

# Counter-Insurgency Measures and Enforced Disappearance in Nigeria: *Boko Haram* Perspective

Dr. Musa Alkali Lawan<sup>1</sup>, Dr. (Ass. Prof) Ahmad Muhammed Bachaka<sup>2</sup>, Abdullahi Usman<sup>3</sup>

<sup>1</sup>Lecturer, Department of Public Law, Faculty of Law, University of Maiduguri, Nigeria

<sup>2</sup>Head of Department, Public Law, Faculty of Law, Usmanu Danfodiyo University, Nigeria

<sup>3</sup>Lecturer Department of Sharia, Mohammed Goni College of Legal and Islamic Studies, Maiduguri, Borno State, Nigeria

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## ABSTRACT

*Boko Haram* has threatened the peace and wellbeing of the nation especially in the North-Eastern parts of Nigeria. The Federal Government initiated counterinsurgency measures involving the National Security Agencies with the sole mandate of restoring law and order. However, the security agencies in their counterinsurgency measures against the *Boko Haram* insurgency have committed series of human rights violations against the citizens. One of the serious human rights violated by the security agencies against the citizens is the right against enforced disappearance. The aim of this paper, is to examine the extent to which the security agencies engaged in violating citizens' right against enforced disappearance, and whether the perpetrators are held accountable for such human right violation. To achieve this, the research adopted doctrinal methodology otherwise known as theoretical. The findings reveal that the security agencies have engaged in violating citizens' right against enforced disappearance and no perpetrator was held accountable. The paper recommends that, cases of enforced disappearance be investigated and the perpetrators be brought before justice and also the Convention against Enforced Disappearance be domesticated in Nigeria.

## INTRODUCTION

*Boko Haram* conflict in Nigeria date back to 2009, when the Islamist insurgent movement popular known as *Boko Haram* meaning (Western Education is Forbidden)[1] with its official name as *Jama'atul Ahlis Sunnah Lidda'awati' Wal Jihad* (which is translated as People Committed to the

Propagation of the Prophet's Teaching and War)[2] waged a violent campaign against the Nigerian government.[3] The conflict has spread and intensified as a result of a complex web of socio-cultural, economic, ethno-religious and sub-regional factors.[4] It has evolved into a non-international armed conflict between *Boko Haram* and Nigerian Security forces in the States of Borno, Yobe, and Adamawa and has been marked by egregious violations of human rights committed by both sides. According to a report by Amnesty International the Nigerian government through the counter-insurgency measures by the Joint Military Task Force (JTF) has led to a documented human rights violations, war crimes and possible crime against humanity committed by the military in their campaign against *Boko Haram*. [5] One of the serious human rights violation alleged to have been committed by the security agencies in their counter-insurgency measures against *Boko Haram* is the right against enforced disappearance. [6] Enforced disappearance is one of the most serious forms of human rights violation, as it include violations of series of fundamental rights, including the right to life, integrity, free development of the personality, personal liberty and security, presumption of innocence, due process, right to defence and effective recourse before the court. [7] Furthermore, the rights of the missing person are violated on one hand and the victims' relatives are denied

the right to know the truth about what happened, the whereabouts of the victim, the receipt of remains and the process of grieving.<sup>[8]</sup> This paper, seeks to examine the extent of the security agencies engagement in violation of the citizens' right against enforced disappearance in their counter-insurgency measures against *Boko Haram* and whether the perpetrators are held accountable for the violation of the rights.

