

## UNIMPEDED ACCESS TO HUMANITARIAN ASSISTANCE AS A PANACEA FOR CIVILIAN PROTECTION: A LEGAL PERSPECTIVE\*

### Abstract

*Effective humanitarian response whereby humanitarian organizations are able to access civilians in need on the one hand; and civilians in need of humanitarian assistance are also able to access humanitarian organizations for materials and services essential to their survival, without any form of obstruction imposed by law or policies, is part of the measures through which International Humanitarian Law effects the protection of civilians not taking active part in hostilities. This Article is however necessitated by the constant obstruction of access to humanitarian assistance characterizing contemporary conflicts which scuttles civilian protection. This is true of Tigray, Yemeni, and Afghan civil wars, to mention but a few. With particular reference to the above civil wars, the Article examined the effect of impeding humanitarian access to civilian protection within the context of the Geneva Conventions 1949 and their Additional Protocols of 1977. The author started by appraising the legal framework for humanitarian assistance; the right to demand; and the obligation to give humanitarian assistance. The author further discussed instances of violation of the right of civilians to access humanitarian assistance in contemporary armed conflicts; and outlined the steps required to be taken by the parties to the conflict to enhance access to humanitarian assistance. The Article found that access to humanitarian assistance is blocked in most contemporary armed conflicts thereby making the protection of civilians difficult or almost impossible. The author concluded by recommending an effective humanitarian operation made manifest in the protection of humanitarian personnel. Only then will International Humanitarian Law secure the protection of civilians.*

**Keywords:** Civilian, Protection, Humanitarian Assistance, International Humanitarian Law

### 1. Introduction

Unimpeded access to humanitarian assistance is one of the ways through which International Humanitarian Law effects the protection of civilians in humanitarian crisis. Humanitarian crisis is one of the direct consequences of armed conflicts with civilians needing one form of humanitarian assistance ranging from food, healthcare, shelter, water, to clothing. This is true of the Ethiopia's Tigray civil war, as the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) noted that as a consequence of the said civil war 'more than 5.2 million people across Tigray, amounting to more than 90 per cent of the region's population, now require life-saving assistance'.<sup>1</sup> On the other hand, the UN Secretary-General remarked that 'more than 2 million people have been displaced from their homes, and millions more are in immediate need of life-saving humanitarian assistance, including food, water, shelter and healthcare'.<sup>2</sup> With respect to the Yemeni civil war, the United Nations International Children's Emergency Fund (UNICEF) asserted that 'Yemen is the largest humanitarian crisis in the world, with around 21 million people in need of humanitarian assistance, including more than 11 million children'.<sup>3</sup> The situation is not different with the South Sudanese civil war which has also taken a toll on civilians leaving about 7.6 million people in need of one form of humanitarian assistance or the other.<sup>4</sup> About 6 million people are faced with starvation; 1.7 million people close to famine; more than 2 million have fled to neighbouring countries for fear for their lives; nearly 2 million are internally displaced; many have lost their lives; some others suffered sexual violations and children forcibly recruited as child soldiers.<sup>5</sup> These situations are not strange as most situations of armed conflicts are followed by humanitarian crisis. However, the situation of armed conflict does not curtail the general protection to which civilians are entitled to in International Humanitarian Law.<sup>6</sup> Hence, civilians are protected against the effect of military operations; and are entitled to this protection unless and except they take

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\*By **Anita NWOTITE, LLB, LLM, PhD**, Lecturer, Department of Public and Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Email: am.nwotite@unizik.edu.ng. Phone Number: 2348039574167.

<sup>1</sup>United Nations News, 'Ethiopia': 'Heartbreaking' Devastation in Tigray, says UN Humanitarian Chief'. Available at <https://news.un.org/en/story/2021/08/1097082> . Accessed 13 March 2022.

<sup>2</sup>United Nations Meetings Coverage and Press Release, 'Humanitarian Catastrophe Unfolding before our Eyes, Secretary-General Tells Security Council, Warning Ethiopia's Youth will be Ultimate Casualties', DG/SM/20866, August 2021. Available at <https://www.un.org/press/en/2021/sgsm20866.doc.htm> Accessed 13 March 2022.

<sup>3</sup>UNICEF, 'Yemen Crisis'. Available at <https://www.unicef.org/emergencies/yemen-crisis>. Accessed 14 March 2022.

<sup>4</sup>United Nations Office of the Coordinator for Humanitarian Affairs, 'South Sudan: A Humanitarian Crisis of Catastrophic Proportions'. Available at [https://www.unocha.org/story/south-sudan-humanitarian-crisis-catastrophic-proportions?gclid=EAlalQobChMI8oavoK3J8wIVje3tCh30oAOUEAAAYASAAEglzGfD\\_BwE](https://www.unocha.org/story/south-sudan-humanitarian-crisis-catastrophic-proportions?gclid=EAlalQobChMI8oavoK3J8wIVje3tCh30oAOUEAAAYASAAEglzGfD_BwE) . Accessed 14 March 2022.

<sup>5</sup>United Nations Office of the Coordinator for Humanitarian Affairs, 'South Sudan: A Humanitarian Crisis of Catastrophic Proportions'. Available at [https://www.unocha.org/story/south-sudan-humanitarian-crisis-catastrophic-proportions?gclid=EAlalQobChMI8oavoK3J8wIVje3tCh30oAOUEAAAYASAAEglzGfD\\_BwE](https://www.unocha.org/story/south-sudan-humanitarian-crisis-catastrophic-proportions?gclid=EAlalQobChMI8oavoK3J8wIVje3tCh30oAOUEAAAYASAAEglzGfD_BwE) . Accessed 23 March 2022.

<sup>6</sup>Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of International Armed Conflicts, 1977 (Protocol I) Article 51; Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Non-Victims of International Armed Conflicts, 1977, (Protocol II), Article 13.

active part in hostilities.<sup>7</sup> As part of this protection, civilians are entitled to the basic needs essential for their survival such as food, healthcare, shelter and so on.<sup>8</sup>

International Humanitarian Law requires parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject, to their right of control.<sup>9</sup> This right exists by virtue of State practice<sup>10</sup> and is further codified under the GC IV<sup>11</sup> and under Protocols I<sup>12</sup> and II.<sup>13</sup> The right of civilians to unimpeded access to humanitarian assistance flows from the general protection accorded civilians against the effect of military operations;<sup>14</sup> and any attempt to obstruct this violates this right.<sup>15</sup> This is well captured by the United Nations Secretary-General with respect to the conflict in Sudan, thus:

Any attempt to diminish the capacity of the International community to respond to conditions of suffering and hardship among the civilian population in Sudan can only give rise to the most adamant expression of concern as a violation of recognized humanitarian principles, most importantly, the right of civilian population to receive humanitarian assistance in times of war'.<sup>16</sup>

The call for unimpeded access to humanitarian access was also reiterated by the UN Secretary-General with regard to the Tigray civil war, thus: 'Unrestricted humanitarian access to all areas in need must be guaranteed and humanitarian workers must be respected'.<sup>17</sup>

The obligation to allow unimpeded access to humanitarian assistance for civilians in need is not only a duty imposed on the parties to the conflict but also a duty imposed on third states parties to the Protocol I.<sup>18</sup> However, this Article is motivated by the constant obstruction of access to humanitarian assistance for civilians in need which characterizes contemporary armed conflicts. Speaking on this issue with respect to the armed conflict in Yemen, Ramesh Rajaingham, Director, Coordination Division, Office for the Coordination of Humanitarian Affairs, observed that 'access constraints affects 6.7 million in need of access, a figure that has never been so high amidst harassment and violence against humanitarian agencies in north Yemen...'<sup>19</sup> This situation is very worrisome as it impacts negatively on International Humanitarian Law and frustrates the protection of civilians which among other things is the hallmark of International Humanitarian Law. The purpose of this Article is therefore to examine the effect of impeding humanitarian access to civilian protection within the context of the Geneva Conventions 1949 and their Additional Protocols of 1977.

