

**Colonial Wars in Africa and the Application of International Humanitarian Law**

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**Asanebi, Daupamowei Henry**

Department of History and International Studies  
Federal University Otuoke

**Odoh, Nathaniel John**

Department of History and Diplomatic Studies  
Federal University of Kashere

**Abstract**

*Africa as a continent has a rich history dating back to ancient times. It consisted of different autonomous empires and kingdoms with considerable control over their affairs before contacting the Europeans. The 19<sup>th</sup> and 20<sup>th</sup> centuries constituted one of the turbulent moments in the history of Africa. The period witnessed the European colonialists' conquest and occupation of the continent of Africa and the establishment of a colonial system. The incursion of the imperial powers into the African space led to fierce battles and colonial resistance by Africans. The paper attempts to examine the extent to which international humanitarian laws (IHL) were applied in the conflicts between Europeans and Africans. Secondary materials from books, journals, and internet sources were relied on to analyze the applicability of IHL in these conflicts. Findings reveal that before the incursion of the imperial powers in the African space, there were rules and regulations that guided wars on the continent. The coming of the European colonialists truncated these laws, and because of the Europeans' Eurocentric perception of Africans, they never treated Africa as a historical part of the world. Hence, the application of IHL was scrapped in the various conflicts that ensued between them to satisfy their imperial greed. The paper concludes that there was a double standard in the application of IHL by the Europeans. They believed that IHL was only meant for 'civilized' societies, of which they thought Africa was not one to justify their conquest of Africa and domination.*

**Keywords:** Colonial Wars, Human Rights, International Humanitarian Law, Liberation and Resistance

**Introduction**

History has shown that conflicts and wars arising from conflicting interests are inevitable in human society. The debilitating effects of battles on the human race necessitated the formation of laws and principles guiding wars' prosecution. African societies were not insulated from conflicts and wars. Like their counterparts in other parts of the world, pre-colonial African societies had laid down rules that specified how wars should be fought. They had laws governing the conduct of hostilities and protection of the victims of war very similar to the rules of contemporary societies. They had rules that revolved around personal conduct during armed conflicts. The rules abhorred night fighting, excluding women, children and the elderly from participating in active



combat.<sup>1</sup> Surprise attacks were frowned at because they ran contrary to the values of courage and honour. Fighters who surrendered without resistance were not to be attacked. Some rules border on protecting individuals and objects. Attacking a woman, a child, or an older adult was prohibited. Special attention was given to places with religious and cultural significance. These places included; places of prayers, cemeteries, and sacred woods. Combatants were forbidden to enter these holy places in the pursuit of an offender taking refuge there. There were also rules governing Prisoners of War (P.O.W) and other captives.<sup>2</sup>

European contact with Africa in the latter part of the 15<sup>th</sup> century along the coastal region of Africa was based on mutual understanding and trade until the dynamics of the relationship changed to include the forceful acquisition of slaves and the displacement of communities through slave raids and wars that ought not to be fought if not for the trade in slaves.<sup>3</sup> The relationship between the Europeans and the Africans later changed with the advent of the industrial revolution. The Europeans were no longer contented trading with the Africans along the coastal states. This resulted from the increasing demand for raw materials to feed the growing needs of her industries at home. Their attention became focused on penetrating the hinterland of Africa to lay hold of cheap available natural resources. This brought them into conflict with the Africans, who did not just sit back to watch the Europeans take over their lands. Unfortunately, the African's superiority in military weapons, among other factors, contributed to the victory of the Europeans. Between 1810 and 1910, virtually the whole continent had come under the effective occupation of the Europeans.<sup>4</sup> In consolidating their rule over Africa, there was also stiff resistance from the Africans from North Africa down to the southern part of the African continent. This resistance mostly became violent and led to the various liberation movements across Africa, culminating in the independence of most African states in the latter part of the 20<sup>th</sup> century. The paper seeks to understand the applicability of International Humanitarian Laws in some selected African countries during the wars of conquests and liberation movements. The paper will conceptualize the basic meaning of International Humanitarian Law, putting it in its proper perspective. It will also assess the applicability of these laws in some selected African countries, especially those that had intense fights with the Europeans. Lastly, the paper will conclude with its significant findings.

### Conceptual Clarification

Two key concepts have been identified in the paper to aid our understanding of the subject: International Humanitarian laws (IHL) and Colonial Wars (CW).

