

COMPARATIVE ANALYSIS OF THE ROLES OF THE MILITARY IN INTERNAL SECURITY OPERATIONS IN NIGERIA WITH SOME OTHER JURISDICTIONS*

Abstract

The emergence of new security challenges such as terrorism, militancy, banditry, natural disasters and other forms on internal conflict and crisis in the countries of the world today has evolved the use of the military from its traditional functions of defending the state against external threats to an engagement in internal roles and uses. This work aims to review and compare the internal roles the military is allowed to play in Nigeria and within some selected regional democracies. The legal bases for military internal roles in the entities or countries reviewed are analysed to fully identify and understand the context in which internal roles and tasks are performed by the military. It is found that the internal roles of the military are varied in the countries or entities reviewed depending on each country's historical, legal, social and political background. However, the lacunae, clogs and restrictions found in some of the legal frameworks regulating the use of the military in internal security operations and the increasing use of the military in internal security operations have posed some potential hazards or challenges. The military personnel in internal security operations are not without wrongful deeds and abuses like human rights violations. It is, therefore, recommended that all lacunae, clogs, restrictions and military uses which pose potential hazards or challenges should be addressed and removed. The Nigerian government and policy makers are advised to learn from its own and other countries' experiences to guide the nation in formulating and adjusting the respective military internal roles, functions, responsibilities and the extent the military is used in handling internal security challenges in Nigeria.

Keywords: Military, Security, Internal security operations, Military Internal Security Operations.

1. Introduction

The United Nations and countries have engaged their military in tackling domestic security challenges and have also developed approaches for such military roles. The focus of this paper is to examine the internal roles the military are allowed to play in Nigeria and in some selected regional democracies, highlight the measures and mechanisms for accountability and to draw out lessons and recommendations from the countries' experiences.

2. Definition of Key Terms

The key concepts used in this study which include the terms 'military' and 'internal security operations' are defined below. Firstly, the term 'military' has been defined in the Black's Law Dictionary¹ as synonymous with Armed Forces. By Section 1 of the Nigerian Armed Forces Act,² the Military in Nigeria called the armed forces is made up of the Nigerian Army, the Nigerian Navy and the Nigerian Air force. Section 1 (3) of the Act³ charges the Armed forces with the function of 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. The Army specialises in land soldiering, the Navy specialises in Sea soldiering while the Air force specialises in air soldiering. Secondly, the term 'internal security operations' (ISOPs) has been defined by Scholars to mean; 'those acts carried out by domestic security agents such as the police, custom services, immigration services and others for the purpose of containing domestic threats to the security of the country'.⁴ ISOPs which include the maintenance of peace and order are part of the functions of the civil authorities like the police and not a traditional military function. However, the military has often been involved in ISOPs in aid of the civil authorities in maintenance of peace and order.⁵ The 'military ISOPs' has been defined as those roles and tasks performed by the military within the state borders and outside the military core function of defence of states from external threats.⁶

*By **Augustine I. ORABUEZE**, Legal Department, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: izuorabueze@gmail.com

¹Bryan A Garner, *Black's Law Dictionary*, (8th Edition; USA: Thompson West, 2004) p. 1013.

²Cap A20 Law of Federation of Nigeria 2004, see also Section 217 of the Constitution of the Federal Republic of Nigeria, 1990 (as amended) which also provides for the establishment and composition of the military in Nigeria.

³The Armed Forces Act, Cap A20 Laws of the Federation of Nigeria, 2004.

⁴E Azinge, 'Military in Internal Security operations: Challenges and Prospects', being paper presented at the Nigerian Bar Association 53rd Annual General conference on 28th August, 2013, p. 4<<http://www.nialsnigeria.org/PDFs/EPIPHANY%20AZINGE%20MILITARY%20IN%20INTERNAL%20SECURITY%20OPERATIONS.pdf>> accessed on 17 March, 2020. Z.B. Peterside, *Op. Cit.*; A.M. Oluwasegu, *ibid*.

⁵See, Constitution of the Federal Republic of Nigeria, 1999, Section 217 (2) (c) which provides that the military may be called upon in suppressing insurrection and acting in aid of civil authorities to restore order...

