

POLICY BRIEF

SAFEGUARDING THE HUMANITARIAN SPACE IN AFRICA: ANALYSIS OF CURRENT STATE OF AFFAIRS AND POLICY RECOMMENDATIONS

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Table of Content

Introduction.....	1
The humanitarian situation in Africa.....	1
Existing International and Regional Frameworks and Institutions Addressing Humanitarian Access:	2
International humanitarian law	2
AU's Legal and Policy Frameworks for Humanitarian Access	4
Role of AU institutions	6
Emerging Trends and Challenges Facing the Humanitarian Space and Access in Africa	6
Towards Strengthening the Protection of the Humanitarian Space: Policy Recommendations.....	9
Conclusion.....	11

INTRODUCTION

The dire state of the humanitarian situation in Africa is currently shaped by three inter-related factors. The first dimension is the exponential increase of the humanitarian need on the continent. As further discussed below, this is attributable, among others, to the increase in the number, geographic spread and level of violence of conflicts and crisis on the continent in recent years. This situation is further compounded by other factors including climate change induced extreme weather conditions.

The second dimension is that despite the increase in the humanitarian need the resources required for meeting these needs are declining and in short supply. This is a major factor behind the African Union's extraordinary summit held in May 2022 in Malabo, Equatorial Guinea.

The third dimension that has made the already dire situation more grave relates to the shrinking humanitarian space. In part this is a result of the shift in the nature of conflicts and the related and worrying tendency of conflict parties to engage in hostilities with little or no regard to international humanitarian law.

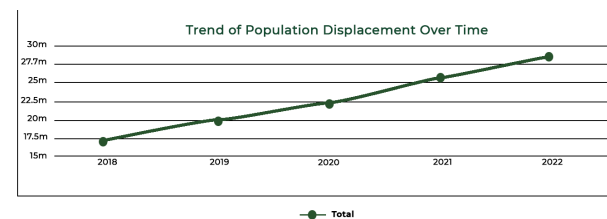
While the growing humanitarian need necessitates enhanced and concerted action on preventive measures and the steps initiated as elements of the outcome of the Malabo humanitarian summit, the dimension of the humanitarian situation in Africa that deserves particular attention relates to the humanitarian space. Securing and expanding this space is central for preserving a measure of humanity in times of war through mitigating the human suffering that arises from conflicts. For this, it is imperative that salient provisions of international humanitarian law to guarantee and ensure humanitarian access be mainstreamed in the response to the humanitarian situations on the continent. In this context, this policy brief examines current trends and challenges and offers critical recommendations to safeguard and preserve the humanitarian space, thus ensuring that populations in need of protection and assistance receive the help that they require and affected society retains the minimum humane foundation

necessary for resolving conflicts.

THE HUMANITARIAN SITUATION IN AFRICA

The humanitarian situation in Africa is at a critical point, with armed conflicts, political instability, and other crises affecting a number of countries across the continent. This has resulted amongst other consequences in heavy loss of life, destruction of homes and properties, displacement of people, and a dire need for humanitarian assistance.

Currently, there are close to 35 armed conflicts in Africa involving states and non-state armed groups (NSAGs) and in some cases NSAGs engaged in conflicts with other NSAGs. The humanitarian impact of these conflicts in Africa has been growing worse by the year. Between the year 2018- 2022 alone, the number of total fatalities has significantly increased from 16,603 in 2018 to about 126,309 reported fatalities at the end of 2022, a whopping 7.6 folds increase from 2018.¹ In terms of population displacement, the number of internally displaced persons (IDPs) has also shown a massive increase over the years, where in the five years between 2018 to the end of 2022 there has been an increase of over 11,345,100 new IDPs in the continent.²



Not any less significant is in 2021, it was estimated that about '26 million people lived in areas where access to humanitarian aid and basic services was fragile'³ Today, the indications are far worse. These stark statistics underscore the importance of access

1 Uppsala Conflict Data Programme (UCDP) "UCDP Dataset Download Center." n.d. <https://ucdp.uu.se/downloads/index.html#armedconflict>

2 UNHCR. Refugee Data Finder <https://www.unhcr.org/refugee-statistics/download?url=Zlmo9x> In 2018 there were 16,728,500 IDPs in Africa, in 2019 – 19,646,230, in 2020 – 22,059,100, in 2021 – 25,357,100, and in 2022 – 28,073,600

