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THE ROLE OF REGIONAL HUMAN RIGHTS INSTITUTIONS IN TIMES OF ARMED CONFLICTS IN AFRICA

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Abstract: Armed conflict is a perennial problem that has plagued Africa for decades, resulting in flagrant human rights abuse. The central problem this paper seeks to address is identifying the laws establishing institutions and agencies for protecting human rights in Africa and examining how well-adapted these institutions are to protect human rights in times of armed conflict in Africa. This research employs the doctrinal research method, which entails an examination of the relevant primary sources of the law as laid down in the statutes and treaties and interpreted by the courts as well as secondary source materials, including journal articles, reports, and other relevant sources materials. It is contended that though human rights institutions were not established with the goal of interventions in times of armed conflict to protect human rights, they can be adapted to meet this challenge to stem the tide of gross human rights violations during armed conflicts. The paper concludes by recommending the expansion in the practice of the mandate of these human rights institutions to accommodate mechanisms for the protection of human rights in times of armed conflicts.

Keywords: Armed Conflict; Humanitarian Law; Human Rights; African Charter; Law of Wars; Regional Institutions

INTRODUCTION

This paper examines the role of regional human rights institutions in times of armed conflict in Africa. This paper is borne out of the desire to address numerous human rights cases of abuse in Africa over time due to armed conflicts that have devastated the region. Over the years, Africa has been home to numerous conflicts from DR Congo, Liberia, Sierra Leone, Uganda, Rwanda, Libya, Egypt, Sudan, and Tunisia, to mention but a few. Most of the abuses in these conflicts have not been investigated, and the culprits were not punished. Where investigations were done and indictments issued, the culprits have not been handed in for trial. Even when trials are conducted, they are done by foreign courts. The affected states and citizens have always complained about the processes and the fact that the trials were not done in Africa, and punishments were not served in Africa too. This paper posits that these challenges will not be over until the human rights courts in Africa are empowered to deal with these abuses at the grass root level, as Africans will best appreciate the peculiar circumstances in the region.

CONCEPTUAL FRAMEWORK

This part is devoted to conceptual definitions of key terms used in this paper. The term armed conflict has been variously defined. The concept of "armed conflict" is not defined in the conventions or protocols. However, it has been noted that "any difference arising between

states and leading to the intervention of members of the armed forces is an armed conflict”, and an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups within a state (Pictet 1952, 1-29).

The Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia defined it thus “an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state” (*The Prosecutor v. Dusko Tadic* 1997). There are two kinds of armed conflict - international and internal, and what we have in Africa falls under the second category.

Human rights law is the branch of public international law that assures us of all the rights and freedoms all human beings are entitled to. These rights are universal, interdependent, and interrelated. For every right, there is a duty to respect, protect and fulfill that right. The duty bearers are all states bound by human rights. These rights are based on customary international law, treaties, and soft laws. The Universal Declaration of Human Rights (UDHR 1948) provides civil, cultural, economic, political, and social rights. The UDHR is soft law, but it contains a binding interpretation of Articles 55 and 56 of the United Nations Charter, a treaty binding on all UN Member States. Some provisions of the UDHR have become customary international law and are binding on all states. Again, human rights are protected by regional treaties and institutions.¹

International humanitarian law (IHL) has been defined as laws of armed conflicts or “the law of war” (Shaw 2008, 1167). From an international law perspective, IHL has been defined as the law that seeks to regulate the conduct of hostilities, “*Jus in Bello*” (Shaw 2008; Greenwood 2006, 783). It has also been defined as the law which applies once the decision to resort to force has been taken and fighting has started (Cassese 2008, 6). However, in an international human rights-focused study, it can broadly and legitimately be seen as a set of laws aiming to protect the individual’s human rights during international or internal armed conflicts (Robertson and Merrills 1996, 310). The protection of the rights of individuals during an armed conflict bears a close relationship to the regime of international protection of Human Rights. In explaining the relationship between human rights law and humanitarian law, Roberts and Merrits (1996) contend that the former is the general law of which the latter forms a part. It is argued that human rights standards ideally should apply at all times and in all circumstances (Rehman and Ghosh 2008; Sassoli 2004) because the relationship between human rights norms and IHL can be seen in their natural complementary and considerate overlap, and humanitarian norms have contributed to the development of human rights law to a very large extent.