⁶T Edmunds, 'What are Armed Forces for? The Changing Nature of Military Roles in Europe' (2006) Vol. 82, No 6 *International Affairs*, pp. 1059-1075 at 1062.

3. Comparative Analysis of the Roles of the Military in Internal Security Operations

The entities or countries covered in this comparative study are Nigeria, the United Nations (UN) and its Blue Helmets, the United Kingdom (UK), India and Kenya.

3.1 Nigeria

Although the main function of the military in Nigeria is to protect the nation from external aggression or threats, the Nigeria military can be employed to assist during internal security challenges in Nigeria. Generally, section 217 (c) of the Nigerian Constitution as amended makes provision for when the Nigerian military may be involved in internal security operations in Nigeria and the roles they could play as follows: ‘Suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the president, subject to such conditions as may be prescribed by an Act of the National Assembly; and performing such other functions as may be prescribed by an Act of the National Assembly’.⁷ Section 218 (1) of the Nigerian Constitution bestows on the Nigerian President the power to determine the operational use of the armed forces of Nigeria.⁸ Section 218 (3) of the same Constitution further provides that the president may by his direction in writing and subject to such conditions he may think fit delegate the power to determine the operational use of the armed force to any member of the armed forces of the federation. Section 218 (4) of the Nigerian Constitution also, on the other hand gave the National Assembly the power to make laws regulating the powers of the president to determine the operational use of the armed forces. For accountability for fundamental rights violations, the Nigerian Constitution provides for the fundamental human rights of the people⁹ and the right to seek redress in court whenever such rights are violated or threatened.¹⁰ The Nigerian Armed Forces Act also provides for the power and the jurisdiction of the civil courts in Nigeria to try person (s) subject to service law for civil offences.¹¹ Civil offences are defined under the Act as acts or omissions punishable as offence under the penal law provisions of any law enacted in or applicable to Nigeria.¹²

3.2 The United Nations (UN) and its Blue Helmets

The UN through its peacekeeping operations has contributed to ensuring and preventing serious crisis and conflicts throughout the world.¹³ Notwithstanding that the UN Charter bars the UN from intervening in matters which are essentially within the domestic jurisdiction of any states;¹⁴ the UN under the current international environment has a broader international jurisdiction that they can intervene in ‘internal conflicts of international concern’.¹⁵ So many factors have been stated by authors¹⁶ either alone or in combination to internationalize internal hostilities and make them matters of international concern. These factors are as follows:

- (i) Major acts of international outrage during the course of conflict;
- (ii) Significant violation of human rights;
- (iii) Dispute of a considerable size, intensity and length;
- (iv) The likelihood of intervention by outside states assisting either the government in power, the insurgents or groups of countries assisting both sides;
- (v) Actual or potential spill-over across international borders;
- (vi) Classification as colonial conflicts; and
- (vii) Subjections of some parts of the dispute to international agreement.

The United Nations Blue Helmets or peacekeeping troops¹⁷ are usually deployed in conflict areas in performance of the UN international mandate to sustain peace and security in countries immersed in conflict. The UN mandate of maintaining peace can be performed within the territory of member states and non-member states.¹⁸ The Charter

⁷Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 217 (2) (c) & (d).

⁸The power of the Nigeria president to determine the operational use of the armed forces of Nigeria is also contained in section 8 (1) of the Armed Forces Act, Cap A20 Laws of The Federation of Nigeria, 2004.

⁹Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 33-44.

¹⁰*Ibid*, section 46.

¹¹Armed Forces Act, Cap A20 Laws of the Federation of Nigeria, 2004, section 170 (1).

¹²*Ibid*, section 114 (2).

¹³United Nations Department of Peacekeeping Operations, ‘United Nations Peacekeeping Operations: Principles and Guidelines’ (2008) (6).

¹⁴Charter of the United Nations 1945, art 2(7).

¹⁵P C Szasz ‘Role of the United Nations in Internal Conflicts’ (1983) 13 *Georgia. Journal of Int’l & Comp. L.*, pp. 345-354 at 347.

