



Review of Legal Framework for the Protection of Education Institutions from Attack in Nigeria



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Executive summary

This review is an attempt by a coalition of stakeholders, led by the Education in Emergencies Working Group Nigeria (EiEWGN), to develop an improved set of laws to provide legal protection against ‘attacks’ on the Nigerian educational establishment. This document relies on the Global Coalition to Protect Education from Attack (GCPEA) definition of an attack on a school, which is as follows: ‘any intentional threat or use of force—carried out for political, military, ideological, sectarian, ethnic, religious, or criminal reasons—against students, educators, and education institutions’.

The most socially visible attacks on education in Nigeria are those that have occurred in the context of the recent conflicts in north-east Nigeria. For the insurgents behind this conflict, the destruction of education is a key objective and a desirable outcome of the hostilities. In addition to such direct and blatant attacks on the Nigerian educational establishment, in recent times the country has also suffered an increase in acts, criminal and otherwise, that undermine and/or disrupt learning. In different parts of Nigeria, students, pupils, and school administrators have been killed, kidnapped or otherwise severely harmed; schools premises have been taken over and occupied by miscreants; and in response to the insurgency in the north-east, the government has had little choice but to permit the military use of educational facilities as temporary barracks.

The first part of this review was an overview of existing global and local laws and protocols that could inform improvements in available policies and legislation. The next step was convening a stakeholder workshop in which the participants engaged in discussion and debate among themselves, in order to propose laws and policies that could be put in place to reduce attacks on educational establishments in Nigeria. A field study was then undertaken to garner the opinions of students and community members, as well as education policymakers and administrators on: a) how they have been affected by attacks on schools, b) how they have responded to such attacks, and c) what laws they think should be put in place to mitigate such attacks. The last stage of the project involved the proposal of laws and policies that could mitigate the incidence of attacks on schools.

Recommendations

In addition to the main recommendations given below, further recommendations, proposals, and suggestions for legal reform are made throughout this report.

Legal

A national bill that will echo the Safe Schools Declaration (SSD) should be proposed. This bill should recognise the difference between coercive and non-coercive forces, and should introduce a classification accordingly. For example, the Nigeria Security and Civil Defence Corps (NSCDC) and non-combatant military roles such as military teachers are non-coercive forces that should be allowed within school premises (but barred from openly carrying arms and wearing uniform), while coercive forces (like the police, who have the power to carry arms, arrest and prosecute), should be kept at a distance from physical structures used for educational purposes.

Nigerian society must begin to see the ethical similarity between schools, hospitals, and religious institutions. There is no valid reason why hospitals and places of worship should be considered as exempt from being subject to military occupation, while schools are not. The penalties for crimes committed within educational institutions should be more severe (with penalties doubled or tripled) than when the same offence is committed in a non-educational environment. Therefore, there should be a change in national policy for an improvement in national attitudes to educational establishments so that they are seen as “no go zones”. For instance, there is already a legal penalty for someone who illegally occupies a building. As a national policy, the same offense should carry a stiffer penalty precisely because it was committed in a school compound. The same thing applies to kidnapping – if someone is kidnapped, there is a penalty, but if a student or a teacher is kidnapped, then the usual penalty should be doubled or at least increased.

This will create a national environment in which educational establishments are understood to be sacrosanct.

International protocols

The international protocols and agreements that the Nigerian government has signed and ratified must be domesticated. The situation in Nigeria is that policies that attract political interest are domesticated faster than others because the domestication of international treaties is a political issue. Since the Federal Ministry of Foreign Affairs (FMFA) and the Federal Ministry of Justice (FMJ) are the custodians of international treaties, they should be contacted by EiEWGN and requested to assist with the domestication of international treaties and protocols. The FMFA must carry other actors affected by international treaties along by making them part of the process. It is the responsibility of the Attorney General of the Federation to submit international treaties for domestication to the Federal Executive Council, which will then forward them to the Senate. Therefore, to avoid unnecessary bureaucratic delays, the FMJ should also be involved.

National Human Rights Commission

Access to basic education is a human right. Without a conducive mental, emotional, and physical environment, delivery of the right to education is undermined. One of the major victories of EiEWGN is that it has been able to persuade the security forces to adhere to some of the minimum SSD guidelines. For instance, military teachers are no longer in possession of arms while teaching. To hasten the achievement of more such progress, the National Human Rights Commission (NHRC) must work closely with EiEWGN on this project.

Implementation of the SSD in Nigeria

Although it is desirable, at this point there is no need to set up an independent federal agency to implement the SSD recommendations. A more effective path will be to create an agency as a division under the Education Support Services Department, whose sphere of operation will cover all academic institutions, and which will include child protection. Later, a new department in the Federal Ministry of Education (FME) could be created. For now, what is required is a department at the FME and desk units at the state level.

Government policy

There should be an increased effort to push federal and state government policies towards serious policy commitment to the reconstruction of damaged educational buildings and replacement of educational assets.

Security

There should be continuous training and capacity building for security and military actors on rules of engagement and a code of conduct as they concern protecting educational establishments. To this end, there should be a thorough review of the security and military actors' code of conduct to ensure it complies with the SSD Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.

Advocacy

There is a need to raise awareness among federal/ state authorities, community leaders, and community members, of the risks associated with the military use of educational infrastructure, including linked violations, such as child recruitment and sexual exploitation and abuse, with the aim of reducing the practice of formally offering the use of such buildings to the military.

Going forward – future work

Due to limited resources, this review was carried out within a 30-day period. In addition to the resulting time limitation, it was also not possible in this time to gain access to all the places where attacks on education have occurred. An adequate study of such a national issue should start out with a national stakeholders' forum that will elicit input from major stakeholders in education policy, security, teaching, refugee management, and internally displaced persons (IDPs). This forum should also include relevant government agencies, local and international development partners, and the presidency. The result of this forum should form the basis of a nation-wide sociological study of the different ways that educational institutions have been undermined and learning disrupted in Nigeria in recent times. Such a study should cover all 36 states of the federation and be robust enough to address the many different dimensions of the problem. The result of such a study would be a formidable tool for advocating for the committed implementation of the SSD.

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Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
CCTV	Closed-circuit television
CRA	Child Rights Act
CRC	Convention on the Rights of the Child
CSO	Civil society organisation
DAWN	Development Agenda for Western Nigeria Commission
DSVRT	Domestic and Sexual Violence Response Team
EiEWGN	Education in Emergencies Working Group Nigeria
FME	Federal Ministry of Education
FMFA	Federal Ministry of Foreign Affairs
FMJ	Federal Ministry of Justice
GCPEA	Global Coalition to Protect Education from Attack
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally displaced person
INGO	International Non-Governmental Organisation
LFN	Laws of the Federation of Nigeria
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NSCDC	Nigeria Security and Civil Defence Corps
PTA	Parent–teacher association
RRS	Rapid Response Squad
SBMC	School-Based Management Committee
SSD	Safe Schools Declaration
SSD Guidelines	Guidelines for Protecting Education from Attack
UBE	Universal Basic Education
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children Education Fund

Introduction

Context

Children’s right to education in Nigeria has been put under threat by the incessant attacks that have taken place against educational establishments. For the purposes of this document, attacks on education are defined as ‘any intentional threat or use of force—carried out for political, military, ideological, sectarian, ethnic, religious, or criminal reasons—against students, educators, and education institutions’ (GCPEA). In Nigeria, both within and outside of environments of armed conflict, school children and staff have been killed, kidnapped, or otherwise severely harmed; school premises have been taken over and occupied by miscreants; and to fight insurgents, the Nigerian Army has sometimes set up makeshift barracks in school premises. These examples, among others, fall under the category of ‘attacks’ on education. This review is an attempt by a coalition of stakeholders, led by EiEWGN, to develop an improved set of laws to provide legal protection against such attacks on the Nigerian educational establishment. The EiEWGN is a coordination structure that serves as a pressure group to facilitate provision of quality education opportunities that meet the physical protection, psychosocial, developmental and cognitive needs of people affected by emergencies. The aim is to enable structured learning to continue in times of acute crisis or long-term instability.

