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# Crime of Genocide and Impunity in the Nigerian-Biafran Armed Conflict Of 1967-1970: The Need for Accountability

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## *Abstract*

The Nigerian–Biafran armed conflict (1967–1970) remains one of the most devastating episodes in Africa's post-colonial history, resulting in widespread civilian casualties, mass displacement, famine, and allegations of atrocities committed against the civilian population, particularly the Igbo ethnic group. More than five decades after the cessation of hostilities, persistent debates continue regarding whether certain acts committed during the conflict satisfy the legal definition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. This article critically examines whether the conduct of the parties to the Nigerian–Biafran conflict meets the legal threshold of genocide under international law and interrogates the consequences of the continued absence of accountability for those allegedly responsible. Adopting a doctrinal legal research methodology, the study analyses the Genocide Convention, the Geneva Conventions of 1949 and their Additional Protocols, the Rome Statute of the International Criminal Court, relevant customary international law, and the jurisprudence of the International Court of Justice, the International Criminal Tribunal for Rwanda, and the International Criminal Tribunal for the former Yugoslavia. The article also evaluates historical records, official reports, and scholarly literature relating to the conflict, particularly issues concerning mass killings, starvation, humanitarian blockades, forced displacement, and the specific intent (*dolus specialis*) required for the crime of genocide. It contends that accountability for atrocity crimes extends beyond criminal prosecution to include truth-seeking, official acknowledgment, reparations, institutional reforms, and guarantees of non-recurrence, consistent with contemporary principles of transitional justice and international human rights law. The article concludes that Nigeria should establish an independent truth and accountability mechanism to investigate allegations of genocide and other serious violations of international humanitarian and human rights law committed during the conflict. Such a mechanism would contribute to historical clarification, national reconciliation, victims' recognition, institutional reform, and the strengthening of the rule of law while reinforcing Nigeria's commitment to combating impunity for the gravest crimes under international law.

**Keywords**: accountability, armed conflict, crimes, genocide, impunity, Nigerian-Biafran war.

## *Introduction*

The Nigerian–Biafran armed conflict of 1967–1970 constitutes one of the gravest humanitarian catastrophes in Africa's post-independence history, resulting in the deaths of an estimated one to three million people, the vast majority of whom were civilians.[1] The war, precipitated by political instability, ethnic tensions, military coups, and the attempted secession of the Eastern Region as the Republic of Biafra, was characterised by intense hostilities, mass displacement, deliberate attacks on civilian populations, and a prolonged blockade that produced widespread famine and starvation.[2] Beyond its immediate human cost, the conflict continues to occupy a contested place in Nigerian history, law, and politics, particularly with respect to unresolved allegations of international crimes and the enduring absence of accountability.

Central to scholarly and legal debates on the Nigerian–Biafran war is the allegation that acts committed during the conflict amounted to genocide against the Igbo and other populations of the former Eastern Region.[3] These allegations are grounded in documented patterns of mass killings before and during the war, the systematic targeting of civilians, and state policies that allegedly weaponised starvation as a method of warfare.[4] While the term "genocide" has often been invoked in political, historical, and advocacy discourses surrounding the conflict, its application as a legal concept remains deeply contested.[5] This contestation reflects the stringent legal threshold for establishing genocide under international law, particularly the requirement of specific intent (*dolus specialis*) to destroy, in whole or in part, a national, ethnical, racial, or religious group.[6]

The adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 marked a watershed in international criminal law by imposing obligations on states not only to punish but also to prevent genocide.[7] However, the Nigerian–Biafran conflict unfolded within a Cold War international order in which geopolitical interests, doctrines of state sovereignty, and non-intervention significantly constrained international responses to internal armed conflicts.[8] As a result, despite widespread media coverage and humanitarian concern, no international tribunal was established, nor were meaningful domestic processes initiated to investigate or prosecute alleged atrocity crimes committed during the war.[9]

The failure to pursue accountability for alleged genocide and related international crimes in the Nigerian–Biafran conflict has contributed to what many scholars describe as a legacy of impunity.[10] Impunity, in this context, extends beyond the absence of criminal prosecutions to include the lack of official acknowledgment, truth-seeking, reparations for victims, and institutional reforms aimed at preventing recurrence.[11] This persistent silence contrasts sharply with developments in international criminal justice since the 1990s, including the establishment of ad hoc tribunals,

1 Stremlau, J., *The International Politics of the Nigerian Civil War, 1967–1970*, Princeton University Press 1977, 3–5.

2 de Waal, A., *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (James Currey 1997) 70–75.

3 Totten, S. and Parsons, W. S., (eds), *Century of Genocide: Critical Essays and Eyewitness Accounts*, 4th edn, Routledge 2013, 339–342.

4 Osaghae, G. E., 'The Ogoni Uprising, Oil Politics and Minority Discontent in Nigeria' (1995) 94 *African Affairs* 325, 330–331

5 Freeman, M., 'Genocide, Civil War and the Politics of Memory in Nigeria' (2005) 8 *Journal of Genocide Research* 455, 458–460

6 *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) para 498.

7 Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277, arts I–III.

8 Mazrui, A., 'The African State as a Political Refugee: Institutional Collapse and Human Displacement' (1995) 36 *International Journal of Refugee Law* 21, 24–25.

9 Gow, J. G., 'Genocide in the Nigerian Civil War?' (1997) 3 *Journal of Genocide Research* 1, 15–17.

10 Orentlicher, D., 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 *Yale Law Journal* 2537, 2542.

11 UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* UN Doc S/2004/616 (2004) para 8.

hybrid courts, and the International Criminal Court, which have progressively narrowed the space for impunity for mass atrocity crimes.[12]

Moreover, the unresolved legacy of the war continues to reverberate in contemporary Nigeria. Renewed separatist agitations, particularly in the South-East, frequently draw upon narratives of historical victimisation and unaddressed atrocities from the Biafran period.[13] The absence of accountability mechanisms has thus not only denied justice to victims and survivors but has also undermined national reconciliation and the consolidation of the rule of law.[14] In this sense, the Nigerian–Biafran conflict represents a critical case study for examining how failure to address past international crimes can perpetuate instability and contestations over state legitimacy.

