COMMUNITY RELATIONS IN MILITARY OPREATIONS IN NIGERIA: HUMAN RIGHTS IN PERSPECTIVES

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Abstract

This article is concerned with community relations in military operations in Nigeria. The article finds that interaction between the military and the civilian population is inevitable both in times of peace and during conflicts. Also, in any of these circumstances, the interaction requires and or results in the use of force or arms to achieve the goals of the operations. Consequently, human rights are violated in the process. This article thus seeks to interrogate derogation and limitation of human rights on the premise of national security, public safety and order as the arguments for the justification for violations of the rights during military operations and argues that a balance must be found between derogation and limitation of the rights on the one hand and the respect for and protection of the enjoyment of the right and freedoms on the other hand. The article thus recommends the integration of human rights into military law and training of commissioned and non-commissioned officers in the Nigeria Military.

KEYWORDS: Community Relations, Civilian Population, Military Operation, Rights, Conflict.

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Introduction

The physical proximity of the Military and the Civilian population in every nation is inevitable both in times of peace and conflicts. In times of peace, an interactive relationship exists as military installations, offices and residential quarters are surrounded or located near civilian communities or population. At this time, military operations take place across several civilian communities from one military location to another. In times of conflicts, military operations sometimes happen close to or around civilian population and objects. This may be consequent upon direct or indirect involvement in hostility, complimenting other security agencies of the State in ensuring the safety and security of life and properties in complex emergencies, election monitoring, and or the provision of humanitarian services/assistance through the delivery of relief aid materials.

Indeed, the changing security situations in the world today have increased the scope of military operations and have made Military-Civilian interactions more constant. These circumstances create community relations in military operations and the interactive circumstance so created is expected to be built on established principles of relationship, one of which is the observance of and respect for human rights.

However, concerns have been raised over time that when a military operation is carried out, whether under a mandate or not, its military component engage in the use of force, which most times results in the violation of fundamental human rights, thereby putting to question the issue, whether there is an obligation for the observance of and respect for human rights by members of the military. Fundamental Human rights are those

rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.[397] Everyone is entitled to these rights without any form of discrimination. These rights include the right to life, liberty and security of persons, freedom from torture, cruel, inhuman and degrading treatment, freedom of movement, etc.[398] And from the perspective of this article, it includes matters related to sexual and gender based violence, extrajudicial and other unlawful killings, arbitrary arrest and detention, deprivation of personal liberty in enforcement of contractual claims/debts and torture and other ill treatments.

Today, it is common argument globally, Nigeria inclusive, that the application of human rights law, during military operations both in times of peace and conflicts presents significant legal and practical challenges to most armed forces in the world. In recent times in Nigeria, incidents involving violations of human rights by the military in peace times and in conflict situations have dominated the airspace in the social and print media.[399] It is

[397] United Nations, Human Rights, available at https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20include%20the%20right,to%20these%20rights%2C%20without%20discrimination. Accessed 12 August, 2022

[398] Ibid

[399] Adeyemi, A., Female Nigerian Soldier Beats Civilian for Calling Her 'Beautiful', YouTube Video, Uploaded, 15th February, 2016, accessed 6th July, 2018, Nyanin, J., Nigeria Soldiers Beats up Civilian Wearing Military Uniform, YouTube Video, Uploaded 1st August, 2016, , accessed 6th July, 2018; Ayoola, S., Nigerian Soldier Allegedly Beats up Civilian for Mistakenly Touching Him, Naija Gossip, Niaja.com, , accessed 6th July, 2018; Deolu, Nigeria Soldier Beats up the Hell out of Civilian, Forces Him Inside Dirty Water, News Feed, 18th May, 2017, www.informationng.com , accessed 6th July, 2018; Ogundipe, M., Soldiers at Tai Solari University Beats up Student for Wearing Camouflag, 10th October, 2017, www.nigeriaeye.com, , accessed 6th July, 2018; Oyedeji, O., How Nigerian Soldiers Beats my Brother to Death, Witness Tells Tribunal, Premium Times, 24th October,

against this background that this article seeks to provoke a number of questions: Do community relations in military operations create an obligation for the observance of and respect for human rights? Are there circumstances where the guaranteed human rights may be derogated or restricted during military operations? What remedies are there against an unjustifiable breach? Etc.

Understanding Key Terms

To appreciate the human rights perspective of community relations in military operations in Nigeria or elsewhere, an understanding of the key words or phrases that make up the topic is necessary if not fundamental.

Community Relations

It is the relationship that a company, organisation, etc. has with the people who live in the area in which it operates.[400] According to the Defence Information School, community relations are on-going relationship between a military community

2017, www.premiumtimesng.com, , accessed 6th July, 2018; Ebegbulem, S., Army Invades Edo Community, Sacks Villagers Over Land Dispute, The Vanguard News Paper online, 8th August, 2017, https:/www.vanguardngr.com/2017/08/army-invades-edo-community..., accessed 6th July, 2018, Atoyebi, O., Soldiers Invades Community, Mark Houses for Demolition, Residents Claim, Punch News Paper Online, 30th October, 2017, punchng.com/soldiers-invades-comm.., , accessed 6th July, 2018; Press Release, Amnesty International Accuses Nigerian Soldiers of raping Women Rescued from Boko Haram, Premium Times, 24th May, 2018, www.premiumtimesng.com, , accessed 6th July, 2018

[400] The Cambridge Business English Dictionary, Cambridge University, http://dictionary.cambridge.org/us/dictionary/english/community-relations accessed 7 January, 2018

and a civilian community. The community relations process can occur through various activities.[401]

In a broader context, it connotes that relationship which applies not only to official acts but also to unofficial acts, which by their commission or omission affects public opinion. The relationship also applies to individual members of the Army, their dependents and the civilian employees of the military in their personal contacts with the civilian community. In a nutshell, it is the interactive relationship between the military and their surrounding civilian communities. In the context of this article, community relations are understood as the engagement or interface between the military and the civilian populace or communities in their areas of operations or responsibility. The study of the relationship is important because, it underscores the fundamentals of military-civilian relationship, especially as it concerns the observance of human rights and the rule of law in conflict management.