EiEWGN

EiEWGN has been actively working and engaging on processes and procedures to ensure the protection of education in Nigeria. The group has the objective of coordinating pertinent stakeholders in education to provide support during current and future emergencies, plan and implement emergency response strategies, and ensure a structure that provides continued access to quality education in a safe and protective environment while accounting for vulnerable groups.

The SSD Guidelines

The Safe Schools Declaration is a commitment entered into and endorsed by independent states to express their shared interest in ensuring the protection and continuation of education in times of armed conflict and in implementing the SSD Guidelines. The SSD provides Guidelines to ensure the protection of education in times of conflict, which signatories commit themselves to fulfilling. The guidelines are:

-) Educational institutions are protected from being used to advance military efforts.
-) Educational institutions are protected from being occupied or used except for specially identified extenuating circumstances under the Guidelines.
-) Educational institutions should not be used as retribution during combat.
-) There should be consideration and exhaustion of all options or alternatives before attempting to destroy educational institutions under extenuating circumstances.
-) Fighting forces should be restricted from providing security for educational institutions except in extenuating circumstances where alternatives are not feasible.
-) The Guidelines recommend the incorporation, internalising, disseminating, operationalising, and implementing of the Guidelines committed to.

-) In defining and developing the Guidelines for the Protection of Education, it is necessary to ensure that certain requirements, conditions, conditionalities, processes, and procedures are considered and adopted. These Guidelines must ensure that the safety, security, interests, and basic rights of children are upheld, protected, and defended. They must ensure an accountability and responsibility system or structure that measures safety, compliance, and adaptability in its development and implementation.

The Guidelines must ensure that due process is followed, incorporating the views of the stakeholders and actors involved in and impacted by the decisions or recommendations, to ensure ownership, their active engagement and collaboration, implementation, sustainability, and monitoring and evaluation over time, with the goal of ensuring success and improving and enhancing performance. The Guidelines must incorporate adapted global best practice measures and approaches that are preventive and precautionary, interventive, and remedial, and that ensure reforming minimum standards. These minimum standards are in relation to the SSD and Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict. This refers to the recommendations by the Safe Schools Declaration requiring implementing agencies or offices to reform minimum standards or processes necessary for ensuring safety and security of schools and personnel. The expectation is that the domestication of the SSD implementation would address and consider this.

Project aims

-) A review and assessment of the legal framework currently available for the protection of Nigerian educational institutions (primary, secondary, and tertiary educational establishments at the local government, state, and federal levels) in times of armed conflict or other crises.
-) A review of the community response mechanisms that have been used by communities that have been affected by such conflicts and other crises affecting educational establishments.

Methodology

-) An inception workshop to introduce the project to relevant stakeholders.
-) An inventory and analysis of existing legal texts with regards to the protection of all levels (primary, secondary, and tertiary) of educational establishments in Nigeria.
-) An analysis of these documents to assess their adequacy as a means of operationalising the SSD Guidelines.
-) An analysis of the strengths and weaknesses of the Nigerian legal framework in relation to the protection of schools and universities with respect to, or about, the SSD Guidelines.
-) A report on the existence of community protection response mechanisms in the event of attacks against educational establishments.
-) An outline of a preliminary draft of the priority legal texts relating to the protection of schools, colleges, and universities.
-) A draft of a relevant legal framework in support of the operationalisation of the SSD Guidelines and the SSD.
-) A workshop to disseminate the legal review findings.
-) Submission of a final report.

Background and history

Global Background

According to the Education Under Attack 2018 Report¹, attacks on higher education personnel includes ‘targeted killings, abductions, threats, harassment, or violent repression of education-related protests that injured or killed a student or university staff member.’ A report by GCPEA provides six broad categories of attack. These include ‘physical attacks or threats of attacks on schools,’ ‘physical attacks or threats directed at students, teachers, and other education personnel,’ ‘military use of schools and universities,’ ‘child recruitment at, or en-route to or from, school or university,’ ‘sexual violence by armed parties at, or en-route to or from, school or university,’ and ‘attacks on higher education.’

According to the Global Terrorism Database of the University of Maryland², global terror attacks on education rose from about 70 in 1970 to about 400 in 2013. The GCPEA 2018 report reveals that ‘20 or more attacks on education occurred in at least 28 countries around the world between 2013 and 2017’ (GCPEA, 2018). According to the recent UN Report on Protecting Education from Attack, Afghanistan, for instance, recorded 670 attacks on education in 2008, compared with just 241 in 2006 (UNESCO, 2010).

Local (Nigeria) Background

In Nigeria, there have been several recorded attacks on education, including, but not limited to, the following:

-] 2009 – Success International Private School, Maiduguri: six classrooms and a school office destroyed.
-] 2010 – Yerwa Primary School, Maiduguri: 36 classrooms set ablaze.
-] 2012– Government Senior Secondary School, Daura, Yobe: two blocks of six classrooms, principal’s office, books, and certificates set on fire.
-] 2013 – College of Agriculture in Gujba: 40 students killed
-] 2014 – Federal Government College Buni Yadi, Yobe State: 59 students killed
-] 2014 – Government Science Secondary School, Potiskum: 33 students killed
-] 2014 – Government Secondary School, Chibok: 279 girls were abducted, 57 escaped, 103 were released following negotiations, four escaped /were found, and 112 remain in captivity at the time of writing.
-] 2015 – College of Administrative and Business Studies, Potiskum: suicide bomb detonated, students killed and injured.
-] 2018 – Government Girls Science and Technical College, Dapchi: 110 girls abducted. 105 released and two non-school girls
-] The University of Maiduguri has been repeatedly targeted

¹ GCPEA (2018) ‘Education Under Attack 2018’. Education Above All and Columbia University Mailman School of Public Health. Retrieved from www.protectingeducation.org/sites/default/files/documents/eua_2018_full.pdf.

² Ibid.

Non-military attacks on educational institutions in Nigeria

-) 2016 – The Babington Macaulay Junior Seminary School, Ikorodu: three female students abducted and subsequently rescued.
-) 2016 – Nigerian Tulip International College, Ogun State: three female students, three female supervisors, one female cook, and a female teacher kidnapped and released after ransom payments.
-) 2017 – Lagos Model College, Igbonla, Epe: six boys kidnapped and subsequently released.

Non-academic uses of schools in Nigeria

Both the Nigerian Army and other groups have been known to use educational institutions for the purposes of occupation, detention, and insurgency activities. The Nigerian Armed Forces Act, Cap A20 LFN 2004 Sections 215-220 makes provision for billeting by the military of certain buildings or establishments. However, this does not seem to apply to educational institutions. Such military occupation undermines and disrupts education.