3 <https://info.icrc.org/humanitarian-access>

to humanitarian aid and delivery of basic services for the teeming victims of the effects of the numerous armed conflicts across the continent, thus highlighting the pertinence of the preservation of the humanitarian space to alleviate the situations of the populations. Regrettably, humanitarian access is threatened by various factors leading therefore to the 'shrinking' of the humanitarian space in the continent. The shrinking of the humanitarian space undoubtedly constitutes a pressing challenge that demands immediate attention and concerted action. Humanitarian personnel and Impartial humanitarian organizations, whose missions are centered around delivering life-saving aid and assistance, are increasingly encountering formidable barriers to their operations. These barriers arise from a complex web of factors including protracted conflicts, security risks, governmental restrictions, and the proliferation of non-state armed groups across the continent. Humanitarian workers continue to be targeted in attacks, and humanitarian organizations are facing restrictions as a result of measures taken by governments and other organisations which may be legitimate in the face of security challenges, but entail the unintended effects of limiting or restricting humanitarian action. As a result, the vital lifelines to vulnerable communities are being constricted, thus undermining the fundamental principles of humanity, impartiality, neutrality, and independence that guide humanitarian action. The preservation of the humanitarian space is therefore of utmost importance to ensure the safety and well-being of those affected by armed conflicts, natural disasters, and other humanitarian crisis.

EXISTING INTERNATIONAL AND REGIONAL FRAMEWORKS AND INSTITUTIONS ADDRESSING HUMANITARIAN ACCESS:

International humanitarian law

International Humanitarian Law (IHL) serves as the foundational framework for preserving humanitarian space particularly in contexts of armed conflicts. All African states have ratified the Geneva Conventions and quite a good number have ratified the Additional protocol as well.⁴ A common implication of such ratification is the activation of the obligation to respect and ensure respect for IHL as enshrined in the common article 1 of the Geneva Conventions. Specifically, IHL has set out rules regulating access to persons in need of humanitarian assistance and on protection of victims of armed conflict⁵. Some of these rules are broadly presented below:

- i. the primary responsibility for the security and wellbeing of civilian populations under their control are those of the states and parties to conflicts.⁶
- ii. Impartial humanitarian organizations such as the ICRC may offer their services and be authorized to undertake relief operations of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction, when the needs of the population affected by the armed

⁴ About 50 African member states have ratified both the 1977 Additional Protocol I & II to the Geneva Conventions.

⁵ Specifically in non- international armed conflicts, these rules are detailed in common Art. 3(2) to the Geneva Conventions and Art. 18 of Additional Protocol II to the Geneva Conventions. In addition, see rules 55 and 56 of the J.M. Henckaerts/L. Doswald Beck, *Customary International Humanitarian Law, Vol. I*, ICRC, Cambridge University Press 2005 (*Customary IHL Study*).

⁶ Although, this rule is not expressly stated in the rules applicable to non- international armed conflicts, it is generally considered a corollary to the principle of state sovereignty.

conflict are not fulfilled.

- iii. While impartial humanitarian activities undertaken in situations of non-international armed conflict⁷, are subject to the consent of the state on whose territory the armed conflict is ongoing,⁸ the parties to the conflict concerned must consent to such activities when the needs of the population under their control are not met; and
- iv. Once impartial humanitarian relief schemes have been agreed to, the parties to the armed conflict as well as all States which are not a Party to the armed conflict concerned must allow and facilitate rapid and unimpeded passage of these relief schemes, subject to their right of control.⁹ This may include simplifying administrative formalities as much as possible to facilitate visas or other immigration issues, financial/taxation requirements, import/export regulations, field-trip approvals, and possibly privileges and immunities necessary for the organization's work.
- v. Additionally, ensuring that the forces of the parties to the conflict respect and protect relief consignments and humanitarian personnel by amongst other things, refraining from attacking them or diverting them including through facilitated passage through checkpoints¹⁰.

⁷ The specific rule on NIAC is emphasized here as many of the armed conflict on the continent are of this nature.

⁸ Although in practice, in areas where the state has no control, the consent of the non-state armed group having control of such areas would usually be sought to facilitate secured access to the populations in need.

⁹ For a broader understanding of these rules, see : [ICRC Q&A and lexicon on humanitarian access - ICRC](#)

¹⁰ See commentary to Art.18 of the Additional Protocol II. Note that, IHL rules regarding NIAC do not expressly contain a similar obligation for third States to facilitate access, However, the ICRC postulates that humanitarian spirit underpinning IHL should encourage non-belligerent States to facilitate humanitarian action that has already been accepted by the parties to a NIAC.

- vi. Humanitarian relief personnel, and objects used for humanitarian relief operations, must be respected and protected.¹¹

In this regard, IHL imposes obligations on both states and non-state actors to facilitate humanitarian relief and access and offer assistance during armed conflicts that are crucial for protecting civilians including humanitarian and medical personnel, *persons hors the combat*¹² and civilian objects without adverse distinctions.

