

INTERNATIONAL HUMANITARIAN LAW AND THE ABUSE OF HUMAN RIGHTS LAW IN THE LIGHT OF RECENT SECURITY CHALLENGES IN NIGERIA*

Abstract

Presently in Nigeria, a lot has been happening in the field of human rights and international humanitarian law, the effectiveness of the state with regards to the protection of lives, right and dignity of its citizens has come under intense scrutiny, this article is concerned with the fact that human rights are inalienable and should not be taken away except in specific situation and in accordance to the due process of the law. All human rights are indivisible and interdependent which means that one set of right cannot be enjoyed fully without the other. Non discrimination cuts across all international human rights, this principle is present in all major human rights treaties. All States Nigerian inclusive had ratified at least some of the core human rights treaties, as well as its additional protocol. The article contends that States therefore have the obligations and duties under international law to respect, protect and fulfill human rights. It concludes that abuses by the Nigeria armed forces like military, police etc in such internal security challenges are real and widespread and that the State is bound by the plethora of international and domestic legislation to ensure that the right and protection of its citizens is guaranteed.

Keyword: International Human Rights Law, International Humanitarian Law, Contemporary Armed Conflict, Protection to Rights and Nigeria Security Situation.

1. Introduction

In recent years, armed conflict has ruined the lives of millions of civilians; serious violations of international humanitarian law and human rights law are common in many armed conflicts.¹ In certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity.² In the past 20 years, Governments, rebels, politicians, diplomats, activists, demonstrators and journalists have referred to international humanitarian law and human rights in armed conflicts. They are also regularly referred to in United Nations Security Council resolutions, in United Nations Human Rights Council discussions, in political pamphlets of opposition movements, in reports of non-governmental organizations (NGOs), in the training of soldiers and in diplomatic discussions, they are also often referred to by defence lawyers and prosecutors in international and to a limited extent domestic tribunals, and form the basis for well-reasoned verdicts,³ because of the extent of abuse of human rights and rules of international humanitarian law usually observed in event of an armed conflict. Human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all, both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection.⁴ Over the years, the United Nations General Assembly, the Commission on Human Rights and, more recently, the Human Rights Council has considered that in armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict.⁵ Although different in scope, international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the conflict.⁶

Recently, a lot has happened in the field of human rights and humanitarian law in Nigeria, the internal security challenges in the country are enormous, like Killings, communal clashes, acts of terrorism

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¹ U.S. Department of State- Bureau of Consular Affairs. *Travel. State. Government Nigeria Travel Advisory*, Nigeria -Level 3. June 16TH 2021 <https://Travel.State.Gov/Content/Travel/En/Traveladvisories/Traveladvisories/Nigeria-Travel-Advisory.Html> Accessed On The 19th June 2021

² U.S. Department of State- Bureau of Consular Affairs. *Travel. State. Government Nigeria Travel Advisory*, Nigeria -Level 3. June 16TH 2021 <https://Travel.State.Gov/Content/Travel/En/Traveladvisories/Traveladvisories/Nigeria-Travel-Advisory.Html> Accessed On The 19th June 2021

³ Ibid

⁴ Ibid

⁵ United Nations, Office Of The High Commissioner, *International And Legal Protection Of Human Rights In Armed Conflict*, New York And Geneva 2011 https://www.ohchr.org/documents/publications/hr_in_armed_conflict.pdf on the 20th June 2020

⁶ Ibid

engendered (Boko Haram) and other sister organizations⁷ agitation for Biafra in the south east unlawful arrest and detention ,attacks on police stations, prisons etc. Members of the armed forces have been deployed in aid of the police and other civil authorities to stem this sinking internal security in Nigeria. ⁸The interventions, while lauded by many, have been ridicule on several fronts because of violations of human rights and international humanitarian law, culminating in allegations of rape, torture, arson, disproportionate use of force superfluous use of force on the masse. Violent crime such as armed robbery, assault, carjacking, kidnapping, banditry, and rape has become common throughout the country etc.⁹Terrorists continue plotting and carrying out attacks in Nigeria, especially in the Northeast. Terrorists may attack with little or no warning, targeting shopping centers, malls, markets, hotels, places of worship, restaurants, bars, schools, government installations, transportation hubs, and other places where crowds gather. ¹⁰ Terrorists are known to work with local gangs to expand their reach.¹¹ This has greatly undermined the rules and principles of international humanitarian law and human right law in the country. The protection of the rights and liberty of the citizen is no longer guaranteed given the precarious security situation in the country.

