LAW, SOCIAL JUSTICE AND DEVELOPMENT
A FESTSCHRIFT FOR
PROFESSOR UBA NNABUE

Edited By:

Uchefula Chukwumaeze Ph.D
Associate Professor of Law
Head of Department
Imo State University, Owerri

Rufus Olaoluwa Ph.D
Associate Professor of Law
Lagos State University, Ojo

Ahamefule Nnabue LL.M (AClArb)
Legal Practitioner
Prince Lateef Fagbemi SAN & Co.
Temitope Chambers, Abuja
Professor
UBA NNABUE KSJI
Barrister and Solicitor of the Supreme Court of Nigeria
LIST OF CONTRIBUTORS

1. M. E. NWCHA, Ph.D., LECTUREP, FACULTY OF LAW, EBONYI STATE UNIVERSITY, BAKALIKI.

2. RUFUS OLU OLAOLUWA, Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, LAGOS STATE UNIVERSITY, LAGOS.

3. HAGLER OKORIE, LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

4. OGBAEGBE, K. N., Ph.D., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

5. AGU C.R. MRS., LL.M., LEGAL PRACTITIONER, LAGOS.

6. J.C. NKWOH, LL.M., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

7. C.E. CHINWEZE LLM, LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

8. ONYEMMA OTITODIRI, LL.M., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

9. ALISIGWE HENRY C., LL.M, LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

10. EMMANUEL. C. IBEZIM, LL.M., LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

11. ABUBAKAR S.R MATAZU, Ph.D., LECTURER, FACULTY OF LAW, USMANU DANFODIYO UNIVERSITY, SOKOTO.

12. OLAOLUWA RUFUS OLU, Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, LAGOS STATE

13. NNAMDI IWU LL.B, BL, LEGAL PRACTITIONER BASED IN OWERRI, IMO STATE

14. NNEOMA IWU LLB, BL, LEGAL PRACTITIONER BASED IN OWERRI, IMO STATE
15. UCHEFULA U. CHUKWUMAEZE Ph.D, ASSOCIATE PROFESSOR, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

16. EZE C. NGWAKWE, Ph.D., FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU, ABIA STATE, NIGERIA.

17. OBIARAERI, N.O. ESQ., ASSOCIATE PROFESSOR, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

18. E.A. ODIKE Ph.D., SENIOR LECTURER, FACULTY OF LAW, EBONYI STATE UNIVERSITY, ABAKALIKI.

19. C. J. UBANYIONWU, Ph.D, LECTURER, FACULTY OF LAW, ANAMBRA STATE UNIVERSITY, IGBARIAM.

20. OLADELE GRACE ABOSEDE (MRS), FACULTY OF LAW, OLABISI ONABANJO UNIVERSITY, AGO-IWOYE.

21. OMOYEMEN LUCIA ODIGIE-EMMANUEL, LECTURER, THE NIGERIAN LAW SCHOOL.

22. C. K. NWANKWO, Ph.D., SENIOR LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

23. EDWIN OBIMMA EZIKE Ph.D., SENIOR LECTURER, FACULTY OF LAW, UNIVERSITY OF NIGERIA, ENUGU

24. M.O. UNEGBU, Ph.D., SENIOR LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

25. NNAMANI OGBU, Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, ANAMBRA STATE UNIVERSITY, IGBARIAM

26. IKENGA K. E. ORAEGBUNAM, Ph.D., LECTURER, FACULTY OF LAW, NNAMDI AZIKIWE UNIVERSITY, AWKA.

27. CHUKWUNonso NATHAN UWAEZUOKE, LECTURER, FACULTY OF LAW, ANAMBRA STATE UNIVERSITY, IGBARIAM.

28. UCHENNA EMELONYE, LL.M., SENIOR HUMAN RIGHTS ADVISER, UNITED NATIONS OFFICE, KENYA.
29. INE NNADI, Ph.D., SENIOR LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

30. THERESA OBY ILEG BUNE, PH.D., SENIOR LECTURER, FACULTY OF LAW, UNIVERSITY OF NIGERIA, ENUGU CAMPUS.

31. ANWO, J.O., LL.D., LECTURER, FACULTY OF LAW, LAGOS STATE UNIVERSITY OJO

32. AROWOLO, G.A., LL.M., LECTURER, FACULTY OF LAW, LAGOS STATE UNIVERSITY OJO.

33. IHEBOM, G.O.C., LL.M., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

34. SULEIMAN IKPECHUKWU OJI, PH.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, USMANU DANFODIYO UNIVERSITY, SOKOTO.

