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APPLICATION OF INTERNATIONAL HUMANITARIAN LAW STANDARDS IN NIGERIA'S COUNTERINSURGENCY EFFORTS

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Abstract

The application of International Humanitarian Law (IHL) in counterinsurgency operations preserves civilians and guarantees that military activities adhere to norms of humanity and legality. Insurgent organisations like Boko Haram and the Islamic State of West Africa Province (ISWAP) are responsible for the protracted conflict in Nigeria, which raises serious questions regarding suspected violations of international humanitarian law and their severe humanitarian effects. The intricacy of implementing IHL in non-international armed situations causes issues for Nigeria, as asymmetric warfare blurs the line between combatants and civilians. The study assessed Nigeria's implementation of IHL standards in counterinsurgency activities, identified the problems, analysed current legal and institutional frameworks, and provided concrete ways to improve compliance. This research adopted a doctrinal methodology focusing on the analysis of primary and secondary sources of law. This study found that Nigeria struggles with consistently enforcing IHL despite its commitments under international treaties, such as inadequate military training, weak accountability mechanisms, and the absence of robust civilian protection strategies. Furthermore, the absence of IHL principles within military doctrine hinders counterinsurgency operations and risks civilian safety. The study indicated that enhancing Nigeria's legal and institutional frameworks would guarantee IHL compliance. The study recommended upgrading military training, establishing independent oversight organisations to ensure accountability, and partnering with international organisations to monitor compliance and provide assistance when necessary to address these difficulties. By aligning its counterinsurgency operations with international standards, Nigeria can reduce the challenging humanitarian implications of its internal conflicts.

Keywords: Boko haram, Civilian protection, Counterinsurgency, Non-international armed conflict, International Humanitarian Law.

1.0 INTRODUCTION

The implementation of International Humanitarian Law (IHL) during counterinsurgency operations is essential for guaranteeing that military actions adhere to legal and humanitarian norms while reducing civilian casualties. Nigeria's actions to counter insurgency, especially against Boko Haram and the Islamic State West Africa Province (ISWAP), have presented substantial legal and operational obstacles.¹ The on-going conflict has resulted in significant displacement, unlawful killings, and damage to infrastructure, impacting both immediate security issues and long-term sustainable development. The capacity to properly implement IHL in these conflicts is crucial for upholding human security, safeguarding essential rights, and promoting lasting peace.²

A major concern in counterinsurgency efforts is adhering to IHL principles while fighting against non-state armed groups. Following IHL bolsters military legitimacy, improves civilian safety, and promotes enduring peace efforts. Clapham and Gaeta stress that IHL is relevant in asymmetric conflicts; necessitating that states weigh military needs against humanitarian concerns.³ Nevertheless, the Nigerian security forces frequently resort to excessive force, extrajudicial killings, and arbitrary arrests, leading to worries about systemic disregard for compliance.⁴

An important concern in the application of IHL is the differentiation between combatants and civilians. Sassòli underscores the intricacy of this distinction in insurgencies, where non-state entities merge with civilian groups, complicating adherence.⁵ This issue is especially apparent in Nigeria, where Boko Haram fighters take advantage of civilian areas,

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¹OgunnaikeTaiwo, 'Two is Better than One: Systemic Integration of International Humanitarian Law and International Human Rights Law to Boko Haram Conflict' (2018) 33(3) American University International Law Review 638-664 <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1960&context=auilr>> accessed 15 December 2024.

² Luigi Daniele, 'Incidental harm in international humanitarian law and its Contra Legem antonyms in recent discourses on the laws of war' (2024) 29(1) Journal of Conflict and Security Law 21–54 <https://academic.oup.com/jcsl/article/29/1/21/7644943> accessed 15 December 2024.

³Andrew Clapham and Paola Gaeta, *The Oxford Handbook of International Law in Armed Conflict* (1st edn, Oxford University Press 2014) 210.

⁴Amnesty International, 'Nigeria: Military attempting to cover up mass killing of civilians' (*Amnesty International*, 2023) https://www.amnesty.org/en/latest/news/2023/12/nigeria-military-attempting-to-cover-up-mass-killing-of-civilians/?utm_source=chatgpt.com accessed 15 December 2024.

⁵Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (1st edn, Edward Elgar 2019) 89.

complicating military actions. Experts advise enhanced training for security personnel on IHL principles to boost adherence and accountability.⁶

The implementation of IHL in Nigeria's counterinsurgency efforts is impeded by institutional deficiencies, such as insufficient judicial supervision and poor accountability systems. Bantekas and Oette contend that national legal systems need to correspond with international duties for effective enforcement.⁷ However, research indicates that Nigeria's military justice system is not independent, frequently protecting members from being prosecuted for IHL breaches.⁸ The African Commission on Human and Peoples' Rights has similarly criticised Nigeria for not investigating claims of war crimes carried out by security personnel.⁹

An essential element of enhancing IHL enforcement is the development of institutional capacity. Oeter argues that nations need to create legal and operational frameworks that incorporate IHL into their national security strategies.¹⁰ In Nigeria, efforts like the creation of human rights desks in the military are moves toward adherence, but their efficiency is still questionable. In this context, sustainable development necessitates judicial reforms, improved military training, and bolstered oversight mechanisms to guarantee accountability.¹¹

The application of IHL significantly affects sustainable development goals, especially goal 16 which on peace, justice and strong institution. Gurses and Mason contend that post-conflict stability is significantly linked to compliance with international legal norms, since fragile legal systems sustain continuing cycles of violence.¹² In Nigeria, the inability to

⁶Helen Duffy, *The War on Terror and the Framework of International Law* (2ndedn, CUP 2015) 314.