Against this backdrop, this article interrogates the question of accountability for the crime of genocide in the Nigerian–Biafran armed conflict and the broader problem of impunity that has followed. It situates the conflict within the framework of international criminal law, critically assesses whether the acts alleged meet the legal elements of genocide, and examines the domestic and international factors that have impeded accountability. By doing so, the study seeks to contribute to ongoing scholarly debates on genocide, transitional justice, and post-conflict accountability in Africa, while also underscoring the importance of confronting historical atrocities as a foundation for durable peace and justice in Nigeria.

**Conceptual Framework**

This study is anchored on a conceptual framework that links mass atrocity crimes committed during the Nigerian–Biafran armed conflict (1967–1970) to the persistent problem of impunity and the contemporary challenges of accountability under international law. The framework conceptualises accountability for genocide as a function of the interaction between historical violence, legal norms, institutional responses, and post-conflict justice mechanisms. It proceeds from the premise that where grave violations of international law are not addressed through effective accountability processes, impunity becomes institutionalised, with enduring legal and socio-political consequences.[15]

At the core of the framework is the concept of **genocide** as defined under international law. Genocide is understood not merely as mass killing but as the commission of prohibited acts, such as killing members of a protected group or deliberately inflicting conditions of life calculated to bring about its physical destruction, committed with the specific intent to destroy that group, in whole or in part.[16] Within this framework, alleged acts during the Nigerian–Biafran conflict, including mass civilian killings, forced displacement, and starvation resulting from the federal blockade, constitute the primary independent variables.[17] These acts are examined against the legal elements of genocide to assess whether they satisfy both the material and mental components of the crime.

A second key component of the framework is the notion of **accountability,** which is conceptualised as a multi-dimensional process encompassing criminal prosecution, truth-seeking, acknowledgment,

12 Cassese, A., *International Criminal Law* (3rd edn, Oxford University Press 2013) 51–55.

13 Obi, I., 'The Biafran Question and the Politics of Memory in Nigeria' (2016) 14 *African Journal of Conflict Resolution* 9, 15–18.

14 Hayner, P., *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 26–28.

15 Orentlicher, D., 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 *Yale Law Journal* 2537, 2542–2544.

16 Convention on the Prevention and Punishment of the Crime of Genocide (1948) art II.

17 Stremlau, J., *The International Politics of the Nigerian Civil War, 1967–1970* (Princeton University Press 1977) 39–45; *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) paras 498–500.

reparations, and institutional reform.[18] Accountability operates as the principal intervening variable between past atrocities and post-conflict outcomes. Where accountability mechanisms are absent or ineffective, the framework posits that impunity emerges, manifesting in the denial of victims' rights and the perpetuation of contested historical narratives.[19] In the Nigerian–Biafran context, the absence of domestic prosecutions, the lack of a truth commission addressing wartime atrocities, and the failure to engage international judicial mechanisms collectively weakened the accountability nexus.[20]

The framework further incorporates the role of legal and political constraints as moderating variables. These include the doctrine of state sovereignty, Cold War geopolitics, and the limited enforcement capacity of international criminal law during the period of the conflict.[21] Such constraints significantly shaped both domestic and international responses to alleged atrocities, insulating state actors from scrutiny and foreclosing external intervention.[22] The post-war policy of "no victor, no vanquished" is situated within this dimension as a political choice that prioritised stability over justice, thereby reinforcing impunity.

Another critical element of the framework is the temporal dimension of accountability. The framework recognises that while accountability is often delayed in post-conflict societies, international law increasingly affirms that genocide and other international crimes are not subject to statutory limitation.[23] This temporal openness means that historical atrocities remain legally relevant and susceptible to renewed inquiry, particularly as international norms on accountability have evolved since the end of the Nigerian–Biafran war.[24] The persistence of impunity over time, however, compounds its effects by normalising the absence of consequences for mass violence.

The dependent variables within the framework are the legal and societal outcomes of impunity, including weakened rule of law, denial of justice to victims, distorted collective memory, and the recurrence of identity-based grievances. In Nigeria, these outcomes are reflected in continued contestations over the legacy of the Biafran war and the mobilisation of historical narratives in contemporary separatist movements.[25] The framework therefore posits a causal relationship between the failure to address alleged genocide and the persistence of instability and mistrust within the polity.

Overall, this conceptual framework provides an analytical structure for examining how alleged genocidal acts during the Nigerian–Biafran conflict, filtered through weak accountability mechanisms and constrained by political and legal factors, have produced enduring impunity. By situating the study within this framework, the article seeks to demonstrate that accountability for genocide is not solely a retrospective legal exercise but a critical determinant of post-conflict justice, reconciliation, and the prevention of future mass atrocities.[26]

**Legal Framework**

The legal framework governing accountability for the crime of genocide and the problem of impunity in the Nigerian–Biafran armed conflict of 1967–1970 is grounded primarily in international criminal

18 UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* UN Doc S/2004/616 (2004) para 8.

19 Hayner, P.,*Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd edn, Routledge 2011) 26–28.

20 Gow, J., 'Genocide in the Nigerian Civil War?' (1997) 3 *Journal of Genocide Research* 1, 15–17.

21 Lauterpacht, H., *International Law and Human Rights* (Stevens 1950) 32–35.

22 Stremlau, J., (*supra*) 168–172.

23 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) art I.

