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RECONCILING INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW: LEGAL TENSIONS AND ENFORCEMENT CHALLENGES IN CONTEMPORARY ARMED CONFLICTS WITH REFERENCE TO NIGERIA AND DEMOCRATIC REPUBLIC OF CONGO

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I. ABSTRACT

This paper examines the complex interplay between International Humanitarian Law (IHL) and International Human Rights Law (IHRL) within the context of contemporary armed conflicts. While both frameworks aim to protect human dignity and limit abuses during war, their concurrent application in modern conflicts- often characterised by asymmetry, urban warfare, and Militias, creates practical and normative tensions. Highlighting situations from Nigeria, and the Democratic Republic of the Congo, this paper aimed at analyzing the practical challenges of enforcing these legal regimes amid state fragility, fragmented accountability mechanisms, and shifting conflict dynamics. Findings show that while the convergence of International Humanitarian Law and International Human Rights Law offers pathways to strengthen civilian protection and accountability, there are still enforcement deficits, with widespread violations including arbitrary detention, extrajudicial killings, and sexual violence remaining prevalent in conflict zones. And practical implementation often falters due to limited institutional capacity, zero military will, and operational constraints within military practice. This paper therefore proposes a framework for reconciliation of International Humanitarian Law and

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International Human Rights Law, advocating for a normative integration in operational frameworks, scenario-based training for armed forces, strengthened independent accountability mechanisms, and victim-centred reparative measures to ensure tangible protections. Drawing on the works of scholars such as Melzer, Lubell, and Milanovic, and the operational guidance of the ICRC, it is demonstrated by this paper that harmonising these legal regimes is not a theoretical exercise but a practical necessity to protect human dignity in conflict settings especially in Sub-saharan Africa.

II. KEYWORDS

International Humanitarian Law, International Human Rights Law, Armed conflict, Civilian protection, “*lex specialis*”, Human dignity, Sub-Saharan Africa.

III. INTRODUCTION

The subject of law incubates and reflects society’s collective commitment to the protection of human dignity. Consistently evolving, lending, and borrowing from different corners of the world, to ensure the establishment of an order that defends this general concern. In clear terms, the concern of law is the establishment of order for the protection of human dignity in every society. Whilst there may not be a universally approved, and all-encompassing definition of law; truth would testify that the definitions offered advance towards the preservation of human dignity through a properly fashioned order.

In like manner, the jurisprudence of international law has run with this idea, steadily seeking the best ways to preserve human dignity in every circumstance. Perhaps, it is good to proclaim that wars pose as the most frightening villain to societal order and ultimately, to the dignity that order seeks to protect. This idea is fastened by the scenes that surround war, to wit; chaos, frenzy, and arbitrariness.⁴

Although conflicts are not alien to man, there, however, was an obvious need to set certain rules to keep the evil meted on humanity in such situations at bay. Ultimately re-emphasizing the frailty of life without order.⁵ This led to the development of

⁴ Hugo Grotius, *De Iure Belli Ac Pacis* (Volume Two) 20, para 28.

⁵ Thomas Hobbes, *Leviathan* (First Published 1651, Penguin Classics, 1982) 185.

International Humanitarian Law: a set of rules developed to regulate the conduct of armed conflict, advocating for a less disorganized war theatre.⁶ Similarly, another set of rules- International Human Rights Law, were developed to still ensure fair conduct between humans during peace time.⁷

All for a general concern: the protection of human dignity. Both laws form the normative backbone of international efforts to limit human suffering. However, the concurrent application of these regimes in armed conflict situations has generated significant debate within scholarship and practice, particularly regarding their normative tensions, interpretive complexities, and operational challenges.⁸

The rules of International Humanitarian Law regulate the conduct of hostilities between belligerents and also provides a protection for persons not or no longer participating in conflict, such as those declared “*hors de combat*”. International Human Rights Law, on the other hand, imposes obligations on states to respect and ensure fundamental rights at all times, including during emergencies and armed conflicts.

Accordingly, the International Court of Justice (ICJ) has affirmed that human rights law does not cease to apply during armed conflict, resulting in the simultaneous applicability of both regimes.⁹ This concurrency, however, raises critical questions regarding the *lex specialis* principle, especially in situations where the protections and limitations of IHL and IHRL appear to conflict, such as in the use of lethal force, detention without trial, and the protection of non derogable rights.¹⁰

The practical realities of modern armed conflicts further complicate this interplay, particularly in non-international armed conflicts where the majority of

⁶ N. Melzer, *International Humanitarian Law: A Comprehensive Introduction* (Switzerland: Geneva, International Committee of the Red Cross, 2016) 12.

⁷ O. W. Igwe, *Preliminary Studies in Human Rights Law* (Lagos: Shomolu Rings and Favolit Ltd, 2002) 1.

