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From Learning to Wisdom



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PORT HARCOURT LAW JOURNAL

The Port Harcourt Law Journal is a peer refereed journal published by the Faculty of Law, Rivers State University of Science and Technology, Port Harcourt Nigeria. It provides a forum for scholars and practitioners to reflect on diverse legal issues of national, regional and international significance and of local and regional relevance.

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Contributions Should Note the Following Requirements:

1. Paper must be empirical or theoretical contributions without being published previously
2. All other scholars works or remarks as well as their origins must be indicated if quoted;
3. English title, abstract and key words should be prerequisite;
4. Paper would contain no more than 7000 words, except for excellent ones.
5. The manuscript must be typed and doubled spaced on one side only of A4 paper.
6. Email attachment sent through email at: ovcokene@yahoo.com is strongly recommended.
7. Papers are accepted on a rolling basis and can be submitted at anytime.

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EDITORIAL INTRODUCTION

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TOBY BOMA GEOFFREY

I am delighted to introduce this issue of the Port Harcourt Law Journal, VOL. 5 No. 1. This issue contains thirty one papers all of which examines critical issues in Law which are of national, regional and International Significance and of local and regional relevance.

Journals are invaluable because they portray the cream of legal thought which is characterised by freshness, currency, and jurisprudential versatility. Much effort has been made to provide the reader with articles that are incisive, investigative, informative and inspiring.

I recommend this Journal to students, researchers, and practitioners. The wealth of the materials will be found to be stimulating for intellectual discourse and legal arguments.

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April, 2013

IN DEFENSE OF THE BOKO-HARAM INSURGENCE AND THE CONSTITUTIONALITY OR OTHERWISE OF THE DECLARATION OF STATE OF EMERGENCY BY PRESIDENT GOOD LUCK JONATHAN IN SOME SELECTED LOCAL GOVERNMENT AREAS OF SOME STATES IN NORTHERN NIGERIA.

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ABSTRACT

There is no doubt denying the fact that if the Boko Haram insurgency is not resolved in the earliest possible time it could lead to the destabilization of the country. As it is now, the harmonious co-existence of the Nation's diverse people in different parts of the country is coming under serious threats with the Southerners leaving the North in fear of attacks by religious sect that has warned them to relocate or risk attacks. What began as a low level campaign of targeted killings and use of improvised explosives devices mostly in Borno State capital, Maiduguri and environs, the insurgency later snowballed into a major security challenge that has spread to many Northern States and Abuja. The cost so far is nearly incalculable. Hundreds of lives have been lost in the Sect's campaign of targeted assassinations, attacks on security agents and their offices, detonation of explosives on roadsides, attacks on banks, prisons and police stations. If this atmosphere of mistrust and suspicion amongst Nigerians is allowed to go on, surely it could provoke a major crisis that may lead to the breakup of the country. The negative impacts of the activities of the Sect are not hidden as its taking its toll on the socio-economic and political lives of the inhabitants of the affected areas with increasing destruction of lives and property. The insurgency so far has defied a clear cut solutions and the government is not giving attention to the advice that it should shelve military action and adopt a political approach to the crisis which is simply dialogue. As one of the measures adopted by the Government as a way out of the worsening situation and security challenges was to declare a state of emergency in the affected areas on the eve of the new year 2012 with its attendant effects and consequences; hence the focus of this paper in elucidating the circumstances leading to the proclamation of the said state of emergency by the President, the constitutional issues involved: in order words the legality or otherwise of the proclamation of the state of emergency; the activities of the Sect, their modus operandi, their mission statement; origin and short comings.

TRODUCTION

Nearly two years ago, we celebrated our national jubilee i. e the 50th year of our independence referred to as 'Golden Jubilee' which demanded both rejoicing and

responsibility, retrospection and rededication heralding what may be called the birth of a 'New Nigeria' we desire peace, progress and prosperity of our dear nation; we aspire to be one of the top 20 economies in the world by the year 2020. We want to have a better image and be the envy of other nations, but how do we get there? Of course we need a road map as the best way to get there. Where did we start from? What were the motivations for the agitation for Independence? What were our collective goals for our nation and attitudes towards one another? These and many more are the emerging questions in the wake of the Boko Haram insurgency that threatened the corporate existence of the Country.¹

The true picture of our foundation as a corporate existing nation can be deciphered from the speech of our First Prime Minister on the occasion of our Independence on October 1st, 1960 when Tafawa Balewa (Late) had said:

"At last, our great day has arrived, and Nigeria is now an independent sovereign nation... this is a wonderful day, and it is all the more wonderful because we have awaited it with increasing impatient, compelled to watch one country after another overtaking us on the road when we had so nearly reached our goal, but now we have acquired our rightful status and I feel sure that history will show that the building of our nation proceeded at the wisest pace; it has been thorough, and Nigeria now stand well built upon firm foundations."

The above speech was a true reflection of where we started from, with true spirit of nationalism and patriotism. Partisan politics and personal pursuits were not paramount on our minds. What preoccupied us was the struggle for our collective Independence from the tedious and tasking tutelage in order to unanimously forge the destiny of our nation to become unparalleled in the annals of history. We labored together for our Independence and eventually laughed together when we achieved it.

In the present state of our security challenges, we must take time to reflect on our present state. How much have we achieved on this journey to enviable development? How much have we lost? What has accelerated our progress and what has slowed it down? What steps have we taken individually and collectively that have helped our journey? And what decisions and predispositions have we encouraged that have harmed it? Indeed we must know where we are coming from in order to better anticipate and appreciate where we are going.²

We Nigerians in furtherance of our desired collective goals as one indivisible nation be perpetually positive and progressive, we must never lose hope. We must be determined in our private and public offices, denominations and determinations to get to our desired destination. We must converse often with all our circles of influence beginning with our families to our friends, acquaintances, and colleagues on the need to

¹ Kumuyi, W.F 'A Sure Roadmap To A New Nigeria' The Guardian Newspaper Outlook Sunday, January 1, 2012 p.17

² Ibid.

do what is just and right to move our nation forward. We must avoid anything capable of destroying the image of our nation and the efforts of all that are working hard to move it forward.

