



**NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
LAW PROGRAM**

**THE PENAL RESPONSIBILITY AND SANCTIONS FOR
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

HERITAGE OLUKUNLE ASEPERI

MASTER THESIS

2021

**THE PENAL RESPONSIBILITY AND SANCTIONS FOR
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

HERITAGE OLUKUNLE ASEPERI
STUDENT NUMBER: 20178150

NEAR EAST UNIVERSITY INSTITUTE OF GRADUATE
STUDIES DIRECTOR PROF. DR. K. HUNSU CAN BASER

MASTER'S THESIS

SUPERVISOR

ASST. PROF. DR. OZLEM CANBELDEK AKIN

2021

ACCEPTANCE/APPROVAL

We as the jury members certify the master thesis prepared by
HERITAGE OLUKUNLE ASEPERI, defended on
.....has been found satisfactory for the award of
degree of Master

JURY MEMBERS

.....
.....
.....
Asst. Prof. Dr. Ozlem Canbeldek akin (Supervisor)
Near East University
Faculty Of Law

.....
.....
Assoc. Prof. Dr Derya Aydin Okur (Head of Jury)
Near East University
Faculty Of Law

.....
.....
Asst. Prof. Dr. Tutku Tugyan
Near East University
Faculty Of Law

.....
.....
Prof. Dr. K Husnu Can Baser
Near East University Institute Of Graduate Studies
Director

DECLARATION

I....., hereby declare that this dissertation entitled '.....', has been prepared myself under the guidance and supervision of '.....' in partial fulfillment of the Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach and Law of Copyrights and has been tested for plagiarism and a copy of the result can be found in the Thesis.

- The full extent of my Thesis can be accessible from anywhere.
- My Thesis can only be accessible from Near East University.
- My Thesis cannot be accessible for two(2) years. If I do not apply for extension at the end of this period, the full extent of my Thesis will be accessible from anywhere.

Date

Signature

Name Surname

ACKNOWLEDGEMENTS

My gratitude goes to almighty God, the giver of knowledge, whom in His wisdom and grace granted me all the wisdom I needed for the completion of this project as well as the entire program. Thank you God for making my dreams come true.

This study wouldn't have been completed without the unalloyed support from my supervisor, Asst. Prof. Dr. Ozlem Canbelek Akin, who meticulously read through my work and guide me all through the study.

I am grateful to my head of department and all the lecturers who have, in one way or another, contributed towards the success of both this project and the entire program, especially Assoc Prof. Derya Okur, Dr. Tutku Tugyan, thanks to you all and may you be richly blessed.

My sincere gratitude goes to my father, although late, but has been my motivation in life. Whenever I encounter difficulties, his memories give me the strength I need to keep going. My late father Jide (Major). My mother, Aseperi Margaret, is not left out in this litany of praise. She is one of a kind and irreplaceable. To my lovely and wonderful siblings: Oluwafunmi, Olusegun and Oluwole Aseperi, I am glad to be related to you all. You have always been my source of joy.

To all my colleagues and friends and every other person who have in one way or the other influence my life and give me moral and material supports, I am thankful.

ABSTRACT

THE PENAL RESPONSIBILITY AND SANCTIONS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

The unending armed conflict between the Nigerian armed forces and the Boko-Haram insurgents in the North–Eastern Nigeria which sated since 2009 have become a course of concern to not just Nigerians but also at the international levels as both the law enforcers and the insurgents are accused as responsible to grave breaches to the international humanitarian laws given the aggressive nature of the conflicts. Consequently, the ICC is calls for Nigerian government to adequately investigate and prosecute those guilty of violations to the international humanitarian law. This study basically examines Nigerian penal system and sanction in line with the IHL. The study revealed the meaning, principles and purpose of IHL. It also reviewed the various areas that Nigerian armed forces have deviated from IHL and the federal government response to ICC when asked to bring the perpetrators to the international criminal court for justice. Thus, the study exposes the staggering nature of Nigerian compliance to IHL but also justified that circumstances and situations determine level of compliance with IHL and as such made recommendations of what need to be done to enhance compliance with IHL by both the Nigerian armed forces as well as Boko Haram insurgents- the case under study.

Keywords: International humanitarian law, Nigerian Penal Responsibility, Sanctions, *Boko Haram*, Nigerian Security Forces, violations, armed conflict

Table of Contents

ACCEPTANCE/APPROVAL	iii
ACKNOWLEDGEMENTS.....	v
ABSTRACT.....	vi
INTRODUCTION.....	1
Background to the study	1
Statement of the problem	3
Significance of the study.....	4
CHAPTER 1	6
1.1 Literature review	6
1.2 Definition of key terms	8
1.3 Research Methodology.....	8
1.4 Limitation of the study.....	9
CHAPTER 2	10
INTERNATIONAL HUMANITARIAN LAW (IHL).....	10
2.0 Introduction	10
2.1 An Overview of International Humanitarian Law	11
2.2 The Geneva Convention of 12 August, 1949	13
2.3 Two Additional Protocols of 8 June, 1977	14
2.4 Implementation of IHL: Examples of cases	15
2.5 Factors Inducing Compliance with IHL.....	23
CHAPTER 3.....	29
NIGERIAN PENAL LAWS AND SANCTIONS FOR VIOLATIONS	29

3.1 Introduction	29
3.2 A Review of Nigerian Penal Laws	29
3.3 Evidences of Violation of IHL in Nigerian	32
CHAPTER 4	40
STATES TO ENSURE COMPLIANCE WITH THE INTERNATIONAL HUMANITARIAN LAW	40
4.1 Introduction	40
4.2 Evidences of Nigeria Compliance with IHL	40
4.3 Testing the adherence of Nigerian Armed Forces with IHL: A case of Boko Haram insurgency	42
CHAPTER 5	47
SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	47
5.1 Summary of Findings	47
5.2 Conclusions.....	49
5.3 Recommendations	51
REFERENCES.....	54
APPENDIX: PLAGIARISM REPORT SUMMARY.....	58

LIST OF ABBREVIATIONS

IHL: International Humanitarian Law
NHRC: National Human Rights Commission
ICRC: International Committee of Red Cross
ICC: International Criminal Court
CCA: Criminal Code Act
UNC: United Nation Commission

INTRODUCTION

Background to the study

War has grave consequences on the people, the nations involved, even the neighbouring countries are not spare during war, or from the effects of the aftermath of war. This is so because war brings with it endless suffering and destruction to millions of lives – militants, combatants or civilians alike. Its trauma may affect several generations even after the war had ended. There are cases of abuse, loss, violence, deprivation, families torn apart and scattered and may not reunite ever again even after the war. War destroys peoples' hope and livelihood. Thus, even though some nations or individuals are idealized as heroes for liberating their countries, for revolution or for their conquests; the shock, torments, and the destabilisation that comes with war makes it inherently inhumane. Technically, there is no winning in war; it is only losses all around – losses to humans, to the nations, not even animals and vegetation are spared. It becomes imperative to alleviate human suffering in situation where there are armed conflicts and to curtail extreme violence during wars; a body of law generally known as the International Humanitarian Law (IHL) was conceived.

The International Humanitarian Law is a branch of armed conflict laws and was found in the Four Geneva Conventions of 1949¹. Almost all the states/countries in the sovereign countries are in agreement with the objectives of IHL². IHL comprises important number of treaties. Among which are the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 which constitute the main corpus of law

¹ Ibrahim, S. J. Evaluating the application of international humanitarian law in internal armed conflicts: Sierra Leone and Liberia as case studies (2014). Retrieved online from: www.sierraleonespecialcourt-enotes-com.mht

² Geneva Conventions of 1949. Retrieved 30th April, 2020 from http://www.nationsonline.org/one_world/states.htm

for civilian protection during armed conflicts³. The Geneva Conventions delegate the responsibility of understanding and disseminating knowledge of IHL to the International Committee of the Red Cross (ICRC) through the statutes of the International Red Cross and Red Crescent Movement.⁴

The IHL recognizes two types of armed conflict: the (i) International Armed Conflicts (IAC), which involves fighting or opposition between two or more sovereign states; and (ii) Non-International armed conflicts (NIAC) which involve fighting or opposition between state and governmental forces and non-governmental armed groups. The most common and frequently occur type of armed conflicts is the later, that is, the Non-International armed conflicts. This is the type that is currently taking place in Nigeria as evident in the fight between the Nigerian government and Boko-Haram. Boko Haram, which once started as a local Islamic radical *Salafist* group had longed be tagged terrorist group in Nigeria as their activities become more fierce involving extreme violation of humanitarian laws as evident in their horrendous attacks leaving behind unspeakable fatalities. In response, the Nigerian military forces also commit various humanitarian law violations as their reprisal attacks are not any better as they also torture, murder, and carry out other severe war crimes thus violating the international humanitarian law. Contrary to the obligations of IHL which include: the protection of civilians, especially the vulnerable ones such as women, children, disabled, and the elderly, among others⁵; the attacks and counter attacks from both the armed forces and Boko Haram had led to the death of many innocent

³ ICRC, 2013, 'Additional Protocols to the Geneva Conventions of 1949', Advisory Service on International Humanitarian Law, December 2013

⁴ International Committee of Red Cross (ICRC,2008), How is the term "Armed Conflict" defined in International Humanitarian Law? Opinion paper. p.1. Retrieved March23, 2020 from www.icrc.org/web/eng/siteeng/.nsf/htmail/armedconflictarticles

⁵ Refworld, 2014, 'Protection of Civilian in Armed Conflict', available from; <http://www.refworld.org/civilians.html>

civilians and the vulnerable. Such practices are also contrary to the Criminal Code Act⁶ and the Penal Code Law⁷ of Nigeria.

Against this background, this study therefore seeks to investigate the penal responsibility and sanctions for violations of international humanitarian laws, by testing the applicability of IHL in internal armed conflicts with particular interest on Boko Haram- Nigeria.

Statement of the problem

One example of Non-International armed conflicts (NIAC) in Nigeria is the Boko Haram insurgency which is currently fighting against the Nigerian Government, and in the process killing the most vulnerable and other innocents which acts against the obligation of the international humanitarian law (IHL). Boko Haram insurgency in Nigeria has resulted in unspeakable horror, endless suffering and destruction of millions of people, including the innocent civilians alike, leaving everyone within the affected areas traumatized by loss, violence, deprivation and abuse. Many families are scattered with little or no hope of ever meeting their love ones again; yet the war is still on-going, defiling any attempt of peace. The problem of this study is to assess the applicability of International Humanitarian Law in internal armed conflicts in Nigeria, with focus on Boko Haram insurgency in Nigeria. The study is therefore guided by the following specific purpose/objectives:

- i. To define and state the meaning, objectives of and core principles of the international humanitarian law (IHL)
- ii. To determine how effective leaving the implantation of IHL in the hands of the state help in meeting the objectives of international humanitarian law (IHL)

⁶ The Criminal Code Act: This act is only adopted in the Southern part of Nigeria (However, other some areas in the southern states no longer practice this laws but had modify it to suit modern developments). On the other hand, those from the Northern States in Nigeria rather adopt The Penal Code Law.

