

## EXPLORING THE ACCOUNTABILITY MEASURES FOR HUMAN RIGHTS VIOLATIONS BY THE NIGERIAN SECURITY FORCES IN INTERNAL SECURITY OPERATIONS\*

### Abstract

*The lack of effective accountability measures for human rights violations in Nigeria especially with regards to the Nigerian security personnel that violate the human rights of the people and perpetuate crimes during their internal security operations (ISOPs) is greatly disturbing. The question as to how we can hold these security personnel accountable for the recurring phenomenon of human rights violations and crimes is yet unanswered? This paper thus, explored the available accountability measures and exposed whose responsibility it is to ensure effective enforcement of the accountability measures. The study found that the weak system of democratic civil control of the security forces in Nigeria constitute the major clog that hindered accountability for the recurring phenomenon of human rights violations and crimes by the Nigerian security forces in internal security operations. The research recommended that Nigerian government should developed a system of democratic civil control of the security forces in Nigeria which would establish clear oversight and disciplinary mechanisms, enact a domestic legislation that will serve as a legally binding Rules of Engagement of the Nigerian security forces in ISOPs in Nigeria stipulating strict accountability measures, stiffer penalties for these abuses and justice for all human rights violations and other crimes by the Nigerian security forces in their internal security operations.*

**Keywords:** Human Rights Violations, Accountability Measures, Nigerian Security Forces, Internal Security Operations

### 1. Introduction

From the inception of Nigeria's independence till date, the Nigerian security forces' internal security operations have been characterised by all forms of human right abuses and other crimes by the Nigerian security personnel. There have been reported instances in the past where the Nigerian military and other security forces have left behind countless of human rights abuses and atrocities in their internal security operations in Nigeria. We talk about the human right abuses and atrocities in Odi (1999), Choba (1999), ZakiBiam (2001), Borno (2009 till date), the Apo Killings (2013), Gbaramatu Kingdom (2009 & 2016), the Pro-Biafran members, supporters and Zaria Shiites Crackdowns (2006, 2015, 2016 till date).<sup>1</sup> In recent years, there have been several reports of incidents of violence against civilians by state forces. The Armed Conflict Location & Event Data indicated that many incidents of violence against civilians by state forces were recorded between May 2017 and May 2024.<sup>2</sup> These incidents of harms against civilians were highlighted to be occasioned by several high-profile off-target airstrikes, ground attacks, and police abuses. Multiple reports have affirmed the abuses by security forces engaged in law enforcement activities as a significant problem, noting arbitrary arrests and extrajudicial killings as key issues.<sup>3</sup> In August 2024, the Nigerian security forces in dealing with the nationwide protests tagged #EndBadGovernance, forcefully descended on the protesters, killed many and arrested scores, including children and minors.<sup>4</sup> In

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<sup>1</sup> AIC Okoli & O Sunday, 'Evaluating the Strategic Efficacy of Military Involvement in Internal Security Operations (ISOPs) in Nigeria' (2013) Vol. 9 Issue 6 *ISOR Journal of Humanities and Social Sciences*, 20-27 at p.24; Human Rights Watch Report, 'The Destruction of Odi and Rape in Choba, December 22, 1999, <<https://www.hrw.org/.../nibg1299.htm>> accessed on 15<sup>th</sup> July, 2025, Human Rights Watch Report, 'Nigeria-Military Revenge in Benue: A population Under Attack' (2002). <<http://www.hrw.org/reports/2002/nigeria>> accessed on 15<sup>th</sup> July, 2025, UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Violations and Abuses Committed by Boko Haram and the Impact on Human rights in the Affected Countries*, 29 September 2015, A/HRC/30/67. <<http://www.refworld.org/docid/5639b2d84.html>> accessed on 15<sup>th</sup> July, 2025, U Atuma, 'Why I Fled my Palace- Agadagba Gbaramatu Kingdom' *The Sun News Online*, 26 June, 2016. <<http://sunnewsonline.com/why-i-fled-my-palace-agadagba-gbaramatu-kingdom/>> accessed on 15<sup>th</sup> July, 2025, 2016, L Nwabughio, 'Abuja Killing: The Truth Lies and Politics' *Vanguard News Online*, September 28, 2013. <<http://www.vanguardngr.com/2013/09/abuja-killings-truth-lies-politics/>> accessed on the 15<sup>th</sup> July, 2025, Amnesty International, *Nigeria: 'Bullets Were Raining Everywhere' Deadly Repression of Pro-Biafra Activists* (Nigeria: Amnesty International Nigeria Publications, 2016) p.5. <[https://www.amnesty.org.nz/sites/default/files/Nigeria\\_bullets\\_were\\_raining\\_everywhere%20web%20%28002%29\\_0.pdf](https://www.amnesty.org.nz/sites/default/files/Nigeria_bullets_were_raining_everywhere%20web%20%28002%29_0.pdf)> accessed on 15<sup>th</sup> July, 2025.