The issue of security of life and property has become paramount in the unfolding scenario and insurgence. The radical Islamic Sect Boko Haram has sustained its onslaught on the polity in spite of official promises to stop their attacks. Lamenting in the circumstances, about One Trillion Naira was voted for security in the 2012 budget, as if the country was being mobilize for war. What more alarming is the fact that the President in his speech has become very close to abdicating and asking Nigerians to seek help to the security challenges we are experiencing from above. In his words: 'Bombing is one of the burdens we must live with; it will not last forever, I believe that it will surely be over'.³

The ball is now down on the Traditional Rulers and Religious Leaders whom are now being enjoined to do something about the spate of insecurity in the country especially in the North-Eastern Nigeria. The Sultan of Sokoto and the Head of Muslims in the Country, Alhaji Sa'ad Abubakar III was on National Television Network after meeting with the President in Aso-Rock Villa, Abuja, preaching peace, tolerance, and the need for Nigeria to remain as an entity.⁴

Equally, Pastor Ayo Oritsejator, President Christian Association of Nigeria (CAN) and other Christian Clergies, have also been talking. The prayer is for the sermons by these eminent religious leaders to sink much faster than the sermons on removal of fuel subsidy so that the Boko Haram-insurgence can be curtailed.⁵

THE BOKO HARAM INSURGENCE

The Boko Haram crisis is more than it meets the eye. What was seemingly regarded as a mere Islamic movement with a radical ideology has turned out to be a wild fire which is consuming in particular the whole of the North-Eastern axis of Nigeria.⁶

It was a melodrama where some zealots initially numbering about 2 million and scattered across the country, but particularly in the North Eastern States threatened the corporate existence of the country.⁷ What really went wrong and how did the movement start? What is the psychological build up of the Boko Haram War-Lords and their Foot Soldiers? Who are their sponsors? These are the many unanswered questions many have asked and are still asking and of course which this paper will seek to provide an answer.

From all indications, the Boko Haram phenomenon was like a time bomb that was detonated before the time set. The group is known in Borno-State where it has its origin as 'Yusufiya Movement' named after its Leader, Utaz Mohammed Yusuf. The members

³ Ogbodo, A The Thorny Road To 2012 The Guardian Newspaper Cover Sunday, January 1, 2012 p.54.

⁴ NTA 9'00 clock Network News 29th December, 2011.

⁵ Ogbodo, A op. cit p.54.

⁶ Uhiia, O. T 'Boko Haram: An Insurgent Too Many' Power Steering Magazine September (Kaduna, Toga Media Concept Group., 2009) Vol. 1 p.8.

⁷ Ibid.

are from the youths, graduates, school leavers, drop-outs, street urchins (Almajiris) and a handful of former Political heavyweights who had lost out in the political scheme in their areas and needed an avenue to fight back. The group also drew membership from the Civil Service and Security Agencies.⁸ Some were attracted to the Sect because of the disquiet within the society especially the deepening divides between the rich and the poor; the blatant display of wealth and the stinking rate of corruption within the society: the movement may therefore be described as a 'child of circumstances' nursed by the failure of our leaders to be responsive to the yearnings of the masses.⁹

The Boko- Haram Sect believes that western education breeds corruption, arguing that the earliest Northern Leaders like late Tafawa Balewa and late Sir Ahmadu Bello, did not use their education and position to amass wealth and oppress the people. The Sect alleged that present leaders have captured the state resources meant for public good and converted them to their own use. They believe that western education has taught our leaders how to steal money, launder them to foreign countries, build houses everywhere like birds. The leaders are equally accused of teaching their off-springs same 'haram' in order to continue the interminable years of servitude by the masses.¹⁰

It appeared that the Boko Haram ideology is against western civilization, hence the recourse to religion (Islam) (in Karl Marx theory as the opium of the people) as a vehicle to mobilize adherents. It provides the fertile ground for dissatisfied members of the society to seek relief or consolation. It also became a rallying point for those who believe that self centeredness, greed, corruption, and the crave for worldly things were products of western civilization and education and must be violently rejected.¹¹

THE SECT STRONGHOLDS

The Sect has made mainly three states in the North Eastern part of the country their stronghold i. e Borno, Bauchi, and Yobe States. The reason for this being that the Sect Leader late Utaz Mohammed Yusuf was not well known beyond Borno-State until he launched his attacked sometime in July, 2009. There were changes after his release from a celebrated court case at Abuja High Court and his constant attacks on the leadership styles of the then Governor (Ali Modu Sheriff) whom he accused of working against the interest of the people.

The Sect commanded more followers and even grew stronger in states where political crises were brewing and where leadership is weak, where government business is individualistic with its attendant corrupt practices. The Sect Apostles found such states germane for enlisting jobless and abandoned youths.¹²

Late Utaz Mohammed Yusuf had consistently attacked the then Borno State

⁸ Recently is the case involving a Commissioner of Police Ibrahim Biu over the escape of a suspected member of the Sect Kabir Sokoto over the bombing in Mandala Area of Suleja, Niger-State on Christmas day of 25th December 2011.

⁹ Uhiia, O. T op. cit p.8.

¹⁰ Ibid at p.9.

¹¹ Ibid.

¹² Ibid.

In Defense of the Boko-Haram Insurgence and the Constitutionality or Otherwise

Governor (Senator Ali Modu Sheriff), in his daily sermon (Dawa) condemning his alleged spraying of money whenever he (the Governor) drives around Maiduguri township on political campaigns, According to the Sect Leader:

*"Allah is not happy with all these things the Governor is doing. People do not have food to eat, no water to drink and no drugs in the Hospitals and many contractors short paid or not paid at all and yet the Governor buys jeeps everyday and cruise around the town, throwing money at people. Never pick such money because it is sinful and the man who sprays it is a devil's agent."*¹³

Dependable sources said, the Governor Modu Sheriff had made several overtures to woo the Sect Leader to his side. The Governor was said to have asked one of his Former Commissioner (Mallam Buji Foi later killed by the Police) to talk to Mohammed. He was enlisted as one of the Mallams to work out a peace plan. Mallam Buji Foi even resigned from Sheriff's cabinet in the wake of this overture.¹⁴ Observers are presently wondering why even against the background of the fact that the Federal Government has been assisting the state to beef up security. Governor Sheriff still went ahead and diverted the resources which were meant to address poverty and unemployment in the state, into the coffers of the 'Operation Flush' (security outfit created by the Governor in the wake of the crisis) which further militarized the state rather than provide security.¹⁵

Political pundits alleged as part of the complacency of the Governor in the Boko Haram complexity, the Governor used the security outfit (Operation Flush) to settle his kit and kins and deal with political opponents. Given the fact that the state is a pluralistic ethnic composition made up of Nigerians from other parts of the country, the Governor was not transparent in his security deal, though he speaks of security of lives and property during his tenure as one of the cardinal objectives of his administration, the Governor and his security operatives where not to be found on the 18th February, 2008 sectarian crisis that almost drove away all the Christians living in the state.

