

After Boko Haram: PROSPECTS FOR **TRANSITIONAL JUSTICE** IN NORTH EAST NIGERIA



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Written by Idayat Hassan and Justin Tyvoll



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Background ■ ■



New research undertaken by the Centre for Democracy and Development (CDD) indicates that the level of violence in northeastern Nigeria has declined substantially in many areas since the height of the Boko Haram insurgency in 2015. In a survey encompassing sites in Adamawa, Borno and Yobe states, 85% of respondents reported witnessing a reduction in the level of violence and human rights abuse in their communities. Nearly 90 percent said they believe the insurgency is subsiding or effectively over.



The eventual end of the conflict will present a wide array of actors – from government authorities, to local NGOs and international organizations – with the daunting task of constructing a sustainable, positive peace in the Lake Chad region. Social and economic development, security sector reform, and political transformation will all be necessary to address the main drivers of the conflict and prevent a return to violence. Similarly, the Boko Haram leadership and perpetrators of grave human rights abuses will require criminal prosecution, displaced populations will need assistance to return home, and local religious leaders will need to publicly and definitively address the flawed Salafi-jihadi ideology of the insurgency.



Perhaps the most pressing need, however, will be a coordinated, context-sensitive and community-specific approach to reconciliation and justice, with potentially thousands of former Boko Haram members heading home after completing deradicalization programs. A comprehensive approach to transitional justice – measures (judicial and otherwise) used to redress human rights abuses and repair social cohesion following armed conflict¹ – is needed to provide accountability for crimes committed during the insurgency, while simultaneously empowering local communities to lay the groundwork for an enduring peace.

Nigeria has a limited and imperfect experience with transitional justice initiatives. During the transition to democracy in 1999-2000, newly-elected President Olusegun Obasanjo established a Human Rights Violations Investigation Commission (also known as the Oputa Panel), mandated to address the various crimes committed under military rule; the resultant report was eventually annulled.² Decades before, following the victory of the Federal Republic over secessionist Biafra in the Nigerian Civil War, amnesties

1 See Berghof Foundation (2012), "Transitional Justice & Dealing with the Past," in Berghof Glossary on Conflict Transformation: 20 notions for theory and practice, Berlin, Berghof Foundation.
2 Kukah, H. M (2011), Witness to Justice: An Insider's Account of Nigeria's Truth Commission, Abuja, Bookcraft Publishers, 2011.



and reconstruction policies had limited impact in addressing local grievances and human rights abuses.³ In re-building post-conflict northeastern Nigeria, the federal government will largely be working from scratch. It is therefore even more imperative to consider local conditions and traditions in the search for effective transitional justice initiatives.



CDD undertook four scoping studies in northeastern Nigeria to address some of these concerns. They included a survey of the atrocities committed and the prevailing attitudes toward reconciliation, and three separate assessments of community readiness and potential for local mechanisms of transitional justice in Adamawa, Borno and Yobe – the states most-affected by Boko Haram violence.

These studies shed much-needed light on local conflict resolution channels and their applicability in addressing the crimes committed during the nine-year insurgency



³ Lodge, Tom (2018), "Conflict resolution in Nigeria after the 1967–1970 civil war," *African Studies* 77:1 (2018): 1–22.

2 Transitional Justice in Review



Transitional justice efforts must serve the dual (and often conflicting) purpose of providing accountability for past crimes, while healing social divisions that stand in opposition to peace.⁴ Thus, transitional justice can be distinguished from demobilization, disarmament and reintegration programs, general amnesties, and political settlements, which are tools used to end armed conflict and set the conditions for peace.

The concept also differs from war crimes tribunals, investigations, or commissions, which are retributive justice mechanisms meant to punish perpetrators. Transitional justice transcends these approaches, incorporating aspects of both in circumstances where normal judicial and security institutions are incapable of handling the level of social disorder. Experts generally agree that effective transitional justice initiatives must include both retributive and restorative elements⁵ – although the exact balance tends to be debated.

Transitional justice generally includes a few broad components. Alexander Boraine, a former member of South Africa's Truth and Reconciliation Commission, breaks these components into five pillars: accountability, truth recovery, reparations, institutional reform, and reconciliation.⁶ Accountability ensures responsibility for human rights abuses, war crimes, and crimes against humanity, thus restoring the rule of law. When perpetrators are too many or societal fracturing runs too deep, truth recovery must be employed in lieu of universal prosecution, providing some dignity to victims through acknowledgment of suffering and abuse.

Different forms of reparations provide partial material restoration for or to victims, and institutional reform seeks to address the underlying causes of conflict or the organizational bodies responsible for crimes. Finally, reconciliation builds from the other pillars to restore trust among victims towards the perpetrators.⁷

4 Berghof Foundation (2012), "Transitional Justice & Dealing with the Past," in Berghof Glossary on Conflict Transformation: 20 notions for theory and practice, Berlin, Berghof Foundation, 112.

5 Ibid. 114-5.

6 Ibid. 113.

7 Ibid.



Various mechanisms may be used in operationalizing these components. Prosecution of the most heinous crimes in international, domestic, or hybrid courts helps restore accountability and the rule of law, deterring similar crimes in the future.

Truth commissions, missing persons commissions, and documentation projects are all non-judicial inquiries into the extent

and nature of past crimes and abuses, with the goal of shedding light on the fate of victims, recording experiences, and exposing causes and patterns of violence. Reparation programs may include compensation, reconstruction, official apologies, and other government pledges.

Transparency, anti-corruption, and various other governance-strengthening initiatives help to reform key institutions.⁸ But for reconciliation specifically, there are no general templates or mechanisms. Reconciliation requires the most creative, locally embedded solutions. After all, crimes against humanity committed in the context of an insurgency are intimate, communal crimes – crimes committed not just against an individual, but an entire community. As such, any attempt to repair affected communities must inevitably involve local practices and institutions. And of course, local practices differ from province to province, and state to state.

