

THE WAR AGAINST TERRORISM AND THE ENVIRONMENT: IMPLICATIONS FOR THE RIGHT TO A SATISFACTORY ENVIRONMENT IN NIGERIA

Ebunoluwa Odunayo Popoola* and Emelda Undiandeye Ejeh**

Abstract

The world is currently witnessing various forms of terrorism, sometimes leading to war, with devastating impacts on the environment. This article evaluates the implication of terrorism and the war on terrorism vis à vis the right to a satisfactory environment in Nigeria. In the Nigerian conflict, forests, national parks and other environmentally protected areas are major theatres of hostilities. The aim of the article is to examine the impact that terrorism and war have on the environment and the right to a healthy environment in Nigeria and to explore ways of mitigating the impacts of armed conflict on the environment. We therefore ask the following questions: In what way(s), if any, does terrorism and the war on terrorism affect the right to a healthy environment in Nigeria? What are the relevant rules under International Humanitarian Law (IHL) that could be utilised for protection of the environment? What viable measures can be taken to better protect the right to a healthy environment while countering terrorism? Protecting the environment before, during and after armed conflict is of utmost importance to any government. Nigeria may discharge this legal burden by preventing and mitigating the factors which give rise to terrorism and armed conflict as well as incorporating environmental considerations in its legal response to terrorism and conflict.

Key words: Environment, Terrorism, War, Right to a healthy environment.

1.0 Introduction

The link between terrorism and armed conflict is established in scholarly literature. So also is the relationship between armed conflict and environmental harm. Many armed conflicts are fuelled by environmental factors and armed conflict, in turn, results in harm to the environment and affects the right to a healthy environment.¹ The threats posed to the environment in the on-going Russia-Ukraine war serve as reminders of how past armed conflicts devastated the environment.² In Nigeria, armed struggles for resource control waged by militants in the oil-rich Niger-Delta against the Nigerian state saw the attack of oil and gas

* BL, PhD; Senior Lecturer, Faculty of Law, Bingham University, Karu, Nasarawa. ebunpopoola@gmail.com

** BL, MPhil: Private legal practitioner, Maiduguri. emeldaejeh@gmail.com

¹ J. Walker and C. Bruch (eds.) *The Environmental Consequences of War: Legal, Economic and Scientific Perspectives* (Cambridge University Press 2000).

² For example, the widespread and lingering environmental devastation in the Vietnam War, the Balkans War, the Gulf War and more recently in Syria, Iraq, Yemen and Somalia. See J.E. Walker and C.E. Bruch (eds.) n 1.

installations as well as a rise in oil theft and artisanal oil refining (oil-bunkering), all resulting in oil pollution.³ The Nigerian military, in its operations, sets ablaze illegal oil cargoes and sites of oil bunkering, adding to the widespread pollution of air, water and land.⁴

Nigeria has been plagued by terrorism notably since the first decade of the twenty first century, prompting the federal government to declare a war on terrorism.⁵ The modus operandi of counter-terrorism has, for about a decade, transcended security operations by traditional law enforcement to the deployment of troops resulting in armed conflicts between the military and terrorists. With the more recent designation of certain armed bandit groups as terrorists,⁶ the scope of the war on terrorism has been expanded.

Forests, national parks and other protected areas have been, and still are, a significant theatre of hostilities.⁷ While terrorism in Nigeria has been fuelled mostly by religious extremism, environmental factors such as climate change and the struggle for access to natural resources are additional drivers.⁸ For instance, armed banditry and terrorism in the North-West and

³ Olaniyan, Azeez. 'Destroying to Destroy: Militancy and Environmental Degradation in the Niger Delta.' Environment & Society Portal, *Arcadia* [2017] 34. Rachel Carson Center for Environment and Society. doi.org/10.5282/rcc/8175. <<https://www.environmentandsociety.org/arcadia/destroying-destroy-militancy-and-environmental-degradation-niger-delta>> accessed 11 November 2022.

⁴ T. Obiezu, 'Nigerian Authorities Defend Decision to Burn Vessel Carrying Allegedly Stolen Oil,' *VOA News* (17 November 2022); Reuters, 'Nigerian Military Recovers Stolen Crude Oil, Destroys Illegal Refining Sites,' (10 February 2022).

⁵ James Forest, *Confronting the Terrorism of Boko Haram in Nigeria* (JSOU Report 12-5) (JSOU Press 2012) 3.

⁶ The *Yan Bindiga* and *Yan Ta'adda* bandit groups and other similar groups were designated as terrorist groups and proscribed by the Nigerian Government on 29 November 2021. See *Notice of Proscription Order*, Federal Republic of Nigeria Official Gazette, November 29, 2021.

⁷ Some forests in Nigeria hosting Boko Haram, ISWAP, Ansaru and Yar Bindiga are Sambisa forest in Borno state, Kamuku forest in Kaduna, Falgore forest in Kano, Kuyambana forest in Zamfara and Dajin Rugu forest stretching through Kaduna, Katsina and Zamfara states. See S. Odeyemi, 'Bandits, Terrorists Occupy 1,129sqm of Forest Reserves in Nigeria –National Park Service', *Punch* (Lagos, 15th September 2021); 'Things You Need To Know About Forests "Governed" By Bandits, Boko Haram,' *Daily Trust* (Abuja, 27 February 2021).

⁸ Andrew Silke and John Morrison, 'Gathering Storm: An Introduction to the Special Issue on Climate Change and Terrorism', *Terrorism and Political Violence* [2022] 34 (5), 883-893; International Crisis Group, *Herders against Farmers: Nigeria's Expanding Deadly Conflict* (Crisis Group Africa Report N°252, 19 September 2017) 3-4;

Middle Belt of Nigeria has been linked to gold-mining,⁹ desertification as well as struggles for land and other natural resources.¹⁰

The International Law Commission's Principles on Protection of the Environment in Relation to Armed Conflicts (PERAC Principles)¹¹ recognises the link between the environment and armed conflict thus, "Recognizing that environmental consequences of armed conflicts may be severe and have the potential to exacerbate global environmental challenges, such as climate change and biodiversity loss,..."¹² It further links environment and human rights: "Aware of the importance of the environment for livelihoods, food and water security, maintenance of traditions and cultures and the enjoyment of human rights,..."¹³ The above reinforces the fact that the environment is often a victim in armed conflict situations with repercussions on the enjoyment of human rights generally, and particularly, the right to a healthy environment.

Although the Nigerian state and terrorists have been engaged in warfare for over a decade, there is paucity of research on the terrorism-armed conflict-environmental rights nexus in the Nigerian context. This paper fills the gap in research by exploring the inter-relationship and intersection between armed conflict and the environment. The aim is to examine the impact of terrorism and the resulting war on the environment and the realisation of the right to a healthy environment in Nigeria. The paper also explores ways of mitigating the impacts of armed conflict on the environment.