Lately, innocent citizens had lost their lives as a result of the high handed nature of the Operation Flush which was what Boko-Haram protested against. And the Governor did not heed the security warning resulting from the Islamic Religious sect. Equally, the 2009 budget of the state tagged 'Budget of Consolidation and Self Reliance' did not go anywhere in actualizing the objectives of reduction of poverty, generation of employment, provision of infrastructures, self reliance and societal development, the bane behind the religion sectarianism.¹⁶

According to history, Borno State is the home of Islam and Islamic knowledge in Nigeria. It has always been argued that it was from ancient Borno that Islam spread to other parts of the country before the Othman Dan Fodio Jihad. Borno's first ruler, Shehu Mohamadu Lamido, who conquered the Fulani Jihadist was both a religious and

¹³ Ibid at p.11.

¹⁴ Ibid.

¹⁵ Ibid at p.34.

¹⁶ Ibid at p.36.

traditional ruler who encouraged Islamic education and fellowship. Since, then Maiduguri has always harboured one Sect or the other.¹⁷

The Sect Leader Late Utaz Mohammed Yusuf whose radicalism manifested a few years ago, after breaking away from another Sect, made Maiduguri the base for his ideologically contrasting group because of the relative peace such group could practice within the area; and equally the fact that the leader grew up there, it was convenient for him to operate in Maiduguri. His father also lived there till he died. So this debunks the assertion of any geographical, environmental or climatic factor in making Maiduguri the home base of the insurgent.

THE CONTROVERSIAL KILLING OF THE BOKO HARAM LEADER

The execution of the Sect Leader Late Utaz Mohammed Yusuf after his capture by the Police as well as that of his Father in Law Alhaji Baba Fugu Mohammed and the Ex-Commissioner Buji Foi has raised a lot of questions and allegations of cover ups, and up till today it is perceived that some of the Sect members that escaped the military onslaught of 2009 are the ones now back with a new vigour to avenge the death of their leader by unleashing mayhem in some parts of the country recently for instance in states like Kano, Gombe, Bauchi, Suleja in Niger State and Jos in Plateau State.

Investigations show that the killing of the Sect Leader was part of a big conspiracy which Nigerians may take time to unravel, thus most conspiracies have happened in the past and swept under the carpet and this one would not be a different. In buttress of this assertion, according to a source,¹⁸ was the mock deployment of the then Borno-State Commissioner of Police, Mr Chris Diega as a window dressing to fool Nigerians. So also is the probe ordered by the late President Musa Ya'Ardua into the extra judicial killings?

It was also not clear that Mohammed Yusuf (Decd) then would have given useful information of his sponsors if he had been spared by the Police. From the encounter with former Governor Modu Sheriff at the Army Brigade Headquarters, Maiduguri shortly after the Sect Leader was captured and before he was killed, Mohammed appeared not ready to divulge any information even though he was repeatedly told of his impending death, he would never give an insight into frequent Islamic insurgencies in the country.

It was alleged that the Boko Haram insurgence was a time bomb that was ironically set off before its set time. The Sect Leader himself had boasted that his planned revolution was set for the next six years, but for the arrest and detention of some of his followers in Bauchi State. Given the trend in Nigeria, the stage would have by then been set for a conflagration that would have completely enveloped the entire country. Our leaders ineptitude and the laxity of the security agencies as exposed by the Boko-Haram episode would have thrown the entire country into a state we all cannot comprehend now.¹⁹

As is the case in the past, the casualties are now counting their losses or licking

¹⁷ Ibid at p.12.

¹⁸ Ibid (Habu Babayo 'a Human Rights Activist')

¹⁹ Ibid.

their wounds. Some were killed, maimed or lost their properties or beloved ones in the mayhem. The true figure is yet to be issued by the Nigeria Authorities and one may have known. What is certain is that this is not the last time we shall hear or witness religious insurgence in Nigeria.

BOKO HARAM'S MISSION

It was a triumph that was short lived and spurious. After three days of intensive and repressive campaign against Boko Haram Militants in Yobe and Borno States, 59 Militants were killed and arsenals destroyed,²⁰ the Nigeria Army announced it had dealt the military wing of the Sect a mortal blow, but doubt crept in hours after about the possibility that the crackdown against the Boko Haram Sect did not achieve its desired objective and the people killed may not have been the militants targeted.

On Christmas Day of 25th December, 2011, a suicide bomber from the group struck at the SSS Headquarters in Damaturu, several operatives were killed. Another suicide bomber, hundreds of kilometers away, drone powerful explosives into a crowd of worshippers at St. Theresa's Church in Mandallah, Niger State, killing at least 43 people. A night before that also in Yobe State, the Boko Haram Militants threw grenades at Christians keeping a Christmas vigil, killing innocent souls.