In recent years, not only have conflict dynamics evolved significantly, with NSAGs adopting increasingly asymmetric, violent, and complex means and methods of warfare, but conflicts have increasingly come to involve more than two belligerent parties. This has resulted in the creation of grave risks to civilians and constraints or impediments to humanitarian access, leaving millions of civilians in distress.¹³ Furthermore, Africa has witnessed a worrisome decline in capacity and increasingly constrained space for delivering humanitarian assistance to people in need. The lack of cooperation from belligerent parties with humanitarian organizations and their inability to ensure unimpeded access exacerbate these dire humanitarian crises.¹⁴

Attacks on humanitarian personnel and objects used for humanitarian relief operations, as well as restrictions on humanitarian access continue to occur unabated. It is thus imperative that African nations prioritize the implementation of IHL in their

¹¹ See CIHL rule 56

¹² Persons who are not or who are no longer participating in hostilities.

¹³ Amani Africa. "Review of the Integration and Implementation of IHL in African Union Policies and Activities." Special Research Report No. 14, December 2022 available at <https://amaniafrica-et.org/wp-content/uploads/2022/12/Review-of-the-Integration-and-Implementation-of-IHL-in-African-Union-Policies-and-Activities.pdf> , p. 14

¹⁴ Amani Africa. "The Major Peace And Security Issues In Africa In The Year The Au Marks Its 20 Years." March 2022. <https://amaniafrica-et.org/wp-content/uploads/2022/05/The-major-peace-and-security-issues-in-Africa-in-the-year-the-AU-marks-its-20-years.pdf> , p.11

domestic legal systems and ensure accountability for violations.

AU's Legal and Policy Frameworks for Humanitarian Access

The African Union (AU) has a number of treaties and policies geared towards preserving the humanitarian space. Notably, the AU Constitutive Act, under Article 13(e), confers upon the AU Executive Council the authority to coordinate and make decisions regarding humanitarian action across the continent. In line with its mandate, the Executive Council has considered at its various ordinary sessions, reports of the AU Commission on humanitarian situations in Africa and taken decisions relevant to responding to these situations.¹⁵

Likewise, the Protocol on the Establishment of the AU Peace and Security Council (PSC), as outlined in Article 3(f), underscores the promotion and adherence to the 'sanctity of human life and IHL' among the core objectives of the PSC. Article 4(c) of this Protocol enshrines respect for IHL as one of the fundamental principles guiding the PSC in the execution of its mandates. Article 7(1) (m) of the Protocol extends the relevance of IHL by empowering the Council to monitor member states' progress in promoting IHL within its conflict prevention role.¹⁶ Within the framework of its conflict management and resolution role as outlined under Article 6(f), the Council is mandated to undertake humanitarian action and disaster management functions. Furthermore, Article 7(1) (p) endows the PSC with the authority to facilitate and support humanitarian action in armed conflicts and natural disasters.¹⁷ The importance of incorporating humanitarian assistance for civilians affected by armed conflicts and natural disasters into the mandates of the African Standby Force (ASF) is highlighted in Article 13(3)(f). This notion is reinforced by Article 13(13), which mandates the inclusion of training on IHL and international human rights law (IHRL) in the education of

both civilian and military personnel of national ASF contingents. As emphasized in the Solemn Declaration on the Common African Defence and Security Policy, the establishment of the ASF primarily aims to empower the PSC in fulfilling its responsibilities related to deploying peace support missions and interventions, as per the Constitutive Act's provisions.¹⁸ Article 15 of the PSC protocol specifically addresses humanitarian action within the PSC's frameworks, emphasizing its active role in coordinating and conducting humanitarian activities to restore normalcy during conflicts or natural disasters.

In addition to these basic principles under its legislative framework, the PSC Protocol also incorporates IHL principles and humanitarian considerations in a number of its operational provisions aimed at preserving humanitarian space. Since its operationalisation in 2004, the PSC has dedicated over 30 sessions under the theme 'Humanitarian Issues'. It was at its 469th session held on 25 November 2014 that the PSC agreed to 'convene a yearly meeting devoted to humanitarian emergencies on the continent'. For instance, an emerging concern that has received much of PSC's attention in its more recent deliberations on humanitarian issues has been the increasing trend of denial of access for impartial humanitarian organisations to deliver essential and lifesaving assistance to civilian populations affected by armed conflicts. At the 1044th session held on 5 November 2021 where the PSC addressed the issue of 'protection of medical facilities and personnel in armed conflicts', it tasked the AU Commission to develop actions necessary for addressing the prevalent attacks and targeting of humanitarian workers in various conflict situations across the continent. One of the key requests in this regard was for the AU Commission to ensure inclusion of 'protection of healthcare and humanitarian assistance providers as an indicator on the Monitoring and Evaluation Mechanism of the AU Master Roadmap of Practical Steps to Silence the Guns in Africa by the Year 2030'.¹⁹ The Communiqué of the PSC's 1081st session of 04 May 2022 more specifically draws attention to