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<sup>1</sup> Y. Diallo, "Humanitarian law and Traditional Colonialism and the resultant marginalization" *African Law International Review of the Red Cross* 179:57-63, 1976, 46.

<sup>2</sup> Y. Diallo, "Humanitarian law and Traditional Colonialism..."

<sup>3</sup> Walter. Rodney, *How Europe Underdeveloped Africa*, (London: Bogle-L'Ouverture Publications, 1972)

<sup>4</sup> T.O. Ranger, "African Initiative and Resistance in the Face of partition and Conquest of Africa." in A.A. Boahen *Africa Under Colonial Domination 1880-1935*, (California: Heinemann, 2000)

### International Humanitarian Laws

In this paper, we shall adopt the definition of the International Committee of Red Cross, which sees international humanitarian law as:

*The body of international law that governs relations between States. It aims to protect persons who are not or are no longer taking part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.*<sup>5</sup>

In summary, international humanitarian law can refer to all the rules concerning armed conflict, whether customary, conventional, Hague, or Geneva. Historically, societies have set regulations intended to minimize the suffering caused by war. Although first documented in 1863 after the war of Solferino, the rules of the engagement battle could be said to have existed and been practiced from the beginning of humankind. The earliest societies, the Papuans, Sumerians, Babylonians, Persians, the Greeks, and the Romans, had rules of fighting, and people followed these. Most religions, Islam, Christianity, Hinduism, and Buddhism, had a handful of provisions on the law of armed conflict. These provisions were geared at protecting individuals from the worst consequences of war. However, it should be noted that it was not until the second half of the 19<sup>th</sup> century that international treaties regulating warfare, including rights and protection for armed conflict victims, emerged.<sup>6</sup>

Thus, these men played an important role in developing contemporary IHL. Henry Dunant, a Swiss businessman and Henri Dufour a Swiss Army Officer. In 1859, while travelling in Italy, Dunant witnessed the shock and impact of the Battle of Solferino.<sup>7</sup> When he returned to Geneva, he recounted his experiences in a book titled "A Memory of Solferino, published in 1862. General Dufour, who had war experiences, lost no time lending his voice and moral support to Dunant's ideas. He chaired the 1864 diplomatic conference at which the original Geneva Convention was adopted. In 1863, with Gustav Myenier, Louis Appia, and Theodore Maunoir, Dunant and Dufour founded the Committee for the Relief of the Military Wounded. This would become the International Committee of the Red Cross (ICRC) in 1876. The Swiss government, prompting the five founding members of the ICRC, convened a diplomatic conference in 1864. It was attended by 16 States, who adopted the convention for the Amelioration of the Condition of the Wounded in Armies in the Field. This gave birth to modern IHL.<sup>8</sup>

The convention, a multilateral treaty, codified and strengthened ancient fragmentary and scattered laws and customs of war protecting wounded and

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<sup>5</sup>. W. Waschefort, "Africa and International Humanitarian Law: The more things change, the more they stay the same," *International Review of Red Cross* (Vol. 98:2, 2018)

<sup>6</sup>. Waschefort, "Africa and International Humanitarian Law..."

<sup>7</sup>. Waschefort, "Africa and International Humanitarian Law..."

<sup>8</sup>. K. Smith, "African Sources of International Humanitarian Law" [www.projectmyopia.com](http://www.projectmyopia.com), Accessed 22nd March, 2022.

sick combatants and those caring for them. The treaty was characterized by standing written rules of universal scope to protect wounded and sick combatants. The treaty was also obligated to extend care to injured and ill military personnel without discrimination (i.e., without any distinction between friend or foe). Respect for and mark medical personnel transports and equipment using an emblem.