Therefore, any attempt to import an external reconciliation model will necessarily fail to address the communal and parochial nature of these crimes. The most successful reconciliation programs are those based on local practices. Post-genocide Rwanda, for example, employed Gacaca courts utilizing traditional Banyarwanda concepts of justice.⁹ Northern Uganda adopted traditional Acholi mediation methods to reintegrate former child soldiers.¹⁰ Northeastern Nigeria must now decide how to use its local justice mechanisms to facilitate its own reconciliation process. The bulk of this report deals with this aspect of transitional justice.

8 United States Department of State (2016), "Transitional Justice Overview," Washington, DC., 2016.

9 Seay, Laura (2017), "Rwanda's gacaca courts are hailed as a post-genocide success. The reality is more complicated," The Washington Post, Washington, DC, 2 June 2017.

10 Shabdita, Shilpi, and Okwir Odiya (2015), "Mapping Regional Reconciliation in Northern Uganda: a Case Study of the Acholi and Lango Sub-Regions," Justice and Reconciliation Project, December 2015

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The Extraordinary Contexts of Boko Haram Violence



Transitional justice is necessarily context-dependent, and policy-makers must resist the urge to apply universal templates.¹¹ The unique characteristics of violence in the Lake Chad basin must therefore be acknowledged prior to any review of local needs or resources for reconciliation. Boko Haram violence is unprecedented, both regionally and globally, in its magnitude and form. At the height of its influence in 2015, the group which became known as the Islamic State West Africa Province (ISWAP) was recognized as the deadliest terrorist organization in the world, responsible for

the deaths of at least 6,600 people in 2014 alone.¹²

Even in 2018, after losing much of the territory it once controlled, the head of United States Special Operations Command, Maj. Gen. Marcus Hicks, described Boko Haram as the most lethal terrorist group in the world.¹³

No enterprise or institution, public or private, religious or secular, national or local, has been spared by Boko Haram. Its extreme violence mirrors the tactics of al Qaeda and Islamic State, while its use of coercion and kidnappings resembles warlord-dominated movements like Uganda's Lord's Resistance Army and Sierra Leone's Revolutionary United Front. Boko Haram draws impetus from a whole host of structural and personal drivers, including social and political grievances, material opportunism, religious zeal, and choice of last resort.¹⁴

Boko Haram is inextricably linked to the history and local context of the Lake Chad basin. The society that gave rise to Boko Haram – and subsequently endured the vast majority of its predations – has a long and illustrious history. The Kanuri-led Kanem-Bornu Empire held sway around Lake Chad (to varying degrees) for over a millennium (700-1900CE). That empire was

11 See Duthie, Roger (2017), "Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies," International Center for Transitional Justice, New York, 2017.

12 Searcey, Dionne, and Marc Santora (2015), "Boko Haram Ranked Ahead of ISIS for Deadliest Terror Group," New York Times, New York, 18 Nov. 2015.

13 Odunsi, Wale (2018), "Boko Haram most lethal terror group in the world – US General," Daily Post, Abuja, 7 April 2017.

14 See "'Motivations and Empty Promises': Voices of Former Boko Haram Combatants and Nigerian Youth," Mercy Corps, April 2016. <https://www.mercycorps.org/research/motivations-and-empty-promises-voices-former-boko-haram-combatants-and-nigerian>.

Islamized early, in around 1100CE, and became a renowned center of learning, before fading in power and influence. It was eclipsed by the Hausa-Fulani Sokoto Caliphate to the west, established in 1804 by the jihad of Usman dan Fodio, which lasted until the turn of the twentieth century.¹⁵

The historical and cultural legacy of these two empires was reflected in the teachings of Boko Haram's founder, Mohammed Yusuf. He emerged against the backdrop of a rise in religious fervor across Nigeria. At the return to democratic rule in 1999, the country was starkly divided over the issue of sharia law, which became synonymous with the growing radical ferment in the north.

Yusuf preached a strict Salafist creed to his expanding followers, which eventually included the embrace of jihad, in opposition to other popular Muslim scholars. When violence erupted against the authorities in 2009, surviving members of Boko Haram were able to make use of existing al Qaeda contacts to train, arm and then return to wage war under its official banner of Jam'at Ahl as-Sunnah lid-Da'wah wa'l-Jihd. In the ensuing years, Boko Haram has retained its local character, while expanding its zones of operations to neighboring countries, and since 2015 pledging allegiance to Islamic State.



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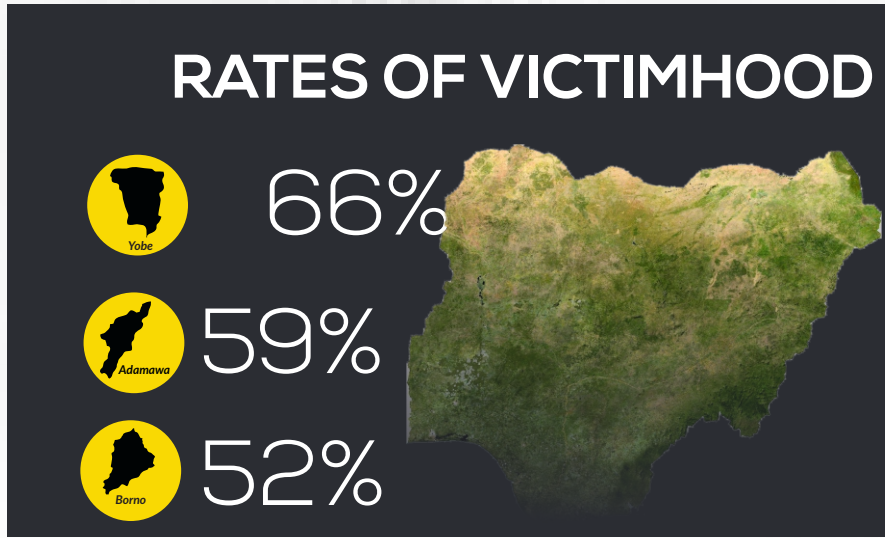
The group is currently split into two main factions: one headed by Abubakar Shekau, who took over at the death of Yusuf, and a breakaway faction led by Yusuf's son, Abu Musab al Barnawi,

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The group is currently split into two main factions: one headed by Abubakar Shekau, who took over at the death of Yusuf, and a breakaway faction led by Yusuf's son, Abu Musab al Barnawi, who is officially recognized by Islamic State as ISWAP leader. Despite a connection to the global jihadi movement, Boko Haram remains grounded in the Nigerian context, where the vast majority of its operations have been conducted. As such, it is imperative that policymakers harness local traditions and institutions towards post-conflict reconciliation.

