

# Impunity: An Impetus For Repeated Atrocities Nigerian Army As A Case Study

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## ABSTRACT

Since Nigeria's transition back to democracy in 1999, the atrocities of the erstwhile military regimes have been left practically unaddressed. Though the Human Rights Violations Investigation Commission ('HRVIC' or 'Oputa panel') was set up in 1999 to investigate human rights violations of the erstwhile military regime, the HRVIC's report was discarded by the federal government. Hence, unlike Argentina's lustration efforts post-military dictatorship resulted in trials and convictions, Nigeria's lustration efforts were unfruitful. Nigeria is a party to international human rights treaties. As such, it has an obligation under international to address human rights violations, albeit inertia is the status quo. Despite Nigeria's obligation under international law, this inertia has led the Nigerian Army to proceed with its impunity unabated. Three separate events of military impunity post-1999 are examined to support the proposition that impunity leads to more atrocities, as is the case with the Nigerian Army.

## Introduction

At the twilight of 20th October 2020 at the Lekki Toll Gate, Lagos, Nigeria—one of the prominent sites of the #EndSARS protests against police brutality that reverberated all over Nigeria—the Nigerian Army brutally murdered unarmed protesters in what would

be later be tagged 'Lekki Massacre'.<sup>1</sup> Live broadcast of the sporadic shootings by the Nigerian Army aired on social media platforms, Instagram, and a stupefied viewer might have thought the unfolding event

<sup>1</sup> Amnesty International. (2020, October 28). *Nigeria: the lekki toll gate massacre— new investigative timeline*. [www.amnesty.org/en/latest/news/2020/10/nigeria-the-lekki-toll-gate-massacre-new-investigative-timeline/](http://www.amnesty.org/en/latest/news/2020/10/nigeria-the-lekki-toll-gate-massacre-new-investigative-timeline/)

unprecedented. However, a cursory study into past activities of the Nigerian Army reveals more brazen atrocities committed by the nation's military body.

Nigeria, a neonate independent country with prospects, was plunged into military rule with a coup in January 1966. Thus, there began decades of military regimes, ushered in by coups, with a four-year democratic interregnum between 1979-1983. One leitmotif, apart from the corruption of the military dispensation, was egregious human rights abuse.<sup>2</sup> The human rights violations of the military were so pronounced that upon transition to democracy, following the 1999 elections, which ushered in Olusegun Obasanjo—former military head of state—as President, the Human Rights Violations Investigation Commission (HRVIC)—popularly dubbed ‘Oputa panel’—was established by President Obasanjo to investigate human rights abuses committed between 1st January 1994 to 29th May 1999.<sup>3</sup> Witness testimony before the HRVIC

revealed troves of damning human rights violations by military officers.<sup>4</sup>

The report of the Oputa panel was submitted to the federal government in June 2002. However, the Supreme Court of Nigeria, in its decision delivered on 31st January 2003 in the case of *Fawehinmi vs. Babangida*,<sup>5</sup> declared the Oputa panel unconstitutional<sup>6</sup> and declared as illegal, sections 5, 10, 11(1)(b), (4) and 12 of the enabling law. Consequent to the judgment, the federal government refused to release the report of the panel nor implement the embedded recommendations, some of which included prosecutions of some military officers.

The debacle of the Oputa panel basically entrenched impunity of the Nigerian military. Little wonder, since the panel fiasco, the military has, in brazen fashion, committed jaw-dropping systematic extrajudicial

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<sup>2</sup> Aihe, D. O. (1971). Fundamental human rights and the military regime in Nigeria: What did the courts say? *Journal of African Law*, 15 213

<sup>3</sup> The HRVIC was established pursuant to the Tribunals of Inquiry Act, Cap 447. It operated between 14 June 1999- May 2002 (2 years, 11 months); United States Institute of Peace. *Truth commission: Nigeria*. [www.usip.org/publications/1999/06/truth-commission-nigeria](http://www.usip.org/publications/1999/06/truth-commission-nigeria)

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<sup>4</sup> Unofficial video recordings of the panel's proceedings can be found on [www.youtube.com/user/OputaPanel](http://www.youtube.com/user/OputaPanel)

<sup>5</sup> (2003) 12 WRN 1 (2003) NWLR (PT 808) 604

<sup>6</sup> The Apex court held that unlike the 1963 Constitution which placed tribunals of inquiry in item 39 of the exclusive legislative list and item 25 of the concurrent legislative list, the 1999 Constitution—as well as the previous 1979 Constitution, both constitutions notably made under the influence of the outgoing military regime—removed the provisions of tribunals of inquiry and made it a residual item for the states within the federation. As such, the federal government could only establish a tribunal of inquiry for the federal capital territory.

killings as well as other atrocities against civilians.