⁷ Available in Chapters: 25, 27, 29 and 31 of the Criminal Code

- iii. To examine the applicability of International Humanitarian Law (IHL) in internal armed conflicts in Nigeria - reviewing the case of Boko Haram insurgency in Nigeria.
- iv. To determine if there is any connection linking Human Rights, International Criminal Law, and International Humanitarian

Significance of the study

The study is significant to lawyers and policy makers as it will help to test the applicability of the international humanitarian law (IHL), especially as it applies to internal armed conflicts in Nigeria. This will make the treaties more practical rather than mere instructions on pieces of papers. The finding of this study will serve as a guide to the lawyers and policy makers in their dealings with extreme violence in war.

The government and the combatants will, from this study, learn that it is necessary for them to consider the safety of the civilians while waging war and be ready to face the consequences in situations where they apply extreme violence in armed conflicts.

The recommendations of this study, especially to maintain peace rather than war is extremely significant and a better option that will give protection to the civilians, especially women, children, and old aged persons and avert the negative consequences of war. Thus, it is better to punish violators of the rules of IHL during internal armed conflict to bring justice and minimize the possibility of recurrence.

The significance of the study also rests on the revelation that by applying the repression of violent laws according to IHL, the dangers that would have befallen the people because of war will be averted. In the study, some of the IHL Conventions will be analysed, the obligations will be highlighted and some of the causes and consequences of failure to implement the convention proposed by IHL

will be revealed with the hope of enlightening the people. It will also make recommendations on how best to overcome the obstacles in the implementation process. This will help in knowledge enhancement as well as serves as a premise from where further investigation could be carried out by other researchers, academia, and students.

Research questions

- i. The following research questions are formulated to guide the study:
- ii. What is the meaning, objectives and core principles of the international humanitarian law (IHL)?
- iii. How had delegating the implementation of IHL in the hands of individual country be effective in meeting the objectives of international humanitarian law (IHL)?
- iv. To what extent has International Humanitarian Law (IHL) applicable to internal armed conflicts in Nigeria- reviewing the case of Boko Haram insurgency in Nigeria?
- v. What is the relationship between International Criminal Law, International Humanitarian and Human Rights?

CHAPTER 1

1.1 Literature review

As the tussle for power and position increases, nations fight against each other to be at advantageous position, map their territories, or gain respect. Regardless of their reasons for violent conflicts, studies⁸ have shown that violent conflicts are disastrous, destructive, and attract majorly losses; and as such need to be controlled. This led to the emergence of international human law (IHL) to help repress extreme violation from armed conflicts. International Humanitarian Law (IHL) as defined Alubo and Piwuna⁹ is a term used to describe international rules that has been enacted from an established customs or treaties with the aim of repressing the right of the parties involved in armed conflicts from using methods or weapons of their choice, especially advanced weapons such as nuclear weapons that poses grave dangers to life and property with the goal of protecting other parties, states or persons who are not involve in the conflicts.¹⁰ IHL embodies several issues among which are: control of armed conflict, prevention of war where possible, overseeing that adequate conflict legal and administrative post war measures are taken.

These roles do not come smoothly without some major constraints. Thus, some of the constraints in implementing IHL obligations are: the attitudes of the armed forces, hostilities generally, how persons and objects are treated during and after armed conflicts, especially those considered as victims of war. Sometimes the behaviour of civilian authorities can also influence the implementation of IHL especially

⁸ Ibrahim (n. 1)

⁹ Alubo, A. O. & Piwuna, M. (2015). 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, 141-153

¹⁰ Ladan, M.T, "Overview of International Humanitarian Law: issues in Domestic Implementation in Nigeria" Paper Presented at Training course in International Criminal Justice and Administration, NIALS, Lagos

when they refuse to incorporate. Others are the law of neutrality as applied between belligerent states and neutral states, likewise the law of occupation¹¹, among others.

IHL comprises two types of laws: that of Hague and the Geneva. The Hague comprises above 800 rules, making it complex to deal with. On the other, the four Geneva Conventions of 12th August 1949 are meant to be applied universally. There is also, the Two Additional Protocols of 10th July, 1977. All these rules are aimed at repressing extreme violent in armed conflicts. Some of the violent conflicts identified in IHL, are also seen in the Criminal Code Act¹² and the Penal Code Law.¹³ Among these are: culpable homicide punishable with death (murder); culpable homicide not punishable with death (manslaughter, assault, infanticide, causing grievous hurt, slave dealing, assault and violence to the person, theft or stealing etc.

IHL is a very hot topic in law as several studies on IHL abound and appear in ICRC publications; however, there are still literatures gaps which the study intends to contribute towards bridging. To bridge the gap, a review of some earlier studies is essential.

For instance, Shaw, M.N¹⁴ in attempt to define internal armed conflict made comparison between international armed conflict and internal armed conflicts and revealed that there is a connection between the two armed conflicts. However, according to Shaw foreign states either have overall control over the internal armed conflict or directly intervene in a civil conflict. The study also revealed that internal armed could operate under a Common Article and its additional Protocol II.

¹¹ Ladan, Ibid

¹² The Criminal Code Act: This act is only adopted in the Southern part of Nigeria (However, other some areas in the southern states no longer practice this laws but had modify it to suit modern developments). On the other hand, those from the Northern States in Nigeria rather adopt The Penal Code Law

¹³ See Chapter 25, 27, 29 and 31 of the Criminal Code

¹⁴ Shaw, M.N.(2003) International Law, (5th ed.) Cambridge University Press, London, p. 1054. 12

Henkaets, J.M and Doswald-Beck, L¹⁵ also investigated International Humanitarian Law paying attention to issues related with enforcement and implementation. All rules, as indicated in the common articles 3, must be respected at all time and circumstances. Emphasis was also laid on parties to an armed conflict are obliged to respect International Humanitarian Law even if the adversary does not do so.

While this study focus on the applicability of IHL in Nigeria context, especially as it concern Boko Haram, it also borrow premise from existing literature to properly understand IHL and advanced its application within the context of Nigeria.

1.2 Definition of key terms

International Humanitarian Law: This is established law at the international level, meant to repress extreme violence during war both at national or international level involving armed or non-armed conflicts. It was developed to protect civilians, especially the most vulnerable such as children, women, and the elderly.

International Armed Conflict of International Humanitarian Law: This involves cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

1.3 Research Methodology

The study will adopt doctrinal approach which is qualitative in nature in examining the subject matter. Both primary and secondary data will be adopted in the study. The primary data will be elicited from the Treaty Laws, and Law Reports on international humanitarian law, and the central anchor of the entire discussion will be the four Geneva

¹⁵ Henkaets, J.M and Doswald-Beck, L. in the Contributions by Alvermann, C, Dormann, K. and Rolle, B. (2005), Customary International Law, Cambridge University Press reprinted with Corrections 2009, Vol. 2 pp. 495-499.

Conventions and the two additional Protocols; while the secondary data will be source from textbooks, articles in both national and international journals and other essential documents on ICRC'S data base, conference proceedings, internet resources, among others. In the study also, analysis of data will be done using content analysis and discourse analysis in attempt to unveil the hidden motivations behind some texts.

1.4 Limitation of the study

IHL is broad, complex and ambiguous which makes it difficult to implement. Thus, this study cannot cover the entire IHL; rather, it will focus only on limited areas, especially those essential for its objectives such as: examining the meaning, objectives and core principles of the international humanitarian law (IHL); assessing the extent to the activities of Boko Haram insurgency in Nigeria has led to the violation of the international humanitarian law (IHL); determining how effective leaving the execution of IHL in the hands of the state help in meeting the objectives of international humanitarian law (IHL), as well as testing its applicability to internal armed conflicts in Nigeria. Thus, the study cannot necessarily provide information on all that there is to know on IHL, thus giving just limited insight to the readers will not be able to solve the problem with the ignorant of IHL obligations. The study will only focus on core principle, obligations, of IHL and not on any in-depth analysis of all obligations placed on States by IHL. This study will exclude all weapons convention, and will focus more on the protection of civilians without paying any attention to conventions meant to protect properties or environment during an armed conflict.

CHAPTER 2

INTERNATIONAL HUMANITARIAN LAW (IHL)

2.0 Introduction

In the strife for the survivor of the fitness as witness all over the world right from its foundation till date, humans have been in constant war for power, recognition, or control as they fight against one country or another. Such fight leads to brutal killings, especially the most vulnerable in the society. An attempt to control, or at least give succour to the weak, there was a need to initiate laws that will restricts human brutality. This led to the introduction of International humanitarian law (IHL). IHL has been in existence for many centuries. It first emerged as a customary law in the form of religion and moral rights to guide human behaviour especially Christianity and Islam¹⁶. It became prominent in the 16th century when certain trend emerged to carter for the wounded, the sick and the prisoners¹⁷ thus initiating an idea which was recognized in the 18th century as international humanitarian law meant to protect human. The Law became prominent in the 19th century and was recognized and regulated as the only International Armed Conflicts. This chapter of the study gives an overview of IHL, its objectives and basic principles and ways to induce compliance of IHL among others.

¹⁶ Meurant, J.(1987). 'Inter Armed Caritus: Evolution and Nature of International Humanitarian Law', Journal of Peace Research, Vol. 24, No. 3, p.239, Retrieved from <http://www.jstor.org.thursday.july>

¹⁷ Ibid.

2.1 An Overview of International Humanitarian Law

The International Humanitarian Law which was established by treaty or custom is a branch of armed conflict laws and was found in the Four Geneva Conventions of 1949¹⁸. It constitutes a major part of public international law and embodies the rules meant to protect people during the time of war/armed conflicts, with particular interest on those who refuse to take part in the conflicts, as well as to control the nature of weapon and warfare adopted in fighting.¹⁹

The IHL is considered as that part of laws of war that restricts brutality and limits the effects of armed conflicts. The law helps to reduce the changes of completely annihilation of all mankind (especially civilians, the wounded, the elderly, women and children) during armed conflicts. It highlights actions that are permissible²⁰ and those that need to be eradicated to minimum in-humane and illegal situations.

This is necessary because the real to conquer sometimes make humans act irrationally thus destroying lives, properties which may have serious consequences on the people and nation at large. For instance, the laws define the conduct and responsibilities of Nations that go astray or contrary to the laws, how to protect the neutral nations, as well as the individuals engaged in warfare.

Essentially, IHL is broad and deals with a whole gamut of issues among which are: prevention, control of armed conflict, post conflict legal and administrative measures²¹. Ladan adumbrated further legal constraints as: (a) The general hostilities at war (b) the conduct or

¹⁸ Ibrahim, (n.1)

¹⁹ ICRC (2016) Annual Review Meeting on the Implementation of IHL in West Africa.

²⁰ M. Sassoli and A. A. Bouvier, *How Does Law Protect in War?* (Geneva, International Committee of the Red Cross, 2006) p. 265

²¹ Ladan, M.T, "Overview of International Humanitarian Law: issues in Domestic Implementation in Nigeria" Paper Presented at Training course in International Criminal Justice and Administration, NIALS, Lagos

behaviours of the armed forces during combat (c) the combatant behaviour while in action (d) how the civilian authorities and persons behave during armed conflict (e) how people and objects are treated during armed conflicts, especially those war victims (f) how ordered are given in in occupied territory (law of occupation) and (g) how belligerent state relates with the neutral state (law of neutrality)²².

