

Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations

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Abstract

In recent times, the involvement of the armed forces in internal security operations have come under intense scrutiny, even before the release of the 2015, highly acclaimed Amnesty International Report on the violations of human rights and international humanitarian law by the Nigerian military. The present essay deals with a phalanx of issues ranging from conceptualization of human rights, internal security operations, the relationship between human rights and International Humanitarian Law. It contends that abuses by the military in such internal security challenges are real and rife even though exaggerated and that the military is bound by the plethora of international and domestic legislation (which are highlighted in this essay) but that enforcement is the bane of the Nigerian apparatus. Conclusions are drawn from the work.

Introduction

Indeed, in Nigeria, a lot has happened in the field of human rights and humanitarian law, in recent times for consternation. It is a truism that Nigeria has not convulsed, this much, since the civil war, security-wise. The internal security challenges are gargantuan: Killings and communal clashes (even on-going) in Jos and its environs and southern part of Kaduna, Tiv-Fulani, Agatu-Fulani (on-going) clashes, acts of terrorism engendered by Jama'atu Sunnah Lida Awali Wali Jihad (Boko Haram) and other sister organizations, oil theft in the Niger Delta area, electoral violence etc. Members of the armed forces (traditionally confined to the barracks), have been deployed in aid of the police and other civil authorities to stem these plummeting internal security dislocation in Nigeria. The interventions, while lauded by many, have been pilloried on several fronts: violations of human rights and international humanitarian law, culminating in allegations of rape, torture, arson, disproportionate use of force etc. This has impelled members of the international community to upbraid Nigeria. Indeed, after the disengagement of the former Chief of Army Staff, Lt General Azubuike Ihejirika, certain groups in the Northern part of Nigeria petitioned the International Criminal Court at the Hague over alleged atrocities by the Army in Bama (Maiduguri) and Giwa Barracks (Maiduguri) where scores of civilians were allegedly killed by the army in reaction or response to violence by Boko Haram.¹ In a dialogue recently organized, it was clearly pointed out that the absence of an intermediary force between the military and the police has resulted in excessive exposure of the military to internal security operations in the states of the federation and that the prolonged use of the military for internal security operations is unhealthy for the professionalism of the military².

¹Binnyat L "Northern Elders Drag Ihejirika, 6 others to ICC over Bama deaths" <http://www.vanguardngr.com/.../> Northern-elder accessed on 7/2/2014; "Abia Assembly Tackles NEF over Ihejirika" www.mydailynewswatchng.com/.../abia accessed on 8/2/2014 where the Igbos have threatened to dust up their files and head to the same ICC to prosecute Northern Elders for atrocities against the Igbos during the civil war. See also "Arewa and Igbo documented genocide report ready for ICC" <http://groups.yahoo> accessed on 8/2/2014; "Ihejirika: Enugu Bishop spits fire, warn Northern Leaders" www.xclusivenigeria.com/.../1437-Ihejirika accessed on 8/2/2014. Lt. General A. Ihejirika has dismissed the plot as ill-conceived and probably based on misinformation

² National Dialogue on Civil- Military Relations: Assessing and Dealing with National Security Challenges, 2013, Institute of Governance and Social Research (IGSR), Abuja.

The dialogue also observed that in spite of all the necessary measures, undertaken by the military to minimize collateral damage, there is a seeming lack of awareness by the civilians, that in asymmetric warfare, collateral damage cannot be eliminated³.

The Concept of Human Rights

It is without doubt that the definition of human rights and humanitarian law are central to this work. Human rights are the basic rights and freedoms to which all humans are considered entitled: the right to life, liberty, freedom of thought and expression and equal treatment before the law, among others. The rights represent entitlement of the individual or group's vis-avis the government, as well as responsibilities of the individual and the government authorities.⁴ These rights to orangutan, are the universal moral entitlements which every human being ought to be accorded under the law irrespective of his or her status, race or religious beliefs ... they are inherent in all moral and rational creatures and for this reason they are the birth right of all human beings and they are germane to the full development of the human person and society, everywhere.⁵ Umzurike states that human rights are claims, supported by ethics and which should be supported by law, made on society, by individuals or groups on the basis of their humanity, regardless of race, color, sex or other distinction and may not be withdrawn or denied by government, people or individuals.⁶ It is believed that the protection of human rights is germane "to the sustainable achievement of three agreed global priorities of peace, development and democracy."⁷ Respect for human rights⁸ has become an integral part of international law and foreign policy.⁹ In Nigeria, the significance of human rights is not lost as the Constitution of the Federal Republic of Nigeria (as amended), which, in two chapters (two and four) provides elaborately for what are called economic, social and cultural rights and civil and political rights.¹⁰ Globally, the United Nations, expressing concerns about the state of human rights, stated that "Today, some of the most serious threats to international peace and security are armed conflicts that arise, not among nations, but among warring factors within a state"¹¹

Derogation from Human Rights

Suffice it to state that, the Constitution permits derogation from strict observance or adherence to human rights in S. 45¹² of the Constitution. S. 37, 38, 39, 40 referred to in section 45 of the Constitution deal with the right to: private and family life, freedom of thought, conscience and religion, expression and the press, peaceful assembly and association. Government is permitted to derogate from certain fundamental rights in the interest of defence, and public order. In the light of the provisions of S. 45 of the Constitution, in appropriate cases, members of the armed forces may violate human rights of individuals without repercussions. Right to life and personal liberty may be circumscribed during periods of emergency.

³ Ibid.