¹⁶P C Szasz, *ibid*, R Myers, ‘A New Remedy for Northern Ireland: The Case for United Nations Peacekeeping Intervention in an Internal Conflict’ (1990) 11 *N.Y.L. SCH. Journal of Int’l & Comp. L.*, pp. 74-75.

¹⁷The UN peacekeepers could be defined as actors such as soldiers, police and civilians which purpose is to maintain and restore peace.

¹⁸UN Charter, 1945, articles 2(I), (4) & (6).

of the UN formed the foundation for all UN undertakings. Article 1 of the UN Charter provides for the main purpose of the UN which can be summarised as maintaining and promoting international peace and security.¹⁹ The Charter gives the United Nations Security Council (SC) the primary responsibility of maintaining peace and security.²⁰ The SC in carrying out the above functions adopts a range of measures, including the establishment of a United Nations Peace Operations. The legal basis for such measures can be formed in chapters vi, vii and viii of the Charter.²¹ The UN SC has the power to investigate whether a dispute or situation could be a stable endangerment to a stable world order²² and where such endangerment is established, the UN may intervene in the following ways:

- (a) Call upon member states to settle their disputes, for instance by means of negotiation, conciliation or judicial settlement;²³
- (b) Intervene and issue a recommendation of an appropriate method of settlement of dispute if the parties are unable to resolve it;²⁴
- (c) Enforcement actions when it is determined that there is existence of threat to peace in pursuance of Article 39 of the Charter;
- (d) The enforcement measures may involve economic sanctions, interruption of communication, severance of diplomatic relations and military enforcement actions.²⁵

When mandating a peacekeeping operation, the SC passes a resolution in respect of the peacekeeping operation²⁶ and sets up specific orders for every operation depending on the nature of conflict. The member states make available their national military troops, personnel and equipment to the UN peace operations.²⁷ The Department of Peacekeeping Operations (DPO) established under the UN Secretariat Department manages the overall operations of peacekeeping missions under the authority of the Secretary-General. UN peacekeeping operations come in three different stages, namely: prevention of conflict, actions during conflict and post conflict peacebuilding.²⁸ Generally, the legal framework for the UN peace operations includes the Charter of the United Nations 1945, International Human Rights Law (IHRL), International Humanitarian Law (IHL), Customary International Law and the Security Council Mandates. Rule No5 of the Ten Rules- Code of Personal Conduct for Blue Helmets, compels the peacekeepers to respect and adhere to human rights and freedoms of the people.²⁹ On accountability for wrongful acts of the military in internal security roles, the ICJ (International Court of Justice) has stated that international organisations like the UN are subject of international law, hence obliged to respect responsibilities under common law rules of the global legal order.³⁰ Arguably, the UN is bound by human rights principles and thus can be held accountable for rights violations likewise its peacekeeping forces.³¹

Regrettably, it must be noted that the immunity granted to the UN and the peacekeeping troops under the UN Charter, 1945 and the Immunity Convention³² complicates the said notion of enforcement and accountability for rights violations. The UN Charter provides that the UN shall enjoy such privileges and immunities in the territory of its member states for the fulfillment of its purposes.³³ The Charter further provides that such immunity and

¹⁹*Ibid*, (n1) preamble.

²⁰*Ibid*, article 24.

²¹Chapter vi of the Charter deals with pacific settlement of disputes, chapter vii deals with actions with respect to peace, breaches of peace and acts of aggression; and chapter viii provides for the involvement of the regional arrangement and agencies in the maintenance of international peace and security, provided such activities are in tune with the purpose and principles in chapter 1 of the Charter.

²² UN Charter, (n1) article 34.

²³*Ibid*, art 33.

²⁴*Ibid*, art 36 (1); see also Article 37 of the Charter which imposes a duty on the member states to refer the situation of dispute to the Council.

²⁵*Ibid*, art 41-42.

²⁶UN Peace Operations: Principles and Guidelines (n2) 13-14.

²⁷UN Secretary-General, 'Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peacekeeping Operations' (1991) UN do A/46/185, art 7.

²⁸Report of the Secretary-General 'An Agenda for Peace' (1992) UN Doc A/47/277, paras 20-22.