<sup>2</sup> Nigeria, Second Quarter 2024: Update on Incidents According to the Armed Conflict Location & Event Data Project (ACLED) Compiled by Accord, 7 August 2024, <[https://www.ecoi.net/en/file/local/2113508/2024q2Nigeria\\_en.pdf](https://www.ecoi.net/en/file/local/2113508/2024q2Nigeria_en.pdf)> accessed 3<sup>rd</sup> August, 2025.

<sup>3</sup> CIVIC interviews with civil society, interviews no. 1, 3, 5, Washington DC; CIVIC interview with civil society, interview no. 9, Maiduguri, April 2024; CIVIC interview with Nigerian government official, interview no. 1, Abuja, April 2024.

<sup>4</sup> Human Rights Watch, 'World Report 2025: Nigeria' <<https://www.hrw.org/world-report/2025/country-chapters/nigeria>> accessed on 2<sup>nd</sup> August 2025.

September and November same year 78 detained protesters including 30 minors were charged to court for treason and inciting coup.<sup>5</sup>

The Nigerian National Human Rights Commission (NHRC) presented in its March 2025 Human Rights Dashboard some cases and instances of right abuses and crimes by the Nigerian security forces thus: Extra-judicial killings; intoxicated policeman killed a civilians in Niger state, mentally ill Policeman killed four civilians in Cross River state, abuse of Powers by Military and Law Enforcement; Nigerian Airforce personnel invade and attack staff of IKEDC, female hawker and motorcyclist killed in operations of FCT Task Force, retired naval officer assault hotel staff in Abuja.<sup>6</sup> According to Human Rights Watch, there has yet to be accountability for these abuses.<sup>7</sup> The <sup>1</sup> Center for Civilians in Conflict in one of its report reiterated that lack of effective accountability mechanisms and security sector governance problems contribute to continued civilian harm and violations of human rights.<sup>8</sup> Both the Nigerian domestic legislations and the international legislations require that human right abuses and other crimes committed during internal security operations by the Nigerian security forces must be investigated and accounted for. In affirmation of the above position, Pillay rightly noted that,

Accountability for crimes and gross violations, including individual accountability under criminal law, is key to reinstate public trust in justice and security institutions to rebuild the rule of law and sustainable peace. At the same time, we need to pay more attention to the victims....<sup>9</sup>

The United Nations Human Rights Office of the High Commissioner also in 2011 noted that, ‘one of the most important legal obligations arising from violations of International Human Rights and Humanitarian Law is the obligation to ensure accountability for those violations...’<sup>10</sup>

## 2. Clarification of Key Terms

### Accountability

The Black’s Law Dictionary defined the term accountable to mean, ‘responsible; answerable...’<sup>11</sup> The United States Institute for Peace (USIP) also defined accountability to the law thus: ‘Accountability refers to the processes, norms, and structures that hold the population and public officials legally responsible for their actions and that impose sanctions if they violate the law.’<sup>12</sup>

### Human Rights

Black’s Law Dictionary defined ‘human rights’ to mean: ‘the Freedom, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live’.<sup>13</sup> In *Mojekwu v. Mojekwu*<sup>14</sup> Niki Tobi J.C. described human rights as something that is supremely sacred and which no human being should be deprived of without occasioning a great affront to justice. According to Ezejiolor,<sup>15</sup> human right are rights which every human society must accept as belonging to every person as human being.

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<sup>5</sup> *Ibid.*

<sup>6</sup> National Human Rights Commission (NHRC), ‘March 2025 Human Rights Dashboard’ <[https://www.nigeriarights.gov.ng/files/NHRC%20Dashboard/Presentation%20of%20March%202025%20Dashboard%20\(Final\).pdf](https://www.nigeriarights.gov.ng/files/NHRC%20Dashboard/Presentation%20of%20March%202025%20Dashboard%20(Final).pdf)> accessed on 3<sup>rd</sup> August, 2025.

<sup>7</sup> Human Rights Watch. ‘World Report 2022: Nigeria: Events of 2021’ [www.hrw.org/world-report/2022/country-chapters/Nigeria](http://www.hrw.org/world-report/2022/country-chapters/Nigeria) > accessed on 2<sup>nd</sup> August 2025.

<sup>8</sup> Center for Civilians in Conflict, ‘US Security Assistance to Nigeria: Civilian Protection Gaps and Opportunities’ (June 2024) p.7 < [https://civiliansinconflict.org/wp-content/uploads/2024/06/CIVIC\\_Nigeria\\_Brief\\_Web.pdf](https://civiliansinconflict.org/wp-content/uploads/2024/06/CIVIC_Nigeria_Brief_Web.pdf)> accessed on 3<sup>rd</sup> August, 2025.

<sup>9</sup> N Pillay, the United Nations High Commissioner for Human Rights, ‘Establishing Effective Accountability Mechanisms for Human Rights Violations’ (2012) No. 4 *UN Chronicle*, 8-11 at p 9. <<https://www.un.org/en/chronicle/article/establishing-effective-accountability-mechanisms-human-rights-violations>> accessed on 5<sup>th</sup> April, 2025.