¹⁵ *Amani Africa*, n.8, p. 4

¹⁶ *Ibid*, p. 5

¹⁷ *Ibid*

¹⁸ *ibid*

¹⁹ *Ibid*, p 7-8

the increasing challenge faced by humanitarian agencies due to denial of access and shrinking humanitarian spaces among others. Similarly, at the 1083rd session convened on 09 May 2022, the PSC condemned the 'conditionality for food access and the use of starvation as instruments of war and/or access to humanitarian assistance'. During its 1155th meeting held on 18 May 2023, the PSC urged all belligerents in conflict zones to strictly respect IHL/IHRL and all other international instruments relating to protection of civilians, as well as to facilitate humanitarian access and to guarantee safety and security of personnel of humanitarian aid agencies.

Additionally, the 2015 AU Humanitarian Policy Framework, adopted with the central purpose of establishing a strategic approach and guidance in support of the fundamental objectives of humanitarian action - preserving, safeguarding, and saving lives, mitigating suffering, and enhancing physical security and human dignity - represents another vital component of the AU's legal and policy instruments in the humanitarian sphere. This policy is designed to enhance the capacity for timely, well-coordinated, and effective humanitarian responses by the AU, Regional Economic Communities/Regional Mechanisms (RECs/RMs), member States, and other pertinent stakeholders. It emphasizes the incorporation of norms from IHL, as evident in several key provisions such as Paragraph 19, which underscores that the policy's basis is firmly rooted in IHL, and Paragraph 48, which outlines that humanitarian aid during armed conflicts must adhere to IHL principles, establishing the framework for negotiating humanitarian access with all conflict parties.²⁰

Another key AU policy for ensuring humanitarian access is the AU's Common African Position on Humanitarian Effectiveness (CAP)²¹ adopted during the 2016 Ordinary Sessions of the Executive Council and the Assembly. It represents Africa's

collective vision for enhancing humanitarian effectiveness on the continent. The CAP focuses on ten key pillars that address humanitarian priorities in Africa, including the primary responsibility of states, addressing root causes, governance and human rights, the development-peace-security nexus, institutional architecture, domestication of norms and policies, protection and assistance of affected populations, knowledge and innovation, the role of various stakeholders (host communities, civil society, private sector, diaspora, and youth), and humanitarian financing and partnerships. Central to the CAP is the principle that an effective humanitarian response depends on capable states. Therefore, it emphasizes the need to strengthen state capabilities in predicting, preventing, responding to, and adapting to humanitarian crises.

Additionally, the African Union convention for the protection and assistance of Internally displaced persons in Africa (Kampala convention)²² is also worthy of mention. The Kampala convention also has various provisions which explicitly spell out the obligations of state parties, NSAGs, and the AU in addressing the protection and assistance of displaced persons, such as the provision of humanitarian assistance to IDPs, cooperation in seeking assistance of, among others, humanitarian organizations that can offer their services to those in need, ensuring respect to humanitarian principles. Also, the convention proceeds to prohibit actions that infringe on humanitarian space, including actions capable of hampering the movement of humanitarian supplies, impeding humanitarian access and passage of relief items, attack or harm to humanitarian personnel and resources, and particularly for the AU, emphasizing the obligation to coordinate the mobilization of resources for the protection and assistance of IDPs and to collaborate with humanitarian agencies and other organizations to support measures taken by state parties.²³

²⁰ Ibid, p.7

²¹ African Union. "Common African Position on Humanitarian Effectiveness". 30 January 2016. Addis Ababa, Ethiopia <https://www.tralac.org/images/docs/9719/common-african-position-cap-on-humanitarian-effectiveness-may-2016.pdf>

²² The Kampala Convention has been ratified by about 33 African countries.

²³ The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa - adopted by the Special Summit of the African Union, Kampala, Uganda, 23 October 2009 (Kampala Convention) see Art. V (6) &(7), Art. VII (5)(b)

From the foregoing, it is apparent that there is no shortage of normative frameworks to ensure the access to humanitarian relief in Africa, but the main challenge remains the lack of implementation and at times, complete disregard for these normative frameworks. Effective follow-up, monitoring and evaluation mechanisms to assess the status of implementation of decisions adopted by the relevant AU policy organs, particularly key decisions of the PSC remain a key factor that could be better reinforced.

