



LEGAL IMPACT OF COUNTER INSURGENCY ON HUMAN RIGHTS IN NIGERIA**

Abstract

This study delved into the legal ramifications of counter-insurgency operations on human rights in Nigeria, with a particular focus on the multifaceted challenges posed by insurgency, notably the Boko Haram conflict. Examining the nexus between counter-insurgency measures and the protection of human rights, the research investigated instances where emergency powers granted to security forces have been utilized in ways that raise concerns about potential violations. The study adopted the doctrinal research methodology making use of primary and secondary sources of literature. In undertaking counter insurgency, the promotion and protection of human rights should be an integral part of the efforts. However, in Nigeria there are clear cases of encroachment on the human rights of the citizens. The paper critically evaluates cases of arbitrary arrests, prolonged detentions without trial, enforced disappearances, and civilian casualties during counter-insurgency operations. These are scrutinized to ascertain the extent to which legal safeguards are observed. In conclusion, the research provides recommendations for refining the legal framework governing counter-insurgency activities in Nigeria, emphasizing the importance of maintaining a delicate equilibrium between security imperatives and the safeguarding of human rights. It advocates for increased accountability, transparency, and adherence to international legal standards to ensure that counter-insurgency efforts contribute to the restoration of peace without compromising the fundamental rights of Nigerian citizens.

Keywords: Insurgency, Counter-insurgency, Human Rights, Terrorism, Violence

1. Introduction

Insurgency, characterized by protracted asymmetric violence, psychological warfare, and political mobilization, is increasingly employed by groups unable to achieve their political goals through conventional means.¹ Rooted in historical precedents dating back to ancient civilizations like the Greek city-state and Roman Empire, insurgencies have consistently sought to overthrow established orders and replace them with new social and political structures.² The historical demise of the Greek and Roman Empires exemplifies the impact of internal insurrections and external attacks on the fall of great states and empires.³ In the contemporary context, Nigeria faces a crisis of insurgency, with resource-based and sectarian conflicts claiming lives, destroying livelihoods, and instilling pervasive fear and insecurity.⁴ Various insurgent groups have emerged throughout Nigeria's political history, including the Movement for the Emancipation of the Niger Delta (MEND), the Odua People's Congress (OPC), the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), and the notorious Boko Haram, which opposes Western education.

This surge of insurgency in Nigeria mirrors historical patterns, where discontented groups aim to alter the balance of power by resorting to armed rebellion. The consequences are tangible, impacting the lives of citizens and challenging the nation's stability.⁵

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¹ National Institute Complex Insurgencies in Nigeria. National Institute and Strategic Studies, Kuru, Nigeria, (2012).

² O Fafowora 'Understanding insurgency in Nigeria; Nature, types, Dynamics and the Way Out,' *National Institute and Strategic Studies*, [2012] 2. Kuru Nigeria.

³ Ibid.

⁴ M Osini , 'Insurgency in Nigeria: Addressing the causes as part of the solution', *Africa Human Rights Journal*, [2014] 14 223.

⁵ Ibid.



Addressing these complex issues requires a comprehensive understanding of the historical context, the motivations of insurgent groups, and the development of effective strategies to restore peace and security.

2. Conceptual Framework

In laying the groundwork for this article, it becomes imperative to establish a clear understanding of fundamental concepts integral to the discourse. This article seeks to elucidate key notions crucial to the work, encompassing terrorism, human rights, human rights violations, as well as insurgency and counter-insurgency.

i. Insurgency

Different definitions of insurgency have been offered by scholars and intellectuals. The United States Department of Defence⁶ defines Insurgency as an organized movement that has the aim of overthrowing a constituted government through subversive means and armed conflict. The implication of this definition is that insurgent groups employ clandestine and unlawful means towards achieving an end, which could be political, religious, social or even ideological. As a result, Siegels⁷ argued that the goal of insurgency is to confront and overthrow an existing government for the control of power, resources or for power sharing.