35. CAROL ARINZE-UMOBI Ph.D., ASSOCIATE PROFESSOR, NNA MDI AZIKIWE UNIVERSITY, AWKA.

36. FELICIA ANYOGU Ph.D., SENIOR LECTURER, NNA MDI AZIKIWE UNIVERSITY, AWKA.

37. E.O.C. OBIDIMMA, Ph.D., FACULTY OF LAW, NNA MDI AZIKIWE UNIVERSITY, AWKA.

38. ANGELA E. OBIDIMMA, Ph.D., LECTURER, FACULTY OF LAW, NNA MDI AZIKIWE UNIVERSITY, AWKA.

39. AMARAMIRO, AHAMEFULA STEVEN LL.M., LECTURER, A比亚 STATE UNIVERSITY, UTURU.

40. E. F. OWOLABI, LECTURER, FACULTY OF LAW, UNIVERSITY OF ILORIN.

41. DEJI OLANREWAJU, LECTURER, SCHOOL OF LAW AND SECURITY STUDIES, BABCOCK UNIVERSITY

42. JEROME OKORO, LECTURER, NATIONAL OPEN UNIVERSITY.

43. CHIZOBA I. OKPARA, MRS., L.L.M., LECTURER, FACULTY OF LAW, A比亚 STATE UNIVERSITY, UTURU.
44. CHUKWU AMARI OMAKA, Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, EBONYI STATE UNIVERSITY, ABAKALIKI.

45. AMAKA. G. EZE, Ph.D., LECTURER, FACULTY OF LAW, NNAMDI AZIKIWE UNIVERSITY, AWKA.

46. OKEKE G.A., Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, NNAMDI AZIKIWE UNIVERSITY, AWKA.

47. CHIKA ODOEMENAM Ph.D., FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

48. UWADIEGWU AÑOKE LL.M., LECTURER, FACULTY OF LAW, EBONYI.

49. OLADIPO ALAKA, LL.M., M. PHIL., AND FEMI ABOBAISADE, LLE, B.L., MILR

50. OBASI M., LL.M., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

51. ELVIS-IMO I.R., MRS., LL.M., LECTURER, FACULTY OF LAW, NIGER DELTA UNIVERSITY, BAYELSA STATE.

52. C.K. OKORIE, Ph.D., LECTURER, FACULTY OF LAW, IMO STATE UNIVERSITY.

53. ELVIS-IMO I.R., MRS., LL.M., LECTURER, FACULTY OF LAW, NIGER DELTA UNIVERSITY, BAYELSA STATE.

54. K. I. ADAM, Ph.D., LECTURER, FACULTY OF LAW, UNIVERSITY OF ILORIN, ILORIN.

55. J. A. YUSUF, Ph.D., LECTURER, FACULTY OF LAW, UNIVERSITY OF ILORIN, ILORIN.

56. M.O. OLATUNJI, LECTURER, FACULTY OF LAW, LAGOS STATE UNIVERSITY, OJO.

57. JOASH AMUPITAN, PROFESSOR, FACULTY OF LAW, UNIVERSITY OF JOS.

58. REGINALD A. ONUOHA, Ph. D., ASSOCIATE PROFESSOR, FACULTY OF LAW, IMO STATE UNIVERSITY, OWERRI.

59. SARAH BANENYA-MUGALU, FACULTY OF LAW, KAMPALA INTERNATIONAL UNIVERSITY, UGANDA.

60. SORONNADI A. NJOKU LL.M., THE HONOURABLE ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, IMO STATE.

61. T.O. OYELAMI, Ph.D.

62. COLLINS O. CHIJOKE, Ph.D., LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.
63. CHIAFOR, AMAECHI BEN, LL.M., LECTURER, FACULTY OF LAW, ABIA STATE UNIVERSITY, UTURU.

64. M.M. AKANBI, Ph.D., PROFESSOR, FACULTY OF LAW, UNIVERSITY OF ILORIN, ILORIN

65. RAPHEAL ADEOYE, LL.M., A LEGAL PRACTITIONER BASED IN IBADAN.

66. OLAYINKA SILAS AKINWUMI, HEAD LAW LIBRARY, NIGERIAN LAW SCHOOL, YENAGOA.

67. IFEANYI D. NWORJI, PH.D., FCA. PROFESSOR, DEPT OF ACCOUNTING, BABCOCK UNIVERSITY, Ogun State.

68. OLOKOoba S.M., Ph.D., LECTURER, FACULTY OF LAW, UNIVERSITY OF ILORIN.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dedication</td>
<td>iv-57</td>
</tr>
<tr>
<td>Foreword</td>
<td>v</td>
</tr>
<tr>
<td>Preface</td>
<td>vii</td>
</tr>
<tr>
<td>List of Contributors</td>
<td>viii-xii</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>xiii-xxiv</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>xxv-xxxi</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>xxxii-xxxvii</td>
</tr>
</tbody>
</table>