Military Operations

A military operation is the coordinated military actions of a state, or a non-state actor, in response to a developing situation. These actions are designed as a military plan to resolve the situation in the State's favour. Operations may be of a combat or non-combat (peace operation) nature and are referred to by a code name for the purpose of national security. Military operations are

[401] The Defence Information School, Basic Combat Correspondent Course, Fort George G. Meade, Maryland, https://dinfos.blackboard.com/bbcswebdav/library/Library%20Content/Broadcast%20Operations/BCC%20-%20Army%20Specific/Community%20Relations_COMREL_no%20%20review%20questions.pdf, accessed 7 January, 2018

often known for their more generally accepted common usage names than their actual operational objectives.[402]

Contextually, military operations are crisis response and limited contingency operations, and normally include efforts or missions to contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and to facilitate the continues operation of legitimate governance. Such operations fall within four principal subsets: peacekeeping operations (PKO), peace building (PB), post-conflict actions and peacemaking (PM) processes, conflict prevention, and military peace enforcement operations (PEO). Any of these operations may be conducted within or outside the territorial border of a State.[403]

The fundamental premise of military operations are consent, impartiality, transparency, credibility, freedom of movement, flexibility and adaptability, civil-military harmonisation and cooperation. Others are restraint and minimum force, objective/end state, perseverance, unity of effort, legitimacy,

[402]Wikipedia, the free encyclopaedia, https://en.wikipedia.org/wiki/Military_operationaccessed 7 January, 2018

[403] David H. L, et. al, *Operational Law Handbook*, (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2015), available at at www.jagcnet.army.mil , ; Gortney E. W., *Peace Operations*, (United States, Joint Publication 3-07.3, 01 August 2012) available at https://fas.org/irp/doddir/dod/jp3-07-3.pdf, accessed 8 January 2018; Scott, D. K., *Peace Operations*, (United States Joint Publication 3-07.3, 01 March 2018), available at https://pksoi.armywarcollege.edu/conferences/psotew/documents/wg2/jp3_07_3%20Peace%20Operations%201Mar18.pdf, accessed 22 June 2018; Kouba, D, et. al, *Operational Law Handbook*, 17th Ed., (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2017), available at at http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2017.pdf, accessed 22 June 2018

security, mutual respect and cultural awareness, and current and sufficient intelligence. These tenets affect every facet of the operations and remain fluid throughout any mission.[404]

Human Rights

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted, for example if a person breaks the law, or in the interest of national security. The human rights idea declares that every individual has legitimate claims upon his or her own society for certain freedoms and benefits. These basic rights are based on values like dignity, fairness, equality, respect and independence. Human rights are not just abstract concepts; they are defined and protected by law.[405] The rights which are inherent in all human beings are interrelated, interdependent and indivisible.

These rights are commonly divided into two categories, namely civil and political rights; while economic and social rights form the second.

Civil and political rights includes rights to life and physical integrity; freedom from torture; slavery; and arbitrary detention; and rights to fair criminal process; as well as rights of personhood

[404] Ibid.

[405] Henkin, L., 'The Universality of the Concept of Human Rights', Vol. 506, 1989, *The Annals of the American Academy of Political and Social Science*, pp. 10-16 available at http://www.jstor.org/stable/1046650, Accessed: 13February 2018; Ogwuche, A. S., *Compendium of Human Rights Law, First Ed.* (Nigeria, Espee Printing &
Advertising, 2006) pp. 1-6

and privacy; freedom of conscience, religion, and expression; and the right to vote and participate in government (the discussion in this article will be centred on some of these rights). Economic and social rights, which are the second category, are essentially those associated with the welfare state. Among these are the right to work, to eat, to obtain health care, housing, education, and an adequate standard of living generally, etc.[406]

Human rights have four dimensions: Exercising the rights (it can be asserted, claimed and pressed), Respecting the rights (corresponding obligation by others to respect the rights is created), Enjoying the rights (the right is enjoyed when it is free from interference or violation by the State or other individual members in the State) and enforcing the rights (the unjustifiable breach of the rights give rise to enforcement and possible remedies). And its core features are: Equality (no one's right supersedes that of another); Inalienability (it is inherent in every one as long as you are human and alive); and Universality (it is the same anywhere you go). Human rights law therefore has the goal of preserving the dignity and humanity of all by creating legally binding obligations concerning the rights of persons both in times of peace and war. This article therefore seeks to situate sexual and gender-based violence, extrajudicial and other unlawful killings, arbitrary arrest and detention, deprivation of personal liberty in enforcement of contractual claims/debts, torture and other ill treatments amongst others committed by the military in their community relations with the civilian populace or communities as human rights abuses.

[406] Ibid

Respect and Protection of Human Rights: Contextualizing Community Relations in Military Operations in Nigeria

The traditional military occupation by their training and orientation is to defend national territory against external threats and to engage in non-international armed conflicts where any element within the State rises against the constituted authority.[407] The sole objective of the Military in carrying out its mandate is to destroy the fighting capacity of an enemy force and they employ military forces to achieve the stated objectives.[408] This is quite in contrast with the methodology the police and other paramilitary authorities adopt in the discharge of their primary responsibility for law enforcement (i.e. maintenance of domestic law and order).

Notwithstanding the traditional military occupation, there are instances when they may be called upon to assist the police and other paramilitary authority in dealing with law enforcement responsibilities.[409] In this context, the military are called upon to perform law enforcement tasks like guard duties, cordon and search, arrest and detention, road blocks, securing routes, crowd or riot control and enforcing curfews or peace in situations of emergencies, assemblies and demonstrations,[410] internal disturbances and tensions,[411] with a view to maintaining or restoring public order and security; preventing, detecting and

[407] Section 1(3) & (4) Armed Forces Act, Cap. A20 LFN, 2004
[408] ICRC, *Handbook on International Rules governing Military Operations*, (International Committee of the Red Cross, December 2013), available at shop@icrc.org ; www.icrc.org p.418
[409]Ibid p.69
[410] Situations where people take to the streets to express their opinion publicly
[411] Situations where people engage in agitation with the potential of likely break down of law and order

investigating crime; and aiding and assisting populations affected by emergencies of all kinds.