In many countries, including Nigeria, educational institutions are also sometimes used for functions different from their original purpose. The Human Rights Commission reports that ‘at least 79 attacks were directly targeted at schools used as polling centres during the 2014 presidential elections in Afghanistan’ (GCPEA, 2018). Similarly, the *Guardian* newspaper reports that ‘around 60 schools were targeted for their use as polling stations during general elections in Bangladesh in 2014’ (GCPEA, 2018). According to the UN in Iraq, ‘23 attacks were carried out on schools used as polling stations during the April 2014 parliamentary elections’. In Nigeria, schools were used as polling units in both the 2011 and 2015 elections. Other uses of educational facilities for non-academic purposes include religious, political, social, and sporting events. These non-academic uses create a conceptual path in the psyche of society that presents educational resources as an exploitable ‘no man’s land’, and thereby inadvertently sets up students and personnel as potential targets.

The results of the foregoing on education in Nigeria

The GCPEA Report on Education under Attack, in its 2018 edition, presents some short-term implications of the foregoing activities that can be summarised as follows:

-) possible loss of life and injury, and even minor and major psychosocial impact on students, staff, and local communities;
-) damage to property, facilities, and resources which potentially limits the flow of resources, supplies, and support from central education authorities to local educational facilities;
-) disruption of academic sessions, learning, and examinations because of closure of schools, which might impact on the further marginalisation a group and access to other forms of support and aid from external sources;
-) hindrance to students’ learning or enrolment and attendance, due to inaccessibility of facilities, and/or distraction, and de-motivation;

-) adverse effects on teaching, including teacher absenteeism and attrition, and other forms of degradation of quality; and
-) increased vulnerability of children and young people to unlawful or voluntary recruitment into armed groups.

The report also notes possible long-term systemic impacts of attacks on education:

-) involuntary brain-drain and loss of academic expertise through the flight of teachers, academics, and education officials;
-) teacher recruitment difficulties due to insecurity, rural–urban migration, etc.,
-) degradation of teacher training institutions and processes;
-) exacerbation of state fragility (fragility can also lead to or facilitate attacks);
-) disruption of education/employment cycles, contributing to creation of a generation of under-educated and frustrated young people with limited access to employment opportunities;
-) degradation of socio-economic investments via dilution of the value of present investments and the halting of new investment resources;
-) silencing of teachers' voices by attacks on trade unionists, which may in turn negatively affect quality;
-) degradation of the quality and relevance of higher education;
-) ideological, cultural, and social effects of banning or restricting education, notably for girls and marginalised groups, creating social, political, and economic isolation and insecurity; and
-) disruptions of the development of new cohorts of graduates and educated citizens, future academics, and human resources for development.

Section conclusion

The implications of the foregoing are that Nigeria should adopt and implement solution options and process methodologies that address the gaps and challenges that have given rise to the problems of insecurity, poor implementation of processes and procedures, weak enforcement systems, and other issues that could undermine and disrupt education in the country. In summary, there is a need for Nigeria to respond to and address the global threats or attacks to education by adopting and adapting measures that fit into and meet its socio-economic, political, environmental, and legal environment or realities.

Review of existing frameworks

Introduction

There are international, regional, and national legal frameworks that seek to guard against activities that could undermine or disrupt education.

International frameworks

Nigeria is a signatory to numerous international legal frameworks that protect education. The Universal Declaration of Human Rights of 1948 (UDHR) is considered the foundation of international human rights law. Article 26 of the UDHR protects the right of every child to education.

The Declaration of Geneva, which was adopted on 26 September 1924, provided a declaration on the Rights of the Child that gave recognition to children after the First World War as recipients of welfare (Kaime, 2009 cited in Isokpan, 2016). This recognition continued further with the United Nations Declaration of the Rights of the Child in 1959. The declaration formed the basis of the Convention on the Rights of the Child (CRC), which was adopted in 1989. Nigeria ratified the CRC in 1991 and domesticated it in 2003. Under the CRC, amongst others, state parties agree to secure the rights of the child to life, survival, development, and non-discrimination, and right to be heard and to have the child's best interest as the primary consideration. Article 38 under this convention makes provisions to secure the rights of children in situations of armed conflict.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted on 19 December 1966 and requires special measures for the protection of children from economic and social exploitation. Under Articles 13 and 14, the state parties set age limits below which paid employment or child labour should be prohibited. This is interpreted under the provision of these articles to include the key feature of educational availability, accessibility, acceptability, and adaptability. Under this article, educational accessibility is further defined with emphasis as education that is available within 'safety and physical reach'.

The Convention Relative to the Protection of Civilian Persons in Times of War was signed in 1949 during the Fourth Geneva Convention and ratified by Nigeria in 1988. The Second Additional Protocol to the Fourth Geneva Convention of 1949 provides for the Protection of Victims of Non-International Armed Conflicts. Signed in June 1977, it makes reception of education, including moral and religious education, one of its fundamental guarantees. The provisions of the Fourth Geneva Convention and its Protocols are customary international law rules that are binding on Nigeria without ratification or accession.

Under Principle 23 of its Guiding Principles, the United Nations Guiding Principles on Internal Displacement of 1998 provide that every human being is guaranteed the right to education and every state authority shall ensure IDPs, especially children, in their territory, have access to free and compulsory education at the primary level.

Regional frameworks

Nigeria has committed to several regional frameworks or protocols that relate to, and ensure protection of, education. They include the following:

The African Charter on Human and Peoples' Rights (the African Charter) was initiated to promote and protect human rights and basic freedoms within the African continent. In 1983, Nigeria ratified and domesticated the African Charter which recognises and gives equal importance to the observance of civic and political rights, as well as economic, social, and cultural rights.

The African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) was domesticated 16 April 1991. Article 11 of the ACRWC guarantees every child the right to education which is of such a nature as to develop the child's personality. Article 22(3) requires the protection of children even in situations of internal armed conflicts, tension, and strife.

The African Youth Charter (Articles 13 and 20) was adopted in 2006, enforced in 2009, and ratified and domesticated by Nigeria in 2009. It refers to the rights, freedoms, and duties of young people in Africa, including the right to education. Article 13 recognises the right of every young person to education of good quality. It refers to multiple forms of education, including non-formal and informal. It also provides for gender equality and the use of African languages in teaching (Article 20).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (the Maputo Protocol) aims to eliminate discrimination against women and to ensure their protection as stipulated in international declarations and conventions. Article 12 (1) was ratified by Nigeria in 2004 and domesticated in 2005. This charter also makes provision for protecting education. It provides for the right to education and training based on the principles of non-discrimination and equal opportunity. It calls for the elimination of all stereotypes and the integration of gender sensitisation at all levels of the education curricula, and refers to protection against sexual harassment.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) (2009), 9(2) (B) was ratified and domesticated by Nigeria in 2012. It binds governments to provide legal protection for the rights and well-being of those forced to flee their homes or countries due to conflict, violence, natural disasters, or human rights abuses. Article 9.2 (b) of the convention refers to maintenance of access to education.

The national framework

Nigeria has initiated and developed several legal frameworks that seek to protect education. These include:

The Constitution of Federal Republic of Nigeria 1999 provides for the general protection of human rights as contained in Chapter IV. Section 18 provides that government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. The government is equally urged to strive to eradicate illiteracy

and, where practicable, provide free, compulsory, and universal primary education and free secondary, university, and adult literacy education.

The Child Rights Act (CRA), enacted in 2003, domesticated the CRC in Nigeria. It is the principal law recognising the rights of children. Section 15 of the CRA obligates the Nigerian government to provide free and compulsory basic education to every child in Nigeria. The act also emphasises the protection of children, including those in situations of armed conflict. However, the CRA has not been translated into an improved child's right protection throughout the federation because while enacted at the national level by the National Assembly, the states must formally adopt the act for domestication as state laws (Iguh, and Nosike, 2011). Thus, the CRA 2003 is only effective in states that have adopted it as a state law.

