



Faculty of Law
Ghent University

Academic year 2016-2017

**INTERNALLY DISPLACED PERSONS IN THE AFRICAN HUMAN
RIGHTS SYSTEM**
An Analysis of the Kampala Convention

Master's thesis
Master of Laws in de Rechten

Submitted by

Ruth Delbaere

(Student ID number: 01100220)

Promoter: Prof. Dr. Yves Haeck
Commissioner: Dr. Salvatore Nicolosi

Acknowledgements

First of all, I would like to thank my promoter, Prof. Dr. Yves Haeck, and my commissioner, Dr. Salvatore Nicolosi, for their continued help and support.

My experience in Kenya, where I had the incredible opportunity to volunteer at an Internally Displaced Persons camp, would not have been possible without *Networks for Voluntary Services*.

Ms. Elizabeth Rushing and Mr. Jacopo Giorgi at the Internal Displacement Monitoring Centre always responded to my questions with great enthusiasm. Thank you to Dr. Cristiano D'Orsi as well, whom I interviewed in South Africa. Despite their busy schedules, they made time to help me, which I am very thankful for.

Through Mr. Dirk Verbeke, I had the unique chance and honour to interview Ms. Justine Ndong-Keller about her job as a translator at the International Criminal Tribunal of Rwanda and her experience with refugees and IDPs. I was also introduced to Mr. Bart Ouvry, former Ambassador at the Embassy of Belgium in Nairobi and current Human Rights Director at the Ministry of Foreign Affairs in Belgium, who granted me an interview as well.

Thank you to everyone who supported me throughout the writing process.

Special thanks to Vera and Carlo Mattheeuws, for everything.

Most of all, thank you to my parents and grandparents who gave me the opportunity to study and pursue my dreams. I wish my Dad could have read my work.

Table of Contents

List of abbreviations 4

Introduction 7

 1. Objectives and academic contribution 7

 2. Societal contribution 10

 3. Empirical research in Kenya 12

Chapter 1: Defining Internally Displaced Persons 17

 1. The notions of internal displacement and Internally Displaced Persons 17

 A. The defining sources of internal displacement and Internally Displaced Persons 17

 B. Key elements of the definitions 18

 2. Internally Displaced Persons and refugees..... 19

 3. Necessity of a separate category for Internally Displaced Persons? 20

 A. Significance of and reasoning behind the prerequisite of border-crossing 20

 B. Conclusion 24

 4. Causes of internal displacement 24

 A. Conflict and violence..... 25

 B. Natural and man-made disasters 25

 C. Development projects 27

 D. Arbitrary displacement and forced evictions..... 27

 E. Case study: causes of displacement in Kenya..... 28

Chapter 2: The current state of play of the rights and protection of Internally Displaced Persons in Sub-Saharan Africa 31

 1. Guiding Principles on Internal Displacement 31

 A. Origin..... 31

 B. Content..... 32

 C. Importance 33

2. Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons.	33
3. The Kampala Convention: origin and importance	35
4. The Kampala Convention: content.....	37
A. Definitions	38
B. Objectives	38
C. Obligations of Member States	39
D. Prohibition of arbitrary displacement.....	41
E. Obligations of international organisations and humanitarian agencies	41
F. Obligations of the African Union.....	42
G. Obligations related to armed groups	43
H. Durable solutions and resettlement	44
I. Compensation	45
5. Conclusion.....	46
Chapter 3: Implementation, monitoring, enforcement and future improvement of the Kampala Convention	47
1. Implementation.....	47
A. Effective implementation	48
B. State responsibility	50
C. Roles of the international community, Non-Governmental Organisations and National Human Rights Institutions.....	51
2. Monitoring and enforcement	53
A. Monitoring mechanisms in the Kampala Convention	53
B. Peer pressure and moral obligation	57
C. (Quasi-)judicial enforcement	59
D. Complaint mechanism for Internally Displaced Persons?	68
3. Recommendations for future improvements	69
A. Improvements within the United Nations.....	70

B. Improvements within the African Union	73
C. Improvements within countries	74
D. Recommendations concerning durable solutions to internal displacement.....	77
Conclusion.....	82
Annexes	88
1. Countries that have signed, ratified or acceded to the Kampala Convention	88
2. Internal Displacement statistics per African region	89
3. New displacements in Africa associated with violence, conflicts and disasters in 2015..	
.....	90
4. Kampala Convention.....	91
5. Dutch summary of this thesis	105
Bibliography.....	108

List of abbreviations

1. Common abbreviations

ACHPR: African Commission on Human and Peoples' Rights

ACtHPR: African Court on Human and Peoples' Rights

ACJHR: African Court of Justice and Human Rights

African Charter: African Charter on Human and Peoples' Rights

APRM: African Peer Review Mechanism

AU: African Union

AU Assembly: African Union Assembly of Heads of State and Government

Great Lakes Protocol: Protocol on the Protection and Assistance to Internally Displaced Persons, in the Pact on Security, Stability and Development in the Great Lakes Region

IASC: Inter-Agency Standing Committee

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICRC: International Committee of the Red Cross

IDMC: Internal Displacement Monitoring Centre

IDPs: Internally Displaced Persons

IOM: International Organization for Migration

IRRI: International Refugee Rights Initiative

KHRC: Kenya Human Rights Commission

MIT: Massachusetts Institute of Technology

NGO: Non-Governmental Organisation

OUA: Organization of African Unity

OHCHR: Office of the High Commissioner for Human Rights

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UNHRC: United Nations Human Rights Council

2. Abbreviations of scientific journals

Afr. Hum. Rts. L.J.: African Human Rights Law Journal

Afr. J. Int'l & Comp. L.: African Journal of International and Comparative Law

Afr. J. Legal Stud.: African Journal of Legal Studies

Brook. J. Int'l L.: Brooklyn Journal of International Law

Conn. J. Int'l L.: Connecticut Journal of International Law

Denv. J. Int'l L. & Pol'y: Denver Journal of International Law & Policy

Foreign Aff.: Foreign Affairs

Geo. J. Int'l L.: Georgetown Journal of International Law

Global Resp. Protect: Global Responsibility to Protect

Hum. Rts. Brief: Human Rights Brief

Hum. Rts. L. Rev.: Human Rights Law Review

Hum. Rts. Q.: Human Rights Quarterly

Int'l. J. Refugee L.: International Journal of Refugee Law

J. Afr. L.: Journal of African Law

J. L. Inf. & Sci.: Journal of Law, Information & Science

Law Democracy & Dev.: Law Democracy & Development

Loy. L.A. Int'l & Comp. L. Rev.: Loyola of Los Angeles International and Comparative Law Review

Mich. YBI Legal Stud.: Michigan Yearbook of International Legal Studies

Neth. Q. Hum. Rts.: Netherlands Quarterly of Human Rights

Refugee Stud.: Journal of Refugee Studies

Rev. quebecoise de droit int'l: Revue quebecoise de droit international

Vand. J. Transnat'l L.: Vanderbilt Journal of Transnational Law

Wake Forest J. L. & Pol'y: Wake Forest Journal of Law & Policy

Wash. U. J. L. & Pol'y: Washington University Journal of Law & Policy

Introduction

*“Internal Displacement has emerged as one of the great human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis.”*¹

Former Secretary-General of the United Nations Kofi Annan

1. Objectives and academic contribution

The focus of this thesis will be on the rights and protection of Internally Displaced Persons (hereafter: IDPs) in Sub-Saharan Africa. The term Sub-Saharan Africa is commonly used to indicate the whole African continent, excluding the Northern countries of Mediterranean Africa, but including Sudan. Politically it consists of all African countries that are located south of the Sahara.²

Internal displacement is *“the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”*.³ The key elements of internal displacement are consequently the involuntary or coerced character of the movement and the fact that no internationally recognised State borders have been crossed (*infra* Chapter 1.1. for a more detailed analysis).

This subject is relevant to be explored for a number of reasons.

Firstly, the number of IDPs in Sub-Saharan Africa has increased dramatically over the past few decades due to factors that will be discussed further in the first chapter, such as conflict, violence, natural or man-made disasters and development projects.⁴ Internal displacement will continue to be a global problem, but over the past decades it has consistently been particularly widespread in Africa.⁵ At the moment, the crises in the Middle-East are also responsible for a

¹ K. ANNAN in R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, Washington D.C., Brookings Institution Press, 1998, Preface by Kofi Annan.

² Millennium Development Indicators: World and regional groupings, http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Data/Regional/africa_sub-saharan.htm; UN Geographical region and composition, <http://millenniumindicators.un.org/unsd/methods/m49/m49regin.htm>.

³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Kampala, www.unhcr.org/4ae9bede9.html, Art. 1, 1.

⁴ See Annexes 2 and 3; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, Washington D.C., Brookings Institution Press, 1998, 31-32.

⁵ L. C. BAILEY, “Out of Africa: Toward Regional Solutions for Internal Displacement”, *Brook. J. Int'l L.* 2014, 381; A. B. BIRGANIE, “African Initiative for the Protection of the Rights of Internally Displaced People”, *Hum.*

dramatic increase in IDPs in countries such as Syria, Iraq and Yemen.⁶ According to the most recent data, there are 40.8 million IDPs and 21.3 million refugees worldwide, so there are now twice as many IDPs as refugees in the world. In 2015, there were 27.8 million new displacements, 8.6 million of which were connected to conflict and violence and 19.2 million were connected to disasters.⁷ The number of people displaced by conflict in Sub-Saharan Africa has consistently been around 12 million over the past ten years, which shows the chronic nature of conflict- and violence-induced internal displacement in the region.⁸ In 2015, in many African countries such as Niger, the Democratic Republic of Congo, the Central-African Republic, Somalia, Ethiopia, Nigeria, Sudan, South Sudan and Kenya, tens of thousands or even hundreds of thousands of people were displaced because of conflicts and/or natural disasters.⁹ Yet unfortunately, recent figures about IDPs are rather scarce because IDPs are often not registered and difficult to identify.¹⁰

Secondly, Africa is the only continent that has a binding legal instrument on the protection of IDPs, namely the Convention for the Protection and Assistance of Internally Displaced Persons in Africa. This document is simply known as the Kampala Convention, from the place where it was signed on 22 October 2009. The Convention entered into force on 6 December 2012.¹¹ Up until the Kampala Convention was signed, there was limited legal protection for IDPs. Therefore, about seven years after it has been signed and four years following its entry into force, it is important to investigate whether the Convention has achieved its goal, i.e. whether

Rts. L. Rev. 2010, 190; C. BRUN, “Research guide on internal displacement”, *Forced Migration* 2005, www.forcedmigration.org/research-resources/expert-guides/internal-displacement/, 5; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *Law Democracy & Dev.* 2012, 221; UNHCR Population Statistics, <http://popstats.unhcr.org/Default.aspx>.

⁶ IDMC, “Global Report on Internal Displacement”, *IDMC* 2016, www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf, 7-8.

⁷ IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 4-5 and 7-8; UNHCR, “Figures at a glance”, www.unhcr.org/figures-at-a-glance.html.

⁸ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *IDMC* 2013, www.internal-displacement.org/assets/publications/2013/201312-af-kampala-convention-progress-report-thematic-en.pdf, 10-11; S. ALBUJA, E. ARNAUD, and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf, 18-19; IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 8; UNHCR Population Statistics, <http://popstats.unhcr.org/Default.aspx>.

⁹ See Annex 3; IDMC, “Global Report on Internal Displacement”, *supra* n. 6; UNHCR Population Statistics, http://popstats.unhcr.org/PSQ_POC.aspx: these statistics are limited to conflict-generated IDPs to whom the Office of the United Nations High Commissioner for Refugees extends protection and/or assistance.

¹⁰ IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 33-34.

¹¹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Kampala, www.unhcr.org/4ae9bede9.html.

it has in fact provided more rights and protection for the internally displaced population (*infra* Chapter 2).

Thirdly, the Convention is not always implemented correctly and efficiently.¹² For that reason, it is necessary to examine who is in charge of the implementation, as well as what is going wrong in a lot of countries and how this can be changed in the future in order to ensure that all IDPs are adequately protected and assisted. The history of international efforts, conventions and soft law concerning IDPs will be discussed in Chapter 2, though this particular matter is already well documented. However, there are some *lacunae* in existing literature regarding the effectiveness and implementation of the Kampala Convention, which is why these topics will be researched in Chapter 3.

In summary, the primary research question is: “What rights and protections does the Kampala Convention provide for Internally Displaced Persons, and how is the Convention enforced and which improvements can be recommended for the future?”

I will answer this primary question by dividing it into four sub-questions:

- 1) Who are Internally Displaced Persons and what is the difference with refugees? (*infra* Chapter 1);
- 2) What is the current state of affairs regarding the rights and protection of Internally Displaced Persons in Sub-Saharan Africa? (*infra* Chapter 2);
- 3) How is the Kampala Convention being enforced and who is enforcing it? (*infra* Chapter 3.1. and 3.2.);
- 4) Which improvements to the protection of Internally Displaced Persons can be recommended for the future? (*infra* Chapter 3.3.).

To answer these questions, the following research methods will be used:

¹² AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, Addis Ababa/Geneva, ECOSOCC and IDMC, 2010, 24; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 10-11; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denv. J. Int'l L. & Pol'y* 2010-2011, 363-370; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *Wereldbeeld* 2009, 8-10; S. SOLOMON, “Updates from the Regional Human Rights Systems”, *Hum. Rts. Brief* 2011-2012, 47-48.

- 1) Desk research: source research and literature review, focusing on a) international, regional and domestic legislation and soft law; b) case law; and c) academic studies, scholarly books and articles, reports and other relevant sources.
- 2) Field research: a) qualitative empirical research while volunteering in Kenya by visiting an IDP camp; and b) interviews with experts in the field, namely Dr. Cristiano D’Orsi, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria; Ms. Justine Ndongu-Keller, Former Translator at the International Criminal Tribunal of Rwanda; Mr. Bart Ouvry, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium; Ms. Elizabeth Rushing, Regional Analyst for West Africa at Internal Displacement Monitoring Centre; and Mr. Jacopo Giorgi, Senior Training and Legal Officer at Internal Displacement Monitoring Centre.

2. Societal contribution

Internal displacement is an important public matter and reflects a global crisis, since all aspects of life and all layers of society are greatly affected by this issue.¹³ The research in this thesis therefore contains an essential societal contribution as well.

All aspects of IDPs’ lives are indeed heavily affected by their displacement, as they have difficult access, or in some cases even no access whatsoever, to food, water, shelter, employment, healthcare, education, etc. On top of that they often lose family members as well as their homes and lands, they suffer from severe deprivation and discrimination and are more susceptible to diseases and psychological problems. These devastating consequences make IDPs an extremely vulnerable group of people whose fundamental human rights are generally not respected, and they are frequently victims of violence, rape, abduction and forced recruitment into armed forces.¹⁴

¹³ R. COHEN and F.M. DENG., “Exodus within Borders - The Uprooted Who Never Left Home”, *Foreign Aff.* 1998, Preface and 12-13; IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 33.

¹⁴ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP’s - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 5-6; S. ALBUJA, E. ARNAUD, and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 19; BROOKINGS and INTERNAL DISPLACEMENT MONITORING CENTRE, “Kampala Convention on Internal Displacement”, *Brookings* 2014, www.brookings.edu/about/projects/idp/kampala-convention, 2; R. COHEN and F.M. DENG., “Exodus within Borders - The Uprooted Who Never Left Home”, *Foreign Aff.* 1998, Preface and 12-13; J. FITZPATRICK, *Human rights protection for refugees, asylum-seekers, and internally displaced persons: a guide to international mechanisms and procedures*, New York, Ardsley, 2002, 1-3; IDMC and BROOKINGS, “National Instruments on Internal Displacements: A Guide to their Development”, *Brookings* 2013,

Internal displacement moreover causes significant stress and has a negative impact on the stability, safety, functioning and development of the affected countries and communities. This is a result of the fact that a stable State is built on a stable population, and IDPs are evidently the epitome of an unstable, uprooted group of citizens.¹⁵ Displacement may even fuel tension, conflicts and violence.¹⁶

In addition, mass displacement has a lasting impact on a large number of people, in the first place of course on the internally displaced population. Long-term displacement can produce an entire generation of uneducated and traumatised children, IDPs are often “de-skilled” because of a lack of tools and resources, the structures and sizes of their families have changed, displacement can cause lawlessness, an entire community or region can be depopulated and destabilised, etc. It is often very difficult for IDPs to go back to their previous lives since the former social institutions no longer exist, which makes reintegration tremendously complicated. But displacement has an impact on other communities too, such as the ones that host IDPs. Populations in certain areas can double or even triple and therefore overload food and water supplies, social services and infrastructure.¹⁷ Displacement consequently affects more people than only the internally displaced population, making it an important topic and challenge of our time.

www.ohchr.org/documents/issues/idpersons/law-and-policymaking_guide-2013.pdf, 7; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 221-225; L. JUMA, “Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya's Rift Valley Province”, *Afr. J. Int'l & Comp. L.* 2012, 253-254; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *KHRC* 2008, <http://resource.khrc.or.ke:8181/khrc/handle/123456789/58>, 21-22; S. SOLOMON, “Updates from the Regional Human Rights Systems”, *supra* n. 12, 47.

