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Title: Who do We Cry to When our Haven is Haunted?: Enforcing Rights of Women and Children in Times of War - The Nigerian Civil War Experience

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There are myriads of international instruments and resolutions for the protection of vulnerable groups like women and children during periods of war or armed conflict. These instruments and resolutions often place obligations on national governments to ensure that these vulnerable groups are protected and that perpetrators of crimes against them are brought to justice. For the rights of these vulnerable groups to be enforced, there must be an active, functional and independent judiciary. It is often said that the Judiciary is the last hope of the common man. Regrettably, the court systems that make up the judiciary are often attacked or deserted and it becomes impracticable to enforce human rights during times of war. Prior to the Nigerian Civil War, when the military took over power in 1966, they suspended the provisions of the Nigerian Constitution of 1963 that dealt with enforcement of human rights and women and children were torn in between the battle for survival and the cry against violation of their rights. This paper examines how issues relating to the rights of women and children in times of war were addressed during the Nigerian Civil War. The paper goes further, in the light of the post - civil war rights and current trends of war or armed conflict, to make recommendations that will help to equip women and children, the Judiciary and indeed national governments in times of war or armed conflict.

WHO DO WE CRY TO WHEN OUR HAVEN IS HAUNTED? ENFORCING RIGHTS OF WOMEN AND CHILDREN IN TIMES OF WAR - THE NIGERIAN CIVIL WAR EXPERIENCE.

ABSTRACT

There are myriads of international instruments and resolutions for the protection of vulnerable groups like women and children during periods of war or armed conflict. These instruments and resolutions often place obligations on national governments to ensure that these vulnerable groups are protected and that perpetrators of crimes against them are brought to justice. For the rights of these vulnerable groups to be enforced, there must be an active, functional and independent judiciary. It is often said that the Judiciary is the last hope of the common man. Regrettably, the court systems that make up the judiciary are often attacked or deserted and it becomes impracticable to enforce human rights during times of war. Prior to the Nigerian Civil War, when the military took over power in 1966, they suspended the provisions of the Nigerian Constitution of 1963 that dealt with enforcement of human rights and women and children were torn in between the battle for survival and the cry against violation of their rights. This paper examines how issues relating to the rights of women and children in times of war were addressed during the Nigerian Civil War. The paper goes further, in the light of the post - civil war rights and current trends of war or armed conflict, to make recommendations that will help to equip women and children, the Judiciary and indeed national governments in times of war or armed conflict.

KEY WORDS: Rights, Women, Children, War and Courts.

INTRODUCTION

The Nigerian Civil War that occurred between 1966 and 1970 is arguably the worst catastrophe that has befallen the country from her birth till date.¹ This submission stems from the fact that the war was in the class of conflicts that engaged the whole nation, threatened her very survival as a unified sovereign entity besides the large scale of destruction of lives and properties. One interesting question that is often ignored is the question of enforcing human rights in the face of war or thereafter. The question may be as dumb as the question of the proverbial prisoner who complained that there is no onion

¹ Although many negative things have happened in Nigeria, the war stands tall and distinct in the history of crisis in the country. See K. Kalu, "The Nigeria Civil War (Biafra War)," Available at <http://www.unesco.com/the-nigeria-civil-war-biafra-war/>, (Accessed March 4, 2017). The author stated that, "The unforgettable days for The Federal Republic of Nigeria are the days within 1967 - 1970. These years were filled with agony and crisis, this was the period where the Nigerian Civil War (also known as The Biafran War) was fought."

in the food he was served in prison. The answer, as one may guess, has often been that the prison is not a place to ask for qualitative food; rather freedom should be the target. As wishful as the request may sound, it may be pertinent to note, from the onset that, if one has a right he should enjoy it and that rights are meaningless if they are not enforceable.

Prior to the Nigerian Civil War, the Military took over power from the democratically elected government and suspended provisions of the 1963 Constitution and made the Constitution subject to Military Decrees thereby caging the power of the Judiciary to check any abuse of power occasioned by Military decrees. Indeed, the Jurisdiction of the Courts which were under the Judiciary, were actually ousted in terms of questioning the validity of Decrees. Thus, the Judiciary entered the Civil war, like a prisoner of war already under the captivity or mercy of the Military Government. War or armed conflict is a period that is always characterized by violence, lawlessness and indiscipline. These conditions naturally constitute an atmosphere that is adverse to the effective performance of judicial functions such as enforcing rights. Kayode Eso JSC, as he then was, said:

There is no justification for the existence of the judiciary except in its existence for the defence of the citizen, for the citizen to put his views across with all potency, for him to vent his feelings, and his success in the public, for him to feel and breathe the air of freedom around him.²

Interestingly, there are a plethora of internationally recognized rights that accrue to different categories of persons during times of war or armed conflicts.³ Critical among the vulnerable persons or groups legally protected during times of war are women and children. Due to their vulnerability, international legal documents such as treaties, conventions, resolutions, declarations and protocols have been put in place specifically for their protection during war or armed conflicts. For example, the United Nations in her

² See E. Agbade, "The Rule of Law and the Preservation of Individual Rights": Individual Rights Under the 1989 Constitution," cited in E. Malemi, *The Nigerian Constitutional Law* (3rd Edition, Lagos: Princeton Publishing Co., 2012) 120.

³ For example it has been noted that "A major part of international humanitarian law is contained in the four Geneva Conventions of 1949 that have been adopted by all nations in the world. The Conventions have been expanded and supplemented by two further agreements: the Additional Protocols of 1977, relating to the protection of victims of armed conflicts, and the 2005 Additional Protocol III. These Conventions provide specific rules to safeguard combatants, or members of the armed forces, who are wounded, sick or shipwrecked, prisoners of war, and civilians, as well as medical personnel, military chaplains and civilian support workers of the military." See American Red Cross, "Summary of the Geneva Conventions of 1949 and Their Additional Protocols." Available at:

http://www.redcross.org/images/MEDIA_CustomProductCatalog/m3610101_HH_SummaryGenevaConv.pdf (accessed 1 March, 2017).

