

From Voluntary Principles to Binding Precedent: The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa comes into Force

Ekpa Shedrack Esq., LL.B, LL.M (Ife), BL,
Lecturer, Faculty of Law, Kogi State University Anyigba- P.M.B 1008
Anyigba -Nigeria,
*ekpasheddy@rocketmail.com

Abstract

Large-scale displacement of people has become a defining characteristic of Africa. Unlike refugees, the legal framework for protection of internally displaced persons in Africa like many parts of the world have just evolved. The idea to protect this category of persons within the region have not attracted the much attention that it deserves despite the truism that in Africa internally displaced persons outnumber refugees. The burden of offering protection to internally displaced persons have been left within the shoulders of national government on the ground that they remains within the borders of their own states who in rare if not in all cases have no municipal law to cater for their welfare. Worse still, in the case of Africa, no specialized institution exists to cater for this class of her citizens as intervention in most cases are Ad-hoc in nature coupled with the attendant highly fragmented response. This paper assesses the emerging/evolving trend of legal protection for internally displaced persons in Africa especially with the coming into force of the regional framework- Kampala Convention for the Protection and Assistance to Internally Displaced Persons in Africa which imposes expanded obligations on states beyond the traditional horizon. The paper apart from tracing briefly the antecedents of the Kampala convention also delved into monumental and unprecedented advancements that have been made in it which has now become realistic and profound with its entry into force.

Keywords: Africa Union, Internally Displaced Persons, Refugees, Kampala Convention

1. Introduction

The end of the year 2012 is very significant and marked a watershed in the history of internal displacement in Africa with the coming into force of the regional convention on internal displacement¹ on the 6th December 2012 upon its signing by thirty six African States and the deposit of the 15th instruments of ratification.² Granted that internal displacement has become the new African dilemma,³ the coming into force of the world first regional treaty is indeed remarkable⁴ as the first of its caliber to originate from regional initiatives⁵ and indeed it is a true testament of Africa continued legal leadership on forced migration.⁶ The above development have indeed strengthened protection for about 9.7 million internally displaced persons in Africa out of the global estimates of 26.4 million in the world by the end of 2011,⁷ attesting further to the truism that Africa shares disproportionate figure of internally displaced persons, which accounts to about one third of the global estimates.⁸

¹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa [hereinafter called the Kampala Convention] Oct. 22, 2009 (entered into force Dec. 6, 2012). Available at <http://au.int/en/content/africa-union-convention-protection-and-assistance-internallydisplacedpersons-africa> (Last visited Dec. 20, 2013).

² The Kampala Convention's Instrument of Ratification have been deposited by the following countries as at Dec. 6, 2012, Benin, Burkina Faso, Central African Republic, Chad, Gabon, Gambia, Guinea Bissau, Lesotho, Nigeria, Niger, Sierra Leone, Swaziland, Togo, Uganda and Zambia. Though more than this number have ratified same.

³ Bradley M. and Asplet M., *Strengthened protection for Internally Displaced Persons in Africa: The Kampala Convention comes into force*, American Society of International Law Insight, Dec. 6, 2012, P. 1.

⁴ Africa took the lead on the evolution of regional framework for the protection of refugee in 1969 with the adoption of the A.U Convention Governing the Specific Aspect of Refugee Protection in Africa. Available at <http://>

⁵ Lwabukuna O.K. *Internal Displacement in Africa: African Solutions to African Problem? Challenges and Prospect*. Journal of Internal Displacement (JID) 2011, Vol. 1, No. 1, P. 138.

⁶ Ladan M.T., *infra note* 50.

⁷ Internal Displacement Monitoring Centre (IDMC) Internal Displacement Global Overview 2011 people displaced by conflict and violence, p. 8. (Available at www.internaldisplacement.org. Last visited Dec. 20, 2013).

⁸ *Ibid*.