### **Colonial Wars**

Colonial wars in this paper refer to conflicts between the Europeans and Africans to establish their foothold in Africa and the various wars of liberation that followed. It began with the various dubious treaties entered into with the African rulers. These treaties meant different things to both parties. To the Europeans, it meant that the Africans had ceded their territories to them. Thus, to the Africans, it meant improved trade relations with the Europeans as that was the picture they painted before the treaties were signed. The Portuguese were the first Europeans to establish trade relations with Sub-Saharan Africans along the coastal areas. Therefore, the first set of colonial wars was with the Portuguese. Other European countries such as; Britain, Belgium, France and Germany, who came late into the struggle for colonies, made inroads into the continent.<sup>9</sup> Various wars were fought to subjugate the Africans of superiority in military weapons against the less sophisticated weapons used by Africans. Other factors such as better strategy and lack of unity among the Africans contributed to the defeat of the African states. The effective occupation of the African states came with challenges; Africans continued to resist the imposition of colonial rule in their domain. The obnoxious policies of the imperial powers were totally out of sync with the established practices in the African societies. As a result, various resistance groups sprang up across the continent as political parties and nationalist groups. Their determination and resilience against the oppressive rule of the European powers across the African continent, coupled with the wind of change that blew across the continent in the second half of the 20<sup>th</sup> century, was instrumental to the freedom and independence of many African States.

### **Colonial Wars and the Applicability of International Humanitarian Laws in some Selected States in Africa**

The level of the applicability of International Humanitarian Law in the colonial wars in Africa is a subject of controversy, as there are divergent views among scholars. From the Eurocentric perspective, the African states were merely an appendage of the British sphere of influence, and the Africans, in their view, were not 'civilized'; hence, the belief that international humanitarian laws did not apply to them. This argument was aimed at justifying the atrocities committed by the Europeans in their colonies, and it establishes the double standard in the affairs of the Europeans.<sup>10</sup> They believed in the principles of IHL within the European states but would not allow it to be practiced in the

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<sup>9</sup>. W. Rodney, *How Europe Underdeveloped Africa*...

<sup>10</sup> .P. Brits and N. Michelle, *Compliance with International Humanitarian Law in Africa: A Study International Review of Red Cross* (Vol. 74:2, 2016)

colonies. From the Africanist perspective, we all belong to the same human race, and the need to apply caution and some rules in war become paramount. Besides, rules and regulations guiding wars and conflicts were not alien to the continent. Many African states had a set of rules and regulations guiding warfare before the coming of the Europeans. From the Africanist perspective, it was argued that the intervention of the Europeans in the African continent and their attitude towards the applicability of IHL contributed in no small measure to weakening the already existing laws concerning war and conflicts in Africa, and this has continued to be a challenge to Africa into the present times.<sup>11</sup> Due to colonization, Africa has been sidelined from effectively participating in the formation of IHL.<sup>12</sup> The Europeans needed a reason to exclude their wars of colonization from the ambit of IHL. This led to the development of concepts such as *terra nullius*: the view that African tribes were not states and were savage. IHL protected Europeans during wars with fellow Europeans but did not restrain their violence during colonial wars against Africans.<sup>13</sup> To appreciate the extent of this argument, the paper addresses the applicability of IHL in some selected countries across four major regions of Africa, i.e., North Africa, West Africa, and Eastern and Southern Africa.

### Algeria

The French invaded Algeria in 1830 following the fly whisk incident with the French Consul.<sup>14</sup> By 1834 the French had consolidated their hegemony over Algeria. The conquest was violent and marked by a scorched earth policy, including massacres, mass rapes, and atrocities. Between 500,000 and 1,000,000 were killed in the first three decades of the conquest.<sup>15</sup> In consolidating their rule over Algeria, stiff resistance ensued between the National Front for Liberation (NFL) and the French, which led to a high rate of casualties on both sides of the divide. Using the guerrilla tactics of sabotage and attacks on French targets, the FLN defied the French colonial power in an eight-year-long war that ended in 1962 with Algerian independence.

In Geneva, the International Committee of Red Cross advocated the view that the applicability of Article 3 needed to be as expansive as possible and should therefore also include colonial rebellions.<sup>16</sup> But authorities in the colonial metropolises took a different standpoint that humanitarian norms should not weaken the position of their security forces, or more precisely, the 'rebels' should not be granted protection in the war against the anti-colonial threat. Therefore, Great Britain and France refused to recognize the minimum standards of the Geneva Conventions in their conflicts in East and North Africa. Their rationale was that neither case represented a war or an armed conflict. By using the neutral terms "emergency" and "civil disturbances", Paris and London attempted to believe the true nature of events in East and North Africa. The

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<sup>11</sup> P. Brits and N. Michelle, Compliance with International Humanitarian Law in Africa

<sup>12</sup> Waschefort, "Africa and International Humanitarian Law..."