IHL exist in two forms - the first is the law of the Hague and the second is the law of the Geneva. The Law of Hague comprises above 800 body of rules which made it more complex when compare to the Law of the four Geneva Convention of August 12th 1949 which is universal. The Four Conventions specifically deals with the following:

- To ameliorate the condition of the sick and wounded in the battlefield during war (GC I);
- To amelioration the condition of the sick, the wounded, and the shipwrecked members of armed forces at sea (GC II);
- To ensures that the prisoners of war are treated(GC III); and
- To ensure that civilians are protected during war (GC IV) (new).²³

While the Geneva Law specifically accounted for the protection of the victims of armed conflicts; the Hague Law was meant to prohibit specific means and methods of warfare. The four Geneva Convent of 1949 were very important in developing the humanitarian law and to replace that of 1864 and 1906. However, at the wake of decolonization, it was difficult to the new State to adopt and abide of these rules that was not enacted by the state. Besides, the treaty rules have remained the same since the Hague treaties of 1907. Nevertheless, since revising the Geneva Conventions might affects some of the improvements made in 1949, a decision to strengthen the

²² Alubo, O.A. & Piwuna, M. (n.9)

²³ History of International Humanitarian law", <http://www.humanrights.ch/en/standards/international-humanitarian-law/history/> accessed 4th May 2020.

protection of the victims of armed conflict is essential, as such; there was a need to adopt new texts, thus leads to the emergence of Additional Protocols to the Geneva Conventions.

Thus the two Additional Protocols to the 1949 Conventions was added in 1977. The reason was to strengthen the earlier conventions, all meant to protect victims of both international armed conflicts (Additional Protocol I (AP I) and non-international armed conflicts (Additional Protocol II (AP II)). The AP II could be seen as an improvement of Article 3 common to the four Geneva Conventions. The Additional Protocols were meant to make up for the lapses in the 1949 Conventions. The Hague, the Geneva, and the two Additional Protocols of 1977 contribute to the development of IHL²⁴. IHL keep in check the activities of the combatants during both internal and external armed conflicts to ensure that the innocents, especially those who are not involve in the conflicts or wants out are protected. In other words, it prevents indiscriminate means and methods during war.

2.2 The Geneva Convention of 12 August, 1949

As earlier said, the IHL has two parts, one of which is the Geneva Convention of 12 August 1947 which was developed primarily to protect humans in non-international armed conflict. In the Convention, Article 3 specifically stated that: When there are armed conflicts occurring within same territory the parties at war are bound to the following provisions:

- The people who refuse to take part in the hostilities especially those who surrendered and laid down their arms as well as people

²⁴ Convention Prohibiting the Use of Certain Conventional Weapons of 1980- The Protocol (I) on Non-Detectable Fragments; The Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices; The Protocol (III) on Prohibitions or Restrictions on the Use of Incendiary Weapons; Protocol Relating to Blinding Laser Weapons of 1995 (Protocol IV [New] To The 1980 Convention); The Rome Statute of the International Criminal Court of 1998; Optional Protocol on the Involvement of Children in Armed Conflict of 2000

placed horsesh combatant by wounds, sickness, detention, or any other cause, should always be treated as human regardless of age, race, religion, gender, wealth, or any other similar criteria:

The Article thus forbade the actions such as:

(a) Violence to life and person, especially any kind of murder, cruel torture and treatment, mutilation, among others.

(b) The act also forbade taking hostages

(c) Similarly, every outrageous practice that affect individual personal dignity such as humiliation and degrading treatment;

(d) According to the act, no one should be condemned or sentenced without adequately being judged by constituted court, and through due judicial processes made available to citizens.²⁵

- Secondly, Article 3 of the Geneva Convention 1949 makes provision for the treatment of the wounded and the sick. The responsibility for this was given to humanitarian body like International Committee of the Red Cross who treat the wounded during war and provide reliefs to the parties to the conflict.

2.3 Two Additional Protocols of 8 June, 1977

Still in an effort to continually improve on humanitarian protection in terms of conflicts; additional rules were included as extension to complement lapses of the earlier rules that made up international humanitarian laws. This new addition to IHL is refers to as “the two Additional Protocols”. In Article I of additional protocol II of 1977, rules guiding non-international armed conflicts are disclosed – Recur that non-international armed conflicts refer to war within same territory or country. It could be between ethnic group, religious sect, or some groups of rebels who used armed forces to rebel against the state, or government, or against individuals who do not share similar belief or

²⁵ International Committee of Red Cross (ICRC,2008), How is the term “Armed Conflict” defined in International Humanitarian Law? Opinion paper. p.1. Retrieved March23, 2020 from www.icrc.org/web/eng/siteeng/.nsf/htmail/armedconflictarticles

ambition like them. An example in the Nigeria is the case of the Boko Haram Insurgency in Nigeria. Part of the territory are controlled by the armed forces or the dissident in order to “carry out sustained and concerted military operations as well as to ensure the implementation of IHL as required in this type of conflict.”²⁶ In other words, it has to regulate some internal disturbances in the form of riots, a conflict between ethnic groups; even the current mayhem by the Boko Haram could be classified into this group (i.e. internal armed forces). This Protocol came about to improve Article 3 of the four Geneva Conventions of 1949 which had been proven to be inadequate given the continual increase on the percentage of conflicts that is on the increase all around the world.

Article 4 of the Geneva Convention deals with fundamental guarantees which require the protection for rights of persons who do not take part directly or who have ceased to take part in hostilities. It stops violence to the life, health and physical and mental well-being of persons in particular murder as well as cruel treatment such as torture, mutilation, collective punishment, corporal punishment, acts of terrorism, taking of hostages, and outrages upon a person's dignity etc.²⁷

2.4 Implementation of IHL: Examples of cases

Setting up rules and obligations or protocols of war is one thing, and respecting or implementing such guideline is another. It is not difficult to a country to acquiescent to the standard and principles sets by IHL; however, when faced with the actual situation, abiding within the limits prescribes by law is usually difficult, especially when one's life is threaten. It is as a result of this challenges that the implementation of

²⁶ History of International Humanitarian law”, <http://www.humanrights.ch/en/standards/international-humanitarian-law/history/> accessed 4th May 2020.

²⁷ HIHL (n.26)

IHL is generally considered as problematic²⁸. If the international legal system is considered as sovereign equality²⁹, it is imperative to note that no other sovereign state has the right to fully interfere in the internal affairs of another. In other words, the enforcement of international law is not centralized - but decentralized. Likewise, all sovereign states have their own legal system, security forces, governments, or courts that control their activities and as such have a say on cases related internal wars. It is no wonder that implementation of IHL is quite challenging, especially when participation is voluntarily and the means of settlement of disputes have no set down standards for the enforcement of IHL. Against these obstacles on the pathway for the implementation of IHL, there are certain measures that enhance the implementation of IHL both in the time of war as well as in the time of peace. Some of these measures are discussed subsequently.

Measures to follow while implementing IHL when there is peace

Every nation hope for lasting peace given that peace heralds prosperity, growth and stability; as a result, States have the obligations to put in place some preventive measures meant to ensure the understanding as well as respect for the international humanitarian laws –IHL. One of such measures is to incorporate the important treaties of IHL into the legal system of the nation in the form of legislation. Countries such as Australia incorporate the Geneva Conventions Act 1957 into their domestic legal system to ensure that the Geneva Conventions are well affected³⁰. Apart from ensuring the enactment of the Conventions domestically, it is also imperative to ensure proper dissemination of the Conventions and Protocols to the

²⁸ Implementation and enforcement of IHL; Published on State Library of NSW (<https://www.sl.nsw.gov.au>)

²⁹ Ibid.

³⁰ Ibrahim, S. J (n.1)

entire population. The people need to be aware of the existence of such Act. Such knowledge will set both the armed forces on guard to avoid falling victims of such war crimes. This could be achieved through: giving regular instructions on matters related to IHL to the armed forces of the nation. It could be achieved by creating a manual for the military which outline the dos and don'ts in the cases of armed conflicts within and outside the state. Also, IHL should be integrated in the rules of engagement of armed forces into duty. It should also provide the bases for their regular trainings in order to be well acquainted with the requirements and specifications according to the IHL Conventions and Protocols. Apart from disseminating information regarding IHL among the armed forces, it is also necessary for the entire civil society to be aware of the Conventions and Protocols. Knowledge of such Conventions and Protocols will enhance individual knowledge of rights and obligations. This could be achieve through incorporating the Conventions and Protocols in the educational programs and teaching it at all levels of education, especially at the universities and schools, as well as through public education programs³¹.

Measures to follow while implementing IHL in times of war

While maintaining peace and harmony is necessary, war is also inevitable given the hunger and thirst of power by political leaders, greed, corruptions and the need to protect ones' territory among others motivating factors for war. One way to control extra judiciary killings and other war crime is to respect the guideline sets by IHL. Of course, the guideline is as presented in the Geneva Conventions in

³¹ <https://www.sl.nsw.gov.au/find-legal-answers/hot-topics-80-international-humanitarianlaw/implementation-and-enforcement-ihl>

Common Article 1³². As presented in the Common Article 1, parties involved in the war should respect and to ensure respect for the present Convention in all circumstances.³³ Based on this principle, the combined efforts of all the parties involved including the state at war, the States that have signed the Conventions and Protocols, to work together in ensuring that there is no breaches of the Convention; and where there are, such breaches should be halted before it gets out of hand. Practically, there is no clear action in ensuring this principle; however, a State facing the breaches of IHL is allowed to take whatever measure that is permissible according to the international law generally, as well as the International Humanitarian Law, specifically, to see that the IHL is respected. In practice, it is essential for a country/state to protect their powers. Protecting powers is a concept derived from the international diplomatic law.

Based on the international diplomatic law, people living in another country as foreigners are protected by law of the state. Nevertheless, there are some situations where such laws do not exist; especially where the diplomatic relations has been severed between the States involved in conflicts. In such circumstances, the state may decide to invite a third party or state in the equation to act as a protecting power. In the case, the third State will mediate to ensure the protection of the nationals as well as the state itself. Of course, protecting power can only be effective if all three states involved reached a consensus to act accordingly; and to appoint a protecting power, all three states involved must reach compromise to act as such. In International Humanitarian Law, Protecting Powers are used to refer to a neutral States who accept the responsibility of observing

³² Geneva Conventions of 1949. Retrieved 30th April, 2020 from http://www.nationsonline.org/one_world/states.htm

³³ <https://www.sl.nsw.gov.au>

and protecting the interests of all the parties involved in a conflict, especially in cases where the diplomatic relations of the countries have been severed because of the conflict. According to the Conventions³⁴, the protecting powers have the responsibilities of visiting the protected person while in prison, overseeing the relief mission or evacuations as well as giving some assistance in the judiciary proceedings to ensure a fair treatment to the protected persons.