⁹ Nigeria suspends mining in Zamfara state after banditry surges, Reuters, 7 April, 2019. <<https://www.reuters.com/article/uk-nigeria-security-idUKKCN1RJ0J7>> accessed 27 October, 2022; Maurice Ogbonnaya, 'How illegal mining is driving local conflicts in Nigeria,' (Institute for Security Studies, 16 June 2020) <<https://issafrica.org/iss-today/how-illegal-mining-is-driving-local-conflicts-in-nigeria>> accessed on 20 October 2022.

¹⁰ International Crisis Group, *Herders against Farmers: Nigeria's Expanding Deadly Conflict* (Crisis Group Africa Report N°252, 19 September 2017) i – iii, 3-4.

¹¹ Protection of the Environment in Relation to Armed Conflicts (PERAC) Resolution Adopted by the UN General Assembly on 7 December 2022. <<https://legal.un.org/docs/?symbol=A/RES/77/104>> accessed 7 January 2023.

¹² Ibid, Preamble Paragraph 3.

¹³ Ibid, Preamble Paragraph 4.

In this vein, we ask the following questions: In what way(s), if any, does terrorism and the war on terrorism affect the right to a healthy environment in Nigeria? What are the relevant rules under International Humanitarian Law (IHL) that could be utilised for protection of the environment? What viable measures can be taken to better protect the right to a healthy environment while countering terrorism?

2.0 Clarification of Key Terms

2.1 Defining Environment

The term ‘environment’ defies a universally acceptable definition. There is also divergence of opinion on whether it is preferable to adopt a broad perspective in defining environment or a narrow approach that is focused on the natural environment. The *National Environmental Standards and Regulations Enforcement Agency (NESREA) (Establishment) Act*¹⁴ defines the environment as including, “water, air, land and all plants and human beings and animals living therein and the interrelationships which exist among these or any of them.”¹⁵ The Nigerian Supreme Court similarly adopted a narrow perspective of environment in the case of *Attorney General of Lagos State v Attorney General of the Federation and others*,¹⁶ defining it as “the natural conditions, for example land, air and water, in which people, plants and animals live.”

The Environmental Impact Assessment (EIA) Act¹⁷ adopts a considerably broader approach, defining environment as “the components of the earth, and includes - land, water and air, including all layers of the atmosphere; all organic and inorganic matter and living organisms; and the interacting natural systems that include the components referred to”.

¹⁴ Chapter N164, LFN 2010.

¹⁵ Ibid. Section 37.

¹⁶ (2003) 7 MJSC 1 at 156; (2003) 12 NWLR (Pt. 833) 1.

¹⁷ Chapter E12, LFN 2004, section 61

While International Environmental Law (IEL) favours the broad perspective of environment that encompasses the natural as well as the man-made environment,¹⁸ IHL rules in contrast, appears to favour a narrow perspective of environment as encompassing the natural environment.¹⁹ Its provisions for protection of the man-made environment is thus limited mainly to sites that constitute cultural property, works or installations containing dangerous forces where an attack could result in release of dangerous forces and consequent severe losses among the civilian population.²⁰ IHL is also essentially anthropocentric. Its instrumental approach to environmental protection is reflected in rules that limit protection to those aspects of the environment that are essential or indispensable for the survival of the civilian population.²¹ The intrinsic approach is gaining acceptance in the IHL discourse.²² The PERAC Principles, for example, stresses the civilian character of the environment in the following language: “No part of the environment may be attacked, unless it has become a military objective”.²³ Recent developments at the international level also show that the broad perspective of environment is finding some support among states.²⁴

¹⁸ The Preamble of the 1972 Declaration of the United Nations Conference on the Human Environment, for example, states that both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights including the right to life itself.

¹⁹ Most IHL instruments that provide for protection of the environmental make specific use of the term “natural environment”. See Article 35 para. 3 and Article 55 paras. 1 & 2 of Additional Protocol I, which adopt the term, “natural environment”; and Article II of the Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques (ENMOD Convention) 1976 which prohibits “techniques for changing - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space”. See also, ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020) 15-16.

²⁰ See Articles 53 and 56 (1) of Additional Protocol I. See also the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954.

²¹ See for example Article 55(1) of Additional Protocol I and Article 14 of Additional Protocol II.

²² See the comments of Germany, Belgium, Spain, Portugal and Ireland on the draft PERAC Principles. < <https://ceobs.org/state-positions-on-the-ilcs-draft-perac-principles-after-first-reading/> > accessed 13 December 2022. See also, ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC 2020), pp. 18 & 19 < <https://www.icrc.org/en/publication/4382-guidelines-protection-natural-environment-armed-conflict> > accessed 13 December 2022.

²³ Principle 13 (3) PERAC Principles.

²⁴ This trend is reflected in the adoption of the term “environment” in place of “natural environment” in the final draft of the PERAC Principles. The effect is diluted by the non-binding status of the Principles..

2.2 The Right to a Healthy Environment

The right to a healthy environment draws inspiration from the fact that the right to life cannot be realized in the absence of a healthy environment. A healthy environment provides life support systems. Many life-threatening illnesses and diseases are caused by environmental factors. The quality of the environment in which a person lives can actually shorten or improve their life expectancy. It is in recognition of this that regional human rights instruments like the African Charter on Human and Peoples' Rights 1981,²⁵ the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights²⁶ and the Aarhus Convention²⁷ provide for environmental rights.²⁸

Courts in several jurisdictions, regional courts and international human rights monitoring bodies have handed down decisions broadly interpreting human rights to encompass environmental protection.²⁹ In *Jonah Gbemre v Shell Petroleum Development Company*³⁰ the Federal High Court applied the environmental right as a component of the rights to life and personal dignity and held that the actions of the 1st and 2nd Respondents in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's community was a gross violation of their constitutionally guaranteed rights to life (including healthy environment) and dignity of human person.

²⁵ African Charter on Human and Peoples' Rights (African Charter) (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

²⁶ Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (Entered into force 16 November 1999), OAS Treaty Series No 69.

²⁷ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "Aarhus Convention") (Adopted 25 June 1998, entered into force 30 November 2001) 2161 UNTS 447, 38 ILM 517 (1999).

²⁸ Article 24, African Charter, Article 11(1) of the Protocol of San Salvador and Article 1 of the Aarhus Convention.

²⁹ *Social and Economic Rights Action Centre for Economic and Social Rights (SERAC) v Nigeria*, African Commission on Human and Peoples' Rights Communication No 155/96 (2001); D. Boyd, *The Environmental Rights Revolution: Constitutions, Human Rights, and the Environment*. (PhD Dissertation, Resource Management and Environmental Studies, University of British Columbia, Vancouver, 2010) 364.