⁴ Maiese, M. "Human Rights Protection" www.beyondintratability.org accessed on 31/1/2014

⁵ Ornguga, Y. "Human Rights in Nigeria: The challenges of Enjoyment" in (2011) Vol. 2 No. 2 Human Rights Review, P. 559; Ornguga, Y. "Boko Haram Insurgency and Human Rights Violations in Nigeria" Bi-annual Journal of Public Law, Kogi State University, 2013 at p. 195

⁶ Umzurike, O.U. *The African Charter on Human and Peoples Rights* (The Hague: Martinus Nijhop Pub, 1979) p. 5 Human Rights Today: A UN Priority" The United Nations, 2002, <http://www.un.org/rights/HR Today>

⁷ Cassese, A. *Human Rights in a changing world* [Philadelphia: Temple University Press, 1990] at p. 2 see 'Human Rights' www.answers.com/topic/human_rights accessed on 31/2/2014; Andreopoulous, G.J. & Claude, R. P. (eds) *Human Rights Education for the Twenty-first century* (Philadelphia: Univ of Pennsylvania Press 1997);

⁸ See Human Rights "[www.answers.com.com/topic/human Rights](http://www.answers.com.com/topic/human_Rights)

⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended). Chapter II headed "Fundamental Objectives and Directive Principles of State Policy" deals with: Fundamental obligations of the government, economic objectives, foreign policy objectives, obligations of the mass media, the government and the people, social objectives, environmental objectives, political objectives, education objectives etc. chapter IV deals with: Right to Life, Right to fair hearing, right to liberty, private and family life, to freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly, freedom of movement, freedom from discrimination, to acquire and own immovable property, etc.

¹⁰ A United Nations Priority: Human Rights and Conflicts" <http://www.un.org> fights accessed on 1/2/2014; Hannum, H ed *Guide to International Human Rights Practice*, 3rd ed (Ardsley, N.Y.: transnational, 1999), Merom T ed *Human Rights in International Law: Legal and Policy Issues*: (Oxford Clarendon Press, 1984)

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

¹² CFRN, 1999 (as amended)

Internationally, the International Covenant on Civil and Political Rights provide, also, for when there could be derogation from human rights such as in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.¹³ No derogation is allowed for articles 6, 7, 8, 11, 15, 16 and 18.¹⁴ Azinge itemized the conditions that may be satisfied for derogations to be efficacious viz: the existence of a public emergency, it's temporary nature (most be lifted as soon as the emergency ceases to exist, necessity and proportionality, consistent with other obligations under international human rights and humanitarian law¹⁵. The non-derogable articles referred to are: articles Art 6 - right to life, Art 7 - right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment or even to medical or scientific experimentation, without his free consent; Art 8 - no one shall be held in slavery, slavery and slave trade in all their forms are prohibited; Art 11 - non-imprisonment owing to inability to fulfill contractual obligation; Art - no one shall be held guilty of any criminal offence which did not constitute an offence under national law or international law; Art 16 - right to recognition, everywhere and Art 18 - right to freedom of thought, conscience and religion. It is incumbent on members of the armed forces to critically study and be knowledgeable in the regime of rights and respect for them but in certain, unavoidable cases of rights violations, which set of rights can be derogated from without repercussions, etc.

International Humanitarian Law

International Humanitarian Law (IHL) means international rules, established by treaties or custom, which limit the right of parties to a conflict to use the methods or means of warfare of their choice, or which protect states not party to the conflict or person and objects that are or may be, affected by the conflict.¹⁶ IHL deals with a whole gamut of issues - prevention, control of armed conflict, post conflict legal and administrative measures¹⁷. Ladan adumbrated further legal constraints as: (a) Hostilities in general (b) conduct of combat by armed forces (c) behavior of combatants in action (d) behavior of civilian authorities and persons in armed conflict (e) behavior towards and treatment of persons and objects in armed conflicts, in particular of victims of war (f) administration of an order in occupied territory (law of occupation) and (g) relation between belligerent states and neutral state (law of neutrality)¹⁸. There are basically two types of IHL - the Law of the Hague and the Law of the Geneva. The law of the Hague involve over 800 body of rules which have become complex¹⁹. IHL rules, especially the four Geneva Conventions of 12th August 1949 are of universal application. In addition, there are two additional protocols of 10th July, 1977. It is seminal to note that the Law of Geneva and the Red Cross and it's activities share same origin as they are linked, dating back to 1859, in Italy²⁰. In 1949, after the Second World War, the existing conventions were revised and supplemented in the form of the first²¹, second and third conventions.²² In internal armed conflicts, basically, international humanitarian law regulates conflicts and makes it obligatory for parties in a conflict to spare persons not participating in hostilities and by restricting excessively dangerous or indiscriminate means and methods of warfare.²³

¹³ 1966. Article 4

¹⁴ Article 4 (2)

¹⁵ Azinge, E "Military in internal Security Operations" Challenges and Prospects Being a paper Presented at NBA 53RD Annual General Conference, 28th August, 2013

¹⁶ Ladan, M.T, "Overview of International Humanitarian Law: issues in Domestic Implementation in Nigeria" Paper Presented at Training course in International Criminal Justice and Administration, NIALS, Lagos

¹⁷ *ibid.*

¹⁸ *Ibid*

¹⁹ Regulates the use of weapons, laws and customs of war. the Geneva rules have made the Hague Rules otiose having, in the additional protocols, taken them into consideration. The ICRC had the rules included in the draft protocols additional to the Geneva Conventions of 1949. This was approved by government representations at the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law, held from Geneva 1974 to 1977

²⁰ *Ibid.* The Geneva rules have made the Hague Rules otiose having, in the additional protocols, taken them into consideration. The ICRC had the rules included in the draft protocols additional to the Geneva Conventions of 1949. This was approved by government representations at the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law, held from Geneva 1974 to 1977

²¹ *Ibid.*

²² *Ibid.*

²³ Ahmed, Loc. cit

Relationship between International Criminal Law, International Humanitarian and Human Rights

