. This protocol prohibits all forms of harmful, violent, and prejudicial practices against women from Articles 2 to 25. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa is a unique piece of legislation because it takes into consideration the provisions of other international instruments on human rights that touch on women's rights, the need for equality and freedom from discrimination.³⁰⁸ In Article 3, there is a mandatory commitment of states to adopt and implement appropriate measures to prohibit the exploitation or degradation of women and ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence.³⁰⁹ Article 4 of the Protocol provides for the rights to life, integrity and security of the person and commits states to identify

³⁰⁸ Osai Ojigho, 'Litigating Gender-Based Violence and Discrimination – The Dorothy Njemanze Case' A Compendium of Strategies and Approaches for Defending the Rights of Women and Girls in Africa, file:///C:/Users/USER/Downloads/LitigatingMaputoProtocol_DorothyNjemanze_Osai_Ojigho.pdf Last accessed the 28th November, 2021.

³⁰⁹ Article 3 of the Maputo Protocol to the African Charter on Human and Peoples' Rights.

the causes and consequences of violence against women and take appropriate measures to prevent, eliminate and punish such violence.³¹⁰

In the history of the Protocol, an important case was decided in the Economic Community of West African States ('The ECOWAS Court'). On October 12, 2017, the ECOWAS Court in the case of *Dorothy Njemanze & 3 Ors. v Nigeria*³¹¹ decided that the state violated the human rights of the claimants (Dorothy Njemanze, Edu Oroko, Justina Etim and Amarachi Jessyford) by failing to recognize their rights and protect them from gender-based violence. This was the first time that a regional court made a pronouncement on the treaty. The court specifically found a violation of Articles 2, 3, 4(1), 4(2), 5, 8 & 25 of the Maputo Protocol.³¹²

To summarize the case, Dorothy Njemanze, an actress, became interested in the issue when friends were picked up on their way to a bridal party by the AEPB joint operation in September 2011. Police officers threatened to shoot her when she tried to intervene. A year later, she had a personal experience. On the night of the September 29, 2012, she went to meet her brother at Dreams Recreational Resort in Wuse 2, Abuja. She parked her car and was walking down the street when a man on a white bus grabbed her breasts and held on to them to stop her from walking.³¹³ The bus had the inscription "AEPB in collaboration with SAPCLN". He was joined by three men in military

³¹⁰ Article 4 of the Maputo Protocol to the African Charter on Human and Peoples' Rights.

³¹¹ Dorothy Chioma Njemanze & 3 Ors v Federal Republic of Nigeria (2017) ECW/CCJ/ JUD/08/17: http://prod.courtecowas.org/wp-content/uploads/2019/01/ECW_CCJ_JUD_08_17-1.pdf Last accessed the 28th November, 2021.

³¹² David Hundeyin, "The Untold Story of the AEPB, Abuja's Uniformed Female Harassment Unit," News Wire NG October 31, 2019: <https://newswirengr.com/2019/10/31/the-untold-story-of-the-aepb-abujas-uniformed-rapesyndicate> Last accessed the 28th of November, 2021.

³¹³ IHRDA, Synopsis of the case of Dorothy Njemanze & 3 Others V. The Federal Republic of Nigeria: <https://www.ihrda.org/2017/10/synopsis-of-the-case-of-dorothy-njemanze-3-others-v-the-federal-republic-of-nigeria/> Last accessed the 28th November, 2021.

uniforms who tried to force her into the bus. Her cries alerted onlookers who came to her rescue. She made a formal complaint at the police station the next day, but no one was ever prosecuted.³¹⁴

Sexual violence, including conflict-related sexual violence, is frequently associated with power, domination, and abuse of authority rather than sexual desire.³¹⁵ Men and boys can also become victims of sexual violence,³¹⁶ even though women and girls are more susceptible. Sexual violence can be perpetrated by a range of people, including state actors, members of organized non-state armed groups, peacekeepers, employees of private military and security firms, and regular people. This frequently happens in Nigeria.

Sexual violence is not an inevitable byproduct of conflict and violence, despite its widespread occurrence.³¹⁷ Just like any other infraction, it is avoidable. A robust domestic and international legal system and the presence of reliable institutions to enforce the prohibition on sexual violence are prerequisites for this. The prohibition of sexual violence in armed conflict is clearly and fully

³¹⁴ IHRDA, *Ibid.* (no. 67 above). The Court held that the arrest of the Plaintiffs was unlawful, that branding the women prostitutes constituted verbal abuse, which violated the right of these women to dignity. Further, the Court held that the arrest violated the right of these women to be free from cruel, inhuman, or degrading treatment; and also constituted gender-based discrimination. The Court also found that there were multiple violations of articles 1, 2, 3 and 18 (3) of the African Charter on Human and Peoples' Rights; articles 2, 3, 4, 5, 8 and 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol); articles 2, 3, 5 (a) and 15(1) of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); articles 2(1), 3, 7 and 26 of the International Covenant on Civil and Political Rights (ICCPR); articles 10, 12, 13 and 16 of the Convention against Torture (CAT); and articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights (UDHR).³¹⁴ The 1st, 3rd and 4th Plaintiffs were each awarded damages in the sum of Six Million Naira which was about USD16,500 at the time. However, the claim of the 2nd Plaintiff was dismissed for being statute barred under the Protocol creating the Court.

³¹⁵ Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, "Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward", Special Report of the United States Institute of Peace, No. 323, February 2013, p. 6, available at: [wartime sexual violence.pdf\(usif.org\)](http://wartime-sexual-violence.pdf(usif.org)); See also: Patrick Chiroro, Gerd Bohner, G. Tendayi Viki and Christopher Jarvis, "Rape Myth Acceptance and Rape Proclivity: Expected Dominance Versus Expected Arousal in Acquaintance-Rape Situations", *Journal of Interpersonal Violence*, Vol. 19, No. 4, 2004, pp. 427–442.

³¹⁶ Gloria Gaggiol, "Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law," *International Review of the Red Cross* 98, no.894 (2014) 503–538. <https://international-review.icrc.org/sites/default/files/irrc-894-gaggioli.pdf>. Accessed November 24, 2023.

³¹⁷ *Ibid.*

prohibited by international law, specifically under IHL and human rights law, as shown in this research.

It is puzzling that a significant portion of regional and international human rights accords do not expressly forbid sexual violence.³¹⁸ Even where rape and other forms of sexual violence are not specifically mentioned in the statutory definitions of war crimes or crimes against humanity, they are generally believed to be acts of torture and inhuman treatment.³¹⁹ They may thus be prosecuted for serious violations of the laws of war, war crimes, or crimes against humanity. Under both domestic and international law, acts like forced prostitution, forced sterilization, forced abortion, forced pregnancy, sexual slavery, rape, and more ought to be emphasized more as crimes.³²⁰

IHL accords have occasionally come under fire for purportedly failing to adequately address the concerns of women in armed situations and for failing to fully forbid and penalize sexual violence,³²¹ and to apply the full weight of the power and resources of the international community to end this scourge with the same fervor as other grave violations of human rights and IHL like murder, torture, enslavement, rape, imprisonment, and other brutal acts against people. When carried out on a large or systematic basis, these acts are considered crimes against humanity. Serious violations of the Geneva Conventions occur when basic human health, physical integrity,

³¹⁸ International Covenant on Civil and Political Rights (ICCPR), 1966; European Convention on Human Rights (ECHR), 1950; American Convention on Human Rights (ACHR), 1969; African Charter on Human and Peoples' Rights, 1981.

³¹⁹ Ibid.

³²⁰ Human Rights Watch, "Sexual Violence as International," *Focus on Human Rights* (1999), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi1-4CL4t2CAxXeQ0EAHRZGA38QFnoECCMQAQ&url=https%3A%2F%2Fwww.hrw.org%2Flegacy%2Fcampaigns%2Fkosovo98%2Fseviolence.shtml&usg=AOvVaw2paA6e7AA3Fs8f0gYIkPMD&opi=89978449> Accessed November 24, 2023.

³²¹ Judith Gardam, "Women, Human Rights and International Humanitarian Law", *International Review of the Red Cross*, No. 324, September 1998, pp. 421–432; Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001. See also, on the criticisms made by these authors, Helen Durham, "Women, Armed Conflict and International Law," *International Review of the Red Cross*, Vol. 84, No. 847, 2002, pp. 655–659.

and dignity are violated in the course of an armed conflict. Regardless of whether they occur in a time of war or peace, widespread or systematic acts of sexual violence should also be punished as crimes against humanity.³²²

³²² Ibid.

Chapter Three: Existing Explanations of Sexual Violence in Armed Conflict: Opportunity, Strategy and Practice

Scholars agree that the factors that enhance the perpetration of sexual violence in armed conflicts are numerous and complex. This section briefly analyzes select explanations for sexual violence in armed conflict relevant to this research and identifies gaps for this research to fill.

Sexual violence in armed conflict has been explained in various ways over the years. There was the notion that sexual violence occurs due to opportunity and social breakdown—the theory that, given the opportunity, men will naturally choose to engage in sexual violence expressed in military cultures as ‘boys will be boys’, as a reward or morale booster.³²³

Another explanation is the biological explanation that the male sex is prone to raping women biologically due to evolution.³²⁴ This notion explains that wartime-caused breakdowns in state capacity to maintain order in the society diminishes social restraints on men and protection safeguards for women, leading to increased access of men to women and explains the corresponding increase in sexual violence.³²⁵ On one hand, the biological explanation is lauded for bringing to the fore the role of sexual desire in the commission of crimes of sexual violence in armed conflict, leading to the need for desire’s explanation; on the other hand, the opportunist explanation is criticized for being unclear as to whether it is the social breakdown that leads to the increased sexual violence or whether it is the sexual violence that is being used to breakdown society, which is arguable.³²⁶ Lastly, the use of sexual violence in armed conflicts has also been

³²³ Elizabeth Jean Wood, *Sexual violence during war: toward an understanding of variation*, in Stathis N. Kalyvas, Ian Shapiro & Tarek Masoud eds., *Order, Conflict and Violence* 321–351, p.337 (2008). Reviewing the evolution of the explanation of sexual violence in armed conflict.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid

explained as being deliberately used by military commanders and their armed groups to achieve a strategic purpose.

3.1. Opportunity Theories

According to Wood, there are different levels of interest in sexual violence among people in times of peace. Some people, he said, are so interested in sexual gratification that they use violence to get it, while others associate sexual gratification with dominance and possibly violence, while still others are completely uninterested in sexual violence.³²⁷ According to Wood's further explanation, various social mechanisms that vary by country and frequently even within-country groups control how individuals express sexual aggression. As a result, the prevalence of sexual violence in peacetime varies between nations and groups (as mentioned above). Societies differ, of course, in how much unlawful aggression is restrained by their regulatory institutions.

Exploring a second point, Elisabeth Wood noted that these control systems are frequently less effective during times of war, which leads to increased rates of sexual violence because the chance and/or incentive to commit sexual violence increases. Third, different conflicts and groups have different degrees of regulatory mechanism breakdown (and opportunity and incentive increase).

Wood explained that the likelihood of sexual violence can occasionally increase. There are numerous potential causes. Armed young men often fight in groups during wars outside of the regular social norms of their village or area. These conditions have less control over sexual aggression (since the costs are smaller), which leads to higher rates of sexual violence. For example, if communities are not relocated collectively, social controls may be weaker among displaced populations. The chance for sexual violence may expand because of some armed

³²⁷ Wood, Elisabeth Jean. 2014. "Conflict-Related Sexual Violence and the Policy Implications of Recent Research." *International Review of the Red Cross* 96 (894): 457–78. <https://doi.org/10.1017/s1816383115000077>.

factions' reliance on the theft of civilian assets for combatant supplies. This is because breaking into people's houses to steal food (and frequently alcohol) presents a venue for such violence.

There is still limited data to properly evaluate various explanations that sexual violence rises in times of conflict, particularly with regard to in-depth case studies. In a statistical analysis that connected a measure of sexual violence and the existence or absence of armed conflict, Neil Mitchell and Tali Gluch found that sexual violence was predicted by the presence of war.³²⁸ However, their conclusion was based on data for only one year and was based on a categorization of scant human rights sources, mostly human rights reports from the US State Department. There appear to be no more suitable longitudinal data, with the exception of specific cases.³²⁹

A study by Madeline Morris using data on 'founded investigations' (defined as reported crimes that were not dismissed as unfounded by investigators)³³⁰ from the FBI and US military services provides evidence that the rate of sexual violence committed by American troops in Europe increased during World War II. She discovered that male US military members committed rape at rates that were three to four times higher during times of war than those of male civilians of the same age (military rates during peacetime were, however, noticeably lower than civilian rates).

It should be noted that opportunity arguments seem to take a different approach to making inferences about who perpetrates sexual violence. Some interpretations of these approaches seem

³²⁸ Neil Mitchell and Tali Gluch, "The Principals and Agents of Political Violence and the Strategic and Private Benefits of Rape" (paper presented at the annual meeting of the American Political Science Association, Chicago, September 2004).

³²⁹ For the majority of developing nations, the crime victimization data from the United Nations Interregional Crime and Justice Research Institute (INICRI) only go back to 1996 or 1997 (and in some cases, to 1992), and only a small number of countries with recent civil wars are included. El Salvador, Sri Lanka, Israel, and Sierra Leone are not among the situations listed above, and while a poll was conducted in Yugoslavia in 1996, it is difficult to understand how it applies to Bosnia-Herzegovina in 1992.

³³⁰ Madeline Morris, "By Force of Arms: Rape, War, and Military Culture," *Duke Law Journal* 45, no. 4 (1996): 651-781.

to presuppose that men will commit rape for sexual enjoyment if given the chance. For instance, evolutionary psychologists Randy Thornhill and Craig Palmer argued that men have a genetically transmitted tendency for rape that has been selected for because men with low reproductive success would have a higher chance of reproducing if they committed rape than if they did not.³³¹

Other interpretations of the opportunity argument appear to presume that when opportunities rise, individuals who have a tendency for rape will commit the crime more frequently or that more males (but not necessarily all men) will commit rape.³³² There are two further ramifications if sexual violence should vary with opportunity, as this logic argues. The first is that sexual violence committed by that group should differ from other forms of violence if we adopt a limited definition of opportunity as access to civilians, such that the chance for sexual violence against a civilian is also the opportunity to rob or kill that civilian. There are greater opportunities for different types of violence for gangs that resupply by robbing civilian homes than for those that don't. The second is that members of particular groups should not be the target of sexual violence (unless opportunity differs systematically with groupings).

Opportunity in a broader sense depends on access to civilians as well as armed group strategies. The chance to commit sexual violence is reduced if an armed group severely penalizes combatants who do so since the costs are likely to outweigh the advantages. Opportunity, in general, also depends on the norms and practices of small units: if some members of a particular small group regularly engage in sexual violence, conformity effects may reduce the social costs of such behavior for other members, leading individuals who are not particularly inclined to sexual

³³¹ Randy Thornhill and Craig Palmer, *The Natural History of Rape: Biological Basis of Social Coercion* (Cambridge, Mass.: MIT Press, 2002).

³³² For example, Mitchell and Gluch, in "Principals and Agents," argue that the principal-agent problem confronting armies is the tendency of combatants to seek to engage in more sexual violence than the leadership deems optimal.

violence to participate out of concern for their standing within the group (a process similar to sexual violence on the part of some youth gangs).

Additionally, in many conflicts, armed organizations specifically target women (and occasionally men and children) who fit certain racial or social profiles. While some sexual violence appears to be opportunistic (such as the rape of British, French, and German women by American troops during World War II), in other conflicts it is highly targeted, such as against women of a specific ethnicity or ideology, as in Bosnia and Herzegovina where Serbs exclusively targeted Bosnian Muslims and Croats. The idea that narrowly defined variations in opportunity could be the cause of such racial profiling in civilizations with highly diverse populations prior to the war does not appear credible.³³³

3.2. Incentive Arguments

According to Woods, another idea explaining why sexual violence rises during times of conflict is that such experiences boost people's motivation to commit such crimes, not only their ability to do so. She saw tactical advantages in this. According to Wood, the biological basis for the rise in sexual violence during conflict is a supposed connection between the aggression required for fighting and the male sex drive (via testosterone). However, the relationship between sexual drive, testosterone, and violence is complicated, and what is known about it provides little evidence to support this claim. However, it is notable that because male testosterone levels change throughout the day, certain findings from animal research may not translate to humans; social processes

³³³ Inger Skjelsbaek, "Sexual Violence and War: Mapping out a Complex Relationship," *European Journal of International Relations* 7, no. 2 (2001): 218.

influence testosterone levels as well as the opposite, and experimental study design is sometimes insufficient. This field of study is challenging.³³⁴

Understanding gender relations in peacetime as patriarchal, in which women's inferior social status is upheld by the state and other institutions as well as by violence, including sexual violence, appears to another approach to explaining the heightened motivation for sexual violence in times of war.³³⁵ As the state and other institutions are less present in war zones, the enforcement of gender relations by them tends to fall apart during times of conflict; in their absence, men are more likely to use violence to uphold gender norms. The justification appears similar to that frequently used to explain why there was an increase in lynchings in the American south after the civil war: because slavery was abolished, violence against African Americans, including lynchings, surged. A variant of this thesis was made by Cynthia Enloe: sexual violence rises during conflict because gender roles become more divisive.³³⁶

According to arguments based on patriarchal social relations, sexual violence should be more common in conflicts where traditional gender roles are more upended. Gender roles often become less divided during civil wars as women take on duties typically performed by men and village hierarchies disintegrate due to population dispersal. The prevalence of sexual violence does not seem to increase with the degree of disruption of established standards. Contrary to the patriarchal research, there are considerable numbers of female warriors in rebel factions in some battles where patriarchal connections are so shattered.

³³⁴ Allan Mazur and Alan Booth, "Testosterone and Dominance in Men," *Behavioral and Brain Sciences* 21 (1998): 353-97.

³³⁵ Numerous feminist writings contain variations of the thesis; the standard work is Brownmiller, *Against Our Will*.

³³⁶ Cynthia Enloe, *Does Khaki Become You? The Militarization of Women's Lives* (Berkeley: University of California Press, 1983).

Joshua Goldstein made a case for increasing sexual violence during conflict that also takes into account the sexual violence of enemy men and women.³³⁷ He argued that societies need individuals who are prepared to hold firm under pressure in order to urge men to fight and face all the horrors and hardships of war. That is frequently done by establishing clear gender distinctions, such as the idea that boys must become warriors in order to become men. As a result of societies' need for soldiers, rituals of manhood that include tests of physical bravery, endurance, strength, self-control, and obedience have been practiced throughout history. Thus, specific conceptions about manhood serve as the foundation for the gendered construction of soldiers. Leaders convince soldiers that asserting a militaristic masculinity is what it takes to be a true man. One outcome of such behaviors is that troops portray the adversary's gendered dominance, which leads to the use of sexual violence against enemy women and, on occasion, against enemy men who are subjugated through male rape and castration.³³⁸

The case for targeting enemy women and men as well as the use of especially sexual violence emphasizes norms of military masculinity that rely on gendered portrayals of enemy dominance.

This may also explain gang rapes in times of conflict (as a type of male bonding among primary units) together with their focus on the value of the bonding between males in the same unit.

Elisabeth Wood's explanations range from strategic advantages and opportunistic tendencies.³³⁹

However, Leatherman explained that the agreeable complex factors can be classified into two, the remote or systemic factor and the proximate or situational factor.³⁴⁰ Leatherman explained that the

³³⁷ Goldstein, War and Gender, 253-300.

³³⁸ Goldstein, War and Gender, 355 to 362

³³⁹ Wood, Elisabeth Jean. 2014. "Conflict-Related Sexual Violence and the Policy Implications of Recent Research." *International Review of the Red Cross* 96 (894): 457–78. <https://doi.org/10.1017/s1816383115000077>.

³⁴⁰ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55

systemic factor is reflected in the traditional exclusion of women from peace negotiation and the processes involved in peace agreement.³⁴¹ Also, drawing on the work of Colombini,³⁴² Leatherman argued further that the patriarchal system that dominates many ideologies around the world contributes, in one way or the other, to the sexual violence being perpetrated during armed conflict.³⁴³ Leatherman elucidated the fact that the control and domination of males over females is a function of the system.³⁴⁴ Thus, men see themselves to be in control always, hence giving them the license to foist their desires on the female gender.³⁴⁵

Leatherman's systemic factor critiques the system itself for creating an enabling environment for the perpetration of this crime by excluding women in the peace processes and negotiations that largely affects them as the principal victims of the crime of sexual violence in armed conflict, and in the innate acceptance of male dominancy over females.³⁴⁶ However, the sufficiency of this factor in explaining this phenomenon appears to be limited to the extent that it primarily considers the perpetration of the crime from the perspective of females as the victims of sexual violence in armed conflict;³⁴⁷ while it is now widely accepted that males are also victims of sexual violence in armed conflict.

³⁴¹ Ibid,56.

³⁴² Manuel Colombini, "Gender Based and Sexual Violence Against Women during Armed Conflict" *Journal of Health Management* (2002) Vol 4 No. 2.

³⁴³ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 57.

³⁴⁴ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55

³⁴⁵ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55

³⁴⁶ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55

³⁴⁷ Megan Bastick, Karin Grimm & Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, (SRO Kunding Chemin de L'Etang 49, Geneva, Switzerland, 2007), p. 9.

It has been established by various reports that males, as much as females, fall victim to sexual violence during armed conflict.³⁴⁸ Perhaps, this might explain why Leatherman categorized the systemic factor as a remote factor, underscoring its insufficiency in the consideration of factors that contribute to sexual violence during armed conflicts.³⁴⁹ The proximate factor, as explained by Leatherman, suggests that sexual violence in armed conflict is encouraged by the freedom enjoyed by armed groups participating in armed conflicts to loot the homes of their victims.³⁵⁰ This appears to give them the impetus to infiltrate the homes of their victims and loot whatever they find and consider valuable, among which sadly, are women.

3.3. Sexual Violence in Armed Conflict: Strategy and Practice

The use of sexual violence in armed conflicts has also been explained as being deliberately used by military commanders and their armed groups to achieve a strategic purpose. It is widely known that rape has been weaponized in wartime to “terrorise, control, displace and eliminate” civilians.³⁵¹ Susan Brownmiller, doing ground-breaking work on the subject of sexual violence in armed conflict, drew attention to the fact that the act of rape was instrumental,³⁵² introducing the notion that “wartime rape represents the communication between the conquering men and the defeated, via the medium of the women’s bodies”.³⁵³ She asserted that whilst not all men rape,

³⁴⁸ “Engaging with Armed Forces to Prevent Sexual Violence in Armed Forces”, 17; see also Jamille Bigio and Rachel Vogelsten, “Countering Sexual Violence in Conflict” (New York: Council on Foreign Relations, CFR, 2017), 14.

³⁴⁹ Jane Leatherman, “Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization” *International Journal of Peace and Studies*, Vol. 12(1), 2007, 57.

³⁵⁰ Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization, 59.

³⁵¹ Carlo Koos, *Sexual violence in armed conflicts: research progress and remaining gaps*, 38(9) *Third World Quarterly* 1935-1951, p.1937 (2017). See also, Inger Skjelsbaek, *Sexual Violence and War: Mapping Out a Complex Relationship*, 7(2) *European Journal of International Relations* 211-237 (2001).

³⁵² Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1975).

³⁵³ *Ibid* p.38.

men benefit from the actions of rapists as the fear of rape dissuades women from challenging a patriarchal order.³⁵⁴

This was shown to be the case in Guinea, where it was alleged that Guinean Armed Forces in September 2009 carried out a series of retaliatory, violent rapes, and in broad daylight to deliver the message that a ‘woman’s place’ was not in the political sphere, in response to political protests carried out by women.³⁵⁵ Similar allegations were made in armed conflict in the former Yugoslavia, of Bosnian Serb soldiers committing humiliation rapes against their enemy male soldiers.³⁵⁶ Other instances have been recorded of the instrumental use of rape in war; like the case of the Rwandan armed conflict where the Hutu armed group leaders were prosecuted at the International Criminal Tribunal for Rwanda (ICTR) based on explicit orders to rape Tutsi women. Although this explanation bears out in certain armed conflicts, it has also attracted caution from scholars in this field.³⁵⁷ Buss cautioned that where there is no explicit order to rape and evidence supporting such orders, strategic rape becomes extremely difficult to prosecute, thus necessitating a push-back against a ‘rape script’³⁵⁸ that presents the clear strategy of rape (as was the case in the Rwandan genocide) as the sole manner within which sexual violence might occur, thereby naturalizing and neglecting sexual violence that occurs outside a constricted view of sexual violence in conflict.³⁵⁹

³⁵⁴ Ibid. See also Stephen P. Pistono, *Susan Brownmiller and the History of Rape*, 14(3) *Women’s Studies* 265-276 (1987).

³⁵⁵ Opeibea Quist-Arcton, BBC NEWS | World | Africa | African view: Guinea’s rape horror News.bbc.co.uk (2009), <http://news.bbc.co.uk/2/hi/africa/8342778.stm> (last visited Feb 17, 2019).

³⁵⁶ *Supra*, note 34, p.1937. Koos asserts that there are but a few recent studies which investigate sexual violence against men. This form of sexual violence is commonly ascribed the goal of demoralising and emasculating men who belong to antagonised groups or who are disobedient civilians. There is little doubt that this form of sexual violence is intended to violate social norms and to humiliate people and communities.

³⁵⁷ Doris E. Buss, *Rethinking ‘Rape as a Weapon of War’*, 17(2) *Feminist Legal Studies* 145-163, 155 (2009).

³⁵⁸ Ibid.

³⁵⁹ Ibid.

Based on my review of several violent conflicts across not just Nigeria but Africa, the necessity of understanding sexual violence in armed conflict within the analytical framework of sexual violence as a strategy versus sexual violence as a practice, and/or a combination of both, is potentially reinforced. In the words of Cohen, “conflict related sexual violence is ubiquitous”.³⁶⁰ In my opinion this shows that a consistent use over several conflicts agrees with the strategy theory advanced in this thesis.

As developed in further detail in Chapter 5, Susan Brownmiller in her book³⁶¹ also analyzed the problem of sexual violence in great detail, particularly through the lens of the power dynamics between men and women, and rape as that ‘power over’ relation that men exercise over women, in continuing to abuse the rights of women, through the use of sexual violence in armed conflicts. Similarly, Chinkin espoused the plight of women as mainly the losers in armed conflict, being targets of soldiers and military lines of command, of both friendly and enemy forces, in different forms of armed conflict, in different parts of the world.³⁶² She wrote that “Rape in war is not merely a matter of chance, of women victims being in the wrong place at the wrong time. Nor is it a question of sex. It is rather a question of power and control...”³⁶³

McKinnon advocated that this problem is not merely a women’s rights issue but that of human rights, and that the act of sexually violating a person is inherently a deliberate act.³⁶⁴ She went on to reiterate that human rights have not been women’s rights—not in theory or in reality, not legally or socially, nor domestically or internationally. Rights that human beings have by virtue of being

³⁶⁰ Nordås, Ragnhild, and Dara Kay Cohen. "Conflict-related sexual violence." *Annual Review of Political Science* 24 (2021): 193-211.

³⁶¹ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (1975).

³⁶² Christine Chinkin, Rape and Sexual Abuse of Women in International Law, *European Journal of International Law*, Volume 5, Issue 3, 1994, Pages 326–341, 326-329.

³⁶³ *Ibid.*, 329.

³⁶⁴ Catherine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4(1) *UCLA Women's Law Journal* 59–86, p.60 (1993); see also Catharine A. MacKinnon, *Are women human? and other international dialogues* (2006).

human have not been rights to which women have had access, nor have violations of women as such been part of the definition of the violations of women as such been part of the definition of the violation of the human as such on which human rights law has traditionally been predicated.³⁶⁵ These are very forceful and valid arguments of these arguments that this work subscribes to in essence, yet more recent research has sought to test how sufficient strategic rape explanations alone are, with empirical evidence,³⁶⁶ in a bid to better understand the nuances of each armed conflict and to complement existing explanations.

More recent studies have expanded on the ground-breaking work done by these feminist advocates, with data that suggests that sexual violence is more of a practice of individual troops in their armed group, mostly as a small group cohesive factor, and not necessarily a deliberate strategy.³⁶⁷ They explain that sexual violence in armed conflict is mostly not a deliberate strategy but a practice of the soldiers, different from the opportunistic commission of sexual violence by rank and file soldiers, either due to the individual preferences of the soldiers or due to peer pressure from the social interactions of the armed group.³⁶⁸ Kasubhai acknowledged Brownmiller's "rape as violence" thesis as a rational description of the ruthless acts of violence against women, but critiqued it as being broad and running the risk of "decontextualizing male domination" from the daily lived experience of women and from the confines of the "institutionalized sexism and male oppression of women" and the "normalized acts of aggression that are a part of male sexuality",

³⁶⁵ Catherine A. McKinnon, *Rape, Genocide, and Women's Human Rights*, 17 *Harvard Women's Law Journal* 5–16, p.5 (1994).

³⁶⁶ Dara Kay Cohen, *Explaining Rape during Civil War: Cross-National Evidence (1980–2009)*, 107 *American Political Science Review* 461–477, p.476 (2013). See also, Dara Kay Cohen & Ragnhild Nordås, *Sexual violence in armed conflict*, 51 *Journal of Peace Research* 418–428 (2014).

³⁶⁷ Dara Kay Cohen, Amelia Hoover Green & Elizabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, United States Institute of Peace, p.10 (2013).

³⁶⁸ Elisabeth Jean Wood, *Conflict-related sexual violence and the policy implications of recent research*, 96 *International Review of the Red Cross* 457–478, p.471 (2014).

opining that feminists would be better postured to “deconstruct the nuanced aspects of power and consent in rape” if the discourse is begun from the perspective that sexual intercourse is rape.³⁶⁹

Elizabeth Wood et al., in their series of studies on sexual violence in armed conflicts,³⁷⁰ agreed with the underlying arguments of the deliberate nature of the act of violating a person sexually but clarified this by theorizing that sexual violence appears to be more of a practice than a deliberate strategy. In her studies of sexual violence in several armed conflicts, Wood famously insists that rape is not inevitable in war and that variations exist in the patterns and frequency of the modus operandi of armed groups.

More recently, Cohen’s findings on patterns from the new Sexual Violence in Armed Conflict (SVAC) dataset coded from qualitative accounts found in quantitative human rights literature³⁷¹ seek to challenge the conventional wisdom of existing explanations of the use of sexual violence in armed conflict. Wood and Cohen reasoned that explanations for widespread patterns of sexual violence in armed conflict based on the military culture of masculinism in armed group socialization, those based on opportunism and those based on gendered violence based on patriarchal cultures of the societies in armed conflict are not sufficient individually to support the existence of a deliberate strategy of sexual violence, nor do they individually suffice to explain the

³⁶⁹ Mustafa T. Kasubhai, *Destabilizing Power in Rape: Why Consent Theory in rape law is turned on its head*, 11 Wisconsin Women's Law Journal 37, p.41-42. (1996)

³⁷⁰ Elizabeth Jean Wood, *Variation in Sexual Violence during War*, 34 Politics & Society 307–341 (2006); Elisabeth Jean Wood, *Armed Groups and Sexual Violence: When Is Wartime Rape Rare?* 37 Politics & Society 131–161 (2009); Elisabeth Jean Wood and Francisco Gutierrez Sanin, *Ideology in Civil War: Instrumental Adoption and Beyond*, 51(2) Journal of Peace 213-226 (2014).

³⁷¹ Dara Kay Cohen and Ragnhild Nordås, *Sexual Violence in Armed Conflict: Introducing the SVAC Dataset, 1989–2009*, 51 Journal of Peace Research 418-428, p.419 (2014).

variation in the occurrence or absence of sexual violence in armed conflicts.³⁷² In this research, I engage Cohen and Wood's reasoning, in the context of the *Boko Haram* armed conflict.³⁷³

The explanation by Cohen, Wood, Green et al.³⁷⁴ that sexual violence in armed conflict is more of a practice than a deliberate strategy suggests that more of these sexual violence crimes are committed as a result of the practice of combatant soldiers, often used as a cohesive factor in the small units of armed groups, and mostly borne out of peer pressure.³⁷⁵ Through peer pressure, members of small units are pressured into committing these violent acts as part of a small group culture and in order for combatants to be assimilated and truly 'belong' to the group.³⁷⁶ According to these scholars, this suggests that these acts are not necessarily usually initiated and/or sanctioned by commanders of armed groups, even if the commanders did not do everything in their power to stop them, either because they do not want to demean the morale of their troops or they calculate that it might cost them more if they lost these combatants than if they turned the other eye.³⁷⁷

Wood continued:

In what follows, I develop a typology of conflict-related rape and a theory of rape as a practice. The typology summarizes how the commander's stance toward rape—to promote as policy, to tolerate, or effectively to prohibit through punishment or inculcation of norms—and the combatant's varied motives for

³⁷² Ibid.

