

Human Rights Implications of African Conflicts

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Abstract

This paper addresses the very serious problem of human rights abuse in conflict situations in Africa. It revisits the various causes and nature the of human rights abuse during conflicts, and notes that within the context of armed conflict, human rights are joined with International Humanitarian law to establish protection for non-combatant who have been the major casualties during these conflicts. It concludes on the note that Africa must accede to the minimal standards of engagement for protection of human rights and possibly support this with the infusion of the African values of sense of community and dignity of the human person in the existing legal regime.

Introduction

Africa is caught in a wave of conflicts, many of them intractable, which have led to wanton abuse of human rights. The sources or causes of these conflicts are many, and have been addressed by many scholars. According to Deng *et. al.*, (1991), for instance, Africa's conflicts arise from problems basic to all populations: the tugs 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 that are rooted in colonial and racial South Africa; conflicts sparked by succession movements as in Angola, Western Sahara and Biafra of former Eastern Nigeria; and political as well as ideological conflicts (El-Ayouty and Zartman, 1984: 103). The bottom line of it all, irrespective of particular source, is the tragic human suffering associated with the outbreak of conflict. The extreme atrocities observed during conflicts in Africa have evoked the universal indignation and the impetus to intervene in order to halt the carnage.

Instances which readily come to mind include the massacre during the civil war in Somalia, and the genocide in Rwanda. The extent of human suffering and insecurity in Somalia, for instance, is what compelled the international community to intervene. Before then, there was an outflow of some 800,000 refugees into neighbouring countries resulting in considerable human suffering. In the Rwanda case, no less than 760,000 people including foreign humanitarian workers and United Nations personnel lost their lives. About 2.5 million others were displaced and forced to seek refuge in squalid, disease-ridden and starvation-ravaged refugee camps (Enemuo, 1994). Blatant human rights abuses have also occurred in Liberia, Sierra Leone, Algeria and the Democratic Republic of Congo. In Sierra Leone, innocent citizens had their limbs cut off by rebel soldiers; even infants were not spared. This is in addition to the abduction of scores of women and young girls; rape, as well as arbitrary torture and killing of civilians.

More than 30 wars have been fought in Africa since 1970, the majority of them being intra-state in origin and generating huge refugee flows and displacement of persons. During the 1980s alone, Africa was ridded by nine internal wars, numerous other instances of large-scale violent conflict and a cocktail of coups, riots and demonstrations. Of the nine wars, those in Sudan, Ethiopia, Angola, Mozambique and Uganda resulted in a high death toll, including civilian casualty in the region of 60,000-100,000 as reported for Angola, and a million or more for Sudan (Bender, 1989: 24). At the beginning of 1990, more than 2.5 percent of all Africans were refugees, most of them fleeing from political violence. These included 4.7 million in need of assistance outside their home countries and another 8.6 million internally displaced persons. Altogether they accounted for 43 percent of the global population of refugees (*World Refugee Survey*, 1989: 30). In 1996 alone, 14 of the 53 countries of Africa were in armed conflict, accounting for more than half of all war-related deaths world-wide and resulting in more than 8 million refugees, returnees and displaced persons (Peters, 1999). Africa is currently "embroiled" in seventeen wars of which only one, the Ethiopia – Eritrea war is classified as inter-state. On the whole, about 8 million displaced persons and refugees have been thrown up by these wars (Hart, 1999: 10). The human rights implications of this development challenges the collective will of humanity to act..

Within the context of armed conflict, human rights are joined with International Humanitarian Law to give protection to civilians who have been the major causality in conflict situations. In terms of the *modus operandi* for concrete action consideration of this problem is at an early stage. Attempts to establish a firm basis for action were made in the *Geneva Protocols of 1977*, supplementing and refining the *Geneva Conventions of 1949*, and previously *The Hague Conventions of 1899 and 1907* (Almond, 1993). The concept of human rights which entails the recognition, respect and protection of the fundamental rights of human beings, because they are human beings, draws heavily on internationally accepted norms.