## PART ONE

**INTERNATIONAL LAW AND JURISPRUDENCE**

### CHAPTER 1

**SELF-DETERMINATION AND NATIONAL SOVEREIGNTY: THE CONTEST OF SUPREMACY IN INTERNATIONAL LAW**

1-27

### CHAPTER 2

**ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW AGAINST VIOLATION WITHIN THE CONTEXT OF INTRA-STATE CONFLICTS IN AFRICA**

28-37

### CHAPTER 3

**THE CONCEPT OF STATE RESPONSIBILITY FOR VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**

38-57

### CHAPTER 4

**THE ROLE OF ECOWAS AS CORPORATE INVESTMENT HARMONIZATION MACHINERY IN WEST AFRICA**

58-66

### CHAPTER 5

**THE IMPACT OF BILATERAL INVESTMENT TREATIES ON DEVELOPING COUNTRIES: AN APPRAISAL**

67-81
CHAPTER 6
AN ANATOMY OF SOVEREIGN WEALTH FUND
82-89

CHAPTER 7
INTERNATIONAL CO-OPERATION THROUGH WORLD TRADE:
CHALLENGES AND OPPORTUNITIES
90-100

CHAPTER 8
SOVEREIGNTY OVER NATURAL RESOURCES-
101-122

CHAPTER 9
GLOBALISATION AND THE MULTIPLICATION OF INTERNATIONAL
COURTS / TRIBUNALS - WHITHER THE INTERNATIONAL COURT
OF JUSTICE?
123-135

CHAPTER 10
WOMEN'S RIGHT TO OWN AND CONTROL PROPERTY UNDER
INTERNATIONAL HUMAN RIGHTS LAW: A GENDERED VIEW.
136-155

CHAPTER 11
AN APPRAISAL OF THE ELEMENTS OF WAR CRIMES
156-172

CHAPTER 12
ENDING IMPUNITY FOR INTERNATIONAL CRIMES AND INDIVIDUAL
CRIMINAL RESPONSIBILITY: LESSONS FROM THE INTERNATIONAL
CRIMINAL COURT
173-190

CHAPTER 13
THE RULE OF LAW, DEMOCRACY AND THE COMMON
MAN IN NIGERIA: AN ANALYSIS
191-215

CHAPTER 14
AFRICA'S POVERTY TRAP AND THE PARADOX OF HUMAN RIGHTS DEFICIT
216-236

CHAPTER 15
AFRICAN LEGAL ERAS AND HUMAN RIGHTS DEVELOPMENT:
MILESTONES AND PROSPECTS
237-265

CHAPTER 16
CORRUPTION IDENTIFIED AS A MAJOR DETERMINANT OF THE
RULE OF LAW IN THE EMERGING NIGERIAN DEMOCRACY
266-282
CHAPTER 17
CONTEMPORARY CHALLENGES TO DEMOCRATIC IDEAS IN NIGERIA 283-295

CHAPTER 18
POLITICAL RIGHTS OF WOMEN AND THE CHALLENGES TO WOMEN'S PARTICIPATION IN POLITICS IN NIGERIA 296-316

CHAPTER 19
LEGAL EDUCATION AND GLOBAL ACCESS TO JUSTICE: THE ROLE FOR LAW TEACHERS AND LAW SCHOOLS IN EXPANDING PUBLIC INTEREST ACTION 317-333

CHAPTER 20
IMPEDIMENTS TO ACCESS TO JUSTICE 334-357

PART TWO
PUBLIC LAW

CHAPTER 21
RESOURCE CONTROL AND TRUE FEDERALISM: THE NIGER DELTA QUESTION 358-389

CHAPTER 22
CONSTITUTIONAL SEPARATION OF STATE AND RELIGION: THE NIGERIAN EXPERIENCE 390-403

CHAPTER 23
ISLAMIC BANKING IN A 'SECULAR' STATE: THE QUESTION OF THE LEGALITY OF THE CBN FRAMEWORK FOR THE REGULATION OF INSTITUTIONS OFFERING NON-INTEREST FINANCIAL SERVICES 404-422