³⁷³ See Chapter 4 for Data Findings and Discussion, and Chapter 5 for further theorizing of *Patriarchal Militarized Masculinity*.

³⁷⁴ *Supra*, note 33

³⁷⁵ Ibid., See generally, Maria Eriksson Baaz and Maria Stern, "Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)," *International Studies Quarterly* 53 (2009); Jocelyn Kelly, *Rape in War: Motives of Militia in DRC*, United States Institute of Peace Report (2010).

³⁷⁶ Ibid.

³⁷⁷ Elizabeth Jean Wood, *Sexual Violence during War: Toward an Understanding of Variation*, in Sjoberg, L. & Via, Sandra, *Gender, war, and militarism: feminist perspectives*, p.124 - 137 (2010).

engaging in it combine to identify three types: rape as policy (including in some settings as a strategy), rape as a practice, and rape as absent. In analyzing when rape is likely to be prevalent as a practice, my theory emphasizes not only the gendered norms and beliefs of the society from which combatants come but also those of combatants and commanders as reshaped by both vertical and horizontal socialization processes within the organization.³⁷⁸

Other scholars have also engaged with Cohen's findings. Quijano and Kelly³⁷⁹ argued that Cohen's explanation appears not to encompass feminist continuity arguments about gendered conditions of communities prior to the conflict, which seeks to explain sexual violence in armed conflict as being due to the subjugation of women and cultures that are permissive of violence against women, but rather, categorizes them as 'simplistic' culture arguments in that "scholars who study wartime killing are rarely asked to calculate rates of pre-war murder to determine if the culture was especially murderous before the outbreak of conflict".³⁸⁰ Cohen does not appear to entirely dismiss feminist continuity arguments about gendered conditions of communities prior to the conflict. However, in my reasoned view, feminist continuity arguments are necessary, though not sufficient, to holistically explain sexual violence in armed conflict; to the extent that pre-war social phenomena require nuanced and comprehensive explanations, and the gray areas are more accurately fleshed out and extensively tested within the context of the rigor of an in-depth case study, a task that I engage with in this research.

³⁷⁸ Ibid., see also Elisabeth Jean Wood, *Conflict-related sexual violence and the policy implications of recent research*, 96 *International Review of the Red Cross* 457–478 (2014).

³⁷⁹ Alejandra Azuero Quijano and Jocelyn Kelly, *A Tale of Two Conflicts: An Unexpected Reading of Sexual Violence in Conflict through the Cases of Colombia and Democratic Republic of Congo*, in Morten Bergsmo, Alf B. Skre & Elisabeth Jean Wood (eds.), *Understanding and Proving International Sex Crimes*, p.389-419 (2012).

³⁸⁰ *Id.*

To conclude this chapter, I emphasize that the multifaced, complex nature of sexual violence during armed conflict, whether a as a war strategy of armed group commanders or as a practice of combatant soldiers, continues to draw attention and robust debate. Importantly, I also note that while several factors contribute to enabling the widespread occurrences of sexual violence during armed conflict, prime among the factors are a lack of access to education, and religious and cultural inclinations in the society where the conflict is ongoing. In addition, the entrenched superiority mentality and power influence of men over women remain at the root of the use of sexual violence as a strategy.

Chapter Four: Key Findings

This research was geared towards investigating the reasons members of the *Boko Haram* armed group engage in sexual violence in the context of the ongoing armed conflict in Nigeria. It carried this out by eliciting information from former members of the *Boko Haram* armed group, to ascertain their personal perspectives of the interplay of sanctions relating to the socio-legal and religio-cultural norms and rules that govern sexual relations in armed conflict. The study also investigated how these combatants perceive the risks and rewards associated with sexual violence pre, during, and post armed conflicts.

As Elizabeth Wood noted about investigating variation in sexual violence in armed conflicts:

Key to explaining the observed variation are the conditions under which armed groups, small units, and individuals develop sanctions and norms that effectively endorse or constrain combatants' engagement in sexual violence.³⁸¹

The findings of this research suggest that the argument that the continued operation of a combination of these factors leads to the continued proliferation of the use of sexual violence in the *Boko Haram* armed conflict: the masculinized military socialization of armed combatants by the armed group; and a pre, during and post war community/culture that is steeped in male-dominated, androcentric religio-cultural ideologies/attitudes and power structures expressed in the institutionalization of discrimination against women, and operationalized through the mechanism of age-old normative institutions like marriage. The data clearly bears out as shown in the work, that the issue is not quite that the current legal landscape and norms are failing in

³⁸¹ Wood, *Id.*

deterrence./enforcement, as has been the focus of the international community's efforts against sexual violence in armed conflict, but that the *Boko Haram* combatants were indoctrinated not to view their acts as illegal, but that the acts of sexual violence were mostly framed within the context of marriage and hence force and coercion apparently becomes irrelevant to them.

4.1 Summary of Field Research Methods

A mixed methodology approach was used in this study to collect and analyze the data. I developed an original data set of audio recordings and transcripts of more than 150 interviews, focus groups, and other secondary data for my analysis. I utilized an in-depth qualitative analysis of the data in my dataset with the aid of Atlas.ti and spreadsheets, which are available on demand. I also designed and used an interview protocol, which can be found in the indices attached to this research. In this study, I tackle the overarching question of what factors enable the sustained perpetration of sexual violence in armed conflicts, with particular focus on the *Boko Haram* armed conflict, spotlighting the perspectives of ex-combatants of *Boko Haram*, as I explain the implications of the inefficacy of International Humanitarian Law to curb sexual violence in armed conflict.

I used the *Boko Haram* armed conflict, mostly in the northern part of Nigeria, as a case study for this study. At the foundation of this research is the quest to engage with the literature around whether international humanitarian law is failing in ending, or at the very least preventing, the sustenance of sexual violence in armed conflicts. This study supports the notion that international humanitarian law has yet to succeed in ending or preventing the continued occurrence of this phenomenon, not for want of prohibitory efforts but, as this study suggests, due to other social-cultural and religious factors in society categorized in this analysis as Armed Group Socialization and Patriarchy, apparently operationalized by *Boko Haram* through the mechanism of the oldest, normative institution in the society—marriage.

I conducted semi-structured interviews in Gombe, FCT, Kwara, Kaduna and Borno states in Nigeria. These sites include the Mallam Sidi camp (where the repentant *Boko Haram* adherents are rehabilitated), a displaced persons camp in Maiduguri, focus group discussions in Ilorin, Abuja and Gombe. I collected data through audio recordings, field notes, a review of secondary documents and reflective journaling for direct observation. The overarching purpose of this study is to fill a lacuna in the knowledge base by contributing with an interdisciplinary empirical research that focuses on understanding this phenomenon of sexual violence in armed conflicts through an in-depth investigation of one conflict; more so, by understanding this ugly phenomenon through the eyes and perception of those who are allegedly the perpetrators of this crime against humanity. The data gathered by the interviews and from survey participants were selected through non-random, purposive sampling. Most of the respondents were male, ex-combatants of *Boko Haram* and rescued, female survivors of sexual violence during the conflict. There was also the initial purposive and subsequent snowball sampling of state military representatives/commanders and legal experts, Islamic law experts, religious/community leaders, civil society representatives, and others.

118 respondents have been involved in one way or the other as a member of *Boko Haram*. Most of the respondents, predominantly male, spent between one to three years as members of the armed group. Their occupations were also recorded: 25 Soldiers, six guards, nine businessmen/women, three drivers, 14 farmers, seven teachers, and 17 others. About 60% of the respondents were abducted into the camp. A few other variables are described with follow-up interpretations on general beliefs and ideology. More than 150 respondents were interviewed in total, however about 139 responses are analyzed here. This is due to certain limitations in the collection and analysis of the data. For instance, several of the audio recordings of interviews were inadequate, because of

the poor quality of some of the recordings, making the words indecipherable. In few cases, like a couple of the focus group sessions, the environment was too noisy, with the respondents speaking over themselves, making it difficult for the sessions to be properly transcribed and systematically analyzed. However, I used notes and observations from the encounters anecdotally in the data descriptive narratives part of the analysis in this chapter.

This section provides graphical representations of a summary of the empirical data collected during the field study phase of the research. The data was collected through site visits to states in the northern region of Nigeria, in particular, Gombe, Maidugri, Kaduna, Ilorin and the FCT-Abuja. Two of the interviews, mostly the Sharia Law scholars, were conducted through phone calls. With each graph comes a brief description of a summary of the data presented and a percentile analysis of the demographics of the respondents. The perspectives of males and females are presented separately in most of the categories, when feasible.

4.2 DATA Findings and Discussion

4.2.1 Age Distribution of Respondents Involved with Boko Haram Armed Group

Figure 1

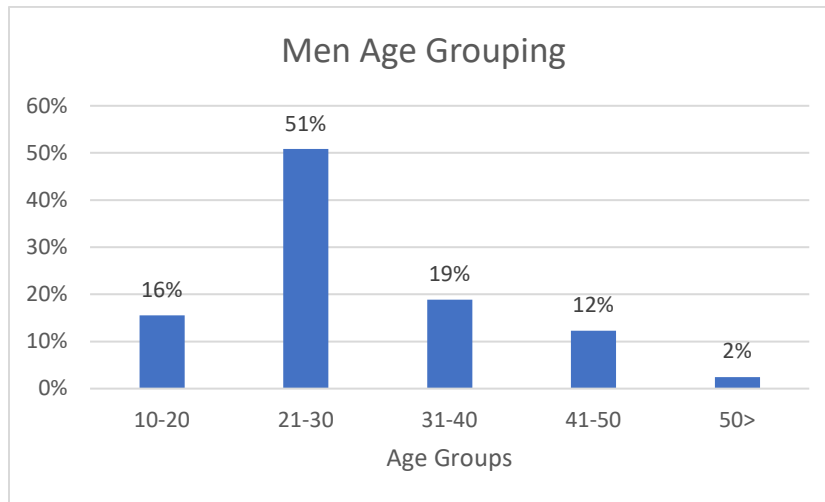
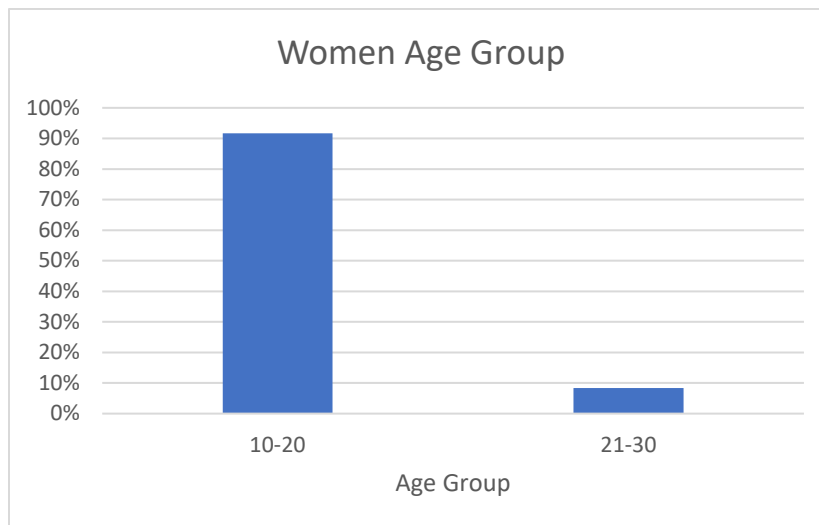


Figure 2



Figures 1 and 2 depict the age groups of the respondents involved in the *Boko Haram* armed conflict in this study. It is noteworthy to emphasize that in this research, I work from the assumption that the men interviewed in the research are male, ex-members of *Boko Haram*, and

alleged perpetrators of SVAC in the conflict, since the researcher encountered them as part of so-called repentant, *ex-Boko Haram* armed group members in the Operation Safe Corridor, a DDR program of the Nigerian Government. The women on the other hand, were rescued from *Boko Haram* and for the purpose of this research are assumed to be survivors of SVAC. However, two of the women reported that they went with their husbands from their villages to join *Boko Haram* in Sambisa Forest where the group camps. One girl was reported by the authorities in the shelter where they were encountered to be recalcitrant, as she was previously rescued from *Boko Haram* after she had been found with a body worn explosive device in the marketplace, having been sent there by *Boko Haram* as a suicide bomber but was saved because the IED malfunctioned and failed to detonate. The girl later escaped and returned to the *Boko Haram* group. She was later rescued again as part of a group of women and children who were rescued or escaped from *Boko Haram* and were brought to the shelter where she was encountered by the researcher. The girl in question acquiesced to the veracity of these claims when asked.

It is apparent to note from the graph that youths were more involved in the armed conflict than older populations. The inference therefore is that that youths are more susceptible to ideological radicalization and religious bigotry.³⁸² For instance, a respondent was of the opinion:

He said one of his friends convinced him and said let them go and do good work and God will see that even if they will die in this work, they will still go to heaven. So, that's why he decided to follow his friend to the camp.

³⁸² Figure 1 Chapter 4

It is also notable that the larger percentage of the respondents were between 21-30 years old, which is the most active 'young adult', age according to Erik Erikson.³⁸³ Just a few respondents are above 50 years. This reveals that *Boko Haram* and other armed conflict groups are more interested in young adults, while the few aged members among them play the role of group ideologists, philosophers, and religious teachers. Yet another respondent added more context:

He said that Boko Haram on their way to Sambisa so they passed through their villages stopped at the village and they preached them. So you have to follow us we're doing God's work. If you live and die in our place you will go straight to heaven. If you don't join us we will kill you here. So that's why they try, they follow them, they tried to kill him, so that's why he follow them.

The armed group portrayed fighting for the cause as doing the work of God to entice young, idealistic men to fight and die for the cause, and few older men to preach and teach younger men, thereby using this indoctrination to radicalize them as a form of armed group socialization.

According to one of the respondents:

they are saying it's a religion or culture, but to him it's not.

While another respondent has this to say:

you can even say it is their own belief, or their own religion.

³⁸³ Erk Erikson 2018.

4.2.2 Boko Haram Armed Group Philosophy (Socialization)

Figure 3

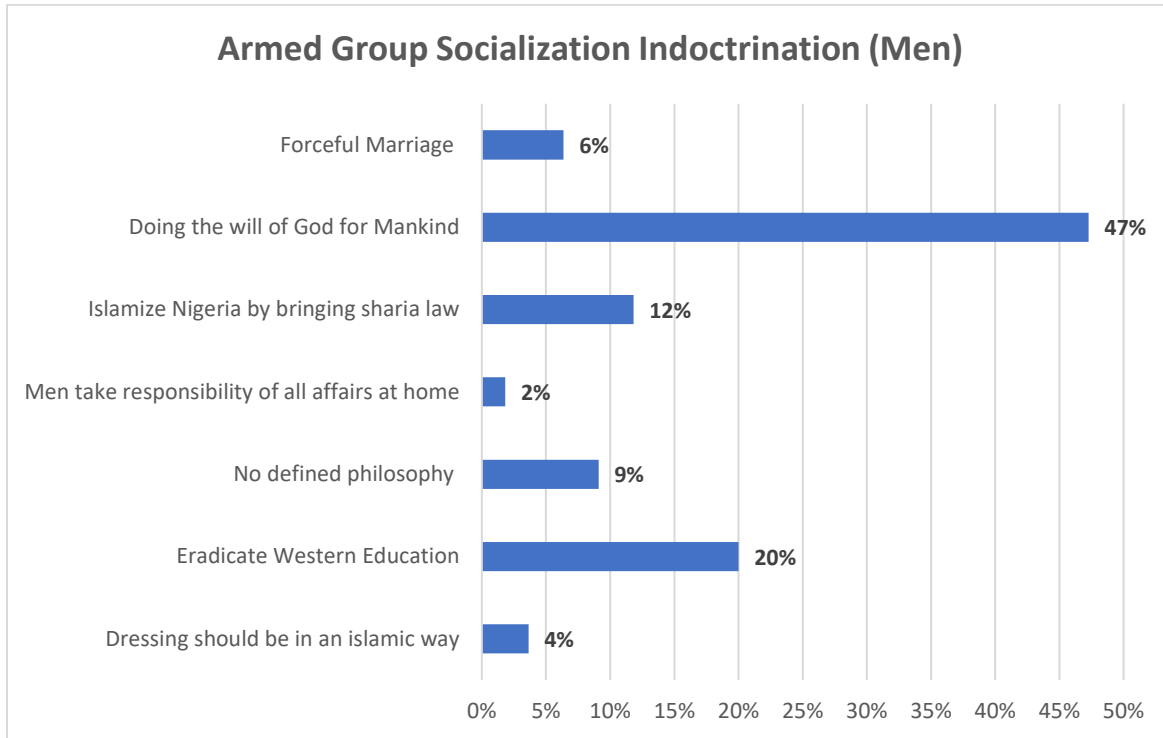
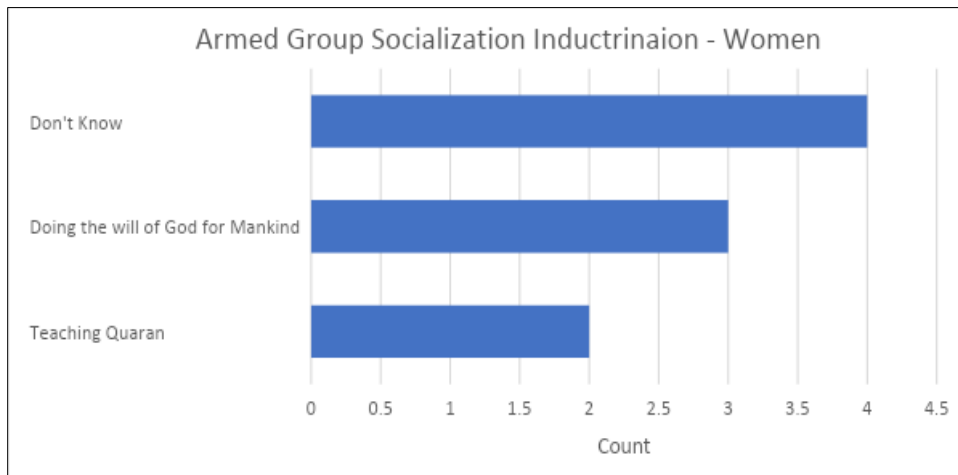


Figure 4



From the above figures, a significant number of respondents, both male and female, emphasized the importance of the teachings they received during their stay and involvement with *Boko Haram*.

For instance, a respondent said:

He say Boko Haram teach them about marriage, they said just if a lady reach nine years then you have right to marry her and you will not raise too much her dowry, he said the maximum her dowry is 6,000 and then if that lady she is widow, you'll just pay 2000 as her dowry. He says in Boko Haram camp all the unmarried ladies are gathered in one place. So they are under the control of the leader Yasmin Amir.

A major part of the socialization of the members of the armed group was done by the regular teaching and indoctrination of the members of the group, both by verbal teaching and by physical demonstration of those beliefs in the actions of the leaders:

He said that they teach them that if you like a girl if the girl likes you, you should marry her even if her parent will not accept it, you will marry her even by force, and you will pay her dowry. And then the dowries there is no fixed amount to money, just the, lady agree yes, you should go to pay her dowry and marry her, even her parents are not accepted. if the girl she is not accepted, you then will leave here to look for another one.

Some respondents, especially male, also attributed their involvement to the lure of material and financial gratification that they received from the armed group either during the time the armed

group raided and occupied their villages or through tales of their kits and kin of the promises of a better life. One respondent stated that:

I was doing Okada [commercial motorbike] in Lagos and they told me that they will give me job and money to take care of my family, that is why I joined them.

Another respondent in the same manner said:

He said normally he's based in Lagos before he even came more than six year, but he just suddenly have a phone call that they say his father already died, so he came back to their village. At that time said he's abusing drugs, he's take to] something like that. Then there's one of Boko Haram in their town. He go and invited his friend so that they will preach him against this thing is not good. So, they come preach him but he refuse to leave it that's why they took him to their own camp, then he decided to follow them, join them yes.

It can also be observed that several participants, especially the females and males that were abducted into the armed group, were unaware of the basis upon which they joined the group. A female respondent shared this story about her abduction with the researcher:

She say she went to see her uncle then from there those people came and then she didn't know that her uncle had joined these armed men. Then from there her uncle gave her to his colleagues and they took her to the bush.

It is, however, instructive to note that some Islamic and Sharia Law scholars interviewed in this study, like Alaro and Omotesho, disagree with the view that Islamic teaching could be responsible for involvement in the activities of Boko Haram. According to Alaro:

Islam is a religion of peace and teaches peaceful cohabitation, there is nothing in Islam that encourages the criminal activities of the Boko Haram.

A strong point of convergence by both men and women is depicted in the statistics of the people that feel that engaging in the activities of *Boko Haram* is service unto Allah and has benefits attached there to. This is reflected by a respondent who said:

Boko Haram come and preached to him and he willingly joined it.

It is important to reiterate here that the rejection of Western education basically for the perceived anti-Islamic law doctrines remain a core premise or for the indoctrination attempts. As discussed later in the thesis, education though representing a basis of advancing the wellbeing of an individual must be presented in a manner and nature that it is acceptable and adaptable to the cultural and religious leaning of an individual. Most of the ex-combatants of *Boko Haram* interviewed shared that their general beliefs before joining were hinged on following the will of God, based on their Islamic religious beliefs and the prevailing cultural attitudes in their communities. Also, some respondents expressed that they only followed the teachings after being captured. Additionally, some joined the sect to play a role to Islamize Nigeria, while others joined because of poverty and the hope that they could provide sustenance for their families.

As deduced from the data representations, Boko Haram's major ideology is to eradicate western education.³⁸⁴ A majority of the members believe in practicing Islam according to the Prophet Muhammad, thereby following the will of God and if they died in battle, they would go to heaven. Further, *Boko Haram* taught its members that women must be fully covered else they will be flogged. This socialization contributes to the way the armed group perceives women in conflict situations. For instance, in the *Boko Haram* ideology, respondents also believed that if a fighter loves a lady, even if she likes it or not, he can marry her forcefully.

4.2.3 Boko Haram Beliefs about Marriage and Consent for Marriage

Flowing from the above, the next set of data dwells on perceptions or philosophy of *Boko Haram* from the recollection and perspectives of the interview respondents, particularly relating to the institution of marriage—how the marriage is conducted within the territories and camps controlled by the armed group. These radicalized views of marriage in turn have an impact on the validity of the marriages and the implication of the sexual relations within those so-called marriages.

³⁸⁴ Atoi, E. and Nelson (2022). Boko Haram Religious Fundamentalism And Western Education In North-East Nigeria. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, [online] 3(3), pp.14–28. Available at: https://kijhus.kiu.ac.ug/assets/articles/1671639371_boko-haram-religious-fundamentalism-and-western-education-in-north-east-nigeria.pdf [Accessed 17 May 2024].

Figure 5

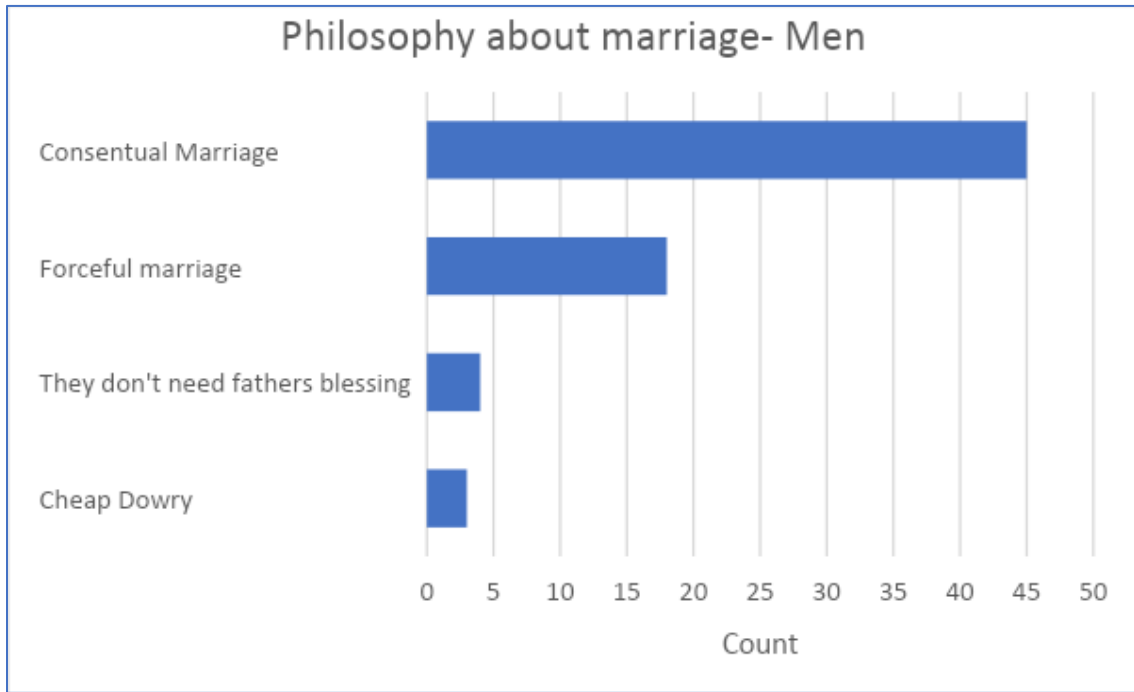
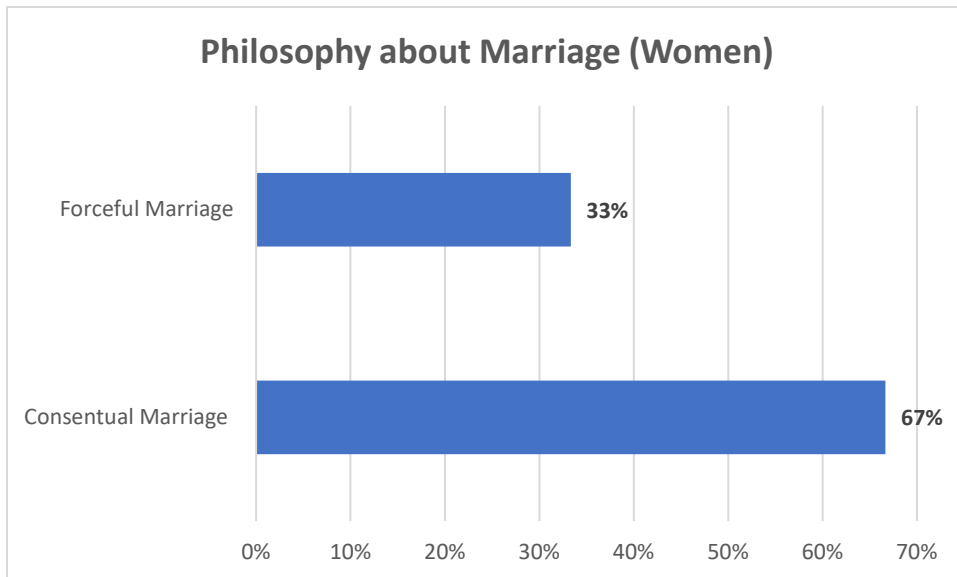


Figure 6



From the above data analysis, it can be seen that a significant percentage of both the men and women stated that *Boko Haram* beliefs about marriage is that marriage must be consensual. A respondent believed thus:

He said that in their own camp they're not violating women. Nobody is violating women in their own camp so he doesn't know anything about that issue.

Another respondent stated that:

He said that they teach them that if you like a girl if the girl likes you, you should marry her even if her parent will not accept it, ... and you will pay her dowry. And then the dowries there is no fixed amount to money, just the, lady agree yes, you should go to pay her dowry and marry her, even her parents are not accepted. if the girl she is not accepted, you then will leave here to look for another one.

However, the percentage that recalled *Boko Haram's* philosophy and teaching about marriage could be forceful, involving some level or type of duress, coercion, and outright abduction, is alarming. The responses below show the extent of the violence against these women. One respondent provided additional details:

it's true some people are violating women in the camp. he claimed he said there is one his friend, that he is living in Cameroon now, so that his friend, there's one woman in their neighbors, so she lost her husband, and then he explained to him as his wife, without

paying any dowry or any married process, so he keep violating her, he keep violation her. So, he know this thing with his friend.

Another male respondent stated as follows:

He said that if the leaders they have sexual intercourse with ladies nobody will punish them because he said he has seen it with his own eyes about the Chibok girls, there are some leaders they should come and select the Chibok girls, and they should go with them, then they should bring them back to the camp again. So nobody will touch them or nobody will question them about the issue.

The role of power and coercive influence in those marriage cannot be overlooked or overemphasized. For instance, a Boko Haram ex-combatant respondent stated below as follows:

He said that just if you saw the lady and you love her, he said that you should go, go and ask permission from her mother. Even without the name of the father, he said that only thing the father, the fathers do not agree to marry off their daughters at that age. So, they should not even bother to the father, if just, if the mom she'll agreed, they should marry her. He said that even if the mother refuse to agree, then they should took that girl and change camp, so they should go and marry in another, another camp. if you see a lady and you love you have to marry her. whether they like it or not.

Additionally, several women are subjected to the whims and decisions of the male family members, which then questions the validity of the so-called consent of the girls that were

supposedly ‘married’ off to *Boko Haram* armed combatants, as some respondents shared. A female respondent said:

She said they being attacked in their hometown that's Bama Local government. She was married before so her husband flee away. He ran away he escaped. Then this armed were able to catch her and they took her to Sambisa, after that they took her to the bush. So when they took her there they got married to her.

For instance, another respondent believed that that with the gun:

I can marry any girl I wish to marry, if the Family refuses, we kill them and take her away.

Similarly, another female survivor of *Boko Haram* sexual violence stated that:

we do not have a say, when they come, we say yes so that they will not kill our family.

In the same vein, a cross section of the male clients alluded to receiving women and girls as gifts as spoils of war:

Sometimes, when we come back after fighting, the leaders will ask us to pick the girls we love and get married to them.

Recounting the experiences of Chibok, another *Boko Haram* ex-combatant respondent said:

So some people, some of the small girls they even decide to kill themselves in the camp. He said, how things happen in the camp. He said the, if the Chibok girls said they should not get married now, they just leave her in the prison, and then nobody would try

to violate them because there are some guards, there are some people that are guarding them in the prison.

In response to a question regarding the kidnapping and sexual violence against the Chibok girls, another *Boko Haram* ex-combatant respondent stated as follows:

He said yes, some leaders are violating the Chibok girls, because he mentioned one of their leader was called Ayu he said, he has ever seen it on his own eye, on his own eyes the time that the Chibok girls are based Gwoza. The guy will come with his own car,(name) The leader will come with he's own personal car. He will select among the ladies and he would take them to he's house at the night and then early in the morning he would bring them back again.

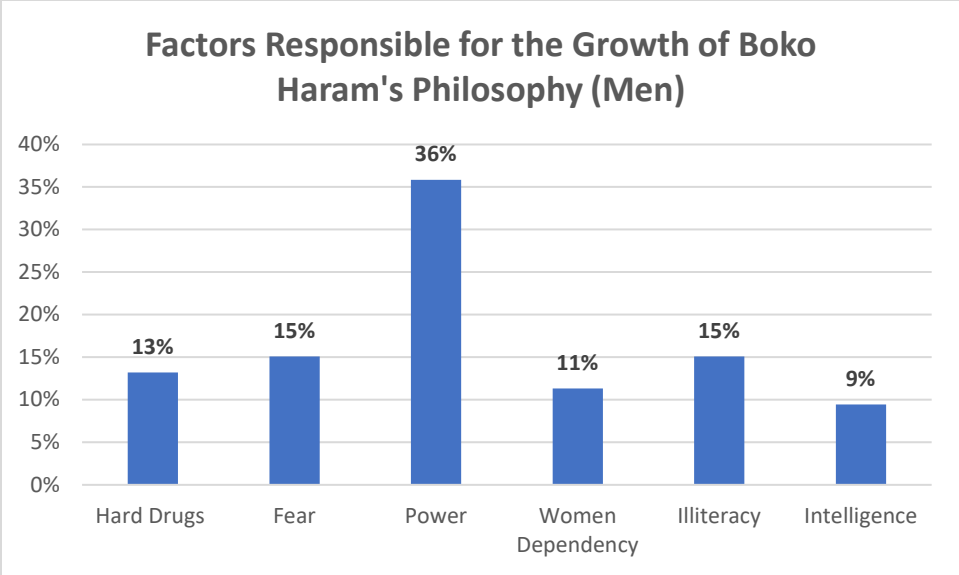
Yet another responded as follows:

He said that, among them there's even, among them they are some Chibok girls, Chibok girls who even gave birth to a child. So, he can't say they are not violating them.

Other factors that contribute to the socialization of the *Boko Haram* members are represented in the graphs below.