³⁰ Suit No: FHC/CS/B/153/2005.

In the more recent case of *Centre for Oil Pollution Watch v NNPC*,³¹ the Nigerian Supreme Court decision liberalised the rules of *locus standi* to allow public interest litigation for the environment. Submissions advanced in favour of allowing public interest litigation included the argument that the threat which a degraded environment poses to human life constitutes a breach of the right to life under section 33 of the 1999 Constitution. In their concurring judgments four out of the seven Supreme Court Justices made references to the right to a healthy environment as a corollary of the right to life. According to Kekere-Ekun JSC,

... Section 33 of the 1999 Constitution guarantees the right to life while section 20 of the Constitution provides that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country.” See also: Article 24 of the African Charter on Human and Peoples Rights which provides: All people shall have the right to a general satisfactory environment favourable to their development.” These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizens to a clean environment to sustain life.³²

Onnoghen, CJN (as he then was) was likewise of the opinion that where the defendant oil company’s actions are in breach of the law and the result is injury to the health of the people and/or danger to the environment, it is necessary for the plaintiff to initiate the action to enforce the law and save lives and protect or restore the environment. He further stated that the Oil and Gas Pipelines Act³³ imposes a duty of care on the owners or operators of oil pipelines to maintain and effect repair of their oil pipelines to ensure that crude oil/hydrocarbon oil being transported through these pipes do not escape and cause damage to human lives and the environment. Accordingly, where the plaintiff, an NGO, seeks the enforcement of the defendant’s obligations under law vis-à-vis the rights of the affected

³¹ [2019] 5 NWLR (pt. 1666) 518.

³² Ibid, p. 587, paras. D- F. Emphasis supplied.

³³ Cap. O7 LFN 2004.

community to maintain a healthy environment which extends to their forest, rivers, air and land, they should be heard.³⁴

Eko JSC held that in order to broadly determine *locus standi* under environmental rights as human rights, Article 24 of the African Charter should be read together with Sections 33(1) and 20 of the Nigerian Constitution on the role of the State in preserving the environment for the health and by extension lives of Nigerians and that having ratified and domesticated the African Charter the right to a healthy environment is a human right in Nigeria.³⁵

3.0 Terrorism in Nigeria

Defining the term terrorism has been plagued with conceptual and definitional disagreements thus there is no internationally agreed definition.³⁶ UN General Assembly Resolution 49/60 which aims to criminalize certain armed activities considered to be “terrorist” in nature, specifies that “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”.³⁷

The Nigerian Terrorism (Prevention and Prohibition) Act, 2022 (TPPA)³⁸ does not define terrorism rather it provides a lengthy description of criminal acts that would constitute “acts of terrorism” when wilfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic.³⁹ A reading of the provisions shows that the environment may be a target as well as a victim of “acts of terrorism”. Section 2(3) of the TPPA provides

³⁴ Ibid, pp. 574 -575, paras. D – A.

³⁵ Ibid, at 601, paras E - H.

³⁶ Andrew Silke, ‘Contemporary Terrorism Studies: Issues in Research’. In: R. Jackson et al. (eds.) *Critical Terrorism Studies: A New Research Agenda* (Routledge 2009).

³⁷ A/RES/49/60.

³⁸ No. 91 of 2022. This Act repealed and replaced the Terrorism (Prevention) Act, 2011 (as amended).

³⁹ Section 2 (3)(a-g)

inter alia that acts of terrorism may involve, cause, or result in “the release of dangerous substance, causing of fire, explosions or floods, the effect of which is to endanger human life,⁴⁰ interference with or disruption of the supply of water, power, or any other fundamental natural resource, the effect of which is to endanger human life;⁴¹ the release into the environment or any part thereof, or distribution or exposure of the public or any part to dangerous, hazardous, nuclear, or other radioactive or harmful substance, any toxic chemical, microbial or other biological agent or toxin, the effect of which is to endanger human life or to provoke substantial damage to property or to the environment;”⁴² an act directed against a nuclear facility, or interfering with the operation of a nuclear facility, with intention or knowledge that the act is likely to cause, death or serious injury to a person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substance.⁴³

The Nigerian Supreme Court, in the case of *Abdulumuni v Federal Republic of Nigeria*,⁴⁴ adopted the definition in section 40 of the Economic and Financial Crimes Commission Act, 2002⁴⁵ and defined terrorism as:

any act which is a violation of the Criminal Code or the Penal Code and which may endanger the life, physical integrity of, freedom of, or cause serious injury or death to, any person, any number or group of person or causes or may cause damage to public property, natural resources, environmental or cultural heritage and is calculated or intended to –

- (i) intimidate, put in fear, force, coerce, or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act or to adopt or abandon a particular standpoint, or to act according to certain principles, or
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency, or

⁴⁰ TPPA, section 2 (3)(g)(vi)

⁴¹ Ibid. Section 2 (3)(g)(vii)

⁴² Ibid. Section 2 (3)(g)(viii)

⁴³ Ibid. Section 2 (3)(g)(xix).

⁴⁴ (2018) 13 NWLR (Pt. 1635) 106 SC. Emphasis provided.

⁴⁵ Repealed and replaced by the Economic and Financial Crimes Commission (Establishment) Act, 2004 (EFCC Act, 2004). Section 46 of the EFCC Act, 2004 is *in pari materia* with section 40 of the EFCC Act 2002.

(iii) create general insurrection in a state;

On the ingredients of the offence of terrorism, the court held that:

The crucial aspect of the offence of terrorism is the creation of intense fear and anxiety, both physical and psychological in the minds of members of the public which has the effect of coercing, intimidating them to do or abstain from doing any act or to abandon a particular view, policy or position to act according to certain principles.⁴⁶

Boko Haram, Ansaru and Islamic State West African Province (ISWAP) are some terrorist organisations operating in Nigeria. Boko Haram, whose full name in Arabic is “*Jama’atu Ahl as-Sunnah li-Da’awati wal-Jihad*” (People Committed to the Propagation of the Prophet’s Teachings and Jihad) is popularly referred to as “Boko Haram” (Western Education is forbidden). Ansaru’s full name is “*Ansarul Muslimina Fi Biladis Sudan*” (Vanguard for the Protection of Muslims in Black Africa). ISWAP is an off-shoot of Boko Haram that pledged allegiance to the Islamic State (IS)⁴⁷ These groups have been designated as terrorist organisations by the Nigerian government, the USA, and the United Kingdom.⁴⁸ Boko Haram is estimated to have directly caused the deaths of over 60,000 persons in Nigeria between 2011 and 2022,⁴⁹ burnt entire villages and displaced over 2 million people in the North East.⁵⁰ The Global Terrorism Index (GTI) Report 2015 classified Boko Haram as the

⁴⁶ (2018) 13 NWLR (Pt. 1635) 106.