24 Cassese, A., *International Criminal Law* (3rd edn, Oxford University Press 2013) 51–55.

25 Obi, I., 'The Politics of Memory and Separatist Agitations in Nigeria' (2016) 14 *African Journal of Conflict Resolution* 9, 15–18.

26 de Waal, A., *Mass Starvation: The History and Future of Famine* (Polity Press 2018) 201–203.

law, complemented by international humanitarian law, international human rights law, and relevant domestic Nigerian legal norms. This framework establishes the normative standards for criminal responsibility, clarifies state obligations, and exposes the gaps that have enabled the persistence of impunity.

**International Legal Framework on Genocide**

The cornerstone of the legal framework is the Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention), which codifies genocide as an international crime and imposes binding obligations on states to prevent and punish it.[27] The Convention defines genocide as certain prohibited acts, such as killing members of a protected group or deliberately inflicting conditions of life calculated to bring about its physical destruction, committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. This definition is central to assessing allegations arising from the Nigerian–Biafran conflict, particularly claims relating to mass killings and starvation of civilian populations.

Under Articles I and IV of the Genocide Convention, states are obliged to punish genocide whether committed in time of peace or war and irrespective of the official status of the perpetrators. Although Nigeria acceded to the Convention after the conflict, genocide was already recognised as a crime under customary international law at the time of the war, rendering the prohibition legally binding even in the absence of domestic incorporation.[28] The International Court of Justice has affirmed that the prohibition of genocide has the character of a *jus cogens* norm, from which no derogation is permitted.[29]

**International Humanitarian Law**

International humanitarian law (IHL) provides an additional legal framework for evaluating conduct during the Nigerian–Biafran conflict. The Geneva Conventions of 1949, particularly Common Article 3, establish minimum standards applicable to non-international armed conflicts, including prohibitions against violence to life, cruel treatment, and collective punishment of civilians. Although Nigeria ratified the Geneva Conventions prior to the war, their enforcement during internal conflicts remained weak in practice.[30]

The deliberate starvation of civilians as a method of warfare, while not explicitly codified at the time, has since been recognised as a serious violation of IHL and a war crime.[31] The relevance of IHL to the present study lies in its capacity to contextualise genocidal allegations within broader patterns of unlawful conduct and to demonstrate that serious violations of the laws of war occurred irrespective of whether genocidal intent is conclusively established.[32]

**International Criminal Law and the Duty to Punish**

Beyond treaty law, international criminal law affirms individual criminal responsibility for genocide and related crimes. The jurisprudence of international tribunals has clarified that genocide is not subject

27 Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277; *ibid* art II.

28 Schabas, W. A., *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) 66–69.

29 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43, para 161.

30 Cassese, A., *International Criminal Law* (3rd edn, Oxford University Press 2013) 83–85.

31 de Waal, A., *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (James Currey 1997) 70–75.

32 Gow, J., 'Genocide in the Nigerian Civil War?' (1997) 3 *Journal of Genocide Research* 1, 10–12.

to statutory limitation and may be prosecuted irrespective of the passage of time.[33] This principle is reinforced by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1968, which underscores the enduring prosecutability of mass atrocity crimes.[34]

Although modern institutions such as the International Criminal Court (ICC) lack temporal jurisdiction over crimes committed before their establishment, the evolution of international criminal law demonstrates a growing intolerance for impunity.[35] The Nigerian–Biafran conflict therefore occupies a legally anomalous position: while the acts alleged fall within prohibited conduct under international law, no international judicial mechanism was available or activated at the time to enforce accountability.

**International Human Rights Law**

International human rights law further strengthens the accountability framework by recognising victims' rights to truth, justice, and effective remedies. Instruments such as the International Covenant on Civil and Political Rights impose obligations on states to investigate and redress gross violations of fundamental rights, including the right to life.[36] Contemporary interpretations of these obligations emphasise that amnesties or blanket immunities for serious international crimes are incompatible with states' human rights duties.[37] Applied retrospectively, these principles expose the inadequacy of post-war policies that prioritised political reconciliation without addressing accountability.

**Issue of Accountability for the Crime of Genocide in the Context of the Nigerian–Biafran War**

Accountability constitutes one of the fundamental objectives of international criminal law. It seeks not only to punish individuals responsible for the gravest international crimes but also to vindicate the rights of victims, deter future atrocities, preserve historical truth, and reinforce the rule of law.[38] In relation to the Nigerian–Biafran War (1967–1970), however, accountability remains one of the most neglected dimensions of the conflict. Despite persistent allegations that certain acts committed during the war amounted to genocide against the Igbo people, no domestic or international judicial body has formally investigated, prosecuted, or adjudicated individual criminal responsibility for genocide or related international crimes arising from the conflict.[39] Consequently, the Nigerian–Biafran War remains one of the few major post-Second World War armed conflicts in which allegations of genocide have never been subjected to comprehensive judicial scrutiny.

The issue of accountability raises two distinct but interconnected legal questions. First, whether sufficient evidence exists to establish that genocide, as defined under the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 ("Genocide Convention"), occurred during the conflict. Second, assuming such evidence exists, whether any legal mechanism presently exists through which those responsible could be investigated or prosecuted.[40] While historians continue to debate the first

33 *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) paras 495–498.

34 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) art I.

35 Rome Statute of the International Criminal Court (1998) arts 11 and 29.

36 International Covenant on Civil and Political Rights (1966) arts 2 and 6.

37 UN Human Rights Committee, *General Comment No. 31* (2004) para 18.

38 Cassese, A., *International Criminal Law*, 3rd edn, OUP 2013, 15–23.

39 Achebe, C., *There Was a Country: A Personal History of Biafra*, Penguin Books 2012, 1–258.

40 Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) arts I–VI.

issue, the second presents significant legal and practical challenges arising from temporal jurisdiction, constitutional limitations, political considerations, evidentiary difficulties, and the absence of appropriate judicial mechanisms.