With the entry into force of the Kampala Convention, new advances has been made in elevating the protection needs of those displaced in Africa from mere voluntary states obligation to binding precedent.¹

This article examines the developments leading up to the convention as well as normative advances made by the Convention, in furthering protection and assistance to internally displaced person. It also delve into sharp overview of the Kampala Convention itself and finally conclude by identifying challenges that may be faced by African states in the implementation of the convention in the future.

1. Developments Leading up to the Convention

African states under the auspices of the African Union over the years have been collaborating with the United Nations as well as other Inter-Governmental Organizations (IGOs) and Civil Society Organizations (CSOs) to address the special and particular concerns of internally displaced persons in Africa² for reason that they represent the most vulnerable groups of persons.³

Keeping with this faith and in recognition of the fact African problem needed African solution, that the Executive Council of the African Union set out early in 2004 to develop a legal framework for the protection of the rights of internally displaced persons,⁴ culminating into the emergence of a draft outline for an IDP Convention which was presented and endorsed at a Ministerial Conference of the Union held in Ouagadougou in the year 2006.

The said draft outline was further deliberated upon by African states after due consultations with stakeholders⁵ at another Ministerial Conference of the Union in 2008 and was eventually adopted at a special summit held in Kampala (Uganda) on the 22-23 October, 2009.⁶

The Kampala Convention builds on a number of soft laws such as the United Nations Guiding Principles on Internal Displacement,⁷ the Pact on Security, Stability and Development in the Great Lake regions and existing domestic laws and policies of African states in the protection and care of internally displaced persons within their territory.⁸

1.1. Guiding Principles on Internal Displacement

Due to ever increasing number of IDPS in the world, the United Nations Commission on Human Rights mandated the then Secretary General to appoint Francis Deng⁹ as representative on IDPS with a mandate to develop legal framework for IDPS's protection worldwide.¹⁰

It is this background that paved way for what later became the first normative framework for the protection of IDPS.¹¹

The Guiding Principles, guiding though not binding on states¹² provides a legitimate minimum standard for the protection of internally displaced persons. The principles are drawn from binding international human rights law, humanitarian law and refugee law¹³ by analogy.

¹ *Chukwudolue v. Republic of Senegal* (2009) CC.J.L.R (Pt. 2) 75 at 89, Para 40-45, where it was held *inter alia* that "A general principle of law is that legally made conventions are binding and hold good as law upon those who made them".

² Making the Kampala Convention Work for IDPS. Guide for Civil Society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Person in Africa: An A.U ECOSOC Publications, July 2010, p. 9. (Print)

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See E.SC. Res.1998/53, UN. DOC. E/CN.4 1998/53/Add.2, Annex, available at <http://www.unhcr.org/refugees/docda/huridoca.nf/0/d2e008c6/b7026ec12566.Assessed> on 10/4/2014.

⁷ *Ibid.*

⁸ States bear primary responsibility for its citizen as outlined under Article 3(d) of the Guiding Principles.

⁹ Kolawole A.K.A., *Towards the Evolution of Legal and Institutional Framework for the Protection of Internally Displaced Persons (IDPS) in Nigeria*, OIDA, International Journal of Sustainable Development, 06:05 2013, at P.143. Available at <http://www.ssrn.com/link/OIDA-intl-Journal-Sustainable-Dev.html>. Assessed on 10/4/2014.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Ferris E., *Internal Displacement in Africa: An Overview of Trends and Opportunities*, Presentation at the Ethiopia Community Development Council Annual Conference "African Refugee and Immigrants Lives: Conflict, Consequences and Contribution" May 2-4 2012, p. 1.

