



GENOCIDE, VIOLENT INTERNAL ARMED CONFLICTS IN AFRICA AND INTERNATIONAL LAW: SOME CRITICAL REFLECTIONS

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ABSTRACT

This article examines violent internal armed conflicts in Africa within the context of international law, particularly the genocide convention. Africa, the article notes, is home to many cases of internal or intra-state armed conflicts in which heinous and egregious crimes are perpetrated. However, while heinous acts committed in the conflicts are hardly treated as genocide or contested as untrue, the article argues that they truly are, if the notion of genocide is properly understood. It concludes that noncompliance with the efforts of the International Criminal Court (ICC) by the AU and some African leaders, and the threat of withdrawal by some States from the institution is a tacit support for impunity.

INTRODUCTION

The history of major wars in the world has been marred by heinous crimes, including genocide (Schabas 1999, O'Connor 1999). The First and Second World wars, for example, were characterized by all forms of heinous crimes, including, during Second World War, genocide (Schabas 1999, 2). The establishment of the International Criminal Court (ICC) in 1998 and a number of ad hoc international war crime tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994, to prosecute perpetrators of war crimes, including genocide (Drumbl 2005, 1301; O'Connor 1999, 931), is a pointer to the issue of genocide in contemporary violent armed conflicts. The establishment of these institutions (ICC, ad hoc tribunals and others) equally points to the centrality of genocide in contemporary international humanitarian law and human rights law. However, although genocide has become an integral corpus of international law, owing to the existence of a plethora of international treaties and conventions prohibiting intended systematic and calculated attempt to kill or annihilate the adversary in battle, acts of genocide have persisted during violent armed conflicts. In Africa, elements of genocide have been identified in a number of violent armed conflicts, including in Rwanda, Democratic Republic of Congo (DRC) and Sudan (Aboagye 2007), in addition to the massive displacement of people, both internally and externally, as a result of violence. According to the Minority Rights Group International Report (2008), "over half of the top twenty countries in the world where people are most under the threat of genocide or mass killing are in Africa."

Nevertheless, aside from the Rwandan conflict of 1994, where genocide was officially identified to have been committed and the perpetrators prosecuted (Schabas 1999, 1; Aboagye 2007), acts that are tantamount to genocide in some internal armed conflicts on the continent have been contested to be untrue in some quarters. A good case of the latter is the controversy surrounding the indictment in 2009 of the Sudanese President, Omar



Al-Bashir, by the ICC for war crimes and genocide committed in Darfur (International Crisis Group 2015), and that surrounding allegations of genocide during the 1967-1970 Nigerian Civil War (Falola and Heaton 2009). This raises a number of important questions: What is the position of international law on genocide? Are internal armed conflicts covered by the international law, including the Genocide Convention? What has been the nature of internal armed conflicts in Africa? Why has the application of the Genocide Convention to internal armed conflicts in Africa been problematic, and what can be done? Answering these and related questions is the thrust of this article.

The article relies on the content analysis of secondary data, sourced from peer-reviewed scholarly journal articles, and relevant books and instruments of international human rights and humanitarian law, as well as downloaded internet materials on the subject matter. Apart from the introduction and conclusion, the article is divided into four sections. The first examines the concepts of violent armed conflict and genocide. The second discusses the phenomenon of genocide within the context of the Convention for the Prevention and Punishment of the Crime of Genocide (CPPCG/Genocide Convention), being the main instrument of international law that relates to the nature, dimensions prevention and punishment of the phenomenon. The third discusses violent armed conflicts in Africa with emphasis on Nigeria and the Sudan, focusing mainly on conflicts, particularly civil wars, which fall within the conception of internal armed conflicts under international law. The fourth section examines the applicability of the Genocide Convention to violent internal armed conflicts in Africa.

