

Suggesting Islamic Preventive Measures against Insurgency-Caused Internal Displacement as a Catalyst to OCHA Humanitarian Response Strategy in North-East, Nigeria

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Abstract

Internal Displacement is an off shoot of insurgency taken place in North-east, Nigeria. Internally Displaced Persons (IDPs) in the North-east, Nigeria are suffering hardships because their needs are not adequately catered for by the government. The intervention of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) plays no small role in ameliorating the conditions of the IDPs. Finding shows that the government and the people need to take up the collective responsibilities to prevent insurgency. The OCHA 2019-2020 report has showed strategies to improve the conditions of IDPs. This study shows that there are some strategies not mentioned in the OCHA report that are safe for use which are contained under the Islamic Law. These Islamic Law strategies shall be discussed in this paper for possible adoption.

Keywords: Internally Displaced Persons (IDPs); The United Nation Office for the Coordination of Humanitarian Affairs (OCHA); Collective Responsibilities.

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Introduction

Internally Displaced Person (IDPs) in North-east, Nigeria are encountering suffering because their needs are not adequately catered for by the government both the Federal and the States. The United Nations office for the Coordination of Humanitarian Affairs (OCHA) plays significant roles in improving the conditions of the IDPs in the North-east.¹ However, the hardships of the IPDs are still persisting unabated. The reason is not farfetched, the government and relevant organization like OCHA² center their efforts on how to ensure wellbeing of the IDPs without paying deserved attentions to the preventive measures against the occurrence of internal displacement.

Finding shows that government and people of the society have not realized that all members of the society both leaders and subject have collective responsibilities to prevent attacks that can lead to armed conflict particularly insurgency. If insurgency is not prevented, the member of IDPs will continue to increase and it will difficult to get the problems of IDPs resolved.

The OCHA 2019-2020 report has mapped out strategies to improve the conditions of IDPs in the North-east.³ This study shows that there are some strategies not mentioned in the OCHA report that are safe for use which are contained under the Islamic Law. These Islamic Law strategies shall be discussed in this paper. The strategies

¹North-east Humanitarian Situation Update, August 2019 Edition- Update on key activities from the 2019-2021 Humanitarian Response Strategy.

² United Nation Office for the Coordination of Humanitarian Affairs (OCHA)

³The strategies are; save lives by providing timely and multi-sector assistance and protection interventions to the most vulnerable, enhance timely, unhindered and equitable access to multi-sector assistance and protection intervention through principled humanitarian action, strengthen the resilience of affected populations, promote early recovery and voluntary and safe durable solution to displacement and support social cohesion.

if adopted shall be positive in imploring the situation and condition of IDPs in the North-east.

UN Office for the Coordination of Humanitarian Affairs (OCHA)

The goal⁵ of the United Nation Office for the Coordination of Humanitarian Affairs (OCHA) is to coordinate the global emergency responses to save lives and cater for victims of Humanitarian crises. It provides advocacy for Humanitarian needs and collaborates with Humanitarian partners in realizing its goals. It has many activities for the internally displaced persons from Bornu, Adamawa and Yobe in the North-east, Nigeria. It has recorded a great performance in the areas of those activities.

The OCHA report of 2019 in respect of North-east, Nigeria Humanitarian situation update with progress on key activities from the 2019-2021 Humanitarian Response Strategy shows that in August 2019 alone 4,021 new internally displaced persons as a result of armed conflicts were recorded across 31 locations in Bornu, Adamawa and Yobe (BAY) States. The report shows that despite the United Nations and partners efforts in ameliorating the conditions of the IDPs the increase in the numbers of displacement acts as a set back to the organization. The office had contributed in no small way to the areas of food security,⁶ nutrition,⁷ protection, gender-based violence protection, child protection, health, water sanitation and hygiene, shelter and non-food items, displacement management

⁵The mission of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) is to coordinate the global emergency response to save lives and protect people in humanitarian crises.

⁶As of August 2019, a total of 2.1 million people have received food assistance and the reminder agriculture and livelihood assistance.

⁷In August, Nutrition partners screened a total of 1,621,627 children under five for acute malnutrition across the BAY states. The screening identified 21,122 were admitted across 560 outpatient therapeutic programme (OTP) centres. In addition, 1,423 children with medical.

systems (camp coordination and camp management), early recovery and livelihoods, education, logistics, emergency communications e.t.c.

It is also indicated in the report the collaborative effort made by the office with the military. This shows that preventive measures are needed to pave way for progress in achieving the goal of the organization.