This article will examine three distinct events of atrocities committed by the military since the return to democracy; the 1999 Odi massacre, the 2001 Benue massacres, and the Lekki massacre of 2020. This article is divided into five parts; part I will examine the army massacre in Odi, which purports to have been outright state machination, part II will examine the army massacres in Benue villages and the institutional response, part III looks at the Lekki massacre and the ensuing judicial panel, part IV considers Nigeria's obligation under international law to address international crimes and human rights violations, and part V juxtaposes Argentina's 1985 junta trial with Nigeria's HRVIC.

### **1.1. 1999 ODI MASSACRE**

Since the discovery of crude oil, in commercial quantities, in the Niger Delta region of the country, there have been agitations and clamours by indigenes of the region for a greater percentage of the oil wealth which serviced the nation's economy. The environmental degradation resulting from oil spillage from the activities of multinational oil companies exacerbated the

situation; the water bodies and farmlands of the regions have suffered significant impacts from oil pollution, thereby impoverishing the inhabitants of the region.<sup>7</sup> This impasse has led to recurring protests with violent ripostes from the government as well.<sup>8</sup> This tense situation serves as a backdrop for the incident at Odi.

Odi is a town in Bayelsa state in the Niger Delta region of the country comprised predominantly of the Ijaw ethnic group. As of 1999, it was an oil-producing town with three oil wells being managed by Shell. On 4th November 1999, a small group of armed men with no clear political or ideological agenda killed seven Nigerian policemen and five more in the subsequent days.<sup>9</sup> Every political leader of the Ijaw people, including the Ijaw Youth Council, condemned these murders. The brazen crime by the armed men drew the ire of the federal government led by President Olusegun Obasanjo. President Obasanjo, forthwith, issued communications to the governor of Bayelsa state, Diepreye Alamiyeseigha, threatening

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<sup>7</sup> Obi, C. (2009). Nigeria's Niger delta: understanding the complex drivers of violent oil-related conflict. *Africa Development, Council for the Development of Social Science Research in Africa*. XXXIV

<sup>8</sup> Ibid.

<sup>9</sup> Human Rights Watch. (1999, December 22). *The destruction of Odi and rape in Choba*. <http://www.hrw.org/legacy/press/1999/dec/nibg1299.htm>

to declare a state of emergency in the state if the assailants were not apprehended before a 14-day ultimatum ended, notwithstanding the fact that the duty of policing was under the purview of the federal government as the 1999 Constitution only provided for a federal police force.

On 20th November 1991, 4 days before the farcical ultimatum expired, military troops moved into Odi—eye witnesses reported to Human Rights Watch that the troops were transported in more than twenty vehicles, including several armoured personnel carriers (APCs) mounted with machine guns.<sup>10</sup> The troops engaged in a brief exchange of fire with the young men alleged to have been responsible for the deaths of the policemen, then proceeded to ransack the town. The soldiers destroyed every single building in the town except the Anglican church, the bank, and the health centre, and killed scores of unarmed civilians<sup>11</sup>. Whilst the official number of those killed by the troops was never announced by the government, the Environmental Rights Agenda (ERA), a non-governmental body, alleged that 2,483 (1,460 male and 1,023 female) civilians were extrajudicially killed in the military

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<sup>10</sup> Ibid

<sup>11</sup> Ibid

raid<sup>12</sup>. The massacre in Odi drew lots of condemnation from various human rights groups. Graffiti such as ‘We will kill all Ijaws’, ‘Bayelsa will be silent forever’ were drawn by the raiding troops on walls of the destroyed buildings.<sup>13</sup>

Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (‘1999 Constitution’) provides that every person has a right to life and that 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. The Nigerian military, in flagrant disregard for this constitutionally guaranteed fundamental right, intentionally deprived scores of Odi residents of their right to life without any legal justification whatsoever; there was no guilty verdict/death sentence ordered by any court in Nigeria towards residents of Odi. There was also no armed conflict whatsoever in Odi, and even if there were, the principle of distinction under the Laws of Armed Conflict (LOAC) strictly forbids the targeting and killing of civilians.