In the words of Bayo Onanuga,²¹ while it may be plausible to reason that the Boko-Haram attacks on Christmas day were planned even before the military assault on their bases, what is no longer debatable is that the insurgency has become the gravest threat to Nigeria nation and the survival of Good Luck Jonathan's eleven months old administration. The question poised in some quarters is what does the Sect really wants to achieve in its murderous and vicious campaign against the citizens resident in their domain and indeed the entire Nigerians. It should be noted that the Sect was denounced severally by leading Muslim, Traditional Rulers and ordinary people, despite these, the Boko Haram remorselessly carries on its campaign of terror; hitting targets after targets almost with impunity; the Police, the Army, the Air-force and the Churches were not left out by the Sect. The Sect was also credited with the murder of about 500 people last year alone; and there are threats of more strikes if government fails to meet their demand. Thus according to the spokesman of the Sect:

*"By the grace of God... there will never be peace-until our demands are met. We want full implementation of the Shariah system and we want democracy and the constitution to be suspended"*²²

The implication of this statement here is that, it would appear as if Sect represent the views and aspirations of the entire Muslims of the North or Nigeria Muslims? Certainly with level of denunciations all around, one discern that the Sect is not the voice

of the Northern Muslims taking into consideration the level of political assassinations, banditry, arson and bomb attacks among the amorphous Sect. The Sect may be likened to the Niger-Delta Militants, who wants Nigeria cast in their own shape and their campaign weapon is violence and guerilla tactics, except that the Sect is acclaimed to a faceless organization and fighting for the course of Islam as a Jihadist.²³

The three major demands of the Sect as implicit in the spokesman remark are: its incarcerated member should be released henceforth; Shariah to be implemented all over the states of the federation; and it wants the Nigeria Constitution and democracy suspended. With government that once engaged and pacified the Niger-Delta Militants with the flamboyant amnesty programme, money and empowerment, the same Government can still meet and satisfy the demand of the Sect by releasing the detained members after meeting with the leadership, which is the easiest demand as canvassed by Nigerians.²⁴

The other demands of the Sect may appear too onerous i.e the Islamization of Nigeria and the suspension of the Constitution and democracy, doing so may lead the country into a sectarian war. Religion is personal and very a sensitive a 'thing in this country. Shariah is already in Nigerian Constitution for those who want it, what is prohibited is the adoption of a state religion.²⁵ These intransigencies in the demand of the Sect perhaps may be the root of why the government has not been able to reach some terms of negotiation or memorandum of understanding with the Sect, and are now treating them with scorn.

The mission and objectives being pursued by the Sect has spurred suspicions among many Nigerians that the Sect is probably waging a political campaign masquerading as Islamic jihadists. Also in the security circle the assumption is that the Sect is trying to plunge the country into a full scale religious war and also want to overthrow the eleven- months' old government of Goodluck Ebele Jonathan.

BOKO HARAM'S MODUS OPERANDI

The Boko Haram Sect constitutes the name of a radical Islamist group. It is a name with which almost every responsive Nigeria is familiar with. Its religious campaign has left the country's security chiefs squirming with embarrassment and members of the public worried about their safety as well as that of the country's corporate existence as one entity. The government's inability to lead in the war against the Sect has earned President Goodluck Jonathan more darts than any governmental action, including the removal of the oil subsidy.²⁶

Book Haram is the definition of effrontery. It is an element that has been added to its repertoire since the cradle days when it could only attack ill-equipped Police Stations. The Sect cheekily announces its intention to strike before doing so. On the 16th June,

²³ Onanuga, B op. cit p.4.

²⁴ Ibid.

²⁵ Section 10, 14, and 38, of the 1999 Constitution (With Alterations).

²⁶ Banking- Obi, 'Monster of the Year' The News Magazine 9th January, 2010 Vol. 38 No. 01 p.14.

²⁰ Onanuga, O 'Boko Haram's Senseless Mission' The News Magazine 9th January, 2010 Vol. 38 No. 01 p.4

²¹ Ibid.

²² Abdul Qaqa Daily Trust Newspaper 9th January, 2012

2011, the Sect's bomb hit the Police Headquarters in Abuja, and narrowly missed taking out the Inspector General of Police. The attack premiered suicide bombing in Nigeria. The bomber, later identified as Manga Mohammed, destroyed parts of the Police Headquarters, killed scores and damaged many vehicles.²⁷

Two months later, the group produced an equally similar attack on the United Nations Building in Abuja, executed by Mohammed Abdu Barra, which claimed many lives too, and the group once again advertised itself as genuine. Force Destruction. The attacks on the Police Headquarters, UN Building, killed 40 people.²⁸ The Sectists' ruthlessness in its demand for the replacement of the country's Constitution with the Shariah. The Sect members have persuaded themselves that God wants them to kill to achieve this end, for this, they crave carnage lustily. Maiduguri, once a thriving town and birth place of the Sect, has become a churchyard. Boko Haram started carrying out shoot outs with the Police before growing into a wild lion attacking alcohol drinkers and luckless citizens caught in its rage. Now it is untamable. The Sect is now skillful in the manufacture and use of explosives with which they caused many maybems in many parts of the North all throughout last year 2011.²⁹

From Maiduguri and environs, the Sect spread its tentacles to other areas, for instance, the National Youth Services Corp Orientation Camp on Biu Road in Maiduguri was attacked and set ablaze. Tudun Wada, Gobiya, in Kazar Local Council of Kaduna State have felt the impact of the Sect too. So has Tibak in Zankwa Local Council of Kaduna State too. Damaturu and Gaidam Local Government Areas in Yobe State have had the misfortune of hosting the Sect with severe casualties. The same happened in Azare, Bauchi State. Equally in 8th April 2011, the Sect bombed the office of the Independent National Electoral Commission (INEC) in Suleja, killing many on the eve of the original date of the nation's presidential election.³⁰

Furthermore, on May 29 (Democracy Day) while the President and Governors were being inaugurated across the country, the Sect bombs went off in Bauchi, Zaria and Zuba near Abuja. These multiple attacks claimed an estimated 15 lives. Before the public could recover from the shock of the attack, the Sect returned to its base in Maiduguri where it struck at a pub house, killing over 25, relaxers. The next day again, the Sect killed two girls and critically wounded three officers of the Nigeria Customs Service in yet another bomb attack.

