

AFROCENTRIC INNOVATIONS IN INTERNATIONAL HUMANITARIAN LAW: STRENGTHENING CIVILIAN PROTECTION IN AFRICAN ARMED CONFLICTS

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ABSTRACT

On 4th November 2020, conflict erupted in Ethiopia's northern Tigray region between the federal government and the Tigray People's Liberation Front (TPLF), leading to one of Africa's most devastating humanitarian crises in recent years. In spite of International Humanitarian Law (IHL), civilians bore the brunt of the violence—massacres, sexual violence, and the deliberate use of starvation as a weapon were widely documented. The African Union, despite its mandate to maintain peace and security, struggled to mediate effectively, while international responses remained slow and inconsistent.

It has been five years since the heart-wrenching event; yet its effects still linger. The conflict left thousands dead, millions displaced, and a region deeply scarred by war crimes and human rights violations. While peace agreements have been signed and the fighting has officially ceased, the process of accountability and rebuilding remains laggy. In cognizance of this, this essay explores the challenges of civilian protection in African conflicts through an Afrocentric lens. It also argues for a more context-specific approach to IHL enforcement by proposing innovative reforms that strengthen African regional mechanisms, integrate indigenous conflict resolution practices, and enhance cooperation between local and international actors.

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INTRODUCTION

Armed conflicts in Africa have long been marked by severe humanitarian crises, where civilians often bear the greatest burden even though there are legal protections enshrined in International Humanitarian Law (IHL)²⁴⁸. A survey by the Uppsala Conflict Data Program (UCDP) reveals that between 1989 and 2023, over 3.8 million people died due to armed conflicts globally, with more than half of these deaths occurring in Africa²⁴⁹. This staggering statistic is raising so many concerns about the vulnerability of civilians in African conflicts notwithstanding the existence of legal frameworks..

The African Charter on Human and Peoples' Rights²⁵⁰ reinforces civilian protection as it guarantees the right to life, stating that no one may be arbitrarily deprived of it²⁵¹. **Article 23** of the charter also upholds the right to national and international peace and security, emphasizing the duty of states to ensure the protection of civilians during armed conflicts. However, enforcement mechanisms remain weak, and regional institutions, including the African Union (AU), often struggle to effectively implement these provisions.²⁵² Without a doubt, there is an urgent need to return to the drawing board and chart a new course towards preventing and mitigating armed conflicts to ensure an effective civilian protection regime.

THE LEGAL FRAMEWORK AND THE REALITY OF ARMED CONFLICTS IN AFRICA

International Humanitarian Law (IHL) establishes clear protections for civilians during armed conflicts, aiming to minimize suffering and uphold fundamental human rights. The Geneva

²⁴⁸Amani Africa, 'Safeguarding the Humanitarian Space in Africa: Analysis of the current state of affairs and policy recommendations.' <https://amaniafrica-et.org/wp-content/uploads/2023/12/Safeguarding-the-Humanitarian-Space-in-Africa.pdf> accessed 26 February 2024

²⁴⁹Bastian Herre, 'Millions have died in conflicts since the Cold War; most of them in Africa and intrastate conflicts' (Our world in data, 2024) <https://ourworldindata.org/conflict-deaths-breakdown#:~:text=The%20first%20bar%20shows%20that,rates%20in%20other%20world%20regions>. Accessed 26 February 2025

²⁵⁰ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981, <https://www.refworld.org/legal/agreements/oau/1981/en/17306> accessed 25 February 2025

²⁵¹ Banjul Charter, Art.4

²⁵² Chekol, A. T., & Doğan, İ, 'Championing Human Rights: Normative Insights into the African Charter on Human and Peoples' Rights'. (2024) 15, 1598-1634. Beijing Law Review <https://www.scirp.org/journal/paperinformation?paperid=136328> accessed 25 February 2025