International criminal law recognizes that genocide gives rise to both individual criminal responsibility and state responsibility. Article IV of the Genocide Convention provides that persons committing genocide shall be punished regardless of whether they are constitutionally responsible rulers, public officials, or private individuals. This provision rejects immunity based on official status and establishes the principle that political and military leaders may incur personal criminal liability where they plan, order, instigate, aid, or otherwise participate in genocidal conduct.[41]

The jurisprudence of international criminal tribunals has consistently reinforced this principle. In *Prosecutor v Akayesu*, the International Criminal Tribunal for Rwanda (ICTR) affirmed that individuals, not abstract political entities, bear criminal responsibility for genocide where the requisite genocidal intent (*dolus specialis*) is established.[42] Similarly, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that military commanders and political leaders may incur liability through direct perpetration, ordering, aiding and abetting, or participation in a joint criminal enterprise.[43] Accordingly, if acts committed during the Nigerian–Biafran conflict were judicially determined to constitute genocide, accountability would attach primarily to identifiable individuals rather than to the Nigerian State as such.

At the state level, the International Court of Justice (ICJ) has clarified that states incur international responsibility where they directly commit genocide, fail to prevent genocide, or neglect their obligation to punish perpetrators.[44] In *Bosnia and Herzegovina v Serbia and Montenegro*, the Court held that although Serbia was not found directly responsible for committing genocide at Srebrenica, it violated its obligations under the Genocide Convention by failing to prevent genocide and by failing to cooperate in prosecuting those responsible. This judgment illustrates that state responsibility under the Convention exists independently of individual criminal liability.

Applying these principles to the Nigerian–Biafran War presents substantial legal complexity. Nigeria ratified the Genocide Convention on 24 July 1969, during the course of the civil war.[45] Although the Convention was therefore legally binding upon Nigeria before the cessation of hostilities in January 1970, international criminal law generally prohibits retrospective criminal liability under the principle of *nullum crimen sine lege* (no crime without law).[46] Consequently, any prosecution would need to establish that the alleged genocidal acts occurred after Nigeria became bound by the Convention or that genocide had already attained the status of customary international law prior to ratification.

There is considerable support for the proposition that genocide had become a customary international crime before the Nigerian Civil War commenced. The United Nations General Assembly had already declared genocide to be an international crime in Resolution 96(I) of 1946, while the Nuremberg Tribunal recognized crimes involving extermination and persecution before the formal adoption of the

41 Schabas, W. A., *Genocide in International Law: The Crime of Crimes*, 3rd edn, Cambridge University Press 2021, 417–438.

42 *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) paras 478–523.

43 *Prosecutor v Krstić* (Appeal Judgment) IT-98-33-A (19 April 2004) paras 134–145.

44 Genocide Convention (n 3) arts I and VI.

45 United Nations Treaty Collection, *Convention on the Prevention and Punishment of the Crime of Genocide: Status of Ratification*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Rep 43, paras 430–450.

46 Rome Statute of the International Criminal Court, adopted 17 July 1998, 2187 UNTS 90, art 24.

Genocide Convention.[47] Furthermore, the International Court of Justice has acknowledged that the prohibition of genocide constitutes a norm of customary international law possessing *jus cogens* status, binding upon all states irrespective of treaty ratification.[48] Consequently, temporal objections based solely upon Nigeria's ratification date may not entirely preclude legal accountability, although they would significantly complicate criminal proceedings.

Another obstacle concerns the absence of a competent international tribunal possessing jurisdiction over crimes committed during the Nigerian–Biafran War. The International Criminal Court (ICC), established by the Rome Statute in 1998, exercises jurisdiction only over crimes committed after the Statute entered into force on 1 July 2002.[49] Article 11 of the Rome Statute expressly excludes retrospective jurisdiction, thereby rendering the ICC incompetent to investigate atrocities committed during the Nigerian Civil War.

Similarly, neither the ICTY nor the ICTR possesses jurisdiction over the conflict, as each tribunal was created by the United Nations Security Council for specific geographical and temporal situations. Unlike Rwanda and the former Yugoslavia, the Nigerian–Biafran conflict has never been the subject of an ad hoc international criminal tribunal or hybrid court. Consequently, no international judicial institution presently possesses automatic jurisdiction to determine criminal responsibility for alleged genocide committed during the conflict.

Domestic prosecution likewise encounters significant legal impediments. Although Nigerian criminal law presently criminalizes genocide through the International Criminal Court (Ratification and Jurisdiction) Act and related obligations under international law, no domestic legislation existed during the civil war specifically incorporating genocide into Nigerian criminal law.[50] While customary international law may provide a basis for prosecution under certain circumstances, constitutional guarantees against retrospective criminal punishment under section 36(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) present substantial legal obstacles. Nigerian courts have consistently interpreted this constitutional protection as prohibiting conviction for conduct that was not recognized as an offence under written law at the time of its commission.[51]

Beyond questions of jurisdiction, evidentiary challenges further complicate accountability. More than five decades have elapsed since the conflict ended. Many principal military and political actors have died, official military archives remain inaccessible or incomplete, documentary evidence has deteriorated, and eyewitness testimony has inevitably diminished. International criminal prosecutions ordinarily depend upon extensive documentary records, witness testimony, intercepted communications, forensic evidence, and official orders demonstrating command responsibility or genocidal intent. The absence of such comprehensive evidentiary material substantially weakens prospects for successful criminal prosecution.

Another important issue concerns the identification of potential perpetrators. International criminal law rejects collective guilt and instead requires proof of individual criminal responsibility beyond

47 UN General Assembly Resolution 96(I), 'The Crime of Genocide' (11 December 1946); *Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg Judgment, 1946).

48 *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15, 23; *Bosnia v Serbia* (n 9) para 161.

