

Topic

Legal mechanisms to ensure access to justice in regions affected by security threats and economic instability. Protecting human rights during military operations and in economically vulnerable communities.

Abstract

Access to justice in regions affected by security threats and economic instability remains a critical challenge for the protection of human rights and the maintenance of the rule of law. This study examines the legal mechanisms designed to ensure effective access to justice in contexts characterized by armed conflict, terrorism, fragile governance, and economic vulnerability, with particular attention to the protection of individuals during military operations and in economically marginalized communities.

The analysis is grounded in the complementary application of international humanitarian law (IHL) and international human rights law (IHRL), alongside domestic constitutional safeguards, emergency powers regulation, and regional human rights frameworks. It explores how these legal regimes operate collectively to prevent abuses, ensure accountability, and safeguard fundamental rights, even under conditions of insecurity. The study further evaluates the role of institutional mechanisms such as national judiciaries, military justice systems, transitional justice frameworks, and international accountability bodies in reinforcing compliance with legal standards.

Findings indicate that while normative frameworks for protection are well established, practical access to justice is often constrained by weakened institutions, disrupted court systems, limited legal aid, and socio-economic deprivation. In response, hybrid and adaptive justice mechanisms including mobile courts, community-based dispute resolution, legal aid services, and digital justice innovations have emerged as critical tools for bridging justice gaps in fragile settings.

The study concludes that sustainable protection of human rights during military operations and in economically vulnerable communities requires an integrated legal approach that aligns security governance with human rights obligations. Strengthening institutional resilience, enhancing regional cooperation, and embedding human rights-based approaches into security and economic policy frameworks are essential for ensuring that justice remains accessible, inclusive, and effective in crisis-affected environments.

Essay

There is a persistent and comfortable assumption in the way states respond to crisis that justice is a good to be rationed, provided generously in times of peace and quietly withdrawn when security falters or the treasury empties. War arrives, and due process starts to look like an inconvenience. An economy contracts, and legal aid budgets are among the first casualties. A security threat emerges, and indefinite detention or the expansion of military jurisdiction over civilians begins to seem defensible to a frightened public. The assumption is not applied cynically so much as it is applied unreflectively, as though justice were a peacetime amenity rather than part of the machinery that keeps a state, and its people, intact.

This essay argues that the assumption is mistaken, and that the mistake matters. Access to justice is not a reward that follows security and prosperity; it is one of the conditions that produces them. Grievances rooted in unresolved land disputes, arbitrary detention, and impunity for abuse are not incidental by-products of instability they are frequently among its principal drivers. It is telling that recruitment into armed groups across fragile regions is so often traced not to ideological conviction but to a specific, unanswered injustice an arrest, a killing, a humiliation at a checkpoint that no institution was willing to address.

A Complementary Legal Architecture

International Humanitarian Law and International Human Rights Law in Concert

International law does not treat armed conflict as a legal vacuum. Two regimes operate concurrently, each filling gaps the other leaves open. International humanitarian law governs the conduct of hostilities and the treatment of those no longer taking part in them, while international human rights law governs the ordinary relationship between a state and the people within its power, in peace and in war alike.¹ Neither regime retires when the other becomes necessary. A soldier's conduct in an engagement is governed by the law of armed conflict, but a police officer maintaining order in a refugee camp in the same country remains bound by human rights law, because law enforcement does not cease to be law enforcement merely because a war is under way nearby.

This dual application matters especially for access to justice, because humanitarian law itself says comparatively little about court procedure. Article 3 of the Geneva Conventions prohibits the passing of sentences and the carrying out of executions without judgment by a "regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples"² a broad, almost aspirational formula. It is human rights law, and article 14 of the International Covenant on Civil and Political Rights (ICCPR) in particular, that supplies the concrete content the right to a fair and public hearing, the presumption of innocence, the right to counsel, and the right of appeal.³ Where the two regimes overlap, the more specific and detailed rule generally governs, a relationship commonly described through the principle of *lex specialis*; on matters of fair trial, that specificity usually belongs to human rights law rather than the law of armed conflict.⁴

States also carry obligations that extend beyond their own conduct. Article 1 of the Geneva Conventions requires every state party not merely to respect the Conventions but to ensure respect for them, in all circumstances one of the few genuinely universal duties in international law, owed to the international community as a whole rather than to any single injured party.⁵ It is also, by most accounts, among the most routinely disregarded provisions in the entire body of humanitarian law not because its meaning is unclear, but because indifference is easy and enforcement is difficult. Obligations of this kind are meant to be internalised well before a conflict begins translated into domestic law, taught, and made enforceable in advance because once hostility has taken hold, it is considerably harder to persuade a population that even an adversary remains entitled to a minimum of humane treatment.