⁷IliasBantekas and Lutz Oette, *International Human Rights Law and Practice* (2nd edn, CUP 2016) 378.

⁸Amnesty International, 'Nigeria: Starving women raped by soldiers and militia who claim to be rescuing them' (Amnesty International,2018) <https://www.amnesty.org/en/latest/news/2018/05/nigeria-starving-women-raped-by-soldiers-and-militia-who-claim-to-be-rescuing-them/> accessed 15December 2024.

⁹African Commission on Human and Peoples' Rights, 'Concluding Observations and Recommendations on the 6th Periodic Report of the Federal Republic of Nigeria' (*African Commission on Human and Peoples' Rights*, 2015) <https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-nigeria-6th-periodic-report-2015> accessed 15December 2024.

¹⁰Stefan Oeter, 'International Humanitarian Law and the Institutional Framework of Peace building' (2013) 25(2) EJIL 321.

¹¹OluwakemiOkenyodo, 'Governance, Accountability, and Security in Nigeria' (2016) 31, Africa Centre for Strategic Studies 1-8 <https://africacenter.org/wp-content/uploads/2016/06/ASB31EN-Governance-Accountability-and-Security-in-Nigeria.pdf> accessed 15December 2024.

¹²David Mason et al, 'Sustaining the Peace: Determinants of Civil War Recurrence' (2007)33(2) International Interactions 167-193 https://www.researchgate.net/publication/266853309_Quinn_J_M_T_David_Mason_Mehmet_Gurses_2007_Sustaining_the_Peace_Determinants_of_Civil_War_Recurrence_International_Interactions_33_2_167-193 accessed 15December 2024.

prosecute violations of international humanitarian law erodes public confidence in state institutions, obstructing long-term peace building initiatives.¹³

Strengthening institutions is crucial for sustainable governance in states affected by conflict. Research highlights the importance of judicial independence, transparency, and legal education in promoting adherence to IHL.¹⁴ Nonetheless, Nigeria's current system does not have sufficient mechanisms for investigating and prosecuting war crimes, highlighting the need for legal reforms to bring domestic laws in line with international standards. The International Criminal Court ICC has previously established that there is a valid reason to believe that war crimes and crimes against humanity have taken place in Nigeria, but local authorities have not shown the capacity or intent to carry out authentic investigations and prosecutions. Amnesty International has also condemned the inability of Nigerian authorities to guarantee accountability, especially regarding offenses carried out by Boko Haram and the Nigerian military. In the absence of significant reforms, on-going impunity will increasingly undermine state institutions and obstruct progress toward enduring peace and justice.¹⁵

As a party to essential IHL treaties, such as the Geneva Conventions and their Additional Protocols, Nigeria is required to adhere to these norms. Nonetheless, the realities of asymmetric conflict, where insurgents function amidst civilian communities, present considerable challenges to strict compliance. Obstacles like insufficient military training on IHL principles, absence of accountability measures, and political meddling make compliance even more difficult. These elements not only jeopardise human security but also obstruct Nigeria's advancement towards lasting peace and stability.¹⁶ Moreover, the lack of IHL

¹³EC Ibe, 'Human Rights Concerns in Nigeria: Addressing Insecurity and Enforcement Challenges' (2024) 8(1) *African Journal of Law and Human Rights* 15 <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/viewFile/2875/3012> accessed 15 December 2024.

¹⁴Chris Jenks and Guido Acquaviva, 'Debate: The role of international criminal justice in fostering compliance with international humanitarian law' (2013) 95(895/896) *International Review of the Red Cross* 775 https://international-review.icrc.org/sites/default/files/irrc-895_896-jenks-acquaviva.pdf accessed 15 December 2024.

¹⁵Amnesty International, 'Nigeria: ICC must not dash the hope of survivors of atrocities by the military' (*Amnesty International*, 2024) <https://www.amnesty.org/en/latest/news/2024/03/nigeria-icc-must-not-dash-the-hope-of-survivors-of-atrocities-by-the-military/> accessed 15 December 2024.

¹⁶International Committee of the Red Cross, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (Report 34th International Conference of the Red Cross and Red Crescent, 2024) https://www.clusterconvention.org/wp-content/uploads/2024/09/34IC_10.6-IHL-Challenges-Report-EN.pdf accessed 15 December 2024.

principles in military doctrine leads to operational discrepancies, diminishing the nation's capacity to integrate counterinsurgency initiatives with international legal commitments.¹⁷

2.0 CONCEPTUAL CLARIFICATIONS

1. International Humanitarian Law

IHL, often referred to as the Law of War, is a sector of international law that governs the application of force during armed conflicts. It has two main purposes: safeguarding individuals who are not or no longer involved in hostilities and limiting the use of force to what is essential for fulfilling military goals. No matter the reasons behind a conflict, the main objective of IHL is to reduce suffering and guarantee that military operations stay within legal and humanitarian limits.¹⁸

IHL is enforced rigorously during armed conflicts and aims to protect those who are not actively participating in the fighting. It also sets forth regulations on acceptable methods and means of combat. The core tenets of IHL encompass:

- i. The principle of distinction, demanding a separation between combatants and civilians,
- ii. The ban on attacking those who are no longer engaged in fighting,
- iii. The limitation on inflicting unnecessary suffering,
- iv. The principle of necessity, which confines the use of force to what is essential for attaining legitimate military goals, and
- v. The principle of proportionality, which guarantees that harm to civilians remains minimal compared to military gain.¹⁹

Although it has protective measures, IHL possesses inherent limitations. It does not ban the use of force in armed conflicts; instead, it governs it. It cannot ensure safety for every impacted person, nor does it differentiate based on the rationale of a conflict. Moreover, it

¹⁷Tristan Ferraro, 'The Applicability and Application of International Humanitarian Law to Multinational Forces' (2013) 95(891/892) International Review of the Red Cross 561-612 https://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf accessed 15 December 2024.