Clare de Than and Edward Shorts argue that “there is a clear, visible cross-pollination and cross referencing between international criminal law, international humanitarian law and international human rights, the first and last of which are really different perspectives on the same problem”.²⁴ The various judgments of the International Criminal Tribunal in Rwanda (ICTR) refer to human rights cases and conventions. Judgments of the International Criminal Tribunal in Yugoslavia (ICTY) are replete with reference to the European Convention on Human Rights (ECHR) and in particular Art 6 of the convention, dealing with the right to fair hearing.²⁵ The link between Human Rights and IHL has also been drawn. The World Human Rights conference in Tehran,²⁶ observed that “peace is the underlying condition for the full observance of human rights and war is a negation. In other words, it is impossible to ensure full realization of human rights with conflict and that human rights is best secured through IHL.”²⁷ In Tehran, Iran, ostensibly given the avalanche of human rights abuses in armed conflicts, in the 1960s, in various places such as Nigeria (civil war), and in other states in Africa and the Middle East, Resolution XXIII was adopted on 12th May 1968 entitled “Respect for Human Rights in Armed Conflicts”.²⁸ The World Conference on Human Rights in Vienna, Austria, in June 1993, also adopted the Vienna Declaration and Programme Action.²⁹ In recent times, the UN Commission on Human Rights no longer hesitates to invoke IHL to give imprimatur to its recommendations. The commission has continued to threaten states such as Syria with prosecution over human rights and humanitarian law violations. The UN recently asserted that “the human rights abuses prevalent in internal conflicts are now among the most atrocious in the world.”³⁰ Assaults on the fundamental right to life – massacres, indiscriminate attacks on civilians, execution of prisoners, starvation of entire population, torture, mass expulsions, torture, mass expulsion, forcible relocations, rape of women and girls, schools, homes deliberately destroyed, are common place.³¹

The Armed Forces of Nigeria

S. 1 of the Armed Forces Act³² established for the Federation an Armed Forces made up of the Nigerian Army, Nigerian Navy and Nigerian Air Force. S. 1 (3) charges the Armed Forces with the defence of the Federal Republic of Nigeria by land, sea and air and such other duties which may be conferred on it by the National Assembly, from time to time.³³ S. 8 of the Act provides that:

(1) The President shall determine the operational use of the Armed Forces, but may, under general or special directives, delegate his responsibility for the day to day operational use.³⁴

The provision of the Constitution regarding the function of the military is more comprehensive. S. 217 of the Constitution establish the army, navy and such other branches of the armed forces of the federation as may be established by an Act of the National Assembly.³⁵ S. 217 (2) say it shall have the task of

(a) Defending Nigeria from external aggression

(b) Maintaining its territorial integrity and securing it’s borders from violation of land, sea or air

²⁴ De Than, C & Short E *International Criminal Law and Human Rights* (London: Thomson & Sweet & Maxwell, 2003) at p. 12

²⁵ Ibid

²⁶ Iran, 1968 convened by the UN

²⁷ Ibid.

²⁸ Adopted on 25 June 1993

²⁹ A United Nations priority, Loc.cit.

³⁰ Ibid.

³¹ Ibid, Armed Forces Act, LFN, 2004

³² . see also S. 218 (1) (2) (3) CFRN, 1999 (as amended)

³³ Operational use includes the operational use of the Armed Forces in Nigeria for the purpose of maintaining and securing public safety and public order S. 217 CFRN

³⁴ See generally, Blanquart, G. “Boko Haram: Terrorist Organization, freedom fighters or religious fanatics? An analysis of Boko Haram within Nigeria, an Australian Perspective and the need for counter terrorism responses that involve prescribing them as a terrorist organization Edith Cavan University, gblanquart@our.ecu.edu.au accessed on 25/2/2014; CLEEN [Responding to the Emerging Trends of Terrorism in Nigeria](#) series NO. 16 (Lagos: CLEEN Foundation, 2011)

³⁵ Constitution of Federal Republic of Nigeria (as Amended).

- (c) Suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the president but subject to such conditions as may be prescribed by an Act of the National Assembly; and
 (d) Performance of such other functions as may be prescribed by an Act of the National Assembly.

With the absence of war with other states around the world, in maintaining Nigeria's territorial integrity and securing its borders, the armed forces have been deployed more to suppress insurrections and assisting, mostly the police and civil defence corp in the blizzard of ugly disturbances in different parts of Nigeria ranging from the Boko Haram insurgency³⁶ to the Ombatse cataclysmic bloodbath in Nasarawa state;³⁷ kidnapping in the South South and South East, especially the role of the military (the armed forces) for which they have come under excruciating opprobrium sometimes, unjustifiably. These have arisen from the armed forces conduct in internal military operations (ISOPS).

Meaning of Internal Security Operations

As the name suggests, internal security operations is the use of the military in the aid of civilian authorities or para-military authorities such as civil defence corp, the prisons, customs and excise, police, immigration service et al, for the purpose of restoration of order, tranquility and security.³⁸ In the Jos, Maiduguri, Yobe and Adamawa states, soldiers have been deployed in internal security operations. An author succinctly stated that: "Law enforcement is not a traditional military skill. Rather, police forces are usually entrusted with enforcing domestic criminal law under highly prescribed legislative regimes that ensure appropriate 'due process'. In fact, in the United States in particular, army or airforce involvement in internal law enforcement is generally prohibited under the *Posse Comitatus* Act. In addition, regulations similarly prohibit the US Navy and Marine Corps from directly participating in civilian law enforcement activities".³⁹ In most liberal democracies, military involvement in politics is abhorred. There is apprehension and may be angst, ostensibly, given the suppression of rights, violations, of rule of law, executive lawlessness by the military or armed forces during the reigns by the military. Nigeria, with its long history of military rule is one of such countries.⁴⁰

Instances of Internal Security Operations in Nigeria/Violations of Rights

In recent times, the involvements of the military in internal security operations were accentuated by the declaration of state of emergencies in several states of Nigeria.⁴¹ Imprimatured by the Emergency Powers Act of 1961, various presidents have used the powers contained there in. Plateau, Ekiti, Adamawa, Yobe and Borno have come under the Emergency Powers that saw massive deployment of members of the armed forces to quell the Boko Haram insurgency. Azinge⁴² has chronicled a panoply of instances of internal security operations by the military such as: the Quelling of the Tiv Uprising 1960 - 1964, Western Region Election Crisis 1965 - 1966, quelling the Biafran Rebellion 1967 - 1970, Maitasine Religious Crisis in Kano, Bauchi, Kaduna etc. The seemingly endless Boko Haram crisis has provided opportunity for the largest deployment of the armed forces in Internal Security operations history.

