

**AN EVALUATION OF THE LEGAL FRAMEWORK FOR THE
PROTECTION OF CIVILIANS IN ARMED CONFLICT
(A Case Study of Mogadishu in Somalia)**

BY

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN
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APPROVAL

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a research report in partial fulfillment for the award of a Bachelor of Laws degree of Kampala International University,”

Sign  Date..... 18/05/15

Ms. Atwiine Rebecca

Supervisor

DEDICATION

I dedicate this work to the Lord Almighty and my parents, Mr and Mrs Miiro for their efforts and support. I am entirely grateful for the faith you have always had in me.

ACKNOWLEDGEMENT

The completion of this work has been a long and fruitful task. In this regard, I thank the Lord Almighty for the grace and for the ability to do this research.

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ABBREVIATIONS

AMISOM	African Union Mission in Somalia.
AP	Additional Protocol
GC	Geneva Conventions
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal of Rwanda
ICTY	International Criminal Tribunal of Yugoslavia
JUL	International Humanitarian Law
NGO	Non Government Organization
UMSOM	United Nations Operations in Somalia
UPDF	Uganda Peoples Defense Force
TFG	Transitional Federal government
AU	African Union
IHL	International Humanitarian Law
UDHR	Universal Declaration on Human Rights
ICCPR	International Covenant on Civil and Political Rights
CAT	Convention Against Torture
ICESCR	International Covenant on Economic, Social and Cultural Rights
CEDAW	Discrimination Against Women
CRC	Convention on the Rights of the Child
ACHPR.	African Charter Human and Peoples' Rights

HC	Humanitarian Coordinator
RC	Resident Coordinator
ERC	Emergency Relief Coordinator
IASC	Inter-Agency Standing Committee
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
OCHA	Office for the Coordination of Humanitarian Affairs

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DRC vs Uganda, ICRC Report; Judgement of 19th December 2005

ICJ Advisory opinion in the Legality of the use of Nuclear Weapons, Advisory Opinion of 8th July 1996

Nicaragua vs USA, ICJ Report 1986, 1986 p.14

North Sea continental shelf case, ICJ Report Judgment on 20th February 1969

Prosecutor vs Jean Paul Akayesu, ICTR-96-4-7 September 2nd 1998

Prosecutor vs Tadic, Judgment (Appeal) of 15th July 1997

R vs Civil Aviation Authority, 2006 E W 1-IL AT 2465

The Niyonteze case, case No 205 Switzerland

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Additional Protocol I and II to the four Geneva Conventions of June 8, 1977.

The Four Geneva Conventions of August 12, 1949

The Constitution of the Republic of Uganda as amended 1995

The UPDF Act No.7 of 2005

Hague Regulations 1899

The Convention on Genocide 1948

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ABSTRACT

The study is an evaluation of the legal frame work protecting civilians in armed conflict, putting specific emphasis on the Mogadishu conflict in Republic of Somalia. The issue of wars and unrest is common worldwide where the most delicate victims who are civilians have been tortured, many lost their lives and property during conflicts. This is not exceptional in a failed state like Somalia where millions of innocent civilians have lost their lives despite the existence of the protection provided to civilians under IHL.

This study evaluates situations of armed conflict and how the rights of civilians have been violated in conflicts like the Mogadishu conflict where the means of war fare used are unconventional. The history of the conflict is examined and the plight of civilians. The study further discussed the importance of the protection of civilians to be a moral responsibility and the duty to protect civilians though primarily imposed on the state, is a collective one.

The study further evaluates the various laws that protect civilians provided for under IHL; the various classifications of armed conflicts; the traditional classification and the IHL classification of armed conflict. The study shows challenges in classifying the Mogadishu conflict, owing to its nature; it does not fit the IHL definition of armed conflicts thereby creating challenge in the protection of civilians in armed conflicts.

The study also recommends strategies that may enable effective protection of civilians in the Mogadishu conflict.

CHAPTER ONE INTRODUCTION

1.1 Background of study

Armed conflicts are a reality of the existence of human nature. Armed conflicts exist whenever there is a resort to armed force between states, or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.¹

This general expression covers confrontation between two or more states, a state and a body other than a state for example a National Liberation Movement, a state and dissident function or two ethnic groups with a state, The breach of the law which specifically deals with situations of armed conflicts is international humanitarian law (IHL). International Humanitarian Law as a branch of public international law limits the use of violence in armed conflicts by providing that those who do not or directly participate in hostilities are spared and protected. This law also limits violence to the amount necessary to achieve the aim of the conflict which can be fought independently only to weaken the military potential of the enemy.

Article 35(1) and (2) provide that in armed conflicts, the right of parties to the conflict to choose methods or means or war fare are unlimited and that it is prohibited employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. The law of international Humanitarian Law is usually applied in cases of armed conflicts which are classified as internal armed conflicts and non international armed conflicts. IHL is concerned with *ius in bello* which means the rules that govern the conduct of hostilities. It does not concern itself with *ius ad bellum* which deals with the cause of the conflict or the use of force. International Armed conflicts involve two or more states as the actors, for example, World War I and II. The four Geneva Conventions of August 12th 1949. Additional Protocol ito the Geneva Conventions and International Customary Law apply to all aspects of an international armed conflict'. Occupied territories are governed by common Article 3 to the Geneva Conventions and Article 42 and 43 of 1907 Hague Regulations. Wars of National Liberation fall under the category of international armed conflicts as provided for under Article 1 (4) of Additional Protocol 1 which provides that;

¹ 'Article 1 of the 1977 Additional Protocol I of Geneva Convention of 12/August/I 949

"The situation referred to in the preceding paragraph include armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self determination as enshrined in the charter of the UN and the Declaration of Principles of international law concerning friendly relations and co-operation among states in accordance with charter."

Non international armed conflicts are conflict within the territories of a state and may be between the state and different dissident groups or the different dissident groups amongst themselves. Depending on the threshold, either common Article 3 to the Geneva Conventions and customary law apply or Article 3 common to the Geneva Conventions and the whole of Additional Protocol

II apply to non-international armed conflicts. This was illustrated in the case of **Prosecutor vs Joan Paul Akugesu**²

Court stated that a conflict in the territory of a state between ethnic groups may be classified as non-international armed conflicts on condition that it possesses the necessary characteristics of intensity, duration and participation. This situation may escalate into an international armed conflict after the local parties get active assistance from external sources or other states.

In **Nicuragua vs USA**³ case, court noted that a non-international armed conflict becomes internationalized if, a state victim of an insurrection recognizes the insurgents as belligerents. Secondly, if one or more foreign state(s) come to the aid of one of the parties with their own armed forces and finally, if two foreign states intervene with their representative armed forces each in aid of a different party. During armed conflict, civilians usually don't take part in the conflict but sometimes been direct target violence, harassment, expulsion and forced transfer, and their property has been destroyed.⁴ Threats to civilians increase due to the production weapons especially small arms and light weapons, this results in organized crimes and modern violence to civilians in these conflicts.⁵ Tens and thousands of people are killed or violated each

² Mark Bradbury, Endless war, A brief history of the Somalia conflict

³ ICTR-96+7 September/2/1998

⁴ International committee of the Red Cross, understanding the ICRC, ICRC publication

⁵ Ibid

year in conflicts that are fought primarily with these weapons⁶. The Mogadishu crisis in Republic of Somalia is one that has lasted for over two decades starting as a civil war in the 1980's. It sustained through a period of state collapse, clan factionalism and warlords in the 1990's to a globalised ideological conflicts in the last decade of the millennium.⁷ The Mogadishu crisis in the Republic of Somalia still carries up in day and as characterized with significant suicide bombings, clashes between the military service of the Transitional Federal government of Somalia and the African Unite mission(AMISONO) on one hand and the Hizbul Islaw and the and the Al shabaab on the other.⁸

An estimate of over 5 50-700 civilians were killed in 2009,⁹ in the capital Mogadishu. The war has caused suffering and hardships to civilians since it has been a breeding ground for the violation of rights of innocent civilians who have been subjected to killings in the most violent ways of torture, starvation and displacement. Over 100,000 residents in Mogadishu have been displaced. The United Nations Security, General Kofi Annan in 2003 said,

'The toll of deed and wounded particularly among innocent civilians has risen to levels that can be distended without any exaggeration as appalling.....'

Civilians have been the objects of attack despite the existence of rules of law that govern the conduct of parties in war. The law put in place mitigation measures to alleviate the effect of such conflicts in Article 5 5(1) and (2) that provides that;

In armed conflicts, the right of parties to conflicts to choose methods or means of war that is unlimited and it is prohibited to employ weapons, projects and material and UN materials of warfare of a nature to cause superfluous injury or unnecessary suffering.

Despite the existence of such legal requirements, civilians still suffer from continued violent from perpetrators. This study therefore, evaluated the law relating to protection of civilians in armed conflicts and its effectiveness in application.

⁶ Department of state on global terrorism 2003

⁷ Mark Bradbury, Endless war, A brief history of the Somalia conflict

⁸ Armed conflict report Somalia (1988-First combat deaths)

⁹ [http://www, ploughshares, ca/libraries/ACR Somalia html](http://www.ploughshares.ca/libraries/ACR_Somalia.html)

Ancient times were unfamiliar with the right of civilians during war time right from the early biblical era as evident in Numbers 13:7-8, Moses was commanded by God after their kings and with the median to Slain all men in battle plus their kings and ordered them to take away all their flocks, women and burn all their property and cities in which they settled.

In the 14a century Abu Buker had a different view saying:

"The blood of women, children and old people shall not stain your victory.

*Do not destroy a palm tree was burn houses and conflicted with fire, and do not eat any fruitful tree. You must not stay any flock or hands save for your subsistence."*¹⁰

Abu Baker's view expressed the fundamental rights to life and ownership of property, this issue was also dealt with by Prosecutor Martens in 1899 during the deliberations that culminated into the adoption of the Hague Regulations concerning the question of how civilians and Belligerent right would be protected, he noted that;

*"In cases not included in the regulations, the inhabitants and Belligerents remain under the protection and rule of the principles of law of nations as they result from the usage established amongst civilized people from their laws of humanity and dictates of public conscience."*¹¹

Jean Henry Dunant also known as the father of the Red Cross, while journeying on a business mission in Italy in *Castiglione della pierre*, the battle of Soferino was fought nearby. The battle was between the French army under Napoleon II and the Austrian army under Franz Joseph. Over 40,000 French, Austrians and Italian soldiers were killed, wounded or were missing on the battle field. The town was filled with casualties of the armed forces. The medical services available at that point proved to be inadequate. It was wholly natural for Dunant to try and help relieve the pain and suffering of the wounded. He mobilized women and instructed them to give

¹⁰ Eyene Okapanachi Ethno-religious identity and conflicts in Northern Nigeria University of Ibadon Nigeria

¹¹ Theodof Moron Marten's clause, Principles of humanity and directors of public conscience p. 79.

difference to all the needy without discrimination of regardless of the camp to which they belong¹².

He also published, "A worry of Saferino" in which he proposed that teams of trained volunteers be organized in all countries for the war. This was enthusiastically endorsed by many persons. Additionally, his support of an international treaty among nations to assure more human care of the wounded around considerable interests.¹³

IHL under the foundation of Henry Dunant's principles recognizes the provisions of civilians in armed conflicts. This is firstly under customary international law which requires, distinction between civilians and combatants and their objects. The 4th Geneva Convention extensively deals with protection of civilians in times of war.

Despite the existing IHL provided for in the Geneva and Hague Conventions, customary international humanitarian law, the number of civilians killed in armed conflicts has been on an increase. These have increased from five percent at the time of the century to fifteen percent during World War I, to sixty five percent by the end of World War II, to more than ninety percent in the wars of the 1990s.¹⁴

Civilians often pay a heavy price during armed conflicts, they daily face threats of violence and death¹⁵ this is a serious problem that needs to be solved. In Mogadishu, the death rate is alarming, in 2009, 550-700 civilians were killed in Mogadishu¹⁶. The two decade war has increased violence hence having million of civilians in Mogadishu dependant on outside help.

More than a million civilians in Mogadishu have been displaced, the price of food are very high. The majority of civilians in Mogadishu have left their relatives due to the long period of drought and endless armed clashes.¹⁷ Due to constant loss of lives, many Somalia's have also decided to live their original mother country and others have found their business collapsing since

¹² Grace Mactual, "Impact of Armed conflict in children, UNICEF"

¹³ [www/Ogalik.com/production-civilian-armed-conflict](http://www.Ogalik.com/production-civilian-armed-conflict)

¹⁴ Ibid

¹⁵ ibid

¹⁶ <http://www.Ploughshares.org/libraries/ACR/Somalia.html>

¹⁷ [http://www.ICY.org/sources/document/update/Somalia/update 13 1009.htm](http://www.ICY.org/sources/document/update/Somalia/update%2013%2009.htm)

customers can not access same Of these places were these business are located if located in an area with conflict or wars for the safety of their lives.

1.2 Statement of the problem

Despite protection offered to civilians by the law governing armed conflict (IHL), civilians continue to be victims of violence. This study discussed settlement of the problems by creating awareness to the general public of the evils visited to the civilians in armed conflict situations. The study evaluated reasons as to why civilians are still not specifically protected during armed conflict situations in spite of the existence of IHL. It equally provided necessary strategies to help governments protect civilians in armed conflict. The problem of this study, therefore, was how to influence change of attitude on the rights of civilians during armed conflict situation with a view to influence policy and attitudinal changes in the whole consent of armed conflict basing on a case study of Mogadishu conflict in the Republic of Somalia.

1.3 Objectives of the study

1.3.1 General objective

The overall objective of this study was to evaluate how the law of armed conflict protects civil during armed conflicts.

1.3.2 Specific objectives;

The general objective of this study is fulfilled through the following specific objectives

Firstly, the study examines situations of armed conflict and how the right of civilians have been protected during armed conflict.

Secondly, the study explores the legal framework on the rationale for protection of civilians in war

Thirdly, the study explores the reasons for the continued violence's against civilians despite the existing law that provided for the protection of civilians in armed conflicts.

Lastly, the study will make appropriate conclusion on recommendation.

1.4 Research questions;

This study will attempt to answer the following questions; how has the law of armed conflict protected the right of civilians in the armed conflict? What are armed conflict situations and how have the right of civilians been protected in armed conflict? What are the reasons for the continued violence against civilians still despite the exercise of the armed conflict? And, what are the classifications and recommendations that can be drawn on the basis of the study?

1.5 Significance of the study.

Previous researcher wrote about the issue of protection of civilians under IHL in armed conflicts. Some discussed expert consultations and recommendations on how to deal with the breach of IHL. The available information, however did not particularly evaluate the law relating to protection of civilians in the Mogadishu conflict in the Republic of Somalia. This study covered these through enlightening reader on specific violations of IHL, in Mogadishu and thereby provided solution for the future breaches of IHL. This study is re-lecture to scholars of international humanitarian law and Human Right lawyers, members of armed forces and researchers.

1.6 Literature review.

There is a lot of literature that has been written on the legal aspect of the protection of civilians in armed conflict and its relevancy. Some of the writings that were reviewed for this study are laid out bellow;

In United Nations Resolution 1265, September 16 1999¹⁸, members of the Security Council discussed the increasing problem of deliberate targeting of a civilian population, the importance of prevention of conflict and the need for respecting international law. The council further raised concern on the need to secure effective law. The council further raised concern on the need to secure effective on unconditional protection of children in an armed conflicts, the need to end attacks against humanitarian workers and unimpeded access to population in need.

The council further expressed concern on the danger manufacturing and marketing of weapons, particularly small arms. The danger of land mines to civilians and the need for laws that should

¹⁸ Literature Mark” The law of war and Civilian on the battlefield”

be incorporated in the struggle to ensure protection of civilians by the United Nations peacekeeping missions. The council raised a number of solutions regarding the problems amongst to monitor situations, in camps.

This literature was relevant to this study since it identified the character of the conflict in Mogadishu where innocent civilians, children and humanitarian workers are deliberately targeted. The literature criticized the use of unconventional means of warfare and offered a number of recommendations of protection of civilians in a place like Mogadishu where the conflict can hardly be qualified and the means applied in the conflict are unconventional.

Lieutenant Colonel Mark Padid¹⁹ of United States Army emphasized the distinction between civilian and combatants as a cardinal principle of IHL. He emphasized that during armed conflict, lives of civilians must be separated from combatants by attacking only combatants and military objectives and that a line must be drawn on what constitutes a civilian and a combatant in conflicts, this study evaluated such laws and principles relating to the protection of rights of civilians and laid strategies on which it could be observed.

This material was relevant to the study since it discussed the customary law principles of illustration as a mode of protecting civilians in an armed conflict, however the literature did not provide a mode of protection in conflicts where means like cyber terrorism are applied, such conflict which do not enable distinction of civilians and combatants. This study addressed solutions in such circumstances.

In an article of the UK, government strategy on the protection of civilians in armed conflict. The article analyzed the United Kingdom's role in the protection of rights of civilians in United Kingdom and worldwide. The study discussed the meaning of protection of civilians as well as the person responsible for conserving this protection. The emphasized the duty to protect civilians as a collective responsibility and further noted that states are major actors. It discussed strategies laid down by the United Kingdom government in protecting civilians, among which included training peacekeeping troops ensuring safe access of relief to civilians. This article was relevant to the study since it identified recommendations to the protection of civilians in armed

¹⁹ 'o Supra note 18

conflicts classified traditionally and did not take into account the evolving typology conflicts like that in the Mogadishu conflict.

The sturdy whoever addressed this by discussing how civilians may be adequately protected in such typological armed situations and who should protect them where necessary.