According to Kilcullen,⁸ “insurgency is a struggle to control a contested political space, between a state or a group of states or occupying powers, and one or more popularly based, non-state challengers.” Nonetheless, Kilcullen drew a line between classical and contemporary insurgencies. He said while the latter seek to replace the existing order, the former sometimes strive for the expulsion of foreign invaders from their territory or seek to fill an existing power vacuum. Colonel Dennis Drew,⁹ defined it thus: “an insurgency is nothing more than an armed revolution against the established political order.” He further added that insurgencies are internal affairs and the insurgents are self-sustaining. According to the U.S. Government Counter-insurgency Guide,¹⁰ “insurgency is the organised use of subversion and violence to seize, nullify or challenge political control of a region.” As such, it is primarily a political struggle, in which both sides use armed force to create space for their political, economic and influence activities to be effective.

ii. Counter-insurgency

Counter-Insurgency is defined as ‘those military, paramilitary, political, economic, psychological and civic actions taken by a government to defeat an insurgency.’¹¹ Counter-insurgency (COIN) is just the opposite of insurgency. COIN involves a combination of measures undertaken by the legitimate government of a country to curb or suppress an insurgency taken up against it. So while insurgents for instance try to erase or overthrow

⁶ P Hellesten, ‘Counter – Insurgency and Its Implication for the Norwegian Special Operations Forces’, Unpublished thesis for the Naval post Graduate school. Monterey, California, USA, [2008] 14.

⁷ J Siegel, ‘Criminology Theories, Patterns and typologies’, 11th ed, (Belmont, CA: Wadsworth Cengage Learning 2007) 328.

⁸ D Kilcullen, ‘Three Pillar of Counter – Insurgency in Government Counter- Insurgency’, (2006) Washinton D.C <Available at <http://www.au.af.mil/au/awcgate/uscoin3pillarsofcounterinsurgency.pdf>.> Accessed on 19th January 2023.

⁹ D Drew, ‘Insurgency and Counter insurgency: American Military Dilemmas and Doctrinal Proposal’, (1988). in Reports no AU-ARI-CP-88-1.

¹⁰ Bureau of Political Military Affairs, Department of State (2009).

¹¹ S Vrooman, ‘A Counter- Insurgency Campaign Plan Concept: The Galula Compass’, in a Monograph, *US Army School of Advanced Military Studies, Unites States Army Command and General Staff College Fort Leavenworth, Kansas* (Ay 04-05)



the existing political authority in order to establish theirs, the counter-insurgent forces try to reinstate the existing political structures as well as reduce or annihilate the usurping authority of the insurgents.¹²

Kilcullen¹³ observes that counter-insurgency is best defined as “an umbrella term that describes the complete range of measures that government take to defeat insurgencies.” According to the U.S. Government Counter-insurgency Guide,¹⁴ counter-insurgency “may be defined as comprehensive civilian and military efforts taken simultaneously to defeat and contain insurgency and address its root causes.

iii. Human Rights

According to Obiaraeri¹⁵ “Humans Rights” as an omnibus is a generic term incorporating many kinds of claims, liberties, powers, immunities, advantages which individual seeks to enjoy from the society; some of which are legal based on the fact that they are accorded recognition by the legal system and some of which are non-legal because they are not so recognised.¹⁶

According to Chukwumaeze¹⁷ human rights may be described as those rights, which inhere in a person by virtue of being a human being. Such rights are inalienable in the sense that a person cannot be deprived of them without a great affront to justice. He says further that implied from the principles of inference and inalienability is the fact that they are universal in that, it is available to human beings whoever and wherever they may be. Even in time of crises it is expected that civilized society must and should ensure that the human rights of all citizens are protected and guaranteed.

3. Nature of Counter-Insurgency

Counter-insurgency is those military, paramilitary, economic, psychological and civil actions taken by a government to defeat an insurgency. In a counter-insurgency, Host Nation forces and partners operate to defeat armed resistance, reduce passive opposition, and establish or re-establish the legitimacy of the Host Nation's government. Counter-insurgency is a proactive approach involving all elements of national power; even down to the tactical level. COIN operations strive to achieve unity of effort amongst many joint, inter-agency, inter-governmental, and multinational organizations. COIN includes tactical planning; intelligence development and analysis; training; material, technical, organizational assistance; advice; infrastructure development; tactical level operations; and information engagement. US forces often lead the US government's counter-insurgency efforts because the US military can quickly project a counter-insurgent force and sustain not only its force but also other agencies.¹⁸

¹² S E Liolio, 'Rethinking Counterinsurgency: A Case Study of Boko Haram in Nigeria' (Unpublished M.A. Thesis, European Peace University, Austria 2013) 33

¹³ D Kilcullen, *ibid*, Accessed on 19 January 2023.

