

International Business in Conflict Zones: The Case of MTN

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Abstract: It is not uncommon for multinational companies to establish subsidiaries outside their home countries, especially in developing regions to tap into emerging markets. It is however a different situation when multinationals establish businesses in unstable and violence-affected regions to take advantage of the local market structure that has suffered a hit by the continuous conflict. However, running a business in such regions may lead to distortion of the administration of these firms due to the violence which may destroy infrastructure and harm employees. Many firms are discouraged from investing in conflict zones because of the exposure to insecurity and violence. This paper adopts a case study and case analysis approach with an in-depth focus on the operation of a specific company and its operations in two conflict zones which resulted in distinct outcomes. In addition, a review of existing literature on the establishment and operation of a business in conflict zones was carried out to effectively examine the challenges of litigation and conflict resolution involving MTN Group as a corporate entity in Afghanistan and Northeastern Nigeria and the impact on the business operations in the respective regions.

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I. Introduction

Conducting business activities in jurisdictions marked by extreme violence is an age-long occurrence. Entrepreneurs have always taken advantage of regions experiencing some form of conflict to expand business opportunities and develop new markets. The authorities and residents in conflict areas will need

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food, ammunition, fuel, and other supplies essential to their continued existence. Some business entities will therefore have to continue operating in war zones to, at the minimum, provide basic needs for residents (Le Billon, 2005). War often has underlying commercial interests and economic incentives due to the resources-backed objectives among parties. Combatants take the opportunity to loot amid the crisis, set up illegal trading channels, and trade pacts for the items that have been pillaged and for commodities that have been made scarce because of the conflict. The questions about business in conflict go beyond the conduct of businesses during conflict and extend to the role that such business corporation plays in sustaining armed conflict and defining the violent patterns of war (Keen, 2012). Jurisdictions that suffer insecurity are prone to a sudden change in the form of government and set of rules that regulate administrative operations. As will be discussed in this paper, the authorities have alleged that MTN contributed to the conflicts in their areas of operation by non-compliance with the operational regulations or unintentional subversion of security operations. This sudden change leads to economic uncertainty, hence, the risk of armed conflict is generally assumed to deter foreign investment in jurisdictions that suffer conflict and insecurity (Morgan, 2005).

The telecommunication industry has been considered less sensitive to conflicts, unlike extractive sectors such as oil, gold, and other natural resources (Goldwyn & Switzer, 2004). However, the central role played by telecommunication, broadcast, and multimedia services has raised the question of whether media-convergent businesses can be considered to be conflict-sensitive (Ahere, 2019). Based on this background, this paper examines the investments and business activities of MTN in jurisdictions that have encountered terrorism and political turmoil. MTN Incorporated is a South African multinational telecommunication company that has found itself in the middle of regulatory infractions and business deemed inimical to peace and aiding the enemy in Nigeria and Afghanistan, respectively. The MTN group incorporated in 1994 has its headquarters in Johannesburg, South Africa, and operates several subsidiaries in African and Asian Countries including Nigeria and Afghanistan. As of 30 June 2016, MTN became the largest mobile network in Africa and the eighth-largest mobile network operator in the world with over 230 million subscribers (Statista, 2019). MTN operates active business activities in over 20 countries with one-third of company revenue coming from Nigeria, where it holds about 35% market share. The company offers voice, data, and digital services to retail customers in countries where telecoms licenses have been obtained.

The information collected is from primary and secondary sources and consists of conference papers and reports, research reports, policy briefs, journal articles, books, websites, and other reliable publications. Documents and resources that provide analyses of the business activities of MTN corporation and conflicts in Nigeria and Afghanistan have been consulted. The role of the conflict and its relationship to international business is analyzed through the available mechanisms for conflict resolution.

This paper is categorized into several sections for easy comprehension. The paper begins by reviewing the existing literature on the operation of a business in conflict zones and a

general overview of MTN as a multinational telecommunication company. The paper then analyses MTN operations in Afghanistan while examining the insecurity in Afghanistan and how the operations of MTN in the region have contributed to the lack of security. The next section discusses the operations of MTN in Northern Nigeria and the insecurity caused by the Boko Haram insurgents in the region. The mechanisms for dispute resolution of business conflict were discussed in the following section where alternative means of dispute resolution for international business conflicts were examined against the traditional litigation mode. The last section offers a conclusion that recognizes the difficulties faced by firms who operate in conflict zones while also recommending that business entities stay away from conflict regions to avoid the imminent consequences.

II. Literature Review

Companies that have chosen to establish or continue to operate their business during the conflict suffer attacks of varying degrees. Their staff may be wounded, killed, or raped, and business organizations of all kinds are destroyed in armed conflicts. Some of these organizations are also hindered from accessing credit facilities and foreign exchange for their business which causes fundamentally curtailed business operations which may in turn lead to lesser proceeds, reduction in employee salaries, unemployment, and sometimes insolvency and liquidation (Hacioglu *et al.*, 2012). It is not uncommon to find businesses involved in conflict within the areas where they operate by providing infrastructure support that has facilitated the continuation of conflicts directly or indirectly. Some have supported their respective governments while others have voluntarily or involuntarily aided armed groups (Tripathi, 2010).