¹⁸AntoineBouvier, *International Humanitarian Law and the Law of Armed Conflict*(3rdedn, Peace Operations Training Institute 2020) 11.

¹⁹ibid, 5.

does not hinder a party from securing military success, and it is based on the premise that the involved parties possess rational goals that do not fundamentally breach IHL.²⁰

IHL places limitations on fighting parties concerning the techniques and resources used in warfare, especially to safeguard individuals not directly involved in hostilities. It guarantees the safety of civilians, prisoners, and civilian belongings. Furthermore, it requires that conflicting parties supply essential humanitarian aid to those impacted and permits relief efforts by external entities, such as humanitarian groups. IHL comprises two primary frameworks:

- i. The laws that govern international armed conflicts, relevant to wars between nations, and
- ii. The laws applicable to non-international armed conflicts, which manage hostilities occurring within a single nation. Although the legal structure for international disputes is more advanced, both types function based on the same fundamental principles.

IHL is also segmented into two main legal traditions: Geneva Law, concentrating on safeguarding individuals from damage during conflicts, and Hague Law, which places limitations on the tactics and resources used in warfare.²¹

2. Insurgency

Insurgency signifies violent opposition to an existing government aimed at achieving political objectives. Black's Law Dictionary characterises an "insurgent" as a person participating in hostilities, whereas "insurgency" refers to the wider condition or movement associated with these activities.²² Insurgent factions frequently utilise a range of strategies, including terrorism, yet the legal definition of a terrorist is distinct from that of an insurgent. The primary difference between insurgency and terrorism resides in their functional traits—though insurgents might partake in terrorist acts, not every insurgent group is identified as a terrorist organisation.²³

3. Counter-insurgency

²⁰ibid, 54.

²¹ibid 5.

²² Bryan Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) 'Insurgent'.

²³Vincent Bernard, 'Interview with David Kilcullen' (2011) 93(883) *International Review of the Red Cross* 587-590 <https://www.icrc.org/sites/default/files/external/doc/en/assets/files/review/2011/irrc-883-interview.pdf> accessed 22 December 2024.

Counter-insurgency denotes the diverse military, paramilitary, political, economic, psychological, and civic tactics used by a government to quell an insurgency. It acts as the complete contrast to insurgency, which aims to dismantle or topple the current political system. In reply, counter-insurgency measures seek to re-establish governmental control and diminish the power of insurgents. This method includes a wide range of synchronised actions aimed at countering insurgent operations while tackling the root causes that lead to their development. Successful counter-insurgency tactics combine civilian and military actions to manage insurgencies and stop their return.²⁴

3.0 APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN NIGERIA'S COUNTERINSURGENCY OPERATIONS

1. Geneva Conventions of 1949 and Additional Protocols of 1977

The Geneva Conventions of 1949 and their Additional Protocols are the basis of IHL and have a direct effect on Nigeria's counterinsurgency efforts against Boko Haram and ISWAP. As a signatory, Nigeria is obligated by law to adhere to these provisions in every armed conflict, encompassing Non-International Armed Conflicts (NIACs).

Although chiefly regulating international disputes, the Geneva Conventions also apply to non-international NIACs via Common Article 3 and Additional Protocol II (AP II) established in 1977.²⁵ Common Article 3 provides essential safeguards for individuals not engaged in hostilities, forbidding murder, torture, and cruel treatment. It requires compassionate treatment for the injured and ill, applicable to both governmental forces and rebels. AP II enhances these protections by banning indiscriminate assaults, guaranteeing fair trials for detainees, and bolstering civilian safeguards. Nigeria's endorsement of AP II establishes a mandatory duty, but findings from Amnesty International and Human Rights Watch indicate breaches, including extrajudicial killings, mass arrests, and claims of torture in counterinsurgency operations.²⁶

²⁴MOUgwu, *et al*, 'Appraisal of the Challenges of Implementation and Enforcement of International Humanitarian Law Rules in Nigeria Both in Times of Peace and War' (2024) 1(1) Nnamdi Azikiwe University Journal of Human Rights Law 33-45
https://www.researchgate.net/publication/385698873_Appraisal_Of_The_Challenges_Of_Implementation_And_Enforcement_Of_International_Humanitarian_Law_Rules_In_Nigeria_Both_In_Times_Of_Peace_And_War
accessed 22 December 2024.

²⁵Additional Protocol 1977, Art 1.

²⁶*ibid* 10.

