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## Strengthening the Legal Protection of the Rights of Internally Displaced Persons in Africa

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### Introduction

Internal displacement of persons by natural and man-made causes has assumed a dimension too great to ignore<sup>1</sup> and is now a human rights concern. According to the Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), there were 31.1 million new internal displacements by conflict, violence and disasters in 2016, and the implication is that, it is equivalent of one person forced to flee every second. On a similar note, the former UN Secretary-General, Kofi Annan, has noted that “*internal displacement is the great tragedy of our times. The internally displaced people are among the most vulnerable of the human family*”.<sup>2</sup> Interests recognised and protected by the laws of a state and which, if violated, attract legal

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<sup>1</sup> Javid Rehman (2010). *International Human Rights Law*, 2<sup>nd</sup> Edition, England, Pearson Educational Limited, 641.

<sup>2</sup> UN OCHA Guiding Principles on Internal Displacement in his Foreword to the second edition of the Guiding Principles by Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Mr. Jan Egeland, he quoted the former UN Secretary-General Kofi Annan has noted, ‘internal displacement is the great tragedy of our times. The internally displaced people are among the most vulnerable of the human family.’

sanctions are referred to as rights. While human rights are entitlements of all human beings, not all persons enjoy these rights all the time and in all situations. Consequently, there is a need for the rights of certain groups of persons, identified as disadvantaged, to be protected by law. Examples are internally displaced persons (IDPs), persons with disabilities, women generally and particularly pregnant women, and children, among others. Incidentally, these groups are usually disproportionately represented among IDPs. There are various levels of legal and institutional protection for some of the disadvantaged groups of persons. However, the adequacy and effectiveness of existing protection is important. This article focuses on the African regional protection of the rights of IDPs and how it can be strengthened.

While there is no universally-agreed definition for IDPs, they are generally persons who have been forcefully removed from their usual environment such as their homes and states within their countries. A displaced person is also one who has been driven from the homeland or place of residence by war, internal upheaval or natural disaster. This paper adopts the definition proffered by the Guiding Principles on internal displacement which defines IDPs as *“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognized State border.”*<sup>3</sup>

The protection of the rights of displaced persons is a very important area of the law which concerns itself with current issues in the international community. It is important to point out that the responsibility for the protection of IDPs reposes first and foremost with national governments and local authorities, in view of issues of sovereignty of states. However, it is important for the regional and international communities to also contribute to enhancing the

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<sup>3</sup> United Nations UN Doc. E/CN.4/1998/53/Add.2, Guiding Principles on Internal Displacement, Principle 2.

See also Ocha, T. (2003). Guiding Principles on Internally Displacement, 2nd ed., UN., New York, USA.

protection of IDPs in conflict and crisis situations.<sup>4</sup> The plight of displaced persons has, over recent years, become a formidable problem of global significance. In terms of conflict-induced displacement, it is notable that conflict and displacement hardly ever stop within borders<sup>5</sup> as it is usual for them to spill over into neighbouring countries with the potential to upset regional stability, thereby often compelling a regional response.<sup>6</sup> Due to the possible cross-border nature of displacement of persons, there are legal initiatives at global, regional and national levels for the protection of IDPs. Africa, like other regions of the world for instance, which has experienced frequent conflicts in the last few decades, has put in place, a regional framework for the protection of IDPs. Part of the major strategies in the African region, for the protection of internally displaced persons, is the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known as the Kampala Convention<sup>7</sup>, alongside other approaches.

Respect for territorial sovereignty has been identified as a major challenge to adequate regional protection for the rights of IDPs as international involvement would bring and make states accountable for their deficiencies when it comes to providing protection and basic support for IDPs<sup>8</sup>. Regional cooperation, deliberate efforts to address the root causes of conflicts before they escalate into conditions that

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<sup>4</sup> Mr. Sergio Vieira de Mello in a Foreword to the Guiding Principles by Under-Secretary-General for Humanitarian Affairs, in a Report submitted in September 2001, pursuant to Commission resolution 1997/39 on the Guiding Principles on Internal Displacement COMMISSION ON HUMAN RIGHTS Fifty fourth session E/CN.4/1998/53/Add.2, 11 February 1998.

<sup>5</sup> Roberta Cohen, The Role of Regional Organizations, ECOWAS Monday, September 30, 2002 Retrieved from <https://www.brookings.edu/on-the-record/the-role-of-regional-organizations-ecowas/>

<sup>6</sup> *Ibid.*

<sup>7</sup> African Union Convention on the Protection and Assistance to Internally Displaced Persons (Kampala Convention), 2009.

<sup>8</sup> JavidRehman, (2010). *International Human Rights Law*, 2<sup>nd</sup> Edition, pp.673-679.

necessitate internal displacement of persons, transparency in governance and a common culture of respect for human rights among other preventive mechanisms will go a long way to minimise the occurrence of internal displacement in Africa.

This article examines the legal instruments and other strategies for the protection of IDPs at the regional African level and how protection can be strengthened. It is divided into five (5) sections, this introduction being the first. The second examines the history and Africa's peculiarities in internal displacement, while the third section reviews the causes of internal displacement, especially in Africa. The fourth section reviews the regional provisions for strengthening the protection of human rights of internally displaced persons. The fifth concludes and recommends measures for improving the protection of the rights of IDPs within the African regional framework.

### **Historical Background and Africa's Peculiarities of Internal Displacement**

Although the phrase "internally displaced persons" was first used in 1969, the reality of internal displacement had existed much earlier<sup>9</sup>. From time immemorial, the issue of internal displacement has been germane and important to the safety, security and peace of mankind, though until the 20<sup>st</sup> century, man did not give much consideration to this area of existence.<sup>10</sup>

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<sup>9</sup> Available at <https://www.idp.com>, United Kingdom.

<sup>10</sup> There was a total of 37,494 million internally displaced persons as at 2015. The middle East and North Africa have 13.933 million while Africa has 10.762 million. As at 2014, there was a record breaking population of IDPs that was estimated as 38.2 million in the world. According to the UNHCR, this is the highest since 1989 and it was the first year that there was a global statistics of IDPs. The IDMC's Global overview in 2015 reported that the majority of the increase in the new displacement during the year was as a result of protracted crises. The DR of Congo, Iraq, Nigeria, South Sudan and Syria. These countries in total account for 60% of the world's IDPs. Also, according to the United Nations Environmental Programme (UNEP), Sudan has the largest population of internally displaced persons in the world. Nearly 2 million are in Dafur in large settlements such as Abu Shouk IDP camp in El Fasher, Northern Dafur.