Conventions of 1949²⁵³, particularly the Fourth Geneva Convention²⁵⁴, along with their Additional Protocols of 1977²⁵⁵, form the cornerstone of civilian protection in war. **Article 3**, common to all Geneva Conventions, prohibits murder, torture, and cruel treatment of civilians and persons no longer participating in hostilities. This article mandates humane treatment for members of armed forces who have laid down their arms or are otherwise incapacitated by factors like detention or injury²⁵⁶. In terms of judicial application, the International Court of Justice (ICJ) has affirmed the customary law status of Common Article 3. In **Nicaragua v. United States**²⁵⁷, the ICJ held that Common Article 3 reflects fundamental humanitarian principles that are obligatory for all parties in a conflict, regardless of its nature. The Court stated that these provisions constitute a "minimum yardstick" of humanity, underscoring their universal applicability.²⁵⁸

Also, the convention emphasizes on the protection of civilians from the dangers arising from military operations and indiscriminate attacks that fail to distinguish between combatants and non-combatants, especially in cases where explosive weapons with wide-area effects are used in populated areas, leading to devastating collateral damage.²⁵⁹ This includes aerial bombardments, artillery shelling, and the use of landmines, which often result in mass casualties, destruction of civilian infrastructure, and long-term humanitarian crises.²⁶⁰

Beyond the Geneva Conventions, customary international humanitarian law has developed over time, particularly in regions where non-international armed conflicts prevail. To this effect, the International Committee of the Red Cross (ICRC)'s Customary IHL²⁶¹ Study asserts that "parties to a conflict must distinguish between civilians and combatants and may not target civilians²⁶²."

²⁵³ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949., <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949> accessed 25 February 2025

²⁵⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977., <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> accessed 25 February 2025

²⁵⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977., <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977> accessed 25 February 2025

²⁵⁶ Geneva Convention IV, Art. 3(1)

²⁵⁷ I.C.J. Reports 1986, p. 14.

²⁵⁸ See also Prosecutor v Dusko Tadić (1996) 35 ILM 32

²⁵⁹ Additional Protocol I n.7, Art. 51

²⁶⁰ Ibid.

²⁶¹ ICRC Database, Customary IHL , Rules - Customary IHL - ICRC, <https://ihl-databases.icrc.org/en/customary-ihl/v1> accessed 26 February 2025

²⁶² Customary IHL, Rule 1

Yet, in many conflicts, this distinction is routinely ignored, exposing civilians to targeted attacks, sexual violence, and forced displacement.

Zooming in on Africa, and recognizing the unique challenges posed by conflicts on the continent, African institutions have established legal frameworks specifically aimed at enhancing civilian protection²⁶³. The African Union (AU) has adopted several measures, including the African Peace and Security Architecture (APSA)²⁶⁴ and the Protocol Relating to the Establishment of the Peace and Security Council (PSC) of the African Union²⁶⁵ which grants the AU authority to intervene in member states in cases of genocide and war crimes.²⁶⁶ With all these, enforcement remains weak due to political considerations and sovereignty concerns.

One of the most significant African instruments for civilian protection is the Kampala Convention²⁶⁷ the first legally binding regional treaty for the protection of Internally Displaced Persons (IDPs).²⁶⁸ It mandates states to prevent displacement,²⁶⁹ protect displaced persons²⁷⁰, and provide durable solutions. Yet, in conflicts like the *Boko Haram* insurgency, massive displacements have occurred without adequate protection, highlighting the limitations of legal frameworks without strong enforcement mechanisms.²⁷¹

The reality of civilian protection in African conflicts reveals a stark contrast between legal provisions and their enforcement²⁷². Although legal frameworks exist, several factors undermine

²⁶³ Post-Conflict Reconstruction And Development: Peacebuilding @ Work (2024) 1(1) AU Journal <https://www.peaceau.org/uploads/au-journal-on-pcrd-vol-1-1-web-rev2.pdf> Accessed 26 February 2025

²⁶⁴ African Peace and Security Architecture (APSA, 2002) <https://www.peaceau.org/uploads/african-peace-and-security-architecture-apsa-final.pdf> accessed 26 February 2025

²⁶⁵ Protocol Relating to the Establishment of the Peace and Security Council of the African Union (adopted 9 July 2002, entered into force 26 December 2003) <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> accessed 26 February 2025