Role of AU institutions

The African Humanitarian Agency (AUHA) is set to play a pivotal role in strengthening humanitarian response on the continent including through facilitating ease of access by humanitarian workers and organizations. AUHA, which is to be 'anchored on regional and national mechanisms' is to be established pursuant to Decision [Assembly/AU/Dec.604 \(XXVI\)](#) of 30 January 2016. Once it becomes operational, AUHA is anticipated to have a crucial role in efficiently coordinating responses to humanitarian crises across the continent by fostering improved collaboration among relevant stakeholders, including various RECs/RMs. Indicating the pertinence of IHL norms for the operation of AUHA, its Draft Statutes under section 5.3, specify that the functions of the Agency including in the areas of advocacy, coordination and collaboration with relevant actors, shall leverage on IHL.²⁴

Other relevant AU institutions and agencies which also play fundamental role in preventing and addressing humanitarian disasters in the continent and which would be essential for collaborated response to Africa's often complex and overlapping humanitarian emergencies include the Africa Centre for Disease Control (Africa CDC), Africa Risk Capacity (ARC) and Special Emergency Assistance Fund (SEAF).²⁵

AU agencies such as the AU Commission on International Law (AUCIL); specialized agencies of

(g)(h)&(i)), and Art. VIII(3).

²⁴ Amani Africa, n.8, p.8-9

²⁵ *ibid*

the AU like the African Centre for the Study and Research on Terrorism (ACSRT) and AU Mechanism for Police Cooperation (AFRIPOL); and treaty bodies, specifically the African Commission on Human and Peoples Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) also play significant roles in promoting the respect for IHL and IHRL norms.²⁶

EMERGING TRENDS AND CHALLENGES FACING THE HUMANITARIAN SPACE AND ACCESS IN AFRICA

As of the close of 2021, the ICRC estimated that approximately 26 million individuals in Africa reside in areas where humanitarian organizations and personnel have difficulties to reach them, and where access to basic services is limited due to violence and armed conflict.²⁷

Several challenges and trends exacerbating the lack of humanitarian access are discussed below:

Complex Humanitarian Crises: Africa is currently witnessing an alarming increase in the prevalence of complex humanitarian crises, casting a long shadow of adversity over the continent. This multifaceted predicament unfolds through an array of interrelated factors, including protracted armed conflicts resulting in the displacement of entire communities, climate-induced disasters such as droughts and floods, and pervasive socio-economic challenges. Such crises have translated into an overwhelming demand for humanitarian assistance, with millions of victims relying on aid for their very survival²⁸. While these dire circumstances

²⁶ For more analysis on the specific instances through which these AU bodies contribute to ensuring respect for IHL, see Amani Africa, n.8.

²⁷ International Committee of the Red Cross. "ICRC Alarmed at Lack of Humanitarian Access for 26 Million People in Africa." November 23, 2021. <https://www.icrc.org/en/document/icrc-alarmed-lack-humanitarian-access-26-million-people-africa>

²⁸ International Committee of the Red Cross. "Humanitarian Needs to Deepen in Dozens of Conflict Zones as World's Attention Wanes." International Committee of the Red Cross, November 29, 2022. <https://www.icrc.org/en/document/>

call for decisive humanitarian action, the reality is that these challenges have deepened and become increasingly intricate, underscoring the urgency of adaptation by impartial humanitarian organisations to the evolving dynamics of these crises.

In the face of the mounting complexity, humanitarian personnel and impartial humanitarian organisations are confronted with a compelling challenge - the need to recalibrate and modify their approaches and strategies to ensure the timely delivery of aid to the populations in distress. This demands a flexible response that can address the multifaceted nature of humanitarian crises while having to navigate several challenges such as insecurity, restricted access, and bureaucratic impediments.

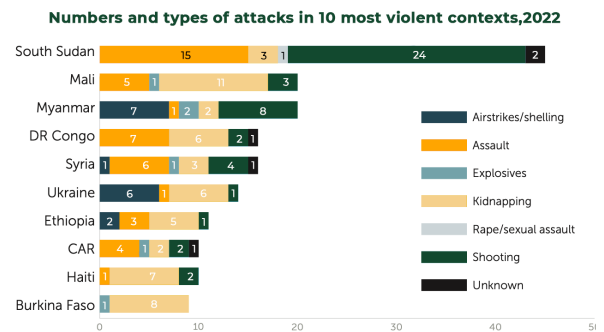
Insecurity and attacks against humanitarian personnel: Humanitarian personnel in Africa face increasing risks to their safety and security. In the first half of 2023, figures from the Aid Worker Security Database show that there have been 69 fatalities, 100 wounded and 38 kidnapped humanitarian aid personnel.²⁹ The previous year, 2022, recorded 116 fatalities, 143 wounding and 185 kidnapping of humanitarian aid personnel the majority of them being national staff, with African countries seemingly making up six of the ten most violent and dangerous countries for humanitarian aid personnel.³⁰ South Sudan and Mali held the top two positions of most violent contexts for humanitarian personnel, with Democratic Republic of Congo (DRC), Ethiopia, Central African Republic (CAR) and Burkina Faso being the other African countries that are on the

