

CIVILIANS IN NON-INTERNATIONAL ARMED CONFLICTS: THE CONTEMPORARY NIGERIAN EXPERIENCE

Abstract

Humanitarian intervention was first experienced in Nigeria during the civil war¹. Since the end of military rule in 1999, Nigeria has enjoyed uninterrupted civilian rule. Nigeria has also faced many challenges consisting of internal upheavals, multiple civil unrests, militancy, and insurgency. Some have degenerated into situations requiring military intervention and situations that may be termed non-international armed conflict. In the course of applying military force to quell or control some of the situations, civilians have suffered loss of property, life and limb and it would seem that the civilian population is not guaranteed of protection in such unfortunate instances. Military interventions leading to civilian casualties infringe on the rules of International Humanitarian Law (IHL), This work re-emphasises the protection available to civilian populations in the context of non-international armed conflicts viewed through the lens of recent Nigerian experience, and makes a case for stringent adherence to IHL obligations by the Armed Forces of the Federal Republic of Nigeria in any situation requiring its intervention within the borders of the Nigeria state.

Key words: *Civilians, Non-International, Armed Conflict, Nigerian Experience*

1. Introduction

One fundamental aspect of modern armed conflict is the protection of civilian populations. Modern International Humanitarian Law guarantees the protection of civilian populations in times of armed conflict thus ensuring that in the midst of hostilities, the dignity of the human person is and shall be respected. The rules are basically embodied in the Geneva Conventions and the Law of The Hague, and these together with customary IHL, Additional Protocols of 1977 and other international agreements regulate the treatment and protection of Civilians in Non-international armed conflict (NIAC). Common Article 3 of the Geneva Conventions and relevant sections of the Additional Protocol II make provision for the protection available to civilians in non-international armed conflict. Parties have a duty to treat all persons who take no active part in hostilities humanely without any adverse distinction founded on “race, colour, religion or faith, sex, birth or wealth, or any other similar criteria” and are prohibited in respect of civilians from:

- a. causing violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
- b. hostage taking;
- c. humiliating and degrading treatment, including rape, enforced prostitution or any form of indecent assault;
- d. the passing of sentences and carrying out of executions without previous judgements pronounced by regular courts which afford all the judicial guarantees recognized as indispensable by civilized peoples.
- e. collective punishments;
- f. acts of terrorism and;
- g. slavery and slave trade in all its manifestations;
- h. Pillage;
- i. Threats to commit any of the above²

It is also prohibited to order that there will be no survivors.³ The distinction made between international and non-international armed conflicts should not extend however to rules governing the conduct of

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¹ Also known and referred to as the ‘Biafran War’

² Common Article 3 para 1 of the Geneva Conventions, Article. 4 para 2 AP II

³ Article 4 para 1 AP II

military operations.⁴ So that where for instance a particular practice or weapon is prohibited, it shall be so for purposes of any kind of conflict. Permitted methods and weapons shall also apply in both international and non-international armed conflict as a consequence.⁵

2. Who is Protected?

The provisions of IHL with regard to the instant topic aim to protect civilians. A civilian has been defined as “any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol.⁶ This is a vague provision that can only be deciphered by perusing the aforementioned provisions. A perusal of the provisions reveals that Article 4 GC III deals with prisoners of war, who have fallen into the power of the enemy and include:

1. Members of the armed forces of a party to the conflict as well as members of militias or volunteer corps forming part of such forces⁷
2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil certain conditions.⁸
3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power⁹, and
4. Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.¹⁰

Article 43¹¹ which deals with armed forces provides as follows: “the armed forces of a party to a conflict consist of all organised armed forces, groups or units which are under a command responsible to that party for the conduct of its subordinates, even if that party is represented by a government or authority not recognized by an adverse party”¹² Taken together, Article 4 A (1), (2), (3) and (6) of GC III and Article 43 paragraph 1¹³ defines the categories of persons which constitute military targets or objectives and which may not be termed “civilians”. Article 50 paragraph 1¹⁴ makes clear that where doubts exist as to the civilian status of a person, such person shall be considered a civilian.

