IMPACT OF INSURGENCY AND COUNTER-INSURGENCY ON HUMAN RIGHTS IN NIGERIA: A LEGAL EXAMINATION[*]

Abstract

Insurgency, an age-old phenomenon, has taken various contemporary forms, notably terrorism, making it a global concern. Nigeria, like many nations, grapples with the pervasive challenges posed by insurgency. Typically starting as small movements avoiding direct confrontation with government forces, insurgencies aim to alter government policies through unconventional tactics. In Nigeria, combating insurgency often involves law enforcement's brutal reprisals against both insurgents and innocent civilians, leading to rampant violations of citizens' human rights. This article examined the factors that cause insurgency, counter-insurgency, and the resultant human rights violations in Nigeria. It explored, the strategies employed by some major counter insurgency theorist and of the Nigerian government in curbing insurgency, and the concurrent human rights abuses. Emphasizing the recurrent infringement of rights such as life and freedom of movement during counter-operations, the articles aimed to shed light on the complex interplay between security measures and civil liberties. The article concluded by proposing practical approaches to mitigate human rights violations in the course of counterinsurgency operations, addressing the pressing need for preventative and remedial measures

Keywords: Insurgency, Counter-Insurgency, Human Rights, Legal Examination, Nigeria.

1. Introduction

Insurgency has existed since the dawn of civilisation; in fact, it is not a new phenomenon in the history of states.[1] It has evolved and taking different forms today. It is noteworthy that insurgency and terrorism have become the most prevalent forms of conflict all over the world and Nigeria is not an exception.[2] They date all the way back to the ancient civilizations of the Greek city states and the Roman Empire, when the rulers of these prehistoric societies frequently had to deal with revolts, and insurrections. Insurgencies usually begin as a small movement that stays out of the way of the government's security forces. In order to avoid direct, definitive conflicts and rely instead on intimidation and surprise, the weak who stand in opposition to the powerful have historically chosen to act in this way. The goal of an insurgency is typically to alter a government's policies or organisational structure through tactics that are uncommon inside or approved by the current system. Insurgencies are acts of armed defiance against governmental authority that aim to topple or weaken the government as well as fight the application of legal restrictions. The first known insurgency attempt in Nigeria is credited to the movement to liberate the Niger Delta people led by Major Isaac Jasper Adaka Boroh[3]. Boroh created the Niger Delta Volunteer Force (NDVF), an armed military group composed of 150 of his kinsmen to fight against the exploitation of oil and gas resources in Niger Delta. More than 30 years after the demise of Major Isaac Jasper Adaka Boroh, there was a resurgence of the armed protest against the Federal Government and the multi-national companies engaged in the oil industry of the Niger Delta region by MEND and led by Asari Dokubo and Ateke Tom.[4] The latest upheaval in the North caused by Boko Haram, bandits attack and issues of Unknown gun men in the East have without doubt, the character of an insurgency. The rise of Boko Haram (meaning 'Western education is sinful') and Unknown gun men have brought about heightened widespread tension, anxiety and a sense of insecurity hitherto unknown in any part of Nigeria especially in the Eastern and Northern parts of Nigeria.

In order to combat insurgency in Nigeria, law enforcement agencies carry out brutal reprisal impacts on both insurgents and even innocent civilians. Citizens' human rights, such as their right to life and freedom of movement, are constantly violated in the event of a counter-operation by security agencies. This article will analyse in-depth insurgency, counter-insurgency, and human rights violations in Nigeria. In order to address the essential preventative and remedial methods, it will draw attention to the effects of insurgency, the counter-insurgency strategies used, the successes made in the battle against insurgency, and the ongoing human rights abuses. It will also propose workable ways for mitigating violations of civilians' human rights in counterinsurgency operations.

2. Conceptual Clarifications

Insurgency: Dennis Drew[5] defined 'an insurgency is nothing more than an armed revolution against the established political order'. He further added that insurgencies are internal affairs and the insurgents are self-sustaining. According to the U.S. Government Counter-insurgency Guide,[6] 'insurgency is the organised use of subversion and violence to seize, nullify or challenge political control of a region.' As such, it is primarily a political struggle, in which both sides use armed force to create space for their political, economic and influence activities to be effective.

