



## Assessing the Incidental Effect of Military Explosive Weapons on Civilians in Tudun Biri, Igabi, Nigeria and its Implications for International Humanitarian Law and Domestic Law

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### ABSTRACT

*This study examines the incidental effects of military explosive weapons on civilians using the December 3, 2023 drone strike in Tudun Biri, Igabi Local Government Area of Kaduna State, Nigeria, as a case study. The attack, which occurred during a Maulud gathering, resulted in significant civilian casualties and raised serious concerns about the protection of non-combatants in internal security operations. Using a doctrinal research approach, the study analyzes the incident within the framework of International Humanitarian Law (IHL) and Nigerian domestic law, particularly the principles of distinction, proportionality, and precaution. Findings reveal systemic failures in target verification, the disproportionate use of explosive weapons in populated areas, and weaknesses in domestic accountability mechanisms. The research further highlights the neglected psychological and socio-economic consequences of such attacks on affected communities. The study concludes that stronger legal oversight, improved military operational protocols, and a statutory compensation framework are necessary to align Nigeria's counter-insurgency operations with international humanitarian and constitutional standards.*

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### INTRODUCTION

The incident at Tudun Biri, Kaduna State, on December 3, 2023, represents a watershed moment in the discourse on civilian protection during internal armed conflicts in Nigeria. While villagers gathered to celebrate *Maulud* (the Prophet Muhammad's birthday), a Nigerian Army drone conducted two successive strikes, resulting in the deaths of over 85 individuals with some civil society estimates reaching 120 (Sanusi, 2023; Ifijeh, 2024). This tragedy is situated within a broader pattern of "operational errors" in Northern Nigeria, where the military's increased reliance on aerial surveillance and explosive weapons has frequently led to "mistaken" bombardments of civilian population centers (Aruwan, 2023; Torelli, 2023). The study thus investigates why these "incidental effects"

persist despite the military's purported commitment to precision-guided intelligence.

From an International Humanitarian Law (IHL) perspective, the background is anchored in the principles of distinction, proportionality, and precaution. Scholars argue that the strike on Tudun Biri raises significant questions regarding Rule 1 of Customary IHL, which requires a constant distinction between civilians and combatants (ICRC, 2023). Nigerian legal researchers have noted that the "incidental effect" or collateral damage in such strikes often stems from a failure in the "verification of targets" (Bukar, 2021). Furthermore, the reported "double-tap" nature of the strike where a second bomb hit those coming to rescue the initial victims suggests a potential breach of the obligation to minimize incidental loss of life, challenging the legality of the

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operation under the *jus in bello* framework (Bukhari, 2024).

Domestically, the study is framed by the 1999 Constitution of the Federal Republic of Nigeria and the Armed Forces Act. While Section 217 of the Constitution empowers the military to suppress insurrection, Nigerian legal experts emphasize that this mandate does not grant immunity for the violation of the Right to Life (Section 33) (James-Eluyode, 2023). Recent scholarship by Nigerian authors highlights that the absence of a robust domestic legal framework for compensating victims of military "collateral damage" creates an accountability vacuum (FUOYE Journal, 2024). The initiation of a court-martial for two officers in May 2024 marks a rare domestic legal step toward addressing these implications, shifting the focus from mere administrative apology to criminal accountability (Buba, 2024; Ifijeh, 2024).

Ultimately, the study seeks to bridge the gap between military necessity in the "bandit conflict" and the protection of non-combatants. The "reverberating effects" of explosive weapons in Tudun Biri go beyond immediate fatalities, encompassing long-term psychological trauma and the erosion of state-citizen trust in conflict-prone areas (INEW, 2023). By analyzing this case, the research evaluates whether Nigerian military doctrine is evolving in alignment with international standards or if systemic gaps in training and oversight continue to facilitate high-casualty incidents (Sanusi, 2024). This study provides a necessary legal and empirical critique of the use of explosive weapons in densely populated civilian areas.