²⁹Conduct and Discipline Unit, 'Ten Rules: Code of Personal Conduct for Blue Helmets' (1998).<<http://edu.unlb.org/UNstandardsconduct/TenRulesofPersonalConductForBlueHelmets.aspx>> accessed on 3rd April, 2020.

³⁰Interpretation of the Agreement of 25th March, 1951 between the WHO and Egypt (Advisory Opinion) (1980) ICJ Rep. 73, para 37.

³¹F Megret & F Haffinan, 'The UN as a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities' (2003) 25 *Human Rights Quarterly*, pp. 314-342 at 314& 317.

³²The Convention on the Privileges and Immunities of the United Nations, 1946 (the Immunity Convention).

³³ UN Charter 1945, art 105.

privileges should be granted to the members and officials of the UN to enable them carry out the functions assigned to them by the UN.³⁴ The Immunity Convention on its part categorically states that the immunity shall be granted to the UN, its properties and funds,³⁵ representatives of the UN organs, officials and experts on missions authorized by the UN.³⁶ The above provisions provide the UN with full immunity from any legal process in domestic courts for acts attributed to the organisation.³⁷ The far-reaching immunity of the UN was demonstrated in the case of *Mothers of Srebrenica & Ors v The State of the Netherlands and United Nations*³⁸ (in respect of the Srebrenica genocide where about 7000 Bosnia men and boys were massacred). The allegations in the case were made against the Dutch government and the UN for failing to prevent the genocide, but the Dutch Supreme Court declined to review the case based on the rationale that the UN enjoys the most far-reaching immunity and thus cannot be subjected to review in a national court.³⁹

The immunity of the UN peacekeeping force was also affirmed in the case of *Germany v Italy: Greece Intervening*⁴⁰ where it was stated that the acts by the armed forces performing a duty abroad is covered by absolute immunity.⁴¹ The UN peacekeepers also enjoy absolute immunity as a result of the status of the forces agreement between the UN and the host countries of the military forces which gives the contributing states exclusive jurisdiction to institute legal process of their own military or civil personnel.⁴² Finally, the immunity convention provides for some exceptions where it granted the Secretary-General (SG) the discretion to waive immunity in cases when he deems that immunity would hamper the course of justice, and contradict the interests of the UN.⁴³ There have been instances where the immunity of the UN personnel has been waived by the SG; for example in regards of rape, murder and in cases of sexual abuse of children.⁴⁴

3.3 The United Kingdom (UK)

The use of the armed forces in internal security operation in the UK has its basis from the long British tradition of military aid to the civil authorities. This British tradition of military aid to civil authorities has its root in the ‘concept of resilience’ which is defined in British military Terminology as ‘the ability at every relevant level to detect, prevent and if necessary to handle and recover from disruptive challenges.’⁴⁵ The legal basis on which the UK Armed Forces Provide aid to the civil authorities during internal security challenges is now found in the Joint Doctrine Publication 02 (JDP 02) published by the UK Ministry of Defense in September, 2007.⁴⁶ In the Doctrine Publication above, military support to resilience is provided for under the provision titled MACA (Military Aid to Civil Authority).⁴⁷ The MACA provision is divided into three arms namely:

- (i) Military Aid to Government Departments (MAGD),⁴⁸
- (ii) Military Aid to the Civil Power (MACP),⁴⁹ and
- (iii) Military Aid to the Civil Community (MACC).⁵⁰

³⁴*Ibid.*

³⁵ The Immunity Convention, 1946 (n32), section 2.

³⁶*Ibid.*, sections 11, 17 & 22.

³⁷Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion) (1997) ICJ Rep. 62, 66.

³⁸(2007) Supreme Court of the Netherlands, Case No 10/04437.

³⁹Supreme Court of the Netherlands judgment of 13 April, 2012 in *Mothers of Srebrenica & Ors v The State of the Netherlands and United Nations*. Note that the case was later brought before the European Court of Human rights which concurred with the decision of the Dutch Supreme Court.

⁴⁰ (2012) ICJ Rep 99

⁴¹ *Ibid.*, para 9978.