⁸ C. Droege, ‘The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict’ (2007) (40) *Israel Law Review* (2) 311.

⁹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 168.

¹⁰ L. Noam, *Extraterritorial Use of Force against Non-State Actors*, Oxford, (Oxford University Press, 2010).

contemporary conflicts occur, and where non-state actors play significant roles in shaping the conduct of hostilities.¹¹

In North-East Nigeria, the prolonged conflict involving Boko Haram and state security forces has shown these tensions, with allegations of arbitrary detention, extrajudicial killings, and attacks on civilians illustrating the operational challenges of applying both laws in the context of conflict. Similar challenges arise across Sub-Saharan Africa, particularly in the Democratic Republic of Congo, reflecting a broader pattern of legal and practical difficulties in reconciling these regimes to effectively protect civilians while maintaining accountability for violations.

This paper descriptively and jurisprudentially examines the legal tensions and practical realities of applying both laws concurrently in armed conflicts. It argues that while convergence between the two regimes is essential for maximizing civilian protection, the lack of a clear operational guidance often leads to inconsistent enforcement, diluting accountability and the normative power of international law. This paper thus explores how courts, practitioners, and policymakers can navigate these intersections to develop a coherent framework that strengthens the protection of human dignity in contemporary armed conflicts.

A. Research Problem Statement

The simultaneous application of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) in armed conflicts has generated significant theoretical and practical debate. Although both regimes seek to protect human dignity, their overlap often produces normative tensions and operational uncertainty, particularly in contexts characterised by asymmetrical warfare, fragile state institutions, and armed groups. In Sub-Saharan Africa, these challenges are compounded by weak accountability mechanisms, flagrant impunity, and recurrent violations such as arbitrary detention, extrajudicial killings, and sexual violence.

¹¹ D. Akande and S. Sivakumaran, 'The Conjoined Twins of International Humanitarian Law and International Human Rights Law' (2012) (20) (1) *International and Comparative Law Quarterly* 591.

This paper narrows its focus to post-2000 conflicts, a period marked by the Boko Haram insurgency in Nigeria and the resurgence of armed groups such as the M23 in the Democratic Republic of Congo (DRC). This temporal scope captures the escalation of complex non-international armed conflicts in the region, where blurred distinctions between combatants and civilians, combined with systemic governance failures, exacerbate the difficulty of enforcing both IHL and IHRL.

B. Aim and Objectives

The aim of this paper is to critically analyse the interplay between IHL and IHRL in contemporary armed conflicts and propose a workable framework for their reconciliation in Sub-Saharan Africa. The specific objectives are to:

1. Examine the areas of convergence and divergence between IHL and IHRL.
2. Assess the practical challenges of applying both regimes in conflict settings, with reference to Nigeria and the Democratic Republic of Congo.
3. Evaluate existing accountability mechanisms and their limitations in addressing violations.
4. Propose an Afrocentric framework that integrates normative guidance, operational reforms, accountability structures, and a victim-centred reparations.

C. Research Methodology

This research adopts a doctrinal methodology, relying on the analysis of primary and secondary legal sources. Primary sources include international treaties, conventions, and case law. This includes the four Geneva Conventions of 1949 and their Additional Protocols, the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), as well as relevant jurisprudence from the International Court of Justice (ICJ).

Secondary sources include scholarly writings, journal articles, and reports by international organisations such as the International Committee of the Red Cross, Amnesty International, and Human Rights Watch. The doctrinal approach is

supported by an analysis of armed conflicts in Sub-Saharan Africa, focusing on Nigeria and the Democratic Republic of the Congo.

The analytical framework employed is comparative and evaluative. First, by identifying areas of normative convergence and divergence between IHL and IHRL, and second, by applying these findings to the practical realities of ongoing conflicts in Nigeria and the DRC. This approach facilitates a prescriptive assessment of how the two regimes can be reconciled to enhance civilian protection and accountability in fragile conflict zones.

IV. CONCEPTUAL CLARIFICATION

A. International Humanitarian Law

The consistent occurrence of armed conflicts creates chaotic situations that threaten human safety; raising a great concern that requires a proactive approach to manage the scene and curtail the hardship it throws at humanity. Although the outbreak of armed conflict is inevitable, the common goal is to ensure controlled chaos, reducing the spree of misconducts witnessed during such times. This is the foundational idea of International Humanitarian Law - a set of rules that govern the conduct of hostilities between belligerents.

