

## ANALYSIS OF HUMAN RIGHTS IMPLICATION DURING COUNTER-TERRORISM OPERATIONS IN NIGERIA

### Abstract

*Human rights are the heartbeat of every society. Undoubtedly, government is meant to protect these rights, but the extent of violations by the security operatives in Nigeria is very disturbing. These violations are as a result of security threats and high value placed on national security by the government. Nigeria is facing serious security challenges with global concern. However, in the course of curbing this worrisome situation, government engages the services of security operatives without any specified guidelines. Most of these agencies capitalized on the breakdown to commit violations on the rights of citizens. These are manifested extra judicial killings, torture and ill-treatment, rape, arrest, enforced disappearance among others. The motivation of this paper was borne of the desire to analysis of human rights implication during counter-terrorism operations in Nigeria. Thus, this paper adopted doctrinal research method. This includes both primary and secondary sources. The paper identified scars of human rights violations perpetrated by the security operatives during counter-terrorism operations in Nigeria. It further proffered solutions by advocating on the need for improvement and effective implementation of anti-torture act, adequate sanction and special trainings on the protection of rights of IDPs among others.*

**Keywords: Human Rights, Counter-Terrorisms, Operations, Nigeria.**

### 1. Introduction

Terrorism per se is an anathema to human rights.<sup>1</sup> This is because the random nature of terrorist acts undermines freedoms and consequently, the international human rights framework. Thus, the human cost of terrorism has been felt in virtually every corner of the globe. This clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the rights to life, liberty and physical integrity of victims, hence, counter-terrorism operations. However, Counter-Terrorism operations refer to all military and humanitarian efforts deployed by the state to address the issue of insecurity in the country.<sup>2</sup> Therefore, this aims at enhancing criminal justice capacity for effective rule of law based investigation, prosecution and adjudication of terrorist cases, promoting inter-agency collaboration on counter-terrorism matters, improving the national legal regime against terrorism, strengthening international cooperation against terrorism and ensuring respect for human rights.<sup>3</sup> As a matter of fact, in achieving these national values, human rights of the citizens are being violated and relegated to the background by the government. This can be witnessed by the level of indiscriminate and extra-judicial killings, torture and ill-treatment, enforced disappearance, arrest and detention, violations of rights of internally displaced persons, rape and sexual slavery, forced eviction

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<sup>1</sup> TA Imobighe, "Rethinking Terrorism and Counter-Terrorism," in TA Imobighe and ANT Eguavoen (eds), *Terrorism and Counter-Terrorism: An African Perspective*. (Ibadan: Heinemann Educational Books, 2006).

<sup>2</sup> T Braimoh, "Human Rights, Terrorism and Counter-Terrorism," in TA. Imobighe and ANT Eguavoen (eds), *Terrorism and Counter-Terrorism: An African Perspective*. (Ibadan: Heinemann Education Books, 2006).

<sup>3</sup> TA Imobighe. "Combating Terrorism in Africa: An Integrated Conflict Management Approach," in TA Imobighe and ANT Eguavoen (eds.), *Terrorism and Counter-Terrorism: An African Perspective*. (Ibadan: Heinemann Educational Books, 2006).

of civilians among others. This paper shall analysis the implication of human rights violation during counter-terrorism actions in Nigeria. The paper shall achieving the set objective by examining nature of human rights violation in anti-terrorism war, analysis the consequences of same and suggest better of balancing the situation to better and prosperous nation.

## **2. Human Rights Violations during Counter-Terrorism Operations**

### **2.1 Indiscriminate and Extra-Judicial Killings of Civilians**

Every person has a right to life and no one shall be deprived of his life, save in the execution of sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.<sup>4</sup> In order words, it entails that life is sacred<sup>5</sup> and no one may be deprived of his life under any circumstance save as permitted by law in due observance of a procedure allowed by that law.<sup>6</sup> Igwe noted that ‘Life is a gift from God. It is not given by the state.’<sup>7</sup> Thus, the law provides for constitutional permissible grounds on the basis of which life can be taken.<sup>8</sup> Notwithstanding the above provisions, civilians in Nigeria have faced multiple security threats and risk of atrocities as result of attacks and extortion by various security agencies during counter-terrorism.<sup>9</sup> Extra-judicial killing is a deliberate killing of a person without the lawful authority granted by a judicial proceeding.<sup>10</sup> It typically refers to government authorities, whether lawfully or unlawfully, targeting specific people for death.<sup>11</sup> This simply means killing at will by the security agencies.