<sup>13</sup> Kelvin Mbith African Source of International Humanitarian...

<sup>14</sup> See B.M. Barkindo, *Africa and the Wider World*, (Nigeria: Longman, 1989)

<sup>15</sup> K. Fabian, "Human Rights in the Shadow of Colonial Violence: The Wars of Independence in Kenya and Algeria," (Philadelphia: University of Pennsylvania Press, 2013), 24.

<sup>16</sup> K. Fabian, "Human Rights in the Shadow of Colonial Violence..."

French government officially held that no war was taking place in Algeria and only dealing with several "evenements".<sup>17</sup> Subsequently, Paris tried to belittle the nature of the Algerian war by referring to it as a series of "Operation de Police" and "enterprises de pacification." By describing the situation with such euphemisms as "civil unrest" and "events," the government in Paris attempted not only to cover up the true nature of the conflicts but also criminalize their opponents and deny them any legitimation. Accordingly, the deeds of "subversive elements" endanger the legitimate order in the overseas possessions. An addendum from the standpoint of the French, the struggle in Algeria was also a fight against "terrorists" and "bandits" who posed a threat to the nation's unity and its North African department.<sup>18</sup> The French viewed the liberation movement members as criminals, not soldiers. Because the insurgents lacked combatant status, they could not assert a claim to the protection accorded by international humanitarian law. One French sergeant justified the execution of captured FLN fighter by stating, "We do not take prisoners. These people are not soldiers."<sup>19</sup> By taking this position, the colonial powers completely counteracted the new provisions of the Geneva Conventions that they had just co-authored and signed.

### Nigeria

The empires and kingdoms that made up Nigeria had come entirely under the effective control of the British in the early part of the 20<sup>th</sup> century with the conquest of the Sokoto Caliphate and what constituted the Igbo-land. The British took over other areas in the southern part of Nigeria like Lagos, Yorubaland, Benin, Itsekiri and the Niger Delta area in the second half of the 19<sup>th</sup> century.<sup>20</sup> African rulers obtained Dubious treaties to justify their taking over the Nigerian area. Some were acquired through force, as in Oba Dosunmu of Lagos. After he was conquered in 1861, he signed a treaty stating:

*I, Dosunmu, do with the consent and advice of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain her heirs and successors forever, the port and the island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging (and as well the profits and revenue and the direct, complete and absolute dominion and sovereignty of the said port, island and premises, with all the royalties thereof, freely, fully, entirely and absolutely.<sup>21</sup>*

In the Berlin Conference of 1884-85, critical decisions were reached in the partition of Africa, of which signing treaties was a fundamental aspect of occupying any African territory. Obtaining these treaties was not enough, as the traditional rulers whose territories were taken were unaware that areas had

<sup>17</sup>. K. Fabian, "Human Rights in the Shadow of Colonial Violence

<sup>18</sup>. K. Fabian, "Human Rights in the Shadow of Colonial Violence...

<sup>19</sup>. The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>20</sup>. For details, see I. Obaro, *The Fall of Nigeria*, (London: Heinemann Publishers, 1977)

<sup>21</sup>. C.N. Okeke "International law in the Nigerian Legal System" *Golden Gate University School of Law Publications*, 1997, 327.

been taken away from them. For the British government to stamp their authority in these areas, they had to engage the various kingdoms and communities in the Nigerian area in multiple battles. Some of the fiercest battles included the conquest of Benin, Itsekiri, the Ekumeku resistance in Igbo-land and the conquest of the Sokoto Caliphate in 1904. In the various wars of conquest in the Nigerian area, there was no recourse to IHL. This was evident in the invasion of Benin in 1897, which was tagged a punitive expedition in reaction to the so-called 'Benin Massacre' where a few British officers were killed compared to over a thousand people who died in the so-called punitive expedition.<sup>22</sup> What happened in Benin in 1897 was carnage; the town was destroyed and set ablaze, women and children were killed, and treasured works of art were looted from the Palace of the Oba.<sup>23</sup> The same scenario also played out in Itsekiri and the Sokoto Caliphate. Brute force was applied to bring the Nigerian area under the control of the British. Similarly, resistance during colonial rule was squashed with force and violence. The killing of 20 Enugu coal miners in 1949 attests to the violation of IHL.<sup>24</sup>

