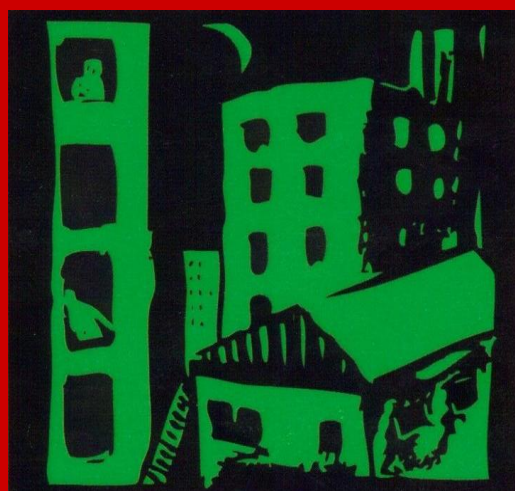
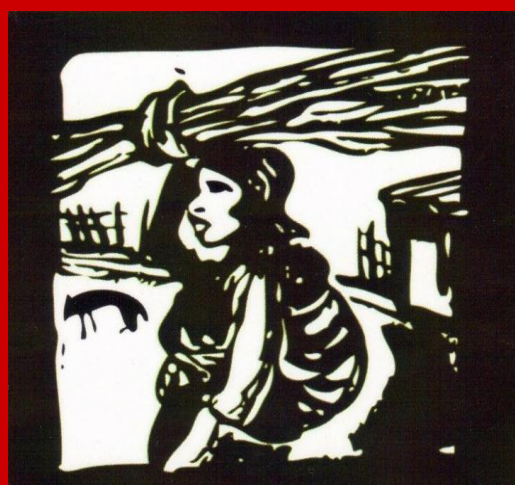


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Contextualising the institutional approach to the Kampala Convention on IDPs in Africa: A legal hypothesis

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ABSTRACT

As global attention turns to the issue of internally displaced persons (IDPs), the African Union (AU) contends with fundamental questions about its policies in this regard. Worldwide, millions of people have been displaced within their territorial jurisdictions due to armed conflicts, violence, or natural disasters.

The situation calls for humanitarian assistance and protection, with the number of IDPs continuing to grow and coming with significant social and economic costs. This article explores the challenges the AU faces as a regional institution in implementing its Kampala Convention of 2009 in response to the plight of IDPs. To this end, the article analyses the legal regime of the Convention and associated policies and actions that provide protection to IDPs, including the obligations of state parties to assist such persons. It recommends that AU member states provide practical solutions to integrate displaced persons, such as adopting legislative measures for social grants to enhance the socio-economic rights of IDPs. It argues that the issue of IDPs in Africa is a major humanitarian concern that requires urgent attention. The AU, in partnership with international community and other stakeholders, must address the root causes of displacement while ensuring the protection and rights of IDPs. Key actions include conflict resolution, economic development, climate adaptation, and legal protection. The Kampala Convention should be enforced to safeguard the rights of IDPs, while global cooperation can provide funding and support. A sustainable, rights-based approach is essential to improving the lives of millions of displaced people in Africa.

Keywords: African Union; displacement; internally displaced persons (IDPs); Kampala Convention; Nigeria

1 INTRODUCTION

The problems and challenges of internally displaced persons (IDPs) in the sub-Saharan Africa are daunting, with millions of people displaced internally across the region. The issues associated with internal displacement have attracted the attention of bodies such as the African Union (AU), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), and international institutions, which grapple with this emerging epidemic and seek ways of protecting IDPs and alleviating their plight. IDPs are people who are still within the confines of their territorial jurisdiction, and among them there are groups who may be more vulnerable to armed conflicts than others, notably women and children, who are the most affected. IDPs suffer economic and psychological trauma, lack of food and water, and insecurity including social dislocation.¹ This article thus examines the nature of state obligations to protect and assist IDPs under the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).²

The article consists of 10 sections. The first deals with the concept of IDPs, the second with the protection of IDPs and state obligations, and the third with the duty to prevent displacement. The fourth and fifth sections discuss displacements which are induced by climate change and development. Sections six and seven examine the Kampala Convention and the African-regional institutional protection of socio-economic rights.

¹ Nwanna CR & Oparaoha NU "The role of social workers in ameliorating the plight of internally displaced persons in Nigeria" (2018) 1(1) *Nigerian Journal of Social Psychology* 63.

² African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa. Adopted by the Special Summit of the African Union on 23 October 2009 and entered into force on 6 December 2012.

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Sections eight and nine discuss the implementation of the Kampala Convention and its impact on IDPs. The last section analyses challenges in the application of the Kampala Convention. The conclusion of the article is that AU member states ought to adopt national legislation and policies to protect IDPs in accordance with international law.

In this regard, given that internal displacement involves some form of migration, it is a matter of global concern and requires the involvement of regional and international institutions such as the AU and United Nations (UN) in protecting IDPs' rights. It is the duty of the international community to create an enabling environment and enforce obligations on states in regard to internal displacement and IDPs. International disaster response, laws, rules and obligations are the new policies of humanitarian law that deal with the international humanitarian principles to assist people affected by the natural and man-made disasters.

These call for certain principles of humanitarian law to focus on protecting civilians, regulating armed conflict, and ensuring ethical treatment of those civilians affected by war like IDPs. Article 9(2) of the Kampala Convention stipulates that states are required to protect and assist IDPs. For example, Nigeria has ratified the Kampala Convention and has a responsibility as a state party to assist displaced persons without discrimination.³ The Convention deals with humanitarian affairs and incorporates the UN Guiding Principles of 1998 on internal displacement, as well as international human rights law (IHRL) and international humanitarian law (IHL) standards in the context of internal displacement.⁴ It provides a legal description of how to protect and assist IDPs during forced displacement. It reaffirms the rights of IDPs in Africa and acknowledges the enormous problems they face. The Convention thus deals with the needs of IDPs and their host communities, both of which are affected by armed conflicts, natural disasters, and various forms of violence in Africa. What is surprising is that, unlike the case with refugees, there is no single UN agency that deals exclusively with IDPs. This calls for the AU to be proactive in protecting IDPs in armed conflicts. So far, the only AU member states to have developed legislation and policies for IDPs are Angola (2000), Burundi (2001), Sierra Leone (2002), Uganda (2004) and South Sudan (2009).⁵

2 STATE OBLIGATIONS AND PROTECTION OF IDPS' RIGHTS

The AU in article 9(2)(a) of the Kampala Convention requires state parties to take necessary measures to ensure that IDPs are protected without discrimination and live

³ Dieng A "Protecting internally displaced persons: The value of the Kampala Convention as a regional example" (2017) 99(1) *International Review of the Red Cross* 263.

⁴ Khaliq U *International human rights law documents* Cambridge: Cambridge University Press (2018) at 606–620. See also Adeola R "The impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa" (2019) 19(2) *African Human Rights Law Journal* 591.

⁵ Beyani C "A view from inside the kitchen of the Kampala Convention: The modernisation of the international legal regime for the protection of internally displaced persons" (2020) *International and Comparative Law Quarterly* 1.

in a condition of safety, dignity, and security.⁶ In Nigeria, the National Emergency Management Agency (NEMA)⁷ was established as an agency to oversee and coordinate the affairs of displaced persons in accordance with article 9(2)(a) of the Kampala Convention. In this context, the Nigerian government is under an obligation to respect and protect the rights of IDPs. These rights include civil and political rights, such as the right to vote and be voted for in electoral processes for public office.