As a branch of public international law, it aims at curbing the harshness of wars by restraining parties from going berserk just to conquer. The concern of this branch of law is firmly rooted in its key maxim '*jus in bello*' which is to regulate the conduct of parties in an armed conflict, as opposed to '*jus ad bellum*' which concerns itself with the right of a state to wage war or use armed force against another state.¹²

International Humanitarian Law (IHL), often referred to as the law of armed conflict or the law of war, constitutes the body of international legal norms specifically designed to regulate the conduct of hostilities and to protect persons who are not, or are no longer, participating in conflict. Its central objective is to limit the effects of armed conflict for humanitarian reasons, balancing military necessity with the imperative of protecting human dignity and safety. Its

¹² K. Jabre and others, *International Humanitarian Law* (IPU and ICRC, 2016).

normative foundations are found in customary international law and treaty instruments, notably the Geneva Conventions of 1949 and their Additional Protocols of 1977, which provide frameworks for the protection of the wounded, sick, shipwrecked, prisoners of war, and civilians.

The Hague Regulations of 1907 and the principles of distinction, proportionality, and necessity further shape the operational content, ensuring the means and methods of warfare are restricted and that deliberate attacks against civilians are prohibited.¹³ The design of International Humanitarian Law embodies the principle of *lex specialis*, applying specifically during armed conflict and superseding general legal frameworks to the extent of any conflict in obligations.¹⁴ It sets a scale for the identification of a situation as an “armed conflict” under the theory, to be determined by objective criteria, including the intensity of violence and the organisation of the parties involved.¹⁵

At the core of International Humanitarian Law lie fundamental principles that guide the conduct of hostilities and the protection of individuals during armed conflict. These principles: distinction, proportionality, necessity, and humanity, reflect dual commitment of the law to military effectiveness and humanitarian protection.¹⁶

The principle of distinction obliges parties to distinguish at all times between civilians and combatants, and between civilian objects and military objectives, ensuring that attacks are directed solely against legitimate military targets.¹⁷ It frowns at violence against civilians, as doing so, constitutes a serious violation of the rules of armed conflict, reflecting the imperative to protect civilian populations from the cruelty of war.¹⁸

Similarly, the principle of proportionality requires parties to properly assess

¹³ S. Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford University Press, 2012) 75-79.

¹⁴ Noam (n7) 34.

¹⁵ *Prosecutor v Tadić* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY IT-94-1-AR72 (2 October 1995) para 70.

¹⁶ Melzer (n3) 12.

¹⁷ Article 48 Additional Protocol I.

¹⁸ J. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Vol. I: Rules* (Cambridge University Press, 2005) Rule 1.

anticipated civilian harm with respect to an intended military advantage. It demands an abortion of attacks which may cause excessive incidental harm to the civilian population in relation to the anticipated military advantage; rationalising the balance between military necessity and humanitarian protection.¹⁹

Military necessity does not give a right to wanton use of force. The principle of military necessity suggests the use of force based on the constraints of the law of armed conflict. It places a mark on achieving military objectives based on the limitations imposed by the law through the principles of humanity, distinction, and proportion.²⁰

Furthermore, the principle of humanity prohibits inflicting suffering, injury, or destruction not necessary for achieving legitimate military objectives, reflecting the humanitarian stance and core of the law even amidst hostilities. It ensures that the conduct of hostilities respects the inherent dignity of all persons affected by the armed conflict.²¹ Understanding that armed conflict is inevitable, a rally goes on, to mitigate its humanitarian consequences rather than an outright prohibition of the use of force.²²

This functional orientation requires balancing military necessity with humanitarian considerations, often creating tensions where the practical realities of conflict result in civilian harm despite legal prohibitions. Enforcement challenges are particularly acute in internal armed conflicts and where non-state armed groups lack the capacity or willingness to comply with legal rules.²³

Enforcement of these rules primarily relies on state compliance, international criminal accountability, and monitoring by entities such as the International Committee of the Red Cross (ICRC). However, these mechanisms are often limited

¹⁹ Article 51(5)(b) Additional Protocol I.

²⁰ Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, Cambridge University Press, 2016) 88.

²¹ Henckarets (15) Rule 70.

²² M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar, 2019) 15.

²³ L. Hill-Cawthorne, *Detention in Non-International Armed Conflict: The Legal Basis and Limits of Internment* (Oxford University Press, 2016) 41- 42.

in contexts of weak governance and fragmented legal systems, undermining the protective aspirations of international humanitarian law.²⁴

Despite these challenges, IHL however remains a cornerstone of the international legal system, providing a structured framework for regulating hostilities and safeguarding the dignity of civilians and combatants “*hors de combat*”. Its interplay with International Human Rights Law in conflict settings requires careful interpretation to avoid normative conflicts while maximising the protective objectives of both regimes, which this paper will examine in subsequent sections.

B. International Human Rights Law

The concept of human rights, “though the terminology itself is relatively recent”, is deeply rooted in the history of human civilization, reflecting humanity’s long quest to safeguard dignity, freedom, and justice. While the idea of inherent rights traceable to human nature has existed across cultures and eras, the universal and formal recognition of human rights gained significant momentum only with the establishment of the United Nations in 1945. Marking a pivotal shift towards codifying these rights within international law.