To remain protected, civilians must be distinguished from combatants and are prohibited from taking active part in hostilities as they may be subject to attack or taken as prisoners of war as a result. Once they take up arms, or take part in hostilities,¹⁵ the protection available to them is lost. Classes of civilians that must also be protected are war correspondents and journalists. Both are civilians for all intents and purposes regardless of the risks they assume. But they must not take any action adversely affecting their status as civilians.¹⁶ One important role likely to be played by war correspondents and journalists is ensuring that atrocities witnessed during armed conflicts are brought to international limelight.¹⁷ It is

⁴ D. Fleck, *The Handbook of International Humanitarian Law*, Oxford University Press Inc. New York, 2008, p.238

⁵ C.C.Wigwe, *International Humanitarian Law*, Readwide Publishers, Accra, 2010, p.128

⁶ Article 50 para 1 AP I

⁷ See Article 4 A (1) GC III

⁸ See Article 4 A (2) GC III

⁹ See Article 4 A (3) GC III

¹⁰ See Article 4 A (6) GC III

¹¹ API 1977

¹² See Article 43 (1) GC III

¹³ API 1977

¹⁴ API 1977

¹⁵ Article 13 para 3 AP II

¹⁶ Article 79 para 2 AP I

¹⁷ *The Prosecutor v Radoslav Brdjanin & Momir Talic* Case No.: IT-99-36-AR 73.9, Decision on Interlocutory Appeal, 11 December, 2002.

crucial to note that civilians who are directly involved in war effort by working at military installations and establishments or in advisory capacities to armed forces do not lose their status as civilians as a consequence and are entitled in an undiluted manner to all protections available under International Humanitarian Law. With respect to those who act in advisory capacity, they may be held accountable where the military actions of the party which they advise are called into question.¹⁸ Avoidance of participation in armed conflict is basic *sine qua non* for civilian populations to remain protected. The situation envisaged under Article 4 A (6)¹⁹ makes civilians susceptible to attack and liable to be detained as prisoners of war if caught. Ultimately, civilians will lose their protection under humanitarian law in the same situations or conditions whether the armed conflict is international or non-international in nature.²⁰

3. The Role of Human Rights

In situations of armed conflict, International Humanitarian Law becomes supreme with regard to the conduct of war. However, Human Rights Law remains valid. Certain rights remain inalienable despite the continuation of hostilities.²¹ The protection available under specific relevant provisions²² of the Geneva Conventions is available to all civilians as protected persons during the pendency of armed conflict and as such, civilians are to be respected at all times whether under situations of international armed conflict or Non-international armed conflict. The rights to which civilians are entitled in all circumstances under the relevant provisions include respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be specifically and especially protected against any attack on their honour, in particular against rape, forced prostitution, or any form of indecent assault. The property of civilians must also be protected during armed conflict.²³ Wanton, unjustified and unnecessary destruction of civilian property may give rise to liability under IHL.²⁴ Civilian populations shall not be the object of attack. Acts or threats of violence aimed at spreading terror among civilian populations are expressly prohibited.²⁵

4. The Current Nigerian Situation

By 2001, Human Rights Watch had reported and condemned the massacre of over a hundred civilians by Nigerian soldiers in several villages in Benue State, apparently in revenge for the killing of 19 soldiers. The deaths of the soldiers in the wake of the Tiv/Jukun clashes were said not to be a justification for the civilian massacre. The incident was reminiscent of a similar sequence of events in Odi, Bayelsa State where soldiers who sought to revenge the death of 12 policemen purportedly executed by local armed groups razed the entire town and killed scores of civilians. Up till now, no member of the armed forces has been prosecuted for the crime(s).²⁶

Amnesty International has recently been at the forefront of reporting civilian abuses in Nigeria during internal interventions involving the Military especially. In a widely circulated report,²⁷ Amnesty International urged that an investigation into the deaths of hundreds of Boko Haram suspects must be carried out as a matter of urgency, citing credible information from a senior official in the Nigerian Army that over 950 people died in Military custody in the first 6 months of 2013 alone. The report further quoted former detainees as the source of information that people died almost on daily basis and

¹⁸ C. C. Wigwe, *International Humanitarian Law*, Readwide Publishers, Accra, 2010, p.132

¹⁹ GC III

²⁰ See n.15

²¹ Article 27 GCIV.