A significant obstacle to enforcing IHL is the lack of explicit national laws that integrate the Geneva Conventions. This undermines enforcement and restricts responsibility for infractions. Moreover, Nigeria has not incorporated the Rome Statute of the International Criminal Court (ICC) into its domestic law, hindering the prosecution of war crimes.²⁷ Institutional flaws additionally obstruct investigations and prosecutions, creating an environment of impunity. The insufficient IHL training for security forces and ineffective judicial supervision worsen these problems, increasing worries regarding adherence. To tackle these shortcomings, it is essential to implement legislative changes, enhance accountability measures, and bolster the enforcement of IHL stipulations during military operations.²⁸

2. The African Charter on Human and Peoples' Rights of 1988

The African Charter on Human and Peoples' Rights (ACHPR), which was adopted in 1981 and ratified by Nigeria, serves as a fundamental legal framework for evaluating human rights protections in Nigeria's counterinsurgency efforts. It enforces mandatory duties on the state to honour, safeguard, and realise human rights, even during conflicts. The Charter provides legal safeguards for civilians, detainees, and surrendered fighters, guaranteeing that counterinsurgency actions occur within a structure that respects essential rights.²⁹

Article 4 ensures the right to life and clearly forbids the unjust deprivation of life. This clause imposes a legal obligation on Nigeria to avert extrajudicial killings and guarantee accountability for security personnel participating in illegal killings.³⁰ Nonetheless, accounts of enforced disappearances and targeted killings during counterterrorism operations create worries about adherence to standards.³¹ Article 5 additionally strengthens safeguards by banning torture, cruel, inhuman, or degrading treatment. Claims of prisoner abuse in military detention centres highlight the necessity for robust oversight and accountability systems.³²

²⁷Rome Statute of the International Criminal Court (1998) 2187 UNTS 90.

²⁸EB Mamman, 'Public Policy Response to Violence: Case Study of Boko Haram Insurgency in Nigeria Insurgency' (*Walden University*, 2020) <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=10671&context=dissertations> accessed 22 December 2025.

²⁹Amnesty International, 'Nigeria 2023' (*Amnesty International*, 2023) <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/> accessed 22 December 2024.

³⁰African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, art 4.

³¹Amnesty International, 'The International Criminal Court: Fact Sheet' (*Amnesty International*, 2006) <<https://www.amnesty.org/en/wp-content/uploads/2021/08/ior630052006en.pdf>> accessed 22 December 2024.

³²African Charter, art 5.

Article 7 ensures the right to a fair trial, which is especially important in counterinsurgency situations, where individuals frequently face military courts and collective trials. The Charter requires access to legal counsel, a presumption of innocence, and impartiality in the judiciary; however, worries remain about extended pre-trial detention and procedural inconsistencies in prosecutions related to terrorism.³³ Tackling these issues necessitates reforms to guarantee that judicial procedures conform to recognised human rights standards.

In addition to personal rights, the ACHPR also highlights group rights. Article 23 asserts the entitlement of all nations to both national and international peace and security.³⁴ This clause emphasises the necessity for counterinsurgency strategies that focus on safeguarding human rights to avert additional radicalisation and societal instability. Nigeria's involvement with the African Commission on Human and Peoples' Rights, which oversees state adherence, is essential for tackling human rights abuses and strengthening institutional responsibility.³⁵

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

The 1999 Constitution of the Federal Republic of Nigeria (as amended) outlines the legal framework for counterinsurgency efforts, setting out essential rights, governing security practices, and specifying state responsibilities in conflict scenarios.³⁶ Section 33 ensures the right to life, forbidding illegal homicides unless allowed by law. Although the use of force is permissible in self-defence or quelling uprisings, it must be justified and appropriate.³⁷ Accounts of unlawful killings and civilian losses underscore enforcement deficiencies, requiring enhanced accountability systems. Section 34 bans torture and cruel treatment; however, claims of detainee abuse and forced disappearances highlight inadequate enforcement, underscoring the necessity for more stringent legal protections.³⁸

Section 36 ensures rights to a fair trial, encompassing the presumption of innocence, access to legal counsel, and impartial courts.³⁹ The implementation of military tribunals and

³³ibid, art 7.

³⁴ibid, art 23.

³⁵Human Rights Watch, 'World Report 2020: Nigeria' (*Human Rights Watch*, 2020) <<https://www.hrw.org/world-report/2020/country-chapters/nigeria>> accessed 22 December 2024.

³⁶Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁷ibid, s 33.

³⁸ibid, s 34.

³⁹ibid, s 36.

special courts in cases of insurgency prompts worries about procedural equity, necessitating legal reforms to maintain constitutional safeguards. Sections 217–220 outline the military's function in national security and the suppression of insurrections but do not include clear stipulations for incorporating international humanitarian law, highlighting the necessity for institutional reforms to improve military accountability.⁴⁰

The National Human Rights Commission (NHRC), created under Section 6, oversees compliance with human rights.⁴¹ Enhancing its investigative and enforcement capabilities would boost supervision of misconduct in military operations.⁴²

4. The Terrorism (Prevention and Prohibition) Act of 2022

The Terrorism (Prevention and Prohibition) Act, 2022 serves as Nigeria's main counterterrorism legislation, superseding the 2011 Act along with its amendments from 2013.⁴³ It enhances prosecution methods and institutional abilities but raises worries regarding adherence to constitutional and international legal norms. The Act defines terrorism broadly to encompass actions intended for public intimidation, disruption of governance, or coercing authorities, which aligns with UN resolutions; however, this complicates its application in armed conflicts, as IHL distinguishes terrorism from legal warfare.

Section 12 makes terrorist financing and activities illegal, which strengthens national security but also raises concerns about due process due to widespread arrests and extended detentions.⁴⁴ Section 35 requires judicial supervision of detentions; however, instances of indefinite detentions without trial expose enforcement shortcomings, underscoring the need for enhanced judicial review.⁴⁵ Section 43 presents new prosecution methods, yet it poses a threat to fair trial rights due to on-going issues with secret trials and military handling of civilian cases.⁴⁶ Guaranteeing transparency and strengthening civilian authority are essential for constitutional conformity.

Section 49 outlines protections for victims and witnesses; however, poor implementation, limited compensation for victims, and inadequate community support

⁴⁰*ibid*, s 217-210.

⁴¹*ibid*, s 6.