4.2.4. Factors Responsible for the Growth of Boko Haram's Philosophy – Men

Figure 7



From the above, the effect of poor literacy and access to education alongside the effect of the usage of hard drugs are identified as contributory factors. However, the quest for power and control is deduced to be the singular contributing factor of influence in the activities of *Boko Haram* by young men. As depicted by one of the respondents:

He said the Boko Haram come and abduct some people in their village then the Boko Haram took those people that they abducted to the Boko Haram camp. Those people that happened to them.

Another respondent, recounting how she got married, said:

Okay. She got married forcefully. They met with the guy at the, my case in the village. So the guy talked to her she said she didn't like the guy before her getting home. The guy reach home first he met her parents. He said he met the girl and the girl accepted. Which she did not accept or agree with him. Then the parent did not agree that they don't want to give her out for marriage. Now she's too small. They now went and meet his friends in the bush. They just finished everything between them. Then they

bring the dowry as 25,000 her parents refused to accept the dowry they denied the husband I gave it to her father strain. So she didn't know whether her father took it from there he took her to the bush. That's how it happened.

The sense of power and superiority that the use of guns inculcated in the armed group members is unprecedented. Other factors include women's dependence on men and their clans, which inform the disregard of consent of girls and women in marriage among others. This was affirmed by another respondent who said:

He said the Boko Haram because they feel that they have power and then they has rifle nobody will even harass them and nobody will say no to them. So they should only ask the ladies consent. So if the lady said yes. They will not even ask the parents, the marriage will take place. Even the parent they accept it or not. He said in the absent of the leaders some fighters sometimes they'll even force the girls to marry them and then if the leaders haven't given permission the leaders will also try to kill that fighter. So, the thing is not rampant in the Boko Haram camp. He says if the leader saw a lady and he showed interest in her. He will first contact the lady if the lady says yes then he'll marry her. If she says no then he will leave her alone because he is the leader he must do the role by himself before the followers will follow him

Another notable point from the data that was gathered and analyzed from this research is the notable role of religion and culture in influencing the ideology of *Boko Haram* armed group members and the communities they are from. The discussion in the next section captures the

perspectives of interview respondents on the role of religio-cultural factors in enabling Sexual Violence in Armed Conflict in the Boko Haram armed conflict.

4.2.5 Role of Religion and Culture in Sustaining Sexual Violence in Armed Conflict

One of the most notable data points was an agreement that a majority of members viewed themselves as following the will of God and the examples laid down by the Prophet Muhammad and the case in that, when they perished, they would be welcomed into paradise. Premised on this, they believed their actions were justified, even their “forceful display of love towards a marriage including forced marriage and sexual intercourse³⁸⁵” were all in the purpose of serving the cause of God.

Because the ex-combatant militants hold this radicalized religious concept in higher respect than they do the law, most respondents stated that violation of women in the *Boko Haram* camp was the norm. A few, meanwhile, insisted that their activities were motivated by self-interest. Figure 8 suggests significant association with roles of religion, culture and power play. Importantly, as already discussed in Chapter 3 of this thesis, it has a huge impact on the perspective of marriage and how it is contracted by *Boko Haram*, which also impacts its sexual violence philosophy.

³⁸⁵ Figure 5 and 6 Chapter 4

Figure 8

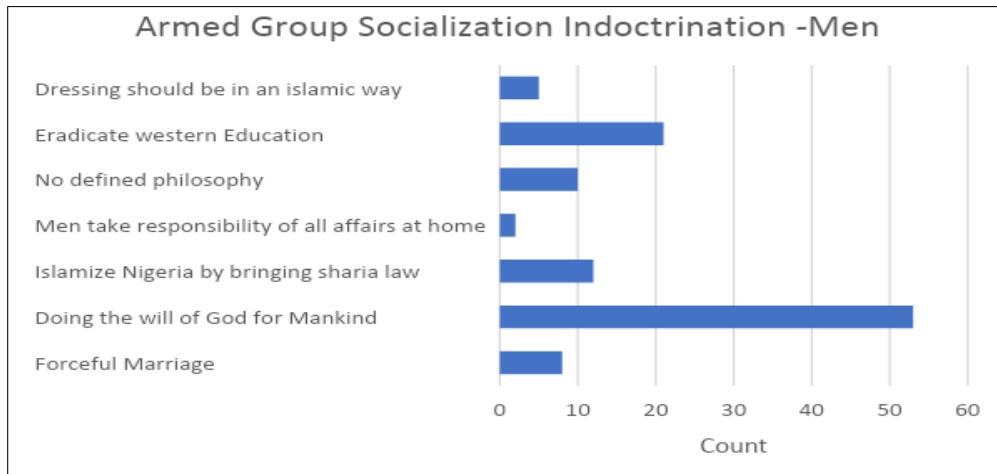
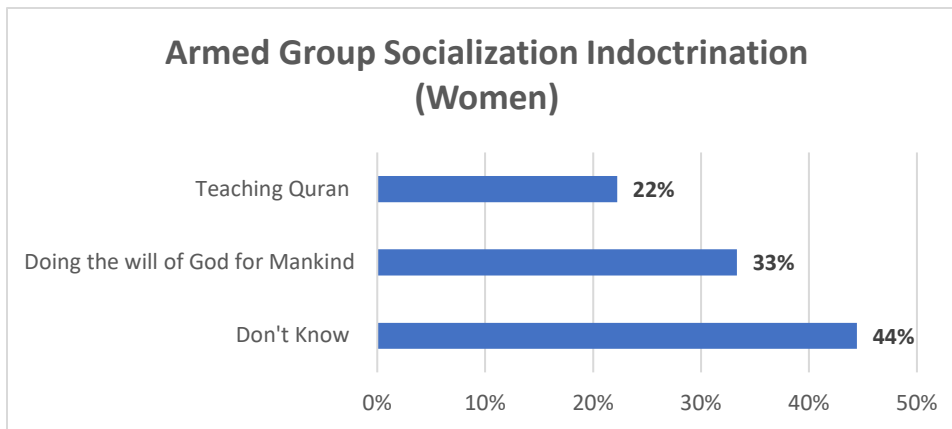


Figure 9



From the graphs above, it is seen, especially in Figure 8, that a large percentage of respondents perceive education as a negative influence on people and believe that it should be done away with. Figure 9 shows an undecided percentage of respondents not sure of what informs their opinions and decision to become involved with *Boko Haram*. As further shown in the graphs, perceptions of religion and Quranic teachings has great impact in influencing attitudes.

4.2.6 Discussion of the Findings

An analysis of these interviews within the framework of the secondary data and literature suggest that the existence of these radical religio-cultural ideological attitudes pose a dire challenge to international humanitarian law in regulating the actions of these non-state sanctioned armed groups engaging in unconventional warfare with guerilla tactics in the course of armed conflict. This research argues that *Boko Haram's* negative views on Western education and by extension the laws derived from west civilization as illegitimate is built on the negative philosophies espoused by leaders of the armed group.³⁸⁶

The term 'Boko Haram means that 'boko' - book/education and more broadly, western civilization is 'haram', or prohibited. The armed group aims to topple the Nigerian secular state and, in its place, institute Sharia as a religion and government. The armed group also seeks to eradicate Western education and civilization; hence it shuns anything Western. By inference, we can deduce that included in the secular/Western civilization that the armed group seeks to topple and replace is the secular legal system and to replace it with the Sharia laws that they espouse and by which they govern their conquered villages/territories.

It is important to reiterate an observation from the field research, that data sources suggest that most of the armed group foot soldiers are youths from very poor socio-economic backgrounds, and hail from areas with extremely high illiteracy levels.³⁸⁷ It is arguably therefore that, for the most part, these youth-turned-armed combatants of *Boko Haram* are ignorant of the existence and provisions of the rules of engagement as governed by IHL, and are thus susceptible to the

³⁸⁶ Chapter 2

³⁸⁷ Onuoha, F. (2014). Why Do Youth Join Boko Haram? [online] Available at: https://www.usip.org/sites/default/files/SR348-Why_do_Youth_Join_Boko_Haram.pdf.

indoctrination and radicalization of the armed group leaders, who do not appear to care about IHL.³⁸⁸ To the extent that these young soldiers, who are also mostly from deeply religious backgrounds, are radicalized to believe that they are acting in accordance with religious guidance in carrying out this repertoire of violence, it is then arguable that the probability that SVAC will continue to exist remains high.³⁸⁹ Also, these extremist religio-cultural attitudes are arguably more harmful than helpful to the perpetrators' socio-economic factors and spiritually, because they are apparently being radicalized by the fundamentalism of a few leaders, who proselytize and espouse views that are rejected by many religious leaders and scholars.³⁹⁰

Further, due to *Boko Haram's* adamant hostility to anything Western, they fiercely oppose education and laws created by humans, including international humanitarian laws, in their so-called Sharia-based movement..³⁹¹ According to a respondent:

He said that he joined Boko Haram willingly because the Boko Haram came and preached to them. So that's why he decided to join them willingly.

Thus, their members, mostly young men and women, were drawn to the armed group to escape their dreadful socio-economic conditions in their communities in the hopes of a brighter future.

For instance, a respondent stated:

He said that the Boko Haram came and met them in their own village and they preached to them about their religion and their beliefs, then

³⁸⁸ Figure 3 Chapter 4

³⁸⁹ Figure 3 Chapter 4

³⁹⁰ Figure 3 Chapter 4

³⁹¹ Atoi, E. and Nelson (2022). Boko Haram Religious Fundamentalism And Western Education In North-East Nigeria. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, [online] 3(3), pp.14–28. Available at: https://kijhus.kiu.ac.ug/assets/articles/1671639371_boko-haram-religious-fundamentalism-and-western-education-in-north-east-nigeria.pdf [Accessed 17 May 2024].

most of the youth of the village decided to follow them willingly not by forced. Because they make us promises to get money and Allah blessings.

This means that they are unable to receive an education, engage in socio-economic activities or able to better their lives.

A former Boko Haram armed group male combatant who was involved in the infamous kidnapping of the 276 schoolgirls from a secondary school in Chibok said:

He says he was involved with the people that kidnapped Chibok girls. He said that when they kidnapped Chibok Girls, they took them to (place) then, then their leader said that let them preach to those women. He said that they're the luckiest woman in Nigeria now because they saved them from people, from non-Muslim people to Muslim camp. So, they have to cooperate with them, they have to follow their law and regulation. So that if they want paradise.

It is believed that Boko Haram has emerged not only as a religious body expecting to Islamize the country by introducing Sharia Law, but also to oppose Western education. The implication of this warped perception of anything. The group has some kind of philosophical belief based on Islamic injunctions to continue to carry out their violence in society.³⁹²

Members were taught that the leaders are the only religious persons in the camps. So, every person in the camp belonged to them. Some of the respondents further stated that the leaders usually

³⁹² (Mustapha Abdullah, 2002.)

forced ladies to have sexual relations with them and because of the important roles they played, nobody had the right to question them nor punish them:

He said one of he's friends convinced him and said let them go and do good work and God will see that even if they will die in this work. They will still go to heaven. So, that's why he decided to follow his friend to the camp.

Hence, a few of respondents claimed to have witnessed such violations in the camp, where some leaders selected some Chibok girls and went away with them for pleasure. For instance, a respondent stated that:

They used to force the woman to marry them. Because they have power and they have the feeling and nobody will stop them.

While in their communities, ex-combatant respondents believed that men were supposed to ask for a lady's consent before having any sexual relationship with her, but at the camp, the reverse was the case. Most respondents believed that there was absolutely nothing good about the *Boko Haram* beliefs, but that the *Boko Haram* leaders were just after personal interest. It was recorded that most men at the camp didn't ask for consent. It was also observed that when the fighters went and captured territories, they captured women as well. Some women who had lost their husbands in battle were exposed to being sexually violated by the leaders and were threatened to be killed if the news was released.

The research revealed that the growth of *Boko Haram*'s sexual relations philosophy was mostly a depiction of the power they had over the women at the camp. The fighters approached women with rifles in their hands and forced the women to marry them. Some also stated that most fighters were afraid to surrender themselves to the government because they knew if they surrendered the

military would kill them. Further, some people in the camp were taking hard drugs, making them misbehave, harass women, and have sexual relations with non-wife women. Most of the interview respondents believed that violating women within the camp was a norm. However, a cross section of the respondents did not perceive the violent crime as a religious driven disposition but stated that “it is the culture of Boko Haram.”

4.3. Patriarchy and Armed Group Socialization as Enablers of Sexual Violence in Armed Conflict

This study began with the initial hypotheses that patriarchy and armed group socialization, when used in conjunction, could provide a more holistic approach to explaining the factors responsible for the continued proliferation of sexual violence in armed conflicts. Thus, the research set out to test the efficacy of this approach in the case study of the *Boko Haram* armed conflict in northern Nigeria. Based on the findings of the research, particularly the data gathered and analyzed from the fieldwork done in Nigeria, this section discusses the combination of armed group socialization in the context of *Boko Haram*, and the operation of patriarchy in the as a basis for explaining SVAC. A few more factors directly elicited from the data are also discussed.

As detailed in Sections 4.1 and 4.2, the use of force is arguably a huge factor in the operations of *Boko Haram* and reinforcing sexual violence. The sheer use of power and conquest depicts the masculine mentality and fuels the sustenance of the activities of the group. For instance, a male Boko Haram armed group respondent said:

Boko Haram captured them in their village. So, he said that nobody was allowed to move out of there. So, they should stay with them. So that is why he joined.

Consequently, the research argues that a major factor responsible for sexual violence in the *Boko Haram* armed conflict is **power**. Both ex-combatants of the armed group and the female survivors of sexual violence believed that *Boko Haram* leaders are too powerful and can do whatever they want at any time. In this case study, patriarchy operates on both the level of the society and on the armed group level.

4.3.1. Patriarchy in Nigerian Society and in the Armed Groups:

The study draws to the forefront the notion that the *Boko Haram* insurgent causes are intrinsically related to the patriarchal culture of Nigeria. This is depicted in the examples of institutionalization of discriminations against women in areas of both public and private life:

Boko Haram marriage they're just doing it like we can say a prostitute, or you can't even compare with humanity, and, but the normal one that is during the peace, you can invite like dancers, or traditional dancers, and you will invite many people.

This is reflected in power structures that devalue and oppress women, and as a result, these norms and gender-based discriminations foster a climate that is favorable to gender-based violence before, during, and after armed conflict. According to a respondent:

he said they being attacked in their hometown that's Bama Local government. She was married before so her husband flee away. He ran away he escaped. Then this armed were able to catch her and they took her to Sambisa, after that they took her to the bush. So when they took her there they got married to her.

These power structures exist in the fields of social, cultural, economic, political, religious, and law, among others, in the country. This reflects also in the way some girls were forcefully married.

Recounting her experience, a female respondent said:

She say they came to their hometown, they attack after the attack they flee to the bush. They went and hid there for some time. After the army left their hometown, they came back to their town then after that the armed men came back again for the second time. When they came for the second time to their hometown, they told her parents that they should get the girl married to anybody. The girl and the boy didn't like each other but they forced them to get married to each other without their consent.

Clearly from the above, it is deducible that patriarchy holds sway in the activities of the Boko Haram sect.

On the level of the armed group, the study found that the armed group leaders acted like they had the power to do whatever they wanted. The respondents noted that whenever a lady did not agree to having a sexual relationship, she would be threatened with a rifle. This instilled deep fear in the women, as a 23-year-old old mother of four explained that she was made to forcefully have sex with *Boko Haram* men every day until she became pregnant, and when she couldn't identify who impregnated her, she was later forced into an unwanted marriage. Another interesting account was captured from a respondent as follows:

it's true some people are violating women in the camp. he claimed he said there is one his friend, that he is living in Cameroon now, so that his friend, there's one woman in their neighbors, so she lost

her husband, and then he explained to him as his wife, without paying any dowry or any married process, so he keep violating her, he keep violation her.

4.3.2. Armed Group Socialization

It is arguable that the misconstrued notion that all conduct in war is fair, particularly in armed conflicts that involve non-state armed groups that engage in guerilla tactics, is partly responsible for the persistence of SVAC. Parties to conflicts frequently take actions that seem to favor their positions and ensure victory and are rewarded for favorable outcomes. This goes both ways, for both foot soldiers and leaders of the camps. Some respondents expressed it thus:

He says they did that secretly. He said that they're some people don't have any work to try this thing they should go and stay behind. If he saw there are some ladies are passing through, then he will catch them, have sexual relationship with them even if they didn't accept it. He said also those people, they are the leaders because nobody that will say no to them. They're the one have the authority to do whatever they want.

This can be partially explained by the way in which it has been suggested that participants in historical military battles may have viewed acts of sexual violence as 'spoils of war'. When virgin rapes are successfully committed during wartime, it is a sign of ego and status:³⁹³

He said that if the leaders they have sexual intercourse with ladies nobody will punish them because he said he has seen it with his

³⁹³ See generally DeMause, Lloyd. "War as righteous rape and purification." *The Journal of Psychohistory* 27, no. 4 (2000): 356.

own eyes about the Chibok girls, there are some leaders they should come and select the Chibok girls, and they should go with them, then they should bring them back to the camp again. So nobody will touch them or nobody will question them about the issue.

This belief in the violation of women as the spoils of war is traceable to ancient times of the conduct of the Oyo Empire and apparently persists in the culture till this day.³⁹⁴

Armed Group Ideological Indoctrination

Further, considering the hyper masculinized culture and the isolation in which these insurgent camps exists, they are easier to radicalize and the dehumanization process happens at a more rapid rate.³⁹⁵ This is because it is easier to promote a particular religious cause and use it as justification for insurgent attacks, and because it is almost certain that other militant groups with ideologies like or closely linked to those of the insurgency will lend their support to it.³⁹⁶ Similarly, religiously driven organizations engage in this fundamentalist radicalization, which has the potential to be more deadly, while maintaining unalterable objectives of causing harm on victims.³⁹⁷

Since a group's established ideology and goals are intended to affect its ability and desire to mobilize resources for ongoing campaigns of attrition, the command structure is usually built on

³⁹⁴ See generally, Adewunmi, Olaolu Adesola. *What happens when myths fail? An examination of traditional "Egba" culture*. State University of New York at Albany, 1998.

³⁹⁵ From interactions with respondents and the researcher's deduction this seems to be a rebuttable assumption. As presented in the graphs on the involvement of and sexuality, this assumption is further strengthened.

³⁹⁶ Gaby Thijssen, Sijtsema, J.J., Bogaerts, S., van and Masthoff, E. (2023). Radicalization Processes and Transitional Phases in Female and Male Detainees Residing in Dutch Terrorism Wings. *Behavioral sciences*, 13(10), pp.877–877. doi:<https://doi.org/10.3390/bs13100877>.

³⁹⁷ McGregor, I., Hayes, J. and Prentice, M. (2015). Motivation for aggressive religious radicalization: goal regulation theory and a personality × threat × affordance hypothesis. *Frontiers in Psychology*, 6. doi:<https://doi.org/10.3389/fpsyg.2015.01325>.

the foundation of violent confrontations.³⁹⁸ Hence it is argued that groups with less aggressive objectives and more narrowly focused goals—like secession or territorial independence—tend to achieve their ultimate goals more quickly or ultimately than groups with maximalist goals, like seizing power or establishing control.³⁹⁹

It's All About Power: Sexual Violence as a Strategy of Boko Haram – Hidden in the Patriarchal Norms of Religion and Marriage

In fitting with the overarching theme and purpose of this work, the data sourced from the interviews were targeted primarily at analyzing the perspectives and practice of *Boko Haram* armed group relating to sexual violence, as well as the role of religion and marriage as factors that impact the development of ideology and the utilization of sexual violence as a strategy of war in the *Boko Haram* camps.

Boko Haram Armed Group Beliefs about Sexual Relations

Prior to encountering *Boko Haram*, both male ex-combatants and female survivors already had beliefs and cultures, some of them are faithful Muslims and some Christians, which abhorred sexual relations outside of the institution of marriage. However, when they encountered *Boko Haram*, most of them were socialized or encountered otherwise, in the conduct of a war that was based on religious ideology and justified with religious interpretations. According to a respondent:

They claim it's their religion but it's not their religion and they're
doing their activities in name, just in the name of religion. Most

³⁹⁸ Yaziji, Michael & Doh, Jonathan. (2013). The Role of Ideological Radicalism and Resource Homogeneity in Social Movement Organization Campaigns against Corporations. *Organization Studies*. 34. 755-780. 10.1177/0170840613479235.

³⁹⁹ Yaziji, Michael & Doh, Jonathan. (2013). The Role of Ideological Radicalism and Resource Homogeneity in Social Movement Organization Campaigns against Corporations. *Organization Studies*. 34. 755-780. 10.1177/0170840613479235.

of us believed that you must be married to have sexual intercourse with your spouse.

Respondents noted that in the armed group, it is believed that the leaders are the only religious persons in the camps. So, every person in the camp belongs to them, and their word was law in the camps. Muslims who refuse to adhere to the camp norms will also face consequences and Christians who did not deny their faith suffered death or other forms of serve treatment.⁴⁰⁰ As an ex-combatant respondent recalled:

If a person is caught having sexual intercourse with a person that is not his wife, they would kill that person. if both are yet to marry, they should give them 80 lashes of the cane then get them married, but if both parties are married to someone else then both of them will be killed.

This however applies only to lower-level members of the group, as the rule was not enforced on the leaders. A male respondent stated as follows:

He said that if the leaders they have sexual intercourse with ladies nobody will punish them because he said he has seen it with his own eyes about the Chibok girls, there are some leaders they should come and select the Chibok girls, and they should go with them, then they should bring them back to the camp again. So nobody will touch them or nobody will question them about the issue.

⁴⁰⁰ Gaji & Usman (2017).

Respondents maintained that the leaders forced ladies to have sexual relations with them, because being their leaders at the camp, nobody had the right to talk to them and punish them. Most women who escaped, were released, or were rescued from *Boko Haram* claimed they were sexually violated. Notably, a few respondents claimed not to have witnessed sexual violations in their camps, whilst those who did claimed that women tend to fall victim to sexual violence with the leaders and fighters outside the camp after being captured. A few of them who lost their *Boko Haram* combatant husbands also experienced sexual violations. As one abducted girl recalls:

it was more advisable to have a husband than to be a single girl.

Women and girls were seeking men especially strong ones for protection from constant sexual harassment.

Sexual violations are explicitly prohibited by the Rome Statute as Crimes against Humanity in Article 7. The statute and other international bodies like the International Criminal Court have explicitly stated that forced sexual relations are a contravention of international criminal law. Further, Article 27, second paragraph of the 1949 Geneva Convention IV provides: “Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” These clauses guided the questioning of those interviewed with regards to sexual relationships in the camps of *Boko Haram*.

ii. Boko Haram Armed Group and Sexual Violence in Marriage—The Consent

Conundrum

Generally, marriage is a social contract between consenting parties. In Nigeria, this is mostly true. Legally, marriage must be devoid of all forms of coercion, deceit and lack of consent. Any marriage contracted in Nigeria under pretext and undue influence is voidable. An in-depth reflection on this subject is discussed in Chapter 3. In addition, marriages conducted outside the

provisions of the Nigerian laws governing same (statutory, customary of Islamic) are voidable at the instance of any of the aggrieved parties.

Several of the respondents before joining the group believed in consensual sex within marriage according to how their religion stated it. An important aspect of a marriage is consent. The import is that an ideal marriage is a situation where both parents consent and witness the marriage,⁴⁰¹ unlike the marriage claims of *Boko Haram*. In *Boko Haram* camps, it appears that marriages are not necessarily viewed in the formal way in which marriage was intended to be, of the unionization of two people but rather as a tool to the gratification of the militants. An ex-combatant of Boko Haram interviewed as part of this research responded as follows:

He said that the Boko Haram they go for border, eh Cameroon, Cameroon border, they go buy some of their foodstuffs. On their way coming back, they come to their village, they preach them some messages then they follow them. According to the ex-combatants after joining Boko Haram, once they like a girl or desire a girl and they reach out to the parents with or without their blessing they take the girl by force. They have the freedom to do as they wish when it comes to sexual relations.

According to another ex-combatant of Boko Haram respondent:

they have their own freedom, and if they feel in love with the girl, they'll go and meet the parents if the parents refuse, they'll marry the girl by force. Sometimes even get to kill.

⁴⁰¹ Ajayi , L.M.C. (2024). Parental Consent As An Essential For A Valid Statutory Marriage In Nigeria. [online] Legal Kekenke. Available at: <https://www.legalkekenke.com.ng/2023/06/parental-consent-as-essential-for-valid.html> [Accessed 17 May 2024].

This view is reinforced by the concept of forced marriages in the camps, dropping all guises of legality or propriety when a girl or her family members refuse the advances of any militant man towards their daughter.

Here, the question of consent, not only of the woman involved, but also of her real/proper guardian is fundamental to the validity of such marriage. As a corollary to this requirement of the consent of a girl's parent/guardian for a lawful marriage, *Boko Haram* appoints *walis* for the girls/women they kidnap. This is typically the appointed 'village head' in the various camps. According to some of the ex-*Boko Haram* members interviewed as part of this research, when the kidnapped girls are brought into the *Boko Haram* camps, they are made to live with/under the auspices of the village head in that camp. This appears to be pretextual as these same village heads are then used by *Boko Haram* leaders as *walis* for the purposes of the sham marriages they contract between their members and these enslaved women/girls. Several of the ex-combatants of the *Boko Haram* group and survivors of these forced marriages also stated that consent of the women/girls for marriage was sought but either ignored when not received or coerced out of the women/girls through threats and/or imprisonment and lashings in some cases.

Forced marriages orchestrated by groups like *Boko Haram* apparently deviate from these foundational principles. In these instances, the genuine consent of the *wali*, and often the woman herself, is coerced or overridden, rendering the marriage devoid of the essential element of willing participation. Again, this brings to the fore the extent to which the girl or woman is denied of any form of autonomy in decision making. The absence of the genuine consent of the women's real parents/guardians, who are entrusted with safeguarding the well-being of the women, arguably reflects a blatant disregard for Islamic values and ethical norms. Islamic jurisprudence upholds the idea that a marriage without the valid consent of the *wali* is inherently flawed. The *wali* serves as

a protector and advocate for the woman, ensuring that her interests are preserved and her consent is freely given. In these forced marriages with a man who is neither related to, nor is the woman's real guardian is arguably a caricature of this foundational principle, thus, the manipulation and coercion employed negate the very essence of the *wali's* role, leading to a situation where the fundamental conditions for a valid Islamic marriage are compromised.

Moreover, legally speaking, this absence of the *wali's* consent extends beyond a mere procedural irregularity; but arguably strikes at the heart of the stated Islamic principles of justice, fairness, and compassion.⁴⁰² Islam places a high premium on the well-being and dignity of individuals, particularly women, and coerced marriages stand in direct contradiction to these values.⁴⁰³ Thus, it could be concluded that genuine consent, which is a fundamental condition for a lawful marriage, is not satisfied in the purported *Boko Haram* marriages. This unsatisfied condition arguably invalidates the purported marriages of *Boko Haram* members with the women and girls they routinely abduct and enslave. This position validates the findings of the thesis on the influence of patriarchy and religion in engendering violence against women.

This practice of *Boko Haram* is in direct contravention of international standards of marriage, including the steps that have been taken by the human rights council in A/HRC/RES/24/23; A/HRC/26/22; A/HRC/35/5; A/HRC/41/19; A/71/253; A/73/257; A/75/262 in a bid to curb the issues of child and forced marriages in society and particularly as integral parts of armed conflicts or wars. Further, the United Nations High Commissioner in its June 2019 report submitted to the Human Rights Council A/HRC/41/19 on the issues of forced marriages in all humanitarian settings

⁴⁰² International Crisis Group (2019). *Exploiting Disorder: al-Qaeda and the Islamic State*. [online] International Crisis Group. Available at: <https://www.crisisgroup.org/global/exploiting-disorder-al-qaeda-and-islamic-state>.

⁴⁰³ Patoari, M.H. (2019). The Rights of Women in Islam and Some Misconceptions: An Analysis from Bangladesh Perspective. *Beijing Law Review*, [online] 10(05), pp.1211–1224. doi:<https://doi.org/10.4236/blr.2019.105065>.

suggests a disconnect between international standards, movements and attempts at addressing the issue of forced marriage.

4.4. Other Factors Responsible for Sexual Violence in the Boko Haram Armed Conflict: Perspectives of Boko Haram Armed Combatants

A core assumption of this research, and which the research data appears to support, is that sexual violence in armed conflicts continues, even though International Humanitarian Law (IHL) prohibitions of sexual violence in armed conflict, have expanded over the years. The data collected during the fieldwork of this research revealed several factors that contribute to enabling the continued occurrence of sexual violence in the *Boko Haram* armed conflict, hence this section discusses these factors from the perspectives of *Boko Haram* ex-combatants. The so-called ‘marriages’ that *Boko Haram* claims to have formed, and are forming with the women and girls they kidnap/ped, are arguably invalid as they lack essential elements of a valid marriage under the various acceptable forms of marriage in Nigeria—valid consent due to duress by coercion and/or force, as well as being lacking substantially in the formalities, thereby essentially rendering such purported marriages void *ab initio* or at best, voidable depending on the circumstances and the wishes of the parties involved. Sadly, these matters are not subject to adjudication before any courts of law and such practices continue to loom large and relegate women in the society.

4.4.1. Islamic law marriage, Boko Haram Insurgency and Sexual Violence

As analyzed above, Islamic Law has laid down rules for the validity of marriage conducted under it. Thus, this section focuses on the validity of marriage purportedly conducted by *Boko Haram* insurgents with enslaved women captured during wartime. Also as earlier mentioned, analyzing sexual relations with abducted and enslaved women captives of war by *Boko Haram* in their camps,

particularly in the Sambisa Forest, raises critical ethical and legal concerns. The validity of such marriages is fundamentally questionable and requires examination from ethical, legal, and humanitarian perspectives. Analyzing the validity of such marriages within the framework of Shariah Law, requires careful consideration of fundamental principles, the context of the actions, and the inherent injustice associated with these practices. There is therefore a need to resolve the interpretations which are alleged to be contrary to Islamic aspirations and teaching and are yet been perpetrated.

Shariah, often depicted as a comprehensive legal and ethical system, places emphasis on consent and justice in matters of marriage. The foundational principle of mutual consent in Islamic marriages is explicit, as evidenced by numerous Quranic verses and Hadiths. The Quran states, “So marry them with the permission of their people and give them their due compensation [i.e., mahr] according to what is acceptable” (Quran 4:25). This verse emphasizes the willing participation of individuals in the marriage contract, a principle that stands in stark contrast to forced unions. The forced marriages orchestrated by *Boko Haram*, involving the abduction and apparent enslavement of women, violate the very essence of Islamic teachings. Such actions contradict the principles of justice, compassion, and respect for human dignity embedded in Shariah.⁴⁰⁴ The notion of enslavement goes against the Quranic injunctions that promote the humane treatment of captives and the abolition of slavery. For instance, the Quran encourages the liberation of slaves as an act of atonement for certain offenses (Quran 58:3).

Moreover, the absence of genuine guardianship and consent in these situations challenges the validity of these marriages under Shariah. Islamic Law stipulates the essential role of a guardian,

⁴⁰⁴ Samaila Ziradzo and Robert T. Netangaheni, 'The traumatic consequences of Boko Haram slavery among the ethnic minorities of southern Borno, Borno State, Nigeria'

typically the *wali*, in ensuring the well-being and interests of the bride. The prophet said: “ No valid Nikkah without the involvement of a wally, marriage guardian.” In the context of *Boko Haram*'s practices, the forced nature of these unions denies women the protection and advocacy of a guardian, further undermining the legitimacy of the marriages. Additionally, the forced marriages in the camps lack the transparency and procedural adherence required by Shariah. The absence of a formalized marriage contract, witnesses, and the basic conditions specified in Islamic jurisprudence raises questions about the validity of these unions. In view of the above, any purported marriage by *Boko Haram* with women in their capture can best be described as forced marriage, which has the toga of sexual violence.

It is plausible that the *Boko Haram* insurgents want to justify their action (enforced marriage) under Sharia. Thus, it is imperative to address the propriety or otherwise under this segment. The argument made against this by Farhan Iqbal is to the effect that the commandments made by the holy Quran to guide the conduct of Muslims during the time of war have been put in place to ensure the prevention of the immorality that becomes prevalent in the chaos of war.⁴⁰⁵ Flowing from the above, it is arguable that the purported marriages by the *Boko Haram* insurgents with women in captivity would amount to sexual violence within the principles of Islamic Law.