Grace Macheal analyzed the impact of armed conflict on civilians and emphasized the need to protect children against hostilities when conflict arose. She analyzed the growth of civilian fatalities till the 1990's. She noted that many children die of hunger or of diseases during armed conflicts; some are raped, others taken as child soldiers. Grace attributed the causes of armed conflict to due to cataclysmic political upheavals and straggles to control. The writing asserted that by mitigating between relief agencies and the combatants, children could be afforded adequate protection during armed conflict.

Grace further noted that, in any country where there is no peace, the economy of that country is always declaring automatically. People in that country are always on tension expecting to make losses in their buss nesses at any point. She said;

A country without peace is like a jangle with the biggest Population of hungry lions every were."

In her opinion, she looked at the responsibility of all state to be always in position to call for peace in their country. She pointed out the main reasons as to why countries like Somalia are always at war amidst themselves as shown bellow;

Political instabilities in the country, Conflicts that exist among and between the clans, the ignorance of the people about the resulting effects as a war break out, Influence from neighboring countries with the aim giving support to the group that they are willing to support.

Concurring with the view of **Grace Macheal**²⁰, the root causes of conflicts within the

Mogadishu in Somalia are the same that attributed to the outbreak of wars in northern

Uganda. Iraq. the war which existed in Kenya between Rayla Odingas group and Mwai

²⁰ Grace Macheal of UNICEF, impale of armed conflict on children

Kibakis group, Libya and many other countries which have faced war over and over again.

All the countries that end up in wars their economic development declines which leads to stunted growth of the country, economy for that period. For example, businesses of the people get demolished, many developmental people lose their lives, refugee camps increase, families break up and displaced and many other problems.

This literature was relevant to the study since it identified vulnerable group of civilians and how their rights have been violated and protected; however, it was limited to the protection of children in armed conflicts. This study in contrast the law protecting civilian's rights in general and its effectiveness.

Ogolla J Ivan²¹ wrote on the conflict in northern Uganda. He reviewed the law protecting civilians in armed conflict and specified the role of International Humanitarian Law in the protection of civilians in armed conflict. Ogolla discussed whether IHL adequately addressed such protection. He proposed measures which the Ugandan government could undertake in protecting civilians in northern Uganda.

This literature was relevant to this study since it addressed the law protecting civilians in armed conflict and how it adequately protects such right. Ogolla however did not address cases of conflict of changing character like the Mogadishu conflict. This study therefore addressed this gap by examining the changing character of the Mogadishu conflict and suggesting law applicable at every state of the conflict and how it effectively protects civilians in armed conflict.

Kisa Daniel²² wrote on the principles of IHL in relation to the protection of civilians in armed conflict. Daniel emphasized the principles of IHL and their in internationalized non international armed conflicts. Daniel further analyzed challenges in implementation and adherence to the

²¹ Ogolla J Ivan. A legal review on the protection of civilians in armed conflict, a case study of northern Uganda.

LLB Dissertation UCU 2007 (unpublished)

²² Kisa Daniel. A critical analysis of the principles of International Humanitarian Law in reference to the protection

civilians in armed conflict. LLB, Dissertation IUIU 2010 (unpublished)

principles of distinction, military necessity and proportionality in a bid to minimize civilian causality during the armed conflicts.

The literature was related to the study since at one time the Mogadishu conflict was characterized as an internationalized armed conflict, therefore the application of these principles would afford civilians same degree of protection.

This writing focused more on the problems of interpretation of the UN charter in so far as observance of prohibition of conflict between state both in reference to international and non international armed conflict. This study redressed this gap by giving general recommendations on how the right of civilians in the armed conflict may be protected in the Mogadishu conflict.

Ojaimbo²³ examined the applicability of Article 3 common to the 4 Geneva Conventions in non international armed conflicts by emphasizing the role of the article in protecting victims in an armed conflict and emphasized that the article is well observed, it would ensure adequate protection of victims and armed conflicts. The literature however did not address the conditions of the Mogadishu conflict were the conflict can hardly be classified and the particular' how and identifiable. In contract, this study examines the protection of civilians in particular, how and why such protection is undermined and suggested how this protection may be effected.

Jane's Alabwe²⁴ examined the law relating to the protection civilians in armed conflict and discussed the plight of children in armed conflict and noted children as the most vulnerable and commonly affected by armed conflict situations.

Jones noted the need to inform the public about the need and responsibility to take concern about the plight of civilian during armed conflict; He noted that despite the existence of the laws protecting children in situations of armed conflict, children are still subject to violence in armed

²³ Ojambo.M David Applicability of Article 3 common to the 4 Geneva Convention of 1949 international armed conflict, LLB Dissertation 2007(unpublished)

²⁴ Jones Ahabwe, An examination of the protection of children during situations of armed conflict and the efficacy. LLJ3 ,dissertation 2009(unpublished)

conflict. He therefore recommended that commissions be put in place to minimize violence against children in armed conflict situations.

This literature was related to this research since it covered children as a category of civilians; however, it was limited to the protection of children in armed conflict and did not cover other categories of civilians. Furthermore, Jones did not the modern forms of conflict that are even much more dangerous to children since the means of warfare used are in discriminatory and are unconventional means.

This study therefore not only examined law protecting children in armed conflict, but also the law protecting civilians as a whole in a conflict of asymmetric nature like Somalia, Iraq, northern parts of Uganda when the rebels who were led by Kony were in full control of the region, from their rights being violated by the people involved in the wars. The study recognized civilian right a case in point children how and who has the responsibility of protecting them.

J.M Spraight²⁵ noted the separation of armies and the peaceful inhabitants in two distinct classes as the greatest triumph of international law and its effects in fulfilling the evils of war has been incalculable. To Straight, this had been the main focus in the separation of civilians and combatants. The literature was relevant since it laid out the principle of distinction as an important principle in the protection of civilians. Spraight did not stress the concept of the special protection of civilians and only assumed that with the law of war civilians would be accorded some protection yet the scope of civilian protection is limited under such distinctive principles.

Furthermore, Spraight did not address situations where international means of warfare are applied, which means do not distinguish between civilians and combatants. This study therefore addressed how civilians can be protected in such conflicts of symmetric nature.

Francois Bugnion expressed his opinion on the reality of the wars;

²⁵ J.M Spraight, war on Land. Macmillan Publication London 1911 p.37

“War is not a ship between man and man but between state and state in which individuals between countries only by accidental not as man, not ever as citizens hut as soldiers not even as members of their nation but as its defenders.”²⁶

This quotation shows how disastrous war can be how it exposes the most vulnerable to displacements, violation like rape, murder of civilians, intents of being held hostage.

Francois Bugnion proposed the need for a convention on the protection of the right of civilian in armed conflicts of the international community since most countries are reluctant in ratifying the conventions. Francois also recommended the need for the exhaustive study to be made with a view of conclusive of an international conversion regarding the conditions and protections of civilians of enemy nationality in the territory of a belligerent n an occupation.

The study was relevant to this study because it enriched the researcher with knowledge on the effect of war on not only civilians but also the belligerents taking part in aimed conflict. It also showed the need for humane treatment and distinction between civilians and combatants in armed conflict. The literature however did not address solutions to conflicts that are typological in nature. This research therefore addressed this by discussing how the law can adequately protect civilians in such conflicts.

Rabin Greiss, a legal expert of ICRC, discussed how professionals are increasingly at the risk of being wounded detained, killed, and kidnapped²⁷. Robin discussed the kind of protection of journalists as civilians are entitled to under IHL. The study referred to Article 4 of the third Geneva Convention and Article 71 of the Additional protocol I which entitles journalists the same protection as that generally offered to civilians in international armed conflicts and the same holds in non international armed conflicts by virtue of customary law. The literature further noted that violation of those rights great breach of the Geneva Conventions and Additional Protocols. Robin analyzed the role of ICRC in protection of journalists.

²⁶ ww CRC orrieng’ prolection-journalist interview 270710

²⁷ ww CRC orrieng’ prolection-journalist interview 270710

Robins²⁸ literature was relevant to the study since it focused on a group of civilian journalists and how the law protects them in armed conflicts. Robin however dwelled more on the role of ICRC in protecting the rights of journalists in armed conflict other than civilians in general. This study therefore addressed this by entirely discussing how the law protecting civilians in armed conflicts of asymmetric nature like Mogadishu where the means of fighting are unconventional by laying out recommendations on how the law can be made to cater for the protection of civilians in armed conflicts

Fritz Kaishover noted that the distinction between belligerents and civilians found acceptance as self evident rule of customary law from the 2nd half of the 19th century and during the 20th century, the Hague Regulations and the Geneva Convention and their Additional Protocol explicit confirmed the customary rule that innocent civilians must be kept outside the hostilities as general protection against danger arising from hostilities²⁹.

The literature was related to the study since it discussed how the principle of distinction acquired the status of customary law and its relevance in the protection of civilians in armed conflicts and laid down the laws of Hague Regulations that protect civilians in armed conflicts. Fritz Kalshoven focused on use of conventional means of warfare.

However, Fritz Kaishoven did not address conflicts of the asymmetric nature where non conventional means are applied, this study addressed this by showing how the law protect civilians in such conflicts of indiscriminate attack.

Partes in "The law of war under the status of civilians accompanying armed forces in the field" noted that states and their population are protected as long as they do not take part in the hostilities but they are a population of prisoners of war status. The persons who accompany military forces do not take alternative part in hostilities and may include those of laborers, supply contractors or services responsible for the welfare of armed forces, who are civilians' in

²⁸ Rule 34 of the ICRC study

²⁹ Fritz Kalshoven. The laws of warfare. A.W. Sijthoff publication Geneva 1975 p.31

essence. If any of those persons take up arms or do any hostile act, they shall lose their immunity and shall be treated as combatants.³⁰

The literature was relevant to this study because it discusses situations when civilians may be protected in armed conflict and when this right is waived. This study was relevant in identifying who a civilian is especially in a conflict of Mogadishu where members of the rebel groups are must distinguishable from civilians. This literature however did not address cases of hypothetical armed conflicts that involve numerous groups fighting of them are hardly distinguishable with civilians, the study therefore addressed this by discussing how civilians may be effectively protected in armed conflict of such nature.

1.8 Methodology

Methodology means description, explanation and justification of the methods and not the material themselves.³¹ The methodology relied upon in this research was mainly qualitative method of analysis. This is an inquiry using descriptive and naturalistic approach to understand the human approaches of a given behavior,³² It describes reality as experienced by the groups, communities, individuals and may other.³³ The qualitative method included; designs, techniques and measures that do not produce discrete numerical data. Data is given in form of words than numbers³⁴

On the other hand, quantitative research is a logical study of any aspect of the social world using quantitative numerical or statistical figures and experiment methods to test the hypothetical deductive generations of the research problem.³⁵

The qualitative method of research was relevant to the study since it permitted the researcher to beyond the statistical results usually reported in quantitative research.³⁶ This method of research

³⁰ Park” Law of war, status of civilians accompanying armed forces in the field.” A memorandum of law for affine of judges advocate general. US army 6th may 1999

³¹ Kahbie (2007) Social Research Makerere University Printer Kampala p.25

³² Ibid p.27

³³ Ram Atage Research Methods Rwat Publication New Deith p.39

³⁴ Ibid

³⁵ Ibid

was also flexible and easily be adjustable while they are employed in data collection unlike the quantitative method where methods of research are standardized and fixed with no option for correction and adjustment.³⁷

Methods in the qualitative research are designed to bring the researcher closer to social reality and social interaction unlike the quantitative method.³⁸ The methods of qualitative research that were applied in this study are discussed below;

1.8.3 Document consultation

The research is based on document consultation. This method involved the use of books, journals, articles and the literature review. The research is majorly based on extensive reading in the library which enables the researcher to acquire knowledge on the background of the study and thus establishing the loopholes in the law that the study seeks to address. This enabled the researcher to critically analyze the present development in light of the protection of civilians in an armed conflict. In so doing, this library research is based on the use of journals, magazines and any relevant material usually provided by the ICRC. This also involved carrying out research from libraries like in Kampala International University IUIU and others.

This method is advantageous since it enables the researcher get information on the assisting literature and the method of study is also open and not predetermined or restructured by hypothesis.

1.8.3 Interview method

The interview method was also applied by the researcher as a method to obtain reliable information for the study. Interviews are defined as verbal questioning.³⁹ The researcher applied unstructured interviews which are flexible and do not require prior indication of specific issues that must be organized in a particular way.⁴⁰ These were oral interviews, the researcher orally interviewed several persons in particular those with relevant knowledge in the field of IHL. This research

³⁶ Supra note 38 p.40

³⁷ Ibid

³⁸ Supra note 38 p.221

³⁹ Ibid p.223

⁴⁰ Ibid p.261

method enabled the researcher to get as much relevant information as possible in as far as the study is concerned. Interviews enable the researcher to collect enough data for study. This however passes a number of short comings that include; time wasting and travel expenses, since the interviewers had to be found at their places of convenience.

1.8.4 Case study method

The case study method was applied in carrying out this research. It is an intensive study of a case which may be an individual, institution system, country, organization or region. It is an empirical inquiry that investigates a contemporary phenomenon within real life context, when the boundaries between the phenomenon and context are not clearly evident and in which multiple sources of evidence are used. It is the kind of research design that involves the qualitative method of selecting the source of data. This research strategy was applied by the researcher in carrying out the study. The case study of Mogadishu in the Republic of Somalia enabled the researcher to offer the holistic account that offers insight into the history of the conflict.

1.9 Limitations of the Study

This being one of the areas on which research that has been undertaken is minimal coupled with the fact that there has been no reported court case concerning protection of civilians in armed conflict, there was virtually no case law on the subject; which would have otherwise enhanced the research. Furthermore, it was not easy to get access into some of the prisons which were geographically accessible due to the long bureaucratic process in obtaining permission from the appropriate authorities.

CHAPTER TWO:

THE INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF CIVILIANS IN CIVIL WARS

2.0 Introduction

The question of how Civilians in civil wars are protected under international law against human rights violations is not merely one of academic interest, as displacement in itself contradicts basic human rights guarantees. The debate on civilians in civil wars protection revolves around two sets of potentially contradictory concerns: (a) ensuring international protection of human rights and upholding state responsibilities, and (b) legal provisions for the protection of Civilians in civil wars and the states' capacity to apply those provisions.⁴¹ To this end, it is imperative to explore the adequacy of the existing international legal norms and institutions as basic components for the protection of Civilians in civil wars.

Consequently, this chapter examines the applicability of international human rights law, international humanitarian law and refugee law to internal displacement, and considers the extent to which each meets the protection needs of the Civilians in civil wars. The chapter also gives an overview of the institutional framework for the protection of Civilians in civil wars.

2.1 The international legal framework for the protection of Civilians in civil wars

Despite not being beneficiaries of a specific convention, Civilians in civil wars are protected by various bodies of law, principally national law, and human rights law and, if they are in a state experiencing an armed conflict, international humanitarian law.⁴² Civilians in civil wars, like all other citizens, have rights, the entitlement to which they have not lost by virtue of having been displaced.⁴³ Civilians in civil wars are nationals of the state in which they are displaced, hence they are entitled to the full protection of the national law and the rights it grants nationals without any adverse distinction.⁴⁴ However because governments frequently cause or tolerate internal

⁴¹ Bennet (n 9 above).

⁴² International Committee of the Red Cross (ICRC) 'Legal Protection of Internally Displaced Persons' (2002), available at <<http://www.icrc.org>> (accessed on 10/5/2004)

⁴³ Helle (n 14 above).

⁴⁴ ICRC (n 37 above).

displacement and are unwilling or unable to guarantee basic rights and meet the needs of their internally displaced citizens, it is important to ascertain whether international law provides adequate protection for these persons.⁴⁵

2.1.1 International Human Rights Law (IHRL)

IHRL which is applicable both in times of peace and in situations of armed conflict, provides protection for Civilians in civil wars. It aims both to prevent displacement and to ensure basic rights should it occur, the latter being the concern of this study. For example the right to personal safety, as well as the rights to food, shelter, education and access to work offer vital protection during displacement.⁴⁶

Presently, IHRL is embedded in the international bill of rights which essentially comprises of the Universal Declaration on Human Rights (UDHR),⁴⁷ and several international human rights instruments primarily including, the International Covenant on Civil and Political Rights (ICCPR)⁴⁸ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴⁹ the Convention Against Torture (CAT),⁵⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁵¹ and the Convention on the Rights of the Child (CRC).⁵² Within the African region, the basic human rights instrument is the African Charter Human and Peoples' Rights (ACHPR).⁵³

⁴⁵ Cohen and Deng (n 24 above).

⁴⁶ See the International Convention on Social, Economic and Cultural Rights (ICESCR) adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966, for details on socio-economic rights provided for under international human rights law.

⁴⁷ UDHR, adopted and Proclaimed by General Assembly Resolution 217 A (III) of 10/12/1948.

⁴⁸ ICCPR, adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966.

⁴⁹ ICESCR, adopted by General Assembly Resolution 2200A (XXI)

⁵⁰ ICESCR, adopted by General Assembly Resolution 2200A (XXI) of 16/12/1966.

⁵¹ CEDAW, adopted by General Assembly Resolution 34/180 of 18/12/1979.

⁵² CAT, adopted by General Assembly Resolution 39/46 of 10/12/1984

⁵³ ACHPR, adopted by the OAU 27/6/1981.

While it is argued that there are no specific forms of legal protection that could be granted to Civilians in civil wars that do not already exist in international law,⁵⁴ it is submitted that the existing international binding instruments fail to articulate rights like the right to not be forced to return or resettle, and the right to personal identification documents, which are essential for the protection of Civilians in civil wars.⁵⁵

With such important omissions in the existing law, there is a need for a specific legally binding instrument for Civilians in civil wars.