Counter-Insurgency: is defined as 'those military, paramilitary, political, economic, psychological and civic actions taken by a government to defeat an insurgency. [7]

Human Rights: Human Rights may be described as those rights, which inhere in a person by virtue of being a human being. Such rights are inalienable in the sense that a person cannot be deprived of them without a great affront to justice. According

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[1]O Fafowora, *Understanding insurgencies in Nigeria: Nature, types, dynamics and the way out*. In: Obafemi and Galadima 2013b, pp. 1–18
[2]ibid
[3]M Osini, 'Insurgency in Nigeria: Addressing The Causes As Part Of The Solution', *African Human Rights Law Journal* (2014) 14, 223.
[4]ibid
[5]D Drew, 'Insurgency and Counter insurgency: American Military Dilemmas and Doctrinal Proposal', (1988). in Reports no AU-ARI-CP-88-1.
[6] Bureau of Political Military Affairs, Department of State (2009).
[7] S Vrooman, 'A Counter- Insurgency Campaign Plan Concept: The Galula Compass', in a Monograph, *US Army School of Advanced Military Studies, Unites States Army Command and General Staff College Fort Leavenworth, Kansas* (Ay 04-05)

to Chukwumaeze,[8] He says that human right are implied from the principles of inference and inalienability is the fact that they are universal in that, it is available to human beings wherever and wherever they may be. Even in time of crises it is expected that civilized society must and should ensure that the human rights of all citizens are protected and guaranteed.

3. Factors and Causes Contributing to Insurgent Movements

Land Use and Proprietary Rights: Land tenure and proprietary disputes are at the core of conflicts in Nigeria's north and east, marked by the complex interweaving of customary and statutory rights. This complexity contributes to conflicts such as the Niger Delta insurgency, disputes involving Fulani herders, and clashes between ethnic groups like the Fulani-Tiv and Tiv-Jukun. The 1982 Kano Katin Kwari Market killings exemplify violence stemming from proprietary rights disputes, underscoring the intricate link between land conflicts and violence.[9] Despite the existence of the Nigerian Land Use Act of 1978, challenges persist, especially evident in the 'indigene' and 'settler' dichotomy in Plateau State, highlighting the need for clearer legal definitions and property claims. .[10]The Niger Delta insurgency is intensified by a perceived deprivation of land and proprietary rights, exacerbated by environmental degradation and a lack of accountability.[11]

Growth of Social Class Awareness and Desire for Equality: Social class awareness and consciousness have the potential for conflict generation. A society where the middle class is small with an equally small or smaller upper class and a robust lower class is prone to dangerous conflict. Such a society is usually characterised by great instability. This is because the lower class looks at the upper class with envy. This feeling is pervasive in many parts of Nigeria. Inequality results in bitterness, and bitterness generates envy and hate. This is true across the entire political spectrum in Nigeria, at the national, state and local levels. This expression of bitterness is quite a universal phenomenon for, as Aristotle put it, 'it is the passion for equality which is thus at the root of sedition'.[12] Indeed, when people are satisfied, as is often the case with professionals, they need not be very rich like the upper class. These are the middle class - a population which in every society attains a certain point of social contentment and thus indifference. The critical estimation of the upper class by the lower class is often occasioned by hardship, suffering and the desire to be upwardly mobile.[13] Those who are worst afflicted with this type of feeling are those who have received some education and yet are bereft of a means of income.

Discrimination: Discrimination comes in a variety of forms. One example is economic discrimination, which is defined as the systematic exclusion, whether prescriptive or de facto, of a person or group from participating in positions or activities of higher economic value, such as employment, trade or profession. Another form is political discrimination, which is defined as a systematic or perceivable pattern of limitations in the form, process, normative or practical outcome of the opportunities of groups to take part in political activities or to attain or keep elite positions of trust.[14]There is also discrimination in the distribution of political and socio-economic goods to populations or segments of the population of a country. This type of discrimination often results in deprivation of basic infrastructural amenities and diminished opportunities for employment, particularly at the upper echelons of governance and economic activities. Ethnic minorities are often victims of this type of discrimination and it has often led to movements of terrorism and insurgency. This type of discrimination was the primary motive force behind the realignment of the erstwhile warring forces of the Ijaw, Itselkiri and Urhobo in Warri, Delta State against the federal government in the Niger Delta insurgency and, according to MEND, the insurgency's primary propellant. In the Niger Delta before the emergence of the insurgency, there was a widespread feeling of deprivation and discrimination, since the evidence showed that the rate of unemployment, the general standards of living and the rate of poverty in the region were clearly disproportionate to other parts of the country and clearly worse than the national average. This was reinforced by the fact that high positions of trust in the oil companies were filled by members of the majority tribes, some of whom were not necessarily more qualified than those who were unemployed.[15]