4.4.2. Armed Group Command and Control Structure

One of the reasons deduced from the study is that *Boko Haram* members strongly believe in and have high regard for their leaders, most especially the spiritual leader Sheikh Imam Abubakar Shekau, a parliament called Shura. Legal efforts have little or no impact in the camp of *Boko Haram* and don't stop them from sexually harassing any lady of their choice. *Boko Haram* has

⁴⁰⁵ Farhan Iqbal, Missionary, Ahmadiyya Muslim Community, Canada: “Islamic teachings on Female Prisoners of War”, 2023.

openly stated that they reject the Nigerian state and its constitution and seek to impose Sharia Law.⁴⁰⁶ Based on the research findings, a large percentage of the respondents said that leaders had the power to do whatever they want to in the camps. An ex-combatant respondent recalled that:

Whenever a lady doesn't agree to have a sexual relationship with them, she would be threatened with a rifle on several occasions where it was otherwise the lady get beaten or killed. The fighters after every victory indulged in sexual violence. Also, whenever under the influence of hard drugs.

It has been argued that the power and control structures of groups inform further attitudes and the use of sexual violence as a tool of war.⁴⁰⁷ Arguably, the less knowledgeable a leader or commanders are, the more cruel their subordinates are in different conflict situations.⁴⁰⁸ According to data analyzed in this work, women are often used as rewards for gallantry at the end of successful missions by combatants.

Additionally, an assessment of these groups' command-and-control structures as well as their motivations, which often came from religion, reiterate these conclusions.⁴⁰⁹ This action is often supported by the command structure and no opposition is allowed. Recounting an experience, a respondent said:

She said it's not good at all. Forcing her to marry without her consent is not good.

⁴⁰⁶ Affreh Ijah (2013)

⁴⁰⁷ See generally, Peltola, Larissa. "Rape and sexual violence used as a weapon of war and genocide." (2018).

⁴⁰⁸ See assumption is informed by my observation and study of difference violences that has erupted in communal clashes with Nigeria and also the stories of activities of militia groups like the Lord's Resistance Army.

⁴⁰⁹ From the data analysis respondents accounts show this clearly. See some of the quotes under the previous sections of the thesis.

Similarly, another respondent was of the view that:

She says her own observation maybe because the men they have power than the woman that's why they're using that power against the woman.

4.4.3. Effect of Intoxicants on Armed Combatants

Intoxicants like hard drugs were deemed by the ex-combatants to be one of the factors responsible for sexual violence against women in their camps. They expressed that both leaders and the foot soldiers regularly took hard drugs, and that they often took those drugs to boost the morale of the fighters, and invariably would violate the women after taking those drugs. Narrating the influence of drug, a respondent who was a member of the Boko Haram armed group stated that:

He says that some people are doing sexual relations with their non-wife ladies. He says the main things that causes this is they're taking trauma drugs, they're abusing drugs, if they're using drugs. So in that situation, even if they should, even if they saw anybody, any lady they just harass her.

Another respondent further explained:

He said that Boko Haram didn't believe in this habit even if they catch someone that doing sexual intercourse with other lady that he will never marry her. So, they should keep the person, and the person does not have a wife, so they should give him, 100 lashes of cane. And if the person is already married, he said they should give him the person. he also said that having sexual relationship with a person you're not married to that is haram.

Generally, drug abuse and sexual violence may be related in a number of ways. Over the past few decades, the media has concentrated on two topics: sexual violence and alcohol's role on college campuses. Roughly 50% of collegiate sexual violence involve alcohol usage or excessive drinking.⁴¹⁰ Substance abuse by the offender, i.e., the individual committing the attack has a history of drug misuse. Some statistics indicate that 60–65% of sexual violence are under the influence of alcohol or drugs.⁴¹¹

Cases of sexual violence were more common in settings where drugs and alcohol were consumed.⁴¹² Many years' worth of research has indicated that drinking alcohol and the use of substances may increase the likelihood of violence against intimate partners.⁴¹³ It is possible to view alcohol as “adding fuel to the fire” in potentially dangerous social circumstances. Heavy drinkers and drug users have been shown to have temperamental features associated with perpetration (e.g., antisocial conduct, inclination towards impersonal sex), as well as heightened sexual desire, disinhibition, and aggression.⁴¹⁴

Studies suggest that addicts of alcohol and drugs may also use it to diminish their own culpability or to justify their behavior.⁴¹⁵ Based on community samples, perpetrators utilize drugs in 60–65%

⁴¹⁰ Maryland Collaborative to Reduce College Drinking and Related Problems. (2016). *Sexual assault and alcohol: What the research evidence tells us*. College Park, MD: Center on Young Adult Health and Development.

⁴¹¹ Brecklin LR, Ullman SE. The roles of victim and offender substance use in sexual assault outcomes. *J Interpers Violence*. 2010 August; 25(8): 1503-22. doi: 10.1177/0886260509354584. Epub 2010 Jan 7. PMID: 20056819; PMCID: PMC3837347.

⁴¹² Graham K, Bernards S, Wayne Osgood D, Abbey A, Parks M, Flynn A, Dumas T, Wells S. 'Blurred lines?' Sexual aggression and barroom culture. *Alcohol Clin Exp Res*. 2014;38(5):1416-1424. Reference may also be made to Mumford EA, Kelley-Baker T, Romano E. Sexual assault histories and evening drinking among young American men in a high-risk drinking environment. *J Sex Res*. 2011;48(1):53-61.

⁴¹³ Crowell NA, Burgess AW. *Understanding violence against women*. Washington, DC: National Academies Press; 1996.

⁴¹⁴ Testa M, Cleveland MJ. Does alcohol contribute to college men's sexual assault perpetration? Between- and within-person effects over five semesters. *J Stud Alcohol Drugs*. in press.

⁴¹⁵ Abbey A. Alcohol-related sexual assault: A common problem among college students. *J Stud Alcohol Suppl*. 2002; 14:118-128.

of sexual violence instances, compared to 35–55% of victims.⁴¹⁶ Several research efforts have investigated how alcohol use affects the results of sexual violence, such as the degree of physical harm and sexual abuse. It is crucial to keep researching the role alcohol plays in sexual violence episodes because the results of these studies have been inconsistent, particularly when situational and demographic factors are considered.⁴¹⁷

Research also exists where the connection between the intensity of sexual victimization and alcohol use before the violence has been examined. The first study, which included 1,667 undergraduate women as a sample, discovered a marginally positive correlation between the severity of sexual aggressiveness and the offender's alcohol usage.⁴¹⁸ Another study by Abbey et al.,⁴¹⁹ examined 113 college men who had committed sexual violence. It found that the severity of the attacks was higher when the perpetrators drank moderate amounts of alcohol, and that the victim's alcohol consumption was positively correlated with the severity of the sexual victimization.

However, intoxicants like alcohol and drugs are generally prohibited in Islam,⁴²⁰ and being intoxicated is punishable by lashing.⁴²¹ Paradoxically, *Boko Haram* claims to be Islamic ideology-

⁴¹⁶ Testa M. The impact of men's alcohol consumption on perpetration of sexual aggression. *Clinical Psychology Review*. 2002; 22:1239–1263.

⁴¹⁷ Testa M, Vanzile-Tamsen C, Livingston JA. The role of victim and perpetrator intoxication on sexual assault outcomes. *Journal of Studies on Alcohol*. 2004; 65:320–329.

⁴¹⁸ Ullman SE, Karabatsos G, Koss MP. Alcohol and sexual assault in a national sample of college women. *Journal of Interpersonal Violence*. 1999a; 14:603–625.

⁴¹⁹ Abbey A, Clinton-Sherrod AM, McAuslan P, Zawacki T, Buck PO. The relationship between the quantity of alcohol consumed and the severity of sexual assaults committed by college men. *Journal of Interpersonal Violence*. 2003; 18:813–833.

⁴²⁰ Usama et al. (2023). Prohibition Of Alcohol In Quran And Bible (A Research And Analytical Review) *Pjace*, 19 (4) (2022) Prohibition Of Alcohol In Quran And Bible (A Research And Analytical Review). 19. 1202-1211.

⁴²¹ Mansoor, A.N. (2023). The Proof of the Crime of Drinking Alcohol and Its Punishment in Islamic Jurisprudence. *International Journal of Cultural and Religious Studies*, [online] 3(2), pp.29–36. doi:<https://doi.org/10.32996/ijcrs.2023.3.2.4>.

driven, but they still take drugs either for sex or war, as the research found. One *Boko Haram* ex-combatant respondent explained that:

they do drugs to have sex like horses for hours, and they only care about their satisfaction. Even when the women complain of tiredness, they would not still free them as long as they are not in their period.

Thus, many girls and women in the camp are suffering from uterine prolapse, a condition in which the uterus in a woman body falls out of place and out of her vagina.⁴²² Dr Ishaka Muse, a Chief consultant obstetrician and gynecologist, explained it to be a forceful intercourse which damages the support structures of the womb.⁴²³

Despite this apparent attempt at justification of SVAC by the ex-armed combatants of *Boko Haram* that were interviewed as part of this research, this is unjustifiable both in Islam and in the law. Neither Nigerian law nor IHL condone SVAC committed under the influence of intoxicants. More so, and as previously discussed, Islam forbids the use of intoxicants like alcohol and hard drugs. Rather, IHL holds armed group leaders liable for the acts of their subordinate soldiers where the commanders either expressly instructed them to commit those crimes or looked away and failed to stop their soldiers from committing or continuing to commit those crimes.⁴²⁴ This strengthens

⁴²² Hawwa Shaffi Nuhu (2018)

⁴²³ Hawwa Shaffi Nuhu (2018)

⁴²⁴ Article 28 UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, UN General Assembly, 17 July 1998, <https://www.refworld.org/legal/constinstr/unga/1998/en/64553> [accessed 17 May 2024] ; See also Heffes, E. and Frenkel, B. (2017). The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules. *Goettingen Journal of International Law*, [online] 8, pp.39–72. doi:<https://doi.org/10.3249/1868-1581-8-1-heffesfrenkel>.

the argument made in this research that the repertoire of SVAC as practiced by the *Boko Haram* armed group is strategic, especially by the top commanders of the armed group.

4.4.3. Sub-Standard Socio and Economic Conditions of Youths in Society

Another factor is that the poor social and economic conditions of the members of the *Boko Haram* armed group while they were in their communities contribute to why the sexual violence continues.

A male respondent explained about his village before *Boko Haram* thus:

He said that the time that Boko Haram captured their headquarters of local government. So they doesn't have any other place to go, then the Boko Haram came and met them in the village.

Another male respondent stated as follows:

He said they forced them to follow. To join them, because they doesn't know any other place that they should go. The Boko Haram already captured the local government headquarters. So they didn't have any option rather to join the Boko Haram and they provided them food.

Mallam Yusuf, the original founder of the then non-violent group (prior to the radicalization of the group into an extremist group after the death of Mallam Yusuf), succeeded in attracting the youth, the unemployed, the poor, and the illiterate to the camp;⁴²⁵ ostensibly due to the poor state of socio-economic conditions in the predominantly Muslim northeastern region of Nigeria, especially for young people.

⁴²⁵ Abdulazeez Malefakis, Medinat. "Boko Haram, the first victimization." In *Humanitarian Displacement and Boko Haram in Nigeria*, pp. 47-84. Cham: Springer International Publishing, 2022.

4.4.5. Wartime Living Conditions of Combatants

Flowing from the data collected from a study, a reason advanced by the former armed combatants lay in some of the socioeconomic living conditions that the armed combatants found themselves in during the armed conflict.⁴²⁶ The combatants' claims that they were left on the battleground for days, and sometimes years without their wives, led some of them to engage in sexual violence.⁴²⁷ This attitude however, falls shorts of respecting the dignity and bodily integrity of victims of sexual violence. It is reaffirmed that no one is permitted to violate another because of the person's personal experiences or dispositions. Indeed, it is a long-standing maxim of law, that the right of an individual ends when the right of another commences. No one is therefore permitted to violate another person for gratification of personal desires.

Extremist Religious Indoctrination of Boko Haram Recruits

The research also finds that the religious indoctrination of recruited members with the extremist ideology of Boko Harm has done more harm than good, even to the combatants themselves. A male respondent stated:

he said Boko Haram come and captured their town then they doesn't have any option than to follow the Boko Haram, then the Boko Haram to Sambisa forest and Boko Haram teach them some of their books and teach them how to operate weapons. So this is how he end up in Boko Haram.

⁴²⁶ Ali Bitenga et al, "Motivations for Sexual Violence in Armed Conflicts: Voice from the Combatant in Eastern Democratic Republic of Congo" in *Medicine, Conflict and Survival* (Routledge Taylor &Trans Group, 2021) p. 1940.

⁴²⁷ Ibid.

This data can be linked to the ideological guidance by the religious leaders claiming to be doing the work of God. Another male respondent said:

He said that Boko Haram on their way to Sambisa, so they passed through their villages stopped at the village and they preached them. So you have to follow us we're going God's work. If you live and die in our place you will go straight to heaven. If you don't join us we will kill you here. So that's why they try, they follow them, they tried to kill him, so that's why he follows them.

The *Boko Haram* armed group earned its name due to its strong opposition to anything western, which it believes corrupts Muslims.⁴²⁸ As an Islamist movement, it strongly opposes man-made laws including international humanitarian laws.

However, the movement has expanded beyond its original religious composition to not only include Islamic militants and criminal elements but also disgruntled politicians.⁴²⁹ This is why *Boko Haram* leaders have failed to adhere to any law. The study shows that not all individual armed actors perpetrate rape and other sexual violence acts. A core factor is that of ideology. Thus, the major catalyst of the activities of the *Boko Haram* sect is ideological in nature, the doctrine is connected to the global Jihad movement in the 13th Century championed by Ibn Taymiyya, who was a staunch defender of Sunni Muslims based on strict adherence to the Quran and the authentic Sunna (Practice) of the Prophet Muhammed.

⁴²⁸ Onuora-Oguno, Azubike, and Mariam Adepeju Abdulraheem-Mustapha. "Beyond the Law to Socio-Legal Intervention: The Boko Haram Insurgency and the Nigerian Child." *Boko Haram and International Law* (2018): 371-389.

⁴²⁹ Iyekekpolo, Wisdom Oghosa. "Political elites and the rise of the Boko Haram insurgency in Nigeria." *Terrorism and Political Violence* 32, no. 4 (2020): 749-767.

The findings of this research, as noted in the discussion of the interviews, are that the actions are in contravention of Article 27, second paragraph of the 1949 Geneva Convention IV amongst other international conventions and regulations that specifically prohibit sexual violence in armed conflict. It is further noted that Rule 93 of Customary International Humanitarian Law Databases specifically states that rape and other forms of sexual violence are prohibited. From my perspective, the patriarchal military seem to be at the base of these occurrences and, thus, the next chapter of the thesis discusses this concept of patriarchy, power and military influence on sexual violence.

Chapter Five: Understanding and Theorizing Patriarchal Militarized

Masculinity

This chapter begins by exploring feminist critiques, organizational structures, and religious ideologies within armed groups, shedding light on the intersection of these factors in perpetuating SVAC. The ideas held by feminists regarding sexual violence emphasize its connection to larger systems of power, injustice, and gender dynamics. The chapter therefore discusses the significant contributions of feminist researchers, activists, and scholars in addressing sexual violence as a symptom of power disparities. The chapter also examines the justification of sexual violence in armed conflict through religious ideologies, with a specific focus on Islamic feminist critiques. Furthermore, it considers the feminist critiques of marriage and the concept of patriarchal militarized masculinity, offering an intersectional approach to understanding SVAC. This chapter argues that the culture of subjugation of women leads to the institutionalization of discrimination against women, which in turn gives way for sexual violence during armed conflict. In this chapter the framework of patriarchal militarized masculinity is analyzed in the context of the Boko Haram armed conflict, providing insights into the dynamics of SVAC. Through a comprehensive exploration of these interconnected themes above, this chapter aims to deepen our understanding of the complexities surrounding sexual violence in armed conflict and the role of patriarchal militarized masculinity in perpetuating such atrocities.

5.1. Explaining SVAC: Feminist Critiques, Organizational Structure, and Religious Ideologies

5.1.1. Feminist Critiques of Patriarchy and Power

As briefly alluded to in Chapter 3, feminist scholars have been essential in drawing attention to the power relations that are present in sexual violence and stressing the importance of control in

the equation. The ideas held by feminists about sexual violence emphasize that these crimes are intricately linked to larger systems of power, injustice, and gender dynamics rather than being purely the result of personal pathology.⁴³⁰ Susan Brownmiller, a groundbreaking author in this regard and a prominent feminist academic, made a substantial contribution to our understanding of the power dynamics involved in sexual violence. In her revolutionary work “Against Our Will: Men, Women, and Rape”⁴³¹ Brownmiller delves into the social, political, and historical backgrounds of sexual violence,⁴³² discussing how rape has been utilized historically and in different cultures as a tactic of dominance and power.⁴³³ Brownmiller’s contributions have played a pivotal role in molding the feminist conversation around sexual violence and its association with the dominance and enslavement of females.

Brownmiller argues that rape is not to be just a brutal crime but a reflection of how our society is conditioned.⁴³⁴ To support this, she traces the use and meaning of rape from biblical times through to Bangladesh and Vietnam, unraveling the origins of rape laws in medieval codes.⁴³⁵ Brownmiller also discusses Freudian sexual psychology, legal defense strategy, and the message behind popular books, magazines and films, arguing that the myths generated by the media serve to glamorize the victim while they romanticize the rapist—even in cases of rape murder.⁴³⁶ Further, Brownmiller

⁴³⁰ Kalra G, Bhugra D. Sexual violence against women: Understanding cross-cultural intersections. *Indian J Psychiatry*. 2013 Jul;55(3):244-9.

⁴³¹ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³² Yokum, N. (2022). A call for psycho-affective change: Fanon, feminism, and white negrophobic femininity. *Philosophy & Social Criticism*,

⁴³³ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³⁴ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³⁵ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³⁶ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

notes that man's structural capacity to rape and women's structural vulnerability are basic to physiology; rape being existent from prehistoric times to the present.⁴³⁷ Arguing that rape is a conscious process of intimidation by which men keep women in a state of fear, Brownmiller uses the story of Dinah to suggest that men of Hebrew tribes like their neighbors, had little compunction against raping women of tribes they had conquered, for in this way, they prospered and grew.⁴³⁸ Rape has accompanied wars for years; it was weaponized for terror in World War I and for revenge in World War II.⁴³⁹ Though not ubiquitous, SVAC is widespread irrespective of nationality or geographic location and unfortunately, captured slave women are often employed as servants, field hands, concubines and breeders of future slaves.⁴⁴⁰

Renowned feminist legal scholar Catherine MacKinnon is well-known for her analysis of sexual violence in relation to patriarchy and gender inequality.⁴⁴¹ According to MacKinnon, sexual violence is not just a collection of discrete individual acts but is instead ingrained in larger power structures that support and legitimize this kind of behavior.⁴⁴² In her seminal work, especially in "Toward a Feminist Theory of the State", MacKinnon explores the connections between the larger

⁴³⁷ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³⁸ Brownmiller, S. (1975). *APA PsycNet*. [online] psycnet.apa.org. Available at: <https://psycnet.apa.org/record/2004-20005-001>.

⁴³⁹ Peltola, L. (2018). *Rape and Sexual Violence Used as a Weapon of War and Genocide*. [online] Available at: <https://core.ac.uk/download/pdf/159384976.pdf>.

⁴⁴⁰ Peltola, L. (2018). *Rape and Sexual Violence Used as a Weapon of War and Genocide*. [online] Available at: <https://core.ac.uk/download/pdf/159384976.pdf>.

⁴⁴¹ Masters, A. E. (2018). Feminist Theory Reveals a Need for Justice over Autonomy in Research Ethics. *Voices in Bioethics*, 4, <https://journals.library.columbia.edu/index.php/bioethics/article/view/6012>

⁴⁴² Mackinnon, C. (2008). *Guest Lecture Series of the Office of the Prosecutor 'The Recognition of Rape as an Act of Genocide - Prosecutor v. Akayesu' * The Hague*. [online] Available at: <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/AF3FA255-B1D9-4FA4-992F-56079A2DCC63/279736/ICCOTP20081027MacKinnon.pdf>.

patriarchal structure and sexual violence.⁴⁴³ She underlines that the use of sexual violence as a weapon to uphold and perpetuate gender hierarchies is a common practice.⁴⁴⁴

Several other feminist researchers, activists, and scholars have also made significant contributions to the area, and together, they have pushed for institutional changes to address the underlying causes of sexual violence and increased our understanding of it as a symptom of power disparities. Schulz argued that rape during armed conflicts is primarily driven by power dynamics, where perpetrators use sexual violence as a means to assert dominance, control, and intimidate both individuals and communities.⁴⁴⁵

Some other scholars discuss the role of pre-existing gender inequalities in societies as a contributing factor. Godiya Makama argued that inequalities can create an environment where sexual violence is more likely to occur, as it is seen as a way to reinforce patriarchal norms and maintain power imbalances.⁴⁴⁶ Card Claudia, another prominent scholar, argued that wartime rape exists on a continuum of violations against women carried over from peacetime.⁴⁴⁷ The continuum argument—also adopted by this research, originated with feminist scholars like Claudia, who maintained that wartime sexual violence is closely connected to the political, social, and economic status of women in the prewar period; stemming from which it is argued that the kinds of violations

⁴⁴³ Robin L. West, “Law's Nobility,” *Yale Journal of Law and Feminism* 17, no 385(2005), 385 - 458.

⁴⁴⁴ Mackinnon, C. (2008). *Guest Lecture Series of the Office of the Prosecutor 'The Recognition of Rape as an Act of Genocide - Prosecutor v. Akayesu' * The Hague*. [online] Available at: <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/AF3FA255-B1D9-4FA4-992F-56079A2DCC63/279736/ICCOTP20081027MacKinnon.pdf>.

⁴⁴⁵ Schulz, Philipp. “Conflict-Related Sexual Violence against Men: A Global Perspective.” In *Male Survivors of Wartime Sexual Violence: Perspectives from Northern Uganda*, 1st ed., 26–47. University of California Press, 2021. <http://www.jstor.org/stable/j.ctv1f884s7.8>.

⁴⁴⁶ Makama Godiya Allanana, “Patriarchy and Gender Inequality in Nigeria: The Way Forward,” *European Scientific Journal* 9, no.17(June 2013), accessed 6 September 2023, <https://core.ac.uk/download/pdf/236407158.pdf>

⁴⁴⁷ Card, Claudia (1996). *Rape as a Weapon of War*. *Hypatia* 11 (4):5 - 18.). Available at <http://iupjournals.org/hypatia/hyp11-4.html>

women faced before the war were driven by patriarchy and are causally related to what women experience during the war.⁴⁴⁸

Also, many academics have investigated the ways in which gender norms and expectations in society contribute to the persistence of sexual violence. Australian sociologist Raewyn Connell, who is well-known for her studies on gender and social theory, also weighed in on this discourse. Connell's theory of "hegemonic masculinity"⁴⁴⁹ is especially helpful in figuring out how social norms and sexual violence are related. In her groundbreaking work "Masculinities", Connell argues that social norms and expectations reinforce power systems that lead to gender inequality by prescribing a particular definition of masculinity as dominant and desirable.⁴⁵⁰ The scholar further opined that hegemonic masculinity, the dominant version of masculinity, is characterized by attributes like aggression, control, and domination.⁴⁵¹ Connell's research indicates that power dynamics and societal norms around masculinity may be linked to the continuation of sexual violence, hence, in societies where aggressive and strong masculinity are highly valued, some people resort to sexual violence as a way to maintain power and adhere to these standards.⁴⁵²

The wider ramifications of sexual violence during armed conflicts are frequently discussed by academics who study conflict-related sexual violence and concentrate on how armed forces utilize

⁴⁴⁸ Card, Claudia. 1996. "Rape as a Weapon of War," *Hypatia* 11(4). Available at <http://iupjournals.org/hypatia/hyp11-4.html>

⁴⁴⁹ Connell, R.W. and Messerschmidt, J.W. (2005). Hegemonic Masculinity: Rethinking the Concept. *Gender & Society*, 19(6), pp.829–859. doi:<https://doi.org/10.1177/0891243205278639>.

⁴⁵⁰ David Blackbeard & Colleen Aldous (2021) Chronic pain and masculine identity: life-world interviews with men at a South African Pain Clinic, *International Journal of Qualitative Studies on Health and Well-being*, 16:1, <https://www.tandfonline.com/doi/full/10.1080/17482631.2021.1970303>

⁴⁵¹ Connell, R.W. and Messerschmidt, J.W. (2005). Hegemonic Masculinity: Rethinking the Concept. *Gender & Society*, 19(6), pp.829–859. doi:<https://doi.org/10.1177/0891243205278639>.

⁴⁵² Connell, R.W. and Messerschmidt, J.W. (2005). Hegemonic Masculinity: Rethinking the Concept. *Gender & Society*, 19(6), pp.829–859. doi:<https://doi.org/10.1177/0891243205278639>.

it as a strategy to impose control, instill fear, and demoralize people.⁴⁵³ Cynthia Enloe, a political scientist and feminist scholar, further informed this discourse by engaging in the study of the relationships between gender, militarism, and international relations. Enloe's "Bananas, Beaches, and Bases: Making Feminist Sense of International Politics"⁴⁵⁴ discusses the strategic use of sexual violence in conflict areas, not only as a result of war but also as a purposeful instrument to accomplish political and military goals. Enloe argued that women are not the 'human interest' story merely caught up in men's wars, but that from its early rumblings to how to end it, women know every aspect of war as they understand the need to survive the patriarchal violence and that promises of gender equality that come with peace often go unfulfilled.⁴⁵⁵

Enloe further pointed out the myriad ways that women have developed new ways of talking about war and notes that concepts introduced by feminists include marital rape, intersectionality, femicide, toxic masculinity, coercive control and survival sex.⁴⁵⁶ Enloe highlighted that feminists have used these concepts to draw attention to often ignored aspects of war, including sexual and domestic abuse committed by soldiers, the use of rape as a strategy of war and the invisible labor women contribute during war.⁴⁵⁷ Enloe, in discussing the ways militarism bleeds into everyday life, argues that though militarism may privilege archetypes of manliness such as the war hero and

⁴⁵³ Enloe, C. (1989). *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. University of California Press.

⁴⁵⁴ Ibid.

⁴⁵⁵ Enloe, C. (1989). *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. University of California Press.

⁴⁵⁶ Enloe, C. (1989). *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. University of California Press.

⁴⁵⁷ Enloe, C. (1989). *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. University of California Press.

commander-turned-politician, it also requires ‘women’s complicity’ and ‘therefore wraps itself in the camouflage of maternalism, wifely loyalty, feminized gratitude, even women’s equality.’⁴⁵⁸

Very importantly and notably, this study engages with the data from the context of the *Boko Haram* armed conflict in Nigeria, to engage with Dara Cohen’s explanation of sexual violence that seeks to deviate from the dominant narrative of sexual violence as a strategic weapon of warfare. Cohen’s main argument suggests that when you have forced recruits, particularly through abduction, this increases the likelihood that insurgents will use sexual violence through the process of training, hazing and bonding recruits.⁴⁵⁹ Since these new members “are recruited by force,” come from a diverse background, and are unfamiliar to each other, the leadership will most likely “use rape to create and maintain unit cohesion.”⁴⁶⁰ Sexual violence thus functions as an effective “socialization tool” because it creates “bonds of loyalty and esteem from these initial circumstances of fear and mistrust.”⁴⁶¹ This “collective act of humiliating a victim” through peer pressure or threats against one’s own life if refusing to participate, “can cause individuals to behave in ways that they would never act if alone,” and as a result it can unify members and thereby increase morale.⁴⁶² It is understood here that Cohen’s research attempts to explain that in conflict, there are multiple incentives that can explain SGBV for both voluntary and involuntary recruits.

Apart from ideological incentives drawing in recruits, it would appear that some recruits are drawn into *Boko Haram* due to its unreasonably cheapened, and bastardized notion of bride price. *Boko Haram* can be seen as an “alternative means” to circumvent a pricey bride-price tax; for male

⁴⁵⁸ Cynthia Enloe, “Twelve Feminist Lessons of War,” *Chatham House* (Blog) 28 July 2023,

<https://www.chathamhouse.org/publications/the-world-today/2023-08/review-what-learn-womens-experience-war>.

⁴⁵⁹ Dara Kay Cohen, 2011, "Causes of Sexual Violence during Civil War: Cross-National Evidence (1980-2009)," Minnesota International Relations Colloquium: 29

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Dara Kay Cohen, 2011, "Causes of Sexual Violence during Civil War: Cross-National Evidence (1980-2009)," Minnesota International Relations Colloquium: 29

recruits, “wives are used to reward fighters for their service and to cultivate loyalty.”⁴⁶³ Remarkably, Cohen notes that if people are forcibly recruited then there is a 79% chance that they will end up perpetrating sexual violence; however, combatants who join voluntarily are less likely to perpetrate sexual violence—with only about a 38% chance that they will perpetrate sexual violence during conflict.⁴⁶⁴ This bears out in the *Boko Haram* armed group as the field data shows that a majority of the members of *Boko Haram* are involuntarily recruited through press ganging and through the sham and forced marriage processes, SVAC is rampant in the armed group. Also, societal gender inequality by itself does not necessarily exacerbate SGBV either;⁴⁶⁵ however, Cohen also argues that voluntary recruits motivated by greed, like material resources, are typically more prone to violence.⁴⁶⁶

In this case study *Boko Haram* offers both financial and familial rewards to new recruits and though Cohen does not include marriage within the ‘greed category’ in her analysis, sham marriages are used as an incentive to reward recruits. Shekau, the now deceased former leader of *Boko Haram*, in a video declared he would sell the kidnapped Chibok girls in the market, and marry them off to his men. Shekau fulfilled his threats, as this research data shows—recruits were encouraged by their leaders to point to any of kidnapped women and girls they fancied and the leaders would make it happen. Thus, the *Boko Haram* case study illustrates how the potential for marriage can act as a distinct pull factor for some voluntary recruits.

⁴⁶³ Hilary Matfess and Valeria M Hudson, “The Neglected Role of Brideprice,” 44-45.

⁴⁶⁴ Dara Kay Cohen, 2011, “Causes of Sexual Violence during Civil War: Cross-National Evidence (1980-2009),” Minnesota International Relations Colloquium, http://www.operationspaix.net/DATA/DOCUMENT/4220~v~Causes_of_Sexual_Violence_During_Civil_War_Cross-National_Evidence_1980-2009_.pdf.

⁴⁶⁵ Cohen, Dara Kay. 2013. “Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War,” *World Politics* 65 (3): 383–415.

⁴⁶⁶ Cohen, Dara Kay. 2013. “Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War,” *World Politics* 65 (3): 383–415.

Marriage, as explained in Chapter 4, is a key aspect of legitimizing SVAC by *Boko Haram*. Even more so, marriage, has been a key subject of feminist critique of patriarchy, power and gender based violence more broadly (such as marital rape and domestic violence). This has then formed a strong tool in the hands of *Boko Haram* in the process of their socialization on the deployment of SVAC in the community and in some instances, using marriage as platform for revalidation. It is therefore important to recall that Nigeria, in which *Boko Haram* predominantly operates, is steeped in patriarchy, which has led to the institutionalization of these discriminations against women in most facets of both public and private life. This is expressed in power structures that devalue and subjugate women, resulting in these norms and gender-based discriminations creating an enabling environment of gender-based violence pre-to-post-armed conflict. These power structures are in the social, economic, religious, political, legal spheres, etc. but this study primarily examined the legal, cultural, and religious structures.

This study grounds the analysis of sexual violence in the theory of power, focusing primarily on feminist perspectives of power and its effect on the woman, her body and her sexuality; tracing prominent feminist discourse around sexual violence in the context of armed conflicts viz-a-viz its criminalization in international law. Michel Foucault in his treatise on power and knowledge, sought to explain the power through the relations between norms and social values, conceptualizing power as not merely as a tool of coercion and control—power over, but as a diffused social construction.⁴⁶⁷ Foucault’s conception of ‘power over’, power as influence and control over others is akin to the power structures exercised by the men in these patriarchal

⁴⁶⁷ Michel Foucault, *The Archaeology of Knowledge* (1969).

societies that exert influence over women's power of agency over their own bodies, which in turn influences the institutions and systems in the society negatively against women.⁴⁶⁸

The traditional notion of power that power is linear, flowing directly from one acting agent (usually a male) to one subordinate agent (usually a female), and usually expressed in male domination of female, has attracted critique for overlooking the fact that the acting agent does not exercise his power in isolation, rather it is from social institutions that perpetuate this exercise of power that the acting agent derives the validation to exercise the power to dominate the subordinate.⁴⁶⁹ This linear model is what Kasubhai called "dyadic" because to him, it myopically recognizes only the acting agent and the subordinated one, without considering the other exterior, systematic enablers of the subjugation of women, in society's oppressive influences on male-female relations".⁴⁷⁰

Kasubhai thus introduced the situated theory of power as an alternative to the "dyadic" linear model, which conceptualizes power as operating like a "social web in which people, institutions, and language shape the relationship between a dominant acting agent and a subordinate receiving agent, thereby subordinating the choice of women."⁴⁷¹ Within the context of rape—a form of sexual violence—Kasubhai's situated conception of power: "necessarily recognizes that agents in any power model are contextually and structurally situated in a social web.... Other agents, which may be peripheral to the actual dynamic between the primary actor and subordinate, comprise the social web which supports the actor's actions, and reifies the subordinate's oppressive experience."