⁴⁷ Rueben Dass and Jasmininder Singh, ‘Islamic State in West Africa Province Video Signals the Group’s Grand Strategy for the Future,’ *Terrorism Monitor* [2022] 20(5) 3-5 <<https://jamestown.org/wp-content/uploads/2022/03/TM-PDF.pdf?x18297>> accessed 12 November 2022; Abdulkareem Haruna, ‘ISWAP Collects Taxes in CFA as Nigeria Government Plans Currency Redesign’, *HumAngle* 12 November, 2022. <https://humanglemedia.com/iswap-collects-taxes-in-cfa-as-nigeria-government-plans-currency-redesign/> accessed 03 December 2022.

⁴⁸ Terrorism (Prevention) (Proscription Order) Notice 2013; US Department of State, ‘Foreign Terrorist Organizations’ <<https://www.state.gov/foreign-terrorist-organizations/>> accessed 07 December 2022; ‘Foreign Travel Advice: Nigeria,’ <www.gov.uk/foreign-travel-advice/nigeria/terrorism> accessed 07 December 2022.

⁴⁹ ‘Deaths Caused by Boko Haram in Nigeria, by States’, <<https://statista.com/statistics/1197570/deaths-caused-by-boko-haram-in-nigeria/>> accessed 07 December 2022.

⁵⁰ Human Rights Watch (HRW), *Those who Returned are Suffering: Impact of Camp Shutdowns on People Displaced by Boko Haram Conflict in Nigeria* (HRW 2022). <<https://www.hrw.org/report/2022/11/02/those-who-returned-are-suffering/impact-camp-shutdowns-people-displaced-boko-haram-conflict>> accessed 11 January 2023.

deadliest terror group in the world.⁵¹ Boko Haram and ISWAP operate mostly in the North East of Nigeria and have, at various times, controlled swathes of territory including imposing taxes on the communities.⁵² Their operations have steadily spread to the North West and North Central areas of Nigeria.

The GTI Report for 2015 classified Fulani militia as the fourth deadliest terror group in 2014.⁵³ The Fulani militia are also popularly referred to as ‘armed bandits’ and “killer herdsmen” in Nigeria. They consist mostly of young to middle aged men from the Fulani ethnic group, who were traditionally nomadic cattle herders and are often involved in conflicts with farming communities in the North over access to land and water. They have their hideouts in abandoned forest reserves and operate mostly in the North West and North Central of Nigeria where they have been reported to engage in heinous crimes including: kidnapping for ransom, mass abduction of school children and other citizens, sexual slavery and violence, cattle rustling, attacks and killings of whole communities, torching villages and farmlands, displacing communities and grabbing their lands. In some cases they exercise control over communities, including through taxes, and have been reported to use conquered

⁵¹ *Global Terrorism Index Report 2015* (Institute for Economics and Peace 2015) 2. <<https://reliefweb.int/report/world/global-terrorism-index-2015-measuring-and-understanding-impact-terrorism>> accessed 03 December 2022.

⁵² Abdulkareem Haruna, ‘ISWAP Collects Taxes in CFA as Nigeria Government Plans Currency Redesign’, *Human Angle* November 12, 2022. <<https://humananglemedia.com/iswap-collects-taxes-in-cfa-as-nigeria-government-plans-currency-redesign/>> accessed 03 December 2022.

⁵³ *Global Terrorism Index Report 2015*, op cit. 43-44.

communities for forced labour.⁵⁴ They are estimated to have conducted 654 attacks, killed 2,539 people and kidnapped 253 in Nigeria between 2017 and May 2020.⁵⁵

The armed bandit groups were designated as a terrorist organization by the Nigerian Government on 29 November 2021,⁵⁶ and proscribed pursuant to sections 1 and 2 of the Terrorism (Prevention) Act, 2011 (TPA)⁵⁷. There are reports that they have been joining forces with Boko Haram and ISWAP.⁵⁸ The Nigerian army and air force have been similarly engaged in an armed conflict with these groups.

While there is universal consensus on the identification of Boko Haram, ISWAP and Ansaru as terrorist organisations, there is controversy surrounding the status of the Independent Peoples of Biafra (IPOB). Pursuant to a 20 September 2017 court ruling declaring that the activities of IPOB in Nigeria amount to acts of terrorism, the Nigerian Government in September 2017 by a Notice⁵⁹ proscribed the group, designating it as a terrorist organisation under section 2 of the TPA. However, after over five years of the designation by the Nigerian

⁵⁴ Ibrahim Adeyemi, 'Merchants of Terror (1): Paying Blood Taxes, Helpless Communities Sustain Nigeria's Terrorists,' *Premium Times*, 3 October 2022 <<https://www.premiumtimesng.com/news/headlines/557418-merchants-of-terror-1-paying-blood-taxes-helpless-communities-sustain-nigerias-terrorists.html?tztc=1>> accessed on 27 November, 2022; Ibrahim Adeyemi, 'Merchants of Terror (2): Inside Multi-million Naira Farming Sustaining Nigeria's Terrorists,' *Premium Times*, October 22, 2022 <<https://www.premiumtimesng.com/news/headlines/561000-merchants-of-terror-2-inside-multi-million-naira-farming-sustaining-nigerias-terrorists.html>> accessed on 27 November, 2022.

⁵⁵ Jose Luis Bazan, 'Fulani Militias' Terror: Compilation of News (2017 - 2020)' (Working Document, May 2020) <https://www.academia.edu/43413000/Fulani_militias_terror_2017_2020> accessed 03 December 2022

⁵⁶ Notice of Proscription Order, Federal Republic of Nigeria Official Gazette, November 29, 2021.

⁵⁷ Repealed and replaced by the Terrorism (Prevention and Prohibition) Act No. 91 of 2022 (TPPA 2022). See section 98 TPPA. Section 2 of the repealed Act and section 48 of the TPPA are similarly worded, albeit with distinct differences and both provide for proscription of entities/organisations involved in acts of terrorism.

⁵⁸ 'Bandits, Boko Haram Terrorists Working Together, Says FG,' *Daily Trust*, 13 April 2022; 'FG Links Kaduna Train Attack to Synergy Between Boko Haram and Bandits,' *ThisDay*, 14 April 2022.

⁵⁹ The Terrorism (Prevention) (Proscription Order) Notice, 2017 No. 99, Vol. 104, Federal Republic of Nigeria Official Gazette.

state, no other country or international body has done so; some rather describe the group as a “separatist group”.⁶⁰

In the Global Terrorism Index of 2021, Nigeria ranked sixth in the list of countries most affected by terrorism.⁶¹ In 2022, Sub-Saharan Africa accounted for 48% of global terrorism deaths with the Sahel region considered home to the world’s fastest growing and most-deadly terrorist groups.⁶² Apart from the loss of lives, property, displacements and growing food insecurity occasioned by the activities of terrorist groups, the environment has also suffered from the activities of terrorist groups as well as from military operations conducted by the state against terrorist groups.