VIOLENT ARMED CONFLICT AND GENOCIDE: DEFINITIONAL AND CONCEPTUAL CLARIFICATIONS

Whereas some people use the term conflict to refer to healthy disagreement and struggles (Anderson 1999, 7), violent armed conflict, from its name, suggests destructive conflict. Violent armed conflicts can be categorized into two: international (or inter-state) armed conflicts and internal or intra-state armed conflicts. Of the two categories, internal/intra-state armed conflicts are more common than inter-state armed conflicts in Africa (Aboagye 2009; 2007; Anan 1998). Kofi Annan, for instance, noted that since 1970 no less than 30 wars have been fought in Africa, most of them intrastate in nature (Aboagye 2009; 2007). But, while it is easy to conceptualize international/inter-state armed conflicts as conflicts between or among sovereign states, internal/intra-state armed conflicts are defined differently by instruments of international law. For example, Article 3 of the Four Geneva Conventions of 1949 defined intra-state conflicts as "... conflicts not of an international character occurring in the territory of one of the High Contracting Parties..." (ICRC 1949). Also, Article 1 (1) of the Protocol Additional to the Geneva Conventions of 1949, and relating to the protection of victims of non-international conflicts (Protocol II) of 1977 view intra-state conflicts as "...conflicts which... take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory" (UN 1979). In the same vein, the Rome Statute of the International Criminal Court (Article 8, 2f) views intra-state conflicts as "...conflicts that take place in the territory of a State when there is a protracted armed conflict between governmental authorities and organized armed groups or between such groups" (International Criminal Court 1998).

All these definitions, their differences notwithstanding, emphasize one thing: that the scope of internal/intra-state armed conflicts covers only situations of wars between



governmental authorities and organized armed groups, and conflicts between organized armed groups. However, Article 1 (2) of the Additional Protocol II of 1977 to the Geneva Conventions and Article 8 (2d) of the Rome Statute further clarify on what, under international law, are regarded as internal or intra-state armed conflicts. The two articles contain the list of incidences of conflicts/violence which are not recognized by international law as typologies of intra-state armed conflicts. On the list are situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature (International Criminal Court 1998; UN 1979). This suggests that not every form of conflicts or violence that occurs within the territory of a state is recognized and governed by international law, especially by the laws of war and other humanitarian instruments.

Evident from the provisions of both the Rome Statute and Additional Protocol II cited above is that for a situation of conflict/violence occurring within a state to be recognized as a typology of intra-state conflict governed by international law, it must involve armed groups. According to the provisions of the two instruments, parties to a situation of conflict/violence in a state are expected to be identifiable armed groups, and not just any faceless group. This explains why riots, mob actions, isolated sporadic acts of violence and acts of similar nature, which are characterized by spontaneity and absence of organized or identifiable groups, are excluded from the typologies of intra-state armed conflicts covered by international law.

Consequently, only civil wars (involving governmental authorities and organized armed groups) and some cases of ethnic conflicts, sub-ethnic conflicts, identity-based conflicts and religious conflicts, which involve identifiable/organized armed groups, fall within the framework of intra-state/internal armed conflicts covered by international law. This distinction and clarification is important because though most violent armed conflicts in Africa are intra-state in nature (Aboagye 2007), not all are covered by international law. The Rwanda conflict of 1994, which was between two identifiable armed groups, the Hutu and Tutsi ethnic groups (Aboagye 2007; Schabas 1999) offers a good example of internal armed conflict. Also, the 1966 'pogrom' in northern Nigeria and the subsequent civil war between 1967 and 1970 involved two identifiable organized armed groups, the Hausa-Fulani and Igbo groups, and later the forces of the government of Nigeria and the Biafra armed forces (Falola and Heaton 2008, Madiebo 1980). Similarly, the age long civil war in Sudan between the Muslim Northern Sudan and the Christian Southern Sudan (Deng 2001) is another example. The lingering armed conflict in the Darfur region of Sudan also involves two distinct armed racial groups, the Arab militia i.e., the Janjaweed, and the Africans (International Crisis Group 2015). In addition, the violent militant activities in Nigeria's oil-rich Niger-Delta region, involving government forces and armed militia groups in the region (Obi 2010), come under the rubric of the intra-state armed conflicts covered by international law. In the same vein, the conflicts generated by the apartheid policy in South Africa, as well as the violent struggles for independence by some African states, such as Algeria and Angola, involving indigenous armed black population and armed white settlers/colonizers (Iliffe 1995), fall within the framework of violent intra-state/internal armed conflicts covered by international law.

Like the concept of violent armed conflict, genocide has a myriad of definitions. This, like violent armed conflict, is in view of the fact that it is a phenomenon that has a long history in global politics, as all periods in history can be said to have been marred by it (Schabas



1999, 1). The Nazi German Holocaust of the Second World War (1939-1945), for example, gave the impetus for the formulation of an international document on the crime of genocide (Drumbl 2005; Schabas 1999; O'Connor 1999).