This has a crucial bearing on the quest for peace, democracy, development and justice in Africa. In Africa, the human rights project is faced with the particular challenge of the status of human rights in emergency situations and in post-conflict society building. The role of the state in the protection of human rights is important here as countries can no longer claim that the way they treat their citizens is an internal matter. The state's duty to protect the rights of its citizens is now owed not only to individuals within its jurisdiction but also to the international community as a whole. There is thus an organic link between human rights and international peace and security.

Human Rights, Humanitarian Law and Conflicts

Though related to each other, human rights law and international humanitarian law can be differentiated from each other. Basically, human rights revolves around the necessity to respect and protect the individual or group from violation of their fundamental rights especially by the state. It was after the Second World War that, as a reaction against the excesses of the Axis forces, human rights law became part of the body of public international law, making human rights law a supplement to the law protecting humanity from abuses in situations of war.

On the other hand, international humanitarian law is that aspect of international law which deals with such matters as the use of weapons and other means of warfare in combat, and the treatment of war victims by the enemy. It deals with the direct impact of war on the life, personal integrity and liberty of human beings (Parsch, 1982: 215). A systematic development of humanitarian law in armed conflict is said to have originated not earlier than the second half of the 19th century when the need was felt to prevent wars by establishing methods of conciliation to humanize warfare and to protect the victims of armed conflicts (Ibanga, 1993). It is generally recognized that international humanitarian law and human rights norms have different origins, and apply in different situations humanitarian law during armed conflicts and human rights during peacetime. Nonetheless, these two, not only share a universal value, namely, that of humanity; they also have the common objective of protecting and safeguarding individuals in all circumstances (Grasser, 1998: 403).

Since the Universal Declaration of Human Rights (1948) which proclaimed and recognized the inalienable rights of individuals, personal dignity and equality, the UN has adopted the following principal legal instruments in the field of human rights.

- The International Convention on Civil and Political Rights.
- The International Covenant on Economic, Social and Cultural Rights.
- The International Convention on the Elimination of All Forms of Racial Discrimination.
- The Convention of Elimination of All Forms of Discrimination against Women.

- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- Convention on the Rights of the Child.

Apart from the various UN resolutions calling for the protection of human rights during armed conflicts, the following legal instruments in the sphere of International Humanitarian Law have also been adopted:

- the Convention on the Prevention and Punishment of the Crime of Genocide;
- the four Geneva Conventions of 1949 for the prosecution of war crimes;
- Protocol I additional to the Geneva conventions, and relating to the protection of victims of International Armed Conflicts; and
- Protocol II additional to the Geneva Conventions, and relating to the protection of victims of non-international armed conflicts.

Clearly, the two sets of legal instruments must be understood as an expression of the international community's determination to strengthen and protect the rights of the individual both in peacetime and during armed conflicts.

The Post-Colonial State and Human Rights Protection

No discourse on human rights and their protection either in peacetime or during armed conflicts would be complete without examining the nature of the African state, especially as this pertains to state-citizen relations and the potential for human rights abuses. We should take cognisance of the colonial past of the state, which was fundamentally sustained through force of arms, intimidation and oppression in order to understand the post-colonial state and its characteristics. African nationalist leaders inherited the structures of violence from the departing colonial authorities; and employed them to consolidate their own power. State-citizen relations became fundamentally conflictual and tenuous, though they appeared normal during periods of relative economic and political stability. For instance, 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 had been no institutionalised or internalised procedures for winning and exercising political power; about what is 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 the political regime. The lack of acceptable parameters in state-society relations left a vacuum and ambiguity in the relations between the two spheres (Obiozor, *et. al.*, 1999: 6). Indeed, many post-independence leaders had been too familiar with colonial dictatorship to be democratic. The institution of political opposition in government, for example, was too strange not to be abused and consequently suppressed; and long reigning presidents and mono-parties became the rule rather than the exception. The result of these

developments was the flagrant abuse of human rights, whether during peacetime or in times of conflict. The worst abuses during Africa's 20-30 years of independence were committed in Uganda, Equatorial Guinea and Central African Republic in the 1970s under Idi Amin, Marcias Nguema and Emperor Bokassa, respectively.