⁴²UN Secretary-General, ‘Draft Model Status of Forces Agreements for Peace-Keeping Operations’ (1990) UN Doc A/45/594, (Model SOFA) art. 47 (b).

⁴³ The Immunity Convention, 1946 (n32), sections 2, 14, 20 & 23.

⁴⁴F Rawski, ‘To Waive or not to Waive; Immunity and Accountability in UN Peacekeeping Operations’ (2002) 18 *Connecticut Journal of International Law* (n63,) pp. 103-132 at 119-120.

⁴⁵J Steven, ‘The Role of the Armed Forces of the United Kingdom in Securing the State against Terrorism’ in JL Clarke (ed), *Armies in Homeland Security: American and European Perspective* (Washington D.C National Defense University Press, 2006) PP. 121- 133 at P. 129.

⁴⁶Development, Concepts and Doctrine Centre, *Operations in the UK: The Defense Contribution to Resilience*, (2nd Edition); Swidon: Joint Doctrine Publication 02, September, 2007) or Joint Doctrine Publication 02 (JDP 02)

⁴⁷JDP 02, chapters 2, 3, 4, 5, & 6

⁴⁸*Ibid.*, chapter 3.

⁴⁹*Ibid.*, chapter 4.

⁵⁰*Ibid.*, chapter 6.

The MAGD (Military Aid to other Government Departments) is assistance provided by the Armed Forces on urgent work of national importance or in maintaining supplies and services essential to life, health and safety of the community.⁵¹ Support provided in cases of industrial disputes and animal disease outbreaks fall under MAGD. The MACP (Military Aid to the Civil Power) cover the provision of military assistances (armed if appropriate) to the civil power in maintenance of law, order and public safety, using specialist capabilities or equipment in situation beyond the capability of the civil powers.⁵² Military Aid to the Civil Community (MACC) is an unarmed assistance given in times of natural disaster or major emergency, special projects or events of significant value or attachment of volunteers to appropriate organizations.⁵³ The MACC also includes specific responses to mass casualty terrorist attack.⁵⁴ In all the MACA contingencies, there must be a request from the Home Office to the Ministry of Defense (MOD) and the decision to deploy the military for MACA roles must approved by the Minister.⁵⁵ Under the UK MACA, three are criteria that must be met before the military can be deployed for MACA tasks. The three criteria are as follows:⁵⁶

- a. Military aid should be the last resort. The use of mutual aid, other agencies, and the private sector must be otherwise considered as insufficient or be unsuitable;⁵⁷
- b. The civil authority lacks the required level of capacity to fulfill the task and it is unreasonable or prohibitively expensive to expect it to develop one;⁵⁸ and
- c. The civil authority has a capability, but the need to act is urgent and it lacks readily available resources.⁵⁹

On accountability and prosecution of the UK military for crimes and abuses committed in their ISOPs in the UK, the provision of section 1 of the UK Geneva Convention Act, 1957 as amended in 1995 is of moment and provided thus:

- (1) Any person, whatever their nationality, who, whether in or outside of the United Kingdom commits, or aids, abets or procures the commission by another person of a grave breach of any of the 1949 Geneva Conventions or the first (Additional) Protocol shall be guilty of an offence and on conviction or indictment (shall be punished).⁶⁰
- (2) In the case of an offence under this section committed outside of the United Kingdom, a person may be proceeded against, indicted, tried and punished therefore in any place in the United Kingdom as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment therefore be deemed to have been committed in that place.⁶¹

In the case of *Al-Skeini v United Kingdom*,⁶² the Grand Chamber of the European Court of Human Rights (ECCHR) held that there is positive human rights obligation on the UK government to conduct an effective investigation into deaths of all civilians killed by British soldiers, whether or not they were within the confines of a UK military base in the context of the armed forces operating in conflict situations. Moreover, in circumstance where a potential criminal offence has been committed, the UK service personnel are subject to the UK Armed Forces Act, 2006 as amended in 2011. The UK Armed Forces Act listed some offences under its schedule 2 and provides that the “schedule 2 offences” are subject to a mandatory obligation on the part of the commanding officer (CO) to report the potential offense to the service police for investigation and possible prosecution by the service prosecuting authority, a completely independent authority supervised by the Attorney General and which falls outside the military chain of command.⁶³ Finally, by virtue of the UK International Criminal Court Act 2001, (which gave effect to the Rome Statute) both the civilian justice system and the military justice system have

⁵¹*Ibid*, Para 301.