The 20<sup>st</sup> century was characterised by several problems ranging from migration issues to poverty, war, crime, natural disasters and epidemic among others. Equally, it has been significantly noted in the 21<sup>st</sup> century that the activities of warlords, terrorists and extremists like the Boko Haram in Nigeria, Al-Shabab in Kenya, ISIS (Islamic State of Iraq and Syria) have triggered the internal displacement of a lot of people in Africa<sup>11</sup>.

The scourge of insurgency in several parts of the world has altered the balance and standard of living of several people, leaving them devastated and susceptible to unforeseen attacks. The issue of internal displacement has affected the developed, developing and underdeveloped countries all over the world<sup>12</sup>. The internal displacement of persons poses a serious challenge all over the world, it is perhaps more serious than refugee crises. In terms of numbers of persons affected, internal displacement is more troubling as it has been noted that there are currently about 51 million IDPs in over 40 states of the world. IDPs can be found in virtually every continent though the problem is much more pronounced in Africa and Asia<sup>13</sup>.

The international protection for displaced persons and refugees began with the precursor of the United Nations known as League of Nations which was established on the 10<sup>th</sup> of January, 1920. The League of Nations was created following the First World War in order to prevent another global-scale war and deal with post-war challenges. The first major wave of refugees in the 20<sup>th</sup> century was one of such challenges. The involvement of the League with refugees began in 1921, as a result of the World War and several wars that followed it. In response to this crisis, various charities originally took the responsibility, specifically organisations like the International Committee of the Red Cross (ICRC)<sup>14</sup>. The ICRC held a conference in February, 1921 to draft a proposal to the League of Nations Council concerning long-

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<sup>11</sup> See <https://www.cfr.org/content/think>.

<sup>12</sup> Javaid Rehman (2010). *International Human Rights Law*, 2<sup>nd</sup> edition, 641.

<sup>13</sup> *Ibid*

<sup>14</sup> Christopher Steadman (2015). *Rights of Refugees, the Internally Displaced and Asylum Seeking People*. Old Dominion University, Model United Nations Society.

term action on behalf of refugees.<sup>15</sup> This began the relationship between intergovernmental organisations (IGOs) and protection of IDPs.

### **Peculiarities of Internal Displacement in Africa**

In terms of Africa's peculiarities in respect of internal displacement, conflict has been identified as a major factor, accounting for many of the displacements, as compared with other causes.

Ferris has observed that Africa has many more internally displaced persons (IDPs) than refugees, stressing that it has nearly five times as many IDPs.<sup>16</sup> By the end of 2010, there were around two million refugees in sub-Saharan Africa while the matching number for IDPs was about 11 million.<sup>17</sup> Nevertheless, it has been observed that while there is a 60-year-old convention on refugees and a dedicated UN agency to protect and assist refugees, the corresponding system for responding to internal displacement stands much weaker<sup>18</sup>. The *Guiding Principles on Internal Displacement*, although widely-recognised as the prevailing normative framework for IDPs and despite the fact that these principles are drawn from binding international law, the principles themselves are not a legally-binding instrument. On the global scale, there is also no dedicated UN agency that addresses the needs of IDPs. However, there has been progress in recent years in assigning responsibility for IDPs issues to existing UN agencies. Even at that, it is trite law that it is the responsibility of national governments to protect and assist those displaced within the borders of their countries<sup>19</sup>.

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<sup>15</sup> Christopher Steadman (2015). Rights of Refugees, the Internally Displaced and Asylum Seeking People. Old Dominion University, Model United Nations Society.

<sup>16</sup> Elizabeth Ferris, Internal Displacement in Africa: An Overview of Trends and Opportunities, Presentation at the Ethiopian Community Development Council Annual Conference "African Refugee and Immigrant Lives: Conflict, Consequences, and Contributions" May 2-4 2012 Brookings-LSE Project on Internal Displacement.

<sup>17</sup> Elizabeth Ferris, *Ibid.*

<sup>18</sup> Elizabeth Ferris, *Ibid.*

<sup>19</sup> Elizabeth Ferris, *Ibid.*

Another peculiarity of internal displacement in Africa is that of protracted internal displacement. It is defined as protracted if it exceeds five years. In Africa, IDPs in about 15 countries were displaced more than five years ago. The implication of a protracted displacement includes the fact that the longer displacement lasts, the more difficult it is to find sustainable solutions. For example, people occupy land left behind by IDPs and issues of restoration of land and property become complex, particularly in situations where most people hold land through customary law rather than individual legal titles, as in Africa.

Due to protracted displacement in some countries, people do not have any land to return to, as a result of patriarchal land ownership, if the men have died in war, as is the case for some of the 30,000 still internally displaced in Uganda<sup>20</sup>. Also, IDPs in Darfur, estimated at nearly two million people, live largely in camps which are difficult living environments. Furthermore, protracted displacement is frequently accompanied by new displacement, due to fresh outbreaks of conflict, such as in the current clashes between Sudan and South Sudan. Other countries, such as the Democratic Republic of Congo and the Central African Republic have both long-standing populations of IDPs and new IDPs created by recent conflicts.<sup>21</sup>

Election violence has led to displacement in Africa and, though it occurs in other regions, it seems to be particularly prevalent in Africa.<sup>22</sup> A lesson to be drawn from this is that preventing displacement in Africa<sup>23</sup> consists of addressing its causes, including

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<sup>20</sup> Elizabeth Ferris, *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Election-related violence has occurred in many African countries, including Angola, the Gambia, Republic of Congo, Zimbabwe, Chad, Nigeria, Sierra Leone, Algeria and Madagascar.

<sup>23</sup> Examples include Kenya where over 650,000 people were internally displaced by post-election violence at the end of 2007 and beginning of 2008; in 2011, there were still some 250,000 IDPs in the country, many of whom were undoubtedly displaced in the post-election violence. In Côte d'Ivoire, up to a million people were internally displaced (and 200,000 externally) as a result of violence occurring in the aftermath of the 2010 disputed presidential elections. Nearly 250,000 are still



election violence. For example, systematising electoral registries is a way to prevent displacement – not just a necessary step towards good governance.