4.0 Armed Conflict in Nigeria

Since the deployment of troops against the Boko Haram in the North East in 2012, fighting has been going on between the Nigerian military and these non-state armed groups. The question may be asked if Nigeria’s war on terrorism qualifies as an armed conflict.⁶³ It is submitted that from the activities of Boko Haram, ISWAP, Ansaru,⁶⁴ their level of organisation and control of territory, the intensity and sustained nature of the armed confrontations between them and the Nigerian armed forces *inter alia*, the on-going conflict involving the military and these groups qualifies as an armed conflict and therefore falls

⁶⁰ Country Policy and Information Note: Separatist Groups in the South-East, Nigeria, March 2022 (Updated 12 August 2022) <www.gov.uk/government/publications/country-policy-and-information-notes/country-policy-and-information-note-separatist-groups-in-the-south-east-nigeria-march-2022-accessible> Accessed 12 January 2023; Dennis Erezi, ‘UK Authorities say IPOB not Designated as Terrorist Organisation,’ *The Guardian* (Lagos 7 May 2022); Paul Ejime, Britain, IPOB and Terrorism, *Business Day*, 17 May 2022.

⁶¹ *Global Terrorism Index 2021* (Institute for Economics and Peace 2021)
<<https://reliefweb.int/report/world/global-terrorism-index-2021>> Accessed 12 January 2023.

⁶² *Global Terrorism Index 2022* (Institute for Economics and Peace 2022)
<<https://reliefweb.int/report/world/global-terrorism-index-2022>> Accessed 15 February 2023.

⁶³ ICRC, ‘Internal Conflicts or Other Situations of Violence – What is the Difference for Victims?’ (10-12-2012 Interview of Kathleen Lawand) (ICRC 2012).
<<https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>> accessed 12 December 2022

⁶⁴ These include, the declaration of a Caliphate, taking over territory, hoisting their own flag therein, appointment of officials to govern in territories under their control, and imposition of taxes on inhabitants.

within the scope of Additional Protocol II.⁶⁵ The conduct of sustained land and air operations by the Nigerian military against the recently designated bandit terrorist groups, the sophistication of the weapons the bandit terrorists use as well as the conduct of hostilities between them and the military, including the shooting down of an air force plane, further leads to the conclusion that there is an armed conflict situation in the North Eastern part of Nigeria.

Most IHL provisions on protection of the natural environment apply to international armed conflicts, however in recent times a greater number of armed conflicts assume a non-international character. Insurgents and non-state armed groups in different continents have proven their capacity to wreak significant harm on civilian populations as well as on the environment.

The Nigerian war against terrorism falls within the category of non-international armed conflict. The formation of military coalitions by states e.g. MNJTF comprising soldiers from the armed forces of Nigeria, Chad, Cameroon, and Benin⁶⁶ and conduct of military operations against insurgents in another state does not change the character of the war against terrorism in Nigeria from its non-international character.

The distinction between an international armed conflict and a non-international armed conflict (NIAC) is important because different sets of rules apply to each. In the area of environment, for example, Additional Protocol I to the Geneva Conventions⁶⁷ contains

⁶⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977. Other conditions in Additional Protocol II required for a conflict to so qualify exist. The Boko Haram and other like groups mentioned above are organized and armed groups, under responsible command, they exercise such control over a part of Nigeria's territory "as to enable them to carry out sustained and concerted military operations" and to implement the Protocol. See Article 1 (1) of Additional Protocol II.

⁶⁶ Jason L. Rock, *The Funding of Boko Haram and Nigeria's Actions to Stop It* (MSc Thesis of Naval Postgraduate School California 2016) 21; Omeiza Ajayi, 'MNJTF Kills 675 Boko Haram Insurgents, Arrests 566 in 5 Months', *Vanguard*, May 13, 2016.

⁶⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection

comprehensive rules relating to protection of the environment in armed conflict.⁶⁸ Additional Protocol II, in contrast, is more limited in terms of the protection afforded the environment.

5.0 Protection of the Environment in a Non-International Armed Conflict Situation

In terms of specific environmental protection in armed conflict situations, Additional Protocol II does not contain much. Articles 4, 14 and 15 can however be read to provide some level of protection for the environment. Article 4 (4)(g) prohibits pillage. Pillage, defined as the “plunder; the forcible taking of private property by an invading or conquering army from the enemy's subjects,”⁶⁹ covers the illegal plunder and predatory exploitation of natural resources⁷⁰ and it could result in despoliation of the environment.

Article 14 of Additional Protocol II provides for protection of objects indispensable to the survival of the civilian population as follows:

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.⁷¹

This provision directed at a category of objects can be interpreted to encompass protection of the natural environment since objects indispensable to the survival of humans often constitute

of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.

⁶⁸ These include the prohibition of methods or means of warfare that are intended or may be expected to cause widespread, long-term and severe damage to the natural environment (Article 35(3)); prohibition of attacks against the natural environment by way of reprisals (Art. 55(2)); and prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Article 55 (1) provides that “care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.

⁶⁹ H. Black, *Black's Law Dictionary* (4th edn, West Publishing Co. 1968) 1305.

⁷⁰ In *Case Concerning Armed activities on the Territory of the Congo (DRC v. Uganda)*, Judgment of 19 December 2005, ICJ Reports 168, para 243, the International Court of Justice applied pillage directly to the exploitation of natural resources. Cited in O. Radics, and C. Bruch, ‘The Law of Pillage, Conflict Resources and Jus Post Bellum’. In: C. Stahn et al (eds.) *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles and Practices* (Oxford University Press 2017)143 -168, n.30.

⁷¹ Emphasis provided.

a part of the environment. According to the ICRC Commentary,⁷² the verbs “attack”, “destroy”, “remove” and “render useless” are used to cover all eventualities, which may include pollution of water supplies by chemical agents or the destruction of a harvest by defoliants.⁷³ These provisions illustrate how the natural environment could be targeted in the course of an armed conflict, resulting in harm. The documented actions of terrorist groups destroying farmlands, crops, foodstuffs and other objects indispensable to the survival of rural communities is a clear violation of Article 14 and Customary International Law and constitutes a war crime.⁷⁴

Article 15 protects some aspects of the built environment,

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

The protection offered here is a special one and is aimed at protecting the civilian population against the ill effects of a possible release of dangerous forces such as large quantities of water or radioactivity.⁷⁵ It is based on the serious consequences their attack or destruction would cause to human lives. The focus here is not on protection of the environment for its own sake but for the sake of human lives. The protection is also a qualified one since the extent of the protection is limited to cases in which an attack may cause severe losses among the civilian population. This means that, assuming such a work or installation were a military

⁷² Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (ICRC 1987) (ICRC Commentary) <<https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-14/commentary/1987>> accessed 23 November 2022.