Over the past years, Nigeria’s military has perpetrated deadly and erroneous airstrikes. Such indiscriminate airstrikes and other operational skills include Operation Cat Race, Operation Crocodile Smile among others. These operations usually result in civilians casualties because there is lack of adequate military protection for vulnerable populations. For instance, in 2009, Boko Haram launched an insurgency attack aimed at overthrowing Nigeria’s secular government and establishing an Islamic state in the country.<sup>12</sup> This made the African Union authorized the regional Multinational Joint Task Force (MNJTF) in 2015 to combat armed extremism, but the threat posed by these groups persists to the extent that over 35,000 people were estimated to have been extra-judicially killed between 2009 and 2023.<sup>13</sup> The Nigerian military has allegedly run a secret, systematic and illegal abortion programme in Adamawa, Borno and Yobe States that has terminated at least 10,000 pregnancies since 2013.<sup>14</sup> Similarly, during counter-terrorism operations, the Law Enforcement Agencies have reportedly committed human rights violations and used excessive force, including extra-judicial killings against suspected Boko Haram members, ISWAP members and as well as Nigerian Civilians.<sup>15</sup> This generated

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<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 33.

<sup>5</sup> M E Nwocha, *Right to Life and the Death Penalty: Philosophy, Law and Practice*. (Abakaliki: CE Darrols Publishers, 2014).

<sup>6</sup> *Ibid*, note 6.

<sup>7</sup> IO Igwe, ‘To What Extent is Killing in Defence of Property Equal to Right to Life in Nigeria?’ (Beijing: Beijing Law Review, 2020) 3.

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 33(2).

<sup>9</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA).

<sup>10</sup> Unknown Author, “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, *Journal of Conflict and Security Law*, (2013) 18 (2): 259-288.

<sup>11</sup> *Ibid*, note 10.

<sup>12</sup> G Dunn, “Impact of Boko Haram Insurgency in the North-East Nigeria on Child Wasting: A Double Difference Study” *Dunn Conflict and Health*, (2018), Vol. 12 No. 6.

<sup>13</sup> CC Aniekwe, “Multinational Joint Task Force: Lessons For Comprehensive” (2023), <https://nathanson.osogoode.yorku.ca>.

<sup>14</sup> *Reuters*. <https://www.reuters.com>.

<sup>15</sup> IA Mustafa and C K Ezeamaka, “Analysis of Boko Haram Insurgency Activities in North Eastern Nigeria: A Geographical Information System Approach”, *American Journal of Geographical Research & Review*, (2019), 2(13):1-9.

a lot of security uproar in the country. Therefore, in attempts to curb the activities of armed bandits, the government has intensified its military operations in affected areas since late 2021, including through indiscriminate airstrikes where such groups operate that have resulted in hundreds of civilian casualties.<sup>16</sup>For instance, in December 5<sup>th</sup>, 2020 at least 85 civilians were extra-judicially killed and dozens severely injured when airstrikes by the Nigerian army struck a religious ceremony in Tudun Biri, Kaduna State where victims who could not be identified were buried in mass graves.<sup>17</sup> In February 4<sup>th</sup>, 2021, an aggressive attack on Kukarita village, Yobe State, resulted in an unconfirmed number of civilians burnt and shot dead.<sup>18</sup> This is just a tip of an ice berg.

## 2.2 Torture and Ill-treatment of Civilians

Torture is defined as a state of putting a person to some form of pain which could be extreme.<sup>19</sup> Therefore, for an act to be prohibited as torture it must involve severe pain and suffering, it must be intentionally inflicted.<sup>20</sup> However, every provision of human rights can be analysed on the basis of the right to human dignity. In other words, every individual is entitled to respect for the dignity of human person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment,<sup>21</sup> yet, security agencies tortured civilians even with the presumption of innocence.<sup>22</sup> Therefore, Nigeria has a strong legal framework prohibiting torture, cruel, inhuman and degrading treatment. Nigeria ratified the United Nations Convention against Torture and the Optional Protocol in the year 2001 and 2009 respectively. Commendably, the country enacted the Anti-Torture Law of 2017 in compliance with the requirement of enactment of a national law prohibiting torture. Also, Nigeria has a National Committee on the Prevention of Torture. Unfortunately, in spite of these legal steps, the use of torture by security agencies in Nigeria remains widespread and systemic. Accountability mechanisms for perpetrators of torture remain weak or nonexistent. Physical, mental /psychological torture and cruel inhuman and degrading treatment are regularly used at different levels of arrest, detention and enforced disappearances during counter terrorism operations.