Due to the gravity of the crimes committed during the Second World War, in which about six million Jews in Europe were systematically exterminated by the Nazi government of Germany, the international community, through the United Nations agreed to end such impunity and barbarity by putting in place the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG/Genocide Convention) in 1948 (Drumbl 2005; Schabas 1999; O'Connor 1999). The Convention, which was adopted in 1948, came into force in 1951 (UN 2017; 1951). The Convention contains the international response to genocide; it equally contains the legal and internationally accepted definition and conceptualization of genocide. Article 2 of the Convention defines genocide as "any of the following acts committed with intent to destroy in whole or in part, a national, ethnic, racial or religious group, as

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group (UN 2017; 1951).

Notwithstanding, there are several other attempts to define the concept, and expand its scope in the literature. For example, Chalks and Jonassohn (1990) conceptualized genocide as a form of one-sided mass killing in which a state or other authority intends to destroy, as that group and membership in it are defined by the perpetrator (p.17). This definition by Chalks and Jonassohn limits the act of genocide to the state or a responsible authority. This suggests that only the state can commit genocide against a targeted group. Haff and Gurr (1988), on their own part, define genocide as "the promotion and execution of policies by a state or its agents which results in the death of a substantial portion of a group ... [when] the victimized groups are defined primarily in terms of their communal characteristics i.e. ethnicity, religion or nationality" (p.3). Like Chalks and Jonassohn, Haff and Gurr also consider the state or its agents as the sole perpetrator of the crime genocide. But, unlike Chalks and Jonassohn, Haff and Gurr's definition recognises that state policies, which could be military or non-military in nature, can engender genocide. Rummel, however, argues that genocide has three different meanings. The first meaning is explained as "murder by government of people due to their national, ethnic, racial or religious group membership". The second refers to the definition contained in the CPPCG alongside the notion of non-killings that in the end eliminate the group, such as preventing births or forcibly transferring children out of the group to another. The third meaning of genocide is given as government killings of political opponents or otherwise intentional murder (Rummel 1997). From all indications, Rummel's definitions broadened the list of those that can be victims of genocide to include political groups. This is contrary to the definition by the CPPCG which restricts the applicability of the convention to victimized ethnic, racial, national and religious groups.

Furthermore, while Drost (1959) argues that genocide is 'the deliberate destruction of physical life of human beings by reason of their membership of any human collectivity as such' (p.125), Thompson and Quets (1990) define genocide as, 'the destruction of a group



by purposive actions' (p.248). A point of convergence in these two definitions is the emphasis on premeditated, planned or intentional destruction of the victimized group. This, like many other definitions above, shows that genocide is not a spontaneous act. Rather, it is usually preceded by planning and scheming. Also, to Horowitz (2001), genocide is a structural and systematic destruction of innocent people by a state bureaucratic apparatus; it refers to a systematic effort over time to liquidate a national population, usually a minority. According to Charny (1999), genocide in the generic sense means the mass killing of a substantial numbers of human beings, when not in the course of military action against the military forces of an avowed enemy, under conditions of the essential defencelessness of the victims. The Charny's reference to non-military factor as a yardstick for determining when the crime of genocide is committed, however, runs contrary to most other definitions. The import of Charny's definition is that the mass killing of the opponents during wartime may not be considered as genocide. This invariably defeats the essence of regulating warfare and ensuring minimum standard for the prosecutions of war.

Some other definitions of genocide in the literature include, 'the deliberate, organized destruction, in whole or in large part, of racial or ethnic groups by a government or its agents' (Walliamnn and Dobkowski 2000), 'any act that puts the very existence of a group in jeopardy' (Huttenbach 1988), and 'a series of purposeful actions by a perpetrator(s) to destroy a collectivity through mass or selective murders of group members and suppressing the biological and social reproduction of the collectivity'(Fein 1993). However, it is important to note that though these definitions and conceptualizations are useful, the Genocide Convention contains the legal and internationally accepted definition and conceptualization of genocide.