## **2. International Humanitarian Law and Access to Humanitarian Assistance for Civilians in Need**

In International Humanitarian Law, civilians are entitled to unimpeded access to humanitarian assistance.<sup>20</sup> This flows from the general protection accorded civilians not taking active part in the hostilities.<sup>21</sup> The applicable legal

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<sup>7</sup> *Ibid.*

<sup>8</sup> Customary International Humanitarian Law, Rule 55; Geneva Convention Relating to the Protection of Civilian Persons in Time of War, 1949, Article 23; Protocol I, *op cit*, Article 70(2); Geneva Conventions, 1949, common Article 3; Protocol I, *op cit*, Article 18.

<sup>9</sup> *Ibid.*

<sup>10</sup> Rule 55.

<sup>11</sup> Article 23.

<sup>12</sup> Article 70.

<sup>13</sup> Article 18.

<sup>14</sup> Protocol I, *op cit*, Article 51.

<sup>15</sup> *Ibid.*

<sup>16</sup> UN Secretary-General, Report on Emergency Assistance to Sudan. Available at <https://digitallibrary.un.org/record/246010?In=en#record-files-collapse-header>. Accessed 23 March 2022.

<sup>17</sup> *United Nations Meetings Coverage and Press Release*, 'Humanitarian Catastrophe Unfolding before our Eyes, Secretary-General Tells Security Council, Warning Ethiopia's Youth will be Ultimate Casualties', DG/SM/20866, August 2021. Available at <https://www.on.org/press/en/2021/sghsm20866.doc.htm> Accessed 23 March 2022.

<sup>18</sup> Protocol I, *op cit*, Article 70(2).

<sup>19</sup> *United Nations Security Council's 8704th Meeting*, 'Despite 'Quietest Week' since Start of Yemen Conflict, Access Constraints Hinder Humanitarian Aid for 6.7 Million People, Top Officials Warns Security Council', 16 January 2020. Available at <https://reliefweb.int/report/yemen/despite-quietest-week-start-yemen-conflict-access-constraints-hinder-humanitarian-aid>. Accessed 20 March 2022.

<sup>20</sup> Customary International Humanitarian Law, Rule 55; Geneva Convention Relating to the Protection of Civilian Persons in Time of War, 1949, Article 23; Protocol I, *ibid*, Article 70(2); Geneva Conventions, 1949, common Article 3; Protocol II, *op cit*, Article 18.

<sup>21</sup> Protocol I, *op cit*, Article 51; Protocol II, *op cit*, Article 13.

framework for humanitarian assistance will however depend on whether the armed conflict is international or non-international in character; the parties to the conflict; and the controlling power.<sup>22</sup> In the case of international armed conflict, the applicable legal regime is the Geneva Convention Relative to the Protection of Civilian Persons in Time of Armed Conflicts, 1949; and the Protocol Additional to the Geneva Conventions 1949, and Relating to the Protection of Victims of International Armed conflicts, 1977. As for non-international armed conflicts, the applicable law is the common Article 3<sup>23</sup> and Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-international Armed conflicts, 1977. The right to unimpeded access to humanitarian assistance for civilians in need was first established as a norm of Customary International Humanitarian Law which applies by virtue of state practice.<sup>24</sup> Rule 55 stipulates as follows: ‘The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control’. The above provision is further codified under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (GC IV)<sup>25</sup> as it requires state parties ‘to allow the free passage of all consignments of medical and hospital stores intended only for civilians and the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases’. Besides, protected persons are under the GC IV<sup>26</sup> entitled to make application to the protecting powers; International Committee of the Red Cross; or a National Red Cross or Red Crescent Society, as well as to any other organization that might assist them.

On the other hand, Protocol I<sup>27</sup> strengthens and expands the above provision by stipulating for ‘rapid and unimpeded passage of all relief consignments, equipment and personnel’. It further requires relief action to be undertaken whenever the civilian population is in need.<sup>28</sup> Again, like under the GC IV, this obligation is not only imposed on parties to the conflict but also applies to each state party to the Protocol I.<sup>29</sup> To that effect, blocking the passage of relief supplies to civilians in need is a violation of International Humanitarian Law.<sup>30</sup> The provisions of GC IV and Protocol I apply in situations of international armed conflicts as covered under common Article 2 of the GCs. The common Article 3 and the Protocol II<sup>31</sup> which apply to non-international armed also guarantee unimpeded access to humanitarian assistance for civilians in need. On the other hand, the Protocol II<sup>32</sup> enjoins humanitarian organizations operating on the territory of High Contracting Parties to offer a relief service which is impartial and non-discriminatory to the victims of armed conflict and especially if the civilian population is suffering hardship due to lack of supplies essential to their survival such as food, water, shelter, clothing etc.<sup>33</sup> Under the Rome Statute of the International Criminal Court, 1998,<sup>34</sup> ‘willfully impeding relief supplies’ as part of the use of starvation as a method of warfare, is a war crime. On the other hand, intentionally inflicting conditions of life such as the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, constitutes Crime against Humanity.<sup>35</sup>

### **3. Access to Humanitarian Assistance**

Neither the Geneva Conventions nor their Additional Protocols defined ‘humanitarian access’ or ‘humanitarian assistance’. That notwithstanding, ‘humanitarian access’ refers ‘to both access by humanitarian actors to people in need of assistance and protection and access by those in need to the goods and services essential for their survival and health, in a manner consistent with core humanitarian principles’.<sup>36</sup> On the other hand, ‘humanitarian assistance’ in a narrower sense ‘refers to activities and resources that seek to provide only goods and services

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<sup>22</sup>R Barber, ‘Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law, (2009) 91 874 *International Review of the Red Cross*, 371 381.

<sup>23</sup> Geneva Conventions, 1949.

<sup>24</sup> Rule 55

<sup>25</sup> Article 23.

<sup>26</sup> GC IV, *op cit*, Article 30.

<sup>27</sup> Article 70(2).

<sup>28</sup> Article 70(1).

<sup>29</sup> *Ibid*.

<sup>30</sup> Customary International Humanitarian Law, Rule 55; GC IC, *op cit*, Article 23; Protocol I, *op cit*, Article 70(2); Geneva Conventions, 1949, common Article 3; Protocol II, *op cit*, Article 18.

<sup>31</sup> Article 18.

<sup>32</sup> Article 18(1).

<sup>33</sup> Article 18(2).

<sup>34</sup> Article 8(2)(b)(xxv).

<sup>35</sup> Article 7.