*Declaration on the Protection of Women and Children in Emergency and Armed Conflict*⁴ the preamble states as follows:

Expressing its deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm.

The subject of the protection of the rights of women and children in times of war is so critical that the International Criminal Court (ICC) has been doing everything possible to explore ways of collaborating with relevant agencies to achieve this goal. In fact, during the Assembly of States Parties to the International Criminal Court, thirteenth session, the fifth plenary meeting on 11 December 2014, out of the three hours of the Plenary, one and a half hours was devoted to discussions on gender and sexual based violence during armed conflicts; while the rest of the time was left for general discussions. It was specifically noted as follows:

The Court has intensified its bilateral interactions with States, regional organizations and the United Nations, highlighting that it would be difficult to fulfill its mandate effectively without securing partnerships for cooperation. In this context, it is worth noting the important UN Security Council thematic resolutions on women, peace and security and on the protection of women and children in armed conflict. Mandates of international and regional organizations, including the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (SRSG-SVC), UN Women, UNDP and UNODC provide a basis for enhanced cooperation between the Court and the international community in ending impunity and protection of victims of and witnesses to such crimes.⁵

This paper primarily examines the issue of the enforcement of the rights of women and children during times of war with particular reference to the Nigerian Civil war. The paper seeks to unveil the challenges faced by women and children, in relation to their rights, during the aforesaid war period which was a black page in the Nigerian national history. Essentially, the paper is to enlighten the readers about the negative impact of any war condition on the vulnerable persons so as to avoid the insatiable impulse for war, and in the event of any war, or in parts of the country undergoing marginal levels of armed

⁴ Proclaimed by General Assembly Resolution 3318 (XXIX) of 14 December 1974

⁵ A. Krutnes (Norway), "Concept note by the facilitator for cooperation"

Thirteenth session of the Assembly of States Parties held on 11th December, 2014. Available at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/ASP13-PD-ConceptNote-COOP-ENG.pdf (accessed 4 March, 2017).

conflict, to ensure that adequate arrangements are made to protect and enforce the rights of women and children as contained in relevant legal instruments.

The paper argues that if issues bordering on economic and social justice, legal enlightenment, security, training of judicial officers, synergy with the Military and law enforcement agencies among other indices are well addressed, then the issue of enforcing the rights of women and children during times of war can be substantially resolved.

1. DEFINITION OF KEY WORDS

Before delving into the substance of this paper, it is pertinent to have an operational understanding of some key words in the title. The words are "Rights," "Women," "Children," "War" and "Courts." Rights connote moral or legal entitlements to have or obtain something or to act in a certain way.⁶ The word has been defined, *inter alia*, as 'something that is due to a person by just claim, legal guarantee, or moral principle.'⁷ This paper deals with the rights of women and children. For the purpose of this work, "women" is the plural form of the word "woman" and it refers to persons of the female gender who have attained the age of 18.⁸ The word "Children" represents all persons of both gender who are below the age of 18 years.⁹ 'War' connotes "hostile conflict by means of armed forces, carried on between nations, states, or rulers, or sometimes between parties within the same nation or state; a period of such conflict."¹⁰ 'Civil War' is an internal armed conflict between people of the same nation.¹¹ Some conflicts may not qualify as wars even though arms may be involved. Thus, 'armed conflict' has been defined as "a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state."¹²

⁶ E. Jewel and F. Abate (eds), *The New Oxford American Dictionary*, (2nd edn Oxford University Press, New York 2005) 1932

⁷ B. Garner, *Blacks Law dictionary* (9th edn West Publishers, USA 2009) 1436.

⁸ Woman means, "an adult female person, as distinguished from a girl or a man." See "Woman," K Dictionaries Ltd, *Random House Kernerman Webster's College Dictionary* (2010). Available at <http://www.thefreedictionary.com/women> (Accessed March 4, 2017)

⁹ United Nations, "The Convention On The Rights Of The Child, Guiding principles: general requirements for all rights." Available at: https://www.unicef.org/crc/files/Guiding_Principles.pdf. (Accessed March 4, 2017). The United Nations stated that: "The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18."

¹⁰ B. Garner, *Blacks Law dictionary* (9th edn West Publishers, USA 2009) 1576

¹¹ *Ibid*

¹² As defined by Department of Peace and Conflict Research Upsala University." Available at: http://www.pcr.uu.se/research/ucdp/definitions/definition_of_armed_conflict/ Accessed 7 March 2017

A Court is “a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.”¹³ There are international and national courts. The judiciary is the primary body that is vested with the power to interpret and enforce laws that are made in society. Courts are part of the judiciary. The Judiciary is the branch of government responsible for interpreting laws and administering justice. It has been defined as “a system of courts or a body of Judges.”¹⁴

2. BRIEF HISTORY OF THE NIGERIAN CIVIL WAR

There are many writings and accounts about the Nigerian Civil War. The war, also known as the Biafran War, lasted from 1967 to 1970.¹⁵ It was a political conflict caused by the attempted secession of the southeastern provinces of Nigeria as the Republic of Biafra. Following independence in 1960, three provinces were formed along tribal lines, the Hausa and Fulani (north), Yoruba (south-west), and Igbo or Ibo (south-east). Tribal tensions increased after a military coup in 1966 which resulted in General Aguiyi-Ironsi, an Igbo, taking power as President. This was followed by a northerner-led counter coup a few months later by General Yakubu Gowon. General Aguiyi-Ironsi was killed and widespread reprisals were unleashed against the Igbos. Fearing marginalization within the state, on May 30, 1967 the Igbo-majority province declared its independence as the Republic of Biafra. The war got into a full proportion and there were series of casualties, especially from the side of Biafra. Biafra surrendered on January 13, 1970.¹⁶

3. SELECTED LEGAL INSTRUMENTS AND DOCUMENTS ON RIGHTS OF WOMEN AND CHILDREN IN TIMES OF WAR AND ARMED CONFLICT

An instrument may be defined as a written legal document that defines rights, duties, entitlements or liabilities.¹⁷ Documents, such as declarations, on women and children’s rights, though not strictly called instruments, still have the effect of guiding the enforcement of rights under international law. In some instances the fundamental

¹³ Ibid at page 356.