³⁶ Internal Security Operations – ICRC" www.icrc.org/eng/assets/...Law II final.p accessed on 5/2/2014; "military support to indirect security and stability surge operations" www.dtic.mil/.../concepts/misss-study.pdf accessed on 5/2/2014; Raghavan, V.R. Military & Internal Security: The Indian Experience www.csa-chennai.org/.../ accessed on 5/2/2014

³⁷ Stephens, D. "Military Involvement in Law Enforcement" International Review of the Red Cross, Vol. 92, No. 875, June, 2010 at p. 453, see also Kennedy, D. 'One, two, three, many Azinge, Op.cit at pp. 4-8

³⁸ Legal Orders: Legal Pluralism and the Cosmopolitan Dream in New York University Review of Law and Social Change, Vol 31, 2006-2007, P. 642 and The US Army stability operations field manual 3-07 (the stability ops manual) University of Michigan Press, Ann Arbor, 2009, Par. 3-22. Ibid at 455. The Posse Comitatus Act of 18 June, 1878 Criminalizes or fines anyone who use part of the army or air force to execute the law without authorization by congress.

³⁹ See Azinge, Op.cit at p. 4-8

⁴⁰ Oluwasegun, A.M. "Internal Security Operations and Human Rights Abuses in Nigeria: Issues and challenges <http://www.academia> accessed non 27/1/2014; Ahmed, A. "Armed Forces and Human Rights Violations as an Internal Security Challenges" asifahmed081.blogspot.com/.../armed forces accessed on 30/1/2014

See also "Internal Security: Duties and Obligations in Upholding Human Right" <http://www.claws.in/index.php?> Accessed on 30/1/2014 See the Indian Armed Forces Special Powers Act, 1958

⁴¹ See generally the Indian Armed Forces Special Powers Act, 1958

⁴² See Azinge, Op. Cit. at 15

In the conduct of internal security operations, the armed forces have been subjected to varying criticisms. Oluwasegun has documented some of these abuses in his well researched article.⁴³ A 1997 report on Nigeria, a country Report by the US Government accused all branches of Nigeria security forces of gross human rights violations.⁴⁴ Almost all the reports on Nigeria by the US governments for over a decade consistently criticized the human Rights records of government (the military inclusive). Horsfall, in a recent article on current threats to peace and security listed the following: oil theft, Niger Delta Military and Boko Haram (which he regards as the most challenging security operation since the civil war, among other crisis as Maitasine, Kalo-kato, all linked up with salafist and Al-Qaeda groups.⁴⁵ Ahmed, writing on the Indian experience, noted that the armed forces in India have been accused of extra-judicial execution of innocent civilians, illegal imposition of curfew, rape, molestation and sexual harassment of women, torture, forced labour and large scale displacement.⁴⁶ Lethal force was permitted in places like Jammu and Kashmir.⁴⁷ In support of military operations contemplated by the Constitution, the Armed Forces Act, Emergency Powers Act and other laws, the military or armed forces have carried out a phalanx of activities: patrols, manning observation posts, identity checks, arrests of suspects, detaining of persons, escort duties, ambush, controlling demonstrations, cordon and search, protecting lives and property of persons threatened, guaranteeing safe passage for victims of crisis, road blocks or vehicle check points, bomb disposal or dealing with improvised explosive devices.⁴⁸ It is in the performance of these laudable, patriotic duties that violations have also occurred. Some of them are discussed here under

Extra-Judicial Killings

The provision of the Constitution in S. 33 (1) to the effect that "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."⁴⁹ Is relevant to extra-judicial killings in the context of our discussion. Article 4 of the African charter on Human and People's Rights provides that human beings are inviolable and for this reason every human being is entitled to respect for his life and no one may be arbitrarily deprived of his right to life by member of the armed forces have been accused of extra-judicial killings in various internal security operations in Nigeria. The killing of the founder of Boko Haram in Maiduguri, in 2009, exacerbated the current insurgency in Borno state.⁵⁰ The killing of the man, captured alive, handed over to the army and died in army custody was not in accordance with the order of a court of law. Only recently, the apex Human Rights Organisation issued a report that it has evidence of extra-judicial killings and atrocities by troops fighting Boko Haram insurgents.⁵¹ The report said that the Baga massacre occurred after Boko Haram insurgents killed a Nigerian soldier.⁵² It further stated that, in reprisal, Nigerian troops attacked the small fishing community of Baga, shooting at civilians and setting private buildings on fire. Residents claimed 185 people were killed and 2,000 houses razed down. The report blamed government troops and Boko Haram for gross violations of human rights.⁵³ In Jos Plateau state, there are numerous cases of villagers shot and slaughtered in their sleep, with survivors pointing accusing fingers at the special task force constituted to help obliterate the problem in the first place.

⁴³ Oluwasegun. Loc. Cit. See Generally Nigeria: NHRC access Government Troops of Mass – Extra Judicial Killings" digitaljournal.com/article/353456 Accessed on 1/2/2014; How JTF is committing abuse in North East: Document" news.naij.com/38802.htm accessed on 1/2/2014

⁴⁴ 1997 Human Rights Report: Nigeria – Nigeria world.com accessed on 26/3/2015

⁴⁵ Horsfall, A.K. "How to achieve sustainable Peace and Security in Nigeria: Clombah.com>index accessed on 23/3/2015

⁴⁶ Ahmed, Loc. Cit.