⁴²National Human Rights Commission (Amendment) Act 1995.

⁴³Terrorism (Prevention and Prohibition) Act 2022.

⁴⁴*ibid*, s 12.

⁴⁵*ibid*, s 35.

⁴⁶*ibid*, s 43.

diminish its impact.⁴⁷ Section 66 permits security agencies to employ force in counterterrorism efforts, while adhering to constitutional protections.⁴⁸ Nonetheless, accounts of extrajudicial executions, indiscriminate bombings, and civilian deaths bring up worries regarding enforcement. Enhancing accountability and compliance with legal standards for the use of force is essential.

The Act additionally creates specialized counterterrorism divisions such as the National Counter-Terrorism Centre (NCTC) to enhance intelligence collaboration.⁴⁹ In boosting security governance, on-going legislative oversight and civilian supervision are essential to avoid power misuse and maintain democratic ideals.

4.0 GAPS IN THE LAW ON NIGERIA'S COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW

The suppression of war crimes, crimes against humanity, and genocide—irrespective of the perpetrator's nationality or the crime's location—is essential for maintaining international justice and the rule of law. Governments hold the main accountability for this oppression, highlighting the need for the creation of comprehensive legal systems that facilitate the prosecution of those accountable for these violations. Even with advancements in establishing international legal frameworks, breaches of International Humanitarian Law (IHL) continue to be widespread in both international and non-international armed conflicts.⁵⁰ The conflicts of the 1990s, including those in the former Yugoslavia, Rwanda, and the Eritrea-Ethiopia war, along with more recent strife in Syria, Yemen, Afghanistan, and Iraq, highlight the ongoing difficulties in adhering to IHL. Nigeria's battle with Boko Haram and its associates, including the Islamic State in West Africa Province (ISWAP), illustrates the growing intricacy of contemporary warfare and the challenges in guaranteeing compliance with the laws of armed conflict.

Modern armed conflicts have brought new hurdles to the enforcement of IHL, such as the participation of non-state armed factions, the division of power in unstable or failed states, the confusion of political and private interests, the increase of advanced weaponry, and

⁴⁷ibid, s 49.

⁴⁸ibid, s 66.

⁴⁹ibid, part viii.

⁵⁰J Kellenberger, *Strengthening Measures for the Respect and Implementation of International Humanitarian Law and Other Rules Protecting Human Dignity in Armed Conflict: Challenges and Prospects* (1stedn, IIHL 2004) 19.

the delegation of military roles to private security companies.⁵¹ The unregulated presence of small arms, the rising use of asymmetric warfare, the militarisation of humanitarian initiatives, and the heightened engagement of civilians in conflicts make the effective enforcement of IHL more challenging. These changing dynamics highlight the challenges of implementing IHL, especially in conflict-affected areas such as Nigeria.⁵²

Despite the prohibition of war in both international and domestic law, its ongoing occurrence is a harsh reality, highlighting the importance of IHL. In Nigeria, breaches of IHL are apparent in the current insurgency. From May to June 2022, Boko Haram caused the deaths of no fewer than 60 civilians in the Dakwa Local Government Area of Borno State. The organisation has participated in widespread abductions, explosives attacks, and various acts of violence, complicating the enforcement of IHL significantly. Boko Haram's intentional attacks on civilians have led to significant displacement, with around 1.3 million internally displaced persons (IDPs) documented by 2015. Both boys and girls have been forcibly conscripted into active combat, while women and girls have endured sexual violence, coerced marriages, and religious oppression.⁵³

The actions of security forces against Boko Haram have also sparked worries about adherence to IHL. Counterinsurgency activities have led to considerable civilian deaths, underscoring the state's duty to uphold and safeguard the right to life as mandated by international law. Nigeria must prevent violations of IHL, look into alleged infringements, and prosecute the individuals accountable. Nonetheless, in spite of these responsibilities, considerable difficulties remain in achieving effective adherence to IHL within the nation.⁵⁴

Multiple significant gaps impede Nigeria's compliance with IHL, such as insufficient commitment to international legal standards, ineffective enforcement systems, and the existence of non-state armed factions, the spread of small firearms, and the challenges of urban combat. These shortcomings weaken the state's capacity to fulfil its legal

⁵¹Ibid, 18.

⁵² Maureen Obiageli Ugwu et al, 'Appraisal of the Challenges of Implementation and Enforcement of International Humanitarian Law Rules in Nigeria both in Times of Peace and War' (2024) 1(1) Nnamdi Azikiwe University Journal of Human Rights Law 33-45 https://www.researchgate.net/publication/385698873_Appraisal_Of_The_Challenges_Of_Implementation_And_Enforcement_Of_International_Humanitarian_Law_Rules_In_Nigeria_Both_In_Times_Of_Peace_And_War accessed 18 December 2024.

⁵³Anietie Ewang, 'Gruesome Boko Haram Killings in Northeast Nigeria' (*Human Rights Watch*, 2020) <https://www.hrw.org/news/2020/12/01/gruesome-boko-haram-killings-northeast-nigeria> accessed 18 December 2024.