It has become rhetoric now that when the Sect is not unleashing terror on a huge scale, it is picking off its opponents, one after the other. For instance, a Vocal Maiduguri Cleric Lima Bana, was tell by the Sect's bullet for preaching sermons that questioned the integrity of the Sect's doctrines.³¹

Also, on 22 September 2011, the Sect struck at Madalla village in Niger State, where it killed five Christians, who could not recite verses of the Holy Quran as it

²⁷ Ibid at p.15.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid at p.15.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

demand. In Kano State, the Sect visited violence in Ungwan Rano before moving to Bitaro Village in neighbouring Kaduna State killing three persons. When the Sect discovered the use of more 'leather' weapon, it struck with a big bang. On November 4, 2011 the Sect struck in Damaturu and Potiskum in Yobe State as well as Maiduguri in a string of attacks that claimed over 100 lives. The Sect employed the use of vehicle borne improvised explosives to hit targets especially the offices of security agencies.

In separate raids, on the 23rd November, 2011, the Sect killed a Bible Teacher and four others in a Church in Sabo Layi Yobe State. Before then, its members had beheaded a young Christian in Barkin Ladi, the same day they killed the Bible Teacher and two children as a punishment for their father's disobedience. Three days later, in Gaidam town in Yobe State the Sect killed four Policemen and wounded 20 others with bombs in a night raid and set Churches and market stalls ablaze.

Since Boko Haram became a major terrorist outfit in Africa, international intelligence organizations have redoubled their surveillance of the country. More regularly than ever, American and European security experts intimate their Nigerian counterparts and indeed the Government of potential areas of planned attack. Earlier this year, the United States warned Nigeria of the need to beef up security around major Hotels in Abuja for forestall eventualities. The advice caused huge panic across Abuja nation's capital and the Hotels took a big profit loss as customers stayed away for safety of their lives.

The Sect's activities have increased the percentage of suspicion among adherents of the country's two major religions. The Sect is also widely believed to be enjoying support from the famous Al-Qaeda terror network and the Somali Al Shabaab Organization. The rampancy of the attacks has also got the international community hailing condemnations at the group. The height of these was against the series of Christmas Day bomb attacks the Sect bombed a location close to St. Theresa's Catholic Church in Madala, Niger State, with the impact wrecking havoc on the worshippers leaving the early morning mass. Not long after too a suicide Bomber of the Sect attempted to enter the office of the State Security Services in Damaturu, Yobe State killing four Officers of the Service in the process. Also an attempt was made to bomb the Parish of Mountain of Fire and Miracles Ministry on Gangare Murtala Mohammed Way in Jos. The attempt was foiled, but the Bomber had a supporting cast of gunmen who fired at worshippers as they left the Church killing about 30.

The Christmas Day attacks attracted condemnation from the Vatican, British and American Governments, the African Union as well as other local and international groups and individuals. While it may be recalled that over the years, the wretched Nigerian roads have oodled many lives, for sheer impact on national psyche, Boko Haram's campaign of death in Niger, Bauchi, Plateau, Gombe, Kaduna, Kano, Borno, Yobe and Adamawa States, and Abuja has doubled this figure recorded by road

³¹ Ibid.

³² Ibid at p.16.

accidents in the country.

It is high time we the entire citizens of this nation turn to God, indeed in the succeeding years Nigeria has witnessed many upheavals. Rain floods claimed lives and property, extra-judicial killings by the Police, pushed alarm button, while epidemics killed dozens of people in several parts of the country. Buildings collapsed and lives were lost. There were reported incidences of kidnappings in some states.

THE DECLARATION OF STATE OF EMERGENCY

On the 31st of December, 2011, in order to stem the rising wave of bombings in the country suspected to be the hand work of the Boko Haram Sect, and restore public order, peace and security in the Federation, the President Goodluck Ebele Jonathan declared a state of emergency in the parts of the country worst hit by the insurgence. These affected areas are Borno, Yobe, Plateau and Niger States respectively.³³

The President in his statement said it had become necessary to address some events that had threatened the corporate existence and shaken the foundation of our collective security as a Nation, the Nigerians are aware of the security challenges which the activities of the Boko Haram Sect have foisted on the country. What began as a sectarian crisis in the North-Eastern part of the country has gradually evolved into a terrorist activities in different parts of the country with attendant negative consequences on our national security.³⁴

The Government in an efforts to find solution to the security threats occasioned by the activities of the Boko-Haram Sect, constituted a presidential Committee under the Chairmanship of Ambassador Usman Gaji Galtimari, to ascertain the immediate and remote causes of the crisis.

While efforts are being made to implement the recommendations of the Committee, the crisis has assumed a terrorist dimension with vital institutions of government including United Nations Building and places of worship, becoming targets of terrorist attacks.

The President went to declare that while the search for a lasting solution is going on, it has become imperative to take some decisive measures necessary to restore normalcy in the country, especially within the affected communities. Consequently in exercise of his powers under Section 305 of the Constitution³⁵ declared a state of emergency in the following parts of the Federation namely: Borno-State viz:- Maiduguri Metropolitan Area; Gaboru-Ngala Local Government Area; Banki Bama Local Government Area; Biu Local Government Area; and Jere Local Government Area. In Yobe State viz:- Damaturu Local Government Area; Geidam Local Government Area; Potiskum Local Government Area; Buniyadi-Gujba Local Government Area; and Gashua Local Government Area. In Plateau State viz:- Jos-North Local Government Area; Jos

South Local Government Area; Barkin-Ladi Local Government Area; and Riyom Local Government Area. In Niger State viz:- Suleja Local Government Area.³⁶

The aftermath of the Declaration was the directive given to the Chief of Defence Staff and the then Inspector General of Police (Hafiz Ringim) to put appropriate measures in place to ensure the protection of lives and property of residents in the affected parts. Furthermore, the political leadership in the affected States and Local Government Areas were urged by Mr. President to give maximum cooperation to the Law Enforcement Agencies deployed to their respective communities, to ensure that the situation is brought under control within the shortest possible time.³⁷

The Chief of Defence Staff in collaboration with other Service Chiefs, were also directed to set up a Special Squad Unit within the Armed Forces with dedicated counter terrorism responsibilities. As part s of the overall strategy to overcome the security challenges, the closure of Nigeria borders adjoining the affected Local Government Areas was equally directed so as to control incidences of cross border terrorist activities, as terrorists have taken advantage of the situation to strike at targets in Nigeria and retreat beyond the reach of Law Enforcement Agencies.

