

## Legal Implications of Recurrent Mass Killings in Nigeria by Fulani Herdsmen

Kaniye S. A. Ebeku\*

### Abstract

In recent years Nigeria has been experiencing recurrent killings of innocent people by Fulani herdsmen. Apart from unlawful killing of human beings, houses and other property have been damaged or burnt. Those killed included women and children. Noteworthy, the Fulani herdsmen belong to a distinct ethnic group in Nigeria and are mainly a nomadic group of cattle rearers who move from place to place to graze their cattle. This cultural and long-standing practice of cattle grazing did not create any significant problem in the past, but in recent years due to a combination of factors, including population explosion, poverty, and climate change, the grazing activities of the herdsmen have become a source of conflict between them and farmers. Whatever may be the reason for the attacks, the truth is that the attacks carry some legal implications. The possible criminal charges the attackers may be liable to include murder, arson, assault, terrorism, and genocide and crimes against humanity. From the angle of civil law, they may also be liable to trespass to land and to the person. This article recommends that the federal government should arrest and prosecute the attackers under relevant criminal provisions in the country. Furthermore, affected persons and states should pursue possible civil actions in the courts. Both approaches would help to curb the recurrent Fulani herdsmen attacks in Nigeria. Moreover, the federal government should adopt the policy of cattle ranching and ensure its implementation as a permanent way of ending incessant farmers-herdsmen clashes.

**Keywords:** History of Nigeria; Fulani People; Fulani Herdsmen; Genocide; Crimes Against Humanity; Universal Jurisdiction.

### I. Introduction

In recent years Nigeria has been experiencing recurrent deadly attacks by Fulani herdsmen in different parts of the country, especially in the northern states.<sup>1</sup> Whole villages/communities have been sacked, houses and other property damaged, and several persons including women and children killed in great numbers. Specifically, between May 2015 and the time of concluding this article in October 2018, countless persons have been killed by Fulani herdsmen and several villages/communities burnt down.<sup>2</sup> Noteworthy, the Fulani herdsmen belong to a distinct ethnic group in Nigeria and are mainly a nomadic group of cattle rearers who move from place to place to graze their cattle. This cultural and long-standing practice of cattle grazing did not create any significant problem in the past, but in recent years due to a combination of factors – including population explosion, poverty, and climate change – the grazing activities of the herdsmen have become a source of conflict between them and farmers. Specifically, the farmers claim that their farm crops are damaged and eaten up by cattle, thereby causing them great financial loss and starvation.

\* Professor of Law, University of Port Harcourt. LLB, LLM (LSE, London), PhD (Kent). Barrister.

Email: [kaniye.ebeku@uniport.edu.ng](mailto:kaniye.ebeku@uniport.edu.ng). Pioneer Dean of Law, University of Port Harcourt (2013-2015); Dean of Law, University of Calabar (2010-2014); Head of Law Department, University of Nicosia, Cyprus (2004-2010); Honourable Commissioner for Education, Rivers State (2015-2017); currently, Honourable Commissioner for Water Resources & Rural Development, Rivers State, Nigeria.

<sup>1</sup> The reality of incessant killings in Nigeria is evident in daily reports in Nigerian and foreign newspapers.

<sup>2</sup> Before 2015 incidents of Fulani herdsmen attacks on villages/communities occurred from time to time. However, the incidents became accentuated and achieved notoriety from about May 2015. Before then, Boko Haram was the notorious killing group in Nigeria.

Hence, they detest cattle grazing on their farms/farmland and insist that cattle rearers should confine their animals on their cattle ranches as is the case in many parts of the world where open grazing no longer obtains. In response, the Fulani herdsmen argue that they are entitled to follow grazing routes and insist on respect for what they consider to be their 'grazing right'. To enforce this nebulous right, they have recently resorted to the use of sophisticated arms such as AK47 assault rifle. Essentially, the farmers-herdsmen conflict is over land use and pastures. More importantly, it is unquestionably the case that the Fulani herdsmen are the aggressors as a result of their quest to graze their cattle.<sup>3</sup>

Curiously, despite the recurrent deadly attacks by Fulani herdsmen on various communities across Nigeria and 'peace and security' being one of the Five-point Transformation Agenda<sup>4</sup> of President Buhari's administration, the Federal Government of Nigeria—which exclusively controls the security apparatus of the country<sup>5</sup>—has hardly taken decisive actions to checkmate the bloodbath.<sup>6</sup> In consequence, insecurity reigns currently in many parts of Nigeria.<sup>7</sup> An essay in a Nigerian influential newspaper *The Guardian* on 30 January 2016 aptly captures and summarizes the situation thus:

Recurring conflicts between herdsmen and their host communities have over the years led to the loss of several lives and property across the country. One of such clashes in recent times was the raiding of four villages: Demsare, Wunamokoh, Dikajam and Taboungo in Adamawa State by...[Fulani] herdsmen...Killed in the attack was the Divisional Police Officer, DPO, in charge of Vunokilang Police Station in Girei Local Council of Adamawa State, who was killed alongside 30 other people ... Several houses and other property in the communities were also burnt in the attack...Before the incident, clashes between the herdsmen and farmers have remained a recurring decimal in the country. Before now, such clashes usually break out in the North-Central and North-East regions, but in recent times it has spread to the South-East, South-South and South-West geopolitical zones of the country ... There is no doubt that...the incessant clash between herdsmen and their host communities across the country appears to be a major security challenge being faced by President Buhari's government. His government's success or failure in tackling it would be determined by approach, commitment and positive outcome.<sup>8</sup>

The main objective of this article is to examine some legal issues implicated in the unmitigated and recurrent mass killings in Nigeria by Fulani herdsmen. The article is divided into five sections, including this introductory section. Section II provides a background to the mass killings and sets out some reported incidents of mass killings in Nigeria between April 2013 and October 2018 in order to lay foundation for the exploration of the legal issues examined herein. This will be strengthened by a brief historical account of the Fulani people of Nigeria in section III. In section IV the article will examine some legal issues intertwined with the recurrent mass killings. The final section will make some conclusions.

<sup>3</sup> For patterns of migration, see Ismail Iro, *Fulani Herding System* <<http://www.gamji.com/fulani4.htm>> accessed 12 October 2018.

<sup>4</sup> The other four are: electoral legitimacy, government political stability, rule of law and anti-corruption.

<sup>5</sup> By constitutional provisions, the federal government of Nigeria exclusively controls the Police and the Armed Forces (Army, Navy and Air Force) in the country. See Sections 214-215 and 217-219 respectively of the Nigerian Constitution 1999 (as amended). Nigeria has a centralized Police Force, unlike the US and the UK for example. Prevailing insecurity in the country questions the propriety of this position and has led to ongoing debate on the establishment of State Police. See Mike Ozekhome, 'Having state police: The urgency of now (1)' *The Sun* (Lagos, 17 March 2018) <<http://sunnewsonline.com/having-state-police-the-urgency-of-now-1/>> accessed 30 October 2018. Cf. Sunday Ehindero, 'Which way forward for the Nigeria Police: Federal or State Police?' *Vanguard* (Lagos, 9 February 2012) <<https://www.vanguardngr.com/2012/02/which-way-forward-for-the-nigeria-police-federal-or-state-police/>> accessed 30 October 2018; Ijeoma Umeh, 'The Nigeria Police, Not A Federal Agency' *The Nigerian Observer* (Benin, 12 January 2015) <<https://www.vanguardngr.com/2012/02/which-way-forward-for-the-nigeria-police-federal-or-state-police/>> accessed 30 October 2018.

<sup>6</sup> See Ozekhome (n 5).

<sup>7</sup> Chris Nwagboso, 'Nigeria and the Challenges of Internal Security in the 21<sup>st</sup> Century' (2018) 4(2) *European Journal of Interdisciplinary Studies* 15. See also Ozekhome (n 5).

<sup>8</sup> Samson Eze, 'Tackling Recurring Herdsmen, Farmers' Clash' *The Guardian* (Lagos, 30 January 2016) <<https://guardian.ng/saturday-magazine/cover/tackling-recurring-herdsmen-farmers-clash/>> accessed 30 October 2018.

## II. Phenomenon of Mass Killings in Nigeria

### (i). Background to the Mass Killings

The British contraption called Nigeria attained independence from Britain on 1 October 1960. Before the coming of Britain, there was no nation called Nigeria; rather there were different and antagonistic tribes and nations colonized by Britain. Gradually, without their consent and agreement, Britain brought together the multi-farious tribes, nations and ethnic groups with diverse cultures and languages and forcefully made them to live together as one nation called Nigeria.<sup>9</sup> Hatchsummed up this point well when he said:

It must be remembered that no such entity as 'Nigeria' existed until 1914. It was the creation of the British government, partly inspired by the desire to save expense. The peoples who inhabited the region now known as Nigeria had always lived in separate and often contentious societies...*In 1914 all these varied societies were declared by Britain to be members of a single state named 'Nigeria'*<sup>10</sup> (emphasis added).

The same point was recently re-stated by Ezeani when he noted that 'before 1914, there was no country in the world known by the name Nigeria' and that 'for hundreds of years, there existed within the geographical space known today as Nigeria peoples and nations identified as Yoruba, Igbo, Tiv, Benin, [Hausa/Fulani], [Ekpeye], etc.'<sup>11</sup>.