4

Needs Assessment on Transitional Justice in Northeastern Nigeria



In this section, we will summarize the findings from the transitional justice needs-assessment surveys conducted in Adamawa, Borno and Yobe states.

We will highlight the crimes to be addressed, the demographics of victims and perpetrators, and local perceptions regarding potential reconciliation. In the survey, a total of 1,200 questionnaires were randomly administered in four Local Government Areas (LGAs) in each of the three states.

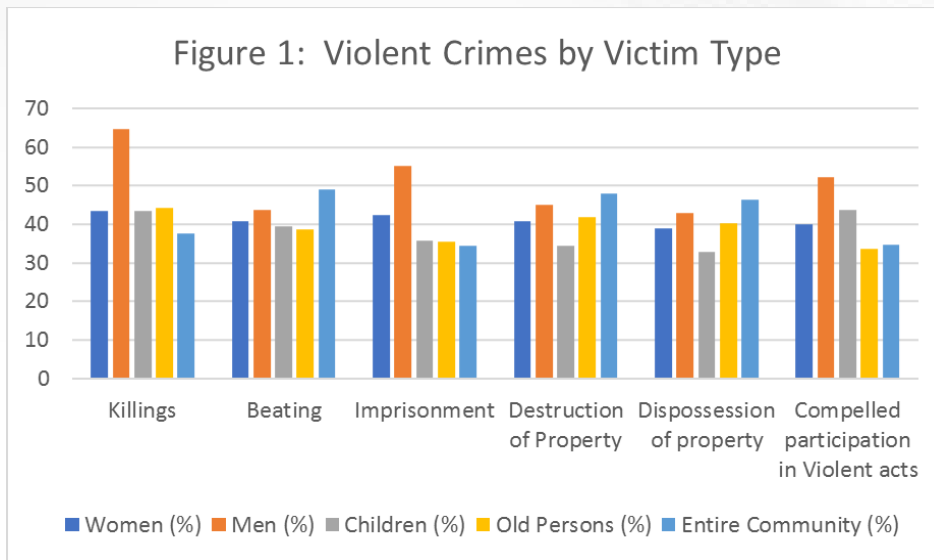
Sites represent both "most" and "least-affected" areas of each state, and efforts were made to ensure equal representation of both males and females, and rural and urban communities. Where applicable, we complement survey results with the qualitative findings of key informant interviews and focus group discussions conducted in the other scoping studies.

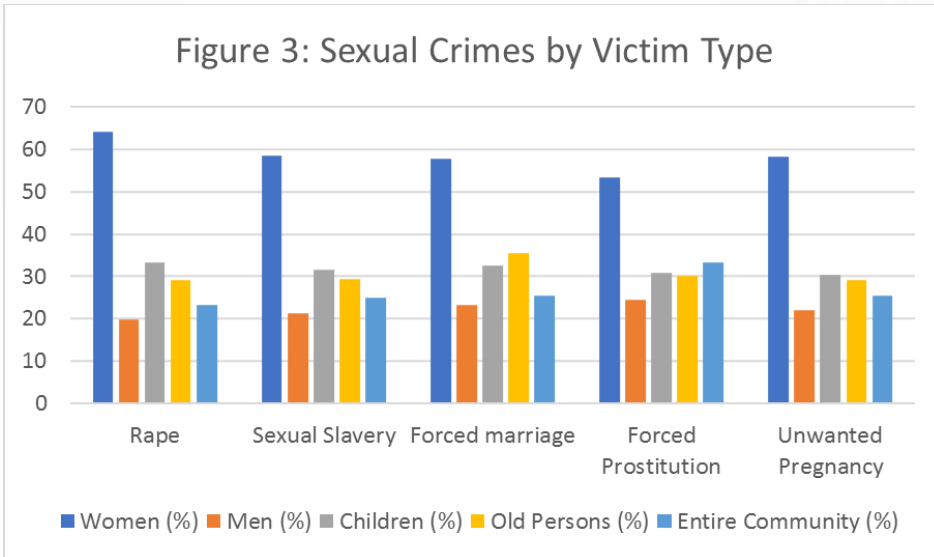
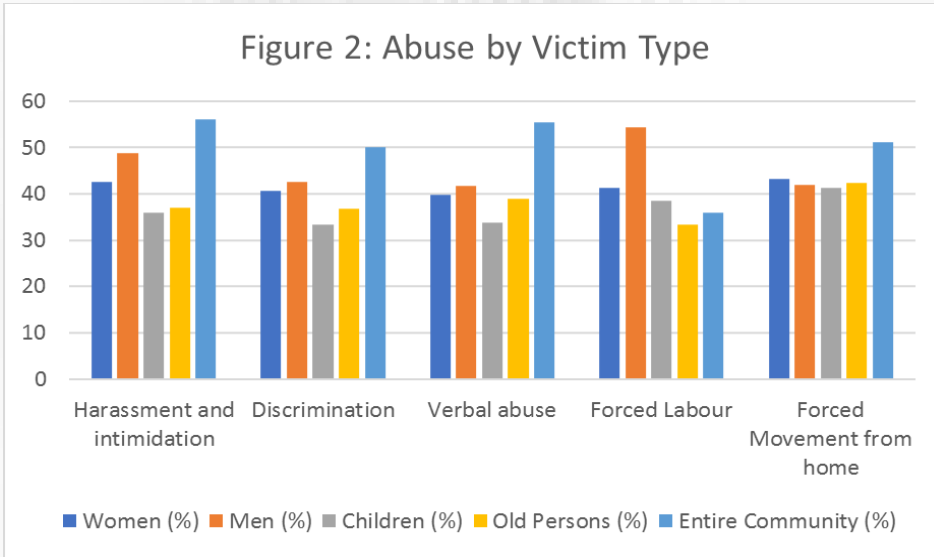
a. Profile of Crimes and Victims