However, since IDPs typically live in displacement camps provided by the state, their living conditions are not conducive to realising their civil and political rights in line with article 9(2)(a). Article 9(2)(b) states that “the obligation of the state government is to provide adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health care services, education and other social services”. It is important to note that these services should be extended to host communities to reduce hostilities over scarce social amenities in the locality where IDPs are hosted. Article 9(2)(b) provides that the state government must render humanitarian assistance to IDPs and must not depend solely on the international community and donor agencies to provide aid and relief materials during forced displacements.

The provisions under article 9(2) deal with social amenities and government services of health care and psychological support for persons with special needs, such as people living with disabilities. Furthermore, the provisions deal with the prevention of sexually transmitted diseases, with advocacy initiatives on HIV/AIDS in IDP camps serving to assist the victims of violence or abuse.

This article argues that for the Kampala Convention to be implemented effectively, the Nigerian government should intensify efforts by the National Assembly to enact the Bill on IDPs into law and implement the relevant IDP policies. The Bill, which was tabled before the National Assembly during the 8th Assembly in 2018, would give displaced and returning IDPs a voice through legal procedures or in court. In other words, once this Bill on IDPs is passed into law and the President assents to it, the Nigerian government will be legally responsible for the protection of IDPs.

Under article 9(2)(c), of the Kampala Convention the state is obliged to provide “special protection” to IDPs with “special needs”. Such persons include unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or communicable diseases. Although the government has provided maternal care clinics in camps for expectant mothers,⁸ these

⁶ Article 9(1)(a) of the Kampala Convention.

⁷ National Emergency (Establishment Act) Management Agency 2004.

⁸ Adeola R “Boko Haram-induced displacement: A critique of Nigeria’s implementation of the African Union Internally Displaced Person Convention” (2017) 50(1) *Comparative and International Journal of Southern Africa* 41; see also Marama N “30 women give birth in Borno refugee/IDPs camp” *Vanguard Nigeria* (2014) available at <https://www.vanguardngr.com/2014/12/30-women-give-birth-borno-refugee-camp/> (accessed 8 March 2024); Ogundipe S “Nigeria succour for pregnant women at IDPs camps” (2015) available at <https://www.vanguardngr.com/2015/02/succour-for-pregnant-women-at-internally-displaced-persons-camps/> (accessed 8 March 2024).

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measures are not adequate and the government could do more by providing different forms of shelter in camps for unaccompanied children and women who are heads of their households. Elderly people and people with disabilities should also receive special protection and assistance where the need arises.⁹ Likewise, it is the responsibility of the government to ensure that IDPs wishing to return to their original homes voluntarily or to resettle in another part of the country do so safely and in dignity. It has been argued that the government must assist IDPs to recover property and possessions or receive compensation or reparation.¹⁰

Furthermore, article 9(2)(d) of the Kampala Convention deals with the protection of the sexual and reproductive health of women and the state's provision of support for victims in cases of abuse. Here, the state government in Nigeria, through awareness campaigns in IDP camps and interventions by civil society, non-governmental organisations (NGOs), and the National Agency for Control of AIDS (NACIA), should organise free HIV screenings in IDP camps.¹¹

Moreover, the Nigerian security channel is porous, with the result that Boko Haram has been able to drop bombs at various IDP camps across the north-east of Nigeria as well as Kano and Abuja, among other places. It is thus imperative that security forces, with the network collaboration of other security providers such as the police, State Security Services (DSS), and National Security and Civil Defence Corps (NSCDC), intensify their security strategies and synergies in both IDP camps and the Nigeria at large.

The government's current sensitisation programme is not adequate to reach its intended beneficiaries, namely IDPs. Women and children do not have the financial means to seek redress in the courts and fight for their rights. Additionally, some cultural practices in Nigeria limit women's rights due to adherence to customs and traditions that do not promote the human rights of women and children in the community. It is important to state that for legislation to be implemented effectively, these traditional practices and beliefs should be abolished.¹²

Importantly, men are also sexually abused during displacements, but the Kampala Convention has failed to note this gap in the law. The instability in north-eastern Nigeria, which Boko Haram has exploited, exposes not only women and girls to sexual violence but men and young boys too. The lack of foresight to include males in the Kampala Convention has left a gap that remains to be filled. This article thus calls for an

⁹ Article 9(2)(c) and 9(2)(d) of the Kampala Convention. See also Asplet M & Bradley M "Introductory note to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)" (2013) 52 *International Legal Materials* 397.

¹⁰ Babalola A & Joshua OT "Humanitarian law and internal displacement in Nigeria: An urgent need for a legal framework" (2017) 4(3) *International Journal of Law and Legal Jurisprudence Studies* 53.

¹¹ Adeola (2017) at 49; article 9(2)(g) of the Kampala Convention.

¹² Customary law is recognised under Nigeria's legal system, but those customs and traditions that are repugnant to natural justice, equity, and good consciences are void, as stated in *Edet v Essien* (1932) 11 NLR 47-48.

amendment of the Kampala Convention to include men and young boys, given that during displacement they too are at risk of sexual abuse and other rights violations.

The Kampala Convention¹³ stipulates that state parties should take the necessary measures, including the establishment of specialised mechanisms, to trace and re-unify families separated during displacement and facilitate their reunion. Owing to the insurgency, IDPs have been separated from their loved ones.¹⁴ Moreover, article 9(2)(I) provides that the state should take the necessary measures to protect individual, collective, and cultural property left behind by displaced persons or located where IDPs are based. Nigeria is under an obligation to implement these measures. The Convention also allows state parties to extend this to areas where they have effective control in case of insecurity or violence.

The Convention in addition provides that state parties are obliged to protect IDPs from environmental degradation.¹⁵ The state has to protect displaced persons from the ill-effects of developmental projects such as mining or the extraction of natural resources like crude oil. Moreover, it is the duty of the state to protect the conflict-induced displacement in situations where basic social amenities are not sufficient in host communities or IDPs camps.¹⁶ IDPs defecate openly due to a lack of sanitary conditions, thereby causing airborne and waterborne diseases as well as environmental degradation.

Similarly, the Convention obliges the state to consult with IDPs and allow them to participate in decisions relating to their protection and assistance.¹⁷ In practice, IDPs are often not consulted on matters which affect them and their well-being. The agents of the state, the personnel who represent the government, are guilty of not consulting with IDPs in this regard.

Furthermore, the Convention mandates the state to take the necessary measures to ensure that IDPs who are citizens in its country enjoy their civil and political rights.¹⁸ IDPs have a right to vote in terms of the Nigerian Electoral Act, which was amended to this effect. In 2015, IDPs did not vote in the election in Nigeria, but in 2019, they were registered to vote and exercise their right to vote in the presidential election. The documentation process of IDPs nationals is crucial, however this process lacks confidentiality and often exposes the applicants to risks. Some displaced persons are afraid that the process could expose them to greater danger on security matters. For that reason, many IDPs struggle to obtain essential documents such as birth certificates, death certificates, school enrolments, and identity documents, which are crucial for accessing basic rights and services.

¹³ Article 9(2)(h) of the Kampala Convention.

¹⁴ See also Ross W "Boko Haram insurgency tearing Nigerian families apart" *BBC* (2014) available at <https://www.bbc.com/news/world-africa-29477760> (accessed 13 March 2024); Adeola (2017) at 50.

¹⁵ Article 9(2)(j) of the Kampala Convention.

¹⁶ Adeola (2017) at 51.

¹⁷ Article 9(2)(k) of the Kampala Convention.

¹⁸ Article 9(2)(l).