During the traditional military operations in times of armed conflicts, community relations are traditionally based on a distinction between the military and the non-military domains, built upon the principles of international humanitarian law that distinguishes between combatants and non-combatants to protect the latter from armed attacks.[412] In the context of the relationship, the military are expected to discharge their responsibilities based on the key humanitarian principles of humanity, neutrality, and impartiality.[413]

In times of peace and other conflict situations, the fundamental premise of community relations in military operations are consent, impartiality, transparency, credibility, freedom of movement, flexibility and adaptability, civil-military harmonisation and cooperation, restraint and minimum force, objective/end state, perseverance, unity of effort, legitimacy, security, mutual respect and cultural awareness, and current and sufficient intelligence. These tenets affect every facet of the operation and remain fluid throughout any mission.[414] At such times, the military in the discharge of law enforcement responsibilities are required to protect and respect the human

[412] Bessler, M., and Seki, K., 'Civil Military Relations in Armed Conflicts: A Humanitarian Perspective', *Liaison – A Journal of Civil-Military Humanitarian Relief Collaborations*, Vol. III No.3, 2006, p 2. available at: http://coe-dmha.org/Liaison/Vol_3No_3/Dept01.htm

[413] Ibid.

[414] David H. L, et. al, *Operational Law Handbook*, (Virginia, International and Operational Law Department, The Judge General Legal Center & School, U.S Army, Charlottesville, 2015), pp.60-62 available at at www.jagcnet.army.mil

rights of all people without any adverse distinction, while performing their duties.[415] Though the military are trained to use force and kill, they are trained to do so only for a purpose or just cause. They are therefore prohibited from the use of unjustifiable force or weapons against civilians and their properties[416] or commit any acts of unlawful sexual transgression against them.[417] These clear prohibitions by implication create obligations for the respect and protection of human rights by the military in the discharge of their duties both in times of peace and conflicts.

In recent times however, the perception of community relations in military operations in Nigeria as contemplated has changed, as the military have been accused of the violation of human rights in discharge of their obligations. There have been reports of:

[415] Article 2 International Covenant on Civil and Political Rights 1966 (ICCPR); Article 2 International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), and Article 2 & 8 Convention on the Rights of the Child, of 1989 (CRC)
[416] Sections 104-114 Armed Forces Act, Cap. A20 LFN, 2004
[417] Sections 77-81 Armed Forces Act, Cap. A20 LFN, 2004

Soldiers Raping Women Rescued from Boko Haram, as well as Sexual Abuse/Exploitation[418] of Women and Girls in IDP Camps[419]

Rape and other forms of sexual abuse or exploitation are gender-based violence:[420] Gender-based violence is a form of discrimination and is prohibited by human rights law.[421] In this regard, the sexual exploitation and abuses, rape and other forms of sexual violence, including enforced prostitution reportedly carried out by the military against women and children in Nigeria constitute a gross violation of the human rights of the victims. Sexual and gender-based violence is most prevalent in environments where there is a general lack of respect for human rights and internally displaced people (women and girls) are among those most vulnerable. Even though these atrocities committed by Nigeria military both in times of peace and conflict situations are often well publicised,[422] it still continues unabated. Reports are available of Nigerian security forces raping thousands of women and girls who escaped from the

[418] The actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions

[419] Press Release, Amnesty International Accuses Nigerian Soldiers of raping Women Rescued from Boko Haram, Premium Times, 24th May, 2018, www.premiumtimesng.com, , accessed 6th July, 2018. *Amnesty International Report 2016/17, The State of the World's Human Rights - Nigeria*, 22 February 2017, available at: http://www.refworld.org/docid/58b033c93.html [accessed 20 July 2018]pp.276-281. The report claims that the Military and Civilian JTF working alongside them sexually exploiting women in the IDP camps in exchange for money or food, or for allowing them to leave the camps

[420] Violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty

[421] ICRC, note 11, p. 457; Lubbers, R., Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, (United Nations High Commissioner for Refugees, May 2003), p. 10 available at https://www.unicef.org/emerg/files/gl_sgbv03.pdf, accessed 26 July, 2018

[422]See Note 3

brutal rule of Boko Haram insurgents.[423] Also during the military occupation of Ogoniland, the Nigerian Armed Forces reportedly perpetrated acts of sexual violence.[424] Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments as well as the 1999 Constitution of the Federal Republic of Nigeria as amended. Among others, these include the right to life, liberty and security of the person; the right to the highest attainable standard of physical and mental health; and the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment, etc.[425] International human rights law imposes an absolute prohibition on discrimination in regard to the full enjoyment of all human rights, inclusive of the right to be free from rape and other forms of sexual abuse or exploitation.[426] In fact, the 1998 Rome Statute of the International Criminal Court proscribes rape, sexual slavery, enforced prostitution and other forms of sexual and gender-based violence against internally displaced persons, and considers it as violence of comparable

[423] See Note 24; see also Njoku, E. T., and Akintayo, J., (2021) Sex for survival: Terrorism, poverty and sexual violence in north-eastern Nigeria, South African Journal of International Affairs, 28:2, 285-303, DOI: 10.1080/10220461.2021.1927166

[424] See Odoemene, A., (2012) The Nigerian Armed Forces and Sexual Violence in Ogoniland of the Niger Delta Nigeria, 1990–1999. Armed Forces & Society 38(2):225-251, DOI:10.1177/0095327X11418319

[425] Lubbers, R., Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response, (United Nations High Commissioner for Refugees, May 2003), pp. 7-27 available at https://www.unicef.org/emerg/files/gl_sgbv03.pdf, accessed 26 July, 2018

[426] Sida, 'Preventing and Responding to Gender-Based Violence: Expressions and Strategies', Sida, International Organisations and Policy Support, 2015, p. 14 available at https://www.sida.se/contentassets/3a820dbd152f4fca98bacde8a8101e15/preventing-and-responding-to-gender-based-violence.pdf, accessed 26th July 2018

gravity as a crime against humanity.[427] It has also been judicially affirmed that beating and humiliation in custody and the rape of young girls by State agents such as military and police personnel amount to torture.[428]

Further, in the Peru Case,[429]it was stated that current international law establishes that sexual abuse committed by members of security forces whether as a result of a deliberate practice promoted by the State or as a result of failure by the State to prevent the occurrence of the crime, constitutes a violation of the victim's human rights, especially the right to physical and mental integrity.