<sup>36</sup> Federal Department of Foreign Affairs, *Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework*, version 2 (2014), 13.

essential for meeting the basic needs of persons in situations of armed conflict'.<sup>37</sup> In other words, 'humanitarian access' means free passage of humanitarian organizations to civilians who are in need of humanitarian assistance (such as food, clothing, medical services etc); and the ability of civilians to get such humanitarian assistance from humanitarian organizations without restrictions directly or indirectly emanating from laws, policies or unfavourable measures. Generally, humanitarian operations are subject to the consent of the parties. Such consent is not however to be refused on arbitrary grounds.<sup>38</sup> The refusal of consent must be based on valid reasons which are to be assessed on the circumstances of each case.<sup>39</sup> Such valid reasons for the refusal of consent may include security or imperative military necessity. However, the refusal will not be justified where it will amount to starvation.<sup>40</sup> The requirement for consent is for the purpose of striking a balance between the interests of the civilian population and that of the receiving state by attending to the needs of civilians in need while at the same time avoiding undue intervention in the internal affairs of the receiving state.<sup>41</sup>

Nevertheless, humanitarian organizations must be impartial and non-discriminatory in rendering such humanitarian assistance. While the principle of impartiality requires them not to take side for reasons of interest, prejudice, or personal sympathy; the principle of non-discrimination prohibits the making of distinction on any ground (such as race, religion, sex, political affiliation etc.) which may be unfavourable to the parties or recipients of such humanitarian assistance.<sup>42</sup> Access to humanitarian assistance may be impeded directly or indirectly through the use of laws, policies, or measures making humanitarian operations difficult or almost impossible. For instance, the passage of the Organization of Humanitarian and Voluntary Work Act, 2006 (popularly known as the NGO Law) by the Sudanese government which amongst other things requires mandatory registration of NGOs with the government's Humanitarian Aid Commission (HAC) is a clog on the wheel of humanitarian operations in the Sudanese civil war. This is against the background that the NGO Law limits the operations of humanitarian organizations by blocking any appeal to denials of application for registration.<sup>43</sup> The implication is that the NGO Law determines which humanitarian organizations are to operate in Sudan.<sup>44</sup> Again, the denial of visas and travel permits to United Nations agencies and other aids organizations who want to access and deliver humanitarian assistance and services to the troubled Ethiopia's Tigray region, obstructs humanitarian operations in Tigray.<sup>45</sup> Aids personnel Besides, violence to health workers, illegal demands of taxation and the demand for levies by the NDAGs against both humanitarian organizations and the civilians in need as witnessed in the Afghan conflict, is an indirect measure through which access to humanitarian assistance for civilians in need is impeded.<sup>46</sup>

#### **4. Obligation to provide and the Right to Demand Humanitarian Assistance**

Flowing from the principle of sovereignty, States have the primary responsibility or obligation of providing the basic needs of the civilian population under their control.<sup>47</sup> This is well stipulated by the Guiding Principles on Humanitarian Assistance as follows:

Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.<sup>48</sup>

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<sup>37</sup> *Ibid.*

<sup>38</sup> Protocol I, *ibid*, Article 70(1); Geneva Conventions, 1949, common Article 3; Protocol II, *op cit*, Article 18.

<sup>39</sup> F Schwendimann, 'The Legal Framework of Humanitarian Access in Armed Conflict' (2011) 93 884, *International Review of the Red Cross*, 999.

<sup>40</sup> R Barber, *op cit*, 387-388.

<sup>41</sup> F Schwendimann, *op cit*, 997.

<sup>42</sup> JS Pictet, *The Fundamental Principles of the Red Cross Proclaimed by the Twentieth International Conference of the Red Cross, Vienna, 1973*, Commentary Henry Dunant Institute, Geneva, 1979, 48 & 38.

<sup>43</sup> Background Briefing, 'Sudanese Government Obstruction of Humanitarian Access', Available at <https://www.hrw.org/legacy/backgrounder/africa/sudan0506/5.htm> Accessed 22 February 2022.

<sup>44</sup> *Ibid.*

<sup>45</sup> Ben Parker, 'Relief for Tigray Stalled as Ethiopian Government Curbs Access' *The New Humanitarian*. Available at <https://www.thenewhumanitarian.org/analysis/2021/2/Humanitarian-access-stalled-in-Ethiopia-Tigray> . Accessed 3 March 2022.

<sup>46</sup> United Nations Office of the Coordinator for Humanitarian Affairs, Humanitarian Programme Cycle, 2020, December, 2019, Humanitarian Needs Overview, Afghanistan, 5.

<sup>47</sup> F Schwendimann, *op cit*, 996.

<sup>48</sup> United Nations General Assembly Resolution 46/182(1991) (Guiding Principles on Humanitarian Assistance), Annex, para 4.

The implication is that the affected State is at the forefront of the delivery of humanitarian assistance.<sup>49</sup> Nevertheless, where the affected State is unwilling or unable to live up to its responsibility, a neutral state or an impartial humanitarian organization like the International Committee of the Red Cross can come in to fill in the gap by assisting civilians in need in accordance with the principles of humanity, impartiality and non-discrimination.<sup>50</sup> Thus, the principle of subsidiarity applies in so far as humanitarian assistance is concerned.<sup>51</sup> This is because States have the primary responsibility for organizing relief; and relief societies play an auxiliary role in assisting States to discharge their responsibility.<sup>52</sup> Rohan Perera<sup>53</sup> strengthens this point by asserting that ‘humanitarian assistance should be a subsidiary action which is never to be taken unilaterally’.

On the issue of the right of the civilian population to demand humanitarian assistance, Distein<sup>54</sup> opined that although civilians in need have the right to demand humanitarian assistance from the State in whose control they are, this right is not however absolute in relation to every State in the world. In other words, the obligation the provision of basic needs rests on the State who has control of the civilian population.<sup>55</sup> Neutral States or humanitarian organizations are not bound to offer humanitarian assistance to civilians in need of humanitarian assistance;<sup>56</sup> but then, where they offer to provide such assistance, the civilians may have the right to access the said assistance on the one hand; and the parties to the conflict will be duty bound to allow unimpeded access to humanitarian assistance for such neutral States or humanitarian organizations, on the other hand.<sup>57</sup> It must be noted at this juncture that humanitarian assistance does not amount to interference in the internal affairs of the receiving State;<sup>58</sup> as international law prohibits States from interfering in the internal and external affair of another State.<sup>59</sup> However, in delivering humanitarian assistance, both neutral States and humanitarian organizations must strictly adhere to the International Humanitarian Law principles of humanity, impartiality and non-discrimination.<sup>60</sup>

## **5. Unimpeded Access to Humanitarian Assistance and the Reality of Contemporary Armed Conflicts**

It has earlier been pointed out in this Article that civilians in need of humanitarian assistance are entitled to access such assistance unfettered.<sup>61</sup> This right is a consequence of the general protection accorded civilians against the dangers arising from military operations.<sup>62</sup> Despite this lofty provision however, access to humanitarian assistance is frustrated in contemporary armed conflicts.<sup>63</sup> These constraints result from deliberate laws; policies; and measures making humanitarian operations difficult or almost impossible. This Article will however focus on the Tigray, Yemeni and Afghan civil wars.

### **Tigray Civil War**

The Ethiopia’s Tigray civil war started on the 4<sup>th</sup> day of November 2020 after the Ethiopian Prime- Minister Abiy Ahmed authorized a military offensive against regional forces in Tigray, in response to an alleged attack on a military base by Tigray forces.<sup>64</sup> However, the incident escalated after a few months of rancor between the Abiy led government and the leadership of the Tigray dominant political party – the Tigray People’s Liberation Front (TPLF).<sup>65</sup> The TPLF has been in control of power in Ethiopia until 2018 after the anti-government protests which

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<sup>49</sup>United Nations General Assembly Resolution 46/182(1991) (Guiding Principles on Humanitarian Assistance), Annex, para 4.