### **Causes of Internal Displacement in Africa**

The growth in the global number of internally displaced persons in the last few years can best be described as astronomical. According to the United Nations Children's Fund, (UNICEF), by the end of 2015, 19.2 million people were internally displaced by violence and conflicts across Asia, a staggering 47 per cent of the global total for similar internal displacements.<sup>24</sup>

Africa has a substantial proportion of IDPs, perhaps next to Asia. As at 2015, there were 12.4 million people internally displaced by violence and conflict across Africa. Some African countries have much higher rate of IDPs than others. Specifically, four countries in Africa, namely Nigeria, Democratic Republic of the Congo, Central African Republic and South Sudan were among the top-10 countries globally for new violence-induced internal displacements in 2015.<sup>25</sup>

The trend of violence, effects of climate change and other causes of internal displacement have generally been on the increase. It can therefore be safely claimed that internal displacement of persons has also been on the increase globally, in Africa, with Nigeria as a particular example. Thus, it is needful to briefly explore the causes of internal displacement and the African legal framework on IDPs and make suggestions for reducing to the barest minimum the rate of the incidence of IDPs in the region.

In terms of the causes of internal displacement of persons, they are generally common to human communities. From the perspective of the International Committee of the Red Cross (ICRC), the causes of displacement in Africa, as in other parts of the world are diverse and

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internally displaced. There was also election-related displacement in 2011 in Nigeria and the Democratic Republic of the Congo.

<sup>24</sup> United Nations Children's Fund (UNICEF) September 2016. Uprooted THE GROWING CRISIS FOR REFUGEE AND MIGRANT CHILDREN UNICEF @ 70, 70 year for every child.

<sup>25</sup> United Nations Children's Fund (UNICEF) September 2016. Uprooted THE GROWING CRISIS FOR REFUGEE AND MIGRANT CHILDREN UNICEF @ 70, 70 year for every child.

complex<sup>26</sup>. They include natural disasters, development-induced displacement, as well as the root causes of displacement that are that have been triggered by, or at least contributed to, armed conflict or situations of violence. Conflict-induced displacements have, as catalysts, poverty, the effects of climate change, scarcity of resources, political instability, weak governance and justice systems<sup>27</sup>.

Internal displacement is a common consequence of inter-communal and political violence, flooding and forced evictions<sup>28</sup>, among others. Africa has the most countries affected by internal displacement than any other continent. It has about 12 million internally displaced persons within it<sup>29</sup>. These same factors often hamper the end of displacement and make the task of rebuilding lives and restoring the livelihoods of people affected by displacement all the more difficult<sup>30</sup>. The statistics on internally displaced persons generally count only those who are displaced by conflict and persecution.<sup>31</sup> Sometimes, too, natural disasters have been responsible for the displacement within their own countries.<sup>32</sup>

The preamble to the Kampala Convention also alludes to root causes of internal displacement to include, especially, persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development in expressing its determination to

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<sup>26</sup> Jakob Kellenberger, "Root causes and prevention of internal displacement: the ICRC perspective" Statement by President of the ICRC at a Special summit on refugees, returnees and IDPs in Africa, Kampala, Uganda, 23 October 2009.

<sup>27</sup> *Ibid.*

<sup>28</sup> Norwegian Internal Displacement Monitoring Centre (IDMC) (2013). Nigeria: Increasing violence continues to cause internal displacement, A profile of the internal displacement situation.

<sup>29</sup> Available at [www.internal-displacement.org](http://www.internal-displacement.org)>Kampalaconvention.

<sup>30</sup> Jakob Kellenberger, "Root causes and prevention of internal displacement: the ICRC perspective" Statement by President of the ICRC at a Special summit on refugees, returnees and IDPs in Africa, Kampala, Uganda, 23 October 2009.

<sup>31</sup> Internally displaced women in Seliah camp, West Darfur informing UNHCR about their living conditions (UNHCR/H. Caux/2004).

<sup>32</sup> *Ibid.*

adopt measures aimed at preventing and terminating the phenomenon of internal displacement by eradicating same<sup>33</sup>.

A commonly-neglected or understated cause of internal displacement is development. Development is ordinarily expected to improve the quality of life for human beings, but its process has been identified as a cause of internal displacement and the consequent hardships that go with displacement<sup>34</sup>.

Cohen and Francis M. Deng (Co-Directors Brookings-SAIS Project on Internal Displacement) have noted that although internally displaced persons are often defined as those uprooted by conflict, human rights violations and natural or human-made disasters, they also include those displaced by development projects.<sup>35</sup> They observe that Robinson has pointed out that: "While victims of disaster—especially natural disaster—generally are the focus of sympathetic attention and international aid (as are many of those displaced by conflict), the same cannot be said for victims of development-induced displacement, although the consequences may be comparably dire."<sup>36</sup>

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<sup>33</sup> Pre-ambule to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

<sup>34</sup> See article 10 (1)-3 which provides protection in cases of displacement induced by projects as stated thus: 1. State-Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors; 2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects; 3. State-parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

<sup>35</sup> Roberta Cohen Francis M. Deng Co-Directors Brookings-SAIS Project on Internal Displacement, in Forward to Robinson W. Courtland, (2003). *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, The Brookings Institution-SAIS Project on Internal Displacement.

<sup>36</sup> Roberta Cohen and Francis M. Deng (Co-Directors Brookings-SAIS Project on Internal Displacement) in the Foreword to Robinson W. Courtland, (2003). *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, The Brookings Institution-SAIS Project on Internal Displacement.

It has been averred that, when people are induced to move, meaning that when they are displaced, even if it is by development schemes, that happening can be designated forced migration<sup>37</sup>. This view is founded upon Nicholas Van Hear's definition of forced migration which is based on the orientation that, to "individuals or communities compelled, obliged, or induced to move when otherwise they would choose to stay put; the force involved may be direct, overt and focused, or indirect, covert, and diffuse."<sup>38</sup> The critical and determining factor here is the element of "force". Victims of internal displacement by development are not allowed to make a choice or exercise their rights over where they want to stay, which amounts to a human right violation. The means used for displacement in development cases maybe the "force" of inducement or compulsion, the important factor remains involuntary movement of persons out of their natural places.