Gender-based violence can have serious long-term and life-threatening consequences for victims/survivors. These can range from permanent disability or death to a variety of physical, psycho-social and health-related problems that often destroy the survivor's self-worth and quality of life and expose her or him to further abuse. Gender-based violence can lead to a vicious cycle of violence and abuse as survivors' risk being rejected by their family, excluded and ostracised by society, and even arrested, detained and punished and sometimes abused again for seeking protection, assistance or access to justice.[430]

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[427] See also the case of The Prosecutor vs Jean-Paul Akayesu (1998) International Criminal Tribunal for Rwanda, Judgment, 2 September

[428] Aksoy vs Turkey (1996) 23 EHRR 535; Aydin vs Turkey (1997) 25 EHRR 251 and Selmduni vs France (2000) EHRR 403

[429]Peru Case 10. 970 (1996) IACtHR Report, 1 March

[430] Action Sheet 4, Handbook for the Protection of Internally Displaced Persons, available at http://www.unhcr.org/protect/PROTECTION/4794b3512.pdf, accessed 26th July 2018

Extrajudicial[431] and other Unlawful Killings[432]

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.[433] The right to life is a non-derogable human right. The use of force and firearms by the military in community relations in military operations must be consistent with human rights obligations concerning the right to life. At all times, the use of force must have a sufficient legal basis and must have been dictated by necessity only to the extent necessary to achieve a legitimate objective and only when all less harmful means have failed or remain without reasonable promise of success. The use

[431] Amnesty International in its 2016/2017 report claimed that the security forces continued to commit serious human rights violations including extrajudicial executions and enforced disappearances. The police and military continued to commit torture and other ill-treatment. Conditions in military detention were harsh. Communal violence occurred in many parts of the country. Thousands of people were forcibly evicted from their homes. See *Amnesty International Report 2016/17, The State of the World's Human Rights - Nigeria*, 22 February 2017, available at: http://www.refworld.org/docid/58b033c93.html [accessed 20 July 2018]pp.276-281

[432] Ibid. The report further claimed military was deployed in 30 out of Nigeria's 36 states and in the Federal Capital Territory of Abuja where they performed routine policing functions including responding to non-violent demonstrations. The military deployment to police public gatherings contributed to the number of extrajudicial executions and unlawful killings. Since January, in response to the continued agitation by pro-Biafra campaigners, security forces arbitrarily arrested and killed at least 100 members and supporters of the group Indigenous People of Biafra (IPOB). Some of those arrested were subjected to enforced disappearance. On 9 February, soldiers and police officers shot at about 200 IPOB members who had gathered for a prayer meeting at the National High School in Aba, in Abia state. Video footage showed soldiers shooting at peaceful and unarmed IPOB members; at least 17 people were killed and scores injured. On 29 and 30 May, at least 60 people were killed in a joint security operation carried out by the army, police, Department of State Security (DSS) and navy. Pro-Biafra campaigners had gathered to celebrate Biafra Remembrance Day in Onitsha. No investigation into these killings had been initiated by the end of the year.

[433] Article 4, 6 International Covenant on Civil and Political Rights 1966; Article 3 Universal Declaration of Human Rights (1948) (UDHR); Article 4 African Charter on Human and Peoples' Rights 1981 (ACHPR); Article 2 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

of force or measures leading to loss of life must be exercised after due precaution and must be proportionate to the extent that harm likely to result from the use of force and firearms to any person or object must always be in proportion to the seriousness of the offence and the legitimate objective to be achieved.

In Nigeria, the right to life and the sanctity of life is guaranteed under the 1999 Constitution of the Federal Republic as amended. It stipulates that:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria[434].

Extra judicial and other unlawful killings by the military in Nigeria therefore constitute a breach of the right to life. Evidence gathered by Amnesty International paints a damning picture of ruthless excessive force by Nigerian security forces.[435] In the southeast alone, it was estimated that at least 115 were killed by the Nigerian security forces.[436] A report by Guardian newspaper[437] indicates that extrajudicial killings by Nigerian military have become the primary cause of death in the country.

[434] Section 33(1) of the constitution of the federal republic of nigeria 1999 as amended

[435] Amnesty International, (2021) Nigeria: at least 115 people killed by security forces in four months in country's southeast. Available at https://www.amnesty.org/en/latest/news/2021/08/nigeria-at-least-115-people-killed-by-security-forces-in-four-months-in-countrys-southeast/

[436] ibid

[437] The Guardian, '13,241 Nigerians unlawfully killed by security forces in 10 years'. 30 november 2021. Available at https://guardian.ng/news/13241-nigerians-unlawfully-killed-by-security-forces-in-10-years/ ,

In fact, the military, it was stated, have cumulatively killed 13,241 people since 2011.[438] Killing a person for any reason or in furtherance of the execution of a lawful duty by the military or any other law enforcement agencies, even on the suspicion of the commission of an offence would amount to condemning a person to death unheard. The fear of situation like this is not far from what his Lordship OBADINA JCA had in mind when he held thus in the case of Ani vs. State[439].

"...as it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence no matter how heinous the offence may be…"

Also in the case of K. H. W. vs Germany (2001)[440] the court held thus:

The law would not support even a private soldier or police constable who show total, blind obedience to orders which flagrantly infringe the constitution of a state, legal principles and international human rights, particularly the right to life, which constitutes the 'supreme value in the hierarchy of human rights'.