Importantly, this faulty 1914 beginning laid foundation for a bitter civil war in Nigeria fought essentially between the Hausa/Fulani nation and the Igbo nation between 1967 and 1970, as a consequence of declaration of secession by the Igbos of the Eastern region of Nigeria. It is also important to note that before the declaration of secession and during the civil war the Igbos living in the northern areas of Nigeria were massacred in great numbers by the Hausa/Fulani. It was a clear case of pogrom/genocide or ethnic cleansing.<sup>12</sup>

Before the civil war started in 1967, Nigeria had come under military rule in 1966 following a military coup d'état on 15 January 1966. Eastern Nigeria was one of the four federating regions of Nigeria then.<sup>13</sup> Defending the civil war, Nigerian military authorities claimed that the civil war was declared 'in order to keep Nigeria one' following the declaration of secession from Nigeria by the Igbos of the Eastern Nigeria.<sup>14</sup> On their part, the military authorities of Eastern Nigeria claimed that they were compelled to secede and declare the region as the republic of Biafra as a result of targeted killings of Igbos serving in the Nigerian military as well as other Igbos living in Northern Nigeria by the Hausa/Fulani people – especially during and after another military coup d'état in July 1966.<sup>15</sup>

Undoubtedly, Nigeria experienced mass killings between 1966 and 1970. However, since the end of the Nigerian civil war in 1970 there had been relative peace and security around the country notwithstanding isolated incidents of mass killings as a result of communal clashes over land or boundaries. This position changed about a decade ago with the emergence of a deadly terrorist group in north-eastern Nigeria called Boko Haram,<sup>16</sup> which engaged in systematic and targeted mass killings in Nigeria never before witnessed in peace time. The killings were virtually daily.<sup>17</sup> Many Churches and other public places were targeted and countless lives lost in ruthless killings.

<sup>9</sup>Kaniye S.A. Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues* (Koppe Publishers, Koln 2006) 14-18.

<sup>10</sup>John Hatch, *Nigeria: A History* (Secker & Warburg, London 1971) 12-14.

<sup>11</sup>Emefiana Ezeani, *In Biafra Africa Died: The Diplomatic Plot* (2<sup>nd</sup> ed. Veritas Lumen Publishers, London 2013) 15.

<sup>12</sup> Many scholars agree that the massive killing of Igbos in 1966 was genocidal. See, for example, Ezeani (n 11) chapter 9 and sources cited therein.

<sup>13</sup> Other regions then were the Northern Nigeria, Western Nigeria, and the Mid-Western Nigeria.

<sup>14</sup> The declaration of secession was made on 30 May 1967 by Lieutenant-Colonel Chukwuemeka OdumegwuOjukwu, who was then Military Governor of Eastern Nigeria.

<sup>15</sup> The first military coup d'état was executed on 15 January 1966. The Hausa/Fulani officers of the Nigerian military took the view that the coup was executed by the Igbos to kill Hausa/Fulani officers. The second coup was a revenge. For a good account of the first coup, see Ezeani (n 11) Chapter 2.

<sup>16</sup> For a discussion of the Boko Haram insurgency, see Kaniye S.A. Ebeku, 'Beyond Terrorism: Boko Haram Attacks and National Constitutional Questions in Nigeria' (2011) 23 *Sri Lanka Journal of International Law* 10.

<sup>17</sup> The US and Nigeria classify Boko Haram as a terrorist organization. But, curiously, the Fulani herdsmen are yet to be so classified despite their dastardly acts. The federal government of Nigeria insists that the herdsmen are mere criminals, not terrorists. Yet the same government was quick to classify the Indigenous People of Biafra (IPOB), a self-determination organization, as a terrorist group notwithstanding that the group had not unlawfully killed even one person nor damaged any kind of property.

The federal government has been battling the Boko Haram insurgency since about 2009, and when it seems the capability of the organization to perpetuate mass killings has been largely diminished by the Nigerian military another deadly group called Fulani herdsmen emerged. In comparison, available evidence shows that killings by Fulani herdsman make those of Boko Haram appear as mere child's play.

In fact, the global terror index lists Fulani herdsmen as the fourth deadliest group in the world.<sup>18</sup> Presently, the country is experiencing recurrent mass killings by Fulani herdsmen and this has raised the insecurity status of Nigeria very high.<sup>19</sup> From various sources, many reasons have been suggested as to the cause of mass killings by Fulani herdsmen.<sup>20</sup> However, for present purposes it will suffice to state three reasons. Firstly, some people – such as the Fulani herdsmen and their supporters – maintain that the killings occur as a result of cattle rustling (cattle stealing).<sup>21</sup> This may or may not be related to disputes over land rights. Secondly, some people claim that the killings were a fall-out of clashes between farmers and herdsmen over landed rights. According to one author who subscribes to this view, ‘...Nigeria in particular has experienced a considerable increase in natural resource conflict since the beginning of the 1990s. Of particular concern are the clashes between farmers and pastoralists’.<sup>22</sup> Essentially, farmers claim rights over their farmlands while herdsmen claim right of passage over what they regard as grazing routes.

Thirdly, there are those who state that the killings were based on ethnic grounds and/or are religiously motivated. For example, this is the position of Governor Ortom of Benue State who says that incessant Fulani herdsmen attacks is a continuation of Jihad (so-called holy war) first launched in early 19<sup>th</sup> century.<sup>23</sup> According to him, his view is based on the declarations of the leaders of Fulani herdsmen such as the Fulani Nationality Movement (FUNAM).<sup>24</sup> Furthermore, this is also the narrative of the Christian Association of Nigeria (CAN), which states that the killings were mostly targeted at Christians.<sup>25</sup>

In the end, it is fair to conclude that all of the foregoing reasons contribute in various degrees to the recurrent killings. More importantly, however, there is an indication that the recurrent killings may not easily end and this can be found in the cultural narrative of the Fulani people regarding the crisis. As a leader of the Fulani herdsmen has explained, ‘nomadic grazing and cattle rearing is a prominent and permanent socio-cultural and socio-economic means of survival of a Fulani man. To stop this cultural trait and means of survival of centuries old is like bringing the Fulani clan into extinction’.<sup>26</sup>

In other words, the struggle for landed resources for cattle grazing is a life-long assignment of the nomadic Fulani. Based on this, attacks by Fulani herdsmen promises to be a chronic source of insecurity in Nigeria. Viewed from this perspective, the crisis deserves urgent attention of the federal government of Nigeria and the international community.

<sup>18</sup>Rose Troup Buchanan, ‘Global Terrorism Index: Nigerian Fulani Militants named as fourth deadliest terror group in the World’ *Independent* (London, 18 November 2015) <<https://www.independent.co.uk/news/world/africa/global-terrorism-index-nigerian-fulani-militants-named-as-fourth-deadliest-terror-group-in-world-a6739851.html>> accessed 14 November 2018.

<sup>19</sup> This is not to suggest that Boko Haram attacks have completely ceased. On the contrary, while it reduced significantly since 2015 it is disturbing to note a resurgence of attacks in November and December 2018.

<sup>20</sup> See, for example, Sunday Ibrahim Dasam and ThankGodEjeIbe, ‘Farmers-Herdsmen Conflict in Nigeria: Reality and Way Forward’ (2018) 6(4) *The International Journal of Humanities & Social Studies* 224-226; Alhassan Usman Bello, ‘Herdsmen and Farmers Conflicts in North-Eastern Nigeria: Causes, Repercussions and Resolutions’ (2013) 2(5) *Academic Journal of Interdisciplinary Studies* 134.

<sup>21</sup> Azeez Olaniya and Aliyu Yahaya, ‘Cows, Bandits, and Violent Conflicts: Understanding Cattle Rustling in Northern Nigeria’ (2016) 3 *Africa Spectrum* 94.

<sup>22</sup> Roger Blench, *Natural Resource Conflicts in North-Central Nigeria: A Handbook and Case Studies* (Mallam Dendo Ltd, Cambridge 2004) 7.

<sup>23</sup> OluTayo, ‘Herdsmen Attacks A Continuation of Fulani 1804 Jihad to Take Over – Ortom’ *The Whistler* (Lagos, 19 February 2018). The Sultan of Sokoto disagrees with the claim of Governor Ortom, but Ortom insists on his position, citing the declarations of leaders of Fulani herdsmen at press conferences as his authority.

<sup>24</sup> Fulani Nationality Movement (FUNAM), ‘Summary of Deliberations by the Fulani Nationality Movement, Jan 13, 2018’ *African Herald Express* (Abuja, 14 January 2018) <<http://africanheraldexpress.com/blog8/2018/01/14/summary-of-deliberations-by-the-fulani-nationality-movement-jan-13-2018/>> accessed 14 November 2018. See also Olasupo Ololade, ‘Ortom Accuses Herdsmen Groups of Declaring Jihad on Benue’ *Nigeria News* (Lagos, 30 May 2018) <<https://www.nigerianews.net/samule-ortom-herdsmen-groups-jihad-benue/>> accessed 14 November 2018.

<sup>25</sup> Biyi Adegoroye, Cephas Iorhemen and Philip Nyam, ‘Benue Killings Jihad, Genocide – CAN’ *New Telegraph* (Lagos, 14 January 2018) <<http://www.newtelegraphng.com/2018/01/benue-killings-jihad-genocide-can/>> accessed 14 November 2018.

<sup>26</sup> Dapo Akinrefon, ‘Banning nomadic cattle rearing, violation of 1999 Constitution – Fulani Chiefs’ *Vanguard* (Lagos, 4 October 2015) <<https://www.vanguardngr.com/2015/10/banning-nomadic-cattle-rearing-violation-of-1999-constitution-fulani-chiefs/>> accessed 14 November 2018. See also Moses Awogbade, Richard Olaniyan and Olukayode A. Faleyeh, ‘Eco-Violence or Transborder Terrorism: Revisiting Nigerian Pastoral Nomadic Fulani Question’ in RA Olaniyan and RT Akinyele (eds.), *Nigeria's Ungoverned Spaces – Studies in Security, Terrorism and Governance* (Obafemi Awolowo University Press, Ile-Ife 2016) 43.