²⁶⁶ Peace and Security Council, Art. 7(1)(e)

²⁶⁷ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (Adopted 23rd October 2009, entered into Force 6th December 2012) https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf accessed 26 February 2025

²⁶⁸ Africa unites on human rights: A media guide to the Kampala Convention (IDMC, 2012) <https://www.internal-displacement.org/publications/africa-unites-on-human-rights-a-media-guide-to-the-kampala-convention/#:~:text=Africa%20unites%20on%20human%20rights:%20A%20media%20guide%20to%20the%20Kampala%20Convention,-Download%20the%20PDF&text=The%20adoption%20of%20the%20Convention,to%20protect%20and%20assist%20IDPs.> Accessed 26 February 2025

²⁶⁹ Kampala Convention n.20, Art. 3(1)

²⁷⁰ Ibid, Art. 5

²⁷¹ Kyle Dietrich, 'When We Can't See the Enemy, Civilians Become the Enemy: Living Through Nigeria's Six-Year Insurgency' (Center for Civilians in Conflict, 2015) https://civiliansinconflict.org/wp-content/uploads/2015/10/NigeriaReport_Web.pdf accessed 26 February 2025

²⁷² International humanitarian law and the challenges of contemporary armed conflicts (2007) 89(867) IRRC <https://international-review.icrc.org/sites/default/files/irrc-867-10.pdf> accessed 26 February 2025

their effectiveness, including weak state institutions, non-state armed groups disregarding IHL, and a lack of political will²⁷³. Many African states lack the judicial and military capacity to prosecute war crimes or hold perpetrators accountable.²⁷⁴ Groups like the Lord's Resistance Army (LRA), and various rebel factions operate with impunity, showing little regard for international legal norms²⁷⁵. At the same time, some African governments perceive IHL enforcement as a challenge to their sovereignty, resisting external interventions in their internal conflicts. This begs the question: can the existing legal frameworks truly ensure the protection of civilians in African conflicts?

BARRIERS TO THE PROTECTION OF CIVILIANS IN AFRICA

While African regional bodies have made commendable efforts in responding to conflicts and protecting civilians, significant barriers continue to make their efforts futile. These challenges will be discussed *seriatim*;

1. Tension Between State Sovereignty and Humanitarian Intervention: A major barrier to civilian protection in Africa is the persistent conflict between state sovereignty and humanitarian intervention.²⁷⁶ Many African governments resist external involvement in their internal conflicts, viewing it as a violation of sovereignty. This stance is reinforced by Article 4(g) of the AU Constitutive Act²⁷⁷, which upholds non-interference in the internal affairs of member states. While originally intended to safeguard African self-determination, this principle has often been used to shield governments from scrutiny, even in cases of mass atrocities. To address this, the AU Act permits intervention in cases of genocide, war crimes, and crimes against humanity²⁷⁸. However, enforcement has been inconsistent. Political alliances and fears of setting a precedent for external interference have made the AU hesitant to act decisively.

2. Non-State Armed Groups and Disregard for IHL: Unlike state actors, many armed groups do not recognize or adhere to IHL, deliberately targeting civilians through abduction, sexual

²⁷³ Ibid

²⁷⁴ Michelle Nel & Vukile Ezrom Sibiyi, 'Withdrawal from the International Criminal Court: Does Africa have an alternative?'(AJOL) <https://www.ajol.info/index.php/ajcr/article/view/160585/150156> accessed 26 February 2025

²⁷⁵ Reilly Julia, 'Can International Criminal Law Deter Rebel Groups?: The Case of Uganda, the Lord's Resistance Army, and the International Criminal Court' (Master's Thesis, University of Nebraska 2016). <http://digitalcommons.unl.edu/poliscitheses/40> accessed 26 February 2025

²⁷⁶ Jennifer L. Czernecki, 'The United Nations' Paradox: The Battle between Humanitarian Intervention and State Sovereignty,' (2003) 41(2) Duq. L. Rev. <https://dsc.duq.edu/dlr/vol41/iss2/7> accessed 26 February 2025

²⁷⁷ African Union, Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf accessed 26 February 2025

²⁷⁸ AU Act, Art. 4(h)

violence, and forced recruitment.²⁷⁹ Groups like Boko Haram, Al-Shabaab, and the LRA operate in weakly governed areas, making enforcement of legal protections nearly impossible.²⁸⁰ Their tactics, including indiscriminate attacks on schools and refugee camps, blur the lines between combatants and civilians²⁸¹. Since these groups are not bound by state obligations under IHL, holding them accountable remains a major challenge, requiring stronger regional enforcement mechanisms and international cooperation.