⁷³ Ibid. para 4801.

⁷⁴ See also Article 8 of the Rome Statute of the International Criminal Court.

⁷⁵ ICRC Commentary, para. 4819.

objective, it could be attacked “as long as the civilian population were not seriously endangered thereby”.⁷⁶

In a bid to address the inadequacies of Additional Protocol II in terms of protection of the natural environment, the PERAC Principles provide greater safeguards for the environment in armed conflict. This is in line with the stated aim which is “enhancing the protection of the environment in relation to armed conflict”.⁷⁷ Novel provisions include the extension of rules protecting the natural environment in international armed conflicts to cover non-international armed conflicts,⁷⁸ extending to the environment general protections accorded civilians⁷⁹ and action to prevent and mitigate environmental degradation arising from human displacement.⁸⁰

6.0 Impacts of Terrorism and Armed Conflict on Environmental Rights in Nigeria

Terrorism and armed conflicts have significant negative impacts on the environment and consequently on the rights of Nigerians to a general satisfactory environment. Acts of terrorism could target the environment directly or indirectly. An act(s) of terrorism may involve, cause, or result in “the release of dangerous substance into the environment. It may cause fire, explosions or floods. Examples include a bomb blast that destroys a dam or other environmental resources. Fires and explosions release pollutants into the air, land and water. They could harm plants, wildlife and other forms of biodiversity.

The TPPA recognises that such acts of terrorism could interfere with or disrupt “fundamental natural resource” and endanger human life.⁸¹ Acts of terrorism under the TPPA could

⁷⁶ Ibid, para. 4820

⁷⁷ Principle 2 PERAC Principles.

⁷⁸ Principle 13 for example provides general protection of the environment during an armed conflict. This provision covers both international and non-international armed conflicts. Additional Protocol II has no such provision.

⁷⁹ See Principle 14 of PERAC Principles: “The law of armed conflict, including the principles and rules on distinction, proportionality and precautions, shall be applied to the environment, with a view to its protection.”

⁸⁰ Principle 8 PERAC Principles.

⁸¹ TPPA, 2022. Section 2 (3)(g)(vii).

involve, cause or result in air pollution, water pollution, land pollution, noise pollution and other forms of environmental degradation. Thus, the Act includes in its definition of “acts of terrorism”: the release into the environment or any part thereof ... “dangerous, hazardous, nuclear, or other radioactive or harmful substance, any toxic chemical, microbial or other biological agent or toxin, the effect of which is to endanger human life or to provoke substantial damage to property or to the environment.”⁸² Thus, acts wilfully performed with the requisite intention of furthering an ideology, whether political, religious, racial, or ethnic, which involves, causes, or results in the aforementioned harm to the environment would fall within “acts of terrorism”. By this definition it is immaterial whether or not the perpetrator had an intention to harm the environment. The environment may not even have been a target yet the act eventually caused or resulted in harm to the environment.

In Nigeria, the activities of terrorist organisations have resulted in harm to the environment. The use of landmines by Boko Haram and ISWAP has been documented.⁸³ So has the poisoning of wells and other sources of water by Boko Haram.⁸⁴ Improvised explosive device (IED) attacks result in air pollution, fires and greenhouse gas emissions. The torching of farms and villages by armed bandits/Fulani militia and Boko Haram result in destruction of ecosystems and habitat loss. Bandit groups have also been linked to illegal gold mining with its propensity to cause water pollution.⁸⁵ More recently, terrorist groups in Nigeria are reported to have forged links with foreign terrorist organisations which could see them

⁸² Ibid, Section 2 (3)(g)(viii).

⁸³ Mines Advisory Group (MAG), *Hidden Scars: The Landmine Crisis in North-East Nigeria* (MAG 2020) <<https://reliefweb.int/report/nigeria/hidden-scars-landmine-crisis-north-east-nigeria> > accessed 18 January 2023; Ruth Maclean, ‘Boko Haram Landmines in Nigeria Killed at Least 162 in Two Years - Study,’ *The Guardian* (London 23 September 2018) <<https://www.theguardian.com/global-development/2018/sep/23/boko-haram-landmines-in-nigeria-killed-at-least-162-in-two-years-study> > accessed 18 January 2023.

⁸⁴ ‘Boko Haram Poisons Water Sources in Borno,’ *Vanguard*, 1 October 2015.

⁸⁵ ‘Nigeria Suspends Mining in Zamfara State After Banditry Surges,’ *Reuters* 7 April, 2019. <<https://www.reuters.com/article/uk-nigeria-security-idUKKCN1RJ0J7> > accessed 27 October, 2022; Maurice Ogbonnaya, ‘How illegal mining is driving local conflicts in Nigeria,’ (Institute for Security Studies, 16 June 2020) <<https://issafrica.org/iss-today/how-illegal-mining-is-driving-local-conflicts-in-nigeria> > accessed on 20 October 2022.

obtaining access to chemical weapons⁸⁶ which are likely to have devastating effects on the environment.

Many of the forests and national parks in Northern Nigeria, which have been occupied by terrorists, are similarly affected by poaching and deforestation resulting in loss of wildlife biodiversity.⁸⁷ Bombing raids by the Nigerian military on terrorist camps and hideouts contributes to the relocation of wildlife and forest degradation.

Terrorism and armed conflict contributes to a breakdown of environmental governance and is a major hindrance to the enforcement of forestry laws and laws governing protected areas. A survey of environmental enforcement officers revealed that those working in forestry and national parks are handicapped in carrying out their statutory role as some of their areas of jurisdiction are occupied by terrorist groups.⁸⁸ The Conservator General of the National Park Service (NPS) stated that about 1,129 square meters of forest reserves and national parks in the country were serving as hideouts for terrorists and bandits and that this was affecting the NPS' objective of protection and conservation of biodiversity.⁸⁹ It could affect the implementation of environmental programs including programs designed to mitigate climate change e.g. the Great Green Wall Program.

There is the impact of military operations on the environment. These involve the deployment of weapons and heavy equipment which rely on fossil fuels and release enormous amounts of

⁸⁶ 'FG Plans Strategy against Terrorists' Use of Nuclear, Chemical Weapons', *ThisDay* 9 December 2019.