¹⁴ B. Garner, *Black’s Law dictionary* (7thedn. West Publishers, USA 2009) 852

¹⁵ See for example, O. Obasanjo, *My Command: An Account of the Nigerian Civil war 1967-1970* (Heinemann, Ibadan, 1999) pp.1-13, L. Iyoho, *Humanitarian Law: The Experience of the Nigerian Civil War* (Afahaide & Bros. Printing/ Publishing Co, Uyo, 2000) pp.79-85; C. Achebe, *There was a Country: A Personal History of Biafra* (Penguin Group, USA 2012) pp.95-239. The writings are largely reflective of the experiences or perspectives of some of the authors as to the details of casualties, violation of rights and other issues bordering on impact; but all authors are considerably agreed on the period and the fundamental causes of the war.

¹⁶ J. Jones, *New Encyclopedia*. Available at

http://www.newworldencyclopedia.org/entry/Nigerian_Civil_War (Accessed on February 21, 2017)

¹⁷ B.A. Garner, *Black’s Law Dictionary*, (7th edn. West Publishers, USA, 1999) 801

declarations assume the status of customary international law.¹⁸ For the purpose of this paper, the term documents will be employed. Diverse documents such as conventions, treaties, protocols, covenants, constitutions and statutes contain the rights of women and children. Some of the documents have specific provisions for their rights in times of war or armed conflict. In order to understand the purport of some of the aforesaid documents, it is necessary to reproduce part of the relevant provisions as listed below:

3.1 Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Article 8--- Non- Renunciation of Rights

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 24 Measures relating to child welfare

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph. They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

3.2 Protocols Additional to the Geneva Conventions of 12 August 1949

Article 76(1) Protection of Women

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

Article 77(1) Protection of Children

Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

¹⁸

3.3 Convention on the Rights of the Child (CRC)¹⁹

Article 4

State Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 6(2)

State Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 22(1)

State Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with the applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of the applicable rights set forth in this Convention and in any other international human rights or humanitarian instruments to which the said States are Parties.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

Article 38

- (1) States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
- (2) States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

¹⁹ United Nations Convention on the Rights of the Child, 1989 (adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entered into force 2 September 1990)

- (3) States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavor to give priority to those who are oldest.
- (4) In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take appropriate measures to promote physical and psychological recovery and social re-integration of a child of victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 147-Penal sanctions I. General observations

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

3.4. **Declaration on the Protection of Women and Children in Emergency and Armed Conflict.**²⁰

Expressing its deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm...

²⁰ Proclaimed by UN General Assembly resolution 3318 (XXIX) of 14 December 1974

1. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned....

6. Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law.

African Charter on Rights and Welfare of the Child²¹

Article 16: Protection against Child Abuse and Torture

- (1) States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.

Article 22: Armed Conflicts

- (1) States Parties to this Charter shall undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflicts which affect the child.
- (2) States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
- (3) States Parties to this Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situation of internal armed conflicts, tension and strife.

Article 23: Refugee Children

²¹ African Charter on the Rights and Welfare of the Child
(entered into force November 29, 1999) OAU Doc. CAB/LEG/24.9/49 (1990)

- (i) State Parties to the present Charter shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with the applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of the applicable rights set out in this Charter and other international human rights or humanitarian instruments to which the said States are parties.
- (4) The provisions of this Article apply *Mutatis Mutandis* to internally displaced children whether through natural disaster, internal conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 27: Sexual Exploitation

States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent;

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

African Charter on Human and Peoples' Rights²²

Article 18(3)

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa²³

Article 11: Protection of Women in Armed Conflicts

- (i) States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.

²² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

²³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; 2003 (adopted by the Assembly of the Union on July 11, 2003 at Maputo, CAB/LEG/66.6 entered into force Nov. 25, 2005.

- (2) States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
- (3) States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
- (4) States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take direct part in hostilities and that no child is recruited as a soldier.

4. THE ROLE OF THE COURTS IN HUMAN RIGHTS PROTECTION IN WAR OR ARMED CONFLICT.

The structure of governance, from the international sphere to local circles is primarily to ensure orderliness in society in terms of distribution of natural resources and exercise of human rights. Thus, the law sets up the respective structures for law making, law execution and law interpretation.²⁴ All governmental structures or machinery must be set up in such a way as to ensure that the rights of the people in any given society are respected and protected from abuse, failing which there will be anarchy or societal extinction.²⁵ The preamble to the Universal Declaration of Human Rights States as follows: "*Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.*"²⁶ In Nigeria, the Constitutions have generally provided that wherever or whenever the rights of persons have been breached or are likely to be breached, such persons should approach the courts in order to seek protection or redress.²⁷ The courts as interpreters of the law and custodians of judicial powers are usually

²⁴ D. Aibe, *Selected Essays on Nigerian Constitutional Laws* (Idodo Umeh Publishers Limited, Benin City, 1985) pp.1, 32-36.