<sup>50</sup> F Schwendimann, *op cit*, 997.

<sup>51</sup>Yves Sandoz *et. al.*, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of August 1949* Martinus Nijhoff Publishers, 1987, 1477; R Barber, *op cit*, 386.

<sup>52</sup> *Ibid.*

<sup>53</sup>Rohan Perera, Statement at the 60<sup>th</sup> Session of the International Law Commission, Geneva, July 2008, cited in R Barber, *op cit*, 386.

<sup>54</sup> Y Distein, *op cit*, 78.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, 78 & 79.

<sup>58</sup>ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States*), Merits Judgment of 27 June 1986, para 242; F Schwendimann, *op cit*, 997.

<sup>59</sup>United Nations Charter, 1948, Article 2(4).

<sup>60</sup>ICJ, Case Concerning Military and Paramilitary Activities in and against Nicaragua, *supra*; F Schwendimann, *op cit*, 997.

<sup>61</sup>Customary International Humanitarian Law, Rule 55; GC IV, *op cit*, Article 23; Protocol I, *op cit*, Article 70(2); Geneva Conventions, *op cit*, common Article 3; Protocol I, *op cit*, Article 18.

<sup>62</sup> Protocol I, *op cit*, Article 51; Protocol II, *op cit*, Article 13.

<sup>63</sup> F Schwendimann, *op cit.*, 993-994.

<sup>64</sup>*BBC News*; Ethiopia’s Tigray War: The Short, Medium and Long Story’, 17 November, 2020. Available at <https://www.bbc.com/news/world-africa-5496378>.amp . Accessed 7 March 2022.

<sup>65</sup> *Ibid.*

led to the appointment of Abiy Ahmed as the Ethiopian Prime Minister.<sup>66</sup> Following his appointment, Abiy Ahmed introduced a number of reforms including but not limited to the facilitation of the settlement of the territorial dispute between Ethiopia and Eritrea, which earned him a Nobel Peace Prize in 2019.<sup>67</sup> Nevertheless, the TPLF perceived some of these reforms as an attempt by the Abiy led government to destroy the age long federal system which allowed each region of Ethiopia to manage its affairs including election matters.<sup>68</sup> This move was resisted by Tigrayan as they went headlong to hold their regional election in September, 2020 in violation of the directives of the central government which postponed the election due to the COVID-19 pandemic.<sup>69</sup> The government declared the election held by Tigray illegal and suspended the funding for Tigray while cutting off all other relationships with it. The height of the conflict was recorded in October, 2020 when the ‘Tigrayan forces were accused of attacking army bases to steal weapons.’<sup>70</sup> At this point, the Abiy led government maintained that Tigray has drawn a battle line, hence the Ethiopia Tigray’s war. Following the Tigray civil war, civilians have been subjected to serious hardship and humanitarian crisis such as widespread displacement, rising hunger, lack of access to healthcare, and so on.<sup>71</sup> It was projected that up to 4 million people of the population out of the 6 million population will need some food in 2021 while the UN estimated that at least 2.5 million people will need relief aid as at 2020.<sup>72</sup> The escalation of the humanitarian crisis in the Tigray region led to the call by the United Nations; the United States of America; the European Union; and other international organizations for unimpeded access for aid organizations to make assessment and deliver food and other humanitarian assistance to the civilian population in Tigray. This call, however, fell on deaf ears as humanitarian organizations were denied access to the trouble zone in the face of the unfolding and mounting humanitarian crisis.<sup>73</sup> For instance, there are denials of visas to allow aid agencies to bring in their personnel and relief materials; denial of blanket travel permits; and constant stringent policies making it difficult or almost impossible for these humanitarian organizations to access civilians in need of humanitarian assistance in Tigray.<sup>74</sup> In fact, even the Ethiopian Red Cross which seemed to have an edge over the other humanitarian organizations operating in Ethiopia (in terms of access to civilians in need), has only been able to access 20 percent of the people in Tigray. The level of the restriction is so worrisome that the Secretary-General of the Norwegian Refugee Council asserted: ‘I have rarely seen a humanitarian response so impeded and unable to deliver’.<sup>75</sup>

### **Yemeni Civil War**

The Yemen civil war began in September 2014 between the Shiite rebel group and the Suuni government after the failure of a smooth political transition from former President Ali Abdullah Saleh (who was ousted from power in 2011) to his deputy Abdrabbuh Mansour.<sup>76</sup> Following quagmire, the rebel group took over the control of Sana’a- the Yemeni capital and demanded for among other things, a change in government.<sup>77</sup> However, when these demands could not be met, the Shiite rebel group took over the Presidential palace in January 2015 and forced President Abd Rabbu Mansour Hadi to resign.<sup>78</sup> In September 2015, Abd Rabbu who had earlier resigned his office as the President of Yemen withdrew his resignation and returned to Aden thereby escalating the hostilities between the government and the rebel group.<sup>79</sup> All efforts by the United Nations to initiate a Peace Talk between both sides in 2016 failed. Meanwhile, Abd Rabbu Mansour Hadi was exiled in Saudi Arabia.<sup>80</sup> In July 2016, the Houthi and the former President Ali Abdullah Saleh (who was ousted in 2011) formed a political

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<sup>66</sup> *Ibid.*

<sup>67</sup> *BBC News*; Ethiopia’s Tigray War: The Short, Medium and Long Story’, 17 November, 2020. Available at <https://www.bbc.com/news/world-africa-5496378>.amp . Accessed 7 February 2022.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> Ben Parker, ‘Relief for Tigray Stalled as Ethiopian Government Curbs Access’ *The New Humanitarian*. Available at <https://www.thenewhumanitarian.org/analysis/2021/2/Humanitarian-access-stalled-in-Ethiopia-Tigray> . Accessed 3 March 2022.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> Ben Parker, ‘Relief for Tigray Stalled as Ethiopian Government Curbs Access’ *The New Humanitarian*. Available at <https://www.thenewhumanitarian.org/analysis/2021/2/Humanitarian-access-stalled-in-Ethiopia-Tigray> . Accessed 3 February 2022.

<sup>76</sup> *BBC News*, 19 June 2020 ‘Yemen Crisis: Why is there War?’. Available at <https://www.bbc.com/news/world-middle-east-29319423> . Accessed 15 March 2022.

<sup>77</sup> Global Conflict Tracker, ‘War in Yemen’. Available at <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>. Accessed 10 March 2022.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

council for the purpose of governing Sana'a the Yemeni capital and some part of northern Yemen. Unfortunately, the political council collapsed in 2017 and former President Saleh and his group waged war against the Houthis. Saleh was killed in the process and his group defeated.<sup>81</sup> An attempt to intervene in the Yemeni conflict by the regional powers, the Gulf States and Saudi Arabia rather escalated the conflict and fuelled the animosity between Sunni and Shia.<sup>82</sup> Following the escalation of hostilities between the government forces and the Houthis, 24 million people out of a population of 30 million people remain in need of one form of humanitarian assistance or the other thereby making<sup>83</sup> Yemen the world's worse humanitarian crisis.<sup>84</sup> Scarcity of food and water; shortage of medical personnel and supplies, and internal displacement are some of the consequences of the conflict.