Business organizations in conflict zones implement corporate social responsibilities as a means of contributing positively to society. These firms have further maintained that they carry out services that are essential to the lives of civilians in the course of the conflict. Some businesses have attempted to help negotiate the restoration of peaceful coexistence among conflicting parties while other businesses promise and also take active steps in creating jobs for members of groups who have surrendered arms (Banfield *et al.*, 2006).

However, some researchers argue against the notion that corporations operating in conflict zones are imperative for the growth and development of traditional communities. The justification for a firm's continued operation in a conflict zone is that its business does not contribute to the escalation of violence and has alleviated poverty in the areas of operation through the creation of jobs. Businesses in Zimbabwe, South Africa, and Angola have played very important roles in helping conflicting parties reach an understanding through negotiations. Also, employees of large business organizations in Rwanda and the Niger Delta in southern Nigeria, have taken exceptional measures to assist victims during an armed conflict. To prevent business organisations from worsening the situation in conflict zones it is necessary to determine clear rules for what they can and cannot do. It has also been observed that the private sector can support conflict prevention strategies in peaceful

regions through its business activities, investment programs, and participation in economic policy discourse (Nelson, 2000).

Areas experiencing conflict and insecurity pose major threats to the foreign subsidiaries, hence, the more exposed the subsidiaries are to threats, the less likely it is for them to stay and continue operations in such areas (Schotter & Beamish, 2014). Remaining in these areas and refusing to halt operations may cause major disruptions for firms in terms of bombings, pillaging, destruction of infrastructure, and exposure of employees to harm. The stall in economic growth may also prompt the local government to implement novel tax structures for additional revenue (Hacioglu *et al.*, 2012; Henisz, 2000). Multinational firms that operate in threatening and unstable environments are often exposed to insecurity and may therefore terminate subsidiary operations in conflict zones in response to terrorist attacks in the host countries (Oh & Oetzel, 2011). Firms may also be discouraged from investing in conflict zones because of the disapproval that these firms receive from their home governments.

Research findings have shown that the effect of conflict on firms may not necessarily be negative and may vary depending on the experience of the individual firm and its operations in conflict zones (Delios & Beamish, 2001).

Some large and multinational establishments have continued operations in conflict zones and even go further to make a significant investment because they can acquire local businesses that have been affected by the conflict and explore opportunities for public-private partnership to strengthen their market reach. These establishments may also benefit from government incentives and gain access to credit facilities from development financial institutions such as the World Bank Group and the International Monetary Fund (Hacioglu *et al.*, 2012). The human rights organization Corporate Watch (2006) reports that despite the huge risks of investing in a conflict zone, some well-known firms in the United Kingdom have made considerable financial gains from investing in Iraq, and other findings have shown that some firms in the diamond industry benefited from investing in the violence affected Angola (Guidolin & La Ferrara, 2007).

Corporate critics think that foreign investors abuse power, promote the abuse of the fundamental rights of man, destabilize governments, and generally worsen the situation in many environments affected by armed conflicts (Haufler, 2005). Researchers while examining the roles of firms amid armed conflict found that business in conflict zones is detrimental and in addition, will hinder tranquility. These researchers further observe that if businesses must operate in conflict-affected areas, then they must be regulated accordingly (Bennett, 2001).

The mechanisms for resolution of conflicts are numerous but the suitability of a particular mechanism to a given conflict depends on the extent of governance in the given area (Humphreys, 2005). In all these paradigms, the impact on entrepreneurs becomes significant as they need to consider whether to continue to do business or withdraw from

the conflict zones. Firm exit as a phenomenon in conflict zones was examined (Camacho & Rodriguez, 2013). The study found that paramilitary attacks in Columbia were an impetus for the firm's exit. Particularly for companies with small numbers of employees and low levels of capital. On the other hand, some states have managed to retain investment, prevent exit, and achieve marginal growth despite the existence of armed conflicts in some parts of the country (Minhas & Radford, 2017).

It is common for disagreement to arise among parties in a contractual relationship. International business entities are however expected to have at the time of executing the contract agreed to one or more dispute resolution mechanisms to be employed in resolving the differences (Reif, 1990). The situation of MTN in Afghanistan and Nigeria are distinct not only because they have occurred in different jurisdictions but also because while the Afghanistan situation led to the institution of a suit against MTN, the Government in Nigeria has only demanded the immediate payment of a penalty following an acknowledgment by MTN that they indeed refused to disconnect invalid sims cards as directed by the Federal Government. MTN has been sued in the United States because the Alien Tort Claims Act of 1879 grants the US court's jurisdiction to determine matters relating to torture without regard to the nationality of the victim and the culprits (Antoniolli, 2005).