Preventive Measures against Internal Displacement under the Islamic Law

It is important to examine how internal displacement can be prevented under the Islamic state. This can be integrated as part of mechanisms to achieve the goal of the UN OCHA. The preventive measures against occurrence of internal displacement under the Islamic state are as follows:

(1) Criminal Accountability and Responsibility

It is only man that will be criminally liable and accountable because he is endowed with instrument of reason to perceive right or wrong and make choice of one to do. Every person shall be accountable for his act whether directly or indirectly.⁸

The exception to personal accountability right is in respect of liability involving payment of *diyat* (compensation) where the family of the offender will bear the brunt of the payment of such compensation in case of quasi premeditated murder or unpremeditated murder. Some of the jurists do not treat imposition of payment of compensation of the family of killer as a fair treatment because there is no bearer of burden that can bear burden of another. However, on humanitarian ground and principle of sympathy, one can see it as a

⁸Qur'an 7 verse 165, Qur'an 35 verse 18, Qur'an 41 verse 46, Qur'an 4 verse 123, Qur'an 41 verse 46.

way of sympathizing with the killer and to reduce the burden imposed by the law.

The criminal responsibility and accountability establish rights and duties of persons because the crime is committed against a person and by a person. The commission of the crime has imposed a duty on the victim and the state as the right of the victim was to be breached. For instance, a thief is committing an offence against another person. The victim of theft suffers breach of right to property. Where such right is about to be infringed upon such victim has a duty to protect his property. All members of his community also have the duty to protect the property likewise the state have the duty to protect. This imposes right and duty under the Islamic State upon all individuals and Ummah as whole to ensure that right things are done in the society.

(2) Right and Duty

Under the Islamic law, rights are exercisable as a matter of option unlike duty which is mandatory. The owners of the rights have discretionary power to exercise their rights or not. Where they elect to exercise the rights, it is lawful and where they elect to relinquish the rights, it is not forbidden. This is not applicable in the event of duty. Any person given a duty must carry out the duty and doing otherwise will amount to an offence. It must be noted that where duty is to be carried out by a person, such person shall not be criminally liable for any breach of right that might have occurred in the process of carrying out the duty. For instance, an executor who carries out death penalty imposed by court on capital offence such executor cannot be guilty of murder of the offender.

There are factors that can be considered to exercise right and discharge of duty. The factors are: Legal Defence, Reformation, Medical Treatment, Manly Sports, Deprivation of Personal Security and Rights and Duties of Authority. Only Legal Defence shall be delved at in this work because of its relevance to the discussion.

(a) Legal Defence

This is a duty of defending one's life and property or any other personal rights. This is divided into two categories:

- i. Special Legal Defence
- ii. General Legal Defence

i. Special Legal Defence: It is not debatable that Islamic law guarantees human rights. It does not stop in the guaranty of those rights alone, it also puts in place instruments to safeguard those rights. Part of the instruments to safeguard rights is this special legal defence that empowers persons to defend their rights by ensuring that a wrong is undone. Muslims are not to be daunted by any aggression. They must defend themselves against aggression.⁹ This duty is not limited to the person being attacked, it is also incumbent on all other members of the society to assist their brother to ensure the attack is not carried out successfully against him. Therefore, Islamic law considers it as a duty for every member of the society to guard against aggression.

The jurists are unanimous that defence against aggression is lawful so that rights to life and property as well as right to personal honour and liberty shall be guaranteed. However, the jurists are divergent on whether on the nature of defence and whether defence is a duty or not. The jurists are unanimous that in case of aggression against one's honour or chastity, it is a duty which must be carried out. For instance, where a woman encounter violent sexual harassment, she has a duty to defend herself. If such woman

⁹Qur'an 2 verse 194 says that "...whoever transgress the prohibition against you, you transgress likewise against him..." Narrated Sa'id bin Zaid (RTA) that Prophet Muhammad said: "He who is killed protecting his property is a martyr." (Reported by Al-Arba'a and At-Tirimidhi graded it sahih (sound).

overpowers the aggressor and the later eventually dies, the woman shall not be guilty of killing the aggressor and if she is killed by the aggressor she will die as a martyr. It must be pointed out that where a duty is imposed, it is mandatory and where it is a right, it is a matter of choice to or not to exercise same.¹⁰ Likewise, if a person sees another person committing an offence of murder, it is a duty on the person seeing them to stop the commission of offence even where it takes life. Some jurists are of the opinion that if any person sees an offence being committed and he refuses to make effort to stop the offence by way of omission, such person shall be penalised for the act of omission.¹¹

It must be said that one who chooses to exercise his right commits no sin or crime while anyone who chooses not to carry out his duty shall be an offender as his omission may amount to conspiracy, aiding or abetting commission of crime.

However, jurists differ on the issue of defence of right to life. According to Imam Abu Hanifah which is in consonance with the opinion of majority of Shafii jurists posits that defence of life is duty. Some of the Hanbilites opine that defence of life is absolutely lawful in a turmoil and absolute duty where there is no turmoil. This view is supported by some Shafites and Malikites. Majority of the jurists treat defence of property as lawful but not duty whereas the defence of life is taken as lawful and duty. The justification is that if the owner of the property elects not to defend it, he chooses to waive his right but if a victim of murder elects not to defend his life and the life was taken, the killing is not lawful and the killed will be punished for not defending his life after death. However, if he makes effort to defend his life but he is incapacitated he will not be guilty of failure to defend

¹⁰ Khan, A.A. & Khan, T.M.: Encyclopedia of Islamic law (criminal law in Islam). Pentagon Press, New Delhi (2010), p. 201.