CHAPTER 24
SHARIA CRIMINAL JUSTICE AND CONSTITUTIONAL DEMOCRACY IN NIGERIA TODAY 423-45

CHAPTER 25
FINDING HARMONY IN THE DISCORDANT LEGAL REGIMES IN NIGERIA ON MINIMUM AGE OF MARRIAGE FOR THE GIRL CHILD 458-474

CHAPTER 26
ASSESSING PROPORTIONALITY AND BEST INTERESTS PRINCIPLES IN THE 2003 CHILD RIGHTS ACT 475-483
<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>TITLE</th>
<th>PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>CONTEMPORARY CHALLENGES TO DEMOCRATIC IDEAS IN NIGERIA</td>
<td>283-295</td>
</tr>
<tr>
<td>18</td>
<td>POLITICAL RIGHTS OF WOMEN AND THE CHALLENGES TO WOMEN'S PARTICIPATION IN POLITICS IN NIGERIA</td>
<td>296-316</td>
</tr>
<tr>
<td>19</td>
<td>LEGAL EDUCATION AND GLOBAL ACCESS TO JUSTICE: THE ROLE FOR LAW TEACHERS AND LAW SCHOOLS IN EXPANDING PUBLIC INTEREST ACTION</td>
<td>317-333</td>
</tr>
<tr>
<td>20</td>
<td>IMPEDIMENTS TO ACCESS TO JUSTICE</td>
<td>334-357</td>
</tr>
<tr>
<td></td>
<td>PART TWO</td>
<td>PUBLIC LAW</td>
</tr>
<tr>
<td>21</td>
<td>RESOURCE CONTROL AND TRUE FEDERALISM: THE NIGER DELTA QUESTION</td>
<td>358-389</td>
</tr>
<tr>
<td>22</td>
<td>CONSTITUTIONAL SEPARATION OF STATE AND RELIGION: THE NIGERIAN EXPERIENCE</td>
<td>390-403</td>
</tr>
<tr>
<td>23</td>
<td>ISLAMIC BANKING IN A ‘SECULAR’ STATE: THE QUESTION OF THE LEGALITY OF THE CBN FRAMEWORK FOR THE REGULATION OF INSTITUTIONS OFFERING NON-INTEREST FINANCIAL SERVICES</td>
<td>404-422</td>
</tr>
<tr>
<td>24</td>
<td>SHARIA CRIMINAL JUSTICE AND CONSTITUTIONAL DEMOCRACY IN NIGERIA TODAY</td>
<td>423-45</td>
</tr>
<tr>
<td>25</td>
<td>FINDING HARMONY IN THE DISCORDANT LEGAL REGIMES IN NIGERIA ON MINIMUM AGE OF MARRIAGE FOR THE GIRL CHILD</td>
<td>458-474</td>
</tr>
<tr>
<td>26</td>
<td>ASSESSING PROPORTIONALITY AND BEST INTERESTS PRINCIPLES IN THE 2003 CHILD RIGHTS ACT</td>
<td>475-483</td>
</tr>
</tbody>
</table>
CHAPTER 39
A CRITICAL APPRAISAL OF THE STATUTORY FRAMEWORK FOR FOOD SAFETY IN NIGERIA - 704-715

CHAPTER 40
THE NIGERIAN CONSTITUTIONAL ARRANGEMENT OF SOVEREIGN POWER: A LEGITIMATE REALITY OR A TANTALIZING MIRAGE? 716-730

CHAPTER 41
THOUGHTS ON THE AMMENDMENT PROCEDURE UNDER THE 1999 CONSTITUTION 731-743

CHAPTER 42
COMMITTEE SYSTEM - THE HUB OF LEGISLATIVE PRACTICE 744-751

PART THREE
PRIVATE LAW

CHAPTER 43
ASSET SECURITIZATION AND SPV: A REVIEW OF ASSET MANAGEMENT CORPORATION OF NIGERIA ACT 2010 752-776

CHAPTER 44
DISPERSED SHAREHOLDING IN CORPORATION GOVERNANCE (A MYTH OR REALITY) 777-782

CHAPTER 45
SAME-SEX MARRIAGE: A RIGHT OR A CRIME 783-795

CHAPTER 46
IS THE ACTION FOR BREACH OF PROMISE TO MARRY AN ANACHRONISM? 796-817

CHAPTER 47
ORIGINALITY IN COPYRIGHT AND THE DEBATE ON PROTECTION OF TRADITIONAL KNOWLEDGE: A VIEW ON NIGERIAN LAW 818-832