Thus, where a man is condemned to death unheard, how can he be tried for any offence he may have been suspected to have committed? Therefore, even the accused before he is pronounced guilty is entitled to the preservation of his life, a right universally recognised.

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[438] ibid
[439]ani vs. State (2002), nwlr pt. 747 p. 217 @ 234-235
[440]*k. H. W. Vs germany (2001)* ecthr, judgment, 22 march

Arbitrary Arrest and Detention,

Human rights law guarantees the liberty of person and freedom of movement without any restraint save for justifiable reasons.[441] In this regards, persons who are arrested or detained during military operations must be treated humanely and are entitled to protection.[442] It is prohibited to subject a person under arrest to torture or to cruel, inhuman or degrading treatment or punishment.[443] It is also inhumane to deny them medical attention. It is equally a fundamental breach to keep persons arrested and in detention beyond the specified constitutional time limit and or deny them access to counsel or legal representation. More importantly, arrested persons must be informed, at the time of arrest, of the reasons for his arrest and must be promptly informed of any charges against him. In addition, a person under arrest must be informed of his rights and how to avail himself of those rights and he must be availed information in a language he understands.[444]

Fundamentally, women and children who are arrested and detained are entitled to special rights and protections. Women who are arrested have the same rights as men who are arrested and are entitled to the same protections. Specifically, however, women by virtue of their gender, are guaranteed that while

[441] Section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended; Article 6 ACHPR,
[442] Articles 3, 9 Universal Declaration of Human Rights 1949 (UDHR); Article 9 ICCPR; Article 37 CRC
[443] Section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended, Article 5 UDHR; Articles 7 & 10 ICCPR; Article 2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT); Article 37 1989 CRC
[444] Article 9 ICCPR; Article 40 CRC

under arrest or in detention all physical searches of their person or clothing must be carried out by female staff; must be kept in separate quarters from men; and must be attended and supervised only by female officers.[445] This special protection is to safeguard them from abuse by male officers.

Children[446] under arrest and in detention have all the same rights as adults but are entitled to additional protections by virtue of their age. It is specifically guaranteed to a child that: arrest and detention should only be a measure of last resort; where arrested and in detention the child must be separated from adults unless it is considered in the best interest of the child not to do so; must be brought before a court of competent jurisdiction as speedily as possible; must be allowed to maintain contact with his family unless exceptional circumstances prevail; the arresting and detaining authorities must notify the child's parents or guardians promptly of the arrest, and of the place where the child is held; in addition, the authorities must also notify them of any transfers to another place of detention; and when the child is taken to the court, parents or guardians should be informed of the charges against the child and permitted to attend the required judicial proceedings, unless it is not in the best interests of the child.[447]

In Nigeria, a report by Amnesty international[448] claims that the military arbitrarily arrested thousands of young men, women and

[445] Article 2 & 26 ICCPR,
[446] Children are defined in the Convention on the Rights of the Child as human beings below the age of eighteen years unless, under applicable domestic law, the age of majority is attained earlier.
[447]Article 10 ICCPR; Articles 37 & 40 CRC
[448] Amnesty International 2016/2017 report, note 36.

children who fled to the safety of recaptured towns, including Banki and Bama, Borno state. These arrests were largely based on random profiling of men, especially young men, rather than on reasonable suspicion of having committed a recognisably criminal offence. In most cases, the arrests were made without adequate investigation. Other people were arbitrarily arrested as they attempted to flee from Boko Haram. Those detained by the military had no access to their families or lawyers and were not brought before a court. The mass arrests by the military of people fleeing Boko Haram led to overcrowding in military detention facilities. At the military detention facility at Giwa barracks, Maiduguri, cells were overcrowded. Diseases, dehydration and starvation was rife. At least 240 detainees died during the year. Bodies were secretly buried in Maiduguri's cemetery by the Borno state environmental protection agency staff. Among the dead were at least 29 children and babies, aged between new-born and five years. At Giwa barracks, children under five were detained in three overcrowded and insanitary women's cells, alongside at least 250 women and teenage girls per cell. Some children were born in detention.449

Suffice it to say that arrest and detention during armed conflicts (Boko haram conflict in the North East) and other conflict situations (the Biafra and Niger-Delta agitations, riots, demonstration or protest march), must satisfy the minimum standards of the rights and protection guaranteed to the human person. In this regard, all persons arrested and deprived of, for any reason, their liberty must be treated with humanity and with

[449] Ibid

respect for their inherent dignity.[450] They must in particular, irrespective of sex, age and inclination, be entitled to: adequate sanitation and hygiene facilities; adequate light, heating, ventilation, floor space; clean and decent clothing suitable for the climate; medical care; daily exercise in the open air; food and drinking water in sufficient quality and quantity; and accommodation, in particular sleeping accommodation, compatible with human dignity.[451]

Deprivation of Personal Liberty in Enforcement of Contractual Claims/Debts

Further to the above, today in Nigeria, there are reported cases that in community relations during military operations, family relations and close friends of the military as well as other persons resort to using the military to pursue the recovery of contractual claims/debts and in the process the constitutionally guaranteed right to personal liberty of citizenry is breached.[452] In EFCC vs. Diamond Bank Plc. (2018) NWLR Pt.1620 p.61 @ 80-81 SC, the court held that 'by section 35(1) of the Constitution of the Federal Republic of Nigeria, 1999, every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in cases listed in the section and in accordance with procedure permitted by law. It would therefore constitute breach of a person's fundamental human rights for him to be subjected to intimidation, arrest or deprivation of his liberty by the military at the instigation of

[450] Op. cit.
[451] Ibid
[452] Our law reports are overflow with many such decided cases where the Courts in Nigeria have made express pronouncement prohibiting the use of the military and other law enforcement agencies as debt collectors.

another solely for the purpose of recovery of a contractual claim/debt. Displeased with this practice, in EFCC vs Diamond Bank Plc (supra) at p.80 per Bage JSC, the Supreme Court held thus:

What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and/or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions. Our security agencies, particularly the police, must know that the citizenry's confidence in them ought to first be ensured by the agencies themselves by jealously guarding the integrity of the uniform and powers conferred on them. The beauty of salt is in its taste. Once salt loses its own taste, its value is irredeemably lost. I say this now and again, our security agencies ...are not debt recovery agencies...'