Emergency Powers and Their Limits

States facing a genuine existential threat are not left without tools. Article 4 of the ICCPR permits derogation from certain obligations "in time of public emergency which threatens the life of the nation," provided that measures are strictly required by the exigencies of the situation.⁶ This is not an open licence. The UN Human Rights Committee has made clear that not every armed conflict automatically qualifies as an emergency of this magnitude, and that any derogation must be temporary, necessary, proportionate, and consistent with a state's other

¹J-M Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law*, Vol I: Rules (CUP 2005).

²Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135, art 3.

³International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14.

⁴M Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar 2019).

⁵Geneva Conventions (n 2) common art 1; see also T Meron, 'The Humanization of Humanitarian Law' (2000) 94 AJIL 239.

⁶ICCPR (n 3) art 4.

international obligations; a declared emergency cannot be used to authorise conduct already forbidden under humanitarian law.

A core set of rights, moreover, is entirely non-derogable. The prohibition on torture is one; the right to recognition as a person before the law is another. The Committee has stated explicitly that emergency powers may never be invoked to justify arbitrary detention or to strip away the presumption of innocence, and the right to challenge the lawfulness of one's own detention before a court habeas corpus occupies a particularly protected place in this scheme. Even the Fourth Geneva Convention, which allows an occupying power to restrict certain privileges of persons suspected of hostile activity, still requires that such persons "be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial."⁷ Security concerns may narrow how a right is exercised; under the framework states have accepted, they cannot erase an individual's standing before a judge.

A Right That Belongs to the Injured, Not Only the Accused

Access to justice in conflict is not confined to the rights of the accused; it belongs equally to those harmed by violations. The United Nations' Basic Principles and Guidelines on the Right to a Remedy require states to investigate violations, pursue prosecution where the evidence supports it, and provide victims equal and effective access to justice irrespective of who is ultimately found responsible for the harm a duty that attaches to the injury itself rather than to the identity of whoever caused it. That remedy is meant to be substantive rather than symbolic restitution, compensation, rehabilitation, guarantees of non-repetition, and the more basic right to learn what actually happened. The International Court of Justice applied comparable reasoning in its advisory opinion on the construction of a wall in the Occupied Palestinian Territory, concluding that the destruction of homes and orchards gave rise to an obligation of reparation, with compensation required wherever restitution was no longer physically possible.⁸ Whatever view one takes of the underlying dispute, the opinion illustrates a broader structural point international law treats wartime destruction as generating legal claims, not merely political grievance.

Institutional Mechanisms of Enforcement

National Judiciaries and the Limits of Domestic Capacity

The first line of protection is, in principle, the domestic judiciary. Functioning courts require functioning states trained judges, secure buildings, working communications, and witnesses who are both alive and willing to testify. Security crises erode all of these simultaneously. Armed conflict destroys court buildings, displaces judges, intimidates lawyers, and weakens law enforcement, while armed groups frequently establish parallel systems of authority that operate entirely outside constitutional and international legal standards. Civilians become vulnerable to arbitrary arrest, enforced disappearance, torture, sexual violence, forced displacement, and unlawful killing, often with no realistic prospect of accountability, and fear steadily displaces confidence in the legal system.

A government under siege may genuinely be unable to prosecute crimes even where it wishes to do so, which is part of why international mechanisms exist as a backstop. Universal jurisdiction allows states with no direct connection to a conflict to prosecute the gravest crimes wherever they occurred, and the International Criminal Court may step in where a state is found

⁷ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 5.

⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136, paras 152–153.