The independent investigation of *Human Rights Watch* noted that about 3.6 million people are internally displaced;<sup>85</sup> while the United Nations estimated that 131,000 of the estimated 233,000 deaths in Yemen since the eruption of the conflict resulted indirectly from lack of access to food, healthcare, and insecurity.<sup>86</sup> Efforts to address the humanitarian crisis have been blocked by both government authorities and the Houthis as they impose restrictions and obstacles making humanitarian operations difficult.<sup>87</sup> The Houthis have in particular obstructed supplies from reaching civilians and have on many occasions diverted aid supplies to Houthi officials, supporters, and fighters.<sup>88</sup> The Houthi rebel group has also been accused of blocking 262 containers in Hodeida port carrying among other things medical supplies belonging to the World Health Organization.<sup>89</sup> However, obstruction of humanitarian assistance is not particular to the Houthi rebel group as government authorities also block the passage of commercial goods including food and fuel.<sup>90</sup> Government authorities have also been accused of imposing onerous bureaucratic requirements on aid agencies;<sup>91</sup> delaying the approval of aid projects, obstructing aid assessments geared towards identifying civilians in need of humanitarian assistance; diversion of aid and violence against humanitarian personnel and their property.<sup>92</sup> These restrictions have negatively affected civilians' access to food, healthcare, water and other things essential to their survival.<sup>93</sup>

### **Afghanistan**

The Afghan war followed from the September 11, 2001 attack of four U.S jetliners by al-Qaeda terrorist group that was harboured by the Taliban.<sup>94</sup> After the said attack, the U.S demanded the leader of the Taliban Mohammed Omar to handover to it all the leaders of al-Qaeda within its territory. On the failure of Mohammed Omar to comply with the said demand, the U.S, in collaboration with the Central Intelligence Agency (CIA), Northern Alliance forces, the UK among others collaborators, invaded Afghanistan, toppled the Taliban, and regained some

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<sup>81</sup> *Ibid.*

<sup>82</sup> Global Conflict Tracker, 'War in Yemen'. Available at <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>. Accessed 10 March 2022.

<sup>83</sup> *Human Rights Watch*, 'Deadly Consequences: Obstruction of Aid in Yemen during Covid-19'. Available at <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19>. Accessed 15 March 2022.

<sup>84</sup> Global Conflict Tracker, 'War in Yemen'. Available at <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>. Accessed 10 March 2022.

<sup>85</sup> *Human Rights Watch*, 'Deadly Consequences: Obstruction of Aid in Yemen during Civi-19'. Available at <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19>. Accessed 15 March 2022.

<sup>86</sup> Invisible Civilians, 'The Challenge of Humanitarian Access in Yemen's Forgotten War'. Available at <https://www.hrw.org/report/2008/11/19/invisible-civilians/challenge=humanitarian-access-yemens-forgotten-war>. Accessed 20 March 2022.

<sup>87</sup> *Human Rights Watch*, 'Deadly Consequences: Obstruction of Aid in Yemen during Civi-19'. Available at <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19>. Accessed 15 March 2022.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> Invisible Civilians, 'The Challenge of Humanitarian Access in Yemen's Forgotten War'. Available at <https://www.hrw.org/report/2008/11/19/invisible-civilians/challenge=humanitarian-access-yemens-forgotten-war>. Accessed 20 March 2022.

<sup>91</sup> *Human Rights Watch*, 'Deadly Consequences: Obstruction of Aid in Yemen during Civi-19'. Available at <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19>. Accessed 20 March 2022.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Human Rights Watch*, 'Deadly Consequences: Obstruction of Aid in Yemen during Civi-19'. Available at <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19>. Accessed 20 March 2022.

<sup>94</sup> 'Afghanistan War, 2001-2014'. Available at <https://www.britannica.com/event/Afgahanistan-War>. Accessed 20 March 2022.

major cities formerly held by the Taliban, including Kandahar.<sup>95</sup> The dismantled members of Taliban scattered into rural areas in southern Afghanistan and to Pakistan from where they waged war against the government in Kabul; Afghan national security forces; and international coalition troops.<sup>96</sup> The Afghan war is made up of three phases. The first phase which lasted only for two months, witnessed the defeat of the Taliban.<sup>97</sup> The second phase, which lasted from 2002-2008, was a strategy geared towards the disbandment/ejection of the Taliban from Afghanistan; and the rebuilding of Afghanistan's core institutions.<sup>98</sup> The third phase was a classic counterinsurgency, covering the periods between 2008 -2014. This phase was facilitated by former President Barack Obama's 2009 decision to increase the U.S military capacity in Afghanistan; with an arrangement to gradually withdraw the foreign troops from the year 2011 while the Afghan Military and Police takeover and continue where the foreign troops had stopped.<sup>99</sup> In 2014, the U.S led coalition eventually ended its mission in Afghanistan and the Afghan National Defense and Security Forces (ANDSF) was charged with the responsibility to oversee the security of Afghanistan.<sup>100</sup> However, this strategy did not succeed as the ANDSF was not militarily prepared and capable of withstanding the Taliban and other terrorists groups and their activities.<sup>101</sup> This was manifest in the high level of terrorists' activities and civilian casualties in Afghanistan. Hence, in 2017, the US came back to continue the combat mission.<sup>102</sup> Although there are reports that there was a form of truce between the U.S. forces and the Taliban terrorist group by the end of 2020, reports show that there is substantial increase in violent confrontations and armed attacks in Afghanistan throughout 2021.<sup>103</sup> In fact, the United Nations Assistance Mission (UNAMA) reported a spike in civilian casualties (1,659 killed and 3,524 injured) between January and June 2021, a figure representing 47 per cent increase compared to first half of 2020.<sup>104</sup>

In July 2021, the US, under the leadership of President Joe Biden, finally withdrew its troops from Afghanistan<sup>105</sup> leaving only a handful of them to protect its embassy in Kabul.<sup>106</sup> Meanwhile, Taliban was fast succeeding in capturing the major urban areas and provincial capitals including Kandahar, Herat, capital of southern Nimruz, Mazar-i-Sharif and Jalalabad.<sup>107</sup> However, precisely on the 15<sup>th</sup> of August 2021, the Taliban stormed the ANDSF bases and outposts and invaded Kabul (the capital of Afghanistan), as a result of which the President Ashraf Ghani fled while the Afghan government collapsed.<sup>108</sup> At this point, the Taliban entered the Presidential palace and took over the government of Afghanistan.<sup>109</sup> The withdrawal of U.S. forces and the Taliban takeover of Afghan government triggered humanitarian crisis in addition to the suffering to which the civilian population are already exposed to as a result of natural disasters and insurgency.<sup>110</sup> Forced displacement, food insecurity, lack of access to food, water and healthcare,<sup>111</sup> and attacks on health personnel<sup>112</sup> are some of the consequences of the situation in Afghanistan.

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<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> 'Afghanistan War, 2001-2014'. Available at <https://www.britannica.com/event/Afgahanistan-War> . Accessed 17 March 2022.

<sup>99</sup> *Ibid.*

<sup>100</sup> 'Afghanistan War, 2001-2014'. Available at <https://www.britannica.com/event/Afgahanistan-War> . Accessed 27 March 2022..

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Centre for Statistics and International Studies, 'Taliban Takeover: Humanitarian Implications and Recommendations for the United States', 24 August 2021. Available at <https://www.ciss.org/analysis/taliban-takeover-humanitarian-implications-and-recommendations-united-states> . Accessed 27 March 2022..