Torture and Other Ill Treatments

The legal regimes of fundamental rights, nationally and internationally absolutely prohibits subjection, of a person moving around freely or under arrest or in detention to torture or other cruel, inhuman or degrading treatment or punishment. Indeed, no exceptional circumstances whatsoever may be invoked as justification for torture or other cruel, inhuman or degrading treatment or punishment.[453] The case of *Prosecutor*

[453]Section 34 of the Constitution of the Federal Republic of Nigeria 1999 as amended ; Article 5 UDHR, Article 7 ICCPR; Article 2 CAT

vs. Jean-Paul Akayesu[454]set out *the essential elements of torture when it states that:*

> *The perpetrator must intentionally inflict sever physical or mental pain or suffering upon the victim for one or more of the following purposes: (i) to obtain information or a confession from the victim or a third person; (ii) to punish the victim of third person for an act committed or suspected to have been committed by either of them; (iii) for the purpose of intimidating or coercing the victim or the third person; (iv) for any reason based on discrimination of any kind; (b) the perpetrator was himself an official, or acted at the instigation of or with the consent or acquiescence of an official or person acting in an official capacity.*

The African Commission on Human and Peoples Rights, also in its decision concerning the trial of Ken Saro-Wiwa and other co-defendants[455]held that:

> *The detention of Mr. Saro-Wiwa in leg irons and handcuffs with no evidence of attempts to escape constituted actions which humiliated the individual or forced him to act against his will or conscience.*

More specifically, the European Court on Human Rights has held that, beating and humiliation in custody and the rape of a

[454]*The Prosecutor vs Jean-Paul Akayesu (*1998) International Criminal Tribunal for Rwanda, Judgment, 2 September
[455]International Pen and Others vs Nigeria (1998) ACtHPR Decision, 22-23 October, 1998

young girl by State agents such as the military or police personnel amount to torture.[456]

Military Operations in States of Emergency[457] and other Situations of Conflicts: The Limits to Derogation & Restriction of Fundamental Rights

States of emergency are critically important from a human rights perspective because the suspension of legal order often paves the way for systematic human rights violations.[458] Some human rights treaties and provisions in national laws permit States to derogate from (temporarily waive) treaty provisions/laws when taking measures in situations of emergency.[459] Apparently, it seems a contradiction, since these treaties have been drafted with the main purpose of protecting human rights.[460] However, the provisions allowing for derogation during state of emergency or other conflict situations contemplates a balance between military necessity and humanity.[461] Derogation provisions are of crucial importance at least for three reasons.

[456]Aksoy vs Turkey (1996) 23 EHRR; Aydin vs Turkey (1997) 25 EHRR 251; Selmduni vs France (2000) 29 EHRR

[457] States of emergencies are situations of internal disturbances and tensions which may escalate to the point at which a government is no longer able to control the situation with the measures it normally has at its disposal.

[458] Criddle, Evan J. and Fox-Decent, Evan, 'Human Rights, Emergencies, and the Rule of Law' (2012).*Faculty Publications*, Paper 1531, p.45 available at http://scholarship.law.wm.edu/facpubs/1531

[459] ICRC, Handbook on International Rules governing Military Operations, International Committee of the Red Cross, December 2013, available at shop@icrc.org ; www.icrc.org pp. 65-66

[460] Salerno, D. M. E, 'In the fight against terrorism, does Article 15 of the ECHR constitute an effective limitation to states' power to derogate from their human rights obligations?' Giurisprudenza Penale, 2016, p. 1 available at *http://www.giurisprudenzapenale.com/wp-content/uploads/2016/04/Scarica-il-contributo.pdf*

[461] David H. Lee, et. al, Operational Law Handbook, available at at www.jagcnet.army.mil , 2015 p.53

Firstly, it is better to decide in advance what measures have to be adopted in time of emergency or crisis; secondly, these clauses establish specific limitations to restrain states' action; finally, for a derogation to be adopted, states are required to provide a valid justification that it is related to the safety of the nation, not to the pursuit of their own interests.[462] Thus, in order to derogate from a human right, the ICCPR for instance stipulates conditions that must be fulfilled:[463] There must be a public emergency which threatens the life of the nation; the State must officially proclaim that there is a public emergency, using the procedures in its national law or constitution for declaring a state of emergency; the derogation must be limited to the extent strictly required by the exigencies of the situation (strict necessity/proportionality); the derogation must not be inconsistent with the State's other obligations under international law (including the law of armed conflict); the derogation must not involve discrimination (on the ground of race, colour, sex, language, religions, or social origin); and finally, international notification is required. These conditions operate as the scale upon which the limits of the derogation can be tested. To this end, any derogation of the fundamental rights by the military in their community relations in military operations which do not meet these set standards would amount to a breach of the right. Thus, in the recent cases of Şahin Alpay v. Turkey and Mehmet

[462] Op. Cit pp. 1-2
[463] Article 4, ICCPR,

Hasan Altan v. Turkey[464] the European Court of Human Rights held that:

The guarantees of the right to liberty and security would be meaningless if it were accepted that people could be placed in pre-trial detention without any strong evidence that they had committed an offence. Accordingly, it found that the applicant's deprivation of liberty had been disproportionate to the strict exigencies of the situation… that a measure of pre-trial detention that was not "lawful" and had not been effected "in accordance with a procedure prescribed by law" on account of the lack of reasonable suspicion could not be said to have been strictly required by the exigencies of the situation.