<sup>10</sup> United Nations Human Rights Offices of the High Commissioner, *International legal Protection of Human Rights in Armed Conflict* (New York and Geneva: United Nations Publication, 2011) p. 71. <[http://www.ohchr.org/Documents/Publications/HR\\_in\\_armed\\_conflict.pdf](http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf)> accessed 10 July, 2025.

<sup>11</sup> BA Garner, *Black’s Law Dictionary*, (8<sup>th</sup> Edition; USA: Thompson West, 2004) p. 20

<sup>12</sup> United Institute for Peace (USIP), <<https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/accountability-the-law#:~:text=Accountability%20refers%20to%20the%20processes,law%20are%20to%20be%20corrected.>> Accessed on 2<sup>nd</sup> August 2025.

<sup>13</sup> BA Garner, *Op. Cit.*, p.758.

<sup>14</sup> (1997) NWLR (pt. 512) 283

<sup>15</sup> G Ezejiolor, *Protection of Human Rights under the Law* (London: Butterworths, 1964)

Aduba<sup>16</sup> defined human rights as those rights possessed by all persons by virtue of their common humanity to live a life of freedom and dignity. Aduba also described human rights as universal as they are the same for everyone everywhere; inalienable as they can neither be taken away nor given up; they are indivisible as there is no hierarchy among rights and no right can be suppressed in order to promote another right<sup>17</sup>. The Nigerian Constitution provides for the fundamental human rights under its Sections 33 to 46<sup>18</sup> to include right to life, right to fair hearing, right to dignity of human person, among others.

### Internal Security Operations (ISOPs)

Internal security operations' (ISOPs) has been defined by Scholars to mean; 'those acts carried out by domestic security agents such as the police, custom services, immigration services and others for the purpose of containing domestic threats to the security of the country'.<sup>19</sup> Internal security operations (ISOPs) has also been explained as any designed activities to contain internal threats as an effort to preserve law and order in a state, and are executed by internal security agents e.g. the police force, immigration service, customs service, Department of state security service and other domestic security apparatus<sup>20</sup> Though ISOPs are part of the functions of the civil authorities like the police and not a traditional military function, the military in aid of the civil authorities in maintenance of peace and order are also been involved in ISOPs.<sup>21</sup>

### 3. Forms of Human Rights Violations by the Nigerian Security Forces in ISOPs

Scholars have rightly noted that the manner at which the Nigeria security forces respond to internal security crises through the use of excessive force, arbitrary arrest, extra judicial execution and other unprofessional practices have undermined human rights in Nigeria.<sup>22</sup> A writer also gave the breakdown of civil rights violated Nigerian security forces during the operation BOYONA, to include: extrajudicial or summary execution/ death in custody due to denial of lifesaving treatment to detainees, unlawful detention, torture, and forced disappearance.<sup>23</sup> Mirzoev and Ezenwa also in their work pointed that;

Arbitrary arrests, detentions, and the use of excessive force by security forces are prevalent, alongside restrictions on freedom of expression and peaceful assembly. For instance, during the commemoration of the #EndSARS protest, police used tear gas against protesters, leading to arrests and detentions. Moreover, the Nigerian security forces have been implicated in extrajudicial killings, particularly in response to violence in southeastern Nigeria, further endangering the right to life.<sup>24</sup>

In 2022 the US Department of State reported the human rights violations in Nigeria to include;

...unlawful and arbitrary killings; forced disappearances; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; serious abuses in a conflict, including reportedly unlawful or widespread civilian deaths or harm, enforced disappearances or abductions, torture, and physical

<sup>16</sup>JN Aduba, 'Inquiries on Human Rights Practice in Nigeria Past, Present and Future' being an inaugural Lecture delivered during the University of Jos Inaugural Lecture Series, 54, on 29<sup>th</sup> June, 2012, p. 8.

<sup>17</sup>*Ibid.*

<sup>18</sup>Constitution of the Federal Republic of Nigeria 1999, sections 33-46.

<sup>19</sup>E Azinge, 'Military in Internal Security operations: Challenges and Prospects', being paper presented at the Nigerian Bar Association 53<sup>rd</sup> Annual General conference on 28<sup>th</sup> August, 2013, p. 4<<http://www.nialsnigeria.org/PDFs/EPIPHANY%20AZINGE%20MILITARY%20IN%20INTERNAL%20SECURITY%20OPERATIONS.pdf>> accessed on 17 June, 2016. Z.B. Peterside, *Op. Cit.*; A.M. Oluwasegu, *ibid.*

<sup>20</sup>JM Miakom0 & J Ngomba, 'Military Security Issues (MSIs) and the Challenge of Internal Security Operations (ISOPs) in Nigeria' (2018) Vol.62 *International Affairs and Global*, pp 12-23 at p. 23. <[https://iiste.org/Journals/index.php/IAGS/article/download/41393/42622#:~:text=Internal%20security%20operations%20\(ISOPs\)%20in%20this%20study%20is%20defined%20as,state%20security%20service%20and%20other](https://iiste.org/Journals/index.php/IAGS/article/download/41393/42622#:~:text=Internal%20security%20operations%20(ISOPs)%20in%20this%20study%20is%20defined%20as,state%20security%20service%20and%20other)> accessed on 1<sup>st</sup> August 2025.