The Compulsory, Free Universal Basic Education Act of 2004 (the UBE Act) confirms the right to compulsory, free, and universal basic education for every child in Nigeria.

The Nigerian Strategic Framework for Violence Free Education in Nigeria, which was initiated and implemented in 2007, emphasises the protection of children from any forms of violence.

Global best practices

In Argentina, which has led efforts in developing and implementing the SSD, the Higher Education Act, Law No. 24,521, of 20 July 1995, art. 31, states that 'Public forces cannot enter the national universities without prior written order from a competent court or a request from the lawfully constituted university authority.'

India also has a provision which protects against the use of educational facilities for any other use other than that which they were set up for. The Requisitioning and Acquisition of Immovable Property Act, Act No. 30 of 1952, March 14, 1952, art. 3, provides that '[N]o property or part thereof ... exclusively used ... as a school, ... or for the purpose of accommodation of persons connected with the management of ... such school ... shall be requisitioned.'

Ireland's Defence Act, of 13 May 1954, restricts the military from entering or interfering with educational institutions. Art. 270 states that 'Nothing in this section [on military manoeuvres] shall authorize ... the entry on or interference with (except to the extent of using any road) any ... school...[or] ground attached to any ... school...'

The United States of America defines 'protected property' by law to include educational institutions, prohibiting them from being used or attacked during battle. This is provided in the Military Commissions Act of 2006, sec. 3, sec. 950(v)(a)(3)&(b)(10), which states that 'The term "protected property" means property specifically protected by the law of war (such as buildings dedicated to ... education...), if such property is not being used for military purposes or is not otherwise a military objective... Any person ... who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished...'

The Philippines has, as part of its national legislation, under its Special Protection of Children against Abuse, Exploitation and Discrimination Act, a provision which states

that 'Public infrastructure such as schools, hospitals and rural health units shall not be utilized for military purposes such as command posts, barracks, detachments and supply depots.'

South Sudan has issued a military order, which was given by the Office of the Deputy Chief of General Staff for Political Military Operations, Deputy Chief of General Staff for Moral Orientation, on 16 April 2012, stating: 'I am hereby once again repeating my message to all of you about occupation of schools by our army. This act of occupation is deplorable, and it is [in] violation of our law of land. Besides, you are depriving our children from the much-needed education. I hereby order you to urgently evacuate the following schools occupied by the forces under your direct commands. Failure to evacuate the above-mentioned schools will lead to severe disciplinary actions and the act is a serious violation of the law of our land which shall bear regrettable implications on each of you.' (GCPEA, 2018)

In India, in a Supreme Court ruling on 1 September 2010, on the case 'Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, Writ Petition, No. 102', relating to military manuals and doctrine, it was stated: 'Considering international humanitarian law norms, it is considered a clear violation of the principle of distinction and the principle of precaution in attacks, and therefore a serious fault, the fact that a commander occupies or allows the occupation by his troops of public institutions such as education establishments.' The same sentiment is echoed in the Military Order of Columbia by the General Commander of the Military Forces in 6 July 2010: 'It should be ensured that the school buildings and hostels are not allowed to be occupied by the security forces in the future for whatsoever purpose.' (GCPEA, 2018).

Section conclusion

It should be noted at this point that Section 215 of the Armed Forces Act, which was contained in the 2004 Laws of the Federation of Nigeria (LFN) A20, provides for billeting and occupation of schools by the military. The section states that when the section is in operation, a general or field officer commanding an arm or part of the armed forces may issue a billeting requisition requiring the police officer in charge of an area in Nigeria specified in the requisition to provide access to a property.

By exempting hospitals and places of worship but not educational establishments from billeting, the Nigerian state reveals that it does not promote the same attitude towards educational establishments that the foregoing country examples seem to indicate.

An important purpose of the present project is to present arguments and research to support a change in the legislation towards repositioning Nigerian educational establishments as spaces that are regarded as sacrosanct – not to be entered or interfered with, under any circumstances.

Inception workshop

Introduction

A key component of this study was an inception workshop which was held in Abuja on 2 and 3 May 2018. The major purpose was to convene a group of stakeholders to propose and debate possible legal and policy responses to some of the actions and activities that continue to cause harm to the education sector in Nigeria. The event was coordinated by EiEWGN.

Methodology

The design of the event aimed to collate and document proposals and suggestions regarding laws and policies from stakeholders within the education value chain. The workshop brought together stakeholders from education (legal and policy), the military (policy, combat, and law), local non-governmental organisations (NGOs) and civil society organisations (CSOs), international NGOs (INGOs), and the media.

Proceedings

Day 1 – Groups were formed of at least one person from each of the aforementioned sectors. Each group was presented with a set of questions on suggested policies and laws that could protect education from actions that could be detrimental to learning, within and outside of situations of armed conflict.

Day 2 – Groups were again formed, but this time each group was made up of stakeholders from within the same sector. A summary of the policies and laws that were developed from the previous day was presented to each sectoral group for consideration and debate.

Day 1

In the first session Dr Judith Giwa-Amu introduced EiEWGN, after which Ms Abiola Sanusi made a presentation in which she emphasised the need to raise awareness about the SSD. She called for a comprehensive legal framework to restore the idea of schools as safe zones. An important issue that came up during the question and answer session was the distinction between the combat and non-combat roles of the military. In session two, Dr Ndidi Nwaneri provided the methodology and implementation strategy of the study. Next, Dr Abiola Afolabi critically analysed the Nigerian legal and policy environment with respect to protecting education from attack.

Breakout group discussions

Members of Group 1 suggested that alternative spaces be provided by the government for the military to camp some distance from school premises. The group highlighted the need for advocacy visits to military and other leaders on the issue of the use of school premises in situations of armed conflict. The group noted that Nigeria does not seem to have a policy position with regard to the use of schools in circumstances of armed conflict.

Group 2 suggested some legislation that could guide the military occupation of schools, like limiting the duration of occupation and locating the military some specified distance away from school premises. They added that to dissuade such actions, policies and principles like international humanitarian law, SSD etc., must guide such occupations; implementation of a policy of non-occupation of schools by military personnel; requiring the physical security of schools like perimeter fencing, gates, and security posts some distance from schools, muster points, exit routes, etc.; implementation of security situation reviews and adoption of a policy of non-allocation of schools as military bases of first resort; as well as a policy requiring school authorities to submit security plans for schools. Group 2 called for a review of the Armed Forces Act, the UBE Act, and the CRA. They also called for a national law that addresses attacks on educational establishments and increased punitive measures, periodic review and assessment of security procedures, continuous capacity building and awareness, and prohibition of openly carrying arms within educational establishments. Lastly, the need to fast track the passage of the National Policy on IDPs was raised.

Group 3 called for global best practices (such as are practised in Argentina, the USA, and India) to be adopted and adapted to the Nigerian environment; modification of the Armed Forces Act Section 215-220 on billeting; existing policies like mandatory perimeter fencing of schools to be implemented; and for there to be mandatory training of pupils/students on emergency response and preparedness. The group also identified the challenge that the SSD is currently not domiciled in a relevant ministry.

Group 4 argued against any military occupation of schools, or the use of schools as IDP camps. They called for tougher sanctions for crimes committed in educational institutions and effective implementation of present and future laws governing such crimes.