CHAPTER 48
PRACTICAL PROBLEMS THAT MAY BE ENCOUNTERED IN THE IMPLEMENTATION OF INVESTMENT AND SECURITIES ACT OF 1999 833-855

CHAPTER 49
LAND TITLING AND REGISTRATION UNDER THE LAND USE ACT, 1978 - CHALLENGES AND PROSPECTS 856-869

xxxvi
CHAPTER 50
THE LEGAL RESPONSE TO NATIONALISATION OF CITIZENS INTEREST IN LAND AND SHARES IN NIGERIA PLUS ITS IMPACT AS SECURITY

CHAPTER 51
TENANCY BY OCCUPANCY: IS IT A TENANCY OR A TENURE? (UN-PACKAGING SECTION 29 OF THE LAND ACT, CAP. 227)

CHAPTER 52
A CRITICAL ANALYSIS OF THE DOCTRINE OF RES IPSA LOQUITUR AND ITS APPLICATION IN NIGERIA

CHAPTER 53

CHAPTER 54
THE NATURE OF ARBITRATION AGREEMENT IN NIGERIA-AN OVERVIEW

CHAPTER 55
AN EXAMINATION OF THE EFFECTIVENESS OF CONCILIATION AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM IN NIGERIA

CHAPTER 56
THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN SETTLEMENT OF WORKPLACE DISPUTES IN NIGERIA: A LEGAL ANALYSIS

CHAPTER 57
ADMISSIBILITY OF COMPUTER-GENERATED EVIDENCE UNDER THE (NEW) EVIDENCE ACT, 2011

CHAPTER 58
WIDENING THE TAX BASE AS A PANACEA FOR INTERNAL REVENUE GENERATION IN NIGERIA: A CRITICAL EXAMINATION OF INCOMES OF ECCLESIASTICAL AND EDUCATIONAL INSTITUTIONS AS INCOME EXEMPT UNDER THIRD SCHEDULE OF PITA, 1993

CHAPTER 59
TAXATION: A NOAH'S ARK IN THE EVENT NIGERIAN OIL DRIES OFF

INDEX
CHAPTER 2

ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW AGAINST VIOLATION WITHIN THE CONTEXT OF INTRA-STATE CONFLICTS IN AFRICA

ABSTRACT

The case of intra-state conflicts and their enforcement against violation of International Humanitarian Law is a complementarily process and mutual influence whereby the principles of International Humanitarian Law are enforced by the mechanism of the operation of municipal legal rules during internal armed conflict within the jurisdiction of a state.

INTRODUCTION

International Humanitarian Law and its enforcement against violation within the context of intra-state conflict raises a lot of issues be it in Africa or elsewhere. This topic under review brings to the fore the question of the sphere of existence and enforcement of International Humanitarian Law. It raises the question of violations of Human Rights Law, Criminal Law and International Humanitarian Law. In other words, how can International Humanitarian Law be recognized for enforcement in the internal jurisdiction of a state. How can violations of international humanitarian law be established and confronted for resolution. This paper is designed to address such issues such as the nature and causes of intra-state conflicts in Africa, the applicability of international humanitarian law to intra-state conflicts, violations of international humanitarian law during intra-state conflicts in Africa and the mechanism for enforcement of international humanitarian law against violation; during intra-state conflicts.

NATURE AND CAUSES OF INTRA-STATE CONFLICTS IN AFRICA

The African conflict topology can be categorized into four broad planks: civil national strife, boundary conflicts, self-determination and intra-State conflict.

RUFUS OLU OLAOLUWA, Ph.D., ASSOCIATE PROFESSOR, FACULTY OF LAW, LAGOS STATE UNIVERSITY, LAGOS.

Each of these has profound implications for the general scheme of conflicts resolution in Africa.²

The incidence of civil strife has been rampant on the continent. Some of the strife's have been running for decades defying military solutions and not succeeding in attracting the right political formula for their solution.³ This is manifested in the problems of Southern Sudan, Ethiopia, Nigeria, Chad, Liberia, Mali, Senegal, Uganda, Zaire and Somalia. In all these countries, internal cleavages manifested in the case of force. This may arise from the context for political power or the desire to secede. In other situations, there is the context for political power: Chad, Zaire, Liberia, Sierra-Leone, Uganda and Somalia provide apt examples. The desire to establish political supremacy has necessitated the resort to the use of force.