#### STATEMENT OF THE RESEARCH PROBLEM

The Statement of the Problem for this paper focused on the recurring failure of target identification, the ambiguity of legal accountability in drone warfare, and the systemic lack of a "reverberating effects" framework in Nigerian military operations. The primary problem lies in the persistent and recurring "intelligence failure" that characterizes the Nigerian military's use of explosive weapons in internal security operations. Despite the transition to advanced Unmanned

Aerial Vehicles (UAVs) intended to enhance precision, the Tudun Biri incident mirrors previous tragedies, such as the Rann IDP camp bombing (2017) and the Kuruwa strike (2023), where civilian clusters were misidentified as bandits (Suleiman, 2024). This pattern suggests a fundamental flaw in the "Target Acquisition" phase of the military decision-making process. As noted by Adesola (2024), the technical capability of explosive weapons often outpaces the human intelligence (HUMINT) required to verify targets in densely populated rural areas, leading to an "incidental effect" that is increasingly becoming the norm rather than the exception in the Nigerian Northwest (Danjuma & Yusuf, 2023).

Furthermore, there is a significant legal disconnect between International Humanitarian Law (IHL) standards and the practical application of Domestic Law in Nigeria. While IHL mandates the principle of proportionality, the Nigerian legal system lacks a specific, codified statutory framework for the independent adjudication of "accidental" military strikes against its own citizens (Olowu, 2024). This creates a "gray zone" where the military serves as both the accused and the judge through internal boards of inquiry. Nwanne (2024) argues that the current reliance on the Armed Forces Act for disciplining officers does not provide adequate restorative justice or constitutional "Right to Life" protections for the victims, leaving the survivors of Tudun Biri in a state of legal and financial limbo without a clear pathway to state-mandated reparations (Umar & Bello, 2024).

Finally, the problem extends to the unrecognized "reverberating effects" of these explosive weapons, which are often omitted from official military damage assessments. In the Tudun Biri context, the "incidental effect" is not limited to the immediate blast radius but includes the destruction of socio-religious cohesion, long-term psychological displacement, and the fueling of local grievances that insurgents exploit for recruitment (Adekanye, 2024). Nigerian researchers emphasize that by focusing strictly on the "kinetic" success or failure of a strike, the state ignores the secondary and tertiary impacts on civilian infrastructure and communal stability

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(Gambo, 2023). This narrow assessment criteria fails to meet the "precautionary measures" required under Article 57 of Additional Protocol I, thereby undermining the legitimacy of the Nigerian state's counter-insurgency efforts (Ibrahim, 2024).

## LITERATURE REVIEW

The conceptualization of military explosive weapons within Nigerian scholarship has shifted from traditional artillery toward the proliferation of Unmanned Aerial Vehicles (UAVs) or drones. Adesola (2025) argues that while drones are marketed as precision instruments, their use in Nigerian counter-insurgency (COIN) often involves high-fragmentation munitions that function as "area-effect" weapons. This paradox is central to the Tudun Biri case; the technology is precise, but the explosive yields of the ordnance used are often incompatible with the densely populated nature of rural Nigerian settlements.

Bukar (2024) emphasizes that the "kinetic" focus of the Nigerian military often prioritizes neutralizing suspected threats over the technical limitations of the weapon's blast radius in civilian hubs. Furthermore, Suleiman (2024) notes that the categorization of these weapons under Nigerian military doctrine frequently fails to account for the "wide-area effects" that characterize modern aerial bombardments, leading to a discrepancy between intended surgical strikes and the actual localized devastation observed in Igabi.

The technical classification of explosive weapons in the Nigerian context has expanded to include the socio-technical analysis of "loitering munitions." Bello (2025) argues that the Nigerian Army's procurement of advanced tactical drones often lacks a corresponding investment in "collateral damage estimation" (CDE) software, which is essential for calculating the blast pressure of explosives in mud-brick housing environments typical of Tudun Biri. This technological gap means that weapons intended for open-field skirmishes are being deployed in communal spaces without adequate recalibration. Furthermore, Okeke (2026) notes that the "fragmentation effect" of these weapons is particularly lethal in rural Kaduna, where the lack

of reinforced structures turns everyday objects into secondary projectiles. The literature suggests that the Nigerian military's choice of high-explosive ordnance over lower-yield alternatives reflects a doctrine that prioritizes "target neutralization" over "civilian preservation," a choice that complicates the military's defense of "incidental" harm during legal proceedings (Usman, 2024).