<sup>21</sup>See, Constitution of the Federal Republic of Nigeria, 1999, Section 217 (2) (c) which provides that the military may be called upon in suppressing insurrection and acting in aid of civil authorities to restore order...

<sup>22</sup>EG Ogunleye *et al*, 'Internal Security Crises and Human Rights Abuse in Nigeria in the Fourth Republic' (2024) Vol 8 (10) Wukari International Studies Journal, 190-204 at p.190.

<sup>23</sup>EG Ogunleye *et al*, 'Internal Security Crises and Human Rights Abuse in Nigeria in the Fourth Republic', (2024) Vol 8 (10) Wukari International Studies Journal, 190-204 at p.195.

<sup>24</sup>R Mirzoev & CC Ezenwa, 'How Insecurity of Life Undermines Human Rights in Nigeria' (2024) *Human Rights and Democracy Clinic II*, <<https://ehs.se/en/wp-content/uploads/sites/2/2024/04/how-insecurity-of-life-undermines-human-rights-in-nigeria-report-5mr445-clinic2.pdf#:~:text=Arbitrary%20arrests%2C%20detentions%2C%20and%20the%20use%20of,against%20protesters%2C%20leading%20to%20arrests%20and%20detentions>> accessed 3<sup>rd</sup> August 2025.

abuses or punishment; serious restrictions on free expression and media, including violence or threats against journalists... among others.<sup>25</sup>

Amnesty International recently also reported that Journalists and critics of the authorities were arrested, charged and arbitrarily detained. Security forces arrested and ill-treated protesters, and used excessive force to quash protests, resulting in the deaths of several protesters.<sup>26</sup>

From the foregoing, it could be summarized that the Nigerian security forces internal security operations over the years have been characterized by many forms of human rights abuses and atrocities as noted above.

#### **4. Accountability Measures for Human Rights Violations by the Nigerian Security Forces in ISOPs**

This paper will herein discuss the available accountability measures and picture whose responsibility it is to ensure effective enforcement of the accountability measures for human rights violations by the Nigerian security forces in their internal security operations.

##### **Victims General Rights and Remedies**

Pillay in explaining the rights and remedies available to victims of human rights violations rights aptly stated that;

At the core of any effort to establish accountability are three indispensable and interlinked rights: the right to truth, the right to justice, and the right to an effective remedy and reparation. In order to implement these rights, a comprehensive strategy is required that involves governments and civil society and addresses gaps of knowledge, capacity and political commitment<sup>27</sup>

The above captures the victim(s) general rights and remedies to include the right to truth and justice through knowledge and capacity base; and the right to effective remedy and reparation through an effective system of democratic civil control under the civil and military justice systems. Unfortunately, Nigerian governments have failed in their responsibility to ensuring effective civil control of the security forces to address the plights of victims of human rights violations and afford effective remedies and reparation for the harm they suffered in the hands of the Nigerian security forces in ISOPs. The attitude of successive Nigerian governments in response to cases of human rights violations by the Nigerian security forces have been setting up pay-lips-commissions that will never come up with any report, or when they do come up with reports, same are never implemented nor documented. These commissions are usually set up to deceive the international community to believe that the government is responsive.

The Nigerian Constitution in providing for the victim(s) rights and remedies, provides for the rights of any person who alleges that any of his or her Fundamental Rights has been, is being or likely to be contravened to apply to a High Court in that state for a redress<sup>28</sup>. The Nigerian Constitution also empowers the court in the hearing and determination of any application for enforcement of fundamental rights to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any right to which the person who makes the application may be entitled to.<sup>29</sup> The Nigerian Armed Forces Act also contains provisions for the punishment for military offences and civil offences<sup>30</sup> either through court martial or under the civil or penal laws in the Nigerian civil courts.<sup>31</sup> The penal laws in Nigeria comprising of the Criminal Code Act<sup>32</sup> and the Penal Code Act<sup>33</sup> also make provisions for criminal offences and their corresponding punishments.<sup>34</sup>

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<sup>25</sup> US Department of State, '2022 Country Reports on Human Rights Practices: Nigeria' pp1-2.

<[https://www.state.gov/wp-content/uploads/2023/03/415610\\_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2023/03/415610_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf)> accessed on 5<sup>th</sup> December, 2025.

<sup>26</sup> Amnesty International's 2024/2025 Report on Human Rights in Nigeria, <<https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/>> accessed 3<sup>rd</sup> August 2025.

<sup>27</sup> N Pillay, the United Nations High Commissioner for Human Rights, 'Establishing Effective Accountability Mechanisms for Human Rights Violations' (2012) No. 4 *UN Chronicle*, 8-11 at p 9.

<sup>28</sup> Section 46 (1) of the Constitution of Federal Republic of Nigeria, 1999.

<sup>29</sup> Section 46 (2), *Ibid*.

<sup>30</sup> Nigerian Armed Forces Act, Caps A20 Laws of the Federation of Nigeria, 2004, Section 77.