Another scenario that has characterized the conflict topology of Africa is the attempt at secession. This scenario has been aptly demonstrated by situations in Nigeria (The Biafran Saga) and Sudan. While the situation in Nigeria abated in 1970, the conflict that raged on in Sudan for its independence was enhanced by the United Nations’ intervention.⁴ It has also been argued in these two cases that the question of self-determination was also an issue.⁵ In the case of Sudan, it was resolved in the emergence of South Sudan becoming an independent State from Sudan on the 9th July, 2011.⁶ It is normal that all sorts of issues are canvassed in a conflict situation in order to sustain the justification or position taken by the actors. More so, that the actors desire the support of the world community and it is, therefore, consistent with the appropriate propaganda to raise issues that appear credible to sustain such sympathy and support.⁷

---

⁵ Onje Gye-Wado, op. cit., p. 188.
⁶ The Republic of South Sudan became independent on the 9th of July 2011 following a referendum that passed with 98.83% of the vote. It is now a member of the United Nations and the African Union and in July 2012 signed the Geneva Conventions. See http://www.mediawiki.org accessed on 10th June 2013
There also is the consideration of self-determination. The concept of self-determination has been available to people who are politically, socially and culturally united but have not yet attained independent status as states. This means that they are still part and parcel of an independent state struggling for separation and attainment of independent status or it is a dependent territory trying to secure an independent status.

Intra-state conflicts generally are governed by the article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application. These conflicts are also governed by Protocol II Additional to the Geneva Conventions of 12 August 1949 which shall apply to all armed conflicts which are not covered by article 1 of the 1977 Protocol Additional to the Geneva Convention of 12 August 1949 and relating to the protection of victims which take place in the territory of state party to the Geneva Convention of 12 August 1949; and relating to the protection of Victims of International Armed Conflicts (Protocol I) and which takes place in the territory of a party between its armed forces and dissident armed forces or other organized groups which, under responsible command, exercise such control over a part of a territory as to enable them to carry out sustained and concerted military operations and to implement this protocol. It should be noted that Protocol II additional to the Geneva Convention of 12 August 1949 shall not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic sets of violence and other acts of a similar nature, as not being armed conflicts.

In Africa today the situations not covered by Protocol I and Protocol II Additional to the Geneva Convention of 12 August 1949 such as riots, strikes, demonstrations, isolated and sporadic acts such as kidnapping are on the increase. These acts and others which are of similar nature are not classified as armed conflicts.

---

9 These conventions are four as follows: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the field; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention Relative to the Treatment of Prisoners of War and Geneva Convention relative to the Protection of Civilian Persons in Time of War.
12 Article 1(II) as in note 10 above.
THE APPLICABILITY OF THE INTERNATIONAL HUMANITARIAN LAW TO INTRA-STATE CONFLICTS

International humanitarian law applies generally to intra-state conflicts. This situation is captured in clear and unambiguous term in article 2 common to the four Geneva Conventions of 1949 in the following words:

In addition to the provisions of which shall be implemented in peace time, the present convention shall apply to all cases of declared war or of any other armed conflicts which may arise between two or more of the ... parties, even if the state of war is not recognized by one of them. The convention shall also apply to all cases of partial or total occupation of the territory of a ... party, even if the said occupation meets with no armed resistance. Although one of the powers in conflict may not be a party to the present convention, the powers who are parties thereto shall remain bound by it in their mutual relation...13

Intra-state conflicts are also known as internal conflicts which are generally referred to as non-international armed conflicts. International humanitarian law always focused on international conflicts between two or more countries. But the article 3 common to the Geneva Conventions of 12 August 1949 laid the first foundation in consideration of conflicts not covered by International humanitarian law in general known as armed conflict not of international character. The above seemed ambiguous. This ambiguity was clarified by Protocol 11 Additional to the Geneva Conventions.14 In its clarification, article 1 Paragraph 2 of Protocol II Additional to the Geneva Convention of 12 August 1949 declares that, "this protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflicts.

The above now takes us to the question or division of Non-International Armed Conflicts into two categories, viz:

1) The Provisions of article 1(1) Protocol 11 Additional to the four Geneva Convention of 1949 and Common articles 3 to the four Geneva Conventions of 1949 as stated above as armed Conflict.

2) Situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflicts.

13 Article 2, Common to the four Geneva Conventions of 12 August, 1949.
It is pertinent to observe that the situations covered by international humanitarian law in article 3 common to the four Geneva conventions of 1949 and in article I of Protocol II Additional to the Geneva Conventions of 1949 are not listed.

It can thus be inferred that the only qualification of intra-state armed conflict is a conflict that involves the armed forces of the state in question against a dissident armed force(s) or any organized armed group(s) which under responsible command exercise control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this protocol.