## (ii). Some Recent Incidents of Mass Killings by Fulani Herdsmen: 2013-2018

Isolated incidents of mass killings by Boko Haram are still occurring in Nigeria as of October 2018, especially in the north-eastern states of Nigeria. However, as already noted, the most worrisome, nation-wide and recurrent source of mass killings in Nigeria in recent years is the violent campaign of armed/militant Fulani herdsmen.<sup>27</sup>This point was well-made by Gadzama, a former Director-General of State Security Service, thus:

Attacks by herdsmen without doubt have become the most potent threat to national security in the last couple of years. What makes the attacks by herdsmen very disturbing are, the frequency, the level of destruction and sheer brutality. The development in almost all cases is characterised by high casualty rate and massive displacement of communities. One can say with certainty that never has the country experienced this level of destruction and social dislocation. What however is so disturbing with the development is how the attacks in almost all cases took place under the eyes of security agencies.<sup>28</sup>

Similarly, in a report published on 26 July 2018 the International Crisis Group (ICG) notes that the Fulani herdsmen have killed more people in recent times than Boko Haram. In its words:

The conflict between herders and farmers in Nigeria, centred in the Middle Belt [also known as north central states, consisting of Benue, Kwara, Kogi, Niger, Nasarawa, and Plateau States and the Federal Capital Territory Abuja] but spreading southward, has escalated sharply. Since September 2017, at least 1,500 people have been killed, over 1,300 of them from January to June 2018, roughly six times the number of civilians killed by Boko Haram over the same period. The first half of 2018 has seen more than 100 incidents of violence and more fatalities than any previous six-month period since the conflict started worsening in 2014. The surge of violence is concentrated in Plateau, Benue and Nasarawa states in the North Central geopolitical zone and in the adjoining Adamawa and Taraba States in the North-East zone.<sup>29</sup> [In the North-West zone, Zamfara State is also a major victim of the violence].

For purposes of this paper, it is sufficient to outline some incidents of mass killing perpetrated by the Fulani herdsmen in order to illustrate the gory picture of the problem. Noteworthy, the killings are mostly targeted at people of non-Fulani ethnic group and Christians. The Figure below contains selected incidents of mass killings between 2013 and 2018:

**Figure 1:** Statistics of Mass Killings and Destructions in Nigeria by Fulani Herdsmen: 2013-2018

1. 23 April 2013  
10 farmers were killed in an attack on Mbasenge community in Guma local government area of Benue State by Fulani herdsmen.<sup>30</sup>
2. 14 May 2013  
Over 200 herdsmen surrounded Ekwo-Okpanchenyi, Agatu LGA of Benue State and killed 40 indigenes.
3. 5 July 2013  
20 people were killed in a clash between Tiv farmers and Fulani herdsmen at Nzorov, Guma local government area of Benue state.
4. 6 July 2013  
Fulani herdsmen invade 2 villages in Agatu local government area of Benue State and killed 8 villagers. They claimed this to be in retaliation for the killing of 112 cows.

<sup>27</sup>SodiqOyeleke, 'Herdsmen Crisis Six Times Deadlier Than Boko Haram – International Crisis Group' *Independent* (Lagos, 26 July 2018) <<https://www.independent.ng/herdsmen-crises-six-times-deadlier-than-boko-haram-international-crisis-group/>> accessed 14 November 2018.

<sup>28</sup>AA Gadzama, 'Nigeria: Herdsmen Attacks and Implications for National Security' *Daily Trust* (Lagos, 25 January 2018) <<https://allafrica.com/stories/201801250135.html>> accessed 14 November 2018.

<sup>29</sup>International Crisis Group (ICG), *Stopping Nigeria's Spiralling Farmer-Herder Violence (Africa Report No. 262, 26 July 2018)* (ICG, Abuja/Dakar/Brussels 2018) 1.

<sup>30</sup> Of all, Benue State is probably the single most frequently attacked state by the Fulani herdsmen. See Ameh Comrade Godwin, 'Herdsmen Killings: Benue Govt Releases Timeline of Attacks' *Daily Post*(Lagos, 6 February 2018) <<http://dailypost.ng/2018/02/06/herdsmen-killings-benue-govt-releases-timeline-attacks/>>accessed 21 September 2018. This document catalogued 46 illustrative incidents of Fulani herdsmen's attacks on various communities of the state between February 2013 and May 2017. Most of the incidents noted here were taken from this government document. The situation is virtually the same in other parts of Nigeria, particularly in the northern states. For example, discussants on TVC television programme on 27/7/18 maintain that Zamfara State (not Benue State) is the most viciously attacked State. This may well be so. However, for the present author, it is better to say that Benue, Zamfara and Plateau States are on the same level in terms of the frequency of attacks

5. 20 January 2014

Fulani herdsmen attacked Agatu local government area of Benue State and killed 5 soldiers on duty and other 7 persons.

6. 20-21 February 2014

In a two-day onslaught, Fulani herdsmen attacked Gwer West local government area of Benue State; killed 35 persons, displaced 80,000 persons who became internally displaced persons (IDP), and sacked 6 Council Wards.

7. 12 March 2014

Fulani herdsmen raided Ukpam village of Mbabaai in Guma local government area of Benue State; killed 28 persons and burnt farms and yam barns.

8. 23 March 2014

In Gbajimba, Guma local government area of Benue State, Fulani herdsmen killed 25 persons and injured over 50, using sophisticated weapons.

9. 29 March 2014

Fulani herdsmen attacked 4 villages in Agatu local government area of Benue State; killed 19 persons and abducted 15 others.

10. 27 January 2015

17 persons killed in attacks by Fulani herdsmen on Abugbe, Okoklo, Ogwule and Ocholoyan in Agatu local government area of Benue State.

11. 30 January 2015

Over 100 attackers stormed 5 villages in Logo local government area of Benue State, killing 9 persons in the attack.

12. 15 March 2015

Egba village in Agatu local government area of Benue State was sacked by herdsmen and over 90 local people, including women and children, were killed.

13. 27 April 2015

28 persons were killed by Fulani herdsmen in attack on 3 villages at Mbadwem, Guma local government area of Benue State; additionally, houses and farmlands were razed.

14. 11 May 2015

Ikyoawen community in TuranKwandelocal government area of Benue State invaded by Fulani herdsmen; 5 persons were killed and 8 others wounded.

15. 14 May 2015

100 persons were killed in an attack by Fulani herdsmen in villages and refugee camps at Ukura, Gafa, Per and Tse-Gusa, Logo local government area of Benue State.

16. 7 July 2015

1 person was killed and several others injured following an attack on mourners in ImandeBebeshi in Kwandelocal government area of Benue State.

17. 5 November 2015

12 persons were killed and 25 others injured in Buruku local government area of Benue State following an attack by Fulani herdsmen.

18. 8 February 2016

10 persons were killed and over 300 persons displaced in clash between herdsmen and farmers at Tor-Anyiin and Tor-Ataan in Burukulocal government area of Benue State.

19. 21-24 February 2016

Over 500 locals were killed and 7000 displaced in an attack on Agatu local government area of Benue State by Fulani herdsmen. Moreover, over 7 villages were razed during the attack.

20. 29 February 2016

11 persons were killed in EdugbehoAgatulocal government area of Benue State, including a police inspector.

21. 5 March 2016

Houses burnt in Agatu local government area of Benue State.

22. 9 March 2016

8 residents killed by Fulani herdsmen in attacks on Ngorukgan, Tse Chia, Deghkia and Nhumbe in Logo local government area of Benue State.

23. 10 March 2016

Two persons were killed in attack on Obagaji Agatu local government area of Benue State.

24.13 March 2016

6 people were killed by Fulani herdsmen in an attack on Tarka local government area of Benue State.

25.24 January 2017

15 persons were killed by rampaging Fulani herdsmen, who attacked farmers in Ipiga village in Ohiminilocal government area of Benue State.

26.2 March 2017

About 10 persons were killed in a renewed hostility between Fulani herdsmen and farmers in Mbahimin community, Gwer-East local government area of Benue State.

27.8 May 2017

Three persons were confirmed killed by Fulani herdsmen in Tse-Akaa village, Ugondo Mbamar District of Logo local government area of Benue State.

28.11 March 2017

7 persons were killed when Fulani herdsmen attacked a Tiv community, Mkgovur village, in Buruku local government area of Benue State.

29.13 May 2017

Less than one week after many persons were killed by Fulani herdsmen in three communities of Logo local government area of Benue State, armed Fulani herdsmen struck again on 13 May 2017 killing eight more people.

30.24 December 2017

A farmer identified simply as Atuanya was killed by Fulani herdsmen in Anaku in Ayamelum local government area of Anambra State.<sup>31</sup>

31.8 March 2018

Armed Fulani herdsmen killed five persons in Miango District of Plateau State and another six in Ganda Village in Bokkos local government area of Plateau State.<sup>32</sup>

32.12 March 2018

Fulani terrorists killed 25 persons, including three children and two women in Dundu Village of Kwall District in Bassa local government area of Plateau State. An injured girl later died in the hospital. This incident occurred about 7pm on a day several persons who were earlier killed in Bassa local government area of Plateau State were given mass burial.<sup>33</sup>

33.16 March 2018

5 persons, including a University undergraduate, were killed about 7.30pm by Fulani herdsmen who attacked Ugboha, Esan South-East local government area and Odiguete Ovia North-East local government area of Edo State. Besides the dead, 12 persons sustained various injuries during the attack.<sup>34</sup>

34.14-15 April 2018

Suspected Fulani herdsmen killed 32 persons of Tiv ethnic group in various communities in Nasarawa State.<sup>35</sup>

35.18 April 2018

Fulani herdsmen killed four persons while they were collecting sand for construction at Jebbu-Miango Village, Bassa local government area of Plateau State, but were repelled by troops while they were moving to attack Taraba State on the same day.<sup>36</sup>

36.2 May 2018

<sup>31</sup>Vincent Ujumadu, 'Tension in Anambra, as herdsmen kill farmer' *Vanguard* (Lagos, 25 December 2017)

<<https://www.vanguardngr.com/2017/12/tension-anambra-herdsmen-kill-farmer/>> accessed 12 October 2018.

<sup>32</sup>See 'Herdsmen kill at least 5 persons in Plateau' *Vanguard* (Lagos, 11 March 2018) <<https://www.vanguardngr.com/2018/03/herdsmen-kill-least-5-persons-plateau/>> accessed 14 November 2018.