Punishing/criminalizing genocide: the Genocide Convention and International law

Notwithstanding the multiplicity and variety of definitions of genocide in the literature, a fact that cuts across all the definitions is the acceptance that genocide should be punished. This position is clearly stressed by the Convention on the Prevention and Punishment of the Crimes of Genocide (CPPCG/Genocide Convention), which is generally recognized as providing the legal definition of genocide, and a compendium document on issues relating to it. According to Article 1 of the CPPCG, states that are party to the Convention are to prevent and punish the crimes of genocide whether committed in time of war or peace. As a result, such states are, according to Article 5, expected to 'enact, in accordance with their respective constitutions, the necessary legislations to give effect to the provision of the Convention, and to provide effective penalties for persons guilty of genocide.' However, while one hundred and forty-seven countries have ratified/acceded to it (UN 2017), thereby becoming parties and making the convention legally binding on them, only seventy have domesticated it (Stanton 2002). These include Canada, which incorporated genocide into its domestic legal system in 2000 (Ntoubandi 2013).

In addition, being privy to genocide is considered punishable under the CPPCG. This is because acts, such as conspiracy to commit genocide; attempt to commit genocide; complicity in genocide; and direct and public incitement to commit genocide are listed in Article 3 as punishable acts. This clearly suggests that under international law, it is envisaged that the crime of genocide, whenever committed, must be punished. This shows that there is no safe haven for perpetrators of the crime of genocide.



Furthermore, unlike most other conceptualizations of genocide, the CPPCG identifies and defines the culprits/perpetrator(s) of the crime of genocide. The Convention states in Article 4 that 'persons, whether they are constitutionally responsible rulers, public officials or private individuals' can be prosecuted for committing the crime of genocide. Going by this definition of the perpetrators of genocide, which though excludes the state; it is obvious that political leaders can be held accountable for actions committed either directly by them or their representatives during their reign in office. Though much emphasis is placed on individual persons as the perpetrators of genocide, the Convention nonetheless recognizes the fact that states can also be responsible for acts of genocide and other related acts listed in Article 3. This is evident in Article 9 of the Convention, which recognizes that there can be "Dispute between Contracting Parties..., including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article 3..." But, unlike the prosecution of persons responsible for genocide, the disputes about a state that is responsible for genocide or for any of the other acts enumerated in Article 3 are, according to Article 9, to be handled by the International Court of Justice (ICJ) at the request of any of the parties to the disputes.

Also, Article 8 of the CPPCG shows the determination of the international community, through the United Nations and its agencies, to address the problem of genocide. The article permits any Contracting Party to, 'call upon the competent Organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.' This means that, where necessary, states can approach the United Nations and any of its agencies to assist in tackling the problem of genocide. Generally speaking, the conceptualization of genocide by the CPPCG is no doubt elaborate, robust and comprehensive. Unlike all other conceptualizations of genocide, the CPPCG addresses the issues relating to the uses and constituents of genocide.

However, some major snags can be observed in the provisions of the CPPCG. For example, the clause that the crime of genocide and related crimes cannot be the basis for the extradition of any person is faulty. According to Article 7, genocide and the other acts enumerated in Article 3 are not to be considered as political crimes for purpose of extradition. The Contracting Parties (i.e., States party to the Convention), according to the article, are as a result at liberty to grant extradition only in accordance with their domestic laws and treaties in force. Though this provision reaffirms the notion of sovereignty as the central element of statehood, it, nonetheless, provides a subtle loophole for perpetrators of the crime of genocide to escape arrest and prosecution. This is because, by the provision of the Article 7, the prosecution of an alleged perpetrator of genocide who escapes to another country is dependent on the willingness and cooperation of the state he/she has escaped to. This, in a way, undermines the ability of the international community to deal decisively with the problem of genocide.

Also, the non-inclusion of dialectal groups in the list of the groups that could be victims of genocide by the CPPCG is a major omission. The need to include dialectal groups in the definition of genocide stems from the fact that language is a central element of identity and in identity formation. The non-inclusion of dialectal groups by the CPPCG is perhaps predicated on the assumption that there are no majority and minority dialects in the language group that constitutes an ethnic group. As a result, ethnicity was considered a sufficient criterion for being a victim of genocide. This is however misleading and



erroneous. Though there is no doubt that language is subsumed in ethnicity, yet a language group may comprise of several dialects. This implies that there could be majority and minority dialectal groups within a language group that constitutes an ethnic group; and there could be conflicts of genocidal proportion between the majority dialectal group and the minority dialectal groups.