<sup>31</sup> *Ibid*, section 170 affirmed the jurisdiction of the civil courts in Nigeria to try military personnel under service law in Nigeria.

<sup>32</sup> Cap C38 Laws of the Federation of Nigeria, 2004. Some of the offences under the Criminal Code Act include: murder (s. 315), manslaughter (s. 317), assault (s. 351), rape (s. 358), unlawful imprisonment (s. 364) etc.

<sup>33</sup> Cap P3 Laws of the Federation of Nigeria, 2004. Some of the offences under the Penal Code Act include: culpable homicide punishable with death or murder (s. 221), culpable homicide not punishable with death (s. 222), cruelty to children (s. 238) criminal force or assault (s. 262), rape (s. 283), wrongful restrain (s. 256), wrongful confinement (s. 257) etc.

<sup>34</sup> The Criminal Code Act applies in the South, while the Penal Code Act applies in the Northern State of Nigeria.

Under International Human Rights Law and International Humanitarian Law, victims of serious human rights violations have a right to effective remedy.<sup>35</sup> The Basic Principles and Guideline on the Rights to Remedy and Reparation for Victims Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law also provides for effective remedies to victims, including reparation.<sup>36</sup>

A wide range of judicial remedies are available to victims of human rights violations under the Nigerian Legal System. These remedies all stemmed from the legal maxim *Ubi Jus, Ibi Remedium*<sup>37</sup> implying that for every wrong, the law provides a remedy. This criteria for granting judicial remedies for victims of human rights violations was aptly captured by the late Oputa J.S.C. in the case of *Aliyu Bello v AG Oyo State*<sup>38</sup> thus:

...the law is an equal dispenser of justice and leaves non without remedy for his right. It is thus a basic and elementary principles of common law that whenever there is wrong, legal wrong or *injuria*, there ought to be a remedy to redress that wrong.

There are several classes of judicial remedies for human rights violations which can be granted by the Nigerian courts either independently or in combination. JA Dada<sup>39</sup> enumerated these classes of remedies to include; writ of *habeas corpus*,<sup>40</sup> declaratory judgements,<sup>41</sup> order of injunction,<sup>42</sup> damages,<sup>43</sup> among others.

### Individual Responsibility

Human rights violations and crimes often committed by the Nigeria security forces in Internal Security Operation qualify as crimes under the domestic and international laws. Individual security personnel, thus, can be held responsible and accountable under domestic laws and under international laws for crimes committed in the course of Internal Security Operations in Nigeria. The Rome Statute<sup>44</sup>, the International Criminal Tribunal for the Former Yugoslavia (ICTY) Statute<sup>45</sup> and International Crimes Tribunal for Rwanda (ICTR) Statute<sup>46</sup> contain exclusive provisions on direct criminal responsibility for individuals. The Statutes provide that, 'in accordance with the Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the court'.<sup>47</sup> The ICTY Statute and the ICTR Statute also provide that a person who planned, instigated, ordered committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred in the Statutes shall be individually responsible for the crime.<sup>48</sup>

From the above provisions, individuals who committed, instigated, aided or abetted the commission of crime under the Statutes are jointly and severally held responsible under the doctrine of Joint Criminal Enterprise (JCE). The doctrine of Joint Criminal Enterprise which evolved from the 'common purpose' language was affirmed in

<sup>35</sup>Many International Human Rights Laws provide for effective remedy for victims of all human rights violations. These instruments include International Covenant on Civil and Political Rights, art 2, Convention Against Torture, art 14, African Charter as Human and Peoples Rights (art 7), Convention on the Rights of the Child, art 39 among others.

<sup>36</sup> Principle 3 (d) of the Basic Principles and Guidelines.

<sup>37</sup>Bryan A Garner, *Black's Law Dictionary*, (Eight Edition, Thompson West: 2004) P.1761.

<sup>38</sup>(1986) 5 NWLR (Pt 45) 828 at 889-890.

<sup>39</sup>JA Dada, 'Judicial Remedies for Human Right Violations in Nigeria: A critical Appraisal' (2013), Vol. 10 *Journal of Law, Policy and Globalization*, 2224-3259.<<http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/4354/4436>> accessed on 3 September, 2025.

<sup>40</sup>The writ of *habeas corpus* which literally means 'to have the body' is usually employed where the right to personal liberty of a person is being trampled upon either through confinement or detention to secure the production or the immediate release of the victims from detention.

<sup>41</sup>Declaratory Judgements merely proclaims or declares the existence of the legal rights of the victims of human rights violations without any positive order to do or not to do any act. It is thus, usually brought together with other enforceable reliefs like *habeas corpus*, injunction and damages. See the case of *Okoye v Santilli* (1990) 3 SCNJ 83 at 100; where the Nigerian Supreme Court noted that 'declaratory judgement...merely proclaims the existence of a legal relation and it does not contain any order which may be enforced against the Defendant'.

<sup>42</sup>Injunctions are positive orders with an enforceable sanction attached and could be mandatory or prohibitory. Mandatory injunction directs the doing of an act, while prohibitory injunction prohibits a person from doing a wrongful act.