¹⁵ C. BEYANI, *Speech: Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention)*, Abuja, Nigeria, 7 July 2011.

¹⁶ BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and G. MC HUGH, *Integrating Displacement in Peace Processes and Peacebuilding*, Washington D.C., United States Institute of Peace Press, 2010, 13-17; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 347-348; IDMC and BROOKINGS, “National Instruments on Internal Displacements: A Guide to their Development”, *supra* n. 14, 5-7; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 220; K. KOSER, “Introduction: Integrating Displacement in Peace Processes and Peacebuilding”, *Refugee Survey Quarterly* 2009, 5; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 2.

¹⁷ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, Preface and 23-26; C. D’ORSI, and G. NALDI, “Multi-Faceted Aspects of Asylum-Law Applicable to Africa: Analysis for Reflection”, *Loy. L.A. Int'l & Comp. L. Rev.* 2014, 115-116; J. KELLENBERGER, *Speech: Root causes and prevention of internal displacement: the ICRC perspective*, Kampala, Uganda, 23 October 2009; UNHCR, *The State of the World's Refugees 2006: Human Displacement in the New Millennium*, Oxford, Oxford University Press, 2006, 156.

The regulation of this phenomenon has also become increasingly urgent because the root causes of internal displacement are growing in frequency and complexity. For example natural disasters are more common due to climate change, and there are more development projects and armed conflicts targeting civilians (*infra* Chapter 1.4.). These interlinked and increasingly common causes result in frequent and repeated displacement, affecting not only IDPs but the stability of countries and communities as well. For IDPs, this inevitably causes more suffering, ostracism and human rights violations. Wide-ranging coordination and regulation are therefore necessary to manage the scale and gravity of this issue, especially since the generally underdeveloped and corrupt governments cannot or will not handle this difficult problem themselves.¹⁸

In general, attention and awareness for internal displacement have risen because of 1) the lack of a universal binding instrument concerning IDPs; 2) the growing scale of the phenomenon; and 3) its devastating impact on the human rights of the people involved, the host communities and countries. Consequently, the research in this thesis contains, in addition to an academic contribution, an important societal contribution as well. This societal contribution manifests itself by identifying issues relating to the protection of IDPs and the implementation of the Kampala Convention, and subsequently offering workable solutions and recommendations in this regard.

3. Empirical research in Kenya

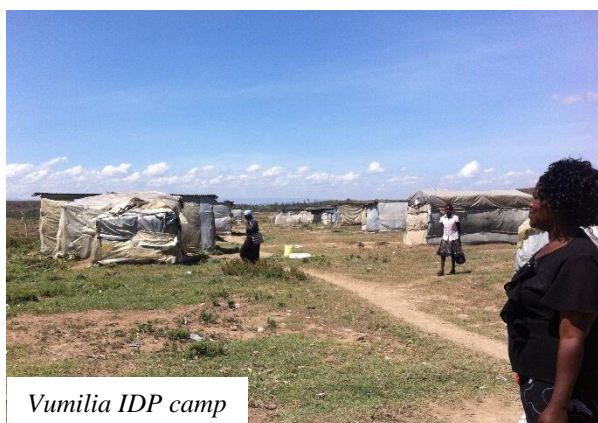
In December 2014, I volunteered in and around Nairobi, Kenya.¹⁹ By visiting and experiencing life in IDP camps and getting to meet the people who live there, I gained a better understanding

¹⁸ See Annexes 2 and 3; S. ALBUJA, E. ARNAUD and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 9-15; C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *Conn. J. Int’l L.* 2012-2013, 75-76; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 347-348; L. JUMA, “Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya's Rift Valley Province”, *supra* n. 14, 251-252; M. YONETANI, “Global Estimates 2014: People displaced by disasters”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201409-global-estimates.pdf, 6-17.

¹⁹ I volunteered through *Networks for Voluntary Services* and *International Volunteer HQ* from 15 December 2014 until 3 January 2015. The majority of my time in Kenya was spent volunteering at a women’s empowerment and special needs program in Kibera Slum, Nairobi. Additionally, I was able to spend time at Vumilia IDP camp, where *Networks for Voluntary Services* and I delivered supplies such as food and clothes and where I got the opportunity to interview IDPs. Due to safety reasons, however, one day was the maximum amount of time I was allowed to stay in Vumilia. I interviewed a woman who has been living in the IDP camp with her five children for years and who requested to remain anonymous because of safety concerns. During the semi-structured interview, she showed me around the camp and acted as a translator while I spoke to four other adults and a few children who were willing to share their stories with me. I mainly learned about the living conditions in the camp, the circumstances that led to their displacement and the lack of help from the government.

of this matter and more insight in what could still be improved. Because even though some African countries have adopted national legislation in order to protect and assist IDPs, the reality is that the provisions in those legal documents are too often not realised and certainly not used in practice. Before delving into the legal part of this thesis, I would therefore like to share the story of the IDPs I met. Their story is representative of that of many victims of internal displacement and will help to understand the practical background of the legal issues discussed in the following chapters.

Vumilia IDP camp is the name of the camp I visited. It is located about 140 kilometres outside of Nairobi near a town by the name of Gilgil. I was fortunate to be able to interview a woman who lives in the camp with her five young children. She also acted as a translator for interviews with other IDPs. Due to the fact that witnesses' lives are often in danger in Kenya, their only condition for the interview was that they would remain anonymous. They provided a great deal of information about life in the camp, the IDPs' most pressing needs and the causes for these families' displacement.²⁰



The people in this camp, and in many other Kenyan IDP camps, are displaced because of one main reason, i.e. the volatile aftermath of the presidential elections of December 2007. Conflict and violence between several Kenyan tribes, mainly the Kalenjin, Kikuyu and Luo tribes,²¹ caused over 650 000 people to be uprooted. The violence entailed crimes such as mass killings,

²⁰ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014. The interviewees requested to remain anonymous, but their identities are known to the author.

²¹ L. JUMA, "Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya's Rift Valley Province", *supra* n. 14, 256; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *KHRC* 2008, <http://resource.khrc.or.ke:8181/khrc/handle/123456789/58>, 11.

rape and burning down entire villages. A lot of the uprooted people then sought refuge in IDP camps in the Rift Valley area.²²

The Kenyan government undertook a belated and imprecise registration of the people displaced as a result of the post-election violence. However, not nearly every IDP was registered as the registration system was riddled with corruption. Some administration chiefs requested payments before registering IDPs, which deprived many poorer families of their rights.²³ Because of this, only some families in the Vumilia IDP camp were resettled four years later. Moreover, these resettlements were typically uncoordinated, corrupt and without any regard for the IDPs' rights. This was particularly the case because the government used force, intimidation and threats to remove families, did not have any regard for their rights and offered no effective accountability mechanisms, which results in gross human rights violations. Corrupt administration chiefs are furthermore all too often bribed by wealthier displaced families to expedite their resettlement process, or, as mentioned previously, they even demanded payments before registering IDPs.²⁴

After the resettlement of some families in Vumilia IDP camp, the remaining families were told that they were not on the list and, for that reason, could not be resettled. Nevertheless, they were promised that the government would return soon and resettle them as well. Five years later, government officials finally did return, but they only gave the IDPs a certain amount of money per family (200 000 Kenyan Shillings, which is a little over 1700 euros). This was certainly of some help to the IDPs. However, the government still did not abide by all of its international and national obligations since it did not facilitate the resettlement of the IDPs in any other way,

²² S. ALBUJA, E. ARNAUD and OTHERS, "Global Overview 2014: People internally displaced by conflict and violence", *supra*, 28; M. CATERINA and J. KLOS, "Unfinished business: Kenya's efforts to address displacement and land issues in Coast Region", *IDMC 2014*, www.internal-displacement.org/assets/publications/2014/201407-af-kenya-unfinished-business-en.pdf, 9; Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014; L. JUMA, "Normative and Institutional Approaches to the Protection of Property Rights of IDPs in Kenya's Rift Valley Province", *supra* n. 14, 251; M. MOREL, "Environmental displacement within Kenya: a search for legal protection frameworks", *Journal of Internal Displacement* 2010, 4.

²³ S. ALBUJA, E. ARNAUD and OTHERS, "Global Overview 2014: People internally displaced by conflict and violence", *supra* n. 8, 28-29; Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 23-24.

²⁴ L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 243; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 10 and 21-34; B. OUVRY, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015.

nor were their safety and fundamental rights guaranteed.²⁵ In view of that, one can fairly say that the help from the Kenyan government has been insufficient and belated.



The school in Vumilia IDP camp, built by volunteers

The circumstances in the camp, which still exists as not all families have been able to resettle yet, are absolutely horrific. Starvation is a common cause of death as most people only have two meals per week. Other frequent causes of death are violence and diseases such as malaria or cholera. The safety situation in the camp is very precarious too because

the families still live and sleep in tents. At night, gangs can therefore easily gain access to the camp to pillage and to rape the women and girls. Both adults and children are mostly in tattered clothes and walk on bare feet all day, and they have limited or no access to food, water, healthcare, education and the outside world. Most children have never even been inside a brick house, they have lived in tents from the time they were born. Past volunteers have built a small school out of corrugated iron where the displaced children can get basic education from local teachers and volunteers. Two rudimentary toilets were also built out of wood by volunteers, for sanitary reasons. Apart from the school and the toilets, there are no actual buildings but only small tents in the IDP camp, in which large groups of people live in dangerous, inhumane and unsanitary conditions.²⁶

²⁵ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html; Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 31 December 2012, Nairobi, www.refworld.org/docid/511219962.html; Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol), in the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), 15 December 2006, Nairobi, www.refworld.org/pdfid/52384fe44.pdf; Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014. Kenya is currently not a Member State of the Kampala Convention (*infra* Chapter 3.1., A).

²⁶ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014.



Children in Vumilia IDP camp

The most pressing needs of these displaced families are elementary supplies such as food, water, clothes and medication, as well as gaining access to fertile land. Their camp is located in a semi-arid region of Kenya, which limits their ability to do any sustainable farming. If they had access to fertile lands, they would be able to at least prevent the IDPs from starving to death

since the Kenyan government provides little to no support. Tenure problems are, however, one of the major issues in Kenya, which also affects the ability to resettle the internally displaced population. Conflicts over land have repeatedly escalated to violence in Kenya's turbulent near past, which in turn led to more displacement.²⁷

When a woman in the Vumilia IDP camp was asked whether she still has hope, she replied with a simple "no". She explained that still hoping for help would be naïve, because everyone knew that adequate help and support would never come.²⁸ This statement proves how dire and hopeless the situation of IDPs in Sub-Saharan Africa is. Local and national governments are generally not willing or able to provide any type of aid to IDPs, which is why the international community needs to step in where necessary (*infra* Chapters 2 and 3). Change will only be achieved by raising awareness for the time and again forgotten IDPs, by adopting and implementing universal and regional instruments regarding internal displacement and by addressing the current lack of political will. Informing IDPs about their rights would also be a step in the right direction, as most displaced people have incomplete or no knowledge whatsoever about their rights and the government's obligations. As a result, they are left feeling helpless and abandoned, as they do not know how to improve their situation.²⁹ Once again it is important to stress that more regulation and change are necessary and long overdue. Consequently, in the last chapter I will attempt to provide recommendations and suggestions for durable solutions in order to improve the IDPs' situation in the future.

²⁷ M. CATERINA and J. KLOS, "Unfinished business: Kenya's efforts to address displacement and land issues in Coast Region", *supra* n. 22, 23; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 243-244.

²⁸ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014.

²⁹ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014.

Chapter 1: Defining Internally Displaced Persons

1. The notions of internal displacement and Internally Displaced Persons

A. The defining sources of internal displacement and Internally Displaced Persons

The notion “displacement” has caused a lot of confusion over the years as it does not have a universally accepted definition. Countless other terms are also being used, such as expulsion or forced migration. However, displacement undoubtedly has an involuntary character and *internal* displacement implies movement within State borders.³⁰ The Kampala Convention defines internal displacement as “*the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders.*”³¹

Up until today, there is no universal binding instrument regarding internal displacement. However, the Guiding Principles on Internal Displacement (*infra* Chapter 2.1.) have gained considerable authority and have been used frequently both on an international and regional level.³² Even though it is not a binding document, the description of IDPs it provides is of notable importance. It describes IDPs as “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.³³

The Kampala Convention, adopted by the African Union (*infra* Chapter 2.3.), offers the following definition: “*‘Internally Displaced Persons’ means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who*

³⁰ M. MOREL, *The Right not to be Displaced in International Law*, Antwerpen, Intersentia, 2014, 47-48 and 50-51.

³¹ Kampala Convention, *supra* n. 3, Art. 1, 1.

³² F.M. DENG, “Global Challenge of Internal Displacement”, *Wash. U. J.L. & Pol’y* 2010, 147-148; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, Washington D.C., The American Society of International Law, 2008, Preface vii-viii.

³³ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html, Introduction Art. 2.

have not crossed an internationally recognized State border”.³⁴ This is an exact copy of the Guiding Principles’ definition, which is again proof of its significant authority.³⁵

B. Key elements of the definitions

The definitions in the Guiding Principles on Internal Displacement and in the Kampala Convention present two elements that are decisive in identifying internal displacement and IDPs: the coercive or involuntary character of the displacement and the fact that the movement must occur without crossing an internationally recognised State border. The second element is what distinguishes IDPs from refugees and it is interpreted extensively, as it refers to the place where the IDP ultimately finds refuge.³⁶ As a result, the second element is also met if, for instance, IDPs have to pass through a neighboring State to ultimately gain access to a safe part of their own country, or if they initially go to another State and then return to their own country but cannot go back to their original homes for the reasons cited in the definitions of the Guiding Principles and Kampala Convention, such as violence or disasters.³⁷

This broad definition accordingly offers equal treatment to all IDPs, regardless of the reason of their displacement. Furthermore, there is no reference to citizenship, which means the definition is not just restricted to citizens but also applies to non-national inhabitants, including stateless persons,³⁸ who are displaced within their country of habitual residence. This does mean that a certain permanency of residence in the country is required.³⁹

³⁴ Kampala Convention, *supra* n. 3, Art. 1, k.

³⁵ INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact”, *IRRI* 2014, <http://reliefweb.int/report/world/comparison-kampala-convention-and-idp-protocol-great-lakes-pact>, 2.

³⁶ BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, Washington D.C., Brookings Institution – University of Bern, 2008, 11-13; C. COURNIL, “Emergence d'un Droit Pour les Personnes Déplacées Internes”, *Rev. quebecoise de droit int'l* 2009, 2-3.

³⁷ BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 12.

³⁸ Stateless persons are persons “who are not considered as a national by any State under the operation of its law”, see: Convention relating to the Status of Stateless Persons, 28 September 1954, New York, www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx, Art. 1.1.; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 12-13; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *Vand. J. Transnat'l L.* 2011, 27.

³⁹ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 13; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 12-13; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 227-228.

2. Internally Displaced Persons and refugees

For the protection and rights of refugees, a universal binding document does exist, namely the United Nations Convention and Protocol Relating to the Status of Refugees⁴⁰ (hereafter: the UN Refugee Convention). This Convention defines a refugee as a person who “*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*”.⁴¹

The African continent also has a regional instrument concerning refugees: the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.⁴² This Convention is an excellent regional complement to the UN Refugee Convention.⁴³ In Article 1.1, it defines refugees with the exact same words as the UN Convention, but it also offers a second definition in Article 1.2: “*the term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*”.⁴⁴ This definition broadens the category of people that are considered to be refugees in Africa.⁴⁵

At this time, IDPs by far outnumber refugees⁴⁶ and although they often find themselves in similar circumstances and in need of similar protection and assistance, they are considered to

⁴⁰ United Nations Convention and Protocol Relating to the Status of Refugees (UN Refugee Convention), 28 July 1951, Geneva, www.unhcr.org/3b66c2aa10.html.

⁴¹ *Ibid.*, Art. 1.

⁴² OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, Addis Ababa, www.unhcr.org/45dc1a682.html.

⁴³ P. NOBEL, “Refugees, Law, and Development in Africa”, *Mich. YBI Legal Stud.* 1982, 258.

⁴⁴ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *supra* n. 42, Art. 1.1 and Art. 1.2.

⁴⁵ J. FITZPATRICK, *Human rights protection for refugees, asylum-seekers, and internally displaced persons: a guide to international mechanisms and procedures*, *supra* n. 14, 5; P. NOBEL, “Refugees, Law, and Development in Africa”, *supra* n. 43, 261-262.

⁴⁶ IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 4-5 and 8; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 25; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *Neth. Q. Hum. Rts.* 2000, 215.

be two distinct groups under international law.⁴⁷ Both refugees and IDPs are involuntarily displaced, but the main difference between them is that refugees cross an internationally recognised State border,⁴⁸ which means they no longer fall under the sovereignty of their own State. As a result, they can claim the special status of “refugee” to gain the protection of their country of refuge.⁴⁹ IDPs on the other hand remain within their country of residence, so their home State maintains the primary responsibility for them. However, because conditions within the home State have often caused the displacement, national governments are generally unwilling or unable to meet the needs of the internally displaced population.⁵⁰

3. Necessity of a separate category for Internally Displaced Persons?

Both the UN Refugee Convention and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa mention the crossing of an internationally recognised State border as a prerequisite to be considered a refugee and subsequently gain the protection of an elaborate system of international law.⁵¹ As discussed above, IDPs do not enjoy the same rights and protection as refugees since they remain within their country of residence (*supra* Chapter 1.2.).