⁴⁶⁸ Ibid.

⁴⁶⁹ Mustafa T. Kasubhai, *Destabilizing Power in Rape: Why Consent Theory in rape law is turned on its head*, 11 Wisconsin Women's Law Journal 37, 41-42 (1996), citing Thomas E. Wartenberg, *Rethinking Power*, p.88-92 (1992).

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid; citing Wartenberg as describing the implications of a power web model that by "viewing the power that the dominant agent has over the subordinate agent as the result of the actions of peripheral social agents ... treats an agent's power over another agent as a result of the social field within which the two agents themselves are located." Ibid. at 80.

Raigrodski engaged with this view of power in her work on a feminist fourth amendment theory, by advocating for the conceptualization of domination and disempowerment to be done in such a way that we “acknowledge and represent our social formation and social situation,” and our laws recognize “how we are socialized, especially along lines of gender and race, to submit to those in power... how different power webs make us vulnerable to different things, at different places and at different times...[that] these power webs as perpetually shifting and reforming, as do our abilities to cope and resist them.” These are extremely invaluable considerations as what is the law if not a social contract between the governed and the governors, and for the law to be effective, then it must put into consideration, the different aspects of society that interact with each to influence and affect the people in the society and their relationships. It cannot be overemphasized that women have to engage with these shifting power webs in their daily lived experience, both as “victims of oppression and as agents resisting it; as a simplistic and dichotomized approach to free will and coercion, agency and victimization, power and powerlessness”⁴⁷² does not suffice to capture the complexity of this lived experience.

In this same vein, sexual violence in armed conflict cannot be explained outside daily lived experiences and situations, pre, during and post armed conflict of the survivors of this brutal form of violence. It is also conceivable that the perpetrators of this violence within a web of power are otherwise disempowered in society or in their fighting units but are in a position of power vis-à-vis the mostly female survivors of their violent crimes. Thus, while some scholars like Megan Gericke and Cohen have sought to critique and expand feminist continuity and gendered causal explanations of sexual violence in armed conflict on the point that these explanations are based on

⁴⁷² Dana Raigrodski, *Property, Privacy and Power: Rethinking the Fourth Amendment in the Wake of U.S. V. Jones*, 22 Boston University Public Interest Law Journal 67-128, p.104-105 (2013).

an assumption that “gender inequality matters in determining wartime sexual violence, without questioning how and when it matters”.⁴⁷³ Other scholars like Davies and True seek to improve upon Cohen et al.’s work by bringing gender back into the empirical examination of causality in this discourse.⁴⁷⁴ Davies and True advocated for the return of what they see as the missing variable in the analysis of sexual violence in armed conflict, using gender analysis as a ‘multifaceted form of explanation focused on structures, institutions and identities rather than single factors or individual-level variables’, in examining the ‘degree of gendered discrimination in a society...⁴⁷⁵ ‘in revealing short- to medium-term changes in gender relations’,⁴⁷⁶ calling for the integration of institutionalized gendered inequalities and discrimination in causal studies aimed at explaining sexual gender-based violence in armed conflicts.

In carrying out a gendered analysis of the power systems used to devalue women, this research argues that the culture of subjugation of women leads to the institutionalization of discrimination against women, which in turn affects sexual violence in armed conflict. The author further depicts that religio-cultural norms are used as a power tool to oppress and mete out violence on women.⁴⁷⁷ Of interest is the religious justification for sexual violence and slavery in the Boko Haram armed conflict. This research adopts an intersectional approach to expand the theoretical framework for the analysis of power to cover the various forms of oppression and their intersections. It approaches the analysis of the *Boko Haram* conflict from the assumption that Nigeria is a country steeped in

⁴⁷³ Megan Gerecke, *Explaining Sexual Violence in Conflict Situations*, in Laura Sjoberg and Sandra Via, *Gender, War and Militarism: Feminist Perspectives*, 138-156, p.150 (2011).

⁴⁷⁴ Sara Davies and Jacqui True, *Reframing Conflict-Related Sexual and Gender-Based Violence: Bringing Gender Analysis Back In*, 46(6) *Security Dialogue* 495-512, p.496 (2015).

⁴⁷⁵ *Ibid.*, p.501

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Dana Raigrodski, *Property, Privacy and Power: Rethinking the Fourth Amendment in the Wake of U.S. v. Jones*, 22 *Boston University Public International Law Journal* 67-128, p.83 (2013)

patriarchy and institutionalized forms of gendered discriminations and power structures that seek to control the woman, her body and her sexuality.⁴⁷⁸

5.1.2. Explaining SVAC through Armed Group Command and Control: The Role of Organizational Structure in Religious Ideology-Based Armed Conflicts

As recent armed conflicts depict, militant groups, initially struggle with a plethora of encumbrances in gathering material resources and aids, but often succeed on creating or joining alliances and gaining the resources to enhance their prowess and power to fight more powerful, often state-sanctioned militaries. Just as history has taught us, the world has seen prominent insurgent groups like Hezbollah and the PKK, who albeit were faced with uphill battles but still strove to consolidate more established rivals while developing robust organizational structures, which aided them to launch sustained attacks against their target states.⁴⁷⁹ It does not however take away from what appears like some, if not most, groups find it difficult to maintain their existence in the long term. For instance, the Syrian Muslim Brotherhood and the Egypt's al-Jamm'a al-Islamiya, could not sustain their military operations against their respective target regimes beyond their first few years of operation.⁴⁸⁰ This is not to say there are no such groups that have survived beyond their first year or have posed sustainable and consistent menace against their target states, in fact, Global Terrorism Data base estimates the number of these groups to be around 246 within 1970 to 2007, while Shkolnik identifies about 31 percent of these groups in their study.⁴⁸¹

⁴⁷⁸ Sefinatu Aliyu Dogo, The Nigerian Patriarchy: When and How, 2(5) *Journal of Cultural and Religious Studies* 263-275, p.263 (2014). See also, Oyèrónké.Oyèwùmí, *Gender Epistemologies in Africa: Gendering Traditions, Spaces, Social Institutions, and Identities* (2011).

⁴⁷⁹ Shkolnik, M. "Organizational Capacity and Constituency Dominance: Why Some Militant Groups Wage Sustained Insurgencies". *Perspectives on Terrorism*, October 2020, Vol. 14, No. 5 (October 2020), pp. 103- 116

⁴⁸⁰ United States Department of State. "Foreign terrorist Organizations". <https://2009-2017.State.gov/j/ct/rls/other/des/123085.htm> accessed: 12/04/2022.

⁴⁸¹ Shkolnik, M. "Organizational Capacity and Constituency Dominance: Why Some Militant Groups Wage Sustained Insurgencies". *Op. Cit.* P.103

Nonetheless, what is arguably the most significant factor that pushes the success of the efforts by militant groups to sustain armed conflict is not unconnected to their organizational structure of command and control, the factor which also accounts for those who could not sustain their armed groups beyond the short term. Hence, it is safe to opine that organizational capacity and constituency dominance are some inalienable drivers and more importantly, answers to the query of how these groups strive despite their uphill challenges.⁴⁸² Findings from various sources have shown that these factors go a long way in predicting which of these groups may have better sustained insurgent span, and they happen to be more potent than the traditional approach of measuring group capacities, to wit; the group size, state sponsorship, and multipronged attack.⁴⁸³

Aside from the foregoing explanations, Shkolnik also added that another factor that contributes immensely to the measurement of group's capacity and regime longevity is not just limited to how powerful or capable a group may appear, but also the enabling environment such as competitive atmosphere and opportunity to effectively mobilize resources and sustain armed hostilities against government forces.⁴⁸⁴ That is to say, the control and command structure is wholly dependent on the organizational structure and the enabling environment. Social movement studies on militant group structures have espoused that centralized and formally structured groups have more efficacy at mobilizing resources and achieving broader objectives, compared to an acephalus group.⁴⁸⁵

Nonetheless, militant groups employ various forms of organizational structure depending wholly

⁴⁸² Kilberg, J. "Organizing for Destruction: How Organizational Structure Affects Terrorist Group Behaviour," (PhD dissertation, Norman Paterson School of International Affairs, Carleton University, 2011)

⁴⁸³ Ibid

⁴⁸⁴ Shkolnik, M. "Organizational Capacity and Constituency Dominance: Why Some Militant Groups Wage Sustained Insurgencies". Op. Cit. P.103

⁴⁸⁵ McCarthy, J. D & Mayer N. Z. "Resource Mobilization and Social Movements: A Partial Theory," The American Journal of Sociology Vol. 82, no. 6 (1977). Pp. 1212–1241

on the goals upon which the group is formed from the outset, and the dominant quest of the locality they operate in.⁴⁸⁶

We also understand from foregoing discussions that that religious ideology and culture play a significant role in determining the extent to which a militant group sustains organizational capacities.⁴⁸⁷ In particular, religious groups have enjoyed access to robust social networks more often than any other form of militant groups, and this usually helps them with effective screening of recruits and helps to address better, their principal-agent problems and this significantly ensures compliance among the rank and-file.⁴⁸⁸ This is usually because it is easier to proclaim a particular religious cause and use it as justification for insurgent attacks, while being almost certain that there will be support from other extremist militant groups with similar or closely related ideology that would buy into the cause of the insurgency.

In the same vein, religiously motivated groups also wield such temerity that promises to be more lethal, while they maintain indivisible objectives thus, making negotiated settlements improbable, and promoting more armed conflict.⁴⁸⁹ Since a group's stipulated ideology and objectives are structured to influence their ultimate capacity and willingness to mobilize resources for sustained campaigns of attrition, then the command structure is always built upon the foundation of armed conflicts. But research has helped us understand that groups with lesser hostile objectives and narrower goals such as secession or territorial independence tend to achieve their ultimate objectives quicker or ultimately than groups who carry maximalist goals such as taking over a

⁴⁸⁶ Kilberg, J. "A Basic Model Explaining Terrorist Group Organizational Structure," *Studies in Conflict and Terrorism* vol.35, no. 11 (2012). Pp. 810–830

⁴⁸⁷ Cox, K., Jolly, S., Van Der Staaij, S., & Van Stolk, C. "Understanding the Drivers of Organisational Capacity," RAND (2018).

⁴⁸⁸ Jacob N. S. "The Terrorist's Dilemma: Managing Violent Covert Organizations" Princeton, NJ: Princeton University Press, (2013). P. 23

⁴⁸⁹ Hoffman, B. "Inside Terrorism". New York: Columbia University Press, (2006); see also Duffy Toft, M. "Getting Religion? The Puzzling Case of Islam and Civil War," *International Security* Vo. 31, no. 4 (2007). Pp. 97–131.

particular government regime or a particular state control.⁴⁹⁰ We have also seen that secessionist groups more often than not also enjoy support from a more concentrated constituency that often share similar political and territorial goals.⁴⁹¹ This is because they are mainly in search of cultivating support from a more well-defined region, which invariably makes it easier for them to mobilize resources for their insurgent attacks than groups seeking to change a specific policy or make inroads across an entire state.

Enabling factors such as competitive dynamics among constituent and rival organizations promotes the trajectory of a militant movement, just as it can be potent against every other social movement. Research abounds have proven that rival relations and internal movement structure aids the promotion of militant dynamics.⁴⁹² Therefore, when the militant group splits, it influences the duration of insurgencies or group longevity as the attacks becomes difficult to curtail with a single effort, rather each sect requires different approach especially when the locality are different.⁴⁹³

The race towards synergizing resources and man power ahead of the other groups or sect creates competition among militant groups, this particularly is crucial to the violent conflict as it spells more doom for the target States.⁴⁹⁴ This is because violence is seen as the best way to signal capabilities and dangerous temerities to rival sects just as the outbidding logic which has been

⁴⁹⁰ Abrahms, M. "Why Terrorism Does Not Work," *International Security* Vol. 31, no. 2 (2006). Pp. 42–78.

⁴⁹¹ Duffy Toft, M. "Getting Religion? The Puzzling Case of Islam and Civil War," *Op. Cit.* P. 105

⁴⁹² Pischedda, C. "Wars Within Wars: Why Windows of Opportunity and Vulnerability Cause Inter-rebel Fighting in Internal Conflicts," *International Security* Vol. 43, no. 1 (2018). Pp.138–176

⁴⁹³ Mahoney, C. W. "Splinters and Schisms: Rebel Group Fragmentation and the Durability of Insurgencies," *Terrorism and Political Violence* (2017). Pp. 1–20

⁴⁹⁴ Shkolnik, M. "Organizational Capacity and Constituency Dominance: Why Some Militant Groups Wage Sustained Insurgencies". *Op. Cit.* P.105

explained in the literatures.⁴⁹⁵ Also, the rival groups are always longing and eager to consolidate each other, by indulging in more destructive campaigns or forming more dangerous alliance just to uphold themselves as the dominant group.⁴⁹⁶

Taking cue from the position of Young and Dugan, it is understood that higher levels of militant group competition will reduce the likelihood of group survival owing largely due to the number of terrorist groups in a country.⁴⁹⁷ According to the authors, the most active militant group in a country are dubbed the “Top Dog” title, and it remains a factor that keeps pushing the exitance of competition.

5.1.3. Religious Ideology Justification Explanation for Sexual Violence in Armed Conflict

A historical analysis shows that it will only be naïve to assume that there is little or no influence of religious ideology in the activities of some groups, especially terrorist or militants who tend to misconstrue certain religious tenets to justify their inhumane activities. A major contribution of this study that makes it unique and a substantial contribution to the academic discourse of explaining sexual violence in armed conflict—particularly armed conflicts that are motivated by religious ideology like the *Boko Haram* conflict—is that it explores possible explanations of sexual violence in armed conflict through the lens of the androcentric, religious ideology justifications adduced by some perpetrators of this phenomenon.

⁴⁹⁵ Bloom, M. “Dying to Kill: The Allure of Suicide Terror” New York: Columbia University Press, (2005); see also Nemeth, S. “The Effect of Competition on Terrorist Group Operations,” *Journal of Conflict Resolution* Vol. 58, no. 2 (2014). Pp.336–362; see also Kydd and Walter, “The Strategies of Terrorism.”

⁴⁹⁶ Pishedda, C. “Wars Within Wars: Why Windows of Opportunity and Vulnerability Cause Inter-rebel Fighting in Internal Conflicts,” *Op. Cit.* Pp. 138–176

⁴⁹⁷ Joseph K. Y. & Dugan, L. “Survival of the Fittest: Why Terrorist Groups Endure,” *Perspectives on Terrorism* Vol. 8, no. 2 (2014).

Although Nigeria claims to be a secular state,⁴⁹⁸ it is comprised of very religious people, predominantly Christian-south and Muslim-north, who believe that the laws of God supersede the laws of men and when faced with the choice, will choose the laws of God above the laws of men. Unfortunately, aberrations occur in this kind of situation and religious laws, norms, doctrines, ideologies are sometimes misinterpreted by clergy who are predominantly male and sometimes use their powerful positions to interpret scriptures in ways that keep women subjugated. An example of this is in the religious justifications of sexual violence/slavery in armed conflict, which is rooted in the controversial Islamic doctrine of “*what your right hand possesses*”, which the *Boko Haram* leader has publicly espoused as justification for kidnapping and enslavement of women for sexual and other forms of violence and exploitation.⁴⁹⁹ Another relevant justification discussed in this section, that arose from empirical data in the context of the *Boko Haram* armed conflict, is the concept of *Jizya*. This study empirically explored and analyzed the validity of these select explanations in this regard within the *Boko Haram* conflict.

The Islamic Doctrine of What Your Right Hand Possesses

Having examined the impact of religious ideology on crimes of a sexual nature, this section of the research will examine the concepts of patriarchy, traditional history and to what extent there is justification, if any, in the context of the *Boko Haram* conflict. Instructive in this section is the theory as advanced by Kecia Ali as captured in the Islamic Doctrine of “what your right hand

⁴⁹⁸ Though the 1999 Constitution does not expressly proclaim Nigeria to be a secular state. See Osita Nnamani Ogbu, *Is Nigeria a Secular State? Law, Human Rights and Religion in Context*, *The Transnational Human Rights Review* 135–178 (2014).

⁴⁹⁹ Aminu Abubakar & Josh Levs, *Boko Haram leader: 'I will sell' kidnapped Nigerian girls*, CNN (2014), <https://www.cnn.com/2014/05/05/world/africa/nigeria-abducted-girls/index.html> (last visited Feb 7, 2019).

possesses”. Religious ideology can be said to be the principles guiding the thoughts and behavior of individuals belonging to a particular religion.⁵⁰⁰

As noted above, religious ideology has been implicated as a plinth upon which the behaviors of those who perpetuate sexual violence rest. Part of the existing literature on this point has been written by Sawari.⁵⁰¹ Sawari examined the impact of rebel ideology on sexual violence during war time. Sawari concluded that rebels with religious ideology are more likely to commit acts of sexual violence than those with other ideological inclinations while noting that Islam does not condone violence against women, subsets and texts may be the basis upon which this violence may be perpetrated.⁵⁰² This is based on the argument that a common ideology pervasive in most religions is the inferiority of women in society.⁵⁰³

In addition, it is often assumed that religions seek to promote this traditional gender hierarchy.⁵⁰⁴ Thus, as pointed above, one of the factors enabling the perpetration of sexual violence in armed conflict is the idea that women are subject to the control of the male gender, Sarwari believes that since this idea is the brainchild of religious ideology gifted to the adherents of the religion, the propensity of adherents of these religion to commit sexual violence during armed conflict cannot be misconceived.

Sawari espoused two main ideologies: Islamic and non-Islamic ideology. With respect to Islamic ideology, the author asserted that Islamic State finds justification for the perpetration of sexual

⁵⁰⁰ James K. Wellman, *Evangelical v. Liberal: The Clash of Christian Culture in the Pacific Northwest*, (Oxford Scholarship Outline, 2008) DOI: 10.1093/acprof:oso/9780195300116.001.0001.

⁵⁰¹ Mehwish Sarwari, “Impact of Rebel Group Ideology On Wartime Sexual Violence” *Journal of Global Security Studies*, 16(2), 2020.

⁵⁰² *Ibid*, 5.

⁵⁰³ *Ibid*.

⁵⁰⁴ *Ibid*.

violence in armed conflict through the interpretation of Sharia law.⁵⁰⁵ The provision of the Quran, which is the main source of the law that has been cited to justify and support this point is Quran 4:34. The verse reads:

Men are the maintainers of women because Allah has made some of them to excel others because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you do not seek a way against them; surely Allah is High Great.

The above provision evinces the position of Islamic law on the status of women vis-à-vis men in society. By this provision, Islamic law appears to favor and support the patriarchal system. Since it can be implied that patriarchal attitudes enable sexual violence, a viable conclusion that one could draw, just like Sarwari did, is that justification for sexual violence could arguably be found under Islamic law. It is also worth discussing whether from the above provision, it could be argued that a male participant in an armed conflict could be exonerated under Islamic law if he commits the act of sexual violence against a female during armed conflict. This is further adumbrated by the postulation of Raza, when the author stated that:

... the legalizing of marriage and concubinage with slave women favored the development of a classical Islamic legal ethos that

⁵⁰⁵ *ibid.*

endorsed the fulfilment of masculine sexual needs and conceived of women as mainly sexual objects.⁵⁰⁶

As shown by the data,⁵⁰⁷ the position finds a contrasting perspective from Islamic clerics and legal scholars interviewed in the course of this research. However, this work argues that the position of Raza holds some grounds as majority of views from the data point to the validity of the claims that there seems to be some link with religious ideologies and use of sexual violence as a tool in warfare.⁵⁰⁸

From the ordinary interpretation of the above verse, a reasonable deduction that one could draw is that the answer to the above poser is in the affirmative. However, more modern interpretations of the verse argue that, while the act of sexual violence as conceptualized above is permitted to a certain degree under Islamic law, it is only allowed between a legally married couple.⁵⁰⁹ Thus, since armed combatants during the war are not arguably, properly married to the women they launch this act against, they will not be justified under Islamic law by taking shelter under the above provisions.

While Sawari opines the legality of “violence” amongst domestic spouses in Islam, other scholars like King, while noting that women suffer domestic violence within Islam, allege the fact that such interpretations are not well conceptualized.⁵¹⁰ Islam further critic the assumption that Islam supports sexual violence and advances that it is more informed by gender inequality and gender

⁵⁰⁶ Raza, Sara. "Sexual Ethics and Islam: Feminist Reflection on Qur'an, Hadith, and Jurisprudence: A Book Review." (2019): 130.

⁵⁰⁷ Figures 1 to 6, Chapter 4

⁵⁰⁸ This position is seemingly supported by the works of Ali, see generally, Ali, Kecia. "Timeless texts and modern morals: Challenges in Islamic sexual ethics." In *Sacred Tropes: Tanakh, New Testament, and Qur'an as Literature and Culture*, pp. 201-216. Brill, 2009.

⁵⁰⁹ Rabha Isa Al-Zeera, 'Violence Against Women in Qur'an 4:34: A Sacred Ordinance? In *Muslima Theology: The Voices of Muslim Women Theologians*, Ednan Marcia Hermansen, Elif Medeni (eds.) (2013, Peter Lang AG), 224.

⁵¹⁰ King, Anna. "Islam, women and violence." *Feminist Theology* 17, no. 3 (2009): 292-328.

bias.⁵¹¹ The position of Islam supporting sexual violence have also been vehemently opposed by Alaro, stating that Islam frowns on all violence against women and chalk up the misunderstanding to a lapse in interpretation of the Quran.⁵¹² To understand the Quran, scholars have established two basic interpretational approaches.⁵¹³ In the first type, different verses from the Quran are allowed to clarify one another, or in other words, the Quran is explained intra-textually. The second method entails reading the Quran in accordance with the Prophet's lead, who was described by his wife as a “walking Quran”, as an example.

Relying on the first methodology stated above, scholars have attempted to give a clearer definition of Quran 4:34.⁵¹⁴ The following passages are at the center of the few verses in the Quran that explain the ideal marriage between husband and wife: “And among His Signs is that He made partners for you among yourselves so that you may live in peace with them, and that He inserted love and mercy into your hearts. Indeed, there are indicators there for those who reflect” [Quran 30:21]. In another verse, God commands men to “live with your wives in love and equity” [4:19], yet in other verses, he threatens them with rebuke if they truly commit a transgression against their spouses [2:231]. Additionally, there are scriptures that emphasize the complementary aspect of marriage by stating that husbands and wives are one another’s clothing [2:187] and that men and women are one another’s defenders [9:71]. According to these experts, these passages establish the norm and paradigm of spousal relationships in terms of love, compassion, and reciprocity.⁵¹⁵

⁵¹¹ Islam, Md Shahidul. "Intimate partner sexual violence against women in Sylhet, Bangladesh: some risk factors." *Journal of biosocial science* 54, no. 1 (2022): 54-76.

⁵¹² Telephone conversation with Abdulrazak Alaro, held on July 20, 2021. Alaro is a Professor of Islamic Law at the Department of Islamic Law, Faculty of Law, University of Ilorin.

⁵¹³ Narrated in Sahih Muslim

⁵¹⁴ Zaleha Kamaruddin, “Violence Against Women...”, pp. 124–125.

⁵¹⁵ Narrated by Suyuti; Nazir Khan, "Key Texts on Domestic Violence" (paper presented on domestic violence, Manitoba, Canada, October 10, 2015).

A companion of the Prophet once questioned the Messenger, “What do you say [advise] regarding our wives?” according to other hadith, or narrations. “Share with them the same food you have for yourself, and clothing them by the same means by which you dress yourself, and do not beat them, and do not revile them”, the Prophet retorted.⁵¹⁶ A further statement made by the Prophet was, “Would one of you whip your wife like a slave and then sleep with her at the end of the day?!” thus highlighting how ludicrous it is for someone to hurt his wife.⁵¹⁷ Instructively, according to research, there is some level of acceptance of wife beating as found by Choon “affiliation with Islam is related to an accepting attitude toward wife beating regardless of demographics”.⁵¹⁸ Importantly however, a balance is struck on the basis of knowledge of the tenets of Islam. as argued by Alaro above. Invariably, therefore, the activities of the *Boko Haram* members suggest this ignorance in activities of sexual violence. The implications therefore are that there are obvious dangers when Imams and leaders of thoughts among the sect, prime their minds into treating women in disdain manner.⁵¹⁹

Scholars contend that a misinterpretation of Quran 4:34 gives rise to the argument regarding the problem of domestic violence in Islam.⁵²⁰ This verse outlines a three-step process for a husband to use if he is concerned about his wife’s flagrant or disobedient behavior. He must first verbally caution her against her course of conduct and correct her errors. To express his dissatisfaction, he must then ‘abandon’ her bed if this does not make things better. The last resort has been translated

⁵¹⁶ 1 Narrated by Abu Dawud; Khan, “Key Texts on Domestic Violence” (paper presented on domestic violence, Manitoba, Canada, October 10, 2015).

⁵¹⁷ Jonathan Brown, *Misquoting Muhammad* (London: Oneworld Publications, 2014), 274.

⁵¹⁸ Chon, Don Soo. "Muslims, religiosity, and attitudes toward wife beating: analysis of the world values survey." *International criminology* 1, no. 2 (2021): 150-164.

⁵¹⁹ For further alternative perspective on this subject see generally, Schuler, Sidney Ruth, and Farzana Islam. "Women's acceptance of intimate partner violence within marriage in rural Bangladesh." *Studies in family planning* 39, no. 1 (2008): 49-58.

⁵²⁰ Hammudah Abd al-Ati, *The Family Structure in Islam* (Brentwood: American Trust Publications, 1977), 158.

as a symbolic act of bodily punishment (araba) if it too is ineffective. This practice, which basically requires the spouse to calm down and refrain from causing harm out of anger, was perhaps developed to control an initial outburst of rage. As a result, experts advise against obtaining unguided legal answers from the Quran because doing so will prevent you from understanding the book, which requires professional interpretation and contextualization.⁵²¹

Whilst the position of scholars on this issue of the acceptability of any sexual violence or violence in its totality in Islamic law and Islam, as has been expounded by Leatherman⁵²² and Koos⁵²³ on the idea of the supremacy of men over women and how this ultimately fuels sexual violence against women, certain texts of the Quran amongst other scriptural texts may have a negative aftereffect on women in times of war, as the notion of the superiority of men and dominance of men are promoted in these texts. This ranges from Quran 4:34, which excluding the controversial latter parts of the texts, and focusing on the initial texts on the superiority of men to women, reads: “Men are the protectors and maintainers of women because Allah has made men excel over the women, and because they spend out of their possessions (to support them)”. Further Quran 33:32 provides “if you are mindful ‘of Allah’, then do not be overly effeminate in speech ‘with men’ or those with sickness in their hearts may be tempted but speak in a moderate tone”.

The imposition of these differences in the position of men and women often contributes to the idea of the supremacy or superiority of men in specific areas and sometimes may be conceived as a hindrance to the effective empowerment of women in a modern society. While these texts may not intend any harm in their ordinary meaning, in its application it goes to the effect of limiting women

⁵²¹ Jonathan Brown, *Misquoting Muhammad* (London: Oneworld Publications, 2014), 274.

⁵²² Janie Leatherman, “Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization” *International Journal of Peace and Studies*, Vol. 12(1), 2007, 57.

⁵²³ Carlo Koos, “Sexual Violence in Armed Conflict: Research, Progress and Remaining Gaps” *Third World Quarterly*, (2017) Vol. 38(9) doi <https://dx.doi.org/10.1080/01436597.2017.1322461> , p. 1939.

in society. The results of these are best perceived in statistics and surveys arising from Muslim majority countries. The Gender Inequality Index (GII)⁵²⁴ reveals significant increments among nations with a comparable share of Muslims.⁵²⁵ The gender gap in education and labor force participation was also examined by Rauch and Kostyshak.⁵²⁶ They discovered that the gender gap in a country with a 100% Muslim population is 18.3% greater than in a country with a 0% Muslim population by using the Muslim population percentage as an explanatory variable. The import of this is the possibility of increased involvement in armed conflict like the situation what is seen in the *Boko Haram* activities in Nigeria; especially with a wide gap in education or poor education as the case maybe.⁵²⁷

As Leatherman explicated the patriarchal system, which is an apparent theme in the ideologies of Muslims and Islam at large around the world, contributes, in one way or the other, to the sexual violence being perpetrated during armed conflict.⁵²⁸ This may be viewed from the perspective that the control and domination of males over females is the function of the system.⁵²⁹ In a system where men see themselves to be in control always, irrespective of the original intent, would inadvertently lead to the license to foist their desires on the female gender especially in times of

⁵²⁴ For as many nations as data of reasonable quality permit, GII represents gender-based disadvantage in three areas: reproductive health, empowerment, and the labor market. It demonstrates the lost opportunity for human development brought on by the disparity between male and female accomplishments in various fields. The scale goes from 0, when men and women perform equally, to 1, where one gender performs as poorly as possible across the board. The association-sensitive inequality measure proposed by Seth (2009) is used to calculate GII values, which implies that the index is based on the general mean of general means of different orders. These means are first aggregated by a geometric mean across dimensions, and they are then aggregated using a harmonic mean across genders.

⁵²⁵ Hdr.undp.org. 2015. Gender Inequality Index (GII) | Human Development Reports. [online] Available at: <http://hdr.undp.org/en/content/gender-inequality-index-gii> .

⁵²⁶ Rauch, J. - Kostyshak, S. (2009): The Three Arab Worlds. *Journal of Economic* 23(3): p. 165-188.

⁵²⁷ See generally, Onuora-Oguno, Azubike, and Mariam Adepeju Abdulraheem-Mustapha. "Beyond the Law to Socio-Legal Intervention: The Boko Haram Insurgency and the Nigerian Child." In *Boko Haram and International Law*, pp. 371-389. Springer, Cham, 2018.

⁵²⁸ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 57.

⁵²⁹ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55.

war.⁵³⁰ This position is similar to what Koos explained, that inequalities ingrained in the society before the war.⁵³¹ Koos stated explicitly that to the extent where women are viewed as a weaker and unequal gender prior to the start of a war, this inexplicably impacts the treatment of women during the time of war. Thus, it becomes another factor relevant to the elements that leads to sexual violence in armed conflict.

The question arising from this assertion is on how this would be achieved. This position expectedly falls within the confines of the significance and objective of this thesis in proffering suggestions through which the menace of sexual violence would be curtailed. The Companion Umar bin Khattabra's declaration that "By Allah, in the Pre-Islamic Period of ignorance we did not pay attention to women until Allah revealed regrading them what he revealed regarding them"⁵³² reflects significant advancements in the understanding of women personhood. This declaration was made during a conversation between the Prophet's Companion and Abass, another companion of the Prophet. This conversation gives insight into how, before Islam, women were treated. The struggle to eradicate sexual violence has been directly correlated with feminist awareness.⁵³³ In its whole, sexual violence against women and against those who are not married should be eradicated, according to the Quran's teachings.⁵³⁴ For instance, in the Quran, particularly, Quran 4:19, Allah Provides that "O you who believe! You are forbidden to inherit women against their will. Nor

⁵³⁰ Janie Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 55

⁵³¹ Ibid. p.1939.

⁵³² Sahih Bukhari Vol. 6, Book 60, Hadith 435, Available on < <https://sunnah.com/bukhari:4913> > accessed on the 8 November 2022.