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<sup>12</sup> Onabu, O. (2002, November 21). *Nigeria: 2,483 died in Odi massacre, says Era*. All Africa. <https://allafrica.com/stories/200211210232.html>

<sup>13</sup> *Nigeria: Odi massacre statements, 12/23/99*. University of Pennsylvania-African Studies Center. [www.africa.upenn.edu/Urgent\\_Action/apic\\_122399.html](http://www.africa.upenn.edu/Urgent_Action/apic_122399.html)

The military also violated other fundamental rights entrenched in the 1999 Constitution; the right to dignity of human person provided in Section 34, the right to fair hearing provided in Section 36, the right to acquire and own immovable property anywhere in Nigeria provided in Section 43.

Despite the glaring violation of these constitutionally guaranteed rights by the military, Dr. Doyin Okupe, special adviser (media and publicity) to President Obasanjo, remarked, in relation to the Odi military operation, at a press conference in Abuja on 29th November 1999;

‘I wish to make it categorically clear that the government, by this act, has not violated any internationally acceptable human rights provisions as practiced elsewhere in the developed world.’<sup>14</sup>

In other words, the federal government justified the egregious actions of the military. As such, there was neither a commission of inquiry into the events at Odi nor a prosecution of the military troops as well as their commanders. The impunity of the armed forces reigned.

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<sup>14</sup> Supra note 9.

## **1.2. 2001 BENUE MASSACRES**

The Tiv and Jukun ethnic groups are part of the numerous ethnic groups in Benue state of Nigeria. However, recurring inter-ethnic conflict—with concomitant destruction of lives and property and internal displacement of people—between the two groups has persisted since the 1950s<sup>15</sup> and no feasible rapprochement seems to be in sight, even till this day. Whenever such inter-ethnic crisis breaks out, the federal government resorts to deploying the armed forces to quell the unrest as more often than not, the federal police force is unable to stymie the violence.<sup>16</sup>

Another bout of crisis between the two groups broke out in 2001 and as expected soldiers were sent in to restore order. However, about nineteen (19) soldiers were abducted and murdered by a supposed Tiv militia with their mutilated bodies found in the village of Zaki-Biam on 12th October.<sup>17</sup>

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<sup>15</sup> Moti, U. G. (2010). An examination of the effect of the Tiv-Jukun conflict of central Nigeria on development. *Alternative Perspectives in the Humanities and the Social Sciences* 26

<sup>16</sup> Peterside, Z. B. (2014). The military and internal security in Nigeria: challenges and prospects. *Mediterranean Journal of Social Sciences*, 5 1301

<sup>17</sup> Human Rights Watch. (2001, October 25). *Nigeria: soldiers massacre civilians in revenge attack in Benue state*. [www.hrw.org/news/2001/10/25/nigeria-soldiers-massacre-civilians-revenge-attack-benue-state](https://www.hrw.org/news/2001/10/25/nigeria-soldiers-massacre-civilians-revenge-attack-benue-state)

According to the criminal justice laws of Nigeria, the response to such criminal acts by the supposed Tiv militia should be an investigation to fish out and arrest the perpetrators for prosecution. However, the Nigerian military had other things in mind.

On Monday, 22nd October 2001, soldiers from the 23<sup>rd</sup> armoured brigade of the 3<sup>rd</sup> armoured division of the Nigerian Army from Yola, Adamawa state; estimated by witnesses to be between two and three hundred soldiers, arrived in the town of Gbeji in Benue state.<sup>18</sup> They called the inhabitants of the town to assemble for a meeting, purporting to be there on a peacekeeping mission. Once a significant amount of people had gathered, they separated the men from the women and children. Then they opened fire on the unarmed men, shooting indiscriminately. Some women and children were also killed. Between a hundred and fifty (150) and a hundred and sixty (160) people were killed in Gbeji including at least four (4) women and about eighteen (18) children. After shooting, the soldiers poured petrol on them and set the bodies ablaze. Some of the victims died from the shooting whilst some

were burnt alive; some bodies burnt beyond recognition. The soldiers then ransacked the town, pillaged, and destroyed houses and buildings.