²⁵ S. Akpan, *Principles of Administrative and Human Rights Law* (Mef (Nigeria) Ltd, Uyo, 2004) p.143

²⁶ United Nations, *Universal Declaration of Human Rights*, (adopted 10 December 1948) UNGA Res 217 A (III)(UDHR)1

²⁷ Example, *The Constitution of the Federal Republic Of Nigeria, 1963*, Section 32; *The Constitution of The Federal Republic of Nigeria, 1979*, Section 42 and *The Constitution Of The Federal Republic of Nigeria, 1999*, Section 46 which all vested the various High Courts with the power or jurisdiction of enforcement of human rights. Note in particular, the *Fundamental Rights Enforcement Procedure Rules*,

given a unique role in the respective constitutions to ensure the protection of human rights without any interference from any other authority.²⁸

Certainly, civil wars and conflicts have another striking characteristic which includes notorious abuse of women and children, sexual violence and most times forced displacement of people. While women and children endure the same trauma as the rest of the warring population, who generally suffer incessant bombings, scarcity of food, epidemics, deliberate mass extermination and death, they seldom suffer war casualties disproportionately. Women and children (especially the adolescent girls) are potential targets of specific and organized forms of abuse and violence; rape, sexual assault, exploitation, forced conscription, imposed labour and other forms of inhumane treatment.²⁹

It has been observed that women as deliberate target groups of contemporary civil wars, face different threats and horrors of violence in civil wars which are similar in manifestations of different shades of rape: mass rape, military sexual slavery, abduction, enforced prostitution and genocidal rape. The perpetrators range from the regular armed forces, militia-men, para-military units, rebel groups, war lords, ultra - nationalist rebels, state security forces and armed opposition groups or terrorists, religious sects, fundamentalist armed groups and in some cases, peacekeeping forces. Rape often considered an integral part of warfare; is primarily targeted at women even though men can also be raped.³⁰ However, though women of all ages may become victims of sexual violence and exploitation in conflict situations but adolescent girls are more vulnerable because they are physically and emotionally less capable of defending themselves.

The International Criminal Court has tried to give redress to victims of abuses during times of war. In Rwanda, for instance, between April 7 and the end of June, 1994, hundreds of displaced civilians sought refuge at the bureau communal. The majority of these displaced civilians were 'Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced

1979 and 2009 respectively which all vested the Federal and State High Courts with exclusive jurisdiction on issues of the violation or alleged violation of fundamental rights in Nigeria.

²⁸ E. Maleni, *The Nigerian Constitutional Law* (3rd Edition. Princeton Publishing Company, Lagos, 2006) p.120

²⁹ D. Martins & T. Chukwudi, *Societal Imbalances And Abuses In War Situations In Nigeria: A Study On The Biafra Crisis*, available at:

<http://www.krepublishers.com/02-Journals/JSS/JSS-16-0-000-000-2008-Web/JSS> (accessed on 3 March, 2017)

³⁰ I. Ogbonna-Nwaogu 'Civil Wars in Africa: A Gender Perspective of the Cost on Women' Available at <http://www.krepublishers.com/02-Journals/JSS/JSS-16-0-000-000-2008-Web/JSS> (Accessed March 3, 2017).

civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.³¹ In Congo, Thomas Lubanga, was found guilty of “war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities” and sentenced to 14 years imprisonment.³² On August 7, 2006, the Pre-Trial Chamber I of International Criminal Court issued an arrest warrant indicting Bosco Ntaganda for “committing war crimes and crimes against humanity in northeastern Congo in 2002 and 2003, including recruiting and using child soldiers, murder, rape and sexual slavery, and persecution.”³³ The case is still before the ICC.³⁴

In Sierra Leone, The former president of Liberia, Charles Taylor was convicted by the Special Court for Sierra Leone of 11 counts of aiding and abetting war crimes and crimes against humanity, including rape and sexual slavery. From the verdict and the summary of the judgment, the trial judges recognized that rape, sexual slavery, and other forms of sexual violence were used as a strategic weapon of warfare, intended to harm not only the direct victims, but their families and whole communities. The crimes were widespread and systematic, committed as part of a strategic campaign to impact the conflict by terrorizing, demoralizing, and destroying the affected civilian populations through sexual violence.³⁵

In the Nigerian Supreme Court case of *Benson V. C.O.P* ³⁶ the court said:

Matters involving the fundamental rights of any person, especially the liberty of the individual, should be given priority over all other matters and heard immediately

³¹ *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, available at:

<http://www.ictj.org/genocide/akayesu-judgment> [accessed 5 March 2017]

³² *The Prosecutor v. Thomas Lubanga Dyilo (“Lubanga Case”)*, ICC-01/04-01/06-2842 14-03-2012, available at: <http://www.iccnij.org/icc-01-04-01-06-2842-14-03-2012> (accessed 4 March 2017)

³³ A. Kuniewicz, *International Criminal Court Prosecutor v. Bosco Ntaganda: Preliminary Ruling* available at: <http://www.ictj.org/genocide/ntaganda-preliminary-ruling> (accessed 4 March 2017)

³⁴ See *The Prosecutor v. Bosco Ntaganda (“Ntaganda Case”)*, ICC-01/04-02/06, available at: <https://www.iccnij.org/cpi.int/drc/ntaganda> accessed 5 March 2017

³⁵ K. Askin, *Charles Taylor Judgment: A Victory for Gender Justice* available at:

<http://www.ictj.org/genocide/taylor-judgment> (accessed 4 March 2017)

³⁶ (2016) All FWLR (PT.840)1255, H.2

they are filed in court. Courts should where possible, ignore procedural formalities when considering such matters and assume all activist role by ruling immediately after hearing arguments, or very soon thereafter. On no account should any person be kept in custody for a day longer than is necessary. The liberty of the individual must be paramount. The judiciary must assume a more robust role in affairs of the fundamental rights of all individual.