The case of President Charles Taylor³⁵

A Liberia President Charles Taylor who ruled between 1997 and 2003 was indicted in 2003 by the Special Court in Sierra Leone in 2003 and was charged with but 11 charges of war crimes during the civil war in Sierra Leone between 1996 and 2002. Among the charges levelled against him were rape, enslavement, murder, sexual slavery, recruitment of child soldiers, and mutilation. However, the premise for his judgment was based on the crime of child soldiers. As a result of this crime, Charles Taylor was arraigned in The Hague as against the Liberian capital, Monrovia. The case revealed that the President's desire to control the diamond field in the nearby Sierra Leone motivated him into supporting rebel groups in nearby Sierra Leone. He was arrested after he resigned as President following his exiled in Nigeria. Charles Taylor was extradited to The Hague in 2006 on the premise that if such case was held in Liberia, it will generate some sort of political destabilization given that as a one-time president,

³⁴ <https://www.sl.nsw.gov.au>

³⁵ Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Sentencing Judgement, 39-40 (May 30, 2012), http://www.sc-sl.or/inkClick.aspx?fileticket_U6xCITNg4tY%3d&tabid_107.

Charles Taylor still has the support of some part of the country. He pleaded not guilty to all charges, and claimed that he was actually the peace-keeper during the civil war; he equally denied receiving any blood diamonds from Sierra Leonean rebels. He maintained the stand in his own defense and his testimony lasted for about seven months. However, Charles Taylor was found guilty in all 11 charges as the judgment was handed down in May 2012 in which he was sentenced to 50 years in prison.

The place of ICRC in ensuring compliance to IHL

The International Committee of the Red Cross – ICRC play key roles during war as well as in ensuring the respect for the International Humanitarian Laws. ICRC usually serves as a neutral party who is independent and separated from the war. They worked for all parties during armed conflicts to see to the protection of all victims of armed forces. The ICRC takes the responsibility of visiting the prisoners of war during armed conflicts at both national and international wars. They also mediate between the fighting parties; they check the overall condition of the detainees to see that it meets the basic standard stipulated by the Conventions; if the prison is below standard, the ICRC will collaborate with the detainers to improve the conditions of the prison. They provide medications and food among other relief materials to the people. However, if private negotiation to improve the quality of the prison failed to work, the ICRC will go public to attract public attentions and opinions on the matter. ICRC serves as an independent and neutral repository of information on the people who have been affected by the war or armed conflicts, especially the missing ones, the wounded, the imprisoned or detained ones, those sick or wounded, as well as the shipwrecked ones. They also attempt

help people locate their families and loved ones as well as keep track of the people who were caught up in the conflict zones³⁶.

Under Article 81 of Protocol I, the ICRC's role includes the provision of humanitarian assistance to States; and the States are mandated to guarantee the right and safety to operate, especially at the international armed conflict; but at the national or non-international armed conflicts, ICRC lacks the right to engage and the States are not obligated to accept their services.

Accountability Mechanisms

Accountability is essential for the sustainability of every organization, likewise IHL. IHL has to hold both the States as well as individuals accountable for the breaches of IHL in times of armed conflicts. This could be achieved either by adopting the rules on state responsibility/accountability or by adopting the international criminal law in the case of individual accountability. The rule on State responsibility embodies some provisions relevant to International Humanitarian Law; among which are: to ensure that the members of its armed forces adhere strictly to the specifications of IHL. The State must strictly prohibit the reprisal against civilian population, as well as against protected persons and goods. The States must not waive or renounce the rights of protected persons, neither are they allowed to use self-defense as a strategy to engage in the violation of any IHL. The law of State responsibility made provision for payment of compensation as a general obligation in case of violation. As for rules of individual responsibility, it is more complicated than that of States.

³⁶ International Committee of Red Cross (ICRC, 2008). Retrieved January 9-1-21 from www.icrc.org/web/eng/siteeng/.nsf/htmail/armedconflictarticles

In this case, there are some violations that are considered war crime which are considered as grave breaches as stipulated in the Geneva Conventions³⁷. Grave breaches fall in the category of crime committed against people that are classified as protected according to the provision of the Conventions and Protocols. These include the wounded, the prisoners of war, the sick or shipwrecked, civilians, the children, among others³⁸. Apart from person, the Conventions also made provisions for the protection of some objects among which are medical transports and medical units, non-defended localities and demilitarized zones as well as objects of cultural, spiritual and historical importance³⁹. Committing offense against the aforementioned is labelled as attacks on the international order.

There are other categories of grave breaches that are identified and punished under IHL known as crimes against humanity and genocide. Crime against humanity covers that crime which is systematically committed against humans or the States. The idea of this category of crime as borne after the Second World War which has become essential component of the customary international law. In same way, genocide also been criminalised under international law and include crimes such as causing serious bodily harms to members of a group, killing of members of the group, purposely inflicting life calculated activity that will bring physical destruction to either part or to the entire group. Added in this category of crime is imposing measures meant to stop births within a group or using force in transferring the children of a group to another with the aim to totally annihilate the group entirely. IHL made provisions for the Conventions to enact legislation meant to punish the aforementioned breaches, fish out the people who perpetrate the crimes before the either own State courts, or to be

³⁷ Ibrahim, S. J. (n.1)

³⁸ Articles 50/51/130/147 of the four Geneva Conventions, respectively, and Article 85 of Additional Protocol I).

³⁹ See Article 85 of Protocol I for more examples

extradited to another State to face their prosecution under the principle of universal jurisdiction.

2.5 Factors Inducing Compliance with IHL

There are several factors that influence individuals to comply with the International Humanitarian Laws. The following were extracted from the works of Krieger⁴⁰

- *Restricted capabilities of States to induce compliance*

By its nature, Armies may not really have a strict and stable military hierarchy. As a result, the possibility of mutiny is extremely high, like in the case of the armed group M23 which rebelled in the eastern DRC in 2012⁴¹. Given the harshness of the training and instruction of soldiers, it is possible that they are unaware of the IHL as envisaged in Article 83 AP I. The structure in the soldiers influences their level of compliance. If too much power is in the hands of the soldiers more than the state, they can do whatever they want without qualms. As Lamp pointed out, “since the criminal justice system is often affected by the breakdown of State structures, military justice may not work as a means of enforcement either⁴². This is evident in Article 17 of the ICC-Statute, which presents the principle of complementarity. As indicated in Article 17 para. 1 lit (a),

a case before the ICC is inadmissible if it is being investigated by a State that has jurisdiction, unless the State is genuinely unable to carry out the investigation. Article 17 para. 3 of the ICC-Statute defines inability as follows: ‘In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the

⁴⁰ Krieger, Heike 2013: A Turn to Non-State Actors: Inducing Compliance with International Humanitarian Law in War-Torn Areas of Limited Statehood, SFB-Governance Working Paper Series, No. 62, Collaborative Research Center (SFB) 700, Berlin

⁴¹ Human Rights Watch 2012: Arrest Bosco Ntaganda for ICC Trial, Press Report, in: <http://www.hrw.org/news/2012/04/13/dr-congo-arrest-bosco-ntaganda-icc-trial>; Retrieved 05.05.2020

⁴² Lamp, Nicolas 2011: Conceptions of War and Paradigms of Compliance: The “New War” Challenge to International Humanitarian Law, in: *Journal of Conflict and Security Law* 16, 225 – 262.

*State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings*⁴³

When there is lack of resources, be it viable legal infrastructure, insufficient material and human resources, inaccessibility of the courts, lack of sufficient experienced and independent judicial personnel, poor operative law, incapability of the police to carryout adequate investigation,, among others are all factors that pressure a state and thus affect the level of compliance to IHL. When countries do not have what it takes to uphold justice, it could be impose to yield to the IHL directives. Most African countries that do not have the required resources to prosecute criminals of war. An example is the case of DRC. President Kabila of Congo admitted that their national judiciary system lacks the ability to try Thomas Lubanga Dyilo in 2004.⁴⁴ The limitations confronting the legal system are even more pronounced in the midst of political biased and incoherent prosecution policy⁴⁵. Human Rights Watch stated in 2004:

'The DRC's judicial system has had little investment over the past decade. Most of the courts do not function. Its personnel have not been paid for years and magistrates are badly trained and unsupported. Mismanagement or corruption often characterizes cases that are heard, sometimes fuelling community grievances and furthering conflict. Lack of confidence in the judiciary's administration of justice is widespread. Not a single political crisis of a constitutional nature has been resolved by the judiciary. Politicians and businesses are reluctant to bring their disputes to the courts. The general population similarly lacks confidence in the judiciary. It is estimated

⁴³ Krieger, Heike 2013: A Turn to Non-State Actors: Inducing Compliance with International Humanitarian Law in War-Torn Areas of Limited Statehood, SFB-Governance Working Paper Series, No. 62, Collaborative Research Center (SFB) 700, Berlin

⁴⁴ Prosecutor v. Lubanga (Decision on the Prosecutor's Application for a Warrant of Arrest) ICC-01/0401/06-8 (10 February 2006), para. 3

⁴⁵ Human Rights Watch 2004: Democratic Republic of the Congo: Confronting Impunity.

that only a very small percentage of disputes end up in courts of law, not because parties to the disputes have better options, but because they are so suspicious of the judiciary that they prefer other means, including the police, security services, the military, or traditional arbitration in rural areas. Victims of human rights abuses are generally reluctant to utilize judicial mechanisms for redress⁴⁶

Thus, when the capacity of the state is limited, such state will be compelled to have their cases related to war crime be tried at the IHL.

- *Engaging armed groups*

Another factor that induces compliance of IHL is the engagement of an armed group to take charge to states which had lost its territories. In other words, where the country lost its territory, IHL assumes the responsibility as indicated in Common Article 3 GC and Additional Protocol II the armed groups within their area are assign the responsibility to be in control. Thus, to ensure compliance it is necessary to engage armed groups in same way as they engage States.

- *Inducing compliance by restricting the capabilities of armed groups*

Given that absolute power corrupts absolutely, it is imperative to reduce the capabilities of armed groups to improve their level of compliance to the IHL. Studies indicate that for total compliance with IHL, it is important that an authority with competence for decision-making and negotiating with public and private international actors.⁴⁷ It becomes imperative to allocate accountability to a central command with the minimum clarity required legally.⁴⁸ Enacting laws to adapt its normative preconditions to facts to adequately address the factual situation is one way to reduce the capabilities of armed group. IHL

⁴⁶ Ibid, HRW: 5

⁴⁷ Krieger, Heike 2013 ibid

⁴⁸ Jo/ Bryant(2013: 243); for a legal discussion of the required degree of centralization and organization see La Rosa and Wuerzner, (2008: 329); Sivakumaran (2012: 175).

has established a two-tiered system to restrict the capabilities of armed groups when it stated that “only armed groups which fulfil the demanding threshold of Article 1 para. 1 are bound by Additional Protocol II; while the minimum standard of Common Article 3 GC applies to other cases of non-international armed conflicts.⁴⁹ This approach, among other things prove that compliance with some of the obligations under the AP II, such as Article 4 and 5 AP II, requires sufficiently stable (infra-) structures.⁵⁰ This connection between compliance and obligation clearly stated in Article. 1 para. 1 AP II, which emphasizes that: “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”⁵¹

AP II also stresses that the since the prerequisites – ‘being under responsible command and in control of a part of the territory concerned⁵²’ – indicates circumstances that requires the armed group to ahead to protocols. The ICRC Commentary reveals that it is not mandatory for that armed groups be as organized as regular armed forces, what is actually more important is discipline in the name of a de facto authority⁵³.