2. The Concept of International Human Right Law

At first, the theory of human rights applied domestically and did not have a place in international sphere.¹² It was towards the end of the 18th century and the beginning of 19th century that the concern for individual rights filtered into the international system.¹³ The United Nations Charter¹⁴ was the first international document to formally give voice to human rights movement after the Second World War.¹⁵ The Human rights scholars speak of three generations of human rights within the international context.¹⁶ First generation human rights, as embodied in the United Nations International Covenant on Civil and Political Rights (ICCPR), stress civil and political rights over and against the encroachment of the state on individuals.¹⁷ States undertake to respect and insure right to life and personal integrity, due process of law and a freedom to travel within as well as outside one's country, freedom of expression, religion, and conscience, the right to participate in government and free elections, the right to marry and found a family, the right to equality and freedom from discrimination.¹⁸ Second generation human rights, embodied in the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), emphasize economic, social, and cultural rights. Under this Covenant, states are to ensure amongst others the right to the highest attainable standards of physical and mental health.¹⁹ Third generation of human rights, involve solidarity among developing states as a group, and among states in general. They are said to be collective rather than individual, and include people's rights to development, the right to a healthy environment, the right to peace, the right to the sharing of a common heritage, and humanitarian assistance.²⁰ All these 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. They represent entitlement of the individual or groups, as well as responsibilities of the individual and the government authorities.²¹ Under Article 1 of the Universal Declaration of Human Right, it states that 'All human beings are born free and equal in dignity and rights.'²² Freedom from discrimination, while the provision of Article 2 is what ensures this

⁷ A.O. Alubo and M. Piwuna. Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations. *International Journal of Humanities and Social Science* Vol. 5, No. 9; September 2015 p.4

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ U.S. Department of State- Bureau of Consular Affairs. *Travel. State. Government Nigeria Travel Advisory*, Nigeria -Level 3. June 16TH 2021 <https://Travel.State.Gov/Content/Travel/En/Traveladvisories/Traveladvisories/Nigeria-Travel-Advisory.Html> Accessed On The 19th June 2021

¹² United Nations Charter Signed On The 26th Of June 1945 Entered Into Force On The 24th Of October 1945.

¹³ *Ibid*.

¹⁴ Universal Declaration of Human Right, UN General Assembly Resolution 217 A (III) U. N. Doc. A (810) 1948.

¹⁵ V. Pillai, Ya-Chien Wang and A. Maleku *Women, War and Reproductive right in Developing Countries*. Vol 56, (2017) Journal on Social Work in Health Care. p.3

¹⁶ G. J. Walters. *Human Rights in Theory and Practice: A Selected and Annotated Bibliography, with an Historical Introduction*. Metuchen, New Jersey & London: Scarecrow Press.ISBN-13: 978-0810830103, (1995). P.9

¹⁷ *Ibid*.

¹⁸ *Ibid*.

¹⁹ *Ibid*

²⁰ Art. 22, 23, and 24 of the African Charter on Human and Peoples Rights. 1981. See also E. Claude and Others. *Human Rights and Development in Africa*, State University of New York Press, (1984), p 26, 317-329.

²¹ A. O. Alubo and M. Piwuna. Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations. *International Journal of Humanities and Social Science* Vol. 5, No. 9; September 2015.

²² ARTICLE 1 OF Universal Declaration of Human Right 1948.

equality.²³ Non-discrimination cuts across all international human rights law, this principle is present in all major human rights treaties. These rights 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 equally relevant to the full development of the human person and society, everywhere.²⁴ They may not be withdrawn or denied by government, people or individuals except when it becomes absolutely necessary for the security and peace of the nation.²⁵

The protection of human rights is relevant to the sustainable achievement of three agreed global priorities of peace, development and democracy.²⁶ Respect for human rights has also become an integral part of international law and foreign policy.²⁷ International human rights law lays down the obligations of States to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. All States have ratified the core human right treaties and its additional protocols.²⁸ This means that States have obligations and duties under international law to respect, protect and fulfill human rights laws. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.²⁹ International human rights law applies at all times whether in peace or in war; it is reflected in the Universal Declaration of Human Rights, as well as in a number of international human rights treaties and in customary international law. In particular, the core universal human rights treaties are:

- a) The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol;
- b) The International Covenant on Civil and Political Rights and its two Optional Protocols;
- c) The International Convention on the Elimination of All Forms of Racial Discrimination;
- d) The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- e) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- f) The Convention on the Rights of the Child and its two Optional Protocols;
- g) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- h) The International Convention for the Protection of All Persons from Enforced Disappearance; and
- i) The Convention on the Rights of Persons with Disabilities and its Optional Protocol.³⁰

International human rights law is not limited to the rights enumerated in treaties, but also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty.³¹ Many of the rights set out in the Universal Declaration of Human Rights are widely regarded to have³² this character. Furthermore, some rights are recognized as having a special status as peremptory norms of customary international law, which means that no derogation is admissible under any circumstance and that they prevail, in particular, over other international obligations.