"unwilling or unable" to act though only as a matter of last resort, since the Rome Statute's principle of complementarity keeps primary responsibility with domestic courts.⁹

Military Justice and the Trial of Civilians

A recurring feature of security crises is the extension of military jurisdiction over civilians, whether through declared states of emergency or the informal expansion of military and special courts. This raises acute concerns, since military tribunals typically lack the independence, procedural guarantees, and rights of appeal available in ordinary civilian courts. Regional human rights bodies have repeatedly held that military courts should not try civilians except in the most narrowly defined circumstances, yet several states experiencing active insurgency have used military or special courts to try civilians accused of terrorism-related offences, frequently with truncated due process. Strengthening domestic military justice systems, rather than relying on the absence of external scrutiny, is a precondition for closing this gap.

Transitional Justice and Hybrid Tribunals

Where formal courts cannot or will not function, states and international partners have increasingly turned to transitional and hybrid mechanisms that combine prosecutions, truth-telling, reparations, and institutional reform rather than relying on courts alone.¹⁰ Hybrid tribunals blending international and domestic judges have produced markedly uneven results. The Special Court for Sierra Leone secured the historic conviction of former Liberian president Charles Taylor, and the Extraordinary African Chambers in Senegal tried and convicted former Chadian president Hissène Habré, while the Special Criminal Court in the Central African Republic began issuing verdicts against former rebel commanders in the early 2020s. By contrast, the Hybrid Court for South Sudan, agreed in principle as early as 2015 and reaffirmed in the 2018 Revitalised Peace Agreement, remains unestablished, stalled by the government's failure to pass enabling legislation even as ceasefire violations continued and national elections were postponed into December 2026. The distance between Sierra Leone's completed process and South Sudan's indefinitely deferred one illustrates, in miniature, how far political will rather than institutional design determines whether a well-conceived mechanism ever delivers justice.

Where courts of any kind remain unavailable, customary and community-based dispute resolution has often filled the space with a degree of local legitimacy that formal systems lack. Rwanda's post-genocide gacaca courts, adapted from a pre-colonial tradition, processed roughly two million cases between 2005 and 2012 a scale no conventional court system could plausibly have matched though the process also drew serious and legitimate criticism over its due-process guarantees. Such mechanisms illustrate both the promise and the peril of customary justice in crisis settings they can deliver restorative, locally legitimate resolution at a speed formal courts cannot match, while also falling short of international fair-trial standards or reproducing discriminatory customary norms, particularly against women.

Regional and International Accountability Bodies Under Strain

Regional human rights systems were built as a bridge between the abstract promise of rights and the concrete experience of a person seeking redress, but the bridge is frequently only half-built. In the Inter-American system, many victims are effectively locked out of the Commission and Court not because the law forbids their claims but because poverty, illiteracy, and personal danger stand between them and the process. The African human rights architecture is unusually ambitious by comparison the African Charter on Human and Peoples' Rights, unlike its European and American counterparts, contains no derogation clause at all, a deliberate choice

⁹Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, arts 1, 17.

¹⁰R. Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Polity Press 2002).

by drafters meeting in the aftermath of a wave of coups and single-party emergencies to deny states the ability to suspend Charter rights even during war. In principle, this makes the African system more protective during military operations than many global counterparts. In practice, individuals and NGOs may bring cases directly to the African Court only where their state has made a special declaration accepting such petitions, and at its high-water mark fewer than ten states had done so, with several subsequently withdrawing after adverse rulings a recurring pattern in which progressive instruments are hedged with reservations precisely where they threaten to bite.

That pattern escalated sharply in the mid-2020s. Mali, Burkina Faso, and Niger, all under military juntas that seized power amid Sahelian insurgencies, completed their formal withdrawal from the Economic Community of West African States (ECOWAS) in January 2025, severing their citizens' access to the ECOWAS Community Court of Justice, which since 2005 had exercised jurisdiction over human rights complaints without requiring exhaustion of domestic remedies. The same three states, organised as the Alliance of Sahel States, subsequently announced in September 2025 their withdrawal from the Rome Statute, with Niger's formal notification received by the International Criminal Court in June 2026 and taking full legal effect only a year later.¹¹ Civil society organisations have warned that the combined effect strips victims of both regional and international avenues of redress precisely when domestic courts are least able to investigate abuses independently. The sequencing regional withdrawal first, international withdrawal second illustrates a broader governance risk accountability mechanisms can be dismantled not through open repudiation of human rights norms but through incremental institutional exit, framed in the language of sovereignty.