¹¹ Ibid p. 20.

his life. It must be emphasised that self-defence is allowed under the Islamic law¹².

There are conditions¹³ precedents for defence against aggressor. These are:

- a. Occurrence of lawlessness and transgression
- b. Wrong is actually carried out
- c. No other way to deter the aggression than the way the victim takes it
- d. Defence should be proportional to the aggression

a. Occurrence of lawlessness and transgression

This condition must be satisfied before defence can be allowed. It is required that before defence is allowed or made, there must be presence of transgression. Where the act is not suitable to be qualified as aggression, defence may not be allowed. For example, where parents are beating their child for the purpose of correcting the child wrong. This is not an aggression and the child cannot make any defence except where abuse can be established. Another example is that of an executioner who carries out death sentence of an offender who is guilty of an offence punishable by death.

¹²See Quran 2 verse 194 says: Fighting in the sacred month is for aggression committed in the sacred month, and for all violations is legal retribution. So whoever has assaulted you, then assault him in the same way that he was assaulted you. and fear Allah and know that Allah is with those who fear Him.

See Sunan Ibn Majah, Kitab al-Diyat, Vol.2, Pp. 886-887: Sunnah al-Nasai Kitabul Samah Vol.3, Pp.857-858. It was reported that the prophet (Sallahualeiwassalam) said that if anyone peeps into another person house without his permission, if the latter gauges out the firmer's eyes he would not be counting any crime. The prophet (S.A.W) also said put he who in protection of his life and property is killed is a matryre. See Imam al Shafii, al-Umm. Vol.6. P.27.

¹³A.A. Khan ibid p. 204

It must be mentioned that transgression is not limited to criminal offence under the Islamic law. According to Imam Maliki, Shafii and Ahmad transgression is not limited to punishable offence but also include any unlawful and illegal act. The aggressor needs not be criminally liable before a duty of defence is imposed. Imam Abu Hanifah and his disciples opine that there must be a punishable offence and criminal responsibility before a duty of defence can be imposed. It must be said that an offender begins the commission of crime from the moment he intends committing the crime. *Mesn rea* is also a crime under the Islamic law¹⁴.

b. Wrong is actually carried out or is actually to be carried out

Where the aggression was not carried out, the victim may not have duty of defence because defence will only arise where there is transgression whether in progress or done. There should be a signal of danger before defence can arise otherwise the aggrieved person may turn transgressor. This shows that victims must exercise reasonable

¹⁴Quran 7 verse 165 says: And when they those advised forgot that by which they had been reminded, we saved those who had forbidden evil and seized those who wronged, with a wretched punishment, because they were defiantly disobeying.

Quran 35 verse 18 says: And no bearer of burdens will bear the burden of another. And if a heavily laden soul calls (another) to (carry some of) its load, nothing of it will be carried, even if he should be a close relative. You can only warn those who fear their Lord unseen and have established prayer, and whoever purifies himself only purifies himself for the benefit of his soul. And to Allah is the final destination.

Quran 53 verse 39 says: And that there is not for man except that (good) for which he strives.

Quran 41 verse 46 says: Whoever does, righteousness, - it is for his (own) soul; and whoever does evil (does so) against it. And your Lord is not ever unjust to (His) servants.

Quran 4 verse 123 says: (Paradise) is not (obtained) by your wishful thinking nor by that of the People of the Scripture. Whoever does a wrong will be recompensed for it, and he will not find besides Allah a protector or a helper.

precautions to be certain of the situation that portrays aggressive attack against him.

c. No other way to deter the aggression than the way the victim takes it

The victim must adopt most simple mode of defence. For example, where it is possible to scare away the aggressors by calling for help from others, the victim will not have reason to resort to strike wound or kill the aggressor. The victim should also adopt the most possible simple mode of defence that will not involve violence or killing except where there is no other means of defence than that one involving violence or killing.

d. Defence should be proportional to the aggression

The use of counter force should commensurate with the aggression. Where the victim uses forces that exceed the aggression, he will become aggressor himself because he has exceeded the limit. The defence of the victim must not go beyond the reasonable measure of the aggression. If the victim is excessive in his defence, he shall be responsible for his excess. The aggressor will also have the duty of defence against the excess of the victim.