Group 5 cited Nepal and Sudan as countries that have required as a part of peace agreements that all military use of schools must be refrained from. To replicate such a policy in Nigeria, they suggested the following: prohibit the use of schools for non-educational purposes (only non-combatant military forces should be allowed into school premises); alternative (for instance mobile) infrastructure should be provided for the military; there should be a national enactment of child protection and safe guarding policies as has been implemented in Lagos State; the Armed Forces Act should be amended; a task force should be set up to ensure the enforcement of these laws; and there should be domestication and adaptation of policies and international laws and protocols.

Day 2

An overview of the previous day was presented by Ms Abiola Sanusi, followed by a technical session titled: The Right to Education – Use of Educational Institutions in Armed Conflicts and Crises by Armed Forces and Armed Groups.

In the first presentation of the technical session, Maher Farea stated that the Monitoring and Reporting Mechanism reduces grave violations against children (particularly in situations of armed conflict) by systematically gathering accurate, timely, objective, and reliable information on such violations. His presentation was followed by a panel discussion by Barr. Yakubu Esther Lade (Acc) of the Nigeria Security and Civil Defense Corps, Col. Ajala of the Nigerian Army, Retired Major General Obi, Civil Military Adviser,

of the UN Office for the Coordination of Humanitarian Affairs. The panel considered the NSCDC as an alternative to military occupation. They also pointed out that the military occupies schools under very strict military guidelines and only as a last resort.

Breakout group discussions

The breakout sessions were sector-specific. Below is a summary of their conclusions.

Policy group

Nigeria should provide incentives like insurance, hazard allowance, and higher salaries to teachers and other personnel who must work in environments that are under or have recently experienced armed conflict. Nigeria should implement SSD in all educational establishments. Nigeria should create a special legal category to increase the penalties for crimes committed in schools.

CSOs and INGOs group

CSOs and INGOs could partner with government and local communities and the security agencies to create a unified response mechanism, as well as coordinating and implementing monitoring mechanisms.

Education group

On ways that education facilities can protect schools and students from attacks, the group identified several security, early warning, and disaster management measures that could be institutionalised.

Security group

The group raised the following ideas: profiling, patrol, blocking forces, anti-IED measures, etc.; security education, community policing, securing the routes to educational establishments, review of policies and rules of engagement, strict enforcement of the policy that educational institutions not be used except in extreme cases and without disrupting learning, and tents could be used as an alternative to school premises.

Legal group

The group called for the adoption of global best practices and recommended expanding the provision of Section 216 (1)(c) to include educational institutions, and replication in the acts and enabling laws of other armed forces (e.g. Police Act, Civil Defence Act, etc). They took the middle ground based on the doctrine of necessity: occupation is permitted when there are no other options and for a limited period. They suggested that Nigeria adopt a strict prohibition of the use of educational institutions by fighting forces, and that such institutions should never be coerced into vacating their premises. At the end of hostilities, educational facilities should be renovated, de-militarised, vacated, and reopened for educational purposes. The military may provide perimeter security at a certain distance, to be determined by experts. Protection inside the physical structures used for learning should be provided by trained civilian personnel who may carry concealed arms. All applicable principles of SSD should also be mainstreamed into all relevant manuals, rules of engagement, etc.

Conclusions and recommendations

The workshop concluded by making a general commitment to the following recommendations:

-) Given the current realities in Nigeria, a complete ban on military occupation might not be entirely feasible at this time. However, the implementation, for example, of soldier deployment should be better managed.
-) There is a need to separate and make a clear distinction between military occupation and military services – especially in situations where there has been a breakdown of law and order.
-) Safety and security measures must be put in place by stakeholders affected and impacted by enemy and criminal attacks on education to minimise the outcomes resulting from such incidences.
-) Minimum national safety, security, and operational standards must be adapted and strictly enforced.
-) On the issue of the appropriateness of national responses to actions that undermine or disrupt learning, there is a need for improved and enhanced sensitisation and communication of plans, processes, and procedures, and there is a need for intent to comply with international standards and best practices amongst stakeholders in the value chain.

Community response mechanisms – field research report

Introduction

The research team sampled six states in Nigeria: Adamawa, Yobe, and Borno in the north-eastern part of Nigeria, and Lagos Ogun and Oyo in the south-west. Data were collected through interviews with children/ students, community leaders, educational institution administrators/ key informants, and security personnel.

Methodology

This qualitative study employed semi-structured interviews and questionnaires as primary tools for data collection. This study focuses on six states (three in the north-east and three in the south-west) that have experienced at least two attacks on educational establishments, whether by insurgents, militants, herdsmen, or unknown assailants. The study sample comprises four categories of people: a) students/undergraduates; b) parent–teacher associations (PTAs), School-Based Management Committees (SBMCs), educational institutions; c) community leaders/key informants; and d) security agencies or bodies. There were 25 participants from the north-east (six students, six parents, six educators, six community leaders, and one key informant), three key informants from the south-west, and two military informants in Abuja. Questionnaires were administered to educational policy informants in Lagos, Ogun, and Oyo states. Cross River and Osun states were earmarked but were not reachable within the period allotted for the study. A total of 30 people were interviewed and surveyed. In the following text, initials are used to protect the identities of research participants. The interview and questionnaire checklist were organised around the following themes: a) community response mechanisms; b) law(s) to address the problems of protection of schools from attacks; and c) military use of schools or institutions during conflict.

Analysis by state

Adamawa

Study sample: Six people from Hong (two children/students, one PTA/ SBMC from educational institutions, one education administrator and two community leaders).

The community responds to attacks on schools by withdrawing their children but where feasible they also set up unarmed security to watch over educational facilities. They want the government to make laws for compulsory school attendance whether there are conflicts or not, and the death penalty for abducting school children. They are opposed to the use of schools by the military during conflict and suggested the use of civil centres instead. They were also open to the idea of criminalising the act of the military use of schools during conflict.

Borno

Study Sample: Nine people: four each from Kabar Maila and Lamisula, and one from Maiduguri (two children/students, two PTA/SBMC from educational institutions, four community leaders, and one key informant).

As a response to armed attacks, schools are shut, and students are withdrawn. Some communities organise extra-mural classes at home for the children, to avoid unnecessary movement. The community forms vigilante groups, the Civilian Joint Task Force (Kato da gora), to protect the community from further attacks. They want laws to implement tight security measures in schools and, considering that a remote cause of insurgency is ignorance, they want education to be made compulsory for everyone. They would also like the enactment of the death penalty for the abduction of school children. They were not averse to the military use of schools, if they do not violate human rights. However, they suggested that the military be replaced with the Civilian Joint Task Force.

Yobe

Study Sample: 10 people: four each from Anguwan Karo and Gwange areas, one from Potiskum, and one from Buni Yadi (two children/students, one PTA/SBMC from educational institutions, three education administrators, two community leaders, and two key informants).

People respond to attacks on educational facilities by school closure; the provision of vocational training from the military and other volunteers at home or in specialised locations as an alternative to going to school; and the setting up of a vigilante group and Civilian Joint Task Force (operation gma yaki) to safeguard the life and property of the community. They heed the advice to plant crops that will not provide hiding spaces for insurgents. They want laws that would make education free and compulsory for all, to address illiteracy, which they say is the root cause of insurgency. They also want criminals who abduct children from schools to face stiffer penalties. They are not averse to the use of schools and educational institutions by the military since they are there to protect the people. However, military personnel who infringe on the rights of the citizens should face the full wrath of the law.