²³ Article 2 Of Universal Declaration of Human Right 1948

²⁴ Y. Ornguga, 'Human Rights in Nigeria: The challenges of Enjoyment' *Human Rights Review*, (2011) Vol. 2 No. 2 P. 559; Y. Ornguga. 'Boko Haram Insurgency and Human Rights Violations in Nigeria' *Bi-annual Journal of Public Law*, Kogi State University, 2013 p. 195

²⁵ O.U. Umzurike. *The African Charter on Human and Peoples Rights* The Hague: Martinus Nijhop Pub,1979 p. 5

²⁶ G.J. Andreopoulos, & R.P. Claude. *Human Rights Education for the Twenty-first century*, Philadelphia: University of Pennsylvania Press 1997.

²⁷ 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.

²⁸ G.J.Andreopoulos & R.P. Claude. *Human Rights Education for the Twenty-first century*, Philadelphia: University of Pennsylvania Press 1997.

²⁹ *ibid*

³⁰ *ibid*

³¹ *ibid*

³² *Ibid*

The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's draft articles on State responsibility.³³

3. The Concept of International Humanitarian Law

International humanitarian law is a set of rules which seek for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities, and restricts the means and methods of warfare.³⁴ Its scope is therefore limited to situations of armed conflict.³⁵ The rules of international humanitarian law have to be applied equally by all sides in every event armed conflict, regardless of whether their cause is justified.³⁶ International humanitarian law is inspired by considerations of humanity and the mitigation of human suffering.³⁷ As a set of rules and principles it aims, for humanitarian reasons, is to limit the effects of armed conflict.³⁸ IHL is a part of public international law and is notable in this regard, as it recognizes obligations for both States and non-State armed groups that are parties to an armed conflict.³⁹ It generally regulates activity during armed conflict and applies irrespective of the body of law that regulates the recourse to armed force, it equally regulates the conditions under which force may be used, namely in self-defence and pursuant to UN Security Council authorization. Once there is an armed conflict IHL applies to all the parties, whether or not a party was legally justified in using force.⁴⁰ It subjects warfare to the rule of law by limiting its destructive effect and mitigating human suffering.⁴¹ IHL covers two key areas which are:

- a) Persons who are not, or are no longer, participating in hostilities must be protected; and
- b) The right of parties to an armed conflict to choose methods and means of warfare is not unlimited.⁴²
- c) Seeks to protect persons and property/objects that are (or may be) affected by armed conflict and limits the rights of parties to a conflict to use methods and means of warfare of their choice
- d) Operates only in situations of armed conflict
- e) Applies to all parties to a conflict.

The two main treaty sources of IHL are the Hague Convention (1907),⁴³ setting out restrictions on the means and methods of warfare, and the four Geneva Conventions (GCs) (1949), providing protection to certain categories of vulnerable persons. These are the wounded and sick in armed forces in the field (GCI); the wounded, sick and shipwrecked members of armed forces at sea (GCII); prisoners of war (GCIII); and protected civilians (GC IV).⁴⁴ The Fourth Geneva Convention is particularly relevant to humanitarian protection and assistance. It was established to prevent conflicts, the extent of civilian suffering experienced during the two World Wars. The two branches of law covered in The Hague and Geneva Conventions are further developed by the first two Protocols Additional to the Geneva Conventions on the protection of civilians (1977). These are referred to as Additional Protocol I (AP I), governing international armed conflict, and Additional Protocol II (AP II), governing non-international armed conflict.⁴⁵ The four Geneva Conventions have achieved universal applicability as they have been universally ratified.