⁸⁷ Olaniyan, Azeez. "Once Upon a Game Reserve: Sambisa and the Tragedy of a Forested Landscape." *Environment & Society Portal, Arcadia* (Spring 2018), no. 2. Rachel Carson Center for Environment and Society. doi.org/10.5282/rcc/8176. National Parks in Time and Space <<https://www.environmentandsociety.org/arcadia/once-upon-game-reserve-sambisa-and-tragedy-forested-landscape>> accessed 27 October 2022; Ibrahim Hassan-Wuyo, 'Insecurity: Ansaru, Boko Haram regrouping in Birnin-Gwari forests – BEPU', *Vanguard*, 14 May 2022.

⁸⁸ Ebunoluwa Popoola, *Appraisal of the Contemporary Jurisprudence on the Right to Environment: A Case Study of Nigeria and South Africa* (PhD Dissertation of Faculty of Law, Ahmadu Bello University, 2017).

⁸⁹ S. Odeyemi, 'Bandits, Terrorists Occupy 1,129sqm of Forest Reserves in Nigeria –National Park Service', *Punch*, 15th September 2021.

greenhouse gases and pollutants into the environment.⁹⁰ The Nigerian air force has carried out many bombing raids against terrorists. In the armed conflict situations, the environment suffers collateral damage; what is not yet known in Nigeria is the extent of the damage or the long term impact of remnants of weapons used in the conflict. In spite of rules of IHL aimed at protection of the environment, some prominent public officers have called for methods that result in indiscriminate harm to the environment. One such method, carpet bombing, used by the USA forces in Vietnam, was advocated by Mallam Nasir El-Rufai, a prominent State Governor in the ruling party:

I have always believed that you know, we should carpet-bomb the forests; we can re-plant the trees after but let's carpet-bomb the forests, kill all of them. There will be collateral damage but it's better to wipe them out and bring peace back to our communities so that agriculture and rural economies can pick up than to continue this touch and go, touch and go isolated responses to banditry.⁹¹

An approach to fighting terrorism or insurgency that neglects environmental considerations is counterproductive since it affects the human rights of civilians who rely on the environment for their sustenance and basic needs. Moreover, since environmental factors may have contributed to the conflict; inflicting additional and unnecessary harm on the environment would only continue the harmful cycle. How then can the environment be preserved while countering terrorism? By regarding the environment as a civilian object which should not be attacked unless it becomes a military objective and application of the principles of distinction, proportionality and precautions.⁹² Its incorporation in military training manuals would undoubtedly result in gains for the environment. Synergy between the military and forest

⁹⁰ M. Bildirici and S.M. Gokmenoglu, 'The Impact of Terrorism and FDI on Environmental Pollution: Evidence from Afghanistan, Iraq, Nigeria, Pakistan, Philippines, Syria, Somalia, Thailand and Yemen.' *Environ Impact Assess Rev* [2020] (81) 106340 < <https://www.sciencedirect.com/science/article/abs/pii/S019592551930277X> > accessed 20 February 2023.

⁹¹ Editor, 'El-Rufai Suggests Carpet-Bombing of Forests in North to End Banditry,' *The Guardian*, 04 January 2022; 'Carpet-bombing Forests Remains Only Way to Wipe out Terrorists, says El-Rufai,' *The Nation*, 29 July 2022. Mallam Nasir El-Rufai was the Governor of Kaduna state (a state bedevilled by terrorism) between 2015 and 2023.

⁹² PERAC Principles 13 and 14.

rangers and traditional hunters familiar with the terrain would provide the military with greater understanding of the environment and the weapons most suitable in each situation.

Sometimes the harm to the environment is not direct but indirect, resulting from the terrorist groups' utilisation of natural resources as a tool to further and advance their campaign, including for political and economic ends. By exerting control over rivers, lakes, arable land, and denying civilian populations access to these environmental resources or making access contingent on submission to their authority and ideology, they consolidate their hold on civilian populations, recruit new members and derive funding, further fuelling the violence.⁹³

Environmental degradation in this context is indirect, resulting from the inability of the state to regulate and enforce the environmental laws against armed groups involved in nature resource exploitation. The collapse of environmental governance in conflict affected and conflict-prone areas engenders a lack of due regard to or compliance with environmental protection laws. Examples are in the areas of illegal mining, deforestation, poaching, and agriculture.

Another indirect effect of war on the protection of environmental rights relates to funding for environmental programs. Funds allocated for climate change mitigation and adaptation programs, pollution prevention and control, biodiversity conservation, among others, have witnessed a drop as defence expenditure takes a larger share of the national budget. According to available statistics, total annual defence spending (both recurrent and capital) increased from ₦332.3 billion in 2012, the onset of the armed conflict between the Nigerian

⁹³ Ibrahim Adeyemi, Merchants of Terror (2): Inside Multi-million naira farming sustaining Nigeria's terrorists, *Premium Times*, n 46; Jason L. Rock, The Funding of Boko Haram and Nigeria's Actions to stop it, n 58. See J.M. Conrad et al. 'Rebel Natural Resource Exploitation and Conflict Duration,' *Journal of Conflict Resolution*, [2019] 63 (3) 591 -616, for an illustration of the link between exploitation of natural resources by armed groups and duration of armed conflict.

military and Boko Haram, to ₦900.7 billion in the year 2020.⁹⁴ It was ₦966.4 billion in 2021 and rose again to ₦1.193 trillion in 2022.⁹⁵ Defence expenditure as a percentage of government expenditure was 2.5%, 2.8% and 8.9% in 2001, 2011 and 2020 respectively.⁹⁶ Budget allocations to the Ministry of Environment, on the other hand, experienced a drop, from ₦21.144 billion in 2013 and ₦23.113 billion in 2014 to ₦17.499 billion in 2015 and ₦19.473 billion in 2016.⁹⁷

The large scale displacements from terrorism and war have led to a proliferation of Internally Displaced Persons (IDP) Camps, further putting stress on the host environments. It is estimated that over 3 million persons, including women and children have been displaced and camped in various IDP camps across Nigeria and across the borders.⁹⁸ There is growing understanding of the nexus between IDP camps, deforestation, desertification, environmental degradation and climate change. Satellite imagery is increasingly being utilised to better explain vegetation changes in areas bordering IDP camps.⁹⁹ The unsanitary condition of

⁹⁴ These figures do not include allocations to the Nigeria Police Force, the Office of the National Security Adviser and Intelligence Services. The *Appropriation Act 2012, Revised Appropriation Act 2020*. <<https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents/2012-budget>> <<https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents/2020-revised-appropriation-bill/viewdocument/459>> accessed 13 January 2023.

⁹⁵ 2021 Appropriation Act; 2022 Appropriation Act <<https://budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents>> accessed 13 January 2023.

⁹⁶ J. Aiyedogbon, *Defence Expenditure and Insecurity in Nigeria: Implications for Macroeconomic Indicators*. (An Inaugural Lecture presented at the Faculty of Environmental Science Lecture Theatre, Bingham University, Karu on 24 February 2022) 50.