¹ In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, and the European Social Charter; In Africa, the Banjul Charter on Human and Peoples Rights; In Americas the American Conventions on Human Rights (ACHR) and the Additional Protocol to the American Convention on Human Rights In the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

HISTORICAL OVERVIEW

Archaeological findings, anthropological interpretations, and historical records indicate that people have engaged in armed conflicts since prehistoric times (Tadesse n.d.). Armed conflicts within states are political conflicts involving citizens fighting for internal change. Some are secessionist movements, generally spearheaded by a group of people, more often a minority within a community, who take up arms to fight to establish either an autonomous entity within an existing state or an entirely new and independent state of their own. Also, armed conflicts within states may involve a group of people who are armed and ready to fight to seize governmental power. Sometimes conflicts are matters of organized crime as opposed to politics.

Regular armies, militias, and armed civilians with a little discipline and ill-defined chains of command fight most armed conflicts. Another important feature in such conflicts is usually the collapse of the institutions of the state, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order, and general banditry and chaos (Project Ploughshares 1998). Fighting in most conflicts in Africa occurs not on well-defined battlefields but in and around communities and is often characterized by personalized acts of violence (Project Ploughshares 1998).

Home-grown weapons, such as machetes and spears, maim many in armed conflicts, but imported machine guns, grenades, mortars, and armored vehicles kill many more. The weapons are acquired by warring parties, either through hard currency purchases or through what is known as “parallel financing”.² There is usually some level of external involvement, whether in the form of arms supply to the warring factions, provisions of military advisers, or direct combat support for a particular side, as was noted in the case of the Democratic Republic of Congo, Liberia, and Sierra Leone.

CAUSES OF ARMED CONFLICTS IN AFRICA

Africa is caught in a wave of conflicts, many intractable, which have led to wanton abuse of human rights. The causes of these conflicts are many. According to Deng and Zartman (1991), for instance, Africa’s conflicts arise from problems basic to all populations, the trigs and pulls of different identities, the differential distribution of resources and access to power, and competing definitions of what is right, fair, and just. There have also been conflicts arising from boundary and territorial disputes; civil wars and conflicts ignited by external forces: conflicts sparked by succession movements as in Angola, Western Sahara, and Biafra of former Eastern Nigeria; and political as well as ideological conflicts (Zartman 1984, 103).

African nationalist leaders inherited the structures of violence from the departing colonial authorities; and employed them to consolidate their power. State-citizen relations became fundamentally conflictual and tenuous. The abuse of human rights during military or autocratic rule in parts of the continent can be understood from the standpoint that when Africa’s leaders assumed state power, there were no standardized procedures for winning and exercising political power: about what is a legitimate purpose and what is not; for defining the limits of state action; and of the place of human rights, especially the rights of the individual in

² Parallel financing involves the sale or barter goods such as diamonds, oil, timber and coffee.

the political regime. The lack of acceptable parameters in state-society relations left a vacuum and ambiguity between the two spheres (Nwachukwu and Obiozor 1996, 6).

A state system that does not provide for the security and welfare of its citizens cannot expect legitimacy. According to Almond (Almond 1993), the post-colonial African state cannot deliver on the "social contract" with its citizens. Rather, it justifies its citizens' rights as the exigencies of national unity and security. In some cases, ruling groups may resort to violence to prolong their rule and maintain opportunities for corruption (Murshed and Tadjoeeddin 2009).

There is also the problem of greed and grievance and the roles of violent Islamism and the global war on terror (Lake and Rothchild 1996). This is more so in times of conflict, during which the social order is disrupted, and national security takes precedence at the expense of people's rights. It is further contended that these claims by states if misdirected, could lead to serious violations of human rights and processes associated with the assertion and protection of human rights and to the total breakdown of the social order (Almond 1993). Some conditions that increase the probability of war include the inability of governments to provide basic good governance and protection for their populations (United Nations, Report of the Secretary-General on the Work of the Organization, Supplement No. 1 (A/54/1) 1999; Rotfeld 1999). Countries afflicted by war typically also suffer sharp inequalities among social groups. Rather than poverty, that seems to be a critical factor, although developing countries have been far more likely to be involved in armed conflicts than rich ones. Whether based on ethnicity, religion is reflected in unequal access to political power that too often forecloses paths to peaceful change (Seul 1999).