It is this issue of dialectal differences that underscores the problem of intra-ethnic conflicts in multiethnic communities in Africa. This is because dialectal differentials among the dialectal groups in some ethnic groups in Africa have been a contributory factor to conflicts. The protracted conflict between the Ife and Modakeke in south-west Nigeria offers a classic example of a sub-ethnic conflict with a dialectal undertone (Akanji 2008). In the first instance, both the Ife and Modakeke belong to the Yoruba language and ethnic group. However, while the Modakeke speak the Oyo dialect of the Yoruba language, the Ife speaks the Ife dialect of the same Yoruba language. The two dialectal groups (i.e. Ife and Modakeke) were engaged in armed conflict for over a hundred and sixty years over a number of issues (Akanji 2008). Though dialectal difference was not the main cause of the conflict, it nonetheless became a reference point and means of differentiating and targeting each other (Akanji 2008). Thus, it is imperative to envisage that acts of genocide may be committed during conflicts or non-conflictive situations involving dialectal groups within an ethnic group. Consequently, mechanisms such as the CPPCG should ensure the protection of such groups as well.

Furthermore, the liberty the CPPCG in its Article 6 confers on states to accept or reject the jurisdiction of any international tribunal set up to prosecute alleged cases of genocide undermines the effectiveness of the global fight against the commission of the crime of genocide, and downplays the gravity of the crime itself. This is because the provision of Article 6 of the Convention is a subtle way of engendering and promoting impunity by states. Issues relating to genocide should be obligatory for states, whether party to the CPPCG or not. Apart from the CPPCG, some other international humanitarian instruments, including the Rome Statute of the ICC and the Statute of the ICTR, recognized the crime of genocide as a punishable offence under international law. Article 5 of the Rome Statute and Article 2 (paragraph 1) of the Statute of the ICTR, for example, recognize the crime of genocide as being one of the crimes that are prosecutable under international law. Also, both Article 6 of the Rome Statute and Article 2 (Paragraph 2) of ICTR adopt the CPPCG definition of genocide. What all these point to is that genocide in armed conflict (whether inter-state or intra-state) is a crime under international law.

Violent internal armed conflicts in Africa: Nigeria and Sudan in brief perspective

Violent internal armed conflicts are common in Africa (SIPRI 2016; Aboagye 2007; 2009; Adejumobi 2004; Eriksson et al 2001; Anan 1998). Besides, the continent has been home to some of the world's longest armed conflicts, such as the civil war in Sudan, which dates back to 1955 (Deng 2001). Similarly, cases of protracted inter-ethnic and sub-ethnic armed conflicts abound on the continent. The lingering conflict between the Ife and Modakeke in Nigeria, which records have shown dates back to the 1840s, is an example of prolonged sub-ethnic armed conflicts in the continent (Akanji 2008). Though the phenomenon of armed conflicts is not peculiar to Africa, its occurrence in the continent surpasses many other regions of the world. A 2016 report by the Stockholm International Peace Research Institute (SIPRI), for example, shows that Africa had the highest regional distribution of armed conflicts in the world in 2015, with a figure close to 20% (SIPRI 2016).



Some of the countries that have experienced violent armed conflicts in Africa over the past five decades include Rwanda, Liberia, Sierra Leone, Somalia, Burundi, the Democratic Republic of Congo, Nigeria, Ethiopia, Sudan, Uganda, Angola, Tanzania, Algeria, Cote d'Ivoire, Morocco, Mauritania, Chad, Mali, and Niger (SIPRI 2016; Eriksson et al 2001).

The Nigerian state, for example, experienced a civil war between 1967 and 1970. The civil war, which was initially considered a police action by the Federal Military Government of Nigeria, was a war between the Nigerian government and the Biafra people (i.e., dominantly the *Igbo* ethnic group) of eastern Nigeria (Falola and Heaton 2008, 175). The war was a result of the socio-political crises that plagued the country immediately after independence from the British in 1960 (Falola and Heaton 2008, Madeibo 1980). After attempts to prevent the civil war had failed, the Nigerian government and the Biafran leadership employed various strategies to prosecute the war. For example, as part of its war strategy, the Biafran army attacked oil fields and oil installations as a way of compelling the oil companies to support its war efforts (Raji and Abejide 2013).