There were divided opinions that trailed the Declaration of this State of Emergency in the 15 Local Councils as to the appropriateness of the step. In one opinion, it was said that it is high time the government took a drastic measure towards the activities of the Boko Haram Sect, describing the emergency rule as a right step towards checking insecurity in the country.³⁸ Also, the Nigeria Youth Parliament (NYP) has described the emergency rule as a giant right step towards checking insecurity in the country.³⁹ Similarly, the Abia State Governor Theodore Orji, has declared his support for the emergency rule saying that President Jonathan by so doing used his constitutional powers and had taken the bull by the horn to curb the embarrassment caused by the Boko Haram Sect.⁴⁰ Orji believes that the initiative would stem the spate of bombings in the country.

However, a political party Action Congress of Nigeria (CAN) said it welcomed whatever reason advanced for the emergency rule, but cautioned that it can only address the symptoms rather than the root causes of the current security crisis facing the nation; that a more fundamental solution must be found to the problem to ensure a lasting peace. In the same vein, the Deputy Minority Leader in the House of Representatives Suleiman kawu Sumaila, has argued that the worsening security situation in the country had proved that President Jonathan was not competent to rule Nigeria.⁴¹

Also against the backdrop of Madalla in Niger-State, Christmas Day bombing, the

³⁶ News Highlights op. cit p.15.

³⁷ Ibid.

³⁸ Aliyu, B (Governor of Niger State) EmergencyRule in Four States Divides Citizens, The Gaurdian Newspaper Monday, January 2, 2012 p.1.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

³³ News Highlights 'Jonathan Declares State of Emergency in Borno, Yobe, Plateau, Niger'The Guardian Newspaper Sunday, January 1, 2012 p.15.

³⁴ Ibid.

³⁵ 1999 Constitution of the Federal Republic of Nigeria (With Alterations).

Senate President David Mark reiterated the need to beef up security in the country; that the government will never allow evil to thrive over good. They must be fished out and punished according to the laws of the land. Nigerians must be allowed to carry out their legitimate businesses without fear of intimidation or harassment. There must be justice and the law must take its full course.⁴² The Deputy Senate President Ike Ekweremadu also speaking on the rising insecurity, urged Nigerians not to lose faith with the current Federal Administration; that all possible means must be employed to secure the nation and restore the people's confidence in the country's Leaders.

In the related development, the Governor of Borno State (the home state of the Sect), Governor Shettima Kashim has called on the residents of the affected five Local Council Areas in the state under the emergency rule to remain calm and law abiding. In a statement by His Commissioner for Information Inuwa Bwala; he reassured the citizens that there is no cause for alarm; adding that the state of emergency in the five Local Council Areas does not affect the democratic structures and functions of government in the State.⁴³

Accordingly, a Cleric Catholic Archbishop of Abuja John Onayiekian, expressed disappointment with President Goodluck Jonathan for declaring what he called selective state of emergency in some states; that the last Christmas bomb blast in Madalla was clearly targeted at the Christians, he challenged Muslims to look inward and expose the perpetrators.⁴⁴

CONSTITUTIONAL ISSUES

The emerging issues here are: what is the implication of emergency rule declared in Local Government Areas; the constitutionality or otherwise of the emergency rule and its effect if any on the democratic structures and the functions of government in the affected Local Council Areas. In this regard, Section 305 of the 1999 Constitution of the Federal Republic of Nigeria is worthy of examination. The said Section provides in parts thus:

- 1) "Subject to the provisions of this Constitution, the President may by instrument published in the official gazette of the Government of the Federation issue a Proclamation of a state of emergency in the Federation or any part thereof;
- 2) The President shall immediately after the publication, transmit copies of the official gazette of the Government of the Federation containing the proclamation including details of the emergency to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House of which he

⁴² Ibid.

⁴³ Njadvava, M et- al 'President Still Chasing Shadows say ACN Rep' The Guardian Newspaper Monday, January 2, 2012 p.4.

⁴⁴ Okwe, M and Taiwo, I 'Oniyekan Faults Selective Emergency Rule, Kumuyi Urges Calm' The Guardian Newspaper, Monday, January 2, 2012 p.8

is the President or Speaker, as the case may be, to consider the situation and decide whether or not to pass a resolution approving the proclamation;

- 3) The President shall have power to issue a Proclamation of a state of emergency only when-
 - a) The Federation is at war;
 - b) The Federation is in imminent danger of invasion or involvement in a state of war;
 - c) There is actual breakdown of public order and public safety in the Federation or any other part thereof to such extent as to require extraordinary measures to restore peace and security;
 - d) There is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
 - e) There is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
 - f) There is any other public danger which clearly constitutes threat to the existence of the Federation; or
 - g) The President receives a request to do so in accordance with the provision of Subsection (4) of this section".

Subsections (4) and (5) of section 305 talked about the proclamation of a state of emergency at the state level when there is in existence within the state any of the situations specified in subsection (3) of this Section and such situation does not extend beyond the boundaries of the state.

Subsection 6) of Section 305 provides further a Proclamation issued by the President under this section shall cease to have effect-

- a) If it is revoked by the President by instrument published in the official gazette of the Government of the Federation;
- b) If it affects the Federation or any part thereof and within two days when the National Assembly is in session, or within ten days when the National Assembly is not in session, after its publication, there is no resolution supported by two-thirds majority of all members of each House of the National Assembly approving the Proclamation;
- c) After a period of six months has lapsed since it has been in force;

provided that the National Assembly may, before the expiration of the period of six months aforesaid, extend the period for the Proclamation of the state of emergency to remain in force from time to time for a further period of six months by resolution passed in like manner; or

- d) At any time after the approval referred to in paragraph (b) or the

extension referred to in paragraph (c) of this Subsection, when each House of the National Assembly revokes the proclamation by a simple majority of all the members of each House.

An analysis of this Section reveals that going by the definitions and the relevant Sections and Subsections, a state of emergency can only be declared only on the Federation or any part thereof, provided the conditions set out in Subsection 3 (a-g) are satisfied. What then is fate of the state of emergency declared by Mr President Goodluck Jonathan on the eve of New Year on selected Local Government Areas across the country?