[humanitarian-needs-deepen-dozens-conflict-zones-worlds-attention-wanes](#)

29 Humanitarian Outcomes. "Aid Worker Security Database - Major Attacks on Aid Workers: Summary Statistics" August 11, 2023. <https://aidworkersecurity.org/incidents/report>, last accessed September 6, 2023

30 Humanitarian Outcomes. "Aid Worker Security Report 2023 - Security Training in the Humanitarian Sector: Issues of Equity and Effectiveness." August 2023, p.5, https://www.humanitarianoutcomes.org/sites/default/files/publications/aidworkersectyreport_2023_d.pdf

list.³¹ Attacks on humanitarian personnel not only essentially threaten their lives but also hinder their ability to provide assistance to those in need.



Additionally, the increasing cases of theft and vandalization of humanitarian objects used for relief operations are recurrent, especially in conflict settings.

Bureaucratic and administrative impediments: In their activities, humanitarian organizations often face bureaucratic and administrative requirements that serve as barriers slowing down their operations and increasing costs. Complex and opaque registration processes for humanitarian organizations, systematic visa restrictions and other restrictive entry requirements, movement restrictions, interference with staff recruitment, beneficiary selection and humanitarian activity, administrative delays, heavy levies and restrictions on imports, and misalignment of policies at the central and local levels of government – all of these factors can hamper timely humanitarian responses.³²

In Africa, both states and NSAGs have reportedly blocked or restricted humanitarian access in various occasions. Often such limitations are arbitrary and at times imposed even when there is

31 Humanitarian Outcomes. Figures at a glance. July, <https://www.humanitarianoutcomes.org/figures-at-a-glance-2023>

32 Nathalie Weizmann, Senior Legal Officer United Nations Office for the Coordination of Humanitarian Affairs 'Access Challenges Humanitarian Actors face in ensuring Principled Humanitarian Action', presentation at the 15th Edition AU-ICRC-OCHA Joint Seminar on International Humanitarian Law (IHL) "Preserving Humanitarian Space Under International Humanitarian Law" 17 August 2023 at the AU Commission, Addis Ababa, Ethiopia

no military necessity justifiable under international humanitarian law. Civilians in Ethiopia, Burkina Faso, and Eastern DRC,³³ among others, have reportedly suffered from the effects of such restrictions and other interferences by the parties to the conflicts.

Sanctions and counter-terrorism measures: The application of sanctions and counterterrorism measures by both African and international actors can have unintended consequences on humanitarian operations. Sanctions and counter-terrorism measures, applied without adequate safeguards, can negatively impact humanitarian action. This is even more concerning particularly when such measures consider humanitarian assistance as forming part of prohibited provision of economic resources to individuals and entities on whom such measures are imposed, these measures consequently hinder provision of humanitarian aid in line with the applicable IHL rules. Similarly, sanctions and counter-terrorism measures which regard IHL-authorized humanitarian activities as a form of prohibited support, or which consider various forms of interaction with listed persons and groups as prohibited support to or interaction with terrorist groups regardless of such interactions being crucial in gaining humanitarian access or for ensuring respect for IHL. Such measures hamper principled humanitarian action and are at odds with various IHL rules governing humanitarian action and protecting humanitarian personnel.³⁴

The recently adopted UN Security Council (UNSC) Resolution 2664 provides a standing humanitarian carve-out to UN sanction regimes, particularly to the asset freeze measures within the UN Sanctions

³³ Amnesty International. "Human Rights in Africa Regional Overview 2022/23." n.d. <https://www.amnesty.org/en/location/africa/report-africa/>

³⁴ Statement by the International Committee of the Red Cross (ICRC) at the United Nations General Assembly, 77th session, Sixth Committee Plenary Meeting on Measures to Eliminate International Terrorism. "Counter-Terrorism Measures Can Impact Humanitarian Action Negatively." International Committee of the Red Cross, October 6, 2022. <https://www.icrc.org/en/document/counter-terrorism-measures-can-impact-humanitarian-action-negatively>

regime.³⁵ The AU and RECs/RMs need to follow suit and apply well-framed humanitarian carve-outs in the design and implementation of both sanctions and counter-terrorism measures to ensure that they do not impede principled humanitarian action.³⁶

Misinformation and Disinformation: Increasingly, misinformation and disinformation are having negative impacts on people and their ability to make well-informed decisions that impact their safety and dignity. It also has an impact on the trust they have in institutions, which in turn jeopardizes the efforts of such institutions to support people in need. The negative impact of misinformation, disinformation and hate speech (MDH) on the public's trust in institutions also has reverberating impacts on humanitarian organizations and can lead to perception and acceptance issues, that in turn creates security risks and hinders humanitarians' ability to assist people in need.³⁷