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Similarly, the Kampala Convention provides for IDPs' property rights, voluntary return, local integration, and relocation, and requires that measures be taken to respect the dignity and safety of displaced persons.¹⁹ It must be emphasised that the state has to provide effective remedies even when the property in question is in the possession of states. It is the duty and responsibility of the state to find durable solutions for accommodating IDPs and compensating them for the mental suffering caused by displacement. Compensation, it is submitted, is a novel idea, but state parties to the Convention may find it difficult or impossible to compensate IDPs for mental suffering. For example, Nigeria does not have the capacity to employ clinical psychologists to determine whether IDPs suffered mentally and should be paid compensation.²⁰

The African Charter on Human and Peoples' Rights (African Charter),²¹ which is applicable to all individuals including IDPs, sets out fundamental principles to guide the protection and promotion of human rights in Africa. These include equality and non-discrimination, as well as the rights to life and human dignity, freedom from exploitation and degradation, freedom of expression, and fair trial.²² The principles are designed to address both individual and collective rights, and they emphasise the balance between rights and responsibilities.

At the sub-regional level, instruments such as the Great Lakes Protocol on Internally Displaced Persons, the Model Law of 2006, and the Protocol on the Property Rights of Returning Persons of 2006 of the Great Lake Region of Africa are legally binding on the states that have ratified them and obligate these state to protect and assist IDPs.²³

3 THE DUTY OF STATES TO PREVENT DISPLACEMENT

Article 5(5) of the Kampala Convention imposes an obligation on state parties to protect indigenous communities. This provision underscores the responsibility of states to safeguard the rights and well-being of indigenous populations, particularly in the context of displacement and other vulnerabilities. This resonates with Mooney's view that it is the responsibility of state governments to prevent the displacement of indigenous people, minorities, peasants, farmers or pastoralists, and other individuals who depend on the land for their livelihoods.²⁴

Article 5(1) of the Kampala Convention provides that AU member states have the primary responsibility to respect, protect and fulfil the rights of IDPs, as specified under

¹⁹ Article 3(1)(c).

²⁰ Balajinaika BG "Lessons from Africa: Normative response to internal displacement – A way forward for South Africa" (2014–2015) *Yearbook of International Humanitarian and Refugee Law* 278.

²¹ The African Charter on Human and Peoples' Rights, 1981, commonly known as the Banjul Charter, was adopted on 1 June 1981 and entered into force on 21 October 1986.

²² Articles 2–7 of the African Charter on Human and Peoples' Rights.

²³ Protocol on the Protection and Assistance to Internally Displaced Persons, adopted on 30 November 2006.

²⁴ Mooney E "National responsibility and internal displacement: A framework for action in protecting and assisting the internally displaced – The way forward" (2005) *Forced Migration Review* at 11–14.

the Kampala Convention.²⁵ Thus, article 4(4)(i) of the Convention states that “all persons have a right to be protected against arbitrary displacement”. The prohibited categories of arbitrary displacement include displacement based on policies of racial discrimination or other similar practices aimed at, or resulting in, altering the ethnic, religious, or racial composition of the population. The Kampala Convention affirms that it is the state’s primary responsibility to respect, protect, and fulfil the rights of IDPs without any discrimination.²⁶

However, the effectiveness of the Nigerian government in meeting these obligations remains questionable. Despite the legal framework established by the Kampala Convention, there are significant concerns regarding how well Nigeria has implemented measures to protect IDPs. Issues such as inadequate provision of basic needs, insufficient security in displacement camps, and limited access to justice for IDPs indicate that the government’s impact on the protection of IDPs has been inconsistent and often falls short of the standards set by the Kampala Convention. This raises critical questions about the extent to which the Nigerian government is fulfilling its obligations under the Convention to ensure the safety, dignity, and rights of displaced persons within its borders.

In arbitrary displacement, the state also must prevent internal displacement and allow freedom of movement and residence. This freedom includes the right to move and reside in any place of choice. It also means that IDPs cannot be moved or evicted from where they are camped. Conversely, internal displacement violates the rights of IDPs in relation to the right of freedom of movement and residence.²⁷ Also, IDPs should be afforded the right to own property and make a peaceful living.²⁸ It is submitted that the registration and proper documentation of IDPs is the responsibility of the state parties.²⁹ These processes are stipulated in the Kampala Convention, but the political will to implement it and legislate it into the national laws of AU member states has been lacking.

3.1 Climate change displacement

The Kampala Convention is the first legal instrument that deals with climate change displacement. Article 5(4) stipulates that states should “take measures to prevent and assist persons who have been displaced due to natural disasters including climate

²⁵ Article 4(4)(a) of the Kampala Convention.

²⁶ Preamble and article 1 of the Kampala Convention.

²⁷ Maru MT “The Kampala Convention and its contribution in filling the protection gap in international law” (2011) 1(1) *Journal of Internal Displacement* 91.

²⁸ C haloka B *Human rights standards and the free movement of people within the states* Oxford, New York: Oxford University Press (2000) at 57. See also Maru (2011).

²⁹ Sheludchenkova A, Spector O & Derkach A “International legal framework for the protection of internally displaced persons” (2019) 31(1) *Fundamental and Applied Researches in Practice of Leading Scientific Schools* at 207–208.

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change such as cyclone, ecosystem, and flooding”.³⁰ The four major types of climate change displacement arise from weather-related disasters, such as cyclones, flooding, and hurricanes; gradual environmental ecosystem deterioration and slow-onset disasters, such as desertification, coastal zone sinking, sea storms, and submergence of low-level island states and deltas; increased disaster risk resulting in the relocation of people from high-density risk zones; and social upheaval and violence attributable to climate-change-related factors.³¹

In sub-Saharan Africa, climate-change-induced displacement has occurred due to weather-related natural disasters, for instance in South Africa, Malawi, Zimbabwe, Mozambique, and Madagascar.³² Between March and April 2019, more than a million people were displaced in these countries due to heavy rainfalls, Cyclone Idai, Cyclone Kenneth, and Cyclone Fani.³³ In 2021, when Cyclone Eloise made landfall in South Africa, 300 deaths and thousands of displaced persons were recorded due to heavy rainfalls and flooding in Durban and the Eastern Cape province.³⁴ In Nigeria too, people have been displaced by natural disasters.

The Kampala Convention does not specifically stipulate what the states should do in case of climate-change-induced displacement but provides only that they should “take measures to protect and assist IDPs in the event of man-made disasters or natural disasters”. In accordance with the Convention, the state, as part of its responsibility to its citizens, should provide assistance for climate change incidents relating to emergencies or disasters. Additionally, the case of *Ioane Teitiota v New Zealand*³⁵ (*Kiribati*) calls for filling the gaps in IHRL and IHL in responding to the needs both of refugees and of IDPs who are displaced by climate change. For instance, persons who are displaced by natural disasters would not qualify as refugees under the existing legal

³⁰ Article 5(4) of the Kampala Convention provides that state parties shall take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change.

³¹ Adeola & Viljoen (2017) at 472.

³² UNICEF “Tropical Storm Ana wreaks havoc for children in Madagascar, Malawi, Mozambique and Zimbabwe, warns UNICEF” (26 January 2022) available at <https://www.unicef.org/press-releases/tropical-storm-ana-wreaks-havoc-children-madagascar-malawi-mozambique-and-zimbabwe> (accessed 1 August 2024). See also Otto FEL, Zachariah M, Wolski P, Pinto I, et al. “Climate change increased rainfall associated with tropical cyclones hitting highly vulnerable communities in Madagascar, Mozambique and Malawi” available at <https://www.worldweatherattribution.org/wp-content/uploads/WWA-MMM-TS-scientific-report.pdf> (accessed 4 September 2024).

³³ Mohanty CR, Jain M, Radhakrishnan RV, Mohanty PC & Panda R “Tropical cyclone Fani: Perspective from the trauma and emergency department of an affected tertiary hospital” (2020) 23(4) *Chinese Journal of Traumatology* 243 available at <https://pubmed.ncbi.nlm.nih.gov/32418712/> (accessed 31 August 2024).