## NATURE AND MEANING OF ENFORCED DISAPPEARANCE

Enforced disappearance is one of the most serious forms of human rights violation, as it includes violations of series of fundamental rights, including, the right to life, integrity and security, presumption of innocence, due process, free development of the personality, right to defence and effective recourse before the court.<sup>[9]</sup> Furthermore, on the one hand the rights of the missing person are violated and on the other hand, the victim's relatives are denied the right to know the truth about what happened, the whereabouts of the victim, the receipt of remains and the process of grieving.<sup>[10]</sup> This fact was upheld by the United Nations General Assembly (UNGA) in its first resolution on disappearance, in 1978, stating that, it is deeply moved at the anguish and sorrow which such circumstances cause to the relative of disappeared persons, especially to spouses, children and parents.<sup>[11]</sup> The recognition of the serious suffering inflicted on relatives because of the enforced disappearance of a loved one has been enshrined in the Declaration on the Protection of All Persons From Enforced Disappearance (DED).<sup>[12]</sup> In fact, it expressly stated that: "any act of enforced disappearance places the persons subjected thereto outside the protection of law and inflicts severe suffering on them and their families".<sup>[13]</sup> A further development in the evolution of international law, the International Convention for the Protection of All Persons From Enforced Disappearance (ICPED), defines Enforced Disappearance as:

The arrest, detention, abduction or other form of unauthorized deprivation of liberty of a person by a State, agents acting for the State, or persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the person's fate or whereabouts, placing him or her outside the protection of the law.<sup>[14]</sup>

Article 1 of the Convention further states that:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for enforced disappearance.<sup>[15]</sup>

Overtime, the prohibition of disappearances has come to be regarded as an independent, self-standing guarantee binding the States as a matter of universally recognized fundamental rights.<sup>[16]</sup> Because of its seriousness, there is also a growing acceptance that an act of disappearance may constitute a crime against humanity under international law, as is expressly recognized, for example, by Article 7 (1) (i) of the Statute of the International Criminal Court and in Article 13 (i) of the Law on Specialist Chambers and Specialist Prosecutor's Office.<sup>[17]</sup> As a matter of human rights law, the essence of that offence lays not just in the serious violation of the rights of the disappeared person and close relatives, it is also connected to the authorities' reactions and attitudes to the situation when it has been brought to their attention.<sup>[18]</sup> A finding of rights violation in such a case is therefore not limited to cases where the authorities can be held responsible for the disappearance itself. It can also arise where the failure of those authorities to respond to the quest for information by the relatives or to the obstacles placed in their way; thus leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant continuous and callous disregard of an obligation to account for the whereabouts and fate of a missing person.<sup>[19]</sup> It should be noted that, the violations of rights involved in the commission of an act of disappearance are among the most important fundamental rights guaranteed by international human rights law. Therefore, the commission of an act of disappearance constitutes a serious infringement of guaranteed human rights. As such, it required decisive and proportionate measures on the part of the State or concerned authorities to prevent,

investigate and remedy the violation of rights arising from the commission of such an act.[\[20\]](#) Victims of such acts are not limited to the disappeared, but may also include close relatives of disappeared persons, who suffer from the continuous anguish of not knowing the fate of their loved ones.[\[21\]](#) This continuous uncertainty, doubt and apprehension on the part of the family of the disappeared also gives this category of rights violation one of its most significant definitional specificities, namely, the ongoing nature of the violation of rights involved in a case of disappearance.[\[22\]](#) Violations of rights arising from an act of disappearance do not cease until that time when the authorities have satisfied their procedural obligations of diligently investigating the circumstances of the disappearance.[\[23\]](#) This means that until that point, the authorities must have continuous efforts in principle to bear a responsibility to look into and remedy those violations.

## **A BRIEF HISTORICAL ORIGIN OF ENFORCED DISAPPEARANCE**

Generally, it is believed that the practice of enforced disappearance began with the *Nacht und Nebel Erlass* (Night and Fog Decree) created by Adolf Hitler in 1941.[\[24\]](#) Persons from the occupied territories were seized and taken to Germany where they were executed.[\[25\]](#) In the meantime, the whereabouts of the missing persons remained unknown to their families as well as to the public.[\[26\]](#) The intention of this decree was in fact made clear in a letter in which Wilhelm Keitel, the Chief of the German Armed Forces High Command, stated that for crimes against the Reich:

...the fibre thinks that in the case of such offences like imprisonment, even life imprisonment with hard labour, is regarded as a weakness. An effective and lasting deterrent can be achieved only by the death penalty or by taking measures which leave the family and the population uncertain of the fate of the offender. The deportation to Germany serves this purpose.[\[27\]](#)