<sup>33</sup> See Friday Olokor, 'How herdsmen killed 26, torched 11 houses in fresh Plateau attacks' *Punch* (Lagos, 14 March 2018) <<https://punchng.com/herdsmen-kill-26-torch-11-houses-in-fresh-plateau-attacks/>> accessed 14 November 2018.

<sup>34</sup> See Simon Ebegbulem, 'Herdsmen Kill 5 in Edo' *Vanguard* (Lagos, 17 March 2018) <<https://www.vanguardngr.com/2018/03/herdsmen-kill-5-edo-still-confused-deceased-father/>> accessed 5 October 2018).

<sup>35</sup>David Odama, 'Nigeria: 32 Killed in Fresh Herdsmen Attacks in Nasarawa' *Vanguard* (Lagos, 16 April 2018)

<<https://www.vanguardngr.com/2018/04/fresh-herdsmen-attack-claims-32-lives-nasarawa/>> accessed 5 October 2018.

<sup>36</sup> See Kingsley Omonobi & Marie-Tarese Nanlong, 'Herdsmen kill 4 in plateau, as troops repel herders attack in Taraba' *Vanguard* (Lagos, 20 April 2018) <

<https://www.vanguardngr.com/2018/04/herdsmen-kill-4-plateau-troops-repel-herders-attack-taraba/>> accessed 3 October 2018.

Fifteen persons were killed and four communities completely burnt down by Fulani herdsmen who attacked Numanlocal government area of Adamawa State.<sup>37</sup>

37.23 June 2018

Over 150 persons were killed in the night and within 48 hours in about 5 villages of Gashish District of Barkin-Ladilocal government area of Plateau State.<sup>38</sup>

38.9 July 2018

Herdsmen attacked communities in Rabah local government area of Sokoto State, killing over 30 persons.<sup>39</sup>

39.2 October 2018

At least 14 persons were killed by Fulani herdsmen in the night of Tuesday 2 October 2018 in an attack in Jol village, Rivom local government area of Plateau State.<sup>40</sup>

40.3 October 2018

19 persons were confirmed killed in yet another fresh attack by Fulani herdsmen on 3 October 2018 in Ariri village of Bassalocal government area of Plateau State.<sup>41</sup>

From Figure 1 above, it is clear that Fulani herdsmen had been killing innocent Nigerians since 2013;<sup>42</sup> that is, two years before President Buhari came into office on 29 May 2015. However, at the time President Buhari came into office the major insecurity problem in Nigeria was occasioned by the activities of a terrorist group called Boko Haram. This fact is indisputable, and was recognized in the following extract from the inaugural speech of President Buhari shortly after his inauguration on 29 May 2015.<sup>43</sup> Addressing the issue of security challenges at the time, he said:

*The most immediate is Boko Haram's insurgency... But we cannot claim to have defeated Boko Haram without rescuing the Chibok girls and all other innocent persons held hostage by insurgents... This government will do all it can to rescue them alive... Boko Haram became a terrifying force taking tens of thousands of lives and capturing several towns and villages covering swathes of Nigerian sovereign territory... For now, the Armed Forces will be fully charged with prosecuting the fight against Boko haram. We shall overhaul the rules of engagement to avoid human rights violations in operations... Boko Haram is not only the security issue bedevilling our country. The spate of kidnappings, armed robberies, herdsmen/farmers clashes, cattle rustlings all help to add to the general air of insecurity in our land. We are going to erect and maintain an efficient, disciplined people-friendly and well-compensated security forces within an over-all security architecture... As ever, I am ready to listen to grievances of my fellow Nigerians. I extend my hand of fellowship to them so that we can bring peace and build prosperity for our people (emphasis added).*

In fact, one of the key electoral promises of President Buhari was ending insecurity in Nigeria. However, few months to the end of his 4-year tenure insecurity in Nigeria is increasing instead of ending. The reality is that Boko Haram insurgency has not ended and Fulani herdsmen attacks have escalated under his watch. The people of Nigeria are currently insecure and have no peace. This leads us to inquire about the Fulani people, especially as this will further help in the legal analysis that follows. Accordingly, the next section will briefly trace the historical origins and disposition of the Fulani people of Nigeria.

<sup>37</sup> See Ameh Comrade Godwin, '15 killed, four villages burnt down as herdsmen attack Adamawa Communities' *Daily Post* (Lagos, 3 May, 2018) <<http://dailypost.ng/2018/05/03/15-killed-four-villages-burnt-herdsmen-attack-adamawa-communities/>> accessed 3 October 2018.

<sup>38</sup> See Musa Pam, 'Breaking: 150 killed as herdsmen attack Barkin-Ladi LGA in Plateau (photos)' *New Telegraph* Abuja, 24 June 2018) <<https://www.newtelegraphng.com/2018/06/breaking-150-killed-as-herdsmen-attack-barkin-ladi-lga-in-plateau-photos/>> accessed 3 October 2018. See also Friday Olokor, 'Herdsmen attack 11 plateau villages, kill 86, torch 50 houses' *Punch* (Lagos, <http://punchng.com/herdsmen-attack-11-plateau-villages-kill-86-torch-50-houses/>)>*Punch* (25 June 2018) accessed 3 October 2018.

<sup>39</sup> See News Agency of Nigeria (NAN), 'Attack: 32 persons buried in Sokoto State' <<https://www.vanguardngr.com/2018/07/attack-32-persons-buried-in-sokoto-state/>> accessed 3 October 2018. See also NAN, 'Bandits attack villages in Sokoto State' *Vanguard* (Lagos, 7 August 2018) <<https://www.vanguardngr.com/2018/07/bandits-attack-villages-in-sokoto-state/>> accessed 3 October 2018.

<sup>40</sup> Usman Audu, '14 persons killed in fresh Plateau attack – Council Chairman' *Premium Times* (Lagos, 3 October 2018) <<https://www.premiumtimesng.com/news/headlines/288258-14-people-killed-in-fresh-plateau-attack-council-chairman.html>> accessed 4 October 2018.

<sup>41</sup> Musa Pam, 'Breaking: 19 Persons killed as herdsmen attack Plateau village' *New Telegraph* (Abuja, 4 October 2018, <https://newtelegraphonline.com/2018/10/breaking-19-persons-killed-as-herdsmen-attack-plateau-village/>)> accessed 4 October 2018.

<sup>42</sup> Note that Fulani herdsmen attacks could be traced much more backward, but they were not so deadly as in recent years.

<sup>43</sup> President Muhammadu Buhari, 'Inaugural speech by His Excellency President Muhammadu Buhari following his swearing-in as President of the Federal Republic of Nigeria on 29<sup>th</sup> May, 2015' *Daily Post* (Lagos, 29 May 2015) <<http://dailypost.ng/2015/05/29/full-text-of-president-buharis-inauguration-speech/>> accessed 4 October 2018.

10 October 2018.

### III. The Fulani People of Nigeria: A Brief History

According to historical accounts, the Fulani people constitute a distinct ethnic group in Nigeria<sup>44</sup> and are found in several other African countries, including The Gambia, Mali, Sierra Leone, Benin, Burkina Faso, Cameroon, Côte d'Ivoire (Ivory Coast), Niger, Togo, the Central African Republic, Ghana, Liberia, and The Sudan. In general, they are minorities in the countries they are found. In terms of language, they speak Fulɓe. It should be noted that the popular name Fulani is a corruption of the local name of the people which is 'Fula' (also spelt Foulah or Fulah). Etymologically, the name Fulani was partly borrowed from Hausa language and from Manding language.

In modern times the Fulani people may be categorized into two groups,<sup>45</sup> namely, (1) the nomadic/cattle-rearing Fulanis; and (2) the sedentary/urbanized Fulanis. Of these two groups, however, the nomadic/cattle rearing or mobile Fulani are closer to the traditional way of life of the Fulani people than the sedentary Fulani who now dwell in cities and engage more in agriculture, trade and politics than in the traditional Fulani nomadic lifestyle.

There are different versions of the origin of the Fulani people and this seems to vary from country to country where they are found. However, this is not the place to recount the various versions.<sup>46</sup> For present purposes, it is sufficient to briefly recount the origin of the Fulani people in Nigeria. According to some authors,<sup>47</sup> the Fulani people first entered Hausa-land in present day Nigeria in the 15<sup>th</sup> century and settled in established Hausa city-states such as Kano, Katsina and Zaria; some of them as Islamic clerics. This continued in the 16<sup>th</sup> and 17<sup>th</sup> centuries with new arrivals who settled and intermingled with local Hausa people. Through the process of time, most of the nomads became acculturated and increasingly sedentary. According to Anter:<sup>48</sup>

The urban culture of the Hausa was attractive to many Fulani. These Town or Settled Fulani became clerics, teachers, settlers, and judges—and in many other ways filled elite positions within the Hausa states. Soon they adopted the Hausa language, many forgetting their own Fulfulde language. Although Hausa customs exerted an influence on the Town Fulani, they did not lose touch with the Cattle or Bush Fulani.

It should be noted that this development was to lay foundation for future spread and political domination of the Fulani people in Nigeria. It should also be noted that about 99% of Fulani people are Muslims. In fact, it can be said that a cultural or religious identity of Fulani people is Islam. As time proceeded in the 18<sup>th</sup> and 19<sup>th</sup> centuries, the Fulani people began to resent being ruled by their host Kings who were regarded as infidels (imperfect Muslims). In 1804, that resentment snowballed into jihad (religious or so-called holy war) launched and led by a Fulani cleric, Usman Dan Fodio, to overthrow the Hausa Kings. The jihad was successful, as most Hausa states were conquered and a new powerful state called Sokoto Caliphate established. To this day the Caliphate exists as the centre of Islamic leadership in Nigeria under an Emir/Caliph.