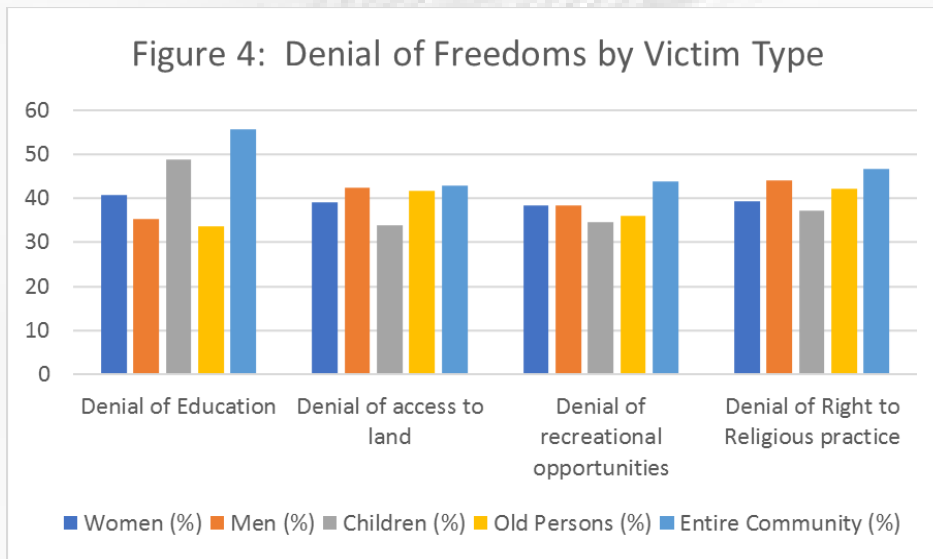
A majority of respondents across all sites reported being victims of some form of violent abuse, and reported knowing other victims of these crimes as well. Typically, these were relatives. Yobe survey sites recorded the highest rates of victimhood (66%), followed by Adamawa (59%), and Borno (52%). These statistics confirm the pervasive extent of Boko Haram-related violence in the northeast. Nearly everyone interviewed had either personally been affected by the violence, or knew someone who had.

Most respondents viewed the insurgency as having increased or exacerbated the prevalence of violent abuse in their communities. But it is important to note that a significant minority (24%) saw only a negligible difference between pre- and post-insurgency levels of violence, suggesting a high underlying rate of crime. (This phenomenon is most prevalent in Borno, where 32% of respondents described the insurgency as having a negligible effect on violent crime).

Men were seen to be the primary victims of killings, beatings, imprisonment, forced labor, and forced participation in violent acts. Women were seen to be the primary victims of sexual violence, while the entire community was seen to be victimized via harassment, intimidation, destruction or dispossession of property, forced migration, discrimination, and verbal abuse. Respondents also indicated that the entire community had suffered from the denial of access to education, land, recreation, and religious practice. Again, the identification of victims across most demographic divisions highlights the pervasive and all-inclusive nature of Boko Haram violence. See Figures 1-4 for a breakdown of respondents' identification of victim classes.







b. Profile of Perpetrators

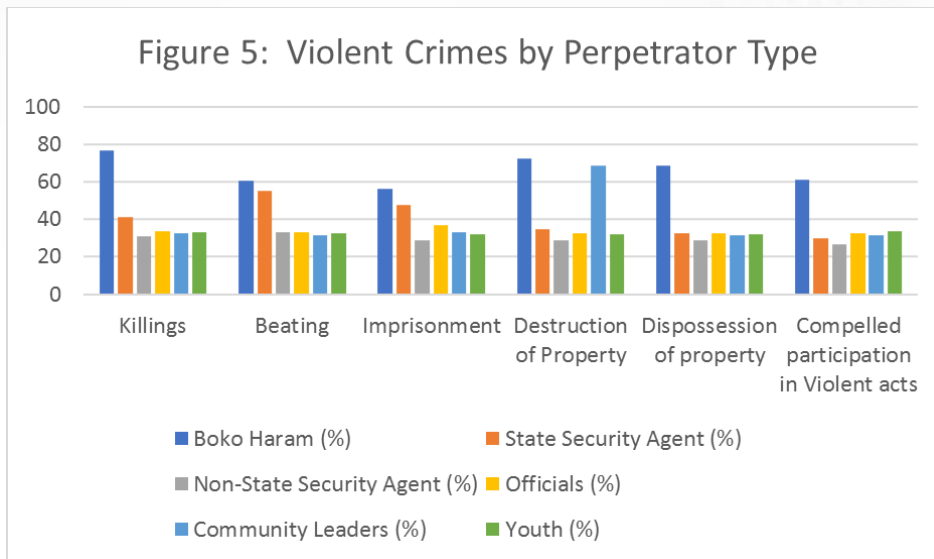
While respondents acknowledged that men were the primary victims of killing and torture by Boko Haram, the fieldwork indicates that women often see themselves as the main victims of insurgent violence more generally, suffering rape, abduction, forced marriage, forced conversion, and sexual abuse at the hands of Boko Haram fighters.

Additionally, the burden of psychological trauma attendant to the fracturing of families and communities seems to have disproportionately affected women, particularly via abuse suffered by women in internally displaced persons (IDP) camps run by the authorities. Women identified as Boko Haram 'wives' also face continued isolation and stigmatization, even upon return to their home communities.