Poverty: It has been noted elsewhere that 'among several other ills, poverty breeds anger, hatred, envy and conflict'.[16] Poverty is based on the lack of basic needs, and the more this lack persists, the greater the likelihood that a situation of frustration will arise which, if not checked in time, will lead to aggression and revolutionary conduct. Campbell and Bunche [17]rightly put it that the living standards for the majority of Nigerians have slightly changed since 1970. According to the National Bureau of Statistics 25% of the total population of Nigerians in 1980 lived in poverty and this has increased to 72% in 2010.

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[8] Right to Rebel, *In search of Legal Scholarship/ Essay in Honour of Earneast Ojukwu,* (Published Abia State University Law Centre, 2017) 33.

[9] These were not sustained conflicts, but they arose from a mix of cultural and religious deferences existing between the indigenous Kano traders and non-indigenes, mostly Ibo, traders who had a common claim to market resources in Kano.

[10] Eg, the Petroleum Act of 1969 and related oil and gas industry laws, some in force since 1958; see BM Russett 'Inequality and instability: The relations of land tenure to politics'(1964) 16 *World Politics* 442-454.

[11] In 2012, the United Nations Environmental Program (UNEP) submitted a confidential report to the President of Nigeria confirming the need for remediation of Ogoni land.

[12] Land and Native Rights Ordinance 1 of 1916, Cap 105 Law of Nigeria, superseded by the Land Use Act, Cap L5 LFN, 2004

[13] AO Muzan, 'Conflicts, disputes and strife in the Niger Delta oil industry: A causal analysis' (1999) 4 *Nigerian Journal of Jurisprudence and Contemporary Issues* 53, 61. cited in Insurgency in Nigeria: Addressing the causes as part of the solution (Chapter 12 Vol 1) [2014] AHRLJ 13 https://www.saflii.org/za/journals/AHRLJ/2014/13.html

[14] AO Muzan 'Conflicts, disputes and strife in the Niger Delta oil industry: A causal analysis' (1999) 4 *Nigerian Journal of Jurisprudence and Contemporary Issues* 53, 71. cited in Insurgency in Nigeria: Addressing the causes as part of the solution (Chapter 12 Vol 1) [2014] AHRLJ 13 https://www.saflii.org/za/journals/AHRLJ/2014/13.html

[15] P Collier Oil and inequalities in rural Nigeria (1981). See also PO Olayiwola Petroleum and structural change in a developing country: The case of Nigeria (1984).

[16] AO Muzan,ibid 66, see also L Randell *Political economy of Venezuelan Oil* (1987).

[17] Campbell, J. & Bunche, R. (2011). Why Nigeria's North South distinction is important. Breaking News and opinion on the Huffington Post. http://www.huffingtonpost.com/amb-john-campbell/why-nigerias-north-south-htm Accessed 24th November 2023

Religious and Ideological Discontent: Both religion and ideology are closely-related concepts in the minds of individuals and social groups. In their pure form, they have universalistic attributes, appealing primarily to the primordial instincts. Thus, such epithets as 'primitive', 'developed', 'civilised', 'traditional' or 'modern' may not in reality be very relevant when used in relation to social groups and their attitudes towards religion and ideology. An ideology, like a religion, is a belief system containing a world view that is accepted as fact or truth by some groups. Ideology and religion are evaluative, normative and ethical, as well as moral in tone and content. Hoffman[18] observed that religion has become the key motivator for several terrorist organizations in Africa. Among the organizations and individuals who have been religiously inspired to adopt terrorist violence, those who espouse a radical interpretation of Islam are predominantly singled out. However, the relevance of extreme-right Christian groups is also underscored. According to Gurr and Cole [19]the proliferation and significance of religiously motivated terrorist groups is notable in the period of time commonly assigned to the emergence of the new terrorism. Evidence of this claim is supported by trends that refer to the percentage of religiously inspired groups in relation to the total number of terrorist organizations. This literature indicates that numbers grew from less than 4% in 1980 to 42% by the mid-1990s[20]. Substantiating this, Zalman [21]opined that religion fanaticism creates conditions that are formidable for terrorism.