Economically Vulnerable Communities

Where armed conflict destroys justice institutions through direct violence, economic crisis erodes them more slowly but no less corrosively.¹² Financial collapse reduces government revenue, limiting resources for courts, prosecutors, legal aid, and oversight bodies precisely as demand for their services rises. During periods of inflation, unemployment, or fiscal contraction, disputes over employment, housing, debt, and social protection increase substantially, even as governments cut the legal aid programmes that vulnerable populations most need. People living in poverty frequently cannot afford legal representation, transport to court, or administrative fees, so justice becomes accessible chiefly to those with the resources to pursue it a direct erosion of the rule of law's foundational premise that every person stands equal before the law regardless of wealth.

The relationship between economic insecurity and justice runs in both directions. Poverty increases vulnerability to exploitation, trafficking, forced labour, and corruption; weak justice systems, in turn, discourage investment, erode public confidence, and allow corruption to flourish, further accelerating economic decline.¹³ Sanctions, blockades, and austerity measures are often presented as bloodless alternatives to war, yet when imposed without care they can produce comparable civilian suffering. A population deprived of medicine or food because of a dispute between governments has consented to none of it and committed no wrong that would justify such a cost. Justice, understood this way, is not confined to courtrooms; it also concerns whether ordinary people are made to bear costs, in health and opportunity, for decisions made far above their heads.

¹¹Rome Statute (n 9) art 127 (withdrawal takes effect one year after notification unless a later date is specified).

¹²UNDP, *Strengthening the Rule of Law in Crisis-affected and Fragile Situations* (UNDP 2011).

¹³A Clapham, *Human Rights: A Very Short Introduction* (OUP 2016).

Crisis conditions, moreover, do not distribute risk evenly. Women and girls face heightened risk of gender-based violence during both armed conflict and economic hardship; children become vulnerable to trafficking, forced recruitment, and denial of education; and refugees, internally displaced persons, persons with disabilities, and older people routinely encounter discrimination when attempting to obtain legal remedies. The Protocol on the Rights of Women in Africa obliges states to prevent and punish sexual violence and to provide reparations,¹⁴ yet stigma, the collapse of forensic and medical infrastructure, and the physical danger of reporting to occupying forces mean the overwhelming majority of incidents, from eastern Democratic Republic of the Congo to the conflict in Sudan, never reach any tribunal, formal or informal.

Bridging the Gap

Mobile Courts and Community Paralegals

A growing body of practice suggests that mobile courts and community-based paralegals offer a scalable answer to the shortage of lawyers and functioning courtrooms in rural and conflict-affected areas. Mobile courts bringing judges, prosecutors, and legal aid providers to displacement camps and remote districts on a circuit basis have been used in the Democratic Republic of the Congo and South Sudan specifically to prosecute conflict-related sexual violence in areas the formal system otherwise cannot reach. Community-based paralegals, trained lay advisers who mediate disputes, explain rights, and refer serious cases upward, have operated successfully in Sierra Leone, Malawi, and parts of the DRC at a fraction of the cost of formal legal aid schemes. In the Philippines, the Justice on Wheels programme performs a comparable function in provinces where the nearest functioning court might otherwise be a half-day's travel away; the very necessity of such a programme is itself a measure of how far the ordinary system falls short in reaching those it is meant to serve.

Legal Aid, Legal Awareness, and Digital Justice

Ring-fencing legal aid as core state expenditure, rather than treating it as discretionary spending vulnerable to reallocation toward security budgets, is one of the more straightforward reforms available to states, and one most consistently neglected in practice. Legal awareness campaigns that inform citizens of their rights, and referral systems that connect a detainee or rural resident to the right office without requiring prior knowledge of the bureaucracy, do comparatively inexpensive work in closing the gap between a right that exists on paper and a right a person knows how to claim. Digital and online court proceedings, expanded substantially in conflict settings such as Ukraine since 2022 to allow displaced populations to access hearings remotely, extend this logic further, though such tools depend on infrastructure and connectivity that is itself often a casualty of the same crises they are meant to address.