Furthermore, IHRL as it stands today is dispersed in various instruments as seen above, each having a separate body to ensure its implementation.⁵⁶ This therefore makes the law difficult as a source of reference for the enforcement of IDP rights, as one would have to have knowledge of all the instruments to know their rights, and appear before various bodies to have the rights enforced. JHRL as it stands today generally binds only states, not non-state actors, such as insurgents. This therefore makes the law inadequate for the protection of Civilians in civil wars as many human rights abuses are committed by non-state actors. Accountability by non-state actors for human rights abuses therefore is of crucial importance in the protection of Civilians in civil wars, and can only be achieved through new legislation.

Notably, it is often argued that a major weakness with IHRL is that it may be restricted or derogated from.⁵⁷ It should however be noted that non-observance of obligations may entail loss of credibility and support on part of other actors or the population itself, and that the relevant authorities often have an interest in discharging their obligations⁵⁸.

⁵⁴ Barutciski (n 20 above) 13.

⁵⁵ The UN Guiding Principles on Internal Displacement provide for these rights, however, the principles are not legally binding.

⁵⁶ ICESCR.

⁵⁷ ICRC document international Humanitarian Law' available at <<http://www.icrc.org>> (accessed on 10/2/2015).

⁵⁸ Helle (n 14 above).

2.1.2 International Humanitarian Law (IHL)

IHL is the body of rules which, in war time protects people who are not or are no longer participating in the hostilities. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules of IHL are to be observed not only by governments and their armed forces, but also by armed opposition groups and any other parties to a conflict.⁵⁹ The principle instruments of IHL are the four Geneva Conventions of 1949 and their two additional protocols of 1977, which cover humanitarian issues directly arising from international and noninternational armed conflicts.⁶⁰

Therefore if Civilians in civil wars are in a state that is involved in an armed conflict then, provided they are not taking an active part in the hostilities, they are considered civilians in civil wars and as such, are entitled to protection afforded to civilians.⁶¹ Once respected, the general rules of IHL can protect Civilians in civil wars, for example those prohibiting parties to a conflict from targeting civilians, the prohibitions on starvation of the civilian population and on the destruction of objects indispensable to its survival, and the rules requiring parties to a conflict to allow relief consignments to reach civilian populations in need.⁶²

A major weakness of IHL vis-à-vis the protection of Civilians in civil wars is that in some situations of tensions and disturbances short of armed conflict, humanitarian law is not applicable.⁶³ Consequently, Civilians in civil wars who are not in areas of armed conflict cannot be protected by IHL. In this respect therefore, IHL cannot be said to be apposite for the protection of all Civilians in civil wars.

⁵⁹ ICRC document international Humanitarian Law available at <<http://www.icrc.org>> (accessed on 10/2/2015).

⁶⁰ See Protocol Additional to the Geneva Conventions of 12/8/1949 and Relating to the Protection of Victims International Armed Conflicts (Protocol I) and Protocol Additional to the Geneva Conventions of 12/8/1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) of 8/6/1977

⁶¹ ICRC document (n 39 above)

⁶² See for example chapters II and III of Protocol I (n 56 above).

⁶³ Cohen and Deng (n 24 above) 75.

2.1.3 International Refugee Law

The starting point of international refugee law is that human rights violations have already occurred and that victims have already fled their country of origin. The objective is to convince an asylum state to respect minimal standards for certain foreigners who do not benefit from some other national protection.⁶⁴ The international refugee legal regime comprises of the 1951

convention relating to the status of Civilians⁶⁵, the 1967 protocol relating to the status of Civilians⁶⁶, and in the African region, the 1969 Convention governing the specific aspects of refugee problems in Africa.⁶⁷

Although some principles of refugee law may be applicable by analogy, the strong and effective protection accorded to Civilians under the refugee conventions can not apply directly to Civilians in civil wars even though their conditions are similar.⁶⁸ For example a refugee is defined among other aspects as a person who is outside the country of his nationality.⁶⁹ For this reason, international refugee law cannot be said to apply to Civilians in civil wars because the latter have not left their country of origin.

2.2 The institutional framework for the protection of Civilians in civil wars

Regarding the institutional aspects of the international response for providing protection and assistance to Civilians in civil wars, the Representative of the Secretary-General on Civilians in civil wars recalled that three options had been considered:

- (a) The creation of a special agency for the internally displaced
- (b) The designation of an existing agency to assume full responsibility for the internally displaced

⁶⁴ Barutciski (n 30 above) 13.

⁶⁵ United Nations Convention Relating to the Status of Civilians. July 28. 1951, 19 U.S.T 6223. 189 U.N.T.S

⁶⁶ Protocol Relating to the Status of Civilians, January 31, 1967, 19 U.S.T 6223, 606 U.N.T.S 267.

⁶⁷ Convention Governing the Specific Aspects of Civilians Problems in Africa 1001 U.N.T.S, 45, 1969.

⁶⁸ Cohen and Deng (n 24 above)75.

⁶⁹ See article 1A (2) of the 1951 Convention (n 62 above).

(c) Collaboration among the various relevant agencies.⁷⁰

However while UN officials in charge of internal displacement insist on the “collaborative approach”⁷¹ which aims for international bodies working on IDP issues to collaborate through existing structures, rather than handing responsibility for Civilians in civil wars to an existing UN agency or a new agency in the provision of aid to Civilians in civil wars, many NGOs are sceptical about the viability of this approach in practice.⁷²

To implement the collaborative approach, a number of institutional mechanisms were put into place to facilitate inter-agency cooperation on behalf of the displaced with a view to addressing the persistent gaps in coordination and protection. At the country level, the humanitarian coordinator (HC) is charged with facilitating coordination among the TJN agencies and the NGOs.

This official is often the same person appointed as the UN resident coordinator (RC). At headquarters level, the Emergency Relief Coordinator (ERC), who is also the Under-Secretary-General for Humanitarian Affairs and the chairperson of the Inter-Agency Standing Committee (IASC) is charged with overseeing the HCs and ensuring that the collaborative approach is working worldwide. A number of other headquarters level institutions have had an important part to play, including the IASC and the IASC working Group, the Senior Inter-Agency Network on internal displacement and the OCHA-IDP Unit.⁷³

⁷⁰ Deng M Francis (2002) ‘Specific Groups and Individuals: Mass Exoduses and Displaced Persons’ Report of the Representative of the Secretary General on Internally Displaced Persons, submitted pursuant to Commission on Human Rights resolution 2000/154.

⁷¹ For example the former emergency Relief Coordinator, Kenzo Oshima stated that the collaborative approach remains the only practical and realistic approach. See Global IDP Project Report (n 2 above)

⁷² Global IDP Project report on the parallel meeting on IDPs held in Geneva on 10/4/2003 entitled ‘Internally Displaced Persons: Accountability, Coordination and Protection Seen as Challenges’ (29/4/2003), available at <<http://www.idpproject.org>> (accessed on 13/3/2015)

⁷³ Deng M Francis ‘Specific Groups and Individuals: Mass Exodus and Displaced Persons’ Report of the Representative of the Secretary-General on Internally Displaced Persons, E/CN.4/2004/77 para 23.

2.2.1 The Representative of the UN Secretary-General on Civilians in civil wars

In response to the growing international concern about the large number of Civilians in civil wars and their need for assistance and protection, the Commission on Human Rights in 1992 requested the UN secretary-General to appoint a representative on Civilians in civil wars.⁷⁴ Accordingly, Mr. Francis M Deng was appointed to this position during the same year.⁷⁵ The main elements of the representative's mandate include visits to countries affected by displacement and the review and evaluation of existing international institutions and international law to determine the degree to which they provide an adequate basis for the protection and assistance needs of those who are internally displaced. The representative was also mandated to formulate appropriate recommendations to improve the response to civilians in civil wars' needs.⁷⁶

Notably, the Representative of the Secretary-General is the only position within the UN system with a mandate from the Commission of Human Rights and the Secretary-General to focus exclusively on the problem of internal displacement and to address both protection and assistance. The office has evolved into one of catalyst within the UN system, raising awareness of the human rights and protection problems of the Civilians in civil wars.⁷⁷ However, the office is a voluntary one, expected to be carried out on a part time basis. The office has no operational authority and has limited staff support. Worse still, the resources placed at the Representative's disposal do not enable him to undertake systematic monitoring of situations of internal displacement or frequent visits to countries with serious problems of internal displacement.⁷⁸

2.2.2 The United Nations High Commission for Civilians (UNHCR)

Of all the UN agencies, UNHCR plays the broadest role in addressing the problems of the internally displaced.⁷⁹ UNHCR is not entrusted with specific legal competence for Civilians in civil wars.⁸⁰

⁷⁴ Commission Resolution 1992/73.

⁷⁵ D Deng (n 87 above) 3.

⁷⁶ Helle (n 14 above).

⁷⁷ Cohen and Deng (n 24 above) 156-157

⁷⁸ Cohen and Deng (n 24 above) 157 Cohen and Deng (n 24 above) 157.

⁷⁹ Ibid

However article 9 of the UNHCR statute in effect provides that in addition to its work with Civilians, the High Commissioner may engage in such activities as the General Assembly may determine within the limits of the resources placed at his or her disposal. This provision therefore has been the basis for UNHCR's intervention with Civilians in civil wars, and the basis upon which the General Assembly has, on several occasions either authorised the High Commissioner to act on behalf of or expressed support for actions already taken by UNHCR in respect of Civilians in civil wars.⁸¹

Note however that the various authorisations to UNHCR by the General Assembly and the Executive Committee of the High Commissioner's Programme (EXCOM) do not amount to carte blanche for UNHCR involvement in issues of internal displacement. The approach taken by the General Assembly underscores the need for flexible responses without providing UNHCR with any obligatory or automatic responsibility for Civilians in civil wars.⁸²

Furthermore, UNHCR's involvement with Civilians in civil wars is circumscribed by a combination of policy, legal and operational considerations which have served as benchmarks for its role in this area. In essence, UNHCR will only get involved with Civilians in civil wars in situations where there is a clear link with refugee or returnee populations, or where there is the potential for internal displacement to develop into external refugee movements. UNHCR's

involvement also depends on the request of the UN Secretary-General or the General Assembly, the consent of the government and other parties to the conflict, and assurances of adequate funding, full access to the displaced, and staff security. However, UNHCR's involvement with Civilians in civil wars should never undermine the right of Civilians in civil wars to seek and enjoy asylum.⁸³

⁸⁰ McNamara Dennis 'UNHCR's Protection Mandate in Relation to Internally Displaced Persons' in Wendy Davies(ed) *Rights Have no Borders: Internal Displacement Worldwide* (1998). See McNamara (n 97 above).

⁸¹ McNamara (n 97 above).

⁸² McNamara (n 97 above).

⁸³ McNamara (n 97 above).

2.2.3 The United Nations Office for the Coordination of Humanitarian Affairs (UN-OCHA)

In December 1991, the General Assembly adopted Resolution 46/182, designed to strengthen the UN's response to both complex emergencies and natural disasters. In addition it aimed at improving the overall effectiveness of the UN's humanitarian operations in the field, hence the creation of the OCHA office. Pursuant to a decision by the Secretary General, the Internal Displacement Unit (IDU) was established within the office for Coordination of Humanitarian Affairs (OCHA) in 2002. The main objective of the unit is to promote system wide improvements in the response to the needs of the Civilians in civil wars as well as to provide targeted support to specific country situations. The main areas of work focus on protection of Civilians in civil wars, field support, capacity building/training and advocacy/public information.

The creation of an IDP Unit within the OCHA in 2002 was a small but positive step forward which "of course does not solve all problems".⁸⁴ The Unit's mandate is to promote system wide improvement in response to Civilians in civil wars through both enhancing institutional arrangements with the UN system and its partners.

2.2.4 The Office of the Emergency Relief Coordinator (ERC)

The growing need to coordinate the UN humanitarian assistance led the General Assembly in 1991 to create the post of the ERC at the Under-Secretary-General level.⁸⁵ Following two international conferences on uprooted populations in 1988 and 1989, in 1990, the General Assembly assigned to resident coordinators the function of coordinating assistance to Civilians in civil wars in the field. The following year, it created the post of the ERC to promote a more rapid and coherent response to emergency solutions.⁸⁶ In his 1997 UN reform program, the Secretary-General reaffirmed the role of the ERC as being responsible for ensuring that protection and assistance for Civilians in civil wars are addressed.⁸⁷

⁸⁴ Kenzo Oshima in report by the Global IDP Project (n 2 above)

⁸⁵ General Assembly Strengthening the coordination of Humanitarian Emergency Assistance of the UN' A/Res/46/182, UN December 1991.

⁸⁶ Cohen and Deng (n 24 above) 127

⁸⁷ Cohen and Deng (n 24 above).75.

It is the responsibility of the ERC to develop policy and advocate for humanitarian causes within the UN system, coordinate emergency response, and give counsel to the Secretary-General, particularly when human rights issues are before the Security Council. Other agencies involved in the protection of Civilians in civil wars include the ICRC, UNDP, WFP, UNICEF, WHO and IOM. However in the absence of strong coordination among these agencies or clear responsibility for the internally displaced, the response has been highly uneven.⁸⁸

2.2.5 Legislative and policy framework on Civilians in civil wars

At the national level, the Constitution of Somalia provides for several individual rights including the right to life, prohibition of torture and humiliation, freedom of movement and residence, right to enjoy ones culture, language and religion, right to earnings and property, including compensation for a taking of property, the right to raise a case of violations of one's rights before the Constitutional Court after having exhausted all executive and administrative remedies.⁸⁹

At the international level, Somalia is party to several core human rights treaties, including the JCCPR, CERD, CRC, as well as the African Charter on Human and Peoples' Rights. Regarding international humanitarian law, Somalia is party to the Geneva Conventions Relating to the Protection of Civilian Persons in time of War (Fourth Geneva Convention).⁹⁰

Regarding the policy framework, since 1988 the government of Sudan has developed several official IDP policy documents. In 1995 it set up the Humanitarian Aid Commission (HAC) which is responsible for managing protection and assistance to Civilians in civil wars and in 2003 it also created a Ministry for Humanitarian Affairs. In 2002, the government revised its 1990 national IDP policy and committed itself to creating an IDP department within the HAC, as well as an IDP support fund.⁹¹

⁸⁸ Cohen and Deng (n 24 above) 127

⁸⁹ See articles 20, 23, 27, 28, and 34 of the Constitution of Sudan.

⁹⁰ Doebller (n 76 above)

⁹¹ Global IDP Project (n 160 above)

Neither of these initiatives however materialized, and the government's response to displaced people remains insufficient. The F-IAC has offered minimal assistance, and its early warning system appears to focus exclusively on natural disaster rather than man-made risk factors.⁹²

In SPLM/A-controlled areas an JDP policy was also drafted in 2002. This was the outcome of a seminar and workshop facilitated by the UN and Brookings SAIS. Although the policy was still not endorsed as of March 2004, this was one of the first efforts to engage a non-state actor into assuming its responsibilities for protecting Civilians in civil wars on the basis of international humanitarian and human rights law.

2.4 Regional developments in the protection of Civilians in civil wars in Somalia

2.4.1 The African Union (AU)

In the case of Mogadishu, the Inter-political talks on the crisis in Mogadishu have been going on in Abuja, Nigeria since 23/8/2004 under the auspices of the AU and with the support of the international community.⁹³

The AU also has about 100 ceasefire monitors on the ground. There are currently 150 Rwandan troops and 150 Nigerian troops in Mogadishu under A.U. flag, whose job is to protect the monitors. Suggestions by the A.U. to increase the force and give it a peacekeeping mandate have on several occasions been rejected by the Sudanese government, which has said it is fully capable of dealing with the situation.⁹⁴

2.4.2 The African Commission on Human and Peoples' Rights

At its recent session in Banjul, Gambia, the Commission appointed Bahame Tom Mukirya Nyanduga of Tanzania as special rapporteur on Civilians and Civilians in civil wars in Africa. This is highly commendable because a regional approach to forcible displacement is critical for

⁹² Global IDP Project (n 160 above)

⁹³ AU Press Release (28/8/2002), available at <<http://www.africa-union.org/DARFUR/homedar.htm>> (accessed on 24/9/2014)

⁹⁴ Deutsche Press Agentur article, available at <<http://www.reliefwebweb.int>> (accessed in 13/2/2015)

an effective solution to the many human rights issues involved.⁹⁵ Will this office enhance the protection of Civilians in civil wars in Africa?

⁹⁵ UNHCR press release 'Secretary-General's representatives Welcome Appointment of African Rapporteurs on Rights Defenders and Civilians and Internally Displaced' 14/6/2004.

CHAPTER THREE

NON-LEGAL FACTORS RELEVANT TO THE MOGADISHU CONFLICT IN THE REPUBLIC OF SOMALIA

3.0 Introduction

The concept of war is not new and can be treated as far back in biblical times, Wars essentially start as those of low intensity internal conflicts and then they last longer. The day when soldiers would face off in fields far from town are gone. War today is fought in lanes of villages and suburbs where distinctions between civilians and combatants quickly melt away.⁹⁶

The reality of millions of civilians caught up in armed conflicts is desperate. Civilians are now the main casualties in war worldwide and are often targeted by warring parties rather than doing the actual fighting. Most present day wars are fought among nations, signaling a shift away from the first half of the 20th century when new phenomena have also arisen, such as the spreading of domestic chaos and armed violence in absence of effective government control and service. Armed violence in failed or weak states often spills over the borders, and third states usually feel inclined to assume sporadic law and order functions in place of disabled governments. So as to maintain the perceived security threat at a tolerable level current efforts to repress acts of piracy off the coast of Somalia are evident case in point.⁹⁷

Despite the existence of war which are specifically tailored to protect persons who are not or no longer taking part in armed conflicts, civilians still suffer as objects of attack. This chapter examines the background of the Mogadishu conflict, the plight of civilians in the area. The chapter further examines what is meant by the protection of civilians in armed conflict, the importance of this protection and whom the duty lays of protecting civilians in armed conflict are the conclusion and recommendation to this chapter.