Armed conflicts, whether international or non-international, always bring disruptions to the lives of civilians. When, due to the devastation and deprivation caused by war, the civilian population is deprived of essential goods and services. In practice, apart from measures that the belligerents may take to help the population

³³ Draft articles on responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session in 2001, reproduced in Yearbook of the International Law Commission, 2001, vol. II, Part II (United Nations publication, Sales No. E.04.V.17 (Part 2))

³⁴ United Nations International Legal Protection Of Human Right In Armed Conflict United Nation, Human Right Office Of The High Commissioner New York And Geneva 2011

³⁵ *ibid*

³⁶ *Ibid*

³⁷ H. Haider, *International Legal Frameworks for Humanitarian Action*: Topic guide. Birmingham, UK: GSDRC, University of Birmingham 2013 <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/summary/> accessed on the 22nd of June 2021

³⁸ *Ibid*

³⁹ International Justice Resource Centre, *Classification of Armed Conflict, International Humanitarian Instrument*. <https://ijrcenter.org/international-humanitarian-law/> accessed on the 30th of June 2021

⁴⁰ *Ibid*

⁴¹ *ibid*

⁴² *ibid*

⁴³ Hague convention 1907

⁴⁴ Geneva convention of 1949

⁴⁵ Geneva Protocol I&II Of 1977 Additional To The Geneva Convention Of 1949

under their control, humanitarian action by impartial humanitarian organizations, like the ICRC, remains essential in order to reduce vulnerabilities and alleviate the needs of persons affected by an armed conflict. The effectiveness and efficiency of humanitarian action will, however, depend on the possibility of rapid and unimpeded access to persons in need. While international human rights law and international humanitarian law have different historical and doctrinal roots, both share the aim of protecting all persons and are grounded in the principles of respect for the life, well-being and human dignity of the person.⁴⁶ From a legal perspective, both international human rights law and international humanitarian law find their source in a series of international treaties, which have been reinforced and complemented by customary international law.⁴⁷

4. Abuse of Human Right and International Humanitarian Law in Nigeria

In Nigeria, the significance of human rights is not lost as the Constitution of the Federal Republic of Nigeria (as amended), in two chapters (two and four) provides elaborately for what is called economic, social and cultural rights and civil and political rights.⁴⁸ The Constitution OF FRN however permits derogation from strict observance or adherence to human rights in Section 45⁴⁹ of the Constitution. Government is permitted to derogate from certain fundamental rights in the interest of defence, and public order.⁵⁰ In the light of the provisions of Section 45 of the Constitution, in appropriate cases, members of the armed forces may violate human rights of individuals without repercussions. Some right may be circumscribed during periods of emergency were it becomes necessary for the interest of the public⁵¹ It is however important to note that derogation must be necessary and proportional to the crisis, must not be introduced on a discriminatory basis and must not contravene other rules of international law including provisions of international humanitarian law.⁵² Certain human rights laws however can never be derogated from, like the right to life, the prohibition against torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude and the prohibition against retroactive criminal laws.⁵³ 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'.⁵⁴

In Nigeria, the constitution guarantees fundamental human rights that unfortunately are constantly in violation.⁵⁵ Nigerian security forces due to the constant civil unrest within the country are frequently alleged to carry out arbitrary arrests, torture, forced disappearances, assassinations and extrajudicial summary executions.⁵⁶ These abuses typically occur within the context of the Nigerian government's security operations or are directed against political and religious organizations and individuals.⁵⁷ Several instances of mass killings of political opponents and agitators by security forces have been reported.⁵⁸ The case of accidental discharges, domestic violence, and detention without trial, kidnappings, and police brutality are common occurrences.⁵⁹ The **Nigerian** experience has shown the level at which people's integrity and dignity

⁴⁶ In Prosecutor v. Anto Furundžija., Case No. IT-95-17/1-T, Judgement of 10 December 1998, Para. 183, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia emphasized that the general principle of respect for human dignity was the 'basic underpinning' of both human rights law and international humanitarian law.

⁴⁷ Customary international law is one of the main sources of international legal obligations. As indicated in the Statute of the International Court of Justice, international custom is defined as 'evidence of a general practice accepted as law'. Thus, the two components in customary law are State practice as evidence of generally accepted practice, and the belief, also known as *opinio iuris*, that such practice is obligatory. See in this respect the decision of the International Court of Justice on the North Sea Continental Shelf cases, I.C.J. Reports 1969, p. 3.