In many African countries, the citizens do not identify wholly with the state and are therefore willing to challenge it, sometimes violently. A state system that does not provide for the security and welfare of its citizens cannot expect legitimacy. Various described as fragile, weak, soft, decaying, over swollen, prebendalist and even "lootocratic", the post-colonial African state is incapable of delivering on the "social contract" with its citizens. It rather finds it easier and indeed more expedient to undermine the rights of its citizens justified as the exigencies of national unity and security. 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. According to Almond (1993: 145), these claims by states, if misdirected, could lead to serious violations of human rights and the processes associated with the assertion and protection of human rights, and to the total breakdown of the social order.

Human Rights Abuses During Conflicts

In Africa, the types of human rights abuse during conflicts vary from the fairly common occurrences such as torture, rape, murder, child labour and forced labour to more recent cases of genocide, mutilations, ethnic cleansing and the use of refugees as "human shield". Violence against women and children has become particularly horrendous. Women and children constitute over 70 percent of the world's most vulnerable; they suffer most during periods of conflict and war. Women in particular, are major victims in times of war or armed conflict. They experience conflict in completely different ways from men. War invariably exacerbates the inequalities that exist in different forms and to varying degrees. Women and girls are usually raped and sometimes forced into sexual servitude. For survivors, physical and social dislocation, injuries and trauma take a toll that may last a lifetime.

Until recently, rape and sexual violence against women were regarded as an inevitable aspect of armed conflict, and seldom if ever were the culprits prosecuted (Chinkin, 1994: 326). This nonchalant attitude which still persists has been increasingly questioned and more pressure is being exerted by women's groups for more attention to be paid to this by the international community. The UN Special Rapporteur on violence against women in armed conflict, after hearing of the extent of sexual violence in the Rwandan conflict, was, in her words, "absolutely appalled that (in the face of such gross violations) the first indictment on the grounds of sexual violence at the International Criminal Tribunal for Rwanda

(ICTR) was issued only in August 1997, and then only after heavy international pressure from women's groups" (Coomaraswamy, 1998). Although, sexual violence against women had been on the agenda of human rights bodies for some years, it was the recent Yugoslav conflict and the attendant human rights abuses that galvanized the international community into action. It led to the most significant development in humanitarian law attributable to the growing emphasis on women's rights, including protection against rape within the norm of grave breaches of international law (Kolb, 1998).

Today, Africa is increasingly witnessing the involvement of children in internal wars. In the past decade, wars have killed more than 2 million children worldwide. Africa accounts for a significant number of these. Four million have been disabled, and 10 million traumatized (Hubert, 1999: 11). Estimates suggests that there are 300,000 children currently serving as combatants, sexual slaves, or slaves. In fact, some of the under-aged combatants have been used to commit the most atrocious crimes in countries like Liberia, Sierra Leone and Angola. In the face of such grave developments, the Report of the Working Group on a draft optional protocol to the convention of the Rights of the Child on recruitment or involvement of children in armed conflict was rather ambivalent. The preamble recalls "the obligation of each party to an armed conflict to abide by the provisions of International Humanitarian Law", while draft Article 3, paragraph 1 balances the moral (not legal) obligation not to recruit children under 18 with a legal obligation on states to prevent such recruitment. It states that:

persons under the age of 18 years should not be recruited into armed groups, distinct from the armed forces of a state, which are parties to an armed conflict. State parties shall take all feasible measures to prevent such recruitment.

Woman and child abuses apart, several and diverse human rights abuses have occurred during conflicts in South Africa, Sudan, Angola, Somalia, Chad, Algeria, Western Sahara, Uganda, Liberia and Sierra-Leone. The abuses range from extreme brutalities, torture, to murder. The refugee problem has also become acute, exacerbating human suffering and loss of basic rights. What can we make of the Rwanda genocide in 1994, for example, and the huge wave of refugees it generated resulting in about 2.5 million people fleeing to neighbouring countries. This growing human phenomenon must be regarded as a human tragedy in the light of the appalling suffering it produces (Ajulo, 1993: 19). Indeed, it has been said, and rightly so, that everyone is a potential refugee in this age.