ii. General Legal Defence

The duty of defence is anchored by the principle of Islamic law that is enjoining the right and forbidding the wrong. The righteous thing is tagged (*maruf*) under the Islamic law which connotes every act that is proper under the provisions and principles of *Shariah*. Wrong is every act that is criminal, illegal, unlawful and forbidding under the tenet of the Islamic law. The wrong may be defined as every offence punishable under the *Shariah*. Islamic law gives responsibility of

enjoining right and condemning wrong on every person who has the following capacities:

a. Responsibility

A person is responsible under the Islamic law, if he is matured and reasonable and Muslim. Anyone who lacks these attributes are not obligated to enjoining good and forbidding wrong. For instance, an insane and minor are not obligated but they would earn rewards where they carry out the duty. The duty of enjoining good things and condemning wrong things is not imposed on non Muslims because there is no compulsion in Islam. Where this duty is imposed on non Muslims, they will be forced to preach Islamic principles which they may not have faith in.

b. Ability of Enjoining and Forbidding

This ability is a situation where a Muslim will have power to root out crime in their community. This can be done by physical means or admonition or by way of personal loath. Muslims can carry out the duty by way of direct intervention from their hands. Where the direct intervention is not possible, they will have the duty to make campaign against the commission of the crime. Where they cannot do the admonition, they are enjoined to disapprove the crime by loath.

c. Justice

Justice is the foundation of authority. Where the person enjoining right and condemning wrong himself is not righteous, he is not qualified to perform the duty of enjoining good and forbidding wrong.¹⁵ Anyone who wants to take up the duty of enjoining rights and forbidding wrong must have passed the test of self assessment of his character. Otherwise, weight will not be attached to his

¹⁵ See Qur'an 2 verse 44, see also Qur'an 61 verse 2-3.

admonition. This is not to say that he is not allowed to perform the duty of admonition but it will bother on his integrity.

Classification of Rights

The essence of classification of rights is to know which rights impose duty on persons and to know which rights are matters of choice of owners of them. Rights are classified to public and private.¹⁶ Rights that are inherent in individual and such rights are beneficial to that individual are classified by jurists as rights of men. Rights that are beneficial to a community at large and are not particular to individual are regarded as rights of Allah. Rights of Allah are also called public rights while rights of men are called private rights. The duty of enforcement of rights of public is imposed on the state while the enforcement of that of private rights is imposed on both individual and state.

Jurists have classified rights as follows:

- (1) Public rights that are beneficial to the generality of society. For instance, implementation of hadd punishment for theft is squarely on the state. The victim whose property was stolen has no right to interfere in the implementation of the punishment on the thief.
- (2) Private rights which are beneficial to individual, for example, right to enforce contract or protection of property.
- (3) Combination of both public and private rights but that of the former take precedent and supersedes that of the later. An example is seen in an offence of slander where the state has a duty to punish the slanderer for wrong accusation against a subject of the state. However, the individual is at liberty to make claim for reducing her reputation in society.
- (4) Combination of public and private rights but that of later take precedent and supersede, that of the former. For example, *Qisas*

¹⁶ Khan A.A.opcit p.207

or retaliation which is the punishment for murder is a right falls under this classification. The family of a murdered person is entitled to right to pardon the offender or to demand for ransom (*diyyat*) or to request that the offender be punished accordingly. In this regard, private right takes precedent and supersedes public right.

Criminal Accountability and Responsibility

As a general rule, protection of life and property must be guaranteed in an Islamic state. It is a right of every person to get his life and property guaranteed. No one is allowed to infringe on the right to life and property of other persons. Security is guaranteed under the Islamic state on two basic conditions. The first basic condition of security guaranty under Islamic state is faith or belief. The second basic condition is by way of covenant.

i. Faith as Basis of Security

Under the Islamic state, Muslims enjoys the right to life and property by virtue of their faith because Prophet Muhammad when he was the head of Islamic state stated that blood, properties and honours of his subjects were sacred to one another like the sanctity of the period of Hajj. He sounded as follows:

“Beware! Do not renegade as disbelievers after me by cutting the necks of one another”.¹⁷ The Glorious Qur’an states that the believers are brethren and they should make peace among themselves.¹⁸ However where non-Muslims have an agreement or truce with the Islamic state as to protection of their lives and properties, their security of lives and properties must be guaranteed under

¹⁷Sahihi Al-Bukhari. Hadith 9, p. 199.

¹⁸Qur’an 49 verse 9-10.

the Islamic state. This is emphasised in the Qur'an that 'O you who believe, fulfill your covenant'.¹⁹

ii. Prevention of Displacement during War under the Islamic Law

The Islamic law concerning war has put in place many provisions that can give no way to displacement as a result of insurgency or terrorism. Insurgency and terrorism are the acts that can result to war even under the Islamic law. It must be said that the only war permissible under the Islamic law is the holy war which is called as Jihad.²⁰ There are two stages of Jihad: Fardhkifayah and Fardh 'ain. It is Fardh 'ain when it is obligatory for all persons except minors, women, sick and disabled to participate in the struggle.²¹ Whereas it is Fardhkifayah when only parts of the community are given the responsibilities of partaking in the fight on behalf of generality of the community.²²

It must be stressed that if enemies invade the community, it is fardh 'ain for all members of the community to defend the

¹⁹Qur'an 5 verse 1 says "O you who believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] – hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends."; Qur'an 16 verse 91 says "And fulfill the covenant of Allah when you have taken it, [O believers], and do not break oaths after their confirmation while you have made Allah, over you, a security [i.e., witness]. Indeed, Allah knows what you do." Qur'an 8 verse 61 says "And if they incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing".