⁹⁶ Supra note 25

⁹⁷ Toni Plane. Humanitarian debate: Law of typology of conflict. ICRC publication

3.1 The Mogadishu conflict in the Republic of Somalia

Somalia is a country located in the horn of Africa with a population of over 7,200,000 million people of whom the majorities are Sunni Muslims. It covers an area of 246,200 sq.miles.. Its capital city is Mogadishu and it borders Djibouti, Ethiopia and Kenya.⁹⁸

Today Somalia has resulted from the northern province of British Somali land and the south Eastern province of Italian Somali land in the 1960's.⁹⁹

Despite the separation of the Somali people during the colonial era, they remain one of the most homogeneous and cohesive of African's people.¹⁰⁰ Somalia also lives in parts of the neighboring states and their attempts to unify the state have been the source of the conflict in Mogadishu.

After years of control as an Italian and British colony, Somalia became independent in 1960. Said Barre seized power in 1969 in a coup, proclaiming a socialist regime but ignoring any of the social and political foundation of socialism¹⁰¹ instead of developing the country he launched military offensives against Ethiopia attempting to annex the Ogaden plateau region in 1976.¹⁰² Ethiopia repelled with the help of Cuban troops and later withdrew from Somalia.

The Mogadishu conflict is as a result of a combination of both internal and external factors. The crisis has been constantly changing; the history of Mogadishu conflicts may be discussed in stages;

3.1.1 The cold war of the civil war 1998-1991

During the cold war externally legacies of European colonialism divided the people into 5 states. The impact of the cold war politics in shoring up a predatory state resulted in wars with neighboring states most damaging the Ogaden war 1977-78 with Ethiopia.

⁹⁸ <http://www.flashpointinfo/countries/countries.htm> Flash points, world conflicts

⁹⁹ Ibid

¹⁰⁰ Revolution fuel of the 2000

¹⁰¹ Ibid

¹⁰² Ibid

3.1.2 State collapse, clan wars and famine 1991-1992

Somalia used the word *burbur* (catastrophe) to describe the period from December 1991 to March 1992. The country was torn apart by clan based warfare and factions plundered the remnants of the state and fought for control over rural and urban assets.¹⁰³

During the first four months of fighting in Mogadishu alone, 25,000 people are estimated to have been killed and 1,500,000 fled the country and at least 2,000,000 were internally displaced.

In the midst of drought, destruction of property, cleansing, those from the marginalized clan suffered. This was worsened in May 1991 when the Somali National Movement declared that the northern regions were seceding from the south to become an independent Somalia.¹⁰⁴

3.1.3 Humanitarian Intervention 1992-1999

In December 1992 the US deployed its forces to support the beleaguered UN mission in Somalia under the leadership of the United States. In 1998, the Puntland Federal State of Somalia was established in the north east as an autonomously governed region. Colonel Abdullah Yusuf, military leader of the Somali Salvation Democratic Front was selected as Puntland's first president and later became the president of the Transitional Federal Government.¹⁰⁵

In 1999, the *Ruhanwegn Resistance Army (RRA)* with the support of Ethiopia won control of the *Bokool* regions and established an administration. In the south, various institutions emerged including two governments. Mogadishu councils of elders district councils and Sharia courts.

Disengagement of western states from Somalia resulted in the initiative of regional states in particular Ethiopia to resort to diplomatic initiatives. The engagement of Addis Ababa was mainly motivated by the Geo-political security and economic interest as by concern to end Somali's political turmoil. Ethiopia was concerned about the increased growth of Muslim groups

¹⁰³ Supra note 55

¹⁰⁴ Ibid

¹⁰⁵ Supra note 53

in Somalia. The Al Itihab and AT Ishamiya with regional ambitions attacked their camps and destroyed the boarders.¹⁰⁶

Were contradictions between the central state authority, fractious kinship system and the Somali pastoral culture in which power is diffused.¹⁰⁷

The end of the cold war led to the collapse of the Somalia state since financial aid that was sustaining the state was withdrawn. Barre lost control of the army and the country due to the lack of funds. This was worsened by the establishment of violent groups in the late 1970's and early 1980's. The Somali Salvation Democratic Front (SSDF) which recruited its militants mainly from the Majerteen clan which hailed from the central and north eastern part of Somalia and the Somali National Movement(SNM) which drew its support from the Isaaq clan. Both armed groups were formed by defendants from Somali army or state officials who sought asylum in Ethiopia¹⁰⁸.

The Somali Nation Movement insurgency was escalated into a full scale civil war in 1988 when it attacked the government forcing the government to respond with ferocious assault on the Isaaq clan from the north. ¹⁰⁹A number of soldiers left those armed groups and formed the United Somali Congrace (USC) and the Somali Patriotic Movement (SPM) in 1989. The United Somali Movement was largely made up of the Hawiye clan family from Mogadishu and central regions. The Somali Patriotic Movement was dominated by the Ogaden clan from the south. The insurgent groups mobilized members of the own clan from the south. The insurgent groups mobilized members of their own clans and gave them weapons.¹¹⁰

In the 1990's as the down fall of Mohammed Barre's centralized regime appeared imminent, insurgent groups positions themselves to control different regions of Somalia. The Somalia Salvation Front was active in the north while the United Somali Congress came to occupy the

¹⁰⁶ Supra note 55

¹⁰⁷ Supra note 8

¹⁰⁸ [http://wardheernews.Com/articles-10/09-mother's day-ifrah.html](http://wardheernews.Com/articles-10/09-mother's-day-ifrah.html).

¹⁰⁹ Ibid

¹¹⁰ Supra note 55

prominent position of Somalia, the capital city, Mogadishu which lies in a predominantly Hawiye area.¹¹¹

Egypt, Libya, Yemen and the Arab league also attempted to settle the disputes in the region but in vain. The situation worsened with the breakdown of the relationship between Ethiopia and Eritrea. This is because Ethiopia supported factions opposed to those aligned with Ethiopia; this created a new element of proxy to the already crowded arena.

3.1.4 The Transitional National Government (TNG) and growth of terrorism 2000 present day.

In August 2000, a new government recognized internationally the Transitional National Government (TNG) which commanded same national and international support. This overnment was opposed by Ethiopia and the Somali Restoration and Reconciliation Council (SRRC) led by Abdullah Yusuf.¹¹²

Following the September 11h attack on the US, the failed state of Somalia attracted renewed interest as a potential haven and breeding ground for international terrorism. The reputational of the Transactional National Government suffering as the growing influence of Islamic courts increased due to suspicious about its link with militant Islamists.

The Islamic court Union aimed at forming an Islamic state in Somalia. The Union ousted a coalition of warlords for the alliance for restoration of peace and counter terrorism from Mogadishu. This Islamic court won popularity however, in December 2006, with the help of Ethiopia and other Western governments; it was forced out and was replaced with the Transitional National Government in Mogadishu.¹¹³

The United States attacked areas of the Islamist Court Union with the aim of killing Al Qaeda operative alleging that they were harbored by the Islamic court this attempt was however unsuccessful. In early 2007, a small contingent of Africa Union Peace Keepers (the AU mission

¹¹¹ Ibid

¹¹² Supra note 55

¹¹³ Ibid

in Somalia AMISON) was deployed in Mogadishu to protect the Transitional Federal Institutions. The attempt of Ethiopia and Transitional Federal Government to impose a victor's peace.

The format is also used in this research. This involved extensive reading of materialism, aircrafts and website availed on the internet on the literature concerning protection of civilians in armed conflict. This method was relevant to the researcher since it enabled the individual to keep up to date with the event in Mogadishu conflict in the Republic of Somalia in carrying out research. The researcher however experienced time and financial constraints in doing this research.

3.1.5 Limitations

The member faced allot of problems in carrying research as discussed bellow;

The member faced both time and financial constraint,' especially with regard to accessing the funds and travel expenses in the attempt to collect data.

There was hardship in accessing the war conflicted areas of Mogadishu in order to effectively order primary data. It has proved strenuous to the research to collect primary data due to the above data and insecurity of the Mogadishu conflict of the Republic of Somalia.

The researcher found that most of the literature that is written about the topic deals more with the protection of a particular group of civilians and they are so limited to a conflicted some difficultly for the researcher yet their other problems that are encountered during the war and these may include;

- (i) Stunted economic growth in a country that is at war
- (ii) Air pollution from the arms or weapons used in fighting
- (iii) Water pollution were dead bodies are thrown after killing them and
- (iv) The killing of wild animals due to the scarcity of food to feed on and many others.

All these are not looked at by the deferent authors who intended to write about the law s both domestically and internationally protecting civilians in countries at a case in point being Mogadishu in Somalia and others.

All these have shown the limitations in deferent researchers views who analyzing the rights of civilians during the war and after the war. This is because many researchers are limiting themselves on what is the law and not on how should the laws be enforced within the counties that are at war.

Provoked the resistance from a mistake of clan militia and remnant of the Islamic Courts Union Hareket Al Shabab (the youth movement)¹¹⁴

Under the leadership of Ahmed Gladama who is widely responsible for organizing suicide bombs in Hargasia and Hosassan in October 2008, the Al Shabab declared to support for the Al Qaeds.

From 2008 to the present day, Somalis are subjected to violent insurgency, rising jihadism and massive population displacement. This has reversed the incremental political and economic progress achieved in the 1990, over 13,000,000 people have been displaced by the fighting 3000,000 in need of emergency food aid and over 60,000 Somalis flee the country every year.¹¹⁵

Somalia as of September 1991 is effectively under the control of as many as 12 rival clans and sub clans. Prior to the civil war, Somalia appeared to be one of the most homogeneous courtiers in Africa having the majority of ethic Somalis speaking dialects of the same language and practice the same religion despite the existence of multitude of ethnical and cultural divisionism with in the country. The practice of Islam varies national wide and has over the years been influenced by different aspect of the Arabian culture. In 2008, economic factors worsened, the level of piracy increased along southern cost of Gulf of Eden with approximately 27 ships being attacked and held for ransom¹¹⁶

3.2 Intervention by International bodies peace keeping

The gravity of Mogadishu conflict has resulted in response from international countries and international bodies into the conflict of Somalia.

¹¹⁴ Supra note 55

¹¹⁵ Ibid

¹¹⁶ Supra note 19

Peacekeeping is a full time job. It must be waged¹¹⁷ to create conditions and institutions which allow and encouraging lasting peace. This is no good in “suppressing” a civil uprising only to see it return to chaos once the peace keepers have left.¹¹⁸

Peace keeping has unique strength including legitimacy, burden shaping and an ability to deploy and sustain troops and police from sound the globe, integrating them with a civilian peace keeper to advance multi dimensional mandates.¹¹⁹

The aim of peace keeping is to prevent war through diplomacy, sanction and use of force. To this end. Peacekeepers.¹²⁰

Monitor, Supervise referendum and elections, Provide an interim authority during times of disputed government and land distribution, Restore law, and order and protect the delivery of humanitarian aid, Clean up after the war, for example, clearing of land mines, Provide a buffer fore between the belligerents, and Enforce sanctions or in other way and restore peace in accordance with international collective will,

3.2. I The United Nation Operation in Somalia UNOSOM I (April 1992- March 1993)

UNOSOM I was established to monitor the cease fire in Mogadishu and to escort deliveries of humanitarian supplies to distribute centers in the city. The mission’s mandate and strengths were later enlarged to enable it protect humanitarian convoys and distribution centers throughout Somalia. It worked with a unified task force in the effort to establish a safe environment for the delivery of humanitarian assistance.¹²¹

The UNOSOM I withdrew from Somalia in March 1993, however it still renders some logistic support to the African peace keeping force in Somalia today.

¹¹⁷ <http://www.adore/en/peacekeeping/>

¹¹⁸ What is peacekeeping? Jason Monaah

¹¹⁹ <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>

¹²⁰ <http://www.un.org/en/peacekeeping/>

¹²¹ <http://www.un.org/en/peacekeeping/missions/past/unosom-i.htm>

3.2.2 The African Union Mission in Somalia (AMISOM)

This AMISOM was established in January 2007 to replace the Ethiopian troops that had invaded Somalia in respect of invitation by the Transitional Federal Government for support to defeat the network of Islamic courts which had taken over larger parts of the country.¹²² The AMISOM got involved in the Mogadishu conflict following preparation in 2003. The African Union wanted to send observers to Mogadishu, however the president Yusuf requested for a peace keeping body rather than an observer who would be dormant.¹²³

AMISOM was mandated to;

- (i) Support the Transitional Federal Government in its efforts in establishing the country and further dialogue and reconciliation
- (ii) Facilitate and provide humanitarian assistance, and to
- (iii) Create conducive conditions for long time, stabilization, reconstruction and development in Somalia.

To fulfill its purpose, AMISOM was also given a wide range of tasks including, the protection of Transitional Federal Government and its infrastructure, to support voluntary disarmament process, assist in reestablishment and training of Somalia security forces and to monitor the situation.¹²⁴

The mission was mandated to 8,000 troops and civilian elements, Nigeria, South Africa, Malawi, Ghana and Burundi promised to send troops to form part of AMISOM, the peace keeping operation in Mogadishu. For same reasons, the African countries that had promised to send their troops became hesitant citing logical problems; others claimed that the killings from the Islamic court of foreign troops kept them from sending their troops to Somalia.¹²⁵

¹²² Cecil Hull. African Union Mission in Somalia (AMISOM), FOL

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Gerald Busingye, Uganda peace keeping mission in Somalia. <http://www.ugpulse.com/articles/daily/Government.asp?aboutUgaflda+Peace+miSSiOfI+SOmalia>

Uganda sent its two battalions in 2007 which were joined later by Burundi forces. The total of forces deployed was 3,000 troops in Somalia and are found by the United State and France.

African union (AU)

The Organization of African Unity (OAU) was established on 25 May 1963, at Addis Ababa, Ethiopia, and the Charter of the OAU was signed on that occasion by the heads of state and government of 32 African states. The Organization was established to promote the unity and solidarity of African countries, to defend the sovereignty of members, to eradicate all forms of colonialism, to promote international cooperation with due regard for the UN Charter and the Universal Declaration of Human Rights, and to coordinate and harmonize Member States' economic, diplomatic, educational, health, welfare, scientific, and defense policies.

On 9 September 1999, the Heads of State and Government of the Organization of African Unity issued the Sirte Declaration, calling for the establishment of an African Union, with a view, inter alia, toward accelerating the process of unity among countries of the continent, enabling it to better participate in the global economy and to better address social, economic and political problems.

Since 1999, three summits have been held to facilitate the implementation of the African Union (AU). The Lome Summit (2000) adopted the Constitutive Act of the African Union, which specifies the objectives, principles, and organs of the AU. The Lusaka Summit (2001) drew the road map for the implementation of the AU. The Durban Summit (2002) launched the AU and convened the First Assembly of Heads of States of the African Union.

In structure, the OAU began as one entity, whereas the AU, integrating itself with the African Economic Community and building other structures, consists of: the Assembly (determines common policies); the Executive Council (coordinates and makes decisions on common policies); the Pan-African Parliament (implements policies); the Court of Justice (ensures compliance with the law); the Commission (the secretariat); the Permanent Representatives Committee (assists the Executive Council); the Specialized Technical Committees (assist the Executive Council in substantive matters); the Economic, Social and Cultural Council; the Peace and Security Council (makes decisions on prevention, management and resolution of

conflicts); and the Financial Institutions (consisting of the African Central Bank, the African Monetary Fund, and the African Investment Bank).

The Constitutive Act of the AU entered into force on 26 May after Nigeria deposited the 36th instrument of ratification on 26 April 2000. At the July Summit in Lusaka, Zambia, the OAU member's endorsed a plan to transform the OAU into the AU the following year.

At the OAU Summit in Lome, 27 African countries signed the Constitutive Act of the AU. The Constitutive Act provided for the establishment of the AU to achieve greater unity and solidarity between the African countries and the peoples of Africa; defend the sovereignty, territorial integrity, and independence of its Member States; accelerate the political and socio-economic integration of the continent; and promote peace, security, and stability on the continent. The act also provided for the establishment of various institutions, including the Pan-African Parliament; Court of Justice; financial institutions, including the African Central Bank; African Monetary Fund; and African Investment Bank.

According to the act, the establishment of the AU would be completed upon the deposit of the 36th instrument of ratification of the Constitutive Act of the African Union and would enter into force 30 days after the deposit of the instruments of ratification by two-thirds of the Member States of the OAU.

The AU Constitutive Act:

In this Constitutive Act: "Act" means the present Constitutive Act; "AEC" means the African Economic Community; "Assembly" means the Assembly of Heads of State and Government of the Union; "Charter" means the Charter of the OAU; "Commission" means the Secretariat of the Union; "Committee" means a Specialized Technical Committee of the Union;

"Council" means the Economic, Social and Cultural Council of the Union;

"Court " means the Court of Justice of the Union; "Executive Council" means the Executive Council of Ministers of the Union;

"Member State" means a Member State of the Union; "OAU" means the Organization of African Unity; "Parliament" means the Pan-African Parliament of the Union; "Union" means the African Union established by the present Constitutive Act.

Article 2 Establishment The African Union is hereby established in accordance with the provisions of this Act.