Human rights refer to those fundamental entitlements intrinsic to human existence, without which individuals cannot fully realise their potential, nurture their intellectual and moral capacities, or satisfy their spiritual and higher needs. As a dynamic and evolving concept, human rights continue to expand in scope, adapting to the complexities of contemporary society and addressing emerging challenges as global human development advances.²⁵

To this end, Boutros Boutros-Ghali has emphasized that human rights are in their essence, constant in movement, having a dual nature; to express timeless

²⁴ W. A. Schabas, *An Introduction to the International Criminal Court* (5th edn, Cambridge University Press, 2017)

²⁵ S. Kaur, ‘Historical Development of Human Rights’ (2014) (6) (2) *Journal of Social Sciences Research* 997

<https://www.researchgate.net/publication/331085996_HISTORICAL_DEVELOPMENT_OF_HUMAN_RIGHTS>accessed 12 July, 2025.

injunctions while advancing to meet modern demands.²⁶

International Human Rights Law (IHRL) emerged in the aftermath of the atrocities of World War II, reflecting a collective global resolution to protect human dignity and prevent the recurrence of mass human rights violations.²⁷ The adoption of the Universal Declaration of Human Rights (UDHR) in 1948 marked a seminal moment, establishing a foundational framework articulating inherent human rights irrespective of nationality, race, or status.²⁸

This declaration paved the way for binding treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966, forming what is often referred to as the International Bill of Rights.²⁹ This branch of public international law, has since evolved into a complex body of norms, encompassing treaties, customary law, and jurisprudence from international and regional mechanisms, reflecting a global commitment to safeguarding fundamental rights even in diverse cultural and political settings.³⁰

At its core, human rights law imposes obligations on states to respect, protect, and fulfil human rights within their territories and under their jurisdiction.³¹ The principle of universality underscores the inherent nature of these rights, affirming that they apply at all times, including in situations of emergency and armed conflict, subject only to lawful and proportionate derogations.³²

It encompasses civil and political rights, such as the right to life, freedom from

²⁶ Proceedings, World Conference on Human Rights (Vienna June, 1993) 8.

²⁷ P. Alston and R. Goodman, *International Human Rights: The Successor to International Human Rights in Context* (Oxford University Press, 2013) 3.

²⁸ J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (University of Pennsylvania Press, 1999) 29.

²⁹ S. Joseph and M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, Oxford University Press, 2013) 7 <<https://academic.oup.com/oxford-law-pro/book/57225>> accessed 12 July, 2025.

³⁰ O.D. Schutter, *International Human Rights Law* (2nd edn, Cambridge University Press, 2014) 13 <https://assets.cambridge.org/97811070/63754/frontmatter/9781107063754_frontmatter.pdf> accessed 12 July, 2025.

³¹ Alston (24) 122.

³² Article 4 ICCPR.

torture, and the right to fair trial, as well as economic, social, and cultural rights, including the right to health, education, and an adequate standard of living.³³ While certain rights may be subject to lawful limitations during emergencies, non-derogable rights, such as the prohibition of torture and the right to life, remain applicable without exception.³⁴

A distinguishing feature of International Human Rights Law is the availability of diverse enforcement and accountability mechanisms, encompassing treaty bodies, regional courts, and special procedures designed to address violations and ensure state compliance. Globally, the Human Rights Committee monitors the International Covenant on Civil and Political Rights (ICCPR), while the Committee on Economic, Social and Cultural Rights oversees the ICESCR, providing avenues for individuals and groups to seek redress through individual communications and periodic state reviews. Regionally, Africa's human rights architecture, notably the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, provides critical platforms for addressing rights violations within the continent, complementing domestic legal avenues.

In Nigeria, enforcement of human rights is grounded constitutionally under Chapter IV of the 1999 Constitution (as amended), with the judiciary serving as the primary enforcement mechanism through fundamental rights enforcement procedures, supported by civil society litigation and the National Human Rights Commission (NHRC), which investigates and monitors human rights abuses. Although these frameworks are put in place to guarantee human rights, enforcement challenges also exist, particularly in conflict-affected and resource-constrained contexts, where weak institutions, executive interference, and structural inequalities detract effective rights protection and remedy.

A critical aspect of IHRL is its continued applicability during armed conflict, complementing IHL in the protection of individuals. In its advisory opinion, the International Court of Justice opined that human rights rules extend to operate

³³ Article 6 - 15 ICESCR.

³⁴ Article 4(2) ICCPR.

during armed conflict, to complement the rules of armed conflict.³⁵ This concurrent application often generates interpretive challenges, particularly in balancing security concerns with human rights obligations.