Other factors that are capable of inducing compliance with IHL as extracted from the work of Wolfrum and Fleck (2008)⁵⁴ include the following:

- Reciprocal interests

⁴⁹ International Committee of the Red Cross, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva, 1987), Art. 1, p. 1348, no. 4447

⁵⁰ Ibid., Art. 1, p. 1352, no. 4466

⁵¹ Sivakumaran, Sandesh 2012: The Law of Non-International Armed Conflict, Oxford.

⁵² ICRC Commentary, above note 12, Art. 1, p. 1353, no. 4470; Sassòli, Marco/Shani, Yuval 2011: Should the Obligations of States and Armed Groups Under International Humanitarian Law Really Be Equal?, in: International Review of the Red Cross 882, 425-436.

⁵³ Ibid

⁵⁴ Wolfrum, Rüdiger/ Fleck, Dieter 2008: Enforcement of International Humanitarian Law, in: Fleck, Dieter (ed.): The Handbook of International Humanitarian Law, 2nd ed. Oxford

- Public opinion
- Maintenance of discipline
- Fear of reprisals
- Penal and disciplinary measures
- Liability for compensation
- Activities of Protecting Powers
- International fact-finding
- Activities of the ICRC
- Activities of the United Nations
- Diplomatic activities
- Activities of non-governmental organizations
- National implementing measures
- Dissemination of IHL
- Personal conviction and responsibility of the individual

Relationship between Human rights, International Criminal Law, and International Humanitarian law

The entire idea of instituting international humanitarian law (IHL) is to protect human rights. Thus, there is interplay between the concepts human rights, international criminal laws and International humanitarian laws. As pointed out Clare de Than and Edward Shorts, the three concepts (international humanitarian law, international criminal law, and international human rights) usually enjoys clear, visible cross-pollination and cross referencing, with the first and last of which are really different perspectives on the same problem". In other words, human rights and international humanitarian laws share some connections which at times make the two concepts difficult to be distinguished from one another. Perhaps, the primary difference is the context of usage. This is not impossible given that all three laws are

geared towards protecting humans. As a result, the emphasis is on peace. The laws emphasize that, for there to be protection of humans, there must be peace if human rights are to be protected. As the UN Convention highlighted in Iran “peace is the underlying condition for the full observance of human rights and war is a negation”⁵⁵. This implies that, there is no way one can truly protect human right when there is no peace, not even the IHL can put soldiers in check. For instance, Nigerian civilians suffered great deal of inhuman treatment during the civil war the took place in 1960 leading to Resolution XXIII which was adopted on 12th May 1968 with attempt to protect humans from advanced molestation during war⁵⁶. It is for this reason that the UN Commission on Human Rights find it necessary to invoke international humanitarian laws to give imprimatur to its recommendations to countries that are in armed conflicts. For instance, the UN Commission has been threatening Syria, which is currently in armed conflicts, with prosecution on the basis of their violation of human rights as well as humanitarian law violations.⁵⁷ This is because the UN Commission has clearly observed that abuses to human rights are very common in internal conflict across the world and thus need to be addressed. Atrocities such as incessant massacres, torture, indiscriminate killings of civilians, starving the entire population, executing prisoners of war, using mass explosives during war, rapes of females both women and girls, forcible relocation, are just few of the many crimes during war/armed conflicts.

⁵⁵ Iran, 1968 convened by the UN

⁵⁶ UN Commission, Adopted on 25 June 1993

⁵⁷ Ibid

CHAPTER 3

NIGERIAN PENAL LAWS AND SANCTIONS FOR VIOLATIONS

3.1 Introduction

Generally, laws are enacted to control behaviours without which inhuman treatment will dominate the world. In this case, the weak are suppressed by the strong living the country into chaos. This chapter of the study reviews Nigerian panel laws and sanctions for violations, as well as evidences of Nigerians soldiers violating IHL in armed conflicts, among others.

3.2 A Review of Nigerian Penal Laws

It is not surprising that the armed forces/soldiers are subjected to both military and civil laws; the latter being possible only when they have been disengaged from the Armed Forces. In the context of this study, Civil is defined from the perspective of The Armed Forces Act defines civil as “an act or omission punishable as an offence under the penal provisions of any law enacted in Nigeria”. Some of the offences and their punishments are listed out in both the Criminal Code Act⁵⁸ and the Penal Code Law⁵⁹. The Criminal Code Act is specifically applicable to the Southern states in Nigeria, which has been slightly altered by some southern state to meet their needs. On the other hand, The Penal Code Law are usually adopted by the people in the Northern states Nigeria. The following offences and their corresponding penalties are frequently common among the armed forces during internal conflicts: culpable homicide – this is punishable with death, especially when the army involved is charged for murder,

⁵⁸ LFN 2004

⁵⁹Penal Code Law

or imprisonment, but not death, if the ones involved are charged for manslaughter, slavery, infantile, or assaults, etc.

Although murder/manslaughter is a serious violation of human right, there are cases that they become inevitable. For instance, in Nigeria, given the insurgency of Boko Haram which their activities that led to the death of countless civilians, raping and kidnapping of girls and brutal killing incessantly among other similar internal conflicts called for reformation of certain humanitarian laws to give power to the armed forces. Some of these laws are The Emergency Powers Act, 1961 and similar others that was speedily signed with respect to Yobe, Ekiti, Plateau, and Borno, following the insurgency. Thus, Section 305 of The Constitution Federal Republic of Nigeria, 1999 (as amended) gives the president power to call for the state of emergency which in situation where peace talk have no effects. According to the Constitution, the president is given the power to make a proclamation when: “the federation is at war, the federation is in imminent danger of invasion or involvement in a state of war”⁶⁰. The state of emergency could be declared also when there is actual breakdown of public order and public safety; when the public is faced with imminent danger. In such situation, the Armed Forces are called upon to fight to curtail the situation, even if it means killing for the sake of peace. Thus, section 217 of the CFRN gives the president the right to call on the Armed Forces’ assistance to protect civil authority when the need arises while section 218 of the Constitution, gives account on the operational use of the armed forces of the federation.

The UN Commission, in 1990 also laid down the basic principles on the use of Force by law enforcement officials. Accordingly, the

⁶⁰ Alubo, O.A. & Piwuna, M. (2015). 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; pp. 141-153

government were given the mandate to enforce laws against the use of force and firearms by soldiers or the police indiscriminately.⁶¹ While Article 1 emphasises on the need ethics that guide the use of firearms by law enforcement, Article 2 permits law enforcement to be exposed to various types of weapons and ammunition to help in differentiated use of force and firearms. Article 3 accounts for the development and deployment of non-lethal incapacitating weapons to reduce the risk of endangering uninvolved persons by controlling the use of such weapons.

The idea is to reduce violence as much as possible; in that case, Law enforcement officials can only considered violence when all other options failed⁶². Article 5 urges law enforcement to try as much as possible to restraint their activities and actions in situations where the use of force and weapon is unavoidable with the aim to minimizing the damage as much as possible. As such, the injuries involving firearms must be reported to their officials.⁶³ As a measure to tame arbitrary use of weapons or firearms, government are required to punished law enforcement officials who abuses the uses of firearms. As a result, internal political instability should not be invoked to obviate compliance according to Article 8; while Article 9 provides law enforcement officials the leverage to use firearms, but only as self-defence or defending others against immediate threat of death or serious injury, especially, when the perpetrator of such serious crime resists their authority. Even in such situation, the law enforcement are still required to identify themselves and to give a clear warning to the perpetrator before resulting to violence if all attempts to avoid violence failed. However, if in attempt to alert and warn the perpetrator will only

⁶¹ 'UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials" www.facingfinance.org/.../un-force

⁶² Protocol Additional to the Geneva conventions – ICPC www.icrc.org/ihl/intro/470 accessed on 7/5/2020

⁶³ Art. 10 ;n Parks, T. "The Elephant in the Room: Internal Security Operations and Conflict Management" <http://asiafoundation.org/.../the-elfphant-in-the-room> accessed on 8/5/2020

put the law enforcement officials in danger or endanger the uninvolved persons, then, the soldiers can only do what they think is best in such situations.

However, it is pointless to insist that law enforcement official must give clear warning and identify themselves. Most often, such warning only triggers the other party to act recklessly, thus endangering more lives. In fact, there may be limited time to follow such protocols. Article 11 thus sets down rules and regulations on how firearms should be used by law enforcers and thus states the circumstances that authorised law enforcers to use firearms as well as the type of firearms and ammunitions to be used to control risk factors and avoid unnecessary harm. This section clearly prohibits the use of those firearms and ammunition that cause unwarranted injury. The Article provides regulation on how to control, store as well as use firearms. It also provides a system of reporting whenever law enforcement officials use firearms in the course of carrying out their responsibilities.

However, setting up rules is different from compliance. In a battlefield, where individuals are faced with death or alive, how many of the armed forces could remember anything about rules while struggling to stay alive. However, where possible, adherence to these rules will help protect lives and human rights specifically and thus have positive influence on humanitarian laws as secure human rights, even when faced with internal conflicts situation.

3.3 Evidences of Violation of IHL in Nigerian

Part II of the Art (Two Additional protocol II of 1977) takes into consideration the protection and welfare of the wounded, sick and shipwrecked (Art 7-12). It also extends its protections to the civilian population. The protocol controls the action of the military or armed

forces on trouble spots or cesspits on the ground. However, the extent to which armed forces in Nigeria or other countries during internal war respect these protocols is questionable. For instance, in Nigeria, given the insurgency of Boko Haram, there are countless cases of inhuman treatment in places like Maiduguri, Gombe, Adamawa, Jos, and other places. Among such inhuman treatments are blowing off or bombing of houses where children and women reside simply because the head of the family is one of the members of Boko Haram is by no means justifiable. There are also cases of rape, the beating of the vulnerable children, forcing passer-by to do frog-jumping, etc. Such practices are inevitable and sometime impossible to avoid but still have negative implications on the dignity of humans. In the fight between law enforcement officials and criminals or militants, the militants or criminals use civilians as shields thus making them easy preys. At such time, the armed forces are faced with the dilemma or *cul de sac*; - on the one hand, is the responsibility of protecting civilians on the other hand is the gargantuan tasks of eliminating their opponents or gets themselves killed. Amidst this confusion, Ahmed stated that, “the seminal problem of all laws, including humanitarian law, is the yawning gap between precepts and practices.”⁶⁴ It is no doubt that the law enforcement officers may yield to the temptation of committing crime against humans in an attempt to protect humans.