As much as the families of the slain and injured American troops and personnel have taken the right step in the right direction by approaching the court considering that the traditional means of resolving disputes emanating from international business is by litigation (Wang, 2014), the apparent flaws in litigation as a dispute resolution mechanism has over the years led to its disapproval by litigants and lawyers alike. The surge in the number of suits filed in courts has not only led to delays in the adjudication of the cases but often resulted in the negligent nature in which suits are determined. In addition, it has been generally observed that the institution and prosecution of an action in court are not cost-effective and generally not affordable when compared to other alternative dispute resolution mechanisms (Wang, 2014). The filing fees, expert witness fees, professional fees, and other associated fees charged by legal practitioners accumulate and turn out to be a lot of money to be paid by litigants.

The deceptive and win-by-all-means technique employed by lawyers in the courtroom sways the court away from the facts of the case and more often than not results in decisions that are unsatisfactory to both parties (Thensted, 1984). This may also lead to animosity between parties considering that events that occurred during the court proceedings may cause a permanent breakdown of the business relationships between parties.

There have also been complaints by litigants that the courts in adjudicating disputes tend to consider technicalities and procedural rules over the substantial dispute brought before the court (Simon, 1978). The frustration of litigants is borne out of the fact that court decisions rely more on the procedure and rules of the court rather than the facts of the case as averred before the court.

In reaction to the weakness of litigation as a form of dispute resolution, disputing parties now look to other means of dispute resolution which include negotiation, arbitration, and mediation. These means of dispute resolution seek to decongest the court by providing a viable alternative for parties to resolve their disputes while also ensuring that the general public plays a decisive role in dispute resolution. The advancement of other means of resolving disputes rather than litigation guarantees a more competent and efficient dispute resolution experience and overall safeguards the right of disputing parties to a fair and just settlement and determination of dispute (Thensted, 1984).

Negotiation as a means of dispute resolution is a discourse between parties who are in disagreement to reach a resolution that is favorable to and accepted by both parties. It is the fastest way to get parties to reach an arrangement that ensures a win-win situation for all parties involved. Fisher *et al.* (1999) have also observed in their book that principled negotiation is the best way to resolve differences among several parties. However, for negotiation to be successful, parties must be open-minded and understanding during the dialogue and more importantly they must be inclined to an amicable settlement that is just and fair to all parties.

Mediation is the procedure whereby a skilled and unbiased umpire referred to as the mediator presides over a dialogue between parties who are in disagreement to ensure a smooth exchange between parties which may as a result ultimately put an end to the dispute (Posin, 2003). The mediator may suggest measures that may facilitate the settlement of the dispute; however, such suggestions are not binding on any of the parties.

Arbitration on the other hand is a more regulated and controlled process than negotiation and mediation. Like litigation, it is an adjudicative mode of dispute resolution however, in arbitration the formal proceeding is prescribed by an arbitral tribunal who determines the dispute by the issuance of an award (McLean, 2008).

Disputes emanating from international business are better resolved using the foregoing alternative means because parties are more likely to reach a compromise and there is a great possibility of compliance since the disputing parties were involved in the resolution process.

III. Telecommunication and MTN's Operation in Afghanistan

Following 23 years of protracted conflict, poverty, and political instability telecommunication as a commercial enterprise in Afghanistan was non-existent until about 2002 (*Afghanistan telecom brief*). This was because of the long-lasting conflicts in the country which robbed the country of many opportunities among which was the development of its telecommunication industry. In June 2002, the road to telecommunication sector reconstruction was initiated at a national assembly known as *loya jirga* which was convened by the President at that time, Hamid Karzai. The *Jirga* identified the importance of stimulating economic activity in all sectors and promoting security. A 2003 report observed that

the lack of telecommunication services has limited the administrative control, revenue collection, and peace-building efforts in the country. Therefore, in 2004, the government was able to restore telecom services under a development plan that attracted an investment of USD130 million to Afghan Telecoms which was translated to 170,000 mobile subscribers. According to Zita (2004), the adoption of a liberal approach in this risky market appears to be growing stronger with more private sector interest in the telecom market.

The first GSM Company—Afghan Wireless Communication Company (AWCC) was established and began operations in 2002 and in January 2003 a second operator Roshan was awarded the second GSM license for telecoms operation in Afghanistan (Khan, 2018). The third GSM license was awarded to Areeba in September 2005 for 15 years at a fee of USD 40.1 million. As of 2012, the total investment in the telecom market stands at USD 1.5 billion and 17.1 million subscribers.