¹³ *Ibid.*, Ferris. See also Background Paper Regional Seminar on Internal Displacement in Economic Community of West African States (ECOWAS) Sub-region, Abuja, Nigeria, 26-28 April 2006, p. 5; M. Bradley and M. Asplet, *supra note 3* at p. 1; See UN DOC. E E/CN.4 1998/53/Add.2, Annex, available at <http://www.unhcr.org/refugees/docda/huridoca.nf/0/d2e008c6/b70263ee125661e0036f36e>. [Hereinafter called Guiding Principles]. Accessed on 12/2/2012

Internally displaced person was for the very first time defined in the principles as:

[P]ersons 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 border.¹

The above definition has been celebrated for being all encompassing as it covers all phases and causes of displacement, as well restating the core obligation of national authorities towards IDPS protection among others.² It also highlights how internal displacement results from or leads to violations of existing international humanitarian and human rights law. The description of this category of person as embedded in the guiding principle also brought to fore two essential elements to wit, the coercive or otherwise involuntary character of movement; and secondly the fact that such movement takes place within national borders.³

The purpose of the Guiding Principle is not however to create a new legal norms but rather to give guidance on how to apply universal rights and guarantees to specific situations of internally displaced persons and so help states to fulfil their obligations.

1.2. Great Lakes Pact and its IDP Protocol

Another important framework upon which the Kampala Convention has inextricably drawn from is the Great Lake Pact on Security, Stability and Development.

This pact emerged out of the realization by the African Union and the United Nations of the specific challenges faced by the regions owing to the peculiarity of the region in terms of its interconnectedness, security and economics. This eventually culminated into the signing of the Pact in 2006 which has now been ratified by the ten International Convention for the Great Lake Region (ICGLR) member states.⁴

The Great Lakes Pact also comprises not only the Pact itself but ten protocols, two of which are central to the issue of protection of rights of those who have forcibly displaced.⁵

The IDP Protocol in particular is the first multilateral sub-regional treaty that commits member states to the full implementation and domestication of the Guiding Principles on Internal Displacement.

1.3. National Laws and Policies

National laws and policies has also increasingly influenced the adoption and subsequent entry into force the Kampala Convention. African states⁶ were among the first to develop national laws and policies based on the Guiding Principles to protect internally displaced persons within their own territory recognizing the fact that national government bears the greatest responsibility for IDPs protection.⁷

2. Notable Advancements in the Kampala Convention

The Guiding Principles restates pre-existing norms of international human rights and humanitarian law⁸ in clear and detail manner to address the specific needs of IDPS. Surely the Kampala Convention influenced by the Guiding Principles is equally underpinned by the keys areas as well as other regional human rights instruments.⁹

¹ Guiding Principles on Internal Displacement, Introduction, Paragraphs 2. See also Ashim M.O.A., *Caught Within their Borders: The Global Crises faced by the International Community of Internally Displaced Persons*, Nigerian Current Law Review 2007-2010, pp. 212-214; where the author clearly analysed the definition of the term “internally displaced persons” as offered in the Guiding Principles on Internal Displacement.

² Guiding Principles, supra note 22, Principle 3(1).

³ This later element in the definition distinguished internally displaced person from refugee, see Iwabukuna O.K., *Internal Displacement in Africa: African Solutions to African Problems? Challenges and Prospect*, Journal of Internal Displacement (JID) 2011, Vol. 1, No. 1, P.136.

⁴ The Ten ICGLR Member States are Angola, Burundi, Congo DRC, Republic of Congo, Kampala Rwanda, Tanzania Uganda, Rwanda, and Sudan.

⁵ These two Protocols are; Protocol on the Protection and Assistance to Internally Displaced Persons (IDP Protocol) and the Protocol on the Property Rights of Returning Populations (Property Protocol).

⁶ Angola (2000) Burundi (2001) Sierra Leone (2002) Uganda (2004) Sudan (2009) while other states such as Chad, Cote d'Ivoire and Nigeria have draft IDP Policies and Laws. Kenya has gone a step further with a bill already presented to Parliament titled: “Bill for Internally Displaced Person in Kenya 2012”.

⁷ Kalin w., *Annotations to the Guiding Principles* 38, Studies in Transnational Legal Policy 6, (2008).