⁵³³ See Kings above

⁵³⁴ Generally, sexual activities amongst unmarried persons in Islam is general prohibited. See generally Mustapha, Ahmad Murshidi, Mohd Zahir Abdul Rahman, and Mohd Miqdad Aswad Ahmad. "An Approach to Address Sexual Misconduct Through the Lessons Found in The Stories of Prophet Joseph and Prophet Luṭ in The Quran." *International Journal Of Academic Research In Business And Social Sciences* (2021).

should you treat with harshness...”. This Verse bears testimony to the fact that sexual violence is not an act condoned in Islam.⁵³⁵

The problem remains that the Quran is still being subjected to diverse interpretations which are basically in three forms understanding of women's humanity. First, there is the ancient and anachronistic understanding which is more or less the pre-Islamic practice which some interpreters refused to divulge of themselves even after the clarification of Islam on women's rights. This view sees women as objects rather than human and this is a clear point of Departure as the ideal Islamic standard.⁵³⁶ They consequently failed to connect Islam's message of benefit to women. Then we have the Intermediate Target Verse which is often viewed as the ideal Islamic standard by Quran readers with intermediate levels of awareness who regard women as inferior beings.⁵³⁷ They consequently neglect to relate the positive message of Islam to the special human experience that women have, both naturally and socially. However, we have the Final Purpose Verse is frequently regarded as the ideal Islamic standard by readers with the highest levels of understanding who recognize women as full human beings.⁵³⁸ This view ensures that neither the good of Islam nor any of the five social experiences of women added to the suffering of their five biological experiences.⁵³⁹

The major obstacle to ending sexual violence against women in Islam is therefore not the Quran's system of Islamic doctrine, but rather the human awareness of women, both male and female, and how they interpret the Quran. In order for the Final Purpose Verses to serve as the cornerstone of a life system full of grace for the cosmos, including for women, efforts to eradicate sexual violence

⁵³⁵ See also Quran 33:35 for the need to treat women with utmost respect in Islam.

⁵³⁶ Rahman, 2008(1); Faiz-ud-din, 2008(2), Rashid, 2004(3).

⁵³⁷ Saifee, Baloach, Sultan, & Khalid, 2012(4); Uddin, & Hossain, 2017(5); Kabir, 2009(6).

⁵³⁸ Doi, 1992(7); Mohammad, & Lehmann, 2011(8); Soomro, & Khuhro, 2018(9).

⁵³⁹ <https://www.scirp.org/journal/paperinformation.aspx?paperid=96850#ref13> .

in Islam must be combined with initiatives to increase awareness of the complete humanity of women, as well as their rights to bodily autonomy and dignity of their person.

Consequently, it might not be out of place to consider that, since the perpetrators of these crimes are human, their actions may have been informed or influenced by their personal or group ideologies. In this regard, religious ideology held by the participants in the armed conflicts, who subject themselves to such religion, may be implicated. Sarwari⁵⁴⁰ argued, in assessing the impact of ideology of rebel group in wartime sexual violence, that rebel groups with religious ideology, whether Islamic ideology or non-Islamic, are more likely to commit the crime of sexual violence during armed conflicts than any other group. This evinces that religious ideology, to certain degree, influences the behavior of combatants that engage in sexual violence. Put in other words, religious ideologies of the perpetrators of this crime have been cited as justifications⁵⁴¹ for this rather obnoxious act of sexual violence.

Despite criticism against the apparent justification for sexual violence in religious texts, there exist provisions in religious texts that appear to influence and contribute, directly or indirectly, to sexual violence that could potentially be misjudged as a justification for sexual violence. However, while religious ideology works indirectly to preserve men's dominance in the society, thereby impliedly and potentially allowing for a society where women may be sexually abused on account of their supposed lower status in the society, the law has insisted that any element of coercion during the act of sexual nature, such will be considered as offence under the law. This is reflected in the prohibition of rape and other acts of sexual violence in various laws, international and national.

⁵⁴⁰ Mehwish Sarwari, "Impact of Rebel Group Ideology On Wartime Sexual Violence" *Journal of Global Security Studies*, 16(2), 2020.

⁵⁴¹ This idea resonates through the works of Hassner as included in his work. See generally, Hassner, Ron E. *Religion on the Battlefield*. Cornell University Press, 2016.

Jizya

Atta Barkindo's *Our Bodies, Their Battle Ground*⁵⁴² is also instructive for our understanding of the *Boko Haram* conflict and the religious ideology justification espoused by *Boko Haram* for their repeated brazen abduction of thousands of women and girls for sexual slavery.⁵⁴³ Atta Barkindo's research work⁵⁴⁴ sought to "investigate[...] gender based violence specifically against Christian women and children in the context of [sic] Boko Haram". It explained the *Boko Haram* justification of sexual violence in armed conflict as *jizya*, a religious justification of sexual violence/slavery in armed conflict rooted in the historical proprietary rights of men over women expressed through the Islamic tax called *jizya*, where non-believing abductees are sexually violated as payment of tax (*jizya*) for the privilege of having their lives spared and for their upkeep in the camps where they are kept.⁵⁴⁵ According to data from this study:

Jennifer Gyang was abducted on May 1, 2013, after her parents and brothers escaped. Jennifer and other five Christian women were kept for two weeks within a hideout in Maiduguri and repeatedly raped. A reason advanced by their captors was that Jennifer Gyang and the other women were Christians. Islamic law

⁵⁴² Atta Barkindo, *Our Bodies, Their Battle Ground: Boko Haram and Gender Based Violence Against Christian Women and Children in North-Eastern Nigeria Since 1999*, Nigeria's Political Violence Research Network Working Paper No. 1 (2013).

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Asma Afsaruddin, Jizyah (Islamic Tax) Encyclopædia Britannica, <https://www.britannica.com/topic/jizya> (last visited Jan 31, 2019). Jizyah, also spelled jizya, historically, a tax (the term is often incorrectly translated as a "head tax" or "poll tax") paid by non-Muslim populations to their Muslim rulers. The jizyah is described in the Qur'an as a tax that is imposed on a certain erring faction from among the People of the Book (Ahl al-Kitāb; non-Muslim groups such as Christians and Jews recognized in the Qur'an as possessing a divine scripture) who violate their own religious and ethical principles (9:29).

allows Christians to pay the jizya; a special tax for Christians under Islamic law paid for their own protection.⁵⁴⁶

Consequently, the rape of these women was justified to them by *Boko Haram* combatants perpetrating the violence, as being on the bases of the concept of sex as jizya.⁵⁴⁷ The study in question also explored the puzzle inherent in the fact that *Boko Haram*'s ideological justification for this is inconsistent with its operational targeting of Christian women and children in its analyses of the underlying "ideological motivations, conflict strategies and mobilization processes;"⁵⁴⁸ as part of its investigation of the nature, types and degree of violence against Christian women and children.

5.1.4. Islamic Feminist Critiques on Sexual Violence in Armed Conflicts

Numerous methods and mechanisms of war have been employed throughout history by warring states to achieve their various motives and, ultimately, emerge victorious at the end of the conflict. Rape and generally other forms of sexual violence has been prevalent in wars and used to torment innocent civilians of the opposing country. Despite the fact that the numerous conflicts in human history had been birthed as a result of varying reasons, which one may either find reasonable or otherwise, one of the unifying elements common to most of such conflicts is the sexual violation and rape of innocent civilians, which has long been considered as "an unfortunate but inevitable accompaniment of war".⁵⁴⁹ The reason for this may be to use it as a tool to assert and maintain control over the people or as is the truth in most cases, rape and sexual violence is used as a means of entertaining the soldiers. A typical example of this is the case of the "comfort women" from

⁵⁴⁶ Supra, note 59, p.27.

⁵⁴⁷ Ibid., p.25

⁵⁴⁸ Ibid., p.4

⁵⁴⁹ Anne .L. Barstow: "Rape- War Crime, Gender-Based Violence"

countries like Korea and the Philippines forced into sexual slavery by the Japanese imperial army to satisfy the sexual needs of Japanese soldiers during the World War II.

It of course should attract no surprise to state that one of the issues raised and addressed by feminists all over the world and since time immemorial, is the disheartening prevalence of the rape and sexual violation of females in most climes but, most especially, in times of conflict. The religion of Islam and its teachings have also always had a strict aversion towards such acts. The golden question here would then be “what exactly does Islamic feminism suggest?” And “why is it considered as separate from feminism in the general sense?” Islamic feminism much like the general movement seeks to assert women’s rights to be considered social equal of their male counterparts, especially when it comes to available opportunities and self -determination. The difference however lies in the fact that Islamic feminists draw their arguments from the content of the Quran, Hadith and other recognized sources of Islamic law/ Shariah. On this note, this section will address the topic of sexual violence in armed conflicts from the different perspectives of Islamic feminists.

The Quran, which is the holy book of the adherents of the religion of Islam and is considered the first of the two primary sources of Islamic law, in one of the many instances where it addressed the concept of war, the circumstances within which it is permitted, as well as the acts that are considered permissible or otherwise during the time of war, stated in *Q2:190* as well as *22: 39* among many others, that permission is granted to Muslims to fight and defend themselves against those who fight them and to avoid being transgressors for “Allah does not like transgressors”. What this suggests, is that since war is considered permissible in Islam albeit under certain circumstances, there must be certain rules guiding the conduct of Muslims during times of war.

Some scholars of Islamic law, such as Professor Saud Saleh, a female Islamic scholar of the prestigious Al-Azhar University in Cairo, Egypt, are of the quite questionable opinion that Muslim men are permitted in the Quran by Allah to rape non-Muslim or infidel women in order to “humiliate them during the time of legitimate war between Muslims and their enemies”. According to her, Allah has granted Muslim men a legitimate avenue to have sexual intercourse with female slaves and prisoners of war.⁵⁵⁰ A professor of History at the Florida state University, Dr. Andrew Holt however, expressed his disagreement with this statement while stating that Saleh’s comments may erroneously be perceived by the rest of the world as the Muslim world’s approval of the rape of Yazidi women and ISIS fighters and officials.⁵⁵¹

In Imam Nakha’i’s opinion, sexual harassment as well as all gender-based violence are prohibited in Islam. He maintained this position by relying on two hadiths of the prophet Muhammad (P.B.U.H), reported by Ath Thabrani, where the prophet stated that it would be better for a man of the Muslim belief to have his head stabbed by an iron needle than to grope a woman who is not his own wife. He also made reference to the statement made by an Egypt Mufati by the name Syauqi Ibrahim Allam who said that sexual violence against women is a big sin considered to be a disgusting and bad act in the perspective of the Shariah.⁵⁵²

One of the arguments usually made by scholars who are of the opinion that sexual violence or rape (at least, in the modern definition of same) is permissible of Muslim men against female prisoners of war or slaves is that the Quran provides that Muslim men are permitted to make sexual advances to their wives as well as those which their “right hand possesses” i.e., their slaves. However, Hazrat

⁵⁵⁰ Farhan Iqbal, Missionary, Ahmadiyya Muslim Community, Canada: “Islamic teachings on Female Prisoners of War”, 2023.

⁵⁵¹ Farhan Iqbal, Missionary, Ahmadiyya Muslim Community, Canada: “Islamic teachings on Female Prisoners of War”, 2023.

⁵⁵² Imam Nakha’i: “Islam Rejects Sexual Violence”, 5th October, 2020.

Mirza Bashir-ud-din Mahmud Ahmad commented on this issue in his commentary on the holy Quran titled, “Tafsir-e-Kabir”. Hazrat stated in his Tafsir on *Quran 23: 7* that certain conditions must first have been met before a female prisoner of war may be handed over to a Muslim soldier and these conditions include the fact that such prisoners may only be taken during the time of war and that they may be released under four different circumstances which may be through the payment of the ransom of such slaves or prisoners of war, or as show of goodwill by the Muslim government where the slave cannot afford to pay the prescribed ransom among others.

The problem however seems to lie in the fact that any female slave who refuses her own release under any or all of the four available avenues for such must be married, even if involuntarily to a Muslim man. If she gets pregnant and gives birth after such release, she is considered to have been set free. The criticism of this, is that where a war prisoner is involuntarily married to a Muslim soldier just because she has refused her own release, any sexual relationship that leads to the pregnancy and birth of the child which eventually sets her free is undoubtedly to be considered as rape.

The argument made against this by Farhan Iqbal is to the effect that the commandments made by the holy Quran to guide the conduct of Muslims during the time of war have been put in place to ensure the prevention of the immorality that becomes prevalent in the chaos of war.⁵⁵³ He stated that involuntary marriage has been put in place only as a last resort and is done in the interest of preventing the spread and prevalence of immorality during the time of war. He also cited the provision of Quran 8:68 where Allah gave the instruction that Muslim troops are prohibited from capturing and making women who are not participating in battle, prisoners of war. In addition to

⁵⁵³ Farhan Iqbal, Missionary, Ahmadiyya Muslim Community, Canada: “Islamic teachings on Female Prisoners of War”, 2023.

this, women who have been made prisoners of war are also granted the avenues earlier discussed, to work for their freedom.⁵⁵⁴

Sexual violence in whatever form both in the periods of war or otherwise arguably is frowned upon by Islam and its teachings. In considering the basis for the criticisms made by the scholars who have discussed the dynamics of sexual violence and rape of innocent civilians during war and the usage of same as a tool or mechanism of war and how the Islamic law applies in such circumstances, it would however be an oversight to insist on ignoring the occurrence and somewhat condone the same in the history of the religion.

It has been opined that Islamic law marriage serves as a comprehensive⁵⁵⁵ and meticulously structured way of life designed for Muslims specifically and the entire universe at large. This includes the institution of marriage, where the Shariah lays down precise regulations regarding the process: from how to marry, when to marry, where to marry, to why one should enter into marriage. Consequently, strict adherence to these rules is imperative for any marriage to be considered valid under the Shariah. Thus, it has moral, legal and societal implications if a marriage is said to be unlawful. The unlawfulness of the purported marriage of *Boko Haram* to the abducted women can be sourced right from the consent of the other parties (i.e women). Abu Hanifa deemed a marriage contract void (*batil*) and ineffectual if its constituent parts were deficient due to the incompetence of the parties or the absence of proper agreement between them. This contract is supposed to be based on mutual consent, and not on coercion or force.

⁵⁵⁴ Farhan Iqbal, Missionary, Ahmadiyya Muslim Community, Canada: “Islamic teachings on Female Prisoners of War”, 2023.

⁵⁵⁶ islamiclawblog (2019). *Abou El Fadl on Sexual Violence in Islamic Law*. [online] Islamic Law Blog. Available at: <https://islamiclaw.blog/2019/01/02/abou-el-fadl-on-sexual-violence-in-islamic-law/> [Accessed 17 May 2024].

The implications of the purported marriage of *Boko Haram* with the women they abducted has been a subject of concern, particularly from the perspective of Islamic scholars.⁵⁵⁶ The experiences of women abducted by *Boko Haram* reveal a pattern of forced marriage, sexual violence, and conversion to Islam under duress.⁵⁵⁷ The group has tactically targeted minority women, forcing them into marriage and subjecting them to inhumane conditions. The use of women as symbols and tools of terror by *Boko Haram* is a clear violation of Islamic principles and human rights.⁵⁵⁸ While some women may have joined the group voluntarily, the majority of the abductions and forced marriages have caused immense suffering and trauma among the affected women and their communities.⁵⁵⁹ The actions of *Boko Haram*, including the forced marriage of abducted women, have been widely condemned by Islamic scholars for their violation of Islamic principles and the human rights of the victims.⁵⁶⁰ The use of women as pawns in the group's campaign of violence and terror is incompatible with the teachings of Islam and has led to widespread suffering and trauma among the affected women and their communities.

In Nigeria, where Islamic/Sharia Law is practiced in some states, the issue of consent in marriage is governed by both religious and secular legal systems. Under Islamic Law, the consent of the woman is a fundamental requirement for the validity of a marriage. However, the application of Islamic Law varies across different states in Nigeria, and the enforcement of these laws can present

⁵⁵⁶ islamiclawblog (2019). *Abou El Fadl on Sexual Violence in Islamic Law*. [online] Islamic Law Blog. Available at: <https://islamiclaw.blog/2019/01/02/abou-el-fadl-on-sexual-violence-in-islamic-law/> [Accessed 17 May 2024].

⁵⁵⁷ The traumatic consequences of Boko Haram slavery among the ethnic minorities of southern Borno, Borno State, Nigeria <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9772719/>

⁵⁵⁸ Women as Symbols and Swords in Boko Haram's Terror <<https://www.inclusivesecurity.org/publication/women-as-symbols-and-swords-in-boko-harams-terror/>> Accessed on 9th January 2024

⁵⁵⁹ Nigeria: Women and the Boko Haram Insurgency | Crisis Group < <https://www.crisisgroup.org/africa/west-africa/nigeria/nigeria-women-and-boko-haram-insurgency>> accessed on 9th January, 2024.

⁵⁶⁰ islamiclawblog (2019). *Abou El Fadl on Sexual Violence in Islamic Law*. [online] Islamic Law Blog. Available at: <https://islamiclaw.blog/2019/01/02/abou-el-fadl-on-sexual-violence-in-islamic-law/> [Accessed 17 May 2024].

challenges to the protection of individual rights, particularly in the context of forced marriages and abductions.

Islamic marriage, deeply rooted in principles of justice and consent, constitutes a sacred covenant between individuals, emphasizing the significance of willing participation from all parties involved. Central to this sacred union is the concept of a *wali*, or guardian, who plays a pivotal role in ensuring the legitimacy and validity of the marital contract. In the context of forced marriages, where coercion and manipulation mocks the essence of genuine consent, the absence of the *wali*, consent becomes a critical aspect that further underscores the illegitimacy of such unions. The concept of a *wali* in Islamic marriages is rooted in the tradition of seeking the guidance and approval of a woman's guardian, typically her father or a male relative. This guardian, acting in the best interests of the bride, ensures that the marriage aligns with Islamic principles and safeguards the rights of the woman involved. The *wali*'s role is not merely ceremonial; it is a manifestation of the protective and just nature of Islamic law, emphasizing the importance of familial support and consultation in such significant life decisions.

In the case of *Boko Haram*, a militant group that has been involved in the abduction and forced marriage of women, the validity of such marriages under Islamic law is highly questionable, as they clearly violate the principle of free and mutual consent. In Islamic marriage, the consent of the bride, groom, and the *wali* (guardian) of the bride is typically required. The absence of genuine consent, especially from the woman's guardian in forced marriages raises significant ethical and legal concerns.

5.1.5. Feminist Critiques of Marriage

The concept of marriage traditionally represents a union between two consenting adults of opposite sex. Within the marriage institution, religion and cultures creates a dichotomy that elevates the male gender above the female. In the Christian religion, the man is seen as the head of the woman. The woman is expected to be submissive and obedient to the man. The same is also the reflection in the Islamic religion where the woman is equally expected to show her true worship to the Almighty Allah by assuming a relegated position in the family tree in subservience to the man. Culturally, the woman is not to be seen in any shade, majorly a ‘beast of burden,’ the property of her husband, one who is expected to assume the role of domestic chores, meal maker and baby maker. The above repression of the female gender was transformed globally with women being denied all forms of equality with men. These affected access to health, education, and political rights of women. Women were excluded from universal suffrage.⁵⁶¹ This represented the growth of power and patriarchy in the society.

The growth of feminism in the 19th century marked the commencement of the interrogation of the stereotypes that denied women access to basic entitlements in life.⁵⁶² According to Matthews, the feminist wave set out to ensure equality of opportunity for women in the society especially in the labor trade.⁵⁶³ The implication of this theory was that women should have access to work and equal pay just like men. The marriage institution was thus identified as a legal space within which the restriction on women could be legitimately executed. Importantly, the marriage institution had

⁵⁶¹ Schaeffer, K. (2020). *Key facts about women's suffrage around the world, a century after U.S. ratified 19th Amendment*. [online] Pew Research Center. Available at: <https://www.pewresearch.org/short-reads/2020/10/05/key-facts-about-womens-suffrage-around-the-world-a-century-after-u-s-ratified-19th-amendment/>.

⁵⁶² Stuart, E. (2017b). *Femme Fatales and the Shifting Gender Norms of the 19th Century*. [online] Available at: <https://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=2689&context=etd>.

⁵⁶³ Matthews, Jill. "Feminist history." *Labour History* 50 (1986): 147

created a role that was to restrict women within the confines of the home, limiting them to baby making and nurturing. Notably, the growth of feminism heralded different aspects of the concept of demystifying the dangers of marriage through the various feminist theories.⁵⁶⁴

In discussing the marriage institution in the perspective of the many restrictions it has provided, this research engages with some feminist thoughts herein. For instance, scholars like Hagan and Johnson construct the limitations in the marriage institution as colonial characteristics. According to Hagan, “Marriage is, in short, considered an ‘intimate colonization’.” This construct is an allusion of how the colonial masters treated their colonies in some heavy negative manners which deprived them of growth, used them and left them worse off. The implication thus suggests that women within the marriage space are used and left for worse by their male partners or husbands. They are unable to keep their own finances nor make independent career choices. In feminist theory, wives are seen as subordinate, economically dependent and deferent. In most if not all countries, women continue to have major responsibility for household and caring duties. Women lack bodily autonomy and control of their sexuality. The marriage institution derogates from the woman liberties that she ought to enjoy unlike her male partner who is spoilt for choices and privileges.

Within the African philosophy, the position of Pateman becomes relevant in several ways. For instance, Oyewumi, opined that “the marriage rhetoric remains a legal means of women subjugation in Africa”.⁵⁶⁵ As previously stated, the philosophy of marriage is one that has

⁵⁶⁴ Stuart, E. (2017b). *Femme Fatales and the Shifting Gender Norms of the 19th Century*. [online] Available at: <https://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=2689&context=etd>.

⁵⁶⁵ Oyewumi, Oyeronke. "Family bonds/conceptual binds: African notes on feminist epistemologies." *Signs: Journal of Women in culture and Society* 25, no. 4 (2000): 1093

predefined roles for women.⁵⁶⁶ In the perspective of Ike et al, the marriage institution must be reconstrued through the deliberate theory to ensure that women are not violated in terms of domestic violence as fueled by African traditional belief.⁵⁶⁷ The growth of early child marriage continues to present current validity to the marriage institution as it is used to validate violation of the rights of the girl child and subject her to severe difficulties. This argument is clearly seen for instance in Nigeria where marriage is used to validate the forced marriage of little girls.⁵⁶⁸ This phenomenon of child marriage, unfortunately predominantly occurs and is deeply rooted in the cultures of the Northern part of Nigeria, which is also predominantly Muslim, and is the seat of the *Boko Haram* armed conflict.

Marriage as it is presently conceived continues to leave less to be desired. This research provides empirical data that support the criticism from feminists on the dangers, oppression and subjugation that the institution of marriage has been manipulated to foist on women and continues to foist on women within it. Primarily, is the denial of the woman autonomy and choice of bodily integrity. The denial of freedom to associate and the struggle that the woman faces in her society-defined roles within the home that merely leaves her as a beast of burden and a home maker. The need therefore to ensure a reconstruction of the negative impact of marriage in the marriage institution cannot be over emphasized and repositioned for a better and more desire impact.

These structures are deeply rooted in the societies where the *Boko Haram* commanders and combatants are from. This supports the argument of this research that a culture that is steeped in

⁵⁶⁶ Onuora-Oguno A.C.:(2013) "Enhancing Women's Rights in Nigeria- Customary Law vs Statutory Law" The Perspective, Issue 3, 2013, https://za.boell.org/sites/default/files/perspectives_dec_2013_web.pdf.

⁵⁶⁷ Onuora-Oguno, Azubike Chinwuba, Chianara Ike, and Christy Barau. "Deliberative and struggle theories of rights realisation: examining the protection of women in Nigeria." *Journal of Law, Society and Development* 5, no. 1 (2018): 16-pages.

⁵⁶⁸ Azubike, Onuora-Oguno, and Olayinka Adeniyi. "Sexual abuse and child marriage: promise and pathos of international human rights treaties in safeguarding the rights of the girl child in Nigeria." *Child abuse research in South Africa* 16, no. 2 (2015): 80.

these androcentric religio-cultural attitudes, presents an enabling environment for these harmful activities, like the crime of sexual violence in armed conflict to thrive, where other factors are in place. This research extends this argument to the context of the *Boko Haram* armed conflict, deduced from the empirical data, that the *Boko Haram* armed group appears to be exploiting marriage as a mechanism with which to institutionalize their crimes of sexual violence against women and girls.

5.2. “Patriarchal Militarized Masculinity”: An Intersectional Approach to Explaining Sexual Violence in Armed Conflict

As shown from the data and as discussed previously, analysis of this study’s findings cuts across the majority of these explanations. This study therefore proposes an intersectional theoretical approach that is comprehensive and sufficient to explain sexual violence in the context of the Boko Haram conflict. The researcher seeks to accomplish this by adapting the military culture explanation to the explanation of gendered violence stemming from patriarchy using Laura Kaplan’s explanation of the relationship between privileged masculinism and militarization, herein termed—Patriarchal Masculinism—⁵⁶⁹and adapting that intersectional approach to explaining the phenomenon of SVAC within the context of the Boko Haram armed conflict.

While existing theories advanced to explain conflict-related sexual violence have individually been criticized for not explaining enough of the variation observed in the incidences of sexual violence in armed conflict, but rather over predict conflict related sexual violence,⁵⁷⁰ the *Patriarchal Militarized Masculinity* concept aims to be an intersection between two seemingly parallel and

⁵⁶⁹ See Section 7.1, p.21 for conceptual clarification on Patriarchal Masculinism.

⁵⁷⁰ Elisabeth Jean Wood, *Conflict-related and sexual violence and the policy implications of recent research*, 96 (894) International Review of the Red Cross 457-478, p.462 (2014).

conflicting theories seeking to explain sexual violence in armed conflict, in order to converge these conversations by utilizing the arguments in such a way that maximizes the strengths, minimizes their weaknesses and uses one to complement the other in a way that creates a comprehensive and more wholistic explanatory framework for sexual violence in armed conflict: the *militarized masculinity* and the *patriarchal masculism* approaches.

The militarized masculinity, military culture explanation, which argues that “societies in war develop (or draw on) institutions and norms that inculcate a highly militarized masculinism based on sharp distinctions between genders: to become men, boys must become warriors;”⁵⁷¹ and produces the effect that “combatants represent domination of the enemy in highly gendered terms and use specifically sexual violence against enemy populations;” has been critiqued for failing to explain the absence of sexual violence on the part of some very effective insurgent and state armies.⁵⁷²

The patriarchal masculism explanation argues that patriarchy and the cultural proclivities of the perpetrators and society in which the armed conflict exists, expressed in institutionalized oppressions based on gender, and the devaluation of women. This explanation has also been critiqued for over-prediction of sexual violence and under-accounting for the variation in asymmetric conflicts where one party to the war promotes sexual violence and the other does not, thus being a necessary but not sufficient condition for predicting the outcome of sexual violence in a particular armed conflict.

⁵⁷¹ Elisabeth Jean Wood, *Sexual Violence during War: Toward an Understanding of Variation*, in Laura Sjoberg & Sandra Via, *Gender, War, and Militarism: Feminist Perspectives*, 124-137, p.132 (2010).

⁵⁷² *Ibid.*

Sexual violence during armed conflict is a serious human rights violation and a major problem on a global scale.⁵⁷³ This includes such crimes as forced prostitution, rape, and other forms of sexual abuse.⁵⁷⁴ A multifaceted approach is necessary to analyze sexual violence in armed conflict, taking into account a range of factors including power dynamics, gender inequality, social norms, and the larger context of the conflict.⁵⁷⁵ It is critical to realize that sexual violence is not an isolated incident; rather, it is frequently employed as a military tactic with the intention of frightening, controlling, and demoralizing both individuals and communities.⁵⁷⁶ According to Laura Kaplan, a level of structural violence exists, and is established in the social structure which seems to do harm to a particular class of people which are the women.⁵⁷⁷ Women are usually enslaved as a symbol of the king's power to commit violence against anyone.⁵⁷⁸ In the context of conflict, Kaplan maintains that militarism deals with the commitment of resources to the waging of war while patriarchy is used by feminists to refer to a society in which men dominate men.⁵⁷⁹

5.2.1. Militarized Masculinity

Militarized masculinity involves masculinities that are created and constructed as a result of military service and that have been molded by the military establishment or institution.⁵⁸⁰ It is

⁵⁷³ Gloria Gaggioli, "Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law," *International Review of the Red Cross* (2014), 96 (894), 503–538.

⁵⁷⁴ *Ibid.*

⁵⁷⁵ Leatherman, Janie. "Sexual Violence And Armed Conflict: Complex Dynamics Of Re-Victimization." *International Journal of Peace Studies* 12, no. 1 (2007): 53–71.

⁵⁷⁶ Human Rights Watch, "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath," *Africa Human Rights Watch Women's Rights Project*, September 1996, <https://www.hrw.org/legacy/reports/1996/Rwanda.htm>.

⁵⁷⁷ Laura Duhan Kaplan, "Purim: Violence Against Women," *Jewish Spiritual Wisdom*, March 8, 2014, <https://www.sophiastreet.com/2014/03/08/violence-in-esther/>.

⁵⁷⁸ *Ibid.*

⁵⁷⁹ Kaplan, Laura Duhan. "Woman as Caretaker: An Archetype That Supports Patriarchal Militarism." *Hypatia* 9, no. 2 (1994): 123–33.

⁵⁸⁰ Milena Abrahamyan, "Gender Discrimination," <https://feminism-boell.org/en/2017/02/08/tough-obedience-how-militarized-masculinity-linked-violence-army?amp>.

assumed that a boy's initiation into the military is how he becomes a man.⁵⁸¹ While the army is an institution that produces violence, militarized masculinity strives for and aids in the achievement of power and violence.⁵⁸² Constructivist theorists reject the idea that men are naturally violent. They believe that a man is violent not because of his inherent nature but because the violence is created in them through military service.⁵⁸³

Militarized masculinity is constructed in culture and society and is strongly linked to military ideals, behaviors, and values.⁵⁸⁴ In many societies, being a "real man" means possessing certain qualities and actions that are typically associated with the military, such as strength, aggression, dominance, and emotional fortitude.⁵⁸⁵ Thus, the normalization of aggression and the exaltation of violence as a strategy for establishing dominance and control, characterize militarized masculinity.⁵⁸⁶ This can be seen in how military heroes are frequently portrayed in popular culture as powerful, courageous, and heroic individuals, apparently lending credence to the notion that using violence is an essential and admirable quality of masculinity.⁵⁸⁷

Militarized masculinity therefore reflects in an environment where men are expected to be dominant and in control while women are to be passive and submissive.⁵⁸⁸ As a result of this,

⁵⁸¹ Ibid.

⁵⁸² Ibid.

⁵⁸³ Ibid.

⁵⁸⁴ Reit, Rachel, "The Relationship between the Military's Masculine Culture and Service Members' Help-Seeking Behaviors" (2017). Master's Theses (2009 -). 410. http://epublications.marquette.edu/theses_open/410.

⁵⁸⁵ Masculinities and Armed Conflict, (2012) The Consortium on Gender, Security and Human Rights, https://genderandsecurity.org/sites/default/files/Masculinities_Armed_Conflict_Annot_Bib_0.pdf.

⁵⁸⁶ Petter Holmgren, "Men, Masculinity and the Military," Lund University Department of Political Science <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOID=3358052&fileOID=3358053>.

⁵⁸⁷ Holt, Douglas B., Craig J. Thompson, and [Dawn Iacobucci and David Glen Mick served as editors and Eric Arnould served as associate editor for this article.]. "Man-of-Action Heroes: The Pursuit of Heroic Masculinity in Everyday Consumption." *Journal of Consumer Research* 31, no. 2 (2004): 425–40.

⁵⁸⁸ Bahlieda, Robert. "Chapter 1: The Legacy Of Patriarchy." *Counterpoints* 488 (2015): 15–67.

negative gender stereotypes are reinforced, often leading to women being marginalized or oppressed.⁵⁸⁹

5.2.2. Patriarchal Masculinism

Dominant masculinities that stem from patriarchal structures, in which men exercise dominance over women and other marginalized genders, are known as patriarchal masculinities.⁵⁹⁰ Maintaining gender inequality, upholding traditional gender roles, and subjugating women are all characteristics of these masculinities.⁵⁹¹ The emphasis on male control and dominance is a fundamental component of patriarchal masculinities. Women are frequently assigned to subordinate roles, while men are expected to be assertive, competitive, and in positions of power. This is evident in many aspects of life in Nigeria, such as family dynamics, business, and politics. Additionally, it may reinforce toxic masculinity, which promotes harmful behaviors like homophobia, misogyny, and violence.⁵⁹²

Patriarchal masculinism can result in discrimination, violence against women based on their gender, and limited opportunities for women to be empowered and have agency.⁵⁹³ If there must exist an egalitarian society in Nigeria or any state at all, patriarchal masculinism must have to be dismantled.⁵⁹⁴ This entails advancing gender equality, combating damaging gender stereotypes, and supporting a variety of masculinity expressions that are not centered on control and

⁵⁸⁹ Enloe, C. (2000). *Maneuvers: The International Politics of Militarizing Women's Lives*. University of California Press.

⁵⁹⁰ UN Women, "Understanding Masculinities and Violence Against Women and Girls," https://trainingcentre.unwomen.org/RESOURCES_LIBRARY/Resources_Centre/masculinities%20booklet%20.pdf.

⁵⁹¹ Ibid.

⁵⁹² Ibid.

⁵⁹³ Walby, S. (1990). *Theorizing Patriarchy*. *Sociology*, 24(2), 213-234.