Misinformation and disinformation have impeded access, including in the Sahel region thus affecting the movement of humanitarian staff particularly in contexts where states are not in control of territories and lack accurate information & coordination.³⁸

³⁵ UN Press. "Adopting Resolution 2664 (2022), Security Council Approves Humanitarian Exemption to Asset Freeze Measures Imposed by United Nations Sanctions Regimes." December 9, 2022. <https://press.un.org/en/2022/sc15134.doc.htm>

³⁶ Patrick Youssef, Regional Director for Africa – International Committee of the Red Cross, statement at the 15th Edition AU-ICRC-OCHA Joint Seminar on International Humanitarian Law (IHL) "Preserving Humanitarian Space Under International Humanitarian Law" 17 August 2023 at the AU Commission, Addis Ababa, Ethiopia

³⁷ International Committee of the Red Cross. "Misinformation, Disinformation and Hate Speech - Questions and Answers." International Committee of the Red Cross, February 17, 2023. <https://www.icrc.org/en/document/general-misinformation-disinformation-and-hate-speech-questions-and-answers>

³⁸ Edem Wosornu, Director of the Operations and Advocacy Division of United Nations Office for the Coordination of Humanitarian Affairs, Statement at the 15th Edition AU-ICRC-OCHA Joint Seminar on International Humanitarian Law (IHL) "Preserving Humanitarian Space Under International Humanitarian Law" 17 August 2023 at the AU Commission, Addis

TOWARDS STRENGTHENING THE PROTECTION OF THE HUMANITARIAN SPACE: POLICY RECOMMENDATIONS

Preserving the humanitarian space in Africa is a pressing challenge given the increasing complexity of conflicts and crises on the continent. It is also a collective responsibility that requires the concerted efforts of Member States, regional institutions like the AU, humanitarian organizations, and the international community. The AU and Member States must enhance access to affected populations, protect humanitarian personnel and objects used for humanitarian relief operations, and ensure that humanitarian assistance reaches those in need, even in the face of emerging challenges.

To address these challenges and ensure that impartial humanitarian organizations can operate effectively, the following recommendations are proposed:

- **Strengthen AU Mechanisms:**

- The AU, through its various constituent organs, should coordinate efforts to ensure compliance with IHL and humanitarian policies in the continent, including through incorporating the protection of humanitarian personnel in relevant mission documents of PSOs.
- The AU should emphasize the role of local humanitarian organizations who are closer to the population and as such often have less access constraints in addressing challenges related to humanitarian access and include them in policy discussions.
- AU Department of Health, Humanitarian Affairs and Social Development (HHS) should organize visits to contexts where armed conflicts

are ongoing in Africa to assess the state of IHL implementation particularly with respect to the access to people in need of humanitarian assistance.

- The AU should take inspiration from the provisions of UNSC Resolution 2664 to inform the integration of well-framed humanitarian carve-outs in the design and implementation of sanctions and counter-terrorism measures. This will prevent these measures from impeding principled humanitarian action.
- The AU Commission needs to enhance its methodologies for monitoring and evaluating the status of implementation of decisions on IHL made by various AU policy organs, including key decisions of the PSC that aim to ensure protection of civilians in conflict settings and promote respect for IHL norms.
- The AU should establish a dedicated platform for sharing best practices on humanitarian access and compliance with IHL, thus enabling Member States to learn from the successes of each other and influence them to adopt effective strategies collectively.
- The PSC should mainstream the assessment of humanitarian situation for all conflict situations on its agenda
- The PSC should also engage the use of expert bodies and ad hoc structures or sub-committees for monitoring, documenting and reporting on breaches of IHL and conditions undermining humanitarian access
- Mediation and peacemaking bodies should have as part of their terms of reference the task of persuading conflict parties and mobilize those with leverage to press on

conflict parties to observe respect for IHL and ensure access for humanitarian assistance

- **Member States:**

- AU Member states should commit to upholding their legal and moral obligations under IHL. This includes taking measures to prevent attacks on humanitarian personnel and holding perpetrators accountable for violations. States should also strengthen their national legal frameworks by ratifying and domesticating relevant IHL treaties or aligning same with relevant IHL principles. In the same vein, member states should refrain from arbitrary denial of consent for the provision of exclusive humanitarian relief to populations in need by impartial humanitarian organizations.
- AU member states should streamline bureaucratic and administrative processes to facilitate humanitarian operations as required by IHL. This includes simplifying registration procedures, expediting visa approvals, and removing unnecessary barriers to humanitarian access.
- Third-party member states should take proactive measures to facilitate unimpeded passage for humanitarian relief and personnel through their territories subject to relevant security measures without undue delays.
- AU member states should prioritize the effective implementation of AU humanitarian policies and conventions, including the Kampala Convention and the Common African Position (CAP) on Humanitarian Effectiveness, which provide precise provisions for the protection of impartial humanitarian or-

ganisations and provision of the necessary systems to ensure the effectiveness of their activities. This includes creating an enabling legal and policy environment to support humanitarian operations and protect humanitarian personnel.