Well on a broader and wider interpretation of Section 305 (1) of the Constitution i.e the clause 'or any part thereof', it would appear that the President and Commander in Chief of the Armed Forces could hide under that umbrella and validly declare a state of emergency on Local Government Areas. This approach seems to be a better one, *moreso* when there is no judicial pronouncement on this dicey area and as at present nobody or group of individuals has gone to court to seek for an interpretation of this Section.

The states of the Federation and the Federal Capital Territory Abuja likewise the Local Government Areas, are provided for under the general provision of Section 3 of the Constitution⁴⁵

So, therefore the state of emergency declared by the President on the eve of New Year 2012 is in order and valid, provided all the requirements in Subsection 3 (a-g) are satisfied. Equally, this is a novel development in our Constitutional history in Nigeria, the first time we are experiencing this kind of scenario. And this development too, may not have been within the purview of Learned Text Writers in person of Professor Ben Nwabueze in his book 'Constitutional History of Nigeria'⁴⁶ and a host of others; like Kehinde M Mawoe, in his book titled 'Constitutional Law in Nigeria',⁴⁷ Ese Malemi, The Nigeria Constitutional Law;⁴⁸ and Peter Oluwede Constitutional Law in Nigeria.⁴⁹

Section 4 of the Constitution on the other hand, provides for the legislative powers of the Federation which shall be vested in the National Assembly which shall consist of a Senate and House of Representatives.⁵⁰ The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive-Legislative List. To mention just a few i.e : accounts of the Federal Government, Arms and Ammunitions, Aviation, Bankruptcy and Insolvency, Census, Citizenship, Copyrights, Defence, Customs and Excise, Drugs and Poisons, Diplomatic Mission, Deportation, Evidence,

⁴⁵ Second Column of Part I and II of the First Schedule to the Constitution; Part I of Chapter VIII, Third Column of Part I.

⁴⁶ Nwabueze, B. Constitutional History of Nigeria (London. Sweet & Maxwell, 1982).

⁴⁷ Mawoe, K. M Constitutional Law in Nigeria (Lagos, Malthouse Press Ltd, 2008) 1-49.

⁴⁸ Malemi, E The Nigerian Constitutional Law lagos, Princeton Pub, Co, 2006) p 450.

⁴⁹ Oluwede P Constitutional Law in Nigeria (Ibadan, Evans Brothers, 2011) p.97.

⁵⁰ Section 4 of the Constitution of the Federal Republic of Nigeria 1999 (With Alterations).

Exchange Control, Export Duties, External Affairs, Maritime, Meteorology, Mines and Minerals, Passports, Pensions, Quarantine, and so on.⁵¹ This power shall be to the exclusion of the Houses of Assembly of States.⁵²

In addition to this and without prejudice to the powers conferred by subsection (2) of this Section, the National Assembly shall have powers to make laws with respect to:

a) any matter in the Concurrent Legislative List set out in the First Column of Part II of the second Schedule to this Constitution to the extent prescribed in the second column opposite thereto. For instance Allocation of Revenue, Antiquities and Monuments, Archives, Collection of Taxes, Electoral Law, Electric Power, Exhibition of Cinematograph Films, Industrial Commercial or Agricultural Development, Scientific and Technological Research, Statistics, Triangometrical, Cadastral and Topographical Surveys, University, Technological and Post Primary Education; and b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.⁵³

Subsection 5 of Section 4 provides further that if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.⁵⁴

Equally Section 5 of the Constitution on executive powers of the Federation provides that:

a) "Shall be vested in the President and may subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him directly or through the Vice-President or Ministers of the Government of the Federation or other officer in the public service of the Federation".⁵⁵

The combined effect of these Sections aforesaid is to give the desired force of law and constitutional backing to any action/legislation made by the President/Federal Government so long it's within the ambit of its jurisdiction and for the maintenance of peace, order, and good governance. So, it follows therefore that the proclamation of the state of emergency by the President in the affected Local Government Council Areas on the eve of the New Year 2012 is in order, constitutional, valid and legal.

One may be prompted then to ask that assuming all is well within our democratic system of government, what then becomes the fate and status of the existing democratic structures of governance in the affected Local Government Areas, in order words the political institutions in light of the declaration of the state of emergency? These apparent questions seemed to have been laid to rest in the celebrated case of PLATEAU STATE

⁵¹ Part I of the Second Schedule to the Constitution 1999.

⁵² Ibid Section 4 (3).

⁵³ Ibid Section 4 (4).

⁵⁴ Ibid Section 4 (5).

⁵⁵ Ibid Section 5 (1)(a).

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"...but the Constitution including Section 305 therefore, is still with us. The powers are still there for the President to exercise if and when he deems fit necessary. The Constitution is alive and so are the emergency powers therein alive. It is therefore of no adverse significance to the case that 'suspended structures and public officers' are now back to duty!.. a declaration of a state of emergency is a serious business anytime, anywhere."⁵⁷

One can decipher from the decision in this case, that the mere effect of declaration of any state of emergency is to temporarily suspend all the democratic structures of governance, authority and functions only while the period of emergency last or is in force.

CONCLUSION

The Boko Haram Sect began in 2002 as a peaceful Islamic Splinter Group. Later politicians began exploiting it for electoral purposes, but it was not until 2009 that the Sect turned violence especially after its leader a young Cleric named Mohammed Yusuf was killed in Police custody. Video footage of Utaz Yusuf's interrogation soon disappeared, but no one was tried or punished for this crime. Seeking for revenge then, the Sect started with the Police, the Military and Local Politicians regardless of Muslims or Christians.

It was not until the year 2009 when the Sect launched its major military onslaught in Borno, Bauchi, Yobe and Gombe states simultaneously, that it became clear that the root cause of violence and anger in both North and South Nigeria is endemic poverty and hopelessness. In defiance of pleas from influential Nigerians on the Federal Government not to respond to Boko Haram insurgence with force alone, but rather address socio-economic deprivation, the Government seems not be listening; instead 25 per cent of Nigeria's budget for 2012 is allocated for security.