A. Significance of and reasoning behind the prerequisite of border-crossing

In international literature, many have asked the question whether the distinction between people who have crossed a State border and people who have not, is still relevant. The significance of

⁴⁷ L. C. BAILEY, “Out of Africa: Toward Regional Solutions for Internal Displacement”, *supra* n. 5, 362-363; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 2; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 25

⁴⁸ United Nations Convention and Protocol Relating to the Status of Refugees (UN Refugee Convention), *supra* n. 40, Art. 1.

⁴⁹ J. FITZPATRICK, *Human rights protection for refugees, asylum-seekers, and internally displaced persons: a guide to international mechanisms and procedures*, *supra* n. 14, 4; N. GEISSLER, “The International Protection of Internally Displaced Persons”, *Int'l. J. of Refugee L.* 1999, 451-452; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *Refugee Stud.* 1996, 27-31.

⁵⁰ L. C. BAILEY, “Out of Africa: Toward Regional Solutions for Internal Displacement”, *supra* n. 5, 360-363; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 2 and 13; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 29; C. COUNIL, “Emergence d'un Droit Pour les Personnes Déplacées Internes”, *supra* n. 36, 2-3; J. KLABBERS, *International law*, Cambridge, Cambridge University Press, 2013, 121; L. LUDLAM-TAYLOR, “Recent literature on IDPs” in *Internally Displaced People: a Global Survey*, London, Earthscan Publications Limited, 1998, 36; J. MANGALA MUNUMA, “Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays”, *Revue Belge De Droit International* 2002, 532; UNHCR, *The State of the World's Refugees: a Humanitarian Agenda*, Oxford, Oxford University Press, 1997, 112.

⁵¹ UN Refugee Convention, *supra* n. 40, Art. 1; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, *supra* n. 42, Art. 1; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 28.

border-crossing and a separate category for IDPs is discussed in various scholarly articles. Some authors⁵² and the International Committee of the Red Cross (hereafter: ICRC)⁵³ propose a broader definition of refugees by dropping the element of border-crossing, whereas the majority of authors,⁵⁴ as well as the UN and the Brookings-Bern Project on Internal Displacement,⁵⁵ are still in favour of a distinction between refugees and IDPs. Certain authors plead for equal treatment of both groups as well since there is currently a substantial discrepancy in treatment, but they also note that IDPs sometimes need particular protection tailored specifically to their vulnerabilities.⁵⁶

In order to explore this debate further, it is first of all important to mention that the UN Refugee Convention was adopted during the period of the Cold War and reflected the political realities of that time. Historically it was consequently intended to apply to a very specific situation. Therefore, it may now be time to modernise the definition of refugees to include IDPs, in line with the current state of affairs in a lot of countries and continents.⁵⁷

During the early years of the UN, their definition of refugees moreover did include IDPs, for example the definition in the Constitution of the International Refugee Organisation of 1946. Named constitution stated that victims of Nazi persecution who were detained in Germany or Austria were also considered refugees, even if they had not left the country.⁵⁸ This is only one example of the fact that border-crossing has not always been a decisive factor in refugee

⁵² R. BONAVENTURA, “How tense is the tension between the refugee concept and the IDP debate?”, *Forced Migration Review* 1999, 30; C. D’ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 27-42.

⁵³ J. BORTON, M. BUCHANAN-SMITH and R. OTTO, “Support to Internally Displaced Persons. Learning from Evaluations”, *Sida* 2005, www.oecd.org/countries/eritrea/35093445.pdf, 98-99; C. BRUN, “Research guide on internal displacement”, *supra* n. 5, 4-5; M. CONTAT HICKEL, “Protection of internally displaced persons affected by armed conflict: concept and challenges”, *International Review of the Red Cross* 2001, 704-705.

⁵⁴ W. COURTLAND ROBINSON, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *The Brookings Institution – SAIS Project on Internal Displacement* 2003, www.brookings.edu/fp/projects/idp/articles/didreport.pdf, 6; G. S. GOODWIN-GILL and J. MCADAM, *The refugee in international law*, Oxford, Oxford University Press, 2007, 27-28 and 32-35; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 7-8; E. D. MOONEY, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern”, *Refugee Survey Quarterly* 2005, 9-36; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *supra* n. 46, 221-229.

⁵⁵ C. BRUN, “Research guide on internal displacement”, *supra* n. 5, 4.

⁵⁶ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 26-29.

⁵⁷ C. D’ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 32-33; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *supra* n. 46, 222.

⁵⁸ United Nations Constitution of the International Refugee Organization, 15 December 1946, New York, www.unhcr.org/3ae69ef14.html (expired 15 February 1952), Annex I, Part I, Section A, 3.

definitions. Likewise, the ICRC does not make a distinction between refugees and IDPs,⁵⁹ and the UNHCR has also increasingly been assisting the internally displaced population by, for instance, monitoring their treatment and intervening with authorities to demand protection.⁶⁰ These are all preliminary arguments to justify the synthesis of the refugee and IDP concepts.

One reasoning behind the prerequisite of border-crossing is that because refugees have crossed a border and therefore lack the protection of their home State, they need international law to protect and assist them. However, in reality IDPs lack assistance of their national governments as well since these governments are often unwilling or unable to effectively take care of their needs (*supra* Chapter 1.2.). The condition of border-crossing is therefore not only irrelevant, but also highly impractical since IDPs and refugees are often in identical situations and in most cases have the exact same needs, i.e. shelter, security and assistance. For these reasons, it can be rightfully suggested that international aid and protection should be based on needs rather than on certain classifications of groups of people.⁶¹ On the other hand, some authors state that the needs of IDPs are in fact different and should remain a primarily internal affair since State sovereignty still applies. In their opinion, the international assistance of refugees is a surrogate for the lost protection from their home State, while the international protection of IDPs should remain complementary to that of their own country.⁶²

Nevertheless, the essence of all universal and regional human rights instruments is that human rights are universal, meaning equal to everyone, inherent to all human beings, whoever and

⁵⁹ J. BORTON, M. BUCHANAN-SMITH and R. OTTO, “Support to Internally Displaced Persons. Learning from Evaluations”, *supra* n. 53, 98-99; C. BRUN, “Research guide on internal displacement”, *supra* n. 5, 4; M. CONTAT HICKEL, “Protection of internally displaced persons affected by armed conflict: concept and challenges”, *International Review of the Red Cross* 2001, 704-705.

⁶⁰ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 27; R. COHEN, “Recent Trends in Protection and Assistance for IDPs” in *Internally Displaced People: a Global Survey*, London, Earthscan Publications Limited, 1998, 6-7; C. D’ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; J. FITZPATRICK, *Human rights protection for refugees, asylum-seekers, and internally displaced persons: a guide to international mechanisms and procedures*, *supra* n. 14, 2002, 3-6; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 30-34 and 37; J. MANGALA MUNUMA, “Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l’intérieur de leur pays”, *supra* n. 50, 544-547; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *supra* n. 46, 223; UNHCR, *The State of the World’s Refugees: a Humanitarian Agenda*, *supra* n. 50, 118-126.

⁶¹ J. BORTON, M. BUCHANAN-SMITH and R. OTTO, “Support to Internally Displaced Persons. Learning from Evaluations”, *supra* n. 53, 94-99 and 105-106; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 27-29; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 30-34 and 39-40; UNHCR, *The State of the World’s Refugees: a Humanitarian Agenda*, *supra* n. 50, 112.

⁶² E. D. MOONEY, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern”, *Refugee Survey Quarterly* 2005, 14; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *supra* n. 46, 218 and 222-224 and 229; C. PHUONG, *The international protection of internally displaced persons*, Cambridge, Cambridge University Press, 2005, 235-236.

wherever they are.⁶³ There is, accordingly, no justification to make a difference between refugees and IDPs in the context of ensuring their fundamental rights, not even the longstanding argument of State sovereignty and the principle of non-interference in internal affairs. Absolute sovereignty is not defensible. Besides, State sovereignty could also be interpreted as a concept of responsibility, which includes the responsibility to ensure the protection of the fundamental rights of its citizens.⁶⁴ There must, consequently, be a balance “*between the principle of non-intervention in internal affairs and the equally compelling obligation to provide humanitarian assistance and promote observance of human rights*”.⁶⁵ So if a State is unable or unwilling to guarantee the protection of its citizens’ human rights, the international community should be able to intervene, either with consent of the State or under the authority of the UN Security Council.⁶⁶ Mass displacement of people has, in addition, been accepted by the UN as being capable of endangering international peace and security, which again justifies international intervention under the authority of the Security Council.⁶⁷ It is likewise the view of the Guiding Principles on Internal Displacement (*infra* Chapter 2.1.) that when international humanitarian organisations and other appropriate actors offer support to IDPs, this should not be regarded as an unfriendly act or an interference in internal affairs.⁶⁸

⁶³ E.g.: African Charter on Human and Peoples’ Rights, 27 June 1981, Monrovia, www.achpr.org/files/instruments/achpr/banjul_charter.pdf, Art. 2; European Convention on Human Rights, 4 November 1950, Rome, www.echr.coe.int/Documents/Convention_ENG.pdf, Art. 1 and 14; Universal Declaration of Human Rights, 10 December 1948, Paris, www.un.org/en/documents/udhr/, Preamble and Art. 1-2; see also: E. BREMS, *Human Rights: Universality and Diversity*, The Hague, Martinus Nijhoff Publishers, 2001, 3-5.

⁶⁴ The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, October 2000, London, www.ila-hq.org/download.cfm/docid/52392D73-DED3-435F-BC0947746E68410A, Art. 16 (Commentary (2)); R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 275-280.

⁶⁵ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 275; see also: W. COURTLAND ROBINSON, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *supra* n. 54, 27-28.

⁶⁶ The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, *supra* n. 64, Art. 16 (Commentary (2)); R. BONAVENTURA, “How tense is the tension between the refugee concept and the IDP debate?”, *Forced Migration Review* 1999, 30; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 214-215; F.M. DENG, *Protecting the Dispossessed: A Challenge for the International Community*, Washington D.C., Brookings Institution, 1993, 11 and 14-20; L. T. LEE, “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *supra* n. 49, 36-37; L. LUDLAM-TAYLOR, “Recent literature on IDPs” in *Internally Displaced People: a Global Survey*, *supra* n. 50, 36; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 57-59; C. PHUONG, “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *supra* n. 46, 224; UNHCR, *The State of the World’s Refugees 2006: Human Displacement in the New Millennium*, *supra* n. 17, 156-161.

⁶⁷ UN GENERAL ASSEMBLY, “International Co-operation to Avert New Flows of Refugees: Note by the Secretary-General”, 13 May 1986, *UN Doc. A/41/324*.

⁶⁸ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html, Principle 25; see also: The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, *supra* n. 64, Art. 10 (Commentary (6-7)).

B. Conclusion

There are clearly two major views in the debate about the necessity of a separate category for IDPs. A separate category for IDPs does seem desirable at first sight, not to give the internally displaced population a privileged status, but to make sure their specific needs are accommodated.⁶⁹ Nevertheless, the proposal to eliminate the element of border-crossing from the definition of refugees so that IDPs all over the world gain the same rights, protection and aid as refugees, seems practical and necessary as well for several reasons. Not only is the prerequisite of crossing a border generally irrelevant, impractical and outdated for all of the reasons mentioned above, it is also incompatible with the principle that fundamental human rights are universal and should apply equally to all human beings.⁷⁰

A universal binding document tailored specifically to the needs of IDPs would undeniably be ideal, and the Kampala Convention (*infra* Chapters 2 and 3) could be a great leading example for this. But for now, such universal document does not exist and even though IDPs and refugees are theoretically in different circumstances, in reality their situations are very much alike, if not identical, in most cases. The reality of IDPs' needs should not be diminished by theoretical arguments such as State sovereignty and the principle of non-interference in internal affairs, as in some cases interference is indeed permissible and even advisable.⁷¹

In conclusion, dropping the element of border-crossing from the definition of refugees is, in my opinion, sensible in order to ensure that IDPs get the same rights and protection as refugees.

4. Causes of internal displacement

Internal displacement can be the result of a variety of complex causes, making IDPs extremely vulnerable to a number of threats. Common causes include conflict and violence, natural and

⁶⁹ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 27; UNHCR, *The State of the World's Refugees 2006: Human Displacement in the New Millennium*, *supra* n. 17, 155-156.

⁷⁰ *E.g.*: African Charter on Human and Peoples' Rights, 27 June 1981, Monrovia, www.achpr.org/files/instruments/achpr/banjul_charter.pdf, Art. 2; European Convention on Human Rights, 4 November 1950, Rome, www.echr.coe.int/Documents/Convention_ENG.pdf, Art. 1 and 14; Universal Declaration of Human Rights, 10 December 1948, Paris, www.un.org/en/documents/udhr/, Preamble and Art. 1-2; see also: E. BREMS, *Human Rights: Universality and Diversity*, The Hague, Martinus Nijhoff Publishers, 2001, 3-5.

⁷¹ C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; R. C. HOLBROOKE, *Speech at Benjamin N. Cardozo School of Law*, New York, USA, 28 March 2000; M. VINCENT, "IDPs: rights and status", *Forced Migration Review* 2000, 29-31.

man-made disasters, development projects, arbitrary displacement and forced evictions.⁷² As will become clear throughout the rest of this chapter, poverty is a common, yet indirect and sometimes hidden, cause of displacement as well.

A. Conflict and violence

Conflict and violence are some of the main causes of displacement in Africa and many of these volatile situations are characterised by a severe disrespect for human rights. Because of armed conflicts between States, civil wars, genocides, political instability, inter-communal tensions, generalised violence and human rights violations, people frequently become displaced.⁷³

Conflict- and violence-related displacement in Sub-Saharan Africa is triggered by four main factors according to Mr. Walter Kälin, the former Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. These four main factors are: the competition for resources, the presence of rebel groups, endemic poverty and inequality, and the proliferation of small arms.⁷⁴ Accordingly, poverty and inequality can be the cause of conflicts and violence, and can therefore also be an indirect cause of internal displacement.⁷⁵

B. Natural and man-made disasters

The UN Disaster Relief Organisation defines a disaster as “*a serious disruption of the functioning of a society, causing widespread human, material, or environmental losses which exceed the ability of the affected society to cope using its own resources. Disasters are often classified according to their speed of onset (sudden or slow), or according to their cause (natural or man-made)*”.⁷⁶ As a result of this definition, only those events where the losses

⁷² AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 6; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 51-53.

⁷³ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 6; S. ALBUJA, E. ARNAUD, and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 18-19; J. KELLENBERGER, *Speech: Root causes and prevention of internal displacement: the ICRC perspective*, *supra* n. 17.

⁷⁴ C. D'ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 75-76; W. KÄLIN, “Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons: First Regional Conference on Internal Displacement in West Africa”, *UNHRC 2007, UN Doc. A/HRC/4/38/Add.4*, 6; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 9-21.

⁷⁵ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 4.

⁷⁶ UN DISASTER RELIEF ORGANISATION, “An Overview of Disaster Management”, 1992, www.pacificdisaster.net/pdnadmin/data/original/dmtp_02_an_overview_dm_8.pdf, 14.

exceed a society's ability to cope and external support is required, are considered to be disasters.⁷⁷

People are frequently uprooted and forced to flee their homes because of natural disasters such as floods, droughts, storms, hurricanes, tsunamis, volcanic eruptions, landslides, wildfires and earthquakes. These disasters are now more often than ever climate-related.⁷⁸ According to figures obtained by the Internal Displacement Monitoring Centre (hereafter: IDMC), an estimated 19.2 million new displacements in 2015 were related to disasters.⁷⁹ In its 2009 report, the International Organization for Migration (hereafter: IOM) also observed that it has been predicted that between 25 million to one billion people could be displaced by climate change by 2050, as climate-related disasters will only intensify in the future.⁸⁰ Africa is one of the regions where these environmental catastrophes are expected to be exceptionally severe. The consequences of climate change could even fuel tensions and conflict due to the competition for scarce resources such as water and food. Post-disaster displacement is furthermore often internal or even local rather than across an international border, so the number of IDPs will undoubtedly rise during the upcoming decades.⁸¹

Man-made disasters that are capable of uprooting people include industrial and technological disasters, such as severe pollution, fires or explosions.⁸²

⁷⁷ W. COURTLAND ROBINSON, "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", *supra* n. 54, 9.

⁷⁸ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 6; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2016, *UN Doc. A/HRC/32/35*, 8; C. COURNIL, "Emergence d'un Droit Pour les Personnes Déplacées Internes", *supra* n. 36, 2 and 20; B. GOGARTY, "Climate-Change Displacement: Current Legal Solutions to Future Global Problems", *J. L. Inf. & Sci.* 2011, 167-169 and 171-174; M. YONETANI, "Global Estimates 2014: People displaced by disasters", *supra* n. 18, 7.

⁷⁹ IDMC, "Global Report on Internal Displacement", *supra* n. 6, 7.

⁸⁰ INTERNATIONAL ORGANISATION FOR MIGRATION, "Migration, Environment and Climate Change: Assessing the Evidence", *IOM* 2009, http://publications.iom.int/bookstore/free/migration_and_environment.pdf, 9 and 42.