<sup>104</sup> United Nations Assistance Mission in Afghanistan, 'Afghanistan, *Protection of Civilians in Armed Conflict Midyear Update:1 January to 30 June 2021*, 1. Available at <https://unama.unmissions.or.protection-of-civilians-reports> . Accessed 17 March 2022.

<sup>105</sup> *Ibid.*

<sup>106</sup> Global Conflict Tracker, 'War in Afghanistan'. Available at <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan> . Accessed 19 March 2022.

<sup>107</sup> Global Conflict Tracker, 'War in Afghanistan'. Available at <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan> . Accessed 19 March 2022.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> Centre for Statistics and International Studies, 'Taliban Takeover: Humanitarian Implications and Recommendations for the United States', 24 August 2021. Available at <https://www.ciss.org/analysis/taliban-takeover-humanitarian-implications-and-recommendations-united-states> . Accessed 19 March 2022.

<sup>112</sup> A Stoddard *et. al.*, 'Survey on the Coverage, Operational Reach and Effectiveness of Humanitarian Aid' *Humanitarian Access SCORE Report: Afghanistan*, April 2020, p 5.

Afghanistan already ‘represented the world’s third largest humanitarian operation, with over 18 million people requiring assistance’.<sup>113</sup> Humanitarian Access SCORE reports that Afghanistan ‘remains in a state of chronic humanitarian crises’.<sup>114</sup> However, there have been access impediments<sup>115</sup> and many vulnerable people are unable to access humanitarian assistance to satisfy their basic needs.<sup>116</sup> A humanitarian operation in Afghanistan witnesses a lot of restrictions from both Taliban and other rebel groups. The Afghanistan Humanitarian Response Plan for 2018-2021 notes particular challenges to humanitarian access coming from growing bureaucratic constraints from the government and the Taliban’s demands to collect taxes on aid entering its area of control.<sup>117</sup> The problem of insecurity has also exacerbated the obstruction of access to humanitarian assistance for the teeming number of Afghans in need of assistance.<sup>118</sup> There have been incidents of violence/attack against humanitarian workers and their assets and facilities.<sup>119</sup> The majority of the incidents relates to intimidations of UN and NGO staff, thefts, occupation/invasion of facilities and looting of assets belonging to NGO and UN, and hijacking of vehicles by Taliban.<sup>120</sup> As a result of insecurity, humanitarian organizations have been forced to maintain low-profile operations’ through a combination of highly localized staffing and near or complete organizational invisibility.<sup>121</sup> These incidents have serious effect on humanitarian operations.<sup>122</sup> Thus SCORE noted that ‘Agencies in Afghanistan have faced huge challenges over the last two decades in maintaining a large humanitarian response and have had to face considerable security crisis and repeated violence... However, in spite of the best efforts, it remains hard for international humanitarian actors to adequately meet needs and to successfully navigate the access restrictions arising from both government and non-State armed actors.’<sup>123</sup>

## **6. Facilitating Civilian Protection through Unimpeded Access to Humanitarian Assistance for Civilians in Need**

The situation of armed conflict no doubt makes civilians highly vulnerable to such humanitarian crisis as lack of access to food, water, shelter, healthcare and other needs necessary for their survival. However, mindful of these hardships, International Humanitarian Law adequately protects civilians in situations of armed conflict.<sup>124</sup> It does not matter whether the conflict is international<sup>125</sup> or non-international in character; what is important is that an armed conflict has ensued.<sup>126</sup> The underlying idea of International Humanitarian Law is protection of persons not taking active part in hostilities, whether these persons are civilians<sup>127</sup> or persons placed *hors de combat*.<sup>128</sup> In other words, International Humanitarian Law seeks to protect potential victims of armed conflict<sup>129</sup> by striking a balance between military necessity and humanitarian concern. Civilians in particular enjoy general protection against the effects of armed conflicts.<sup>130</sup> This protection applies in both international and non-international armed conflicts.<sup>131</sup> Thus, Protocol I<sup>132</sup> which applies to situations of international armed conflicts provides: ‘the civilian population and individual civilians shall enjoy general protection against the dangers arising from military

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<sup>113</sup>Joint Statement by WHO Regional Director for Eastern and Mediterranean Region, Dr. Ahmed Al-Mandhari, and UNICEF Regional Director for South Asia, George Laryea-Adeji, 22 August 2021, ‘Amidst Kabul Airport Blockage, WHO and UNICEF call for Assistance to Deliver Critical Supplies to Afghanistan’. Available at <https://www.unicef.org/press-releases/amidst-kabul-airport-blockage-who-and-unicef-call-assistance-deliver-critical-health> . Accessed 19 March 2022.

<sup>114</sup> A Stoddard *et. al.*, *op cit*, p 3.

<sup>115</sup> *Humanitarian Response*, ‘Afghanistan: Snapshot of Population Movements (January-August 2021).

<sup>116</sup> A Stoddard *et. al.*, *op cit*, p 4.

<sup>117</sup> OCHA (2018) Afghanistan.

<sup>118</sup> Humanitarian Response Plan 2018-2021.

<sup>119</sup> A Stoddard *et. al.*, *op cit*, 9

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup>Joint Statement by WHO Regional Director for Eastern and Mediterranean Region, Dr. Ahmed Al-Mandhari, and UNICEF Regional Director for South Asia, George Laryea-Adeji, 22 August 2021, ‘Amidst Kabul Airport Blockage, WHO and UNICEF call for Assistance to Deliver Critical Supplies to Afghanistan’. Available at <https://www.unicef.org/press-releases/amidst-kabul-airport-blockage-who-and-unicef-call-assistance-deliver-critical-health> . Accessed 19 March 2022.

<sup>123</sup> A Stoddard *et. al.*, 15.

<sup>124</sup> Protocol I, *op cit*, Article 51; Protocol II, *op cit*, Article 13.

<sup>125</sup> Geneva Conventions, 1949, common Article 2.

<sup>126</sup> *ICTY, Prosecutor v Tadic*(IT-94-1). Available at <https://www.icty.org> . Accessed 23 March 2022.

<sup>127</sup> Protocol I, *op cit*, Article 51; Protocol II, *ibid*, Article 13.

<sup>128</sup> *Op cit*, Article 41; Geneva Conventions, *op cit*, common Article 3.

<sup>129</sup>A Nwotite, ‘Application and Applicability of the Law of Armed Conflict to the Armed Conflicts within the Context of Covid-19 Pandemic’, (2021) 3 (2) *IRLJ*, 127.

<sup>130</sup> Protocol I, *op cit*, Article 51; Protocol II, *op cit*, Article 13.

<sup>131</sup> *Ibid.*

<sup>132</sup> Article 51(1).

operations. Protocol II<sup>133</sup> has also similar provision to that effect applicable to situations of non-international armed conflicts.