After commencing services in July 2006, with services in the four provinces of Mazar, Kabul, Ningrhar and Kundu, the telecoms operator had an estimated subscribership of 200,000 by the end of that year. Areeba Afghanistan became the country's third mobile operator, joining Roshan and Afghan Wireless Communications Company (AWCC) in providing telecommunications services to the Afghanistan market. As part of a global merger, Areeba was later acquired by the South African-based Mobile Telephone Network (MTN) in mid-2007 under a deal worth \$5.53 billion between the two companies (Hamdard, 2012). With the takeover, MTN Afghanistan which as a result expanded MTN's global coverage from 11 to 21 countries across Africa and the Middle East. MTN has grown its coverage across major cities, districts, and provincial capitals in Afghanistan providing mobile telecommunication services, including the installation, operation, and maintenance of a Global Systems Mobile (GSM) network, wireless communication, and internet services to over six million subscribers.

MTN-Afghanistan is a subsidiary of the South African-based MTN Group, a multinational telecommunications company operating across the Middle East and Africa. MTN is the majority (90%) shareholder, while International Finance Corporation (IFC) at 9% is also a debt and equity shareholder of MTN-Afghanistan. MTN operates at 900–1800 MHZ GSM band, and as of 2012 has 4.5 million subscribers and service coverage in most major cities, 464 districts, and all 34 provincial capitals. With over \$400 million in total investment, MTN offers mobile voice, SMS, MMS, GPRS, fax, and voicemail services through prepaid, postpaid, and corporate tariffs.

MTN has interconnection agreements with all national telecom operators and provides international voice and SMS roaming in 121 countries and across 227 operators through prepaid and postpaid roaming tariffs. MTN also has a national ISP license which the company received in November 2008. MTN was the first company to introduce the popular per-second billing system in the country (also known as “pay as you talk”) allowing its subscribers to transparently track their talk time and receive billing summaries via SMS. The scheme was so popular that other GSM companies quickly adopted this method.

As part of its corporate social responsibility initiative, MTN supports the Afghanistan health sector by building health centers, and financing gynecology, blood donations, and emergency Response Services. They also dug wells and boreholes, reconstructed damaged roads, and collapsed ridges, and made efforts to rehabilitate victims of the war.

MTN through its foundation also offers free education to Afghan males and females and provides books, stationery, and computer training. The foundation also ensures that schools are kept clean and in wholesome conditions (Khan, 2018). They assist community support programs by reconstructing broken bridges digging water wells for people and helping those who are affected by war and displaced from their own homes in provinces.



Figure 1. Afghanistan Map

War and insecurity in Afghanistan

For a long time, Afghanistan has been involved in various tribal and civil wars that were caused by a duel between the superpower states and the conflicting socio-political system (Liakhovsky, 2000). The strife and unrest in Afghanistan may be traced to the 4th century during the Greek conquest and Kushan invasions by Alexander the Great. The Afghans, albeit unsuccessfully, put up a fight against the invasion of their land which was at that time a part of Persia, and renamed Bactria after the conquest (Farrell & Giustozzi, 2013). Another notable event that provoked conflict in Afghanistan was the occupation of

Afghanistan lands by the Soviet Union in 1979. The soviet troops assumed control and took charge of the major cities and provinces in Afghanistan which prompted rebellious activities by the Mujahideen against the Soviets on the one hand and the Democratic Republic of Afghanistan on the other for requesting the Soviet Union to introduce forces into Afghanistan to facilitate governance. Other wars that Afghanistan has been involved in include the Islamic conquest of Afghanistan which was from the 7th century to the early 8th century, the conquest of Afghanistan by the Mongol empire which occurred in the 13th century, the Anglo-Afghan wars which lasted from 19th century to the 20th century, the Soviet-Afghan war and the Afghan civil wars of the 20th century.

The conflict in Afghanistan today primarily revolves around the subversive and rebellious activities of al Qaeda and the Taliban. Although it is common knowledge that Al-Qaeda was founded by Osama bin Laden in 1998, there is an understanding that Al Qaeda as a terrorist group was set up by the United States government as a tool to divide and subdue the Middle East. In 2005, Robin Cook, a former British Foreign Secretary confirmed that the Al-Qaeda group was a product of the United States of America's intelligence agency (Chengu, 2014).

Al Qaeda under the leadership of Osama bin Laden orchestrated the infamous attack on the United States on September 11 2001 which resulted in nearly 3000 deaths and damage to infrastructure worth billions of dollars. The United States government responded to the September 11 attacks by invading and declaring a war on terror in Afghanistan. Following the invasion of Afghanistan by the United States, the Taliban lost grip of the country and had to move to Southern Afghanistan to seek refuge. The Taliban have since then waged war against the Afghanistan government and its security forces (Council on Foreign Relations, 2023).