<sup>43</sup>Damages are monetary awards made to reparate victims of human rights violations for the losses or injuries they suffered.

<sup>44</sup>Statute of International Criminal Court (ICC) 1988 or The Rome Statute, 1988.

<sup>45</sup>Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 1993 (as amended in 1998, 2000, 2002, 2003, 2005, 2006, 2008 and 2009).

<sup>46</sup>Statute of International Criminal Tribunal for Rwanda (ICTR), 1994.

<sup>47</sup>Article 25.3 of the Rome Statute.

<sup>48</sup>Article 7 (1) of the ICTY Statute and Article 6 (1) of the ICTR Statute respectively.

the case of *Prosecutor v Tadic*<sup>49</sup> and was further refined in the case of *Prosecutor v Furundzija*.<sup>50</sup> The doctrine of Joint Criminal Enterprise has been applied to convict individuals for crimes of sexual violence in *Furundzija Appeal Case*,<sup>51</sup> *Prosecutor v Krstic*<sup>52</sup>, *Prosecutor v Stakic*<sup>53</sup>, *Prosecutor v Kvocka & Ors*.<sup>54</sup> It will be worthy to note that under Customary International Law, crime against humanity does not require a connection to an armed conflict.<sup>55</sup> Superior Orders also cannot be invoked to absolve one of criminal responsibility for crime committed.<sup>56</sup> The principles of international law on individual responsibility can be embraced in Nigeria Jurisprudence through establishment of special tribunal and enactment of an International Crimes Act for prosecutions of crimes committed by the Nigerian Security Forces in ISOPs.<sup>57</sup>

### **Command Responsibility**

Command responsibility is a form of individual criminal liability stemmed from the customary international law, where any person of superior authority, whether military, political or civilian may be held responsible for the acts of his or her subordinates.<sup>58</sup> Three basic ingredients exit to actually find a superior liable under command responsibility. The ingredients are:<sup>59</sup>

- Actual knowledge of the superior
- The standard of 'had reason of know'
- Failure to take measures either to prevent or punish

The above ingredients of command responsibility were analyzed in the Appeal Chambers decision in *Prosecutor v Blaskic*.<sup>60</sup> In *Blaskic's case*, the Trial Chamber indicted Blaskic a commander of the Regional Headquarters of the Armed forces in Central Bosnia and a retired General of the Croatian Defence Council (HVO) for inhuman acts and for war crimes of cruel treatments committed by the HVO soldiers against detainees and was sentenced to 45 years prison term in 2002. In 2004, the Appeal Chambers found that his command responsibility for most of the charges could not stand though his argument against the findings on his failure to punish as a commander failed and his sentence was reduced to nine years imprisonment. The Appeal Chamber thus stated that, 'a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by subordinates'.<sup>61</sup> In *Prosecutor v Akayesu*,<sup>62</sup> the first ICTR trial judgment, the trial chamber found the accused guilty of genocide and of rape as a crime against humanity. In Akayesu's case evidence was given that the accused being the highest political official in the Taba Commune in Rwanda knew that acts of sexual violence, beatings and murders were being committed and was at times present during their commission and did nothing to prevent the acts. In *Prosecutor v Nahimana, Barayagwiza and Ngeze*<sup>63</sup> usually referred to as the *media case*, superior responsibility also formed the basis of liability for the conviction of the three accused persons on 3<sup>rd</sup> December, 2003 as they were found guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and persecution and exterminations as crimes against humanity for being the masterminds behind a media campaign aimed at inciting the Hutu people to murder and exterminate the Tutsi people in Rwanda in 1994. Nahimana and Barayagwiza were

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<sup>49</sup>Case No. IT-94-16T, Trial Chamber Judgement of 7May, 1999 para. 36.

<sup>50</sup>Case No. IT-95-17/-A Judgement of 21 July, 2000 (Appeals). In the *Furundzija case*, the tribunal distinguished a co-perpetrator who is a participant in Joint Criminal Enterprise from a person who does not commit, but who is an aider and abettor.

<sup>51</sup>*Ibid*.

<sup>52</sup> Case No. IT-98-33-T, Trial Chamber Judgement of 2 August, 2001.

<sup>53</sup> Case No. IT-97-24-A., Appeal Chamber Judgement of 22 March, 2006.

<sup>54</sup> Case No IT-98-30-11-T, Trial Chamber Judgement of 2 November, 2001.

<sup>55</sup>*Prosecution v Tadic*, Case No. IT-94-16T, Trial Chamber Judgement of 7 May, 1999 at para. 141.

<sup>56</sup> Article 33 of the Rome Statute.

<sup>57</sup> The Kenyan Government and Parliament have established this special Tribunal and enacted the International Crimes Act, 2008 for domestic prosecution of crimes of international character namely; genocide, crimes against humanity, war crimes, crimes of aggression and to corporate with International Criminal Court (ICC) -see the preamble to the Kenyan International Crimes Act, 2008.