As a consequence of the general protection accorded civilians against the dangers arising from the effects of armed conflicts, starvation as a method of warfare is among other things prohibited<sup>134</sup> in both international and non-international armed conflicts. The prohibition is against the background that starvation threatens the existence of the civilian population and invariably civilians' protection.<sup>135</sup> No population survives without such basic necessities as food, water and healthcare. To that effect, (with respect to the Ethiopia's Tigray civil war), the UN asserts that 'the lives of millions of civilians in Tigray and neighbouring region...depends on our capacity to reach them with food, nutrition supplies, medicine and other critical assistance'.<sup>136</sup> On the other hand, OCHA noted that 'With lack of essential medicines, vaccines, and diagnostic equipment, coupled with limited access to essential humanitarian assistance and services, increasing number of children, women and people with chronic diseases are at grave risk'.<sup>137</sup> Lack of food leads to starvation; extreme starvation leads to 'severe acute malnutrition';<sup>138</sup> and severe acute malnutrition is most likely to result in death. A humanitarian group operating in Tigray has reported more deaths owing to starvation.<sup>139</sup> In the same vein, access to healthcare is an essential element of human survival. The sick, the wounded, expectant mothers, children, young and old, all need medical care to enhance their lives and wellbeing. Thus, the protection and the preservation of the civilian population as envisaged by International Humanitarian Law among other things, lies in the ability of civilians to access the basic needs of life such as food, healthcare, water, shelter and so on.

Humanitarian access is therefore fundamental to humanitarian assistance,<sup>140</sup> and in fact an integral part of and the gateway to civilian protection. Access to humanitarian assistance lies on the one hand, in the ability of humanitarian organization to enter crisis areas in order to assess and offer assistance to civilians in need; and on the other hand, in the ability of the civilian population to benefit from such assistance.<sup>141</sup> The case of the Tigray civil war is very illustrative as numerous civilians' lives were lost owing to lack of access to both food and healthcare. Impeding humanitarian access does not promote the protection of civilians. Mindful of the effect of impeding humanitarian access to civilians in need, the United Nations has regularly and severally called upon parties to conflicts to allow the passage of basic needs to conflict areas.<sup>142</sup> It is however important to note at this point that humanitarian operations is very much dependent on the safety and security of humanitarian workers. The protection of relief workers thus becomes an essential aspect and extension of the protection accorded civilians in International Humanitarian Law.<sup>143</sup> Thus directing attacks against relief workers violates International Humanitarian Law<sup>144</sup> and is in fact a war crime.<sup>145</sup> The United Nations has also reiterated the importance of ensuring the safety and security of humanitarian workers<sup>146</sup> as a means of enhancing humanitarian assistance and by implication civilian protection. It is therefore safe to assert at this juncture that unimpeded access to humanitarian assistance is key to civilian protection.

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<sup>133</sup> Article 13.

<sup>134</sup> Protocol I, *op cit*, Article 54(1); Protocol II, *op cit*, Article 14 .

<sup>135</sup> R Barber, *op cit*, 387-388.

<sup>136</sup> United Nations News, Tigray Aid situation Worsening by the Day, warn UN Humanitarians'. Available at <https://www.news.un.org/en/story/2021/09/1099022> . Accessed 19 October 2021.

<sup>137</sup> *The Wall Street Journal*, 'UN Warns of Escalating Humanitarian Crisis in Ethiopia's Tigray Region'. Available at <https://www.wsj.com/articles/u-n-warns-of-escalating-humanitarian-crisis-in-ethiopia-tigray-region-11633105224> . Accessed 22 March 2022.

<sup>138</sup> Tom Dannenbaum, 'A Landmark Report on Starvation as a Method of Warfare'. Available at <https://www.justsecurity.org/73350> . Accessed 20 March 2022.

<sup>139</sup> *The Wall Street Journal*, 'UN Warns of Escalating Humanitarian Crisis in Ethiopia's Tigray Region'. Available at <https://www.wsj.com/articles/u-n-warns-of-escalating-humanitarian-crisis-in-ethiopia-tigray-region-11633105224> . Accessed 22 March 2022.

<sup>140</sup> Federal Department of Foreign Affairs, *Humanitarian Access in Situations of Armed Conflict, Handbook on the International Normative Framework*, version 2 (2014), 14.

<sup>141</sup> *Op cit*, 13.

<sup>142</sup> *United Nations Meetings Coverage and Press Release*, 'Humanitarian Catastrophe Unfolding before our Eyes, Secretary-General Tells Security Council, Warning Ethiopia's Youth will be Ultimate Casualties', DG/SM/20866, August 2021. Available at <https://www.on.org/press/en/2021/sgsm20866.doc.htm> Accessed 19 March 2022.

<sup>143</sup> Protocol I, *op cit*, Article 71(2).

<sup>144</sup> *Op cit*, Article 70(2).

<sup>145</sup> Rome Statute of the International Criminal Court, *op cit*, Article 8(2)(b)(xxv).

<sup>146</sup> *United Nations Meetings Coverage and Press Release*, 'Humanitarian Catastrophe Unfolding before our Eyes, Secretary-General Tells Security Council, Warning Ethiopia's Youth will be Ultimate Casualties', DG/SM/20866, August 2021. Available at <https://www.on.org/press/en/2021/sgsm20866.doc.htm> Accessed 19 March 2022.

## 7. Steps required to be taken by parties to Ensure Unimpeded Access to Humanitarian Assistance

It has earlier been pointed out that it is the primary obligation of States to ensure the provision of the basic needs of the civilian population within their control.<sup>147</sup> However, often times, discharging this obligation may not be feasible as parties to the conflict may not be willing or may not have the capacity to that effect. In such a situation, a neutral State or impartial humanitarian organizations may come in to provide such humanitarian assistance in line with the principle of International Humanitarian Law.<sup>148</sup> On the other hand, parties to the conflict must allow unimpeded access to these humanitarian organizations for the purpose of providing humanitarian assistance to the civilian population within their control. Allowing unimpeded access to humanitarian assistance is an obligation imposed on parties to the conflict not just by virtue of treaty obligation<sup>149</sup> but also by virtue of state practice.<sup>150</sup> To satisfy or rather fulfill this obligation therefore, parties to the conflict are required to take certain steps such as consenting to; and facilitating humanitarian assistance; and ensuring the safety and security of humanitarian personnel operating within their territories.

### Consent to Humanitarian Assistance

In International Humanitarian Law, parties to the conflict have the obligation to allow unimpeded access to humanitarian assistance for civilians in need.<sup>151</sup> This obligation is however 'subject to the agreement of the Parties concerned in such relief actions'.<sup>152</sup> The implication is that the provision of humanitarian assistance by neutral States or humanitarian organizations must be consented to by the parties to the conflict before such humanitarian operations can take place.<sup>153</sup> However, as part of parties' obligation to ensuring the protection of the civilian population within their control, such consent must not be withheld on arbitrary grounds once such humanitarian need arises; and provided that the services of the humanitarian organizations are impartial and non-discriminatory, unless imperative military necessity requires it.<sup>154</sup> The ICRC has also reiterated the need for parties to the conflict to consent to humanitarian assistance.<sup>155</sup> Nevertheless, in as much as parties must not withhold consent; they can however exercise control over humanitarian operations taking place within their territories.<sup>156</sup> On the other hand, humanitarian personnel must act in accordance with the receiving party's domestic laws and security requirements.<sup>157</sup>

### Facilitation of Humanitarian Assistance

As part of the primary obligation imposed on States to ensure the provision of the basic needs of the civilian population within their control,<sup>158</sup> parties to the conflict are required to facilitate humanitarian operations within their territory.<sup>159</sup> This obligation can be discharged through the relevant agency (such as the Ministry of Humanitarian Affairs in Nigeria); by seeking the assistance of humanitarian organizations in that regard as this does not amount to interference in the internal affairs of the receiving State<sup>160</sup> provided however that the said organizations abide by the principles of humanity, impartiality and non-discrimination in the discharge of their operations.<sup>161</sup> As part of this measure, States must provide regulatory and institutional framework to ensure the enhancement of humanitarian operations within their territory. Such regulatory framework will among other things ensure the registration of humanitarian organizations that operate within their territories and the monitoring of their activities. A very good example is the Sudanese Organization of Humanitarian and Voluntary Work Act, 2006 (NGO Law). On the other hand, humanitarian organizations must liaise with the relevant government ministries and abide by the relevant regulatory framework to ensure a standard and hitch free delivery of

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<sup>147</sup>United Nations General Assembly Resolution 46/182(1991) (Guiding Principles on Humanitarian Assistance), Annex, para 4.