Further, torture and ill-treatment of civilians by security agencies can take many forms. They can be physical or psychological and can result both from intentional acts such as threats, beatings, rape, and failure to provide a detainee with food or water. So, the activities of security agencies and terrorist groups in the country introduced disturbing dimensions to the issues of torture especially as it concerns who can perpetrate torture *vis-a-vis* the obligations of security agents in Nigeria. The human toll of these terrorists' attacks is dramatic with thousand deaths, millions internal displaced persons and

<sup>16</sup>Internal Displacement Monitoring Centre. "Nigeria: Fragmented response to internal displacement amid Boko Haram attacks and flood season". Oslo: Norwegian Refugee Council; 2013.

<sup>17</sup>MA Pérouse de Montclos, *Nigeria's interminable insurgency? Addressing the Boko Haram crisis*. London, UK: Chatham House, The Royal Institute of International Affairs; 2014.

<sup>18</sup>Ibid, note 15.

<sup>19</sup>*Uzoukwu v. Ezeonu* (1991) 6 NWLR (pt. 200) 708.

<sup>20</sup>*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment*.

<sup>21</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 33, Article 1 of UDHR provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 3 of African Charter on Human and Peoples' Rights 1981 provides that all peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural aspect. Also, Article 5 of African Charter on Human and Peoples' Rights provides that every human being shall be entitled to respect for his life and the integrity of his person and one may be arbitrarily deprived of this right.

<sup>22</sup>Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 36; Article XI (1) of the Universal Declaration of Human Right provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

refugees. The heavy-handed responses adopted by security agencies have contributed to escalate violence against communities and among security forces themselves. The Security operations against Boko Haram insurgency in the Sambisa forest instead of reducing the effects of terrorism have rather increased acts of extortion, killings, torture and ill treatment which is against the provisions of Sections 33 and 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>23</sup> Several reports accused the Nigerian military of using torture which takes several inhumane forms in her effort to defeat the Boko Haram terrorist group. The Human Rights Committee was concerned about allegations of serious human rights violations committed by the security forces during the state of emergency, declared in May 2013 in the Northeast of the country;<sup>24</sup> that is states of Adamawa, Borno and Yobe, in the context of counter-terrorism measures against Boko Haram. In 2015 Amnesty international reported that Nigerian military forces have extra-judicially executed more than 1,200 people; they have arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture.<sup>25</sup> A more recent report revealed in 2020 that soldiers subjected women, children and men in detention to torture and other ill-treatment.<sup>26</sup> Thus, the EndSARS protest of 2020 which unfortunately ended in the extrajudicial killing of young protesters was also a response to overuse of torture by the disbanded Special Anti-Robbery Squad (SARS) and other Specialized Units of the Nigeria Police Force and other security agencies.<sup>27</sup>

### **2.3 Enforced Disappearance, Arrest and Detention**

By virtue of Section 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), every person shall be entitled to his personal liberty and no one shall be deprived of such save in the following cases and in accordance with a procedure permitted by law.<sup>28</sup> Without doubt, the security agencies sometimes maliciously arrest and detain a citizen who has not committed a crime or reasonably suspected of having involved in insurgency attack with impunity during operations.<sup>29</sup> This may definitely lead to enforced disappearance of persons. More so, it is against the provisions of Section 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>30</sup> Enforced disappearance is one of the most serious forms of human rights violations, as it includes violation of series of fundamental rights, such as right to life,<sup>31</sup> integrity and security,<sup>32</sup> presumption of innocence,<sup>33</sup> due

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<sup>23</sup> UDHR, Article 1 and African Charter on Human and Peoples' Rights 1986, Article 3.

<sup>24</sup> Amnesty International Nigeria, "Killing of Endsars Protesters by the Military must be investigated", <https://www.amnesty.org/en/latest/press-release/2020/10/killing-of-endsars-protesters-by-the-military-must-be-investigated>.

<sup>25</sup> Ibid, note 23

<sup>26</sup> Ibid, note 23

<sup>27</sup> Amnesty International Nigeria, "Two Years on, more than 40 Endsars Protesters Still Languishing in jail", <https://www.amnesty.org.ng/2022/10/20/nigeria-two-years-on-more-than-40-endsars-protesters-still-languishing-in-jail/>

<sup>28</sup> Article 9 of African Charter on Human and Peoples' Rights 1986 which provides that no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Also, Article III of Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person.