The crisis in the Democratic Republic of Congo is another instance where the rights of innocent citizens have been severely compromised and abused. This situation was further compounded by the internationalization of the conflict

involving the four neighbouring countries of Burundi, Uganda, Angola and Zimbabwe thereby further complicating resolution of the conflict. There are at present over one million refugees in Central Africa. The number is still growing as terrified civilians clamber onto boats on Lake Tanganyika to be taken to safety in Tanzania; others have been crossing from the west to escape both the renewed war in neighbouring Angola, and continued fighting in the Republic of Congo (*The Guardian*, 1999).

Generally, refugees in Africa suffer untold hardship and abuses compared to other parts of the world. Perhaps this is because of the limited attention accorded African problems by the international community. For example, Congo recently accused Burundi of allegedly holding 750 refugees in harsh conditions after they fled shelling by Burundian troops. According to the Congolese Minister for Human Rights—Leonard She Okitundu—the refugees were kept under inhuman conditions in abandoned schools (*The Guardian*, 1999). Refugees, like all persons have certain basic human rights which are enshrined in the UN Charter and the Universal Declaration of Human Rights.

These include the fundamental right to life, liberty, security of person, the protection of the law, freedom of thought, conscience and religion, and the right to own property. Refugees also have the right to freedom of movement. It is recognized that an influx of refugees always creates a security problem for the host country. This, and the need to safeguard the rights of the local population, may dictate restrictions on refugees (Agbu, 1995: 126). But such security imperatives of the host country should always take cognisance of the basic rights of refugees as well.

Legal and Humanitarian Instruments

In general, the international community's reaction to human rights abuses during situations of armed conflict has been based on the Geneva Conventions of 1949, the Geneva Protocols of 1977, and other related instruments. The four principal Geneva Conventions are:

- (a) Geneva Convention for the Amelioration of the condition of the wounded and sick in Armed Forces in the Field.
- (b) Geneva Convention for the Amelioration of the condition of the wounded, sick and shipwrecked members of the Armed Forces at Sea.
- (c) Geneva Convention relative to the Treatment of Prisoners of War.
- (d) Geneva Convention relative to the Protection of Civilians in times of War.

The Protocols are, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international Armed Conflicts (Protocol I)*, of 8 June 1977; and *Protocol Additional to the Geneva Conventions*

of 12 August 1949, and relating to the protection of victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977.

In addition to these above, article 52(1) of the UN Charter anticipated regional arrangements designed to foster international peace and security. Regional arrangements can be categorized among these protocols. The one that is important in addressing conflicts in Africa is the *African Charter on Human and Peoples' Rights* (ACHPR). Due to the very serious violations of human rights during armed conflicts, the OAU at its Monrovia Summit in 1979 directed the Secretary-General to initiate a process for developing an African convention on human rights. After preparatory meetings in Dakar and Banjul, the African Charter on Human and Peoples' Rights was finally adopted in 1981. The Charter entered into force on 21 October 1986. The Commission that was established under it held its first session on 2 November 1987 and adopted its Rules of Procedure at its second session on 13 February 1988 (Brett, 1988). The Commission is expected to receive and investigate complaints from states which have signed the charter, and also from individuals. Over forty states are party to the African Charter.

The Charter provides in Article 4, that "Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of his rights". However, it is Article 5 that is more specific: it prohibits "... All forms of slavery, slave trade, torture and cruel, inhuman or degrading treatment". The ratification of the African Charter is significant in the efforts at protecting human rights in Africa. It is as important, in its own way, as the 1948 Universal Declaration of Human Rights in the history of Europe (Carver, 1990).

In retrospect, we find that the idea of an African Charter was canvassed in the late 70s, the period of the overthrow of Idi Amin, Jean-Bedel Bokassa and Macias Nguema. However, as a legal instrument, the African Charter has been criticized as being weak in some respects compared to the two UN covenants which give legal force to the Universal Declaration. Many rights are hedged with the qualification that they are to be enjoyed "under the law", as if the law could never be used to violate human rights. But it must be emphasised that with the numerous human rights abuses recorded in the ongoing conflicts on the continent, the Commission is indeed very relevant and has a lot of work to do in terms of investigating and punishing those responsible for human rights abuses.