The Taliban have assumed control of most of the provinces including the strategic southern province of Helmand, they continue to threaten other provincial capitals and execute suicide attacks in major provinces and cities. As of 2019, the number of United Nations documented civilian casualties since 2001 was reported to have exceeded 100,000 (Council on Foreign Relations, 2023). More than one thousand civilians have been killed and over 2000 injured including women and children in the first six months of the year 2020. The Taliban who have claimed to only direct attacks to the Afghanistan government and the foreign military have haphazardly launched attacks that have left hundreds of civilians dead and injured. The Afghanistan army is also guilty of careless air strikes that have left a good number of civilians dead and injured.

The anti-terrorism case against MTN

In December 2019, two separate civil suits were filed under the Federal Anti-Terrorism Act at the District Court of Columbia, alleging MTN and seven other corporations of aiding the enemy by paying protection money to Al-Qaeda and the Taliban in Afghanistan.

The first suit is *Guy Davis et al., v. MTN Irancell Telecommunications Services Company et al.*, Civil Action No. 22-829 (RDM) while the second suit is *Sally Chand et al., v. MTN Irancell Telecommunications Services Company et al.*, Civil Action No. 22-830 (RDM).

A third suit against MTN was also filed in the Eastern District of New York in *Zobay et al. v. MTN Group Limited et al.*, No. 1:21-cv-03503-CBA. The suit was filed by 67 American Gold Star family members, servicemembers, and their families, who were involved in several attacks by the Taliban which left many US soldiers dead and others injured between 2009 and 2017. In the case filed in the Eastern District of New York, the claimants averred that MTN violated the US Anti-Terrorism Act by making payments to the Taliban to protect its cellular towers and other infrastructure from being attacked and destroyed by the Taliban militants. The claimants allege that the payments arrangement between MTN and the Taliban began in 2006 which has since continued and adds up to hundreds of millions of dollars. The claimants further aver that these sums have been a major source of funding the Taliban's attacks against the United States troops.

These cases have another geo-political dimension as the court documents referred to a joint venture between MTN and the Iranian Islamic Revolutionary Guard Corps (the "IRGC") under a formal agreement to support the security need of IRGC which the plaintiff considers to be terrorist activities.

The claimants believe that MTN had taken the convenient route of paying off the Taliban militants to deal with their security hurdles in the conflict region instead of investing in efficient security measures to protect their cell towers, transmission masts, and other infrastructure. The claimants further aver that sources from MTN state that it was cheaper for the telecommunication corporate to pay the protection sums to the Taliban than to rebuild cell towers and other infrastructure if they were destroyed in the heat of the subsisting conflicts in the country (Gordon & Donati, 2019).

These payments heavily funded the Taliban in their activities in Afghanistan and in their strikes against the United States troops which left over 300 United States soldiers and civilian personnel dead and injured between 2009 and 2017. The claimants comprising Zobay and in the suit filed further averred that the monies were paid in cash either by direct disbursement to heads and rulers of the Taliban or payments to the community and tribal heads who over time subsequently hand over the money to the Taliban (BBC, 2019). The evidence to establish this claim is reported to have been gathered by the Afghan Threat Finance Cell who maintain that protection payments to Taliban in Afghanistan was a common practice. Other reports suggest that this is a bribe to ensure the continued business of MTN in Afghanistan.

MTN has also been alleged to have connived with the Taliban by shutting down their cellular networks at night upon the instruction of the Taliban militants to avoid being tracked by the United States troops. According to the claimants, the fact that MTN in 2011 disregarded a decree by the former President of the Islamic Republic of Afghanistan ordering MTN to re-activate its towers at night shows that the communication network

deliberately protected the Taliban, hence, sabotaging the efforts of the United States troops in combating insurgency.

Essentially, the claimants have, with the lawsuit, prayed the court for damages for the deaths and injuries suffered by the United States troops and civilian personnel as a result of attacks from the Taliban between 2009 and 2017. In a statement made after the suit was filed, MTN maintains that it at all times and in all territories where it operates, conducts its business in a responsible and compliant manner (Reuters, 2020). In April 2020, MTN filed an application asking the court to dismiss the suit for want of jurisdiction and because none of the conduct of MTN as averred by the claimants violates the anti-terrorism Act. The claimants in June 2020, amended their complaints to further aver that MTN had *ab initio* targeted the United States by conducting its business in an unstable zone not friendly or affiliated with the United States, making protection payments to the Taliban which heavily funded attacks on the US service men and shutting down its cellular towers at night to prevent the Taliban from getting tracked by the United States troops (Reuters, 2020). It is anticipated that MTN will file another application for dismissal taking into consideration the amended complaint. The leadership of MTN has expressed sympathy to the injured civilians and military personnel and to those who have lost loved ones but maintained that the MTN group is not the insurgents nor have they contributed to the tragic losses suffered by the Americans in Afghanistan.

While the suit is yet to be determined and MTN is by law presumed innocent of the allegations contained in the complaints, it is undoubtedly demeaning to the status of the largest African telecommunication group to be faced with such unpleasant allegations amid the deadly conflicts being experienced in Afghanistan.