The solution, as suggested by the World Commission on Dams, is that "an approach based on 'recognition of rights' and 'assessment of risks'...be developed as a tool for future planning and decision making"<sup>39</sup>. Robinson asserts that if this is applied to development-induced displacement within the framework of the *Guiding Principles*, such an approach would bring new populations under the purview of the Representative of the Secretary-General on Internally Displaced Persons. Against the background of non-recognition of development-induced internal displacement of persons, the import of this is that, rather than dilute aid and attention or render protection for IDPs more incoherent, the inclusion of development-induced displacement could draw upon a potentially wider network of institutional resources and a

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<sup>37</sup> Robinson W. Courtland, (2003). Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement, The Brookings Institution-SAIS Project on Internal Displacement.

<sup>38</sup> Van Hear, Nicholas. Development and Displacement: A Review of the World Bank's World Development Report 1990 and the UNDP's Human Development Report 1990, Refugee Studies Programme, Oxford, 1990.

<sup>39</sup> Cited in Chris de Wet, (2002). "Improving Outcomes in Development-Induced Displacement and Resettlement Projects."In Forced Migration Review, March 2002 (www.fmreview.org).

broad array of rights and make for a more coordinated response to internal displacement.<sup>40</sup>

However, doubts have been expressed on the possibility of states adopting the notion of recognising the development-induced displacement group in these words: "there would be resistance from governments if [development-induced displacement] were included in the definition of IDPs. States may consider that their inclusion would give considerable scope to the international community to find pretexts to interfere in their domestic affairs."<sup>41</sup> Saha, an Indian government official, recommends deleting development-induced displacement from the *Guiding Principles* definition but even those who favour inclusion acknowledge it could render access even more problematic<sup>42</sup>. Although it has been noted that states are generally quite willing to grant access to assist victims of natural disaster and, at least when it serves their purpose, may permit aid to victims of conflict-induced displacement, unfortunately, "governments naturally fight harder to maintain the concept of national sovereignty when the perpetrator of displacement is the state itself"<sup>43</sup>.

It is hoped that governments will gradually come to terms with the human rights violation embedded in development-induced displacement and consequently give adequate recognition and all necessary measures to those affected, in recognition of their human rights, based on a right-based approach.

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<sup>40</sup> Robinson W. Courtland, (2003). *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, The Brookings Institution-SAIS Project on Internal Displacement.

<sup>41</sup> K...C. Saha (2000). "Rethinking the Guiding Principles: the Case of the Kashmiri Pandits." *In Forced Migration Review*, August 8, 2000 ([www.fmreview.org](http://www.fmreview.org)).

<sup>42</sup> *Ibid.*

<sup>43</sup> Bjorn Pettersson (2002). "Development-induced displacement: Internal Affair or International Human Rights Issue." *In Forced Migration Review*, March 2002 ([www.fmreview.org](http://www.fmreview.org)).

## **The Legal Instruments/Framework on Internal Displacement in Africa African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention)**

The Kampala Convention is the most prominent regional instrument that binds governments to provide legal protection for the rights and well-being of those forced to flee in their home countries due to conflict, violence, natural disasters, and other human rights abuses. Such situations have become so prevalent that every nation of the world either through its national or regional affiliation with other countries is directly or indirectly involved. The UN Economic and Social Council Report of the Representative of the Secretary-General<sup>44</sup> gives a picture of internal displacement as far back as two decades ago<sup>45</sup>, a situation which has grown worse over the last decade. Recognising the importance and relevance of this evolving aspect of international law, the African Union Kampala Convention on IDPs in Africa defined internal displacement as *“the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”*<sup>46</sup>.

The Kampala Convention is the first independent legally-binding regional instrument in the world to impose on states the obligation to

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<sup>44</sup> Report submitted pursuant to Commission resolution 1997/39 on the Guiding Principles on Internal Displacement COMMISSION ON HUMAN RIGHTS Fifty fourth session E/CN.4/1998/53/Add.2, 11 February 1998.

<sup>45</sup> *Ibid.* Francis M. Deng in that report, states that “Internal displacement, affecting some 25 million people worldwide, has become increasingly recognized as one of the most tragic phenomena of the contemporary world. Often the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in which discrimination features significantly; displacement nearly always generates conditions of severe hardship and suffering for the affected populations”.

<sup>46</sup> Article 1(1) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted by the special summit of the union held in Kampala, Uganda, 22nd October 2009.

protect and assist IDPs. The Convention entered into force on 6 December 2012, after being ratified by 15 African countries.<sup>47</sup>

As mirrored in the Kampala Convention, the African regional protection seeks, among other things, to locate IDPs as close to their natural habitat as possible by prohibiting discrimination against them and encouraging their integration into their new communities as if it was their original home. Thus, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) stipulates that: “*States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.*”<sup>48</sup>

It therefore amounts to discrimination for anyone to exclude an internally displaced person from participating in the social, economic, political or cultural life obtainable in the host community, provided they qualify for it as much as is required of natives or indigenes of the place. On the other hand, this can potentially lead to conflicts between IDPs and members of the host community, who may perceive IDPs as encroaching on their private domain or sharing in spaces which they consider insufficient, even without the IDPs (a case of higher demand on limited resources, leading to keen competition for farming land in northern Nigeria for instance).

Governments are required to integrate and implement the convention into national laws and policies after ratification.<sup>49</sup> The content of the convention incorporates the UN Guiding Principles on IDPs. One of the objectives of the convention is to promote regional measures to prevent, prohibit and eliminate root causes of internal displacement as

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<sup>47</sup> The first 15 ratifications were: Benin, Burkina Faso, Central African Republic, Chad, Gabon, Gambia, Guinea-Bissau, Lesotho, Nigeria, Niger, Sierra Leone, Swaziland, Togo, Uganda and Zambia. They were later joined by Angola, Malawi, Mali and Rwanda.

<sup>48</sup> Article 11(2) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

<sup>49</sup> International Refugee Rights Initiatives (IRRI), Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact, A Briefing Note by the International Refugee Rights Initiative, January 2014.

well as provide durable solutions for such. Article 12 of the convention provides that countries that do not follow their obligations are accountable<sup>50</sup>.