The objectives of the Union shall be to:

- (a) achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (b) defend the sovereignty, territorial integrity and independence of its Member States;
- (c) accelerate the political and socio-economic integration of the continent;
- (d) promote and defend African common positions on issues of interest to the continent and its peoples;
- (e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (f) promote peace, security, and stability on the continent;
- (g) promote democratic principles and institutions, popular participation and good governance;
- (h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- (j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- (k) promote co-operation in all fields of human activity to raise the living standards of African peoples;
- (l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- (m) advance the development of the continent by promoting research in all fields, in particular in science and technology;
- (n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Article 4 Principles

The Union shall function in accordance with the following principles:

- (a) sovereign equality and interdependence among Member States of the Union;
- (b) respect of borders existing on achievement of independence;
- (c) participation of the African peoples in the activities of the Union;
- (d) establishment of a common defence policy for the African Continent;
- (e) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- (f) prohibition of the use of force or threat to

use force among Member States of the Union; (g) non-interference by any Member State in the internal affairs of another; (h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity; (i) peaceful co-existence of Member States and their right to live in peace and security; (j) the right of Member States to request intervention from the Union in order to restore peace and security; (k) promotion of self-reliance within the framework of the Union; (l) promotion of gender equality; (m) respect for democratic principles, human rights, the rule of law and good governance; (n) promotion of social justice to ensure balanced economic development; (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities; (p) condemnation and rejection of unconstitutional changes of governments.

3.2.3 The right of civilian in the conflict.

Two decades of armed conflict in Mogadishu have led to peaks of violence and natural disaster leaving millions of people in dire straits and totally depending on outside help. The recurrent droughts and high price of food, goods and commodities has eroded food security and resulted in mal nutritional in many areas.

Lack of water is exacerbating the cycle of malnutrition. Precipitation during the last rainy season which was far below normal. The fact that there had been three years of severe drought had made the situation worse because most of the traditional water storage system is empty.¹²⁶ impoverished families pay a high price for just a few liters of water to meet their own daily means and those of their livestock.

More than one million people have been displaced in central and Southern Somalia.¹²⁷ The poorest of the poor cannot even flee to safer areas they are stuck in Mogadishu with little or no means of coping.

¹²⁶ Supra note 20

¹²⁷ Ibid

The largest number of displaced families is lower and middle Shabelle where they are settling more frequently in camps instead of staying with relatives. Health and ICRC economic security coordinator of Somalia Andrea said,

*"I fled from Mogadishu two times before. My children were almost dying without water and food plus the wind, rain, sun and dust since we did not have a shelter. I finally came back to my house to await my own destiny."*¹²⁸

Many schools are open although the attendance is poor and those in rebel held districts have struggled because of shelter.¹²⁹ Many civilians have been the object of attack in Mogadishu confirms and this has in most cases been done internationally. This is evidenced by 31 December on the graduation ceremony of the medical students in Mogadishu, the attack left over 30 dead and at least 60 wounded. The victims included several doctors, medical teaching staff and already graduated students.¹³⁰

The sound of gunfire echoes through almost every street of Mogadishu. Resident areas frequently come under heavy, indiscriminate, shelling, corpses litter the alleys and neither side seems to be gaining an upper hand.

The sound of gunfire echoes through almost every street of Mogadishu. Resident areas frequently come under heavy, indiscriminate, shelling, corpses litter the alleys and neither side seems to be gaining an upper hand.

The city is proving to be more dangerous than any other time I can remember. I have decided to move for the safety of my children. Says Jamillo Cilmi a resident in Mogadishu.¹³¹

Reciting bodies are piling in the Southern Hodan district, because the fighting has been too intense to collect them. Everywhere has turned into a cemetery, says Omer Abdullah another resident in the city of Mogadishu¹³²

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ <http://www.bbc.co.uk/news/world-africa-1216325>

¹³¹ Ibid

Apart from fighting on the streets, women are being forced to cover up as they enter the AL Shabaab areas and are sometimes questionable at military check points when they travel without their husbands or male relatives.¹³³ Dhabo Osman a mother of six explains that,

*Now here it is safe in the capital today. It has turned into a Short town. We live in constant worry of a hopeless intention because both the government backed by the AMISOM and the insurgent do not care about civilians being caught up in the cross fire.*¹³⁴

Trade has been affected; shops have been closed, since most of the traders have moved their sells out of the market due to endless shelling. Mohammad Hajji Nur, a local leader commented,

*"Both side known that the use of force is not a solution, but their intentions are to kill civilians and forcing the remaining residents to flee."*¹³⁵ Abdul Kadir who lost his leg in the conflict agrees.

*When the elephant fights it is the grass that suffers more. I wonder who these warring groups want to rule if are all dead. This is because many people in Mogadishu in Somalia are dying.*¹³⁶

They will only rule a society with animals and graves.¹³⁷

Despite the endless suffering of civilians, neither side seems to be winning. They are occupying the same area they were in modern age. Their only gains are that they are measuring innocent civilians and destroy what is left to this dilapidated capital. What is going on here is like slow genocide.¹³⁸ Warns Au Sheik Yasin, a human right activist in Somalia.¹³⁹

¹³² Ibid

¹³³ [http://www.icrc.org/eng/resources/resu It/documents/news-release/Somalia-news- 141 209htm.](http://www.icrc.org/eng/resources/resu%20It/documents/news-release/Somalia-news-141209.htm)

¹³⁴ Mohammed Olad 1-Iassan " Slow genocide" in Somalia's capital Mogadashu.8tl September 2010

¹³⁵ Supra note 79

¹³⁶ Ibid

¹³⁷ Supra note 72

¹³⁸ Ibid

¹³⁹ Sela Hennessy Amnesty: civilians in Somalia not adequately protected.

British watchdog, Amnesty International has reported on the plight of civilians in the Mogadishu conflict and has noted that the perpetrators in the Mogadishu conflict are not taking enough care to protect civilians.¹⁴⁰ The report ¹⁴¹notes that people in Mogadishu and other countries are regularly killed due to the fighting between opposition groups and the TFG forces.

Amnesty further reported that armed opposition groups fire mortars and heavy artillery towards the bases of the TFG and the AMISOM; the groups responded with more mortars and heavy artillery resulting into increased civilian causality.¹⁴² Amnesty's Benedicte Goderaiaux said,

*"We continue to receive many reports that government and the AMISOM forces are not taking the necessary precautions to ensure that their weapons do not affect civilians and their residents"*¹⁴³

3.2.4 What is meant by protection of civilians and why is it important to protect civilians in Mogadishu conflict?

In the context of armed conflict, the concept of protection encompasses all activities aimed at ensuring full respect for the rights of individuals in accordance with the letter and spirit of relevant bodies of law that is; Human Right Law, International Humanitarian Law and refugee law protection for civilians is contained in the IHL. Human Right Law, Refugee Law and Criminal Law, numerous UN Security Council Resolutions.

Protection of civilians in armed conflict matters in a moral perspective. Everyone has a right not to be arbitrarily deprived of their life and the right not to be tortured.¹⁴⁴ It also matters in legal perspective. The law imposes an obligation on the states to protect civilians in situations where it is involved in military action. IHL provides that civilians shall enjoy general protection from the

¹⁴⁰ <http://www.voanews.com/English/news/Africa/amnesty/civilians-in-Somalia-not-adequately-protected/89124892.htm>

¹⁴¹ Publication on Thursday, March 25/2010

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ A definition agreed on in 1999 by a working group of humanitarian and human rights agencies regularly convened by ICRC in Geneva. www.fco.gov.uk/---/protection-civilians-conflict

effects of the armed conflicts. It is important that civilians are protected during armed conflict because if they are protected, it reduces direct impact of conflict on effected population.

3.2.5 Who is responsible for the protection of civilians?

A number of actors share the moral, legal and practical responsibility for the protection of civilians. The duty of protecting civilians is more of a collective one, however by virtue of their sovereignty; states have the primary responsibility of protecting civilians in times of conflict as well as peace.¹⁴⁵

At the UN summit of September 2005, heads of state signed up the protection. This concept recognized that states are primarily responsible for protecting their own population from all kinds of violence in war.

In instances where the state fails to protect from all the forms of violations during the war, the responsibility then shifts to the International community's Regional and humanitarian organizations have a role to play in the protection of civilians. An example is the JCRC which has done a great job in the Mogadishu conflict though the parties to the conflict are making their access to those in need of humanitarian help impossible. AU formerly in Darfur and currently the peace keeping force in Mogadishu, the EU in DRC and Chad.

Peace keepers too have the duty to protect civilians in armed conflicts and in so doing, they are under the obligation to respect and observe the relevant international law.

3.2.6 Challenges in the classification of Mogadishu conflicts

Researchers spell out effects in the failed state of Somalia that increase the number of players involved in the conflict and those added in international across boarder elements that complicated the precise situation. This involvement of the countries like Ethiopia in the internal conflict today made the issue of classification of the conflict rather difficult.

Additionally now foreign innervations now directed against governmental forces has also posed a challenge in the classification of the conflict. It is unclear what the category of the conflict will be if a foreign country enters into another in pursuant of enemy forces other than the government

¹⁴⁵ Supra note 18

of that boundary for the sake of Somalia, the United State has been pursuing for Al Qaeda in Somalia and pifsles by air strikes across Somalia without an authorization. This has thus created a complicity in the classification in Somalia, A similar issue arose in the case of Furkey **Hostilities vs PICK**¹⁴⁶ were it was questionable whether international humanitarian law of international armed conflicts applies in Northern Iraq as Turkish troops grassed into Iraq though they were attacking PKK (the Kandish Worker's Pary) based and not Iraq government forces. The same bizarte face the Mogadishu conflict there by making it difficult to classify.

The classification of Mogadishu conflict has been complicated by the coming of the peace keepers like the United Nations Operations of AMISOM, the African Union peace keepers from Uganda and Burundi. It is hard to determine if the peace keepers are of the conflict since they are just fighting but also maintaining peace.

It should also be noted that the law of war considers armed conflicts to exist in well defined situations where there is resort to armed forces between state or protracted armed violence between government authorities and organized armed groups or between groups within a gate. Considering the state of confusion in Somalia, it is hard to ascertain if the group there fit the test.

Generally, this sort of asymmetric conflict is a challenge to IHL; the principle of distinction under IHL requires distinction between civilians and combatants as required under Additional Protocol 1 and the Principle of Proportionality. These are under minded by the use of unconventional means that do not cater for such principles. Additional, the actors in the conflict are hardly distinguishable since most of them are not dressed up in some sort of uniform and use civilians as a human shield. Technological superior belligerents obsessed with the protection and preservation of their soldiers amidst attacks, which emanate from the "civilians." This has created a lot of difficulty in characterizing the Mogadishu conflict.

3.2.5 Conclusion

In conclusion, Mogadishu has faced a wide range of social, economic and developmental problems which cases have been the root cause of the endless Mogadishu conflicts. The study

¹⁴⁶ Marca Sasolin, How does the law protect in war. ICRC Publications, Geneva, Switsaland.1999 p.213

above shows the background of Mogadishu conflict, that started after independence as clan divisions and has immersed into crisis that has had great impact not only on the Somali people, but also on the international community and have social, economic and developmental problems have had a role to play in the Mogadishu conflict.

The long straggled conflict has affected many innocent civilians in Mogadishu who have to keep up with the inconsiderable greed of a few groups straggling for clan supremacy, which has now turned into admission of terrorism. It is evident that civilians have had to keep up with a long drought, insecurity, high food prices and famine among others. Owe to the inability of the civilians to protect themselves from the indiscriminate and unconventional means of attack, of which some of the armed groups like the Al Shabaab, many of them especially the children have lost their lives.

It is evident that protection of civilians matters both in the moral and legal perspective since every human right has a right to life and the duty to ensure this protection is one mandated on the state and were the state fails then the international community and the humanitarian and regional organizations take on the responsibility. International Humanitarian law therefore provides for the ways in which civilians can be protected in Somalia in armed conflicts.

The study further discussed the challenges in classification of the Mogadishu which have been due to the challenges in the conflict and failure to identify the parties to the conflict. This has worsened the situation of civilians in Mogadishu since there is no clear law providing for the circumstances in Mogadishu. This has led to gross violation of the rights of civilians since the parties consider themselves not to be bound by the law.

CHAPTER FOUR

LEGAL ASPECTS RELATED TO THE MOGADISHI CONFLICT IN THE REPUBLIC OF SOMALIA

4.0 Introduction

International Humanitarian Law sets out detailed rules that seek to limit effect of armed conflicts.¹⁴⁷ International treaties lay out the protection of civilians during armed conflicts and has been accepted universally. IHL caters for armed conflict by providing for their classification, the law applicable for each case will depend on the type of conflict in issue there by, laying down the law applicable to each conflict.

The chapter discusses the law that provide for the general protection of civilians under International Humanitarian Law, It further discusses the traditional qualifications as fares that seem to have emerged as far back as ancient times. The chapter also discusses the IHL classification of armed conflicts and the new forms of classification. The chapter further discusses the classification of the Mogadishu conflict repressing the wrong in the Mogadishu conflict and the conclusion and recommendations of the chapter.

4.1 General protection of civilians

4.1.1 Customary International Law

Customary law predates the promulgation of the General Conventions and their Additional Protocols in respect to the rules governing the conduct of war. The ICRC prepared a report on the customary rules of IHL applicable in armed conflicts.¹⁴⁸ The ICRC noted that despite the fact that treaty law provides a wide range of persons during war time, not all states have ratified the conventions and Protocols. ICRC therefore sought to establish rules of customary law that apply

¹⁴⁷ International view of the Red Cross, Customary law Vol 87 Notified the treaties containing similar 857 March 2005. Icrc Publication

¹⁴⁸ Ibid

to all parties to a conflict regarding of whether or not they have ratified the treaties containing similar rules.¹⁴⁹

In the **Aperech war Copirferaned Shelf** case¹⁵⁰ court noted that requirement of a custom to be suggested as customary law; that is of cause axiomatic that material of customary law is in the bands of paternity in the actual practice and opinion Fans of state.

Today practice is determined by looking at the natural case law; and pleadings before tribunal.

Foe state practice to form customary law and must be both extensive and representative in the Noarh Sun noted that state practice must include that of the state whose internists are affected.

Oboaths Jours refer to the legal conviction that a particulr particular practice is curried out “as far right” International customary law, therefore, is a relevant branch of law that would effectively apply in a conflict that the Mogadishu conflict since it can hardly be classified customary international law is applicable in the protection of civilians in armed conflicts and it is so advantageous because it does not require ratification by the parties to the conflict.

4.1.2 The Principle of IHL

These principles recognized under IHL are considered to be fundamental in nature. They fill gaps in IHL. The principle of humanity and necessity are the heart of IHL; that is where the principles of proportionality distinction between civilians and combatants and the prohibition of causing unnecessary suffering are got.

4.1.2.1 The principle of Humanity

This is evident in the marten’s clause as contained in the Fourth Hague Convention which states; Until a more compete code of law of war is issue, the high contracting Parties think right to declare that in cases not included in the Regulations, Adopted by them, the populations and the belligerents remain under the Protection and empire of the principles of international law as they result From usages established between civilized nations from the laws of humanity.¹⁵¹

¹⁴⁹ Ibid

¹⁵⁰ Thendor Meron, Marten’s clause, principles of Humanity and dictates of public conscience

¹⁵¹ Ibid

The principle of humanity requires that material conditions of humanity are applicable to all acted of welfare and in particular, to situations not created under treaty protection of customary law.

In the **legality of the use of Nuclear weapons case**¹⁵² court noted that it is prohibited cause unnecessary suffering to combatants and this manifests the principles of necessity.

4.1.2.2 The principle of necessity

This principle was defined by the American Tribunal case of 1943. The Haurage case thus, "Military necessity permits a litigant, subject to the laws of law to apply any amounand and kind of force to compel the complete submission of the enemy with the Least probable expenditure of lime, likes and money."

IHL recognizes that the legitimate objective of winning the war which is done by the use of lethal weapons. However, it requires under the principle of necessity that violence should not go beyond what is necessary to achieve legitimate military objective. There are however same actions which are unlawful but can be only justified by "imperative military necessity". Article 54(2) of Additional Protocol 1 prohibits the earth scorched policy. However, Article 5 5(5) legitimizes the policy if required by imperative military necessity; therefore even food Staffa and agriculture may be indispenionsable to the survival of the civilian population imperative military necessity may prevail. This line of reasoning was probably followed by the ICJ in the legality of the use of nuclear weapons case.¹⁵³ Which stated that the use of nuclear weapons may be justified when the very survival of the state is seriously threatened?

4.1.2.3 The Principle of proportionality.

The principle determines whether the nature and degree of the action taken are proportionate to the military advantage to be gained. Any kind of degree of force which exceeds the one needed to achieve the military objective is unlawful. This principle is important because it helps strike a balance between the requirements of military necessity and humanity.

¹⁵² Advisory Opinion of 8th July 1996

¹⁵³ Ibid

4.1.2.4 The principle of the distinction between civilians and combatants.

Article 48 of Additional Protocol 1 requires all combatants at all time to distinguish between the civilians and population and the combatants however, when civilians take part directly in the conflict they lose this protection. This was laid down in the ICJ Advisory Opinion in the legality of the Nuclear weapons case.¹⁵⁴

States must never make civilians the objects of attack and must consequently never use the weapons that are incapable of distinguishable between them.

Article 52(2) lay out what constitutes military objects to constitute military objectives;

That object by nature, location, destination or use effectively must contribute to the military might of one party, its total partial destruction, capture or neutralization must offer military advantages to the other party.

In cases of objects that may be used by the civilians and the combatants, the principles of proportionality reader it a lawful destruction occurs excessive harm of civilians.

The above principles of IHL would de so useful in the Mogadishu conflict since they do not require ratification in order to use them. Furthermore, these principles acquired the status of customary international law and therefore, would help in the adulate protection of civilians in the Mogadishu conflict.

4.2 Traditional forms of classification of armed conflict

Present day conflicts are continuously changing. International Humanitarian Law lays out the different rules of war governing the modes of war fare in each conflict. The old phenomenon of terrorism has gained renewed importance in the light capacity of non state groups. The nation of the continuous and never ending global “war on terror “ has cast expectations of the international humanitarian law in doubt.

¹⁵⁴ Supra note 30

Moreover the traditional character of this type of armed conflict on concept of the armed conflict within a defined territory to its limits.¹⁵⁵

4.2.1 Asymmetric Conflicts

These can be defined as a broad and unpredicted of military information operation, conducted by national organizations with the surrogacy force under their control.