Ethnic and religious animosities, mass violations of human and minority rights, and ethnic cleansing resulting from extreme forms of nationalism propagated by hate media exacerbate conflict. The relative ease with which arms are trafficked worldwide, particularly in countries and regions affected by civil wars, is also a contributory factor. It has been noted that at least seven million small arms are in West Africa, where they have killed more than two million people since 1990, more than 70 percent of them women and children (United Nations 1999). State weakness can create the conditions for violent conflict. Political institutions that cannot manage differing group interests peacefully, provide adequate guarantees of group protection, or accommodate growing demands for political participation can fracture societies (Mansfield and Snyder 2007, 161-76). Colonialism and liberation struggles in Africa have left various legacies, including divisive and militarized politics and fierce struggles for power and land (Wyk 2007). It is important to note that irrespective of the causes of armed conflict, the bottom line is the tragic human suffering associated with the outbreak of conflict.

EFFECTS OF ARMED CONFLICT

Where wars erupt, suffering and hardship invariably follow. Conflict is the breeding ground for mass human rights violations, including unlawful killings, torture, forced displacement (Akujobi and Awhefeada 2021), and starvation. In global conflicts, governments and armed groups routinely attack civilians and commit war crimes and terrible human rights abuses (Armed Conflict n.d.). At least a dozen African countries have been affected by armed conflict over the last few years despite numerous peace and international mediation processes.

In all of them, civilians suffered human rights abuses, and the most affected were women, children, and older people (Amnesty International n.d.).

About two-thirds of the world's forcibly uprooted people are displaced within their countries. They are known as internally displaced people (IDPs). In the first half of the year 2020, for example, it is reported by the Internal Displacement Monitoring Centre (IDMC) that there are over fourteen million displaced persons across one hundred and twenty-seven countries (Internal Displacement 2020: Mid-Year Update 2020). According to the figures released by the Geneva-based Internal Displacement Monitoring Centre (IDMC), there were 28.8 million IDPs worldwide in 2012 (United Nations 2015). The 28.8 million internally displaced civilians recorded in the IDMC report included more than 6.5 million newly displaced. The conflicts in Syria and the Democratic Republic of the Congo were responsible for around half of the new displacements. An estimated 500,000 people fled their homes in both Sudan and India. The largest regional increase in the number of IDPs in 2012 was in the Middle East and North Africa; the region with the largest total number of IDPs was sub-Saharan Africa, which hosted 10.4 million (United Nations 2015). Hundreds of thousands of people at risk in war areas, such as Southern Sudan, the Democratic Republic of the Congo, Burundi, Angola, and Sierra Leone, mostly internally displaced, cannot be reached by humanitarian agencies. Where such access is possible, it is often under very dangerous conditions. In Burundi, for example, in the last quarter of 1999 alone, 30,000 new refugees fled to the United Republic of Tanzania. That country's total number of Burundian refugees is now about 300,000 (Ogata 2000).

Civilians face various threats to their persons and property during armed conflicts. In the worst cases against humanity or even genocide, such targeting includes killing, rape, torture, looting, and destroying homes. It has been particularly common in internal interethnic conflicts, such as Bosnia, Darfur, and Rwanda (Docherty 2011). The Rwandan genocide of 1994 consisted of attacks against civilians, with the exploitation of ethnic identities and allegiances degenerating into hate-filled propaganda (United Nations 1998). Children have been obliged to join warring parties to avoid starvation, protection, or under pressure from adults (United Nations 1998). The brutal doctrinarian of child soldiers leaves them with emotional and psychological scars. Children were made to witness massacres and commit atrocities. In Cambodia, Mozambique, and Sudan, child soldiers were "socialized" into violence by subjecting them to periods of terror and physical abuse (Wallensteen and Sollenberg 1998). In Sierra Leone, abducted children were forced to witness or take part in the torture and execution of their relatives. This made them outcasts in their villages and forced them to cling to rebel groups. Another effective tactic rebels use to spread terror is the execution of the village chief by the youngest boy. Refugees are the symptoms of wars and communal violence motivated by ethnic or religious hatred, persecution, and intolerance (Wallensteen and Sollenberg 1998).