³⁴ Nyoka S “Durban floods: South Africa floods kill more than 300” *BBC* (2022) at <https://www.bbc.com/news/world-africa-61092334> (accessed 31 August 2024).

³⁵ CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020 available at <https://www.refworld.org/cases,HRC,5e26f7134.html> (accessed 17 September 2020).

order, as demonstrated by the *Kiribati* case;³⁶ however, they should be included in the definition given under refugee conventions because in some natural or man-made disasters, governments respond by discriminating against, or neglecting, certain groups on political or ethnic grounds, or by violating their human rights in various ways. The proviso in article 5(4) of the Kampala Convention should be amended to a state-specific policy or remedy in the event of climate change displacement.

Climate change displacement in Africa is a growing humanitarian crisis that requires urgent global and regional cooperation. Governments, regional institutions, and international organizations are focusing on solutions through climate adaptation, legal protections, disaster preparedness, and sustainable development. While progress is being made, increased funding and policy commitments are essential to protect the millions at risk of forced displacement due to climate disasters. For instance, experts in demography and meteorology should undertake research to find concrete solutions to predicting cyclones, sea storms, and other hazards of climate change that affect citizens during internal displacement.

The non-justiciability of the economic, social, cultural, and environmental rights of IDPs in Nigeria will continue to hinder the good governance and sustainable development of the nation's coastal areas. To the contrary other AU member states have come with strategies to combat climate change displacement. For example, in 2018, South Sudan had a national development plan on internal displacement based on humanitarian law and human rights mediation which produced the IDP law. This was done through the promulgation of the Protection and Assistance of Internally Displaced Persons Act of 2019, based on the UN Guiding Principles and Kampala Convention. The legislation of South Sudan (a member state of the AU) provides lessons on which Nigerian government could model its own legislation; in particular, it could draw lessons from the South Sudanese IDP Act of 2019 to assess and reinforce its protection and assistance of IDP rights.

The Nigerian government frequently cites climate change and developmental projects as justifications for actions that violate the rights of indigenous communities. While projects such as wildlife conservation, reforestation, and infrastructure development are essential for economic growth and environmental sustainability, they often lead to forced evictions, land dispossession, and cultural disruption for indigenous groups. It acknowledged that while climate change mitigation and development projects are essential, they must not come at the expense of indigenous peoples' rights. A human rights-based approach to development in Nigeria must ensure a balance between environmental sustainability and indigenous protection.

Under international criminal law for example, environmental crimes need to be included in the event of displacement during natural disasters. There were more than 2,100 climate-change-related court cases filed globally by the end of 2022, more than

³⁶ See Ndimurwimo LA & Opara LC "Access to justice for internally displaced persons (IDPs): The global legal order" (2019) 6(1) *Journal of Law, Society and Development* at 8, 11 and 16.

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double the total from 2017.³⁷ It is submitted that IDPs should be protected from climate change, especially those living in coastal areas in Nigeria. The Kampala Convention should be explicit in imposing specific sanctions on member states if they fail to avert climate-change-induced displacement.

4 DEVELOPMENT-INDUCED DISPLACEMENT OF IDPS

Article 10(1) of the Kampala Convention states that development-induced displacement must be prevented “as much as possible”. This provision should be understood in relation to article 4(4) of the Convention, which prohibits arbitrary displacement. In regard to development-induced displacement, the Convention tries to mitigate the tension between the development imperative and the upholding of human rights by requiring that impact assessments (IAs) be carried out before the implementation of development projects, in accordance with article 10(3),³⁸ and informed consultations be conducted, as stipulated in article 10(2).³⁹

Additionally, it should be questioned whether the affected people should be involved in the negotiation processes. We argue that displacing indigenous people in the name of development must be handled with respect, fairness, and full participation. The principles of free, prior, and informed consent should be enforced, and affected people must actively participate in negotiations to protect their rights and ensure fair outcomes. In using African dispute-resolution methods to resolve problems, it would be better to adhere to the traditions and customs of Africa, such as the concept of *ubuntu* which was used in South African reconciliation processes. Also, local chiefs and traditional rulers (emirs in the northern part of Nigeria) should be involved in settling disputes between IDPs and the government.

In view of the above, article 10 of the Kampala Convention prohibits development projects that may cause displacement. In *Centre for Minority Rights Development, Minority Rights Group International and Endorois Welfare Council (On Behalf of the Endorois Community) v Kenya (Endorois)*,⁴⁰ the applicants took their case to the African Commission on Human and Peoples’ Rights (ACHPR). In 2010, the ACHPR issued a judgment stating that the Kenyan government had violated the African Charter, specifically the rights to religious practice, property, culture, free disposition of natural resources, and development. While certain aspects of the Commission’s decision have been realised, the Kenyan government has generally not complied with the

³⁷ UN Environment Programme “Climate litigation more than doubles in five years, now a key tool in delivering climate justice” (2023) at <https://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering> (accessed 9 March 2024).

³⁸ Article 10(3) of the Kampala Convention provides that state parties shall carry out a socio-economic and environmental impact assessment of a proposed development project to undertake such a project.

³⁹ Article 10(2) of the Kampala Convention provides that states parties shall ensure that the stakeholders will explore feasible alternatives, with full information availed to and consultation with persons likely to be displaced by projects.

⁴⁰ Communication No. 276/2003.

recommendations. The *Endorois* case represents the first legal recognition of African indigenous peoples' rights over traditionally owned land, and is also the first case globally which found a violation of the right to development.⁴¹ It is emphasised in this article that the AU and its member states must observe and uphold the principles which the ACHPR established in the *Endorois* judgment.

The Kampala Convention requires the state to provide protection and assistance to displaced citizens. This is in line with the UN Guiding Principles.⁴² IDPs must be included in implementation of the right to development. International instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴³ recognise the right to development and it is the same at the regional level.⁴⁴ IDPs could be protected and assisted even by member states, as stated in article 9. While article 9(1) focuses on the protection of IDPs by member states, article 9(2) focuses on the assistance of IDPs during displacement. Thus, states have the primary duty to protect displaced persons in their countries.⁴⁵ It is submitted that non-intervention in the protection of IDPs may be attributed largely to the sovereignty principle. "Sovereignty" here means responsibility and accountability for one's citizens as an independent sovereign state. AU member states should be responsible for the protection of IDPs, who are their citizens. Thus, in displacement, sovereignty entails the burden of attending to the protection and assistance of IDPs.⁴⁶ However, if the governments of member states fail to fulfil their obligations, other states may intervene on the ground of their right to prevent an international crisis.⁴⁷ Cohen and Deng argue that states should

⁴¹ The ACHPR called on Kenya to implement the *Endorois* case decision in 2013.

⁴² Cohen R & Deng FM *The forsaken people: Case studies of the internally displaced* Washington, DC: Brookings Institution Press (1998).

⁴³ See article 1(1) of the ICESCR, which recognises the right to development by allowing all people to freely pursue their economic, social, and cultural development. Additionally, in 1986 the UN General Assembly adopted the Declaration on the Right to Development, which states that "every human person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedom can be fully realised".

⁴⁴ See article 22(1) of the African Charter on Human and Peoples' Rights on the right to development. It states that "all people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind". Sub-article 2 of the same article requires states to ensure, individually or collectively, the exercise of the right to development.

⁴⁵ Article 5(1) of the Kampala Convention provides that states parties bear the primary duty and responsibility for affording protection and humanitarian assistance to IDPs within their territory without discrimination of any kind.