The adoption of the AU Convention for the protection and assistance of IDPs in Africa (Kampala Convention) by the African government in 2009 marked a milestone in preventing and addressing one of the continent's most pressing humanitarian crisis, that is, the phenomenon of internal displacement.

Africa has long had some of the world's highest number of IDPs and the Convention stands out as the first legal instrument intended to bind an entire region on matters related to internal displacement.<sup>51</sup> The Federal Government of Nigeria for instance has signed and approved the ratification<sup>52</sup> of the African Union (Kampala Convention) for the protection and assistance of IDPs in Africa<sup>53</sup>. Nigeria formally ratified the Convention on the 17<sup>th</sup> of April, 2012.

The Preamble of the Kampala Convention provides that the Heads of State and Government of the member-states of the African Union are to be conscious of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states. It is also conscious of the suffering and specific vulnerability of internally displaced persons and it reiterates the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities.

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<sup>50</sup> Uganda was the first country to ratify this convention.

<sup>51</sup> The Convention entered into force on Dec 6, 2012, barely three years after it was adopted.

<sup>52</sup> On Wednesday, 14<sup>th</sup> September 2011, the Federal Executive Council in Abuja approved the ratification of the Kampala Convention on Internally Displaced Persons but was yet to be deposited in the A.U. Secretariat in Addis Ababa, Ethiopia as required by Article 16(2) of the Convention.

<sup>53</sup> The Kampala Convention on IDPs needed 15 ratifications under Article 17(1). It was signed by 32 and ratified by 12 AU States, including five ECOWAS member States – Gambia, Guinea-Bissau, Mali, Sierra-Leone and Togo.



The Kampala Convention reflects the norms included in the 1998 UN Guiding Principles on Internal Displacement and also advances international norms on internal displacement in significant ways<sup>54</sup>. The Convention has the potential to make a significant contribution to improving the well-being of IDPs across Africa, depending on its effective implementation and ratification by additional AU member - states<sup>55</sup>. The Convention is also committed to sharing the common

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<sup>54</sup> It breaks new grounds in articulating the obligations and roles of African States and a host of other actors, including the African Union (AU), armed groups, international organizations and civil societies, to prevent and respond to internal displacement.

<sup>55</sup> Article 5 of the Kampala Convention spells out the Obligations of States Parties relating to Protection and Assistance as follow:

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate with each other upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons.
3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, in accordance with international law.
4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.
5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.
6. States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. Such organizations may offer their services to all those in need.
7. States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local

vision of providing durable solutions to the problems of internally displaced persons by establishing an appropriate legal framework for the protection and assistance of internally displaced persons in Africa. It is determined to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes of displacement, for example, conflict, and natural disasters, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development.

One can glean from the provisions of the preamble of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known (the Kampala Convention), that it strives to emphasise the importance of protection and assistance of IDPs at all stages of displacement, including prevention of displacement, protection and assistance of IDPs during displacement and the provision of adequate solutions while displacement lasts.<sup>56</sup>

This Convention incorporates the 1998 UN Guiding Principles on Internal Displacement and it recognises the inherent rights of internally displaced persons as it is stipulated for and protected in

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and international organisations and humanitarian agencies, civil society organisations and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.

8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.
9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.
10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.

<sup>56</sup> Introduction: Scope and Purpose of the Guiding Principles on internally displaced persons I.

international human rights and humanitarian law, as set out in the 1998 United Nations Guiding Principles on Internal Displacement. Although there are laudable provisions in the Kampala Convention, the charter is not without its shortfalls, which include: The implementation level of the Kampala Convention in AU member-states has not been effective enough to stem the rise of occurrence of internal displacement in Africa with the situation in Nigeria for instance. Although the convention in Article 4 (6) requires consenting parties to “declare as an offence punishable by law acts of arbitrary displacement that amounts to genocide, war crimes or crimes against humanity, thereby eradicating the root causes of internal displacement, it does not sufficiently provide for its application or ratification in member states. The weight of the charter has not been sufficiently felt. This has been attributed to the fact that many African states are yet to embrace it by legislating it into their domestic laws to give it national application, which is an expression of its weakness and the lack of political will power of member-states to effect a change in the continent.

Lack of domestication is consequently another challenge in the realisation of the goals of the Kampala Convention. Member states do not observe the binding provisions in the convention and, as a result, their citizens may not be considered subject to the provisions of the convention, thus weakening the impact of the convention in such countries.

### **Protocol on the Protection and Assistance of Internally Displaced Persons (IDP Protocol) of the International Conference on the Great Lakes Region (ICGLR) (the IDP Protocol)**

The 11 states of the Great Lakes region remain host to more than half of Africa’s displaced, comprising more than one million refugees and over nine million IDPs<sup>57</sup>. The Conference of the Great Lake Region birthed the Great Lake Protocol on the protection and assistance of Internally Displaced Persons (IDP Protocol) as one of several other

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<sup>57</sup> Refugee figures based on UNHCR’s most recent Global Report for 2007, available at [www.unhcr.org/gr07/index.html](http://www.unhcr.org/gr07/index.html).

IDP figures are based on the most recent estimates available to the IDMC, as of June 2008.

instruments<sup>58</sup>. The IDP Protocol was signed as part of the Pact on Security, Stability and Development in the Great Lakes Region by the Heads of State and Government of 11 member states on 15 December 2006, under the umbrellas of the International Conference on the Great Lakes Region (ICGLR) in Nairobi, Kenya<sup>59</sup>. This began a new season for the region, as the pact reflects the shared vision and determination of the leaders and peoples to transform the region into a space of sustainable peace and security, political and social stability, shared growth and development, and space of cooperation based on convergent strategies and policies driven by common interests<sup>60</sup>. All member states have ratified the pact, of which the IDP Protocol is a part, in a quest to create lasting conditions for security, stability, sustainable development and reconstruction in the region as a whole<sup>61</sup>. African countries are part of the key members of the conference as well as hosts to many IDPs. The Internal Displacement Monitoring Centre (IDMC) has estimated that about half of the IDPs of the world, currently, live on the African continent and about half of these internally displaced persons are in the Great Lakes region<sup>62</sup>. Sudan alone counts for more than 5 million IDPs, followed by Northern Uganda with, until recently, 1.7 million and the DRC with 1.1 million. On 15 December 2006, the negotiations culminated in the adoption, at

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<sup>58</sup> The Great Lakes Pact is made up of 10 Protocols and four Programmes of Action. It is one of the few international agreements that address internal displacement in a detailed and holistic manner. It covers both conflict induced displacement as well as displacement caused by natural disasters and those induced by development projects.