⁸¹ S. ALBUJA, E. ARNAUD, and OTHERS, "Global Overview 2014: People internally displaced by conflict and violence", *supra* n. 8, 12-13; INTERNATIONAL ORGANISATION FOR MIGRATION, "Migration, Environment and Climate Change: Assessing the Evidence", *supra* n. 80, 9-15 and 247-273; IDMC, "Global Report on Internal Displacement", *supra* n. 6, 52; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 21-22; K. KOSER, "Climate change and internal displacement: challenges to the normative framework" in *Migration and Climate Change*, Cambridge, Cambridge University Press, 2011, 289; M. YONETANI, "Global Estimates 2014: People displaced by disasters", *supra* n. 18, 7-10.

⁸² W. COURTLAND ROBINSON, "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", *supra* n. 54, 9.

C. Development projects

Internal displacement is also increasingly caused by development projects, i.e. public or private sector projects like the creation of industrial parks, the construction of urban infrastructure such as roads, bridges, dams, airports, railways, canals and electrification, tourism projects, or industrial processes such as natural resource extraction.⁸³

These projects can, admittedly, benefit developing communities by creating jobs and improving the economy. Nonetheless, they also generate severe costs which are borne disproportionately by certain members of society, such as indigenous peoples and poor and marginalised groups of people that live on land that is valuable as real estate or because of the presence of natural resources. So once again, poverty-stricken groups of people are more at risk of being displaced. Aforementioned groups are indeed frequently and disproportionately displaced because of development projects, generally without their previous knowledge or consent and without being offered any adequate compensation. They often lose their houses and livelihoods as a consequence and most likely face long-term homelessness, landlessness, hardship and aggravated poverty.⁸⁴

D. Arbitrary displacement and forced evictions

According to Article 4.4 of the Kampala Convention, arbitrary displacement includes displacement due to policies or practices of racial discrimination or other similar practices aimed at altering the ethnic, religious or racial composition of a population; displacement during armed conflicts (unless it occurs because of security or imperative military reasons compliant with international humanitarian law); displacement used as a method of warfare or as a collective punishment; displacement caused by generalised violence or human rights violations; displacement as a result of harmful practices; and forced evacuations not justified by the

⁸³ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 25-26; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP’s - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 6; W. COURTLAND ROBINSON, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *supra* n. 54, 9-15; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 23.

⁸⁴ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP’s - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 6; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 16-17; W. COURTLAND ROBINSON, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *supra* n. 54, Foreword and 4 and 10-13; IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 44 and 58; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 23.

affected peoples' safety and health.⁸⁵ In short, it is displacement for unfounded or illegitimate reasons, which may constitute a war crime or a crime against humanity according to several international instruments, such as the Fourth Geneva Convention and the Statute of the International Criminal Court.⁸⁶

A report by the African Union Commission defines forced eviction as “*the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection*”.⁸⁷

In Africa, arbitrary displacement is a widespread cause of displacement. Forced evictions are a common cause as well, because of the fact that people in rural areas typically do not have property deeds, so their lands can easily be reallocated to the State or to a private company. When these people, pastoralists⁸⁸ in particular, lose their lands, they in all likelihood also lose their livelihoods and are subsequently forced to leave their homes. This once again results in the severe impoverishment and marginalisation of the IDPs.⁸⁹

E. Case study: causes of displacement in Kenya

Displacement in Kenya is caused by practically all of the various reasons stated above. Since the country's independence in 1963, generalised violence, conflicts, natural disasters, human rights violations and development projects have all frequently caused internal displacement.⁹⁰ Kenya's worst incidence of internal displacement took place as a result of the waves of violence after the disputed presidential election of December 2007, which uprooted more than 650 000 people (*supra* Introduction). Since then, other situations of violence and conflict, as well as

⁸⁵ Kampala Convention, *supra* n. 3, Art. 4.4; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 25-26; J. KELLENBERGER, *Speech: Root causes and prevention of internal displacement: the ICRC perspective*, *supra* n. 17.

⁸⁶ Geneva Convention IV, 12 August 1949, Geneva, www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByTopics.xsp, Art. 49 and Art. 147; Statute of the International Criminal Court, 17 July 1998, Rome, www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf, Art. 7.1, d j° Art. 7.2, d and Art. 8.2, e, (viii); M. JACQUES, *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge, Cambridge University Press, 2012, 125-127.

⁸⁷ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 26.

⁸⁸ Pastoralists are people who derive more than 50 percent of their income from livestock and livestock products. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT, “Livestock and pastoralists”, *IFAD* 2009, www.ifad.org/documents/10180/0f8e4134-4354-4d08-bf09-e1a6dbec3691; see also: Merriam-Webster Dictionary, www.merriam-webster.com/.

⁸⁹ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 26-28.

⁹⁰ M. CATERINA and J. KLOS, “Unfinished business: Kenya's efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 5; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 15-16.

natural disasters such as floods and droughts, and forced evictions because of development projects, have continued to displace a large number of people.⁹¹

Pastoralists (i.e. people who derive more than 50 percent of their income from livestock and livestock products)⁹² are common victims of displacement in Kenya. Their livelihoods are dependent on the access to lands which they often do not legally own, thus creating an unclear tenure status. The loss of their homes, lands and resources therefore inherently means the loss of their livelihoods too.⁹³

Unclear tenure statuses are a large problem in Kenya on the whole.⁹⁴ The IDPs in the Vumilia IDP camp, for instance, have periodically been approached by a number of people who are claiming the land the camp is built on as their own. The proclaimed landowners had legal documents to prove their ownership, leading the IDPs to have to clear part of the land they are currently living on as they do not have any legal claim to it.⁹⁵ Situations like this happen frequently in Kenya, and since people such as pastoralists and IDPs usually do not have legal ownership over the land they are living on, they are often forced to leave.⁹⁶

Kenya has taken some significant steps to create a comprehensive legal framework on internal displacement and to assume its responsibility towards the prevention of displacement and the protection and assistance of IDPs. In December 2012, the national parliament adopted the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act.⁹⁷ Even though Kenya is not a party to the Kampala Convention,⁹⁸ this Act

⁹¹ S. ALBUJA, E. ARNAUD and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 28; M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 9-15.

⁹² INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT, “Livestock and pastoralists”, *IFAD* 2009, www.ifad.org/documents/10180/0fbc4134-4354-4d08-bf09-e1a6dbec3691; see also: Merriam-Webster Dictionary, www.merriam-webster.com/.

⁹³ S. ALBUJA, E. ARNAUD and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 29; M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 9-10 and 14-15; M. CATERINA and N. SCHREPFER, “On the margin: Kenya’s pastoralists – From displacement to solutions, a conceptual study on the internal displacement of pastoralists” *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201403-af-kenya-on-the-margin-en.pdf, 18-31.

⁹⁴ M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 9, 11-14 and 27.

⁹⁵ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014 and subsequent e-mails and phone calls over the course of 2015.

⁹⁶ M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 9, 11-14 and 27.

⁹⁷ Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 31 December 2012, Nairobi, www.refworld.org/docid/511219962.html.

⁹⁸ See Annex 1. Kenya is most likely not a party to the Kampala Convention because they have already adopted their own legislation regarding IDPs. Nevertheless, they are currently not implementing this legislation well, which

heavily resembles the provisions of the Kampala Convention, the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons⁹⁹ and the UN Guiding Principles on Internal Displacement.¹⁰⁰ The Kenyan legislation concerning IDPs was also praised by Dr. Chaloka Beyani, the Special Rapporteur on the Human Rights of Internally Displaced Persons: “*Although Kenya is not a party to the Kampala Convention, its efforts to develop a national policy on internal displacement stands out as an example of a good practice and should be built upon to guide other countries in the African Union.*”¹⁰¹ Nevertheless, there has not been much progress in implementing the Act since its adoption. Without decent implementation, the Act is of course of very little help to IDPs, so the Kenyan government must take further steps to efficiently implement the legal framework they have provided (*infra* Chapter 3.1.).¹⁰²

may be an additional reason they do not want to sign and ratify the Kampala Convention, as they would then be internationally obligated to implement provisions concerning IDPs.

⁹⁹ Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol), in the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), 15 December 2006, Nairobi, www.refworld.org/pdfid/52384fe44.pdf.

¹⁰⁰ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 20.

¹⁰¹ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 17.

¹⁰² S. ALBUJA, E. ARNAUD and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *supra* n. 8, 29; M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 20 and 25-27.

Chapter 2: The current state of play of the rights and protection of Internally Displaced Persons in Sub-Saharan Africa

1. Guiding Principles on Internal Displacement

A. Origin

To this day, there is no universal binding instrument concerning IDPs. Though this matter is hardly a recent phenomenon, it took until 1992 for the UN Commission on Human Rights to appoint Mr. Francis M. Deng as the Representative of the Secretary-General on Internally Displaced Persons to study this global crisis. Mr. Deng and his team of legal experts were requested to undertake a comprehensive study to determine whether international law provided adequate protection for IDPs.¹⁰³ Upon receiving the disconcerting results of this study, namely that the protection of IDPs under international law was far from sufficient and contained serious gaps, the UN Commission on Human Rights gave Mr. Deng the task to develop a framework for the protection of IDPs. Based on existing international human rights and humanitarian law, he then developed the Guiding Principles on Internal Displacement (hereafter: Guiding Principles), which is a set of non-binding guidelines that address the gaps identified in Mr. Deng's earlier report.¹⁰⁴

The choice for a non-binding instrument instead of a treaty was made because of mainly practical reasons. It was feared that adopting a treaty would be controversial and, as a result, too time-consuming, and that many States would be hesitant or even opposed to ratifying a binding document concerning IDPs. This does mean that the Guiding Principles are not legally

¹⁰³ F.M. DENG, "Internally Displaced Persons: Compilation and Analysis of Legal Norms", *OHCHR* 1996, *UN Doc. E/CN.4/1996/52*.

¹⁰⁴ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html; L. C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 364; C. BEYANI, "Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa", *J. Afr. L.* 2006, 191-192; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 179-180; C. BRUN, "Research guide on internal displacement", *supra* n. 5, 2; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 84-89; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, Preface viii; C. PHUONG, "Internally Displaced Persons and Refugees: Conceptual Differences and Similarities", *supra* n. 46, 217-218; P. SCHMIDT, "Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment", *Geo. J. Int'l L.* 2003-2004, 483-485; UNHCR, *The State of the World's Refugees: a Humanitarian Agenda*, *supra* n. 50, 126.

binding unless they are incorporated in national law, apart from those principles that codify existing international human rights treaties and international humanitarian law.¹⁰⁵

B. Content

The Guiding Principles provide practical guidance to the Representative of the Secretary-General on IDPs, States, (inter)governmental and non-governmental organisations, and all other authorities, groups and persons when confronted with IDPs.¹⁰⁶ All three phases of displacement are covered: the pre-displacement phase, the phase of displacement and the phase of resettlement and reintegration.¹⁰⁷

A broad description of IDPs is provided by the Guiding Principles (*supra* Chapter 1.1., A). Further, Principles 3 and 25 stress that national authorities have the main duty and responsibility to assist their own IDPs. In the event that they are unable to do this, international humanitarian organisations and other appropriate actors have the right to offer their services in support of the IDPs and this offer must not be seen as an unfriendly act or an interference in a State's internal affairs. Consent thereto cannot be arbitrarily withheld, particularly when the authorities concerned are unable or unwilling to provide the required humanitarian assistance.¹⁰⁸ The document also specifies several rights equal to all IDPs, without any type of discrimination, such as the right to not be arbitrarily displaced and the right to voluntarily return to their homes or to resettle.¹⁰⁹

¹⁰⁵ C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 89-91; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 350; M. MOREL, "Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?", *supra* n. 12, 4; P. SCHMIDT, "Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment", *supra* n. 104, 494-495 and 515.

¹⁰⁶ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html, Introduction, 3.

¹⁰⁷ C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 84; C. PHUONG, *The international protection of internally displaced persons*, *supra* n. 62, 56; P. SCHMIDT, "Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment", *supra* n. 104, 486.

¹⁰⁸ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html, Principles 3 and 25; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 11 and 23; F.M. DENG, "Global Challenge of Internal Displacement", *supra* n. 32, 144; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 91-92; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 1-171.

¹⁰⁹ Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html, Principles 1, 4, 6 and 28; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 84-85; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 1-171; M. MOREL, "Het Kampala-verdrag inzake

C. Importance

Even though the Guiding Principles are not legally binding, they have gained significant worldwide authority and are the key international framework concerning internal displacement. Consequently, they have been acknowledged and used by the UN, numerous States and regional intergovernmental organisations, such as the African Union, to adopt measures to protect and assist the internally displaced population.¹¹⁰

The greatest achievement of the Guiding Principles is undoubtedly the internationalisation of this internal issue.¹¹¹ Its adoption raised awareness and was a crucial first step towards establishing a comprehensive framework on internal displacement, by citing in more detail the international minimum standards regarding IDPs and by providing the first description of IDPs. Through adopting this instrument, the international community sent a strong signal of its intention to get involved in situations of internal displacement.¹¹²

2. Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons

In 2006, the Pact on Security, Stability and Development in the Great Lakes Region was adopted by the eleven member States of the International Conference on the Great Lakes

Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 5; C. PHUONG, *The international protection of internally displaced persons*, *supra* n. 62, 56; P. SCHMIDT, “Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment”, *supra* n. 104, 486-489.

¹¹⁰ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 8; F.M. DENG, *Protecting the Dispossessed: A Challenge for the International Community*, *supra* n. 66, 147-150; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 5; P. SCHMIDT, “Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment”, *supra* n. 104, 485 and 514-515 and 518; UNHCR, *The State of the World’s Refugees 2006: Human Displacement in the New Millennium*, *supra* n. 17, 165.

¹¹¹ C. BEYANI, “Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa”, *supra* n. 104, 192; J. MANGALA MUNUMA, “Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l’intérieur de leur pays”, *supra* n. 50, 539.

¹¹² C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 8; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 3-4; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 226; C. PHUONG, *The international protection of internally displaced persons*, *supra* n. 62, 74-75.

Region.¹¹³ The Pact comprises two protocols relevant to IDPs: the Protocol on the Protection and Assistance to IDPs¹¹⁴ and the Protocol on Property Rights of Returning Populations.¹¹⁵

In the Great Lakes Region in Africa, internal displacement is a severe and widespread issue. The Great Lakes Protocol on the Protection and Assistance to IDPs (hereafter: Great Lakes Protocol) establishes the first binding multilateral instrument in the world to adopt and implement the Guiding Principles.¹¹⁶ The States that signed the Protocol are committed to adopt national legislation to implement the Guiding Principles, as Article 6 states the following: “Member States shall ratify the present Protocol and shall also enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems”.¹¹⁷

The Great Lakes Protocol is, therefore, an important document for IDPs because it gives the Guiding Principles a legal basis in this region. Additionally, it encourages the implementation of national measures to ensure the minimum standard of protection for IDPs as provided by the Guiding Principles.

¹¹³ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 9.

¹¹⁴ Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol), in the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), 15 December 2006, Nairobi, www.refworld.org/pdfid/52384fe44.pdf.

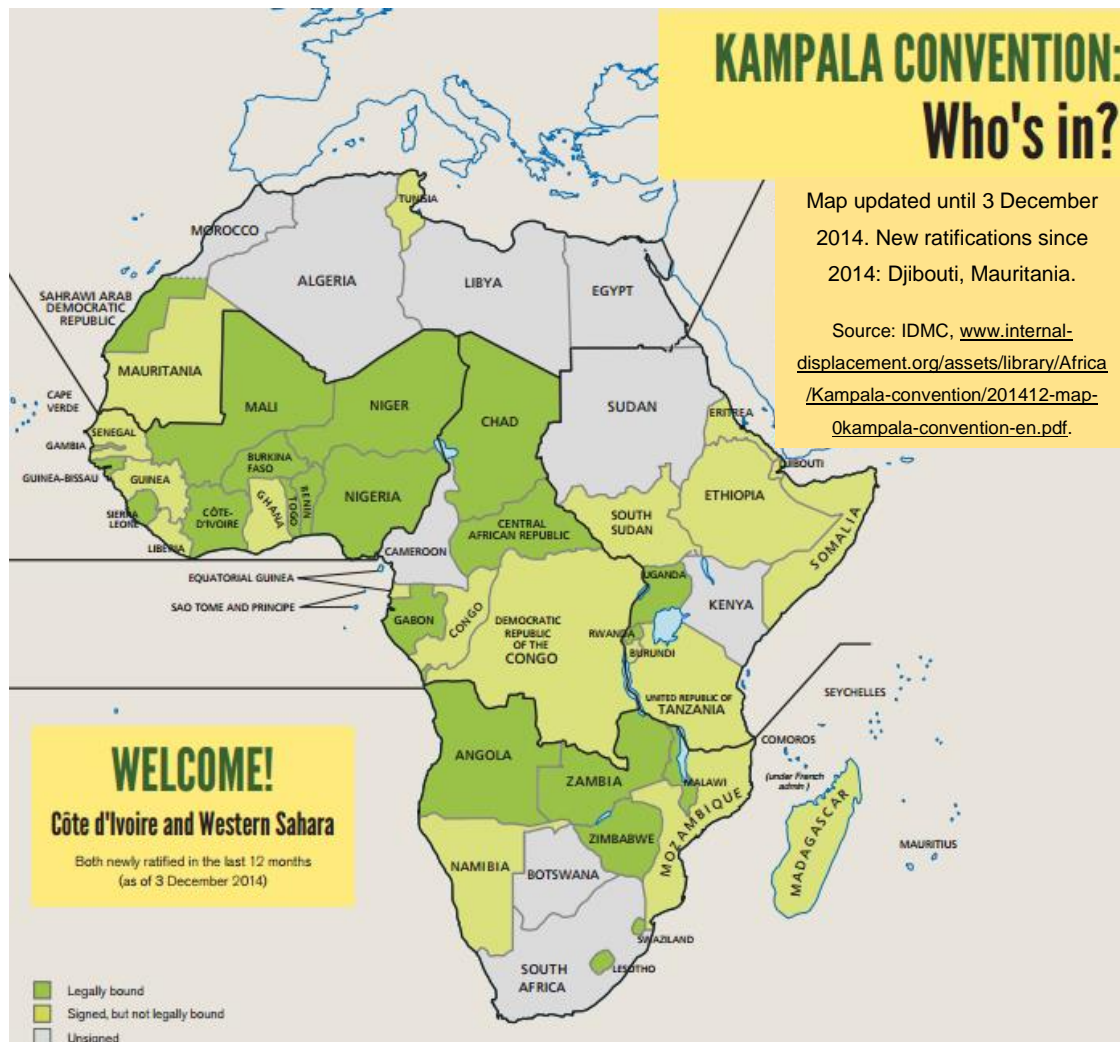
¹¹⁵ Protocol on Property Rights of Returning Populations, in the Pact on Security, Stability and Development in the Great Lakes Region, 15 December 2006, Nairobi.