On the nature of reliefs an applicant may seek and obtain under Section 46(1) of the Constitution, the Court of Appeal in *D.S.Ltd V. Leo Oleka & Sons Ltd*³⁷ stated:

The reliefs which an applicant may seek and obtain under Section 46(1) of the Constitution of the Federal Republic of Nigeria 1999, and in action commenced under the Fundamental Rights (Enforcement Procedure) Rules must be one of those affecting any of the fundamental rights entrenched in Chapter IV of the Constitution.

5. EXAMINATION OF THE VIOLATION OF RIGHTS OF WOMEN AND CHILDREN DURING THE NIGERIAN CIVIL WAR

Despite the various legal instruments on the protection of the rights of women and children in times of war or armed conflict, they have through the years remained the greatest casualties. However, experience has shown that the myths provided for in those provisions greatly differ from the realities of conflict situations, especially in so-called non-international armed conflicts or civil wars. The same problems existed during the Nigerian Civil War.³⁸

During the Nigerian Civil War of 1967-1970, all the provisions for the protection of human rights were violated by the military. For instance, the soldiers, reportedly, concentrated their attacks on civilian targets which violates one of the fundamental rules of Humanitarian Law applicable in armed conflicts. As earlier stated, the rule is that parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and property; neither the civilian population nor civilian persons shall be the object of attack; attack shall be directed solely against military objectives³⁹. Instead, the massacre of all was alleged to be a general pattern of Nigerian troops whenever they entered a town. Asaba was one of the centres of mass killings. On one occasion, it was reported that the soldiers under the guise of welcoming the civilians.

³⁷ (2016) All FWLR (PT.814)180, 11.3

³⁸ L. Iyoho, *Humanitarian Law: The Experience Of The Nigerian Civil War* (Afahaide & Bros Printing/Publishing Co, Uyo, 2000) p.55

³⁹ Ibid p.88

lured them to an open field and thereafter sprayed them with bullets, killing over 700 males¹⁹.

The conscription of children into the army which is kicked against by various instruments on the protection of children was also of grave concern. Article 38(2) of the *Convention on the Rights of the Child* (CRC) provides thus: "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."

General Obasanjo²⁰ attested to the violation of the above provision when he stated:

...they gave in and surrendered after a dispirited and feeble defence. In appearance they were ragged. A few of them who wore uniform explained that they had been alternating uniform with their own civilian clothes to prolong the life of their uniform. Among them were ...school children of not more than sixteen years of age.

Furthermore, Ben Okafor²¹ reported in his personal account of the Biafran War as follows: "The Biafran government was under-resourced, and the army was using children, known as the Boys' Company, as spies behind federal government lines to gather intelligence... The boys were all about my age - 12 or 13 - and even the captain was only 15."

Article 76(1) of *Protocol Additional to the Geneva Conventions of 12 August 1949*, and relates to the Protection of women in Armed Conflicts. It provides that women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault. Although the Protocol was made after the Nigerian Civil war, it can be seen that women suffered such violations during the Nigerian Civil war and are still suffering same in other parts of Nigeria currently facing armed conflicts.

The Nigerian Federal Army allegedly, carried out indecent assault on women on massive and semi organized forms against the above Article. For example, in the Ngo-Andoni area of present day Rivers state, the first action taken by the Nigerian troops as they took over was to satisfy themselves to the women and adolescent girls of the communities. Ngo-Andoni women and teenage girls were allegedly separated from other members of their

¹⁹ -- "The Violations of Human and Civil Rights of Ndi Igbo in the Federation of Nigeria (1966-1999): A Call for Reparations and Appropriate Restitution. A Petition to the Human Rights Violations Investigating Committee, by Oha-na-Eze (The Apex Organization of the Entire Igbo People of Nigeria) for and on Behalf of the Entire Ndi Igbo, October 1999," available at: <http://www.asabamemorial.org/data/ohanaze-petition.pdf> (accessed 2 March, 2017)

²⁰ O. Obasanjo, *My Command: An Account Of The Nigerian Civil War 1967-1970*, (Heinemann Ibadan, 1999) p.107

²¹ -- "Ben Okafor Remembers the Biafran War" available at: <http://www.bbc.com/news/world-africa-18707808> (accessed 6 March, 2017).

community and taken to a primary school compound where they were notoriously and ruthlessly raped and abused.⁴³

In Onnah-Iket, present day Akwa Ibom state, abduction of women was rampant that people bent on protecting their wives, daughters and sisters had to relocate and live with them in inaccessible swampy parts of the area. In some part of Edo state, empirical evidence was brought on two soldiers of the Federal Army who left the most indelible mark in the memory of the people in the Egor area of Edo state. These soldiers were specialized in waylaying and assaulting girls returning from the market, stream and farms. Sometimes they deliberately shot and killed those who rebuffed their sexual approaches⁴⁴. In Unwana, Afikpo, Ebonyi State, an eye-witness, Samuel Inyang, deposed that in the village square "near the *salga latrine*, I saw five women and eight children all lying down dead... each and every one of the five women and three girls of the eight children had long sticks pushed through their external genitalia."⁴⁵

It has been further noted that, "...one witness (Erif Spiff) to the Onyiuke Tribunal: "Many (Igbo) girls in the training school in Kano were collected and taken to the leper colony to live with the lepers." Many other young girls were abducted from their homes, workplaces and schools and forced into sexual intercourse with sick, demented men."⁴⁶