While IHL may operate as *lex specialis* during conflict, IHRL continues to regulate the broader human rights obligations of states, including the right to life, the prohibition of torture, and fair trial rights in conflict-related detention. As this paper will later explore, the intersection of IHL and IHRL in conflict settings offers opportunities for enhancing protection but also reveals areas of normative tension, necessitating careful legal analysis to clarify states obligations under both regimes.

V. CONVERGENCE AND DIVERGENCE OF INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW IN ARMED CONFLICT

A. Convergence: Complementarity in the Protection of Human Dignity

At their core, both IHL and IHRL share a fundamental concern with the protection of human dignity, approaching that concern through different legal lenses and operational frameworks. According to Milanovic, the regimes are united in their objective of limiting state power to protect individuals, albeit tailored to differing contexts of peace and armed conflict.³⁶

Reinforcing this complementarity, the International Court of Justice (ICJ) in the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*³⁷ stated that “the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by lawful derogation.” Similarly, the ICJ reaffirmed the concurrent application of IHL and IHRL in the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,³⁸ emphasizing their complementarity in protecting individuals during armed

³⁵ *Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ Rep 226.

³⁶ M. Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press, 2011) 48.

³⁷ *Supra*.

³⁸ ICJ Reports 2004, 136, para. 106.

conflict.

Consequently, an argument has developed, calling for a “merger approach” where the interpretation of rights during armed conflict should leverage IHL as a *lex specialis* within the broader framework of human rights, to maximize the protective regime available to individuals.³⁹ Although there seems to be a good sense in the argument, whether it will be adopted remains an anticipation.

B. Divergence: Normative and Practical Tensions

There exists a complementarity between IHL and IHRL, yet significant areas of divergence remain. The primary normative tension concerns the *lex specialis* principle, which implies that IHL, being specifically designed for armed conflict, should override IHRL where the two conflict, thereby giving it primacy during hostilities. Scholars such as Noam Lubell support this view, noting that while the concurrent application of both regimes is desirable, the realities of conflict often necessitate reliance on IHL standards to avoid contradictory obligations.⁴⁰

A clear example of divergence lies in the right to life under IHRL and the rules on targeting under IHL. Under human rights law, the right to life is non-derogable except in narrowly defined circumstances, such as self-defence. In contrast, IHL permits the targeting of combatants and civilians directly participating in hostilities under conditions of necessity and proportionality.

A further divergence emerges from the temporal scope of application. Under Common Article 2 of the 1949 Geneva Conventions, IHL applies to all cases of declared war or any other armed conflict between two or more High Contracting Parties, even absent a formal declaration of war. By contrast, Common Article 3 extends limited protections to non-international armed conflicts.

The tribunal in the *Tadić* case, defined non-international armed conflicts as situations of protracted armed violence between government forces and organized

³⁹O. Ben-Naftali and K. Michaeli, ‘We Must Not Make a Scarecrow of the Law: A Legal Analysis of the Israeli Policy of Targeted Killings’ (2003) (36) *Cornell International Law Journal* 233

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1098459> accessed 12 July, 2025.

⁴⁰ L. Noam, *Lawfare: The Use of Legal Systems to Wage War* (Cambridge University Press, 2010) 64.

armed groups, or between such groups themselves.⁴¹ This threshold requirement means that IHL does not govern situations of internal disturbances, riots, or sporadic violence. Scenarios of such nature remain regulated under IHRL. Consequently, there are grey zones where protections depend primarily on human rights mechanisms rather than humanitarian law, creating uncertainty in enforcement.

Operationally, the application of human rights law in active conflict zones faces significant challenges, including difficulties in investigation, enforcement, and accountability, particularly in contexts where states or non-state actors contest legal obligations. Although the legal frameworks provide clear normative protection, their practical enforcement is often undermined by security concerns, political interests, and the erosion of legal institutions in conflict settings.

An observation notes that the fragmented nature of accountability mechanisms and inconsistent jurisprudence in conflict situations often hinders effective enforcement of IHRL, even where legal obligations are clear⁴². Truthfully, weak state structures and the prevalence of non-state armed groups often obstruct meaningful rights enforcement, creating a legal vacuum in which violations occur with impunity. According to Knuckey⁴³, structural inequalities and geopolitical dynamics further inhibit the operationalization of IHRL in conflict environments, as powerful states selectively engage with accountability mechanisms based on strategic interests rather than legal obligations.

Futhermore, practical realities reveal the difficulties of extending IHRL protections to non-state actors who may lack the institutional capacity or willingness to adhere to rights obligations, despite their significant role in many contemporary conflicts⁴⁴. The

⁴¹ *Prosecutor v Duško Tadić* (Jurisdiction Decision) ICTY-94-1-AR72 (2 October 1995), para 70.