With respect to the special case of women, the Charter in Article 18(3) stipulates that "the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declaration and conventions". For instance, the four 1949 Geneva conventions and two 1997 protocols contains some 19 provisions that relate specifically to the rights of women. However, the scope of these rules is somewhat

limited and many of them are in fact designed to protect children (Arts. 50 and 132 of the Fourth Geneva Convention).

Apart from the Geneva conventions and protocols, and the ACPHR, various other instruments exist to prevent human rights violations. These include the convention on the Prevention and Punishment of the Crime of Genocide (1948), Declaration on protection from torture (1975), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1948), Convention Relating to the Status of Refugees (1951) and Convention Relating to the Status of Stateless Persons (1954). With respect to the incidence of torture which has become a central concern of human rights law, the first international legal text specifically outlawing "torture" was the Universal Declaration (Article 5). Soon afterwards, the European convention on human rights in Article 3 also prohibited torture. In 1948, the UN convention prohibiting torture became the first binding international instrument exclusively dedicated to the struggle against one of the most serious and pervasive human rights violations of our time (Kolb, 1998: 433). For instance, Article 3, common to the four Geneva conventions of 1949, includes on the list of minimum standards to be observed by all parties even in non-international armed conflicts, a prohibition on "violence to life and person, in particular ... mutilation, cruel treatment and torture". Also, Protocol II prohibits "violence to the life, health and physical or mental well-being of persons, in particular ... cruel treatment such as torture, mutilation or any form of corporal punishment (Article 4, paragraph 2(a) of Protocol II, 1977).

Other general human rights conventions on torture include, Article 7 of the Covenant on Civil and Political Rights (CCPR), 19 December, 1996; Article 37(a) of the Convention on The Rights of the Child (CRC), 20 November, 1989; Article 5(2) of the American Convention on Human Rights (ACHR), 22 November 1969; and Article 3 of the European Convention for The Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November, 1950. Since torture is a fairly common occurrence during armed conflicts, Africa has also had its fairshare of such abuses in conflict situations, especially in countries such as Uganda, South Africa, Algeria, Equatorial Guinea, Liberia and Sierra Leone. In as much as many of these instruments may apply to individual member states, the point remains that without the political will enhanced by the right political atmosphere, little will be achieved in terms of punishing violators of human rights in periods of armed conflicts.

In the light of such occurrences, the ACHPR is a most welcome instrument in spite of its weaknesses. The challenge to African countries is to seek institutions congenial to African environment to check human rights abuses rather than wholesale imitation of western human rights institutions.

On refugees and the need to protect their rights, the 1951 convention provides the most comprehensive codification of the rights yet documented at the global

level. This was subsequently amended by the 1967 protocol. On the other hand, the Organisation of African Unity (OAU), sought to achieve the same goal through the 1969 convention governing Specific Aspects of Refugee Problems in Africa (Changani, 1994: 197). Since majority of African refugees are already vulnerable – children, women and the old armed conflicts further worsen their plight. Hence, particular attention should be paid to the protection and needs of these segments of the population. Whilst children are open to all kinds of abuse, women are vulnerable to rape before, during and after captivity. Children, for instance, are frequently subjected to some of the most abominable practices including torture, rape, detention, and conscription into military service; and they are usually victims of malnutrition, disease and separation from their families. Those who survive are likely to be traumatised for life. In Angola, Mozambique, Somalia, Sudan, Liberia and Sierra Leone, for example, armed conflict has produced child soldiers (Agbu, 1995: 200). Indeed, the devastating nature of African conflicts has also made the young and able-bodied not only refugees but also victims of similar human rights violations.