<sup>29</sup> Amnesty International Nigeria: "Extrajudicial Executions Under the guise of tackling Insecurity in the South-east must stop", <https://www.amnesty.org.ng/2022/07/19/extrajudicial-executions-in-the-south-east-must-stop>.

<sup>30</sup> African Charter on Human and Peoples' Rights, 1986, Article 12 provides for free movement of persons within the country.

<sup>31</sup> Universal Declaration of Human Rights, 1948, Article III.

<sup>32</sup> Ibid.

<sup>33</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 36 (5).

process,<sup>34</sup> free development of personality,<sup>35</sup> right to defence and effective recourse before the court.<sup>36</sup> No doubt, Article 1 of the UDHR sees it as arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty<sup>37</sup> or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>38</sup>

Many enforced disappearances, arrest and detention have occurred, and continue to occur, in the context of armed conflict and counter-terrorism operations. Severally, men were forcibly disappeared by the state agents in response to the activities of Boko Haram, Herder-Farmer Clashes, Militancy, Ebubeagu, etc. For instance, in April 24, 2022, Maduabuchi Obinwa disappeared after his abduction when security operatives from Awkuzu State Criminal Investigation Department raided his house in Ekwulobia, Anambra State. In July 17, 2022, seven persons were extra-judicially executed following their abduction by members of Ebubeagu, a State sponsored security outfit at Awo-Omamma, Imo State.<sup>39</sup> Similarly, in October 17, 2022, a coroners' court found that police had shot dead Jumoke Oyeleke during a Yoruba Nation Rally in Ojota, Lagos State.<sup>40</sup> Consequently, security agencies have used excessive force to disperse peace protests and assemblies. In November 23, 2021, Sunday Ifedi and Calista Ifedi, a couple, were taken by security operatives from their home in Enugu because of their alleged membership of Indigenous People of Biafra.<sup>41</sup> Accordingly, Sunday Nwafor, Uzonwanne Ejiofor and Wilfred Dike were secretly abducted and detained by the military without charge since February 27, 2020 and later, released in September 14, 2022 without trial.<sup>42</sup> Thus, the government critic, Abubakar Idris remained missing since his abduction by suspected states agents in 2019.<sup>43</sup>

#### **2.4 Violation of Rights of Internally Displaced Persons (IDPs)**

Terrorism in Nigeria gave birth to era of Internally Displaced Persons (IDPs) with needed protection by the government. In the bid to ensure adequate protection of the IDPs, the security agencies were called to the national duty. But various allegations and reports have it that those called upon to protect the

<sup>34</sup> Universal Declaration on Human Rights, Article 10 provides that 'everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.

<sup>35</sup> Universal Declaration on Human Rights, Article 29 provides that everyone has duties to the community in which alone the free and full development of his personality is possible.

<sup>36</sup> Universal Declaration on Human Rights, 1948, Article 8 provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

<sup>37</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 35; African Charter on Human and Peoples' Rights, Article 6 provides that every individual shall have the right to liberty and to the security of his person and no one may be deprived of his freedom except for reasons, while Universal Declaration on Human Rights, Article III is also a similar provision on this without any derogation.

<sup>38</sup> The International Convention for the Protection of All Persons from Enforced Disappearance, 2006.

<sup>39</sup> Amnesty International Nigeria: "Extra Judicial Executions under the guise of tackling insecurity in the South East must stop", <https://www.amnesty.org.ng/2022/07/19/extra-judicial-executions-in-the-south-east-must-stop>.

<sup>40</sup> Amnesty International Report 2022/23, "The State of the World's Human Rights, Nigeria entry", <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria>

<sup>41</sup> The Guardian, "Five inmates electrocuted, others injured in Ikoyi Prison", <https://guardian.ng/news/five-inmates-electrocuted-others-injured-in-ikoyi-prison>.

<sup>42</sup> Amnesty International Report, "Nigeria must show genuine commitment to ending enforced disappearance", 30 August 2022, <https://www.amnest.org/2022/08/03/Nigeria-must-show-commitment-to-ending-enforced-disappearance>

<sup>43</sup> Amnesty International Report, "Nigeria: Extra-Judicial executions under the guise of tackling insecurity in the South East must stop", <https://www.amnesty.org.ng/2022/07/19/extra-judicial-executions-in-the-south-east-must-stop>