⁴² S. Darcy, *Judges, Law and War: The Judicial Development of International Humanitarian Law* (Cambridge University Press, 2014) 177 <<https://research.universityofgalway.ie/en/publications/judges-law-and-war-the-judicial-development-of-international-huma-3>> accessed 12 July, 2025.

⁴³ Knuckey, Sarah, "International Human Rights Fact-Finding in the Twenty-First Century" (2018) (40) (4) *Human Rights Quarterly* 964.

⁴⁴ S. Sivakumaran, 'Binding Armed Opposition Groups' (2016) (20) (2) *International Journal of Human Rights* 195 <https://www.researchgate.net/publication/231801287_Binding_Armed_Opposition_Groups> accessed 12 July, 2025.

complexities of enforcement are further compounded by challenges in evidence collection and investigation during armed conflict, with limitations in access and security impeding the ability of monitoring bodies to document violations and hold perpetrators accountable.

As Moeckli⁴⁵ observes, that states may invoke derogations under human rights during conflict, often in ways that undermine substantive protections, thereby complicating efforts to secure accountability for violations.

Collectively, these practical realities demonstrate that while IHRL remains a vital framework for protecting human dignity during armed conflict, its implementation is heavily constrained by the operational dynamics of contemporary warfare. Addressing these challenges requires a re-examination of enforcement strategies, improved investigative methodologies, and greater international cooperation to ensure that the promise of human rights is not rendered illusory amidst the chaos of armed conflict.

VI. ENFORCEMENT CHALLENGES IN CONFLICT ZONES OF NIGERIA AND DR CONGO:

In Nigeria and across Sub-Saharan Africa, the complexity of conflicts involving Boko Haram, Islamic State West Africa Province (ISWAP), and various local militias underscores the serious difficulties in enforcing human rights and humanitarian rules within contexts marked by state fragility, persistent insecurity, and fragmented legal frameworks. These environments often lack institutional capacity and political will to turn legal obligations into effective protection for affected populations.

Irrespective of Nigeria's ratification of the African Charter on Human and Peoples' Rights and its constitution guaranteeing human rights; the consistent assault on human dignity by both the state and local militias reflect a severe accountability deficit.⁴⁶ Recent incidents highlight the persistence of these dynamics: in May 2025,

⁴⁵ D. Moeckli, *Human Rights and Non-Discrimination in the 'War on Terror'* (Oxford University Press, 2008) 137.

⁴⁶ Amnesty International, 'Human Rights in Nigeria' < <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria> > accessed 12

Boko Haram militants massacred at least 57 civilians in Mallam Karamti and Kwatandashi villages in Borno State after accusing them of collaborating with rival insurgents.⁴⁷ In January 2025, a Nigerian Air Force strike in Zamfara State mistakenly killed 16 civilians,⁴⁸ illustrating how counter-insurgency operations frequently produce grave violations of IHL and IHRL when identification and oversight are inadequate.

The practical challenges of enforcing these laws on human protection are further compounded by underlying weaknesses in investigative and judicial processes. Moreover, the reliance on emergency and security frameworks often leads to the derogation or *de facto* suspension of human rights protections without adequate oversight, further entrenching impunity. It is reported that military operations in Nigeria's Northeast violate the core of both IHL and IHRL, with cases of: mass detentions without trial, torture and inhumane conditions in military detention facilities, contravening both domestic and international obligation.⁴⁹

These allegations are not anecdotal: international and national monitoring bodies have repeatedly documented patterns of abuse and impunity. Human Rights Watch citing Reuters reported about Nigerian military involvement in the killing of suspected child-terrorists and forced abortion of terrorist fathered babies on rescued girls.⁵⁰

The protection of children also illustrates the human rights enforcement deficit. UN reporting on children and armed conflict documents the large number of grave violations affecting children in Nigeria: from forced recruitment to attacks on schools: and highlights that both the state and terrorists are responsible for a substantial share

July, 2025.

⁴⁷ Associated Press, 'Boko Haram Militants Kill Dozens in Borno Villages' (AP News, 21 May 2025) <<https://apnews.com/article/nigeria-attack-militant-boko-haram-islamic-state-8fb38a82c5ad79edb3333f0c45803d0a>> accessed 12 September 2025.

⁴⁸ BBC News, 'Nigeria Air Strike Kills Civilians in Zamfara' (BBC, 16 January 2025) <<https://www.bbc.com/news/articles/cn0y30766kjo>> accessed 12 September 2025.

⁴⁹ Human Rights Watch, 'Reports Allege Nigerian Army Abuses' <<https://www.hrw.org/news/2022/12/13/reports-allege-nigerian-army-abuses>> accessed 12 July, 2025.