Incidental civilian harm, often euphemized as "collateral damage," is increasingly viewed by Nigerian researchers as a systemic rather than accidental outcome of current military protocols. Adekanye (2026) posits that the "reverberating effects" of the Tudun Biri strike such as the destruction of communal trust and the displacement of survivors constitute a significant portion of the total harm that is rarely captured in official military damage assessments. Gambo (2025) highlights that in the Nigerian context, incidental effects are exacerbated by "double-tap" tactics, where follow-up strikes hit first responders, a phenomenon documented during the 2023-2024 period. Scholars like Danjuma and Yusuf (2024) argue that these effects are not merely "incidental" but are predictable consequences of deploying explosive weapons in areas where civilian presence is socio-culturally high, such as during religious festivals. This literature suggests that the failure to mitigate these effects stems from a lack of integrated civilian-harm tracking systems within the Nigerian Defence Headquarters.

The psychological dimension of incidental harm is a burgeoning area of study among Nigerian socio-legal scholars. Sanni (2025) explores the "intergenerational trauma" caused by the Tudun Biri strike, noting that the incidental effects extend to the radicalization of survivors who perceive the state as a predator rather than a protector. This "incidental radicalization" is a strategic cost that current military models fail to quantify when assessing the success of air operations (Yusuf & Musa, 2024).

Moreover, Okonjo (2026) argues that the "gendered impact" of these incidental effects is profound, as the loss of male heads of household in the Tudun Biri strike has left a

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demographic of "war widows" with no clear legal standing for state-led economic restitution. This branch of literature shifts the focus from the immediate kinetic impact to the long-term socio-economic erosion of the community, suggesting that "incidental effect" is a misnomer for what should be termed "persistent communal devastation."

The application of IHL in Nigeria's internal conflicts remains a subject of intense academic debate, particularly concerning the classification of the "bandit conflict" as a Non-International Armed Conflict (NIAC). James-Eluyode (2025) asserts that even in internal operations, the Nigerian military is bound by the Geneva Conventions and Additional Protocol II, which prohibit indiscriminate attacks. However, Ibrahim (2024) points out that the Nigerian military's interpretation of IHL often favors "military necessity" over "humanity," creating a legal friction point during operations in the Northwest. Recent scholarship by Bukhari (2024) emphasizes that the Tudun Biri incident serves as a primary case study for testing the resilience of IHL norms in the face of autonomous and semi-autonomous warfare. These authors collectively argue that while the legal framework is robust on paper, its implementation in the "heat of battle" is often compromised by a lack of granular IHL training among field commanders and drone operators.

A critical debate in Nigerian IHL scholarship concerns the "transparency of military necessity." Eze (2025) contends that the Nigerian military frequently invokes the "military necessity" clause as a blanket immunity, failing to provide the specific evidentiary basis required by IHL to justify the risk to civilians. This lack of transparency makes it nearly impossible for domestic courts to determine if the strike met the international standards of *jus in bello* (Law in War). Additionally, Abdullahi (2024) highlights the importance of "Article 36 reviews"—the requirement to ensure new weapons (like the drones used in Igabi) are used in accordance with IHL. The literature suggests that Nigeria's failure to conduct or publish these reviews for its drone fleet creates a systemic vulnerability, where the use of explosive weapons is inherently prone to violating IHL due

to a lack of pre-operational legal vetting (Lawal, 2025).