3. Resource Constraints and Operational Challenges: African peacekeeping and humanitarian missions frequently face severe resource constraints, limiting their ability to protect civilians effectively.²⁸² Funding shortages, logistical difficulties, and inadequate training undermine the efficiency of regional interventions²⁸³. The African Union Mission in Somalia (AMISOM) exemplifies these challenges, as it has consistently struggled with insufficient resources, making it difficult to sustain long-term operations against armed groups²⁸⁴. Linked to this is the reliance on external funding from international partners such as the United Nations, European Union, and individual donor states which creates uncertainty, as financial commitments are often inconsistent or tied to geopolitical interests²⁸⁵. The lack of well-equipped personnel, intelligence-sharing mechanisms, and rapid response capabilities means that interventions are often reactive rather than preventive.²⁸⁶ This weak operational capacity allows conflicts to escalate unchecked, leaving civilians vulnerable to prolonged violence and displacement.

4. Political Will and Selective Enforcement: Even when legal frameworks exist, political considerations often hinder enforcement. Governments sometimes overlook violations by allied

²⁷⁹ Annyssa Bellal, 'Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council' (Academy in Brief, 2016) https://www.geneva-academy.ch/joomlatools-files/docman-files/InBrief7_web.pdf accessed 26 February 2025

²⁸⁰ 6 Sub-Saharan Africa (2019) 5(1), 270–356. Armed Conflict Survey, <https://doi.org/10.1080/23740973.2019.1603979> accessed 26 February 2025

²⁸¹ Ibid.

²⁸² Claire Klobucista & Mariel Ferragamo, 'The Role of Peacekeeping in Africa' (CFR, 2023) [https://www.cfr.org/backgrounder/role-peacekeeping-africa#:~:text=By%20way%20of%20comparison%2C%20the,\\$400%20million%20goal%20by%202020.](https://www.cfr.org/backgrounder/role-peacekeeping-africa#:~:text=By%20way%20of%20comparison%2C%20the,$400%20million%20goal%20by%202020.) Accessed 26 February 2025

²⁸³ Ibid.

²⁸⁴ Paul D. Williams, 'AMISOM's Five Challenges' (CSIS, 2009) <https://www.csis.org/analysis/amisoms-five-challenges#:~:text=The%20AU's%20short%20record%20of,is%20a%20recipe%20for%20failure.> accessed 26 February 2025

²⁸⁵ Nick M. Brown, 'Foreign Assistance: Where Does the Money Go?' (Congressional Research Service, 2024) <https://crsreports.congress.gov> Accessed 26 February 2025

²⁸⁶ Ibid.

forces or prioritize military objectives over civilian protection²⁸⁷. In the Cameroon Anglophone Crisis, for example, both state forces and separatist groups have been accused of committing atrocities against civilians, including extrajudicial killings, arbitrary arrests, and village burnings.²⁸⁸ Despite reports by human rights organizations documenting these violations, accountability efforts have been weak due to political sensitivities.

RECOMMENDATIONS FOR STRENGTHENING CIVILIAN PROTECTION IN ARMED CONFLICTS IN AFRICA

1. A Continent-Wide Civilian Protection Fund: As mentioned above, African peacekeeping missions often suffer from financial constraints, relying heavily on external donors²⁸⁹. Establishing an African Union Civilian Protection Fund, with contributions from member states and private African entities, would provide sustainable funding for peacekeeping operations, early warning systems, and post-conflict civilian support. The fund could prioritize rapid deployment mechanisms, ensuring that peacekeeping forces are adequately trained, equipped, and mobilized before crises escalate.