⁴⁸ A. O. Alubo and M. Piwuna. Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations. *International Journal of Humanities and Social Science* Vol. 5, No. 9; September 2015 p.2

⁴⁹ Section 45 of the Constitution Of Federal Republic Of Nigeria 1999 as amended

⁵⁰ Ibid

⁵¹ A. O. Alubo and M. Piwuna. Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations. *International Journal of Humanities and Social Science* Vol. 5, No. 9; September 2015 p.4

⁵² Ibid

⁵³ International Committee On Red Cross and Red Crescent article the differences between International Humanitarian Law and human right law January 22nd 2015

⁵⁴ United State (Human Right) *International Legal Protection Of Human Right In Armed Conflict* Office Of The High Commissioner New York And Geneva 2011 P. 24 http://hr_in_armed_conflict.pdf accessed on the 11th of August 2021

⁵⁵ A. O. Alubo and M. Piwuna. Observance of Human Rights and International Humanitarian Law by Nigeria Armed Forces in Internal Security Operations. *International Journal of Humanities and Social Science* Vol. 5, No. 9; September 2015 p.4

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

are not respected and protected in the society, regrettably in most instances people are usually subjected to physical and mental torture in the hands of the security forces.⁶⁰ Both the armed group Boko Haram and Nigerian security forces have continued to commit serious crimes in the north-east, including war crimes and likely crimes against humanity, Boko Haram have killed hundreds of civilians and carried out abductions which targeted women and girls and more than 420 civilians died in around 45 attacks, many of them which occurred within Borno, Adamawa and Yobe State.⁶¹ In the north-western and north-central regions, over 1,500 people died in inter-communal violence and bandit attacks.⁶² More than 1,531 people died and thousands were displaced in inter-communal violence mostly between herdsmen and farming communities, as well as in attacks by bandits, in the north-central and north-western regions. More than 1,015 people were taken hostage by unidentified gunmen.⁶³ Between January and July 2019, at least 366 people were killed in villages in Kaduna state by suspected herders, In May, some 74 people were reportedly killed in Sokoto State when gunmen attacked four villages in the Sabon Birni Local Government Area.⁶⁴ Government forces on their own part have continued to arrest without proper investigation and to detain citizens in inhumane conditions without recourse to trial, Excessive use of force resulting in unlawful killings, and torture and other ill-treatment amongst the government forces in Nigeria is widespread.⁶⁵ The rights to freedom of expression and peaceful assembly and association are routinely violated. In the context of COVID-19, gender-based violence increased and the right to health was undermined. Thousands of people were forcibly evicted from their homes.⁶⁶ Civilians were also killed when government forces launched indiscriminate attacks against Boko Haram. On 13 April 2019, at least 10 children and seven women were among those killed when the Air Force accidentally bombed the village of Sakotoku in Damboa Local Government Area in Borno state.⁶⁷ Thousands of people were internally displaced by inter-communal violence and attacks by armed groups in the northern regions. Many were also displaced as a result of military attacks against Boko Haram.⁶⁸ The authorities repressed human rights, including the rights to freedom of expression, peaceful assembly and freedom of movement. Such violations were prevalent in the context of enforcing COVID-19 measures, between 30 March and 13 April, at least 18 people were killed by the Nigerian Correctional Service, the police and the military.⁶⁹ The National Human Rights Commission documented 105 complaints of human rights violations between March and mid-April, including the use of excessive force perpetrated by security forces in 24 of the country's 36 states and in the Federal Capital Territory Abuja.⁷⁰ On 23 August 2019, security forces opened fire on unarmed members of the separatist group the Indigenous People of Biafra (IPOB), who were holding a meeting at a school in Emene in Enugu State, killing at least four people.⁷¹ Witnesses said officers of the Department of State Services (DSS), police and military were at the scene, some of whom shot directly at IPOB members who were carrying stones and sticks. The authorities said two security force officers were also killed in the incident.⁷² In October, security forces used excessive force to disperse peaceful protests and assemblies, including the EndSARS demonstrations, resulting in the deaths of 56 protesters, bystanders and members of the security forces. (SARS - the Special Anti-Robbery Squad - is a unit of the police tasked with fighting violent crime.)⁷³

With regards to unlawful arrest, the military continued to detain thousands of people. They arbitrarily arrested and detained those suspected of links to Boko Haram or IPOB. In some cases, Detainees were denied access to their family members and lawyers and were not brought before courts.⁷⁴ The use of torture and other ill-treatment remained pervasive throughout the criminal justice system and was perpetrated by the police (particularly the SARS), the DSS and the military. The government failed to promptly, thoroughly and effectively investigate allegations of human rights violations and abuses or bring suspected perpetrators to justice. In particular, no genuine steps have been taken to investigate or prosecute crimes under international Humanitarian law committed by Boko Haram or the Nigerian military in the context of the