⁵⁴Ibid, 20.

responsibilities and guarantee complete adherence to IHL. These gaps thoroughly, assessing their consequences and possible avenues for enhancement are as follows:⁵⁵

1.Failure to Comply with International Humanitarian Law

The Boko Haram insurgency in Nigeria represents an asymmetric conflict frequently waged among civilian communities. The significant technological and military advantage of state forces has prompted armed opposition groups to utilise covert strategies, integrating themselves within civilian populations to avoid being discovered. As a result, conflicts often occur in city areas instead of open combat zones, thus heightening the risk to civilians from armed conflicts. Throughout the years, Boko Haram has consistently attacked defenceless civilians, such as women and children, in clear violation of IHL.⁵⁶

A major challenge in enforcing compliance with IHL in Nigeria is the difficulty in differentiating between combatants and non-combatants. When unable to face state forces directly, armed groups resort to tactics forbidden under IHL, including wearing civilian clothing, carrying out indiscriminate assaults, and intentionally targeting non-combatants. These techniques not only breach the principle of distinction, which requires the separation of soldiers and non-combatants, but also worsen the dangers confronted by innocent communities.⁵⁷

Additionally, national military forces functioning in these intricate settings face substantial challenges in distinguishing between valid military objectives and non-combatants. This issue is intensified by situations in which both state and non-state actors show a flagrant indifference to the fundamental tenets of IHL, such as distinction, proportionality, and the humane treatment of those impacted by conflict.⁵⁸

2. Lack of Commitment to the Duty to Uphold and guarantee adherence to International Humanitarian Law

⁵⁵ibid, 20.

⁵⁶ibid, 20.

⁵⁷Morgan Kelley, 'Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare' (2013) 1618 Independent Study Project 17-26 https://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=2643&context=isp_collection accessed 18 December 2024.

⁵⁸ECIbezim et al, 'Boko Haram Insurgency and Challenges to Implementation and Enforcement of International Humanitarian Law in Nigeria' (2020) 25(6) IOSR Journal of Humanities and Social Science 36-51 [file:///C:/Users/Hp/Downloads/Boko_Haram_Insurgency_and_Challenges_to%20\(1\).pdf](file:///C:/Users/Hp/Downloads/Boko_Haram_Insurgency_and_Challenges_to%20(1).pdf) accessed 18 December 2024.

The duty to uphold and guarantee adherence to IHL is a core principle established in the Geneva Conventions, mandating that both state and non-state entities follow its regulations at all times. Even though Nigeria is devoted to numerous international legal frameworks related to armed conflict, the Boko Haram insurgency has revealed considerable difficulties in upholding IHL. Although Nigeria has ratified important treaties like the Geneva Conventions and Additional Protocols, the failure to domesticate these instruments continues to be a significant barrier to their complete implementation in the national legal system. The dualistic characteristic of Nigeria's legal framework requires legislative approval for treaties to be effective domestically, a process obstructed by political and procedural obstacles.⁵⁹ However, under the principles of customary international law, if a state is not a signatory to a treaty, such state may be bound by rules of Customary International Law. Some of the rules of Customary International Law have crystallised into treaties and conventions.

Boko Haram's ongoing disregard for IHL is clear in its random attacks on civilians, conscription of child soldiers, suicide bombings, and large-scale kidnappings, all of which represent significant breaches of international law.⁶⁰ These actions not only violate Common Article 3 of the Geneva Conventions but also constitute war crimes and crimes against humanity. Furthermore, Boko Haram's strategic adoption of urban warfare methods, such as infiltrating civilian communities, muddles the differentiation between combatants and non-combatants, thus undermining a fundamental principle of IHL.⁶¹

The Nigerian military has been accused of violating international humanitarian law, with claims of extrajudicial killings, torture, and forced disappearances involving suspected insurgents and civilians.⁶² Amnesty International has reported cases where individuals were reportedly starved, suffocated, or tortured to death during military detention, highlighting issues of accountability and adherence to IHL. Notwithstanding these reports, the Nigerian government has rejected liability and has hesitated to take legal action against military

⁵⁹ibid, 26.

⁶⁰ Geneva Conventions 1, Article 12-18 and Articles 49-50; Geneva Convention II, Articles 12- 21; and Article 50-51; Geneva Convention III, Articles 12-16, Articles 89-99; Geneva Convention IV, Articles 13-26, and Articles 27-34. Additional Protocol I, Article 13-20; Additional Protocol II, Articles 7-18; and Rome Statute of International Criminal Law, Articles 7 and 8.

⁶¹MI Bukar, 'A Critical Analysis of the Challenges of Effective Enforcement of International Humanitarian Law: A study of the fight against Boko Haram in Nigeria' (Coventry University, 2021) <https://pure.coventry.ac.uk/ws/portalfiles/portal/45086887/Bukar2021.pdf> accessed 18 December 2024.

⁶²UA Nwagwu and OU Enwelum, 'Analysis of Human Rights Implication during Counter-Terrorism Operations in Nigeria' (2021) 12(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 29-39 <<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ajol.info/index.php/naujilj/article/view/278377/262619&ved=2ahUKewipg-HlqsCLAxXDQEEAHUb-LYYQFnoECCgQAQ&usg=AOvVaw1jCb44HO-oximtt4LBqoE>> accessed 18 December 2024.

members involved in these purported infractions. This absence of accountability highlights a larger issue in maintaining compliance with IHL, as both state and non-state entities have shown neglect for the core principles of distinction, proportionality, and humane treatment during armed conflict.⁶³

3. **Ineffective Institutional Frameworks for the Application and Enforcement of International Humanitarian Law**

The application and enforcement of IHL in Nigeria have been greatly compromised by feeble institutional frameworks across the executive, legislative, and judicial branches. Crucial institutions like the military, police, correctional services, National Assembly, and courts, tasked with protecting the rights of war victims, have proven largely ineffective because of corruption, indiscipline, and a lack of professionalism. The lack of a robust institutional framework has not only obstructed accountability but has also sustained impunity in the continuing armed struggle against Boko Haram.