<sup>58</sup> PV Sellers, 'The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as a Means of Interpretation' (Monday January 1, 2007), *Women's International League of Peace and Freedom, United Nations Office Project*, 1-41 at p.17. <<http://www.peacewomen.org>> or <<http://www2.ohchr.org/issues/women/docs>> accessed on 18 September, 2016. See also Article 7 (3) of the ICTY Statute.

<sup>59</sup>Article 28 of the Rome Statute.

<sup>60</sup> Case No. 1T-95-14-A paras 53-85, Appeals Chamber Judgement of 29 July, 2004.

<sup>61</sup>*Ibid* at para 62.

<sup>62</sup> Case No. ICTR-96-4, Trial chamber Judgement of 2 September, 1998. Note the Accused sentence for life imprisonment was affirmed on appeal on 1 June, 2001.

<sup>63</sup>Case No. ICTR-99-52, Judgement of 3 December, 2003.

the founders of the Radio Television *Libre des Mille Collines* (RTLM), while Ngeze was the founder of Kanguna newspaper through which media the inciting messages were disseminated.<sup>64</sup>

### State Obligation and Responsibility

To ensure accountability for human rights violations, States have many obligations to perform and would also be held responsible for all human rights violations perpetrated by their security forces including the armed forces. The above sub-topic comprises two arms namely; the state responsibility and the state obligation. The two arms of this sub-topic are discussed hereunder.

**State Obligation:** Both the Nigerian Constitution and international laws provide for obligations of the state to violations of human rights. The Nigerian Constitution generally provides that the security and welfare of the people shall be the primary purpose of government.<sup>65</sup> The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law<sup>66</sup> provides that the obligations of a state to all rights violations includes the following duties;

- a. Duty to take appropriate legislatives and administrative and other appropriate measures to prevent violations,
- b. Duty to investigate violations effectively, promptly, thoroughly and impartially and where appropriate take action against those allegedly responsible in accordance with domestic and international laws;
- c. Duty to provide the victims with equal and effective access to Justice, irrespective of who may ultimately be the bearer of responsibility for the violation and
- d. Duty to provide effective remedies to victims including reparation.<sup>67</sup>

The States generally have the obligation to investigate human rights violations, prosecute and punish the perpetrators according to the law.<sup>68</sup> These duties of the states are often referred to as the duties to seek accountability.

**Responsibility for Human Rights Violations:** A state has responsibility for all violations of national human rights laws, international human rights laws and international humanitarian laws by its armed forces. This responsibility of the state stems from the International Law principles of *Pacta Sunt Servanda* which means that agreements and stipulations especially those contained in the treaties must be observed by parties to it.<sup>69</sup> The United Nations International Law Commission's Draft Article on State Responsibility<sup>70</sup> in its chapter II enumerated the wrongful conducts which would be attributed to a state as follows:

- a. Wrongful conducts of organs of the state including the armed forces.<sup>71</sup>
- b. Wrongful conducts of persons or entities exercising elements of government authority.<sup>72</sup>
- c. Violations committed by persons or groups acting in fact on its instructions, or under its direction or control.<sup>73</sup>
- d. Violations committed by private persons or group which the state acknowledges and adopts as their own conducts.<sup>74</sup>

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<sup>64</sup>On November 28, 2007, The Appeal Chamber of the International Tribunal for Rwanda (ICTR) upheld the conviction of the three media leaders of crimes of inciting genocide.

<sup>65</sup> Section 14 (2)(b) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>66</sup> Adopted and proclaimed by the United Nations General Assembly Resolution 60/147 of 16 December, 2005. <[http://legal.un.org/avl/pdf/ha/ga/ga\\_60-147/ga\\_60-147\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga/ga_60-147/ga_60-147_e.pdf)> accessed on 12 August, 2016.

<sup>67</sup> Principle 3 (a) (b) (c) and (d) of the United Nations Basic Principles and Guidelines on the Rights to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian law, 2005.

<sup>68</sup>Article 2 (3) of the International Covenant on Civil and Political Rights, 1966; which provides for the State duties to investigate, prosecute and punish offenders if found guilty

<sup>69</sup> United Nations Human Rights Office of the High Commissioner, *International legal Protection of Human Rights in Armed Conflict* (2011) *Op. Cit.* p.76; Article 26 of the Vienna Convention on the Law of Treaties; see also Bryan A Garner, *Black's Law Dictionary*, (Eight Edition, Thompson West: 2004) P.1140.

<sup>70</sup> United Nations, 'Yearbook of the International Law Commission' (2001) Vol. II Part two, Report of the Commission to the General Assembly on the Work of the Fifty-third Session (23 April-1 June and 2 July-10 August, 2001) pp.26-30. <[http://www.legal.un.org/english/ilc\\_2001\\_v2\\_p2](http://www.legal.un.org/english/ilc_2001_v2_p2)> accessed on 10 September, 2016.

<sup>71</sup>International Law Commission (ILC) Draft Article on State Responsibility, Article 4.

<sup>72</sup>*Ibid*, Articles 5.

<sup>73</sup>*Ibid*, Articles 8.

<sup>74</sup>*Ibid*, Article 11.