Anter rightly notes that the ties between the nomadic/cattle rearing Fulani (also called pastoral Fulani) and the sedentary/urban Fulani became helpful during the 19<sup>th</sup> century jihad when the latter joined the jihad. In his words, 'they tied their grievances to those of their pastoral relatives. The cattle Fulani resented what they considered to be an unfair cattle tax, one levied by imperfect Muslims'.<sup>49</sup>

In contemporary times, the Fulani people resent and oppose the anti-grazing laws enacted in Benue State, Taraba State, Plateau State, and some other States in Nigeria to check the frequent clashes between farmers and Fulani herdsmen. As the International Crisis Group (ICG) argues, some of the attacks and mass killings in recent years are traceable to this resentment.<sup>50</sup>

<sup>44</sup> See, by example, *Nwagboso* (n7) 26. For an interesting early study of the Fulani people and their lifestyle, see Derrick J. Stenning, 'Transhumance, Migratory Drift, Migration; Patterns of Pastoral Fulani Nomadism' (1957) 87(1) *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* 57.

<sup>45</sup> For other possible classification, see *Stenning*, (n 44) 57.

<sup>46</sup> For some information on the various versions, see TarigAnter, 'Who are the Fulani People & Their Origins?' *Modern Gnana* (Accra, 9 September 2011) ><https://www.modernghana.com/news/349849/1/who-are-the-fulani-people-their-origins.html> > accessed 5 October 2018.

<sup>47</sup> See, by example, *Stenning* (n 44) 57.

<sup>48</sup> *Anter* (n 46).

<sup>49</sup> *Anter* (n 46).

<sup>50</sup> *International Crisis Group (ICG)* (n 29) 8.

In the political arena, the Fulani people of Nigeria occupy high political offices since the time of their victory in the 19<sup>th</sup> century jihad. Before the formation of Nigeria, the Caliph of the Sokoto Caliphate was the highest religious and political leader of the Hausa/Fulani Kingdoms. This pre-eminent leadership position continued after the formation of Nigeria and up to the present day, with Fulani people occupying the highest political office of the land and several other high-ranking political offices. Specifically, at independence on 1 October 1960 Alhaji Tafawa Balewa (a Fulani man) became the first Prime Minister of Nigeria and served till 15 January 1966 when he was killed in a military coup. In more recent years, it is noteworthy that President Umaru Musa Yar'Adua (2007-2010) was a Fulani man, and the sitting President of Nigeria, Mohammad Buhari, is also a Fulani man.<sup>51</sup>

To conclude, there are indications to suggest that there is an alliance between the nomadic/cattle rearing Fulanis (herdsmen) and the urban/sedentary Fulanis who control the coercive force of government in the ongoing recurrent killings by the herdsmen. Firstly, President Buhari (urban/sedentary Fulani man) owns cattle which are herded by the herdsmen and he is a patron of *Miyetti Allah* (an association of Fulani herdsmen). Secondly, President Buhari is manifestly unwilling to take any decisive security action against the impunity, massive and recurrent killings of innocent Nigerians perpetrated by Fulani herdsmen.<sup>52</sup> Thirdly, he is unwilling to declare Fulani herdsmen as a terrorist group and rejects any suggestion that Fulani herdsmen attacks are a continuation of the Fulani 19<sup>th</sup> century jihad. Notably, apart from President Buhari's support, similar support for the Fulani herdsmen abound among other urban/sedentary Fulani people in high political positions and other high offices in Nigeria.<sup>53</sup> Finally, the alliance can also be seen in the fact that the Fulani herdsmen are known to use sophisticated weapons—such as AK47 assault rifles and other weapons of violence and mass destruction—in the various attacks, which they cannot possibly acquire personally given their lack of education and nomadic lifestyle except someone (most likely their sedentary Fulani brothers) helped them to acquire and trained them on the use.

Importantly, notwithstanding denials by President Buhari, the Sultan of Sokoto, and some other Muslims a historical statement by a Fulani man – Alhaji Ahmadu Bello, who was the Saruwa of Sokoto and Premier of the Northern Region of Nigeria –coupled with recent declarations of the leadership of *Miyetti Allah* as noted above, arguably supports the proposition that the Fulani herdsmen are currently engaged in jihad. In the 1962 historical statement, Ahmadu Bello said: ‘When the time comes I will mobilize the people of the region [Northern Nigeria/Muslims/Fulani people] so that they can play their full part in this all-important task which might be likened to a jihad... A jihad is war waged for some sacred interest to protect the faith, life, property, liberty and self-respect [interest]’.<sup>54</sup>

Having regards to recurrent mass killings by Fulani herdsmen and the tacit support of President Buhari and other influential and powerful Fulani people, it may be that for the Fulani successors of Ahmadu Bello the time may have come to mobilize Fulani herdsmen and other Muslims for jihad. In any case, having regards to the foregoing background this article proceeds to consider the possible legal implications of recurrent mass killings in Nigeria by Fulani herdsmen.

#### IV. Some Legal Implications Of Mass Killings By Fulani Herdsmen

From the foregoing incidents of mass killings and destruction of property as well as the brief historical account of the Fulani people, it is clear that some legal issues are intertwined. For purposes of analytical presentation, the issues will be discussed under the following headings: fundamental human right to life and the crime of murder; other criminal offences other than murder (such as assaults, arson, and terrorism); genocide and crimes against

<sup>51</sup> President Muhammadu Buhari entered office on 29 May 2015, and his first presidential term of 4 years will end on 29 May 2019. On 7 October 2018 he was affirmed the presidential candidate of his political party, the All Progressives Congress (APC) for the February 2019 general elections, which could give him a second term in office. He had previously served as Military Head of State of Nigeria (1983-1985). If he lost the February presidential election, it will likely be to Atiku Abubakar (a Fulani man), who is the presidential candidate of the biggest opposition political party presently in Nigeria, i.e. the Peoples Democratic Party (PDP). Another Fulani man who served as President of Nigeria was Alhaji Shehu Shagari (1979-1983).

<sup>52</sup> Orsu24News Team, ‘Buhari Said He can Only Pray Over Killings By Herdsmen, But He Sent Military To Kill Defenceless IPOB Protesters – Omokri’ *ORSU24 News* (Orsu, 28 June 2018) <<http://orsu24news.com/buhari-said-he-can-only-pray-over-killings-by-herdsmen-but-he-sent-military-to-kill-defenceless-ipob-protesters-omokri/>> accessed 7 October 2018.

<sup>53</sup> Nigerian newspapers are awash with reports of high-level political solidarity with the Fulani herdsmen by their kinsmen.

<sup>54</sup> Quoted in Kaniye S.A. Ebeku, ‘The Limited Applicability of Shariah under the Constitution of Nigeria’ in Rainer Grote and Tilman J. Roder (eds.), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (Oxford University Press, New York 2012) 95-96.

humanity; and trespass to land and to the person. For lack of space, these are the only legal issues that will be examined below, and in turn.

### A. Fundamental Human Right To Life And The Crime Of Murder

The first legal issue raised by the mass killings perpetrated by the Fulani herdsmen is the violation of right to life. The sanctity of life is guaranteed under section 33(1) of the Constitution of Nigeria 1999 (as amended), which provides: 'Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria'.

Under section 33(2) of the self-same Constitution, killing a person is not considered a deprivation of life in contravention of the substantive provision stated above if a person dies 'as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary' in three circumstances. Firstly, if a person was killed 'for the defence of any person from unlawful violence or for the defence of property'<sup>55</sup> belonging to the assailant or another. Secondly, if death occurred 'in order to effect a lawful arrest or to prevent a person from escaping from lawful custody'.<sup>56</sup> And, thirdly, if a person was killed in the course of security operations to 'suppress a riot, insurrection or mutiny'.<sup>57</sup>

Similar provisions can be found in Article 3 of the Universal Declaration on Human Rights (UDHR) 1948,<sup>58</sup> Article 6 of the International Covenant on Civil and Political Rights 1966,<sup>59</sup> and Article 4 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983.<sup>60</sup> Importantly, the 1983 Act is a domestication of the African Charter on Human and Peoples' Rights 1981 in Nigeria.<sup>61</sup> More importantly, Nigeria is a State Party to these international/regional instruments and their provisions are binding on the country. In effect, the right to life of a Nigerian citizen as well as those within the territory of Nigeria is derived from multiple sources, including the Nigerian Constitution.

There is no question that the victims of the Fulani herdsmen killings have a right to life under the above legal provisions. However, the critical question is whether the killings were a violation of their right to life. Clearly, the various killings did not occur in any of the circumstances set out under section 33(2)(a), (b) and (c) of the Nigerian Constitution nor can they be justified under the provisions of any of the relevant instruments. However, it would appear from the first possible reason/ground of the attacks stated above that the Fulani herdsmen seek to justify the massive killings as reasonably necessary for the defence of their property (i.e. cattle). Even so, not a few people will dispute the validity of this claim. A proper interpretation of the relevant provisions will require that the defence of property and the killing must be contemporaneous. But, from all indications, most killings were not done contemporaneously. On the contrary, it appears that the attacks and killings were premeditated before execution and so in clear violation of the Constitution and extant laws – including the Criminal/Penal Code Act. Under the Nigerian criminal justice system, both the Criminal Code Act (applicable to the southern states of Nigeria) and the Penal Code Act (applicable to the northern states of Nigeria)<sup>62</sup> prohibit the unlawful killing of a human being. Specifically, section 306 of the Criminal Code Act provides that 'it is unlawful to kill any person unless such killing is authorised or justified or excused by law'. As can be observed, this is consistent with section 33(1) of the Constitution of Nigeria 1999 (as amended).

<sup>55</sup> Constitution of Nigeria 1999 (as amended), section 33(2)(a).

<sup>56</sup> Constitution of Nigeria 1999 (as amended), section 33(2)(b).

<sup>57</sup> Constitution of Nigeria 1999 (as amended), section 33(2)(c).