Lagos

Type of attacks experienced: kidnapping, hoodlum attacks, cultism, child abuse.

In response, the community inaugurates search parties at the community level through vigilante groups. Communities also hold meetings and use public protests and campaigns like the school safety awareness campaign to raise awareness of, and take a stance against, such actions. In Lagos, there are state-enforced measures in place to help facilitate responses to such attacks, like the Rapid Response Squad (RRS), toll-free telephone lines, the Domestic and Sexual Violence Response Team (DSVRT), and capital punishment for the offenders. The south-western states in Nigeria also formally collaborate to resolve security issues through agencies like the Development Agenda for Western Nigeria (DAWN <http://dawncommission.org>). The people desire proper implementation of already existing laws, such as the law against street hawking; guidelines for the establishment of schools; a sexual court to address the prosecution of

cases of sexual abuse; and laws against child trafficking and child labour. In addition, they want life sentences for abductions. Lagos is totally against the prolonged use of schools by the military and believes offenders should be court-marshalled.

Oyo

Type/number of attacks experienced: kidnapping, rape, break-in and vandalism of school properties by hoodlums and drug addicts.

In response to school attacks, reports are lodged with law enforcement agents, there is raising of awareness of school security risks, school safety awareness campaigns are launched and there are calls for perimeter fencing to be erected in all schools. In addition to the DAWN Commission, Oyo State has proposed a school safety enforcement policy, in collaboration with law enforcement agents. Oyo is demanding the death penalty as punishment for kidnapping, and mandatory capacity building on school safety and child protection. Also, severe punishments are demanded for vandals and hoodlums invading schools. Schools must be declared as 'no thoroughfares' zones. Security agents must dedicate a team to collaborate with schools on security issues, create an emergency response mechanism, and enforce a law against long-term military occupation of schools. According to the informants, infractions of any of the foregoing should attract strict and high penal consequences for offenders

Ogun

Type/number of attacks experienced: kidnapping by suspected herdsmen and suspected lunatics.

Such attacks have led to an increase in community-based security, appropriate prohibition signs and fencing off of the school premises, and the launch of school safety awareness campaigns. In addition to the activities of the DAWN initiative, the state has initiated a 'see something, say something' media campaign. They want government to review the laws governing the operational framework for the education sector to consolidate and centralise control in the Ministry of Education (the current situation, in which the State Universal Basic Education Board and State Teaching Service Commission act almost independently of the Ministry, is considered to lead to the exploitation of responsibility gaps and buck-passing). Also, collection and warehousing of education data is key: this will require legislation to ensure implementation. Ogun sees the military use of schools as an exigency of wartime circumstances. However, schools should be the last alternative and, where used, alternative accommodation should be made for the schooling, and the school should not be allowed to function in that vacated location for a minimum of three years.

Analysis by kinds of persons interviewed

Community leaders

In cases of attacks on schools, while some members of the community migrated to other locations, community leaders' first response was to stop sending their children to school and to initiate vigilante policing. On desired legislation to better protect schools, their

preferences ranged from life imprisonment to death by hanging. On military use of the premises of educational institutions during conflict, they said there should be a law against military occupation of schools for a prolonged period, with strict sanctions imposed for violations.

Children/students

According to children/students, the government should develop and implement an accelerated learning programme in support of children whose access to schooling has been disrupted by conflict – alternative arrangements should be made to advance learning, parents/teachers could give lessons to children. Free bus services should be available to take students to and from school under tight security. The rural schools should not be neglected: security men should be drafted in to secure risky areas.

They do not think their schools/ institutions have any strategy in place to respond to attacks, except for a few independent security agents and vigilantes who are employed by some private schools. However, they acknowledge the existence of a response strategy of alerting security agencies of any suspicious persons or things.

They want laws that will secure schools and ensure free compulsory education for all. They believe that strictly imposing the death penalty could have saved their educational establishments from attack.

They are divided on the issue of the military use of schools or institutions during conflict. Some see it as a welcome rescue intervention while others see the military as a necessary evil. All agree that alternatives should be considered as soon as hostilities are over.

Educational institutions

In the north-eastern states, educational administrators and key informants use at least some of the following strategies: unarmed security men (employed by the FME), who are on duty 24 hours a day, as well as vigilantes who reinforce their efforts. Communities are offered advice by the police and civil defence on assistance they can render to one another during attacks – raise an alarm by either ringing the bell or whistling or informing security personnel. Different codes exist to instruct the students to run to town or hide within neighbouring houses. The military are also present in schools from 6 pm to 6 am. On desired legislation, educational administrators suggest a minimum of 30 years imprisonment with hard labour, life imprisonment, or death by hanging for all perpetrators.

Whereas south-western participants are averse to military use of educational establishments and think there should be a law against it, the majority of the informants in the north-east are not averse to the use of schools or institutions as a response to armed conflicts.

Security agencies

According to the security agencies, military occupation of educational establishments occurs only when the situation demands, and educational infrastructure is only used

pending the availability of a viable alternatives. In addition, particularly in the north-east, due to the recent hostilities, entire neighbourhoods, including the educational establishments, are no longer safe for use as a place of learning. They also reiterated the need to differentiate between the combat and non-combat roles of military personnel, pointing out that their role in educational facilities is usually non-combat. The military are also not empowered to arbitrarily occupy educational institutions during actions to protect a community. They therefore identified other ways that communities could be protected against attack without military occupation of educational institutions. For instance, there is a need to have minimum standards: physical security, such as defence/fencing, CCTV cameras in all schools in all states of the federation; proper intelligence gathering, profiling of community members; patrolling; blocking forces; community policing; stop and search exercises; small drones that could be deployed for surveillance; and the securing of routes to schools/institutions.

Findings

The following are the most common community protection response mechanisms or strategies, some of which are unique to certain states, as indicated:

-) engagement of hunters and vigilante groups, such as the Civilian Joint Task Force (Kato da gora) in Borno, and operation gma yaki in Yobe);
-) withdrawing of children from schools/institutions;
-) alerting security personnel;
-) setting up of a school in the village square;
-) tightening checks on people entering schools – ‘stop and search’;
-) toll-free telephone lines to report attacks (Lagos);
-) launch of school safety awareness campaign (south-western states);
-) reporting of strange (new) faces/movement in the community;
-) RRS (Lagos);
-) the DAWN Commission (south-western states);
-) DSVRT (Lagos);
-) the Alma Mata initiative (Ogun);
-) early warnings (code) – ringing the bell, or whistling to alert security; and
-) planting crops that will not provide hiding places for insurgents (Yobe).

Features of desired regulations

The enactment of a law to provide for compulsory attendance even in the face of conflict or/and armed security personnel. This refers to developing legislature and having an enforcement mechanism or structure to ensure that compulsory attendance and continuance of education services takes place even during times of armed conflict and/or presence of military personnel. The review, however, notes that the law currently only provides for the right to and access to compulsory education up to Primary 6.

95% of the study population wants to see laws that impose and strictly enforce the death penalty for perpetrators. Their suggestions include:

-) 30 years of imprisonment with hard labour;
-) 50 years of imprisonment;
-) life imprisonment; and
-) death by hanging.

Section conclusion

The incessant attacks against educational establishments have caused communities to develop protective mechanisms, as well as creating a desire for the enactment of preventive laws to deter perpetrators from attacking school/institutions. The suggestions of severe and definitive laws to deter perpetrators from attacking their school and institutions reveal the extent to which people are prepared to go to put an end to this menace. The apparent disparity between the response strategies of the north-eastern states and south-western states sampled is of interest and demands further research. For instance, unlike the south-western states, this study did not find any coordinated collaboration by the north-eastern states on common response mechanism(s).