The former human rights officer of the UN Office of the High Commissioner for Human Rights identified the following common trends of violations in situations of armed conflict:

1. Abuses by government forces and allied militia under international humanitarian law. These include failure to discriminate between civilian and military targets, violence towards non-combatants, pillaging, and intentional displacement of civilian populations.

2. Arbitrary arrests and detentions by policy, national security, and military intelligence, as well as abductions by rebel groups with *de facto* administrative control over certain geographical areas and assume responsibility for law and order in those areas.
3. Sexual and gender-based violence is mainly directed toward displaced women vulnerable to attacks when traveling outside the camps for income-generating activities.
4. Torture and ill-treatment by government security agencies and rebel groups.
5. Harassment of IDPs by militias, rebel groups, and government forces.
6. The inability of IDPs and civilians to conduct livelihood activities due to the high risk of and lack of protection.
7. Lack of accountability for human rights violations.
8. Poor administration of justice due to lack of resources and political will.
9. Unreasonable restrictions on the freedoms of expression, opinion, and assembly. Government security forces allegedly harass, arbitrarily detain and mistreat human rights defenders and community leaders who express opinions perceived as opposed to the government (Syed 2011).

LEGAL FRAMEWORK

Common Article 3

Common Article 3 is the human rights guarantees in times of internal conflict or civil war, which all the parties to the conflict should obey. It lists all the fundamental guarantees to be observed by the parties to the conflict. The slight difficulty observed in applying this mini-treaty and Additional Protocol II is determining when each becomes operative. It is important to note that common Article 3 has a lower threshold than Additional Protocol II, but they all protect victims of internal conflict. Applying common Article 3 in internal conflict requires two conditions to be fulfilled. There must be two parties to the conflict and the intensity of the conflict. This is important to distinguish common Article 3 conflict from violent situations with a lower threshold. This means that each conflict situation must be analyzed based on the stated criteria to determine the regime of law that will apply. Common Article 3 prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture. Taking hostages; outrages personal dignity, particularly humiliating and degrading treatment. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees recognized as independent by civilized peoples. It also provides that the wounded and the sick shall be collected and cared for and also makes provisions for the services of an impartial humanitarian body such as the ICRC (common Article 3(1)(a)-(d) and (2)). It is accepted that the provisions of common Article 3 reflect customary international law.

The ICTY (*The Prosecutor v Dusko Tadic* 1997) held *inter alia* that:

The emergence of international rules governing internal strife has occurred at two different levels: at the level of customary law and at that of treaty law. Two bodies of rules have thus crystallized, which are by no means conflicting or inconsistent, but mutually support and supplement

each other. Indeed, the interplay between these two sets of rules is such that some treaty rules have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions.

The ICJ also reiterated the above assertion in the *Nicaragua* case when it stated:

Article 3, which is common to all four Geneva Conventions of 12 August 1949, defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called 'elementary considerations of humanity (...)' (*Nicaragua v. United States of America* 1986).

Since all parties are bound by common Article 3 regardless of whether the affected state has ratified the Geneva Conventions, this paper's stance is that it does.

Customary International Humanitarian Law

In 2005, the ICRC published a study on customary IHL (Henckaerts 2005), which has helped greatly clarify the scope of protection in non-international armed conflict. The study also recognizes that the rule that applies to any conflict that meets the threshold of Article 3 is customary international humanitarian law. The study has shown that 148 out of 161 rules contained in the study apply to all conflicts, whether international or internal. The study under the caption of 'Fundamental Guarantees' (Rules 87-105); reiterates that the provisions of common Article 3 reflect customary law. The rules are specifically for protecting civilians and persons *hors de combat*. The rules of customary IHL are identified as part of the norms applicable in internal conflicts that meet the threshold of common Article 3.

