

International Humanitarian Law and Plight of Civilians during Armed Conflicts in Africa

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Abstract. *Armed conflicts have been a major problem in Africa for many decades. Since the beginning of the 1990s, the African continent has acquired a dubious honor of being number one in hosting the largest number of armed conflicts and complex emergencies. This article examines the role of international humanitarian law (IHL) in the amelioration of the plight of victims of armed conflict in Africa. The article shows that in spite of the ratification of IHL by most African states, its provisions are often violated during armed conflicts. In order to improve the current situation, the states must enact national legislation and take practical measures in order for the rules to be fully effective.*

Keywords: *International Humanitarian Law, Armed Conflict, Civilians, Africa*

Introduction

In the over 60 years since the adoption of the Geneva Conventions of 1949, mankind has experienced a distressing number of armed conflicts affecting almost every continent. During this period, the four Geneva Conventions and their Additional Protocols of 1977 have provided legal protection to persons not or no longer participating directly in hostilities (the wounded, sick and shipwrecked, persons deprived of their liberty for reasons related to an armed conflict, and civilians). In spite of this, there have been numerous contraventions of these treaties, resulting in suffering and death which might have been avoided had international humanitarian law been better respected (Henckaerts, 2005). Armed conflicts have been a major problem in Africa

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for many decades. Since the beginning of the 1990s, the African continent has acquired a dubious honor of being number one in hosting the largest number of armed conflicts and complex emergencies (Rugumamu, 2002). That is why the former UN Secretary General Kofi Annan in his 1998 Report to the Security Council, lamented Africa's insecurity situation as follows:

Since 1970, more than 30 wars have been fought in Africa, the vast majority of them intra-state in origin. In 1996 alone, 14 out of 53 countries in Africa were afflicted by armed conflicts, accounting for more than half of all war-related deaths worldwide and resulting in more than 8 million displaced refugees, returnees and displaced persons. The consequences of these conflicts have seriously undermined Africa's efforts to ensure long-term stability, prosperity, and peace for its people... Preventing such wars is no longer a matter of defending states or protecting allies. It is a matter of defending humanity itself (Annan, 1998).

Armed conflict is often associated with suffering and hardship. It is usually the breeding ground for mass violation of human rights including unlawful killings, torture, forced displacement and starvation (Amnesty International, 2014). By 2004, all 53 African Union countries had ratified the four Geneva Conventions, while of the two 1977 Additional Protocols, Protocol I had been ratified by 45 and Protocol II by 44 African Union countries. However, this manifestation of respect for international humanitarian law (IHL) by states parties does not give a complete picture of reality, since between 1955 and 2005 more than 200 armed groups were involved in about forty armed conflicts on the African continent (Ewumbue-Monono, 2006). A number of African countries continue to be beset by armed conflict or other situations of violence. Invariably, civilians bear the brunt of the suffering. Millions are displaced from their homes. Many are cut off from their families and from social services, detained, wounded, killed, exposed to danger, extortion and harassment (ICRC, 1998). The effect of armed conflict on humans worldwide has necessitated the emphasis on International Humanitarian Law (IHL) by institutions and individuals interested in ameliorating human suffering during periods of aggression. This paper examines the extent to which IHL has been respected during periods of armed conflicts in African states. The paper begins with the conceptualization of IHL including its major provisions. It then examines the concept and typology of armed conflict. Additionally, the paper examines cases of breaches of IHL during periods of armed conflicts in some African states. The paper argues that domestication of the provisions of IHL could contribute to its enforcement and role in regulating the conduct of hostilities especially intra-state conflicts. Improvement in the activities of international criminal tribunals could also contribute towards ensuring compliance with IHL during armed conflicts in Africa.