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IDPs were in the fore front of violations of their rights.<sup>44</sup> IDPs' rights were variously violated by the security agencies most especially with girls and women being at the receiving end due to the incessant rape amongst others.<sup>45</sup> Despite the violations of rights of IDPs in the hands of the security agencies, the government have treated the situation with kid's glove by not deeming it fit to bring the perpetrators to book. However, Internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed on internationally recognized state border.<sup>46</sup> By virtue of Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), every person has a right to acquire and own immovable property.<sup>47</sup> But often times, Nigerian citizens are being displaced by the government and security agencies during terrorism and counter-terrorism operations without special protection and provision accorded to the more vulnerable class of persons such as children, people with disabilities, refugees, Internally displaced persons, etc owing to their peculiar circumstances.<sup>48</sup> This has been a global crisis affecting about twenty to twenty-five million people in over forty nations, literally all regions of the globe.<sup>49</sup> Nigeria has 3.3 million internally displaced persons, mainly as a result of conflicts and violence, thus having the highest number in Africa.<sup>50</sup> IDPs as victims of human rights violations, not only by insurgents or terrorists, but also from security agencies who are responsible for ensuring security of lives. As citizens or habitual residents of their country, IDPs remain entitled to guaranteed rights under the state's obligations under international, regional and national laws.<sup>51</sup> They are entitled to rights and protections not only by the human rights treaties in effect for the country where they reside, but also by basic provisions of international law that binds all states.<sup>52</sup>

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<sup>44</sup> Unknown Author, "Violation of the IDPs' Rights by the Security Personnel in Nigeria: A Systematic Literature Review", *UNIZIK Law Journal*, (2023), 19(2).

<sup>45</sup> MT Ladan, "Diagnostic Review of Insurgency in Nigeria: The Legal Dimension", *Bayero University Journal of Public Law(BUJPL)*, (2010) 2 (2) 1-4 cited in AF Yakubu, "Benchmarking the Rights of Internally Displaced Persons in The Fight Against Boko Haram Insurgency In Nigeria", *Nigerian National Human Rights Journal (NNHRCJ)*, (2016) 6, 5.

<sup>46</sup> Guiding Principle on Internal Displacement

<sup>47</sup> African Charter on Human and Peoples' Rights 1981, Article XIV provides for right to acquire and own property.

<sup>48</sup> A. Olawale, "Explaining the Security Challenges in Contemporary Nigeria", *Institute of African Studies, University of Ibadan, Nigeria*, (2012).

<sup>49</sup> C Roberta and D Francis, *Masses in Fight: The Global Crisis of Internal Displacement*, Washington DC: Brookings Institution Press, (2008) 16.

<sup>50</sup> National Emergency Management (NEMA), "Abuja 2015 Records of Internally Displaced Persons 2015"; See further National Commission for Refugees in Nigeria (NCFR), Abuja 2015 Report, Table 2. In May, the commission revealed the existence of about 3.2million internally displaced persons in Nigeria due to complex causes.

<sup>51</sup> E Aloba and S Obaji, "Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons", *Journal of Law, Policy and Globalization*, (2016) 51, 26.

<sup>52</sup> Universal Declaration on Human Rights, Article 25 that provides for standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. While *Article 26 of the above law* provides that Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

According to Amnesty Annual Report, humanitarian crisis had ensued from the activities of the Boko Haram and the security forces which had affected more than fourteen million people inclusive of IDPs.<sup>53</sup> The Report did not spare odious activities of the police in the violation of IDPs' rights. The report stated that Boko Haram is not the sole perpetrator of crimes against humanity and gruesome human rights violations of IDPs, but besides the problem of overcrowding and other distresses suffered by the IDPs in terms of movement; feeding, environmental sanitation and medical care were occasioned by the security agencies.<sup>54</sup> Human Right Watch has it that the personnel of the Nigeria Police Force and the Nigeria Army do rape young girls and women in various IDPs camps.<sup>55</sup> It alleges that some of the victims were drugged and raped while others were forced into sex through false marriage promises, materials and financial assistance.<sup>56</sup> These victims were subsequently abandoned when they became pregnant without getting the much needed support for the horrible trauma they suffered at the hands of the Boko Haram and security agencies.<sup>57</sup> The irregular supply of foods, clothing, medicine and other essentials, along with restricted movement in the IDPs camps in the affected regions compounds the vulnerability of victims to rape and sexual exploitation by camp officials, soldiers, police, members of civilian vigilante groups and other residents.<sup>58</sup> Men used their position of authority, gifts and the victims' desperate need for food or other items to have sex with them. Internally displaced persons are faced with multiple problems in Nigeria.<sup>59</sup> It was observed that the population of the IDPs geometrically increased, thereby resulting in a growing concern within the international community as most IDPs live in destitute conditions, not receiving adequate humanitarian assistance and are vulnerable to the most serious human rights violations such as arbitrary killings, rape, torture, and kidnapping.<sup>60</sup> IDPs continue to face various human rights violations, including inadequate access to basic necessities such as shelter, healthcare, education, and livelihood<sup>61</sup> opportunities.