²⁰Jihad is taken to mean a situation when a person exerts himself and puts in his energy with endurance to strive against injustice and oppression of his enemies. Jihad fi sabilLlahi is an act of struggling or striving for cause of Allah. See Muhammad S.H, Fiqh According to the Qur'an and Sunnah, Darussalam, King Fahd National Library Cataloging-in-Publication Data, 2008 p. 523-524.

²¹Ibid p. 527

²²Ibid p. 527

community. Where it is fardh 'ain it is forbidden to flee from battle except military retreat.²³ It is also important to state that war must be declared publicly before commencement of the war. The troops are to be arranged and banners or flag must be carried. The manners of jihad is very important to all fighters because it operates as rules of engagement. The first rule of engagement is that all fighters must fear Allah and they should be good to all Muslims who are partners in the struggle. Soldiers must not attack civilians who do not bear arm against them. It is unlawful to kill women²⁴, children²⁵ and old men²⁶ except there is necessity. This shows that where the rules of engagement under Islamic law are observed, internal displacement is impossible because it is a rule that Muslim soldiers should not attack civilians. The rules also forbid Muslim soldiers from attacking the women, the minor and old persons. Tree should not be cut, farm should not be destroyed, animals should not be killed and above all, no civilian should be sent out from his place of his residence. These are indicators that there is no way internal displacement can occur under Islamic state having made rules that the aforementioned category of persons must not be attacked in order to nip it on bug from the root.

Another cardinal principle of Islamic law to forestall internal displacement is that in the Muslim community cooperation of members of the community is imperative to promote virtue and prevent societal vices. Members of the community have duties to assist one another because it will enhance development to the community. Cooperation in the Muslim community is so important as

²³Qur'an 8 verse 6

²⁴It is reported on the authority of Abdullahi that Prophet Muhammad disapproved killing of women and children. This hadith was narrated by Al-Bukhari (6/148 no. 3014) and Muslim (3/1364, no. 24/1744).

²⁵Ibid

²⁶Ibid

a whole human body that feels the pains of other parts of the body.²⁷ It is also likened to a well-laid bricks of wall that if a part of the wall is affected the other part will equally be affected. The members of the community must be of assistance to one another to promote virtue and piety and they should not assist to promote the act of transgression.²⁸ Cooperation in the Muslim community is commanded in the Glorious Qur'an²⁹ that there should be no conspiracy to commit a crime or wrong doing and disobedience of Messenger of Allah (sallah Llahalei Wassallam) but it is allowed to make conspiracy for righteousness, piety and virtue.³⁰ In an Islamic community, brotherhood and unity must be enhanced.³¹ This makes the community to rise and fight against injustice and oppression together as one.

Therefore, there can be no displacement in an Islamic community. Every member of the community must fight to restore normalcy and justice on the land. Both leaders and subjects have responsibility to wage war against corruption on the land. The members of the community also act as keepers of their brothers no matter the circumstance may be. They would not allow their brothers to lack.

It is only the non-Muslims who are Jews and Christians that are allowed to enter pact with the Islamic state. Non-Muslims who are not people of the books are not permitted to have truce with the Islamic state. The Islamic state is tagged as Darul Islam. The entire world is classified to two. One of it is Darul Islam which is governed by Islamic law. This makes up an Islamic state. The other class is Darul

²⁷Sahih Al-Bukhari, Hadith 8.40

²⁸Sahih Al-Bukhari, Hadith 8.55

²⁹Qur'an 58 verse 9

³⁰Ibid

³¹Qur'an 2 verse 274, see Sahih Al-Bukhari, Hadith 9.83, Sahih Muslim, Hadith 6254, Sahih Muslim, Hadith 4290, Sunan Al-Tirmidhiyu, Hadith No. 4985, Sahih Muslim, Hadith 6470.

Arb which is state of war which is always hostile to the Islamic state. It must be said that a non Muslim who has agreement with the Islamic state shall also be protected under the Islamic state.