The above represents a scenario where a surgeon who is able to diagnose a patient with a known disease will recommend the patient for treatment but where he is unable to diagnose the disease, the patient is not qualified to benefit from the treatment offered to other citizens in a government hospital despite, the fact that it is evident even to a non-surgeon that the patient is in dire need of treatment. Article 1 of Protocol II Additional to the Geneva Conventions is based on the prevalent conditions in civilized nations majority of which are in other continents outside Africa. The question of intra-state conflicts have been allowed to thrive under the guise of defence of a state's sovereignty, territorial integrity and independence, and under the principle of non-interference in the internal affairs of states which effectively gives whoever is in power almost absolute powers to rule according to the dictates of his self interest and colleagues under the guide of the ruling party put in place by the same persons.

The situation in Africa especially between 1963 when the OAU was created and year 2002 when it was dissolved and replaced by the African Union, was a time of absolute powers for African states where power corrupts and absolute power corrupts absolutely. The above situation led to a situation of less involvement of the people in governance which led to bad governance, corruption in high places, relegation of public utility and services to a deplorable level of unfunctionality whereby everyone has to fend for himself. The above condition led to situations of internal disturbances and tensions, such as riots, strikes, isolated and sporadic acts of violence but the international humanitarian law which ought to device a mechanism for their accommodation is not yet seeing the need to bring these situations under its regulation.

The above situation has influenced a departure of the African Union from that of Organisation of African Unity (OAU) in its principles. Although the term "Armed

15 Article 2 (1)(3) Charter of the Organisation of African Unity (OAU)
16 Article 3 (2) Charter of OAU
Conflict was not used in the in article 4 on principles but terms like conflict, war crimes, genocide and crimes against humanity were used among other relative terms in International Humanitarian Law.

The principles of African Union includes but not limited to:

1) Principle of peaceful resolution of conflicts among member states...
2) Principle of prohibition of the use of force or threat to use force among member states of the union.
3) Principle of non-interference by any member states in the internal affairs of another.
4) The principle of the right of the African Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances namely; war crime, genocide and crimes against humanity.
5) Respect for democratic principles, human rights, the rule of law and good governance; and
6) The principles of respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.17

It is pertinent to note that the Constitutive Act of the African Union in one breath provides for non-interference of any member in the internal affairs of another18, but in another breath it also provides for the right of the African Union to intervene in a member State in respect of grave crimes like war crimes, genocide and crimes against Humanity.19

This in itself has fulfilled the provisions of the Rome Statute.20 This is bridging the gap between international law and municipal law in the application of international humanitarian law to intra-state conflicts. It is our candid opinion that for international humanitarian problems arising from conflicts to be solved, there has to be a re-definition and re-direction of the items under article 1(2) Protocol II Additional to the Geneva Conventions so that they can be classified as non-international or internal conflicts without any further division or distinction.

17 African Union Constitutive Act, Art. 4
18 Ibid., Art. 4(g)
19 Ibid., Art. 4 (h)
20 Rome Statute of Internal Criminal Court. Art. 5
The intra-state conflicts in Darfur (Sudan) and many African states fall into this category.

There has been a perceptible in privatization of war in many parts of Africa, for example in Sierra-Leone and Liberia, but the same phenomenon is also found in other Countries outside Africa such as Afghanistan, Chechnya and Columbia. Such wars are driven not so much by politics as by economics, the belligerents become war enterprises. The motives for war are economic and links with organized crime, illegal trade and trafficking, often make them even more lucrative. In the final analysis, many of these conflicts transcend intra-state sphere.28 The mechanism for enforcement of international humanitarian law against violations during intra-state conflicts is a complex but realistic approach to the process of implementing international legal rules within the mechanism of municipal laws.

There is need for African states to act as a matter of urgency to ratify and domesticate all international legal rules on humanitarian law. As such, there can be redress of situations leading to conflict. This in turn will increase the good relationship between humanitarian organisations and Individual States in order to be able to quickly and adequately react and render help to victims of armed conflict in whatever sphere or dimension it occurs. This will also allow for the enforcement of article 3 Common to the Geneva Conventions in relation to impartial humanitarian body such as the International Committee of the Red Cross.29

There should be an intensive public enlightenment programme in African States so that knowledge about war, its devastating effects on humans, economy, environment and others may be disseminated. People should be able to know that their victims are not their enemies and that unlawful attack should not be directed at innocent victims and combatants who have surrendered or are incapacitated to submission to the opposing party.