¹⁴ Bureau of Political Military Affairs Department of State (2009).

¹⁵ NO Obiaraeri, *Human Rights in Nigeria*, (Millennium Perspective. Lagos; Perfect Conception) 3-6

¹⁶ The Distinctions between Human Right and fundamental Rights have come to be recognised by both National and International Human Right Jurisprudent.

¹⁷ Right to Rebel, *In search of Legal Scholarship/ Essay in Honour of Earnest Ojukwu*, (Published Abia State University Law Centre, 2017) 33.

¹⁸ W George, *Tactics in Counterinsurgency* (Washington D.C Headquarters Department of the Army 2009) 10.



Counter-insurgency is a complex effort that integrates the full range of civilian and military agencies. It is often more population-centric (focused on securing and controlling a given population or populations) than enemy-centric (focused on defeating a particular enemy group). This does not mean that counter-insurgency is less violent than any other conflict: on the contrary, like any other form of warfare it always involves loss of life. It is an extremely difficult undertaking, and often highly controversial politically, involving a series of ambiguous events that are extremely difficult to interpret, and often requires vastly more resources and time than initially anticipated. In particular, governments that embark upon COIN campaigns often severely underestimate the requirement for a very long-duration, relatively high-cost commitment (in terms of financial cost, political capital, military resources and human life). The capabilities required for counter-insurgency may be very similar to those required for peace-keeping operations, humanitarian assistance, stabilization operations, and development assistance missions. However, counter-insurgency differs from peacekeeping operations in this regard; indeed, this is a key point. In peacekeeping operations, combat is not expected and the goal is an absence of violence. In counterinsurgency, such an absence may actually mask insurgent preparations for combat. The intent of a counterinsurgency campaign is to build popular support for a government while marginalizing the insurgents: it is therefore fundamentally an armed political competition with the insurgents. Consequently, control (over the environment, the population, the level of security, the pace of events, and the enemy) is the fundamental goal of counterinsurgency, a goal that distinguishes it from peace operations or humanitarian intervention. Within these broad characteristics, the specific nature of any particular counterinsurgency campaign arises from the complex interaction of three key factors: the characteristics of the environment (physical, economic, political and human) in which it takes place; the nature of the insurgent group (or groups); and the nature of the counterinsurgent government and its security forces. The purpose of counterinsurgency is to build popular support for a government while suppressing or co-opting insurgent movements.¹⁹

4. Approaches to Counter-Insurgency

Different approaches have emerged towards countering insurgency. Some of them include:

- (a) **The Enemy-Centric Approach:** This approach conceives COIN as a contest with an organized enemy, and thus emphasizes defeat of the enemy as its primary objective, while viewing other mechanisms as secondary. In other words, the focus here is on the complete annihilation of the insurgents or their guerrilla formations and cadres while minimizing the significance of nation-building as well as measures to gain popular support. There are also “many variants within this approach, including “soft” vs. “hard,” direct vs. indirect, violent vs. non-violent, and decapitation vs. marginalization strategies.” This approach can be summarized as “first defeat the enemy, and all else will follow.” In modern times, this approach is often not discussed but it is applied in COIN operations. It has also been said that if this approach is applied to its fullest, it “might work against incipient insurgencies

¹⁹ Counterinsurgency- An Introduction'. <Http URL/NATO/data/NATO/Im_data/Im_8422/11689/index.html> accessed on 21 November 2023.



that are led or centrally controlled by a particularly charismatic or powerful individuals.”²⁰