An amended complaint by the plaintiff which was filed on 4th February 2022 shows the scale of the allegations which have been extended beyond MTN Afghanistan to the entire MTN Group Limited, MTN Irancell, MTN Dubai Limited. Also included as defendants are Chinese businesses registered in the USA—ZTE Corporation, ZTE (USA) Inc., ZTE (TX) Inc., HUAWEI Technologies Co. Ltd., HUAWEI Technologies USA Inc., HUAWEI Device USA Inc., FUTUREWEI Technologies, Inc., and SKYCOM Tech Co. Ltd., as joint defendants while the next friends, estates and representatives of several US citizens were the plaintiffs who are demanding a trial by jury.

All the defendants were alleged to be providing funds, technologies, and benefits for terror groups in Iran, Iraq, Palestine, and Lebanon against American citizens. The relief sought by the plaintiffs includes a judgment finding the defendants jointly and severally liable under the Anti-Terrorism Act, and award of punitive and compensatory damages to the maximum extent permitted by the law among others.

Significantly, all three cases contain the same factual situations on terrorism against the defendants. The challenges of multiple suits against MTN were further compounded by the inability to harmonize the cases into one suit instead of three. On 30th March 2023, District Court Judge Randolph Moss denied the defendant's MTN application to transfer

the suit to New York. The court orders were on the basis that:

“The Court is unconvinced. Although Defendants have identified a handful of factors that weigh in favor of transfer, they have failed to carry their “heavy burden” of demonstrating that the relevant considerations cut “strongly in favor” of transferring actions properly brought in this forum” (Davis *et al.* v MTN *et al.* Memorandum Opinion and Order, 2023).

The decision that Zobay, Davis, and Chand should stand alone and not be transferred has a damaging effect on the reputation and activities of the company in South Africa and other markets. Beyond corporate reputation, individuals who were officials of the company during the period of the alleged terrorism activities were added to the suit. Such individuals include Phutuma Nhleko and Irene Charnley who were both former chairman of MTN Group and executive officers respectively (Mungadze, 2022). It becomes incumbent on MTN to continue to follow suit and report to its shareholders on the challenges posed by these terrorism financing lawsuits. In a statement released as part of announcing its third-quarter earnings in November 2023, the company stated that “MTN firmly believes that the plaintiffs have sued the wrong defendants in the wrong court, based on insufficient allegations” (Gavaza, 2023).

IV. MTN and Insecurity in Northeastern Nigeria

Another regulatory infringement about the armed conflict that involved MTN occurred within the African continent in Nigeria, West Africa. The history of telecommunication services in Nigeria dates back to the installation of submarine cables by the British colonial administration in the late 19th century to connect Lagos to London which led to the introduction of phone lines at specific regions including Ibadan and Calabar (Arzika, 2000). In 1985, twenty-five years after independence, Nigeria launched her telecommunication service known as the Nigerian Telecommunications Limited, commonly known as NITEL. The organization was saddled with the responsibility of managing the telecommunications and external communications in Nigeria. Unfortunately, the organization was highly inefficient in carrying out its responsibilities, and not too long after the launch there were appeals for the rebuild and rehabilitation of the firm. These appeals led to the removal of restrictions on the private sector to take part in the telecommunication industry which as a result allowed for competition in the industry.

The Nigerian Communication Commission (NCC) was therefore set up as an independent body to regulate and create an enabling environment for competition in the telecommunication industry in Nigeria and ensure efficient and effective telecommunication services across the country. The NCC was also vested with the power to grant licenses to private sector operators (Ndukwe, 2004).

In 2001, the NCC granted renewable licenses to MTN and Econet (now Airtel) at 285 million dollars each and both corporates launched their services in August of the same

year. Both MTN and Econet were by the licence required to have at least 1.5million subscribers five years after they began operations and have a minimum of 5% coverage in each geopolitical zone.

MTN Nigeria is one of the largest providers of telecommunication services in Africa. Its services are currently cut across more than 200 cities and about 10,000 villages spanning the 36 states and 6 geo-political zones in Nigeria and the Federal Capital Territory (Ndukwe, 2005). Statistics by the NCC show that as of December 2019, the telephone subscribers in Nigeria had exceeded 184 million with MTN having the highest number of 68.7 million subscribers (Nigerian Investment Promotion Commission, 2020).

Like in Afghanistan, MTN Nigeria also has a foundation responsible for corporate social responsibility focusing on education, health, sports, and economic empowerment. The foundation has impacted the areas of poverty reduction and sustainable development growth in Nigeria. MTN through its foundation in 2015 equipped a laboratory with technical equipment in Lagos to facilitate the training of young students in technical colleges. They have also collaborated with the government in providing hemodialysis machines in general hospitals.