The fact that the main aim of the decree and the practice of seizing persons and having them disappeared was to be deterrent, and to create uncertainty over the fate of the prisoner among their relatives and acquaintances was also elaborated on in a letter by the Chief of the German Security Police in 1942.[\[28\]](#) Such practice was believed to have a deterrent effect and there was no risk of creating a martyr.[\[29\]](#) In the second half of the 20<sup>th</sup> Century, enforced disappearances became a tool for political repression not only for military dictatorships but also in semi democratic regimes, and emerged as a phenomenon affecting Latin America and Caribbean.[\[30\]](#) Since then its practice has extended to other regions of the world, namely: Europe, Middle East, Africa and Asia.[\[31\]](#) Furthermore, the phenomenon has become global now as there is strong evidence that it is being practiced in the current global war on terrorism.

## **LEGAL FRAMEWORK FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE**

The followings are some of the international, regional and domestic instruments for the protection of persons against enforced disappearance.

### **The Four Geneva Convention of 1949.**

The Geneva Convention of 1949 possesses four treaties that set international humanitarian standards in the context of armed conflicts.[\[32\]](#) The four treaties laid down rules for situations of war as well as legal safeguards for assuring the protection of individuals from violence.[\[33\]](#) These rules aim to primarily protect those people who do not take part in the fight such as civilians, medical staff, aid workers as well as those who can no longer fight such as wounded or sick persons, ship-wrecked troops or prisoners of war.[\[34\]](#) Two additional Protocols were adopted to the conventions in 1977, with the first and the second one

elaborating on differences between international and non-international conflicts respectively.[\[35\]](#) The most recent supplement to the Geneva Conventions, Additional Protocol (III) of 2005 created a third internationally recognized protective emblem; the red crystal, which joined the red cross and the red crescent as the only emblems recognized by nations signifying the protected status of individuals or objects bearing them during armed conflict.[\[36\]](#) Indeed, the Geneva Conventions and its Protocols are universal in scope, almost all countries of the world have accepted them.[\[37\]](#)

Without explicitly utilizing the term enforced disappearance, there is no doubt that many of the provisions under the Conventions and their Additional Protocols which form the basis of international humanitarian law aim to prevent enforced disappearances in the context of an armed conflict. This body of law contains numerous rules that are applicable to persons that are missing as a result of an armed conflict; the person subjected to an enforced disappearance can constitute one category of missing persons.[\[38\]](#)

### **The Rome Statute**

The Rome Statute was adopted in 1998 and established the International Criminal Court (ICC).[\[39\]](#) It lays down the Courts' structure, jurisdiction and functions. The Rome Statute and the Court were established with the objective of bringing to justice persons that have committed genocide, crime against humanity, grave breaches of international law, war crimes and other serious international crimes.[\[40\]](#) The ICC is a court of last resort; and thus, it will not take action when a case is investigated or prosecuted by a national judicial system, unless the national proceedings are not genuine.[\[41\]](#) Article 7 (1) (i) of the 1998 ICC Statute does recognize and provides that, enforced disappearance of persons constitutes a crime against humanity.[\[42\]](#)

### **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

The Convention Against Torture (CAT) is an international human rights treaty that aims to prevent torture and other cruel, inhuman or degrading treatment or punishment.[\[43\]](#) Under the CAT, torture is defined as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[\[44\]](#)

The CAT, also prohibits other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. However, these acts have not been criminalized under the Act, as they are not subjected to universal jurisdiction or to an 'extradite or prosecute' duty unlike acts of torture as defined in Article 1.[\[45\]](#) Therefore, in order to be criminalized under the CAT, an act of enforced disappearance must satisfy[\[46\]](#) the definition of torture as defined in Article 1. Acts amounting to physical or mental torture, as noted above, will often accompany an act of enforced disappearance, particularly in circumstances in which disappeared individuals are subsequently kept in clandestine detention facilities.[\[47\]](#) Acts of torture accompanying an enforced disappearance are often difficult to prove when a victim fails to reappear. However, international and regional human rights bodies, applying the relevant provisions that prohibit torture in international human rights law to case of enforced disappearance have at times shown a general willingness to imply from circumstantial evidence in the case of a disappeared person, even where the exact nature of the acts found to amount to torture is not unknown.[\[48\]](#)