¹¹⁶ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 10; C. BEYANI, “Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa”, *supra* n. 104, 192; C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 86-88; IDMC and IRRI, “The Great Lakes Pact and the rights of displaced people: A guide for civil society”, *IDMC and IRRI 2008*, www.refugee-rights.org/Publications/2008/GLReport.Sep2008.pdf, 7 and 11-14; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 220 and 229-230; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 5-6.

¹¹⁷ Great Lakes Protocol, *supra* n. 25, Art. 6.3; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 9; BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, *supra* n. 36, 33; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 352; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, Preface viii.

3. The Kampala Convention: origin and importance

In light of the disproportionate number of IDPs in Africa (*supra* Introduction),¹¹⁸ the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (hereafter: the Kampala Convention) was adopted by the African Union in October 2009.¹¹⁹ Thirty days after having been ratified by 15 countries, it entered into force in December 2012.¹²⁰ At the moment, 40 countries out of the 54 AU Member States have signed it and there are 25 ratifications.¹²¹



¹¹⁸ See Annexes 2 and 3; Kampala Convention, *supra* n. 3, Preamble; L. C. BAILEY, “Out of Africa: Toward Regional Solutions for Internal Displacement”, *supra* n. 5, 380-381.

¹¹⁹ Kampala Convention, *supra* n. 3.

¹²⁰ Kampala Convention, *supra* n. 3, Art. 17.1; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact”, *supra* n. 35, 1.

¹²¹ See Annex 1; List of countries which have signed, ratified/acceded to the Kampala Convention, www.au.int/en/sites/default/files/treaties/7796-sl-african union convention for the protection and assistance of internally displaced persons in africa kampala convention 11.pdf.

This Convention is a tremendously important, ground-breaking and unprecedented achievement. While the Great Lakes Protocol was the first binding multilateral instrument in the world to adopt and implement the Guiding Principles (*supra* Chapter 2.2.),¹²² the Kampala Convention is the first and so far the only binding continent-wide legal document regarding internal displacement. It is also the first time States were directly involved in creating an instrument about IDPs. It consequently sets a substantial precedent and marks a milestone for the protection and assistance of IDPs. Furthermore, the speed with which it has been signed and ratified by many States, demonstrates the commitment and political will of the members of the African Union. It may therefore be a leading example for the implementation of the Guiding Principles and the adoption of legal instruments concerning IDPs in other regions.¹²³

First and foremost, the Kampala Convention is the result of the fact that the stability and security of the African continent were threatened due to the issue of internal displacement.¹²⁴ Mainly because of this reason, African leaders decided to try to tackle this problem. The Convention was moreover inspired by and is in part a codification of international humanitarian law, African and international human rights instruments, the Guiding Principles on Internal

¹²² AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 10; C. BEYANI, "Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa", *supra* n. 104, 192; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 86-88; IDMC and IRRI, "The Great Lakes Pact and the rights of displaced people: A guide for civil society", IDMC and IRRI 2008, www.refugee-rights.org/Publications/2008/GLReport.Sep2008.pdf, 7 and 11-14; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 220 and 229-230; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 5-6.

¹²³ A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *Refugee Survey Quarterly* 2009, 28-29, 42 and 56-57; AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 6-10; C. BEYANI, *Speech: Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention)*, *supra* n. 15; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 190; M. BRADLEY, "The Kampala Convention: Significance and Next Steps", *Brookings-LSE* 2014, www.brookings.edu/~media/research/files/reports/2014/04/08%20kampala%20convention%20bradley/kampala%20convention%20event%20at%20swiss%20mission%20april%208%202014.pdf, 1-5; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 352-353; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 230; K. MAGLIVERAS and G. NALDI, "The African Union, Part III. Activities", *Intergovernmental Organizations* 2014, 317.

¹²⁴ Kampala Convention, *supra* n. 3, Preamble.

Displacement (*supra* Chapter 2.1.) and the Great Lakes Protocol on the Protection and Assistance to IDPs (*supra* Chapter 2.2.).¹²⁵

The similarity between the Great Lakes Protocol and the Kampala Convention is remarkable, which reflects their mutual goal of providing durable solutions for situations of internal displacement by creating an appropriate legal framework for IDPs' protection and assistance.¹²⁶ The Guiding Principles and the Kampala Convention also have a very similar viewpoint on the definition and scope of internal displacement, and they both cover all causes and stages of this matter. However, there are still a few differences in approach. The Convention mainly sums up obligations for States and non-State actors, whereas the Guiding Principles primarily set forth rights for IDPs. So while the Convention approaches the rights from the perspective of States, non-State actors and international organisations (obligation-based approach), the Guiding Principles approach the rights from the perspective of IDPs (rights-based approach). Also, it is worth mentioning that the Kampala Convention is tailored specifically to the African continent as it deals with some issues of particular interest to Africa, such as arbitrary displacement and the specific mention of harmful practices as one of the root causes of internal displacement.¹²⁷

4. The Kampala Convention: content

The Kampala Convention is applicable to all situations of internal displacement, irrespective of the cause.¹²⁸ It covers all stages and causes of internal displacement and consists of a Preamble followed by 23 articles. The Convention can roughly be divided into two sections. The first section (Articles 1-14) covers the definitions, objectives and obligations regarding internal

¹²⁵ Kampala Convention, *supra* n. 3, Preamble; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 233-234.

¹²⁶ Kampala Convention, *supra* n. 3, Preamble; Great Lakes Protocol, *supra* n. 25, Preamble; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *supra* n. 35, 1 and 6.

¹²⁷ Kampala Convention, *supra* n. 3, Preamble; A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 42-43; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 7; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 352; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 56 and 83; K. MAGLIVERAS and G. NALDI, "The African Union, Part III. Activities", *supra* n. 123, 321; M. MOREL, "Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?", *supra* n. 12, 6; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 129-130; S. OJEDA, "The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects", *Refugee Survey Quarterly* 2010, 59.

¹²⁸ Kampala Convention, *supra* n. 3, Art. 15.1.

displacement, whereas the second section (Articles 15-23) covers procedural matters, such as the application (Article 15) and entry into force of the Convention (Article 17).¹²⁹ In this chapter the emphasis will lay on the first section. The procedural clauses will be discussed further in Chapter 3.

A. Definitions

All definitions relevant to the Kampala Convention are listed in Article 1, for example the definitions of IDPs, internal displacement, armed groups and harmful practices.

Article 1, k defines IDPs as “*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*”.¹³⁰

As discussed in Chapter 1.1., the Convention’s definition is consistent with the description of IDPs in the Guiding Principles. For a detailed analysis of these definitions can be referred to Chapter 1.1., A and B (*supra*).

B. Objectives

The objectives of this Convention are:

- 1) encouraging and promoting national actions to prevent internal displacement by addressing its root causes, as well as providing durable solutions;
- 2) establishing a legal framework related to all stages of displacement, namely the prevention of displacement, protection and assistance of IDPs and durable solutions in the post-displacement phase;
- 3) outlining the obligations and responsibilities of States, armed groups and non-State actors with regard to internal displacement.¹³¹

¹²⁹ Kampala Convention, *supra* n. 3; A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 46; C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 97-98.

¹³⁰ Kampala Convention, *supra* n. 3, Art. 1, k.

¹³¹ Kampala Convention, *supra* n. 3, Art. 2; A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 45-46; C. BEYANI, *Speech: Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention)*, *supra* n. 15; C. D’ORSI, “Strengths and Weaknesses

The Kampala Convention's scope is therefore very broad as all causes of displacement are included, for instance displacement due to conflict, violence, violations of human rights, natural disasters and development projects (*supra* Chapter 1.4).¹³²

C. Obligations of Member States

The principle of State responsibility is consistent throughout the Kampala Convention. States bear the primary responsibility in cases of internal displacement. The Convention consequently lists a variety of obligations and responsibilities for States in Articles 3 to 14.¹³³ States must incorporate these obligations into national law and take all further necessary measures to conform to the Convention, such as providing funds, adopting policies and strategies on internal displacement, and, where necessary, designating (or assigning responsibilities to) an authority or body responsible for coordinating the protection and assistance of IDPs.¹³⁴

Because States have the primary duty and responsibility to provide protection and assistance to IDPs,¹³⁵ they must protect people against displacement,¹³⁶ including arbitrary displacement and displacement as a result of marginalisation, exclusion, discrimination or development projects.¹³⁷ States must also create early warning systems and disaster strategies in areas of potential displacement.¹³⁸ Furthermore, they are required to protect the rights of IDPs, no matter what the cause of displacement is, by refraining from and preventing discrimination, genocide,

in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 98; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 231.

¹³² A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 46.

¹³³ A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 49; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 13.

¹³⁴ Kampala Convention, *supra* n. 3, Art. 3.2; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 14; A. B. BIRGANIE, “African Initiative for the Protection of the Rights of Internally Displaced People”, *supra* n. 5, 184.

¹³⁵ Kampala Convention, *supra* n. 3, Art. 5.1; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 357.

¹³⁶ Kampala Convention, *supra* n. 3, Art. 3.1 and 4.

¹³⁷ Kampala Convention, *supra* n. 3, Art. 3.1 and 10; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 355; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact”, *supra* n. 35, 5; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 232.

¹³⁸ Kampala Convention, *supra* n. 3, Art. 4.2; K. MAGLIVERAS, and G. NALDI, “The African Union, Part III. Activities”, *supra* n. 123, 319; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 6; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 130.

crimes against humanity, war crimes, arbitrary killings and detention, abduction, torture, starvation, etc.¹³⁹ In line with international humanitarian law,¹⁴⁰ they must make sure that, *inter alia*, IDPs live in dignified, safe and secure environments and have adequate humanitarian protection and assistance as well as special support for vulnerable groups of IDPs such as children, mothers, persons with disabilities and the elderly. Where appropriate, this support should be extended to host communities as well. Countries moreover have to respect the IDPs' right to information, consultation and participation.¹⁴¹ Additionally, States have to create and maintain a register of IDPs and give them the necessary personal documents, like passports and birth certificates.¹⁴²

One obligation is of particular interest, namely the obligation for States to ensure that IDPs do not engage in subversive activities. This means that governments can take the necessary measures if these types of activities occur.¹⁴³

If countries cannot provide adequate aid and resources themselves, they must seek, accept and cooperate with international help, for example by accepting help from and cooperating with international organisations and humanitarian agencies such as UNHCR and the ICRC.¹⁴⁴

¹³⁹ Kampala Convention, *supra* n. 3, Art. 3.1 and Art. 9.1; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 183-184 and 186-187; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 100; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 232.

¹⁴⁰ Geneva Convention IV, *supra* n. 86, Art. 55, 59, 85, 89, 91; S. OJEDA, "The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects", *supra* n. 127, 61-62.

¹⁴¹ Kampala Convention, *supra* n. 3, Art. 5.5 and Art. 9.2; AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 14-15 and 18; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 236; K. MAGLIVERAS, and G. NALDI, "The African Union, Part III. Activities", *supra* n. 123, 320.

¹⁴² Kampala Convention, *supra* n. 3, Art. 13; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 185; S. OJEDA, "The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects", *supra* n. 127, 63.

¹⁴³ Kampala Convention, *supra* n. 3, Art. 3.1, f; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 184; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 99.

¹⁴⁴ Kampala Convention, *supra* n. 3, Art. 5.6, Art. 5.7 and Art. 9.3; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 15; L. C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 375; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 14; A. B. BIRGANIE, "The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects", *supra* n. 5, 185; K. MAGLIVERAS and G. NALDI, "The African Union, Part III. Activities", *supra* n. 123, 319.

D. Prohibition of arbitrary displacement

The Convention prohibits arbitrary displacement by both States and non-State actors. It does not provide a definition, but Article 4.4, a-h lists several prohibited activities. This non-exhaustive list includes, among other things, displacement based on any form of discrimination, illegitimate displacement of civilians during armed conflicts, displacement used as a method of warfare or collective punishment, or displacement as a result of generalised violence, violations of human rights or any other harmful practice.¹⁴⁵

The Kampala Convention establishes individual criminal responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law.¹⁴⁶ So according to the Convention, States must not only protect people against arbitrary displacement, but ensure accountability of persons, groups and non-State actors (including multinational companies and private military or security companies) responsible for arbitrary displacement as well.¹⁴⁷ In addition, States are required to domestically criminalise acts of arbitrary displacement that amount to genocide, war crimes and crimes against humanity.¹⁴⁸

E. Obligations of international organisations and humanitarian agencies

The obligation to respect the rights of IDPs is not only placed on States. International organisations and humanitarian agencies that assist the internally displaced population must respect IDPs' rights and act in conformity with international law and the national law of the

¹⁴⁵ Kampala Convention, *supra* n. 3, Art. 4.

¹⁴⁶ Kampala Convention, *supra* n. 3, Art. 3.1, g.

¹⁴⁷ Kampala Convention, *supra* n. 3, Art. 3.1, a, g and h and Art. 4; A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 47-48; AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 14 and 25; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 14; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 184-185; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *supra* n. 35, 5; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 231; K. MAGLIVERAS and G. NALDI, "The African Union, Part III. Activities", *supra* n. 123, 318; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 131-132; S. OJEDA, "The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects", *supra* n. 127, 61.

¹⁴⁸ Kampala Convention, *supra* n. 3, Art. 4.6; A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 44; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *supra* n. 35, 4.

country in which they operate as well. They are bound by the principles of humanity, neutrality, impartiality and independence when assisting States with IDPs.¹⁴⁹

It is interesting to note that a separate provision is dedicated to the obligations of international organisations and humanitarian agencies, whereas IDPs' rights are scattered over several other provisions, mostly disguised as obligations of States. This is once again proof of the different approach of the Kampala Convention in comparison with the Guiding Principles: the Convention uses an obligation-based approach, while the Principles are characterised by a rights-based approach (*supra* Chapter 2.3.).¹⁵⁰

F. Obligations of the African Union

The African Union has the right to intervene in any Member State, either upon request of the AU Assembly of Heads of State and Government (hereafter: the AU Assembly) in case of grave circumstances (i.e. genocide, war crimes and crimes against humanity), or upon request of a State to restore peace and security.¹⁵¹ Moreover, the AU must support Member States in the prevention of displacement and the protection and assistance of IDPs. This support can, *inter alia*, come in the form of strengthening the institutional framework, information sharing, coordinating the mobilisation of resources and cooperating with States, international organisations and humanitarian agencies.¹⁵²

¹⁴⁹ Kampala Convention, *supra* n. 3, Art. 6; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 14; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 185; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 234.

¹⁵⁰ W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 69-70.

¹⁵¹ Kampala Convention, *supra* n. 3, Art. 8.1 and 8.2; L. C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 376; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 100; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 358.

¹⁵² Kampala Convention, *supra* n. 3, Art. 8.3; L. C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 376; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 14; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 358; L. JUMA, "Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention", *supra* n. 5, 234; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 71.

It was consequently envisioned that the AU will play a crucial, leading role in the implementation of the Convention.¹⁵³ As stated by the AU Commissioner for Political Affairs, Dr. Aisha Abdullahi, the AU will continue to assist States with the implementation of the Kampala Convention by, *inter alia*, developing a model law (which has already been developed in the meantime)¹⁵⁴ that will “*enable a complete and harmonised transposition of its provisions into national legal frameworks*”.¹⁵⁵

G. Obligations related to armed groups

The Kampala Convention defines armed groups as “*dissident armed forces or other organized armed groups that are distinct from the armed forces of the state*”.¹⁵⁶

Armed groups are often driving forces behind internal displacement. Hence, by addressing this issue in Article 7, the Kampala Convention takes a significant step forward with regard to the legal framework concerning internal displacement. It is worth mentioning that the Convention clearly sets forth that the provisions in Article 7 do not in any way legalise, legitimise or recognise armed groups.¹⁵⁷ This is an important statement because the inclusion of armed groups in the Convention was controversial at first, since there was concern that this would give legitimacy to these groups.¹⁵⁸

The Convention provides that armed groups and their members are criminally responsible in case they violate the rights of IDPs under international or national law.¹⁵⁹ They are explicitly,

¹⁵³ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 15; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 71.