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² *ibid*

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ *ibid*

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*

⁷³ *ibid*

⁷⁴ *ibid*

conflict in the north-east.⁷⁵ The authorities used repressive laws to harass, intimidate, arrest and detain human rights defenders, activists, media workers and perceived critics. Non-state actors also subjected journalists to intimidation, harassment and beatings.⁷⁶ It is a long-standing rule of customary international law, set forth in Article 3 of the 1907 Hague Convention (IV) and repeated in Article 91 of Additional Protocol I, that a State is responsible for 'all acts committed by persons forming part of its armed forces'.⁷⁷ This rule is an application of the general rule of State responsibility for wrongful acts, whereby a State is responsible for the behavior of its organs.⁷⁸ The armed forces are considered to be a State organ, like any other entity of the executive, legislative or judicial branch of government. The application of this rule under international humanitarian law is reflected in the four Geneva Conventions, which specify that State responsibility exists in addition to the requirement to prosecute individuals for grave breaches.⁷⁹ A number of military manuals specify that a State is responsible for violations of international humanitarian law. Some of these manuals expressly refer to acts committed by members of the armed forces of a State, while others more generally deal with responsibility for grave breaches or war crimes, not specifying by whom such acts must be committed in order to be attributable to the State.⁸⁰ However, it is clear from the above-mentioned general principle of international law that the acts of all State organs are attributable to the State, be they military or civilian. There is also national case law supporting this rule, like the judgment in Eichmann's case in 1961, Israel's District Court of Jerusalem attributed the wrongful acts committed by the accused to Germany as its own 'acts of State'.⁸¹ Furthermore, in the Reparation Payments case in 1963, Germany's Federal Supreme Court referred to the 'principle of public international law according to which a State party to a conflict is also responsible for acts committed by its nationals in relation to the conduct of hostilities which are not in line with public international law'.⁸² In the Distomo case in 2003, the same German court affirmed that the responsibility of States for internationally wrongful acts committed during hostilities 'comprises liability for the acts of all persons belonging to the armed forces'.⁸³ The International Criminal Tribunal for the former Yugoslavia, in its judgment in the Furundžija case in 1998 and in its judgment on appeal in the Tadić case in 1999, held that a State is responsible for the behavior of its armed forces.⁸⁴

5. Effect of the Abuse of Human Right and International Humanitarian Law

Effects of the Human Rights Abuse in Nigeria: Human rights abuse in Nigeria often leads to poverty which is so prevalent due to massive abuse of public fund. This is as a result of high rate of unemployment which has resulted in youth's involvement in crimes such as armed robbery, internet scams and kidnapping for survival. Secondly, human right abuse has obvious hindrance to national development.⁸⁵ Thirdly, it also breeds high insecurity rate as a state of anarchy had given room to lack of protection of lives and properties as witnessed under conflicts in the Niger Delta region⁸⁶ and the various ethno – religious violence. Human right abuse has created unlawful detention and lawlessness with gross violation of the rule of law. Furthermore, human right abuse makes people unpatriotic as most Nigerians are not proud of calling Nigeria

⁷⁵ *ibid*

⁷⁶ *ibid*

⁷⁷ Additional Protocol 1 to the Geneva Convention Article 91.

⁷⁸ Article 4 Of the Draft Article on State Responsibility Adopted in 2001 after more than 40 years work. This draft article 'seeks to formulate the basic rule of international law concerning the responsibility of state for their international wrongful acts'. The International Law Commission Commentaries To The Draft Article On State Responsibility Report On The International Law Commission The Work Of Its Fifty-Third Session. UN DOC A/56/10, New York 2001.

⁷⁹ First Geneva Convention, Article 51 ; Second Geneva Convention, Article 52 Third Geneva Convention, Article 131, Fourth Geneva Convention, Article 148 .

⁸⁰ See, e.g., the military manuals of Argentina , Canada , Colombia , Germany , Netherlands , New Zealand , Nigeria, Russian Federation, Spain , Switzerland , United Kingdom , United States and Yugoslavia

⁸¹ *AG of the Government of Israel v. Adolf Elchman, Israel*, Case No 40/61, Judgment Given On The 11th Of December 1961 District Court Of Jerusalem, *Eichmann* <http://Www.Internationalcrimesdatabase.Org/Case/192/Eichmann/> Accessed On The 21st Of July 2021

⁸² ICRC Customary International Humanitarian Rule 15 Reparation. *A State Responsible For Violations Of International Humanitarian Law Is Required To Make Full Reparation For The Loss Or Injury Caused*. Law Germany, Federal Supreme Court, *Reparation Payments Case*). https://Ihl-Databases.Icrc.Org/Customary-Ihl/Eng/Docs/V1_Rul_Rule150 accessed on 25th of July 2021

