



ICC and the evaluation of the case of Nigeria

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PANEL: 'Sectarianism Driven by Political Interests: The Case of Nigeria and Islamic Movement of Nigeria'

The Nigerian army carried out a series of violent attacks over the course of the 12 and 13 December 2015 which targeted the Islamic Movement of Nigeria (Islamic Movement) in Zaria.

The operation resulted in the deaths of at least 1000 unarmed civilians, mostly Islamic Movement members, killed by gunshots attributed to soldiers. Hundreds more were injured. There were reports that the military blocked access to medical care for the injured and shot at and killed wounded persons. Witnesses and victims reported signs of widespread force and cruelty with allegations of looting, arson, mutilation, mass graves, torture, rape and other inhumane acts levelled at the Nigerian army and civilian gangs.

The supporting materials and eyewitness accounts further indicated that such massive acts of violence were carried out in the context of a widespread and systematic attack against the Nigerian civilian population. The violence unleashed on members of the Islamic Movement has a history and it is a history of premeditation. There is also sufficient evidence to suggest an official plan by Nigerian government officials to cover up these crimes and indeed perpetrate the same.

What Happened:

Over the course of 12-14 December 2015, the Nigerian army carried out four deadly attacks:

1. the Hussainiyyah religious centre located at No.1A, Sokoto Road;
2. the home of the Islamic Movement’s leader, Shaykh Ibrahim Al-Zakzaky, in the Gyellesu neighbourhood of Zaria;

3. the group's burial ground of Darur-Rahma, in Dembo village, in the outskirts of Zaria; and
4. The home and burial place of Hajiya Saliha Muhammad, Shaykh Zakzaky's late mother in the Jushi neighbourhood of Zaria.

The attack against the Hussainiyah

The first attack was on Saturday 12 December 2015, when soldiers started arriving and gathering opposite the Hussainiyah, a religious centre run by the Islamic Movement. On that day, the Islamic Movement was to have a flag-hoisting event to commemorate the beginning of the month of Rabiul Awwal, the Islamic month in which the Prophet Muhammad was born.

Once the soldiers amassed outside the Hussainiyah they were approached by members of the Islamic Movement who asked them to move away. The soldiers claimed that they were there as they were having a passing out parade and were there to keep the road clear for the passage of the army Chief of Staff.

Rather than move away, video footage filmed by Islamic Movement members showed soldiers calmly taking up their position around the Hussainiyah before the shooting began. The army started shooting in the air initially, and then targeted the members of the Islamic Movement. As Islamic Movement members scrambled for cover, soldiers were seen carting away those they wounded and killed.

The soldiers then brought in their own cameramen who filmed the soldiers shouting from behind their cars "don't shoot". These videos were then disseminated to present the Islamic Movement members as the perpetrators of violence.

The Nigerian army then maintained a siege of the Hussainiyah preventing the injured inside the centre from coming out to seek medical attention. Twelve hours after the initial shooting, they called on those inside, numbering in the hundreds, including women and children, to come out with their hands up. However, when some did, they were shot by the soldiers thus deterring the others from coming out. At about 5:30am the Nigerian army started throwing grenades in an attempt to gain access, killing those who had remained inside. The soldiers shot indiscriminately including at those previously injured and at those giving them first aid. Eyewitnesses told IHRC that the soldiers were seen targeting children who, confused and scared, were scrambling for refuge. At the end of the attack, the soldiers took away the corpses to an unknown destination.

A week later, on Sunday 20 December, Kaduna state government officials along with the army brought down the front of the Hussainiyah and levelled the entire structure.

Based on eyewitness accounts, IHRC estimates that the Nigerian army murdered approximately three hundred unarmed civilians at the Hussainiyyah on the night of 12 December, amongst them approximately one hundred children. They took away most of the corpses.

Attack against Shaykh Zakzaky's home

While the shooting took place at the Hussainiyyah, many Islamic Movement members and supporters went to the Gyellesu neighbourhood, seeking refuge from the killing spree unfolding at the Hussainiyyah and to create a human shield around the leader of their organisation, Shaykh Zakzaky.

At about 9:00p.m. around nine Nigerian army trucks carrying heavy arms and ammunition moved on the private residence of Shaykh Zakzaky. Once they had taken up position close to the house of Shaykh Zakzaky, the soldiers opened fire indiscriminately on the people who had formed a human shield around the house. The attack lasted twelve hours, with the army shooting at besieged defenceless civilians before they gained entry to Shaykh Zakzaky's house.