- (b) The Population Centric Approach:** Unlike the first approach, the population-centric approach focuses on protecting the population and maintaining or winning its support. Although direct military confrontation might be needed in defeating the insurgents, it is not seen here as the primary objective which is to win the support of the population. This approach can be summarized as “first protect and support the population, and all else will follow.” There are more theorists supporting the population-centric approach than they are with the enemy-centric approach. The U.S. style of COIN embedded in the 2006 FM 3-24 also follows this approach.²¹
- (c) "Drain the sea" approach:** With regard to tactics, the terms "drain the sea" or "drain the water" involves the forced relocation or elimination of the civilian population ("water") to expose the rebels or insurgents ("fish"). In other words, relocation deprives the aforementioned of the support, cover, and resources of the local population. This is typically targeted in that it specifically targets the demographic that supports the insurgency in a limited area where insurgency is taking place, but is indiscriminate from an individual perspective.²² Draining the sea" can also be accomplished through genocide by killing the population blamed for the insurgency.
- (d) Carrots and Sticks, Hearts and Minds:** Another major approach to counterinsurgency is the older and more famous "hearts and minds" strategy which operates by a somewhat different logic, focusing on "the problems of modernization and the insurgent need for popular support." As Rand explains, the aim was to rebuild public confidence in the government by instituting reforms, reducing corruption, and improving the population's standard of living.²³

5. Counter-Insurgency and Human Rights in Nigeria

The United Nations Global Counter-Terrorism Strategy emphasizes that ensuring the promotion and protection of human rights for everyone, along with upholding the rule of law, is integral to all aspects of the Strategy. It acknowledges that effective counter-terrorism measures and the advancement of human rights are not opposing objectives but rather work together in a complementary and mutually reinforcing manner.²⁴ Undoubtedly, insurgency undeniably exerts a significant and tangible influence on human rights, resulting in detrimental and calamitous outcomes that adversely impact the fulfillment of essential rights such as life, liberty, and other fundamental human rights. The United Nations High Commissioner for Human Rights emphasizes that upholding human rights and the rule of

²⁰ C Gompert and Others, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency* (Santa Monica: Rand 2008) 12.

²¹ *Ibid.*

²² Plakoudas, Spyridon (2016). "Population transfers in counter-insurgency: a recipe for success?". *Small Wars & Insurgencies*. 27 (4): 681–701. doi:10.1080/09592318.2016.1189542. ISSN 0959-2318. S2CID 1482525

²³ C Gompert and Others, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency* (Santa Monica: Rand 2008) 12

²⁴ Office of the United Nations High Commissioner for Human Rights 'Human Rights, Terrorism and Counter-terrorism', Fact Sheet No.32, (United Nations Global Counter-Terrorism Strategy/ General Assembly Resolution 60/288, annex)



law should form the foundation of the worldwide efforts against insurgency.²⁵ This necessitates the Nigerian government to formulate domestic counter-insurgency strategies focused on preventing insurgent activities, prosecuting individuals involved in criminal acts, and safeguarding the rule of law and human rights. Nigeria's efforts to counter insurgency and terrorism should target the root causes that give rise to insurgency, addressing the violations of human rights and the absence of the rule of law. In essence, Nigeria's counter-insurgency measures must denounce human rights violations while simultaneously safeguarding the rights of those who have fallen victim to such violations.²⁶

Human rights can be defined as universal values with an enshrined legal guarantee having the objective of protecting individuals as well as groups against the actions and infractions committed by agents of the State which meddles with fundamental freedoms, human dignity as well as entitlements.²⁷ The entirety of human rights encompasses the recognition, safeguarding, and fulfillment of a range of rights, including civil, cultural, political, social, and economic rights. The universal nature of human rights implies that every individual is entitled to enjoy these rights. International human rights law is embedded in customary international law and various core international human rights treaties. Key universally-oriented human rights instruments include the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and its two Optional Protocols, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance. Beyond these international human rights instruments, numerous regional treaties also address the safeguarding of fundamental freedoms and human rights. States are obligated to adhere to, protect, and fulfill the provisions of human rights, emphasizing the enforcement and promotion of these rights.

This necessitates that States proactively take measures to prevent any encroachments on the enjoyment of human rights. It is the duty of States to ensure that appropriate steps are implemented to prevent external interference that might impede the enjoyment of these rights. States bear the responsibility of instituting suitable measures, including legislative, judicial, educational, and administrative actions, to ensure the fulfillment of legal obligations outlined in human rights instruments. Furthermore, States are obligated by human rights principles to guarantee the availability of effective remedies in cases where violations have occurred.