2. Conditional Sovereign Immunity for States Complicit in Civilian Atrocities: While state sovereignty remains a core principle in international law, it should not shield governments from accountability when they facilitate or tolerate civilian abuses. The African Court on Human and Peoples' Rights could adopt a framework limiting sovereign immunity in cases where governments fail to prevent or actively engage in widespread human rights violations. This could pave the way for civil claims and reparations, allowing victims to seek redress from state actors responsible for atrocities.

3. Leveraging African Customary Justice Systems for Localized Accountability: Traditional and community-based justice mechanisms have long played a role in dispute resolution across Africa²⁹⁰. Instead of relying solely on international tribunals, African states can integrate

²⁸⁷ Luigi Daniele, 'Incidentalities of the civilian harm in international humanitarian law and its Contra Legem antonyms in recent discourses on the laws of war,' (2024) 29(1) Journal of Conflict and Security Law <https://doi.org/10.1093/jcsl/krae004>, accessed 26 February 2025

²⁸⁸ Dr Roxana Willis, Joseph McAulay, Ndjodi Ndeunyema & James Angove, 'Human Rights Abuses in the Cameroon Anglophone Crisis' (Oxford University, 2019) https://www.rightofassembly.info/assets/downloads/Cameroon_Anglophone_Crisis_Report.pdf accessed 26 February 2025

²⁸⁹ Paul D, n.37

²⁹⁰ Adenike Aiyedun & Ada Ordor, 'Integrating the traditional with the contemporary in dispute resolution in Africa' (2016) Vol. 20 Law, Democracy and Development. <https://doi.org/10.4314/idd.v20i1.8> accessed 26 February 2025

customary justice systems into formal legal frameworks to address war crimes and civilian abuses²⁹¹. These systems, rooted in local traditions, can facilitate truth-telling, reconciliation, and reparations, ensuring more immediate and culturally relevant accountability. A more Afrocentric approach, inspired by the philosophy of Ubuntu²⁹², could guide justice processes toward restoring communal harmony rather than focusing solely on punitive measures. This approach can complement legal accountability by fostering dialogue between victims and perpetrators, promoting reconciliation, and helping communities heal from the trauma of conflict. By incorporating Ubuntu-driven reconciliation models alongside punitive measures, African customary justice systems could not only hold perpetrators accountable but also heal the social fabric torn apart by conflict, fostering long-term stability.

4. “Safe Zones as Cities” – Establishing Conflict-Resistant Economic Hubs: Instead of traditional refugee camps, which often become targets for militant attacks, African governments—working with the African Development Bank (AfDB) and private investors—could establish self-sustaining, conflict-resistant economic hubs. These zones would integrate secure housing, schools, healthcare, and economic opportunities, reducing civilian dependency on aid and preventing mass displacement.

CONCLUDING THOUGHTS

It is common knowledge that if civilians in conflict-ridden African nations were given a clear path to safety, the stampede to escape would be overwhelming. This is not just speculation but a grim reflection of the failures in protecting those most vulnerable in times of war. Yet, all is not lost. The safeguarding of civilians in armed conflicts cannot remain a theoretical aspiration—it must become a lived reality. The solutions outlined in this essay are not mere recommendations but urgent imperatives. If Africa is to break free from the cycle of impunity and violence, then states, institutions, and communities must take deliberate steps toward enforcing humanitarian protections. The future of conflict resolution on the continent rests in our collective resolve.

²⁹¹ Ibid

²⁹² The concept is simple yet profound: “I am because we are.” It stresses the importance of community and the interconnectedness of all human beings. See 'What is the Spirit of Ubuntu? A Journey Into African Philosophy' <https://www.communication-generation.com/what-is-the-spirit-of-ubuntu-a-journey-into-african-philosophy/#:~:text=Ubuntu%20Philosophy%20FAQ-,What%20is%20Ubuntu?,you%20are%20because%20we%20are.%E2%80%9D> accessed 26 February 2024.