<sup>58</sup> The Article provides 'Everyone has the right to life...' Unlike section 33 of the Nigerian Constitution, Article 3 of the UDHR does not set out circumstances in which a person may lawfully be killed. Noteworthy, the UDHR has passed into customary international law and is therefore legally binding on all nations of the world.

<sup>59</sup> The Article provides: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

<sup>60</sup> The Article provides that 'human beings are inviolable. Every human being shall be entitled to respect for his life and the dignity of his person. No one may be arbitrarily deprived of this right'.

<sup>61</sup> By the African Charter on Human and Peoples' Rights (Ratification) Act, CAP A9 L.F.N. 2004.

<sup>62</sup> Note that originally the Criminal Code Act and the Penal Code Act applied to the Western and Eastern Regions (Southern States of Nigeria) and the Northern Region (Northern States of Nigeria), respectively. When states were first created out of the regions in 1967 the Codes became applicable to the group of states so created and this is still the case to date, although the various states have now enacted the original codes into their state law.

Under the Criminal Code Act, unlawful killing is of different kinds - the greatest of which is murder. Section 316 of the Code defines the offence of murder, *inter alia*, as unlawful killing of a person in circumstances where the offender 'intends to cause the death of the person killed, or that of some other person' (section 316(1)).<sup>63</sup> Similar provision can be found in section 220 of the Penal Code Act which provides, *inter alia*, that 'whoever causes death by doing an act with the intention of causing death or such bodily injury as is likely to cause death commits the offence of culpable homicide [murder]' (section 220(a)).

In conclusion, the various killings of innocent people by Fulani herdsmen violate not only the Nigerian Constitution but also opens them up for criminal liabilities/charges for multiple murders under the Criminal Code Act/Law or Penal Code Act/Law depending on whether the crime was committed in southern or northern Nigeria respectively.<sup>64</sup>

## B. Other Criminal Offences Other Than Murder

Apart from the crime of murder, other sundry criminal charges revealed by the account of the attacks by Fulani herdsmen include arson, assaults, and terrorism.<sup>65</sup> Specifically, as has been seen above, the herdsmen often set fire on the houses of their victims. This is arson, which is defined, in part, under section 443 of the Criminal Code Act as 'wilfully and unlawfully' setting fire on 'any building or structure whatever, whether completed or not'.<sup>66</sup> Regarding criminal assaults, sometimes when the herdsmen molest some of their victims they manage to escape with or without injuries. In this situation, the attackers, if arrested, may be prosecuted on charges of assault or assault occasioning harm under sections 351 and 355 of the Criminal Code Act or under other relevant criminal provisions.

Furthermore, the herdsmen may also be liable to charges of terrorism under the provisions of the Terrorism (Prevention) Act 2011<sup>67</sup> (as amended<sup>68</sup>).<sup>69</sup> Section 2(2) of the Terrorism (Prevention) Act 2011 (as amended) defines 'acts of terrorism' in part as meaning 'an act which is deliberately done with malice aforethought and which':

- (b) is intended or can reasonably be regarded as having been intended to—
  - (i) seriously intimidate a population; and
  - (ii) involves or causes, as the case may be—
    - (i) an attack upon a person's life which may cause serious bodily harm or death;
    - (ii) kidnapping of a person...

The Act provides penalties for the various acts of terrorism,<sup>70</sup> triable exclusively in the Federal High Court,<sup>71</sup> and vests powers of prosecution in the Attorney-General of the Federation or any relevant agency he may delegate his powers to.<sup>72</sup> Furthermore, arrest and investigation of suspects are the responsibility of the National Security Adviser<sup>73</sup> and the Nigeria Police/Inspector General of Police,<sup>74</sup> both of which are controlled by the federal government.<sup>75</sup> In

<sup>63</sup> Section 319 of the Criminal Code Act prescribes a mandatory sentence of death for the offence of murder. See also Penal Code Act section 221. In comparison, most European countries and most states in the US have abolished death penalty in their criminal justice system.

<sup>64</sup> Apart from criminal charges, dependants of a person who was unlawfully killed can bring a civil action for damages against the assailants.

<sup>65</sup> Kidnapping and rape were also widely used by the Fulani herdsmen to intimidate the indigenous Christian population they attacked. A well-known incident of kidnap was the abduction of Chief OluFalae, a former Minister of Finance, in his farm located in western Nigeria.

<sup>66</sup> Criminal Code Act, section 443(a). See also sections 443(b)-(d) and 444-446.

<sup>67</sup> Act No. 10 of 2011.

<sup>68</sup> As amended by the Terrorism (Prevention) Act, 2013, section 2(b).

<sup>69</sup> The statutes were enacted pursuant to Nigeria's international obligations under the United Nations Security Council (UNSC) Resolution 1373, adopted unanimously on 28 September 2001 as a counter-terrorism measure following the terrorist attacks on the United States on 11 September 2001.

<sup>70</sup> Terrorism (Prevention) Act 2011 (as amended), section 33.

<sup>71</sup> Terrorism (Prevention) Act 2011 (as amended), section 32 (1).

<sup>72</sup> Terrorism (Prevention) Act 2011 (as amended), section 30 (1).

<sup>73</sup> Terrorism (Prevention) Act 2011 (as amended), section 24.

<sup>74</sup> Terrorism (Prevention) Act 2011 (as amended), section 24.

<sup>75</sup> For overview of the Terrorism (Prevention) Act 2011 (as amended), see *Alaba Omolaye-Ajilaye*, Legal Framework for the Prevention of Terrorism in Nigeria, ResearchGate, 22 May 2018.

effect, the offences created under the Terrorism (Prevention) Act 2011 (as amended) are federal offences which federating states cannot prosecute.

As can be seen from the foregoing, the recurrent killings of innocent persons across Nigeria by the Fulani herdsmen, their attacks on communities/villages and their kidnapping activities are all within the purview of the Terrorism (Prevention) Act 2011 (as amended).<sup>76</sup> Yet, the federal government has not arrested and prosecuted any of the perpetrators; nor has she declared the Fulani herdsmen and/or their organizations such as *Miyetti Allah* as a terrorist organization,<sup>77</sup> as required by the law.<sup>78</sup> As already suggested, this may be explained on the basis of alliance between the Fulani herdsmen and the urban /sedentary Fulani who are currently controlling the federal government – headed by President Buhari. Nevertheless, the perpetrators would remain potentially and perpetually liable to account for their acts of terrorism under the relevant statutes.

As yet no state law on terrorism has been made. At least, the present author has not found any. However, some states of the federation have made law on kidnapping. An example is the Rivers State Kidnap (Prohibition) Law No. 3 of 2009 (as amended<sup>79</sup>). Noteworthy, Kidnap law can be used to prosecute Fulani herdsmen who engaged in acts of kidnapping. Recall that under section 2(2)(c)(ii) of the Terrorism (Prevention) Act 2011 (as amended) ‘kidnapping of a person’ is an act of terrorism. However, prosecution for kidnapping under a state law on kidnapping cannot be regarded as a prosecution for terrorism *stricto sensu* under the federal statute.

### C. Genocide And Crimes Against Humanity

Some commentators, including Christian bodies, have described the recurrent and massive killings of innocent people (mostly indigenous Christians) by Fulani herdsmen as genocide. For example, this is the position of a former governor of Plateau State, Jonah Jang.<sup>80</sup> According to him, the killings of over 200 persons of Berom ethnic group perpetrated by ‘Fulani militias [herdsmen]’ is a ‘heinous crime against [my] people, genocide, and an attempt to forcefully take over and occupy the ancestral land of the Berom nation’.<sup>81</sup> Similarly, the Berom Educational and Cultural Organization (BECO) says that ‘the Fulani have driven out the Beroms from over 10 of their villages and farms, and are now forcefully occupying them’.<sup>82</sup> Furthermore, the Christian Association of Nigeria (CAN) condemns the ‘unholy act of systematic genocide... [and] deliberate attempt to destroy the cultural heritage of the Plateau people, in particular the most affected areas.’<sup>83</sup> The association restated this position in a wider perspective in a later press statement:<sup>84</sup>

We are particularly worried at the widespread insecurity in the country where wanton attacks and killings by armed Fulani herdsmen, bandits and terrorists have been taking place on a daily basis in our communities unchallenged despite huge investments in the security agencies. The perpetrators are being deliberately allowed to go scot free. It is even more worrisome that... over 6000 deaths in 2018 alone have been recorded in various attacks, especially in the northern and middle belt states... and other states when the country is not in a state of war... There is no doubt that the sole purpose of these attacks is

<sup>76</sup> See specifically, the Terrorism (Prevention) Act 2011 (as amended), section 2(2)(b)(ii) and 2(2)(c)(i) and (ii).

<sup>77</sup> Wale Odunsi, ‘Court to rule on suit asking Buhari to declare herdsmen terrorists’ *Daily Post* (Lagos, 13 June 2018) <<http://dailypost.ng/2018/06/13/court-rule-suit-asking-buhari-declare-fulani-herdsmen-terrorists/>> accessed 10 November 2018.

<sup>78</sup> See Terrorism (Prevention) Act 2011 (as amended), section 2(1)-(3). Yet, the federal government was quick to declare the Indigenous Peoples Organization of Biafra (IPOB) - which peacefully agitates for self-determination of the Igbo people as a terrorist organization, notwithstanding that it has not intentionally killed anybody.

<sup>79</sup> See Rivers State Kidnap (Prohibition) (Amendment No. 2) Law No. 7 of 2009; Rivers State Kidnap (Prohibition) (Amendment) Law No. 5 of 2015.

<sup>80</sup> Jonah David Jang is presently a Senator representing Plateau North in the National Assembly (Parliament).

<sup>81</sup> Seriki Adinoye, ‘Plateau Killings: A Genocide, Land Occupation Attempts by Fulani, Say Jang, CAN, Others’ *This Day* (Lagos, 26 June 2018) <<https://www.thisdaylive.com/index.php/2018/06/26/plateau-killings-a-genocide-land-occupation-attempts-by-fulani-say-jang-can-others/>> accessed 21 November 2018.