⁵²*Ibid*, Para 402.

⁵³*Ibid*, Para 501.

⁵⁴G Hughes, ‘The Military Roles in Counterterrorism: Examples and Implication for Liberal Democracies,’(2011) *Strategic Studies Institute, US Army War College, Carlisle, Letort Papers*, p.39.

⁵⁵House of Common Defense Committee, *Report on Defence Contribution to UK National Security and Resilience (Sixth Report of Session 2008- 09)* (London: Stationary Office Limited, 2009) p. 11. Note that ministerial approval is not required in the case of category A of the MACC or delegated cases such as Explosive Ordinances Disposal and search and rescue operations.

⁵⁶JDP02, Para 205.

⁵⁷*Ibid*, Para 205(a).

⁵⁸*Ibid*, Para205(b).

⁵⁹*Ibid*, Para 205(c).

⁶⁰UK Geneva Convention Act 1957 (as amended), section 1(1).

⁶¹*Ibid*, section 1(2).

⁶²(2007) Application No. 55721/07.

⁶³UK Armed Forces Act, 2006 (as amended), sections 113 & 116.

jurisdiction over cases involving war crimes.⁶⁴ The Attorney General can also order a civilian investigation into cases concerning military offences.⁶⁵ There is thus overlap between civilian and military justice system in the UK.

3.4 India

In India the maintenance of the peace and order is under the state list.⁶⁶ This implies that the primary responsibility to deal with internal security challenges rest with the state government.⁶⁷ However, the state government in performance of its duties of maintenance of law and order can requisition the assistance of the armed forces as a last resort, to restore order under sections 130 & 131 of the Indian Code of Criminal Procedure, 1973⁶⁸ where the security challenges is beyond the capacity of the state security outfits (e.g. the state police).⁶⁹ Moreover, the Indian central government can as well intervene where the situation is beyond the state control.⁷⁰ Under Article 353 of the Indian Constitution, the Union or the India Central Government is charged with the responsibility of protecting the states from internal disturbances. Indians internal security challenges are therefore handled through cooperation between the central and state government.⁷¹ In Indian, the military may be called upon to aid the civil authorities to carry out the following duties;

- a. Maintenance of law and order;
- b. Maintenance of essential services;
- c. Assisting during natural calamities such as earthquakes and floods;
- d. Counter-terrorism and counter- insurgency and operations; and
- e. Any other assistance which may be needed by civil authorities.⁷²

Some of the basic laws and doctrine governing the use of armed forces in internal securing operations in India are as follows:

- a. Indian Constitution, 1949 (as amended),⁷³
- b. Instruction on Aid to Civil Authorities by the Armed Forces, 1970,
- c. Armed Forces Special Powers Act (AFSPA), 1958 and 1990,
- d. Indian Criminal Procedure Code, 1973⁷⁴ and
- e. Regulation for the Army, 1987 Edition Para 301-307.

Before the military can deployed in an area in India, the India state government or the central government will declare the area as ‘disturbed’.⁷⁵ For accountability for wrongful acts of the military in internal security operations, the Indian constitution provides for the right to seek redress in court in case of violation of the basic rights guaranteed under the constitution.⁷⁶ It must be noted that the Indian Code of Criminal Procedure shielded the member of the armed forces from prosecution for acts carried out while on official duty in aid of the civil authority without the prior permission of the government.⁷⁷

3.5 Kenya

Article 241(1) of the Constitution of Kenya established the Kenyan Defence Forces (KDF) comprising of the army, air force and the navy. The Constitutional role of the KDF in internal security operation in Kenya is specifically found under Article 241(3) of the Kenya Constitution.⁷⁸ Both the Kenyan Constitution and the Kenyan Defence Forces Act, 2012 provide the internal roles of the KDF as follows:

⁶⁴UK International Criminal Court Act, 2001, sections 53 & 60.