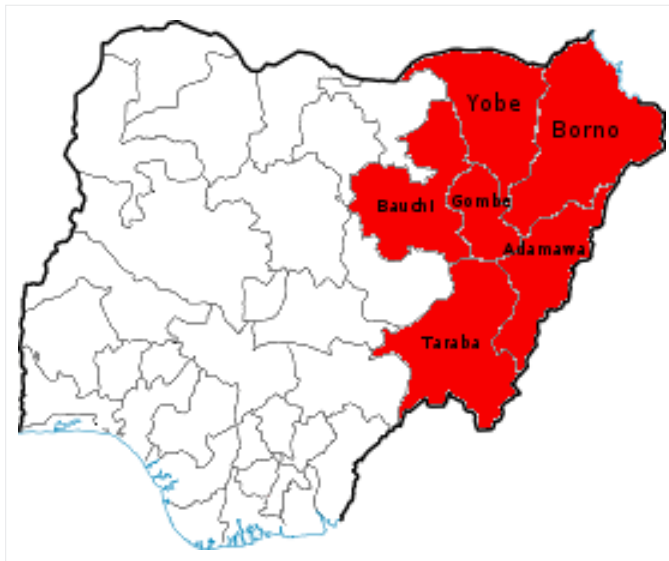


Figure 2. Nigerian Map Indicating the Northeastern States

Boko Haram and insecurity in Nigeria

The insecurity being experienced in Northeastern Nigeria which comprises six states viz- Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe has resulted in the killing of several civilians, destruction of properties, public infrastructure, rape, kidnappings, and

a complete degradation and deterioration of the North Eastern Geo-Political Zone. The insurgency in the region has been linked to the activities of the largest Islamic militant group in Africa known as Boko Haram.

Although scholars are not unanimous on when the Boko Haram sect was formed, however, it is common knowledge that the sect became active in 2001 under the leadership and mentorship of the late Muhammad Yusuf who was able to recruit poor and unemployed youths in Northern Nigeria. The sect provided recruited members with food, clothing, shelter, and medicine with funding reported to have come from well-to-do northern Nigerians and some Salafi movements in Saudi Arabia (Awojobi, 2014). Some of the members of the sect are reported to have been subjected to comprehensive training sessions within the Al-Qaeda sect in Mali and Somalia (Akinbi, 2015). It is therefore not a surprise that some of them have shown the ability to manage weapons skilfully and build local bombs using improvised explosives.

The leader of Boko Haram, Muhammad Yusuf was captured and killed in July 2009 and since then the sect has intensified its attacks on the police, the military, churches, mosques, public infrastructures, and random killings in busy markets and villages (Ajah, 2011). Since 2009, the insurgency in the northeastern Nigerian has claimed tens of thousands of lives and has displaced millions. The United Nations refugee agency has reported that the insurgency has displaced about 2.4 million civilians putting about seven million at risk of food insecurity and starvation (Campbell & Harwood, 2018).

The years 2014 to 2015 saw the region suffer the worst attacks from the insurgents. The Boko Haram sect in April 2014 claimed responsibility for the kidnap of over two hundred girls from their school in the Chibok town of Borno State. Some of the girls have been released due to negotiations between the Boko Haram insurgents and the Nigerian Government. This incident attracted concerns from various countries and international bodies. In 2014 alone, about 5000 deaths were recorded resulting from killings, and bombings including suicide attacks and kidnappings in Adamawa, Borno, and Yobe states. Bauchi, Gombe, Taraba, and the federal capital territory. The Nigerian government in May 2014 declared a state of emergency in Adamawa, Borno, and Yobe.

The government under the administration of President Goodluck Jonathan (2010–2015) and President Muhammadu Buhari (2015–present) made efforts to combat the insurgents and drive them away from areas that have been captured and fully controlled by them. Paramilitary officers and local civilian groups have also assisted the Nigerian Military by serving as a source of support and providing useful information on the activities of the insurgents.

At present there is a remarkable reduction in the activities of the insurgents in the region. They have over the years been forced out of their strongholds and peace has been restored in most areas which has resulted in daily activities returning to normal (Jacob & Akpan, 2015). Although the sect has control of a few villages and still launch attacks, they are less

powerful than they were in 2015 and have resulted in suicide bombings in their struggle against the government. It is pertinent to state that insurgency-related violence is completely absent in the South and Western parts of Nigeria considering that the insurgent activities are confined to the North Eastern geo-political zone in Nigeria (Campbell & Harwood, 2018).

A major factor that has assisted the Boko Haram sect is the use of mobile phones to plan attacks simultaneously in different areas. The insurgents are known for conducting raids, killings, and suicide attacks concurrently in different towns and villages. In an attack in March 2020, the sect attacked the Lake Chad military personnel in the Lake Chad region and almost at the same time attacked an army convoy in Borno State. The sect has also mastered the art of using mobile phones to organize several attacks to distract security personnel away from their major plans. The insurgents are known to conduct raids in small villages to divert the attention of the Nigerian military away from an even more serious and destructive attack. A good example is the infamous raid of the Chibok Secondary School where the insurgents had before the raid but on the same day attacked the Nyaya park in Abuja vide a car bomb which left many dead and several injured (Jacob & Akpan, 2015). The insurgents had by communicating through mobile phone successfully organized the Nyaya attack to distract the military operatives from their main objective of abducting over 200 girls from their school in the Chibok town of Borno state.