⁴⁷ Ibid

⁴⁸ "Plateau Killings: Disband STF now, HURIWA tells Jonathan" Premiumtimesng.com/.../52874; "Plateau State: Nigeria gunmen 'dressed as soldiers' fire in pub BBC" www.bbc.co.uk/world-africa 2051275, "Eyewitnesses: Nigeria soldiers slaughtered fleeing Christians" midnightwatcher.wordpress.com/.../... accessed on 5/2/2014; "Blood on the Plateau: Escape from Rwanda (2)" www.nguardiannews.com/.../... Accessed on 5/2/2014

⁴⁹ Okoye, F "Rules of Engagement, insurgency and the civil populace" THISDAY, Sat 01, February, 2014 accessed 30/4/2013; S.35(4)

⁵⁰ Ibid. of course, the senate of the National Assembly absolved the soldiers of blame even though satellite images provided by Human Rights Watch confirmed the soldiers destruction of houses.

⁵¹ Ibid.

⁵² Ibid.

⁵³ See Note 49

The soldiers or the STF has always countered that the gun-men only dressed as soldiers.⁵⁴ Perhaps, I should add that others too have criticized the actions of the military. In an article in 2013, Festus Okoye stated that: “nothing justifies the conduct of internal security operations on the basis of revenge or collective punishment for the victims of internal insecurity challenges or killing of women and children who need protection during periods of internal security challenges. Nothing justifies the leveling of a whole community just because of the misdemeanor of a few people. Women and children deserve maximum protection. Protection of unarmed populations targeted by insurgents is a cardinal principle of international law and international humanitarian law but when the protector becomes the aggressor, the civilian populations are left unprotected and vulnerable.”⁵⁵

Indefinite Detention

Freedom of movements and personal liberty rights are rights that an officer on internal military security must avail suspects and civilians of. Section 35 (1) of the Nigerian Constitution provides situations where the rights are excepted. The Constitution also provides that any person charge with a criminal offence shall be brought before the court of law within reasonable time (a day or two days or such longer period). Hundreds accused of various offences against the state during the on-going insurgency in Borno, Yobe and Adamawa (some taken to Abuja), unfortunately are yet to be tried. In the NHRC report referred to earlier, the commission blamed Boko Haram and government for rights violations, noting that detainees were and are held in un-gazetted places of detention with no adequate or inadequate documentation outside the safeguards of applicable laws, including the constitution and the charter on Human and Peoples Rights.⁵⁶ In the detention, accesses were not or are not granted to family members or medical personnel.⁵⁷

Violations of Other Rights

Concerned about the role of security forces in internal security operations, the United Nations General Assembly adopted a resolution on December, 17, 1979 that all security personnel shall respect and protect human dignity and uphold the human rights of all persons as well. It applies to the armed forces. They have to abide by the international conventions against torture and other cruel punishment against humanity. It is incongruous that the same armed forces that served with distinction in peace-keeping operations around the world could be pilloried at home, accused of brass knuckle tactics, high handedness, insensitivity, excessive use of force, discrimination on grounds of religion, nepotism, rape, torture, assault on personal dignity, arbitrary arrest among hordes of abuses. In the report⁵⁸ referred to in the footnote entitled “Stars on their shoulders. Blood on their hands: war crimes committed by the Nigerian Military”, it was discovered that “since March 2011, more than 7,000 young men and boys died in military detention and more than 1,200 people were unlawfully killed since February 2012”. Shethy said further that “This sickening evidence exposes how thousands of young men and boys have been arbitrarily killed or left to die in detention in the most horrific conditions. It provides strong grounds for investigations into the possible criminal responsibility of members of the military, including those at the highest level”.⁵⁹ Expectedly, there have been angst and furious reactions in and outside the military with some denouncing the report as an International Conspiracy⁶⁰ and that the military has nothing to hide. Indeed, the generality of the citizens of Nigeria have pilloried the report and unbalanced as the report largely ignored the violations by the group.

Legal Regime for Internal Security Operations/Best Practices

For operations within borders, domestic legislation, generally govern internal security operations. Nigeria is however not an Island and the rules of international and humanitarian law govern internal security operations. To some of these regimes are discussed below.

⁵⁴ S. 35(4)

⁵⁵ NHRC, Loc Cit.

⁵⁶ Ibid

⁵⁷ Ibid.

⁵⁸ Amnesty International “Nigeria: Senior members of the Military must be investigated for war crimes” www.amnesty.org/news. accessed 28/7/2015, Amnesty International Report 20/4/2015.

⁵⁹ Ibid.

⁶⁰ Onuorah, M. “Anger in Military over Amnesty Report/The Guardian Nigeria www.nguardiannews.com 72015/06 Accessed on 28/7/2015.

The Armed Forces Act, LFN, 2004

The Armed Forces Act⁶¹ contains provisions for handling the cases of officers subject to the Act who have misconduct themselves. The Act makes provisions for offences and punishment of military and civil offences through the court martial. Some of the military offences are drunkenness - S. 64; fighting, quarrelling and disorderly behavior - S. 55, cowardly behavior - S. 47; aiding the enemy - S. 45; communication with the enemy - S. 46, looting - S. 37; offences relating to property - S. 66 -68; rape and carnal knowledge - S. 77, defilement - S. 78; sodomy - S. 81, irregular arrest and confinement - S. 84. The Armed Forces Act classifies certain offences as civil offences.⁶² These provisions are circumscribed or bedeviled by two factors: the will to prosecute, in certain cases, even in the face of flagrant abuses and commission of these offences under the façade of ‘performance of patriotic duty’. I am tempted to go along with the failure to prosecute, given the horrendous and inhumane plots hatched against the military in certain cesspits in Nigeria. Secondly, the failure to prosecute is hamstrung by the Emergency Proclamation Laws which gives imprimatur to the crackdown on the insurgency, legalizing acts that would otherwise be illegal. I submit that our problem may not be absence of legislation, but enforcement.