The fulfillment and enforcement of human rights obligations by States parties are scrutinized by monitoring bodies established to assess whether a State is adhering to its commitments. These bodies also facilitate individuals in exercising their right to file complaints with international entities regarding rights violations. Accountability becomes

²⁵ Ibid p.2

²⁶ Ibid p.2

²⁷ Ibid at p.3



crucial when States undertake measures to counter insurgency, ensuring that the promotion and protection of human rights remain integral to these efforts. Given the substantial impact of insurgency on human rights and effective governance, it is imperative to strike a balance between countering insurgency and safeguarding individual rights. Recognizing the deleterious effects of insurgency on human rights, measures taken by States to address insurgency should be proportionate and commensurate with the severity of the offenses committed. States should implement effective measures against insurgency without resorting to overly harsh or draconian measures.

The United Nations High Commissioner for Human Rights stated that “effective counter-insurgency measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States’ duty to protect individuals within their jurisdiction.”²⁸ The Security Council swiftly took action to enhance the legal framework governing the enforcement of counter-terrorism measures by establishing the Counter-Terrorism Committee, tasked with overseeing the implementation of these measures by States. The imperative to ensure adherence to counter-insurgency measures led to the creation of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the context of countering terrorism. The UN Special Rapporteur emphasizes the essential role of fair trial procedures in the effective prosecution of terrorist acts, underscores the importance of preserving the integrity of civilian trials for terrorism offenses, acknowledges the equilibrium embedded in rules of evidence and procedure within national legal systems for the overall protection of fair trials, and highlights the significance of delineating distinct spheres of competence for military and civilian authorities in the application of criminal law.”²⁹

Moreover, the Special Rapporteur “recognizes the significance of fair and human rights compliant trials, the need for professionalism and protection of key actors engaged in the prosecution of acts of terrorism, and the necessary prosecution of acts that constitute serious violations of international law, including international humanitarian law and human rights law.”³⁰ The Human Rights Watch in its Report of July 18, 2018 noted that Nigeria’s prosecution of suspected Boko Haram members was marred by serious legal shortcomings, and the failure of the authorities to prioritize the prosecution of those most responsible for the group’s atrocities.³¹ According to Anietie Ewang, Nigeria’s researcher at Human Rights Watch submitted that “Nigeria needs to pursue justice for those responsible for Boko Haram’s atrocities and end the prolonged detention of thousands of suspects.”³² He went on to report that “however, to achieve justice and deter extremist attacks, the Nigerian government’s overall strategy and trial procedures need to conform with constitutional

²⁸ Ibid at p.19

²⁹ United Nations Human Rights Special Procedures, Special Rapporteurs, Independent Experts, and Working Groups ‘Position of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on the use of “Battlefield” or Military Produced Evidence in the context of Investigations or Trials involving Terrorism Offences’ (April 2021) p.3

³⁰ Ibid at p.3

³¹ Anietie Ewang, ‘Nigeria: Flawed Trials of Boko Haram Suspects,’ July 18, 2018 @ 2018 Getty Images

³² Ibid In June 2019, Human Rights Watch interviewed 32 children and youth who had been detained at Giwa barracks as children. In all the cases investigated, the children’s detention appeared to be arbitrary. None of the 32 children interviewed said they were taken before a judge or appeared in court, as required by law. None were aware of any charges against them. Only one said he saw someone who he believed might have been a lawyer 465 Amnesty International, Human Rights for Human Dignity (Amnesty International, 2014) 13.



safeguards and international standards.” Right from the previous century, human rights have received much attention internationally. Ban Ki-moon, a former UN Secretary-General, once said this about human rights; “No person should go hungry, lack shelter or clean water and sanitation, face social and economic exclusion or live without access to basic health services and education. These are human rights and form the foundations for a decent life,” Describing human rights as the bedrock of fundamental and fulfilling human existence is an apt characterization. Various instruments have recognized the imperative of promoting human rights, serving as significant testaments to the advocacy for human rights. These documents take different forms, with some being inherently binding, structured as treaties, while others predominantly function as soft laws. Despite the nonbinding nature of some instruments, they possess normative qualities that can be construed as having the force of law, particularly when articulated as customary international law.