### Kenya and Tanganyika

In the case of Kenya, they came under the effective control of the British through the British East India Company after they had displaced the rule of the Arabs. The British East African Company was granted a charter in 1888, which led to the colonization of present-day Kenya. When the Company became bankrupt, the British government took over the colony's administration which they intended to use as a gateway to Uganda, Buganda and Bunyoro because there were no minerals to exploit in Kenya. To subdue the colony, the British authorities forcibly took the land, introduced forced labour and passed legislation that ensured natives became subjects of the British settlers.<sup>25</sup> They introduced regressive taxes like the hut tax, and failure to make payment led to forced labour. Native reserves were created just like in South Africa, where the idea originated. These reserves were usually far from major roads and rail, and their soil was not conducive to farming. They also introduced the Kipane, similar to the Pass Act in South Africa. This restricted the movement of labourers. This policy dispossessed Kenyans of their lands and reserved fertile grounds for the Europeans. Kenyans became settlers on their land, working as labourers with low wages from the British. To summarize the pathetic conditions of Kenyans, the Chief Native Commissioner of Kenya has this to say:

*You may travel through the length and breadth of Kitui Reserve, and you will fail to find any enterprise, building, or structure that the government has provided for more than a few foreign sovereigns for the direct benefit of the natives. The place was little better than a wilderness today as far as our efforts are concerned. If we left that district tomorrow, the only permanent evidence of our occupation would be the*

<sup>22</sup>. [www.archive.artic.edu/benin/conquest/](http://www.archive.artic.edu/benin/conquest/) Accessed 22 March, 2022

<sup>23</sup>. [www.archive.artic.edu/benin/conquest/](http://www.archive.artic.edu/benin/conquest/) Accessed 22 March, 2022

<sup>24</sup>. Tayo Agunbiade "Remembering Margaret Ekpo and the Enugu Strike Massacre [www.aljazeera.com](http://www.aljazeera.com). Accessed 20<sup>th</sup> March 24, 2022.

<sup>25</sup>. The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24<sup>th</sup> March 2022.

*buildings we have erected for the use of our tax-collecting staff.*<sup>26</sup>

This ill-treatment of the Africans led to the emergence of the Mau Mau Uprising from 1952 to 1960 against the British. They fought against the white European colonist's settlers in Kenya. The uprising suffered set back with the British orchestrating divide and rule tactics among them. Suppressing the Mau Mau uprising in the Kenyan colony cost Britain 55 million pounds and caused at least 11,000 deaths among the Mau Mau and other forces, with some estimates considerably higher. This included 1,090 executions at the end of the war, the most prominent wartime use of capital punishment by the British Empire.<sup>27</sup>

There were several war crimes in the British attempt to crack down on Mau Mau uprisings. According to Nuremberg principles, war crimes entail(s) "violation of the laws or customs of war which include massacres, the bombing of civilian targets, terrorism, mutilation, torture, and murder of detainees and prisoners."<sup>28</sup> There were slow methods of torture at Mau Mau Investigation Centre Special Branch. The centre had a way of slowly electrocuting members of Mau Mau. Civil liberties were suspended in Kenya. Close to 320,000 to 450,000 Kikuyu were incarcerated, and most of the populations were held in 'enclosed villages', also known as concentration camps.<sup>29</sup> Although some were victims of collective punishment that colonial authorities imposed on large areas of the country, hundreds of thousands were beaten or sexually assaulted to extract information about the Mau Mau threat. Prisoners were questioned with the help of "slicing off, boring holes in the eardrum, flogging until death, and pouring paraffin over suspects who were set alight, and burning eardrums with lit cigarettes".<sup>30</sup> Among the detainees who suffered severe mistreatment was Hussein Onyango Obama, the grandfather of Barrack Obama, the former President of the United States. According to his widow, British soldiers forced pins into his fingernails and buttocks and squeezed his testicles between rods, and two others were castrated.<sup>31</sup> Robert Edgerton describes the methods during the emergency thus;

*The subject was beaten and kicked if a question was not answered to the interrogator's satisfaction. More force was applied if that did not lead to the desired confession, and it rarely did. Electric shock was widely used, and so was the fire. Women were choked and held under water; gun barrels, beer bottles, and even knives were thrust into their vaginas. Men had beer bottles thrust up their rectum, were dragged behind Land Rovers, whipped, burned and stabbed... Some police officers did not bother with more time-consuming forms of torture; they shot any suspect who refused to answer and then told the next suspect to dig his grave. When the tomb was*

<sup>26</sup> . The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>27</sup> . The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022

<sup>28</sup> . The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>29</sup> . The Colonization of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>30</sup> . The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>31</sup> . K. Fabian, "Human Rights in the Shadow of Colonial Violence..."