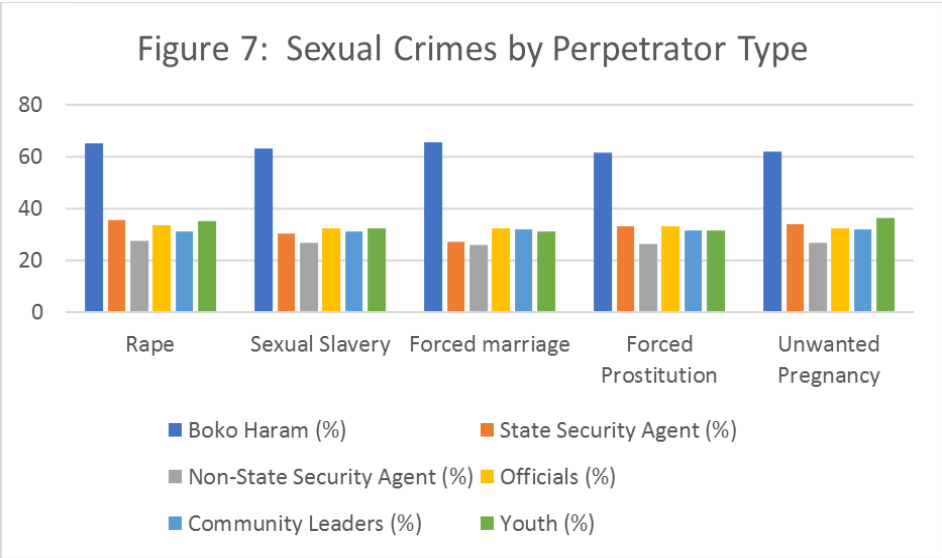
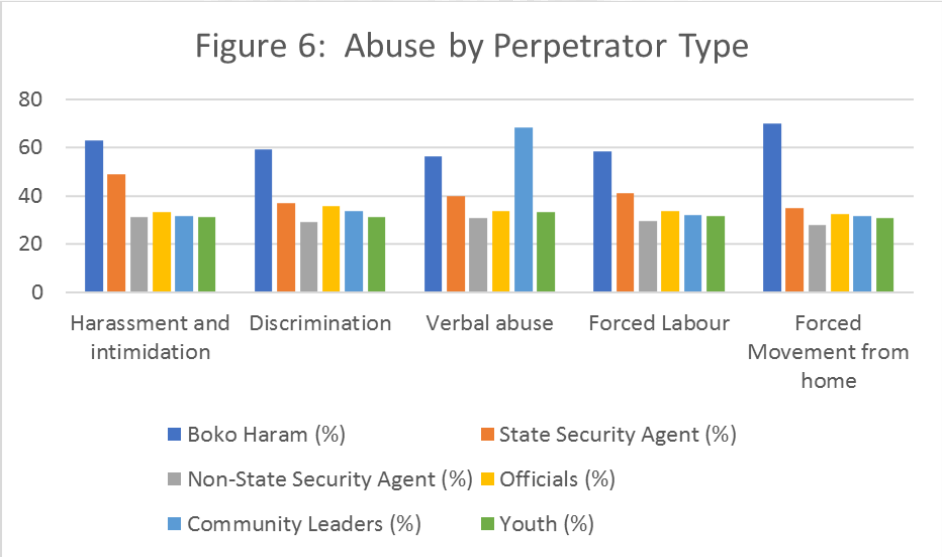
A majority of respondents identified Boko Haram militants as the main culprits for every category of violent crime and abuse. However, substantial minorities (varying between 30-50%) often identified state actors as responsible for various violent actions, discrimination, abuse, and destruction/dispossession of property. Vigilantes (e.g., Civilian Joint Task Force – known as CJTF), officials, and local leaders were also implicated in

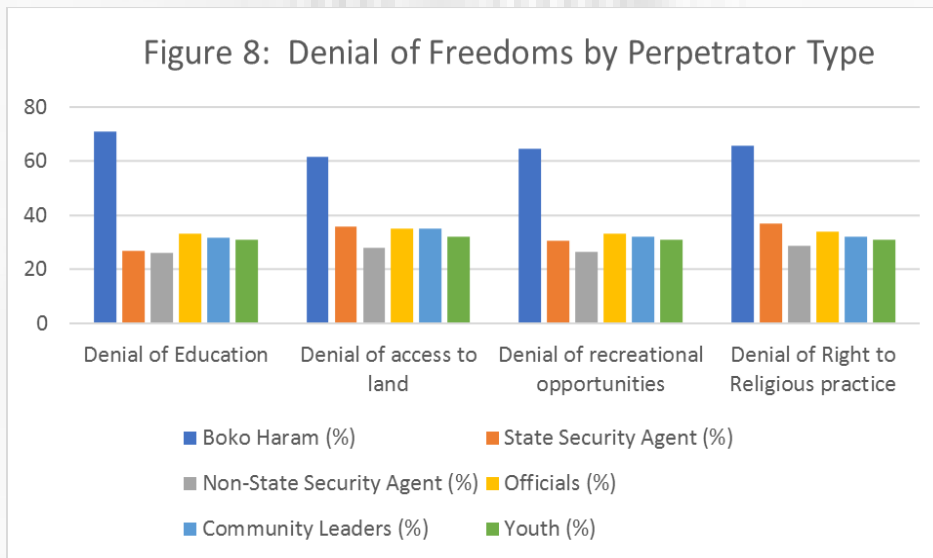
some crimes, though to a lesser extent. Focus group discussions and key informant interviews in Yobe and Borno states bear out these findings. Most respondents placed the blame for abuse on Boko Haram, but there were significant occurrences of vigilante and security force abuses. In particular, female respondents from Borno's Bama LGA, which borders Cameroon, blamed the military for the arbitrary detention and execution of their husbands and sons.