Concept and Origin of International Humanitarian Law

International humanitarian law also known as the law of war or the law of armed conflict is part of the public international law that regulates the use of force or instruments of destruction during armed conflict. It aims to protect persons who are not or are no longer taking part in hostilities such as the sick, wounded, prisoners of war and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities. The cornerstone of IHL is the Geneva Conventions. The first was signed by 16 countries in 1864. For centuries before then, rules had applied to the conduct of war, but they were based on custom and tradition, were local or just temporary. 1864 changed all that and began a process of building a body of law that is still evolving today. The initiative for the first convention came from five citizens of Geneva. One of them, Henry Dunant, had, by chance, witnessed the battle of Solferino in 1859. He was appalled by the lack of help for the wounded and organized residents to come to their aid. Out of this act came one of the key elements of the first convention – the humane treatment of those no longer part of the battle, regardless of which side they were on (ICRC, 1998). Originally, International humanitarian law had two branches namely; the “law of Geneva”, which is designed to safeguard military personnel who are no longer taking part in the fighting and people not actively involved in hostilities, i.e. civilians; and the “law of The Hague”, which establishes the rights and obligations of belligerents in the conduct of military operations, and limits the means of harming the enemy. The two branches of IHL draw their names from the cities where each was initially codified. With the adoption of the Additional Protocols of 1977, which combine both branches, that distinction is now of merely historical and didactic value (ICRC, 1998). The following table highlights some of the main treaties that make up international humanitarian law:

Some Treaties/Conventions that Constitute IHL

Year	Treaties/Conventions
1949	Four Geneva Conventions: I. Amelioration of the condition of the wounded and sick in armed forces in the field; II. Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; III. Treatment of prisoners of war; IV. Protection of civilian persons in time of war (new).
1954	The Hague Convention for the protection of cultural property in the event of armed conflict.
1972	Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxic weapons and on their destruction.
1977	Two Protocols additional to the four 1949 Geneva Conventions, which strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts.

Year	Treaties/Conventions
1980	Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (CCW), which includes: <ul style="list-style-type: none"> • the Protocol (I) on non-detectable fragments; • the Protocol (II) on prohibitions or restrictions on the use of mines, booby-traps and other devices; • the Protocol (III) on prohibitions or restrictions on the use of incendiary weapons.
1993	Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction.
1995	Protocol relating to blinding laser weapons (Protocol IV [new] to the 1980 Convention).
1996	Revised Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices (Protocol II [revised] to the 1980 Convention).
1997	Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction.
1998	Rome Statute of the International Criminal Court.
1999	Protocol to the 1954 Convention on cultural property.

Presently, the Geneva Conventions and their Additional Protocols are at the core of the international humanitarian law. The Geneva Conventions consist of four treaties, and two additional protocols. Sometimes the singular expression Geneva Convention is used to refer to the agreements of 1949 (after the Second World War, 1939-45), which updated the provisions of the first three treaties (1864, 1906, 1929), and added a fourth treaty (ICRC, 1998).

The fourth Geneva Convention (“Relative to the Protection of Civilian Persons in Time of War”) covers all individuals “who do not belong to the armed forces, take no part in the hostilities and find themselves in the hands of the Enemy or an Occupying Power”. Protected civilians are expected to be:

- Treated humanely at all times and protected against acts or threats of violence, insults and public curiosity.
- Entitled to respect for their honor, family rights, religious convictions and practices, and their manners and customs.
- Enabled to exchange family news of a personal kind. - Helped to secure news of family members dispersed by the conflict.
- Allowed to practice their religion with ministers of their own faith. Civilians who are interned have the same rights as prisoners of war. They may also ask to have their children interned with them, and wherever possible families should be housed together and provided with the facilities to continue normal family life. Wounded or sick civilians, civilian hospitals and staff, and hospital transport by land, sea or air must be specially respected and may be placed under the protection of the red cross/crescent emblem.

Additionally, protected civilians must not be:

- Discriminated against because of race, religion or political opinion. - Forced to give information.
- Used to shield military operations or make an area immune from military operations.
- Punished for an offense he or she has not personally committed. - Women must not be indecently assaulted, raped, or forced into prostitution (ICRC, 1998).

Specifically IHL protects the following categories of persons:

1. Women: International humanitarian law aims to prevent and alleviate human suffering in war without discrimination based on sex. But it does recognize that women face specific problems in armed conflicts, such as sexual violence and risks to their health.
2. Civilians: During the past 60 years the main victims of war have been civilians. The protection of civilians during armed conflict is, therefore, a cornerstone of international humanitarian law. This protection extends to their public and private property.
3. Prisoners of War: The Third Geneva Convention provides a wide range of protection for prisoners of war. It defines their rights and sets down detailed rules for their treatment and eventual release. International humanitarian law (IHL) also protects other persons deprived of liberty as a result of armed conflict.
4. Refugees and Internally Displaced Persons: Refugees are people who have crossed an international frontier, fleeing persecution in their country. Internally displaced persons (IDPs) have not crossed a border but have, for whatever reason, also fled their homes (ICRC, 1998).