Asymmetric conflict may further be defined as warfare in which combatants have treated differently military capabilities and the weaker aid who were involved in terrorism.¹⁵⁶

According to David L.Grangé, strategies define asymmetries conflicts as conflicts deriving from the norm, or an indirect approach to affect a counter hamstring of fines.¹⁵⁷ It is a conflict which does not match relatively even strength of two military forces. It may occur were a weaker combatant uses non-traditional weapons and strategy in order to obtain fighting advantage over the stronger.¹⁵⁸ It is best used against targets traditionally have little or no protection.¹⁵⁹

The concept of asymmetric armed conflicts is not news. Combatants through the age have sought to avoid the strength of the opponent. It may be treated far back in the military photography of non Tu and Mao Zedong which requires targeting the weakness of an enemy, avoid the strength, surprise him and master the indirect approach.¹⁶⁰

Asymmetric conflict are an old concept that has been brought back by the fourth generation warriors, non national and trans-national groups based on ideology, religion, tribe, culture and illegal economic activities.¹⁶¹

¹⁵⁵ Supra note 30

¹⁵⁶ Cadet first class Micheal L.Kalodzie Community the asymmetries guards <http://www.almc.army.mil.lalog/issues/joug/ho/ms628htm>

¹⁵⁷ <http://www.war.org.uk/war/resources/asymmaric.10/Paterson>.

¹⁵⁸ David L.Grangé Asymmetric warfare old method, new concern,national Strategy form review 2000

¹⁵⁹ Ibid

¹⁶⁰ Supra note 78

¹⁶¹ Ibid

4.2.2 Characteristics of asymmetric conflicts

Asymmetric conflict may be characterized as follows¹⁶²

Asymmetric conflicts are between actors whose strengths are unequal. The military power or the tactics of the belligerents differ significantly.

The actors are unequal in terms of military resources, man power, equipment, psychological resources for example faith, courage.

There must be a disparity of interest between the opposing forces.

There are no clear rules or norms guiding the conflict; if the law serves their interest, the level of fidelity are high and if it works to their disadvantage, they tend to disregard it, such inefficiency cause the weaker state to resort to unconventional means of warfare like cyber terrorism, using civilians as a human shield.

4.2.3 Types of Asymmetric Conflict

The various types of asymmetric conflicts include;

Positive Asymmetry which relates to strategic, tactics, weapons that aim at undermining or Negative to Asymmetry which relates to strategies, tactics and weapons that exposing the enemy weakness.

Technological Asymmetry.

War of attrition versus the effect based warfare. These are used to impose a major psychological impact such as shock or confusion which affect the opponent's freedom of action or will, it weakens the opponent's will to fight back. These laws intensively conflicts have no quick fix solution; they have complex culture, religions and historical regimes where criminality population coercion and extremist's politics abound.¹⁶³

¹⁶² S.K Sumba, Asymmetric armed conflicts: Tentative definitions Department of political science and public Administration Makerere University

¹⁶³ Supra note 31

This is the situation evident in the Mogadishu conflict in the Republic of Somalia, where the soldiers use civilians as human shield where unconventional means of warfare are used like terrorism, suicide bombings.

It is observed that campaigns of this kind are more likely to continue because it is the only kind of war that fits the condition of the modern age, since it has been opted in the world today by the disagreement of social discontent, racial ferment and nationalistic favors.¹⁶⁴

4.3 Modern classification of armed conflict

The commentaries on the Geneva Convention offer a broad view of the term “armed conflict” by interpreting Article 2 as including difference between states leading to intervention of armed forces.¹⁶⁵ These delegates of international committee of red cross and the international institutions of humanitarian law at a conference criticized the definition of commentaries on the conventions explicitly because it excluded some criteria such as; the refusal of the duration of the conflict.¹⁶⁶

Peter Wallenstein, in an interview with the ICRC concerning the Uppsala conflict in Sweden defined armed conflict to mean, a political disagreement between one actor which is the state and another actor which could be a state or an organization.¹⁶⁷ Wallenstein further agrees that the conflict must have arrived at magnitude which to them is measured as 25 people being killed during the year.

The key word in the definition is “disagreement” or in academic terms, “incompatibility,” there must really be a disagreement.

¹⁶⁴ Ibid

¹⁶⁵ The commentary on the third Geneva Convention. ICRC Geneva, ICRC publication 1958 p.23

¹⁶⁶ International Humanitarian Law and other regimes; interplay in situations of violence “Summary report by IC RC

¹⁶⁷ ICRC, Humanitarian debate; typology of conflicts, Cambridge University press 2009 p.7

Armed conflicts are affirmed in the case of **Prosecutor vs Todic** ¹⁶⁸ to exist whenever there is resort to use of forces between states or protected armed violence between governmental authorities and organized armed groups of between such groups within a state.

The most applied in determining whether an armed conflict exists is one of objective criteria which will depend on the facts on the ground and not on the subjective declarations if applicable to a non state actor.¹⁶⁹

4.3.1 Classification of armed conflicts

It is important to understand armed conflicts because international humanitarian law only applies during armed conflicts.

The rationale for classifying armed conflict is to determine the law palpable to the conflict ¹⁷⁰there by making it easy in distinguishing between combatants and civilians and in case of criminal liability, deterring which is liable. The continued existence of armed conflicts has led to multiplication of new forms of armed conflicts.

4.3.2 International armed conflicts

International armed conflicts are conflict between two or more High contracting parties. In **Prosecutor vs Tadic**¹⁷¹ the international Tribunal of Yugoslavia regarded the conflict have tuned into and international one due to the involvement of the creation army in Bosnia Herzegovina.

The law applicable in international armed conflict is international customary law and all the 4 Geneva conventions. Common Article 2 to the Geneva Conventions provides;

"In addition to the provision which shall be implicated in peacetime the present convention shall apply in all cases of declared war or any other armed conflict which may arise between two or more of the high contracting parties, even f the state war is not recognized by one of them."

¹⁶⁸ Supra note 79

¹⁶⁹ www.icrc.org/eng/war-and-law.

¹⁷⁰ ICTR in prosecutor vs Akayesu Appeals Chamberjudgement 1 June 2001

¹⁷¹¹⁷¹ Judgment (Appeal)of 15th July 1960

Further imposes obligation on parties to the conflict that even if one of the parties is a party to the present convention, parties shall be bound by the convention in their mutual nature and they shall be bound to the convention in case the other party accepts and applies to provisions of the convention.

4.3. 3 Occupation

This is another form of international armed conflict which occurs where the armed forces of a state occupy territory outside its own territory except refugees¹⁷². Occupation is defined under Article 42 of the Hague Regulations to mean;

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to territory where such authority has been established and can be exercised.

The law applicable to occupation is international customary law and common Article 2 of the Geneva Conventions which provide that;

.....the convention applies to all cases of partial or total occupation of the territory of a highly contracting party, even if the occupation meets with no resistance.....

The criteria provided by the provision in that; there must be exercised of authority or effective control making it hard for the occupied government to exercise its authority, control must cover the whole or parts of the territory of another state and it is irrelevant whether the occupation was met with armed opposition. This is evident in the case of **DRC vs Uganda**¹⁷³ where court determined the test of occupation. Court noted that there is need to examine if there is sufficient evidence to demonstrate that the said authority was established and exercised by the intervening state of the question. Court understood this to mean in practice that the Uganda force in Congo had established them in Congo and imposed their authority as Congolese and hence there was occupation.

¹⁷² Supra note 97

¹⁷³ ICJ Reports, Judgement of 19th December 2005, www.icj-cis-org/docket/under-pkg p/-88 p.2

Wavel K vs Civil Arlation Authority¹⁷⁴ court held that occupation will occur as soon as the peace is forced or evacuated from the area. In this case, the state of Israel had occupied from Gufa so it would not be to have occupied the palcasin territory.

4.3.4 Internal disturbance and plots, Tensions.

Cases are common in the world situation however, Article 1(2) of Additional Protocol II provide that;

"The protocol shall not apply to situations of internal disturbances, such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflict."

It can therefore be concluded that international humanitarian law does not apply to internal disturbances, riots, such conflicts usually or may graduate into armed conflicts as evident in the situation in Libya.

The conflict in Libya was inspired by a united front of Egyptian demonstrators who forced the resignation of President Hosni Mubarak.¹⁷⁵ The conflict started with the arrest of dissent human rights activists Fathi Terbil in Benghazi; this forced a number of protestors to gather around the police. Libyan president Qaddafi released Faith and promised to release the other 110 political activists and raise government salaries as a concession to the opposition.¹⁷⁶

After the day of range several people were killed and many more arrested. The violence escalated after security forces opened fire on a funeral procession. On February 2011, more than 200 people were reported to have died national wide and anti-government cockroaches. The number of causalities reached 1000 by February 28th 2011. The Libyan government has begun using armed attacks against the rebels. Government forces have continued to block the rebel forces westward. The rebel fighters were cast by missile and rocket fire from the pro-Gaddaffi troops before retreating to the city of Bin Jawad. On March 19th 2011, the UN security which

¹⁷⁴ 2066 E W HL AT 2465

¹⁷⁵ <http://www-bet-com/news/globet/2011/03/28/Libya-conflict-faq-htrn/>.

¹⁷⁶ Ibid

came up with a resolution authoring the use of all necessary means to protect civilians from assaults from forces loyal to the Libyan president Mummer Gaddafi.¹⁷⁷

The situation in Libya shows a conflict that started off as a demonstration and has now resulted into armed conflict and is evidently changing into an Internationalized and historical armed conflict.

4.3.5 Non International Armed Conflicts

These are at first considered to be purely international matters of state of which no international law applies. However, latter society as states agreed on a set of minimal guarantee to be respected during non international armed conflicts.

Non international conflict are defined in the case of **Prosecutor vs Akayeso**¹⁷⁸ to exist where there is a protracted armed violence between the government authorities and organized armed group or between such group within a state.

IHL provides for the applicable to non International armed conflict and these are common Article 3 and Additional Protocol II, however, there are instances where only common Article 3 applies,¹⁷⁹ In **Prosecutor vs Akayesu** court discussed the nature of the armed conflict, court noted that were an alleged offence is charged under both common Article 3 and the Additional Protocol II, which has a higher threshold, the prosecutor will need to prove that the criteria of both provisions has been met.

Depending on the threshold either common Article 3 of the Geneva Convention and customary law apply or Article 3 common to the Geneva Conventions and the whole of Additional Protocol II applies.

¹⁷⁷ <http://www.understandingwar.org/themenode/Libyan-conflict-situation-update>

¹⁷⁸ Case number, ICTR 96-4-T paragraph 618

¹⁷⁹ Ibid

Common Article 3 applies to conflicts not of an international character. The international Tribunal of Rwanda discussed the application of common Article 3.¹⁸⁰ The tribunal noted that norms set under the article apply as soon as the armed conflict is not of international character.

In a conference of 1949 in Geneva, it laid down criteria to be considered in order for Article 3 to apply;

That the party in revolt against the de jure government possesses an organized military force, an authority responsible for its acts, acting with determinate territory and having the means of respecting and ensuring the respect of the conventions.

The legal government is obliged to have recourse to the regular military forces against the insurgents organized in military possession of part of the territory as belligerents or it must have claimed to have the right of a belligerent and this recognition is only for the purpose of the present convention. Lastly, the dispute must have been submitted to the UN General Assembly on the Supreme Court as being a threat to international peace and breach of peace or an act of aggression.

The above criteria were enunciated as a means of distinguishing the genuine armed conflicts from the mere acts of bandit or unorganized and short-lived insurgency.

In this case, the tribunal found the two groups being the government forces on one hand and other group on the other, both groups were well organized and considered to be armies in their own right. Court therefore found that the events showed the existence of an armed conflict not of an international character as covered by common Article 3 of the 1949 convention.

Additional Protocol II on the other hand applies to such conflict that fulfills the conditions laid down in Article these are as follows;

That the armed conflict takes place in a territory of a highly contracting party between its armed forces and the dissent armed forces or organized armed group.

The dissent armed forces or other organized armed group were under responsible command.

¹⁸⁰ Appeals Chamber Judgement of 1 June 2001

The distant armed forces or the organized armed group were able to exercise such control over part of the territory as to enable them to carry out sustained concerted military operations.

That the dissent armed forces or other organized forces were able to complement Additional Protocol II.

Common Article 3 requires that the above criteria be applied respectively irrespective of the objective conclusion of the parties involved in the conflict¹⁸¹ In **Prosecutor vs Akayesa**,¹⁸² court held that the conflict in Rwanda was an Additional Protocol II conflict.

In the **Mounrate case**,¹⁸³ a Rwandan citizen sought refuge to Swetizland. The prosecutor alleged that the accused was involved in the wide spread strikes against the Hutu and the Tursi majority on May and July 1995, the accused applied for judicial review and alleged that he had no proximate connection with the conflict in Rwanda, court held inter alia that;

The category in which the Rwanda conflict of 1 994 falls is not to dispute; this was an armed conflict not of Article 3. The conflict falls within the scope of Additional Protocol II which is what narrower than that of common Article 3.

Court further noted that common Article 3 applied to conflicts of lesser intensity. Other forms of non international armed conflict that do not meet the requirement include wars of liberation and civil wars.

4.3.6 Wars of National Liberation

These were common in the time of colonialism where this controlled territories seek independence or liberation from the controlling state, these are conversed under Article 1(4) of Additional Protocol I which provides for cases in which situations referred to in Article 2 common to the Geneva Conventions apply. It states

¹⁸¹ Supra note 122

¹⁸² Ibid

¹⁸³ Case No 205 Switzerland

"The situation referred to in the preceding paragraph include armed conflict in which people are fighting against colonial domination and alien occupation and against racist regimes in the existence of their right to self determination as enshrined under the chapter of the principles of international law concerning Friendly Relations and cooperation among states accordance with in the character of the United Nations.

4.3.7 Civil War

A civil war is a war between the authorities of the state and an organized armed group with the control over parts of the state territory. Civil wars are internal conflicts and are provided for under Article 1 of Additional Protocol II which states,

The protocol which supplants Article 3 common to the Geneva Convention of 13th August 1949 without muffing the existing conditions of application, shall apply to all armed conflicts and which has place in a territory of a highly contracting party between its armed forces and dissent armed forces or inter organized armed groups under responsible command, exercise such control never a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the protocol."

4.3.8 Internationalized and non Internationalized Armed conflict.

The term internationalized international armed conflicts describes internal hostilities that are rendered international. It includes war between two internal factions of which both are backed by different states that military intervene in an armed conflict in supporting opposing sides and war involving foreign intervention in support of an insurgent group fighting against an established government. For example NATO'S intervention in the armed conflict between the Federal Republic of Yugoslavia and Kosovo Liberation army in 1999 and the intervention undertaken by Rwanda, Angola, Zimbabwe, Uganda and others in support of opposing sides in the internal armed conflict in DRC since August 1998.¹⁸⁴

¹⁸⁴ James .G. sternart, Towards a single definition of armed conflict In International Humanitarian Law. A critique of internationalized armed conflict.

The test that determines the existence of internationalized non international armed conflicts was stated in Prosecutor vs Tadic¹⁸⁵ which stipulated that;

'---- in case of internal armed conflict breaking out on the territory of a state, it may become international (or depending on the circumstances) be international in character alongside an internal conflict if answer state intervenes in that conflict through troop, or alternatively, if sums of the paretic plant in the internal armed conflict acts on behalf of the other side.'

In international court of justice in the **Nicerague vs USA**,¹⁸⁶ while determining whether some of the participants in the internal armed conflict act on behalf of another applied effectively.

The test which involved assessing whether there was a relationship between the control with or as government of they were acting on behalf of the US government, Under paragraph 115 the court stated that for this conduct to give rise to legal responsibility of the United States, it should in principle have to be proved that state had effective control of the military or personilitary operations in the cause of which the alleged violations were committed.

4.4.1 State control war.

Such wars center on struggles for control of the governing apparatus of the state. State control struggles are typically being driven by ideological definitions of revolutionary movement another. In some instances, communal or ethical interests are significant to the fight to transfer of power and in anther religion because the defining features of the conflicts.¹⁸⁷

4.4.2 State formation conflicts

These center on the form of ship of the state itself and generally involve particular regions of a country fighting for a greater measure of autonomy or for outright secession, or for the right to decide in a fair and binding referendum, whether or not to secede, communal or ethic interests are usually central to struggling for regional autonomy or secession and in some instances religion also becomes a defining feature of the conflict¹⁸⁸

¹⁸⁵ Appeal judgements of J 5th July 1999

¹⁸⁶ Supra note 97 p 1364

¹⁸⁷ Supra note 17

¹⁸⁸ Ibid

4.4.3 Failed state wars

Failed state wars involve domestic violence sometimes brought on by prosecutor and deliberating state control and state formulation wars under failed state wars, the armed conflict is neither about state control and state formation but about some local issues and capacity to provide minimal human security for individual citizens. This could be said to be use of the Mogadishu conflict.¹⁸⁹

Sudan's decade long civil war involved all the same armed struggle to over throw the ruling regime(elements of the northern opposing), Armed struggle for greater autonomy(Nuba) or outright secession(elements of the south) as well as a failed state conflict(the internecine wars among the Nuer)¹⁹⁰

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4.5 Characterization of the Mogadishu conflict.

The essence of qualification of the Mogadishu conflict as discussed earlier is to establish the law applicable to particular conflict in order to determine liability for violations of such laws of wars. The Mogadishu conflict due to numerous changes and duration of the war makes it difficult to classify the conflict. This study will classify the conflict basing on the events at the time.