## **International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)**

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) aims to prevent forced disappearance and make the practice punishable.[\[49\]](#) While this act may constitute a crime in an armed conflict the convention makes it an offence under all circumstances as a crime against humanity.[\[50\]](#) It was adopted in 2006 and entered into force in 2010.[\[51\]](#)

The Convention's structure is very similar to the Convention against Torture. It defines the action as a punishable offence, and provides provisions to prevent or to punish it. Article 2 defines Enforced Disappearance as:

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[\[52\]](#)

The Convention excludes any exceptional circumstances (State of war or threat of war, internal political instability or any other public emergency) as a justification for enforced disappearance.[\[53\]](#) It defines the widespread or systematic use of enforced disappearance as a crime against humanity.[\[54\]](#) States party to the Convention takes a complex set of obligations to make enforced disappearance an offence under domestic criminal law and to investigate acts of enforced disappearance, and bring those responsible to justice.[\[55\]](#) States party to the Convention has to establish jurisdiction over the offence, even if the perpetrator is not a citizen or resident. They have to cooperate with other States so that offenders are prosecuted or extradited and they also have to assist the victims of enforced disappearance. These obligations are followed by other aiming protection of victims, reparations and compensation.[\[56\]](#)

The Convention is monitored by a treaty, the Committee on Enforced Disappearance id consisted of ten (10) expert members, elected by States party.[\[57\]](#) The Committee examines the reports States have to prepare on the steps they have taken to enforce and implement the Convention. The Convention optimally provides for the possibility for communications to the Committee, which allows individuals and groups to issue petitions, and to undertake inquiries in the case of grave and systematic violations.[\[58\]](#) Article 30 provides for a Special Procedure: a request may be submitted to the Committee related to disappeared person, as a matter of urgency, and the Committee may request the State party concerned to provide it with information on the situation of the person sought within a time limit set by the Committee.[\[59\]](#)

## **The International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16<sup>th</sup> December, 1966 and came into force on 23<sup>rd</sup> March, 1976.[\[60\]](#) It commits its parties respect the civil and political rights of individuals.[\[61\]](#) Two Optional Protocols have been drafted to the ICCPR, the first founding the individual complaint mechanism, the second aiming to abolish the death penalty.[\[62\]](#) The ICCPR also provides for the establishment of the Human Right Committee (HRC), whose primary role is to monitor the implementation of the ICCPR. Indeed, the ICCPR is ratified by many countries in the world including Nigeria.[\[63\]](#) It is pertinent to that, persons going missing often involve multiple human rights abuses in respect of the persons themselves and also in respect of the family of the missing person. Regarding the missing person these abuses frequently include violations of the right to security and liberty, as well as dignity of the person; the right to life; the right not to be subjected to torture or degrading treatment or punishment; the right to family life and the right to recognition [\[64\]](#) as a person before the law. In the absence of effective and official investigations, disappearances concurrently represent grave abuses of the rights of surviving relatives and others, including violations of due process, the prohibition of torture, and violation of the right to family life and the right to recognition as



a person before the law. These rights are guaranteed by the International Covenant on Civil and Political Rights.[\[65\]](#)

### **The African Charter on Human and Peoples' Rights (ACHPR)**

The African Charter on Human and Peoples' Rights came into force in October 1986.[\[66\]](#) It is an regional human rights instrument that has been domesticated in Nigeria, by virtue of African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[\[67\]](#) This is provided in section 1 that the provisions of the Charter shall have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.[\[68\]](#) In the case of *Gani v Abatcha*[\[69\]](#) the Supreme Court held that:

By virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10 Laws of the Federation of Nigeria 1990, the African Charter is now part of the laws of Nigeria and like other laws, courts must uphold it.[\[70\]](#)