²² Ibid. n.21

²³ Article 46 paras 1 and 2 Hague Regulations, and Article 53 GC IV

²⁴ Article 147 GCIV

²⁵ Article 13 para 2 AP II, Article 51 para 2 AP I

²⁶ <http://m.hrw.org/news/2001/10/25/nigeria-soldiers-massacre-civilians-revenge-attack-benue-state> last accessed 24 June, 2015 12:13 pm.

²⁷ www.amnesty.org/en/latest/news/2013/10/nigeria-deaths-hundreds-boko-haram-suspects-custody-requires-investigation/ last accessed 24 June, 2015, 11.24. am

that there might have been instances of extra-judicial executions. Amnesty International alleged that the deaths occurring in detention were mostly not investigated partially and thoroughly by Nigerian authorities and it could be inferred from the report that there were no human rights considerations in the conflict zones. By 31 March 2014, Amnesty International again published a widely circulated report, this time with reference to a purported video footage allegedly shot at a street corner in Maiduguri, the Borno State Capital of a soldier murdering an unarmed man in broad daylight and sent via a mobile phone to Amnesty International²⁸. Amnesty International further claims to have authenticated these videos of atrocities and claim to have extracted metadata such as timestamps confirming the date of the incident.

5. Need for Action

The international outcry over information and data coming out of Nigeria in recent times especially with regard to Boko Haram conflict areas has become a huge national burden. As a matter of fact, it is already enough to jolt the Federal Government of Nigeria and the military authorities into action.

Indeed, circumstances may arise where the civilian population disregards the obligations imposed under International Humanitarian Law. In the event that such has occurred, parties to a conflict still have legal obligations with respect to the civilian population and civilians.²⁹ Civilians must remain protected from military operations and do not constitute military objectives. Indiscriminate attacks on civilians are still prohibited though the civilians have breached or disregarded the obligations imposed on them under international law³⁰. Reprisals are prohibited.³¹ It is noteworthy that where civilians have temporarily lost their status, attacks initiated against them must accord with rules of proportionality.³² It would seem that in the Nigerian cases, the rules of proportionality were always summarily dispensed with on a number of occasions when the members of the armed forces went on rampage.

No meaningful action has been taken by Nigerian military officials except by way of denials, and the outright shunning of those issues. The Federal government had hitherto aggressively dismissed reports of human rights and civilian violations by the armed forces.³³ It seems however, by the recent tone of the Federal Government, that its posture has changed and it is now more likely that it will conduct in the least, preliminary inquiries into the allegations and findings of the Amnesty International report.³⁴

It remains unclear up till now if the military or the Federal Government is ready to investigate these overwhelming and rather grotesque allegations. Given the veiled official silence and effluxion of time, it seems the military is not minded to conduct any investigation at all. This is in spite of the fact that Amnesty International has repeatedly shared findings with the Nigerian authorities,³⁵ and has held numerous meetings with government authorities, sharing findings and raising concerns about ongoing violations and requesting information and specific action such as investigations. Amnesty International has also shared the findings of its research with the Office of the Prosecutor of the International Criminal Court (ICC), and has submitted to the ICC a list of names of military officers who should be investigated for their possible role in the crimes under international law and serious human rights violations already documented in its report. Nigeria has yet to put a stop to the impunity that seems to have characterized military operations since the return of civilian rule.

²⁸www.amnesty.org/en/latest/news/2015/06/how-technology-helped-us-expose-war-crimes-in-nigeria/-last accessed 24 June, 2015 11:41 am.