49 Rome Statute (n 11) arts 5 and 11.

50 Rome Statute (n 11); see also Nigeria's implementation of its international criminal law obligations.

51 *Aoko v Fagbemi* [1961] 1 All NLR 400.

reasonable doubt. Accordingly, allegations directed generally against "the Federal Military Government" or "the Nigerian military" would be legally insufficient. Prosecutors would need to identify specific political leaders, military commanders, or other officials who possessed effective control over perpetrators and who either ordered, planned, instigated, aided, or knowingly permitted genocidal conduct.

The doctrine of command responsibility may become particularly relevant in this regard. Under Article 28 of the Rome Statute and customary international law, military commanders may incur criminal liability where they knew or should have known that subordinates were committing international crimes and failed to prevent or punish them.[52] The ICTY elaborated this principle in *Prosecutor v Delalić et al.* (*Čelebići*), holding that superior responsibility arises from effective control over subordinates rather than formal rank alone.[53] If similar principles were applied retrospectively through customary international law, senior military officials exercising operational authority during the Nigerian–Biafran conflict could theoretically incur responsibility where evidence demonstrated knowledge and deliberate failure to prevent genocidal acts. However, the practical evidentiary burden remains formidable.

Political considerations have also significantly influenced the absence of accountability. At the conclusion of the war in January 1970, General Yakubu Gowon's policy of "No Victor, No Vanquished" emphasized reconciliation, reconstruction, and national unity rather than criminal prosecutions.[54] The Federal Government established programmes aimed at reintegrating former Biafrans into Nigerian society while deliberately avoiding judicial inquiries into atrocities committed by either side. Although this approach arguably contributed to the immediate cessation of hostilities and the preservation of national cohesion, critics contend that it entrenched a culture of impunity by sacrificing justice for political expediency.[55]

Contemporary international criminal law increasingly rejects blanket amnesties or political settlements that permanently shield perpetrators of genocide from accountability. The United Nations has repeatedly emphasized that genocide, crimes against humanity, and war crimes should not be the subject of unconditional amnesty where prosecution remains feasible.[56] The evolving international norm reflects the principle that sustainable reconciliation is strengthened, not undermined, by truth, accountability, and acknowledgement of victims' suffering.

In view of the practical impossibility of conventional criminal prosecution after more than fifty years, alternative accountability mechanisms deserve serious consideration. Comparative experience from South Africa's Truth and Reconciliation Commission, Sierra Leone's Truth and Reconciliation Commission, Morocco's Equity and Reconciliation Commission, and Canada's Truth and Reconciliation Commission demonstrates that truth-seeking bodies may complement or substitute criminal proceedings where prosecutions are politically or legally impracticable.[57] Such mechanisms do not determine criminal guilt in the strict judicial sense but contribute to establishing an authoritative historical record, recognizing victims, recommending reparations, preserving documentary evidence, and promoting institutional reform.

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52 Rome Statute (n 11) art 28.

53 *Prosecutor v Delalić et al.* (*Čelebići*) (Appeal Judgment) IT-96-21-A (20 February 2001) paras 195–266.

54 General Yakubu Gowon, Broadcast to the Nation, 15 January 1970 ("No Victor, No Vanquished").

55 Ekwe-Ekwe, H., *The Biafra War: Nigeria and the Aftermath*, Edwin Mellen Press 1990, 211–240.

56 United Nations, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (2005), Principles 19–24.

57 Hayner, P. B., *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd edn, Routledge 2011, 11–45.

For Nigeria, a judicial commission of inquiry or independent truth commission could investigate allegations of genocide, crimes against humanity, and serious violations of international humanitarian law committed by all parties during the Nigerian–Biafran War. Such a body could examine military archives, receive testimony from survivors and former combatants, recommend reparative measures for victims, and provide an authoritative historical account capable of informing national reconciliation.[58] Although such mechanisms cannot replace criminal accountability where prosecution remains legally possible, they represent an important means of fulfilling the state's broader obligations to investigate grave human rights violations and preserve collective memory.

Ultimately, accountability for alleged genocide during the Nigerian–Biafran War remains constrained by formidable jurisdictional, constitutional, evidentiary, and political obstacles. No international tribunal possesses retrospective jurisdiction; domestic prosecution faces constitutional barriers against retroactive criminal liability; and the passage of time has significantly diminished available evidence. Nevertheless, the continuing absence of any formal investigation into allegations of genocide has left important legal and historical questions unresolved. International law increasingly recognizes that accountability encompasses not only criminal punishment but also truth-telling, historical clarification, reparations, institutional reform, and guarantees of non-recurrence. In this broader sense, Nigeria's obligations under international human rights and humanitarian law may still support the establishment of credible truth-seeking and restorative justice mechanisms capable of addressing one of the most contested episodes in the nation's history.

**Can Acts Committed During the Nigerian–Biafran Conflict Meet the Legal Threshold of Genocide as Defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide?**

The question whether acts committed during the Nigerian–Biafran conflict (1967–1970) satisfy the legal definition of genocide remains one of the most controversial issues in contemporary international criminal law. Although the humanitarian consequences of the conflict, including mass civilian deaths, widespread starvation, aerial bombardments, forced displacement, and systematic deprivation of essential supplies, are well documented, the characterization of these events as genocide requires a rigorous application of the legal elements contained in the *Convention on the Prevention and Punishment of the Crime of Genocide, 1948* ("Genocide Convention"), rather than a purely moral or political assessment.[59] International law distinguishes genocide from other international crimes by requiring proof not only of prohibited acts but also of a specific intent (*dolus specialis*) to destroy a protected group, in whole or in part.[60]

Article II of the Genocide Convention defines genocide as any of five prohibited acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.[61] The protected groups are exhaustively listed and include national groups, within which the Igbo population of Eastern Nigeria would arguably fall. Consequently, the first legal inquiry is whether the victims constituted a

58 Roht-Arriaza, N. and Mariezcurrena, J. (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, Cambridge University Press 2006, 1–27.