## 2.5 Rape and Sexual Slavery

Rape and sexual slavery is against the right of dignity which is the heartbeat of human rights system. Section 357 of the Criminal Code Act defines rape as:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.<sup>62</sup>

<sup>53</sup>Amnesty Annual Report [www.amnesty.org/en/countries/africa/nigeria/report-nigeria/NIGERIA2016/2017](http://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/NIGERIA2016/2017) accessed on 20th December, 2021.

<sup>54</sup>Ibid, note 51.

<sup>55</sup> Human Right Watch, "Spiraling Violence: Boko Haram Attacks and Security Force Abuses in Nigeria" (2012), p. 58-71, [https://www.hrw.org/sites/default/files/reports/nigeria1012\\_brochure\\_LOW.pdf](https://www.hrw.org/sites/default/files/reports/nigeria1012_brochure_LOW.pdf) accessed on 29th December, 2022.

<sup>56</sup>Ibid, note 53.

<sup>57</sup>Ibid, note 53.

<sup>58</sup> G Otto and U Wilfred, "National Security and Development in Nigeria", *African Journal of Business Management*, (2012), 6(23), 6765-6770.

<sup>59</sup> E Aloba and S. Obaji, "Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons", *Journal of Law, Policy and Globalization*, (2016) 51, 26.

<sup>60</sup>Ibid, note 57.

<sup>61</sup> A Jauhari, "Colonial and Post-Colonial Human Rights Violations", *International Journal of Humanities and Social Science*, (2011), 1(5) 5.

<sup>62</sup> In explaining the definitions used, the Criminal Code explicitly states that unlawful carnal knowledge means "carnal connection which takes place otherwise than between husband and wife". Rape of a woman by her husband is therefore not regarded as rape under the Criminal Code; the only charge that could be brought would be assault. Both the Criminal Code and the Penal Code therefore condone marital rape and discriminate against women married to the perpetrator. Likewise, the Kano Sharia Penal Code Law explicitly condones marital rape

While Section 358 provides for punishment as life imprisonment, with the possible addition of caning.<sup>63</sup> Rape is a crime under Nigerian national law and is an internationally recognised human rights violation.<sup>64</sup> Despite this, the government is failing in both its national and international obligations to prevent, investigate and prosecute rape, whether committed by state actors or non-state actors, and to provide any reparations to the victims. Amnesty International has received credible reports that women have been raped by the police in the IDPs camps; while in streets, while being transferred to police stations, or even when visited male detainees.<sup>65</sup> The organization has also received many reports of rape by the police from human rights organizations throughout Nigeria, including Women's Aid Collective (WACOL), Legal Defence and Assistance Project (LEDAP), Women's Rights Advancement and Protection Alternative (WRAPA), Project Alert and Nigerian media. The security agencies used their authoritative position over detainees in the war zones to rape and sexually harassed them. Rape of women and girls by security agencies within IDPs camps, their homes and community, is acknowledged to be endemic in Nigeria not only by human rights defenders but also by some government officials and international community at large.<sup>66</sup> This is because the government is failing in its obligation to exercise due diligence. The perpetrators invariably escape punishment; women and girls who have been raped were denied any form of redress for the serious crimes against them.

Amnesty International has found that the Nigeria police force and security agencies commit rape in many different circumstances, both on and off duty.<sup>67</sup> At times, it is used strategically to coerce and intimidate entire communities in the war zones. In January and February 2006, some of the women and girls were raped, some of them were abducted by the security forces in areas of the country where violence was rife, and had documented their harrowing experiences.<sup>68</sup> In September 27<sup>th</sup>, 2004, two students, aged 17 and 18 years at the time, were abducted by 2 police men who took them to the house of one of the police officers, having been told that they would be safer there than in custody and

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and discriminates against married women who have been forced into having sexual intercourse by their husbands. Penal Code, Section 282(1) provides that a man is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances – (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or hurt; (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (e) with or without her consent, when she is under fourteen years of age or of unsound mind.