⁸³ Germany, Federal Supreme Court V. Prefecture Of Voiotia, (*Distomo Massacre Case*) *Case No 11/2000(288933) War Crime, Crime Against Humanity*. <http://Www.Internationalcrimesdatabase.Org/Case/3247> Accessed On 25th Of July 2021

⁸⁴ *The Prosecutor v Anto Furundžija International Criminal Tribunal Yugoslavia Trial Chamber IT-19-17/IT Dec 1998, Furundžija Case*, Judgment And Judgment On Appeal <http://www.internationalcrimesdatabase.org/Case/89> accessed on 24th of July 2021

⁸⁵ G.C. Enebe, 2008. The concept of human right: Origin, meaning and place in the new world. In O. Anichebe (Ed.). *Logic, philosophy and human existence*. 8th Edn., Nsukka: Afro-Orbis Publications.

⁸⁶A. Ero, 2009. 'Gun power diplomacy: Niger – delta – A return to the trenches'. *Tell* June 1: 20-25

their fatherland. This is why many citizens of Nigeria seek ways of leaving the country in search of safety and prosperity abroad.

6. Conclusion and Recommendations

When comparing norms of international human rights law and international humanitarian law, it becomes apparent that the latter protects only some human rights and only to the extent that they are particularly endangered by armed conflicts, and is not, as such, incompatible with the very existence of an armed conflict. Thus, the right to social security, the right to free elections, freedom of thought or the right to self-determination are not covered by international humanitarian law. In a number of situations, its rules could be, on the limited issues they deal with, more adapted to the specific problems arising in armed conflicts. Moreover, while the rules of international humanitarian law on the treatment of persons who are in the power of the enemy may be understood as implementing their human rights, taking military necessity and the peculiarities of armed conflicts into account, certain rules on the conduct of hostilities deal with issues not addressed by human rights, e.g., who may directly participate in hostilities and how such persons must distinguish themselves from the civilian population, or the rights and identification of medical personnel. International human rights law imposes obligations to respect, protect and fulfill that stretch across all human rights. These three terms make it possible to determine whether international human rights obligations have been violated. While these terms have not traditionally been used

In international humanitarian law, the obligations resulting from its rules may be split up into similar categories. Since States have obligations to do something (positive obligations) or to abstain from doing something (negative obligations) under both branches, they can be responsible for a violation of international human rights and humanitarian law through action, omission or inadequate action. In international humanitarian law they have an explicit obligation to respect and to ensure respect. International human rights law explicitly protects a very wide range of rights, from the right to be free from torture, to the right to education which can be affected, directly or indirectly, by armed conflict. These human rights obligations, whether positive or negative, apply to the State as a whole, independently, from any internal institutional structure and division of responsibilities among different authorities.⁸⁷ It is therefore the responsibility of a state at all times to ensure the protection of this right. State responsibility for violations of international human rights and humanitarian law has long been a foundation of international law. Even beyond treaty obligations, the International Law Commission's draft articles on State responsibility recall the general principle of international law that the breach of a State's international obligation constitutes an international wrongful act, which entails the international responsibility of that State. In this context, it is useful to recall that a State is responsible for violations of international human rights and humanitarian law in the context of armed conflict if the violations are attributable to it, such as:

- a) Violations committed by its organs, including its armed forces;
- b) Violations committed by persons or entities empowered to exercise elements of governmental authority;
- c) Violations committed by persons or groups acting in fact on its instructions, or under its direction or control;
- d) Violations committed by private persons or groups which it acknowledges and adopts as its own conduct.⁸⁸

A State may also be responsible for lack of due diligence if it has failed to prevent or punish violations of international human rights and humanitarian law committed by private actors.

The Nigerian government should take more proactive campaign against corruption and strengthen the country's anti-corruption institutions. This is because corruption serves to promote criminal and extremist activity by creating barriers to legitimate socio – political and economic endeavors. By attacking corruption, Nigeria will send a clear signal that the country is indeed committed to good governance, to the security of its citizens and to its rightful place as a significant actor on the global stage.⁸⁹ The Nigerian Constitution has to undergo further amendments in certain clauses such as section 215 (5), 260(1), 275 (1) amongst others.⁹⁰ For instance, it is unjust for any government that claims to be secular to put loopholes in her

⁸⁷ Ibid

⁸⁸ ibid

⁸⁹ T P McCulley, Nigeria's commitment to human rights. The Punch April 25. 2013 Available from www.punching.com. [Accessed 4th November].