¹⁸⁹ Supra note 23

¹⁹⁰ Ibid

¹⁹¹ Supra note 23

The law between 1980's and 1991

The 1980's involved the rise of the Somali National Movement and the Somali Salvation Democratic Front which escalated a civil war attacking the government and forcing it to respond with ferocious assault. Using the Geneva Conventions that applied to conflicts not of an international character. The fact that the rebel group were fighting against government forces qualified the conflict at this stage as an Additional Protocol II conflict.

The clan war and famine period 1991-1999

This catastrophic period that was characterized by clan faction, the country was torn apart by clan based warfare and there was fighting in the north, central and south. This would be characterized as civil war in the country. The conflict scenario in a failed state like Somalia is typically made up of hostilities between various armed groups. In the absence of given mental forces, this scenario cannot be qualified as either an international or non international armed conflict in the sense of Article 2(1) of Additional Protocol II. Thus from the outset only common Article 3 to the four Geneva Conventions, which encompassed armed conflicts that take place between armed factions as well as those rules of customary international humanitarian law that became applicable at the specific threshold of common Article 3, are potentially applicable.

Classification of this period is further hardened by the humanitarian international by various countries like the Arab League, Ethiopia, Eritrea that tried to advocate for dialogue in vain.

The period between 2000 to the present

This period is characterized by the rise of the Transitional National Government which was opposed by the Somali Restoration and Reconciliation Council with the support of Ethiopia in response to the September 11th attacks in US, the United States attacked the Islamic courts Union claiming they were part of the AT Qaeda. The rise of the Al Shabaab led to the increase in terrorism hence the integration of the African Union peace keepers in 2007. To classify this stage of conflict, it can be said that a conflict in Somalia is one of mixed nature involving a complex mix of charter fighting against each other in an attempt to establish the authority.

Hence the conflict in Somalia can be qualified as an internationalized non international conflict. This is because although the conflict is internal, there are external forces involved in the conflict there by making it international. The conflict satisfies the test as **Prosecutor v stadia** illustrated it.¹⁹²

Having discussed the forms of classification of armed conflicts, the Mogadishu conflict can be best fits the traditional classification of armed conflicts which is the asymmetric. This is evident with the means of warfare used. The weaker party, the AT Qaeda applies tin conventional means of warfare like terrorism to weaken the enemy and they are civilians as shield.

The typology classification of armed conflicts, the Mogadishu conflict is one that has moved through stages, having non state actors against each other and the state itself. Mogadishu conflict neither qualifies to be a failed state war due to the domestic chaos and armed violence there of which the wars are neither about local issues nor disputes involving violence in absence of effective government control.¹⁹³ The failure of the state to protect its civilians qualifies Somalia as a failed state.

Therefore, the Somalia can be classified as a failed state undergoing an asymmetric armed conflict.

4.6 Protection of civilians during the Mogadishu conflict in Somalia.

A civilian is defined under Article 50 Additional Protocol I to mean any person who does not belong to one of the categories of persons referred to in Article 4(A),(1),(2),(3) and(6) of the third convention and Article 43 of Additional Protocol I. In case of any doubt whether a person is a civilian, that person shall be considered to be a civilian.¹⁹⁴

Persons referred to under Article4(A),(1),(2),and(6) of the third convention and 1 Article 43 of Additional Protocol I are not civilians and these include; members of armed forces, members of militaries, members of armed forces of the government not recognized by the detaining power and civilian taking up arms against invasion.

¹⁹² Judgment Appeal of 15th July 1999

¹⁹³ Supra note 57

¹⁹⁴ Article 50 of the Additional Protocol 1

Article 50 further provides that civilian population comprises all persons who are civilians.¹⁹⁵ The presence of individuals who do not come within the definition of civilians in a civilian population does not deprive the population of its civilian character.¹⁹⁶ This was illustrated in the case of Zoran Kupresk and others)¹⁹⁷ It was noted that;

Even if it can be proved that the Muslim population of Ahmic village Bosnia and Herzegovina was not entirely civilian but comprised some armed elements, still no justification would exist for wide spread and indiscriminate attacks against civilians.

The quid pro quo for the special protected states enjoyed by civilians is that they are strictly prohibited from participating in hostilities, except in the exceptional cases where they are participating in a levee en masse in which they shall be regarded as belligerents provided they carry their arms openly and respect the laws and customs of war.¹⁹⁸ Civilians are therefore regarded as unlawful combatants even if they defector fulfill some of the conditions of competency, such as carrying arms openly, respecting the rules and customs of war. Additional, Additional Protocol ii to the Geneva Convention provides that those civilians who do unlawfully participate in hostilities shall lose their protected status as civilians. Article 13(3) provides:

Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

The rationale for defining who a civilian is in international Humanitarian Law is to ensure that the principle of distinction is observed. The principle requires the distinction between civilians and combatants and their object at all times during armed conflict. This principle ensures the protection of civilians from deliberate attack by combatants.

Civilians are the people who are most affected during armed conflicts, they are often wounded and displaced. Residents in Somalia said that, Islamists briefly retook an area of Mogadishu on Wednesday in street battles that killed 14 people wounded a dozen more and added on exodus of

¹⁹⁵ Article 50(2) of the Additional Protocol I

¹⁹⁶ Article 50(3) of the Additional Protocol I

¹⁹⁷ Supra note 97 P. 1467

¹⁹⁸ <http://wardheernews.com/article/10/May/09-mothers-day-ifrah.html>

residents from the coastal Somali capital weeks of fighting in Somalia have driven tens of thousands of people from their homes and smelling camps of the Kenya borders that are already the largest and oldest in the world sheltering more than 270,000 Somalia refugees,¹⁹⁹ Ifrah /brahim inter article,²⁰⁰

I promised myself that one day I will tell my son about how Baydhado Janaay Decame Buidoa the city of death were thousands of people died due to the Callousness of the war lords.

The situation forced by civilians is so serious in Somalia that they lack essential needs, medical relief and yet the humanitarian bodies have been prohibited from accessing the wounded, sick and hungry. They are exposed to indiscriminate attacks and live such day of their lives under fear of abrupt attacks as expressed by one of the victims of terrorist attack.

“It seems no matter who you are, you are a target, God help us”²⁰¹

Civilians often endure horrific or deals in today’s conflicts, sometimes as direct targets, Massacres, hostage taking, sexual violence, harassment, expulsion, forced transfer and looking and the deliberate denial of access to water, food and health care are some of the practices archive speed terror and suffering among civilians.²⁰²

4.6.1 Categories of civilians.

Civilians include all people other than those taking part in armed conflicts. These include women, men the elderly and children provided they are not carrying arms.

Article personal, chaplains and other persons accompanying the armed forces or members of technical arms. These persons are regarded as civilians even if they move along with the armed forces of the adversary. They carry out role like medication between the parties to the conflict and they are accorded civilian status except if they participate in armed conflict as combatants.

¹⁹⁹ Ibid

²⁰⁰ Reuters/Finbarr o’reilly

²⁰¹ Supra note 148

²⁰² International Committee of the Red Cross. Discover the JCRC, ICRC publications, September 2005.

Medical and religious personnel may be referred to as non combatants but that misconstrues their actual status because they do not have primary status as combatants, the law prohibits them from engaging in armed conflict.²⁰³ It should be noted that simply performing work of the armed forces is not sufficient for one to be considered as civilians accompanying armed forces. Article 50 of additional Protocol I that a “civilian is any person who does not belong to one of the categories of persons referred to in Article 4(A),(1),(2),(3) and (6) of the Third Convention and in Article 43 of this protocol. “Civilians accompanying the armed forces are referred to the Geneva Convention art 4(A),(4), which states;

Person who accompany the armed forces without actually being members thereof Such as civilians, members of military air craft crews, war correspondents, supply Contractors, members of labor units or of services responsible for the welfare of the armed forces provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.”

This implies that for one to be considered as a civilian accompanying the armed forces, one has to bear an identification card similar to the annexed model. Civilians accompanying the armed forces do not receive treatment that is different from other civilians because unlike almost anyone else with civilian status, they are entitled to the prisoners of war status when captured.²⁰⁴

Like other civilians, private employees and contractors who take part in hostilities will be considered as unlawful combatants.²⁰⁵ Private employees and contractors also face the risk of losing their protection from attack. Civilians are owed under the law of war because of their proximity to military objectives.

Like other civilians, private employees and contractors who take part in hostilities will be considered as unlawful combatants.²⁰⁶ Private employees and contractors also face the risk of

²⁰³ <http://Findarticles.com/p/articles/min-m6007/s 57/am l6520069/p-10>

²⁰⁴ Supra note 11

²⁰⁵ Ibid

²⁰⁶ Ibid

losing their protection from attack civilians are owed under the law of war because of their proximity to military objectives.²⁰⁷

Medical personnel include humanitarian relief agencies like the international committee of the Red Cross, usually the personnel officers of the ICRC have been identified by the Red Crescent

The United Nations any may other agencies. They may also include the local Non Governmental Organizations. Religious leaders like Chaplains, sheiks are also considered as civilians.

Journalists and their technical staff also posses civilian protection. Journalist and other media professions by virtue of their work are inevitably exposed to dangers in military operations. Journalist are offered a lot of protection under Article 79 of Additional Protocol I entitles journalists to all rights and protections granted to civilians in international armed conflicts and under customary law in case of non international armed conflicts.

Children are also a vulnerable category of civilians. A child means every human being bellow the age of 18 years unless the law applicable to the child majority is attained earlier.²⁰⁸ The convection of the Republic of Uganda ²⁰⁹describes a child with different ages depending on the purposes of each law; for the purposes of marriage and enrollment in the armed forces, a child is said to be one bellow the age of 18 years.

IHL takes special interest in the protection of civilians in armed situations therefore it takes specific interest in children. Children have been tortured in the Mogadishu conflict and have been taken as child soldiers, used as suicide bombers, serve as cooks, massagers, and spies of the armed groups.

4.7 The wrongs in the Mogadishu conflict.

During armed conflicts, the rights of civilians are grossly abused and violated. This is done in many ways like murder, rape, distraction of property, international humanitarian law obliges states to suppress all its violations to punish all grave breaches search for persons who have

²⁰⁷ Article I of the convention on the Rights of the Child

²⁰⁸ Article I of the convention on the Rights of the child.

²⁰⁹ Article 31 and 34(4-5) of the Constitution of the Republic of Uganda as amended in 1995 and UPDF Act 2005 section 52©

alleged committed such crimes and during them before their own constitutions and extradite them to another state for prosecution.²¹⁰

4.7.1 Crimes against humanity

This term has come to mean anything atrocious committed on a large scale. This term originated from the 1907 Hague Convention preamble which codified the customary law of armed conflicts, which codification focuses on the existence state practices that derive from those value and principles deemed to constitute the "law of Humanity" as reflected throughout history.²¹¹

Crimes against humanity are defined under Article 7 of the Rome Statute to mean,

Murder, extermination, enslavement, deportation and other inhuman acts committed Against the civilian population before or during the war or persecution on political Racial or religious grounds in execution of or in connection with any crime within The jurisdiction of the tribunal whether or not in violation of the domestic law of the Country were perpetrated."

Crimes against humanity to same extent over with genocide and was crimes in breach of nature against humanity do not require an "Intent to destroy in whole or in part" but only groups of a given group and carry out a policy of "wide spread systematic" violations.

Crimes against humanity have been said to exist in customary law and are also deemed to be part of jus cogens and thus constituting a non derogable rule of law. This means that all states are obliged to exercise their jurisdiction in prosecuting perpetrator irrespective of where the crime was committed.²¹²

²¹⁰ Supra note 97

²¹¹ Rog Gutman, David Reiff and Anthony Dworkin, crimes of war, p.136

²¹² As cited by the 1948 Convention on Genocide

4.7.2 War Crimes

War crimes are violations of International Humanitarian Law that incur individual responsibility.²¹³ The first true trial for war crimes is generally considered to be that of Peter Von Hagebach who was tried in 1474 in Austria and sentenced to death of war time atrocities.²¹⁴

The 1945 Charter of International Military tribunal of Nuremberg defined war crimes to mean.

“Violations of law or custom of war” including murder, ill treatment of law prisoners of war, killing of hostages, plunder of public or private property, wanton destruction of municipalities and devastation not military necessary.

These have also been evident in the Mogadishu conflict many civilians have been murdered, tortured by the toxic explosion by the parties to the conflict. Many have been taken as hostage and treated inhumanely. There are all war crimes that are laid out in the Rome Statute under Article 8.

4.7.3 Grave breaches of International Humanitarian Law.

The 1949 Geneva Convention which codified international humanitarian law marketed the first inclusion a set of war crimes. Geneva breaches are provided for under the Geneva Convention and the Additional Protocol I and Additional Protocol II gives no regard to give breaches.²¹⁵

According to the conventions, grave breaches do not apply to non international armed conflicts in the case of **Prosecutor vs Tadic**.²¹⁶ Court held that the serious infringing of international law by the government army of Bosnia against Bosnia Serbian civilians having their nationality of Bosnian Harzegovite would not be regarded as grave breaches since they are protected under the convention.

²¹³ Ibid

²¹⁴ Supra note 167

²¹⁵ Article 50,51, 30.147 of the Geneva Conventions respectively and Article 11 (4),85 and 86 of Additional Protocoll

²¹⁶ Supra note 97

Once state commit breaches of IHL, they are punished under international law, on the other hand, if individuals commit grave breach of IHL, it is regarded criminal offense and they are liable to punishment under the penal sanctions.

These have been evident in the Mogadishu conflict where people have been murdered, tortured, taken as hostages, forced to serve in the armed forces without consent, These constitute grave breaches of IHL and the perpetration is liable to penal sanctions.

4.8 Conclusion.

The chapter shows the existence of IHL that provide for protection of civilians in situations of armed conflict. The chapter discusses the traditional forms of warfare which were asymmetrical and it is observed that such means of warfare are emerging back and evident in the conflict in Mogadishu.

The study further shows the relevancy of classification of armed conflict in IHL; that it helps in identifying the law applicable in a particular conflict, the Mogadishu conflict has however proved to be hard to quality due to the fact the parties to the conflict are hard to define owing to the means of lighting which have been termed as unconventional. Some modern scholars chose to define a state like Somalia as a failed state.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

This study covered the protection of civilians in the Mogadishu conflict and its efficacy. It has also cover the law relating to the protection of civilians in the Mogadishu conflict. The study questioned the efficacy of the law protecting civilians in an armed conflict of asymmetric conflict and war unconventional means of warfare are used.

The conclusion and recommendations made herein are largely the view of the researcher. It is hoped that the conclusions are recommendations made here in will bring light to the situation of civilian in Mogadishu conflict; increase awareness of the need to protect civilians in armed conflict.

This sturdy discussed armed conflict in general with specific focus on the Mogadishu conflict.

Armed conflicts exist whenever there is a resort to armed forces between the states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.

The study covered the period 1990-2011. The conflict in Mogadishu was rested in the wave of conflicts which had taken place in the Republic of Somalia from as ar back as the colonial period. That period was vital to the study because of the various changes that have occurred in the conflict during the period from a civil war into internationalized armed conflicts.

The study covered the capital Mogadishu in the Republic of Somalia which is located in the born of Africa. The magnitude of war in intense and has even stretched beyond borders of the

Republic of Somalia and affected neighboring countries in Ethiopia, Kenya and Eretria.

Chapter one discusses the introduction, background of the study, statement of the problem, objectives of the study, scope of the study, synopsis, significance of the study, literature review and the methodology. Chapter two gives an overview of the international legal framework for the protection of Civilians in civil wars. It involves an analysis of the international legal regime on

Civilians in civil wars like the guiding principles on internal displacement in a bid to assess their adequacy in the protection of Civilians in civil wars. The chapter also explores the existing institutional framework for the protection of Civilians in civil wars, like the office of the Representative of the Secretary-general on internal displacement, the UNHCR, and the office of the Coordinator for Humanitarian Affairs (OCHA).

Chapter three. This chapter discussed the general introduction and the background of the Mogadishu conflict, the plight of civilians in that area and the extent to which the conflict has involved other statutes and the peace keeping missions (AMISOM). The chapter further classified Mogadishu conflict and discussed what is meant by protection of civilians, the importance of such protection, on whom such duty of civilian protection is placed and the conclusion and recommendation to this chapter.

Chapter four. The chapter discussed the law relating to the protection of civilians during armed conflicts in detail. The chapter classified armed conflict by discussing the trafricanoum classification and classification of armed conflict. The chapter further discusses challenges in classification of the Mogadishu. Chapter five discussed the conclusion and recommendations to the chapter.

5.2 Conclusions

The introduction of this study in chapter 1 showed that the issue of armed conflicts is not new but can be traced to ancient times. The study further shows the reality of a long time conflict in Mogadishu. The introduction of this research reflects the gravity of the Mogadishu conflict in the republic of Somalia and the gross violation of civilian right. It further shows the diverse groups fighting who take no consideration of their obligation to protect civilians in the conflicts imposed on the by law.

The chapter further discussed the available literature that has been written on the topic and the various methods applied in the research.

Chapter two on another hand discussed that civilians in Mogadishu conflict face a wide range of social, economic and developmental problems. The study shows how the background of the Mogadishu conflict, that started after independence as clan division and has emerged into a crisis

that has great impact not only on the Somalia people but also on the international and neighboring community.

The long drugged conflict has affected many innocent civilians in Mogadishu who have to keep up with the inconsiderable greed of a few group struggling for clan supremacy, which has now turned into dimension of terrorism. It has evident that civilians have had to keep up with the long insecurity, high food prices and famine among others. Due to the inability of the civilians to protect themselves from the indiscriminate on unconventional means of attack of which some of the armed groups like the Al Shabaab, many of them especially the children have lost their lives.

It is evident that protection of civilians matters in a moral and legal perspective since every human being has a right to life, and the duty to ensure this protection is primarily mandated on the state; were the state fails, is important on the international community and the humanitarian and regional organizations take on the responsibility. International Humanitarian Law therefore provide for the ways in which civilians can be protected in situation of armed conflict.