*finished, the man was asked if he would now be willing to talk.*<sup>32</sup>

This demonstrated the level of carnage perpetrated by the British in breaking the resistance of the Africans. In their attacks, Mau Mau fighters undoubtedly resorted to cruel methods, which often led to the murder and mutilation of the victims. The use and spread of terror were crucial elements in their guerrilla tactics. Still, it was explicitly directed at representatives of the hated colonial regime and not arbitrarily against the entire population. One particularly bloody example was the Lari massacre of March 1953, in which Mau Mau Commando murdered 120 African inhabitants of a village loyal to the British colonial power. However, while the British side expressed unwavering opposition to the idea of recognizing humanitarian norms, the Mau Mau movement attempted to commit its troops to uphold specific rules of war. As a reaction to the excessive use of violence in Lari, the Mau Mau passed a resolution at a meeting in July 1953 under the direction of the leading General Dedan Kimanthi in which the killing of women and children by their soldiers was strictly forbidden.<sup>33</sup> The rules of conduct passed on 4th January 1954 prohibited the killing of persons under 18 years of age, the mishandling of civilians, the rape of women and attacks on civilian facilities such as hospitals and schools.<sup>34</sup>

Tanganyika came under the effective control of the Germans. Like their colonial counterparts, the Germans had one of the worst cases of human rights abuses. They introduced oppressive policies which Africans resented. Some of the policies included oppressive taxes. This led to the Maji Maji rebellion of 1905-1907. The response of the Germans was to crush the uprising with excessive use of force through mass torture and detention. In early 2017, the National Assembly of Tanzania demanded an apology and compensation from Germany for "the colonial atrocities" committed during the colonial period. Before the Maji Maji uprising, Germany had signed the Red Cross Convention of 1864, which obliged its armed forces to spare wounded enemy combatants. Unfortunately, they did not apply the provisions of the convention in Tanganyika. They looked the other way when the Askari, who made up their fighting force, meted harsh treatment on civilians, killing wounded or surrendered enemy fighters and destroying homesteads. Theodore von Hirsch, the former station chief of Mpapua, wrote a diary in which he "felt like a murderer, arsonist, and slave trader, but did nothing to stop the atrocities, and even his warriors a lump sum for decapitated heads."<sup>35</sup>

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<sup>32</sup>. The Colonisation of Kenya [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) Accessed 24th March 2022.

<sup>33</sup>. P. Brits and N. Michelle, Compliance with International Humanitarian Law in Africa: A Study *International Review of Red Cross*. Vol. 74:2. 2016.

<sup>34</sup>. P. Brits and N. Michelle, Compliance with International Humanitarian Law in Africa...

<sup>35</sup>. Klaus, B. and Gerhard K. "Was Quashing the Maji-Maji Uprising Genocide? An evaluation of Germany's Conduct through the Lens of International Criminal Law" *Holocaust and Genocide Studies*, Vol. 35 No.2, 2021.

### South Africa and Mozambique

South Africa and Angola have one of the worst human rights violations in the history of IHL. The nature of the colonization of the two countries as settler colonies could explain why the Dutch and the Portuguese were highhanded and never applied the provision of the international humanitarian laws in their dealings with the Africans. For example, the emergence of the Union of South Africa as a republic in 1910 under the Boers<sup>36</sup> did not bring any form of respite to the conditions of the Africans who had gone through misery since 1452 when they had contact with the Dutch at the Cape of Good Hope.<sup>37</sup> Their contact with the Dutch marked the beginning of untold hardship characterized by forced labour and the dispossession of their lands during the 'Great Trek.' There was nothing remarkable about the 'Great Trek'. Instead, it has gone down in history as one of the worst forms of injustice meted out on the indigenous people of South Africa. Africans were displaced from their lands and were deprived of access to the gold and minerals of South Africa.