It is now a common occurrence in the affected Local Government Council Areas now for the Military and the Police to respond to any attack from the Sect with indiscriminate force and killing of innocent souls in the process, in fact the army is more feared than the Sect members

The Southern Nigerians have threatened to take up arms to fight the Northern Boko Haram Sect since most of the major attacks were targeted against the Southern Christians, more particularly the Igbos. In reality however, the Sect has not spared any tribe or ethnic affiliation as in their strong hold too, most attacks were carried out against even their kith and kins as well. Most of the assassinations were aimed at individuals suspected to informants to the security Operatives.

Mujahid Dokubo-Asari, a Muslim who led a rebellion in the Delta Area until a peace deal was reached with the Federal Government in 2004, said that bomb attacks

(2006) 3 NWLR Pt. 967 p 346.
Ibid at p.390.

by Boko-Haram could provoke retaliation by mostly Christian Southerners.⁵⁸ According to Dokubo-Asari, Boko-Haram has become the number one threat to Nigeria's security. Asari said he was skeptical that the government could negotiate with moderate members of the Sect via back channels as National Security Adviser General Owoye Azazi suggested, but the Sect's faceless nature made talks impossible coupled with the insincerity on the part of the Government. If you cannot identify the people who are carrying out these attacks, how can you dialogue with them, interact with them, and bring them round the table?

The Government should release the members of the Sect wherever they are being held, pay compensation to the families of their members that were victims of the Police extra judicial killings of the August, 2009 onslaught, rebuild their destroyed Mosque and Islamic center that were destroyed by the Military in wake of the crisis and let peace and normalcy return to this country. As the saying goes no price is too much to pay for peace

Another way out of the tensed crisis and unperturbed nature of the Sect's activities is to introduce some kind of palliative measures to cushion the hardship experienced by some of the Victims. For instance, the Governor of the home base of the Sect, Governor Kashim Shettima has set up a Seven Man's Committee to work out modalities for the payment of compensation to victims of the insurgent. The Information Commissioner to the Governor, Inuwa Bwala said that the payment of compensation to victims became inevitable so as to put smile on their faces.⁵⁹ Bwala appealed to Residents of the affected Local Government Areas where Federal Government declared state of emergency to remain calm and cooperate with security agencies in the task of restoring peace to the state.

The Federal Government should equally put in place the kind of amnesty programme that we have for the Militant Youths in the Niger Delta Area of the Country as a way of rehabilitating the members of the Sect and giving them that desired sense of belonging.

However, some have expressed opinions as to the originality of the Boko Haram Sect and even doubt its existence in its entirety. Thus in the opinion of Jean Herskovits, while 'Boko' Haram Sect has been blamed for virtually every outbreak of violence in Nigeria, he described the Sect as a shadowy group, an extremist Islamist Organization based in the North Eastern Corner of Nigeria,⁶⁰ rather the Government and mass media are chasing an elusive and ill defined threat. There is no proof that a well organized, ideologically coherent terrorist group called Boko Haram even exists today. Evidence suggests instead that, while the original core of the group remains active, criminal gangs have adopted the name 'Boko Haram' to claim responsibility for attacks when it suits

⁵⁸ Dokubo Asari 'Southern Backlash at Boko-Haram' Daily Trust Newspaper Wednesday, January 4, 2012 p.9.

⁵⁹ Yahaya Ibrahim 'Boko-Haram: Shettima Raises Victims' Compensation panel' Daily Trust Newspaper Wednesday, January 4, 2012 p.10.

⁶⁰ Jean Herskovits 'In Nigeria, Boko Haram is not the Problem' Daily Trust Newspaper Wednesday, January 4, 2010.

them.⁶¹

Henceforth, care must be taken not to draw many rhetorics that would give a biased picture of the war on terror. Getting involved in an escalating sectarian conflict that threatens the country's unity may have the potentials of turning Muslims against the Christians without really addressing any of the underlying problems that are fueling instability in the country and sectarian strife.

Since August, 2011 when an American General Carter F. Ham (Commander of the United States Africa Command) warned that Boko Haram had links Al Qaeda affiliates (an International Terrorist Organization Network), the perceived threats have grown. Not quite long after General Ham's warning, the United Nations Headquarters in Abuja was bombed, and since then, simplistic explanations blaming Boko Haram Sect for Nigeria's mounting security crisis became a routine. Suddenly after the United Nations' Building incidence, someone who claims to be a spokesman for the Sect with a name no one recognizes and whom no one has been able to identified or met with has issued threats and statements claiming responsibility for the attack. Surprisingly, the Nigeria Government and the international news media simply accepted what he said.⁶²

The best that happened after the United Nations' Building incidence in Abuja, was that in November, 2011, a Subcommittee of the House Committee on Homeland Security issued report with the provocative title: 'Boko Haram: Emerging Threat to the US Homeland.' The report did nothing and makes no case, but nevertheless proposed that the Sect be added to America's list of foreign terrorist organizations.

Many Nigerian's believes that the United States unconditional support for President Jonathan's government despite its failings is fueling the insecurity situation, especially Washington's praise that the April 2011 election was found credible did not go down well with key political notchers in the North, and hence the urge to make Jonathan's government ungovernable. Couple with this is the fact Washington's financial support for Nigeria's security forces despite their documented human rights abuses, further inflames the Muslims in the North.

Some of the actions of the present administration of Goodluck Jonathan have not helped in drowsing the situation, but rather fueling it. For instance on the eve of New Year the President declared a state of emergency in parts of the State's most affected by the activities of the Sect leading to increase in military activities there. And on the New Year's Day too, he removed subsidy on petroleum products more than doubling the price. This happened in a country where 90 per-cents of the population lives on \$2 or less a day, there is bound to be anger and rising cost of living and resistance movements.

Conclusively, since we returned to civilian rule in 1999, many politicians have used ethnic and regional differences and most disastrously religion for their own purposes. Northern Muslims and indeed all Nigerians are desperate of a government that responds to their basic needs; personal security and hope for improvement in their lives they are

⁶¹ Ibid.
⁶² Ibid.

outraged by the government policies and expenditure that undermine both. Indeed the residents in the affected areas have being enjoined on daily basis to continue to pray for peace.