Overlap of Protocol II and Common Article 3

Protocol II (1977)³ contains provisions or rules applicable during the internal armed conflict that has exceeded the threshold of common Article 3 (1949) conflict. This does not indicate a state of incompatibility between the laws. IHL and HR are developed separately and differ in content and context when one considers their field of application. Human right regulates the conduct of states concerning their citizens and applies both in times of war and peace. IHL as *lex specialis* is best suited and applicable in times of conflict. It controls how parties to a conflict behave and ensures that anyone under the enemy's control has their rights upheld. This is where the relationship between IHL and HR is most evident. Those in the hands of the enemy are citizens of a state, and their rights must be protected.

³ Additional Protocol to the Geneva Convention of 12 August 1949, and Relative to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977

Although some rights can be derogated from in times of emergency (such as freedom of movement, speech, and association), such as armed conflict situations, the international monitoring mechanisms and procedures of human rights are well developed to supplement the law's effects of war or IHL. The development of human rights can help improve the works of humanitarian organizations like the ICRC in times of armed conflict. Having noted that IHL and HR have different origins and scope of application, they must complement each other in times of armed conflict to form a synergy for better protection of the civilians and those *hors de combat*. It has been noted that freedom of speech and movement is specifically a human rights issue. Treating prisoners of war is within the scope of humanitarian law. However, the right to life, freedom from torture, and inhuman or degrading treatment are protected by human rights and IHL regimes (Bothe 2004), and this is where the synergy comes from.

Domestic Legislations

Domestic criminal laws of states also constitute a source of law in times of internal conflict. States in line with treaty obligations⁴ are encouraged to review their local laws to bring them in line with the provisions of the law of war. Only when this is done can states effectively try those indicted of committing war crimes, crimes against humanity, and genocide.

The African Charter on Human and Peoples Right (ACHPR 1986)

The African Charter on Human and Peoples Rights is a comprehensive legislation covering a range of individual and collective rights to be enjoyed by Africans (Articles 1-29). Although the Charter did not mention war or conflict, its provisions can be applied for protecting lives and resources in times of conflict in Africa as human rights apply at all times. Most of the crises in Africa have been linked to the environment and natural resources, and the Charter contains very copious provisions. The Charter also made provisions for establishing the African Commission on Human and Peoples Rights (Article 30). The Charter also defines the Commission's functions (Article 45).

The African Commission on Human and People's Rights

Africans must develop new ways of conflict management. Indeed, artificial societies created by colonialism in which different nationalities, ethnic groups, and tribes were forcibly yoked together cannot be wielded in peaceful nation-states that can be stable and prosperous. The problem is not peculiarly African; deeply segmented societies exist virtually everywhere. The presence of many ethnic groups in a country does not necessarily bring about internal stability, animosity, and conflicts. What makes the difference between stable plural societies and unstable ones is usually the responsibility of the leadership to the fact of multinationality (Oyeniya 2011). Given the competition of multiple identities within most African boundaries (Adejumobi 2001), realizing human rights on the continent entailed, at the minimum, guarantees of social justice or equitable ground rules for access to the benefits of membership in, protection by, or immunities

⁴ Article 1 common to the four Geneva Convention of 1949.

from the state as such it is very much bound up with the construction of both the state and citizenship on the continent.

In its broad outlines, realizing human rights in Africa is an economic and political project of eliminating poverty, disease, and their adverse consequences and liberating the citizens and inhabitants of the continent to realize their fullest potential (United Nations General Assembly 2000). This project requires states with constitutional governments in which people are guaranteed the fullest rights of participation in determining their collective and individual fates, i.e., states in which governments are accountable both to their people and to norms and institutions that effectively prevent, restrain and redress arbitrariness. These objectives, which may seem quite modest, have proved rather onerous to attain in an African continent with more than its fair share of human rights violations, conflict, underdevelopment, natural disasters, and humanitarian catastrophes. However, the extreme atrocities observed during conflicts in Africa have evoked universal indignation and the impetus to intervene to halt the carnage.