<sup>148</sup> F Schwendimann, *op cit*, 997.

<sup>149</sup>Customary International Humanitarian Law, Rule 55; GC IV, *op cit*, Article 23; Protocol I, *op cit*, Article 70(2); Geneva Conventions, *op cit*, common Article 3; Protocol II, *op cit*, Article 18.

<sup>150</sup> Customary International Law, *op cit*, Rule 55.

<sup>151</sup>*Ibid*; GC IV, *op cit*, Article 23; Protocol I, *op cit*, Article 70(2); Geneva Conventions, *op cit*, common Article 3; Protocol II, *op cit*, Article 18.

<sup>152</sup> Protocol I, *op cit*, Article 70(1); Protocol II, *op cit*, Article 18(2).

<sup>153</sup> *Ibid*

<sup>154</sup> Y Sandoz, C Swinarski, B Zimmermann (eds), *Commentary on the Additional Protocols*, *op cit*, 539.

<sup>155</sup> 26<sup>th</sup> International Conference of the Red Cross and Red Crescent, Res. II.

<sup>156</sup> GV IV, *op cit*, Article 23; Protocol I, *op cit*, Article 70(3).

<sup>157</sup> Protocol I, *op cit*, Article 71(4).

<sup>158</sup>Paul Harvey, 'Towards Good Humanitarian Government-The Role of the Affected State in Disaster Response' Humanitarian Policy Group Report 29 September 2009, 7; UNGA Res. 46/182(1991).

<sup>159</sup> GC IV, *op cit*, Article 59(1).

<sup>160</sup> *Nicaragua v United States*, *supra*.

<sup>161</sup> Paul Harvey, *op cit*7.

humanitarian relief.<sup>162</sup> This responsibility may be discharged by copies of the professional qualifications to be registered with the relevant government office; or by reviewing the project proposal of the humanitarian organization seeking to operate in the recipient's State.<sup>163</sup> Additionally, States are to coordinate and monitor the quality and effectiveness of relief actions within their territory.<sup>164</sup> This responsibility flows from the primary responsibility to provide for the basic needs of the civilian population within their territory being also a consequence of State sovereignty.<sup>165</sup> This duty could be discharged through such relevant agencies like the National Disaster Response Management, ASEAN, or OCHA that ensure the quality of the humanitarian assistance delivered by humanitarian agencies.<sup>166</sup> States must therefore be at the forefront of relief actions within their territories.<sup>167</sup>

### **Provision of Assistance to Relief Personnel & Ensuring their safety and Protection**

Humanitarian organizations only come in to complement the efforts of States in the provision of relief assistance since the primary responsibility rests on States.<sup>168</sup> To that effect, States must assist relief workers, to the full extent practicable, in carrying out their responsibility.<sup>169</sup> They must also ensure that any act that is capable of constituting a clog in the wheel of relief actions (whether by way of law or policies) are done away with, unless the security of the civilian population requires it; or where it is for imperative military necessity. Hence, relief consignments must be exempted from taxes, charges, and customs duties. Besides, administrative formalities and logistics particularly with regards to the granting of entry visas for international humanitarian personnel must be simplified, except where not necessary.<sup>170</sup> On the other hand, records have shown that insecurity among other factors account for the increasing decline in humanitarian operations.<sup>171</sup> It is therefore imperative that host States ensure the safety and security of relief workers.<sup>172</sup> Ensuring the safety and security of humanitarian personnel is an important responsibility of the parties to the conflict if humanitarian operations must be effective. Humanitarian personnel must enjoy freedom of movement and assistance to enable them access and assist civilians who need their assistance. The United Nations has severally called upon States and non-states armed actors to 'promote the safety, security and freedom of movement of humanitarian personnel and United Nations and its associated personnel and their assets'<sup>173</sup> in order allow and facilitate access to civilian population affected by armed conflict'.<sup>174</sup> The United Nations has also showed dissatisfaction over and condemned attacks against objects protected under International Humanitarian Law.<sup>175</sup>

### **8. Conclusion**

No population can survive without access to the basic needs of life such as food, water, shelter, healthcare and so on. On the other hand, States have the primary responsibility of providing these basic needs, although impartial humanitarian organizations may play a complementary role where States lack the capacity or neglect to do so. This draws from the general protection accorded civilians against the dangers of military operations, which among other things prohibits starvation as a method of warfare. Unimpeded access to humanitarian assistance is imperative if the protection of the civilian population which is the hallmark of International Humanitarian Law must be realized. Parties to the conflict must therefore step up to their responsibility of providing basic needs of the civilian population within their control. This can only be possible where parties to the conflict discharge their obligation under International Humanitarian by:

1. Assisting humanitarian organizations in their effort to provide relief services.

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<sup>162</sup> Caroline Ford, *op cit*, 8.

<sup>163</sup> *Ibid*.

<sup>164</sup> Paul Harvey, *op cit*, 8.

<sup>165</sup> Caroline Ford. 'Humanitarian Exchange' (2003) vol. 2, *Humanitarian Practice Network*, 2 & 7. Available at <https://odiphn.org/magazine/the-accountability-of-states-in-humanitarian-response>. Accessed 9 March 2022.

<sup>166</sup> Caroline Ford, *op cit*, 8.

<sup>167</sup> Paul Harvey, *op cit*7.

<sup>168</sup> Yves Sandoz *et. al.*, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of August 1949* Martinus Nijhoff Publishers, 1987, 1477; R Barber, *op cit*, 386.

<sup>169</sup> Protocol I, *op cit*, Article 71(3).

<sup>170</sup> Protocol I, *op cit*, 71(3).

<sup>171</sup> R Barber, *op cit*, 373.

<sup>172</sup> Paul Harvey, *op cit*, 8; Protocol I, *op cit*, Article 71; 69(2).

<sup>173</sup> UNSC, 'Protection of United Nations Personnel, Associated Personnel and Humanitarian Personnel in Conflict Zones' UNSC Res. 1502 (2003), para 4.

<sup>174</sup> UNSC Res.1894 (2009).

<sup>175</sup> UNSC, Res. 1265 (1999), para 2.

2. Avoiding all measures and policies such as unnecessary imposition of taxes, customs duties, bureaucratic, administrative and logistical processes which constitute a clog on the wheel of the wheel of humanitarian operations.
3. Ensuring freedom of movement for humanitarian personnel/relief materials by removing visa restrictions.
4. Ensuring the safety and security of humanitarian personnel operating within their territories.
5. The international community must also constantly remind parties to the conflict of their obligation under International Humanitarian Law to facilitate unimpeded humanitarian access for civilians under their control as has constantly be done by the United Nations and International Committee of the Red Cross.
6. The international community must also impose sanctions on parties particularly guilty of impeding humanitarian access.