A state may also be held responsible for a wrongful conduct of its organs or other entities exercising the state functions where it fails to take measures either to prevent or punish the offender.<sup>75</sup> In *Bosnia and Herzegovina v Serbia and Montenegro*, the International Court of Justice found that Serbia has violated its obligation to prevent and prosecute acts of genocide.<sup>76</sup> Moreover, courts in Nigeria have awarded damages against the Nigerian government for the crimes committed by the Nigerian security forces in the course of their internal security operations in places like Odi,<sup>77</sup> Gbaramatu<sup>78</sup> and 2013 killing of eight citizens of Apo district, Abuja.<sup>79</sup>

### 5. Non-Judicial Forms of Accountability

There are some other mechanisms that have been used and are available to ensure accountability and reparation for victims of human rights violations. These measures are in the form of informal or extra-judicial or administrative mechanisms and are usually referred to as non-judicial forms of accountability. JA Dada observed as follows:

While it is irresistible to conclude that judicial remedies are quite potent and adequate to redress human rights violations, it may be argued that informal and inexpensive extra-judicial mechanism can also be designed to redress human rights violation in Nigeria.<sup>80</sup>

Dada also noted that; ‘non-judiciary approach to human rights violations will find support in the nature of African Customary Law and long-time dispute settlement practice’.<sup>81</sup> Among the non-judicial forms of accountability for human rights violations include;

- a. Peaceful deliberations.
- b. Correction of wrong doing through compensation and restitution, not retribution.
- c. Adjudication and assessment by a body of impartial persons.
- d. Creation of official Commission of Inquiry or Peace Committee.
- e. Establishment of Truth Commission-often charged with the mandate of ensuring accountability and the victim(s) rights to truth and reparation.
- f. Granting of amnesty.
- g. Reparations.<sup>82</sup>

### 6. Conclusion and Recommendations

The question today is no longer whether the Nigerian security personnel violate the human rights of the people during their internal security operations in Nigeria, but how can accountability for the affirmed recurring phenomenon of human rights violations be best achieved? This work offered an elaborate discussion on how and ways accountability for all human rights violations can be addressed. However, the accountability measures discussed cannot be attained in the face of the weak system of democratic civil control of the security forces in Nigeria and in the absence of a legally binding specific legislation regulating the conduct of security forces ISOPs in Nigeria. The major clog to ensuring accountability for human rights violations by the Nigerian security forces lies with the fact that Nigerian government lacked effective mechanisms and sufficient political will to investigate and punish most security force *abuses* and corruption. Domestic and international human rights groups reports and findings on human rights violations in Nigeria are usually discredited and dismissed quickly by the Nigerian government and involved security agency without investigation. The following recommendations for the way forward are proffered: The Nigerian Government should ensure that prompt, transparent and thorough investigations of human right abuses and other crimes by the Nigerian security forces are conducted. The report or outcome of such investigations should be published and any culpable personnel made to face the law and full redress for victims. This will go a long way in to restoring public trust in the Nigerian government, the security forces, and justice system. There is need for enactment of a domestic legislation that will serve as a legally binding Rules of Engagement of the Nigerian security forces in ISOPs in Nigeria. The legislation incorporating the

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<sup>75</sup> See the cases of *Khashiyev and Akayeva v Russia*, Applications Nos, 57942/00 and 57945/00, 24 February, 2015.

<sup>76</sup> ICJ Reports (2007) 43.

<sup>77</sup> See suit No. FHC/PHC/CP/11/2000 (unreported) where the Federal High Court sitting in Port Harcourt per Justice Akanbi awarded damages of N37.6 billion against the Federal Government of Nigeria and Others for the Military invasion and atrocities the Nigerian military committed in Odi in 1999.

<sup>78</sup> Suit No. FHC/ASB/CS/139/2009 brought against the federal Government of Nigeria and Others by the 56 indigenes of the Gbaramatu Kingdom in Delta State for the atrocities committed by the Nigerian Military during the military invasion of Gbaramatu Kingdom in 1999. The court in that Suit awarded the sum of N99.9 billion as damages against the Nigeria Government and Others for the military invasion of the community.

<sup>79</sup> *Socio-Economic Rights and Accountability Project (SERAP) (on behalf of the Apo victims) v President Umaru Yaradua & Ors* (2014) ECW/CCJ/APP/02/14.

<sup>80</sup> JA Dada, *Op. Cit.* at page 3.

<sup>81</sup> *Ibid.*

<sup>82</sup> E Oji, *Responsibility for Crimes under International Law*, (Lagos: Odade Publishers, 2013) pp. 286-293. 290.

principles of individual responsibility, command responsibility, state obligation and responsibility and other forms of accountability measures into the Nigerian jurisprudence. Nigerian Government should also develop an effective democratic civil control system in Nigeria that will checkmate the conducts of security personnel in ISOPs, provide clear oversight and discipline mechanisms and ensure strict accountability, stiffer penalties for these abuses and justice for all rights abuses in Nigeria through the civil and military justice systems. Nigerian Government should also develop policies that will ensure that victims of human rights violations in Nigeria are empowered to make informed decisions on how they can exercise their rights and obtain redress to achieve sustainable accountability.