⁸ Bradley M., and Asplet M., Supra note 3 at p 1.

⁹ Such as the African Charter on Human and Peoples' Rights and the Great Lakes Protocol etc., see specifically Kampala Convention; Art. 3.

However, beyond the parameters known to the Guiding Principles and all other existing norms, the Kampala Convention has made notable advancements in the protection and assistance of IDPs in a number of ways.

3:1. Arbitrary Displacement

The prevention of arbitrary displacement is recognized in the convention as part of the “general obligations” of states.¹ The Convention notably and in detail elaborated the right to be protected against arbitrary displacement² identifying acts deemed a violation of that right. The scope of the coverage is extremely broad, including displacement due to discrimination, armed conflict, general violence and human rights violations, harmful practices,³ unnecessary evaluations, or collective punishment.

States are therefore obliged to “refrain from, prohibit and prevent arbitrary displacement of populations”.⁴

The prohibition of arbitrary displacement is not in and of itself, new to international law,⁵ however, in elaborating this rights clearly the Kampala Convention has gone beyond the already known delineations and their reflections in the Guiding Principles for instance Article 4, which is a catch all causes of displacement have no counterpart in other IDP framework to date⁶ even though its incorporation is influenced by human rights law.⁷ Indeed the convention in this regard filled a potential gap in international law generally as a violation which is neither in widespread in character⁸ or arising out of armed conflict⁹ is nevertheless prohibited under the convention.

These represent a broad approach to the prevention of forced migration, as one which is intended to capture any arbitrary displacement in all circumstances which are inadvertently left out in other international regimes.¹⁰

Therefore it sounds to reason that even though arbitrary displacement is not a crime under the Kampala Convention, it is framed on such a way as to denote a harm which all persons have a right to be protected. States parties to the Convention are obliged to declare as offences any act of arbitrary displacement that amount to genocide, war crimes or crime against humanity¹¹ and to ensure that individuals who perpetrated same are handed the prescribed punishment under domestic and international criminal law as applicable.¹²

3:2. Increasing Accountability for Arbitrary Displacement

Beyond the fact that the Kampala Convention demands increased responsibility for acts of arbitrary displacement, it strengthen accountability for intended displacement in host line of instances.

The convention places directly the responsibility for protecting and assisting IDPS squarely on the shoulder of the state parties.¹³

Recognizing that apart from states parties, other range of actors may join in the prevention, protection and assistance of IDPS, the convention addresses also the obligations of other non- state actors.¹⁴ For example in situation of armed conflict leading to displacement, the convention applies international humanitarian norms in

¹ *Ibid*, Art. 4(4).

² *Ibid*, Art. 4(4)(e) “Harmful Practices” are defined as “all behaviour attitudes and/or practices which negatively affect fundamental rights of persons, such as but not limited to the right to life, health, dignity, education, mental and physical integrity and education”. See *id*, Art. 1(i).

³ *Ibid*, Art. 3.1-b.

⁴ See the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War, Art. 49, August 12, 1949, 973 UNTS 75; also Protocol Additional to the Geneva Convention of 12th August 1949, and adopting to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Art. 17, 8 June, 1977, 1125 UNTS 609, See also Statute of the International Tribunal for the former Yugoslavia, Art. 2(g), available at <http://www.ccty.org/x/file/legal%20library/statute/statute-sept09-0n-pdf>. (Last visited on 30/1/2013).

⁵ Bradley M., and Asplet M., *supra* note 3 at p. 5.

⁶ Harmful practices in particular, is an important concept in African Human Rights Law. See e.g. Protocol to the African Charter on Human and Peoples Right on the Rights of Women in Africa, July 11, 2003, available at <http://www.africa-union.org/root/an/document/treaties/text/protocol%20rights%20of%20women.pdf> (Last visited 20/1/2013).

⁷ As with crimes against humanity.

⁸ As in the case of international humanitarian law

⁹ See Kampala Convention, Art. 4(h).