¹⁵⁴ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 16.

¹⁵⁵ A. ABDULLAHI, *Speech at the African Union Workshop on the Implementation and Domestication of the AU Convention on the Protection and Assistance to Internally Displaced Persons in Africa (Kampala Convention)*, Lusaka, Zambia, 18 July 2013; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 15.

¹⁵⁶ Kampala Convention, *supra* n. 3, Art. 1, e.

¹⁵⁷ Kampala Convention, *supra* n. 3, Art. 7.1 and Art. 15.2.

¹⁵⁸ M. BRADLEY, “The Kampala Convention: Significance and Next Steps”, *supra* n. 123, 2; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 358-361; K. MAGLIVERAS and G. NALDI, “The African Union, Part III. Activities”, *supra* n. 123, 320; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 7.

¹⁵⁹ Kampala Convention, *supra* n. 3, Art. 7.4 and 15.2; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 14-15; A. B. BIRGANIE, “African Initiative for the Protection of the Rights of Internally Displaced People”, *supra* n. 5, 185-186; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 234; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 72.

but non-exhaustively, prohibited from carrying out arbitrary displacement, hindering the protection or assistance of IDPs in any way, restricting the IDPs' freedom of movement, recruiting children, engaging in abduction, slavery or trafficking, etc.¹⁶⁰

H. Durable solutions and resettlement

Creating durable solutions for internal displacement is another obligation of Member States. They are required to promote and establish suitable conditions for voluntary return, local integration or relocation on a sustainable basis and in safe and dignified circumstances.¹⁶¹ IDPs have the right to be consulted and to participate in decisions about, *inter alia*, whether or not to return to their homes or relocate.¹⁶² If States cannot fulfill these obligations, the principle is reiterated that they must seek and welcome help from international and humanitarian organisations.¹⁶³ Additionally, States have to create proper procedures to resolve disputes about the IDPs' property.¹⁶⁴ Finally, they must “*restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion*”.¹⁶⁵ Examples of communities with special dependency and attachment to their lands are indigenous peoples and pastoralists.¹⁶⁶

¹⁶⁰ Kampala Convention, *supra* n. 3, Art. 7.5; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 72; K. MAGLIVERAS and G. NALDI, “The African Union, Part III. Activities”, *supra* n. 123, 320.

¹⁶¹ Kampala Convention, *supra* n. 3, Art. 11.1; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 14; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 366-368; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 235; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 65; S. OJEDA, “The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects”, *supra* n. 127, 63.

¹⁶² Kampala Convention, *supra* n. 3, Art. 11.2; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 15; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 237.

¹⁶³ Kampala Convention, *supra* n. 3, Art. 11.3.

¹⁶⁴ Kampala Convention, *supra* n. 3, Art. 11.4; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 16; F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 369; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 237.

¹⁶⁵ Kampala Convention, *supra* n. 3, Art. 11.5.

¹⁶⁶ W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 66.

In conclusion, according to the Convention, the characteristics of a durable solution for IDPs include a voluntary, safe, dignified and organised return.¹⁶⁷ As stated by Mr. Walter Kälin, this means ensuring their safety, returning their property and creating economic, social and political circumstances that facilitate sustainable return.¹⁶⁸ It is, however, unfortunate that the Kampala Convention does not elaborate on the parameters to determine and evaluate the extent to which durable solutions are found and to ultimately hold States accountable in that respect. The Inter-Agency Standing Committee (hereafter: IASC) Framework on Durable Solutions for IDPs could have been a suitable guideline in this regard.¹⁶⁹ For further recommendations regarding durable solutions to internal displacement can be referred to Chapter 3.3., D.

I. Compensation

States bear the responsibility to establish an effective legal framework in order to provide IDPs with adequate and fair compensation “*for damage incurred as a result of displacement, in accordance with international standards*”.¹⁷⁰ In the event of natural disasters where the State failed to protect and assist their internally displaced inhabitants, States are required to repair damage.¹⁷¹

The purpose of Article 12 is to give IDPs some kind of remedy for their losses and damage, in the form of material compensation, restitution or through legal procedures. This is evidently necessary to rebuild the IDPs’ lives and restore some sense of normalcy in their existence. The right to an effective remedy is certainly well-established in international law too, for example in Article 8 of the Universal Declaration of Human Rights and in Article 2.3 of the International

¹⁶⁷ F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 368.

¹⁶⁸ L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 236; W. KÄLIN, *Speech: The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges*, London, United Kingdom, 27 September 2007.

¹⁶⁹ E. RUSHING and J. GIORGI, Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *The Brookings Institution – University of Bern Project on Internal Displacement* 2010, 1-46.

¹⁷⁰ Kampala Convention, *supra* n. 3, Art. 12.2; AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 26; L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 237; K. MAGLIVERAS and G. NALDI, “The African Union, Part III. Activities”, *supra* n. 123, 321; S. OJEDA, “The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects”, *supra* n. 127, 63.

¹⁷¹ Kampala Convention, *supra* n. 3, Art. 12.3; L. JUMA, “Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya’s Rift Valley Province”, *supra* n. 5, 278; W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 67; K. MAGLIVERAS and G. NALDI, “The African Union, Part III. Activities”, *supra* n. 123, 321.

Covenant on Civil and Political Rights.¹⁷² Nevertheless, neither Article 12 nor Article 11.5 of the Kampala Convention spell out the general principle according to which restitution should always be the preferential measure (as opposed to compensation) in the solution of land disputes concerning displaced persons, as set out in the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (also known as the Pinheiro Principles).¹⁷³

5. Conclusion

The Guiding Principles, Great Lakes Protocol and Kampala Convention provide a solid basis for the prevention of displacement as well as for the protection and assistance of IDPs in Sub-Saharan Africa. There are also many opportunities for regional and sub-regional organisations to become more involved in dealing with internal displacement (*infra* Chapter 3.1., B).¹⁷⁴

The Kampala Convention in particular offers substantial improvements to the situation and rights of IDPs in Africa. The African Union has shown great commitment, capability and leadership through adopting this instrument.¹⁷⁵ By recognising the numerous root causes of displacement and by stating clear responsibilities and obligations for both States and non-State actors, it provides an outstanding framework to prevent and combat internal displacement.¹⁷⁶ To conclude, even though the Convention is not flawless, it can most likely still bring some hope and progress.¹⁷⁷

¹⁷² L. JUMA, “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *supra* n. 5, 237; L. JUMA, “Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya’s Rift Valley Province”, *supra* n. 14, 278.

¹⁷³ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 28 June 2005, *UN Doc. E/CN.4/Sub.2/2005/17*, www.refworld.org/docid/41640c874.html, Principles 2.2 and 21; E. RUSHING and J. GIORGI, Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015.

¹⁷⁴ C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 112.

¹⁷⁵ C. BEYANI, *Speech: Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention)*, *supra* n. 15.

¹⁷⁶ AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *supra* n. 8, 26; M. MOREL, “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *supra* n. 12, 10.

¹⁷⁷ F. Z. GUISTINIANI, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *supra* n. 12, 369-370.

Chapter 3: Implementation, monitoring, enforcement and future improvement of the Kampala Convention

1. Implementation

The Kampala Convention entered into force on 6 December 2012, thirty days after its ratification by 15 States.¹⁷⁸ At present, 40 countries out of the 54 AU Member States have signed it and there have been 25 ratifications.¹⁷⁹



¹⁷⁸ Kampala Convention, *supra* n. 3, Art. 17.1; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact”, *supra* n. 35, 1.

¹⁷⁹ See Annex 1; List of countries which have signed, ratified/acceded to the Kampala Convention, www.au.int/en/sites/default/files/treaties/7796-sl-african union convention for the protection and assistance of internally displaced persons in africa kampala convention 11.pdf.

The Kampala Convention clearly sets forth that its provisions apply to all cases of internal displacement, irrespective of the cause. States consequently have the duty to implement it in every case of internal displacement,¹⁸⁰ which is an excellent development for IDPs. Nevertheless, some countries seem to be averse to ratifying the Convention. One underlying reason behind this may be that some governments think the issue is not urgent or not relevant for their country because they are currently not dealing with the issue of internal displacement. Another reason could be that some governments are simply reluctant or unable to comply with the provisions of the Convention, because of, for instance, the practical and financial implications of a ratification. Practical implications include the obligation to adapt national legislation in accordance with the Convention and financial implications include the obligation to provide compensation.¹⁸¹

A. Effective implementation

Signing and ratifying the Kampala Convention is an important first step towards guaranteeing the rights of IDPs, but effective implementation is ultimately the key to success. Therefore, States must follow ratification of the Convention with the necessary measures to implement it.¹⁸²

Effective implementation implies two steps. Firstly, Member States must incorporate their obligations under the Convention into national law by adopting legislation or by amending existing legislation.¹⁸³ Secondly, States have to actually respect and enforce their own laws, in this case that would mean adequately assisting and protecting IDPs as described in the Kampala Convention.¹⁸⁴

¹⁸⁰ Kampala Convention, *supra* n. 3, Art. 15.1.

¹⁸¹ Kampala Convention, *supra* n. 3, Art. 3.2 and Art. 12; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 18; C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 4, 377-378 and 391.

¹⁸² AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24.

¹⁸³ Kampala Convention, *supra* n. 3, Art. 3.2; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 16 and 20; A. B. BIRGANIE, "African Initiative for the Protection of the Rights of Internally Displaced People", *supra* n. 5, 188.

¹⁸⁴ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 18-19.

The first step should be preceded by the evaluation of the existing national laws and policies to determine to which degree they are already consistent with the Convention and where changes, amendments or supplements are required.¹⁸⁵ At present, several countries such as Kenya, Uganda and Sudan have already adopted a national instrument regarding internal displacement,¹⁸⁶ even though Kenya is not a party to the Kampala Convention.¹⁸⁷ Kenya's legislation with regard to IDPs, however, heavily resembles the provisions of the Kampala Convention, the Great Lakes Protocol and the Guiding Principles.¹⁸⁸ Other countries are currently in the process of developing legislation.¹⁸⁹

The second step, namely the implementation and enforcement of legislation in practice, is evidently tremendously important. If this does not happen, the Kampala Convention's provisions are without any real meaning.¹⁹⁰ Political will, focus, sufficient resources and support from the international community are essential to achieve effective implementation.¹⁹¹ In addition, the AU Commission on International Law has held workshops and developed a model law for the Kampala Convention to promote and facilitate its transposition into national legal frameworks. The model law consists of 14 chapters that analyse the Convention's provisions and indicates how all key aspects of responses to internal displacement should be regulated.¹⁹² Therefore, this tool may certainly be useful for States as a guideline for the implementation process.

¹⁸⁵ A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 54-55; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24-25.

¹⁸⁶ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 16.

¹⁸⁷ See Annex 1. Kenya is most likely not a party to the Kampala Convention because they have adopted their own legislation regarding IDPs (i.e. the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 31 December 2012, Nairobi, www.refworld.org/docid/511219962.html). However, implementation of this legislation is currently severely lacking, which may be another reason why the Kenyan government is reluctant to ratify the Kampala Convention, as they would then be internationally obligated to implement provisions concerning IDPs.

¹⁸⁸ AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 20.

¹⁸⁹ A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 55; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 16.

¹⁹⁰ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24-25.

¹⁹¹ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 19.

¹⁹² AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 26; IDMC, "Workshop report: The national responsibility to protect internally displaced people: The Kampala

B. State responsibility

According to the Kampala Convention, States bear the primary duty and responsibility for implementation.¹⁹³ Article 3 specifically sums up the States' obligations, namely incorporating the Convention into national laws; designating an authority or body responsible for the coordination of the protection and assistance of IDPs; adopting appropriate measures, strategies and policies regarding internal displacement; providing the necessary funds; and striving to incorporate the Convention into negotiations and agreements concerning durable solutions for internal displacement.¹⁹⁴ In case they are unable to fulfil these obligations, they must accept and welcome international aid (*supra* Chapter 2.4., C).

African States, however, frequently cause internal displacement directly or indirectly and are commonly riddled with corruption and underdevelopment. They moreover generally do not have sufficient financial means or political will to abide by all of the provisions of the Convention or they may not be aware of the Convention's existence whatsoever.¹⁹⁵ For these reasons, States are often unwilling or unable to implement the Kampala Convention correctly. As a result, the African Union has been designated a role too. The AU mainly has a coordinating and supporting task, but in certain situations it can act as a substitute for State action (*supra* Chapter 2.4., F).¹⁹⁶ In light of these responsibilities, the AU Commission has created workshops and a model law for the Kampala Convention (*supra* Chapter 3.1., A), which States can use in the domestication process.¹⁹⁷

The main issue, nonetheless, remains compliance. Because the monitoring and enforcement mechanisms provided by the Convention are quite weak (*infra* Chapter 3.2.) and because of

Convention", *IDMC* 2014, www.internal-displacement.org/assets/publications/2015/201505-af-national-responsibility-to-protect-idps-kampala-convention-workshop-report-en.pdf, 8.

¹⁹³ Kampala Convention, *supra* n. 3, Preamble, Art. 2, d, Art. 3, Art. 4 and Art. 5.1; AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 14; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 357.

¹⁹⁴ Kampala Convention, *supra* n. 3, Art. 3.2; AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 14.

¹⁹⁵ C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 377-378 and 391; L. JUMA, "Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya's Rift Valley Province", *supra* n. 14, 252.

¹⁹⁶ AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 15; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 358 and 370.

¹⁹⁷ AFRICAN UNION COMMISSION, "The Kampala Convention One Year On: Progress and Prospects", *supra* n. 8, 16.

limited resources and political will, there continues to be a serious lack of adequate compliance with the Convention.¹⁹⁸ Another issue is that some States have adopted the Convention through national legislation without entirely understanding the scope of their obligations, which often leads to national instruments that are not being used in practice.¹⁹⁹

The problem of insufficient resources may be solved by support from various actors, since the Kampala Convention explicitly mentions that countries may seek the cooperation of international organisations, the AU and other States Parties.²⁰⁰

The lack of political will requires continuous encouragement and persuasion. The AU Member States must therefore persistently be urged to sign and ratify the Convention, after which they should be urged to fulfil their obligations by taking the necessary steps to effectively implement it.²⁰¹ For more detailed recommendations in this regard can be referred to Chapter 3.3.

C. Roles of the international community, Non-Governmental Organisations and National Human Rights Institutions

The international community, Non-Governmental Organisations (hereafter: NGOs) and National Human Rights Institutions (hereafter: NHRIs) can have a considerable impact on the Kampala Convention's implementation.

Firstly, the international community, such as the African Union, the African Commission on Human and Peoples' Rights (hereafter: ACHPR), UN agencies and other actors, should continue to support the African region with regard to the implementation of the Kampala Convention. They can advocate, raise awareness, implement projects, monitor progress, provide funds, stimulate and strengthen the work of regional and national organisations, etc.²⁰² It is

¹⁹⁸ F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 370; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 133; S. SOLOMON, "Updates from the Regional Human Rights Systems", *supra* n. 12, 48.

¹⁹⁹ J. SKINNER, "State Responsibility in the Face of Environmentally Displaced Persons", *Wake Forest J. L. & Pol'y* 2014, 429.

²⁰⁰ Kampala Convention, *supra* n. 3, Art. 4.3, Art. 5.2 and Art. 8; S. SOLOMON, "Updates from the Regional Human Rights Systems", *supra* n. 12, 48.

²⁰¹ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 17; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 85.

²⁰² C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33* 21-22; E. A. ANKUMAH, *The African Commission on Human and Peoples' Rights Practice and Procedures*, The Hague, Kluwer Law International, 20-22; M. MOREL, "Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?", *supra* n. 12, 8.

furthermore critical to not only raise awareness on the level of the AU, governments and NHRIs, but to also inform IDPs and other vulnerable groups of their rights. As a result, awareness-raising and advocacy by the international community should happen in all relevant languages and through appropriate channels to ensure that all members of society are reached, including the most vulnerable ones. Examples of suitable awareness-raising and advocacy activities are translating the Kampala Convention into relevant languages; distributing the Convention; organising exhibitions, workshops, training days, briefings, events, public lectures and debates; using creative ways to inform people about the Convention, for instance through drama and games; notifying various media outlets of the Convention; etc.²⁰³

Secondly, NGOs can also play an important part in implementing the Convention, as they can inform and advise countries about its ratification and implementation, as well as assist and inform the internally displaced population. Because NGOs are often in direct contact with IDPs and host communities, they are able to identify and report any problems accurately and comprehensively. After the identification of these issues, a solution can be worked out to ensure the realisation of the Convention's provisions. It is essential as well that NGOs make sure that States have a continuous awareness of the issue of internal displacement and that it remains high on their list of priorities. Finally, NGOs can help monitor the implementation of the Convention and advocate for change if they come across any failures, gaps or deficiencies.²⁰⁴

Lastly, NHRIs are "*statutory bodies established by governments in Africa and charged with the responsibility of promoting and protecting human rights institutions in their respective countries*".²⁰⁵ Much like NGOs, at a national level they may play a big role in encouraging countries to sign, ratify and implement human rights conventions such as the Kampala Convention and they may subsequently help to monitor the implementation of the Convention. NHRIs are moreover obligated to assist the ACHPR in the promotion of human rights on a

²⁰³ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 18-19.