This should be extended to all institutions of learning not minding the level because those who are out of school and who are not employed are a ready army in the hands of people who are at the helm of affairs during intra-state conflicts. There are a lot of institutions and decisions for the enhancement of good governance, for alleviation of poverty and enthronement of democracy in all African states such as New Partnership for African Development (NEPAD), African Peer Review Mechanism that can bring about new relations in and

27 Ibid., p. 152.
28 Ibid., p. 154.
29 Article 3(2) Geneva Convention III of 1949.
amongst African States. These countries should try to encourage themselves to achieve these laudable programmes and the issue of enforcement of international humanitarian law against violation within the context of intra-state conflicts in Africa will be drastically reduced, if not totally erased.

CONCLUSION

Conflicts at whatever level in Human Society occurs as a result of inequality which a party is unable or not ready to cope with until things improve by natural process. The emergence of conflicts especially within the context of intra-state relations had led to a lot of destruction of human life, economic resources and disrupts peaceful co-existence between persons and groups of persons since time immemorial.

It is in order to checkmate or reduce its consequences on human, natural and other resources in society in the form of international humanitarian law rules which were established between States.

Rules alone cannot do the magic of enforcement. That is why enforcement of international humanitarian law has to be actively pursued by all States. African States in particular ought to ratify and domesticate all international humanitarian law conventions and disseminate its contents in national and local languages to their people in order for them to be conversant with these rules. This is because knowledge is power.

In addition to this, African states ought to overhaul their system of governance to accommodate all and sundry. The war against corruption in government circles is to be vigorously pursued and realistic economic development programmes should be engendered to the detriment of intra-state conflicts in Africa.
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW DURING INTRA-STATE CONFLICTS IN AFRICA

The main aim of international humanitarian law is to respect the sanctity of human life, reject impunity and defend the right and conditions of the victims of armed conflict without contemplation as to the cause or who is responsible for the acts of the conflict.

The persons that are protected against violations of international humanitarian law in armed conflicts of non-international character include:

1) Persons' taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause.\(^\text{21}\) These protected persons shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

b) Taking of hostages;

c) Outrages upon personal dignity, in particular, humiliating and degrading treatment; and

d) The passing of sentences and the carrying, out of executions without previous judgment pronounced by regularly constituted court...

2) The wounded and the sick shall be collected and cared for.\(^\text{22}\)

The four main groups of violations as provided for by article 3(1), GC I, II, 111 & IV are the main forms of violations seen in most intra-state conflicts. For example in Liberia, killings were carried out in dastardly ways whereby victims are killed and butchered like animals in broad day light and even in front of moving cameras.\(^\text{23}\)

The situation in Sierra-Leone was the same. Those who escaped being killed are left alive with one or both arms cut-off.

\(^{21}\) Article 3(1) GC 1. 12 August, 1949.

\(^{22}\) Article 3(2) GC 1

\(^{23}\) ICRC documentary films on the crisis in Liberia.
In Rwanda, the high point of the conflict and its effects on its victims are the cases of rape based on discrimination against the Tutsi women from the offending Hutu men. In some instances, Hutu women married to Tutsi men were allowed to divorce their husband with immediate effect and allow them to leave before their hastily operations but their children who are females were not spared as they were considered as Tutsi women. In this account, rape was not just committed but the women were made to be naked and made to go out naked after the act after which other inhuman and degrading acts will follow before they are finally killed.

These violations are also the order of the day during situations of internal disturbances, riots, isolated and sporadic acts of violence not covered by international humanitarian law as provided for by Protocol II.

In all internal conflicts all over Africa the above trend is observed be it in Darfur (Sudan), Liberia, Rwanda, Chad, Somalia and elsewhere where intra-state conflicts has occurred.

MECHANISM FOR ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW AGAINST VIOLATIONS DURING INTRA-STATE CONFLICTS

Human beings, their rights and dignity in whatever situation they find themselves must remain humane. Even as a victim of a conflict which is covered or not covered by international humanitarian law, human dignity should remain human dignity. It does mean that if special situations arise in the life of human beings threatening their existence or dignity, special rules should be made to address the situation as to maintain the status quo in human dignity without trying to assert who is at fault.

In intra-state conflicts, there usually exist asymmetry and owing to the fact that governments are mostly fighting a non-governmental armed group. In this type of conflicts, which is to be found in most of the areas where the ICRC works, inequality between the belligerent and their weaponry is the rule rather than the exception. The term symmetrical warfare is generally understood to mean classic armed conflict between states of roughly equal military strengths.

---