⁹⁷ See Appropriation Act 2013, Appropriation Act 2014, Appropriation Act 2015 and Appropriation Act 2016. <<https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents/federal-ministry-of-environment-2010/viewdocument/681>>; <<https://www.budgetoffice.gov.ng/index.php/resources/internal-resources/budget-documents/federal-ministry-of-environment-2015/viewdocument/229>> accessed 5 January 2023

⁹⁸ According to the Internal Displacement Monitoring Centre (IDMC), Nigeria had about 3.2 internally displaced persons at the end of 2021, See IDMC, 'Country Profile: Nigeria'. <<https://www.internal-displacement.org/countries/nigeria>> accessed 10 January 2023; UNHCR, 'Internally Displaced People,' <<https://www.unhcr.org/ng/idps>> accessed 10 January 2023.

⁹⁹ A. Musa et al., 'Impact of Internally Displaced Persons on Forest and Vegetation of Jere LGA, Borno State, Nigeria', *Journal of Applied Sciences and Environmental Management* [2019] 23 (5); Tafere Maereg, 'Forced Displacements and the Environment: Its Place in National and International Climate Agenda,' *Journal of Environmental Management* [2018] 224: 191-201; Jean-François Maystadt et al, 'Vegetation Changes Attributable to Refugees in Africa Coincide with Agricultural Deforestation', *Environmental Research* [2020] Lett. 15 044008.

many IDP camps has implications for the right to a healthy environment and the right to life of the inhabitants.

Host communities may resent the presence of displaced persons whom they regard as contributors to environmental degradation and therefore a threat to their own future livelihoods and right to healthy environment. The environmental stresses faced by the host communities could lead to tension between the displaced persons and their hosts which, if not well managed, could birth new conflicts.¹⁰⁰ Terrorism and armed conflicts in Nigeria have led to rural-urban drift as inhabitants of rural communities flee violence for the cities which are considered safer. The unplanned rise in the urban population and erection of informal settlements has negative impacts on the environment.

Persons displaced by terrorism and armed conflict suffer double jeopardy as they are denied access to the very environment on which they depend for their livelihood. Majority of Nigeria's rural dwellers are farmers. In this case they are not only denied the right to a healthy environment. They are denied the very environment they need to thrive.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)¹⁰¹ contains relevant provisions for the protection of environmental rights of IDPS. Nigeria, as a state party, is under an obligation to take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located.¹⁰² Nigeria is also under a duty to ensure the accountability of

¹⁰⁰ U.A. Zanna, 'Scarce Resources, NGO Activities are Putting Locals, IDPs at Loggerheads,' *HumAngle* 17 January 2023 <humanglemedia.com/scarce-resources-ngo-activities-are-putting-locals-idps-at-loggerheads/> accessed 15 February 2023; M.E. Kindzeka, 'Cameroon's Boko Haram IDPs Clash with Hosts Over Resources', *VOA News* 10 August 2018 <<https://www.voanews.com/amp/cameroon-boko-haram-idps-clash-with-hosts-over-resources/4522846.html>> accessed 15 February 2023.

¹⁰¹ (Kampala Convention) <<https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>> Ratified by Nigeria on 17/04/ 2012.

¹⁰² Article 9 (2)(j) Ibid.

non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement.¹⁰³

Considering the negative impact of armed conflict on the environment, prevention is key. Conflict resolution mechanisms and early warning systems require a deeper understanding of the ways in which climate change and competition for natural resources drive terrorism and armed conflict. In an era when it is projected that climate change will be a major cause of terrorism,¹⁰⁴ necessary measures for prevention would include speedy execution of climate mitigation and adaptation projects, entrenching equitable benefit-sharing of natural resources; and involving local communities in environmental governance.

7.0 Conclusion

In any discussion on protecting the environment and environmental rights before, during and after an armed conflict, it is appropriate to appreciate the environmental factors that drive armed conflict and take steps to prevent or mitigate them. It is also important to identify the particular impacts of conflict on the environment in order to promptly address them in the conflict and post-conflict stage. Failure to do so can result in an unending cycle of: environmental harm → conflict → environmental harm → conflict. The role of desertification, climate change and environmental degradation in the Sahel region in the rise of the Fulani militia is illustrative.

While International human rights law, International Environmental Law and International humanitarian law are different branches of law, the work of the International Law Commission on the PERAC Principles has brought to the fore the need for IHL to take the other branches of law into account. The ICRC Guidelines endorses this approach. Armed

¹⁰³ Article 3 (1)(i) Ibid.

¹⁰⁴ Andrew Silke and John Morrison, 'Gathering Storm: An Introduction to the Special Issue on Climate Change and Terrorism', *Terrorism and Political Violence* [2022] 34 (5), 883-893.

conflict that fails to take the environment and human rights into account could jeopardize the peace-building process since natural resources are essential for rebuilding and reconstruction. While the PERAC Principles often adopt recommendatory language and much of its implementation is dependent on voluntary action by states, it serves as a useful guide in an era when the very existence of man is being threatened by environmental harm.

The activities of terrorist groups in Nigeria have resulted in significant harm to the environment. The landmines used by Boko haram and ISWAP would take years to clear. These can be brought under the head of 'environmental crimes'. While IHL rules do not provide for responsibility of Non State Armed Groups like Boko Haram and ISWAP, members of such groups can be held responsible as individuals. In this regard, relevant principles in the Kampala Declaration can be utilised. The Nigerian Government has a duty and responsibility to prosecute terrorists whose actions have endangered civilians and the environment.

The effect of mass displacements on the environmental rights of IDPs and the communities that host them is addressed by Principle 8 of PERAC Principles which states that, "States, international organizations and other relevant actors should take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities." This would require taking environmental considerations into account in the planning and siting of IDP camps including the provision of renewable energy/alternative energy sources, fuel and sanitation. The assistance should be extended to the host communities whose energy needs are likely be affected by the additional environmental stresses. Currently Nigeria's Policy on the Environment does not contain provisions relating

to IDPs or IDP camps in spite of the presence of IDP camps in over ten states.¹⁰⁵ This is an omission that needs to be addressed.

Damage to the environment from armed conflict can be irreparable and restoration and rehabilitation can take decades to achieve. It could also hamper post-conflict restoration and reconstruction efforts as well as contribute to new conflicts. It is therefore imperative to address the environmental drivers and other root causes of conflict, particularly in the present era where many conflicts are linked to climate change and other environmental factors.

¹⁰⁵ '12 States Battle IDP Crisis, Communities, Farms Deserted,' *Punch* 15th June 2021. <<https://punchng.com/12-states-battle-idp-crisis-communities-farms-deserted/>> accessed 15 February 2023; See IDMC, 'Country Profile: Nigeria' <<https://www.internal-displacement.org/countries/nigeria>> accessed 10 January 2023.