The Charter covers Social, Economic and Cultural Rights as well as Civil and Political Rights. It also gives emphasis to the assumption that every person has duties as well as rights in a community. It further stipulated rights of individuals as well as peoples. The Charter establishes the African Commission on Human and Peoples' Rights, whose key roles, among those entrusted to it by the Assembly of Heads of State and Government include:[\[71\]](#)

1. The protection of human and peoples' rights
2. The promotion of human and peoples' rights
3. The interpretation of the African Charter on Human and Peoples' Rights.[\[72\]](#)

Although, the African Charter on Human and Peoples' Rights does not contain any specific reference to enforced disappearance *per se*, it finds a lot of relevance for enforced disappearance cases as it protects many of the rights violated during the act.

### **The Constitution of the Federal Republic of Nigeria, 1999 (as amended)**

Human rights are very significant in the lives of citizens of any country, their guarantee in the Constitution or any legal instrument helps in safeguarding the welfare and happiness of the citizens. To this, one of the greatest objectives of the Post-Independence Nigerian Constitutions is the protection and promotion of human rights. To this end, Chapter two and four of the 1999 Constitution, extensively deal with human rights issues. However, it is pertinent to note that, the 1999 Constitution did not explicitly provide for enforced disappearances, but, key provisions can be found in Chapter IV of the Constitution that articulated on the protection of fundamental human rights that are violated by enforced disappearance. These include the following rights:

1. Rights to life[\[73\]](#)
2. Right to personal liberty[\[74\]](#)
3. Right of arrested and detained person[\[75\]](#)
4. Right to human dignity[\[76\]](#)
5. Freedom from torture, cruel, inhuman, degrading treatment or punishment,[\[77\]](#) and,
6. Rights to fair hearing.[\[78\]](#)

These rights as enshrined in the 1999 Constitution (as amended) have created a strong basis for the state being obligated to ensure that citizens are protected from violations of human rights such as those of enforced disappearance.

## BOKO HARAM INSURGENCY

Insurgency is a protracted struggle conducted systematically, in order to achieve specific intermediate goals leading finally to the overthrow of the existing order.<sup>[79]</sup> According to the United States Counter-Insurgency Guide defined insurgency as: “The organized use of subversion and violence to seize, nullify, or challenge political control of a region”<sup>[80]</sup> insurgency seeks to subvert or displace the government and completely or partially control the resources and population of a given territory.<sup>[81]</sup> They do so through the use of force (including guerrilla warfare, terrorism and coercion/intimidation), propaganda, subversion and political mobilization.<sup>[82]</sup> Insurgency is therefore the strategy of the weak and is usually characterized by protracted, asymmetric and psychological warfare, which mobilizes the population.<sup>[83]</sup> The main objective of insurgent groups is to discredit the existing government and gain popularity.<sup>[84]</sup> Insurgents may have various objectives, they may want to overthrow an existing government and obtain power, which is known as revolutionary insurgency, or their objectives may be limited to succession, autonomy, separation, or a change in policy.<sup>[85]</sup> *Boko Haram* believes a strict Islamic State under Sharia Law would address the problems of corruption, bad governance, and western influence which does not meet the desires of the Muslim population.<sup>[86]</sup> Since its emergence, the insurgent group has employed all forms of guerrilla tactics and violence to unleash mayhem against the State and people in an attempt to replace the Nigerian institutions, which they perceived as corrupt and western inclined. The violence unleashed by *Boko Haram* on the Nigerian State is unprecedented in the history of insurgency in the country. *Boko Haram* has used bombs to launch attacks against government or western targets, to intimidate opponents and to kill civilians.