A major concern is the insufficient protection for at-risk groups, especially women, during the conflict. Amnesty International has documented on-going claims of rape and sexual violence committed against women in internally displaced persons (IDP) camps, alongside the use of sexual violence and torture by security forces to obtain confessions from detainees.⁶⁴ These serious violations breach Nigeria's commitments under IHL, including Common Article 3 of the Geneva Conventions and the Additional Protocols, which forbid violence against life and individuals, especially cruel treatment and torture.

Regardless of these violations, the Nigerian government has neglected to carry out independent inquiries or bring to justice those accountable for war crimes and crimes against humanity. The lack of legal actions against both state and non-state entities implicated in these violations highlights the fundamental shortcomings of Nigeria's enforcement systems. Additionally, the judiciary's restricted capacity and absence of independence exacerbate the issue, as courts infrequently hold offenders responsible for violations of IHL.⁶⁵

4. **Non-State Armed Actors and Adherence to International Humanitarian Law**

⁶³ Amnesty International, 'Nigeria: Stars on their shoulders: Blood on their hands: War crimes committed by the Nigerian military' (*Amnesty International*, 2015) <https://www.amnesty.org/en/documents/afr44/1657/2015/en/> accessed 18 December 2024.

⁶⁴ Amnesty International, 'Nigeria: Boko Haram and Nigerian military committing crimes under international law in north east Nigeria: Amnesty International written statement to the 28th session of the UN Human Rights Council (2 – 27 March 2015)' (*Amnesty International*, 2015) <<https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4410332015ENGLISH.pdf>> accessed 18 December 2024.

⁶⁵ *ibid*, 20.

A major obstacle in applying IHL is the challenge of ensuring adherence from Non-State Armed Groups (NSAGs). Interacting with these actors is essential for reducing violence against civilians, since numerous armed groups, like Boko Haram in Nigeria, depend on community backing to sustain their activities. This reliance might present a chance to sway their behaviour and promote compliance with essential IHL principles. Nonetheless, various legal and practical challenges obstruct such involvement.⁶⁶

A significant challenge is the criminalisation of dealings with NSAGs under national laws, where involvement is frequently seen as offering material assistance to terrorism. However, it is pertinent to state that not all NSAGs are terrorists. Some are resistance movements/groups or rebels. Some are politically motivated. Some are sponsored by foreign states to push political narratives.

Numerous states classify armed opposition groups as "terrorist organisations," rendering any direct or indirect involvement legally intricate and politically delicate. Additionally, the absence of organised leadership, discipline, and monitoring systems within these groups worsens the issue, as there are frequently no obvious authorities to converse with or compel adherence to IHL.⁶⁷

5. The Presence of Small Arms and Light Weapons and its Effect on Adherence to International Humanitarian Law

The extensive presence of Small Arms and Light Weapons (SALW) has greatly weakened initiatives aimed at fostering adherence to IHL. The uncontrolled distribution of these weapons, especially to non-state armed factions lacking knowledge of IHL, has intensified the difficulties in maintaining compliance with essential regulations overseeing armed conflict. The availability of such arms has led to widespread violence, rendering civilian populations more susceptible during conflicts.⁶⁸

In Nigeria, the surge and improper use of small arms have intensified organised violence and crime, becoming a hallmark of the nation's socio-political environment. The absence of efficient arms control systems has allowed armed factions to gather advanced weaponry, further reducing the likelihood of adhering to IHL. The problem is exacerbated by

⁶⁶ibid, 32.

⁶⁷ibid, 32.

⁶⁸Francis LangumbaKeili, 'Small Arms and Light Weapons Transfer in West Africa: A Stock-Taking' (2008) 4 Disarmament Forum 5 <<https://undir.org/files/publication/pdfs/the-complex-dynamics-of-small-arms-in-west-africa-en-329.pdf>>accessed 18 December 2024.

leaky borders and insufficient enforcement of global arms embargoes, which enables illegal arms trade to flourish.⁶⁹

6. Difficulties of Urban Combat and Adherence to International Humanitarian Law

Urban warfare poses considerable difficulties in adhering to International Humanitarian Law (IHL), as the existence of large civilian populations complicates military actions. Even when IHL is upheld, armed conflicts in densely populated regions inevitably lead to extensive human suffering. Military strategies should comply with essential principles like proportionality and precaution to reduce civilian casualties. Nonetheless, the truth of contemporary warfare has shown that these principles are frequently challenging to maintain in reality.⁷⁰

A significant trend in recent wars is the rising use of improvised explosive devices (IEDs) by non-state armed factions, leading to greater civilian casualties. Numerous conflicts are asymmetric, as armed opposition groups integrate themselves among civilian populations to avoid being detected. As a result, conflicts mainly occur in urban areas instead of open fields, increasing dangers for civilians.⁷¹

State and non-state actors utilise munitions with extensive impact, including artillery, rockets, and large bombs, which result in not only immediate casualties but also destruction of critical civilian infrastructure. This devastation has wide-ranging effects, such as displacement, diminished access to healthcare and essential services, and prolonged economic instability. In numerous cases, whole towns and cities have been flattened, leading civilians to wonder if they are being collectively punished for the deeds of non-state armed groups.⁷²

5.0 CONCLUSION

The implementation of International Humanitarian Law (IHL) in Nigeria's fight against insurgency poses a major challenge because of inadequate institutional frameworks,

⁶⁹ibid 36.

⁷⁰International Committee of the Red Cross, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (2007) 89 International Review of the Red Cross 719 <<https://international-review.icrc.org/sites/default/files/irrc-867-10.pdf>> accessed 18 December 2024.