In a non-international armed conflicts situation, Claire de Than and Edward Shorts⁶⁵, in their magnum opus, listed some war crimes that could be committed in times of war. Some of these crimes are extracted from the International Criminal Court (ICC) in Article 8 (2) (e). These crimes are synonymous with those found under Art 8 (2)

⁶⁴ Ahmed, Loc. Cit.; See Park, T. “The Elephant in the Room: internal Security Operations and Conflict Management” <http://www.asiafoundation.org/.../the elephant-in-the-room> Accessed: 8/5/2020

⁶⁵ Dethan, C. & Shorts, E. *International Criminal Law and Human Rights* (London: Thomson & Sweet & Maxwell, 2013) 173-175; See also Gray, C O *Another Bloody Century: Future Warfare* (London: Weidenfell & Nicolson, 2005)

(b) of the offences committed during international armed conflicts:

They are:

- i. *When civilians are deliberately attacked;*
- ii. *Deliberately attacking materials, buildings, medical units etc.*
- iii. *Purposively attacking installations, personnel, material, units etc.*
- iv. *Deliberately attacking buildings that were meant for education, worship, science, charitable reasons, historic monuments, arts, etc.;*
- v. *Forcefully taken over a place or town by assault;*
- vi. *Involving in rape, enforced prostitution, sexual slavery, forced pregnancy, etc.*
- vii. *Forcing underage or children below fifteen years to join the armed forces or groups etc.*
- viii. *Giving order for the displacement of civilians because of war, etc.*
- ix. *Deliberately Killing a combatant enemy or treacherously wounding them*
- x. *Making declaration that that no quarter will be given;*
- xi. *Forcing people who are not under your authority to fight against themselves and*
- xii. *Forcefully taking over property that belongs to the enemy, etc.*⁶⁶

Without many thoughts, these offences are common in times of war and most states/countries have their own laws on dealing with these crimes. Although ICC laid down some rules against these crimes, however, the jurisdiction of the ICC is not meant to replace the national law. Its aim is to complement existing national laws, in as much as such laws are geared towards protecting human rights⁶⁷. All countries are required to rise against such crimes and to give appropriate punishment to the criminals. In situation where the

⁶⁶ Azinde Op. Cit. at 23; Alubo, O.A. & Piwuna, M. (2015). 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; pp. 141-153

⁶⁷ *ibid*

state/country is not willing to punish the criminal involved, such country is under the obligation to extradite the persons involved to the ICC in-charge of such matter. This shows that the state involve has the right to prosecute the soldiers that failed to abide by the rules, and can only extradite them to ICC when all local remedies are exhausted.

In Nigeria, the endless fight against Boko Haram insurgency and the nature of sophisticated weapons they are using against Nigerian citizens, causing countless deaths, etc. have leave the federal government with no choice than to counter attack. Consequently, there have been large deployments of the armed forces in Internal Security operations to the areas where the conflicts are fiercest.

In carrying out their duties, the armed forces are faced with several criticisms. Some of which Oluwasegun documented as abuses against IHL.⁶⁸ Nigeria was in 1997 accused of gross human rights violations by the US governments. Some of the regularly occurring crimes activities that forces the armed forces to act contrary to human rights include: civil war, oil theft, Niger Delta Military crises, Boko Haram insurgency, among other crises. Of course it is not easy to achieve peace in such situation without been suppress by the armed forces. To protect the Armed Forces, the Nigerian government thus introduced some constitutions such as: the Emergency Powers Act, the Armed Forces Act, and other laws. These laws protects the armed forces to carry out phalanx of activities such as: patrols, identity checks, manning observation posts, arrests of suspects, escort duties, detaining of persons, protecting lives, controlling demonstrations, ambush, cordon and search, and property of persons threatened,

⁶⁸ Oluwasegun, A.M. "Internal Security Operations and Human Rights Abuses in Nigeria: Issues and challenges <http://www.academia> accessed non 7/5 /2020; see also NHRC access Government Troops of Mass – Extra Judicial Killings" digitaljournal.com/article/353456 Accessed on 7/5/2020; How JTF is committing abuse in North East: Document" news.naij.com/38802.htm accessed on 8/5/2020

guaranteeing safe passage for victims of crisis, road blocks or vehicle check points, bomb disposal or dealing with improvised explosive devices.⁶⁹

It is no doubt that while performing these duties; the Nigerian Armed Forces are also compelled by situations to violate some human rights. For instance, the constitution on human rights emphasizes that at “Every person has a right to life, and no one shall be deprived intentionally of his life, unless when found guilty by law and condemned according to the laws in Nigeria.”⁷⁰ This constitution gives protection not just to the victim but also to the villains. In other words, as far as the villains are human, they are also entitled for the protections of their lives in same way as the victim. That explains why the armed forces are put in a difficult position while carrying out their duties.

One of such unavoidable extra-judiciary killings, was the killing of the founder of Boko Haram in 2009 in Maiduguri, worsen the attacks of the insurgency in Borno state. From his capturing, through the process of his dying was not in accordance with the law which thus exacerbated the activities of Boko Haram resulting in the killings of countless the innocent Nigerians. Even the Baga massacre was attributed as a reprisal attacks on the part of both Boko Haram and the Nigerian armies; one for the killing of Boko Haram founder, and secondly, for the killing of some Nigerian soldiers. Thus, the small fishing community of Baga was faced with serious attacks that led to the loss of lives and properties of the civilians. About 185 residents were reported killed and over 2,000 houses were razed down.

⁶⁹ Plateau Killings: Disband STF now, HURIWA tells Jonathan” Premiumtimesng.com/.../52874; “Plateau State: Nigeria gunmen ‘dressed as soldiers’ fire in pub BBC” www.bbc.co.uk/world-africa/2015/08/150827_nigeria_plateau_killings, “Eyewitnesses: Nigeria soldiers slaughtered fleeing Christians” midnightwatcher.worldpress.com/.../... accessed on 8/5/2020; “Blood on the Plateau: Escape from Rwanda (2)” www.ngrguardiannews.com/.../... Accessed on 8/5/2020

⁷⁰ Okoye, F “Rules of Engagement, insurgency and the civil populace” THISDAY, Sat 01, February, 2014 accessed 30/4/2020; S.35(4)

Consequently, the Nigerian army were accused of violation of human rights.⁷¹ Similarly, incident took place in Jos Plateau state, where not only human lives but also properties were destroyed, and the special task force were accused for malicious killings. Okoye did not spare the soldiers or the special task force either. He condemned the act of the army his article in 2013 that:

*“nothing justifies the conduct of internal security operations on the basis of revenge or collective punishment for the victims of internal insecurity challenges or killing of women and children who need protection during periods of internal security challenges. Nothing justifies the leveling of a whole community just because of the misdemeanor of a few people. Women and children deserve maximum protection. Protection of unarmed populations targeted by insurgents is a cardinal principle of international law and international humanitarian law but when the protector becomes the aggressor, the civilian populations are left unprotected and vulnerable.”*⁷²

Apart from killings, the Nigerian law enforcers have also been accused of depriving criminals of war of their freedom through indefinite imprisonment. Constitution makes provisions for individual to moves freely. Section 35 (1) of the Nigerian Constitution makes provision for the protection of individual rights of freedom of movement. More so, the Constitution made provision that requires that before one is subjected to imprisonment for any crime, they must first pass through the court of law within few days of detention. However, there are more than hundreds accused in the time of war or during the Boko Haram insurgency had been imprisoned without even the privilege of appearing in court neither is there any documentation to warrant their detention. These prisoners have no access to their

⁷¹ Ibid

⁷² NHRC access Government Troops of Mass – Extra Judicial Killings” digitaljournal.com/article/353456 Accessed on 6/5/2020;

family members or medicine as against the constitution on Human and People Rights⁷³.

It is without doubt that the armed forces are bound by the international conventions to avoid torture and other cruel punishment against humanity. Yet, situations force the armed forces to go contrary to the agreement when faced with the challenge of protecting the nation crises. It can be frustrating and quite disappointing on the part of the armed forces that fought at the front to keep peace and protect their people, yet are being accused of discriminations, torture, nepotism, insensitivity, rape, assault on personal dignity, or any other hordes of abuses. Some derogatory titles has been given to the armies by the media, some instance include: Stars on their shoulders. Blood on their hands: war crimes committed by the Nigerian Military⁷⁴, As indicated in the report, the writer counted more 7,000 youths who died in detention since 2011, while more than 1200 were said to have been killed by the soldiers unlawfully in 2012.

*In addition, Shethy pointed out that: This sickening evidence exposes how thousands of young men and boys have been arbitrarily killed or left to die in detention in the most horrific conditions. It provides strong grounds for investigations into the possible criminal responsibility of members of the military, including those at the highest level.*⁷⁵

No one fill happy when being accused. Of course the military government has to deny the allegation and thus referred to it as International Conspiracy⁷⁶ and thus are all fault accusation. After all, the military has nothing to hide. One cannot help but support that the military are in the victims. They sacrifice their lives for the safety of

⁷³ Ibid

⁷⁴ Amnesty International "Nigeria: Senior members of the Military must be investigated for war crimes" www.amnesty.org/news.accessed 8/5/2020, Amnesty International Report 20/4/2015

⁷⁵ ibid.

⁷⁶ Onuorah, M. "Anger in Military over Amnesty Report/The Guardian Nigeria www.nguardiannews.com 72015/06 Accessed on 8/5/2020

their people and being accused of such hideous crime can be discouraging.

CHAPTER 4

STATES TO ENSURE COMPLIANCE WITH THE INTERNATIONAL HUMANITARIAN LAW

4.1 Introduction

IHL is set to control and safeguard human rights beyond country boundaries. The reason being that due to some belief system, culture, values or principles, some human are marginalized. The situation is worse during international and non-international armed conflicts where the weak becomes easy prey in the hands of the powerful. Civilians become victims of war as they are displaced, handicapped, raped, kidnapped, imprisoned, brutally treated, even when they are not part of the war. Protecting their rights thus led to the introduction of IHL. However, implementing IHL is left in the hands of the various states who agreed to the treaties, only some complex cases are referred to the international court. This chapter of the study reviews the extent to which Nigeria comply with IHL, especially while facing non-international armed conflict as in the case of Boko Haram insurgency as discuss subsequently.

4.2 Evidences of Nigeria Compliance with IHL

While faced with the dilemma of upholding defending oneself and country and complying with IHL, the Nigerian armed forces also try to comply with the IHL. However, the extents to which the countries comply with the international law depend largely on the political will of countries/states. Presently, the sovereign state sees international law as central while enacting the laws of individual country. Whether or not to take part in the negotiation, signing as well as ratifying of any

treaty at international level is dependent on the states discretion. With this in mind, one can say that the obligation to carry out any treaty by a state is intrinsic to its accession or ratification even though this is not explicitly stipulated.

One can make inferences from some of the clauses in some specified laws. For instance, the Vienna Convention on the Law of Treaties of 1969 pointed out that “a treaty must be performed in good faith by the states which are party to it”⁷⁷. In this case, Ladan M.T attempts to interpret the phrase in “in good faith.” Accordingly, “a state in good faith does want that the treaty, to which it has become a party, be given full effect. The good thing about the International Humanitarian Laws is that the laws provide the premise which helps to ensure compliance”⁷⁸ This presupposes that, while attempting to comply with the international humanitarian law, a state/country should not forget the contextual influences that also have implications on individual actions and behaviours. There is always a customary law that serves as a window to some unavoidable breaches to the international law. Example is the “Emergency Power Act” in Nigeria that protects the armed forces when faced with situation that compelled them to violate some of the international humanitarian laws or violation of human rights.