Corruption: Corruption is another factor which aids the emergence of insurgency in Nigeria. This can be viewed from the procurement process and administration of the economy. The poor maintenance culture of acquired facilities meant to improve life's of the citizens. The most serious aspect of corruption is the internal frustration that led the insurgents and militants to engage in what the military referred to as rebellion/revolts against the state. The main reason for the emergence of Boko Haram could be regarded as religious fanaticism but corrupt practices among government officials and few rich ones in the society also led to protest against government neglect in Niger Delta, because the masses did not benefit any shares, especially those in the South South that happen to remain traditionally the poorest despite available resources in the region. The challenge is that fight against the insurgency without capable security forces who are under-paid and ill-trained soldiers who rape and commit other crimes against humanity such as Boko Haram and Niger Delta militants which they were supposed to contain.[22]

Unemployment: Terrorist activities sprung up as a result of unemployment. This has become a serious issue in the country and has led to joblessness of our graduates for a long time, frustration sets in and this encourages them to involve in activities that are detrimental to the society. The high rate of unemployment in Nigeria in 2014 led to the untimely death of 16 job seekers who were stampede when 500,000 unemployed youths rushed to apply for about 5000 vacancies at the Nigeria Immigration Service. The World Bank estimated in 2014 that about 80% of people under 24 are unemployed.

4. Views of Experts on Counter Insurgency
David Galula a French Army commander during the Algerian War obtained actual expertise in counterinsurgency. According to him, counterinsurgency is not primarily military, but a combination of military, political and social actions under the strong control of a single authority.
Galula proposes four 'laws' for counterinsurgency:[23]
1. The aim of the war is to gain the support of the population rather than control of territory.
2. Most of the population will be neutral in the conflict; support of the masses can be obtained with the help of an active friendly minority.
3. Support of the population may be lost. The population must be efficiently protected to allow it to cooperate without fear of retribution by the opposite party.
4. Order enforcement should be done progressively by removing or driving away armed opponents, then gaining the support of the population, and eventually strengthening positions by building infrastructure and setting long-term relationships with the population. This must be done area by area, using a pacified territory as a basis of operation to conquer a neighbouring area.

Galula argues that a victory (in a counterinsurgency) is not the destruction of the insurgent's forces and his political organisation in a particular area. A victory also includes the insurgents being permanently cut off from the people; this isolation is maintained with and by the populace rather than being imposed upon it. ... In conventional warfare, a force's strength is determined by military or other objective standards, such as the quantity of its divisions, their status, the availability of its industrial resources, etc. Strength in revolutionary warfare must be judged by the degree of public support as determined by the level of grassroots political organisation. The counterinsurgent gains power when it is solidly supported by and embedded in a political organisation that emanates from the population.[24] With strict adherence to his political ideals and laws of counter-insurgency, Galula coined out a military and political strategy for embarking on an operation under full insurgent control (or hot insurgencies). This strategy is divided into eight steps:[25]
1. Concentrate enough armed forces to destroy or to expel the main body of armed insurgents.
2. Detach for the area sufficient troops to oppose an insurgent's comeback in strength, install these troops in the hamlets, villages, and towns where the population lives.
3. Establish contact with the population and control its movements in order to cut off its links with the guerrillas.

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[18] B Hoffman, 'Inside terrorism'. New York: Columbia University Press 2006.
[19] N Gurr, & B Cole, *The New Face of Terrorism: Threats from Weapons of Mass Destruction*. London: I.B. Tauris 2005
[20] I Lesser, J Arquilla, D Ronfeldt, B Hoffman, M Zanin. & B Jenkins, (1999). *Countering the New Terrorism*. Santa Monica, CA: The Rand Corporation.
[21] A Zalman, *Causes of terrorism*. New York: Columbia University Press 2004.
[22] ibid
[23] *Reeder Brett. ,'Book Summary of Counterinsurgency Warfare: Theory and Practice by David Galula,'. Crinfo.org (The Conflict Resolution Information Source). Accessed 29th November 2023.*

[24]D Galula, *Counter- Insurgency warfare: Theory and Practice*, (Westport, Connecticut: Praeger Security International, 1964) 43.
[25] S E Liolio.(n5) 49.