⁷¹Armida van Rijet al, 'Defining the Device: The Need for International Humanitarian Standards for Improvised Explosive Device Disposal' (*The Policy Institute, King's College London*, 2017) <https://www.kcl.ac.uk/policy-institute/assets/defining-the-device.pdf> accessed 18 December 2024.

⁷²ibid, 39.

the actions of non-state armed factions, the spread of small weapons, and the intricacies of urban combat. Although Nigeria has ratified important IHL treaties and integrated some obligations into its domestic law, enforcement is still insufficient. Weaknesses in institutions such as the executive, legislature, and judiciary obstruct the proper safeguarding of war victims, while the absence of accountability for violations further reduces compliance.

Non-state armed organisations, especially Boko Haram, persist in violating essential IHL principles by attacking civilians and employing strategies like suicide bombings and abductions. Involving these groups in upholding humanitarian standards is challenging, particularly when legal barriers make communication with them a crime. The extensive presence of small arms worsens the conflict, equipping factions that show scant respect for IHL and escalating violence toward civilians. Moreover, the rising trend of urban warfare has obscured the boundaries between fighters and non-combatants, rendering compliance with IHL principles of distinction, proportionality, and precaution more challenging.

To enhance adherence to IHL in Nigeria's counterinsurgency initiatives, it is essential to establish more robust institutional structures, strengthen accountability systems, and provide improved military training on IHL principles. Nigeria should also improve collaboration with non-state entities, control the spread of arms, and implement conflict strategies that reduce harm to civilians. Ultimately, a more thorough and coordinated strategy—reconciling military needs with humanitarian duties is vital for making sure that counterinsurgency actions comply with international legal norms and successfully safeguard human rights during armed conflicts.

6.0 RECOMMENDATIONS TO ADDRESS CHALLENGES IN NIGERIA'S COUNTERINSURGENCY EFFORTS

1. Establishment of a Specialised IHL Enforcement Unit

A dedicated International Humanitarian Law Enforcement Unit ought to be established within Nigeria's security agencies to oversee, examine, and take legal action against breaches of IHL. This unit needs to be autonomous, properly financed, and granted legal power to take action against both state and non-state entities that perpetrate war crimes or other breaches of IHL. Its main function would be to guarantee that counterinsurgency operations comply with international legal standards, thus avoiding impunity and enhancing institutional accountability.

2. Complete Integration of IHL Treaties into Nigerian Legislation

Nigeria has ratified numerous important IHL treaties; however, their complete integration into national law is still unfinished. A specific law for enforcing IHL should be established to explicitly criminalise war crimes, crimes against humanity, and genocide. This legislation should also confer jurisdiction to Nigerian courts for IHL violations, making sure that offenders—be they military members, insurgents, or other individuals—face legal repercussions. Empowering the National Human Rights Commission (NHRC) to initiate legal proceedings in IHL cases will further strengthen enforcement.

3. Strengthening Civilian Protection Mechanisms in Conflict Zones

Counterinsurgency efforts should be conducted with rigorous compliance to the principles of distinction, proportionality, and precaution in IHL. Legislation should require the establishment of civilian protection procedures that security forces must adhere to, especially in urban combat scenarios. These protocols must contain distinct regulations on force utilization, directives for reducing collateral damage, and a legal obligation for impartial inquiries into events that result in civilian casualties. Improved civilian oversight systems, such as parliamentary and judicial evaluations of military actions, will guarantee greater compliance with these safeguards.

4. Criminalisation of Sexual Violence in Conflict with Stronger Enforcement Measures

Accounts of sexual violence, such as the rape of displaced women, underscore a substantial deficiency in the enforcement of IHL. Nigerian legislation must be revised to explicitly categorize sexual violence in conflict as a war crime, imposing severe punishments for perpetrators. Dedicated prosecutorial entities must be created to address these cases, and survivor protection initiatives should be legally required to offer medical, psychological, and legal assistance to victims. Moreover, law enforcement agencies must be obligated to swiftly and openly investigate and prosecute all claims of sexual violence.

5. Regulation of Small Arms and Light Weapons to Prevent Misuse

The spread of small arms and light weapons has intensified conflict and complicated the enforcement of IHL. Nigeria's arm control legislation needs to be enhanced to enforce tougher rules on arms trafficking, ownership, and utilization, especially in regions vulnerable to conflict. A committed National Arms Control Agency needs to be created to monitor and manage the distribution of arms, guaranteeing that insurgent organizations and untrained

militias cannot access hazardous weapons. In addition, it should be mandated by law that security agencies enhance the management of arms stockpiles to avoid weapons ending up in inappropriate hands.

6. Legalisation of Humanitarian Engagement with Non-State Armed Groups

The counterinsurgency laws in Nigeria need reform to permit restricted interaction with non-state armed groups for humanitarian reasons. At present, national legislation frequently prohibits any engagement with insurgents, even if it is intended to facilitate humanitarian access or negotiate the freeing of hostages. A legal structure should be established to allow impartial humanitarian organisations to interact with these groups in manners that foster compliance with IHL while ensuring national security. This strategy has proven effective in different conflict areas where involving non-state entities has resulted in better humanitarian situations and less violence against civilians.

7. Judicial and Military Training on IHL Compliance

Numerous breaches of IHL happen because of insufficient knowledge and training among military staff, law enforcement agents, and judicial officials. Nigerian legislation ought to require mandatory IHL training for every military, paramilitary, and law enforcement agency. Likewise, judicial officials ought to obtain specialised training in handling IHL-related cases to guarantee correct legal interpretation and application. Mandating annual IHL certification for military commanders and frontline staff would strengthen commitment to international humanitarian norms.