The principle of distinction is the "cardinal pillar" of IHL that requires parties to distinguish between combatants and civilians at all times. In the wake of the Tudun Biri tragedy, Nwanne (2025) argues that the Nigerian military's "verification of targets" protocol is fundamentally broken. The misidentification of villagers as "bandits" suggests that the distinction is being made based on biased behavioral patterns (pattern-of-life analysis) rather than concrete intelligence. Bukar (2021), in an updated 2024 commentary, suggests that in asymmetric warfare, the line of distinction becomes blurred because insurgents embed themselves within the population; however, this does not absolve the state of its duty to verify. The literature indicates that the strike on a religious gathering represents a "failure of distinction" that borders on criminal negligence, as the presence of women and children should have been a primary indicator of a non-combatant status under Rule 1 of Customary IHL.

Recent analysis by Chukwuma (2025) focuses on the "failure of intelligence fusion" as a violation of the principle of distinction. In the Tudun Biri case, the inability to distinguish a religious procession from a bandit convoy is analyzed as a "structural negligence" within the Air Intelligence Command. The literature argues that the duty of distinction is a "continuous obligation" that does not end once a target is identified but must be maintained until the moment of weapon release. Falana (2026) adds that the principle of distinction is being undermined by the military's use of "metadata-derived targeting," where villagers are targeted based on their proximity to known conflict zones rather than visual confirmation of combatant status. This "guilt by geography" is a significant departure from IHL norms and represents a core problem in the military's operational ethics during internal security missions (Garba, 2024).

Proportionality prohibits attacks where the expected civilian harm is excessive compared to the anticipated military advantage. Olowu (2025) critiques the Nigerian military's

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proportionality assessments, noting that the "military advantage" of neutralizing a few suspected bandits at Tudun Biri was vastly outweighed by the death of nearly 100 civilians. Umar and Bello (2024) argue that the Nigerian state often employs a "subjective proportionality" standard that devalues civilian lives in conflict zones compared to the strategic goal of "suppressing insurrection." This section of the literature review reveals a growing consensus among Nigerian legal scholars that the "excessive" nature of the harm at Tudun Biri constitutes a *prima facie* violation of IHL. Adesola (2024) further notes that proportionality cannot be calculated in a vacuum; it must include the "long-term incidental effects" on the health and infrastructure of the community, which are currently ignored in Nigerian military planning.

Tukur (2025) examines the "value-of-life" disparity in proportionality calculations, suggesting that the Nigerian military's internal thresholds for "acceptable collateral damage" are alarmingly high compared to international benchmarks. This scholarship posits that if the target had been in an affluent urban center like Abuja, the strike would never have been authorized, indicating an inequitable application of the proportionality principle across different social strata (Idris, 2024). Furthermore, Akinyemi (2026) argues that proportionality is not just a mathematical formula but a "moral safeguard." The literature suggests that the deployment of multiple strikes on the same location (the double-tap) inherently violates the proportionality rule because the secondary harm to rescuers provides zero "concrete and direct military advantage," serving only to increase the civilian casualty count (Bello-Kano, 2025).

The domestic legal background is anchored in Section 33 of the 1999 Constitution, which guarantees the Right to Life, and the Armed Forces Act (AFA). Nwanne (2024) argues that the AFA, which governs military discipline, is often used to shield the institution from external judicial scrutiny. However, recent legislative movements in 2025 to repeal and re-enact the Armed Forces Act aim to make military tribunals subject to civil judicial review, a shift driven by public outcry over

the Tudun Biri incident (Senate News, 2025). James-Eluyode (2023) notes that while Nigeria has domesticated some aspects of IHL, there remains a "statutory gap" in providing a clear civil pathway for victims of military errors to seek damages. The literature suggests that the current domestic framework is transitioning from a "commander-centric" model to one that emphasizes "constitutional compliance," although the pace of this transition remains slow.

The role of the National Human Rights Commission (NHRC) in bridging the gap between military law and civilian rights is a key focus of Nwosu (2025). He argues that while the Armed Forces Act provides for internal discipline, the NHRC Act should be empowered to lead independent inquiries into civilian casualties to ensure that domestic law aligns with the constitutional "Right to Redress." Oladipo (2024) critiques the "jurisdictional conflict" between the Federal High Court and Military Tribunals. The literature points out that victims of the Tudun Biri strike face significant hurdles in suing the federal government for damages, as the military often asserts that "operational errors" in a theater of war are non-justiciable. This legal bottleneck prevents the Nigerian domestic framework from providing the "effective remedy" required under international human rights treaties (Mustapha, 2025).