⁵⁰ *Ibid.*

of violations,⁵¹ complicating accountability and rehabilitation efforts. These patterns demonstrate that ratification and domestic constitutional provisions alone do not translate into credible enforcement in fragile operational environments.

Similarly, the Democratic Republic of the Congo (DRC) further illustrates the limits of legal protections in protracted conflicts. Regardless of the presence of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and a framework of peace agreements, persistent violence by armed groups, including the recruitment of child soldiers, targeted killings, and widespread sexual and gender-based violence, has continued with near-total impunity.⁵²

In February 2025 M23 fighters abducted at least 130 patients from two hospitals in Goma, including wounded civilians and suspected militia members, in blatant violation of international humanitarian law protections for medical facilities and patients.⁵³ Human Rights Watch further documented forced evacuations of displacement camps west of Goma, displacing tens of thousands of civilians and exposing them to acute humanitarian risks.⁵⁴ These incidents, occurring despite the continued presence of MONUSCO forces, illustrate the persistent gap between the normative protections of IHL and IHRL and their operational enforcement in eastern Congo's conflict theatres.

Weak judicial institutions, pervasive corruption, and the lack of security sector reform hinder efforts to hold perpetrators accountable and provide meaningful redress to victims in Sub-saharan Africa, illustrating the gap between the normative promises of IHL and IHRL and their practical realization on the ground. Additionally, regional and international mechanisms often struggle to address these challenges effectively

⁵¹ United Nations, 'Conclusions on children and armed conflict in Nigeria' <<https://childrenandarmedconflict.un.org/country/nigeria-en/?utm>> accessed 30 August 2025.

⁵² 49 Human-Rights-Watch, 'DR-Congo: Civilians at Risk as M23 Approaches Eastern Region of Goma' <<https://www.hrw.org/news/2025/01/25/dr-congo-civilians-risk-m23-approaches-goma>> accessed 12 July, 2025.

⁵³ Reuters, 'East Congo Rebels Abduct at Least 130 Hospital Patients, UN Says' (3 March 2025) <<https://www.reuters.com/world/africa/east-congo-rebels-abduct-least-130-hospital-patients-un-says-2025-03-03/>> accessed 12 September, 2025.

⁵⁴ Human Rights Watch, 'DR Congo: M23 Forces Drive Displaced People from Goma Camps' (13 February 2025) <<https://www.hrw.org/news/2025/02/13/dr-congo-m23-drives-displaced-people-goma-camps?>> accessed 12 September, 2025.

due to limitations in jurisdiction, enforcement power, and political constraints.

For example, while the African Court on Human and Peoples' Rights and the African Commission provide avenues for redress, state compliance with decisions remains uneven, and victims in active conflict zones face significant barriers in accessing these mechanisms due to security concerns, legal illiteracy, and socio-economic constraints.⁵⁵ These realities highlight a deep tension between the theoretical commitments of IHL and IHRL and their operationalization in contemporary conflict settings, where legal frameworks alone are insufficient to overcome entrenched political, social, and economic barriers.

VII. CLARIFYING NORMATIVE INTERSECTIONS AND HIERARCHIES

The relationship between international humanitarian law and international human rights law as noted, reveal both convergence and persistent legal tensions within international legal practice. The *lex specialis* doctrine implies that IHL, as the more specific legal framework, governs conduct during armed conflicts, providing rules on the conduct of hostilities and the protection of persons affected by conflict, while IHRL remains applicable as the general law.

Whilst acknowledging the *lex specialis* principle, some scholars such as Marko Milanovic advocate for a conflict-sensitive interpretative methodology. The *raison d'être*, being that the method preserves the protective ethos of IHRL while recognising the operational realities of armed conflict governed by IHL. Thereby avoiding legal fragmentation and ensuring human dignity remains central even in warfare.

Similarly, the International Committee of the Red Cross (ICRC) has proposed a functional approach whereby rights such as the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) are interpreted in

⁵⁵ S. T. Ebobrah, 'Litigating Human Rights Before Sub-Regional Courts in Africa: Prospects and Challenges' (2014) (17) (2) *African Journal of International and Comparative Law* 415.

light of IHL principles on targeting, necessity, and proportionality during active hostilities, while ensuring that non-derogable rights and fundamental guarantees remain respected.⁵⁶

Recent scholarship further suggests that the convergence of IHL and IHRL offers an opportunity to enhance the protection of civilians by leveraging the strengths of both regimes, provided that the interpretation of overlapping norms respects the structural differences between the laws of war and peacetime rights protection. However, this convergence is not without challenges, as differences in the normative objectives, enforcement mechanisms, and interpretive frameworks of IHL and IHRL often generate operational ambiguities in conflict zones, requiring contextual and practical navigation by states and humanitarian actors alike.⁵⁷

VIII. TOWARD A FRAMEWORK FOR RECONCILIATION IN THE ARMED CONFLICT ZONES OF SUB-SAHARAN AFRICA

The reconciliation of the legal regimes no matter how thorny and difficult it is, is imperative considering the evolution in armed conflict, notably; asymmetrical warfare, transnational armed groups, and blurred lines between combatants and civilians, especially in Sub-saharan Africa. This reconciliation, however, within the context of contemporary armed conflicts requires more than theoretical alignment; it demands the construction of a pragmatic, legally sound, and context-sensitive framework that ensures accountability while safeguarding human dignity.