Human rights law, particularly the rights affected during insurgencies and government efforts to quell them, finds comprehensive recognition in treaties and customary international law. Notably, the Universal Declaration on Human Rights (UDHR) delineates crucial rights that merit consideration in addressing the challenge of insurgency. The African Charter on Human and Peoples' Rights (ACHPR) similarly endeavors to safeguard the rights of individuals across the African continent. In the context of Nigeria, the Constitution of the Federal Republic of Nigeria, 1999, specifically addresses the protection of citizens' rights. These rights are outlined in both Chapter II (Fundamental Objectives and Directive Principles of State Policy) and Chapter IV (Fundamental Rights) of the Constitution. Section 13 of the Constitution, commencing Chapter II, explicitly declares the duty of all government organs, authorities, and individuals exercising legislative, executive, or judicial powers to adhere to, observe, and apply the provisions of this constitutional chapter.³³ Given the multitude of laws at the international, continental, and national levels aimed at safeguarding the rights of individuals, it is evident that governments worldwide prioritize human rights, and any actions undermining these rights are strongly disapproved of. Regrettably, various insurgencies, such as those led by the Boko Haram group, Fulani herders, and unidentified gunmen, have orchestrated extensive assaults on the fundamental rights of Nigerians, particularly those residing in the northern and eastern regions. These infringed rights, resulting from acts of insurgency, encompass the right to life, the right to property ownership, protection against inhuman and degrading treatment, the right to practice religion, the right to reside freely in any part of the country, and the right to education, among others.

6. Human Rights Violations During Counterinsurgency Operations

In countering insurgency in Nigeria, security operatives³⁴ have unleashed brutal revenge attacks on innocent civilians and insurgents who according to the Nigerian Constitution are presumed innocent until proven otherwise. Citizens suffer constant human rights violations most times there is a countering operation by the security. These violations include right to life, right to freedom of movement and others.

³³Constitution of the Federal Republic of Nigeria 1999

³⁴A S Odomovo, 'Insurgency, Counterinsurgency and Human Rights Violations in Nigeria' [2014] (3) The Age of Human Rights Journal, 6.,



i. Right to Life and Extrajudicial Killings

One of the most serious transgressions of human rights perpetrated by government security forces in the course of counter-insurgency operations is the unjust killing of civilians. The infringement upon the right to life of the Nigerian populace, particularly in the northeastern and eastern regions of Nigeria, has been a prominent aspect of the government's efforts to combat insurgency. As an illustration, the Office of the High Commissioner on Human Rights (OHCHR) highlights documented incidents of security forces' attacks causing a significant number of civilian casualties, notably in Baga, Nigeria, in April 2013, where security forces reportedly shot civilians, resulting in the displacement of 642 people.³⁵ Examinations conducted by credible national sources established occurrences of extrajudicial and summary executions, torture, arbitrary detention, enforced disappearance, and rape perpetrated by national security forces during the incident. The sources reported that the veracity of these allegations could not be fully substantiated.³⁶

ii. Personal Liberties and Personal Security

In Nigeria, OHCHR has verified reports indicating that in areas affected by Boko Haram, young men face not only the risk of being targeted by Boko Haram but also the potential for arbitrary arrest and detention by the army, police, or civilian vigilante groups if suspected of being affiliated with Boko Haram. Instances of indiscriminate arrests, detention, and mistreatment of individuals suspected of having ties to Boko Haram extended beyond Nigeria's borders to all neighboring countries. Following Boko Haram attacks between June and July 2015 in N'Djamena, Chadian authorities implemented heightened security and surveillance measures, impacting civilians, particularly foreigners. For instance, security forces reportedly detained nearly 400 foreigners of 14 nationalities in the two weeks following the attack on N'Djamena on June 15, 2015, during identity checks, house searches, or on the streets. In Niger, security forces apprehended an unspecified number of Boko Haram suspects, including children, in the Diffa region between February and July 2015. In July, 40 juveniles suspected of Boko Haram affiliation were reportedly detained in the prisons of Koutoukale and Kollo, with some later transferred to the juvenile section of Niamey prison. Since these arrests, many family members have been unable to locate their relatives in detention.³⁷ For instance, out of the 200 arrests carried out by Cameroonian authorities, OHCHR could only verify the location of 20 individuals held in four prisons designated for Boko Haram suspects in Maroua, Kouseri, Mokolo, and Yagoua; the whereabouts of the remaining 180 detainees remain unknown. Additionally, non-governmental organizations documented around 260 arrests, with OHCHR confirming the presence of only 45 individuals at the central prison in Maroua. Although an official communique from the Ministry of External Relations of Cameroon mentioned 25 deaths in detention, the fate of the remaining 192 individuals remains unaccounted for. Witnesses in Nigeria recounted instances where young men suspected of being affiliated with Boko