Proposed legal framework

Introduction

The focus of this chapter is to propose a legal framework for safer schools and that will restrict the use of educational institutions for military purposes in order to limit the pejorative impact of the military use of educational institutions on the enjoyment of the right to education in Nigeria. While focusing on the legal framework, social and policy frameworks will also be referred to and proposed as appropriate for a nuanced and all-encompassing approach.

Proposed legal component 1

Functioning schools are not under any circumstances to be subject to requisition and the armed forces are to refrain from the use of force or inducement to coerce or persuade school administrators to abandon or evacuate schools, except where there is a present and persistent danger to the security and the safety of staff and students cannot otherwise be dealt with. The armed forces are obliged to protect school physical structures, staff, and students through observation posts and patrol patterns, without creating a military presence inside schools or within weapons range of the schools. Non-functioning or abandoned schools can only be used for military purposes in self-defence or in other exceptional circumstances and for the shortest possible time. If any damage occurs during the period of use, the armed forces are obliged to remedy the damage and promptly return schools to their civilian status as soon as possible. The armed forces are also to pay compensation to the administrators of educational institutions for use. The compensation payable is to be quite apart from any cost of remediation or damages. The armed forces should also be legally constrained not to attack educational institutions that are being used for military objectives by armed non-state actors without a prior show of force or warning to the other party to desist from such use.

Rationale

The proposals above agree with Principles 1, 2, and 4 of the SSD Guidelines. The first principle of the Guidelines outlaws the use of functioning schools by parties to armed conflicts. The second allows the use of abandoned or evacuated schools for military purposes only in exceptional circumstances and for the shortest possible time, while the fourth principle outlaws the targeting of schools because they are being used for military purposes by rival armed opponents and requires warning and an opportunity to cease military use of schools before attacks are carried out against educational facilities. The rationale for the adoption of the relevant Principles of the Guidelines is twofold: first, Nigeria is one of the countries that has endorsed the SSD Guidelines through its endorsement of the SSD. Nigeria is, by the endorsement, obliged to transform the Guidelines into laws and military doctrines.³ Second, the SSD Guidelines represent an example of best practice in dealing with the military use of educational facilities in armed conflict and hold a promise for ensuring the safety and security of schools in times of armed conflict, if adhered to.

³ Principle 6 of the SSD Guidelines.

Justification

Global best practice allows limited use of educational facilities in exceptional circumstances and when there are no alternatives. A total ban may compromise the ability of the Nigerian Armed Forces to deploy on necessary security operations.

Proposed legal component 2

Attacks on educational facilities, staff, and students amount to war crimes under international law; there is therefore a need to reflect the serious nature of attacks against schools as international crimes under the Rome Statute. Consequently, it is proposed that attacks on educational facilities, staff, and students be explicitly defined as a war crime, with a very severe penalty (death or very long prison sentences) in the proposed amendments to the Armed Forces Act.⁴ Military commanders are to be legally obliged to ensure the observance of the law by their troops. Non-state armed individuals and groups that breach the provisions of the Act are to be triable under the Act in a military court. Attacks on educational facilities, staff, and students should also be included in the Terrorism (Prevention) Act, 2011, as a terrorist act.

Rationale

There is a need to specifically criminalise, with severe penalties, and to prosecute and punish those found culpable of attacks on educational facilities, students, and staff in order to properly underline the seriousness of such acts even though they might already amount to crimes under existing penal laws. The main rationale for specific definition of these acts as war crimes with a heavy penalty is to bring clarity to the matter. If there is no clarity or specificity to the offences, they will continue to be subsumed under the general criminal law and this will continue to be unhelpful to the prosecutors, the victims, and the objective of deterrence, which such criminalisation should ordinarily serve.⁵

Justification

The justifications for re-defining attacks against educational facilities as war crimes are as follows. One, prosecuting the attacks in terms of a domestic equivalent will fail to capture the nature and gravity of the offence. Two, not specifically defining the offences may hamper their prosecution as prosecutors may not be able to properly frame the offence in terms of domestic laws. Three, governments are oftentimes unwilling to prosecute their own officials and soldiers.⁶ Thus, defining these offences in terms of domestic laws will mean the offences will not be prosecuted when committed by government soldiers and officials. Defining the offences in terms of international criminal law, on the other hand, will invoke the universal jurisdiction of other countries, with the possibility that if culpable government soldiers and officials are not prosecuted domestically, they may be prosecuted outside of the jurisdiction at any time.

⁴ The definition may borrow from the explicit definition in Argentina's military manual, which include attacks on educational facilities as war crimes in the following terms: '... intentionally directing attacks against buildings dedicated to ...education... provided they are not military objectives.' GCPEA *The Safe School Declaration: A framework for action* (2015) 32 (fn omitted).

⁵ *Ibid.*, at 130.

⁶ *Ibid.*, at 131.

Proposed legal component 3

There is a need to subject the use of schools by the military to the authorisation of school administrators. It is proposed that amendment be made to enabling laws or subsidiary legislation be made to make it mandatory for the military to require and obtain the authorisation of school administrators before they use schools for military purposes.

Rationale

This will ensure school administrators are involved and have a say on whether schools under their authority get to be used for military purposes. They are in the best position to make such a judgement, being the ones on the ground and familiar with the terrain and local conditions.

Justification

Requiring the authorisation and inputs of school administrators democratises the requisition process and ensures that military authorities do not act arbitrarily or capriciously. The approach will also furnish the necessary opportunities for the military to engage with school administrators.

Proposed legal component 4

The government needs to domesticate the necessary treaties and protocols, which will aid safer school initiatives in Nigeria. The most relevant in this regard are the SSD Guidelines, which are a legal obligation of the Nigerian government in accordance with Principle 6 of the Guidelines and the ICESCR.

Rationale

The SSD Guidelines are explicit and detailed with regard to the protection of educational facilities from military use, while the ICESCR is the umbrella treaty for the right to education. Both treaties, if domesticated, will serve as solid foundation upon which the protection of schools in Nigeria can be based.

Justification

There is a paucity of school protection-specific legislation in Nigeria. The domestication of these treaties, among others, will go a long way to bridging that gap and to providing a solid foundation upon which to formulate appropriate policies.

Proposed policy component 1

The government needs to develop a policy of negotiating codes of conduct with armed non-state actors to protect schools. In such negotiations, the government must extract commitments from armed non-state actors to protect schools and not to use educational facilities for military objectives, and to warn the government before attacking educational facilities they consider legitimate military targets.

Rationale

Extracting commitments to protect schools from armed non-state actors is an example of global best practice: it was utilised in 2006 by Nepal to extract commitments from the Maoist guerrilla group to protect schools and not to use educational facilities in their area of operations for military purposes.⁷

Justification

The policy of extracting commitments from armed non-state actors to protect schools has the added advantage of providing a basis for holding armed non-state actors accountable for war crimes should they violate the agreements to protect schools and it may also work to foster dialogues that may lead to enduring peace since force is not always the answer or solution to disputes.

Proposed policy component 2

There is a need for human rights and international humanitarian law education and training for personnel of the Nigerian Armed Forces (and other pertinent stakeholders). While there may be some education or training on international humanitarian law for some categories of officers, the existence of education and training on human rights across the board is doubtful.