6. PROBLEMS HINDERING EFFECTIVE PERFORMANCE OF JUDICIAL FUNCTIONS OF COURT REDRESS TO VIOLATIONS DURING TIMES OF WAR OR ARMED CONFLICTS

The problems faced by the courts in relation to conflict situations are peculiar and deserve great attention. At the plenary session of the Thirteenth session of the Assembly of States Parties of the International Criminal Court on Thursday December 11, 2014, Ambassador Anniken Krutnes (Norway) identified the specific challenges regarding the investigation and prosecution of Sexual and Gender Based Crimes as follows:

⁴³ D. Martins & T. Chukwudi, *Societal Imbalances and Abuses in War Situations in Nigeria: A Study on the Biafra Crisis*, available at

<http://www.igbo.org/igbo-people/abuses-in-war-situations-in-nigeria-a-study-on-the-biafra-crisis> (accessed on 3 March, 2017)

⁴⁴ Ibid

⁴⁵ "...The Violations of Human and Civil Rights of Ndi Igbo in the Federation of Nigeria (1966-1999): A Call for Reparations and Appropriate Restitution, A Petition to the Human Rights Violations Investigating Committee, by Oha-na-Eze (The Apex Organization of the Entire Igbo People of Nigeria) for and on Behalf of the Entire Ndi Igbo, October 1999,"

, p15

⁴⁶ Ibid.

In addition to general challenges faced by the Court, such as those related to conducting investigations in conflict situations, investigating Sexual and Gender Based Crimes presents its own specific challenges. These include: - under-reporting or non-reporting of attacks owing to societal, cultural, or religious factors; - stigma attached to the victims; - limited domestic investigations, and the associated lack of readily available evidence; - lack of forensic or other documentary evidence, owing, inter alia, to the passage of time; - inadequate or limited support services at the national level, including regarding assistance and protection for witnesses and victims of these crimes; - lack of, or inadequate, domestic criminalization of Sexual and Gender Based Crimes.⁴⁷

As a follow up on the above, some of the problems or challenges affecting the courts ability to deal with violation of human rights during times of war or armed conflict are as follows:

a) Breakdown of Law and Order

It is impracticable to secure obedience to laws during times of war which is often characterized by rebellion to constituted authorities. During the Nigerian Civil war, the law enforcement agents were often polarized in favour of their places of origin. Thus, when there is a violation of human rights at such times, it becomes difficult to track offenders. The question is who do you safely report to. In some instances, the law enforcement agents themselves are involved in the violation of such rights.

b) Suspension of powers of the judiciary.

During military rule, the judiciary usually suffers reduced capacity, independence and the credibility needed to serve as the last hope of the common man. The most common machinery employed by the military against the judiciary and the rule of law is to oust the jurisdiction of the courts from questions the powers exercised by them and in some cases their jurisdiction over certain cases are totally taken away.⁴⁸ In January 1966, Nigeria witnessed a military *coup d'etat* and an unprecedented situation not within the contemplation of the 1963 Republican Constitution took place. The said Constitution was

⁴⁷ A. Krutnes (Norway), "Concept note by the facilitator for cooperation"

Thirteenth session of the Assembly of States Parties held on 11th December, 2014. Available at: https://asp.ice.epl.int/icedocs/asp_docs/ASP13/ASP13_PD-ConceptNote-COOP-FNG.pdf (accessed 4 March, 2017).

⁴⁸ For instance, Decree No. 45, 1968, ousted the jurisdiction of the Courts from questioning the validity of any Decree. It also excluded the application of fundamental human right provisions in the Constitution and abated all pending proceedings in respect of any Decree. See Sections 1(1),(2),(3) and 2(1) and (2) of the Forfeiture of Assets, Etc. (Validation) Decree, 1968.

suspended and modified by the Constitution (Suspension and Modification) Decree, 1966, which is known as Decree No.1, 1966.

Section 6 of the decree provided as follows:

"The question whether a law made by the Military Governor of a Region with respect to the matter included in the Concurrent Legislative list was made with the consent required by sub-section 2(b) of Section 3 above **shall not be inquired into by any court of law in Nigeria.**" (*Emphasis supplied*)

By virtue of the above Section, the jurisdiction of the court was ousted. However, the potency of the ouster clauses was tested by the courts in several cases, the most outstanding being *Lakanmi and Anor V. Attorney - General, Western State*⁹ where the supremacy of Decrees over the Constitution was examined.

Aka rightly noted:

'During these periods, military dictators disbanded the legislature and ruled by military decrees, as well as suspended many sections of the constitution, including those dealing with fundamental freedoms. With specific reference to the court system, military rulers restricted the judicial review powers of the judiciary, removed judges from office arbitrarily, and operated military tribunals to whom they transferred some of the functions of the regular courts. Given these severe restrictions, the climate of judicial independence during military regimes resembled the colonial period, where the executive powers so loomed wholesale over the political system that even the judiciary operated like an extension of an unchecked executive branch.'¹⁰

c) The support system of the court is largely engaged in stemming crisis.

The courts primarily depend on the Police force for protection of court officials, execution of bench warrants, discipline of contemnors among others. Sadly, during times of war, the law enforcement agents are hardly sufficient to deal with the war crisis. Thus, it becomes difficult for the same law enforcement agencies to be performing court related functions which could be seen as civilian functions.

d) Struggle for Survival

When there is an outburst of violence, the reflex action is usually that of survival. No wonder an adage says that "when the neck is alive, it can be adorned with necklace." The

⁹ (1970) LPELR-SC 58/69; See also *Council of University of Ibadan vs. Adamolekun* (1967) ANLR 225 SC

¹⁰ P. Aka, *Judicial Independence Under Nigeria's Fourth Republic: Problems And Prospects* available at: <http://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1151&context=cwilj#page=24&zoom=110,133,29> (Accessed February 28, 2017)

civilians during the Biafran War were not exempted from this natural recourse. "What is life compared to rights?!" they say: "It is better we run for our lives!" Hence, the populace, including the women and children run for their lives abandoning their rights and leaving the courtrooms empty. Women and children go for life first before rights. Likewise the Lawyers who should sue or institute actions in court.

e) Whistleblowers becoming blowers of Human Rights.