³⁵ United Nations Human Rights Council, 'Violations and Abuses Committed by Boko Haram and the Impact on Human Rights in the Countries Affected', 40 <https://www.ohchr.org/EN/HRBodies/HRCRegularSessions/.../A-HRC-30-36_en/> accessed United Nations Human Rights Council, 'Violations and Abuses Committed by Boko Haram and the Impact on Human Rights in the Countries

Affected' <https://www.ohchr.org/EN/HRBodies/HRCRegularSessions/.../A-HRC-30-36_en/> accessed 20 October 2023

³⁶ Nigerian National Human Rights Commission, 'The Baga Incident and the Situation in North-East Nigeria: An Interim Assessment and Report', June 2013.

³⁷ Ibid



Haram were apprehended by civilian vigilante groups or the army and subsequently disappeared. However, due to fear of reprisals from either side of the conflict, few of such incidents are officially reported.³⁸

iii. Economic and Social Rights and Freedom of Religion

The economic challenges in certain regions impacted by the insurgency have been further intensified by the security and counter-insurgency actions of the government. Measures such as restricted traffic circulation, border closures, bans on motorcycles, imposition of curfews, suspension of fishing activities, and the seizure of truckloads of goods on suspicion of being intended for insurgency have contributed to the exacerbation of the already fragile economic conditions. As a result, numerous individuals have lost their livelihoods. Additionally, the insurgency has heightened tensions between communities and religions, amplifying the risk of escalated violence within and between communities.

7. Overall Approach and Attitude of the Nigerian Government on Counter Insurgency

The overall strategy employed to address insurgency in Nigeria has resulted in significant human rights violations, whether committed by insurgents, terrorists, or law enforcement agencies. The government's approach has faced considerable scrutiny, particularly in instances where it actively engaged in negotiations for the release of Boko Haram victims, notably in the cases of the Chibok girls, released three years after their abduction, and the Dapchi girls, who were returned five weeks after being kidnapped from school. These negotiations often involved the exchange of arrested Boko Haram members for the abducted individuals. The act of negotiating with a group of insurgents that poses a threat to national security has raised questions about the government's ability to effectively combat and defeat the insurgents and terrorists. Neumann's perspective that "negotiations give legitimacy to insurgents and their methods" is particularly relevant in this context.³⁹ A democratic government should refrain from engaging in negotiations with insurgent groups as it undermines its authority and diminishes its capacity to adequately protect the lives and properties of the citizens who elected it. Nevertheless, some democratic governments have sought the assistance of mediators to facilitate peace talks between the government and insurgents. The United States of America stands as an example of a democratic country that has firmly committed to not negotiating with terrorists, regardless of the severity of the situation. Other nations with a similar stance include Colombia, Turkey, and Spain. Former Prime Minister Margaret Thatcher of the United Kingdom, at one point, expressed a steadfast refusal to participate in such negotiations.⁴⁰ These countries record a minute number of insurgent attacks compared to the countries that are constantly in peace talks with terror groups. The position of the government in dealing with insurgents either strengthens them or weakens them depending on what the government stance is. Another approach the Nigerian government has adopted is Amnesty for repentant insurgents members. At a time in Nigeria, the Oil-rich States were ravaged by Niger delta militants, who consistently attacked oil companies, blamed for been responsible for the pollution of farmlands and water

³⁸ Ibid.