⁴⁶ Rosenberg M "Refugee law and the displacement loophole" (2004) 2(2) *Hertfordshire Law Journal* 19 at 23. See also Beyani C "State responsibility for the protection and resolution of forced population displacement in international law" (2023) 64 *International Journal of Refugee Law* 745; Cohen & Deng (1998).

⁴⁷ Beyani C (2023) at 745.

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not be allowed to justify the mistreatment of their citizens with the excuse of sovereignty.⁴⁸

For that reason, no state should be able to claim the principles of sovereignty if such a state does not conduct its duties and responsibilities of protecting its citizens in line with international law standards. The duties and responsibilities include protecting and sustaining IDPs' existence.⁴⁹ It is further submitted, as per the position of Cohen and Deng, that AU member states which have ratified the Kampala Convention should be held accountable for not complying with the protection and assistance of IDPs in their respective states, as required under the Kampala Convention. Nigeria as a member state is not excluded in this regard. Furthermore, under article 4(5) of the Kampala Convention, states are required to ensure the protection of communities with a special attachment to and dependency on land due to their culture and spiritual values, except for a "compelling and overriding public interest".⁵⁰

This raises the question of what constitutes a "compelling and overriding public interest" or an exception to protecting indigenous people. To avoid any diminution of protection under the Kampala Convention, the latter's article 20(1) and (2) provides that no provision of the Convention shall be interpreted in such a way as to affect the existing protection of IDPs under IHRL,⁵¹ while, article 26⁵² provides a framework for ensuring an effective remedy for development-induced IDPs. This includes protecting the right to property, which can be violated even when indigenous peoples are no longer in possession of their lands. In such cases, indigenous peoples who have lost their lands are entitled to restitution.

Furthermore, the United Nations Declaration on the Right to Development (UNRTD) of 1986 and the United Nations Right to Indigenous People (UNDRIP) of 2007 require the participation of indigenous people, who have the right to the land, territories and resources which they have traditionally owned, occupied or used or acquired, as stated in article 26 of the UNDRIP. It could be inferred from this that IDPs, given their displacement, may fall into the category of indigenous people without land. Once IDPs are forced or otherwise displaced from land in the national interest, the UNDRP and the Kampala Convention could be enforced.

5 VULNERABILITY AND THE KAMPALA CONVENTION

The provision of social security to Nigerian IDPs may serve as the compensation which the Kampala Convention prescribes but which the government of Nigeria has failed to

⁴⁸ Cohen & Deng (1998).

⁴⁹ Cohen (1998) at 276–277.

⁵⁰ Article 4 (5) Kampala Convention 2009.

⁵¹ Juma L "Protection of internally displaced persons in Kenya under the Prevention, Protection and Assistance of Internally Displaced Persons and Affected Communities Act 2012: An appraisal" (2018) 51 *Comparative International Law Journal of Southern Africa* 44.

⁵² United Nations Declaration on the Rights of Indigenous People, 2007.

provide. In terms of article 12(2) of the Convention, state parties should establish an effective legal framework to provide just and fair compensation and other forms of reparation to IDPs for damages under international standards. The government of Nigeria should thus provide adequate basic services – such as schools for IDPs’ children and health-care facilities for women and the elderly in camps – in accordance with the principles of the Kampala Convention. Fineman’s theory of vulnerability proposes that states are responsible for the social inequality of the citizens, especially IDPs, when they are vulnerable to certain human conditions beyond their control.⁵³ If the “vulnerability” theory is applied in line with the Kampala Convention, then vulnerable groups such as IDPs rights can be protected. This in turn may lead to the eradication of societal practices and structures that maintain disadvantages or indirect discrimination.

According to Kamungi, in the case of non-performance or non-compliance, IDPs can legitimately claim social protection and assistance, which is enforceable by the courts of member states.⁵⁴ State parties must continue striving for the promotion of social justice for IDPs, which entails respecting the latter’s fundamental rights.⁵⁵ Furthermore, if the vulnerability theory can be applied to elderly displaced people, then the state government can take responsibility for their care or and formulate social policy for elderly as well as young displaced persons. Thus, this theory can apply to situations where elderly, and young displaced persons are more vulnerable than others and cannot run for safety, such as in conflict situations or attacks by armed groups. It must be emphasised that elderly persons might not have the necessary capacity to enter a legal battle, especially when they are traumatised.⁵⁶ In view of this, the state government should negotiate or bargain effectively for a legal contract and protect the interests of aged and elderly IDPs.

6 AFRICAN REGIONAL PROTECTION OF SOCIO-ECONOMIC RIGHTS

Socio-economic rights are contained in the African Charter.⁵⁷ In its preamble, the Charter confirms the commitment of African states to protecting the fundamental rights enshrined in the Universal Declaration of Human Rights (UDHR). Article 15 of the African Charter states that every individual has the right to work under equitable and satisfactory conditions and receive equal pay for equal work. Article 16(1) states, furthermore, that every individual has the right to enjoy physical and mental health.

⁵³ Fineman MA & Grear A (eds) *Vulnerability: Reflections on a new ethical foundation for law and politics* London: Routledge (2013).

⁵⁴ Kamungi P “Beyond good intentions: Implementing the Kampala Convention” (2010) 34 *Forced Migration Review* 53.

⁵⁵ Article 3(1)(a), (c), (d) and (e) of the Kampala Convention.

⁵⁶ Kohn NA “Vulnerability theory and the role of government” (2014) 26(1) *Yale Journal of Law and Feminism* 8. See also Fineman MA “Elderly as vulnerable: Rethinking the nature of individual and societal responsibility in the autonomy myth: A theory of dependency” (2012) *The Elder Law Journal* 20.

⁵⁷ In November 2010, the ACHPR adopted the Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, 1998. See also Nwobi IS “The role of the judiciary towards enforcement of socio-economic rights in Africa: Lessons from South Africa” (master’s thesis, University of Pretoria, 2015) at 45.

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Likewise, article 16(2) provides that the state must take the necessary measures to protect the health of its citizens and ensure they receive adequate medical attention when they are sick. Moreover, article 17 provides for the right to education of every individual, while the right to life is provided under article 4. In view of the provisions of the African Charter, IDPs are citizens of the country and equally entitled to the right to education, health-care services, and work. The African Charter places the responsibility on the ACHPR to adjudicate violations of socio-economic rights and grants it the power to hear cases pertaining to the abuse of socio-economic rights.⁵⁸

The Kampala Convention provides for compensation for the infringement of the rights of IDPs. However, member states, individuals, and civil society groups do not have the political will to bring actions against states before the African Court of Justice and African Court on Human and Peoples' Rights in which they claim damages on behalf of displaced persons. The problem here is that the actors do not implement the legislation allowing IDPs to claim compensation even though it is part of their socio-economic rights to start a new life upon return or at the places where they camp or decide to live during or after displacement. IDPs' socio-economic rights are not protected, unlike the rights of refugees.

7 IMPLEMENTATION OF THE KAMPALA CONVENTION

The impact on the ratification of a convention or treaty by state parties is limited by the lack of domestic legislation enabling domestication. This means that the obligations imposed on member states are only effective when member states adopts such legislation to be part of its national law. Although Nigeria has signed and ratified the Kampala Convention, the latter has still not been promulgated into legislation. In Nigeria, the Constitution provides that any convention or international treaty must be domesticated in national legislation before it can be legally binding on the state.⁵⁹ As matters stand, the domestication of the Kampala Convention has remained in the bill-formulation process since 2016 even though the Convention was ratified in 2012.⁶⁰ The delay by both the National Assembly and the executive organs of state in domesticating legislation for IDPs is a gross violation of Nigeria's obligations under the Kampala Convention and the National Policy on Internally Displaced Persons of 2012. It is submitted that while the ratification of the Kampala Convention has affected some of the country's policies, the implementation and enforcement of this treaty is significantly limited by the fact that it has not been domesticated. This is contrary to the aims of the Kampala Convention, which places duties on states to afford IDPs protection and assistance.