Local Legitimacy and Its Limits

Structured dialogue between citizens, local leaders, police, and self-defence groups documented in community reconciliation initiatives across the Sahel and along contested border regions in the Horn of Africa has shown that trust between security forces and the public is not automatic; it has to be built deliberately, in spaces where people who have been mistreated can say so and be heard. The Acholi mato oput reconciliation ritual, invoked in northern Uganda as a complement to formal accountability for crimes committed during the Lord's Resistance Army insurgency, illustrates the same tension the gacaca experience revealed customary mechanisms can deliver restorative resolution at a scale and speed formal courts cannot match, but they require careful integration with fair-trial and non-discrimination safeguards rather than treatment as a substitute for the formal system altogether.

¹⁴Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) art 11.

Why Sequencing Fails

Conventional policy thinking tends to favour a sequenced theory of change first security, then justice; first stability, then rights; first economic recovery, then institutional reform. The evidence surveyed above suggests this sequencing is not merely slow but self-defeating, because the conditions that make justice appear unaffordable are frequently caused by its absence in the first place. Disputes over land and resources continue to fester during conflict and often become accelerants of further violence precisely because everyday civil justice issues are sidelined in favour of narrow, top-down security interventions. Transitional justice is not something bolted onto a peace agreement after the fact; the wounds it addresses do not go dormant simply because a document declares a conflict over, and credible guidance on justice and security assistance increasingly treats an inception period of six months or more, before substantive programming begins, as a precondition for legitimacy rather than bureaucratic delay legitimacy cannot be imported on a deadline.

Several structural tensions cut across every region examined here. Governments increasingly invoke sovereignty to resist external and even regional scrutiny, using genuine security threats as political cover for institutional exit. Even where regional courts and commissions issue favourable rulings, compliance by respondent states remains inconsistent, and enforcement mechanisms remain considerably weaker than the comparable machinery available domestically in stable states. Continental and sub-regional judicial bodies remain chronically underfunded relative to their mandates, often reliant on donor financing that creates its own dependency and legitimacy concerns, and prosecution rates for conflict-related sexual violence remain extremely low relative to documented incidence in nearly every active conflict. The proliferation of parallel accountability bodies continental courts, sub-regional courts, proposed alternatives, and international tribunals risks diffusing rather than strengthening accountability if not carefully coordinated, and the shrinking operating space for human rights defenders and journalists in conflict zones undermines the documentation on which every downstream justice mechanism ultimately depends.

In conclusion the architects of modern humanitarian and human rights law were not idealists indifferent to the realities of war; they were responding directly to the worst of what states and armies do under pressure. They built a system on the premise that respect for basic humanity is not a weakness to be discarded in crisis but often the only thing separating a difficult situation from a catastrophic one. Disciplined institutions that respect the law tend to function better under strain, not worse, and societies that hold their institutions accountable during hard times recover more fully than those that treat hard times as licence to abandon accountability altogether. Justice withheld "for now" rarely returns intact later; it tends to come back diminished, if it returns at all. This is why access to justice cannot be treated as a fair-weather right, extended in calm periods and withdrawn under pressure. The true measure of any society's commitment to justice is not what it upholds when nothing is at stake, but what it refuses to abandon when everything is.

Bibliography:

1. Clapham A, Human Rights: A Very Short Introduction (OUP 2016)
2. Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135
3. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287
4. Henckaerts J-M and Doswald-Beck L, Customary International Humanitarian Law, Vol I: Rules (CUP 2005)
5. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

6. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136
7. Mani R, Beyond Retribution: Seeking Justice in the Shadows of War (Polity Press 2002)
8. Meron T, 'The Humanization of Humanitarian Law' (2000) 94 American Journal of International Law 239
9. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005)
10. Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3
11. Sassòli M, International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare (Edward Elgar 2019)
12. UNDP, Strengthening the Rule of Law in Crisis-affected and Fragile Situations (UNDP 2011)
13. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)