²⁹ Article 51 para 8 AP I

³⁰ Article 51 para 4 & 5 AP I

³¹ Article 51 para 7 AP I

³² C. C. Wigwe, *International Humanitarian Law*, Readwise Publishers, Accra, 2010, p.137

³³ <http://www.vanguardngr.com/2014/09/torture-amnesty-international-lied-report-fg/> last accessed 24 June, 2015. 12: 49pm

³⁴ <http://datelinews.com.ng/buharis-justice-minister-advice-fg-amnesty-international-report/> last accessed 24 June, 2015 12:44pm

³⁵ www.amnesty.org/en/latest/news/2015/06/nigeria-senior-members-of-military-must-be-investigated-for-war-crimes/ last accessed 24 June, 2015 11:52 am.

6. Conclusion and Recommendations

This article set out to discuss the need for a more IHL and human rights based understanding of the need for proper compliance with IHL and Human rights considerations in the management of non-international armed conflict situations in Nigeria. The existing regulatory framework was analysed, and relevant provisions, judicial decisions and legislative interventions were elaborated upon in support of an IHL and rights-based understanding of non-international armed conflict in Nigeria. The Federal Government and armed forces of Nigeria should therefore be mindful of maintaining a clean humanitarian law and human rights record as a key component of Nigeria's international obligations. This is because, from the much that has been stated about improving the system for compliance with IHL and human rights provisions, it is clear from this work that the Government of Nigeria and the armed forces have not done enough in the area of IHL compliance. This is a major factor contributing to poor observance of international best practices. As a matter of urgency, there is the need to facilitate the rapid introduction of and education of members of Nigerian armed forces and citizens on modern armed conflict practices which have yet to take root in Nigeria. Education and training gaps need to be bridged in order to foster dependable, efficient and sustainable IHL knowledge generally. It is imperative that trainings on international Regulatory instruments which could encourage sustainable IHL knowledge and practice be sustained. Finally, a coherent national military reform policy which combines adequately streamlined regulation, training, public involvement, introduction and sustenance of modern ideas of warfare and counter insurgency methods and awareness in the area of International Humanitarian Law and human rights should be developed and introduced.

There is no doubt that relevant regulation and sanctions exist for regulating the violations of the rights of civilians in situations of non-international armed conflict exemplified by recent developments in Nigeria. Despite the existence of these international regulations and reports from various international agencies, and the efforts of the International Committee of the Red Cross (ICRC) in Nigeria³⁶ to help the nation's armed forces to realize and act in line with international humanitarian and human rights laws, respect for International Humanitarian law has remained a challenge and civilians have continuously been subjected to abuse, thus negatively impacting the rights they are entitled to under International Humanitarian Law and human rights such as respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. And that they shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women are to be specifically and especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. The property of civilians must also be protected during armed conflict.³⁷ Wanton, unjustified and unnecessary destruction of civilian property may give rise to liability under IHL.³⁸ And Civilian populations are prohibited from being the object of attack, and acts, or threats of violence aimed at spreading terror among civilian populations.³⁹ To achieve a sustainable level of international humanitarian law and human rights compliance by armed forces in Nigeria, it is recommended that:

1. A phased but aggressive enlightenment campaign focusing on compliance with international humanitarian law and human rights for all members of the Nigerian armed forces and Nigerian citizens should be organised by government in conjunction with the ICRC at all levels in Nigeria.
2. Military authorities should urgently carry out investigations into allegations of IHL and human rights breaches during interventions in non-international armed conflict especially the amnesty international reports on the latest counter-insurgency efforts.
3. Funding and human resource development efforts should be improved for the military trainers concerned with IHL and human rights.
4. The employment of scientific techniques and technologies is necessary for dealing with breaches of IHL and human rights and journalists and war reporters should be allowed to access conflict zones in accordance with international best practice.
5. The provisions of international regulations should be more stringently enforced and offenders should be subjected to penalties which should effectively serve as a deterrent to would be offenders.

³⁶ <http://nigeriainfo.fm/lagos/local/item/403-nigerian-navy-to-partner-with-red-cross-on-personnel-training> last accessed 24 June, 2015 1:09pm.

³⁷ Article 46 paras 1 and 2 Hague Regulations, and Article 53 GC IV

³⁸ Article 147 GCIV

³⁹ Article 13 para 2 AP II, Article 51 para 2 AP I