One respondent said: "Soldiers at the beginning were killing everybody because they did not know who was Boko Haram or not." Reports of security force and CJTF abuses may be under reported, as subjects/respondents are likely to fear reprisals by the government, military or CJTF. Amnesty International has accused the Nigerian military of over 1,000 extrajudicial killings, arbitrary arrest of over 20,000, and the deaths of 7,000 suspects in detention.¹⁶ Similarly, respondents in Maiduguri blamed the CJTF for numerous human rights abuses, with one interviewee stating, "The CJTF, even though they did not kill people (suspects) they beat them up so badly that the person eventually dies." See Figures 5-8 for a breakdown of respondents' identification of perpetrators



¹⁶ See Amnesty International, "Stars on their shoulders. Blood on their hands: War crimes committed by the Nigerian Military," 2017.





In the cross-state survey, only 32% of respondents reported knowing the identity of the perpetrators that committed crimes against them or their communities. Again, field research in Yobe state bears out these results; very few subjects admitted knowing the identity of perpetrators (possibly out of fear of government reprisal).

c. Attitudes toward Reconciliation

A majority of survey respondents (56%) indicated they believe there are ways for perpetrators of violence to make amends to their victims, while a sizable minority (37%) believe nothing can be done to achieve reconciliation. Slightly more, 57% of respondents, believe that most people in their home communities will be able to forgive perpetrators, with 38% rejecting the notion. But 23% claimed outright that there can be no forgiveness for Boko Haram perpetrators of violence.

There were significant geographic differences in these results. In Borno, Yobe and Adamawa, 64%, 62% and 42% of respondents respectively had positive attitudes toward reconciliation. In Borno, 67% of interviewees said their communities would be able to forgive repentant Boko Haram. For Adamawa and Yobe, the results were 52% and 50% respectively. There is a loose, inverse relationship between geographic rates of victimization and attitudes toward reconciliation. Borno, the state with the lowest rate of victimization (at 52% for selected LGAs) reported the most positive attitudes, while Yobe, the state with the highest rate of victimization (66%), reported the least positive attitudes. This may indicate that areas with lower rates of violence may be more willing to forgive and reconcile with perpetrators than heavily-affected areas.

Qualitative research in Yobe and Borno confirms these findings. Most survey participants acknowledged the possibility and need for reconciliation and forgiveness. Many respondents consider reconciliation to be the only viable option for sustainable peace and justice once the war ends. As one respondent said, "Given the deep impact of the insurgency, no form of prosecution can ever be enough." Interviewees in Borno cited various reasons for this conclusion, including: a) the impossibility of prosecuting every perpetrator, b) familial and social bonds between victims and perpetrators, c) the element of coercion active in many crimes, d) the often-blurry line between victims and perpetrators, e) the desire to avoid reliving traumatic events, and f) the danger of driving repentant fighters back into the bush.

These attitudes are most prevalent in areas less affected by the insurgency, like Kwaya Kusar LGA in Borno, where one respondent said, "Many of the people abducted by Boko Haram were merely forced to commit heinous crimes under duress and if such people escaped and came back to us, we will surely live with them in peace."

However, some survey participants – predominantly women – were adamantly against any form of reconciliation. In one Yobe LGA, at least 50% of female respondents considered reconciliation and reintegration to be inappropriate. Similarly, in Bama, female respondents were committed to legal prosecution and punishment for perpetrators of sexual violence. One stated:

"We are prepared to cooperate with whoever is ready to prosecute Boko Haram insurgents; we want to be given the opportunity to present our case before a court of law because we lived with them in Bama, we witnessed the atrocities they committed against us and other women, but unfortunately nobody has come to ask us what happened."

Participants from hard-hit communities near Maiduguri expressed a desire for retributive justice and accountability for the most heinous crimes. We may conclude that the most vulnerable social groups and communities will likely be least supportive of local reconciliation efforts.

d. Local Requirements for Reconciliation

The vast majority of survey respondents (up to 91%) believe that security forces, the government, and traditional or religious leaders have important or very important roles to play in ending the Boko Haram insurgency.

On the other hand, only 28% of respondents think that Boko Haram has an important or very important role to play. These results were confirmed by interviews and focus group discussions in the three states.

Such findings may indicate that affected communities a) do not view Boko Haram factions as legitimate actors, b) see the military defeat of Boko Haram as the only likely or practical way to end the violence, or c) do not envisage the state engaging in dialogue or negotiation with the insurgents.

Other actors considered important or very important by many respondents (between 70-85%) include vigilantes, hunters, NGOs, local communities, the media, and youth groups. Women's groups, local businesses, and the international community were seen as least important (less than 70%) in the efforts to end the conflict.

Respondents listed many requirements for the forgiveness and reintegration of perpetrators. The most important of these were: to openly ask forgiveness from the community (67%), to ask forgiveness from God (67%), and to swear an oath never to repeat the condemned acts (59%). Qualitative fieldwork in Yobe and Borno confirmed these findings, with the need for open displays of contrition, asking of forgiveness, public awareness of the perpetrators' identity, and some form of oath-taking as prerequisites for eventual reintegration.



Respondents from Borno pointed out a particular need for material reparations or assistance to victims of Boko Haram atrocities. The many displaced families will need to be resettled in their former communities and be provided with the means to restart their lives before any reintegration efforts begin.

One respondent noted:

"For us to agree on any reconciliation or dialogue, our livelihoods have to be resuscitated; we lost all our properties in the insurgency and we see de-radicalized Boko Haram members with assets provided for them to restart their lives, while we the victims, who lost everything, have not received any help: we cannot accept that."

Participants also mentioned a variety of different mechanisms or channels through which perpetrators could make amends to their home communities. The most popular were reconciliation (18%), reporting to security or local officials (16%), and repentance/forgiveness (15%).

The desire for perpetrators to report in to security forces reveals that despite the widespread perception that the insurgency is in decline, ex-fighters would be greeted with a degree of caution.