Whistle blowers in this context include the caregivers, social workers from the international communities, press men, the soldiers, Policemen, and other government agents in charge of the refugee camps or warring communities. During the Biafran War, the Nigerian Federal Army allegedly carried out indecent assault on women on massive and semi organized forms. For example, in the Ngo-Andoni area of present day Rivers state, the first action taken by the Nigerian troops as they took over was to satisfy themselves to the women and adolescent girls of the communities. Ngo-Andoni women and teenage girls were allegedly separated from other members of their community and taken to a primary school compound where they were notoriously and ruthlessly raped and abused. In Onnah-Iket, present day Akwa Ibom State, abduction of women was rampant that people bent on protecting their wives, daughters and sisters had to relocate and live with them in inaccessible swampy parts of the area. In some part of Edo state, empirical evidence was brought on two soldiers of the Federal Army who left the most indelible mark in the memory of the people in the Egor area of Edo state. These soldiers were specialized in waylaying and assaulting girls returning from the market, stream and farms. Sometimes they deliberately shot and killed those who rebuffed their sexual approaches⁵¹.

f) Problem of enforcing laws that are yet to be domesticated.

International treaties will continue to be mere documents in countries that are signatories to them if their significance is not felt by the people. It is not enough for a sovereign state to ratify a treaty in the international community framework; it is more important for such a state to adopt it into her domestic legal system, integrate the treaty into her national standard and make it domestic law. Over the decades, Nigeria has ratified several international treaties on environment, violence, child right, trade, et cetera. But, many of these treaties are not operational in the country because they have not been domesticated. Since they are not domesticated, these treaties are not national law and therefore, cannot be employed in defence of cases involving their violations before courts of law in the country nor can they be used for advocacy of rights within the country. Further to this,

⁵¹ D. Martins & T. Chukwudi, *Societal Imbalances and Abuses in War Situations in Nigeria: A Study on the Biafra Crisis*, available at

<http://www.ijerph.com/abstract-view/?id=10000>
(accessed on 3 March, 2017)

violators cannot be held accountable for any international treaty that has not been domesticated in the country⁵².

In October 14, 2013, during the Women's Convention in Nigeria, it was stated that for more than 23 years after the ratification of CEDAW by Nigeria, its provisions still remains a paper tiger and cannot be enforced in any court in Nigeria, as a process of domestication must be undergone according to Section 12 of the 1999 Constitution (as amended) of Nigeria, before it can become part of the nation's local law. For instance, Nigeria owes an obligation to CEDAW Committee to make domestic laws to conform to the provisions of CEDAW apart from periodic progress report⁵³.

g) Apathy of Women Towards Enforcing Their Rights

As Orabueze & Ogbazi observed "Igbo women who are victims or are likely victims of these violations shy away from applying to a State High Court or Federal High Court for the enforcements of their rights."⁵⁴ This actually stems from the fear of stigmatization and ostracization by the society.

h) Lack of knowledge and training on the part of some Judges on rights of women. It is sad, but true that some of the judges have been reported to be ignorant of some of the rights of women and children.⁵⁵

i) Question of safety or immunity of the courts from the armed conflicts

During armed conflicts, the targeted areas for vandalization are mostly government or public buildings which the courtrooms are included in that category. In 2011, Amnesty International reported that Boko Haram⁵⁶ was targeting the police, security forces,

⁵² O. Rotimi, *Domesticating International Treaties In Nigeria*, available at:

<http://punchng.com/domesticating-international-treaties-in-nigeria/> (Accessed March 3, 2017)

⁵³ H. Stiftung, *The Women's Convention in Nigeria*, <https://ng.boell.org/2013/10/14/womens-convention-nigeria> accessed on 2nd March, 2017

⁵⁴ F. Orabueze & I. Ogbazi, *The Inscription of Fundamental Human Rights and the Liberation of the Igbo Woman from Customary and Administrative Burdens*, available at:

<http://www.ajol.info/index.php/ujah/article/viewFile/10102/91914> (accessed March 3, 2017).

⁵⁵ N. Udombana, "Interpreting Rights Globally: Courts and Constitutional Rights in Emerging Democracies" *African Human Rights Law Journal* Vol. 5 No. 1, 2005. P.53 -58

⁵⁶ "Boko Haram" means "Western education is forbidden." See <http://www.bbc.com/news/afghanistan-12111111>

<https://africa.cheek.org/factsheets/factsheet-explaining-nigerias-boko-haram-and-its-violent-insurgency/> accessed March 3, 2017

government officials and buildings.⁵⁷ The Courts are manned by human beings and when a city is bombed, everything goes!

j) **Bottlenecks and Exceptions latent in the relevant laws during times of war.** Sometimes there are bottlenecks at the local level that can frustrate the ventilation of internationally recognized rights.⁵⁸ For example section 11 of the *Geneva Conventions Act, of Nigeria 1960* stated as follows: Institution of proceedings and jurisdiction

- (1) Proceedings for an offence under this Act or under an order made under this Act shall not be instituted except by or on behalf of the Attorney-General of the Federation.
- (2) Notwithstanding anything in any other written law, neither a magistrate's court nor a court-martial convened under any enactment applicable to the members of the armed forces of Nigeria shall have jurisdiction to try any person for an offence under section 3 of this Act or under an order made under section 4 of this Act

EQUIPPING THE JUDICIARY TO PROTECT WOMEN AND CHILDREN IN TIMES OF WAR AND ARMED CONFLICTS

The time of war is a tough time and it needs tough people, tough strategies and tough decisions. The courts have to be toughened to face challenges of administration of justice posed in war situations. Below are some ways of equipping the judiciary for the exercise:

The Courts and all relevant officers should be isolated from conflict zones and made secure from all forms of attack. Some of the violations of the rights of women and children need urgent intervention of the courts even in times of war. Such interventions can hardly occur if the safety of the court system is not guaranteed.