That same day, soldiers proceeded to the neighbouring village of Vaase—the nineteen (19) soldiers hitherto killed had been abducted in Vaase—and killed seventeen (17) people, fifteen (15) men and two (2) women.<sup>19</sup> They also burnt houses; a woman in her twenties was burnt inside her house.

The soldiers proceeded next to the village of Anyiin, arriving in the afternoon and staying there till night. They could not kill anyone as most people had fled the village before the soldiers arrived. Consequently, the soldiers burnt down houses and vehicles, shooting sporadically at objects.<sup>20</sup> A local police official present remarked that he was made to watch as the soldiers burnt a vehicle, with the soldiers threatening to shoot him if he attempted to stop them. Such was the rage and impunity of the soldiers.

In the following days, 23 and 24 October, the soldiers attacked the village of Zaki Biam—the bodies of the nineteen (19) soldiers had been found in Zaki Biam—and the devastation was only second to Gbeji in

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<sup>18</sup> Human Rights Watch. (2002, April 1). *Nigeria: military revenge in Benue: a population under attack*. [www.refworld.org/docid/3cab1e985.html#P139\\_176\\_81](http://www.refworld.org/docid/3cab1e985.html#P139_176_81)

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

terms of civilian casualties. There was widespread destruction of homes, shops, the popular yam market, and other buildings, including even the police station. In the operation which lasted two days, the soldiers shot sporadically and burnt buildings. The soldiers also targeted the village of Tse Adoor, on the outskirts of Zaki Biam. Tse Adoor was the village of Lieutenant General Victor Malu, the former Chief of Staff of the Nigerian army. Such was the unhinged nature of the military's quest for revenge that the compound of Victor Malu's family was attacked, with Victor Malu's house and others burnt and about five people killed.

In the aftermath of the October 22-24 military operation, Human Rights Watch received reports of other human rights violations, such as several cases of rape of girls and women, harassment, looting etc, alleged to have been committed by soldiers.<sup>21</sup>

The military violated the fundamental rights entrenched in the 1999 Constitution; the right to life provided in Section 33 of the 1999 Constitution, the right to dignity of a human person provided in Section 34, the right to a fair hearing provided in Section 36, the right to acquire and own immovable

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<sup>21</sup> Ibid.

property anywhere in Nigeria provided in Section 43.

The President of the country, Olusegun Obasanjo, a former military head of state himself, apparently did not find the military massacres in Benue condemnable, and a press conference suggested that the soldiers might have been acting in self-defence.<sup>22</sup> The army Chief of Staff, Alexander Ogomudia, also was quoted to have remarked:

'The troops will fight back in self-defence. We cannot allow the soldiers to fall again...If nineteen soldiers are killed, and we keep quiet, a whole battalion can be wiped out. We have to make it clear. You can't kill people who work for the government. You must not make the mistake of attacking them.'<sup>23</sup>

It is no gainsaying that such remarks by the President as well as the Army Chief of Staff, endorsed the impunity of the ravaging soldiers.

In the aftermath of the massacres, the federal government set up a judicial commission to

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<sup>22</sup> Onishi, N. (2001, October 30). *Nigeria army said to massacre hundreds of civilians*. The New York Times.

[www.nytimes.com/2001/10/30/world/nigeria-army-said-to-massacre-hundreds-of-civilians.html](http://www.nytimes.com/2001/10/30/world/nigeria-army-said-to-massacre-hundreds-of-civilians.html) accessed

<sup>23</sup> Supra note 18

look into the inter-communal crises between the Tiv and Jukun communities. The Commission's terms of reference included the following, inter alia:

- Examine the immediate and remote causes of the crises between the communities within and across the affected states.
- Identify basic issues and the causes of the prolonged tension and conflicts between the communities and advise on strategies for lasting peace.
- Identify groups and individuals that might have contributed to the prolonged crises and recommend appropriate sanctions where necessary.
- Examine the roles of states and local governments in the management of the crisis and the facilitation of prolonged peace and recommend appropriate measures to be taken by government (federal, state and local) to forestall future occurrence of the disturbances.<sup>24</sup>

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<sup>24</sup> World Organisation Against Torture & Center for Law Enforcement Education. (2002). *Hope betrayed? a report on impunity and state sponsored violence in Nigeria*. 165. [www.omct.org/site-resources/legacy/nigeriareport0802.pdf](http://www.omct.org/site-resources/legacy/nigeriareport0802.pdf)

In flagrant disregard for the victims of the Benue killings, the Commission's terms of reference, as set by the government, precluded an inquiry into the conduct of the armed forces in the killings and destruction.

### 1.3. 2020 LEKKI MASSACRE

Police brutality on civilians has been endemic for decades in Nigeria, particularly from the Special Anti-Robbery Squad of the police popularly known by its acronym, 'SARS'.<sup>25</sup> The atrocities of different SARS units all over the country were egregious and enormous. SARS agents extorted civilians<sup>26</sup> and committed gross extrajudicial killings,<sup>27</sup> all with impunity. Public outrage over police brutality, particularly from SARS, had been simmering<sup>28</sup> and in October 2020 reached its climax, snowballing into a

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<sup>25</sup> Kadioglu, U. (2021, January 27). *Police Brutality in Nigeria and the #EndSARS Movement*. Harvard International Review. <https://hir.harvard.edu/police-brutality-in-nigeria-and-the-endsars-movement/>

<sup>26</sup> PEOPLE TALK: *On increasing cases of extortion by SARS operatives*. (2020, August 12). Vanguard. <https://www.vanguardngr.com/2020/08/people-talk-on-increasing-cases-of-extortion-by-sars-operatives/>

<sup>27</sup> Oluwabemi, A. (2017, July 28). *Ezu Rivers dead bodies: Report indicts police four years after*. Punch. <https://punchng.com/ezu-river-dead-bodies-report-indicts-police-four-years-after/>

<sup>28</sup> *Outrage grows over SARS menace, Osinbajo, others condemn killings, arrests, extortion*. (2020, October 5). Punch. <https://punchng.com/outrage-grows-over-sars-menace-osinbajo-others-condemn-killings-arrests-extortion/>



nationwide protest movement which went on for days.<sup>29</sup>

On 20th October 2020, as the protest continued all over the country, the Lagos state governor, Babajide Sanwolu, tweeted via his official handle that he was imposing a 24-hour curfew starting from 4pm<sup>30</sup> that day with the excuse being that the once peaceful protest was beginning to degenerate into chaos. Governor Sanwolu also invited the Nigerian Army to reign in on protesters<sup>31</sup> who did not obey the curfew. Protesters at the Lekki toll gate, which seemed to be the major rendezvous and protest site in Lagos, refused to disperse from the toll gate. Around 18:29 Nigerian time, video and photograph footage confirm army vehicles leaving Bonny camp, a military base about approximately a seven-minute drive from the Lekki toll gate.<sup>32</sup> At around 18:45, the military began to open fire

on the unarmed protesters at the Lekki toll gate. The unarmed protesters were waving the Nigerian flag and singing the national anthem yet the Nigerian Army shot at them.<sup>33</sup>

As a result of the protests in the preceding days, the Lagos State government had on 15th October 2020 constituted the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters ('Panel') pursuant to Section 1 of the Tribunal of Inquiry Law, Cap T7, Laws of Lagos State 2015. The Panel's duties were to identify the victims of abuse, brutality, and extrajudicial killings in hands of officers of SARS/Nigeria Police Force; to determine and recommend compensation for verifiable/deserving victims and their dependents; to interrogate serving or dismissed officers of the disbanded SARS and Nigeria Police Force responsible for the abuse of victims and recommend their prosecution.<sup>34</sup>

With the Lekki incident on 20th October, Governor Sanwolu expanded the terms of

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<sup>29</sup> Busari, S. (2020, October 25). *Nigeria's youth finds its voice with the EndSARS protest movement*. CNN.