The emergence of the Nationalist Party in 1958 worsened the conditions of Africans with the promulgation of the Apartheid laws in South Africa.<sup>38</sup> The laws were extraordinarily racist and were meant to keep the Africans at the end of the social ladder. Some rules included the Population Registration Act of 1950, the Reservation of Separate Amenities Act, 1953, the Bantu Education Act, the Native Land Act and the Pass Laws that required Africans to carry Pass Books around.<sup>39</sup> These repulsive laws did not sit well with the Africans. Liberation movements were popular. Among them were the African National Congress and the Pan Africanist Congress. Students were also instrumental in resisting the apartheid policies. The stiff resistance against apartheid led to the Sharpeville and Soweto massacre, where unarmed protesters were shot at.<sup>40</sup> There was outrage across the globe over the outcome of these massacres. The United Nations General Assembly, appalled by the constant abuse and human rights violations, passed a resolution seeking the application of the Geneva Convention to the South African liberation struggle. Resolution 2396, which referred to South Africa's apartheid policies, expressed concern over the persecution of opponents of apartheid and the treatment of freedom fighters that were taken as prisoners during the struggle for liberation and condemned the government for degrading treatment of political prisoners.<sup>41</sup> It called for the release of such prisoners. It also declared that freedom fighters should be treated as Prisoners of War. The South African Apartheid government ignored the request and was condemned by UN General Assembly. The UN Security Council intervened on the side of South Africa's national liberation struggle by imposing a partial arms embargo.<sup>42</sup>

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<sup>36</sup>. [www.britannica.com/event/South-Africa-Act](http://www.britannica.com/event/South-Africa-Act) Accessed 23rd March 2022.

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<sup>38</sup>. [www.britannica.com/event/South-Africa-Act](http://www.britannica.com/event/South-Africa-Act) Accessed 23rd March 2022.

<sup>39</sup>. Scythe, N.C. "Early Apartheid: Race Laws in South Africa 1652-1836," LLM Thesis, University of Witwatersrand, Johannesburg, 1994.

<sup>40</sup>. [www.britannica.com/event/South-Africa-Act](http://www.britannica.com/event/South-Africa-Act) Accessed 23rd March 2022.

<sup>41</sup>. Poobalan, P. "The Geneva Convention and the South African War of Liberation," *Alternation*, 7:2 2000, 148-155.

<sup>42</sup>. Poobalan, P. "The Geneva Convention and the South African ...

The situation in Mozambique is not any different from that of neighbouring South Africa and Angola. The Portuguese exercised excessive control over Mozambique, exploited its natural resources, and equally imposed exploitative taxes on the people. Just like Angola, a settler colony witnessed a rapid influx of Europeans. The repressive nature of the Portuguese colonial government also led to the emergence of the liberation movement. In 1962 Mozambican representatives from exiled political groups formed the Socialist Mozambique Liberation Front. They led the liberation struggle through the support of some African states and the Soviet Union. They explored the use of guerrilla tactics in launching attacks on colonial facilities. Portugal responded with excessive use of force without recourse to IHL. Many of the fighters were arrested, tortured and incarcerated. The Portuguese could not sustain their onslaught against the FRELIMO; they had no choice but to relinquish power and grant Mozambique its independence on 25th June 1975.<sup>43</sup>

### **Conclusion**

The paper has examined the application of International Humanitarian Laws (IHL) in the colonial wars between Africans and Europeans in some selected countries across the four regions of Africa. The paper noted that laws governing the conduct of war are not new on the African continent. There are examples of states entrenched these laws in prosecuting their battle, as demonstrated in the paper. The emergence of international humanitarian laws on the global scene resulted from the debilitating effects of war, as observed by the founders of IHL. The Geneva Convention of 1864 was implemented to ameliorate the conditions of combatants and civilians in conflict situations. Sadly, Africa was not part of the founding states of IHL. By the later part of the 19<sup>th</sup> and early 20<sup>th</sup> centuries, Africa had come under the control of the European powers. Unfortunately for Africa, the imperial forces did not apply the principles of IHL they formulated in the colonies. Instead, they considered African freedom fighters savages and bandits that they needed to suppress with brute force.

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<sup>43</sup>. Mozambique- Colonial Mozambique [www.britannica.com/colonial-Mozambique](http://www.britannica.com/colonial-Mozambique). Accessed 20<sup>th</sup> March 2022.