<sup>63</sup> The Special Rapporteur on Torture has stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” (*UN Doc. A/56/156*), Para. 39). Amnesty International has not received any reports of the sentence of caning being applied. However, Amnesty International holds that judicial corporal punishment, including flogging (caning), should be abolished.

<sup>64</sup> Fourth Geneva Convention, Article 27 relating to the protection of civilian persons in time of war, states: Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits violence against women.

<sup>65</sup> Amnesty International interviewed the Commissioners of Police in Lagos and Enugu States in January 2006.

<sup>66</sup> OO Ibeanu, “Insurgent civil society and democracy in Nigeria: Ogoni encounters with the state 1990-1998”, Research report for ICSAG Programme of the Centre for Research and Documentation, Kano, Kano State, Nigeria.

<sup>67</sup> Amnesty International acknowledges that men and boys are also subjected to rape, including by state actors, although to a lesser extent. This report focuses on rape and significant other forms of sexual violence against women and girls, as part of Amnesty International's long-term campaign to stop violence against women. In 2005 Amnesty International published a report describing how up to two-thirds of women in certain groups in Nigeria had experienced violence within the family, including marital rape and rape by family members: Amnesty International, Nigeria: Unheard voices: violence against women in the family (*AI Index: AFR 44/004/2005*), 31 May 2005.

<sup>68</sup> *Ibid*, note 65.



subsequently raped them.<sup>69</sup> Security agencies deployed in the Niger Delta by the Federal Government to restore law and order and protect oil production have used rape as a counter-terrorism tactic and to intimidate the population. They used rape to humiliate and dehumanize women and their communities; to coerce them into divulging information about the whereabouts of certain individuals; to intimidate the community into submission; or as a collective punishment. Women were held for several weeks in sexual slavery in military barracks and repeatedly raped. Amnesty International noted that where sexual slavery is part of a widespread or systematic attack on a civilian population with knowledge of the attack, it is a crime against humanity in international law.<sup>70</sup> Rape by the security agencies in the Niger Delta had been well documented by international non-governmental organizations, including Amnesty International and Human Rights Watch, as well as Nigerian groups such as WACOL and Women Advocates Research and Documentation Centre (WARDC).<sup>71</sup> In November 12<sup>th</sup>, 2002 WACOL organized a “Women’s Court” in Abuja, which was reported to have heard the traumatic accounts of more than 20 victims of gender-based violence in the Niger Delta. WACOL recorded over 50 allegations of rape by the security agencies in Odi in 1999.<sup>72</sup> These series of human rights violations in Nigeria attracted the establishment of Human Rights Violations Investigations Committee known as Oputa Panel in 1999 to investigate human rights violations from 1966 to 1999.<sup>73</sup>

## 2.6 Forced Eviction

Forced eviction is the permanent or temporary removal against the will of individuals, families and communities from their homes or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection.<sup>74</sup> This process of removal most time does not exist in isolation and can be attributed directly or indirectly to civil unrest, urban renewal, planning and development, planning purposes, slum clearance, large infrastructure or development projects and international events such as the Olympics.<sup>75</sup> This violates, directly and indirectly the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments.<sup>76</sup> The law provides the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>77</sup> This Covenant outlines the centrality of the right to adequate housing as the right to live somewhere in security, peace and dignity.<sup>78</sup> It also makes reference to the issue of tenure security and forced evictions, by stating that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.<sup>79</sup>

<sup>69</sup> Amnesty International has received a copy of the report.

<sup>70</sup> Rome Statute of the International Criminal Court, adopted on 17 July 1998, Article 7 (1) (g).

<sup>71</sup> Human Rights Watch, “The Destruction of Odi and Rape in Choba”, 22 December 1999.

<sup>72</sup> WACOL, “A cry for justice: the truth about sexual violence against women in Nigeria”, Enugu, 2003, p.3.

<sup>73</sup> Ibid, note 72.

<sup>74</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing: forced evictions.

<sup>75</sup> K. Olds, “Urban Mega-Events, Evictions and Housing Rights: The Canadian Case. Current Issues in Tourism”, (1998), 11(6), pp. 2-46. See Ezema, I. C., Opoko, P. A. & Oluwatayo, A. A., 2016. “Urban Regeneration through State-led, New-Build Gentrification in Lagos Inner City, Nigeria”. *International Journal of Applied Environmental Sciences*, 11(1), pp. 135-146.

<sup>76</sup> International Covenant on Civil and Political Rights, 1966, s Articles 6, 7, 9, 11, 12, 13 and 26; of Universal Declaration of Human Rights, 1948, , Article 17.