4. Destroy the local insurgent political organizations.
5. Set up, by means of elections, new provisional local authorities.
6. Test these authorities by assigning them various concrete tasks. Replace the softs and the incompetents; give full support of the active leaders. Organize self-defence units.
7. Group and educate the leaders in a national political movement.
8. Win over or suppress the last insurgent remnants.

Although Galula recognises the need of traditional military techniques in counter-insurgency, he focuses on developing an effective 'political machine' capable of gaining peoples' support. As a result, he argued, the development and effectiveness of the counter-insurgency cause should be predicated on the heart of the 'political machine,' which also requires political programmes aimed at pacifying the insurgent's base. The counter-insurgents should also effectively coordinate efforts at such programs as this is a major requirement. And like he noted, this coordination can be achieved through committees integrated military-civilian hierarchies however, 'more than anything else, a doctrine appears to be the practical answer to the problem of how to channel efforts in a single direction.'[26] Knowing what the population really want is also a prerequisite for achieving this goal which should first be tested in a selected location and depending on its success or lessons learned, be then applied to subsequent areas. In view of the foregoing, Galula thus provided a 'compass' for counter-insurgency operations giving them laws as well as defining the corresponding strategy and tactics. His central idea was the development of a 'political machine' capable of capturing public support for the state thus emphasising the fact that the success of a counter-insurgency operation is hinged on the population. Put differently, as long as popular support is on their side, an insurgency can hold out indefinitely, consolidating its control and replenishing its ranks, until their opponents simply leave.

Robert Thompson also was a British military officer and counter-insurgency expert widely regarded on both sides of the Atlantic as the world's leading expert on countering the Mao Tse-tung technique of rural guerrilla insurgency'[27] He was designated one of the primary architects of British success in Malaya, Robert once served as the Secretary South of Defence of Malaya as well as headed the British Advisory Mission to south Vietnam (BRIAM) in the early Year of the Vietnam War. Robert Thompson[28] opines that the counterinsurgents must take proactive actions to combat the insurgents. He believed that defeating guerrilla organisations required more than just numerical supremacy in the military. He then put forth five fundamental guidelines for a successful operation:

1. The government must have a clear, long-term political aim to support the people. This covers any improvements made to address any flaws or issues with the government, such as inefficiency and corruption.
2. The government must function in accordance with the law. Maintaining the moral high ground is critical in order to retain the support of its people or allies. This applies to all activities, including incarceration, military operations, and so forth.
3. The government must have an overall plan. This strategy should cover the duties and maintenance of the following functions: security, military, political, social, economics, administration, police, and any other measures related to the insurgency. To avoid duplication of effort and gaps in government initiatives, roles and duties must be clearly defined.
4. The government must give priority to defeating the political subversion of the insurgency, not the guerrillas. This includes an intelligence focus on the people who must cross from the insurgent cells (A-level units) to the others (district committees, B&C-level units, and insurgent leadership). The intent is to eliminate the support, thus starving out resistance units.
5. In the guerrilla phase of an insurgency, a government must secure its base areas first. Very quickly, the government must also start protecting developed areas in order to gain security and instil confidence in the people. The population must also be prepared for a long Counter-insurgency effort.[29]

Given the foregoing, Robert places more emphasis on gaining legitimacy than on killing insurgents as the secret to counter-insurgency success. However, as both insurgents and counter-insurgents work to acquire the support of the populace, legitimacy rests with the people. Thompson emphasised that the military must try harder to treat its citizens kindly because the counter-insurgents must work to win the support of people. Robert Thompson's pragmatist understanding of the overtly political nature of insurgencies and the requirement for legitimacy in operations gives a fresh approach to the still-evolving issue of insurgencies, although his beliefs do not fully address the COIN dilemma. He thus acknowledged that rather than being a purposeful choice, his five fundamental counterinsurgency principles were the result of trial and error. [30]

David Kilcullen in his book 'Three Pillars of Counterinsurgency[31], described a framework for inter-agency cooperation in counter-insurgency operations. His pillars Security, Political and Economic - support the overarching goal of Control, but are based on Information. As he also noted that: 'This is a framework, not a template. It helps people see where their efforts fit into a campaign, rather than telling them what to do in a given situation. It provides a basis for measuring progress and is an aid to collaboration rather than an operational plan'.[32]
David also noted that his position thus stated above rests in the fact that:

[26] ibid.
[27] The Time of London: Robert G. Thompson. Available at http://academics.wellesley.edu/polisci/wj/vienam/obituaries/thompson.htm, accessed on 13th January 2023
[28] R Thompson, *Defanging Communist Insurgency: The Lesson of Malaya and Vietnam* (Hailer Publishing, Petersburg. Florida, 1966) 59.
[29] *W Hamilton Donald. The art of insurgency: American military policy and the failure of strategy in Southeast Asia (1998).* Greenwood Publishing Group. ISBN 978-0-275-95734-6.
[30] L Ferguson, 'Theory to Strategy: War for the Strategy Soldier', *School of Advance Military Studies, United State Army Command and General Staff College,* (Fort Leavenworth, Kansas 2008) 17.
[31] D Kilcullen, (n8), accessed 13th January 2023.
[32] Ibid,4.

> Perception is crucial in developing control and influence over population groups. Substantive security, political and economic measures are critical but to be effective they must rest upon, and integrate with a broader information strategy. Every action in counter- insurgency sends a message; the purpose of the information campaign is to consolidate and unify this message. Importantly, the information campaign has to be conducted at a global, regional and local level because modern insurgents draw upon global networks of sympathy, support, funding and recruitment.[33]

While Kilcullen presented a brilliant strategy on how to counter-insurgency, it remains a fact that his theory does not answer all there is to counter-insurgency. Accordingly, he concluded that his 'thoughts are tentative; they need a large amount of work. The 'three pillars' model is clearly incorrect all models are, in that they are systematic over simplifications of reality. But this, or something like it, might be a basis for further development.

Martin van Creveld, opined that, 'the first and absolutely indispensable, thing to do is to throw overboard 99 per cent of the literature on counter-insurgency, counter-guerrilla, counter terrorism, and the like. Since most of it was written by the losing side, it is of little value.'[34] Illustrating the failure of counter-insurgencies by the metaphor of killing a Child, Van Creveld noted that:

> By definition, a strong counterinsurgent who uses his strength to kill the members of a small, weak organization of insurgents let alone the civilian population by which it is surrounded, and which may lend it support – will commit crimes in an unjust cause, while a child who is in a serious fight with an adult is justified in using every and any means available – not because he or she is right, but because he or she has no choice.[35]

While the above passage may be true and somewhat a good consideration, van Creveld's proposal on how to fight insurgency appears to be at variance with this initial position. For instance, while noting also the importance of 'time' in counter-insurgency, van Creveld coined out measures to counter insurgencies by relying on lessons from basically two previous counterinsurgencies namely: the efforts of the British during the Troubles of Northern Ireland which started in the 1960s and ran into the late 1990s[36] and the 1982 Hama's massacre by the government of Syrian to quell an uprising by the Muslim Brotherhood. In both cases van Creveld argues that the 'core of the difficulty is neither military nor political, but moral' and thus outlines two distinct methods.[37] His first method is dependent on super intelligence which should be provided by people who have knowledge of the physical and social environment of the conflict as well as the insurgents. If the essentials for the first method - exemplary intelligence, well-trained and disciplined soldiers and police, and an iron will to avert being provoked into lashing out - are lacking, van Creveld postulates that an indomitable counter-insurgents must use the second method which he exemplified by the 1982 Hama massacre.

Perhaps drawing credence from al-Assad and also noting they could have been easily written by Niccolò Machiavelli,[38] van Creveld put forward five rules for his second method on defeating an insurgency:

1. There are situations in which cruelty is necessary, and refusing to apply necessary cruelty is a betrayal of the people who put you into power.
2. Once you decide to strike, it is better to kill too many than not enough.
3. Act as soon as possible.
4. Strike openly. Do not apologize, make excuses about 'collateral damage', express regret or promise investigations.
5. Do not command the strike yourself, in case it doesn't work for some reason and you need to disown your commander and try another strategy.