59 Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) art II.

60 *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) paras 498–523.

61 Genocide Convention (n 1) art II.

protected group under the Convention, while the second concerns whether the perpetrators possessed the requisite genocidal intent.

**Protected Group**

The Igbo ethnic community constituted one of Nigeria's major ethnic groups long before independence and maintained distinct linguistic, cultural and historical characteristics. Following the military coups of January and July 1966, anti-Igbo pogroms occurred across Northern Nigeria, resulting in thousands of deaths and the displacement of hundreds of thousands of Eastern Nigerians. These massacres significantly influenced the Eastern Region's declaration of independence as the Republic of Biafra in May 1967.

From the standpoint of international criminal law, the Igbo satisfy the Convention's requirement of an "ethnical" or arguably "national" group because the International Criminal Tribunal for Rwanda (ICTR) has interpreted protected groups broadly by considering stable and permanent characteristics recognized by society.[62] Likewise, the International Criminal Tribunal for the former Yugoslavia (ICTY) emphasized that the determination of a protected group depends upon both objective characteristics and the perception of perpetrators.[63] Consequently, there is little difficulty in concluding that the victims potentially belonged to a protected group under Article II.

**Commission of Prohibited Acts**

The Genocide Convention identifies five categories of prohibited conduct. Several acts committed during the Nigerian–Biafran conflict arguably correspond with these categories.

**(a) Killing Members of the Group**

Evidence from historians, humanitarian organizations and eyewitness accounts demonstrates that substantial numbers of Igbo civilians were killed during the pogroms preceding the civil war and throughout military operations conducted during the conflict.[64] While battlefield deaths involving combatants ordinarily fall outside the scope of genocide, deliberate killings directed against civilians belonging to a protected ethnic group may satisfy Article II(a).

The anti-Igbo massacres of 1966 are particularly significant because many victims were selected solely on the basis of their ethnic identity rather than military affiliation.[65] These killings have frequently been cited as potential evidence supporting allegations of genocidal conduct.

**(b) Causing Serious Bodily or Mental Harm**

The ICTR has interpreted serious bodily or mental harm to include torture, inhuman treatment, rape, persecution, severe psychological trauma and other forms of abuse producing lasting physical or psychological consequences.[66]

During the Nigerian–Biafran conflict, reports documented extensive violence against civilians, including torture, arbitrary detention, indiscriminate bombardment of civilian settlements, destruction of villages and prolonged psychological trauma suffered by displaced populations.[67] Such conduct may satisfy Article II(b) where committed against members of a protected group.

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62 *kayesu* (*supra*) paras 511–516.

63 *Prosecutor v Krstić* (Appeal Judgment) IT-98-33-A (19 April 2004) paras 34–38.

64 Madiebo, A.A., *The Nigerian Revolution and the Biafran War*, Fourth Dimension 1980, 45–61.

65 Achebe, C., *There Was a Country: A Personal History of Biafra*, Penguin 2012, 66–108, 76–99

66 *Akayesu* (*supra*) paras 502–506.

67 de St Jorre, J., *The Nigerian Civil War*, Hodder and Stoughton 1972, 287–335.

**(c) Deliberately Inflicting Conditions of Life Calculated to Bring About Physical Destruction**

Perhaps the strongest legal argument advanced by scholars concerns the Federal Government's blockade of Biafra, which prevented food, medicine and humanitarian assistance from reaching millions of civilians. The blockade contributed to widespread famine, with estimates of civilian deaths ranging between one and three million people, many of them children.[68]

Article II(c) expressly recognizes genocide where perpetrators deliberately inflict conditions of life calculated to bring about a group's physical destruction. The International Court of Justice (ICJ) has accepted that starvation and deprivation of indispensable resources may fall within this provision where accompanied by genocidal intent.[69] Similarly, the ICTR held that intentionally subjecting a protected group to subsistence conditions leading to gradual destruction may constitute genocide.[70]

Whether the Nigerian blockade satisfies this element depends not merely upon its humanitarian consequences but upon whether it was designed to destroy the Igbo population rather than to achieve legitimate military objectives by defeating the Biafran secession.

**(d) Measures Intended to Prevent Births**

Available historical evidence provides little indication that either party systematically implemented policies intended to prevent births within the Igbo population as contemplated under Article II(d). Consequently, this element appears unsupported by existing evidence.

**(e) Forcible Transfer of Children**

Similarly, there is limited evidence demonstrating a systematic policy involving the forcible transfer of Igbo children into another protected group within the meaning of Article II(e). Accordingly, this category appears inapplicable.

**The Requirement of Specific Intent (*Dolus Specialis*)**

The defining characteristic separating genocide from crimes against humanity and war crimes is the requirement of specific intent to destroy a protected group. The ICTY consistently describes genocidal intent as the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such."[71]

The International Court of Justice reaffirmed in *Bosnia and Herzegovina v Serbia and Montenegro* that genocide cannot be inferred solely from large-scale killings or widespread atrocities. Rather, there must be compelling evidence demonstrating that destruction of the protected group itself constituted the perpetrators' objective.[72]

This represents the principal legal obstacle in classifying the Nigerian–Biafran conflict as genocide.

Supporters of the genocide characterization point to several factors:

a. the systematic anti-Igbo massacres before the outbreak of war;
b. repeated public statements allegedly expressing hostility toward the Igbo population;

68 Chinweizu, *The West and the Rest of Us*, NOK Publishers 1975, 236–248.

69 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* [2007] ICJ Rep 43, paras 186–190.

70 *Akayesu* (*supra*) para 506.

71 *Krstić* (*supra*) paras 134–140.