<sup>82</sup> Seriki Adinoye (n 81).

<sup>83</sup> Seriki Adinoye (n 81).

<sup>84</sup> See ‘Press Release By Church Denomination Heads In Plateau and Christian Association of Nigeria (CAN) Plateau State Chapter Over the Renewed Armed Fulani Herdsmen Attacks And Killings Targeted At Christians Across The Country on 28-06-2018’ *Christian Solidarity Worldwide (CSW)* (Surrey, 29 June 2018) <<https://www.csw.org.uk/2018/06/29/news/4017/article.htm>> accessed 10 October 2018.

aimed at ethnic cleansing, land grabbing and forceful ejection of the Christian natives from their ancestral land and heritage... *What is happening in Plateau state and other select states in Nigeria is pure genocide and must be stopped immediately* (emphasis added).<sup>85</sup>

Of all, the most authoritative claim of genocide can be found in the Resolution of Nigeria's Federal House of Representatives made on 3 July 2018, describing the killings in Plateau State as genocide. The Resolution demanded that 'the masterminds and perpetrators of the attacks and massacres be arrested and prosecuted, adding that there should be a coroner's inquest and forensic examination of the weapons and ammunition used to determine the cause of deaths, calibre and source of the weapons used'.<sup>86</sup>

In international law, genocide is recognised as a crime and is defined in Article II of the Convention for the Prevention and Punishment of the Offence of Genocide 1948 as meaning, among others, 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; and (b) Causing serious bodily or mental harm to members of the group'. Similar definition can be found in Article 6 of the Rome Statute of the International Criminal Court (ICC)1998. Noteworthy, under Article I of the 1948 Genocide Convention the crime of genocide may be committed in time of peace or in time of war. In contrast, crimes against humanity is defined in the ICC statute as meaning an act 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack', including murder, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health (Article 7).

Interestingly, the two concepts were developed differently in early 1940s by two men who attended the same law school part of an ancient university which is older than the University of Harvard in the US located in present-day Ukraine.<sup>87</sup>

More importantly, while the two concepts are closely related genocide differs from crimes against humanity in one significant way. Essentially, genocide protects a group while crimes against humanity protects individuals. This point was well-made by Philippe Sands in an interview he granted Robert Coalson of the Radio Free Europe in 2013, thus:

Crimes against humanity and genocide are two distinct concepts. They became part of international law in the mid-1940s, after the end of World War II, and really around the time of the Nuremburg trials. They were new concepts – they are relatively recent in that sense...The basic difference between crimes against humanity and genocide is as follows: Crimes against humanity focuses on the killing of large numbers of individuals. The systematic, mass killing of a very large number of individuals will constitute a crime against humanity. Genocide has a different focus. Genocide focuses not on the killing of individuals, but on the destruction of groups. In other words, a large number of individuals who form part of a single group. And the two concepts in this way have different objectives. One aims at protecting the individual; the other aims at protecting the group.<sup>88</sup>

Crucially, notwithstanding their conceptual difference the 'international crimes' of 'genocide' and 'crimes against humanity' are subject to universal jurisdiction – meaning that they are triable anywhere in the world regardless of where the crime was committed. Moreover, prosecution and punishment for the crime of genocide and crimes against humanity do not admit of exceptions or immunities. According to Article IV of the 1948 Genocide Convention, 'persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.' In other words, constitutional or diplomatic immunities cannot avail any accused person.

<sup>85</sup>Stoyan Zaimov, 'Pure Genocide: Over 6,000 Nigerian Christians Slaughtered, Mostly Women and Children' *The Christian Post* (Washington DC, 3 July 2018) <<https://www.christianpost.com/news/pure-genocide-over-6000-nigerian-christians-slaughtered-mostly-women-children-225655/>> accessed 10 October 2018.

<sup>86</sup>James Emejo and Senator Iroegbu, 'House Designates Plateau Killings as Genocide' *This-Day* (Lagos, 4 July 2018) <<https://www.thisdaylive.com/index.php/2018/07/04/house-designates-plateau-killings-as-genocide/>> accessed 21 November 2018.

<sup>87</sup>Robert Coalson, 'What's the Difference Between 'Crimes Against Humanity' and 'Genocide?' *The Atlantic* (Washington DC, 19 March 2013) ><https://www.theatlantic.com/international/archive/2013/03/whats-the-difference-between-crimes-against-humanity-and-genocide/274167/>> accessed 10 October 2018.

<sup>88</sup>Robert Coalson (n 87).

Hence, even a serving Head of State may be prosecuted in a foreign land. For example, in the past couple of years the serving President of The Sudan, Omar Al-Bashir, is wanted by the ICC for prosecution for alleged crimes against humanity and war crimes he allegedly committed during the Sudanese wars.

Noteworthy, the famous case of Augusto Pinochet clearly illustrates the concept of universal jurisdiction and the non-availability of immunity to accused persons.<sup>89</sup> In brief, Augusto Pinochet was the Head of State of Chile who ruled his country with terror. Under his rule, many people were tortured, killed and many disappeared. When his reign eventually ended, he became a life senator and enjoyed immunity from prosecution in Chile by virtue of exit laws he had signed. In 1997 he travelled to London to seek medical attention. While there, two Spanish Stipendiary Magistrates issued two separate arrest warrant and request for extradition to Spain to face charges of torture, murder and other crimes against humanity.<sup>90</sup> Following that, he was refused exit from the UK while extradition hearings were ongoing. His lawyers raised the issue of immunity, arguing that as former Head of State he was immune from prosecution for acts committed during his time in office. In general, the House of Lords rejected the defence arguments and held that immunity does not apply to crimes against humanity and so Pinochet could be extradited to Spain for trial.<sup>91</sup>

Interestingly, after his ordeal in London and he was eventually allowed to return to Chile on grounds of ill-health he was to face prosecutions at home as the courts nullified the immunity law he signed. All of this show that persons who perpetrate genocide, crimes against humanity or allied crimes may eventually be held accountable in their home country or in a foreign country before a domestic court or international tribunal such as the ICC which has jurisdiction to try and punish for the crime of genocide, crimes against humanity, war crimes, etc. (Rome Statute, Article 5).

Noteworthy, Nigeria is a State Party to the above-stated international instruments.<sup>92</sup> Under Article I of the Genocide Convention 1948 the Contracting Parties ‘confirm that genocide, whether committed in time of peace or in time of war is a crime under international law’ and ‘undertake to prevent and to punish’ perpetrators of the crime. Moreover, under Article 5 of the Convention ‘the Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention’.

Moreover, they undertake to ‘provide effective penalties’ for persons guilty of genocide, conspiracy to commit genocide, direct and indirect incitement to commit genocide, attempts to commit genocide and complicity in genocide (enumerated in Article 3). To date, however, Nigeria is yet to fulfil its obligation under the Convention by domesticating its provisions in accordance with section 12(1) of the Nigerian Constitution 1999 (as amended).<sup>93</sup> Even

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<sup>89</sup> The case was first heard at the High Court, Queens Bench Division, and by the House of Lords on appeal. For the High Court case, see *In the Matter of an Application for a Writ of Habeas Corpus ad Subiendum. Re: Augusto Pinochet Duarte*, 28 October, 1998; reproduced in 38 ILM (1999) 68. The appeal to the House of Lords was uniquely heard by two different panels, as the decision of the first panel was set aside by the House of Lords on the ground that Lord Hoffman who cast the deciding vote in the decision of the first panel had a tie with Amnesty International which was admitted in the proceedings as an intervener and he did not disclose that. The first appeal report is reported as *Regina v. Bartle and the Commissioner of Police for the Metropolis and Others (Appellants), Ex Parte Pinochet (Respondent) (on Appeal from a Divisional Court of the Queen's Bench Division); Regina v. Evans and Another and the Commissioner of Police for the Metropolis and Others (Appellants), Ex Parte Pinochet (Respondent) (on Appeal from a Divisional Court of the Queen's Bench Division)*. Judgment of 25 November 1998, 37 ILM (1998) 1302. For interesting comment, see Hazel Fox, Colin Warbrick and Dominic McGoldrick, ‘The First Pinochet Case: Immunity of a Former Head of State’ (1999) 48 *ICLQ* 207. The second appeal panel decision is *R v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening) (No. 3)* [1999] 2 All E.R. 97. For a comment, see Andrea Bianchi, ‘Immunity Versus Human Rights: The Pinochet Case (1999) 10(2) *EJIL* 237-277, esp. 243-249.

<sup>90</sup> The first warrant was issued on 16 October 1998, alleging the murder of Spanish citizens in Chile during his reign. The second arrest warrant alleged more offences, including conspiracy to commit acts of torture, hostage-taking as well as conspiracy to murder.

<sup>91</sup> See references cited in note 89 for more specific information.

<sup>92</sup> UN Convention on the Prevention and Punishment of the Crime of Genocide; ratified by Nigeria on 27 July 2009; Rome Statute of the International Criminal Court; ratified by Nigeria on 27 September 2001.

<sup>93</sup> See Samson Atekojo Usman, ‘House Committee Begins Public Hearing to Domestic ICC laws’ *Daily Post* (Lagos, 18 July 2018) <<http://dailypost.ng/2018/07/18/house-committee-begins-public-hearing-domesticate-icc-laws/>> accessed 21 November 2018. For an interesting overview of the ICC Statute, See Mohammed Tawfiq Ladan, ‘An Overview of the Rome Statute of the International Criminal Court: Jurisdiction and Complementary Principle and Issues in Domestic Implementation in Nigeria’ (2013) 1(1) *Journal of Sustainable Law and Policy* 37.

so, her obligations remain binding on her and her citizens under international law and so it is possible for the perpetrators of genocide in Nigeria to face prosecution in other jurisdictions world-wide.<sup>94</sup>

As in Nigeria, similar incidents of mass killings recently occurred in Myanmar. Crucially, in a recent report by a UN-backed Independent International Fact-finding Mission the experts concluded that targeted killings of Rohingya Muslim minorities by the military smack of commission of genocide, clearly stating that the ‘Myanmar’s military, known locally as the Tatmadaw, had demonstrated ‘genocidal intent,’ and that ‘the Tatmadaw’s contempt for human life... and for international law, should be a cause of concern for the entire population of Myanmar and for the international community’. The experts rejected the defence of the Tatmadaw which seeks to justify the killings on grounds of security and self-defence: ‘Military necessity would never justify killing indiscriminately, gang raping women, assaulting children, and burning entire villages. The Tatmadaw’s tactics are consistently and grossly disproportionate to actual security threats...’