¹⁰ *Ibid*, Art. 4(6).

¹¹ *Ibid*, Art. 3(1) g.

¹² *Ibid*, Art. 5(1).

¹³ For example, the African Union, ECOWAS, International Humanitarian Agencies like International Committee of the Red Cross (ICRC) and Non-State Armed Groups.

¹⁴ Through couched in a rather different way states are also prohibited from impeding humanitarian access states must not “attach or otherwise harm” humanitarian personnel, and they must “allow rapid and unimpeded passage” for all relief consignments. See Kampala Convention, Art. 5(7), (10).

order to protect civilians and humanitarian personnel so as to prevent armed groups from hampering activity or impeding humanitarian assistance.¹

In addition as part of the advancement of international norm for the protection of IDPS, the convention addresses the accountability of Multinational Corporations and private military or security companies for acts of arbitrary displacement or complicity in such acts.² These provisions in particular goes beyond the traditional state focused international human rights law, yet given the central role of such actors today as evident in many contemporary internal displacement crises,³ this bold advance increases the convention relevance.

3:3. Provision of an advanced remedies

The provision of remedies for IDPS have in the past limited focus on loss of housing, land and property⁴ as the biggest harm associated with displacement with the remedy of property restitution as the best form of remedy for both refugee and IDPs in particular.⁵ The Kampala Convention in comparison with this earlier international human rights prescribes a broader approach by providing for the grant of effective remedies that are “just and fair” compensations and other form of reparations, where appropriate and in accordance with international standards.⁶

By the above, the convention has deepened the pool of potential claimants in search for remedies other than the traditional remedy of Housing and Loss of Properties (HLP).

3. Conclusion

Displacement in Africa is complex⁷ and this factor among others necessitated the conclusion of the Kampala Convention with the underlying thought that internally displaced persons have received much less international attention even though they out number refugees.⁸

Now that the Kampala Convention has transcended from mere guiding to binding precedent, there is every need for state parties to adopt national laws and policies that align with the provisions of the Kampala Convention to prevent displacement and to protect those that are already displaced as their primary responsibility.

In the same manner, there is also need for change in the political will and commitment of governments of the state parties. In order to develop policies that will ensure that the provisions of the Kampala Convention are complied with and not violated with impunity as it is the case with the non-binding but guiding United Nations Guiding Principles on Internal Displacement. As profound as the African Union’s current effort in this area may be, there is therefore the need to cast in broader context of legal/institutional solutions required by adopting a collaborative /cluster approach, if effective protection of the IDP in Africa is to be a reality. In conclusion, with the eventual coming into force of the Kampala Convention, there seems to be a greater hope for Internally Displaced Persons in Africa.

¹ *Ibid*, Kampala Convention, Art. 3(1)(ii).

² In the Niger Delta Region of Nigeria, several indigenes have been displaced by oil exploration activities of Multinational Oil Companies such as Shell BP among others, displacement that is not necessarily caused by acts of State or Federal Government in Nigeria.

³ Popularly referred to as “HLP”.

⁴ See Guiding Principles, *supra* note --- Principle 29; and generally United Nations, Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005) (Known widely as the “Pinheiro Principles”) available at <http://2001-2009.state.gov/documents/organization/99774.pdf>. Assessed on 12/12/2013.

⁵ Kampala Convention, Art. 12(1).

⁶ Ladan M.T., *African’s Landmark Human Rights Treaty Entered into Force on Dec. 6, 2012*. Commentary aired on Radio Nigeria by Federal Radio Corporation of Nigeria (FRCN) Abuja on Tuesday December 2012. Available at <http://www.mtladan.blogspot.com>. Accessed on 10/2/1014

⁷ Ferris E., *supra* note 20, P. 12.

⁸ Abebe, A.M., *Legal and Institutional Dimensions of Protecting and Assisting Internally Displaced Persons in Africa* Journal of Refugee Studies 2009, P. 171

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