72 *Bosnia v Serbia* (*supra*) paras 370–376.

c. the prolonged starvation blockade despite widespread international awareness of mass civilian deaths;
d. restrictions placed upon humanitarian relief flights; and
e. the disproportionate impact of these policies upon Igbo civilians.[19]

Some scholars argue that these circumstances permit an inference that the starvation policy exceeded legitimate military necessity and reflected an intention to destroy a substantial portion of the Igbo population.[73]

Conversely, many historians and legal scholars maintain that the principal objective of the Federal Military Government was preservation of Nigeria's territorial integrity rather than extermination of the Igbo people.[74] They emphasize repeated official declarations describing the conflict as an effort to suppress secession rather than eliminate an ethnic community. The Federal Government's post-war policy of "No Victor, No Vanquished" and subsequent reintegration initiatives are cited as evidence inconsistent with genocidal intent, although such post-conflict conduct is not determinative of criminal responsibility.[75]

The ICJ has repeatedly cautioned that genocidal intent must represent the only reasonable inference available from the evidence where reliance is placed upon circumstantial proof.[76] Applying this demanding evidentiary standard, available historical materials concerning the Nigerian–Biafran conflict remain open to competing interpretations.

**Starvation as Evidence of Genocidal Intent**

One of the most debated issues concerns whether deliberate starvation can itself establish genocidal intent. International humanitarian law prohibits starvation of civilians as a method of warfare, while modern international criminal law recognizes intentional starvation as a war crime.[77] Nevertheless, genocide requires an additional evidentiary showing that starvation was imposed because the victims belonged to a protected group and with the objective of destroying that group.

The ICTR acknowledged that deliberately inflicting life-threatening conditions may constitute genocide where such measures are intended to bring about the destruction of the protected group.[25] Likewise, the ICJ recognized that deprivation of food and medical care may amount to genocidal conduct if undertaken with the requisite specific intent.[78]

Applied to Biafra, the humanitarian catastrophe unquestionably demonstrates large-scale civilian suffering. However, whether the blockade constituted military strategy aimed at compelling surrender or an intentional policy to destroy the Igbo population remains a matter of considerable scholarly disagreement. The available archival evidence has not produced the type of unequivocal documentary proof, such as explicit extermination orders or official plans, that has featured prominently in several international genocide prosecutions.

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73 Ekwe-Ekwe, H., *Biafra Revisited*, African Renaissance 2006, 154–176.

74 Siollun, M., *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966–1976)*, Algora Publishing 2009, 147–176.

75 Gowon, "No Victor, No Vanquished" Post-War Broadcast (15 January 1970); see also Falola, T. and Heaton, M., *A History of Nigeria*, 2nd edn, Cambridge University Press 2023, 196–203.

76 *Bosnia v Serbia* (*supra*) paras 373–376.

77 Rome Statute of the International Criminal Court, adopted 17 July 1998, 2187 UNTS 90, art 8(2)(b)(xxv); Additional Protocol I to the Geneva Conventions 1977, art 54.

78 *Bosnia v Serbia* (*supra*) paras 186–190.

**Evidential Challenges**

Another significant obstacle arises from evidential limitations. Unlike the situations before the ICTY, ICTR or the International Criminal Court, the Nigerian–Biafran conflict has never been investigated by an international criminal tribunal possessing powers to compel testimony, collect official archives and determine individual criminal responsibility. Consequently, much of the available evidence derives from historians, journalists, humanitarian agencies and governmental documents rather than judicial findings.

International criminal jurisprudence demonstrates that genocide findings ordinarily rely upon cumulative evidence, including official communications, military orders, witness testimony, demographic analyses and patterns of conduct.[79] In the absence of such comprehensive judicial investigation, definitive legal conclusions remain difficult.

**Legality of action**

Applying the legal framework established under the 1948 Genocide Convention, a number of acts committed during the Nigerian–Biafran conflict, including mass killings, widespread bodily and mental harm, and starvation resulting from the blockade, could potentially satisfy several of the prohibited acts enumerated in Article II.[80] Furthermore, the Igbo population clearly qualifies as a protected ethnic group for purposes of the Convention.

However, the decisive legal issue remains proof of *dolus specialis*—the specific intent to destroy the Igbo group in whole or in part. While some scholars argue that the cumulative pattern of conduct, especially the prolonged starvation policy and anti-Igbo massacres, supports such an inference, others maintain that the evidence more convincingly demonstrates an exceptionally brutal civil war directed toward defeating a secessionist movement rather than exterminating an ethnic population.

Accordingly, under existing international jurisprudence, it is legally plausible to argue that certain acts committed during the Nigerian–Biafran conflict could satisfy important elements of genocide. Nevertheless, whether the conflict as a whole legally constituted genocide remains unresolved because the stringent evidentiary threshold required to establish specific genocidal intent has never been conclusively determined by a competent international judicial body.

**Conclusion**

The Nigerian–Biafran armed conflict (1967–1970) remains one of the most tragic and legally contested episodes in Nigeria's history. More than five decades after the end of the war, allegations that acts committed during the conflict amounted to genocide continue to generate significant scholarly, legal, and political debate. This article has demonstrated that while there is substantial historical evidence of mass killings, widespread starvation, humanitarian blockades, forced displacement, and immense civilian suffering, the legal characterization of these acts as genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, ultimately depends upon proof of the specific intent (*dolus specialis*) to destroy, in whole or in part, a protected national, ethnic, racial, or religious group. Although the available historical evidence raises serious questions concerning the conduct of the parties to the conflict, the absence of an authoritative judicial determination means that the legal status of the alleged genocide remains unresolved.

79 *Krstić* (*supra*) paras 34–38; *Bosnia v Serbia* (n 14) paras 370–376; Akhavan, P., "The Crime of Genocide in the ICTR Jurisprudence" *Journal of International Criminal Justice* (2005) 3 989–1006.