Borrowing from existing scholarship and practice: particularly the operational guidance on contemporary armed conflicts of the ICRC, the Geneva Academy's work on investigative standards, and Human Rights monitoring reports, this paper proposes a Four-Pillar Framework for reconciliation. This model is not merely a restatement of prior methods but an afro-centric prescriptive

⁵⁶ ICRC, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (2015) 19-23 <<https://casebook.icrc.org/case-study/icrc-international-humanitarian-law-and-challenges-contemporary-armed-conflicts-2015>> accessed 12 July, 2025.

⁵⁷ R. Kolb and G. Gaggioli, *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar, 2013) 213.

contribution, synthesising scattered recommendations into a coherent structure tailor-made for the Armed conflict situations in Sub-Saharan Africa.

1. **Normative harmonization and interpretive guidance:** Building on the view of Milanovic for a conflict-sensitive interpretative methodology and the functional approach of the ICRC, this pillar proposes the development of “African made interpretive instruments” that clarifies how rights such as the right to life apply during hostilities in the African context. Practical steps in this regard would ordinarily include: model “interpretive guidelines” adopted through regional bodies like the African Union or the African Commission, the incorporation of ICRC operational guidance into national laws and doctrines, and the use of clear jurisprudential standards for national or regional courts when confronted with “*lex specialis conflicts*.”
2. **Operational integration and capacity building:** The ICRC and Geneva Academy emphasize that humanitarian and human rights obligations must be embedded into military practice, particularly through legal advisers in operational planning and scenario-based training.⁵⁴ This framework advances those recommendations by further prescribing: simulation-based modules that are “mandatory” for African soldiers “at all ranks”, formal integration of legal advisers in targeting and detention planning, including a regular legal reviews of weapons and surveillance tools like (drones, spyware & AI tools), which is not widely covered in the conventional African military practice.
3. **A Reconfigured Accountability Architecture:** Scholarship on accountability usually stresses the need for credible investigative and prosecutorial mechanisms. This pillar-framework advances the discussion by proposing a hybrid investigative model: independent investigative units at the national level, complemented by hybrid teams embedded within regional or UN peace operations to collect evidence in insecure environments. This is necessary because most missions monitor and report, but they rarely function as evidence-preserving investigative units capable

of feeding into prosecutions. It is therefore necessary for there to be a merging of two existing but separate ideas: (a) UN/regional monitoring missions, and (b) hybrid courts, into a proactive, embedded investigative structure that could operate during conflict.

- 4. Victim-centered Protection/ Reparations, and Local Resilience Building amidst conflict:** Human rights monitors such as Amnesty International and Human Rights Watch routinely call for reparations and victim-centred approaches, but usually after conflicts, by way of truth commissions, compensation funds and just prosecutions. This framework incorporates and acknowledges those insights but innovates it by proposing community-based reparations programmes that can be initiated even during conflict by way of interim relief, medical support, legal aid for victims seeking Justice, and local trust-building initiatives to rekindle harmony even while conflict is ongoing.

By clarifying interpretive standards, embedding legal norms into military practice, reforming accountability through hybrid mechanisms, and delivering victim-centred remedies even during conflict in Sub-Saharan Africa, the framework moves reconciliation from abstract theory to practice. In the fragile conflict zones of Sub-Saharan Africa, where enforcement is weak and victims often remain unseen, this approach offers a realistic means of positively setting international law in motion in the lives of people affected by armed conflicts.

IX. CONCLUSION

This paper examined the interplay between International Humanitarian Law and International Human Rights Law in contemporary armed conflict, highlighting their tensions, overlaps, and enforcement challenges. In Sub-Saharan Africa, where wars are often protracted and accountability is fragile, reconciliation of these regimes is not theoretical but essential to preserve human dignity. The Four-Pillar Framework advanced here; which involves clarifying interpretive guidelines, integrating them into military practice, strengthening accountability, and centring victims, offers practical means of connecting ideas to reality. For these legal

protections to have meaning, African states must however adopt clear frameworks for the operation of both laws. Victim-centred justice mechanisms must align with local realities, independent and well-resourced investigative bodies should also be set up to ensure accountability for violations, and investment in capacity-building for security forces and judicial actors should be encouraged and embarked upon.

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