Nigerian Penal Laws

While members of the armed forces are subject to military law, in certain instances, they may be subject to civil law, so-called. This is especially so after their disengagement from the Armed Forces. The Criminal Code Act⁶³ and the Penal Code Law⁶⁴ contain series of provisions for offences and punishments. Some of the offences that armed forces personnel on internal security duties may be subject to are: culpable homicide punishable with death (murder); culpable homicide not punishable with death (manslaughter, infanticide, assault, slave dealing, causing grievous hurt, assault and violence to the person, theft or stealing etc. The Emergency Powers Act, 1961 and various other specific laws have also been promulgated, speedily and signed into law with respect to Plateau, Ekiti, Borno, Yobe as insurgency. The Constitution (FRN, 1999 (as amended). We have stated herein before, that S. 217 which establish the Armed Forces, gives the president power to call on the armed forces to assist civil authorities in times of need. S. 305 also give the power to the president to make proclamation of a state of emergency in the federation or any part thereof in the official gazette. The proclamation is usually issued by the president when: the federation is at war, the federation is in imminent danger of invasion or involvement in a state of war, there is actual breakdown of public order and public safety; these is occurrence of imminent danger, there is other public danger⁶⁵ or the president receives a request in accordance with S. 305 (4). S. 218 of the Constitution, dealing with the power to determine the operational use of the armed forces of the federation, is equally important here.

Basic Principles on the Use of Force, by Law Enforcement Officials, 1990 (United Nations)

The principles urge government to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials, even as it must keep the ethical issues associated with firearms under review.⁶⁶ Article 2 provides that government and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement official with various types of weapons and ammunition that would allow for differentiated use of force and firearms. Article 3 provides that the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons and the use of such weapons should be carefully controlled.

⁶¹ LFN 2004

⁶² The Armed Forces Act defines civil as an act or omission punishable as an offence under the penal provisions of any law enacted in or applicable to Nigeria.

⁶³ The Criminal Code Act is applicable to states in Southern Nigeria (most southern states have altered provisions of the Act in accordance with modern developments) The Penal Code Law is applicable to states in Northern Nigeria.

⁶⁴ See Chapter 25, 27, 29 and 31 of the Criminal Code

⁶⁵ S. 305 (3) CFRN, 1999 (as amended)

⁶⁶ Article 1. See ‘UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials’ www.facing-finance.org/.../un-force see also Amnesty International, Unlawful Use of Firearms by Law Enforcement Officials, 1 March, 1997, EGR/39/01/97 at <http://www.reford.org/docid/> accessed 8 February, 2014; See Emmanuel, O. “Nigerian Army Accused of Serious Human Rights Abuses” www.premiumtimesng.com accessed on 4/6/2015; World Report 2014: Nigeria Human Rights Watch M.hrw.org.country-chapters>nigeria accessed on 4/6/2014; See also “Nigeria: Senior Members of the Military must be investigated for war crimes” www.amnesty.org

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.⁶⁷ Force and firearms may be used only if other means remains ineffective or without any promise of achieving the intended result. The provision of Article 5 is seminal. It provides that whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint; minimize damage or injury and assistance provided. Injuries from firearms by law enforcement officials must be reported to their officials.⁶⁸ Government shall ensure that arbitrary or abusive use of force and firearms by public officials is punished as criminal offence under this law. It is doubtful if some of these basic principles have been reduced to local legislation for the purpose of punishment. Article 8 provides that internal political instability should not be invoked to obviate compliance with the basic principles.

There are also special provisions in the basic principles such as Article 9 which provides that Law Enforcement officials shall not use firearms against person except in self defence or defence of others against immediate threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority. Even in the use of firearms, aptly captured in Article 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.⁶⁹ Again, it is doubtful, almost non-existent to have law enforcement official give clear warning of their intent to use firearms after first identifying themselves. The *raison detre* for this could be that no time exists for law enforcement officials to follow laid down rules. Article 11 of the article provides also that rules and regulations on the use of firearms by law enforcement should include guidelines that state the circumstances under which law enforcement officials are authorized to carry firearm and prescribe the types of firearms and ammunitions, ensure firearms are used only appropriately in a manner not likely to cause unnecessary harm; prohibits the use of those firearms and ammunition that cause unwarranted injury; regulate the control, storage and issuing of firearms; provide for warning to be given and provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty. The question that invariably follow is: what has been the extent of compliance with the rules by the armed forces of member states? It is doubtful that those on the field, 'the battlefield', so to speak have seen the rules before or even read them. Among the rank and file, it is a truism that illiteracy rate is very high. This will invariably act as constraint to the non-adherence to the rules. Adherence to the rules will, most certainly, positively impact on human rights and humanitarian law in internal security operations.