As rightly submitted by Salerno,[465] it is in times of emergency that there is a greater risk for human rights violation, due to the possible abuse of the derogation powers by states. It must be argued that, in this context, states' freedom of action is not unlimited. Indeed, it is restricted by the identification of non-derogable rights,[466] which cannot be suspended even in state of

[464]Alpay v. Turkey and Mehmet Hasan Altan v. Turkey (20 March 2018) Chamber judgments see Factsheet – Derogation in time of emergency, Press Unit, P. 8 available at https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf. These cases concerned complaints by two journalists who had been arrested and detained following the attempted military coup of 15 July 2016. The Turkish Government emphasised in particular that all of the applicant's complaints should be examined with due regard to the derogation of which the Secretary General of the Council of Europe had been notified on 21 July 2016 under Article 15 of the Convention.

[465] Note 54 p.2

[466] The ICCPR explicitly states that the following rights are non-derogable: the right to life; the right to be free from torture and cruel, inhuman or degrading treatment;the right to be free from slavery, the slave trade, and servitude; the prohibition of detention for debt; the prohibition of retroactivity in criminal law; the right to

crisis, and by the strict substantive and procedural conditions required to derogate. It must be suggested that, in states of emergency, even without a specific provision, states would derogate the application both of human rights obligations and the ordinary law, due to its inadequacy. For this reason, it is better to coordinate the way in which states respond to these extraordinary circumstances and to control whether they restrict only derogable rights.

It is interesting to note that like the derogation clause, some human rights treaty provisions or national law contains a limitation clause which allows for restrictions of the particular right, without the need for a situation of emergency, for the reasons set out in the provision itself. Unlike derogations, limitation clauses are used in time of peace and they allow an interference with human rights on the basis of collective exigencies, specifically included in the provision itself.[467] For instance, a limitation clause might allow restriction of a right in the case of necessity for reasons of national security, public health or public order. Generally, a State may only restrict a right when necessary for reasons and purposes set out in the limitation clause. In addition, the restriction must be proportionate to the protected interest.

It is therefore respectfully submitted that the security of the State and its democratic institutions, as well as the safety of its officials and its population, is a vital public and private interests

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freedom of thought, conscience and religion; and the right to recognition as a person before the law.

[467] Op.cit p.3

that deserves protection. In this regards, States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life.[468] The protection of the right to life includes preventive operational measures to protect life and guarantee freedom from fear of the individual members that makeup the society, especially during community relations in military operations.[469] This obligation with respect is consistent with the decision of the European Court of Human in the case of Osman v. United Kingdom,[470] where it held that:

In certain well-defined circumstances, there is a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

The above argument on limitations of fundamental human rights may well be invoked by the military in Nigeria in their community relations in military operations as a justifiable basis or measure to limit the enjoyment of the fundamental human right of an individual. However, the justification of limitations of fundamental human rights depends on a number of factors: first, if the right or freedom concerned is formulated as an absolute right or freedom, which is for instance the case with the right to

[468] Venice Commission, Opinion on the Protection of Human Rights in Emergency Situations, Council of Europe, Opinion no. 359 / 2005, Strasbourg, 4 April 2006, p.2
[469] Ibid pp.2-3
[470]Osman v. United Kingdom (judgment of 28 October 1998) paragraph 115

life and the prohibition of torture, for which no limitations are allowed[471].

Secondly, one of the limitation grounds that is exhaustively listed in the applicable treaty provisions or must be at stake, such as the interests of national security and public safety. Thirdly, the limitations must be "prescribed by law" which requires their regulation in transparent and accessible legal provisions. And fourthly, the limitations must be "necessary in a democratic society".[472] The implication is that the protection of national security and public safety may justify restrictions of the enjoyment of certain human rights, but that such justification is subject to certain rather strict conditions.[473] Though there is no fixed scale to assess the balance that has to be struck between national security and public safety, on the one hand, and the enjoyment of fundamental rights and freedoms, on the other hand, the justifiable measures for the restriction or limitation of fundamental rights must meet the standard of fairness and proportionality.[474] In the operational code of conduct for the Nigerian army[475] for instance, it is an operational rule in all circumstances that: Under no circumstances should pregnant women be ill-treated or killed; children must not be molested or killed, they should be protected and cared for; youths and school children must not be attacked unless they are engaged in open hostility against Federal Government Forces, they should be

[471] This justification is founded on judicial decision or the interpretation of the provisions of the law given the circumstances of the case.
[472] Note 63 p. 3
[473] Ibid
[474] Ibid
[475] Operational Code of Conduct for The Nigerian Army, 1967

given all protection and care; hospitals, hospital staff and patients should not be tampered with or molested; soldiers who surrender will not be killed, they are to be disarmed and treated as prisoners of war (this as well should apply to members of militia or armed groups in Nigeria, even though under the law, they do not enjoy the status of prisoners of war). Thus, they are entitled in all circumstances to humane treatment and respect for their person and their honour; no property, building, etc, should be destroyed maliciously; Churches and Mosques must not be desecrated; no looting of any kind. (A good soldier will never loot); women will be protected against any attack on their person, honour and in particular against rape or any form of indecent assault; male civilians who are hostile to the Federal Forces are to be dealt with firmly but fairly, they must be humanely treated; all military and civilians wounded will be given necessary medical attention and care, they must be respected and protected in all circumstances, etc.[476] It is therefore safe to state that operational military code exist in Nigeria with clear provisions safeguarding the human rights of citizens both in times of war and during peace times.

It is against this background that the justification of what is obtainable in Nigeria can be questioned and whether there does exist any remedy in the event of a breach?

Remedies for Breach of Human Rights in Community Relations in Military Operations

One of the most important legal obligations arising from violations of human rights is the obligation to ensure

[476] Ibid

accountability for those violations and provisions for remedy.[477] States have an obligation to respect and protect the fundamental rights of individuals under their jurisdiction against violations by any person. Such an obligation includes taking measures to prevent violations of human rights, investigating human rights abuses or violations promptly, thoroughly and independently and prosecuting those found responsible, providing adequate and effective remedies, and preventing the recurrence of violations.