The African Commission on Human and Peoples' Rights and Conflict Resolution

The African Commission on Human and Peoples' Rights is a body set up under the African Charter on Human and Peoples' Rights (1986), to which all African states are now party. What is worth considering is the extent to which the African Commission sees conflicts as part of its human rights mandate. The substantive provisions of the Charter appear to place conflict within the context of human rights. Article 23(1) states that "all peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by the Organization of African Unity shall govern relations between states".⁵ Article 23(2), affirmed by the Commission's interpretation, interestingly suggests that it is expected that most conflicts will come from inside the state rather than being external threats.⁶

Including peoples' rights within the Charter also offers the potential for preventing conflicts. It is important to note that conflicts are perceived to be part of the mandate of the Commission. The Commission has various methods for identifying potential conflicts (Murray 1999). One way is through the individual communication procedure under Article 58 of the Charter, which speaks expressly of "a series of serious or massive violations". The importance of this procedure not only for highlighting abuses but also for potentially dealing with possible conflicts declares:

The prevalence of internal conflicts in Africa, which are accompanied by massive human rights violations, suggests the need for strengthening

⁵ The rest of Article 23 reads: "For the purpose of strengthening peace, solidarity and friendly relations, States Parties to the present Charter shall ensure that: (a) any individual enjoying the right to asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

⁶ In this respect as part of their reporting obligation, they should inform the Commission of "Statutory and Administrative measures designed to restrain refugees allowed into the country under Article 12 from engaging in subversive activities against their country of origin or any other State party to the Charter. Prohibition of subversive or terrorist activities against other States parties to this Charter being organized or launched from their territories".

human rights mechanisms for non-state groups to voice their grievances regarding systematic discrimination and violations of human rights remains critical. Recourse to a legitimate international mechanism where such grievances can be aired and pressures brought to bear upon the offending government to change its behavior will be important in protecting human rights in Africa (OAU/IPA 1998).⁷

Other methods employed by the African Commission on Human and Peoples' Rights for preventing conflicts in Africa include on-site missions, the assignment of commissioners to particular states for promotional purposes,⁸ the inter-state communication procedure, the reporting mechanism,⁹ interim measures,¹⁰ the holding of the extraordinary session¹¹ and through the work of its special Rapporteurs.¹² There is also the early warning mechanism¹³. Under this mechanism, there is a "situation room" at the secretariat, which collects general information from, for example, news agencies and the internet and transmits this raw data to the staff at the conflict division in the secretariat. These data are to be collected and analyzed. It is crucial to note that continuous monitoring of a state's human rights situation will provide indicators of potential conflicts.

The African Court on Human and Peoples' Rights and Conflict Resolution

Norms prescribing state conduct are not meaningful unless anchored in functioning and effective institutions. Thus, the African Court on Human and Peoples' Rights is a mechanism for protecting and promoting Human Rights. Generally, human rights abuses during conflicts in Africa have increased substantially. What is the African Court doing to address the human rights abuses occasioned by conflicts in Africa? Are there better ways the African Court can resolve the conflicts resulting in these human rights abuses? It is observed that the Court has both contentious and conciliatory jurisdiction.¹⁴ Article 4 of the African Charter also provides for advisory jurisdiction through which it issues advisory opinions on "any legal matter relating to the charter or any other relevant human rights instruments".

⁷ Report of the OAU/IPA, Task Force on Peacemaking and Peacekeeping in Africa, New York, March 1998, at 17-18.

⁸ Geographical Distribution of Countries for Promotional Activities, DOC/OS/36e (XXIII)

⁹ States are required to submit reports every two years under Article 62 of the Charter on the measures they have taken to implement the Charter in national law.

¹⁰ As See Rule 111-The provision can arguably be used as indicators to enable action to be taken against potential conflict at an early stage.

¹¹ Rule 3

¹² Special Rapporteurs on Summary, Arbitrary and Extra-Judicial Executions, Special Rapporteurs on Prison and Other Conditions of Detention, Special Rapporteurs on Women's Rights. All of them are Commissioners.