Given that nations have their own sovereign powers; it is often difficult to give a hundred per cent compliance with international law. Every sovereign state will like to put forward its own interest before considering the international community. In other words, the right of individuals that is expressed in the international law can only be

⁷⁷ The Vienna Convention on the Law of Treaties of 1969

⁷⁸ 83 Prof. M.T. Ladan “Domestic implementation of international humanitarian law (IHL) treaties in Nigeria” A lecture delivered at The PGDJAGBC Training Workshop for Legal Officers of the Legal Service Wing, Nigerian Army School of Military Police, Zaria.

protected within the municipal courts of a country. Nigeria is also signed the IHL treaties and thus is bound by the international humanitarian laws like other countries. Consequently, Nigeria also has duty to devices ways that will ensure compliance with IHL regardless whether there is peace or in time of armed conflicts. Some of the measures developed by Nigeria as ways to comply with IHL include: the adoption of national legislation which primary purpose is to ensure the implementation of the IHL treaties and rules, personal and military training on how to apply the IHL, as well as translation of IHL in local dialects for easy assimilation by the populace. The duty of the national legislation also includes prosecuting individuals who are guilty of “grave breaches” of the Four Geneva Conventions (Four GCs) and the Additional Protocols (API) following due process. More so, Nigeria allows its courts to engage in universal jurisdiction when there are grave violations of the laws, especially in time of war regardless of whether the crime is committed during non-international armed force conflicts or during the international armed force conflicts. However, the cases of some non-international armed force conflicts, especially the ones with the North-eastern region will give a clearer view on the extent to which Nigeria complies with the directives of IHL as discuss subsequently.

4.3 Testing the adherence of Nigerian Armed Forces with IHL: A case of Boko Haram insurgency

Stating the laws and keeping the laws are two different things; while stating the law is governed by will-power, that is, ones willingness to abide by the law; keeping the law combines willpower and situations/context. Most time, contexts or situations overruled the willingness to keep the law. This is the case with the Nigerian security forces which has been alleged by the ICC as committing grievous crimes against humanity given their indiscriminate arrest, extrajudicial

killings, detention, etc of individual are a suspected to be members of Boko Haram.

For instance, in Yobe, Adamawa, and Borno states, since the insurgency of Boko Haram from 2009, it has been recorded that, the armed forces of Nigeria has been engaged in arbitrary arrest and unlawful detention. Between 2012 and 2013, above 4,500 civilians had been said to have been arrested by the Army⁷⁹ Most time, some of these detained civilians died in the process as about 7000 cases had been recorded between 2011 and 2016.

In like manner, the same armed forces are said to routinely torture civilians and forced them to admit their involvement with the Boko Haram using all types of malicious punishments such as shock with electric batons, deprivation of food, suspended on metal poles, beaten or any other tortures without showing mercy and even depriving victims access to medical aids.⁸⁰ Okorie, while reviewing the activities of the Nigerian armed forces pointed out that between 2012 and 2014; more than 1200 had been killed through the extrajudicial killing engaged by the armed forces.⁸¹ Given these evidences, one cannot but accused the Nigerian Armed forces for being inhumane. However, before jumping into such conclusion, it is also important to review some of the activities of the Boko Haram that affects not just the armed forces but also the people under their protections.

Boko Haram sects, like the Nigerian armed forces, have also violated the principle of human rights. The office of the Prosecutor at The

⁷⁹Amnesty International, "Stars on their Shoulders, Blood on their Hands". War Crimes Committed by the Nigerian Military" 3 June 2016 (AFR 44/1657/2016) available from <https://www.amnestyorglen/documents/afr44/1657/2016/en> (accessed on 20/5/2020)

⁸⁰ ibid

⁸¹ Okorie, H. 2018. Violation of International Humanitarian Law by Parties to the Armed Conflict in the Northeast Nigeria. *International Journal of Business & Law Research* 6(1):58-66

Hague in the International Criminal Court (ICC)⁸² accused Boko Haram of eight crimes against human rights as stated under Article 7 and 8 of the Rome Statute. These are as

i. Attack on civilians: It is uncertain of the course of which Boko Haram is fighting for and against whom they channel their aggressive to. This is so because their attacks to the civilians have no limit. They attack an entire village and take control of it. They pay no attention to religion as both mosque and churches are bombed by them. Their attacks cares not about who will be affected. The Rome Statute, in Article 7 attempted a definition of crime against human to include deliberately going against any civilian population with the intention to rape, enslave, murder, torture, enforced prostitution, forced pregnancy, sexual slavery, murder, forcible transfer of people or deportation as well as extermination, imprisonment or serious deprivation of civilians' freedom or physical liberty are all violation against human rights and as well as going against the fundamental rules of international law. Since the so called Boko Haram launched its attacks in 2009, civilians had been their targets. They attacks homes, churches, mosques, markets, schools, even buses, etc., all which involve different categories of people, women, children, the sick, pregnant individuals among others. This shows that Boko Haram insurgents have no care about civilians nor do they care about the dignity of live.

ii. Forcible detention and deprivation of liberty: Boko Haram insurgents do not only attack and kill; they also abduct and detain civilians including children. Thousands of civilians are abducted and detained in Boko Haram camps including Sambisa forest. Some are

⁸² Office of the Prosecutor of the International Criminal Court, "Report on the Preliminary Examination, Situation in Nigeria", 5 August 2013 at <http://www.icc-cpi.int/iccdocs/PIDS/does/SAS%20NGA%20-%20public%20version%20Article%205%20Report%20%2005%20August%202013.PDF>

executed, some are forced to bear children for them, and some become their slaves.⁸³

iii. Vandalism of public places such as school buildings and churches: Countless numbers of school buildings and churches in the affected state have suffered massive dilapidation given to constant bombing, firearms or just burnt down by the Boko Haram insurgents putting the lives of both teachers and students at risks. Between 2012 and 2014, more than 173 teachers and above 100 school children had been killed while in school by the insurgents with over 50 schools burned down and 60 schools forced to close down as a result of Boko Haram activities.

iv. Recruitment of Child Soldiers: Contrary to what the law states, Boko Haram is in the habit of recruiting children into their soldier. Boko Haram goes to schools and abducted young girls and boys as young as twelve years and forced them to join their armed forces. Some of them are trained to become spies, suicide bombers or for intelligent gathering. These children are being track while on mission such that they cannot escape even when they want to.

v. Abduction and Attacks on Girls and Women: The IHL made provision for the safety and protection of women and young ones during armed conflicts. However, that is not the case with Boko Haram insurgent who have no problem breaking into schools to abduct young children as it was with the case of the abduction of 276 Chibok girls from Borno state in 2014⁸⁴

vi. Attacks on Places of Worship: The International Criminal Court (ICC)'s report laments on the incessant attack by the Boko Haram on

⁸³ Ibekwe N., „ICC Lists 8 possible war crimes against Nigerian Military, Boko Haram, Premium times, <http://www.premiumtimesng.com/news/headlines/193142-ic...sible-war-crime-against-nigerian-military-boko-haran.htm>.

⁸⁴ Office of the Prosecutor of the International Criminal Court, “Report on the Preliminary Examination, Situation in Nigeria”, 5 August 2013 at <http://www.icc-cpi.int/iccdoes/PIDS/does/SAS%20NGA%20-public20version%20Article%205%20Report%20%2005%20August%202013.PDF>

places of worship such as churches and mosques leading to massive destructions of lives and property with no conscience.

CHAPTER 5

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of Findings

The institution of IHL was not to satisfy a few, but to keep everyone safe. IHL is amalgamation of several treaties and conventions including the Geneva Conventions and the Additional Protocols, and customary international law. The purpose was to ensure that even though war is inevitable in some situations, setting some restrictions and boundaries are essential to ensure that the human race will not be utterly destroy by weapons or fellow man. However, it is obvious from this study that keeping the law and enacting laws are two different things. There are situations that breaching the law is inevitable. This is the case between Boko Haram and the Nigerian Armed forces. On one hand, the armed forces have the responsibilities to ensure the safety of the people including the Boko Haram. On the other hand, they are faced with the threats from Boko Haram whom they either killed or be killed. Besides, Boko Haram insurgents use civilians as shield thus sacrificing them in the process. Met with such situation, what other choice do the armed forces have?

To minimize casualties, the International humanitarian law sets out rules on the conduct of hostilities with the hope of protecting civilian who are not even parties to such hostilities. The rules required that whatever measure possible to separate military and their targets or

civilians and civilians objects.⁸⁵ The contents of the laws forbade attacks channelled directly against civilians, and against their objects unless if such objective endangers the lives of the civilians. The laws also make provision for treatment of the wounded regardless of whether they are considered foes or friends without any discrimination.⁸⁶

In case of violations of IHL, it is the responsibilities of the state to ensure that all criminals of laws are brought to justices. This includes making reparation for the losses caused by their troops or those who are under their authority. Violations of the international humanitarian laws are not to be taken lightly. *Article 8* and *Article 3* maintained that no active members of the hostilities should be protected. Wars should also exclude violations to life and person including all manner of murder, cruel treatment, mutilation and torture⁸⁷. Regardless of rank, anyone responsible of grave breaches, be it military, or civilians who violate IHL are held accountable for their actions, not even superior orders is good enough to serves as defense against war crimes.⁸⁸ However, there are some authority's account that could mitigate punishment.⁸⁹ It is also true that the Commanders are the ones who may be responsible for some crimes against IHL since they are the one who strategize, give orders, aids, abet, or command actions in armed conflicts. Without their commands, their troops will not carry out any action whatsoever. It is therefore not out of place if the commander or civilian superior is held accountable for breaching IHL even when the act was committed by the subordinates, especially in cases where they are aware of the actions and ought to have prevented it but failed.

⁸⁵ Geneva conventions: Articles 13 and 14 AP II

⁸⁶ AP II, *Articles 5 and 7*

⁸⁷ AP II, Articles 5 and 7; Customary IHL Study, Rule 150; Customary IHL Study, Rule 139

⁸⁸ Rome Statute, *Article 33*

⁸⁹ Customary IHL study, Rule 155

It is without doubt then that both the Nigerian armed forces as well as the Boko Haram insurgents are accused of grave breaches of IHL in the non-international conflicts in Nigeria. Breaching any of the IHL whether in international or non-international armed conflicts simply implies that both international laws and human rights have been breached.

5.2 Conclusions

More than international armed conflicts, non-international conflicts is more ramparts these days and come in diverse forms including demonstrations, insurgencies and terrorisms. In Nigeria, the non-international armed conflicts about, and the more prominent one is the Boko Haram insurgency which started since 2009. The severity of the problems has led to massive violations of the international humanitarian laws as well as breaches on human rights. Without any clear reason as to why or what they are fighting for, the Boko Haram insurgents have unleashed untold losses and hardship to the nation including indiscriminate killings, abductions, bombing of houses, schools, churches, etc. destroying lives of the innocent Nigerians including children, youths, adults, and even the ages.

This has attracted the attention of the International Criminal Court (ICC) who accused not only the Boko Haram insurgents but also the Nigerian armed forces for violation of International Humanitarian laws. Although Boko Haram insurgency has its own peculiarities, however, the parties involved are bind by existing international legal norms as presented in IHL principles and thus calls for strict adherence. Every

actions and act of indiscipline during the war are meant to face justice - post conflict justice enforcement- to serve as deterrent to avoid a recurrent as well as to stop other nations from repeating similar mistakes.