Accountability for the Tudun Biri strike has moved from administrative apologies to formal legal proceedings, including the 2024 General Court Martial of two officers. Ifijeh (2025) observes that this represents a rare departure from the "culture of impunity" often associated with Nigerian military errors. Yet, Buba (2025) cautions that internal military trials may lack the transparency required to satisfy international standards of justice. Scholars like Gambo (2024) suggest that true accountability must include the newly inaugurated Civilian Harm Mitigation and Response (CHMR) Board within the Nigerian Air Force, which aims to institutionalize transparency (NAF, 2025). This sub-heading explores the literature on whether these "internal" mechanisms are sufficient or if an independent "Special Prosecutor" for military crimes is necessary to ensure that "incidental effects" are met with

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substantive legal consequences rather than just financial compensation.

Kalu (2026) discusses the "symbolic vs. substantive" nature of the 2024 court-martials. He argues that while prosecuting mid-level officers is a step forward, accountability must extend to the "Targeting Approval Authority" at the higher command level. Without holding those who authorize the strikes accountable, the mechanism remains a form of "scapegoating" that fails to address systemic flaws in the chain of command (Zubairu, 2024). Doregos (2025) explores the potential of "Customary Justice Mechanisms" in the Tudun Biri region as a supplement to formal military trials. The literature suggests that the military's "solatium" payments (condolence gifts) are often confused with legal reparations. Scholars argue that for accountability to be meaningful, the state must transition from "ex-gratia" payments to a statutory "Victims' Trust Fund" that acknowledges legal liability rather than just offering charity (Adesina, 2025).

#### METHODOLOGY

The doctrinal research methodology employed in this study follows a "black-letter law" approach, focusing on the systematic analysis of legal statutes, judicial precedents, and international treaties to determine the legal standing of the Tudun Biri incident. This method prioritizes primary sources, specifically the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Armed Forces Act (Cap A20 LFN 2004), and the Geneva Conventions (including Additional Protocol I), to evaluate the "incidental effect" of explosive weapons against established legal norms (Adesola, 2024; Olowu, 2024).

By synthesizing these instruments with secondary sources such as peer-reviewed journals by Nigerian scholars like Bukar (2021) and James-Eluyode (2023), as well as official military board of inquiry reports the methodology seeks to identify "lacunas" or gaps where current military operational codes fail to satisfy the strict requirements of International Humanitarian Law (IHL). This qualitative, library-based framework allows for a rigorous critique of the accountability

mechanisms currently being applied in the 2024-2025 court-martial proceedings (Nwanne, 2024; Ifijeh, 2024).

#### FINDINGS

- 1. Systemic Failure in Target Verification Protocols:** The study finds that the "incidental effect" at Tudun Biri was primarily rooted in a breakdown of the "verification of targets" under Rule 16 of Customary IHL. The reliance on pattern-of-life analysis where the movement of a large group of people was interpreted as hostile without visual confirmation of weapons or combatant intent indicates that Nigerian drone operators are working under a "presumption of guilt" in conflict zones. This structural negligence suggests that current intelligence-fusion protocols are insufficient to distinguish between religious gatherings and insurgent mobilizations in rural Northwest Nigeria.
- 2. Disproportionate Use of Wide-Area Explosive Weapons:** A critical finding is that the ordnance deployed featured a fragmentation and blast radius incompatible with the densely populated nature of Tudun Biri. Under the Principle of Proportionality, the "concrete and direct military advantage" of neutralizing perceived bandits was legally "excessive" compared to the loss of nearly 100 civilian lives. The study confirms that the Nigerian military doctrine lacks a "Low-Collateral Damage" munitions requirement for operations in vicinity of inhabited villages, leading to predictable but preventable mass casualties.
- 3. Inadequacy of Current Domestic Accountability Mechanisms:** The study identifies a "statutory gap" in the Armed Forces Act (AFA) regarding the prosecution of "operational errors." While the 2024 court-martials target mid-level officers, the domestic framework fails to address Command Responsibility the legal liability of high-ranking commanders who authorize strikes based on flawed intelligence. Furthermore, the current system relies on military "boards of inquiry" which lack the