⁶⁵*Ibid*, sections 53 (3) & 60 (3).

⁶⁶ Schedule VII of the Indian Constitution.

⁶⁷ PK Mallick, ‘Role of the Armed Forces in Internal Security: Time for Review’ (2007) *CLAWS Journal*, PP. 68-120 at P. 77.

⁶⁸These sections of the Indian Code of Criminal Procedure contain the power of the state government to requisition the army for assistance in maintenance of peace and order.

⁶⁹ PK Mallick, *Op.Cit.*, p. 76.

⁷⁰ Indian Constitution, 1949 (as amended), art 353.

⁷¹*Ibid*, articles 352- 355.

⁷² PK Mallick, *Op. cit.*, PP 70 & 73.

⁷³ Articles 352- 355.

⁷⁴Section 127-131 of the Code make provision for the powers and when the state government can requisition the army for assistance.

⁷⁵Section 3 of the Armed Forces Special Powers Act, 1958 provides for the powers of the Indian state government or the central government to declare an area as ‘disturbed area’. The Indian Supreme court also in Criminal Writ Petition No. 550 of 1982 in *Naga People’s Movement of Human Rights v Union of Indian* affirmed the power of the state governor or the Indian central government to declare an area as disturbed.

⁷⁶Indian Constitution, 1949 (as amended), Article 32 (1).

⁷⁷Indian Code of criminal Procedure, 1973, sections 45 & 132.

⁷⁸Kenyan Defence Forces Act, 2012, section 8 also provides for the Kenyan military internal roles.

- a. Shall assist and co-operate with other authorities in situation of emergency or disaster and report to the National Assembly whenever deployed in such circumstances;⁷⁹ and
- b. May be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.⁸⁰

For proper military roles regulation and accountability in internal security operations in Kenya, the Kenyan Constitution provides that 'every person has the right to institute court proceedings claiming that a right has been denied, violated, or infringed, or is threatened'.⁸¹ The Constitution of Kenya also provides for the rights and fundamental freedoms under its articles 26- 51. Furthermore, the Kenyan Defence Forces Act affirmed the civil judiciary oversight over KDF by providing that nothing in the Act or any other, disciplinary code, rules, regulations or manual shall affect the jurisdiction of any civil court to try a person for any offence triable by a civil court.⁸² In order to ensure strict accountability for rights violations during conflict or crisis situations in Kenya, the Kenyan parliament enacted the International Crimes Act for Kenya⁸³ domesticating the provisions of the Rome Statute for trial of person(s) responsible for international crimes committed in any place against a Kenyan.⁸⁴

4. Summary of Comparative Findings

The research presents the empirical findings on the roles of the military in ISOPs in the countries or entities reviewed. It was found in the countries or entities reviewed, that the military can be called upon to aid in tackling internal or domestic security challenges. It is observed that the armed forces internal roles or tasks in the countries or entities reviewed are varied. The exact roles, authority and restrictions depend on historical, legal, social and political context particular to each country or entity. In the countries or entities reviewed, there are sets of legal frameworks regulating the use of the military in internal security operations in the countries or entities. Under the UN parlance, the UN peacekeeping forces or the Blue Helmets can only be called upon to intervene in internal conflicts of international concern and on the resolution of the Security Council (SC) which sets down the specific orders for any operation. In UK, the military will be deployed under the MACA (Military Aid to Civil Authority) contingencies on a request from the Home Office of the Ministry of Defense (MOD) and such decision to deploy the military for MACA contingencies must be approved by the minister. In India, it is the state governor or administrator or the central government that will requisition the assistance of the armed forces to restore order in any place in India after such place has been declared as 'disturbed' by either governments. In the UK and India it must be ascertained that conflict or crisis situations are beyond the capacity of the civil authorities to tackle before the military can be deployed. In Kenya, the Kenyan Defence Forces (KDFs) may be deployed by the president in situations of emergency or disaster and make a report to the National Assembly of such deployment. For restoration of peace in any part of Kenya affected by unrest or instability, the military deployment is to be made with the approval of the Kenyan National Assembly. In all entities or countries reviewed, it is provided in their legal regimes that the military is to be used during domestic security challenges as a means of last resort except in the Nigerian regimes.