<sup>59</sup> Ambassador Mulamula, 2008. Message from Ambassador Mulamula in *The Great Lakes Pact and the rights of displaced people: A guide for civil society*, Internal Displacement Monitoring Centre and the International Refugee Rights Initiative, 2008.

<sup>60</sup> Ambassador Mulamula, 2008. Message from Ambassador Mulamula in *The Great Lakes Pact and the rights of displaced people: A guide for civil society*, Internal Displacement Monitoring Centre and the International Refugee Rights Initiative, 2008.

<sup>61</sup> Article 2(c), Pact on Security, Stability and Development in the Great Lakes Region.

<sup>62</sup> Refugee figures based on UNHCR's most recent Global Report for 2007, available at: [www.unhcr.org/gr07/index.html](http://www.unhcr.org/gr07/index.html). IDP figures are based on the most recent estimates available to the IDMC, as of June 2008.

the second summit of heads of state of the ICGLR in Nairobi, of the Great Lakes Pact<sup>63</sup>. The pact in article 3 (1)(2) discloses its contents to include the Dar-es-Salaam Declaration, the Protocols, the Programmes of Action, the Regional Follow-up Mechanism, and the fund, which shall constitute integral parts of the pact, and states that all references to the pact shall necessarily refer to all the integral parts of this pact<sup>64</sup>. The Protocol on IDPs is of specific interest in developing the law on IDPs. It puts obligation on state-parties “to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to internally displaced persons in the Great Lakes Region”<sup>65</sup>.

### **The African Charter on Human and Peoples’ Rights**

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is another representation of international human rights instrument, aimed at promoting and protecting human rights and basic freedoms in the African continent. Some of the provisions of the charter are relevant and applicable for the protection and enforcement of the rights of IDPs in the continent. Although the provisions of the African Charter on Human and Peoples’ Rights (ACHPR) generally provides for the human rights of everyone and does not specify IDPs, as a group within the scope of persons for whom the ACHPR provides, articles 1, 2,3,4,5 and particularly article 12 of the African Charter, provide for the protection and enforcement of the rights of IDPs in the continent<sup>66</sup>. The ACHPR guarantees the civil, political,

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<sup>63</sup> The full text of the Pact, and all the Protocols are available at [www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm](http://www.lse.ac.uk/collections/law/projects/greatlakes/ihl-greatlakes.htm) or [www.icglr.org/F\\_END/about.asp](http://www.icglr.org/F_END/about.asp)

<sup>64</sup> International Conference on the Great Lakes Region Pact on Security, Stability and Development in the Great Lakes Region 14 and 15 December 2006.

<sup>65</sup> Article 6 of the IDP Protocol, 2008.

<sup>66</sup> Article 12 of the ACHPR provides thus:

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country.

social, economic, environmental and developmental rights of everyone, including IDPs. Other rights guaranteed by the ACHPR include right to education, shelter, health, food, employment, social security, adequate standard of living, safe environment, cultural life and development. Its protocol on the African Charter on the Rights and Welfare of the Child (ACRWC) <sup>67</sup> provides for dealing with refugee children and may be made applicable to internally displaced children as well, whether such displacement was caused by natural disaster, armed conflicts, civil strife or breakdown of economic and social order, among other causes.

The ACRWC also directs state-parties to take all appropriate measures to ensure that an internally displaced child shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights as contained in it and other international human rights and humanitarian instruments to which states are parties<sup>68</sup>.

State parties are expected to cooperate with existing international organisations to protect and assist a displaced child trace parents or close representatives<sup>69</sup>. In a case where the legal guardians of the child or close representatives or relatives cannot be found, the child shall be

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This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality..

3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

<sup>67</sup> Article 23(4) of the African Charter on the Rights and Welfare of the Child, OAU Doc. CABLE 24.949 (1990) entered into force in November 29, 1999. Available at [https://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf).

<sup>68</sup> Article 23 and 25 of the African Charter on the Rights and Welfare of the Child (ACRWC).

<sup>69</sup> Article 23(2) of the African Charter.

entitled to the same protection as any child permanently or temporarily deprived of family environment for any reason<sup>70</sup>.

Among criticisms levelled against the protection provided for IDPs by the ACHPR is the principle of non-interference in internal affairs of states and the way it is highly upheld as a means of preserving African tradition. The principle is enshrined in article 3 (2) of the African charter, consequently allowing African states to ignore human rights violation that occurs within the continent, like the case of the 1994 genocide in Rwanda.

### **African Union Resolution on the Situation of Internally Displaced Persons in Africa**

The African Union also has a resolution on IDPs with a view to protect and promote their rights,<sup>71</sup> reached at the African Commission on Human and Peoples' Rights (the Commission), meeting at its 19<sup>th</sup> Extraordinary Session held from 16 to 25 February 2016 in Banjul, Gambia.

The resolution recalled the mandate of the African Charter on Human and Peoples' Rights (the African Charter) to promote and protect human and peoples' rights in Africa the primary responsibility of African states to protect their citizens and adopt lasting solutions for internally displaced persons (for their return and resettlement) as well as the provisions of Article 23 of the African Charter guaranteeing all peoples the right to national and international peace and security, among other obligations in its preamble. It also recalled the commitment made by states parties in the Preamble of the Kampala Convention to provide durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance and adopting measures aimed at preventing and terminating the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural

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<sup>70</sup> Article 23(3) of the Charter.

<sup>71</sup> The African Commission on Human and Peoples' Rights (the Commission) Resolution 335 on the Situation of Internally Displaced Persons in Africa - ACHPR/Res. 335 (EXT.OS/XIX) 2016 <http://www.achpr.org/sessions/19th-eo/resolutions/335/>

disasters and large development projects which have devastating impact on human life, peace, stability, security, and development.