Armed Conflicts: Concept and Typology

An **armed conflict** is a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths (Wallenstein & Sollenberg, 2001). In this definition, the expression *armed force* refers to the use of arms in order to promote the parties' general position in the conflict, resulting in deaths. *Arms* refer to any material means, e.g. manufactured weapons but also sticks, stones, fire, water, etc. that are used to cause deaths. The definition also shows that armed conflict is said to exist when there is a minimum of 25 battle-related deaths per year and per incompatibility. A 'major armed conflict' is a war between states and a current political conflict within a State in which armed fighting or clashes between Government forces and its opponents result in at least 1,000 deaths in the course of the conflict (Wallenstein & Sollenberg, 1998).

Armed conflicts in Africa have been classified in different ways. For example, Collier and Binswanger (1999) classify armed conflicts into (a) loot seekers and (b) justice-

seekers, classification which is based more on value judgment rather than analytical criteria. From another perspective Salim (1999) armed conflicts in Africa can be classified into the following categories: boundary and territorial conflicts, civil wars and internal conflicts having international repercussions, succession conflicts in territories decolonized, political and ideological conflicts, and others including those related to transhumance and irredentism (Abdalla, 2002). Under international humanitarian law, two types of armed conflict have been identified. They are:

International armed conflicts:

This refers to an armed conflict involving two or more states.

Non-international armed conflicts: These are armed conflicts between governmental forces and nongovernmental armed groups within the territories of a state. They are also called internal armed conflicts. The term “internal armed conflict” refers to all armed conflicts that cannot be characterized as either international armed conflicts or wars of national liberation (ICRC, 1998). According to Additional Protocol II internal armed conflicts “must take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement (Carrillo-Suárez, 1999). Armed conflicts within States are usually political conflicts involving citizens fighting for internal change. Some are secessionist movements, generally spearheaded by a group of people, more often than not a minority within a community, who take up arms to fight for the establishment of either an autonomous entity within an existing state or an entirely new and independent state of their own. It is important to note that situations of internal tensions and disturbances are not often classified as an armed conflict under international humanitarian law. The term “internal tensions and disturbances” refer to situations that fall short of armed conflict, but involve the use of force and other repressive measures by a government to maintain or restore public order or public safety (Carrillo-Suárez, 1999).

Armed conflicts in Africa usually have characteristics such as; lack of respect for international humanitarian law by states and non-state actors, coupled with a prevailing culture of impunity, is the main cause of the large-scale human suffering we are witnessing. The reality in some places is men, women and children being killed or raped, being forced out of their homes and losing all their possessions, living in a state of fear. Beyond the deliberate targeting of civilians, the reality is also the countless numbers of other – often forgotten – victims who are equally in need of protection. The constant evolution in the means and methods of warfare – sometimes accompanied by a reckless disregard for the protection of civilians – is another challenge in African conflicts.

Cases of Violation of Rules of IHL during Armed Conflicts in Africa

More than six decades since the adoption of the Geneva Conventions of 1949, humankind has experienced an alarming number of armed conflicts affecting almost every continent. During this time, the four Geneva Conventions and their Additional Protocols of 1977 have provided legal protection to people no longer participating directly in hostilities (the wounded, sick and shipwrecked, persons deprived of their liberty for reasons related to an armed conflict and civilians). Even so, there have been numerous violations of these treaties, resulting in suffering and death, which could have been avoided if International Humanitarian Law (IHL) was better respected (Henckaerts, 2005). Armed conflicts in Africa have always been characterized by gross violation of the provisions of IHL. For example, UNOCHA asserted that up to half of the world's child soldiers are in Africa.

Cases of violation of the provisions of IHL in African conflicts can be classified into the following:

Use of Children as Soldiers: According to Article 77 of the Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted in 1977:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest.

This above indicates that IHL prohibits the recruitment of children under the age of 15 years including internally displaced children into the armed forces. In spite of these provisions many cases of the use of child soldiers were recorded in armed conflicts in several parts of Africa such as Liberia, Sierra-Leone, Rwanda, Democratic Republic of Congo and many others. The appalling nature of the involvement of children in armed conflicts made the secretary-general of the United Nations to assert: "We must not rest, until all children who have been recruited or used in violation of international law have been released, and until all children feel safe in their homes, schools and communities, without fear that they will be forced into war" (Human Rights Watch, 2009). In the international community, a "child" generally refers to a person under the age of eighteen. Prevailing international law, however, sets fifteen as the minimum age for military recruitment and participation in armed conflict. A standard age for recruitment continues to be debated in the international forum. Contrary to existing legal requirements children as young as nine years old have been documented combatants. The role of girls in armed conflict is particularly troubling. Girls are often used as sexual

slaves, wives and concubines to soldiers. When these young girls become pregnant, the resulting children are often stigmatized and labeled as “rebel babies.”