⁵⁸ See the African Charter on Human and Peoples' Rights, 1981.

⁵⁹ (2001) AHRLR 60 (ACHPR 2001).

⁶⁰ Adeola (2019) at 591. Nigeria became the 12th African country to ratify the Kampala Convention.

It is submitted, moreover, that the state or state agents should be held responsible for the violation and abuse of IDPs' human rights since IDPs are subject to IHRL.⁶¹ The promotion and protection of human rights demands international, regional and sub-regional co-operation. The state should apply and interpret the concept of "sovereignty as responsibility" inasmuch as sovereignty is the duty and obligation of AU member states to protect the human rights of their citizens.⁶² For example, IDPs must be protected against arbitrary displacement in line with the Kampala Convention without considering the impact of sovereignty principle, especially in specific matters. Article 4(4) of the Convention provides for protection against displacement based on racial discrimination, armed conflict, human rights violations, harmful practices, unnecessary evacuations, and collective punishment.⁶³ However, articles 7 and 10 deal with specific matters relating to armed conflicts that cause displacement.⁶⁴ In the light of these provisions, IDPs must be protected against unwanted racial discrimination, and states must protect them from armed conflicts. International criminal law prohibits acts of arbitrary discrimination that may amount to war crimes or crimes against humanity.⁶⁵ The state must act against discrimination in any form in accordance with international and national laws. Furthermore, in arbitrary displacement, the AU must intervene when displacement amounts to war crimes, genocide, or any other crimes against humanity.

In *SERAC v Nigeria (the Ogoni case)*,⁶⁶ the AU Commission on Social and Economic Rights Action Centre held the Nigerian government liable for violation of the African Charter. In this case, the armed forces had enforced the displacement of the Ogoni people from their homes, destroying their farmlands and spreading terror. This was a case of arbitrary displacement related to environmental degradation and oil exploration. The African Court on Human and Peoples' Rights (African Court) ruled that the usual rights, stated in the Charter, protect IDPs. The doctrine of "implied rights" was used when interpreting the right to life, health and food. The African Court also implied that the right to housing and shelter emerges from the right to property and the protection of the family. It was found that the Federal Government of Nigeria had violated the socio-economic rights of IDPs.

The government and State Parties to the Kampala Convention who are Members of AU failed to involve IDPs in decision-making processes relating to their resettlement and movement, contrary to article 9(2)(k) of the Kampala Convention which provides that member states should consult displaced persons and allow them to participate in

⁶¹ States can be held responsible for breaches of international obligations, including obligations under IHL. See Crawford J *Brownlie's principles of international law* 8th ed Oxford: Oxford University Press (2012) at 540.

⁶² Balajinaika (2015) 267.

⁶³ Asplet M & Bradley M "Strengthened protection for internally displaced persons in Africa: The Kampala Convention comes into force" (2012) 16 (36) *Insights*.

⁶⁴ Abebe AM *The emerging law for forced displacement in Africa: Development and implementation of the Kampala Convention on internal displacement* London: Routledge (2016).

⁶⁵ Article 4(c) and (e) of the Kampala Convention.

⁶⁶ (2001) AHRLR 60 (ACHPR 2001).

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decisions relating to their protection and assistance.⁶⁷ Likewise, article 11(2) stipulates that member states must enable IDPs to choose freely on whether to return, integrate locally, or relocate, doing so by consulting them and ensuring their participation in finding a sustainable solution. In practice, however, the state government neither consults displaced persons nor seeks their opinions in matters that concern their welfare during internal displacement.

Article 10(1) of the Kampala Convention also provides that member states should prevent and mitigate conditions leading to internal displacement. The state government has to implement policies that include or recognise social and economic development. Article 10 further provides that it is the responsibility of the state to protect and provide socio-economic resources for displaced persons in their communities or host states. In all, the Kampala Convention recognises that the state has a duty and responsibility to protect and assist IDPs' human rights. In Nigeria, the management of IDPs has remained a challenging matter for various administrations. In legal terms, however, IDPs do have the very same rights as other persons in their country.

Article 7 of the Kampala Convention demands the protection and assistance of IDPs in situations of armed conflict.⁶⁸ It also allows international law and IHL to govern this Convention pertaining to the protection and assistance of the IDPs. It submitted that an inference can be drawn from the principles and standards of international law and international humanitarian law to hold AU member states and non-state actors criminally liable. The Convention does not attach criminal liability for members of armed groups to be prosecuted under the Convention once the rights of IDPs are violated under the international and national legislation of the particular state.⁶⁹

It is important to note that Nigeria is yet to domesticate the Kampala Convention and would find it difficult to prosecute members of Boko Haram except if they are prosecuted under the national criminal law and the international treaties to which Nigeria is a state party. Article 7 lists several acts which prohibit armed groups from threatening the rights and physical security of IDPs during conflicts. For example, the Kampala Convention prohibits recruiting children and forcing them to be soldiers, or taking children by force into hostilities.⁷⁰ It also prohibits abducting, kidnapping, sexually abusing, and trafficking people or taking them as hostages. It is a crime, and attracts criminal liability of persons or individuals, to force people into displacement. It

⁶⁷ Nyamavuvu LP "An assessment of Zimbabwe's adherence to the African Union's Convention on the Protection and Assistance of Internally Displaced Persons: The case of Tokwe Mukosi" (2015) *Comparative International Law Journal of Southern Africa*.

⁶⁸ Article 7(4) provides that members of armed groups "shall be held criminally liable for their Acts which violate the rights of IDPs under international and national laws".

⁶⁹ Article 5(7) of the Kampala Convention.

⁷⁰ Article 7(5)(d), (e) and (f) of the Kampala Convention.

is also the responsibility of the states to prevent the recruitment of IDPs' children into hostilities.⁷¹

Furthermore, the Kampala Convention states the specific needs of separated and unaccompanied children and notes that they have equal rights to obtain the necessary identity documents "such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates". If IDPs lose their documents, these must be replaced or reissued.⁷² The Nigerian government ratified the Kampala Convention on 17 April 2012 but has not domesticated it in the national law, which would have offered an enforceable remedy for the protection of IDPs, including the provision of the necessary documents to children.⁷³

Similarly, the Kampala Convention places a duty on AU member states to intervene in any member states under grave circumstances of war crimes, genocide and other forms of crimes against humanity.⁷⁴ The problem is whether the AU Commission has the capacity or will to prosecute or sanction those member states that violate the principles of the Kampala Convention. Similarly, under international law, the regional and international community ought to intervene and protect IDPs where the state government has refused or failed to provide protection and assistance. The ACHPR and African Court are empowered by the Convention to adjudicate cases relating to violations of IDPs' human rights. These institutions require member states to comply with the Kampala Convention.⁷⁵ In this context, the African Court has the right to entertain petitions and complaints from individuals, civil society, and NGOs, as well as to institute criminal prosecution of war crimes and crimes against humanity committed during armed conflicts which cause displacement. The Kampala Convention provides for compliance and implementation as well as a follow-up mechanism. A conference of state parties should be established to seek a peer-review method to monitor AU members states' compliance with the Convention.⁷⁶

8 THE IMPACT OF THE KAMPALA CONVENTION ON IDPS

Article 4(3) of the Kampala Convention encourages the state, civil society and other stakeholders to collaborate in protecting IDPs. Such assistance must not be for personal gain. In addition, article 5(1) states that the parties in question must offer humanitarian assistance and protection to all vulnerable displaced victims without discrimination of any kind.⁷⁷ The Convention enjoins state parties to undertake relief action with a humanitarian outlook to reduce and mitigate the suffering of IDPs.⁷⁸ This can be

⁷¹ Article 9(1)(d).

