

Book Review:

Kuwali D and Viljoen F (eds) *By All Means Necessary: Protecting Civilians and Preventing Mass Atrocities in Africa* (PULP Pretoria 2017) ISBN 978 1 920538 66 8

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Abstract

This contribution provides a review of the collective volume "*By All Means Necessary: Protecting Civilians and Preventing Mass Atrocities in Africa*" edited by Dan Kuwali and Frans Viljoen.

Keywords

Mass atrocities; international peace and security; United Nations Security Council

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Review

This volume is a collaborative effort from various scholars with regard to the very topical issue of the protection of civilians and the prevention of mass atrocities specifically with reference to the African continent. It originated from a colloquium held in 2014 by the *Centre for Human Rights* at the Faculty of Law, University of Pretoria with the assistance of the *United States Africa Command* (AFRICOM) through the *Africa Military Forum* (AMLF). The specific aim of this colloquium was to consider the legal, procedural and practical challenges with regard to the meaningful implementation of article 4(h) of the *Constitutive Act of the African Union* as well as the role of the international community with regard to the protection of the African population.

The phrase "by all means necessary" originates from the competence of the United Nations Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security".¹

As Kuwali and Viljoen point out in the introduction - to save lives is a moral imperative and a legal obligation (the latter rooted in human rights) and it enhances peace and security. They explain the two approaches to preventative measures with regard to this topic - the first being the "upstream" one – this entails the development and implementation of policies, laws and strengthening of sectors to combat mass atrocities and to improve the security of individuals. The second approach ("downstream") involves responses to the imminent danger of mass atrocities. That is also how this volume is structured – each chapter deals directly or indirectly with one or sometimes both of these approaches.²

The introductory chapter highlights the importance of all stakeholders in this matter and also indicates that there might be a lack of cohesion in this regard, which hampers efforts to effectively address the scourge of mass atrocities.³ It also points out that the United Nations Security Council resolutions with regard to protection of civilians and the combatting of mass atrocities receive a special place in the volume, but that the volume goes

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¹ UN Charter a 42.

² Kuwali and Viljoen *By All Means Necessary* 3.

³ Kuwali and Viljoen *By All Means Necessary* 6.

beyond this and also casts its net wider and includes contributions, ideas and suggestions by other role players such as humanitarian agencies, the International Criminal Court as well as other domestic agencies.⁴

The volume comprises 25 chapters divided into five themes. These are: the implementation and protection of civilian-mandates; protection of specific populations and property at risk; means and strategies to deal with mass atrocities; lessons learnt on protection of civilians in armed conflicts and a reflection on the future of the protection of civilians; and the prevention of mass atrocities. This offers a sensible blend of perspectives and different angles of the issues at hand.

In chapter 2 Kiwali grapples with article 4(h) which specifically deals with responsibility to protect and offer protection to civilians and indicates that by the year 2000 statistics show that 9 out of every 10 deaths in armed conflicts involve civilians, a very chilling and sobering thought.⁵ Kiwali feels that there is a "doctrinal gap that exists as a result of different perspectives of the term 'protection' between humanitarian organisations".⁶ He suggests that humanitarian organisations take a broad view with regard to protection of civilians, as opposed to peacekeepers which tend to adopt a narrow approach. Foley (chapter 3) and Tladi (chapter 4) also discuss this topic with chapter 4 providing a very insightful analysis of the protection of civilians-mandates in UNSC resolutions.

Chapter 5 which introduces Part 2 of the volume, offers a confirmation by Chengata that the article 4(h)-intervention as well as the responsibility to protect, can assist to bridge the gap in the implementation and monitoring of mechanisms to help to prevent wilful killing of civilians in armed conflicts. The rest of Part 2 deals with aspects such as a legal framework for the protection of refugees and internally displaced persons (chapter 8), and other pressing issues such as the protection from sexual and gender-based violence (chapter9).

Part 3, which focuses on the means and strategies for dealing with mass atrocities, has offerings such as chapter 15 in which by Boti-Phiri – a former military officer - cites Kenya as a good example of an African country which has implemented sensible and practical changes. These changes have been driven by the Kenyan government in order to combat protection of

⁴ Kuwali and Viljoen *By All Means Necessary* 8.

⁵ Kuwali and Viljoen *By All Means Necessary* 16.

⁶ Kuwali and Viljoen *By All Means Necessary* 19.

civilians and prevention of conflict. His chapter makes for thought-provoking reading.

Chapter 16, which has been co-written by Kuwali and Dastoor, the latter being a Captain in the United States Army Advocate General Corps and an international Operational Law attorney, also offers some solid discussions. This chapter shows great insight into the issue of veto power, and the use and abuse of this by the P5, and contributes on a practical as well as an academic level.

In part 4, chapter 21 gives us an analysis of the normative and institutional frameworks that lay the foundation for the protection of civilians-agenda especially as promoted by the AU. A reflection of the future of these issues is dealt with in Part 5 of the volume.

Chapter 25 aims to give clearer insight into the overall aim of the volume. namely greater clarity regarding the closure of the conceptual and operational gap that exists as a result of different perceptions of the term "protection" as well as, very importantly, the factors that trigger mass atrocity crimes.⁷

The statement is made that the root of all atrocities that trigger article 4(h)-intervention in Africa is political in nature and not judicial and political solutions rather than judicial interventions are suggested. This means that the international community should assist Africa in addressing the urgent political, social and economic problems that create and foster these conflicts.⁸

This thought-provoking volume offers keen insight into the issue of protection of civilians and prevention of mass atrocities – two of Africa's major issues. It offers a wide perspective and draws from the knowledge and experiences of academics, scholars as well as people who have actively been involved in conflicts in Africa and not just ones with academic experience, and this adds to its value.

⁷ Kuwali and Viljoen *By All Means Necessary* 489.

⁸ Kuwali and Viljoen *By All Means Necessary* 489.