A Case for a Human Rights Court

Is there a case for a human rights court in Africa? This question becomes very important when one considers the magnitude and nature of human rights violations during armed conflicts in Africa. Since independence in the 1960s most African countries, appear not to have built the capacity to ensure peace, order and good governance. As members of the human family, African countries must subscribe to an internationally prescribed minimum standard of behaviour, this is especially so as the principle of non-interference has become anachronistic and moribund. In fact, the reality today is that there are countries with no government or with a government that is only partially in control of their territories (Brett, 1998). On the one hand, large scale abuse of human rights and humanitarian law led to the setting up of the International Criminal Tribunal for Rwanda. This court has the power to prosecute those responsible for serious human rights abuses and violations of international humanitarian law, including genocide. The treaty establishing this court was adopted by 120 countries in July 1998 in Rome. On the other hand, African people have always recognized the need to respect the rules of warfare. Thus, most of what are now embodied in international humanitarian instruments have from time immemorial formed an integral part of the cultural practices of many African peoples. For many traditional communities in Africa, perfidy and despoliation would remain forbidden practices in the conduct of warfare. Also, certain categories of persons like pregnant women, children, the aged and women generally must in no circumstance be killed by combatants (Ibanga: 137). Therefore, drawing heavily from African practices during warfare, it is possible to construct some minimal

standards of engagement for protecting human rights, and go further to put in place an enforcement mechanism.

Though calls have been made for the formation of a human rights court in Africa, with suggested names such as African Court on Human Rights and Continental Court of Human Rights, I would like to believe that this project should start from the sub-regional level. This is because, it is important to have mutually acceptable economic and political understanding upon which a human rights enforcement mechanism can be built. The Economic Community of the West African States (ECOWAS), and the Southern African Development Community (SADC) have the potential to achieve this. In West Africa, there is already in place an economic and political integration process, i.e. ECOWAS and the ECOWAS Monitoring Force (ECOMOG), a regional security arrangement. In addition, there are also calls for a West African parliament, while the ECOWAS Travellers cheque is already in use. It is integration at these levels that can serve as a base for a strong and effective human rights enforcement institution. This same logic applies to the Southern African region and, perhaps, to the Maghreb. It is only after such a regional mechanism has functioned over a period of time that we can then think in terms of establishing an African Court of Human Rights. Of course, it is assumed that the material and human resources needed in terms of capacity building would be available. Basically, the development of the rules of human rights has always been inextricably linked with the necessary enforcement machinery, otherwise the whole process may lack the vitality to address the very basis of existence of such a human rights regime (Gye-Wado, 1991: 227). It is therefore absolutely necessary for the various subregions to speedily negotiate the basis for the formation of a human rights court and proceed to institute it.

Conclusion

Generally, human rights abuses during conflicts in Africa have increased substantially and attracted the attention of the international community, as was in the case of Rwanda and Sierra-Leone. The post-colonial state, which is a replica of colonial coercive institutions, has contributed in no small measure in perpetuating human rights violation. But more worrisome are the kinds of repugnant abuse witnessed in areas of armed conflict. Such abuses go against the provisions of the laws governing the conduct of war, and the Geneva conventions, including the protocols.

International Human Rights Laws and Humanitarian Law have universal validity. Nevertheless, the ACPHR is very relevant to the African condition though its provisions need to be enforced. To this end, there is the urgent need for the formation of a Human Rights Court beginning from the subregional level before its institutionalization continent-wide. Generally, there is the need to strengthen the place of legal norms as a guide to conduct during conflicts, and build the

capacity for enforcing these norms. Africa should not be an exception, especially in view of the gravity of war crimes committed by belligerent. Indeed it appears that the various governments, Human Rights Non-government Organisations (NGOs), the African Commission and other agencies need to do a lot more in terms of human rights education.

Since conflict is inevitable in relationship amongst human beings, those standards recognized as necessary for ensuring respect for humanity must be recognized and acceded to by all. For Africa, issues concerning human rights should be part and parcel of the quest for peace, democracy, development and justice. The provisions of the Universal Declaration, the Geneva Protocols and the ACPHR should be respected during periods of conflicts, while effort should be made to see how the African values of community and respect of the human person can be infused into the legal regime and used to reinvigorate the existing norms and enforcement instruments.

Notes

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