Attacks on Civilian Population: The fourth Geneva Convention relative to the protection of civilian persons provides for the protection of civilians including internally displaced persons during periods of armed conflict. Specifically, it prohibits the following:

1. Violence to life especially torture, mutilations or cruel treatment. This includes protection against sexual violence and other threats to life.
2. The taking of hostages
3. Deportations.
4. Outrages upon personal dignity, in particular humiliating or degrading treatment founded on differences of race, color, nationality, religion, beliefs, sex, birth or social status.

In almost all armed conflicts in Africa, civilians have been targets and victims of war. During the genocide in Rwanda for example, internally displaced persons were used as protective shield by combatants.

Violation of the Provisions of IHL Restricting the Use of Land Mines and Related Weapons: Article 35 of additional Protocol II to the Geneva Convention prohibits the use of weapons of a nature that can cause superfluous injury or unnecessary suffering, widespread long-term severe damage to the natural environment. Similarly, article 55 (1) of Protocol 1 of the 1977 prohibits the use of methods or means of warfare which are intended or may expected to cause such damage to the natural environment and thereby jeopardized the health or survival of the population. Examples of such weapons include land mines, booby traps, incendiary weapon and other related devices which also include manually placed ammunitions designed to injure or damage and which are actuated by remote control or automatically after the lapse of time. In defiance of these legal provisions land mines were extensively used during armed conflicts in countries such as Angola, Zimbabwe, Uganda and Democratic Republic of Congo.

Sexual violence or rape as a weapon of war: Rape is prohibited by Article 4 paragraph 2(e) and Article 27 of the Fourth Geneva Convention. Sexual violence as a weapon of war targets individuals not only on the basis of group membership (i.e. ethnicity, tribe, race, etc.), but also uniquely on the basis of gender. A report by United Nations Development Fund for Women (*UNIFEM*) indicates that while sexual violence may be an unconventional weapon of war, it is arguably one of the most effective tactics used in warfare. The report states:

Men and boys as well as women and girls are the victims of this targeting, but women, much more than men, suffer gender-based violence. Their bodies become a battleground over which opposing forces struggle. Women are raped as a way to humiliate the men they are related to, who are often forced to watch the assault.

In societies where ethnicity is inherited through the male line, 'enemy' women are forced to miscarry through violent attacks. Women are kidnaped and used as sexual slaves by service troops... (Rehn & Sirleaf, 2002).

In several armed conflicts in Africa sexual violence has been a very worrisome situation. A very good example was what happened in Rwanda during the 1994 genocide in the country. According to UNIFEM report, 250,000 to as many as 500,000 women were raped during the 1994 genocide in Rwanda. Many of the victims were infected with HIV by perpetrators during the genocide, causing an ongoing crisis for Rwandans.

The *Prosecutor v. Akmkeyesu* case during the sitting of the International Criminal Tribunal for Rwanda presented the first conviction of an individual for the charges of genocide and international crimes of sexual violence, a truly groundbreaking feat. Kelly Askin highlights three historic aspects of this case:

... (1) the trial chamber recognized sexual violence as an integral part of genocide in Rwanda, and found the accused guilty of genocide for crimes that included sexual violence; (2) the chamber recognized rape and other forms of violence as independent crimes constituting crimes against humanity; and (3) the chamber enunciated a broad, progressive international definition of both rape and sexual violence (Askin, 1999).

Basically, the Akayesu case made the linkage between the prevalence of sexual violence and the political agenda behind the identity-based conflict. In this way, the Tribunal established that sexual violence and military objectives could be one and the same. The use of the term "sexual violence" to encompass rape and other forms of sexual aggression has more relevance in modern warfare than the previous references to rape. According to the Akayesu judgment, the Tribunal identified sexual violence to include acts that did not necessarily involve physical invasion of the human body or physical contact (Park, 2007).

The Use of Starvation as a Means of Warfare: Article 54(1) of the 1977 additional protocol 1 prohibits starvation of civilians as a method of warfare. It is prohibited to attack, destroy or remove or render useless objects indispensable to the survival of the civilian population (e.g. foodstuff, crops, livestock, agricultural areas producing food, drinking water installations and supplies etc. commenting on the nature of armed conflicts in Africa, the United Nations Children's Fund (UNICEF), for example, estimates that "in African wars, lack of food and medical services, combined with the stress of flight, have killed about 20 times more people than have armaments."