<https://edition.cnn.com/2020/10/25/africa/nigeria-end-sars-protests-analysis-intl/index.html>

<sup>30</sup> Ibeyemie, B. (2020, November 22). *'Lekki Shooting': Let the army be!* Vanguard. [www.vanguardngr.com/2020/11/lekki-shooting-let-the-army-be/](http://www.vanguardngr.com/2020/11/lekki-shooting-let-the-army-be/)

<sup>31</sup> The usual trend of inviting the army to supposedly restore law and order whenever there is public agitation. Some argue (supra Note 30) that the protest was against police brutality and it would have been incendiary to call on the same police to quell the protests.

<sup>32</sup> Supra note 1

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<sup>33</sup> Ibid

<sup>34</sup> Lagos State Judicial Panel of Inquiry on Restitution For Victims of SARS Related Abuses and Other Matters. *Report of the Lekki Incident Investigation of 20<sup>th</sup> October, 2020*. <https://lagosstatemoj.org/wp-content/uploads/2021/12/Report-of-Judicial-Panel-of-Inquiry-on-Lekki-incident-investigation-of-20th-October-2020.pdf>

reference of the Panel to include an item requiring the Panel ‘to investigate the incident at the Lekki Toll Gate on 20th October 2020 and make necessary findings and recommendations’.<sup>35</sup>

The Panel had series of hearings, received evidence and made findings, inter alia, that the Nigerian army shot, injured, and killed unarmed helpless and defenceless protesters, without provocation and justification. The Panel also found that the Nigerian Army refused to allow ambulances render medical assistance to victims of the shooting who required urgent medical assistance. The Panel then made 32 recommendations at the end of its report.<sup>36</sup>

The report of the panel was presented to the Lagos state government at a presentation ceremony on 15th November 2021<sup>37</sup>. Governor Sanwolu, present at the ceremony, promised to set up a four-man committee led by the Attorney General of the state to prepare a white paper for the purpose of implementing the findings and recommendations expressed in the report and to give it legal backing. He also

promised to send the report to the National Economic Council for implementation. However, on 30th November 2021 the Lagos state government released its white paper on the Panel’s report<sup>38</sup> which accepted 11 out of the 32 recommendations<sup>39</sup> and rejected the finding of the Panel that there was a massacre at the Lekki toll gate. The Lagos state government retorted that there was no massacre at the Lekki toll gate, contextual or otherwise, stating that the finding of the Panel that nine persons died from gunshots fired by the military is based on assumptions and speculations.

This rejection by the Lagos state government of the finding of the Panel that there was a massacre at the Lekki toll gate on 20th October 2020 forecloses any prosecution of members of the Nigerian Army responsible for the massacre and further reinforces the impunity of the Nigerian Army.

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<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Oyeleke, S. (2021, November 15). *Lagos EndSARS panel submits report on Lekki shooting, others*. Punch. <https://punchng.com/breaking-lagos-endsars-panel-submits-report-on-lekki-shooting-others/>

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<sup>38</sup> Chioma, U. (2021, November 30). *Lagos Govt Releases White Paper On #EndSARS Report [IN FULL]*. The Nigeria Lawyer. <https://thenigerialawyer.com/lagos-govt-releases-white-paper-on-endsars-report-in-full/>

<sup>39</sup> The Lagos state government argued that some of the recommendations were beyond its jurisdiction and were within the purview of the Federal government’s powers.

#### **1.4. NIGERIA'S OBLIGATION UNDER INTERNATIONAL LAW**

The atrocities of the Nigerian Army sampled and discussed above constitute both international crimes and human rights violations. Nigeria's obligation under international law to address international crimes stems primarily from the Rome Statute of the International Criminal Court ('Rome statute') which it has ratified, making it a state party to the International Criminal Court ('ICC'). It's obligation to address human rights violations stems from it being a party to international human rights treaties, such as International Covenant on Civil and Political Rights ('ICCPR') and African Charter on Human and Peoples' Rights ('ACHPR'). Notably, Nigeria also has an obligation under customary international law.