Zambernardi also gave some insights into counter-insurgency operations. He argues that counter-insurgency involves three main goals, but in real practice a counter insurgent needs to choose two goals out of three.[39] Drawing credence from economic literatures, he calls these goals the 'impossible trilemma' of counter-insurgency by which he suggests that it is impossible to simultaneously achieve: 1) force protection, 2) distinction between enemy combatants and non-combatants, and 3) the physical elimination of insurgents. [40] Specifically, he argues that 'a state can protect its armed forces while destroying insurgents, but only by indiscriminately killing civilians as the Ottomans, Italians, and Nazis did in the Balkans, Libya, and Eastern Europe, respectively.' On the other hand, a state 'can choose to protect civilians along with its own armed forces instead, avoiding so-called collateral damage, but only by abandoning the objective of destroying the insurgents.'[41] Zambernardi concludes by saying that 'a state can discriminate between combatants and non-combatants while killing insurgents, but only by increasing the risks for its own troops, as the United States and the International Security Assistance Force (ISAF)' did in Afghanistan under the leadership of Gen. Stanley McChrystal. Zambernardi's theory thus postulates that in counter-insurgency, it is almost impossible to do force protection, distinguish between combatants and non-combatants and eliminate the enemy all at the same time. Consequently, counterinsurgents must strictly adhere to two out of the three goals and coin out a strategy to successfully accomplish them, while sacrificing the third goal. However, the thesis is anchored on the enemy-centric theory which is premised on the presumption that counter-insurgency is a contest with an organized enemy and thus, emphasizes defeat of the enemy as its primary objective, while viewing other mechanisms as secondary. This is in view of the general impression and

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[33] Ibid

[34] M Creveld, *The Changing face of War: Combat from the Marne to Iraq New3 York,* (Presido press 2008) 268.

[35] *Ibid*, 226.

[36] J Holland, *Hope against History: The course of Conflict in Northern Ireland*, (Henry Holt & Company, 1999), 221.

[37] *Ibid.*

[38] M Creveld, *The Changing Face of War: Combat from the Marne to Iraq,* (New York Presido Press 2008), 235.

[39]L Zambernardi, *Counter Insurgency's Impossible Trilema.*; The Washington Quarterly (2010). <Available at http://cis.org//file/publication/twq10julyzambernardi.pdf.> Accessed 16th January 2023.

[40]Ibid, 22

[41] Ibid 12.

belief that insurgents are enemies of the state therefore all efforts are directed at eliminating the enemies at all cost. And this involves massive abuse of human rights of both the civilians and the insurgents.

5. Nigerian Government's Attempts at Combating and Insurgency

The security forces have recorded successes and failures in counterinsurgency operations. Unlike some other jurisdiction like India, where the population-centric approach to counterinsurgency was used and more successful, the Nigerian security forces and government have applied the enemy-centric approach to counterinsurgency. This approach has made the military to lose the support of the local population. Over the past four years, the Nigerian military lost much local support due to the bluntness of its tactics. Many non-combatants have allegedly also been killed by the military in the counter-insurgency campaigns and others have been wrongly detained. In some quarters the soldiers were reportedly more feared in Maiduguri than Boko Haram.[42] General David Petraeus[43] during counterinsurgency in Iraq advised and noted that population-centric approach has proven more effective than enemy-centric approach. In countering insurgency the Nigerian government and security forces have taken the following steps:

There is formation of joint task force, which comprise of the army, navy, air force, police, para-military forces, state security services and sometimes customs and immigration. It also includes the Mobile Police (MOPOL or riot police).[44]This tactic is similar with was applied in India, where they formed a 'Unified Command.' However, in India, intelligence information is often shared amongst the security forces in the Unified Command Headquarter especially between the military and the police and usually effective collaboration between them.[45] The situation is somewhat different in Nigeria, where little or no synergy exists between the military and the police. Often times, the military is left alone to confront the insurgents single-handedly. Nigeria could emulate the tactics applied in India and implement a better and more successful strategy. Other strategies employed by the Nigerian government are: Establishment of the Joint Task Force designed strategies in quest to achieving its aim of military-oriented operations which include road blocks, checkpoints, arrests, cordon and search; declaration of a state of Emergency, for example on 14th May, 2013, a state of emergency was declared in Borno, Yobe and Adamawa;[46] dislodgment of insurgent groups from their camps, especially members of the Boko Haram sect in the North-eastern part;[47] carrying out of aerial bombing;[48] formation of Youth Vigilante Groups also known as the Civilian JTF. The youth groups worked in collaboration with the soldiers to apprehend insurgents and report their activities.[49] A somewhat similar tactic was applied in Kenya, where it created different committees to the peace and stability of the region, however, the function of the committees as to serve as mediators.[50] Also, in India,[51] insurgents who have surrendered and have been rehabilitated are allowed to join in the fight against insurgents in order to restore peace to troubled areas; entering caves to search for insurgents;[52] and relocation of the Military Base to Borno State, where insurgent groups (especially Boko Haram) have made its supposed 'headquarters'. Another counter-insurgency approach employed by Nigeria in dealing with the threats posed by the Niger Delta militants is the carrot-and-stick approach or the 'amnesty' approach. As a way of dissuading the militants from resorting to the use of arms and as an incentive to their firm undertaking to renounce militancy, the Federal Government of Nigeria initiated the amnesty programme. The programme was designed to teach the militant youths skills in various vocations, to offer them basic education and to offer them alternative means of livelihood. This counter-insurgency approach has proved to be largely unsuccessful because of the poor design and handling of the programme, coupled with the insincerity of government in implementation. In conclusion, the Nigeria security forces have tried in countering insurgency and recorded good success which is evident in the reduction of the operation of insurgents. The fight against insurgency is a gradual, consistent and persistent one, which can only be won over time. However, the Nigerian government and security forces could learn better effective tactics from countries such as India that have annihilated insurgency to its barest minimum and Kenya, although, only in some aspects.