This study has revealed in the case of Nigeria and the Boko Haram armed conflicts that significant weakness exist in enforcing IHL; and in a bit to protect the armed forces, Nigerian laws create some windows of escape in the form of “The Emergency Powers Act, 1961”. This shows that adherent to the IHL depend largely on the political will of a nation to enforce or comply with the laws; otherwise, state will always find a way of protecting law enforcers in some tricky situations. For instance, some cases of violations of IHL involving high profile individuals/law enforcers are yet to face the laws. Nigerian government continual pledged their loyalty and promise to investigate the said cases but never really take action. This shows low level of commitment and insincerity. To make matter worse, the Amnesty International provided the Nigerian Government with about Nine (9) names of high-ranking military officials who were in charge of some operations that took place between 2012 and 2015 between the Boko Haram and the North-East Nigeria to be brought before the international criminal courts for questioning or prosecution depending on the outcome of the court. Till date, none has been prosecuted. In fact, about six of the nine high ranking officers are currently on retirement, while one was, in January 2016 reinstated as a result of unrelated suspension.⁹⁰ One can easily infer from such scenario that Nigerian government has not really being sincere in upholding IHL.

⁹⁰ Note: In July 2015, President Buhari retired the Chief of Defence Staff, Air Chief Marshal Alex Badeh and the Chief of Army Staff, Lt. General Kenneth Minimah (both named). ACM Badeh was arrested in February 2016 on unrelated charges (corruption). Former service Chiefs named are Lt. Gen. Azubuike Ihejirika and Admiral Ola Saad Ibrahim, who retired in June 2015. Major Gen. Ahmadu Mohammed was reinstated in January 2016. Others also named in the report are still in active service: Brig-Gen. Rufus O. Bamigboye and Brig-Gen. Rufus O. Bamigboye

Although the Boko Haram conflicts and other homicides in Nigeria are very delicate issues as both parties involved are Nigerian citizens and the government have the responsibilities to protect all its citizens from violence attacks, torture and any form of inhumane treatments, there are situations that they cannot help but declare state of emergency to some area which aftermath is not better off. Therefore, leaving the compliance of IHL in the hands of national criminal courts will not yield expected results. It is imperative for the national criminal court to collaborate with the international criminal courts in order to achieve deterrence. The Boko Haram may not be part of the international humanitarian Laws or part of any human right treaties, however, they (Boko Haram) are also bind by the law of nature to respect human lives and properties; consequently, their activities must be curtailed.

5.3 Recommendations

Although the Nigerian Federal Government has been putting in much efforts to ensure compliance with IHL and at same time ensure peace and security within the nation, their efforts are yet to reach its desired level as cases of violations are still witness within the country. Thus, ensuring compliance with IHL requires the contribution of all stakeholders in the on-going Boko-Haram insurgency and other related non-international armed conflicts.

This study recommends that the federal government should ensure more awareness of the existence of IHL and the punishment for undermining the treaties of IHL. This awareness and knowledge of IHL should not only be limited to the Nigerian Armed forces and other law enforcers, but must cut across the general population

The federal government should sincerely investigate armed conflict crimes and ensure that war criminals face the punishment they deserve to serve as deterrence to avoid future occurrence.

The government should enact legislation meant to domesticate the ICC's Rome Statute as ratified by Nigeria in 2001 to punish offences such as genocides, and other war related crimes constituted as grave breaches

Prosecution should be done without delay regardless of perpetrators' status or rank. That is the only way that justice will be served.

There should be fair trial to all parties involve following due process as laid down by IHL. In other word, no one should be prosecuted without fair trials.

Persons and property of non-active party in the armed conflict must be protected, and should the enemy still penetrate and destroy lives and property, adequate compensation should be made to victims by perpetrators if caught, or by the federal government for the sack of peace.

The Nigerian law enforcers should be given adequate training on IHL to guide their behaviours during armed force conflicts. Also, while selecting individuals and weapons for non-international armed conflicts, attention to should be given to the laid down principles of IHL to minimize abuses of human rights, etc.

The Boko Haram insurgents should also be conscious of the right of humans and the need to protect lives and property. As such, they should device better way to negotiate with the government and discuss their concerns instead of resulting to violence.

They should be enlightened on the need to protect human rights to freedom of expression, movement, education and religious and thus cease all attacks to schools, churches, mosques, etc.

All the Nigerian International partners within and outside African continents should put pressures on the Nigerian government to ensure that they fulfill their obligations as required in IHL such as bringing war criminals to court to face trials, ensuring that detainees pass through due process and there must be adequate reporting of extra-legal activities among the law enforcers.

REFERENCES

Alubo, O.A. & Piwuna, M. "Observance of human rights and international humanitarian law by Nigeria Armed Forces in internal security operations" (2015). 9 *IJ HSS* 5; 141, 153

Additional Protocol II, *Articles 5 and 7*

Amnesty International "Nigeria: Senior members of the Military must be investigated for war crimes" < www.amnesty.org/news > Accessed 8/5/2020

Amnesty International, "Stars on their Shoulders, Blood on their Hands". War Crimes Committed by the Nigerian Military" 3 June 2016 (AFR 44/1657/2016)
<<https://www.amnestyorg/en/documents/afr44/1657/2016/en>>
(accessed on 20/5/2020)

Amnesty International, "Welcome to Hellfire: Torture and other ill-treatment in Nigeria" 18 September 2014 (AFT 44/011/2014)
<<https://www.amnesty.org/en/documents/AFT44/011/2014/en/> >
accessed on 20/5/2020

Customary IHL Study, Rule 150, 139; 155

Dethan, C. & Shorts, E. *International Criminal Law and Human Rights* (London: Thomson & Sweet & Maxwell, 173-175, 2013)

Geneva Conventions of 1949. <<http://www.nationsonline.org/one/world/states.htm>> Accessed 30th April, 2020

Gray, C O. *Another bloody century: Future warfare*. (London: Weidenfell & Nicolson, 2005)

Henkaerts, J.M and Doswald-Beck, L. "International humanitarian Law" In Alvermann, C, Dormann, K. and Rolle, B, *Customary International Law* (Cambridge University Press reprinted with Corrections 2009, Vol. 2 pp. 495-499).

History of International Humanitarian law",
<http://www.humanrights.ch/en/standards/international-humanitarian-law/history/> accessed 4th May 2020.

Human Rights Watch 2004: Democratic Republic of the Congo: Confronting Impunity. Ibid, HRW: 5

Human Rights Watch 2012: Arrest Bosco Ntaganda for ICC Trial, Press Report, in: <http://www.hrw.org/news/2012/04/13/dr-congo-arrest-bosco-ntaganda-icc-trial> > Accessed 05.05.2020

Ibekwe N., „ICC Lists 8 possible war crimes against Nigerian Military, Boko Haram, *Premium times*, <<http://www.premiumtimesng.com/news/headlines/193142-icc...sible-war-crime-against-nigerian-military-boko-haran.htm>. > Accessed 7/5 /2020

Ibrahim, S. J. evaluating the application of international humanitarian law in internal armed conflicts: Sierra Leone and Liberia as case studies (2014) <www.sierraleonespecialcourt-enotes-com.mht > Accessed 7/5 /2020.

ICRC (2016) Annual Review Meeting on the Implementation of IHL in West Africa.

ICRC Commentary, above note 12, Art. 1, p. 1353, no. 4470
International Committee of Red Cross (ICRC,2008), How is the term “Armed Conflict” defined in International Humanitarian Law? Opinion paper. p.1. Retrieved March23, 2020 from <www.icrc.org/web/eng/siteeng/.nsf/html/armedconflictarticles>

International Committee of the Red Cross, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva, 1987), Art. 1, p. 1348, no. 4447

Krieger, H. (2013). A turn to non-state actors: inducing compliance with international humanitarian law in war-torn areas of limited statehood, SFB-Governance Working Paper Series, No. 62, Collaborative Research Center (SFB) 700, Berlin

Ladan, M.T. Domestic implementation of international humanitarian law (IHL) treaties in Nigeria” A lecture delivered at The PGDJAGBC Training Workshop for Legal Officers of the Legal Service Wing, Nigerian Army School of Military Police, Zaria.

Lamp, N. Conceptions of war and paradigms of compliance: The “new war” challenge to international humanitarian law” (2011). 16 *JCSL* 225, 262

Meurant, J. ‘Inter Armed Caritus: Evolution and nature of international humanitarian law’ (1987), 24 *JPR*,. 3, 239

Office of the Prosecutor of the International Criminal Court, “Report on the Preliminary Examination, Situation in Nigeria”, 5 August 2013

<<http://www.icc-cpi.int/iccdoes/PIDS/does/SAS%20NGA%20>>
Accessed 7/5 /2020

Okorie, H. "Violation of international humanitarian law by parties to the Armed Conflict in the Northeast Nigeria" (2018). 6 *IJBLR*, 58, 66

Okoye, F. "Rules of Engagement, insurgency and the civil populace" *THISDAY*, Sat 01, February, 2014 accessed 30/4/2020; S.35

Oluwasegun, A.M. "Internal security operations and human rights abuses in Nigeria: Issues and challenges" (2014) <<http://www.academia> accessed non > accessed 7/5 /2020

Onuorah, M. "Anger in military over amnesty report" <www.nguardiannews.com72015/06 > Accessed on 8/5/2020

Park, T. "The elephant in the room: Internal security operations and conflict management" <[http://www.asiafoundation.org/.../the elephant-in-the-room](http://www.asiafoundation.org/.../the%20elephant-in-the-room)> Accessed: 8/5/2020
Plateau Killings: Disband STF now, HURIWA tells Jonathan"

Prosecutor v. Lubanga (Decision on the Prosecutor's Application for a Warrant of Arrest) ICC-01/0401/06-8 (10 February 2006), para. 3

Rome Statute, *Article 33*

Refworld, (2014) "Protection of civilian in armed conflict" <<http://www.refworld.org/civilians.html>> Accessed: 8/5/2020

Sassoli, M. & Bouvier, A. A. How does law protect in war? (Geneva, International Committee of the Red Cross, p. 265, 2006)

Sassòli, M. and Shani, Y.. Should the obligations of states and armed groups under international humanitarian law really be equal? (2011) 882, *IRRC*, 425, 436.

Shaw, M.N. *International Law, (5th ed.)* (Cambridge University Press, London, p. 1054. 12, 2003).

Sivakumaran, S. *The Law of Non-International Armed Conflict*, Oxford, 2012).

The Criminal Code Act is applicable to states in Southern Nigeria (most southern states have altered provisions of the Act in accordance with modern developments) The Penal Code Law is applicable to states in Northern Nigeria Chapter 25, 27, 29 and 31 of the Criminal Code

UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials” <www.facingfinance.org/.../un-force>

Wolfrum, R. & Fleck, D. *Enforcement of International Humanitarian Law* (Oxford University Press, Oxford, 2008)

APPENDIX: PLAGIARISM REPORT SUMMARY

THE PENAL RESPONSIBILITY AND SANCTIONS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW.

ORIGINALITY REPORT

19%	19%	9%	%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	ijhssnet.com Internet Source	4%
2	studyres.com Internet Source	3%
3	docs.neu.edu.tr Internet Source	1%
4	seahipaj.org Internet Source	1%
5	legalanswers.sl.nsw.gov.au Internet Source	1%
6	www.icrc.org Internet Source	1%
7	www.modishproject.com Internet Source	<1%
8	Hans Günter Brauch. "Chapter 31 War Impacts on the Environment in the Mediterranean and Evolution of International Law", Springer	<1%