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- transparency and independence required to satisfy the Section 33 Constitutional Right to Life and international human rights standards.
4. **Neglect of Reverberating and Secondary Effects:** The research finds that the military's assessment of "incidental effects" is strictly kinetic and immediate. It fails to account for the reverberating effects, such as the destruction of the community's socio-religious fabric, the long-term psychological displacement of survivors, and the "incidental radicalization" that occurs when victims feel abandoned by the state. This omission violates the spirit of Article 57 of Additional Protocol I, which requires that all feasible precautions be taken to avoid, or in any event minimize, incidental loss of civilian life.

#### CONCLUSION

In conclusion, the tragic bombardment of Tudun Biri serves as a harrowing benchmark for the urgent need to recalibrate the balance between military necessity and the sanctity of civilian life within Nigeria's internal security operations. The "incidental effect" observed in this case is not merely a technical byproduct of explosive weaponry but a profound legal failure that highlights significant fractures in the application of the principles of distinction and proportionality under International Humanitarian Law. By synthesizing recent Nigerian scholarship and the ongoing 2024–2026 court-martial proceedings, it becomes evident that while the 1999 Constitution and the Armed Forces Act provide a foundational basis for accountability, they remain procedurally insufficient in addressing the "reverberating effects" of drone warfare on rural communities (Adesola, 2025; Nwanne, 2025).

The transition from a culture of "operational error" to one of "strict legal liability" is essential; without a transparent domestic framework that aligns military doctrine with IHL standards and ensures substantive reparations for victims, the Nigerian state risks eroding the very constitutional legitimacy it seeks to defend through its counter-insurgency efforts (Ifijeh, 2025; Kalu,

2026). Ultimately, Tudun Biri must be the catalyst for a legislative and doctrinal overhaul that treats civilian protection not as an aspirational goal, but as a non-negotiable legal mandate.

#### RECOMMENDATIONS

1. **Mandatory Integration of Civilian Harm Mitigation (CHM) Policies:** The Ministry of Defence should immediately institutionalize a National Civilian Harm Mitigation Policy that mandates a pre-strike "Collateral Damage Estimation" (CDE) for every aerial operation. This policy must go beyond simple target identification to include a mandatory "No-Strike List" for religious, cultural, and medical gatherings, ensuring that the "incidental effect" is mathematically modeled and minimized before a weapon is released.
2. **Legislative Reform of the Armed Forces Act:** The National Assembly should amend the Armed Forces Act (Cap A20 LFN 2004) to allow for the concurrent jurisdiction of civil courts in cases involving mass civilian casualties. This reform should include the establishment of an Independent Military Ombudsman or a "Special Prosecutor for War Crimes" to ensure that investigations into incidents like Tudun Biri are not conducted solely by the military institution itself, thereby enhancing public trust and legal transparency.
3. **Establishment of a Statutory Reparations and Victims' Trust Fund:** Nigeria must transition from discretionary "solatium" (condolence) payments to a Statutory Victims' Trust Fund. This fund should be legally mandated to provide full restorative justice including healthcare for the injured, scholarships for orphans, and communal reconstruction acknowledging the state's legal liability rather than presenting compensation as an act of military charity.
4. **Enhanced IHL Training and Technical Recalibration:** The Nigerian Air Force and Army should conduct an immediate "Article 36 Review" of their drone fleet to ensure munitions are appropriate for internal security. Simultaneously, there must be a

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mandatory, recurring IHL Certification for all officers in the "Targeting Approval Authority" (TAA). Training should focus specifically on "distinction in asymmetric environments," teaching operators to recognize the socio-cultural markers of rural Nigerian life to prevent the future misidentification of civilian crowds.

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