On its part, the federal government of Nigeria adopted a war strategy that focused on the "isolation of Igbo territory and the impoverishment of Biafra" (Falola and Heaton 2008, 175). As part of the strategy, the Nigerian military adopted the policy of economic strangulation of the 'enemy' region, i.e., Biafra/eastern Nigeria where the *Igbo* people are domiciled (Falola and Heaton 2008, 175). In addition, the federal government of Nigeria changed the country's currency in 1968, thereby rendering useless and unusable any Nigerian currency held by the Biafrans to fund the war (Falola and Heaton 2008, 176). These, which were aimed at compelling the Biafran army to surrender, prevented the movement of goods and services in and out of the Biafra region. Thus, "malnutrition and starvation increased rapidly within Biafra" (Falola and Heaton 2008, 177), resulting in the death of many *Igbo*. Though there are no official government records of the number of casualties during the war, some of the existing unofficial accounts are corroborative of each other. For example, according to the UNICEF, cited in Tamuno (1989), between the onset of the war and September 1969, over two million children died (p.65). The civil war eventually ended in 1970, after the Biafran government surrendered (Falola and Heaton 2008; Madeibo 1980).

Similarly, there was protracted civil war in Sudan between 1955 and 2005 (Aras 2011). The civil war, involved the government-backed northern Muslim and Arab-speaking Sudanese and southern Christian and indigenous-African Sudanese (Deng 2001). The war revolved around identity, particularly religious identity. Specifically, the civil war was about the quest by the Muslim north to Islamize the predominantly Christian and African south, leading to violent resistance by the south, which created in 1983 the Sudan People's Liberation Movement (SPLM) and a military wing known as the Sudan People's Liberation Army (SPLA) (Deng 2001). The civil war engendered huge and terrible human toll, as, by 2001, over two million people have dead as a result of the war and related causes, such as war-induced famine, and about five million people displaced and half a million more fled across an international border, in addition to tens of thousands of women and children abducted and subjected to slavery (Deng 2001). Another consequence of the war, and which marked its end, was that the south gained independence from the Sudan through a referendum in 2011, as the Republic of South Sudan (Aras 2011). However, the Republic of South Sudan has also been bedeviled since 2013 by violent political conflict



between forces loyal to President Salva Kiir and those loyal to his deputy, Riek Machar, leading to over 2.4million people being displaced (Human Rights Watch 2017).

In the same vein, the Darfur region of Sudan has since 2003 been embroiled in violent armed conflict, involving the Sudanese government-backed ethnic Arab militia group, the Janjaweed, and rebels from the local non-Arab African Dafurians (in particular the Fur, Zaghawa and Masalit) (Amnesty International 2016/17; International Crisis Group 2015, 3). Over the years, the conflict has deepened, particularly as rebel groups and militias splintered and fragmented and fought against each other (International Crisis Group 2015, 3-4). Despite several regional and international interventions, including the deployment of the AU Mission in Sudan (AMIS) in 2004 and a larger mission, in the form of the AU/UN Hybrid Operation in Darfur (UNAMID) in 2007, the conflict has remained unresolved (International Crisis Group 2015, 3). The Darfur conflict has occasioned the death and displacement of many people. For instance, while some 450,000 people were displaced in 2014, about 100,000 were displaced in January 2015 alone, in addition to some two million that had been internally displaced since the conflict began (International Crisis Group 2015, 1)

INTERNAL ARMED CONFLICTS IN AFRICA AND THE APPLICABILITY OF THE GENOCIDE CONVENTION

The relevance of the Genocide Convention to internal armed conflicts in Africa is ensconced in the relationship between international law and intra-state conflicts; a relationship established and reinforced by the provisions of Article 8 (2f) of the Rome Statute of the International Criminal Court; the Article 3 Common to the Geneva Conventions of 1949, and Article 1 (1) of the Additional Protocol II of 1977 to the Geneva Conventions of 1949. Besides, the Genocide Convention is a recognized binding instrument of international law, as it is a convention of the UN ratified and acceded to by majority (147) of its member states. Therefore, internal (intra-state) conflicts recognized by international law, namely, civil wars and conflicts involving organized and identifiable armed groups in Africa (and elsewhere), such as the 1967-1970 Nigerian Civil War, 1994 Rwandan conflict, and the conflicts in the Sudan since 1955, can be examined within the context of international law, including the Genocide Convention.