The jurisdiction of the ICC with regard to Nigeria only covers events which occurred after 2002. As such, of the three sample events discussed, only the Lekki massacre, being post-2002, can be addressed by the ICC subject to the principle of complementarity.<sup>40</sup>

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<sup>40</sup> The principle of complementarity espoused in the paragraph 10 of the preamble and Articles 1 and 10

With regard to human rights violations, there is no time restriction. As such, having ratified the ICCPR and the ACHPR, Nigeria has a duty to address violations of human rights. Considering that the human rights violations also bother on criminal law, its imperative that there is a prosecution of those responsible for the violations.

Article 2(2) and Article 1 of the ICCPR and ACHPR respectively place responsibility on state parties to adopt legislative and other necessary measures to ensure the recognition and protection of the rights enshrined in the respective treaties. In addition, by virtue of Article 3 of the ICCPR, a state party undertakes to ensure that any persons whose rights and freedoms, enshrined in the treaty, are violated shall have an effective remedy notwithstanding the violation being committed by persons acting in official capacity. Nigeria's 1999 Constitution contains, in Chapter IV, provisions for fundamental rights that are in *pari materia* with the provisions of the ICCPR and ACHPR. Not only are those fundamental rights expressly provided for in the grundnorm of the land,<sup>41</sup> they are

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of the Rome Statute basically entails that the jurisdiction of the ICC can only be invoked if the domestic jurisdiction relevant to the crimes is not genuinely invoked to address the crimes.

<sup>41</sup> *Abacha v. Fawehinmi (2000) 6 NWLR 228*

reasonably protection from derogation.<sup>42</sup> As such, Nigeria has the responsibility to address the egregious human rights violations committed during the Odi and Benue massacres<sup>43</sup>.

Interestingly, the ICCPR makes provision for a Human Rights Committee ('Committee') which oversees the human rights measures/activities of state parties via intermittent reports submitted to the Committee by the state parties. Optional Protocol to the ICCPR further makes provision for the competence of the Committee to receive communications from individuals, subject to the jurisdiction of the particular state party, who claim to be victims of the violation by that state party of the rights enshrined in the ICCPR. The ability of the Committee to receive communications concerning a state party of the ICCPR, however, depends on whether that state party is also a party to the Optional Protocol.<sup>44</sup> Nigeria is, unfortunately, not a party to the Optional Protocol, thereby

foreclosing the possibility of victims of the Odi and Benue massacres sending communications to the Human Rights Committee. The irresistible inference to be drawn from the Nigerian government's refusal to ratify the Optional Protocol is that it seeks to prevent international oversight over its human rights issues.

On the domestic front, some victims banded together and instituted an action against the Federal government in the Federal High Court, seeking reparations. On 5th July 2007, the Federal High Court entered judgment in favour of the victims for a sum of 41.8 billion nairas<sup>45</sup>. However, the Federal government offered to pay only 8 billion naira, and in resignation, the victims reached an out-of-court settlement and filed a consent judgment for the sum of 8 billion nairas. Nonetheless, the Federal government, through various acts of chicanery, has stalled in paying the consent judgment sum. Thus, the victims who cannot seek redress on the international scene have their domestic justice efforts frustrated.

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<sup>42</sup> Section 45 of the 1999 Constitution

<sup>43</sup> The Supreme Court of Nigeria in the case of *Abacha v. Fawehinmi (Supra)* held that by virtue of the fact that the ACHPR had been domesticated in Nigeria, it was a 'statute with an international flavour. Therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other statute because it is presumed that the legislature does not intend to breach an international obligation.'

<sup>44</sup> Article 1 of the Optional Protocol of the ICCPR

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<sup>45</sup> Duru, P. (2022, August 12). *Zaki Biam invasion: Victims yet to be paid 15 years after court ordered FG to pay compensation.* Vanguard. [www.vanguardngr.com/2022/08/zaki-biam-invasion-victims-yet-to-be-paid-15-years-after-court-ordered-fg-to-pay-compensation/](https://www.vanguardngr.com/2022/08/zaki-biam-invasion-victims-yet-to-be-paid-15-years-after-court-ordered-fg-to-pay-compensation/)

With regard to the Rome statute regime, the Office of the Prosecutor ('OTP') opened a preliminary investigation into the possible Commission of international crimes in the situation of Nigeria long before the Lekki massacre. The investigation has gone on for over a decade without any prosecution materializing.<sup>46</sup> The jurisdiction of the ICC was made complementary to the domestic jurisdictions of state parties. In other words, state parties have a cogent obligation under international law to address impunity within their domestic jurisdiction. With the Nigerian authorities unwilling to investigate and prosecute the crimes committed during the Lekki massacre and the seeming bureaucracy of the OTP with regard to the situation in Nigeria,<sup>47</sup> it behooves one to wonder if the impunity of the perpetrators of atrocity crimes would ever be addressed.