Rationale

While international humanitarian law and human rights law have common grounds, they are different. It is necessary for troops to understand and appreciate the scope and extent of their many aspects and nuances in relation to their military operations vis-à-vis the general populace and even the armed non-state actors they may be confronting. The knowledge acquired during such training may dampen the audacity and impunity of some of the troops in the theatre of operations and may make for more human rights-compliant operations, to the benefit of all.

Justification

Knowledge, they say is, power: lack of humanitarian and human rights laws awareness and knowledge may be responsible for most soldiers' misconduct, abuse, impunity, and human rights violations in theatres of operation across the country.

Proposed policy component 3

Finally, there is a need for the relevant ministries and departments to adopt conflict-sensitive education to minimise conflict and to lead to the promotion and maintenance of peace. The adoption of conflict-sensitive language and curricula is therefore proposed here.

⁷ Human Rights Watch (2016) 'They Set the Classrooms on Fire: Attacks on Education in Northeast Nigeria', USA: Human Rights Watch.

Rationale

The rationale for the adoption of this policy is that conflict-sensitive education is a veritable tool for the promotion and maintenance of peace.

Justification

The worsening conflict situation in Nigeria justifies the adoption of conflict-sensitive educational programmes and initiatives in Nigeria. The adoption of conflict-sensitive language and curricula, if properly implemented, will douse the raging fire of conflicts and discontent in the country.

Implementation strategy

Proposed legal component 1 can be effected through an amendment to the Armed Forces Act currently pending before the National Assembly. Proposed legal component 2 can be implemented through amendments to the Armed Forces Act and the Terrorism (Prevention) Act 2011. Proposed legal component 3 can be effected through amendments to schools enabling laws or through regulations or orders made pursuant to those enabling laws by appropriate authorities. Proposed legal component 4 is to be effected by the National Assembly in the exercise of its powers under section 12 of the Constitution of Nigeria, 1999. Proposed policy component 1 can be effected through the necessary policy shift by the necessary department of the Federal Government of Nigeria. Proposed policy component 2 can be effected through policy shifts and necessary action of the education department of the military. Proposed policy component 3 can be effected through a necessary policy initiative of the Ministry of Education.

Section conclusion

This section of the study has reviewed and presented the different legal and policy options and opportunities available within Nigeria's peculiar constraints and in the light of global best practice to ensure safer schools and restrict the use of schools for military purposes in Nigeria.

Report end

Report overview

The most socially visible attacks on education in Nigeria are those that have occurred in the context of the recent conflicts in north-eastern Nigeria. To the insurgents involved in this conflict, the destruction of education is a key objective and a desirable outcome of hostilities. In addition to such direct and blatant attacks on the Nigerian educational establishment, in recent times the country has also suffered an increase in acts, criminal and otherwise, that undermine and/or disrupt learning. In different parts of Nigeria, students, pupils, and school administrators have been killed, kidnapped, or otherwise severely harmed; schools premises have been taken over and occupied by miscreants; and in response to the insurgency in the north-east, the government has had little choice but to permit the military use of educational facilities as temporary barracks.

Even in the absence of attacks on education, the Nigerian education sector is already severely strained, as evidenced by embarrassingly low literacy rates. For this sector to be further challenged by actions that undermine or disrupt the delivery of educational services elevates the problem to crisis levels. This report was commissioned by EiEWGN, in the context of increasing criminal acts and legitimate military responses to insurgencies that undermine and disrupt learning or otherwise negatively impact students, staff, and educational infrastructure in Nigeria. This is a timely and important project because it is now imperative to seek an adequate response to mitigate the situation.

The first part of this project was an overview of existing global and local laws and protocols that could inform improvements in available policies and legislation. The next step was convening a stakeholder workshop, in which the participants discussed and debated among themselves, so as to propose laws and policies that could be put in place to reduce attacks on educational establishments in Nigeria. A field study was then undertaken to garner the opinions of students and community members, as well as education policymakers and administrators, on: a) how they have been affected by attacks on schools; b) how they have responded to such attacks; and c) what laws they think should be put in place to mitigate such attacks. The last stage of the project was the proposal of laws and policies that could mitigate the incidence of attacks on schools.

Report conclusion: Recommendations

Legal

Besides the legal recommendations listed above, a national bill that will echo the SSD should be proposed. This bill must recognise the difference between coercive and non-coercive forces, and should introduce a classification accordingly. For example, the NSCDC are non-coercive forces that should be allowed within school premises (though barred from openly carrying arms), while coercive forces (like the police, who have the power to carry arms, arrest, and prosecute), should be placed at a distance from the physical structures used for educational purposes.

We must begin to see the ethical similarity between schools, hospitals, and religious institutions. There is no valid reason why hospitals and places of worship are considered as exempt from military occupation, while schools are not. The penalties for crimes committed within educational institutions should be more severe (with penalties doubled or tripled) than when the same offence is committed in a non-educational environment. This is so as to create a national environment in which educational establishments are understood to be sacrosanct.

International protocols

The international protocols and agreements that the Nigerian government has signed and ratified must be domesticated. The situation in Nigeria is that policies that attract political interest are domesticated faster than others because the domestication of international treaties is a political issue. Since the FMFA and the FMJ are the custodians of international treaties, they should be contacted and requested by EiEWGN to assist with the domestication of international treaties and protocols. The FMFA must carry other actors affected by international treaties along by making them part of the process. It is the responsibility of the Attorney General of the Federation to submit international treaties for domestication to the Federal Executive Council, which then forwards them to the Senate. Therefore, to avoid unnecessary bureaucratic delays, the FMJ should also be involved.

NHRC

Access to basic education is a human right. Without a conducive mental, emotional, and physical environment, delivery of the right to education is undermined. One of the major victories of EiEWGN is that it has been able to persuade the security forces to adhere to some of the minimum SSD guidelines. For instance, military teachers are no longer in possession of arms while teaching. To hasten the achievement of more such progress, NHRC must work closely with EiEWGN with regard to this project.

Implementation of the SSD in Nigeria

Although it is desirable, at this point there is no need to set up an independent federal agency to implement the SSD recommendations. A more effective path will be to create an agency as a division under the Education Support Services Department whose sphere of operation will cover all academic institutions, and which will include child protection. Later, a new department in the FME could be created. For now, what is required is a department at the FME and desk units at the state level.

Government policy

There should be increased effort to push federal and state government policies towards a serious policy commitment to the reconstruction of damaged educational buildings and the replacement of educational assets.

Security

There should be continuous training and capacity building for security and military actors on rules of engagement and codes of conduct as they concern protecting educational establishments. To this end, there should be a thorough review of the military code of conduct to ensure it complies with the SSD Guidelines

Advocacy

There is a need to raise awareness among state authorities, community leaders, and community members, of the risks associated with the military use of educational infrastructure, including linked violations, such as child recruitment and sexual exploitation and abuse, with the aim of reducing the practice of informally offering the use of such buildings to the military.

Going forward – Future work

Due to limited resources, this study was completed within a 30-day period. In addition to the resulting time limitation, it was also not possible to gain access to all the places where attacks on education have occurred. An adequate study of such a national issue should start out with a national stakeholders' forum that will elicit input from major stakeholders in education policy, security, teaching, refugee management, and IDPs. This should also include relevant government agencies, local and international development partners, as well as the presidency. The result of such a forum should form the basis of a nation-wide sociological study of the different ways that educational institutions have been undermined and learning disrupted in Nigeria in recent times. Such a study should cover all 36 states of the federation and be robust enough to address the many different dimensions of the problem. The result of such a study will be a formidable tool in advocating for the committed implementation of the SSD.

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