They shared these concerns in common and therefore went ahead to consider the provisions of relevant UN and regional principles relating to internally-displaced persons, including the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), and in particular its Article 3 which calls on state-parties to refrain from, prohibit and prevent arbitrary displacement of populations. It also expresses deep concern about the massive displacement of populations as a result of armed conflicts, and the devastating consequences on the lives of these populations, particularly in terms of insecurity, disease and loss of their possessions, as well as the suffering and vulnerability of certain groups among displaced persons, including women, children, elderly persons and persons with disabilities besides its deep concern over the increasing number of violations against displaced persons, particularly children being recruited into armed groups, violence against women and girls, the main targets of warring factions and the extent of violations of the rights of internally displaced persons guaranteed under international and regional human rights instruments, the continued existence of camps for internally displaced persons and the consequences on their rights and those of host communities, as well as the negative impact on the stability and development of countries concerned, among other concerns. Consequently, in the resolution, the Commission calls on state-parties to the African Charter to undertake certain steps as will now be highlighted.

First, to take appropriate measures in order to respect the human rights of all internally displaced persons and ensure that they receive all necessary assistance and protection adapted to their circumstance. Secondly, to ensure that the issue of internally displaced persons is integrated into their periodic reports presented pursuant to Article 62 of the African Charter and Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol). Thirdly, the Commission urges state-parties to the Kampala Convention to take all appropriate measures to ensure the protection of populations against forced displacement caused by large development projects in accordance with the



provisions of Article 10 of the Convention and for those state-parties that have not yet done so, to ratify the Kampala Convention. This ratification is expected to secure greater commitment to the goals of the African Charter to eradicate, minimise, protect and promote the rights of IDPs.

Recognising the centrality of conflict as a cause of internal displacement, the Commission has urged the African Union to intensify efforts for the resolution of armed conflicts, and develop a regional action plan to provide the necessary support to states experiencing natural disasters which result in the massive displacement of populations. The resolution has the potential to achieve great impact, even though it is in the realm of soft law, because it was agreed upon by many of the state-parties.

### **The UN Guiding Principles on Internal Displacement, 1998**

The UN Guiding Principles on Internal Displacement is the first international standard that sought to protect and promote the needs of IDPs globally. It comprises elements of international humanitarian law, human rights and refugee law. The legal basis for the Guiding Principles developed in 1996, when a study conducted by the Representative of the Secretary-General on internally displaced persons and a team of independent legal experts found that, although existing human rights and humanitarian law provided substantial protection for the internally displaced, there were significant areas in which gaps existed in providing adequately for their protection and assistance<sup>72</sup>. In developing the Guiding Principles, therefore, they were made to reflect existing standards, and bring clarity to the grey areas and fill in the gaps identified in the earlier study<sup>73</sup>. The legal basis for each of the principles contained in the Guiding Principles is set out in the Annotations to the Guiding Principles.<sup>74</sup> In terms of its legal status, the Guiding Principles are not binding. The Guiding

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<sup>72</sup> (E/CN.4/1996/52/Add.2).

<sup>73</sup> Global Database Guiding Principle on Internal Displacement Frequently Asked Questions at: [http://www.law.georgetown.edu/idp/english/id\\_faq.html](http://www.law.georgetown.edu/idp/english/id_faq.html)

<sup>74</sup> Written by Walter Kälin. See: [http://www.law.georgetown.edu/idp/english/id\\_faq.html](http://www.law.georgetown.edu/idp/english/id_faq.html)

Principles on Internal Displacement is therefore not a binding instrument that could be enforced with sanctions against states.

However, the Guiding Principles reflect and are consistent with international human rights law and international humanitarian law, as set out in the Annotations to the Guiding Principles. It is notable that, to the extent that states have ratified the human rights and humanitarian instruments upon which the Guiding Principles are based, they are bound by the corresponding principles. In other words, since existing human rights and humanitarian law norms are reflected in the Guiding Principles, states that are parties to the norms reflected are bound to keep such norms. States can make the Guiding Principles binding by incorporating them into their domestic law, and some have done so.

These guiding principles state the rights of IDPs, the obligation of national authorities as well as non-state actors toward them. It covers all the stages or phases of internal displacement which include the pre-displacement phase, during displacement phase and during return, resettlement or reintegration phase.<sup>75</sup>

The first section of the principles relate to the rights of IDPs and the responsibilities of national authorities. Principle 3(1) of these guidelines explains that national authorities have the essential, basic and primary responsibility to provide protection and assistance to IDPs within their various countries. Principle 1 states that IDPs are entitled to enjoy in full equality the same rights and freedom that are enjoyed by other people in the country, who have not been displaced and they shall not be discriminated against because of their displacement.

The guiding principles are all-encompassing and therefore recognise that some exceptional persons may require extraordinary attention, apart from other categories of IDPs<sup>76</sup>. Section two of the principles

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<sup>75</sup> Oduwole, T.A. and Fadeyi, A.O. (2003).Issues of Refugees and Displaced Persons in Nigeria, *Journal of Sociological Research*, Vol 4. No 1.

<sup>76</sup> Principle 4 (2) provides that certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and

relating to protection from displacement deals with the legal framework on protection from displacement, prohibition of arbitrary displacement, States' obligation to avoid the displacement of people and to protect them when displaced. The guiding principles stipulate minimum guarantees required when displacement is unavoidable<sup>77</sup>.

The third section of the guiding principles relates to protection during displacement and covers the civil, economic, social, political, cultural rights that all persons, including IDPs are entitled to enjoy. Some are the rights to be protected against acts of violence, torture, cruel, inhuman and degrading treatment or punishment<sup>78</sup> and the right to be protected against the use of anti-personnel land mines<sup>79</sup>. The section goes further to provide for recognition of displaced persons without unnecessary requirements and without segregation on any basis, according men and women the same rights to such recognition by issuance of appropriate documents<sup>80</sup>,

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assistance required by their condition and to treatment which takes into account their special needs.

<sup>77</sup> Principle 10(2) provides that attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

<sup>78</sup> Principle 11(2) (a).

<sup>79</sup> Principle 10(2) (e).