- Through a lessons learnt platform established by the AU, States must report on sanctions and counter-terrorism measures' impact on their obligations under IHL, ensuring transparency and accountability.

- **Peace Support Operations (PSOs):**

- PSOs operating in conflict zones should prioritize the protection of humanitarian personnel and facilitate their access to affected populations while always considering the principles governing humanitarian action (neutrality, independence, and impartiality).
- Military forces involved in PSOs should continue to receive training on IHL and civil-military coordination to ensure the safety of humanitarian missions.

- **Humanitarian organizations:**

- Humanitarian organizations should coordinate with state representatives, military forces, and local actors to improve the effectiveness of field operations within the limits of the principles governing their humanitarian action.
- Humanitarian organizations should also be able to engage with non-state armed groups to negotiate access, promote respect for IHL and deliver humanitarian activities in strict compliance with the rules of IHL. Mediation and dialogue efforts should be pursued to facilitate access to conflict-affected

populations.

- **Diplomatic Efforts:**
 - o Donors and diplomatic groups should leverage their respective areas of influence to effectively advocate for enhanced humanitarian access and protection outcomes.
 - o Build partnerships between impartial humanitarian organisations and frontline actors to facilitate coordinated negotiations on access.
- **Civil-Military Coordination:**
 - o Robust civil-military coordination mechanisms should be established to facilitate communication between impartial humanitarian organisations and military components of peace missions.
 - o Regular joint field visits and training should address civil-military coordination issues.
 - o AU Member States should prioritize the safety and security of humanitarian personnel. In this regard, civil-military relations should be strengthened to guarantee security in protected areas while always taking into account the principles governing humanitarian action (neutrality, independence and impartiality).
- **Role of the African Humanitarian Agency:**
 - o The AUHA should prioritize negotiating access with Member States and non-state actors to ensure timely and safe humanitarian interventions.
 - o AUHA should work closely with the AU PSC to leverage its influence in preserving the humanitarian space and negotiating access.
 - o AUHA should play a role in strengthening information and notification systems and reinforcing early warning systems to facilitate access to people in need of

humanitarian assistance.

- o The statute of the AUHA should be reviewed and strengthened to enhance the agency's mandate in facilitating humanitarian operations, including on humanitarian access.

Common Responsibilities

- **Countering misinformation and disinformation:** Humanitarian organizations, Member States, AU, regional bodies, and the international community should work together to counter misinformation and disinformation that undermines trust in impartial humanitarian organisations. Public awareness campaigns and information-sharing mechanisms can help address this challenge.
- **Coordinate efforts at all levels:** Coordination and collaboration at the continental, regional, and national levels are essential to ensure effective humanitarian access. AU member states, RECs/RMs, and humanitarian organizations should work together to address challenges and facilitate access to populations in need.

CONCLUSION

The challenges facing humanitarian space in Africa poses a growing concern for both humanitarian personnel and organizations striving to provide critical assistance to vulnerable populations across the continent. As conflicts, insecurity, and political complexities intensify in various regions of Africa, the operational environment for these actors becomes increasingly challenging. Access to affected communities is hindered by a range of factors, including armed conflict, bureaucratic impediments and administrative restrictions, and the threat of violence. Moreover, the proliferation of non-state armed groups and the politicization of aid activities in certain areas further constrict the space available for humanitarian operations. Addressing this issue necessitates a comprehensive approach involving regional organizations such as the AU and RECs/RMs, and member states to uphold

IHL, facilitate coordination, and establish robust protection mechanisms that safeguard the ability of humanitarian personnel and organizations to reach those in dire need.

To address the shrinking humanitarian space in Africa, a multifaceted strategy is imperative. Firstly, collaboration between the AU and regional organizations must be strengthened to promote peace and security across the continent which is fundamental for humanitarian action. Secondly, member states need to uphold their obligations under IHL, ensuring safe and unimpeded access for impartial humanitarian organizations and their personnel. Additionally, engaging with non-state armed groups through diplomatic channels and conflict resolution efforts can be pivotal in securing access to affected populations. Furthermore, it's crucial to enhance coordination between impartial humanitarian organisations, states, and local communities, while emphasizing the principles of neutrality, impartiality, and independence. Ultimately, addressing the shrinking humanitarian space requires a collective commitment to protect the rights and lives of those who depend on humanitarian assistance in Africa.



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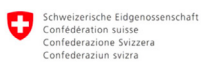
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