Attribution to and State responsibility for violations of fundamental human rights arises where such: violations are committed by its organs, including its armed forces; violations are committed by persons or entities empowered to exercise elements of governmental authority; violations are committed by persons or groups acting in fact on its instructions, or under its direction or control; violations committed by private persons or groups which it acknowledges and adopts as its own conduct (in the case of the last two instances, Civilian JTF working alongside the military in the North-East of Nigeria, where the Boko haram insurgency is taking place).

Aside from State responsibility for the violation of human rights, the military are responsible and accountable for the breach of human rights either on the basis of command or individual responsibility. This is because in all military systems, the power to command and the duty to obey are of central importance.[478] In

[477] United Nations, International Legal Protection of Human Rights in Armed Conflict, (New York and Geneva, 2011, United Nations Publications) eISBN-13: 978-92-1-055097-0, P.71

[478] OSCE/ODIHR, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008, P.209

the context of breach of human rights, Commanders have both a moral and legal role in preventing breaches of human rights and or commission of offences that could potentially be committed by subordinates and therefore, under obligation to ensure respect for and protection of human rights. Thus, commanders bear responsibility for the orders they give, and they are also responsible for breaches of human rights committed by their subordinates, even if they do not order or directly participate in the breach or commission of unlawful acts, if they knew, or should have known, about these unlawful acts and failed to take steps to prevent them from occurring.

Similarly, in all military systems, members of the armed forces have a general duty to obey superiors' orders. In case of execution of an illegal command, moral and legal responsibility is borne both by those issuing and by those actually executing the illegal order. Therefore, armed forces personnel executing unlawful orders or acting illegally on their own initiative are, in general, held individually accountable for offences or crimes committed, the breaches of human rights inclusive.

Whatever the basis of responsibility for the breaches of human rights, in order to ensure that the human rights are respected by all, including the military, treaties/laws and regulations protecting human rights have been put in place, with stipulations on effective remedies available to deal with any violations that may occur.[479] Victims of violation of fundamental human rights can have recourse to the court against a violator of the right for the

[479] See for instance Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended, Articles 2 & 9 ICCPR

purpose seeking redress and getting compensation as the case may be.

Conclusion

Community relations in military operations at peace and war times and during domestic civil-military operations present serious and contending human rights issues. The military like quick result. This impatience has potential consequences in peace times and during community relations in military operations. The frequent uses of excessive force by the military personnel against civilian during military operations have raised serious concerns. This has resulted in serious adverse consequences on Civilian-Military relations particularly with regard to respect for and protection of human rights.

The importance of respect for and protection of human rights cannot be over emphasised. The changing nature of military operations, which increasingly include the performance of the task of law enforcement, provision of humanitarian services etc. that are the responsibility of the police and other para-military authorities, as well as their normal daily interaction with civilians requires that soldiers have a solid ethical outlook based on human dignity, human rights, morality, and tolerance.[480] This will help to prevent the military from becoming a state within a state by the adoption of laws, policies, and a military mindset that underlies the integration between the armed forces and society.[481]This is necessitated by the need for a balance between the societal need

[480] OSCE Report, Citizen in Uniform: Implementing Human Rights in the Armed Forces Berlin 7-8 September, 2006, Conference Report, *https://www.osce.org/odihr/22130?download=true* p.1
[481] Ibid p.2

for security on the one hand and civil liberties on the other.[482] It is therefore respectfully argued that the reliance on state of emergency, terrorism and other conflicts situations as justifiable basis or measures for derogating or limiting fundamental human rights by the military must meet the limits of national and international standards. Justice Barak, President of the Supreme Court of Israel, rightly captured and stressed this fact when he aptly stated that:

> *Every balance that is made between security and freedom will impose certain limitations both on security and on freedom. A proper balance will not be achieved when human rights are fully respected, as if there were no terrorism. Similarly, a proper balance will not be achieved when national security is afforded full protection, as if there were no human rights. The balance and compromise are the price of democracy. Only a strong, safe and stable democracy may afford and protect human rights, and only a democracy built on the foundations of human rights can exist with security*[483]

Be that as it may, notwithstanding the presence of appropriate regulatory regimes, national and international on the respect and protection of human rights, they are proved inadequate for ensuring respect for these rights in day-to-day military life in their relationships with communities both in times of peace and

[482] Ibid p.3
[483] Barak, A., 'The Role of a Supreme Court in a Democracy, and the Fight against Terrorism', 58, October 2003, University of Miami Law Review, p. 133

conflicts.[484]The military need not only be trained on military law but also on practical application of human rights, and international humanitarian law. Integrating human rights law into military doctrine is not achieved through the mere inclusion or quotation of rules and principles of human rights applicable law in codes of conduct, manuals and procedures. The relevant principles of fundamental human rights, together with the means and mechanisms to ensure respect for and protection must become a natural and integral part of every component of military doctrine. Reference manuals for the different specialists and areas of action, at the deferent levels of the chain of command, must also be reviewed or adapted, so that orders, procedures and rules of engagement allow compliance with human rights law in the varied and complex situations faced during operations in times of peace and conflicts. This is because it has been proven that the most effective instruction method is practical exercise, which is an approach that enables participants to retain nearly 90% of the contents years thereafter on the job.

Sanctions as a key preventive mechanism must be visible, predictable and effective and explore to check the violation of human rights internally by the military. This is because the more visible and predictable the application of the sanctions on erring officers, the more dissuasive the others will be.

[484] Op.cit

Recommendations

This article adopts without modification the clear recommendations of OSCE/ODIHR[485]in addressing the issue of respect for and observance of human rights by the military in their community relations both in times of peace or conflicts:

1. Education on human rights should form a core part of initial military training. Members of the armed forces should therefore be unable to pass military training without demonstrating familiarity with the principles of human rights;
2. Armed forces should draw on the expertise of civilian experts and civil society organisations in providing training in human rights;
3. Where codes of conduct do not already exist, consideration should be given to adopting and promoting codes that outline the responsibilities of members of the armed forces in terms of respecting the human rights of others at all times;
4. Human rights should be given greater prominence in the staffing and work of military colleges and Centres of excellence should be established to promote awareness of human rights in the armed forces.

[485]OSCE/ODIHR, Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008, P.209