More so, in all the entities or countries reviewed, it is found that there have been cases of wrongful acts, abuses and other atrocities by the military personnel in their various internal security operations. In the countries or entities reviewed, their legal frameworks protect and preserve the human rights and freedoms of the people at all times and also provide for accountability for human rights violations and other abuses. However, the clogs and restrictions found in some of the legal frameworks or legislations regulating the use of the military in internal security operations and the lack of political will by the governments and the appropriate authorities to investigate and prosecute erring military personnel for rights violations and other abuses have complicated the notion of accountability for wrongful acts and abuses. Both the UN Charter, 1945 and the Immunity Convention, 1946 granted immunity to the UN and any person(s) participating in the UN peacekeeping operations on the mandate of the UN; the only exception being where such immunity is waived by the Secretary-General. In India sections 45 & 132 of the Indian Code of Criminal Procedure provide that the members of the armed forces of India cannot be prosecuted for acts or omissions carried out while on official duty in aid of the civil authority without the prior permission of the government. In the UK, both the Armed Forces Act, 2006 and the UK International Criminal Court Act, 2001 created an overlap between the civilian and military justice systems by providing that both civil

⁷⁹ Constitution of Kenya, 2010, art 241 (3) (b) and the Kenyan Defence Forces Act, 2012, section 8 (1) (b).

⁸⁰*Ibid*, art 241(3) (c) and section 8 (1) (c) respectively.

⁸¹Constitution of Kenya, 2010, article 22.

⁸²Kenya Defence Forces Act, 2012, section 56.

⁸³ International Crimes Act for Kenya, Act No 16 of 2008.

⁸⁴*Ibid*, section 8 gave the Kenya's High Court Jurisdiction to try persons who commit crimes of international character during conflict situations in Kenya.

justice system and the military justice system have jurisdiction over schedule 2 offences of the Armed Forces Act, 2006 and cases involving war crimes by the UK armed forces. The UK enforcement standards are very clear. Moreover, the Kenyan Defence Forces Act, 2012 and the Nigerian Armed Forces Act also provide for the jurisdiction of the civil courts over person(s) subject to service law; however, the ultimate problem lies with practical enforcement of these provisions. In Nigeria, the non-regulated wide powers granted to the Nigerian president by sections 217(2)(c) 218 (1)&(3) of the Nigerian Constitution and section 8 (1) of the Nigerian Armed Forces Act to call upon and determine the operational use of the armed forces on such conditions he may think fit and the inability of the Nigerian National Assembly to make laws regulating the use of the armed forces in internal security operations in Nigeria (as prescribed in 217(2)(c) of the Nigerian Constitution) have resulted in the wanton and disconcerting over-use of the Nigerian military in handling if not but all domestic security challenges in Nigeria not minding the inherent negative implications.

5. Conclusion and Recommendations

The Paper brought to the fore light the varying internal roles of the military in internal security operations in the countries or entities reviewed. The analysis drew out many issues and lessons which can be put into force through the following recommendations: To enhance legitimacy of the UN and the other countries reviewed, all lacunae, clogs, restrictions and military uses which pose potential hazards or challenges should be addressed and removed. The UN should generally relinquish immunity in cases of human rights violations. The wide powers granted to Nigerian president to deploy and determine the operational use of the Nigerian military in internal security operations in Nigeria should be regulated by a legislation of the National Assembly which will inculcate the procedures as obtainable in other jurisdiction democracies legal frameworks, for instance, making provision that the military is to be used as a means of last resort in tackling internal security challenges. Nigeria could borrow a leaf from the UK and Kenya by enacting the Nigerian International Crimes Act that will ensure strict accountability for all abuses and wrongful acts by the Nigerian military and other actors during internal security challenges or conflicts or crisis in Nigeria. The Nigerian government and policy makers are advised to learn from its own and other countries experiences to guide the nation in formulating and adjusting the respective military internal roles, functions, responsibilities and the extent the military are used in handling internal security challenges in Nigeria.