Security under the Islamic state is a collective responsibility of both subjects and leaders. This must start by way of sharing common interests, common rights, common institutions, common history and glory, common defences and security of the rights among members of the Ummah – community. All members of the Ummah must always be battle ready against those people in the state of war against them. The institution of Islamic state must exist and the arrangement of internal security must co-exist. Recourse can be made to the history of the Prophet when the Prophet entered into first³² and second³³ pacts with the people of Yathrib – Medinah. The hostilities of people of Makkah against the Prophet precipitated the two pacts which placed emphasis that the security and safety of Muslims are guaranteed in Yathrib. Recourse should also be made to the Medinah Sahifah which is called Medinah constitution. This constitution is grand norm to the operation of the people of Medinah. It is organic law that sets out the security layout of the Islamic state. Major parts³⁴ of the Medinah

³²In the 621 C.E. during the holy month, twelve men from Yathrib met the Prophet at al-‘Aqabah and showed their readiness to follow the Prophet. They enter covenant with Prophet; this is called the first covenant of al-‘Aqabah. The covenant state that the people of Yathrib agree to adhere to the absolute unity of God. They would neither steal nor commit adultery, neither to kill their children nor wittingly to commit any evil and not to disobey God commandment.

³³In the year 622 C.E. 73 men and 2 women from Yathrib came to Makkah and entered another covenant at al-‘Aqabah with the Prophet. The Prophet’s uncle Abbass ibn ‘Abd al Muttalib followed the Prophet to al-‘Aqabah though he had not accepted Islam at that time. He sought the assurance of safety of the Prophet from the people of Yathrib and the guaranteed the Prophet’s safety.

³⁴No believer shall take as an ally a freedman of another Muslim without the permission of his previous master. All pious believers shall rise as one man against whosoever rebels or seeks to commit injustice, aggression, sin, or spread mutual enmity between the believers, even though he may be one of their sons. No believer

constitution centre on security and justice among the Ummah. The first clause of Medinah charter is clarion call on all the members of the community to be ready to fight in the cause of Allah and His Prophet.³⁵

There are lots of ideas developed from this clause. It shows that despite the fact that Muslims at that time were minority, it does not pave way for them to give up their lives and properties to their enemies but it rather made it as a law that defence of their lives and property is sacrosanct and on no account they should daunt to the defeat of their enemies. As a matter of Islam members of the community must be ready to lay down their lives and properties in the way of Allah (SWT). Though, when the Medinah charter was made, war has not started in the real sense of it between Makkah and Medinah but the people of Makkah had declared war against Muslims. This made people of Medinah to initiate defensive measures against likely hostilities that might come from Makkah. It should be recalled that the two pacts³⁶ earlier made between the Prophet and the

shall slay a believer in retaliation for an unbeliever; neither shall he assist an unbeliever against a believer. Just as God's bond is one and indivisible, all believers shall stand behind the commitment of the least of them. All believers are bonded one to another to the exclusion of other men. Any Jew who follows us is entitled to our assistance and the same rights as any one of us, without injustice or partisanship. This *PaxIslamica* is one and indivisible. No believer shall enter into a separate peace without all other believers whenever there is fighting in the cause of God, but will do so only on the basis of equality and justice to all others. In every military expedition we undertake our members shall be accompanied by others committed to the same objective. All believers shall avenge the blood of one another whenever any one of them falls fighting in the cause of God.

³⁵Clause 1 of the Medinah charter says that "Those who followed the believers and fought with them shall form one Ummah to the exclusion of others". They shall be ready to defend themselves against any aggression or attack from their foes.

³⁶1st and 2nd Aqabah Bayhah entered into between the Prophet and people of Yathrib wherein they guaranteed the security of life and properties of Prophet Muhammad.

people of Medinah were to guarantee the safety of Muslims in Yathrib because the Yathribites were yearning to accommodate Islam in Yathrib.

This Medinah charter cancels all those undertakings between the Prophet and people of Yathrib by establishing Muslim Ummah. It shows that those who do not follow the believers are not included in the Muslim Ummah.³⁷ The Muslim Ummah has no geographical, ethnic or linguistic barrier. All members of the Muslim Ummah are to be united and equal. All of them were given equal status. All are free born and enjoying equality and freedom. They are portrayed by the Glorious Qur'an as the best community in the whole universe.³⁸

The charter also having provided defence against war, envisaged possibilities of prisoners of war. It provides that enemies will entitle to redeem their prisoners with kindness and justice common among believers. This is a principle that states that where Muslims capture their enemies as prisoners of war, they should treat prisoners with kindness and justice. The prisoners were also entitled to the right of repatriation after ceasure of hostility. Article 3 of the charter says "they will redeem their prisoners with kindness and justice common among believers"³⁹.

Another clause of Medinah Charter is that "Believers will not fail to redeem their prisoners or fail to pay blood money on behalf of one of them". The Ummah cannot afford losing a Muslim into the hand of

³⁷Qur'an 3 verse 118 says: "O you who have believed, do not take as intimates those other than yourselves [i.e., believers], for they will not spare you [any] ruin. They wish you would have hardship. Hatred has already appeared from their mouths, and what their breasts conceal is greater. We have certainly made to you the signs, if you will use reason."