Effects of the Violation of the Rules of IHL

In contemporary armed conflicts, the challenge of upholding humanitarian values is not the result of a lack of rules but a lack of respect for them. The violation of the rules

of international humanitarian law in African conflicts has adverse effects on African societies. The following are some of them:

Effect on Women and Children: They suffer unspeakable atrocities in armed conflicts. In the past decade, according to one estimate, up to two million of those killed in armed conflicts were children. Countless others have been forced to witness or even to take part in horrifying acts of violence. The widespread insecurity and trauma due to the atrocities and suffering of the civilian population is another terrible legacy of these conflicts.

Post-traumatic Stress: Conflicts create extensive emotional and psychosocial stress associated with the attack, loss of loved ones, separation from parents and destruction of home and community. Many children develop problems, such as flashbacks, nightmares, social isolation, heightened aggression, depression and diminished future orientation. These problems of mental health and psychosocial functioning persist long after the fighting has ceased and make it difficult for children, who may comprise half the population, to benefit fully from education or to participate in post-conflict reconstruction. The psychosocial impact of war is often an aspect poorly addressed by Governments, as are the root causes of conflicts, such as exclusion and polarization of groups, in their efforts to rebuild society and prevent a relapse of violence (Wessells, 1998).

Sexual Violence: Sexual violence is another ruthless weapon of war. Warring parties resort to rape and sexual slavery of women to humiliate, intimidate and terrorize one another, as, in the conflicts in Rwanda. Rape has been a weapon of ethnic cleansing aimed to humiliate and ostracize women and young girls for bearing the “enemy’s” child and to eventually destroy communities.

Effects of Landmines: Landmines can have profound medical, environmental and economic consequences. Anti-personnel mines, which come in different shapes and sizes, are especially dangerous for children, who are unable to read warning signals and mistake them for toys. Their small bodies make children more likely to die from landmine injuries. Aside from residents of the affected countries, health-care workers and staff of non-governmental organizations who assist emergency-affected displaced and refugee populations in regional conflicts have suffered landmine-related injuries. In addition to exacting a heavy human toll, landmines in some countries, such as Angola have rendered vast areas of arable land uncultivable. Safe drinking water is at a premium in areas with large numbers of landmines, increasing the risk of waterborne diseases and malnutrition.

Reasons for Weakness in the Application of IHL

Three basic reasons have been identified as responsible for the weakness in the application of the provisions of IHL during armed conflicts. They are: lack of political will, lack of prevention and control, and lack of accountability. Experts consulted by the ICRC in 2003 also found that one of the main weaknesses of the IHL mechanisms – be

it the system of protecting powers, the *ad hoc* enquiry procedures, or the Fact-Finding Commission foreseen in Article 90 of Additional Protocol I – is that they can only be functional with the agreement of the parties. While Article 90 of the First Additional Protocol of 1977 foresees the possibility for States to accept the *ipso facto* competence of the Fact-Finding Commission, only 70 States have done so. Given the Commission has not been active since its inception, despite its confidential working method; it is difficult to be optimistic about the chances of a stronger mechanism. To improve IHL compliance mechanisms, they would likely have to be mandatory and not dependent on the agreement of parties once a conflict has broken out.

Conclusion

International humanitarian law protects a wide range of people and objects during armed conflict. The Geneva Conventions and their Additional Protocols protect the sick, wounded and shipwrecked who do not take part in hostilities, prisoners of war and other detained persons, as well as civilians and civilian objects. Parties to a conflict are prohibited from targeting civilians and are required to take all feasible precautions to avoid attacks that result in civilian casualties. They are also required to avoid defensive measures that put civilians in danger. Civilians may not be used as protective shields or forcibly displaced. Unnecessary attacks on their means of livelihood such as farms, housing, transport and health facilities are forbidden. In spite of these regulatory measures, armed conflicts in Africa have been characterized by gross violation of the rules of IHL. Respect for IHL can be enhanced if it is formally adopted by all States through ratification or accession. States must then enact national legislation and take practical measures in order for the rules to be fully effective. The establishment of international tribunals such as International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for states characterized by gross violation of IHL can help reduce the extent to which IHL is violated during armed conflict.

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