Chapter three discusses the existence of IHL that provide for protection of civilians in situations of armed conflict. The chapter discusses the traditional forms of warfare which were asymmetrical and it is observed that such means of warfare are emerging back and evident in the conflict in Mogadishu.

The study further showed the relevancy of classification of armed conflicts in IHL; that it helps in identifying the law applicable in a particular conflict, the Mogadishu conflict has however proved to be hard to quality due to the fact the parties to the conflict are hard to define owing to the means of fighting which have been turned as unconventional. Some modern scholars close to define a state like Somalia as a failed state. The study further laid down other general laws that would also apply in the Mogadishu asymmetric conflict the forms of violation of civilian rights in Mogadishu. This shows the need to cater for the protection of civilians in the Mogadishu conflict.

Generally in conclusion, the situation in the failed state of Somalia is alarming. It is evident that the parties to the conflict will not stop and yet the people who suffer innocently and are the most affected are civilians; yet give the state of the conflict the law applicable in hardly definable

since no set of laws been standardized by the IHL authorities to help bring in Mogadishu. This has rendered the existing IHL rules not useless but inefficient in a situation like the Mogadishu. Except that the crimes that was committed in times where the conflict could be characterized under international. Humanitarian law can be prosecuted. This therefore shows the urgent need for protection of civilians in the Mogadishu conflict.

5.3 Recommendations.

From the finding of the study, the researcher recommended the following;

International humanitarian law provides for the protection of civilians in armed conflict between this has evidently been ignored in the Mogadishu conflict in the Republic of Somalia. This has been due to the fact that as the conflict changing through the years, there have been many parties to the conflict of which many of them have been so ignorant about the existence of particular rule of law. Many of them did not show the willingness to be bound by the rule of IHL.

The researcher therefore recommended that, parties at war should be educated of their obligations under the law to protect civilians in armed conflict. More still they should emphasis the importance on them by law to avoid the use of indiscriminate means of warfare that are in humans not only to the civilians but also to the adversary party like the unconventional means used by the AT Shabaab group in the Mogadishu conflict.

The peace keeping forces, the innocent civilians affected by drought, displacement, famine, drought, poor sanitation and many others; should ensure that the humanitarian group reach safely to those in need and also ensure that the area occupied by the civilians and the camps of the displaced are guarded and that they are safe for the dwelling of civilians in Mogadishu.

Furthermore, the rate at which civilians suffer in the conflict is high. This shows the urgent need to protect civilians in Mogadishu conflict. The researcher emphasizes that it is a collective duty to protect civilians in Mogadishu; it's not the duty of the TFG forces and the AMOSOM peacekeepers alone to ensure the safety of civilians, but an international duty that requires more troops both in the humanitarian side and the armed side to assist the Ugandan and Burundi forces under AMISOM in Somalia. The researcher therefore recommended that the AU should persuade the international community into rendering more support to the AMISOM in

Mogadishu. This will help the Humanitarian Organizations to access with ease civilians and such vulnerable in need of humanitarian assistance in the war torn areas of Mogadishu.

It should be noted that as the peace keeping troops may be increased in number, in order to ensure the protection of civilians in Mogadishu; however, the mandate of objectives of those peace keepers should be clearly laid out and taught to the peace keeping forces in order to avoid such allegations the peacekeeping forces are also involved in the gross torture of Somalia in the conflict.

From the discussion in chapter three, it is evident that to determine the law applicable in the given conflict, IHL requires that such conflict be qualified in order to have a particular set of laws apply. The Mogadishu conflict is one that has been changing drastically from the independence; as mere clan divisions to a hardly characterized conflict that involve non conventional means of warfare.

The researcher, therefore, recommends in attempt to enforce rights of civilians violated during the Mogadishu conflict, regard should be given to customary international law and the principle of IHL since they cover a wide range of humanitarian rules of war and do not require ratification in order for them to be applied to a particular armed conflict. This will help bind the conflicting parties especially as regards to the acts of terrorism in the Mogadishu conflict in the Republic of Somalia.

The researcher recommends that the international committee of the Red Cross gets together in order to come up with a say an Additional Protocol laying down situations asymmetric conflict and the law applicable to such conflicts like that in the failed state of Somalia.

The researcher emphasizes that the duty to protect civilians is a collective one that imposes an obligation first and foremost on the TFG government should remember that it is under an obligation to protect civilians in armed conflict. In so doing the government is under the mandate to educate the TFG forces; especially as regards their duty under the principles of humanity, proportionality, military necessity and most importantly the distinction between combatants and civilians and their objects. This will help reduce on unending attack on civilians and their objects

which is key in the Mogadishu conflict right now. It will further help sustain the survival of civilians if their objective are not attacked and are respected.

Additionally, the TFG should not undermine the role of the police forces in Mogadishu; they should be trained and deployed especially in the field of mobilizing civilians. This will help in increasing the military power and hence help in the adequate protection of civilians in the Mogadishu conflict and also help putting an end to the conflict.

The state should ensure general sensitization of both its forces and the civilians at large. Civilians should be taught on the dangers of joining such brother hoods that has been named as terrorists. They should be taught on the need to end wrathless clan struggles and the need to unite in order to overcome the era of insecurity for a better and developed Somalia.

The TFG government should take measures and appropriate preventive steps in maintenance of peace within Mogadishu conflict. This could include; shifting the wounded civilians from the capital to safer camps else were in Somalia. It should ensure at such intervals the medical assistance and other humanitarian relief reaches the needy civilians in Mogadishu and this will help save those that would have perished by starvation.

The state should consider the application of IHL in the conflict most especially the observance of the principles of IHL and customary international law since they do not require ratification. The state should encourage its courts of judicature to deal with such and cases drought to the using customary international law, human right law and the principles of IHL, since no clear law has been put in place to address situations of asymmetric conflict like that in Mogadishu.

The adversary parties are under an obligation to protect civilians and in so doing they should end ever to respect the responsibility imposed on them by law to protect civilians at all times during armed situations. This includes distinguishing them from the combatant objects of attack. A question arises in a situation like Mogadishu were civilians masquerade as combatants, and some of which are used as actors in the conflict to carry bombs as suicide bomber to attack the civilian population. The actors should understand that such actions are crimes punishable under IHL forcing or using civilians to serve as combatants and this is punishable. This will help deter such violations in the Mogadishu conflict.

Actors on the adversary should train their troops on their obligation under IHL and that customary law and the principles of IHL require them to protect civilians at all times and that failure to do so would amount to both individual and collective responsibility of the groups.

The international community is under an obligation to protect civilians in Mogadishu conflict as the law imposed on them such responsibility in case the state fails to fulfill such an obligation. It is evident that the TFG government has failed in its role of protection of civilians as called for under international law. Therefore, the international community should put in place periodic studies on the impact of the conflict on civilians in Somalia. This will help to create public awareness on the gravity of the issue.

The international community should set up conferences especially made for the issue of asymmetric conflicts. The delegates should endeavor to set down law that ensures protection of civilians under such conflicts. Emphasis should be put on the definition of the term armed conflict and the term combatants in order to cover such situations of asymmetric conflict where parties to the conflict are hardly distinguishable and use unconventional means of warfare.

The international community should reconsider sending more troops to Somalia to assist the AMISOM because it is clear that the conflict is so serious and in order to ensure adequate protection of civilians, more troops should be engaged in the Mogadishu in order to ensure peace and comfortable dwelling for civilians in the capital.

The international community should also extend more assistance to the TFG and AMISOM, through logistics like arms, funds to sustain the peace keepers, arms among others. This will help the peace keepers to maintain peace in the region. Assistance should also be extended to the humanitarian and Non-Governmental Organizations to enable them reach the needy civilians in Mogadishu, this can be in form of medical supplies, food, this will help the needy civilians in the conflict.

The international community should also assist in the training of the peace keeping forces to enable them survive in the conflict and ensure effective protection of civilians in the conflict.

International Humanitarian Organization and Non- Government Organizations are under an obligation to protect civilians in the Mogadishu conflict. These should train their personnel on

the dangers of collaborating with terrorists; they should be taught that their immunity ceases once they collaborate or participate in the conflict.

The organizations should endeavor to deliver humanitarian assistance to the civilians since the clan issue in Mogadishu is so serious. They should deliver humanitarian law to all without discrimination but basing on the extent of need for each civilian.

The local NGO's should work together with international organizations by informing them of the most needy and dangerous areas in Mogadishu. This will ease their work in protecting civilians. They should also report on the status of civilians in these conflicts, this will create public awareness of the matter and help in prosecution of such crimes against civilians.

Humanitarian Organizations should encourage the parties to the conflict to settle their grievances on a round table rather than fighting. They should seek to find the causes of the conflict and the desires of each party to help put an end to the conflict. They should persuade the parties to the conflict in accepting the application of the rules of IHL to the conflict; this will help in protection of civilians in Mogadishu conflict.

Religious leaders are under an obligation to protect civilians in the Mogadishu conflict. The Islamic belief system is deeply rooted in the Somalia society. Religious leaders are usually known or seen as the bearers of the Islamic faith and have the ability to utilize their religious status, societal prestige, embedded trust and the respect. The researcher therefore recommends that they give their status in society and their knowledge of Islam which is a religion widely respected in Somalia, they should use their teaching to sensitize Somalia that Islam requires conflict resolution in peaceful means rather than war.

Religious leaders should act as mediators between the parties to the conflict since they are respected and considered to advocate for the common good rather than individual interest. They should try to identify the difference between the persuade the parties to the conflict in accepting to be bound by the rules of IHL and to ensure that civilians are not attacked during armed conflicts.

Religious leaders should encourage funding in their places of worship. Such funds will help to support the civilians in need. This will help reduce on the number of civilians who die of starvation.

The religious leaders should move from encouraging the war conflict They should criticize the gospel of terrorism, this will help especially the civilians to trust in religious leaders to have a place to run to for refugee. It should also be acted that since their reputation is damaged, then it will be hard to deal with the neighboring for peace.

Civilians are also responsible for their own safety. This can be done if civilians maintain their resistance in participation in such conflicts, since THL withdraws immunity from them if they participate in the conflict. Civilians should vacate such areas were the fighting is so serious; this will help them from deliberate attacks.

Civilian's leaders should sensitize their communities on the need to unite and end war. They should ensure that they do not temper with unusual objects which may be placed in civilian areas since they may be some sort of explosions, this will help ensure their safety.

The elders should educate their children on the effects of joining such groups that have proven to be the notorious terrorist groups fighting against the government. This will help to lessen the influence of the adversary parties.

Peace keeper like AMISOM is also under an obligation, to protect civilians in the Mogadishu conflict. Their mandate is to ensure peace in the conflict. They should ensure that humanitarian aid is delivered safely to the needy in the areas of conflict. AMISOM should ensure distinction between the civilians and the combatants in the conflict while exercising their duties.

The AMISOM should abide by their mandate and not team up with the adversary parties in the conflict. The AMISOM should ensure the highest level of conduct of its troops.

It is important to note that basing on the gravity of the conflict, the work of peace keeping is no longer relevant, the researcher therefore recommends that the role of peace keeping should be emerged with peace enforcement in order to end this war and for the protection of civilians in the conflict.

International Humanitarian Law provide for the protection of civilians in armed conflicts, however this has been evidently ignored in the Mogadishu conflict in the Republic of Somalia due to the fact that as the conflict changed through the years, there have been many parties to the conflict of which many of them have been so ignorant about the existence of particular rules of war since many of them did not show the willingness to be bound by the rules of IHL.

It's not evident in the study above that social, economic and developmental have played a big role in sustaining Mogadishu conflict, therefore the research recommends that the parties to the conflict should pay more regard in ensuring that the countries' social, economic and developmental status is achieved this could help stop the conflict. This can only be done effectively if the parties to the conflict consider the welfare of the Somalis first since no development can be achieved in a war torn area. The starting point is for the parties to the conflict to find means of peaceful management in order to build a stable and developed Somalia.

The Parties of war should be educated of the obligations under the law protecting civilians in armed conflict. More still they should emphasis the duty imposed on them by the law to avoid the use of indiscriminate mean of warfare that are inhuman not only to the civilians but also to the adversary party like the unconventional means used by the Al Shabaab group in the Mogadishu conflict.

The researcher further recommends that the parties to the conflict embrace and apply the principles of customary international law which are applicable to all armed conflict situations since they are universally recognized and do not require ratification.

To help the innocent civilians affected by drought, displacement, famine, poor sanitation and many others. The peace keeping force should ensure that the Humanitarian groups reach safety to those in need and also ensure that the area occupied by civilians and the camp of the displaced which are guarded and that they are safe for the dwelling of civilians in Mogadishu.

Furthermore, the rate at which civilians suffer in the conflict is high. This shows the urgent need to protect civilians in Mogadishu conflict. The researcher emphasized that it is a collective duty to protect civilians in Mogadishu and it is not the duty of TFG force and the AMISOM

peacekeepers alone to ensure the safety of civilians, but an international duty that requires more troop both in the humanitarian since and the armed side to assist Uganda and Burundi forces under AMISOM in Somalia.

The researcher therefore recommends that the AU should persuade the international community into rendering more support to the AMISOM in Mogadishu. This will help the Humanitarian Organizations to asses with ease civilians and such vulnerable in need of the humanitarian assistance in war torn areas of Mogadishu.

REFERENCES

A. Books

Commentary on the third Geneva Convention,(1958), International committees of the Red Cross Geneva.

Commentary of the fourth Geneva Convention, (1958) , international Committees of Red Cross, Geneva.

Henry Dunant. (1986), A memory of Somalia. ICRC publications.

International Committee of the Red Cross, (229), Typology of armed conflicts. Humanitarian debate: Law, policy and action. Cambridge University Press. Vol .91 No. 873.

International Review of the Red Cross, (2007), Customary Law.Vol 87. No.857.ICRC Publications.

International Committee of the Red Cross (2005). Understanding the ICRC, ICRC Publications
Katebire D.A.(2007), Social Research and Methodology, Makerere University Printer, Kampala.

Macro Sassoli and Antoine Bouvier, (1999). How does the law protect in war? ICRC Publication Geneva.

Ram Ahuja, (2000), Research Methodology: Rwat publication. New Delhi.

Ranjit Kumar, (1999), Research Methodology: A step —by-step guide for beginners. Sage Publications. London.

Roy Gutman, David Reiff an Anthony Dworkin (2007),Crimes of war. w.w. Norton Company. London.

B. Journals

Advisory Sevice on International Humanitarian Law, Legal protection of children in Armedconflict, ICRC, 2003 .www.icrc.org/web/Eng/siteenngO.nsf/html.

David L Grange Asymmetric warfare: old method, New concern, National strategy forum review winter 2000.

C. Articles

Cecilia Hull. Africa Union Mission in Somalia (AMISOM), FOI.

Evene Okapanachi. Ethno-religious Identity and Conflict in Northern Nigeria University of Ibaden. Nigeria.

Gerald Busingye, Uganda Peace Keeping Mission in Somalia.

<http://www.ugpulse.com/articles/daily/Government.asp?>

About=Uganda+peace+keeping+mossion+Somalia.

James G Stewrt, Towards a single definition of armed conflicts in International Humanitarian

Law: A critique of internationalized armed conflict.

Jason Beer, What is peace keeping? Monash Univercity.

Mark Bradbury. Endless war: A Brief History of the Somali Conflict. [www.corg.
worklaccord/somalia/endless](http://www.worklaccord/somalia/endless)

Michael L Kolodizie, Cadet First Class. Commentary:

Mohammed Olad Hassan "slow genocide" in Somalia's capital Mogadishu. 8th September 2010.

S.K Sumba. Asymmetric armed conflicts: Tentative definitions. Department of political sciences and public Administration MUK

Selan Hennessy. Amnesty: civilians in Somalia not Adequately Protected.

Theodar Meron. Marten's clause, principles of humanity and dictates of public conscience.

<http://www.jstor.org/stable/2555232>.

D. Websites

<http://www.ploughshares.ca/libraries/ACR.somalia.html>. Last accessed on 3rd march 2015

[www.fco.gov.uk/.../protection-civilians-armed conflict](http://www.fco.gov.uk/.../protection-civilians-armed-conflict)! Last accessed on 3rd march 2015

[www.un.org/...96-99-8 Thematic-44](http://www.un.org/...96-99-8-Thematic-44)- last accessed on 13th April 2015

www.i.org/eng/.../protection-journalists-interview270710, last accessed on 3rd march 2015

<http://www.flashpoints.info/countries/countries.html> Flash points world conflicts. Last accessed on 21st march 2015

<http://wardheernews.com/articles-i0/may/09-monther'sday-ifrah.html>. Last accessed on 4th march 2015

<http://www.un.org/en/peacekeeping>! Last accessed on 3rd march 2015

<http://www.un.org/en/peacekeeping/operationsspeacekeeping.shtml> last accessed on 3rd April 2015

<http://www.bbc.co.uk/news/world-africa-11216325> .Last accessed on 3rd march 2015

<http://www.icrc.org/eng/resources/result/documents.news-release!Somalia-news.141209.htm>.
[www.icj.cij.org/docket/index.php? P1=3](http://www.icj.cij.org/docket/index.php?P1=3) and [p2---](#) last accessed on 12th march 2015

[http://www.ploughshares.co/libraries/ACRi/crc/ACR-opes of war.htm](http://www.ploughshares.co/libraries/ACRi/crc/ACR-opes-of-war.htm). Last accessed on 5th march 2015

E. Reports

Ms. Grace Macheal, Report of the Expert of the Secretary General on the impact of Armed Conflict on children, 26th August 1996.

Armed conflict Report Somalia (1988-first Combat deaths).

International humanitarian law and other regimes: interplay in situations of violence summary report by International Committee of the Red Cross.