## COUNTER-INSURGENCY MEASURES BY THE SECURITY AGENCIES AGAINST BOKO HARAM

Every insurgency draws a response known as counterinsurgency (COIN), which is usually focused on defeating it.<sup>[87]</sup> Such a response comes primarily and directly from the State against which insurgency is directed, with the State usually getting support from the international community as the insurgency escalates.<sup>[88]</sup> Much of the literature on COIN has carefully avoided attempts at furnishing any concise definition on this refractory and elusive term. However, the United States government, based on its experience in COIN operations in Afghanistan and Iraq, defines COIN as: “Comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and address its root causes.”<sup>[89]</sup> Apparently reinforcing the U.S perspective, R. Scott Moore defines COIN as:

Counterinsurgency is an integrated set of political, economic, social and security measures intended to end and prevent recurrence of armed violence, create and maintain stable political, economic and social structures, and resolve the underlying causes of an insurgency in order to establish and sustain the conditions necessary for lasting stability.<sup>[90]</sup>

According to John J. McCuen and Robert Thompson in their writing separately in the 1960s have emphasized the centrality of military and security operations in their conception of COIN. McCuen sees COIN as: “Preserving oneself and annihilating the enemy, establishing strategic bases, mobilizing the masses, seeking outside support, and unifying the effort.”<sup>[91]</sup> On his part, Thompson looks at COIN as a “Military response, which entails clearing an area of insurgent activity, holding it for the government, winning its inhabitants, then moving on to another area.”<sup>[92]</sup>

Having defined counterinsurgency, it is pertinent to note that, the unprecedented nefarious and inhuman activities orchestrated by the *Boko Haram* Fundamentalist Islamic sect have attracted the forceful response of the Federal Government of Nigeria. This is made possible through the establishment and deployment of the Joint Task Force Code named (JTF) Operation Restore Order 1 on 12<sup>th</sup> June 2011<sup>[93]</sup> which later

renamed as Operation *Lafiya Dole* in 2015.<sup>[94]</sup> The JTF comprises of personnel from the Nigerian Armed Forces, Nigeria Police Force (NPF), the Department of State Security (DSS), Nigerian Custom Service (NCS), Nigeria Immigration Service (NIS) and the Defence Intelligence Agency (DIA).<sup>[95]</sup> The force was founded with the mandate of restoring law and order in the North-Eastern parts of Nigeria and Borno State in particular.<sup>[96]</sup> However, the counterinsurgency measures of the JTF in the *Boko Haram* infested States have intensified the militant activities of the sect, implicating human rights abuses. According to Amnesty International the JTF have perpetrated serious human rights violations in their response to the *Boko Haram*. Hundreds of people accused of link to *Boko Haram* have been arbitrary detained without charge or trial, others have been extra-judicially executed or subjected to enforced disappearance.<sup>[97]</sup> The ignoble disposition of the JTF contradicts the internationally recognized and time-honoured responsibility of the security agencies in the protection and preservation of the rights of the citizenry.

## IMPLICATIONS OF THE COUNTER-INSURGENCY MEASURES OF THE JTF ON THE CITIZENS' RIGHT AGAINST ENFORCED DISAPPEARANCE.

The Security agencies in their counter-insurgency measures against *Boko Haram* continue to commit gross human rights abuses and serious violations of international human rights and humanitarian laws resulting in extreme violation of the Constitution and other normative regime. One of the serious human rights violations by the security agencies in the fight against *Boko Haram* that shocked the scruples of the international community is enforced disappearance. Enforced disappearance as one of the serious human rights violations, as it includes violation of series of fundamental rights, including the right to life, right to personal liberty, right to presumption of innocence and also the victim's family right to know the truth about what happened and whereabouts of the victim. It is pertinent to examine some of the human rights violations that may be occurred in relation to enforced disappearance.