<sup>77</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 General Comment No. 4: The Right to Adequate Housing among others.

<sup>78</sup> Ibid, note 76.

<sup>79</sup> ICESCR General Comment No. 7.

Identifying and re-affirming the right to adequate housing for all, Paragraph 1 of the Human Rights Resolution also identifies forced evictions as a gross violation of human rights and *prima facie*, incompatible with international law.<sup>80</sup> Despite years of advocacy at international, national and municipal levels for the right to adequate housing to be institutionalised and respected as a basic human right, forced evictions continued to occur within very diverse contexts, at varying scales and for multiple explicit and hidden motives.<sup>81</sup> For instance, in 2022, following the announcement by Governor Nyesom Wike, 60,000 civilians were forcibly evicted in Port Harcourt across waterfront communities.<sup>82</sup> In February 2013, the Lagos State government with the support of heavily armed police, demolished 266 structures that served as homes and businesses. The demolitions were presumed to affect 1,933 tenement households and 319 residential structure owners in Bida East.<sup>83</sup> Then, in April 2005, estimates of 3,000 residents were forcibly evicted from Makoko following ongoing legal contestation between the residents of the land and a private family claiming ownership to the land.<sup>84</sup> This was alongside the destruction of houses, two churches, a mosque, medical clinic and the physical harm brought to members of the community, including children. The forced eviction was carried out by police and other security agencies who used machetes to destroy the homes located on waterside.<sup>85</sup> This was carried out without prior consultation, compensation or alternative accommodation.

### **3. Conclusion and Recommendations**

This work has tried to x-ray a detailed analysis of human rights implication during counter-terrorism operations in Nigeria. Government embraced human rights violations by the security agencies due to national security and lack of rule of law. These agencies were widely implicated in cases of extra-judicial killings, arrest, torture, rape among others. The on-going violations of human rights with impunity in the conflict areas have made the promotion and protection of these rights impossible and if left unchecked, there could be more serious and grievous consequences on the citizens.

Considering the above background, there should be a review on counter-terrorism law in ensuring compliance with international standards, including international human rights law and international humanitarian law, in particular, the principles of legality and proportionality. Similarly, this review will be in line with articles 12, 13 and 16 of the Convention against Torture, to ensure the initiation of impartial and comprehensive individual investigations of all complaints of indiscriminate & extrajudicial killings by security agencies in the course of fighting terrorism in Nigeria. However, there is an overwhelming need to make regulations to operationalized the Anti-Torture Act with specific rules to guide the procedures and processes for the documentation, investigation and prosecution of torture, inhuman and degrading treatment against the citizens. In similar vein, the Federal government should implement legal safeguards against enforced disappearance of citizens by the security agencies. Furthermore, there should be special trainings for security agencies on the protection of rights of IDPs and adequate sanctions of the security agents involved in human rights violations during counter-terrorism operations to serve as deterrent to other civilians. In addition, the international community,

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<sup>80</sup>Ibid.

<sup>81</sup> International Development Research Centre, “Evictions and the Right to Housing: Experience from Canada, Chile, the Dominican Republic, South Africa, and South Korea”, (1998), *International Development Research Centre* (Canada).

<sup>82</sup>Amnesty International, <https://www.amnesty.org.uk>.

<sup>83</sup> The Coalition for Human Rights in Development, <https://rightsindevelopment.org>.

<sup>84</sup> Centre on Housing Rights Evictions (COHRE), “Global Survey on Forced Evictions: Violations of Human Rights 2003-2006” (2006).

<sup>85</sup> O Udo-Udoma, “University of Cape Town World Bank Public Participation Policies and Processes in relation to the Lives of Beneficiaries in Slum Upgrading Projects Case Study: Makoko, Lagos, Nigeria”, (January 2014), s.l.: University of Cape Town.

including the United Nations and African Union should encourage and support Nigeria to fully implement all international and regional treaties and recommendations aimed at condemning, prohibiting and preventing all acts of violence against women; investigating all cases of rapes and bringing perpetrators to justice in accordance with international standards and providing reparations for victims. Finally, Nigerian government should develop comprehensive anti-eviction strategies by establishing a moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international human rights standards.<sup>86</sup>

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<sup>86</sup> This will include the adoption of legislation to explicitly prohibit forced evictions and guidelines to ensure that evictions are carried out in compliance with the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, that is providing effective remedies, including adequate alternative housing and compensation for any loss or damage to property for persons who have been victims of forced eviction.