80 Genocide Convention (n 1) art II.

Notwithstanding the continuing debate over whether the legal threshold for genocide has been conclusively established, the article has shown that the issue of accountability cannot be dismissed merely because criminal prosecution has become legally and practically difficult. Contemporary international law recognizes that genocide, crimes against humanity, and serious violations of international humanitarian law engage obligations that extend beyond punishment alone. States have a duty to investigate allegations of atrocity crimes, preserve historical evidence, acknowledge victims' suffering, provide effective remedies where appropriate, and adopt measures aimed at preventing the recurrence of similar violations. The continued absence of any comprehensive official investigation into allegations arising from the Nigerian–Biafran conflict has perpetuated uncertainty regarding the historical record, denied many victims and survivors meaningful recognition, and contributed to perceptions of enduring impunity.

The article has further established that significant legal impediments confront conventional criminal accountability. The principle of non-retroactivity, constitutional guarantees against retrospective criminal liability, the temporal limitations of the International Criminal Court, the absence of an ad hoc international tribunal, the death of many potential perpetrators and witnesses, and the deterioration of documentary evidence collectively render criminal prosecution increasingly improbable. These challenges, however, do not extinguish Nigeria's broader obligations under international human rights law, international humanitarian law, and the principles underlying the Genocide Convention to pursue truth, accountability, and justice through appropriate mechanisms.

Experience from other post-conflict societies demonstrates that accountability for mass atrocities need not be confined exclusively to criminal trials. Truth commissions, judicial commissions of inquiry, official historical investigations, reparations programmes, institutional reforms, public memorialization, and guarantees of non-recurrence have become widely accepted components of transitional justice. Such mechanisms acknowledge victims, establish an authoritative historical record, promote national reconciliation, and strengthen public confidence in state institutions while complementing, rather than replacing, criminal justice where prosecution remains feasible.

Ultimately, confronting allegations of genocide and other atrocity crimes committed during the Nigerian–Biafran armed conflict is not merely a matter of revisiting the past; it is a necessary step towards strengthening the rule of law, promoting national unity founded upon justice rather than silence, and fulfilling Nigeria's obligations under international law. Genuine reconciliation cannot rest solely upon the passage of time or political expediency but must be grounded in truth, accountability, institutional responsibility, and recognition of the dignity of all victims. By embracing a comprehensive accountability framework that incorporates truth-seeking, historical clarification, reparative justice, and institutional reform, Nigeria would not only address one of the most painful chapters in its national history but also reinforce its commitment to combating impunity and preventing the recurrence of atrocity crimes in accordance with evolving principles of international criminal justice and international humanitarian law.

**Recommendations**

Based on the findings and conclusions of this study, several recommendations are proposed to address the enduring challenges of accountability for the crime of genocide and impunity arising from the Nigerian–Biafran armed conflict of 1967–1970:

**a. Establishment of a Truth and Reconciliation Commission**

Nigeria should establish a Truth and Reconciliation Commission (TRC) specifically mandated to investigate wartime atrocities, including alleged genocidal acts. Such a commission would provide a

formal mechanism for documenting historical evidence, acknowledging victims' suffering, and promoting national reconciliation. A TRC could also facilitate access to reparations and institutional reforms while fostering collective memory that is historically accurate and legally informed.

**b. Legal and Judicial Mechanisms for Accountability**

Where evidence permits, Nigeria should explore the possibility of domestic prosecutions for crimes committed during the conflict, particularly for high-ranking individuals implicated in orchestrating mass atrocities.[3] Even though the events occurred decades ago, international law affirms that genocide is not subject to statutory limitations.[4] Where domestic capacity is limited, hybrid mechanisms or international collaboration could be considered to strengthen legal accountability.

**c. Codification and Implementation of International Norms**

Nigeria should incorporate explicit provisions on genocide and crimes against humanity into its domestic legal system to ensure that such crimes are prosecutable within national courts. This would reinforce the enforcement of international legal standards and signal a commitment to uphold the rule of law. It would also create a deterrent effect for future mass atrocities.

**d. Promotion of Historical Education and Awareness**

To prevent recurrence and mitigate lingering grievances, the government, civil society, and academic institutions should promote education on the Nigerian–Biafran conflict, including its humanitarian and legal dimensions. Accurate historical education can help contextualise the conflict, discourage revisionist narratives, and reinforce societal commitment to the principle of accountability for mass atrocities.

**e. Victim-Centred Reparative Measures**

Recognition of victims' rights should go beyond symbolic acknowledgment. The government should implement reparative measures, such as compensation, memorialisation, and psychosocial support for survivors and affected communities. These measures are consistent with international human rights and transitional justice principles, which emphasise both acknowledgment and remediation of harm.

**f. Strengthening International Cooperation**

Nigeria should strengthen cooperation with international criminal justice institutions, including the International Criminal Court (ICC) and relevant United Nations bodies, to access expertise, technical assistance, and best practices for investigating and documenting historical atrocities.[8] Such cooperation could also facilitate the development of a more robust accountability framework in line with global standards.

**g. Institutional Reforms to Prevent Recurrence**

Finally, the Nigerian state should undertake institutional reforms aimed at ensuring military compliance with international humanitarian law, civilian protection, and early warning mechanisms to prevent mass atrocities. Strengthening institutions reduces the risk of future violations and demonstrates a genuine commitment to the principle that genocide and crimes against humanity will not be tolerated.

The overarching recommendation is that accountability for genocide should be pursued in conjunction with reconciliation, reparations, and institutional reform. Addressing past atrocities is not merely a legal imperative but a socio-political necessity to restore trust in state institutions, uphold human rights, and prevent the recurrence of mass violence. Implementing these recommendations would provide Nigeria with an opportunity to confront its historical legacy, fulfil its international legal obligations, and promote sustainable peace and justice.