There must be good synergy with the military. The military are the commanders of war. They hold the power of combat and surrender. They have the power to discipline the soldiers under military laws and could frustrate any effort to deal with the soldiers under their command. The military generally discipline their soldiers through the Court Martial system. The court marshal does not generally provide damages for the victims of violation of human rights. Thus, while there must be an effective court martial system the military

⁵⁷ AOAV & NWGAV, *The Violent Road: Nigeria's North East*, available at: <https://aoav.org.uk/2013/the-violent-road-nigeria-north-east/> (accessed 6 March, 2017)

⁵⁸ Article 51 of the 4th Geneva Convention of 1949 enables judges to decline to perform their functions on grounds of conscience. This latitude could be used as a window for unwary judges to shy away from protecting the rights of women based on religious or other forms of discrimination.

and the courts must have a common appreciation of the need for military officials to submit to and keep the laws of war as it relates to the rights of women and children.

There must be effective prosecution of war criminals as a deterrent. There could also be an effective exploration of redress through the International Criminal Court (ICC). As noted in the International Court web-page:

By supporting the Court, the countries that have joined the Rome Statute system have taken a stand against those who, in the past, would have had no one to answer to after committing widespread, systematic international crimes. The ICC calls on all countries to join the fight against impunity, so that perpetrators of such crimes are punished, and to help prevent future occurrences of these crimes.⁵⁹

As a follow up to the above, it is interesting that the doctrine of limitation of time for seeking redress for violations of human rights by war criminals has been abolished at the international level by the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*.⁶⁰

There must be effective press freedom and adequate whistle blowing mechanisms. The press and indeed everyone must be alive to the duty to accurately report cases of alleged violation the rights of women and children to appropriate agencies responsible for monitoring and enforcement of the rights in question.⁶¹

There should be adequate training of lawyers and Judges: Human rights of women and children keep expanding as the ramifications of violation keep occurring in human society. Thus, lawyers and judges must be abreast with the current trends and treat victims

⁵⁹ International Criminal Court, *The Fight Against Impunity Continues*, available at: <https://www.icc-cpi.int/about> (accessed March 4, 2017). Note that Nigeria is one of the member states to the Statute of Rome which establishes the international Criminal Court.

⁶⁰Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968

Entry into force: 11 November 1970, in accordance with article VIII. Article 1 enumerates the war crimes, while Article 2 states: "If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission."

⁶¹ See generally, A. Akpabio, 'Women's Rights in African Constitutions: A Desideratum or a Feminist Utopia?' Ph.D Thesis, University of Uyo, Uyo, Nigeria, 2015, p.254.

with some expert care so that they can appreciate the need to ventilate their grievances through the courts.

There should be proper screening and training of peacekeepers and leaders of refugee camps. It is very important that all the peace keepers and leaders of refugee camps must all be trained to show self- restraint. They must be subjected to great background checks to be certain that they do not have a history of abuse before women and children are left in their care during times of war. Where they are engaged in the violation of the rights of women and children, they should be severely punished.

States must ensure that causes of war are averted by good, equitable and accountable governance. More often than not, if there is political, economic and social equity, it is less likely that people will take arms against themselves in modern society. Political and community leaders all act responsibly, accountably and sensitively to avoid things that will start war. As the saying goes, prevention is better than cure. Governments can help to eradicate or, at least ameliorate the violation of the rights of these vulnerable persons by ensuring the practice of the rule of law in times of peace. The rule of law generally deals with the issues of Supremacy of the law, equality of all persons and authorities before the law and respect for fundamental rights.⁶²

Scholars must live up to the task of conducting researches and educating women and children about their rights during times of war and the need to ensure that the rights are enforced. Accurate accounts of war and its horrendous impact on society can help shape the mindset of the citizenry and the government.

CONCLUSION

One of the greatest challenges in the enforcement of human rights, especially the rights of women and children, is in times of war or armed conflict. Whether the enforcement of the right is to be done in the face of war, or after the war, the victims of the violation of such rights face an Achilles hill. For rights to be successfully enforced, the beneficiary of the rights must know about the rights, must have functional channels for expressing the pain of violation, evidence must be secured, the violator should be accosted, the courts must be functional in all ramifications among other indices.

⁶² See S. Hon. *Constitutional Law and Jurisprudence in Nigeria* (Pearl Publishers, Port Harcourt, 2004) pp.31-35. Where the author in analyzed series of cases, where the courts in Nigeria warned against the consequences of ignoring the rule of law, especially in democratic governance.

This paper has primarily identified some core rights that women and children have during times of war or armed conflict. The paper has demonstrated that during the Nigerian Civil War that occurred between 1967 and 1970, there was gross and unconscionable violation of the rights of women and children with arid impunity. Regrettably, the rights of the women and children were never enforced during the war or after the war. The factors that frustrate and frustrated the enforcement of the rights of these vulnerable persons were also discussed, not just for academic purposes, but as a tool for redressing the plight of these vulnerable persons in other armed conflicts currently occurring in the country and around the world. The paper has advocated certain measures that must be put in place to prevent war in the first place, and should war be inevitable, the paper goes on to show how the courts should be equipped to address the injustices meted out on women and children.