5

Local Conflict Resolution Mechanisms

Through focus group discussions and key informant interviews, CDD investigated local conflict resolution mechanisms in the three affected states. The most common and prevalent features of these local mechanisms include oath-taking, exile or excommunication, and the obligation to forgive and forbear evil suffered. One method in particular, the Islamic practice of sulhu (reconciliation or mediation) in sharia, is particularly prominent. Finally, methods of consultation and dialogue (sawari or Ci kumo ye Duto) have already been utilized among Kanuri-speakers to reintegrate Boko Haram 'wives.' Table 1 summarizes the various mechanisms identified.

Table 1: Local Conflict Resolution Mechanisms by Salient Feature

	Borno	Yobe	Adamawa
Oath-taking	Qu'ranic	Qu'ranic; Makera, linzani (Kare-kare)	Qu'ranic; tifinitie (Kamwe); bollum(Batta); shafa (Marghi); hunayeere (Fulani)
Exile/Excommunication	N/A	self-exile, prior to sulhu	self-exile, prior to sulhu; kommbol (Fulani)
Obligation to Forgive	Islamic and Christian norms	Islamic and Christian norms	Islamic and Christian norms; pulaaku code (Fulani)
Sulh	sulfu, solo, and sasantawa	Sulhu	Sulhu
Consultation and Dialogue	Sawari or Ci kumo ye Duto	N/A	N/A

a. Oath-taking

Many local or indigenous justice systems in northeastern Nigeria feature some form of oath-taking as integral to conflict resolution. These oaths may be restrictive (preventing a penitent criminal from repeating an act) or adjudicative (determining which of two parties is in the right). Most prominent among the restrictive oaths is swearing upon the Qur'an, often in the context of sulhu mediation (elaborated below).

This is practiced among Hausa and Kanuri-speakers in Yobe and Borno states, as well as the Kamwe people of Adamawa (for whom the practice is related to the similar, indigenous tifintie oath). Other restrictive oaths include the Makera oath, sworn upon an iron lizard totem, and the linzani oath, taken while biting a horse-bridle. Both of these systems are used among the Kare-kare people of Yobe state. They may be found objectionable by more puritanical sects of Islam, on account of idolatry (taghut). But in all of these practices, a penitent criminal publicly acknowledges and renounces his crimes, asks forgiveness of God, the victim (or victim's family), and the community, and finally swears upon the object to never repeat the condemned act. The oath is undertaken with the supervision or presence of community leaders, government representatives. If the criminal repeats the offense after making the oath, it is believed that will die or suffer some terrible misfortune.

Adjudicative oaths are also used in conflict resolution in northeastern Nigeria. In the context of sulhu, participants swear on the Qur'an. The Batta people of Adamawa employ the oath of Bollum, the Marghi use Shafa, and the Fulani use the hunayeere vow. In each case, two conflicting parties who are unable to reach a settlement agree to make a solemn pledge of their position (often declaring innocence). It is then believed that God (or gods, in the case of bollum) will judge the case for themselves, bringing death or misfortune upon the guilty or dishonest party in a short period of time.

Qu'ranic oath-taking has been used previously in Borno State by the CJTF as a counter-insurgency measure. Male youths were told to report to their ward heads, before whom they swore on the Qu'ran that they were not associated with Boko Haram. Those who refused were treated as Boko Haram suspects. Many were turned over to the security forces for detention and interrogation, while others were allegedly extrajudicially killed by the CJTF.

b. Exile and Excommunication

Self-imposed exile and communal excommunication are common conflict resolution mechanisms in the northeast. Many Yobe and Adamawa communities include exile as a preliminary step in the reconciliation process (often sulhu). The guilty party will flee his community in a pragmatic act of desperation, to escape death at the hands of the victims' family. After a long period of exile, the criminal may hope to return after the crime is forgotten or wounds heal. Alternatively, while the criminal is in exile, his family may initiate reconciliation with the victim or victim's family, through the mediation of local or religious leaders, and prepare for the return of the outcast. In other cases, where reconciliation has failed, a community may choose to cast out the offender. Among the Fulani, a decision of this sort –

c. Obligation to forgive and forbearance

Northeastern communities also possess religious or ideological resources often used in resolving local conflicts. In Islam, restorative justice is mandated as a calling for Muslims: *ihsan* (healing and reconciliation), *samah* (forgiveness), and *adl* (justice) are both virtues and duties. Moreover, the *ummah* (a collective sense of solidarity and peace) is celebrated as one of the most important social goods. The *ummah* is to be preserved at all costs. Christians have been enjoined by Christ to love one another, reconcile with their enemies, and seek the good of the community. Among the Fulani, the *pulaaku* moral code emphasizes forbearance of fault as a virtue and source of honor.

d. Sulhu

Islamic reconciliation or mediation, known as *sulhu* in Hausa and Kanuri (alternative terms include *sulfu*, *solo*, and *sasantawa*), and *sulh* in Arabic, appears to be the dominant mode of pacific conflict resolution in northeastern Nigeria. One of the "channels" or modes of sharia law, *sulhu*, coexists side-by-side with other sharia processes and the secular justice system. With roots in pre-Islamic Arabia, *sulhu* is the preferred form of resolution for any dispute in sharia, as it best preserves the collective unity of the *ummah*.¹⁷

Sulhu has its basis in many passages of Qur'an, Hadith, and Sunna. For example, "The believers are but a single brotherhood, so make peace and conciliation between two (contending) brothers, and fear Allah, that ye may receive mercy."¹⁸ The Prophet Muhammad praised *sulhu* and insisted upon it, proclaiming it more meritorious than fasting, prayer, or charity.¹⁹ He even acted as arbitrator himself on numerous actions, facilitating *sulhu* even in times of war and even with unbelievers.²⁰