To defeat the insurgency, the Nigeria Communications Commission (NCC) in collaboration with the Director of Secret Service (DSS) and the Office of the National Security Adviser in May 2015 directed all telecommunication operators within Nigeria to deactivate all improperly registered sim cards. This development was prompted by apparent indications that invalid sim registrations posed a great threat to national security. The security agencies had inferred that unregistered sims facilitated the commission of heinous crimes by the insurgents by making it difficult to trace the perpetrators (Nosiri & Ibekwe, 2016).

The NCC therefore gave a deadline to all telecommunication operators to deactivate all invalid and improperly registered sims by August 2015. Upon compliance audit, it was discovered that the telecommunication operators had not complied with the directive which consequently led to a meeting between the government and the chief executives of the operators where the government reiterated its directives and warned the operators that continued violation of the directives will have the government impose penalties by the Sim Registration Regulations and licenses may be revoked.

Except MTN, all other operators within Nigeria had after this meeting fully complied with the directives. MTN had made little and ineffectual attempts to deactivate a few unregistered users in selected areas which led to the NCC in October 2015 imposing a fine of \$5.2 Billion for failure to deactivate and disconnect over 5 million improperly registered sims. MTN approached the court to challenge the validity of the penalty and obtained an order preventing the Nigerian Government from restraining them from transferring

funds abroad. MTN eventually decided to withdraw the case from court and explore alternative dispute resolution which led to a diplomatic meeting between Jacob Zuma, the president of South Africa, and Muhammadu Buhari, the president of Nigeria in March 2016. The president of Nigeria at the meeting observed that the primary concern of the country is national security and much less on the payment of the fine. He stated further that improperly registered sims are being used by the insurgents in committing heinous crimes and killing Nigerians (BBC, 2016a).

After the meeting between the presidents, the Nigerian government slashed the fine of \$1.7 billion to be paid in instalments over three years (BBC, 2016b). MTN has since then complied with the directives and in June 2019 paid the final instalment in full compliance with the penalty. The Chairman of the company was reported to have said that “this is the best outcome for the company” after the deal was struck to pay the fine.

V. Conclusion

MTN in Nigeria as mentioned above withdrew an action filed against the Federal government in the Federal High Court in 2015 and subsequently entered negotiations which led to both parties reaching a compromise to reduce the fine imposed. Upon the reports that the United States and the Taliban have reached an agreement to bring back peace to Afghanistan, it is advisable for the families and representatives of United States troops who were victims of several attacks by the Taliban to withdraw the suit and explore quicker and less expensive alternative means of resolving the matter (BBC, 2020). It is even more important if the legal practitioners intend to protect these families by keeping their information confidential and away from the public.

Undoubtedly, conflict zones take a toll on businesses and MTN has announced its intention to exit Afghanistan and the Middle East region due to its frequent entanglement in conflict. On the other hand, MTN has listed its stocks on the Nigerian Stock Exchange after the resolution of the dispute in Nigeria.

This paper comprehensively reviewed the existing literature on the establishment and operation of business in conflict zones and analyses the presence of MTN in Afghanistan and Northern Nigeria being jurisdictions that are suffering conflicts and insurgent activities. How conflicts emanating from international business are best resolved was also examined considering MTN incidents both in Afghanistan and Nigeria. While the company was able to adopt an international negotiation mechanism in Nigeria, the conflict in Afghanistan has led to a lawsuit that has remained unresolved and could influence the firm exit.

Firms that have decided to move to or continue operations in conflict zones are required to stay away from activities that may incite any form of conflict or violation of human rights. These establishments must observe business ethics in conflict environments and avoid provoking strife in their business, recruitment policies, and employment conditions more particularly their use of security personnel for protection (Dashwood, 2012).

International organizations carrying on business activities in jurisdictions suffering from insurgency are sometimes made to involuntarily participate in the creation of wealth for the military. The consequence of this action is the hostility by movements against the government and these establishments cannot often handle them. The protection of employees and ensuring the stable administration of the daily activities of the firm in such hazardous and unstable environments may however prompt some form of compromise that may result in decisions that are not in line with business ethics and may sometimes contravene the law.

If these firms have been involved in unethical activities that motivated some form of violence, it is important to promptly disengage from such activities and forthwith arrange constructive engagements to resolve issues that may have stemmed from the violence caused. However, the most secure way of handling business in conflict areas is to stay away from such zones or depart the region as soon as a crisis is perceived.

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