²⁰⁴ AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, Pretoria, Pretoria University Law Press, 2011, 39; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24-26; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 18-19; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 112.

²⁰⁵ AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 41.

national level. In practice, NHRIs have, for example, encouraged countries to ratify human rights treaties and raised awareness concerning the ACHPR's activities.²⁰⁶

In short, the primary tasks of the international community, NGOs and NHRIs include continually raising awareness and providing support on an international, regional, national and local level, identifying any IDP-related issues and monitoring the Member States' implementation.²⁰⁷

2. Monitoring and enforcement

A. Monitoring mechanisms in the Kampala Convention

One of the Kampala Convention's main limitations is the lack of adept monitoring and enforcement mechanisms. Even though the Convention clearly determines the rights of IDPs and the obligations of Member States, the African Union and non-State actors, it does not provide an adequate enforcement mechanism.²⁰⁸ This is unfortunate, since its importance, power and influence are therefore restricted. Because if rules are not or barely legally enforceable, one can surely question their effectiveness.

- *Monitoring compliance*

The Kampala Convention's monitoring mechanisms are summed up in Article 14:

“Article 14 - Monitoring Compliance

- 1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.*
- 2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.*

²⁰⁶ AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 41.

²⁰⁷ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 24-26; C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 18-19; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 112.

²⁰⁸ C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; F. Z. GUISTINIANI, "New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa", *supra* n. 12, 370; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 133; S. SOLOMON, "Updates from the Regional Human Rights Systems", *supra* n. 12, 48.

3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.

4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.”²⁰⁹

Firstly, a Conference of States Parties shall monitor and review the implementation of the Convention's objectives (Article 14.1 Kampala Convention). It is nevertheless sensible that the implementation of the Convention's terms and provisions will be monitored by the Conference too.²¹⁰ States are obligated to inform and cooperate with this monitoring mechanism. It will also serve as a forum for cooperation and mutual support (Article 14.2 Kampala Convention). How often it will be organised is not specified, but it shall be “regularly” (Article 14.3 Kampala Convention). Yet up until today, the Conference of States Parties has never convened.²¹¹ The AU was considering 2016 for holding the first Conference of States Parties,²¹² but this intention was not materialised.

Secondly, States are required under Article 62 of the African Charter on Human and Peoples' Rights (hereafter: African Charter)²¹³ to submit reports to the African Commission on Human and Peoples' Rights (hereafter: ACHPR). These initial reports, followed by periodic reports to be submitted every two years, should indicate the legislative and other actions that have been taken with regard to the implementation of the African Charter and the Kampala Convention (Article 62 African Charter *juncto* Article 14.4 Kampala Convention). However, there is no sanction provided in the event that States do not submit these reports,²¹⁴ and States have a bad

²⁰⁹ Kampala Convention, *supra* n. 3, Art. 14.

²¹⁰ W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 76-77.

²¹¹ Kampala Convention, *supra* n. 3, Art. 14.1, 14.2 and 14.3; A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 52; A. B. BIRGANIE, “African Initiative for the Protection of the Rights of Internally Displaced People”, *supra* n. 5, 188; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 15; C. D'ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 101; M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, thesis Law Faculty Ghent University, 2010-2011, 93-94.

²¹² E. RUSHING and J. GIORGI, Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015.

²¹³ African Charter on Human and Peoples' Rights, 27 June 1981, Monrovia, www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

²¹⁴ Kampala Convention, *supra* n. 3, Art. 14.4; A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 52-54; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS

record of submission. The reports that have been submitted, are often brief and of poor quality. Nonetheless, this issue will hopefully gradually improve in the future due to the fact that, *inter alia*, the ACHPR has generally called upon States to submit their reports and has published a list of States that have not yet submitted their reports.²¹⁵ Publication of the reports and of the ACHPR's observations and recommendations also serves as a follow-up to the reviewing procedure of the ACHPR.²¹⁶ As an example of the use of moral obligation (*infra* Chapter 3.2., B), publication may indeed be a suitable incentive for States. However, not nearly all of the ACHPR's observations and recommendations are made public. Other follow-up measures have moreover been inconsistent – sometimes there is a follow-up, sometimes there is not – and negligible, as they have mostly been limited to the submission of subsequent State reports. They are consequently dependent on the will of the States, which is often lacking, and on accessible concluding observations.²¹⁷

Thirdly, States Parties that submit reports to the African Peer Review Mechanism (hereafter: APRM), must once again indicate the legislative and other measures that have been taken to give effect to the Kampala Convention (Article 14.4 Kampala Convention). The APRM is “*a voluntary process of submission to review by ‘peers’ (fellow heads of state) of a country’s record in political, economic, and corporate governance.*”²¹⁸ The review takes place under the auspices of the African Union. Its aim is to establish a process of peer review and

UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 35; AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP’s - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 16 and 26; A. B. BIRGANIE, “African Initiative for the Protection of the Rights of Internally Displaced People”, *supra* n. 5, 188; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 15; C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 102; M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, thesis Law Faculty Ghent University, 2010-2011, 93-94.

²¹⁵ AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 38-39 and 58; E. A. ANKUMAH, *The African Commission on Human and Peoples’ Rights Practice and Procedures*, *supra* n. 202, 76; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, The Hague, Kluwer Law International, 2001, 193-194 and 196.

²¹⁶ African Commission on Human and Peoples’ Rights, Documents, www.achpr.org/; E. A. ANKUMAH, *The African Commission on Human and Peoples’ Rights Practice and Procedures*, *supra* n. 202, 25; R. MURRAY, *The African Commission on Human and Peoples’ Rights*, Oxford, Hart Publishing, 2000, 16-17.

²¹⁷ AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 58; E. A. ANKUMAH, *The African Commission on Human and Peoples’ Rights Practice and Procedures*, *supra* n. 202, 25 and 75; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 195-196; F. VILJOEN, *International Human Rights Law in Africa*, Oxford, Oxford University Press, 2012, 297 and 355 and 367-368.

²¹⁸ F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 198.

constructive dialogue between equals in order to assess and recognise their own deficiencies and share experiences in policies and strategies to remedy these deficiencies in the form of Programs of Action. The APRM could therefore certainly be useful in the context of the Kampala Convention and internal displacement in general, though much depends on the continued willingness and commitment of States.²¹⁹

- *Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons*

In addition, the ACHPR has established the mandate of a Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons. This position is currently filled by Ms. Maya Sahli Fadel. The Special Rapporteur's mandate is to examine and act upon the situation of refugees, asylum seekers and IDPs in Africa; to undertake studies, research, investigations, visits and fact-finding missions; to assist States in developing appropriate legal and policy frameworks; to raise awareness; to submit reports to the ACHPR; and to promote the implementation of relevant standards. Most importantly in this particular context, the Special Rapporteur contributed considerably to the establishment of the Kampala Convention.²²⁰

- *Dispute settlement procedure*

A dispute settlement procedure can be found in Article 22:

“Article 22 - Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the

²¹⁹ African Peer Review Mechanism, <http://aprm-au.org/>; M. KILLANDER, “African Peer Review Mechanism and Human Rights: The First Reviews and the Way Forward”, *Hum. Rts. Q.* 2008, 41 and 47-48; A. M. B. MANGU, “Assessing the Effectiveness of the African Peer Review Mechanism and Its Impact on the Promotion of Democracy and Good Political Governance”, *Afr. Hum. Rts. L.J.* 2007, 363-364; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 198-204.

²²⁰ Resolution 72 of the African Commission on Human and Peoples' Rights on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa (7 December 2004), www.achpr.org/sessions/36th/resolutions/72/; African Commission on Human and Peoples' Rights, www.achpr.org/mechanisms/refugees-and-internally-displaced-persons/; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 46; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 376.

dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.”²²¹

In case any dispute between Member States arises regarding the interpretation or implementation of the Convention, they are required to try to come to an amicable agreement. If such agreement cannot be reached, either one of the States can bring the case before the African Court of Justice and Human Rights (hereafter: ACJHR), once it is operational (Article 22.1 Kampala Convention). Until it is operational, parties can submit their conflicts to the Conference of States Parties. The Conference will decide unanimously or by at least a two-third majority of the present and voting Member States (Article 22.2 Kampala Convention).²²²

This dispute settlement procedure is nevertheless of little practical use. States usually do not have much interest in enforcing the rights of IDPs in other States because it is essentially perceived as a national issue. This enforcement mechanism is therefore probably not suitable in the case of internal displacement, as the benefits for States would not nearly outweigh the financial costs of a procedure.²²³

B. Peer pressure and moral obligation

As a result of the mostly inadequate enforcement mechanisms in the Convention, some alternatives ought to be considered as well. Peer pressure and moral obligation are examples of alternative methods to enforce States' and non-State actors' compliance with the Convention.

The UN General Assembly has repeatedly adopted resolutions to express its concern about the internal displacement situation in Africa and to encourage African States to provide sufficient

²²¹ Kampala Convention, *supra* n. 3, Art. 22.

²²² W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 78; M. MOREL, *The Right not to be Displaced in International Law*, *supra* n. 30, 133; M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 94-95.

²²³ W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 79; M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 95-96.

protection and assistance for IDPs.²²⁴ These resolutions, along with previous and future (binding) African Union General Assembly resolutions regarding internal displacement,²²⁵ can unquestionably help to raise awareness concerning this matter and to exert pressure on governments. Lastly, the AU Executive Council has also adopted decisions²²⁶ on human rights matters related to internal displacement.²²⁷

Once again, the international community and NGOs in particular may play a crucial role in this area too. NGOs are in all likelihood among the best actors to exert peer pressure on the African Union and Member States in order to not only monitor, but also enforce the Kampala Convention. For instance by publicising reports, they are able to put pressure on States and non-State actors, since country leaders and armed groups generally try to avoid too much negative attention and publicity. Especially in the case of the African Union, legitimacy and international standing are of the utmost importance.²²⁸ Peer pressure exerted by the international community is therefore undoubtedly a useful tool.²²⁹ Likewise, the ACHPR at times also uses the element of publicity to put pressure on States to comply with the African Charter, so it could use its promotional powers with regard to the internally displaced population as well. Examples of the ACHPR's promotional powers are promotional visits, conferences, missions, adopting

²²⁴ See for instance: Resolution 68/180 of the General Assembly of the United Nations (30 January 2014), *UN Doc. A/RES/68/180* (2014); Resolution 69/154 of the General Assembly of the United Nations (22 January 2015), *UN Doc. A/RES/69/154* (2015).

²²⁵ See for instance: Resolution 72 of the African Commission on Human and Peoples' Rights on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa (7 December 2004), www.achpr.org/sessions/36th/resolutions/72/; see also: AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 48-49; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 171-172 and 183.

²²⁶ These decisions can take the form of regulations and directives (binding) or recommendations (non-binding). See: Rules of Procedure of the African Union Executive Council, 9-10 July 2002, Durban, www.au2002.gov.za/docs/summit_council/ropexec.pdf, Rule 34.1.

²²⁷ See for instance: Decision of the AU Executive Council on the Situation of Refugees, Returnees and Displaced Persons (1 February 2010), *AU Doc. EX.CL/Dec.240* (2010); see also: F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 186-187.

²²⁸ "I need not remind you the damaging impact that negative publicity has had in compounding the internal challenges that we Africans face. None more so, than my own country Ethiopia, which up until recent times remained passive while others told its stories' in the most negative light possible." H. DESALEGN, *Speech of the Prime Minister of the Federal Democratic Republic of Ethiopia and Chairperson of the African Union at the First All Africa Public Relations and Strategic Communication Summit*, Addis Ababa, Ethiopia, 8-10 May 2013.

²²⁹ M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 98-99 and 101 and 103-104.

resolutions, enlisting the support of NGOs, etc.²³⁰ Finally, Member States could of course influence fellow members to take action regarding internal displacement.²³¹

Ideally, countries will moreover have a self-imposed moral obligation to take care of their citizens. Some international laws may be so authoritative, that they are generally accepted and complied with by States.²³² In reality, this is unfortunately not always the case, which still makes adequate enforcement mechanisms and international encouragement essential in the end.

C. (Quasi-)judicial enforcement

- National Courts

One enforcement method is to bring a case before a national court. This method is particularly useful to enforce the obligations of armed groups. IDPs could, for instance, call upon the Kampala Convention in their complaints or lawsuits to incriminate armed groups. This requires, however, that the Kampala Convention has either been incorporated into national law, or that it has direct effect.²³³

Nevertheless, a lack of knowledge and financial means are often enormous obstacles for IDPs. Many IDPs are not aware of their rights and do not have the resources to initiate a case before a national (or international, *infra*) court.²³⁴ For that reason, it can be the task of public prosecutors and NGOs to either bring cases before a court or quasi-judicial body themselves, or to educate IDPs about the enforcement of their rights as well as offer financial and other resources. NGOs have indeed already brought several cases concerning IDPs before the ACHPR (*infra*).²³⁵

²³⁰ AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 17; E. A. ANKUMAH, *The African Commission on Human and Peoples' Rights Practice and Procedures*, *supra* n. 202, 75-77; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 176-180; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 297.

²³¹ M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 98-99 and 101 and 103-104.

²³² M. DIXON, *Textbook on International Law*, Oxford, Oxford University Press, 2013, 7 and 12.

²³³ M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 101-102.

²³⁴ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014; B. OUVRY, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015.

²³⁵ For instance, these cases were brought before the ACHPR by NGOs on behalf of IDPs: ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009, Comm. 276/2003; ACHPR, *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, 4 June 2014, Comm. 368/09.

- *African Commission on Human and Peoples' Rights*

Article 20.3 of the Kampala Convention provides the right for IDPs to lodge a complaint against a State with the ACHPR. Articles 55-59 of the African Charter²³⁶ set out a rather vague procedure for so-called “other communications”, i.e. the individual and NGO complaint procedure. In its Rules of Procedure, the ACHPR has developed a more detailed procedure for dealing with these communications.²³⁷

Complaints may be lodged against States by individuals, groups of persons or NGOs and even an *actio popularis* is permitted.²³⁸ Article 56 of the African Charter provides the criteria of admissibility, including the requirements that the authors of the communication are indicated; that the communication is compatible with the Charter of the Organization of African Unity and with the African Charter on Human and Peoples' Rights; that it is not exclusively based on news from the media; that it is sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged; that it is submitted within a reasonable period of time after the exhaustion of local remedies; etc.²³⁹ According to Article 46 of the African Charter, the ACHPR may resort to any appropriate method of investigation.²⁴⁰ The ACHPR consequently has great powers of investigation, including the possibility of on-site investigations.²⁴¹ Provisional measures may be suggested by the ACHPR, on its own initiative or at the request of a party and in case this is necessary to avoid irreparable harm.²⁴²

²³⁶ African Charter on Human and Peoples' Rights, 27 June 1981, Monrovia, www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

²³⁷ Rules of Procedure of the African Commission on Human and Peoples' Rights, 26 May 2010, Banjul, www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf, Rules 93-113; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, “First Annual Report of the African Commission on Human and Peoples' Rights”, 28 April 1988, www.achpr.org/files/activity-reports/1/achpr12and3_actrep1_1988_eng.pdf; R. MURRAY, *The African Commission on Human and Peoples' Rights*, *supra* n. 216, 17-18; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 180-181 and 203-204.

²³⁸ The African Charter and the Rules of Procedure of the ACHPR stay silent on the issue of standing. Sources: AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 25; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 204; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 304-305; see also the Ninth and Sixteenth Annual Activity Reports of the African Commission on Human and Peoples' Rights.

²³⁹ African Charter on Human and Peoples' Rights, *supra* n. 63, Art. 56.

²⁴⁰ *Ibid.*, Art. 46.

²⁴¹ E. A. ANKUMAH, *The African Commission on Human and Peoples' Rights Practice and Procedures*, *supra* n. 202, 73.

²⁴² Rules of procedure of the African Commission on Human and Peoples' Rights, 26 May 2010, Banjul, www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf, Rule 98; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n.