⁵⁹⁴ Ibid, 18.

dominance, but rather on affirming all genders as equal and recognizing the inherent right of all to exercise their agency and maintain bodily autonomy.

Patriarchal masculinity is an expression of masculinity that maintains male dominance over women.⁵⁹⁵ This can facilitate and encourage gender-based and sexual violence (SGBV) such as sexual assault, rape, domestic violence, harassment, and other forms of violence with roots in power disparities and gender inequality,⁵⁹⁶ particularly in the context of conflict. An instance of how patriarchal masculinity fuels sexual violence against women is by upholding gender norms and expectations that sustain men's dominance and sense of entitlement over the bodies of women. These expectations foster a culture that accepts and even encourages violence against women by emphasizing aggression, control, and the objectification of women. Men who uphold the standards of patriarchal masculinity are more likely to act in ways that violate women. Men who support traditional gender norms, such as ideas of male entitlement and superiority, are more likely to commit intimate partner violence.⁵⁹⁷

Patriarchal masculinity can facilitate and encourage gender-based and sexual violence (SGBV).⁵⁹⁸ Concerning the instrumentalization, commercialization, and weaponization of women, *Boko Haram* has employed a gender-based terrorist approach.⁵⁹⁹ Women are used as sex slaves, human shields, armed couriers, suicide bombers, and are frequently kidnapped for

⁵⁹⁵ Ibid.

⁵⁹⁶ Ibid.

⁵⁹⁷ Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T., & Lang, J. (2013). Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific. Bangkok: UNDP, UNFPA, UN Women, and UNV.

⁵⁹⁸ Ibid, 18.

⁵⁹⁹ Chukwuma Al Okoli, "Gender and Terror: Boko Haram and the Abuse of Women in Nigeria," *Georgetown Journal of Internal Affairs*, April 5, 2022, accessed on 1 September 2023, <https://gjia.georgetown.edu/2022/04/05/gender-and-terror-boko-haram-and-the-abuse-of-women-nigeria%E2%80%9C#:~:text=Boko%20Haram%20employs%20a%20gendered,as%20a%20strategy%20of%20terror.>

ransom.⁶⁰⁰ The systematic rape of women, sexual enslavement, forced marriage, forced pregnancies, forced sterilizations, and forced abortions are only a few of the reported, sexual and sex-specific types of violence that women experience in *Boko Haram* conflicts.⁶⁰¹

Sexual violence during conflict is frequently a planned tactic of opposing sides, committed for the reason of tearing apart the social fabric of families and communities, forcibly displacing communities, and sowing terror, as a way to humiliate the victims' relatives and as a form of retribution for those who support the 'wrong' side of the conflict.⁶⁰² Several of these women go through phases of sicknesses and diseases from time to time because of this. A good number of them experience uterine prolapse due to frequent rape and child deliveries.⁶⁰³ The brutality of *Boko Haram* takes advantage of the patriarchal system that dominates northern Nigeria which leads to deeply ingrained legal, social, and religious systems which marginalize women.⁶⁰⁴

Nigeria is a country with several ethnicities, most of which practice deeply patriarchal religious-cultural norms and customs. It is also a nation whose people have deep roots of religion and religious sentiments. A majority of the southern parts of the country practice Christianity and other forms of traditional religions, while the northern part is predominantly Muslim. About twelve of the 19 northern states in the country adhere to Shariah, and often subscribe to orthodox interpretations of its doctrines, from which certain traditions of male hegemony and female submission is taught. This system is often used to marginalize women by offering men

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid.

⁶⁰² Megan Bastick et al., "Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector," Geneva Centre for the Democratic Control of Armed Forces (July 2007), accessed 6 September 2023, https://www.dcaf.ch/sites/default/files/publications/documents/sexualviolence_conflict_full.pdf.

⁶⁰³ Helen, O.O.K. et al., "Uterovaginal prolapse following suspected sexual abuse to a child: a case report," *Ann Pediatr Surg* 17, no. 48 (September 7, 2021), accessed 6 September 2023, <https://aops.springeropen.com/articles/10.1186/s43159-021-00105-8#citeas>.

⁶⁰⁴ Jacob Zenn, "Case Not Quite Closed on the Assassination of Nigerian Salafi Scholar Jafaar Adam," <https://www.cfr.org/blog/case-not-quite-closed-assassination-nigerian-salafi-scholar-shaikh-jaafar-adam>.

social and economic advantages over women, thereby strengthening patriarchal norms. One of the ways that patriarchal masculinity fuels sexual gender violence against women is by upholding gender norms and expectations that sustain men's dominance and sense of entitlement over women.⁶⁰⁵ These expectations foster a culture that accepts and even encourages violence against women by emphasizing aggression, control, and the objectification of women.⁶⁰⁶

5.2.3. Explaining SVAC through the Patriarchal Militarized Masculinity Framework

The concept of Patriarchal Militarized Masculinity explains the situation where a combination of cultural governance and militarism are employed to produce gender violence.⁶⁰⁷ The Patriarchal Masculinity framework as explained by Kaplan is elucidated as a concept that inspires men to form images of women as “devalued others” and to employ the said images as a “model for training and inspiring masculine warriors to devalue and distance themselves from enemies”,⁶⁰⁸ thus inciting gender violence by men against women.⁶⁰⁹

In some quarters, it is believed that the intention of the armed men to destroy the social structure of the opposing side has enabled the perpetration of sexual violence in armed conflict.⁶¹⁰ That sexual violence is used as a weapon and strategy of war.⁶¹¹ Reacting however to this assertion, Carlo Koos⁶¹² argued that this assertion is rather an assumption because there is no clear evidence

⁶⁰⁵ Makama, Godiya Allanana, “Patriarchy And Gender Inequality In Nigeria: The Way Forward,” European Scientific Journal June 2013 edition vol.9, No.17. <https://core.ac.uk/download/pdf/236407158.pdf>

⁶⁰⁶ Gurvinder Kaira and Dinesh Bhugra, Sexual violence against women: Understanding cross-cultural intersections,” Indian Journal of Psychiatry, 2013 Jul-Sep; 55(3): 244–249.

⁶⁰⁷ Ronni Alexander, *Confronting Militarization: Intersections of Gender(ed) Violence, Militarization, and Resistance in the Pacific*, in Laura Sjoberg and Sandra Via (eds.) *Gender, War, and Militarism: Feminist Perspectives* 69-79, p.71 (2010).

⁶⁰⁸ Laura Duhan Kaplan, *Woman as Caretaker: An Archetype That Supports Patriarchal Militarism*, 9 *Hypatia* 123-133, p.124 (1994).

⁶⁰⁹ *Supra*, note 88.

⁶¹⁰ Carlo Koos, “Sexual Violence in Armed Conflict: Research, Progress and Remaining Gaps” *Third World Quarterly*, (2017) Vol. 38(9) doi <https://dx.doi.org/10.1080/01436597.2017.1322461> , p. 1936.

⁶¹¹ *Ibid.*

⁶¹² *Ibid.*

that sexual violence is perpetrated based on this factor. This shows the weakness of “weapon of war” theory of factors that lead to sexual violence. Elbert⁶¹³ echoed similar sentiment in its report of the armed conflict that ensued in the Democratic Republic of Congo. Elbert believes that sexual violence is not perpetrated in furtherance of military strategy because there was no order from the military head directing combatant to engage in the act of sexual violence.⁶¹⁴ While the fact that sexual violence is not often associated with military strategy may be true, its total veracity is not universal. This is because in the armed conflict in Rwanda, the Trial Chamber trying Akayesu found as fact that the sexual violence unleashed against the Tutsi women were calculated to bring the existence of the Tutsi group to naught. This was poignantly laid out by the ICTR thus:

in most cases, the rapes of Tutsi women in Taba, were accompanied with the intent to kill those women. Many rapes were perpetrated near mass graves where the women were taken to be killed...it appears clearly to the Chamber that the acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process...⁶¹⁵

Another factor that is identified and explicated by Koos is the inequalities ingrained in the society before the war.⁶¹⁶ Koos believes that the fact that women have been seen as unequal to men pre-

⁶¹³ Elbert et al., *Sexual and Gender-Based Violence in Kivu Provinces of the Democratic Republic of Congo Insight from Former Combatants*, (Washington D.C, World bank, 2013).

⁶¹⁴ Ibid.

⁶¹⁵ Ibid. p. 733.

⁶¹⁶ Ibid. p. 1939.

war time is another factor that should be considered as factor that leads to sexual violence in armed conflict. This is similar to Leatherman's position that inequities prevalent in the society against women ignite the act of sexual violence in armed conflict.⁶¹⁷

In addition, research also suggests that the historical lack of accountability for the foot soldiers who perpetrate this crime, has encouraged the perpetrators of this crime to engage in this act.⁶¹⁸

This lack of accountability can be attributed to several factors, including but not limited to the focus of the international community on prosecution of war crimes based on the doctrine of command responsibility.⁶¹⁹ Thus, some members of the same armed group, who identify with or support fellow soldiers in unleashing sexual violence on women, may consider sexual violence as a norm in armed conflict, and without the deterrence of accountability, they may refrain from reporting fellow armed group members who engage in acts of sexual violence.⁶²⁰

In considering the data collected by Bitenga,⁶²¹ the explanation of the absence of penal sanctions for the commission of the crime of sexual violence as a factor enhancing sexual violence might face certain critiques. That explanation may not be sufficient to explain the sustained use of sexual violence in the context of that armed conflict. This is because the data revealed other factors that contributed to enabling sexual violence in the armed conflict. Bitenga et al interviewed several armed combatants in the Eastern Democratic Republic of Congo. These combatants made it known

⁶¹⁷ Jane Leatherman, "Sexual Violence and Armed Conflict: Complex Dynamics of Re-victimization" *International Journal of Peace and Studies*, Vol. 12(1), 2007, 57

⁶¹⁸ Ibid. p. 1940.

⁶¹⁹ "Command Responsibility." European Center For Constitutional and Human Rights. <https://www.ecchr.eu/en/glossary/command-responsibility/#:~:text=In%20international%20criminal%20law%2C%20the.>

⁶²⁰ Ibid.

⁶²¹ Ali Bitenga et al, "Motivations for Sexual Violence in Armed Conflicts: Voice from the Combatant in Eastern Democratic Republic of Congo" in *Medicine, Conflict and Survival* (Routledge Taylor &Trans Group, 2021) p. 1940. <https://doi.org/10.1080/13623699.2021.1882365>

that they knew that engaging in sexual violence is against the ideals of a good soldier.⁶²² Nevertheless, these combatants engaged in sexual violence during the pendency of that armed conflict.

The concept of **Patriarchal Militarized Masculinity**, especially in the context of Nigeria and the Boko Haram conflict, requires us to further explore feminist theories of power, organizational factors within a religious ideology-based organization like Boko Haram, and broader religious justifications for SVAC.

5.2.4. Patriarchal Militarized Masculinity in the Boko Haram Armed Conflict

Patriarchal Militarized masculinity often reinforces traditional gender roles and hierarchies, positioning men as the dominant figures in military contexts. This can lead to the marginalization and exclusion of women from military roles and decision-making positions.⁶²³ The hypermasculine environment associated with militarized masculinity can contribute to a culture that tolerates or even encourages sexual harassment and violence against women. Women serving in the military may face higher risks of experiencing such misconduct.⁶²⁴ Militarized masculinity can perpetuate a culture of violence, which may extend beyond the military context. SGBV is greatly aided and abetted by patriarchal masculinity, which is a prevalent cultural framework.⁶²⁵

Patriarchal Militarized Masculinity plays a crucial role in the *Boko Haram* armed conflict. These deeply ingrained patriarchal norms and beliefs underpinning *Boko Haram's* ideology and behavior

⁶²² Ibid.

⁶²³ Enloe, C. (2000). *Maneuvers: The International Politics of Militarizing Women's Lives*. University of California Press.

⁶²⁴ Bartis, T. (2014). *Sexual Assault and Sexual Harassment in the U.S. Military: Annex to Volume 2*. RAND Corporation.

⁶²⁵ Jewkes, R., Flood, M., & Lang, J. (2015). *Men and Gender Equality: Power, Intimate Relationships, and Sexual Health*. World Health Organization.

are militarized in the context of the armed conflict and in the *Boko Haram* camps, as the research data show. This is reflected in the group's violent, oppressive treatment of women, gender-based violence, and the maintenance of gender inequality as seen in the *Boko Haram* armed conflict.⁶²⁶ The extremist, religious ideology of *Boko Haram* encourages a strict (albeit misguided) interpretation of Islamic law, which includes controlling and enslaving women.⁶²⁷ The patriarchal society in Nigeria is one in which women frequently face numerous forms of violence, such as forced marriages, sexual slavery, and physical abuse, because they are frequently perceived as inferior. This is a reflection of the patriarchal masculinist notion of male dominance that leads to the institutionalized, subjugation of women in the society.

Boko Haram targets and forbids western education, especially the education of women, which further demonstrates patriarchal nature of the group's armed conflict.⁶²⁸ This patriarchal ideology aims to restrict women's educational opportunities and uphold traditional gender norms.⁶²⁹ It is noted however, that *Boko Haram's* activities have been denounced as not reflecting Islamic principles or customs in their entirety.⁶³⁰ The *Boko Haram* armed group is accused of using a distorted interpretation of Islamic law to support their agenda.

These crimes not only hurt the victims immediately on a physical and psychological level, but they also have long-term effects on their well-being and the communities in which they occur.

⁶²⁶ Al Chukwuma Okoli, "Title: Gender and Terror: Boko Haram and the Abuse of Women in Nigeria," *George Town Journal of International Affairs*, April 5, 2022, <https://gja.georgetown.edu/2022/04/05/gender-and-terror-boko-haram-and-the-abuse-of-women-in-nigeria%E2%80%9C>.

⁶²⁷ Ibid.

⁶²⁸ Ibid.

⁶²⁹ Omeje, K. (2015). Boko Haram and the Gendered Dynamics of Violence in Nigeria. *African Conflict & Peacebuilding Review*, 5(1), 1-23.

⁶³⁰ Ukiwo, U. (2014). Boko Haram: The Anatomy of a Crisis. *Review of African Political Economy*, 41(142), 414-431.

Stemming from the above analysis, the thesis will proceed to examine the broader implications of the activities of *Boko Haram* and the efficacy of international law in the quest to curb the spread of SVAC.

Chapter Six: Broader Implications from the Boko Haram Case Study: Further Research and Critique of the Efficacy of International Humanitarian Law in Ending SVAC

As much as crises in the form of war, referred to in this work as armed conflict, seem unavoidable, the law has not folded its arms to allow parties to the armed conflict to perpetrate hostilities as they wish and without boundaries. To this effect, international humanitarian law, codified largely in the Geneva Conventions of 1949 and the additional protocols thereto,⁶³¹ as well as the customary rules of international humanitarian law,⁶³² widely accepted by the international community as universally applicable, remain in focus.

Despite the plethora of the various soft and hard law, and norms that regulate the conduct of hostilities during conflict, violations of these norms and IHL continue to abound. A broad consensus of opinions appears to suggest that these international humanitarian law violations do not occur because of the lack of comprehensiveness of IHL rules; but from “an unwillingness to respect the rules, from insufficient means to enforce them, from uncertainty as to their application in some circumstances and from a lack of awareness of them on the part of political leaders, commanders, combatants and the general public”.⁶³³

This phenomenon can be attributed the perception that all is fair in war. In hostilities, parties often tend to adopt approaches that may seem to favor their dispositions and guarantee victory as it

⁶³¹ Amanda Alexandra, “A Short History of International Humanitarian Law” *The European Journal of International Law*” 26, No. 1 (2015), 109.

⁶³² “List of Customary Rules of International Humanitarian Law - ICRC.” 2005. [www.icrc.org](https://www.icrc.org/en/doc/resources/documents/misc/customary-law-rules-291008.htm). March 31, 2005. <https://www.icrc.org/en/doc/resources/documents/misc/customary-law-rules-291008.htm>.

⁶³³ Jean-Marie Henckaerts, “Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict,” *International Review of the Red Cross*, Volume 87 Number 857 March 2005, p. 176.

were.⁶³⁴ Authors like Hirschauer argue that this provides the erroneous basis on which sexual violence have continued to increase in armed conflicts.⁶³⁵ It is however, instructive to note that it is this menace that IHL frowns out and sets out to hold violators responsible for any atrocities committed in armed conflicts. The question as therefore raised by Wood when investigating the absence of sexual violence in war times becomes instructive in determining the factors that necessitates this- IHL or other non-legal parameters?⁶³⁶

Sexual violence is an ugly phenomenon pervasive around the world that is often worsened during armed conflict.⁶³⁷ Thus, though not ubiquitous,⁶³⁸ it is not infrequent to receive reports of sexual violence whenever there is such armed conflict.⁶³⁹ This can be explained in part from the phenomenon that armed combatants involved in armed conflicts over the years may have considered acts constituting sexual violence as being part of their ‘spoils of war’⁶⁴⁰ This explains Cohen’s theory of socialization using sexual activities during wartime.⁶⁴¹ Zoe argued that it is a mark of ego and status when virgin rapes are successfully carried out during war times.⁶⁴²

⁶³⁴ Oxford, Ann. "All is Fair." *Paper Mill Press: A Journal of Creative Arts* 1, no. 4 (2021): 36-37.

⁶³⁵ Hirschauer, Sabine. *All is fair in war—violent conflict and the securitization of rape*. Old Dominion University, 2012.

⁶³⁶ Wood, Elisabeth Jean. "Armed groups and sexual violence: When is wartime rape rare?." *Politics & Society* 37, no. 1 (2009): 131-161.

⁶³⁷ International Committee of Red Cross, "Engaging with Armed Forces to Prevent Sexual Violence in Armed Forces" ([4400_002_Engaging_to_prevent_sexual_violence_WEB.pdf](#)), 26.

⁶³⁸ Wood, Elisabeth Jean. 2014. "Conflict-Related Sexual Violence and the Policy Implications of Recent Research." *International Review of the Red Cross* 96 (894): 457–78. <https://doi.org/10.1017/s1816383115000077>.

⁶³⁹ Recently in 2007, a report was made for the Geneva Centre for the Democratic Control of Armed Forces. This report covers a global overview of incidences of sexual violence about 51 African Countries, America, Asia and Middle East who have experienced the armed conflict. This report unearths the fact that in almost all cases of armed conflict, sexual violence is being perpetrated.

⁶⁴⁰ Jammie Bigio and Rachel Vogelsten, "Countering Sexual Violence in Conflict" (New York: Council on Foreign Relations, CFR, 2017), 3.

⁶⁴¹ Cohen, Dara Kay. "Explaining rape during civil war: Cross-national evidence (1980–2009)." *American Political Science Review* 107, no. 3 (2013): 461-477.

⁶⁴² Marks, Zoe. "Sexual violence in Sierra Leone's civil war: 'Virgination', rape, and marriage." *African Affairs* 113, no. 450 (2014): 67-87.

The phrase ‘spoils of war’ has its roots in the association of the word ‘spoils’ to property gotten from another, such as an hide stripped from an animal to armor stripped from an enemy during war.⁶⁴³ Consequent upon this, the phrase spoils of war has come to be understood as “anything [usually properties] stripped or taken from a country after its defeats in war...”.⁶⁴⁴ Thus, simply put, spoils of war means the profit earned by the winning side of a war or other military activity.⁶⁴⁵ Mullins’ position is that this becomes a military tactic in war against subduing and terrifying civilians.⁶⁴⁶ As the research showed, the fear factor contributes to the recruitment ability of an insurgent group where villagers, for fear or for seeking protection from a sect like the *Boko Haram*, are willing to join the sect. It is interesting to note that the use of sexual violence in this context does not exclude women as literature reveals that women are as much involved as men are in the use of sexual violence as a tool in war. This position finds support in the work of Cohen in the active involvement of women in the Sierra Leone war.⁶⁴⁷

The implications above, therefore, present a further nuance in the focus of this research in determining the place of religious philosophies in the use of sexual violence by *Boko Haram*. As shown in the statistics of findings in the research, some women become willing tools in the terror activities spurred by personal convictions and belief. It is interesting to note further that the idea of plundering properties (spoils of war) of a defeated country by the winning side has traditional

⁶⁴³ Jeanette Greenfield, ‘The Spoils of War: An Overview’ in Maron Deshmurk & Elizabeth Simpson (eds), *The Spoils of War: World War II and its Aftermath: The Loss, Reappearance and Recovery of Cultural Property*’ German Studies Review Vol. 22 No. 2, p. 34.

⁶⁴⁴ Ibid.

⁶⁴⁵ Your Dictionary, ‘Spoils of War Meaning’ < <https://www.yourdictionary.com/spoils-of-war> > accessed on the 21 March 2022.

⁶⁴⁶ Mullins, Christopher W. "Sexual violence during armed conflict." In *The Palgrave handbook of criminology and war*, pp. 117-131. Palgrave Macmillan, London, 2016.

⁶⁴⁷ Cohen, Dara Kay. "Female combatants and the perpetration of violence: Wartime rape in the Sierra Leone civil war." *World Politics* 65, no. 3 (2013): 383-415.

history and as religio-cultural records. From the religious perspective, acquiring spoils of war is seen in accounts of wars in religious texts.⁶⁴⁸

The study, having analyzed international and municipal legal regimes that deal with the protection of rights in conflict, argues that several other ideological underpinnings continue to frustrate the efforts made on the legal front. From data gathered and analyzed, it is evident that religious ideology is a strong factor in detailing how individuals act in conflict situations. Additionally, custom and patriarchy disposition steeped in power matrixes informs the use sexual violence in violent situations. Although the International Humanitarian Law (IHL) prohibition of sexual violence in armed conflict has grown over time, it has arguably not succeeded in preventing the use of sexual violence in armed conflict. This appears to be largely due to the inability of the international humanitarian law to be scaled down to the ordinary citizens and individuals who are largely unaware of its provisions.

This study demonstrates that sexual violence is still prevalent in armed warfare, despite the proliferation of prohibitory norms and sanctions against it. Nevertheless, sexual violence is still perceived as powerful weapons in battle and continue to dehumanize women and girls. Despite the outcry against it, the expanding local and international prohibitions, and the recent prosecution of the crimes, the strategic use of sexual violence in war continues to be a problem that dates to the beginning of armed conflict. By using Africa as a case study, the Lord Resistance Army, *Boko Haram*, and other militias' actions on the continent provide a stark illustration of the threat of sexual violence and its effectiveness in conflict. Which is the primary motivation behind this study.

⁶⁴⁸ Ephesians Chapter 4 verses 7 to 10; Quran An-Anfal (Chapter 8).

This study argues that the sexual violence is one of the repertoires of violence being strategically utilized by the leadership of *Boko Haram* and operationalized through the mechanism of patriarchal religio-cultural attitudes in marriage. *Boko Haram* also capitalizes on the legal lacuna of the absence of criminalization of marital rape, as well as the Islamic doctrine of what your right hand possesses during jihad, to perpetrate sexual violence against women and girls in the conduct of its armed conflict against the government of Nigeria.

Nigeria has experienced several cases of non-international or internal conflicts, the most prominent among them being that of the *Boko Haram* terrorists.⁶⁴⁹ These cases of *Boko Haram* armed conflicts in Nigeria have resulted in horrifying civilian casualties, widespread displacement, and infringements of human rights and international humanitarian laws.⁶⁵⁰ However, IHL attempts to limit these harmful effects of armed conflict.⁶⁵¹ It aims to achieve this by employing the transitional justice system and establishing regulations that safeguard people who choose not to participate in the hostilities or who have stopped doing so.⁶⁵² It further restricts the ways in which hostilities can be carried out, and stop the conflict from getting worse.⁶⁵³ This means that an objective of IHL is to lessen the effects of armed conflicts by defending those who are engaged in hostilities and victims of such hostilities. It does not only limit the effect of these armed conflicts but goes further to restrict the means of warfare to ensure a peaceful society.⁶⁵⁴

⁶⁴⁹ Andrew Walker, "What is Boko Haram," United States Institute of Peace Special Reports (2012), accessed 17 August 2023, <https://www.usip.org/sites/default/files/SR308.pdf>.

⁶⁵⁰ Amnesty International, "Armed Conflict," accessed 1 September 2023, <https://www.amnesty.org/en/what-we-do/armed-conflict/>.

⁶⁵¹ Ibid.

⁶⁵² ICRC, "What is International Humanitarian Law?" *Advisory Service on International Humanitarian Law* (June 2004), accessed 6 September 2023, https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

⁶⁵³ Okubor Nwachukwu, "Armed Conflict Under International Humanitarian Law," *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 5 no 1(2014), accessed 1 September 2023, <https://www.ajol.info/index.php/naujilj/article/view/136284>.

⁶⁵⁴ Sushmita Choudhary, "Internal armed conflict under international humanitarian law," *Ipleaders* (Blog) October 6, 2020, accessed 1 September 2023, <https://blog.ipleaders.in/internal-armed-conflict-international-humanitarian-law/>.

Nevertheless, IHL is sometimes referred as a missing link.⁶⁵⁵ There is a belief that IHL falls short in addressing the intricacies and dynamic character of contemporary armed conflicts.⁶⁵⁶ Conventional international humanitarian law frameworks may find it difficult to adequately control and safeguard all parties in conflicts that involve nonstate actors and grow increasingly asymmetrical.⁶⁵⁷ Furthermore, some contend that the absence of accountability procedures and enforcement mechanisms under IHL contributes to the idea that it is not properly applied or enforced.⁶⁵⁸ This could lead to IHL breaches going unpunished, eroding the system's legitimacy and efficacy.⁶⁵⁹ Moreover, various actors may interpret and apply IHL differently resulting in uneven application and possible protection gaps.⁶⁶⁰ Consequently, this may give rise to the impression that IHL is not always followed or that some parties may take advantage of these legal gaps.

IHL is seen as the 'missing link' because of doubts about its capacity to resolve modern issues, compel adherence, and guarantee uniform application across all parties engaged in armed conflict.⁶⁶¹ To understand the reasons behind the apparent ineffectiveness of IHL in curbing sexual violence during armed conflicts, it is crucial to delve deeper into the broader context in which these conflicts take place.⁶⁶² This context comprises various factors such as societal norms, power

⁶⁵⁵ Paul R. Williams and Meghan E. Stewart, *Humanitarian Intervention: The New Missing Link in the Fight to Prevent Crimes against Humanity and Genocide*, 40 *Case W. Res. J. Int'l L.* 97 (2008).

⁶⁵⁶ International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts." *30th International Conference of the Red Cross and Red Crescent, Geneva 89*, no.867(2007)26-30.

⁶⁵⁷ *Ibid.*

⁶⁵⁸ International Committee of Red Cross, *How does Law Protect: Implementation Mechanisms* (2023), <https://casebook.icrc.org/law/implementation-mechanisms> .

⁶⁵⁹ International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts." *30th International Conference of the Red Cross and Red Crescent, Geneva 89*, no.867(2007)26-30.

⁶⁶⁰ *Ibid.*

⁶⁶¹ Rocznik Choleswiska J. , " Socialisation Of International Rules Exploring Alternative Mechanisms For Securing Compliance With International Humanitarian Law By Armed Groups," *Biblioteka Nauki* (2019), Accessed November 28, 2023, <https://bibliotekanauki.pl/articles/2141079.pdf> .

⁶⁶² ICRC, *Sexual Violence in Armed Conflict: A violation of international humanitarian law and human rights law as unlawful killing.*" <https://international-review.icrc.org/sites/default/files/irrc-894-gaggioli.pdf> Accessed November 28, 2023.

dynamics, and the complexities of implementing and enforcing IHL on the ground, where the conflict is taking place, like northern Nigeria.

One of the main challenges is the deeply rooted patriarchal norms and gender inequalities that persist in many societies affected by armed conflicts. These norms perpetuate the subordination of women and reinforce the idea that sexual violence can be used as a weapon to exert power, instill fear, and degrade communities.⁶⁶³ Such norms create an environment where sexual violence is normalized, and perpetrators often enjoy impunity. Furthermore, armed conflicts disrupt social structures and institutions, leading to a breakdown of law and order.⁶⁶⁴ In these chaotic environments, armed groups and individuals take advantage of the power vacuum to commit acts of violence without fear of prosecution. These groups often operate outside the law and are not held accountable for their actions.

Another crucial aspect is the lack of adequate preventive and protective measures for vulnerable populations, particularly women and girls. Despite the existence of IHL provisions aimed at protecting civilians, including specific provisions regarding sexual violence, the implementation and enforcement of these measures remain challenging.⁶⁶⁵ Insufficient resources, weak institutional frameworks, and a lack of political will all contribute to the failure to effectively prevent and respond to sexual violence. Additionally, and very importantly, the rules and principles of IHL themselves may need further development to address the changing nature of armed conflicts. Contemporary conflicts are often characterized by non-state actors, asymmetrical

⁶⁶³ Makama Godiya Allanana, "Patriarchy and Gender Inequality in Nigeria: The Way Forward," *European Scientific Journal* 9, no.17(June 2013), accessed 6 September 2023, <https://core.ac.uk/download/pdf/236407158.pdf> .

⁶⁶⁴ United Nations, "Armed Conflicts and their Consequences," <https://www.un.org/esa/socdev/rwss/docs/2001/15%20Armed%20Conflict.pdf> .

⁶⁶⁵ International Committee of the Red Cross, "International Humanitarian Law and the challenges of contemporary armed conflicts." *30th International Conference of the Red Cross and Red Crescent, Geneva* 89, no.867(2007)26-30.

warfare, and the blurring of lines between combatants and civilians.⁶⁶⁶ These complexities present unique challenges for implementing IHL and effectively curbing sexual violence.

According to Onuora-Oguno and Abdulraheem,⁶⁶⁷ the letters of the law may not hold the resolutions of the crimes committed by the *Boko Haram* armed group. In considering other social-legal means to resolving the challenges, appropriate education is identified. However, it is instructive to note that the seeming inefficacy of IHL in curbing sexual violence during armed conflicts can be attributed to a combination of factors. These include deeply rooted societal norms, the breakdown of social structures during conflicts, lack of preventive measures, and the need for continuous development of IHL to adapt to evolving conflict dynamics. Additionally, embracing and adhering to other social legal means is pivotal. Addressing these challenges requires a comprehensive and multidimensional approach that strengthens legal frameworks, promotes gender equality, provides adequate resources, and enhances the accountability of perpetrators. Religious institutions must be involved in dismantling age long beliefs that make women less than men. This requires a concerted effort to ensure that promote the relegation of women in the community be changed. Culturally, the use of folklores that further discriminate women and enshrine patriarchal dispositions must all be changed and a different but positive narrative encouraged. Further, it requires that IHL and the international community move beyond the current, predominant approach of focusing on accountability of top military commanders of armed groups for war crimes, to a preventative approach, particularly, for the crime of SVAC. This is because the accountability approach has been grossly inadequate in comparison with the

⁶⁶⁶ Ibid.

⁶⁶⁷ Onuora-Oguno, Azubike, and Mariam Adepeju Abdulraheem-Mustapha. "Beyond the Law to Socio-Legal Intervention: The Boko Haram Insurgency and the Nigerian Child." *Boko Haram and International Law* (2018): 371-389.

widespread and devastating nature of this crime to the victims and survivors of SVAC, as by the time accountability takes place, it is already too late for these victims who have either lost their lives to same or the survivors who have been permanently scarred and whose lives would never remain the same afterwards; including the children born of these horrendous circumstances, some of whom are being raised into the damaging culture of conflict and some as child soldiers.

The theoretical framework of this research is a critical, gendered analysis of patriarchal structures as they are manifested in institutionalized discriminations that oppress and enslave women on all levels—society, state, and armed group—by institutionalizing these practices. The patriarchal structures of society and armed groups were also a goal of focus which this work has addressed. To achieve this reliance was made on data sourced from conflict prone areas in Nigeria, Camps were major stakeholders and participants were kept for rehabilitation and additionally via focus group discussion and interviews with experts and opinion leader on Islamic jurisprudence.

This study empirically investigated and analyzed what motivates the widespread use of sexual violence in the *Boko Haram* armed conflict; and creates an enabling environment for the phenomenon to endure till date. Study was conducted using mostly Qualitative, methodological approaches and mixed methods to collect, analyze and report the data, by first doing doctrinal research and review of existing literature, legal frameworks (domestic/international) and analyzing the problem using existing theory and relevant concepts. This was done via a mixed-methods research approach to conduct qualitative data collection and analyses of empirical data collected using both primary and secondary sources.

The research findings suggest that a combination of these factors, including the armed group (Boko Haram)'s masculinized military socialization of combatants and a pre-war community or culture that was rife with male-dominated, androcentric religious and cultural ideologies and power

structures manifested in the institutionalization of discrimination, contributed to the continued proliferation of the use of sexual violence in the Boko Haram armed conflict.