#### 1.5. ARGENTINA'S 1985 JUNTA TRIAL IN CONTRAST WITH NIGERIA'S HRVIC (OPUTA PANEL)

The 1985 Junta trial of Argentina and the Human Rights Violations Investigation Commission ('Oputa panel') of Nigeria were lustration efforts by the transitional democratic governments of Argentina and Nigeria respectively in regard to the human rights abuses of the preceding military regimes.

Following the fall of Argentina's military dictatorship, a newly elected President Raul Alfonsin created the Human Rights Commission, CONADEP (Comision Nacional sobre la Desaparicion de Personas or National Commission on the Disappearance of Persons) on 15th December 1983. This was unprecedented in Argentina. CONADEP's purpose was to investigate crimes committed by the erstwhile military dictatorship and to bring the perpetrators to justice.<sup>48</sup> CONADEP published its report, *Nunca Mas* (Never Again), in 1984; in its report, it submitted that Argentina's military junta killed around

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<sup>46</sup> Chiarini, G., & Nwagbara, I. T. (2022). *Nigeria—A Twelve-Year Preliminary Examination: Is the Time Ripe for the ICC Prosecutor to Tackle Boko Haram's Criminals?* Cork Online Law Review. [www.corkonlinelawreview.com/single-post/nigeria-a-twelve-year-preliminary-examination](http://www.corkonlinelawreview.com/single-post/nigeria-a-twelve-year-preliminary-examination)

<sup>47</sup> Ibid.

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<sup>48</sup> Bosoer, F. (2014, January 19). *Argentina's truth commission at 30*. Aljazeera America. <http://america.aljazeera.com/opinions/2014/1/argentina-conadeptruthcommissionhumanrights.html>

10,000 citizens.<sup>49</sup> CONADEP's work graduated into full-fledged trials of military leaders in 1985 and in the early 2000s<sup>50</sup>.

In contrast, whilst Argentina's lustration efforts graduated from truth commission investigation to trials and ultimately to convictions, the lustration efforts of the Oputa panel were frustrated by the federal government that initiated the efforts. Unlike CONADEP, whose report was published, the Oputa panel report submitted to the federal government of Nigeria was never officially published by the government. No perpetrators identified in the Oputa panel report were tried, and in fact, the jurisdiction of the panel was deemed unconstitutional by Nigeria's Supreme Court.<sup>51</sup>

Argentina's junta trials dealt a heavy blow to military impunity, whilst Nigeria's inertia has worsened military impunity, giving impetus for further atrocities.

## CONCLUSION

The international community rallied together to formulate treaties to ensure the ubiquitous protection of fundamental human rights from violation. The international community also came together to create the International

Criminal Court, a permanent court to address international crimes, with the determination to address the impunity of perpetrators of the most serious crimes of concern to the international community.<sup>52</sup>

Upon transition to democracy in 1999, the Nigerian federal government had the golden opportunity to tow the Argentine lustration precedent. However, it failed to do so. This inertia has not only fuelled impunity of the Nigerian Army but serves as an impetus for further atrocities. The three case studies discussed above constitute just a tiny fraction of the egregious human rights violations allegedly committed by the Nigerian Army since 1999.<sup>53</sup>

Whether or not military impunity abates in Nigeria depends on whether the Nigerian federal government, as well as the international community, takes cogent measures to actively address impunity.

## CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Supra note 5

<sup>52</sup> Paragraph 5 of the preamble of the Rome statute

<sup>53</sup> Aregbesola, I. (2022, March 8). *Nigerian army treats 500 cases of human rights violation*. News Agency of Nigeria. <https://www.nannews.ng/2022/03/08/nigerian-army-treats-500-cases-of-human-rights-violation/>

consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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