### Extra-judicial Killing:

Extra-judicial killing is a killing of a person by government authorities or individuals without the sanction of any judicial proceeding or legal process.<sup>[98]</sup> The right to life is the basic, the most fundamental, the most primordial and supreme right which human beings are entitled to have and without it the protection of all other rights becomes meaningless or less effective.<sup>[99]</sup> National and International laws have recognized this basic right as accruing to every individual at birth. To this, the 1999 Constitution provided that:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Also the African Charter on Human and Peoples' Rights recognized right to life as human right which are inviolable that, every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrary deprived of his right.<sup>[100]</sup> While, the International Covenant on Civil and Political Rights (ICCPR), is to the effect that, every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>[101]</sup> Despite the protection for the right to life by international, regional and national instruments, cases of extrajudicial killing by the security agencies in their counter-insurgency measures against *Boko Haram* in relation to the victims of enforced disappearance is rampant. This is because, extrajudicial killings often occur in the cause of an enforced disappearance, and are separately recognized as a severe human rights violation.<sup>[102]</sup> Extrajudicial, summary, targeted, and arbitrary executions all refer to the same concept of killing someone outside the protection of law. Since 2017 over 28 cases of enforced disappearance, detention incommunicado, and death in detention by the security agencies has been documented in the North-East Nigeria.<sup>[103]</sup> Large numbers of relatives have laid complaints about the disappearance of their brothers, husbands, sons and fathers after they were arrested by the military. Some of the relatives did not hear about their relatives, while, others were killed by the military.<sup>[104]</sup>



For instance, according to Amnesty International two witnesses were interviewed by them in August 2014, identified one of the 18 executed men as their relative, 25 year old *Jidu Hassan* in July 2014.[\[105\]](#) Amnesty International interviewed his mother, who at that time, was not aware of his death. She said that in July 2011, soldiers arrested *Jidu* along with 40 other men, following a bomb blast in their home town of Maiduguri.[\[106\]](#) The mother did not receive any official information about *Jidu's* fate, whereabouts or charges against him, but a year after his arrest she heard from a construction worker from *Giwa* Barracks that *Jidu* was being held there. Also, the fate of those 40 men arrested with him remain unknown.[\[107\]](#) Also, on 18 April, 2013, 64 detainees were killed in Presidential Lodge (Guardroom) detention centre in Damaturu Yobe State. According to a Military source who was posted in this area at the time, the men had been detained for three to four months. The soldiers took them out of their cells in the evening and shot all of them at close range in the bush near Maiduguri road.[\[108\]](#)

## Illegal Detention

All human beings have the rights to enjoy their liberty and security, without an effective guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory.[\[109\]](#) To this Section 35 of the 1999 Constitution provides: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the cases and in accordance with a procedure permitted by law." Yet, as it evidences by the most of the International Monitoring Organs, arrest and detention without responsible cause, and there being any effective remedies available to the victims concerned are commonplace.[\[110\]](#) The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, defines detention as: "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence.[\[111\]](#) The term detention is therefore used normally for pre-sentence detention, while imprisonment is being used for post-sentence.[\[112\]](#) On the other hand, deprivation of liberty has been defined as:

Any form of detention or imprisonment or placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.[\[113\]](#)

Normally, in determining whether detention is legal or illegal requires an analysis of conduct in the light of national law in force in that given country. Therefore, any detention of a person not in accordance with the law of the nation would amount to illegal and arbitrary detention. In the course of such arbitrary and illegal deprivation of liberty, the detainees are frequently deprived of access to their families and lawyers and also subjected to torture and other forms of ill-treatment.[\[114\]](#) The International human rights law grants every person the right to be free from arbitrary or unlawful deprivation of liberty. This prohibition applies to all situations, including criminal proceedings, administrative detention, military detention, security detention and detention under counter-terrorism measures.[\[115\]](#) The right however, may suffer limitations during States of Emergency in accordance with Article 4 of the ICCPR. A State is allowed to limit the enjoyment of certain rights in cases of officially proclaimed public emergencies which threaten the life of the nation.[\[116\]](#) Such limitations are permitted only to the extent strictly required by the exigence of the situation and may never involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Despite the above protection by the international, regional and domestic instruments against arbitrary detention that are enforced disappearance, the security agencies in their counter-insurgency measures against *Boko Haram* have committed a lot of human rights violation, particular illegal detention that led to enforced disappearance. For instance, *Hussaini Kallo*, a 31-year-old grain seller was detained in *Giwa* Barracks for 18 months, told Amnesty International that: "...after *Boko Haram* invaded the Barracks, we were asked by *Boko Haram* to follow them and take weapons, I said no, I don't know how to shoot and I have not seen my father or mother for almost two years now."[\[117\]](#) Also the case of *Usman Mohammed Gambo* and *Amiru Mohammed Gambo* of *Gomboru* Millionaires Quarters Maiduguri, Borno State, presents