<sup>80</sup> Principle 20 (1)-(3) provide for recognition before the law and on equal basis as follows:

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents

According to Principle 22(d), IDPs have a right to vote and participate in governmental and public affairs, whether or not they are living in camps. The guiding principles also state that IDPs have a right to adequate standard of living, including ensuring safe access to essential food, potable water, basic shelter and housing, as well as appropriate clothing and essential medical services and sanitation. Also, according to Principle 19(3) of the guiding principles, special attention has to be given for the prevention of contagious and infectious diseases for IDPs.

The fourth section of the guiding principles discusses humanitarian assistance and it unambiguously states that when governmental authorities are unable or unwilling to provide assistance to displaced persons, international organisations have the right to offer their services and the IDPs must first give their consent before this can be done<sup>81</sup>.

Section five of the Guiding Principles relating to return, resettlement and reintegration<sup>82</sup> expresses the need to provide IDPs with long-term options like voluntary return to safety and dignity or resettlement in another part of the country. This section also emphasises the importance of ensuring durable solutions, including the need to provide IDPs with integration assistance, whether they return or resettle and to ensure that they have equal access to public services. The section also places the responsibility on national authorities, of assisting IDPs to recover their possessions that were lost upon displacement and/or, when this is not possible, assist them to obtain compensation or any other kind of just repatriation<sup>83</sup>.

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or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

<sup>81</sup> Principle 24 of the Guiding Principles.

<sup>82</sup> Principle 28 of the Guiding Principles.

<sup>83</sup> Principles 29 and 30 of the Guiding Principles.

The level of publicity of the UN Guiding Principles is rather low and it is recommended that the United Nations and, in fact, states should make the UN Guiding Principles on internal displacement more known; that is, more awareness and sensitisation of the existence of these principles should be made, thereby creating an enabling environment for its function. Its publicity will save several lives, since people would be made aware of the principles they can resort to on issues of displacement<sup>84</sup>.

The UN has also sought to review these principles in order to give itself specific functions, not only for sanctioning non-compliance with these principles but also of playing specific roles in bringing relief to IDPs<sup>85</sup>.

These Guiding Principles are meant to influence how states and other interested parties deal with IDPs although, to have legal effect, the Guiding Principles need to be domesticated; that is, be ratified by the state. For instance, in Nigeria, it has to go through the procedure required for its ratification as specified in the Constitution<sup>86</sup>, although, within its short period of existence, it has achieved considerable success, in terms of being adopted, published and applied<sup>87</sup>.

The Organisation of American States has hailed the Guiding Principles as “the most comprehensive restatement of norms applicable to the internally displaced” which “will provide authoritative guidance to the Commission on how the law should be interpreted and applied during all phases of displacement”. In Europe, the Organisation for Security and Cooperation has expressed support for the principles and has begun to disseminate these Guiding Principles to its field staff, as well as co-sponsored some workshops that promote the Guiding Principles. Similarly, the African Union has formally expressed appreciation of the Principles and several Africa’s important position in respect of internal displacement cannot be

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<sup>84</sup> Olajide, O. (2006). Management of Internal Displacement in Nigeria, a PhD. work in Legal Anthropology, Brandeis University.

<sup>85</sup> *Ibid.*

<sup>86</sup> Section 12 of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>87</sup> Nnabuife R. (2015), Legal Status and Socio-Economic Effect of Internally Displaced Persons and Refugees in the 21<sup>st</sup> Century, a Master’s project, University of Ibadan.

overemphasised as it hosts more than half of the world's IDPs<sup>88</sup>. These principles, though not legally-binding on states, are a very useful and important tool for bringing together existing norms of International Humanitarian Law and Human Rights Law, as well as Refugee Law in a way that covers all types or phases of internal displacement.

### **Conclusion**

Africa needs to devise strategies for strengthening protection of the rights of IDPs. While the importance of a regional legal framework and cooperation cannot be overemphasised, it is imperative to have a regional body that is empowered to oversee the protection of the rights of IDPs in Africa. The lack of a single organisation dedicated to take responsibility for IDPs and to ensure appropriate response to reports from IDPs, is a key factor that undermines the protection provided by the African regional framework. Although the African Human Rights Commission has played a good role in providing a resolution for the protection and promotion of the rights of IDPs, it will be better realised if there is a body devoted to give attention to the needs of IDPs alone, for maximum attention.

Also, African countries need to recognise that occurrence of internal displacement of persons and the protection of the rights of IDPs are serious global challenges, and are particularly so in Africa. Thus, every African state should consider being a party to the African Convention on the protection of IDPs.

Prevention is said to be better than cure. This is most appropriate in the context of the protection of the rights of IDPs in Africa. African states need to prevent conflicts, which is a critical cause of internal displacement. Embracing sustainable development, rather than development at all costs, will reduce development-induced internal displacement of persons. Also, the intensity of nature-induced internal displacement can be reduced by increasing the level of adaptation to climate change in Africa. Furthermore, although the emergence of internal displacement as a subject of human rights governance is quite recent in relation to that of refugees, the rate of increase in the number

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<sup>88</sup> Rahman Javaid (2010). *International Human Rights Law*, 2<sup>nd</sup> Edition, pp.673.

of IDPs is by far more rapid than that of refugees,<sup>89</sup> due to increasing levels of internal crisis attributable to various causes highlighted in this article. However, the extent of attention so far given to the protection of IDPs at all levels, flowing from the UN down to the municipal levels, have not been commensurate to the challenges engendered by the development of internal displacement of persons. More protection of the rights of IDPs will be a welcome development across all levels.

It is recommended that African states should enact national legal instruments for the protection of the rights of IDPs in all African states. Such instruments should not only adopt global standards, but should be made more elaborate and suitable to national peculiarities. Also, regional cooperation for better enforcement of the various instruments will be needful for the achievement of better protection of the rights of IDPs in Africa, especially when IDP camps are located at border/boundary communities, thereby being partly IDPs and spilling across as partly refugees. Africa needs a binding instrument that will address the protection of the rights of IDPs in all state-parties or members. Furthermore, the level of publicity of the UN Guiding Principles on internal displacement is rather low and it is recommended that all African states should not only adopt the principles, but create much greater awareness of their existence and implementation.

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<sup>89</sup> Refugee figures based on UNHCR's most recent Global Report for 2007, available at [www.unhcr.org/gr07/index.html](http://www.unhcr.org/gr07/index.html).

IDP figures are based on the most recent estimates available to the IDMC, as of June 2008.