³⁸Qur'an 3 verse 110 says: "You are the best nation produced [as an example] for mankind. You enjoy what is right and forbid what is wrong and believe in Allah. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

³⁹See Article of the Medinah Charter.

unbelievers as prisoner of war. The reason is that where a Muslim is captured as a war prisoner, he would be denied opportunity of worshipping the Supreme Being – Allah. He would not be able to practice his religion and he would be forced to be part of unbelievers. Where this occurs, all members of the Ummah must stand up for his rescue. It must be remembered that Jihad will become obligatory upon every Muslim in that community until the Muslim prisoner is rescued.⁴⁰ Redeeming prisoners is very important particularly when Qur'an 2 verse 190 is considered where Muslims are commanded to fight in the way of Allah against those who fight them. Wherever Muslims find themselves, they are in one nation which is Islamic state.⁴¹ This is a big indication that under the Islamic law, there can be no situations of prisoners of war or internal displacement. Islamic state place a duty on all the members of the Ummah as well as the institution of state to redeem whoever is captured by their enemies or pay ransom for his freedom. This is an obligatory duty on the shoulders of all Muslims of Ummah the burden of which must be discharged by all cost no matter the situation is.

Another clause of Medinah charter is that “protection in the name of Allah will be common. The weakest among believers may give protection and it will be binding on all believers”⁴². No matter how low the position of a believer is, he is allowed to give protection to non Muslim but such protection should not be given in the name of the person or the Ummah. It must be stressed that non Muslim cannot give protection to another non Muslim. It is only Muslim that can give protection to non Muslim in the Islamic state because though non

⁴⁰Qur'an 2 verse 190 provides that: “Fight in the way of Allah those who fight but do not transgress. Indeed, Allah does not like transgressors.”

⁴¹Qur'an 23 verse 52 says: “And indeed this, your religion, is one religion, and I am your Lord, so fear Me.”

⁴²See Article 14 of the Medinah Charter.

Muslims in an Islamic state have some rights but such rights do not include giving protection to a sworn enemy in the name of Allah.⁴³

Part of the charter is that “the peace of believers cannot be divided”⁴⁴. Islamic law emphasises brotherhood and unity among the believers. It states the believers must share the pain and gain together. There is no believer that should be comfortable where a fellow believer is suffering. Every believer must ensure that the peace is everywhere. All believers must ensure that the rope of brotherhood and unity among themselves is not cut off. The strength of believers is their brotherhood and unity. Muslim Ummah is one all over the world.⁴⁵

The moment there is a breach of peace in a Muslim environment, it is a duty on all other Muslims within and outside that environment to ensure that peace is restored back to the Muslims environment. It is not Islamic for a Muslim community to form allied relationship with an aggressor against Muslim community. There is no neutrality in this situation; no Muslim community should sit on the fence. They should all join together as one to bring back peace to the concerned Muslim community. It should be remembered that Prophet Muhammad places emphasis on this manner of brotherhood in Islam when a question was posed against him that “would he (the Prophet) return to his people and leave people of Medinah after Allah might have given him victory in Medinah?” The Prophet answered by saying that “No!” blood is blood and blood not to be paid for. I am of you and you are of me. I will war against them that war against you, and be at peace

⁴³Khan, A.A. & Khan, T.M. Encyclopedia of Islamic Law, 2. (Foundation of Islamic Law) Pentagon Press, p. 232.

⁴⁴See Article 19 of the Medinah Charter.

⁴⁵Qur’an 2 verse 192 says: “And if they cease, then indeed, Allah is Forgiving and Merciful”. Qur’an 23 verse 52 says: “And indeed this, your religion, is one religion, and I am your Lord, so fear Me.”

with those at peace with you⁴⁶. This is what is regarded as indivisible peace of Muslims.

Muslims are either at war or at peace. There is no half peace and half war to Muslims because peace and war are indivisible. They are either all at peace or all at war. It must be stressed that where a Muslim community is attacked by enemy. The Muslim community nearest to the attack has duty to repel the attack before others who are not close to the attack will come in as helpers. Where the nearest community is capable of tackling the issue themselves, the far Muslims must not ignore the nearest community despite their capability to cope with the situation single handedly. The far Muslims must send a token force to observe the situation and report back to them.⁴⁷ This will enable them to add to their experience. This principle of Islamic state is not considered by many Muslims community around world today. There is apparent division of peace among the Muslims around the world. The implication of occurrence of division of peace is that the Islamic fold will become weak. The principle of brotherhood and unity among the Muslims have been ignored and the resultant effect is breach of peace because of the division of Muslims.