a case of enforced disappearance.[\[118\]](#) These two brothers were arrested as they were on patriotic call to join a Youth Volunteer group established by the office of the Governor. According to Ali Mohammed, a brother to the victims, the incident occurred at NYSC Orientation Camp Maiduguri at about 2: 00am, 5<sup>th</sup> May 2013, when the two brothers and some other men who were equally there to join the volunteer group known as the Borno State Youth Orientation and Empowerment Scheme (BOYES) were classified into a group that were arrested and taken to detention till date. The relative also noted that all efforts to reach the victims by the family members and legal officers have yielded no result and presently there is fear that the brothers may have been killed or died in detention.[\[119\]](#)

### **Family Members as Victims of Enforced disappearance**

The practice of enforced disappearance entails a situation in which ‘a wide range of human rights of the victim himself and of his family may be denied or infringed.[\[120\]](#) These include civil and political rights as well as economic, social and cultural rights.[\[121\]](#) Therefore, the Working Group on Enforced or Involuntary Disappearance (WGEID) has stressed that “various human rights of the members of the family of a missing or disappeared person may also be infringed by that person’s enforced absence.[\[122\]](#) Their right to a family life may be seen as the principal right involved but other rights of an economic, social and cultural nature can also be directly affected; for example, the family’s standard of living, health care and education may be adversely affected by the absence of parent.[\[123\]](#) Therefore, the WGEID has stated that:

As it is men who are usually the direct victims of enforced disappearances, it is the wives, mothers and children who often bear the consequences of the enforced disappearance and who are the persons most affected.[\[124\]](#)

The Working Group calls upon States to provide sufficient support to those affected by enforced disappearance.[\[125\]](#) Similarly, the WGEID has declared that, in the case of enforced disappearances of the children’s parents many of the child rights, including economic, social and cultural ones, are affected.[\[126\]](#) In many occasions, children are prevented from exercising their rights due to their legal uncertainty created by the absence of the disappeared parent. This uncertainty has many legal consequences, including effects on: the right to identity, the guardianship of underage children, the right to social allowances and management of property of the disappeared person.[\[127\]](#)

### **CONCLUSION**

The paper examined the counter-insurgency measures by the security agencies against *Boko Haram* and its implications on the citizens’ right against enforced disappearance. The counter-insurgency measures of the security agencies are characterized by brutal show of force that triggers retaliatory violence from insurgents. The brutal nature of the security agencies counter-insurgency measures against *Boko Haram* has exacerbated the level of violence perpetrated against the citizens. The citizens were trapped in the theatre of violence especially in the Borno State, have fallen victims to violence attacks by the security agencies for allegedly harbouring insurgents. The violent confrontation between security operatives and insurgents have therefore resulted in a cycle of human rights abuses against the citizens, particularly the rights against enforced disappearance perpetrated by the security agencies in the counter-insurgency measures against *Boko Haram*, where citizens are randomly arrested, detained without charge and in some cases are extra-judicially executed. Despite the existing legal framework at the international, regional and domestic level, cases of enforced disappearance by the security agencies in their counter-insurgency measures against *Boko Haram* Insurgency is still rampant. Due to the scale of violation of right involved in enforced disappearance and other human rights violations by security agencies host communities have reduced their support to the security agencies approach to counter-insurgency, making it difficult for the security agencies to gather relevant intelligence from local residents for their counter-insurgency measures. In view of the

about challenges, the paper recommends that, the cases of enforced disappearance by the security agencies be investigated and the victims of enforced disappearance and their families be adequately compensated. Furthermore, the Convention against Enforced Disappearance be domesticated in Nigeria.

## FOOTNOTES

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