This position is buttressed by the European Court of Human Rights' argument that once there is a plan/intention to destroy in whole (i.e., to completely annihilate, without leaving any remnant) (Council of Europe 2007) or in part (i.e., to annihilate only some members) of a national, ethnic, racial or religious group through the mechanisms specified in the CPPCG definition of genocide (UN 2004), the crime of genocide is committed, and is punishable under international law. This then means that the commission of any of the acts listed above during a situation of armed conflicts (whether in inter-state or intra-state armed conflicts) or in a time of peace is a crime of genocide. This clearly affirms that cases of intra-state armed conflicts, particularly civil wars, ethnic, sub-ethnic and religious conflicts in Africa can be viewed from time to time from the lenses of genocide, particularly if characterized by acts identified and punishable by articles 2 and 3of the CPPCG.

However, in spite of the existence and applicability of the Genocide Convention, and other relevant instruments of international law, to violent internal armed conflicts recognized by



international law, namely, wars between government and organized armed group(s) and conflicts between organized armed groups, some violent internal armed conflicts in Africa have been characterized or allegedly characterized by genocide. For example, in the case of the Rwanda conflict of 1994, genocide was committed, and the perpetrators were later tried and convicted under international law by the ICC (Paris 2004; Schabas 1999). There were however only allegations by the Igbo ethnic group in Nigeria that the 1967-1970 civil war in the country was characterized by genocide (Onwibiko 2001). This was sequel to attempts by the Nigerian government to crush the Biafran resistance through various strategies, including economic strangulation and scorched earth strategy (Falola and Heaton 2008, 176), which had the capacity to exterminate a large proportion of the Biafran population. Indeed, the economic blockade strategy of the Nigerian government inflicted on the Igbo group (the Biafra) conditions of life calculated to bring about its destruction in whole or in part, as “malnutrition and starvation increased rapidly within Biafra” (Falola and Heaton 2008, 177) during the war. Also, the conflict in the Darfur region of Sudan has been marred by genocide. This is owing to the systematic, deliberate and calculated attempts by the Sudanese government-backed militia group, the Janjaweed, to annihilate their enemy, the Africans (Amnesty International 2016/17; International Crisis Group 2015). As a pointer to the genocidal nature of the conflict, the ICC indicted President Omar-al Bashir of Sudan in 2009 for the crime of genocide committed in the Darfur conflict between 2003 and 2008 (International Criminal Court 2010).

Notwithstanding, successful application of the Genocide Convention and other relevant instruments of international law to internal armed conflicts in Africa has been limited by the unwillingness of African states to cooperate with the ICC in the enforcement of the provisions of the Convention. A pointer to this was the failure in 2015 of South Africa to arrest and extradite President Omar al-Bashir to the ICC, as expected of signatories to the Rome Statute of the court, when he visited the country to attend an AU meeting (BBC News 2017). Similarly, a number of African states, including South Africa, Kenya and Burundi, have at one time or the other threatened to withdraw from the ICC on the ground that the international court only targets Africans and undermines their sovereignty (BBC News 2017). The threat was confirmed as being the position of the AU, which, in February 2017, endorsed mass withdrawal of member states from the ICC (BBC News 2017).

Conclusion

The relationship between genocide and internal armed conflicts in Africa is irrefutable; in the same way the applicability of Genocide Convention to internal armed conflicts generally is undeniable. The reason for this is that as evidences of genocidal internal armed conflicts in Africa abound, the Genocide Convention is universally known and accepted as an instrument of international law applicable to armed conflicts. The development of the Genocide Convention by the UN was to end (prevent and punish) impunity in war and peacetime. However, application of the convention to conflicts in Africa has been seriously handicapped. The refusal of the AU and some African leaders to cooperate with the ICC in its bid to bring to trial persons, particularly former and sitting Heads of States, indicted for genocide and war crimes has been a major impediment to the institution. However, the principles of state sovereignty and non-interference on which the position of the AU and some African leaders is predicated are without doubt inconsequential, given the gravity of the offences that constitute crime of genocide. Moreover, while it is imperative to respect state sovereignty, the gravity of the crime of genocide is so serious that it should not be politicized or considered as a political claim. It



is expedient that once a *prima facie* case of genocide is established against a person by a competent court or tribunal of the state in the territory in which the act was committed or by an international penal tribunal/court such as the ICC; or an allegation of genocide is made against a person, it is important that all Contracting Parties (i.e. the States party to the Convention) should respond by extraditing the accused person(s). This will strengthen the resolve to rid the world of the scourge of genocide.

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