³⁹PR Neumann, 'Negotiating with Terrorists' accessed 3 December 2020

⁴⁰ H Toros, 'We Don't Negotiate with Terrorists!': Legitimacy and Complexity in Terrorist Conflicts, *Security Dialogue* (2008) 39(4) *Security Dialogue* 407



bodies in the States. A former President of Nigeria, the late Umaru Musa Yar'adua, introduced amnesty as a move to convince the militants to surrender their arms in exchange for money and government pardon.⁴¹ The amnesty approach proved effective in restoring peace to the region. It can be argued that the militants resorted to attacks to highlight their grievances against the government, as the discovery of oil in the Niger Delta region led to significant environmental pollution, causing substantial losses for farmers and fishermen. The nation's wealth growth came at the expense of the Niger Delta people, with numerous breaches of their social, economic, and environmental rights.

Contrastingly, dealing with terrorists involves intentional efforts to deprive people of their rights based on differences in thoughts, conscience, and religion. In recent years, there have been connections between a faction of Boko Haram and the Islamic State of Iran and Syria (ISIS). Given these affiliations and Boko Haram's numerous atrocities, the question arises: should there be amnesty talks between the government and terrorists? Presently, approximately 2000 repentant terrorists have undergone rehabilitation and reintegrated into society.⁴² The effectiveness of this initiative in creating a lasting solution is widely doubted. The terrorist group has been actively causing destruction in the north, acquiring weapons more advanced than those of the Nigerian military, and sustaining their enclave in the forest. They receive financial support from unidentified sponsors, and the government has been unable to trace these backers. In November 2020, the United Arab Emirates convicted six Nigerians for facilitating the funding of Boko Haram between 2015 and 2016.⁴³ This marks the initial instance of such a conviction, although it was not carried out by the Nigerian government.

8. Conclusion and Recommendations

In conclusion, the legal impact of counter-insurgency on human rights in Nigeria is a complex and critical issue that demands careful consideration and recalibration of existing frameworks. This study has underscored the challenges and concerns arising from the intersection of counter-insurgency operations and the protection of fundamental human rights. The documented instances of extrajudicial killings, arbitrary arrests, prolonged detentions without trial, enforced disappearances, and civilian casualties during these operations reveal the pressing need for a more robust legal framework that strikes a balance between national security imperatives and the preservation of human rights.

The analysis has also emphasized the importance of international legal standards and conventions in guiding and evaluating counter-insurgency efforts. Recognizing that security measures, particularly during states of emergency, grant extensive powers to security forces, it is imperative to establish clear boundaries to prevent the abuse of such powers. The international community's expectations for accountability, transparency, and adherence to human rights principles in conflict zones further highlight the need for Nigeria to align its counter-insurgency strategies with globally recognized standards.

⁴¹ Xan Rice, 'Nigeria begins Amnesty for Niger Delta Militants', *The Guardian*, 6 Aug 2009, accessed 3 December 2020

⁴² F Soyombo, 'Before we grant amnesty to Boko Haram' (*The Cable*, 24 February 2020) cited in Akanni, Nnamdi Kingsley, 'Counter-Insurgency and Human Rights Violations in Nigeria', *Journal of Law, Policy and Globalization* Vol.85, 2019 ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) DOI: 10.7176/JLPG <https://core.ac.uk/download/pdf/234652151.pdf> accessed 18th October 2023.

⁴³ UAE and Boko Haram funders' (*Vanguard*, 16 November 2020), www.vanguardngr.com/2020/11/uae-and-boko-haram-funders/, accessed 3 December 2020.



Moving forward, it is recommended that legal reforms be instituted to enhance oversight mechanisms, accountability structures, and the protection of citizens' rights during counter-insurgency operations. Strengthening the role of legal institutions, fostering collaboration with international human rights organizations, and incorporating lessons from global best practices can contribute to a more effective and rights-respecting approach to counter-insurgency. Ultimately, the goal should be to create a legal framework that not only addresses the immediate security challenges posed by insurgency but also upholds the inherent dignity and rights of all individuals affected by these operations in Nigeria.