6. Conclusion and Recommendations

In conclusion, this legal assessment has underscored the intricate web of challenges and legal implications arising from the interplay of insurgency and counter-insurgency operations within Nigeria. The impact on human rights has been scrutinized through the lens of domestic and international legal frameworks, revealing instances where the pursuit of security imperatives has intersected with the protection of fundamental rights. The findings suggest a pressing need for a recalibration of strategies to ensure that counter-insurgency efforts are conducted within the bounds of established legal norms.

Enhancement of Legal Safeguards: There is a crucial necessity to fortify legal safeguards to protect human rights during counter-insurgency operations. This involves reinforcing domestic legislation and ensuring alignment with international human rights standards to create a robust legal framework.

Strengthening Oversight Mechanisms: To mitigate potential abuses, there should be a strengthening of independent oversight mechanisms. This could involve empowering judicial review processes and enhancing the role of human rights commissions to effectively monitor and investigate allegations of rights violations.

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[42] A Higazi, 'Insurgency and Counter-Insurgency in North-East Nigeria', 3 <http://www.sciencespo.fr/ceri)>
[43] Former Director General of the Central Intelligence Agency (CIA) of the United States Army.
[44]A S Odomovo, 'Insurgency, Counterinsurgency and Human Rights Violations in Nigeria' [2014] (3) *The Age of Human Rights Journal*, 46.
[45]A Behram, 'India's Approach to Counterinsurgency Operations', Public lecture delivered at the Quarterly Public Lecture Series organized by the Institute for Peace and Conflict Resolution, Abuja in collaboration with the United Nations Development Programme (UNDP) held on 12 September 2011at the Institute for Peace and Conflict Resolution, Abuja.
[46]. A Higazi ,ibid
[47] *Ibid.*
[48] *Ibid,*.3
[49] *Ibid,* 4.
[50] CEWERU are national governmental and non-governmental stake-holders networks engaging in conflict monitoring and response. CEWERUS from part of CEWARN, or Conflict Early Warning and Response Mechanism, a collaborative effort of seven members states of IGAD to mitigate and prevent conflict in the region.
[51] A Behram, *Ibid*.
[52] A Higazi, *Ibid*

Training and Sensitization: Comprehensive training programs for law enforcement and military personnel are essential to instil a deep understanding of human rights principles. This could foster a culture of respect for human rights norms, ensuring that individuals involved in counter-insurgency operations are cognizant of legal boundaries.

Engagement with International Partners: Nigeria should actively engage with the international community and organizations involved in human rights advocacy. Collaboration with these entities can facilitate the exchange of best practices, resources, and expertise to address the complex legal challenges posed by insurgency and counter-insurgency activities.

Public Awareness and Participation: Encouraging public awareness and participation in the legal discourse surrounding human rights and security issues is paramount. This involves fostering a transparent and inclusive dialogue that allows for citizen input in shaping legal frameworks and policies related to counter-insurgency.

By implementing these recommendations, Nigeria can move towards a more balanced approach that upholds both national security imperatives and the protection of human rights, fostering a legal environment that is resilient to the challenges posed by insurgency.