⁷² Article 13.

⁷³ Olusegun OO & Ogunfolu A "Protecting internally displaced children in armed conflicts: Nigeria in focus" (2019) 9(2) *Notre Dame Journal of International and Comparative Law* 4.

⁷⁴ Article 8(1) of the Kampala Convention.

⁷⁵ Article 2(2).

⁷⁶ Article 14.

⁷⁷ See the preamble to the National Policy on Internally Displaced Persons in Nigeria, 2012.

⁷⁸ Article 5(7) of the Kampala Convention.

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attributed to the participation of civil society organisations in humanitarian affairs. Article 11(1) and (2) provides that the process of resettlement should provide a lasting solution to vulnerability-related challenges. Thus, the movement of IDPs must be voluntary by nature. To this end, article 11(3) and (5) urges member states to engage and collaborate with all relevant humanitarian actors or international agencies, such as the AU and civil society, which are involved in protecting IDPs and serving their needs.

Article 12(1) and (2) Kampala Convention encourages the compensation procedures of IDPs through a legal framework that will ensure assistance to IDPs, following international standards. Article 13 enjoins all member states to register or properly document IDPs. This can enhance collaboration between states and their counterparts, such as NGOs and civil society organisations. If IDPs' records are kept up to date, it can assist the UN and other humanitarian agencies in supporting IDPs as well as accounting for the number of displaced people. For example, the United Nations High Commissioner for Refugees and other agencies, which wish to support or partner with the Nigerian government on its IDP initiatives, would easily access the data to assist IDPs with food and medical aid, among other things. Article 13(1) of the Kampala Convention provides for the documentation of IDPs to access the documents referred to in article 13(2). In regard to the registration and personal documentation of IDPs, article 13(4) provides that "women and men as well as separate and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such document issued in their names".

However, despite the near-universal ratification of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child by states in Africa, it is not clear if the Kampala Convention has protected internally displaced children in the region.⁷⁹ It is submitted that IDP children face challenges regarding the documentation process as well as the enjoyment of their rights during displacement. A call is made to the AU to improve respect for children's rights by insisting that states take proactive action in support of IDP children, who are more vulnerable than non-IDP children, lack access to education, and are exposed to risks of various kinds.

9 THE CHALLENGES OF THE KAMPALA CONVENTION

The adoption of the Kampala Convention is a positive step towards the protection and assistance of IDPs in Africa and a precedent for future measures of this kind. However, the main problem the AU faces is convincing more member states to sign and ratify it. To date, out of 54 member states, only 40 have signed the Convention. It is also a challenge for the AU to convince member states to domesticate it in their national legislation and then implement it. However, the AU has now adopted a Model Law⁸⁰ that allows member states to choose different model laws for their legislation depending on their practices. If the Nigerian government was to domesticate the Convention, which it

⁷⁹ Garba F & Yeboah T "Free movement and regional integration in the ECOWAS sub-region" in Teye IJK (ed) *Migration in West Africa* Berlin, New York: IMISCOE Research Series, Springer (2022) 19.

⁸⁰ Kidane (2011) 1. See also Juma (2018) at 56.

has presently submitted to the 9th National Assembly, it could choose a model law in this regard.

It is important to share information on internal displacement among the AU membership.⁸¹ This is because no sovereign state would want to expose other member states for their failure to meet their obligations to their citizens and IDPs. Governance problems among heads of state and governments in the AU are other factors affecting the efficient and effective implementation of the Kampala Convention. It is recommended that member states designate a commissioner to provide protection and assistance services to IDPs. Stakeholders, multinationals, and corporate bodies should contribute funds and establish a management team to ensure that the finances and resources of the commission are properly used for IDPs. In addition, it should not only be constitutive legislation in line with the treaty, but an active implementation of the Convention's principles to protect IDPs. Furthermore, people who were displaced by disasters and other causes should be allowed to enter and seek shelter as well as safety within the borders of member states without documentation or proof of identity. For instance, a driver's license or any means of identification could be allowed instead of a passport to travel and settle permanently. The AU could enable the free movement of people during displacement by borrowing ideas from the Caribbean free-movement agreement which allows people to move for six months in the Eastern Caribbean.⁸²

States can address the problem of displaced persons caused by natural disasters by using statistical data of those who moved into their states due to natural causes for a limited period, in order to render humanitarian assistance. In the ECOWAS regional economic community, people may move freely for 90 days without being in possession of documentation.⁸³ This would allow a majority of IDPs from the north-east of Nigeria to enter other countries such as Niger, Chad, and Cameroon freely and without restriction during the Boko Haram insurgency.⁸⁴ IDPs may also lose their identity documents when fleeing armed conflicts or during natural disasters.⁸⁵ Identity documents, outlined in Guiding Principles 20, are addressed in article 6 of the UDHR and article 16 of the International Covenant on Civil and Political Rights (ICCPR), both of which recognise the right of IDPs to move everywhere as provided by the law.⁸⁶

⁸¹ Article 8(3) of the Kampala Convention.

⁸² Platform on Disaster Management "Free movement agreements and climate-induced migration: A Caribbean case study" available at <https://disasterdisplacement.org/resource/fma-caribbean/> (accessed 11 March 2024).

⁸³ Garba & Yeboah (2022) 19.

⁸⁴ Article 14(1) of the UN Guiding Principles on Internal Displacement affirms the rights of IDPs to move freely throughout the territory of a state during their displacement. Lack of documentation is a key threat to the right to movement.

⁸⁵ Sheludcheenkova et al. (2019) 203. See also Lopez A "The protection of environmentally displaced persons in international law" (2007) *Environment Law* 305.

⁸⁶ Sheludcheenkova et al (2019) at 206. See also Oloka-Onyango J "Movement-related rights in the context of internal displacement" (2010) 41 *Studies in Transnational Legal Policy* 9.

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Since no international legal instruments are implemented to protect IDPs, only the UN Guiding Principles recognise the role of non-state actors in protecting IDPs' legal rights in regard to the right to access.⁸⁷ Principle 25 of the UN Guiding Principles declares that "an international humanitarian organisation and other appropriate actors have the right to offer their services in support of the internally displaced". States are, therefore, under an obligation to grant access to such organisations for purposes of humanitarian services. Furthermore, states (countries that are independent and are members of the UN) cannot condone the non-compliance with IHR and IHRL rules, particularly when the concerned states cannot provide such assistance to the displaced persons.⁸⁸ The collaboration of non-state actors and the government is needed to achieve the objective of returning and resettling IDPs. It is thus essential that IDPs are protected and fully recognised by national legislation.

It is submitted that the Kampala Convention should be amended to allow individuals to institute legal action against states that fail to comply with its provisions. In doing so, an additional protocol could be added to remedy the omission in the Convention. Such an additional protocol will strengthen capacity-building and enhance confidence in the regional institution and best practices in the world. This can serve as a standard for IDPs to have equal rights and status as refugees. In addition, this would entrench the knowledge of the rights of IDPs in Nigeria, as stipulated in the UN Guiding Principles and Kampala Convention. IDPs also have the right to basic human rights, such as the right to life, freedom of movement, association, dignity, personal liberty, and private life and family,⁸⁹ as stipulated in Chapter Four of the Nigerian Constitution. The major concern is non-passing of the bill on IDPs into law to enhance the protection of IDPs' liberty and security, and their vulnerability during distress and displacement.⁹⁰ The creation of an agency or commission for the prevention, rehabilitation, and resettlement of IDPs in Nigeria, is needed. Should this agency be created, it could replace the existing NEMA or establish a separate body from NEMA which can deal mainly with the affairs of internal displacement. The effective implementation of the Convention by AU member states and international partners will benefit the protection of the rights of IDPs. However, for the national enforcement and implementation of the Convention well-tailored legislation is called for, to form part of national laws in Nigeria with strong institutional support from the AU.