Another important clause of Medinah charter is that “No separate peace will be made when believers are fighting in the cause of Allah”. It has been stated earlier that peace of Muslim is indivisible. Where Muslims are fighting common enemies, it is not permissible for any

⁴⁶This was made at the 2nd Ba’y‘Aqabah which is the second pact that was entered between the prophet and people of Yathrib before Medinah Charter was made.

⁴⁷Qur’an 9 verse 122-123 says: “And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain understanding in the religion and arm [i.e., advise] their people when they return to them that they might be cautious. O you who have believed, fight those adjacent to you of the disbelievers and let them find in you harshness. And know that Allah is with the righteous.”

Muslim to make separate peace with those enemies. Where a Muslim makes a separate peace with the enemy that other Muslims are fighting such Muslims will be considered as hypocrites.

In order to balance equation, where a Muslim is killed by the enemy, the Muslim must avenge the killing of their member except where the killer is ready to pay diyah as ransom for the killing.

On the final note, faith is the yardstick of operation of Muslims, where faith is lost in Muslims, they may not be able to fight for the right things and condemn the wrong things. Therefore, faith must be well ruled in the Muslims. It is only where they will abide by all the principles. This will make Muslims when defending the rights of humanity stand firm by incense of Jihad because they have belief that they are doing the best act as directed by the Law Giver.⁴⁸

The Medinah charter shows that all Muslims are in one nationhood which is Muslim Ummah. Where there is peace in the Muslim Ummah, all members of the Ummah must enjoy the peace and where there is a war against any member of the Ummah all and sundry of the Ummah must defend the victim.

It is now conclusible that there is no way internal displacement can occur under the Islamic state because:

- (1) Where there is an attack against any Muslim community, every member of that community shall have the duty to defend the attack. The victim of the attack has a duty to defend himself against the attack and his neighbours must not fold arms onlooking.
- (2) Defence of lives and properties is an obligatory duty upon every Muslim.

⁴⁸Qur'an 3 verse 110 provides: "You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allah. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

- (3) Muslims are not allowed to be onlooking where their brother is under attack.
- (4) Peace and war of Muslims are indivisible because all Muslims are brethren.
- (5) It is only people of books that Muslims are allowed to enter pact with.
- (6) Duty of defence is faith rooted and every Muslim faithful is duly bound to carry out the duty.

iv. Maslahah and Mafsadah

Maslahah indicates righteousness and goodness while mafsadah is tagged corruption or cause of corruption. According to Adud al Din al Iji⁴⁹ in his commentary on the Mukhtasar of Ibn Haji⁵⁰ defined Maslahah as being “pleasure and its means. He also defined it as what is agreeable to human kinds nature and purpose. Al Shatibi defined it in his work Unan al-Tarif as anything that is beneficial to human being and is acceptable because it is needed either individually or collectively.⁵¹ Whereas, Mafsadah is the opposite of Maslahah. It is attributable to an act whereby corruption or harm occurs either to the public or individual. It seems that all the definitions offered point to the fact that Maslahah is meant for public or individual. Where it is meant for the public is called Maslahah amah which is concerned on what is beneficial to the public rather than individual. Example of this is security of the community. This always pertains to collective

⁴⁹He was born in 700/1301 in the town of Ijin Shiraz. He died 756/1355. He as an outstanding legal theorist, linguist and Ash’ari theologian.

⁵⁰Adud al Din Abdu al-Rahman al Iji, Sharh al-Adud (a commentary on al-iji’s al-mawaqif by al-sharif Ali ibn Muhammad al-Jurjani) ed. Mahmud Umar al-Dimyati (Beirut: Daral-Kutub al-Ilmiyyah, 1419 (1998), vol. 4/8, p. 203.

⁵¹Opcit: Ibn Ashur p. 92.

obligation (Fardh al Kifayah) like defence of land of the community from invasion of aggressors.

Whereas, private interest is regarded as MaslahahKhasah which pertains to anything beneficial to individuals. This operates by ensuring that individual acts are righteous to produce righteous society. The primary objective here is individual while the public benefit is secondary. For example, inheritance.

It is important that Maslahah amah and Maslahahkhasah overweigh Mafsadah. Islamic law stresses the need to ensure that things are not working against natural dispositions of man.

Conclusion

Discussion of this paper has demonstrated to the public the approach of Islamic law to prevention against Insurgency based internal displacement in North-east, Nigeria. It is believed that prevention is better than cure, the UN office for coordination Humanitarian Affairs has been making efforts to cater for IDPs Refugees and Returns who suffer forced migration from their place of abode as a result of insurgency in the North-east, Nigeria series of activities had been laid down for the IDPs and other related persons. These activities include but not limited to Agricultural Development and Capacity building, access to financial services, Apprenticeship opportunities and entrepreneurship opportunities and wage earning in small skills and entrepreneurship, computer literacy and many more. However, the Islamic preventive measures if they are put in place as discusses above it is believed that the occurrence of internal displacement as a result of armed conflicts will be put to rest.