To this effect there were several steps laid out for the purpose of guidance in the conducting of the purposes of this work. The first being the conceptualization of the terms “Sexual Violence” and “Armed Conflict”. For Sexual Violence, this work embraced a comprehensive definition of sexual violence that encompasses all sexual violence and human exploitation. In particular, the definition of a sexual act against a person, or to have caused another to commit such an act, by force, or by threat of force, or by abuse of power, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or by taking advantage of a coercive environment, or by taking advantage of a person's inability to give genuine consent, is particularly important. For the purpose of the use of the term "armed conflict", the author of this study relying on the Geneva convention amongst other sources described the concept as hostilities between armed organizations (military organizations engaged in armed conflict includes state militaries, private militaries, and armed rebel groups/insurgents.) as well as attacks on persons and property.

It is important to recognize that there have been international attempts made to combat the problem of sexual violence in armed conflict. The UN Security Council passed Resolution 1325 on Women, Peace, and Security in October 2000. This four-page declaration, in particular, highlights and affirms the role played by women in humanitarian aid, post-war reconstruction, peace negotiations, peacebuilding, and conflict prevention and resolution. However, this research however contends that most ongoing armed conflicts are non-international, involving state armed forces versus rebel forces, or non-state armed groups battling it out within the borders of sovereign states; they frequently employ unconventional, asymmetrical guerrilla tactics; and the parties involved in most

contemporary conflicts aren't just states but also rogue, armed rebel groups, private military units, mercenaries.

Furthermore, the study suggests that the patriarchal culture of Nigeria, where *Boko Haram* primarily works, has contributed to the institutionalization of discriminations against women in most areas of both public and private life. This is reflected in power structures that devalue and oppress women, and as a result, these norms and gender-based discriminations foster a climate that is favorable to gender-based violence before, during, and after armed conflict. These power structures exist in the fields of social, cultural, economic, political, religious, and law, among others.

It is noted in this work that the idea that guerilla tactics of considering all conducts in war as fair may also be responsible for the persistence of this war crime. Parties to conflicts frequently take actions that seem to favor their positions and ensure victory and are rewarded for favorable outcomes. This can be partially explained by the suggestion that participants in historical military battles may have viewed acts of sexual violence as 'spoils of war'. When virgin rapes were successfully committed during wartime, it was a sign of ego and status. This act was traceable to ancient times of the conduct of the Oyo Empire and persists in the culture till this day. Further, the work notes that one could argue that early on, sexual violence in armed combat was not considered a humanitarian issue. This is because none of the clauses of the four Geneva Conventions specifically deal with how to protect sexual violence victims in terms of humanitarian law. It was only addressed in the 1977 protocols.

This research argues that religion has an impact on some groups' behavior, particularly that of terrorists and militants who, despite their propensity to misinterpret some religious principles, rely on them to justify their cruel actions. This bears out in interview respondents in the Nigerian

Government's rehabilitation program for ex-combatants of the *Boko Haram* armed group, during the fieldwork part of the research.

The research further argues that the power and control structure of armed groups informs further attitudes and the use of sexual violence as a tool of war. Invariably, the less knowledgeable a leader or commander is, the crueler their subordinates are in different conflict situations. According to data analyzed in this work, women are often used as reward for gallantry at the end of successful missions by combatants. Additionally, an assessment of these groups' command and control structures as well as their motivations, which often came from religion reiterate these conclusions.

However, it must be noted in the analyses of the lacuna found within IHL, that the Geneva Convention is not appropriate for defending against or reducing the threat posed by these groups. Religious groups have profited more from easy access to strong social networks than any other category of militant organization, and this typically enables them to more effectively screen recruits and address their principal-agent difficulties while also assuring conformity among the rank and file.

It is becoming more apparent, particularly from current conflicts, that insurgent causes are easier to radicalize where religious causes are promoted and can be used as justification for insurgent attacks, and because it is more likely that other militant groups with ideologies like, or closely linked to those of the insurgency, will lend their support to it. Similarly, religiously driven organizations engage in this temerity, which has the potential to be more deadly, while maintaining unalterable objectives, resulting in improbable diplomatic settlements, and promoting increased armed conflict. Since a group's established ideology and goals are intended to affect its ability and desire to mobilize resources for ongoing campaigns of attrition, the command structure is always built on the foundation of violent confrontations. But this work has shown that groups with less

aggressive objectives and more narrowly focused goals—like secession or territorial independence—tend to achieve their ultimate goals more quickly or ultimately than groups with maximalist goals, like seizing power or establishing state control.

Having reviewed the influence of religion and ideology in armed conflicts, the work proceeds to review the use of religion not only as a motivation of wars but as well as a defense to sexual violence in armed conflict. The work notes that the provisions of Quranic texts such as Quran 4:34 and the story as told in Daniel 13 of the Bible put women at a systematic disadvantage and whilst scholars such as Sawari have posited that interpretation of the Quran to justify sexual violence in war time are in error. However, this work posits that there is a nexus between the tacit implications of the religious texts of the major global religions and its ultimate reflection in society as Sheila Redmon has identified, the running themes of suffering and self-sacrifice when implemented in modern society are not controllable narratives especially when submission is put as one of the qualities necessary in society. It is to be noted that the judicial attitudes to religious defense has rejected the concept as it goes against the principles of humanity and respect for dignity.

With the review of the role of religion and ideology, I assessed the role of the Nigerian system especially its legal framework. I noted that only Chapter IV of the Constitution specifically mentions sexual violence. This chapter contains the crucial fundamental rights provision. Basic rights were deemed to be superior to all other rights and ordinary Nigerian laws in the *Ransom Kuti v. Attorney General of the Federation* case. More specifically, the right to human dignity, which protects against all types of sexual violence, is guaranteed under Article 34 of the Constitution. However, it is noted that because the constitution did not specify the acts that constitute a violation of this essential right to human dignity, some scholars have come to the conclusion that sexual violence in whatever form constitutes an act against the personal dignity

and honor of any individual (victim). It can result in death or psychological harm for victims, and it is detestable and brutal. However, this failure is shown to be covered by the Criminal Code, Penal Code and Violence Against Persons Prohibition Act amongst others.

Despite these laws in place, this work has portrayed that not only does there exist a perversion of sexual violence in armed conflicts and insurgency but also by the police in their procedures. Police brutality, the use of torture as an interrogation method, and other willful violations of human rights were listed by Amnesty International as some of the Nigeria Police Force's key failings that have drawn public scorn, opprobrium, and condemnation. Numerous media outlets in Nigeria have reported on the sexual abuse of numerous women. The victims testified in court about their sexual violences and stated that some police officers used water sachets as 'protection' in place of condoms, while others engaged in forcible intercourse with them without using a condom or any other kind of safety.

It can be safely concluded that sexual violence remains prevalent in the cases of insurgence and that the major catalysts that drives this include religious philosophies and ideologies, cultural affiliations, poverty, and also patriarchal supremacy ideologies. The conclusion is inferable from the data gathered by the interviews conducted by the researchers of this work, interview and survey participants selected through non-random, purposive sampling of ex-male combatants of the BH Armed Group and rescued female survivors of sexual violence during the conflict, initial purposive and snowball sampling of state military representatives/commanders and legal experts, Islamic law experts, religious/community leaders, civil society representatives, etc., where the respondents in the interviews claimed that women were coerced into having sex with soldiers and forcefully married to the militants. If any person escaped, they were brought back, sexually violated, and sometimes killed. Women who lost their husbands also suffer from sexual violence in the system.

A notable aspect of the data derived from the sources interviewed was the agreement that majority of members viewed themselves as following the will of God and the examples laid down by the Prophet Muhammad and the case where they perished, they would be welcomed into paradise and premised on this, they believe their actions were justified, even their “forceful display of love towards a marriage including forced marriage and sexual intercourse” were all in the purpose of serving the cause of god. Because militants hold this cultural and religious concept in higher respect than they do the law, most responders to the research stated that violation women in the camp was the norm. A few, meanwhile, insisted that their activities were motivated by self-interest.

This work has listed the primary justifications for why sexual violence continues to occur despite IHL during the *Boko Haram* armed war ranging from the patriarchal society to the largely religious factor in play. This problem has been unsuccessfully resolved by the laws of war. This makes it obvious that the regulations have not been successful since *Boko Haram* has a large number of financial and political backers. Thus, for the objective of the reduction of sexual violence during armed conflict, new approaches must be imagined for curbing this phenomenon. Religion-based defenses have been more harmful than helpful to the offenders because they have been poisoned by the religious authorities. Due to the group's adamant hostility to anything western, which it says corrupts Muslims, it has acquired this reputation. It fiercely opposes all laws created by humans, including international humanitarian laws, because it is an Islamist movement.

The research reiterates the abhorring of all forms of sexual violence and activities. As a serious violation of IHL, sexual violence constitutes a war crime. The Statute of the International Criminal Court includes rape and some other forms of sexual violence in the list of war crimes and in the list of acts that constitute crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population.

Radicalized, fundamentalist, ideological socialization of armed groups, when combined with patriarchal attitudes in power structures in a society pre armed conflict reinforce the inability of IHL to have the desired positive impact in curbing sexual violence during armed conflicts and especially in the Boko Haram context. These factors clearly obfuscate domestic and international efforts aimed at achieving much needed results in preventing and curbing sexual violence during armed conflict situations. This perhaps draws attention to the multipronged challenges that IHL must overcome if the intentions of the drafters of the various instruments that regulate conflict situations would be achieved.

Having analyzed the prevailing factors responsible for the continued perpetration of sexual violence in the Boko Haram armed conflict despite IHL norms and prohibition, it is apparent from the research that International Humanitarian Law has yet to succeed in deterring *Boko Haram* from war crimes and crimes against humanity like sexual violence in armed conflict, which this discourse centers on. There is little indication that IHL has been effective in dealing with this phenomenon, particularly in the context of our case study. On the contrary, *Boko Haram* armed groups boast of backing in several quarters including foreign and political interests. The *Boko Haram* insurgency and terrorism still pose a threat in most parts of Nigeria till date. From the field data, several respondents noted that some members of the armed group, who might be willing to defect are afraid of surrendering to the government, because they know that the government would have them killed. There is no gainsaying that the spate of insecurity, characterized by ethnic conflicts and *Boko Haram* insurgency, is fast demolishing the remnants of the economic and social infrastructure of the northern region of Nigeria.

This work premised on all of the aforementioned data and research opines that the existence of these ideological drivers proves a challenge to international humanitarian law in regulating the

actions of these groups in the course of armed conflict as the groups already view Western education and by extension the laws derived from the west are illegitimate and for the most part, are ignorant to their existence as they do not care about them and to the extent where these soldiers believe that they are acting in accordance religious guidance, these actions would continue to exist in the status quo.

Twinning's conceptualization of *Law as an Institutionalized Social Practice* appears instructive, where he engages Gordon Woodman's argument that "state law is typically defined in terms of relatively determinate territory",⁶⁶⁸ and within the context of legal pluralism, where 'a population observes more than one body of law', settled 'choice of law' rules might not be readily apparent, he insists,

the population may be dispersed, membership of the population may be ambiguous, there may be variations and inconsistencies within a single 'system' or body of law, and an individual may observe different laws for different purposes, even in relation to a single transaction or relationship... especially the case with personal and religious laws....⁶⁶⁹

Adapting this innovation to IHL, as it relates to the discourse around the prohibition and prevention of sexual violence in armed conflict, will work to ensure that IHL is understood and perceived by armed group combatants, whether state sanctioned or otherwise as legitimate and binding on them in the conduct of armed conflict. The decentralization of law and should assist in ensuring the

⁶⁶⁸ Gordon Woodman, (2003), 'Why there Can be no Map of Law', in R. Pradhan (ed.), Legal Pluralism and Unofficial Law in Social, Economic and Political Development. Papers of the XIIIth International Congress of the Commission on Folk Law and Legal Pluralism, 7–10 April 2002, Chiang Mai, Thailand, vol. III, Kathmandu: International Centre for the Study of Nature, Environment and Culture (ICNEC), pp. 383–92. (2003).

⁶⁶⁹ William Twining, *Globalisation and Comparative Law*, in Esin Örüçü and David Nelken (eds.) *Comparative Law: A Handbook* (2007), citing Woodman, Why There Can be no Map of Law (2003): The practice of relating laws to countries, societies, fields, or localities is, as Woodman suggests, a hangover from 'legal centralism', which treats state law as the paradigm.

diffusion of these norms into the very fabric of the society, including the interplay of sanctions in the society against SVAC.

Regarding the legal reaction to justifications of sexual violence and violence in Nigeria, it is noteworthy here, that marital rape is not recognized, nor is it a punishable offence under Nigerian law as of the time of the writing of this work. One proactive way by which Nigeria can seek to prevent sexual violence, especially in the *Boko Haram* armed conflict is by criminalizing marital rape, to ensure that the law has means by which to hold accountable perpetrators of sexual violence against women and girls under the guise of marriage as this research shows that *Boko Haram* has been doing. *Boko Haram* has been shown to be kidnapping and enslaving women and girls, and carrying out sham marriages with them, as justification for sexually violating the women and girls. Unfortunately, the Nigerian government has yet to successfully charge or prosecute any *Boko Haram* member for crimes of sexual violence, during the pendency of this armed conflict. It is therefore recommended that Nigerian lawmakers reconsider recognizing marital rape a crime in the country, considering the alarming statistics of domestic violence and the rarity of formal reporting of these instances of violence to law enforcement there

According to the current international trend of criminalizing marital rape, this recommendation is pertinent. As an illustration, countries like the United States, the United Kingdom, Canada, France, South Korea, Zimbabwe, South Africa, Rwanda, Sierra Leone, and Malawi have all made marital rape a crime.⁶⁷⁰ According to Section 34 of the Federal Republic of Nigeria's 1999 Constitution, which guarantees the right to human dignity,⁶⁷¹ the idea of criminalizing marital rape is one that

⁶⁷⁰ Itunu Kolade-Faseyi, "Spousal Rape in a Globalised World" NAUJILJ 9, No. 1, 109, 2018.

⁶⁷¹ Section 34 1999 Constitution

has constitutional validation. In view of the country's pressing needs, Nigeria is advised to create a legal framework that makes marital rape a crime.

Emerging jurisprudence in national and international fronts suggest that the immunity granted to men on account of such ideology no more holds water. This is reflected in the recent case of *R V. R*⁶⁷² where the court held that there is nothing like an exemption for a husband who rapes his wife. The effect being that he will also be considered a rapist, just like any other person. The effect of this, as rightly suggested, by Faseyi is “that a wife is not obliged to obey the husband in all things...”.⁶⁷³ Thus, by this, the courts are beginning to gradually disassociate themselves from marital rape.

From the international perspective, the crime of sexual violence has been prosecuted before international courts and/ tribunals. Though some of these cases have been reviewed in previous chapters, it is pertinent to reiterate them here. The first case in point is that of *Prosecutor v. Tadic*,⁶⁷⁴ in which there were allegations of sexual violence against civilians who were detained by Dusko Tadic. Consequent upon these allegations, Tadic was prosecuted and was found guilty of the crimes against humanity, among which was sexual violence premised on the fact that rape and sexual violence may never be an acceptable tool of law and goes against the very humanity of the victims.⁶⁷⁵ Another case of sexual violence during armed conflict discussed in this work is the case of *Prosecutor v. Kvočka*,⁶⁷⁶ also relating to the detention Camps established by the Serb Forces after taking over Prijedor located in the North-Eastern part of Bosnia and Herzegovina, from which allegations of several acts of sexual violence were also reported and proved in court. The court

⁶⁷² R V R [1991] UKHL 12.

⁶⁷³ Itunu Kolade-Faseyi, “Spousal Rape in a Globalised World” NAUJILJ 9, No. 1, 109.

⁶⁷⁴ Case No: IT-94-15T.

⁶⁷⁵ *Prosecutor v. Tadic*, Judgment, Case No. IT-94-16T, 7 May 1997, para. 536.

⁶⁷⁶ Case No: IT-98-30/1-T.

then found Kvocka guilty of these offences, relying on the principle that sexual violence by its very nature degraded a person and subjected such person to inhumane treatment.⁶⁷⁷

The cases cited above underscore the prevalence of sexual violence pre, during and post armed conflict, and the reaction of the international community towards same, in refusing to condone and seeking to hold accountable and punish perpetrators of this crime. Nevertheless, in these and other cases of similar nature, religious justification was not raised as a defense by the accused persons. This explains why it may be more difficult to determine the perspective of international courts on how religious ideology could impact the prosecution of sexual violence at the international level, as this research did not find cases where the defense of religious ideology was used by a defendant in international courts or tribunals, as a defense against sexual violence charges. Invariably, it could be assumed that this has yet to be decided before international courts, to afford us the opportunity to have it examined.

Cohen's treatise on opportunistic versus strategic explanations of factors enabling sexual violence in armed conflict was also explored empirically through the fieldwork data, and theoretically by engaging the work of Leatherman who suggested that the complex factors can be examined under two rungs, the remote/systemic factor and the proximate/situational factor; also bringing Wood in conversation with Leatherman in this respect. The research further explored the role of religion and/or religious justifications in the perpetration of sexual violence, concluding that religious ideologies seeking to preserve and enforce the religio-cultural attitudes of patriarchy where men are seen as the lord over women, has significant influence on the continued proliferation of sexual violence, pre, during and post armed conflict. With regard to the position of the courts in cases

⁶⁷⁷ Ibid Paragraph 88.

where religious ideology was claimed as a defense to charges involving the act of sexual violence, it can be concluded from the cases that, the courts will not allow a defendant to plead a religious defense at the expense of the normative law of the land, and rightfully so; and where there exists any conflict between religious defenses and international law, the latter prevails.

The relationship and possible areas of concurrence between Islamic law and IHL, specifically the Geneva Conventions, the implication of this analysis on the proliferation of sexual violence in armed conflict, particularly in religious ideology based armed conflicts like the *Boko Haram* armed conflict, have implications for further research as this is beyond the scope of this research, yet is relevant to this discourse. This research critiques the efficacy of IHL in religious ideology-based armed conflicts like the *Boko Haram* armed conflict as being largely ill-equipped for and therefore ineffective in preventing and/or deterring sexual violence in armed conflict, hence the need to further investigate the reasons for this ill-preparation and how to remedy this apparent lacuna to ensure that the law is suitable to respond to this scourge. The research further examined the question of whether the *Boko Haram* armed group considers IHL as binding on the group in the armed conflict which they pursue, and to what extent they consider IHL as binding on their conduct of the war, considering their tactics and repertoire of violence. This research set out to investigate the puzzling contradiction between the espoused ideological beliefs of the *Boko Haram* armed group and their actions. The research data suggests that not all armed groups and combatants are as knowledgeable about IHL and conventional warfare laws as some others are, and that not all armed groups and combatants necessarily feel as though they are bound by those rules, despite what certain groups' and their members' behavior might suggest.

In exploring this, the data elicited the mechanism through which the *Boko Haram* armed group apparently carries out their sexual violence as the normative institution of marriage, and which

mechanism the *Boko Haram* armed group uses to circumvent the Sharia prohibition of sexual relations outside of the confines of marriage. The implications of the purported marriages to women who in most cases were abducted or were purportedly married in questionable ceremonies or lack of, raise fundamental questions of consent and the validity of such marriages under Islamic and secular laws of the land. The study's analysis concludes that consent sought and obtained from women/girls who were abducted and involuntarily held in enslavement, often at the threat of detention or with guns, amounts to consent obtained by force and duress.

Under the law in Nigeria, force or duress invalidates consent for marriage, thus any consent obtained from these enslaved women/girls for these purported marriages is arguably invalid, thus making such marriages voidable when these women regain their freedom from the armed group. However, the status of these marriages post-return of these women/girls elicits implications for further research as these questions were not asked of the female survivors of these marriages. Further, when asked of the military legal officials, these officials were reluctant to engage with the researcher, only offering the response that the government has no official stance on the status or validity of the so-called marriages contracted with the women by *Boko Haram* in their camps in Sambisa Forest.

Finally, this research determined the prevailing factors responsible for the continued perpetration of sexual violence in the *Boko Haram* armed conflict, despite IHL efforts to deter armed groups from committing this crime. Due to the current vacuum in existing scholarly literature explaining this phenomenon in the context of the *Boko Haram* conflict, this work was focused on understanding what explains the reasons sexual violence occurs in armed conflict, based on findings from empirical data from the *Boko Haram* conflict in northern Nigeria. Thus, the research focus was intended to contribute to the discourse focused on preventing sexual violence in armed

conflict, because discussions focused on holding perpetrators accountable for these crimes, are belated,⁶⁷⁸ after the harm has already been done to the survivors and their lives have changed irreparably.

For these adolescent girls their virginity—a symbol of their honor in their society, cannot be retrieved and for all these survivors, their dignity, bodies, and souls have been so brutally invaded and ravaged that they may never fully recover their self-esteem and self-worth. Those with children born of this attack will forever live with them as a reminder of their shame and pain. Studies like this, however laudable, cannot fully capture the essence of and depth of the effects of this crime against humanity and women. The urgency of the need for a preventive focus to be adopted in the effort to end this scourge in the long term and in the meantime, see to the speedy and steady decline of the rates of this social phenomenon, therefore, cannot be over-emphasized.

⁶⁷⁸ Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law*, 46 McGill Law Journal 217 (2000), 239. The author noted that “at root, the process of changing patriarchal **culture** and the inequality of women is a multi-faceted and urgent responsibility of both women and men. The ICC can contribute to this process, but we must remember Rosalie Abella's comment last night that courts and legal norms come “too late.”

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APPENDICES

INTERVIEW GUIDELINES

Subject: Sexual Violence in Armed Conflicts: Case study of the Boko Haram Armed Conflict in Northern Nigeria

Interviews: In-depth, Semi-structured Interviews in Nigeria

Purpose: The purpose of this study is to understand how Sexual violence in Armed conflicts are sustained despite International Humanitarian Law, particularly in the Boko Haram Armed Conflict.

Method of recording: Audio recording (permission requested first). Field notes and reflective journals will also be kept for direction observation.

Interview Subjects: Target groups include:

a. Ex-Combatants of the Boko Haram group—specifically those who have laid down arms and received amnesty from the government and have been rehabilitated or are currently going through a rehabilitation program or are in the process of doing same.

b. State Sanctioned Military members and/or Leaders.

c. Other current or former state and/or non-state military and paramilitary group members, militia, vigilante, etc. involved in the armed conflict in any capacity.

d. Some members of the communities affected by the conflict.

e. Religious and/or Cultural thought leaders

f. Key representatives of Government and NGO organizations that work with the communities affected by the conflict, combatants and survivors of sexual violence in the armed conflict etc.

g. Other relevant stakeholders, influencers, etc.

General probes for all interview subjects

1. Personal background:

(The purpose of this section 1 is to get background information about the respondent, but also for the interviewer to build rapport with the respondent so that they will feel comfortable with the interview.)

These questions do not need to be asked exactly as they are written here. They should be asked in a conversational manner.

The interviewer can begin with, “Can you tell me a little about yourself?”

Other probes

- a. How old are you?
- b. What is your ethnicity? (Country, State, Village)
- c. Where were you born?
- d. Are you currently or were you ever involved in the Boko Haram or any other armed conflict?
- e. If yes, for how long?
- f. What role are you currently or did you play in the armed conflict?
- g. How did you get involved in this armed conflict?

SPECIFIC PROBES FOR BOKO HARAM MEMBERS AND OTHER ARMED GROUPS

2. Direct Involvement

- a. How did you get involved in the Boko Haram Armed Conflict? (recruitment)
- b. What role did you play in the activities of your group? (personal involvement)
- c. To the best of your knowledge, what is the general philosophy and beliefs of the Boko Haram Armed Group?
- d. To the best of your knowledge, how did you learn the general philosophy of the Boko Haram Armed Group? Were you taught these philosophies, beliefs or did you learn through observation or perhaps a combination? Can you tell me more about that? How did that work? Please explain and give examples if any. (socialization)
- e. To the best of your knowledge, what is Boko Haram's philosophy and beliefs about sexual relations generally? Were you taught these philosophies, beliefs or did you learn through observation or perhaps a combination? Can you tell me more about that? How did that work? Please explain and give examples if any. (socialization)
- f. To the best of your knowledge, how did you learn the Boko Haram's philosophy about marriage? Were you taught these philosophies, beliefs or did you learn through observation or perhaps a combination? Can you tell me more about that? How did that work? Please explain and give examples if any. (socialization)
- g. Is this different during peacetimes and wartimes?

h. Before getting involved in the Boko Haram conflict, what did you believe about these things above (your cultural and personal religious beliefs, perspectives, attitudes, convictions about sexual relations and marriage, during peace and war time)

3. Opinions

a. What are your views about Boko Haram's general philosophy?

b. What are your views about Boko Haram's philosophy about sexual relations and marriage?

c. What factors do you think were responsible for growth of this philosophy?

d. What in your opinion is positive about your involvement in this conflict?

e. What in your opinion is negative about the activities of Boko Haram?

f. With the benefit of hindsight, what are your views about what happened in 2e above?

g. What in your view amounts to sexual violence against a person?

h. To the best of your knowledge, how does the law view this kind of act?

i. How does your society, culture view this? What's your religious view and that of your society about this? Can you give any examples?

j. Are these beliefs the same for peace and war times? If not, what are the differences? Can you give any examples?

k. What in your opinion is responsible for causing sexual violence during war? What has sustained this perpetration of sexual violence?

l. What about the culture and attitudes of the society you come from, do you think plays any role in causing and/or sustaining sexual violence in this armed conflict? How do you think these factors lead to and sustain the perpetration of these acts of sexual violence? What makes you think so and/or what informs your response?

m. What about your religious attitudes and beliefs and that of the society you come from, do you think plays any role in causing and/or sustaining sexual violence in this armed conflict? How do you think these beliefs lead to and sustain the perpetration of these acts of sexual violence? What makes you think so and/or what informs your response?

- 4. Conclusion Statement**
- a. Is there anyone else we should speak to about these topics?
 - b. Would you share any thoughts that you think are important for me to know?
 - c. May we contact you again in the future as this research project develops?

SPECIFIC PROBES FOR OTHER MAJOR STAKEHOLDERS

1. POLICY and LEGAL STAKEHOLDERS

- a. What in your view is responsible for the sustenance of Sexual Violence in Boko Haram Conflict?
- b. What role do you think religion and culture play in the use of sexual violence in Boko haram conflict?

Policy

- a. What in your view is responsible for the sustenance of Sexual Violence in Boko Haram Conflict?
- b. What role do you think religion and culture play in the use of sexual violence in Boko haram conflict?

Law

- a. What International Humanitarian laws are available to help curb sexual violence?
- b. In your opinion, why do you think sexual violence is sustained despite several International Humanitarian laws?
- c. Do you think relevant stakeholders have enough knowledge of existing International Humanitarian Laws?
- d. Do you think that non-legal solutions would help curb sexual violence above legal ones? If so, what could these solutions look like?

2. CROSS-CUTTING ISSUES: STAKEHOLDERS

- a. What are your views on your role as lawyers/ courts/ legislators/religious leaders in curbing sexual violence in general and particularly in the Boko Haram armed conflict?
- b. How do you act in order to advance these views?

c. What if any, do you think you could do or could be done differently in order to prevent sexual violence both in peace and wartime?

d. Do you collaborate with other stakeholders, organizations, government, in the role you play? Who are your allies, including domestic, international), funding or other support?

- What strategies do you utilize to advance your views, and have these strategies worked? How useful have you found these strategies to be?

3. Conclusion Statement

a. Is there anyone else we should speak to about these topics?

b. Would you share any thoughts that you think are important for me to know?

c. May we contact you again in the future as this research project develops?

INTERVIEW QUESTIONS FOR THE WOMEN

1. Personal Background

- (a) Please tell us about yourself
- (b) How old are you
- (c) what is the name of your hometown/Village
 - (i) Where were you born
- (d) Are you/Were you ever involved with BH?
- (e) How did you join BH? (Examples could be Kidnapping, Voluntary, etc?)
- (f) What was your reason for identifying with BH? (Examples could be BH preached to them, marriage, etc
- (g) Were you/Are you in a relationship with a current/former BH member or member of any other armed group?
- (f) What is the relationship (brother/father/spouse)
- (e) Can you remember any difference in the person before he joined BH and after they joined BH?
- (f) If the interviewee answered the above in the affirmative ask them if they remember specific examples
- (g) Do you think this change impacted your life in any way
- (h) if Yes - HOW

SPECIFIC PROBES FOR SPOUSES OF BH AND OTHER ARMED GROUPS

2 Specific Occurrences

- a) Did BH or any other armed group come to your hometown/village
- b) If the answer is Yes- please name them or describe them
- c) when did the armed groups come to your village/hometown
- d) what did they do when they came (activities) to your village? you noticed (List)
- e) these things you noticed have they affected life and living in your community(explain). Have their activities affected the way life happens in your village like when people go out or come home, instigating fear for their safety, disappearances.
- f) Have these things affected women in a special way?
- g) If YES please tell me more
- (h) Were you in the bush/forest/BH camp?

- (i) How did you go the bush/forest/BH camp?
- (j) How would you describe your personal experience in the Bush? Life in general, duties, trainings, punishment, etc
- (k) What does BH believe in, what is their philosophy, ideology, belief? What are they fighting for?
- (l) How did you get to know about this belief, philosophy, ideology? Did they preach, teach you or did you learn about it by hearing from others there?
- (j) What does BH believe about women
- (k) What does BH believe about marriage? Explain their belief about the process of how to get married and what happens in marriage.
- (l) What does BH believe about Sexual relations before and after marriage?
- (j) What happens if sexual experiences occur outside marriage? Consequences?
- (j) Did you get married in the bush/forest/BH camp?
- (k) How did that marriage take place? Describe the process of the proposal, personal and family consent, dowry, witnesses, marriage ceremony.
- (l) Did you experience any sexual relations outside marriage? What happened? Consequences?
- (j) Were you told, or did you hear any reason why that sexual experience occurred?

3 Opinions

- a) How are women treated generally in your village? Before and after BH
- b) How does marriage take place generally in your village? Before and after BH
- c) What is your culture relating to sexual relations generally? Before and after BH
- d) In your personal opinion, what do you think should happen before a man has sexual relations with a woman?
- e) Do you believe a woman should give their consent without coercion/force for sexual relations to take place?
- f) Does BH have sexual relations with women without their consent?
- g) Why do you think they do that?
- h) Are your reasons for your answer related to the armed conflict or does it also apply during normal peace time?
- i) What is the situation relating to this in your village before and after BH came?
- j) What do you think is the best way to respect the dignity of women/girl
- k) Do you think men use sexual violence as a weapon against women in he BH camp?

Other Probes (if there is time and if the Interviewee is willing to continue)

- (a) What are the characteristics of relationships identified in section One above in your village BEFORE the advent of BH and other armed groups started their activities in your hometown

- b) What is the nature of these relationships now
- c) Has there been significant changes in the nature and dynamics of these relations for instance how a brother speaks to his sister/ how a son speaks to his mother/ how a husband now treats his wife and how marriages are now contracted
- d) what are these changes (please list them)
- e) Do you think the changes are due to the existence of BH in your hometown/village?
- f) Why do you think so
- g) are these changes positive or negative
- h) have there been incidence of sexual violence/ gender-based violence/harassment of women/girls in any way by people believed to be BH members/

4 Concluding Statement

- a) Do you think our conversation today will benefit from speaking to some other person.
- b) Are there things I did not ask you that you think will increase my understanding of these issues I have raised with you today
- c) Would you want us to contact you further on these issues if it becomes necessary at a later stage in our research.

CONSENT FORM FOR INTERVIEW PARTICIPANTS

RESEARCH TITLE: -

I agree to take part in the above University of Washington research project. I have had the project explained to me and I have read and understood the Information Sheet, which I may keep for my records. I understand that agreeing to take part means that I am willing to:

Be interviewed by the researcher:

- 1) I understand that my identity, as well as any information I provide in an interview, can be anonymized upon my request. If I do request that my identity be made confidential, the information I provide will be coded to prevent my identity from being made public.
- 2) I understand that I will be given a transcript of the interview for my approval before it is included in the research findings, and I agree that the information may be published in a doctoral thesis and other subsequent publications.

Allow the interview to be audio taped:

- 1) I consent to the audio recording of the interview, but should I request that my identity be kept confidential, the recording shall be done in such a way as to preserve my anonymity.

Please select one: (special conditions may be explained on the following page)

- I give approval for my identity, name and workplace to be used in this research and publications arising from it.
- I would like my identity made confidential, and any information I provide in an interview to be anonymized.

Initials

Special Requirements:

I understand that my participation is voluntary, that I can choose not to participate in part or all of the research project, and that I can withdraw at any stage of the project without being penalized or disadvantaged in any way.

Name: _____

Signature: _____

Date: _____