Normally reserved for civil disputes over land, business, marriage, or inheritance, plaintiffs bring their case to a respected community leader, religious leader or elder, who adjudicates the case according to sharia principles. Results may be appealed to the ward, district, and eventually the Emirate Council. Alternatively, as *sulhu* is recognized by the official Sharia Courts of Nigeria, the Sharia Court of Appeals may decide such cases.²¹ In cases where the perpetrator acknowledges guilt, they must show remorse and ask forgiveness, after which the victim proclaims forgiveness. Truth-telling has preeminent importance in this regard, with the complete acknowledgment of the circumstances of a crime or atrocity committed. Witnesses will often be called to testify. In extreme cases the perpetrator may have to swear on the Qu'ran, either in a restrictive or adjudicative capacity. *Sulhu* is currently offered as an official judicial service in Borno State through the Amicable

17 Al-Ramahi, Aseel (2008), "Sulh: a Crucial Part of Islamic Arbitration," New York Law School, 2008. 1.

18 Q49:10

19 Ibid. 10.

20 Ibid. 14.

Settlement Corridor of the State High Court.²² About thirty such cases are heard every month in Borno, with sessions held in private and settlements met by consensus.²³

e. Consultation and Dialogue

Sawari or Ci kumo ye Duto is a dialogical approach to reconciliation in which leaders and stakeholders collectively decide on the resolution to a set of grievances, with a focus on the good of the entire community. In these dialogues, participants are encouraged to subdue emotional responses and unrealistic expectations in order to prevent the generation of new resentment or grievances. Less a form of reconciliation or justice than a policy-making decision, sawari enables victims, perpetrators, and community leaders to make arrangements that will best benefit the future health of the community. Borno communities have already used the sawari mechanism in the process of reintegrating former 'wives' of Boko Haram fighters. In order to overcome the stigma and isolation of these women, sawari dialogues have resulted in policies encouraging arranged marriages with Boko Haram wives, thus easing their reintegration.

21 Haroon, Idris Abdullahi (2017), "The Use of Alternative Dispute Resolution (Sulh) in Sharia Cases," Kwara State Sharia Court of Appeal, Ilorin, 2017.

22 Rasul, Majida, and Simon Robins (2017), "Assessment of Dispute Resolution Structures and HLP Issues in Borno and Adamawa, North-East Nigeria," Norwegian Refugee Council, September 2017.

23 Ibid.

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Challenges to Future Transitional Justice Initiatives

a. Unwillingness to Forgive

The significant minority that stand in opposition to any reconciliation or forgiveness of the insurgents is likely to be the main impediment to fighter reintegration or any other communal justice initiative. This challenge will likely be greatest in areas that were most affected by the violence, and may come from socially vulnerable groups, including women. The challenge stems from bitterness over the crimes committed, fear that Boko Haram repentance will not be genuine, and a belief that Boko Haram members cannot truly change.

b. Fear of Recidivist Violence or Relapse

Similarly, Yobe and Borno fieldwork indicates that many – especially women – fear that Boko Haram fighters will continue their crimes after reintegrating with their former communities. One subject said,

"If repentant fighters of Boko Haram were to be reintegrated today into my neighborhood, I would relocate to another area because they would later regroup and fight us again. They are repenting now because the condition is bad in terms of food and general welfare in the bush."

c. Fear of state reprisal for truth-telling

Elders in Maiduguri shared reservations concerning reintegration, warning that the premature release and return of "so-called de-radicalized youths" may threaten the security of host communities. If large segments of a host community's population fear that reintegration will bring a renewed threat to life or property, reconciliation will not prove possible.

Significant levels of state-sponsored criminality, combined with the apparent reticence of many respondents and subjects to discuss their knowledge of Boko Haram militants, would appear to indicate that fear of repercussions from the government may inhibit public confession or witness-provision in the process of local reconciliation.

Based on the foregoing information, we recommend the following steps be taken in the development of local transitional justice mechanisms in northeastern Nigeria.

A. Sort former Boko Haram members into classes based on magnitude of alleged crimes

Prosecution of the worst offenders is necessary to provide accountability, restore rule of law, and prevent similar, future uprisings. The leadership of Boko Haram factions and suspected perpetrators of the most heinous crimes should be separated from rank-and-file or conscripted fighters. Depending on the nature of an individual member's role in the insurgency, he/she will be slated for prosecution or selected for deradicalization and eventual reintegration/reconciliation.

B. Establish an independent judicial commission for the prosecution of leadership and primary perpetrators

Senior commanders and grave human rights abusers ought to be prosecuted to the fullest extent of domestic and international law by a specially-formed judicial commission.

C. Establish official Sulhu 'Courts' for returning, lower-echelon Boko Haram members

The currently administered sulhu process is the best local mechanism for reintegration and reconciliation efforts. The informal, local systems of sulhu should be coordinated, organized, and formalized for the purpose of receiving and processing returning Boko Haram members from deradicalization facilities. Local and religious leaders should be given prominent roles in the facilitation of these courts.

D. Keep returning Boko Haram members separate from communities during preparations for reconciliation

In line with local practices of self-exile, Boko Haram members should be kept apart from their home communities during and after deradicalization, to allow time for tempers to cool and the host population to come to terms with the sulhu process.

E. Require public proclamation of guilt, recollection of crimes committed, and request of forgiveness

Sulhu proceedings must include former Boko Haram members' public admission of guilt, description of crimes committed, and request for the mercy of the community

- F. Have former Boko Haram members publicly swear on the Qur'an**
Former Boko Haram members should be asked to publicly swear upon the Qur'an as to the absolute truth of their testimony, and their promise to never again commit such crimes. Depending on the local context, communities may add to or modify the oath required.
- G. Provide community members with avenues of redress or dissent**
Community members (particularly women) with concerns or fears over the reintegration of particular Boko Haram members should be given some way to appeal the decision to reintegrate those fighters. If there is strong opposition to integration, the federal government should make alternative arrangements for the member in a different community.
- H. Ensure state and federal immunity for statements made under sulhu**
Government and security services must provide solid assurances that all testimony provided under the sulhu proceedings will be legally inviolable, and shall bring no retribution upon the community or individual.

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