Importantly, much the same thing can rightly be said regarding recurrent killings of Christians and burning of houses and Churches by rampaging Muslim Fulani herdsmen in Nigeria. Apart from being Christians, the victims belong to other ethnic groups in the country other than the Fulani ethnic group, and this perfectly fits into the Myanmar situation.

In the Myanmar case, following the publication of the UN-backed report the ICC has ruled that ‘it has jurisdiction to probe the forced expulsion of Rohingya as a possible crime against humanity’.<sup>95</sup>This may well be the experience of Nigeria in the future regarding the killings by the Fulani herdsmen. Certainly, the perpetrators remain potentially and perpetually liable to investigation and prosecution as the passage of time is immaterial to prosecution under the Rome Statute which recognizes no time limit for the investigation and prosecution of crimes within the jurisdiction of the court.

#### **D. Trespass To Land And To The Person**

Apart from the criminal implications of the recurrent Fulani herdsmen attacks, there is also the civil aspects of trespass to land and to the person.

The law of tort forbids the unauthorised or unjustified entry or interference with land in the immediate and exclusive possession of another. Crucially, the wrong inheres in possession of land and not ownership. In other words, it is possible for a land owner who is not in possession to be held liable on trespass to land. In the law of tort, possession means right to use, control or deal with something such as chattel or land. Importantly, in a suit for trespass it is not necessary to prove that actual harm was suffered by the claimant.

Noteworthy, most trespass to land are intentional although they may also be committed negligently. With regard to the grazing activities of the Fulani herdsmen in Nigeria, there is evidence to assert that the herdsmen intentionally commit trespass on land in possession of another (especially farmers) in order to graze their cattle. In a meeting held in Plateau State to discuss the problem of cattle grazing on the Plateau State University (PLASU) Campus, a representative of the *Miyetti Allah Cattle Breeders Association of Nigeria* (MACBAN)– an association of Fulani herdsmen – categorically pledged that ‘we will ensure that our members do not trespass into the premises of PLASU [henceforth]’.<sup>96</sup> The Vice Chancellor of the University elaborated the nature of the trespass thus:

The activities of herdsmen had been disturbing, as they usually break through the university fence to graze their cattle both during the day and night. The incessant trespass by the cattle breeders had always resulted to breach of peace in the institution. We agreed that henceforth, the herdsmen would stop any form of grazing within the university premises as there was no cattle route running through the university community to warrant such action...<sup>97</sup>

The general defences to the tort of trespass to land are license, justification, and necessity. Briefly, license avails a defendant where he proves express or implied permission from the possessor of land to enter thereon.

<sup>94</sup> Perpetrators may be tried by the ICC, as its jurisdiction is complementary to national criminal jurisdictions (ICC Statute, Article 1). Other national criminal jurisdictions may also try perpetrators of genocide under the concept of universal jurisdiction.

<sup>95</sup>Laignee Barron, ‘The International Criminal Court Says it can Rule on Alleged Crimes Against Myanmar’s Rohingya’*Time* (New York, 7 September 2018) ><http://time.com/5389574/icc-jurisdiction-ruling-myanmar-rohingya/>>accessed 10 October 2018.

<sup>96</sup> See ‘Relief, as Herdsmen Pledge to Stop Grazing on Plateau University Campus,’ *ALY News* (Lagos, 21 July 2018) <<https://www.youtube.com/watch?v=q9DQIEWqMHM>>accessed 11 October 2018.

<sup>97</sup>*ALY News* (n 96).

On its part, justification is a statutory defence which allows a person such as a policeman to enter a land for the purposes of arrest. In the case of necessity, the defendant must show that it is absolutely necessary to enter the land. As can be seen from the illustrative Plateau State University trespass, these defences may not avail the Fulani herdsmen in any action for trespass to land against them jointly and severally.

Furthermore, the activities of Fulani herdsmen as outlined above may also constitute trespass to the person. Essentially, this tort protects the inviolability of the human person. The protection comes in three variants, namely (i) assault; (ii) battery; and (iii) false imprisonment. In the case of assault, the claimant must establish that the defendant behaved in such a menacing way that created apprehension of immediate physical contact with him. If physical contact actually occurs, this will graduate to battery – defined as the intentional and direct application of force to another person without justification. Lastly, false imprisonment occurs where a person is deprived of freedom of movement without a lawful justification. Proof of intention is critical for liability in assault and battery while false imprisonment is a tort of strict liability.<sup>98</sup> From the nature of the Fulani herdsmen attacks, it will be easy to establish intention to assault or commit battery on the victims of the attacks, particularly the survivors. And for those who had to hide indoors in order to escape attack it may be possible for them to succeed in an action for false imprisonment even if the herdsmen did not know that they were stopping someone from moving freely because of their attacks.

## V. Conclusion

The security of life, property and general welfare of the people is the central role of governments all over the world. In fact, section 14(2)(b) of the Constitution of Nigeria 1999 (as amended) expressly provides that ‘the security and welfare of the people shall be the primary purpose of government’. Where a government is discharging its duties efficiently, recurrent killings cannot occur. Hence, the recurrent killings of innocent people by Fulani herdsmen indicates that the federal government of Nigeria which exclusively controls the security apparatus of the country has failed in its responsibilities. Unfortunately, by virtue of the ouster clause in section 6(6)(c) of the Constitution<sup>99</sup> the people of Nigeria cannot legally compel their government to discharge the primary purpose of government as constitutionally ordained. The political remedy of impeachment<sup>100</sup> or rejection at the next general election is but a cold comfort, given the docile nature of the National Assembly/Parliament and the notorious fact that the people’s votes hardly counts in Nigeria.

Consistent with its set objective, this article has shown that Fulani herdsmen attacks on innocent people have some legal implications both from criminal and from civil perspectives. From the criminal angle, the recurrent killings of human beings violate the Nigerian Constitution 1999 (as amended) as well as the Criminal/Penal Code Act provision which protects the sanctity of life and prohibits unlawful killing of any person. Perpetrators of unlawful killings commit the offence of murder. Moreover, some of the attacks fall within the definition of the offences of arson, assaults, and terrorism. Crucially, while all of these are triable only within the country there is also a likelihood that the attacks may qualify as the international crimes of genocide and crimes against humanity which could be tried in foreign jurisdictions as well. Besides, the Fulani herdsmen attacks may also incur civil liabilities such as trespass to land and to the person.

As of October 2018, the federal government has not arrested and prosecuted any of the perpetrators of the heinous crimes for any of the possible crimes triable in Nigeria.<sup>101</sup> This is also the finding of Amnesty International. Noteworthy, this may be explained on the basis of the alliance between Fulani herdsmen (nomadic Fulani) and the urban/sedentary Fulani who wield powerful political and economic powers in Nigeria, including President Buhari. Starting from the 19<sup>th</sup> century, the Fulani people bond together and display a penchant for conquest and occupation of the lands of indigenous people. Regarding the crime of genocide and crimes against humanity, they are as yet not triable within Nigeria because the federal government has not domesticated the relevant international instruments (i.e.

<sup>98</sup>Relevant information on trespass can be found on any standard textbook on the law of tort.

<sup>99</sup> The section provides that ‘the judicial powers vested in accordance with the foregoing provisions of this section [dealing with judicial powers] shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person... is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution’. Section 14(2)(b) is part of the provisions under Chapter II of the Constitution.

<sup>100</sup>For removal of a President from office during his tenure (impeachment), see the Nigerian Constitution 1999 (as amended), section 143.

<sup>101</sup>Some suspects were arrested from time to time but as yet there has been no prosecution, even when confessional statements had been made.

the Genocide Convention 1948 and the ICC Statute 1998) which they had ratified. This a breach of Nigeria's obligations under these instruments and therefore a breach of international law. Nevertheless, the international crimes remain potentially triable in foreign jurisdictions either by the ICC or foreign domestic courts.

To sum up, it is strongly recommended that the federal government should adopt both short-term and long-term measures toward tackling the chronic farmers-herdsmen crisis. In the short term, she should discharge her primary constitutional responsibility to the people by, *inter alia*, arresting and prosecuting the Fulani herdsmen who perpetrate the attacks for the various possible crimes, including those identified in this article. Furthermore, she should domesticate the Genocide Convention 1948 and the ICC Statute 1998 without further delay in order to enable the international crimes therein created to be triable in Nigeria too. In the same vein, it is strongly recommended that affected individuals and states of the federation should follow the example of Benue State by pursuing possible civil actions against the Fulani herdsmen.<sup>102</sup> Noteworthy, criminal prosecutions and civil actions would help to curb the recurrent Fulani herdsmen attacks. In the long term, the federal government must adopt critical policy decision (s) in collaboration with all the states of the federation and other critical stakeholders that could end the recurrent killings and other criminalities. Suggested options include ranching or cattle colonies.<sup>103</sup> Of these two, ranching is preferable because, *inter alia*, it will be less controversial and more widely acceptable to the federating states and other stakeholders.

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<sup>102</sup> See Ameh C. Godwin, 'Benue Drags Herdsmen to Court' *Daily Post* (Lagos, 1 May 2018) <<http://dailypost.ng/2018/05/01/benue-drags-fulani-herdsmen-court/>> accessed 15 December 2018.

<sup>103</sup> Dasam and Ibe (n 20) 229-231.