¹³ Mechanism for Urgent Response to Human Rights Emergencies under Article 58 of the African Charter on Human and Peoples' Rights, Doc/OS/52 (XXIV)

¹⁴ Article 3 Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights by the Assembly of Heads of State and Government of the Organisation of African Unity, Conference of Ministers/ Attorneys General on the Establishment of an African Court on Human and Peoples' Rights, OAU/LEG/MIN/AFCHPR/PROT. (1) Rev 2 (1997) hereinafter referred to as Protocol.

The paper highlights some of the decisions of the African Court in its protection functions. Article 9 of the Protocol that sets up the African Court on Human and Peoples' Rights follows the Court to attempt the "amicable settlement" of disputes. In the case of *African Commission and Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya* (2011), the Court received an application from the African Commission on Human and Peoples' Rights instituting proceedings against the Great Socialist Peoples' Libyan Arab Jamahiriya, for serious and massive violations of human rights guaranteed under the African Charter on human and people rights. The indiscriminate and excessive use of force and lethal weapons against peaceful protesters violated human rights and international humanitarian law, contributing to the loss of human life and the destruction of property.

The Court decided to make an order for the provisional measure.¹⁵ According to the Court, it appears from the application that there exists a situation of extreme gravity and urgency, as well as a risk of irreparable harm to persons who are the subject of the application. The Court unanimously ordered the Great Socialist People's Libyan Arab Jamahiriya to immediately refrain from any physical integrity of persons, which could be a breach of the Charter's provisions or other international human rights instruments to which it is a party. It also ordered the Great Socialist People's Libyan Arab Jamahiriya to report to the Court within fifteen days of receipt of the order on the measures taken to implement it. The Court's order on this matter is a very welcome development as the human rights of citizens in a conflict situation.

However, a very disturbing feature of the provisions of the protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights is that for the Court to hear a case brought directly by an individual against a state party, there must be compliance with, *inter alia*, Article 5(3) and Article 34(6) of the Protocol.

Article 5(3) provides that: "The Court may entitle relevant non-governmental organizations with observer status before the Commission and individuals to institute cases directly before it, in accordance with Article 34(6) of this protocol".¹⁶

The effect of the preceding two provisions is that direct access to the Court by an individual is subject to the deposit by the respondent state of a special declaration authorizing such a case to be brought before the Court (*Michelot Yogogombaye v. Senegal 2009*).

CONCLUSION

This paper considered the conceptual framework and the legal regimes in times of internal conflict and concluded that the relevant regimes of IHL and HR overlap to form a synergy. Common Article 3 of the Geneva Conventions contains a human rights provision to be respected and obeyed by the parties to the conflict and has also attained customary law status.

¹⁵ Under Article 27 (2) of the Protocol and Rule 51 (1) of the Rules of the Court, the Court is empowered to order provisional measures *proprio motu* "in cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons" and to which it deems necessary to adopt in the interest of the parties or of justice".

¹⁶ Article 34(6) of the Protocol provides that: at the time of ratification of this Protocol or anytime thereafter, the state shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a state party which has not made such a declaration.

The IHL study on Customary IHL has helped to clarify the uncertainties about the relevant rules applicable in any conflict. The paper notes that states must respect customary rules irrespective of ratification. The paper also noted the need for states to review domestic legislation to enable them to try breaches arising from armed conflicts. The paper recommends that the African countries immediately draft relevant rules for the African Court of Human Rights in addition to funding which is very crucial for the survival of the Court.

It is strongly recommended that individuals be granted direct access to the African Court on Human and Peoples' Rights so that those violating the human rights of people in situations of armed conflict can be promptly punished. Also, in that case, those that take part in armed conflict will learn to comply with the rules of international humanitarian laws and human rights laws.

Also, the African Court on Human and Peoples' Rights has a conciliatory jurisdiction. In its conciliatory jurisdiction, the Court should take urgent steps to resolve disputes before they degenerate into a state where parties take up arms against each other. It should be noted that this conciliatory jurisdiction of the Court reflects the African value, which emphasizes conciliation and compromise. Unlike the European system, the winner takes it all and promotes continued fraternity between the parties. Today, it is sad to note that all we hear in Africa are rumors of war. Therefore, the challenge to African countries is for the existing human rights institutions in Africa to use the early warning mechanism, establish methods of conciliation to humanize warfare, and protect the victims of armed conflicts.

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