10 THE MECHANISM FOR ENFORCING THE KAMPALA CONVENTION

The Conference of State Parties is the body that regulates and monitors the activities as well as the implementation⁹¹ of the Kampala Convention. It held its first meeting on 5

⁸⁷ Kidane (2011) at 1. See also Juma (2018) at 56.

⁸⁸ Tesfaye (2017) at 22.

⁸⁹ Aloba E & Obaji S "Internal displacement in Nigeria and the case for human rights protection of the displaced persons" (2016) 51(26) *Journal Law, Policy and Globalisation* 26.

⁹⁰ Aloba & Obaji (2016) 26.

⁹¹ Article 14(1) of the Kampala Convention.

April 2017 in Harare, Zimbabwe. The Conference of State Parties is comprised of Ministerial and Heads of the governments of the member states, where the first action plan (the Harare Plan of Action) for the implementation of the Kampala Convention was discussed. It also introduced the AU Regulatory Framework for IDPs, which focuses on humanitarian services. The body has elected the first bureau of the Conference of State Parties. The enforcement mechanism under the Convention remains unclear. However, various human rights legislation enforcement procedures do exist. These include the complaint procedure and the inquiry procedure. The complaint procedure allows affected individuals, states, or interstate bodies to formally submit complaints regarding violations. The inquiry procedure involves investigations into serious or systematic human rights violations, even in the absence of a formal complaint. These mechanisms help ensure accountability and compliance with human rights standard.⁹² On the other hand, the Conference of State Parties follows an investigative approach to inquire about the circumstances.

Articles 14(4) and 20(3) of the Kampala Convention explain the reporting procedure and individual complaint procedure and how supervisors may implement them. The Convention gives the ACPHR the power to receive state reports and individual complaints. Furthermore, the Commission must review the reports of state parties to ascertain their compliance with the implementation of the Convention.⁹³ The individual has the right to complain to the African Commission⁹⁴ if his or her rights have been violated. IDPs may complain to the African Court because it is within the latter's jurisdiction to handle cases of human rights violations in Africa. In *African Institute for Human Rights and Development v Guinea*,⁹⁵ the African Court used the OAU Refugee Convention to determine the merits of the matter and found a violation of article 4 of the Kampala Convention, in addition to violation of the provisions of the African Charter.⁹⁶

Article 14 expressly defines the powers and duties of the Conference of State Parties' relating to monitoring and reviewing implementation of the Convention. Article 14(3) provides that the Conference of States Parties shall be convened regularly but fails to state categorically what is meant by "regularly".

The implementation of the Kampala Convention by a political body or an ombudsman may influence its effectiveness, as each member state remains sovereign and independent. The monitoring group, composed of state representatives, is responsible for ensuring compliance with the Convention's provisions on the rights of IDPs. However, national interests and political dynamics may affect the consistency and enforcement of these obligations, potentially impacting the full realization of IDP rights. For the effective and efficient monitoring of the Kampala Convention's implementation,

⁹² Tesfaye (2017) at 22.

⁹³ Tesfaye (2017) at 23.

⁹⁴ Article 20(3) of the Kampala Convention.

⁹⁵ Communication No. 249/2002) (2004) ACHPR 59. See also Tesfaye (2017) 23.

⁹⁶ Tesfaye (2017).

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the ACHPR should allocate resources for hearing IDPs' cases. An independent body must be established to monitor and achieve the implementation of the Kampala Convention.

11 CONCLUSION

In every country of the world, IDPs are victims of human rights abuses. This abuse spans across civil, political, economic, social, and cultural rights, and occurs both during and after their displacement. The Kampala Convention is a legally binding instrument of the AU for protecting IDPs, and requires states to promulgate and adopt national legislation and policies for IDPs in accordance with international law. It also requires the protection of economic, social, and cultural rights, and extends obligations to displaced persons to non-state actors.⁹⁷ The rights of IDPs under the Convention include preventing political, social, cultural, and economic exclusion and marginalisation of the IDPs which might cause the displacement of people.⁹⁸ It also recognises the right of IDPs to self-reliance and a sustainable means of livelihood,⁹⁹ as well as their right to vote during elections. IDPs in Nigeria are vulnerable human beings, and their state of vulnerability entitles them to humanitarian assistance and human rights protection.

Nigeria has ratified the Kampala Convention, which brought with it commitment to ensure the protection of the rights of IDPs within its borders. When IDP legislation are passed into law and this legislation is applied, it would alleviate the plight of IDPs in Nigeria. In view of its ratification of the Kampala Convention, the Nigerian government is duty-bound to domesticate it and provide a legal framework for the protection of the rights of IDPs'. This step would afford IDPs the assurance of the double protection of their rights in conformity with the Kampala Convention. Finally, IDPs would enjoy the right to return to their places of origin, claim compensation, and request assistance from their state governments through peaceful negotiations. Since the adoption of the Convention, only a few states have enacted national legislation in regard to IDPs. As such, Nigeria can learn from Burundi and Sierra Leone by adopting best practices from their IDP policies and AU legal frameworks to strengthen its own legislation. However, non-compliance with the Kampala Convention among the AU Member States remains a major challenge, hindering the development of a robust regional legal framework for internal displacement. Therefore, ensuring effective implementation and enforcement of the Kampala Convention is essential for internal displacement sustainable solutions.

Article 3(2) of the Kampala Convention has obliged member states to domesticate legislation on the protection and assistance of IDPs in accordance with international law and humanitarian law. A milestone was achieved when the AU addressed the plight of IDPs in 2019 on 10th anniversary of the adoption of the Kampala Convention. The AU marked the occasion by declaring 2019 the year of 'refugees, returnees and IDPs' to celebrate the 50th anniversary of the OAU Convention Governing the Specific Aspects of

⁹⁷ Groth L "Engendering protection: An analysis of the 2009 Kampala Convention and its provision of internally displaced women" (2011) 23(2) *International Journal of Refugee Law* 221.

⁹⁸ Article 3(1)(b) of the Kampala Convention.

⁹⁹ Article 3(1)(k) of the Kampala Convention.

Refugee Problems in Africa, 1969.¹⁰⁰ Integrating regional legal frameworks and UN Guiding Principles into national laws enhances protection for IDPs. The Kampala Convention plays a crucial role in ensuring accountability, while strong coordination among regional bodies, national governments, and international partners is essential for sustainable solutions.

The AU and its Commissions are to discuss the monism and dualism and/or the harmonisation approach relating to the role of international law in the domestic legal order. That will strengthen the arguments for domestication in relation to the role and implementation of the Kampala Convention to protect IDPs rights. It is on this basis that the article suggests that African states in general and Nigeria in particular should prosecute armed groups that violate the rights of IDPs during conflicts. This article thus calls for an amendment of the Kampala Convention to include men and young boys, given that during displacement they too are at risk of sexual abuse and other rights violations.

Authors Contribution:

All three authors conceptualised and developed the manuscript. Opara LC was responsible for the parts on the legal regime as it affects the IDPs rights and the state obligation and the need for state parties to domesticate the Kampala Convention as a national legislation in Nigeria. Erasmus D made contribution on the sub-heading of challenges of Kampala Convention. Ndimurwimo LA was responsible for articulating on the contextual framework and the mechanism for enforcing the Kampala Convention. Each author contributed equally to editing and finalising the article.

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