Code of Conduct for Law Enforcement Officials, 1979

This code of conduct was adopted by the General Assembly resolution 34/169 of 17th December, 1979. Article 1 provides that law enforcement officials shall at all times fulfill the duty on them by law and maintain a high degree of responsibility. Article 2 of the Code of Conduct states that in the performance of their duty, law enforcement official shall respect and protect human dignity and maintain and uphold the human rights of all persons. Article 3, provides that law enforcement officials may use force only when strictly necessary and the extent required for the performance of their duty. Article 5 prohibits the inflicting, instigating or tolerate any act or torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior order or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability any other public emergency, as a justification for torture or other cruel, inhuman or degrading treatment or punishment. Law enforcement officials shall ensure the full protection of the health persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required. Law enforcement officials, under the code, shall not commit any act of corruption. They are urged to oppose and combat them. Some of the rules in the code may have found their ways into rules of engagement but it is debatable if, in internal security operations, members of the armed forces implement the code of conduct

⁶⁷ Art. 4; See also Protocol Additional to the Geneva conventions – ICPC www.icrc.org/ihl/intro/470 accessed on 7/2/2014; "Summary of the Geneva Conventions of 1949 and their additional protocols" www.redcross.org/.../m3640104 IHL accessed on 7/2/2014

⁶⁸ Art. 10 Ahmed, Loc. Cit. see Parks, T. "The Elephant in the Room: Internal Security Operations and Conflict Management" <http://asiafoundation.org/.../the-elfephant-in-the-room> accessed on 28/1/2014

⁶⁹ Article 6 of the Code of Conduct

Geneva Convention Relative to the Protection of Civilian Persons in Time of War - 12 August, 1949 (Geneva Convention)

This convention makes provisions which are applicable in non-international armed conflict. Extensively, Article 3 provides that:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combatant by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria:

To this end, the following acts are and shall remain prohibited at anytime and in any place whatsoever with respect to the above mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilations, cruel treatment and torture;
 - (b) Taking hostages
 - (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict. The parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present convention. The application of the proceeding provisions shall not affect the legal status of the parties to the conflict. In internal military operations, in different parts of the country, have the military or armed forces acted or been acting in compliance with article 3, extensively, reproduced above? The answer is no.

Protocol Additional to the Geneva Convention of 12 August 1949 and Relating to the Protection of victims of non-international Armed Conflicts (Protocol II) of 8 June, 1977 (Additional Protocol II to the Geneva Conventions)

According to Article I of additional protocol II of 1977, a non-international armed conflict is characterized by fighting between the armed forces of a state and dissident or rebel armed forces or other organized exercise that control part of the territory as to enable them to carry out sustained and concerted military operations and to implement the international law applicable to this kind of conflict. It must be sustained and concerted which must be juxtaposed against internal disturbances such as riots, which may be sporadic, isolated and staccato which would not fall into armed conflicts, so-called. A conflict however between two ethnic groups may be classed as internal armed conflict provided it has the necessary characteristics of intensity and participation. It is germane to state therefore that this protocol was adopted because Article 3 common to all four Geneva Conventions of 1949, proved to be inadequate because of the percentage of conflicts around the world, most of them, civil in nature and content. The basic principles are to be found in Article 4 which deals with fundamental guarantees. There are in all 28 articles. Part II of the Convention (containing three articles) deal with fundamental guarantees, persons whose liberty have been restricted and penal prosecution. The section on fundamental guarantees demands protection for rights of persons who do not take part directly or who have ceased to take part in hostilities. The section prohibits violence to the life, health and physical and mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, collective punishment, taking of hostages, acts of terrorism, and outrages upon a person is dignity etc.

Part II provides for the wounded, sick and shipwrecked (Art 7-12). Provision is made for the protection of civilian population (protection of civilian population, protection of objects indispensable to the survival of the civilian population, prohibition of forced movement, protection of works and installations containing dangerous forces) etc.

The provision of Protocol II [Additional to the Geneva Conventions, juxtaposed against acts of the military or armed forces on trouble spots or cesspits on the ground, in internal military operations, leaves a sour taste in the mouth.

Allegations are rife in Gombe, Jos, Adamawa, Maiduguri and other places of sordid practices such as scorched earth policy (houses where civilians such as women and children live in are being blown off because of the atrocities of the head of the family), beating of vulnerable groups, frog-jumping of such persons, rape etc even in the absence of direct evidence of involvement in the armed conflict. I am not oblivious to the dangers of fighting terrorism or the cul de sac or dilemma that the armed forces find themselves. I am aware that in some cases, these civilians are used as human shields, making them easy targets for the military. I am aware that containing insurgency on the one hand and preventing violations of human rights on the other hand are gargantuan tasks. In any case, even in Borno, Gombe, and Adamawa states, the record of rights compliance by Boko Haram are dismal and almost non-existent. It was Ahmed, who, in the case of India stated that “the seminal problem of all laws, including humanitarian law, is the yawning gap between precepts and practices.”⁷⁰

Miscellaneous: In addition to the panoply of rules and legislation exhibited, there are also rules of engagement, which the author, tried in vain to get. In 2015, other laws were made. A 2015 Act – the Administration of Justice Act, a Federal Law, provides that “(1) a person arrested shall be accorded humane treatment, having regard to the right to the dignity of his person; (2). A person arrested shall not be subjected to any form of torture, cruelty, inhuman or degrading treatment. (3) A person shall not be arbitrarily arrested, or arrested on allegations that bother on civil wrong or breach of contract, but the arrest shall be based on reasonable suspicion that the person arrested committed or is about to commit a crime punishable as an offence under a written law. In addition to this law, the violence Against Persons (Prohibition) Act, 2015 prohibits the commission of harm or injury and other allied abuses or violations on a person. Violations are criminal and punishments are attached

Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts Not of an International Character

Claire de Than and Edward Shorts⁷¹, in their *magnum opus*, listed war crimes which can be committed in situations of non-international armed conflict and which are subject to the jurisdiction of the International Criminal Court (ICC) in Article 8 (2) (e). The offences are similar to the offences under Art 8 (2) (b) of the offences committed during international armed conflicts:

The offences referred to in Art 8 (2) (e) are:

- i. Intentionally directing attacks against the civilian population;
- ii. Intentionally directing attacks against buildings, materials, medical units etc.
- iii. Intentionally directing attacks against personnel, installations, material, units etc.
- iv. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, etc.;
- v. Pillaging a town or place, even when taken by assault;
- vi. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, etc.
- vii. Conscripting or enlisting children under the age of fifteen years into armed forces or groups etc.
- viii. Ordering the displacement of the civilian population for reasons related to the conflict, etc.
- ix. Killing or wounding treacherously a combatant adversary
- x. Declaring that no quarter will be given;
- xi. Subjecting persons who are in the power of another party to the conflict and
- xii. Destroying or seizing the property of an adversary”⁷²

These are obvious sanctions. States have important rights and obligations to act against such crimes. The jurisdiction of the ICC does not replace, but it is complementary to, national jurisdiction.⁷³

⁷⁰ Ahmed, Loc. Cit.; See Park, T. “The Elephant in the Room: internal Security Operations and Conflict Management” <http://www.asiafoundation.org/.../the-elfant-in-the-room> Accessed: 28/1/2014

⁷¹ Dethan, C. & Shorts, E. *International Criminal Law and Human Rights* (London: Thomson & Sweet & Maxwell, 2013) 173-175; See also Gray, C O Another Bloody Century: Future Warfare (London: Weidenfell & Nicolson, 2005)

⁷² ICC Statute

⁷³ Azinge, Op.cit at pp 16

For such crimes, all states must, assume power to prosecute and punish the perpetrators, irrespective of whether the perpetrators or the victims of the crimes have a connection with the state parties concerned. A state which is subject to this duty may not shelter the person: if it does not want to prosecute the person itself, it is obliged to extradite the person to the ICC which has jurisdiction over the matter. It is therefore inappropriate to petition the ICC in the case of some soldiers when there has been no exhaustion of local remedies i.e. our courts have not declined jurisdiction to prosecute.

The African Charter on Human and Peoples Right, Lfn, 2004

It is an international instrument intended to protect human rights and basic freedoms Articles 1-26 provide for rights and duties such as right to freedom from discrimination, right to life, prohibition of torture and cruel, inhuman and degrading treatment right to personal liberty and prohibition from arbitrary arrest, right to fair trial, right to freedom of movement, duty to promote human rights etc. The instrument has now been domesticated in accordance with Section 12 of the Constitution and it demands compliance from individuals and government in Nigeria.

International Charters on Human Rights

There are also plethoras of international legislation on Human Rights that guide the conduct of everybody and even soldiers, during military operations. Some of these charters are the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The Armed Forces and Current Challenges

Opprobrious remarks may have been made because of the challenges that members of the armed forces encounter, on daily basis. Some of them are highlighted below:

- (a) Funding: Around the world, because of economic morass that most economies are experiencing, the budgets for the military have been on a downward spiral except for states such as China and Russia that have placed emphasis on upgrading the military. With equipment, obsolete or anachronistic, sometimes outgunned, in terms of superior weaponry, the proper actions may not be taken by the armed forces of Nigeria. In the case of Nigeria, and the current Boko Haram campaign the USA refused to sell sophisticated weapons to Nigeria, tying it to improvement in human rights records by the armed forces.
- (b) Training: There have been challenges in the area of training too. Most training by the military are localized, ostensibly, as a result of poor funding. Time was when a lot more officers were trained in some of the best military facilities around the world which provided opportunities to make comparisons. With adequate training, officers would be sensitized in the use of reasonable force as opposed to disproportionate force that has become the military's albatross around trouble spots in the country. The latest amnesty report gives support to this position. The need to refocus training is certainly imperative.

Patriotism: The armed forces that used to be a fulcrum or pivot for unity in Nigeria is now fractious and fractured. The division along ethnic and tribal lines, religious and some times, ideology are real. With a new government, some of the damage may be reversed. Educations are part of their ideological lines and are clearly noticeable. More than other challenges such as orientation, strategy and tactics, the dearth of patriotism is responsible for the woes of the armed forces. There have been tales, in internal security operations of 'friendly fire' or 'squabbling over strategy', 'refusal to take commands', 'deliberately undermining security', 'carelessness', 'recklessness', 'love for money', 'cavalier operations' etc. These factors have undermined internal security operations and led to flagrant right abuses with consequences for the armed forces and its officers.

Conclusion

But for the intervention of members of the armed forces, the situation in most trouble spots, in the country, would have been different.

The military halted, to a large extent the ethno-religious crisis, at various times in Jos, from 2001 to date. In the areas under Emergency rules, relative calm has been restored even though excruciatingly, a painful bout of violence takes place from time to time. The challenges confronting the military are huge. There has been impunity in some of the cases, despite the provisions of the law and rules to prevent abuses of human rights and humanitarian law. The impunity must be obliterated, investigations into gross abuses of human rights and humanitarian law must be conducted against members of the armed forces and the guilty punished.

It must be borne in mind however, that members of the armed forces operate in a difficult environment, a convoluted milieu, in crisis, some novel in tactics, methods, strategy and weaponry deployed by militants and insurgents.

There is need to insist on honest, transparent, holistic compliance by the armed forces to human rights and humanitarian law and it may be time to begin to reconsider the argument and the constitutional provision on derogation from human rights that such rights can be asphyxiated on the altar of national security. There must be emphasis on training and most importantly education as officers can read the basic rules and laws governing such internal operations and minimize violations of rights. While prosecution of errant officers in the courts are recommended, the judiciary in certain cases (such as states under Emergency rule), may be hamstrung by the immunity provided by the enabling Emergency Laws. I support calls for the establishment of Human Rights cells to deal with cases of abuses in various commands with on-going conflicts. Gross abuses could be quickly looking into at those cells. The officers could be punished under the regime established by the Armed Forces Act. In other situations, independent commissions of inquiry may unravel the truth about large scale or serial violations of human rights or international humanitarian law. With the release of the recent report by Amnesty International on the gruesome abuses by the Nigerian military, and the attendant interests and denials, it is becoming extremely impossible for government to discountenance and deflate the criticism. What government is going to do is debatable.