⁹⁰ P O C Ezeanya, *Tribes and tongues in Nigeria*. Enugu: Professor's Press.2010

constitution that guarantees state to adopt any religious law (like the enforcement of Sharia law on non-Muslims in the North). Also, if our leaders are genuinely sincere, then there is no reason why a President and Governor could not be questioned on abuse of office in the court of law. Hence, it is recommended that the immunity clauses in our constitution should be removed. Moreover, freedom of the press and freedom of expression are also fundamental human rights, key to functioning democracies. A vibrant free press is critical to illuminating public discussion on issues arising from Nigeria's democracy, including security and corruption.

The silencing of journalists, political critics, and others, whether via arrest and detention, threats or other forms of intimidation should be outlawed in Nigeria. Respect for the rule of law is paramount and must start with the government itself. To this end, government should follow the rule of law. It has to ensure that corruption in the judiciary is stopped and checked by another agency. This will make it easier for the citizens to trust the judiciary and seek redress in court whenever their rights are abused.⁹¹ With the restoration of democratic governance in all the countries in West African sub region, there should be more conscious efforts by Nigerian government to ensure respect for, protection and fulfillment of human rights. This is why the National Human Rights Commission needs to be repositioned to effectively discharge its mandate.⁹² Along the same vein, government should provide Human Right Education to the citizens through media campaigns, lectures, and simulation exercises among others. This will help to educate the citizens on their rights and on how to seek redress when their rights are violated.

However, the Nigerian law enforcement agencies, most importantly the Nigerian police, need re-orientation because they need to understand their duties as they have to learn that respecting the rights of the citizens are part of their duties. The military on the other hand should be taught to use less force when called upon to restore law and order. To this end, the government should allow the military to concentrate on defending the state against external aggression than quelling internal unrest. Rather, the police should be beefed-up and well-equipped so that they can combat most internal crimes effectively. The citizens should not only help the government to protect their rights but they should also live responsibly to protect the rights of others at all levels of human relationship ranging from the family to the global arena. Hence, citizens should be more patriotic, have respect for the law, assist the law enforcement agencies and co-operate with international organizations on human rights issues. It is very important that the Nigeria government in the face of its current security situation effectively strengthen the independence of the judiciary, equally, the independent commissions of inquiry may unravel the truth about large scale or serial violations of human rights or international humanitarian law. 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 prosecutions of errant officers in the courts are recommended. This will curb the level of impunity by armed forces were there is effectively punishment against any abuse of human right against its citizen.

Lack of proper knowledge of basic human right is a ground for the frequent abuse of right by armed forces. It's the state responsibilities therefore to ensure proper education of the knowledge human right, Press freedom, democratic rules/principles, and public vigilance to further curtail human rights abuses and promote good governance in Nigeria.⁹³ There is need for proper enlightenment on the armed forces of the rules of armed conflict under international humanitarian law and also the need insist on right as well as minimizing violations expect were its absolutely necessary. Honest, transparent, holistic compliance by the armed forces to human rights and humanitarian law in Nigeria, and derogation from human of rights will be only for the purpose of national security and provided in the constitution. Finally, another mechanism that can effectively contribute to fulfilling the duty of States to investigate human rights violations is the creation of official commissions of inquiry with a human rights mandate. Although such inquiries are by definition established at the initiative of the Government authorities, they are most often a result of concerted demands by civil society and sometimes also by the international community. This will properly investigate and curb the unnecessary use of power by the member of various organs of government particularly members of the armed forces.

⁹¹ D Kaluge., Human right abuse. 2013 Available from <http://davidkaluge.hubpages.com/hub/human-right-abuse> [Accessed 4th November 2013].

⁹²I. Nnochiri, 2013. Human rights abuses in Nigeria worrisome – FG. *Vanguard News* November 2. Available from <http://www.vanguardngr.com/2013/04/human-rights-abuses-in-nigeria-worrisome-fg.html> [Accessed 15th November].

⁹³ A. R. Adenrele & O M. Olugbenga., 'Challenges of Human Rights Abuses in Nigerian Democratic Governance – Which Way Forward ?', *Journal of Social Economics Research*, Conscientious Beam, vol. 1(5), 2014 pages 87-96. <https://ideas.repec.org/a/pkp/josere/2014p87-96.html> Accessed 22nd Of June 2021