During the attack Shaykh Zakzaky, his wife Zeenat Ibrahim, and their six children, remained confined in the house. At least 700 Islamic Movement members and supporters were killed while many others, who were injured and were left outside the residence in urgent need of medical assistance, were denied medical treatment until the following day. Eyewitness reports and photographs show piles of bodies lying on the floor outside Shaykh Zakzaky's house. Later on, the army threw explosives at sections of the house, which started fires. These burnt some of the injured who were too sick to move as well as some of the corpses.

Eyewitnesses reported to IHRC that soldiers were seen killing anyone who had been injured during the attack and also allowed groups of criminals to steal and loot the victims' belongings from their corpses. Many corpses were found severely mutilated and bearing wounds from being cut.

The attack on the Shaykh Zakzaky's residence ended on 14 December with the arrest of Shaykh Zakzaky and his family. Three of his sons and his elder sister were shot dead and Shaykh Zakzaky and his wife were both shot and injured immediately before their arrest.

The army went on to attack the group's burial ground of Darur-Rahma killing 50 people and attacked the home and burial place of Shaykh Zakzaky's late mother in the Jushi neighbourhood of Zaria.

Crimes Against Humanity

According to Article 7 of the Rome Statute (to which Nigeria is a signatory), a crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1. Murder;
2. Extermination;

3. Enslavement;
4. Deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
8. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender..., or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

We see there are three elements to be met to show this is a crime against humanity:

1. A widespread and systematic attack against a civilian population
2. Any of the acts from (a) to (k) must be part of the attack
3. There must be a state or organisational policy to commit the attack.

In our submission to the ICC we argued each of those elements was met:

It was widespread and systematic attack. Widespread is understood to be about magnitude as well as geographical area. We saw large numbers of people being killed (up to 1000 or more) or attacked in four different incidents. And the army's actions were not spontaneous. Each time we saw a build up to the attack: soldiers arriving, preparing then attacking. It was also geographically widespread, 4 different sites of attack – as well as numerous sites where the army buried the bodies. These unmarked mass graves form part of the complaint about crimes against humanity.

As for the acts: murder and mutilation of dead bodies was certainly the primary acts complained about, but sexual violence at the hands of the soldiers was reported by many female victims. Many were arrested and taken to prison, with no due process, and many of those arrested in 2015 remain under arrest awaiting trial, almost three years after their arrest.

We also showed in our report how there was a state policy to carry out these attacks. This is not the first time the Islamic Movement has been attacked in this way. In 2014 a procession was attacked killing and injuring many. In fact, such unprovoked attacks have a long history. Given the preparation involved, the history of violence and statements by politicians about curbing the Islamic Movement's perceived influence, what we see is a clear intention to attack and destroy the organisation.

The International Criminal Court (ICC)

Since submitting our report the ICC has reached preliminary findings and written to the Nigerian authorities to seek further clarifications. Unfortunately, the ICC do not divulge the contents of their preliminary findings or what they are seeking clarification on. We hope to hear about their final assessment soon.

IHRC is of the view that there are reasonable grounds to believe these crimes fall within the jurisdiction of the court in accordance with the Rome Statute. The crimes of the Nigerian army meet all the relevant criteria to warrant further investigation by the prosecutor of the ICC.

In our report we stated that based on the evidence IHRC firmly believes that:

1. The crimes committed between 12 and 14 December 2015 in Zaria, Kaduna State, by the Nigerian army amount to crimes against humanity.
2. The crimes committed by the Nigerian army meet all the necessary legal requirements to warrant a preliminary investigation by the ICC prosecutor.

Based on these grounds, IHRC recommended the following:

1. The ICC prosecutor should open a preliminary examination into the incidents that occurred between 12 and 14 December 2015 in Zaria, Kaduna State.
2. The Prosecutor expand its monitoring activities on Nigeria and the army's involvement in attacks against the Islamic Movement that occurred in the period between 2014 and 2015. Indeed, Nigeria is already under preliminary investigation by the Prosecutor in relation to Boko Haram.
3. IHRC calls on the ICC Prosecutor to issue a preventive statement saying that she is monitoring the Nigerian crisis and is aware of the commission of crimes and warn the perpetrators about their criminal liability.