Nonetheless, there is some confusion as to whether or not the ACHPR's decisions are binding, since it is only a quasi-judicial body. Some States have argued that they are not legally bound by the ACHPR's decisions because they are merely recommendations. However, these decisions become final, therefore possibly binding, after they have been approved by the AU Assembly or the AU Executive Council. Arguably, the final character of the decisions after the approval of these political bodies makes them binding. As States have not only adopted the binding African Charter, but recognised the ACHPR's mandate as well, it does seem advisable and logical to accept the binding character of the ACHPR's decisions too.²⁴³ Even so, the ACHPR currently has inadequate and inconsistent follow-up mechanisms, since no systematic follow-up system exists. This makes it difficult to monitor whether or not States have complied with the ACHPR's recommendations and equally difficult to enforce compliance. The reason that the ACHPR does not have a systematic follow-up system, is that it is debatable if it has the competence to do so since the African Charter is quite ambiguous on this matter.²⁴⁴ However, it is desirable to interpret the African Charter as implicitly allowing, or even requiring, follow-up. Because if it is not interpreted in this way, this raises an important question: "*Why does the Commission consider communications in the first place, if it remains unconcerned about their implementation and effect?*"²⁴⁵ Follow-up should therefore be a fundamental element of the individual complaint procedure before the ACHPR.²⁴⁶ It is moreover worth mentioning that the ACHPR's decisions can only be made public upon approval of the AU Assembly.²⁴⁷ Publication of the decisions is consequently subject to political approval, which can, in my view, be problematic since it may be more desirable from a political standpoint not to make certain decisions public.

As far as sanctions are concerned, the AU Assembly is the political body responsible for the implementation and enforcement of decisions of (quasi-)judicial bodies such as the ACHPR.²⁴⁸ Pursuant to Article 23.2 of the AU Constitutive Act,²⁴⁹ the AU Assembly may apply sanctions,

204, 28; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, supra n. 215, 232-233; F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 306-307.

²⁴³ Rules of procedure of the African Commission on Human and Peoples' Rights, supra n. 237, Rule 112 and 118; F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 339.

²⁴⁴ A narrow interpretation of the word "consider" in Article 55 of the African Charter may imply that the ACHPR does not have the competence to take follow-up measures. F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 340-341.

²⁴⁵ F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 340-341.

²⁴⁶ C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 340-341.

²⁴⁷ African Charter on Human and Peoples' Rights, supra n. 63, Art. 59.

²⁴⁸ F. VILJOEN, *International Human Rights Law in Africa*, supra n. 217, 182 and 340.

²⁴⁹ Constitutive Act of the African Union, supra n. 268.

for example of a political or economic nature, to any Member State that fails to comply with the decisions and policies of the AU, therefore including decisions of the ACHPR pertaining to the Kampala Convention.²⁵⁰

So far, the ACHPR has considered a small number of communications regarding internal displacement.²⁵¹ In the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* case,²⁵² a complaint was lodged on behalf of the Endorois Welfare Council by the Centre for Minority Rights Development and Minority Rights Group International because the Kenyan government forcibly displaced the Endorois indigenous (pastoralist) community from their ancestral lands with the aim of tourism development. Consequently, they could not access their religious and cultural sites anymore. The removal furthermore happened without proper, prior consultations and without adequate, effective compensation. Because Kenya is not a party to the Kampala Convention, the applicants did not allege a breach of the Kampala Convention. They did, however, allege a violation of the African Charter and sought restitution of their ancestral lands as well as adequate compensation. The ACHPR found a violation of Articles 1, 8, 14, 17, 21 and 22 of the African Charter (*inter alia* the rights to property, culture, religion, natural resources and economic, social and cultural development). The Kenyan government was ordered by the ACHPR to reconstitute the Endorois community's ancestral lands, to allow them unrestricted access to their religious and cultural sites and to compensate them for damages and losses.²⁵³

In the *Abdel Hadi, Ali Radi & Others v. Republic of Sudan* case,²⁵⁴ 88 Sudanese nationals had become internally displaced due to the war in Sudan and were living in the Soba Aradi camp in Khartoum. On 18 May 2005, police officers and soldiers entered the IDP camp, sealed off parts of it and attempted to forcibly relocate thousands of families. However, the IDPs resisted and violence erupted when the police tried to force them. This violence resulted in the deaths of fifteen police officers and at least five IDPs. In the aftermath of these incidents, over 600 IDPs

²⁵⁰ F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 172 and 179 and 182.

²⁵¹ For instance: ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009, Comm. 276/2003; ACHPR, *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, 4 June 2014, Comm. 368/09.

²⁵² ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009, Comm. 276/2003.

²⁵³ ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009, Comm. 276/2003; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 31.

²⁵⁴ ACHPR, *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, 4 June 2014, Comm. 368/09.

were arrested and detained without being informed of the reason for their arrest and without any charge. They were also denied access to a lawyer and communication with family members and they were subjected to torture and ill-treatment. Since Sudan is not a party to the Kampala Convention, the applicants alleged violations of the African Charter and not of the Kampala Convention. The ACHPR found a violation of Articles 1, 5, 6 and 7.1, c and d of the African Charter (the right to dignity and the prohibition of torture and cruel, inhuman and degrading treatment, the right to liberty and security and the right to a fair trial). Sudan was ordered by the ACHPR to compensate the victims, to initiate an effective and impartial investigation into the circumstances of arrest and detention and subsequent treatment, to amend the domestic legislation that is incompatible with the African Charter, and to train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture.²⁵⁵

As a final point, Articles 47-54 of the African Charter on Human and Peoples' Rights provide a procedure for inter-State communications before the ACHPR as well. It is nonetheless unlikely that States will make use of this procedure for the problem of internal displacement because of reasons such as State sovereignty as well as political and diplomatic relations.²⁵⁶ Besides, it has only been used once for other issues.²⁵⁷ For these reasons, the inter-State procedure will not be discussed in any further detail.

- *African Court of Justice and Human Rights and African Court on Human and Peoples' Rights*

Pursuant to Article 20.3 of the Kampala Convention, IDPs have the right to lodge a complaint with the African Court of Justice and Human Rights (hereafter: ACJHR). Any disputes or differences arising between the States Parties concerning the interpretation or application of the Convention shall be settled amicably between the States Parties, but in case this is not possible, either State may refer the dispute to the ACJHR (Article 22.1 Kampala Convention).

²⁵⁵ ACHPR, *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, 4 June 2014, Comm. 368/09.

²⁵⁶ AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 24; E. A. ANKUMAH, *The African Commission on Human and Peoples' Rights Practice and Procedures*, *supra* n. 202, 23-24; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 198 and 202.

²⁵⁷ ACHPR, *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*, 20 May 2003, Comm. 227/99; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 24.

However, while the ACJHR should replace the African Court on Human and Peoples' Rights (hereafter: ACtHPR) and the Court of Justice of the African Union, it is not operational yet. At present, the ACtHPR is still operational. This Court is competent to deal with “*all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned*”,²⁵⁸ so including the Kampala Convention. Therefore, the workings of this Court will be explained briefly. It is, nevertheless, important to note that no case regarding IDPs has thus far been brought before the ACtHPR.²⁵⁹

Article 5.1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the ACtHPR sets forth that the ACHPR, the State Party which has lodged a complaint with the ACHPR, the State Party against which a complaint has been lodged with the ACHPR, the State Party whose citizen is a victim of human rights violations and African Intergovernmental Organizations may submit cases to the Court. When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.²⁶⁰ The Court may furthermore entitle individuals and relevant NGOs with observer status before the ACHPR to institute cases directly, but only if the State involved has made a declaration accepting the competence of the Court to receive such cases.²⁶¹

In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt any provisional measures it deems necessary.²⁶² The Court's judgments are binding and final²⁶³ and if the Court finds that there has been a violation of human rights, it shall make appropriate orders to remedy that violation, including the payment of fair

²⁵⁸ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 9 June 1998, Ouagadougou, <http://www.achpr.org/instruments/court-establishment/>, Art. 3; AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 51-52; V. O. NMEHIELLE, *The African Human Rights System – Its Laws, Practices, and Institutions*, *supra* n. 215, 263-265.

²⁵⁹ African Court on Human and Peoples' Rights, www.african-court.org/; C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015.

²⁶⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 9 June 1998, Ouagadougou, www.achpr.org/instruments/court-establishment/, Art. 5.2.

²⁶¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 5.3 *juncto* Art. 34.6.

²⁶² Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 27.2.

²⁶³ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 28.2 *juncto* Art. 30; Rules of Court of the African Court on Human and Peoples' Rights, 2 June 2010, Arusha, [http://en.african-court.org/images/Protocol-Host%20Agrtmt/Final Rules of Court for Publication after Harmonization - Final English 7 sept 1 .pdf](http://en.african-court.org/images/Protocol-Host%20Agrtmt/Final%20Rules%20of%20Court%20for%20Publication%20after%20Harmonization%20-%20Final%20English%207%20sept%201%20.pdf), Art. 61.4 and 61.5.

compensation or reparation.²⁶⁴

If a State refuses to comply with a judgment, enforcement may be challenging, even though judgments are binding. Indeed, States “*undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution*”,²⁶⁵ but what if a State refuses to do so? The Executive Council of Ministers monitors the execution of the judgments, yet it has no clear enforcement power.²⁶⁶ The Court also reports the States that have not complied with its judgments to the AU Assembly.²⁶⁷ If the Executive Council of Ministers takes a decision reiterating the State’s obligation to execute the Court’s judgment, this decision is binding and if it is not abided by, the AU Assembly may impose sanctions (*e.g.* the denial of transport and communications links with other Member States and other measures of a political and economic nature).²⁶⁸ Nonetheless, the Court itself has no power to enforce its judgments.²⁶⁹ Forcing an unwilling country to execute judgments can, in any case, be an extremely difficult and time-consuming task.²⁷⁰

At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the ACtHPR may also issue advisory opinions on a legal matter relating to the African Charter or any other relevant human rights instruments, therefore including the Kampala Convention, provided that the subject of the opinion is not related to a matter being examined by the ACHPR.²⁷¹

The Kampala Convention, however, refers exclusively to the ACJHR, so the workings of this Court will be explored concisely as well. Accordingly, once (and if) the ACJHR becomes operational, the following matters should be taken into account with regard to the enforcement of the Kampala Convention.

²⁶⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 27.1.

²⁶⁵ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 30.

²⁶⁶ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 29.2; S. LYONS, “The African Court on Human and Peoples' Rights”, *ASIL Insights* 2006, www.asil.org/insights/volume/10/issue/24/african-court-human-and-peoples-rights#_edn13; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 445-446.

²⁶⁷ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 31.

²⁶⁸ Constitutive Act of the African Union, 11 July 2000, Lomé, www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, Art. 23.2; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 446.

²⁶⁹ G. NALDI, “Observations on the Rules of the African Court on Human and Peoples' Rights”, *African Human Rights Journal* 2014, 385-386; S. LYONS, “The African Court on Human and Peoples' Rights”, *supra* n. 266.

²⁷⁰ W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 81.

²⁷¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, *supra* n. 258, Art. 4.

Apart from the right of IDPs to lodge a complaint, the Statute of the ACJHR allows some non-State actors to submit cases too, such as the AU Assembly and Parliament, the ACHPR, accredited African Intergovernmental Organisations, African National Human Rights Institutions and individuals or accredited NGOs.²⁷² Nevertheless, individuals and NGOs do not always have direct and unrestricted access to the Court because States can choose whether or not to grant access to these categories.²⁷³ In addition, it is worth noting that the Conference of States Parties can be considered an African Intergovernmental Organisation that is accredited by the AU.²⁷⁴ The Conference could therefore, in theory, submit a case to the ACJHR on behalf of IDPs.

The ACJHR can take provisional measures in cases of extreme gravity and urgency and if they are necessary to avoid irreparable harm.²⁷⁵ The Court's judgments are binding and final and may order a number of fitting measures, including fair compensation.²⁷⁶ If a State refuses to comply with a judgment, the case will be referred to the AU Assembly to decide upon further measures,²⁷⁷ which may include sanctions such as the denial of transport and communications links with other Member States and other measures of a political and economic nature.²⁷⁸ Nonetheless, as mentioned before, forcing an unwilling State to execute these judgments can be a difficult and time-consuming task.²⁷⁹

To conclude, the ACJHR may also issue advisory opinions on legal questions at the request of the AU Assembly, the Parliament, the Executive Council of Ministers, the Peace and Security Council, the Economic, Social and Cultural Council, the Financial Institutions or any other organ of the AU as may be authorized by the Assembly.²⁸⁰

- *International Criminal Court*

²⁷² Protocol on the Statute of the African Court of Justice and Human Rights, 1 July 2008, Sharm El-Sheikh, www.refworld.org/docid/4937f0ac2.html, Art. 29.1, b-c and Art. 30, b-f; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 79-80.

²⁷³ Protocol on the Statute of the African Court of Justice and Human Rights, *supra* n. 272, Art. 8.3 *juncto* Art. 30, f; W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 80.

²⁷⁴ W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 80-81.

²⁷⁵ Protocol on the Statute of the African Court of Justice and Human Rights, *supra* n. 272, Art. 35.

²⁷⁶ Protocol on the Statute of the African Court of Justice and Human Rights, *supra* n. 272, Art. 45 and Art. 46.1-2.

²⁷⁷ Protocol on the Statute of the African Court of Justice and Human Rights, *supra* n. 272, Art. 46.4-5.

²⁷⁸ Constitutive Act of the African Union, 11 July 2000, Lomé, www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, Art. 23.2; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 446.

²⁷⁹ W. KIDANE, "Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention", *supra* n. 38, 81.

²⁸⁰ Protocol on the Statute of the African Court of Justice and Human Rights, *supra* n. 272, Art. 53.

Displacement for unfounded or illegitimate reasons is considered to be a crime against humanity.²⁸¹ Moreover, the Statute of the International Criminal Court states that “*ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand*” is a grave violation of the laws and customs applicable in armed conflicts. Accordingly, it constitutes a war crime.²⁸² When individuals are accused of such core crimes, namely genocide, crimes against humanity, war crimes and acts of aggression, they can be brought before the International Criminal Court (hereafter: ICC).²⁸³

However, due to the fact that “*Africa has dominated the Court’s agenda*”,²⁸⁴ the ICC has had to deal with a lot of criticism, such as claims that it is biased against Africa.²⁸⁵ For this reason, the African Union and African States have increasingly opposed the ICC’s investigations in African cases, including a case against Kenyan citizens concerning murders, forcible transfers of population and persecution during the post-election violence of 2007 and 2008 (*supra*, Introduction).²⁸⁶ The Kenyan government argued that this case was inadmissible since the Republic of Kenya has jurisdiction over the matter and the case was later terminated.²⁸⁷ As a result, if cases with regard to internal displacement were to be brought before the ICC, it is likely that the AU and African States will oppose the investigations.

Moreover, an amendment to the Protocol on the Statute of the ACJHR amended Article 16 of the Protocol in order to give the ACJHR a section of International Criminal Law.²⁸⁸ This means that, if the ACJHR becomes operational, an “African Criminal Court” could be established as

²⁸¹ Statute of the International Criminal Court, *supra* n. 86, Art. 7.1, d and 7.2, d.

²⁸² Statute of the International Criminal Court, *supra* n. 86, Art. 8.2, e, (viii); M. JACQUES, *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*, *supra* n. 86, 152.

²⁸³ Statute of the International Criminal Court, *supra* n. 86, Art. 5; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 72-73.

²⁸⁴ F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 72.

²⁸⁵ F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 72-75.

²⁸⁶ ICC, *Case Information Sheet: Situation in the Republic of Kenya in the Case of the Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC-PIDS-CIS-KEN-01-012/14, www.icc-cpi.int/kenya/rutosang/Documents/RutoSangEng.pdf.

²⁸⁷ ICC, *Application on behalf of the Government of the Republic of Kenya pursuant to Article 19(2)(b) of the Statute*, ICC-01/09-01/11-1104, www.icc-cpi.int/CourtRecords/CR2011_03107.PDF; ICC, *Case Information Sheet: Situation in the Republic of Kenya in the Case of the Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang*, *supra* n. 286; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 72-75.

²⁸⁸ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27 June 2014, Addis Ababa, www.au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights, Art. 6.

an alternative to the ICC. This is, in my opinion, once again evidence of Africa's distrust and dissatisfaction regarding the ICC, but further developments of course remain to be seen.

D. Complaint mechanism for Internally Displaced Persons?

Article 20.3 of the Kampala Convention states that “*the right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples’ Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention*”. So the Convention does not arrange for a specific complaint mechanism for IDPs, but then again does not interfere with existing complaint mechanisms either (*supra* Chapter 3.2., C). Nevertheless, these existing complaint mechanisms are often not suitable in the case of IDPs because they are typically in a precarious and vulnerable position²⁸⁹ and therefore often do not have the means or the knowledge to enforce their rights through complaint procedures.²⁹⁰

As a result, it may in my opinion be advisable to incorporate a complaint mechanism in the Kampala Convention tailored specifically to the situation of IDPs. Establishing an easily accessible, specialised complaint mechanism with, for instance, the necessary know-how to deal with this specific issue and flexible criteria of admissibility, could be a substantial improvement. In addition, since IDPs are generally neither aware of the existence of complaint mechanisms, nor do they have the necessary resources – as mentioned above –, a complaint procedure for groups of persons and NGOs representing IDPs could be desirable as well. However, the existing procedures before the ACHPR, the ACtHPR and the ACJHR, once it becomes operational, may suffice for this last group of actors (i.e. NGOs) since they – contrary to IDPs – do have the knowledge and means to initiate these procedures.²⁹¹

Even so, there is no consensus on the question of whether a separate complaint mechanism for IDPs ought to be established. Undeniably, valid arguments can be raised against the creation of such mechanism. The fact that there is already an abundance of complaint mechanisms, for example, is without a doubt a valid argument, as a myriad of different complaint mechanisms

²⁸⁹ AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, *supra* n. 12, 5-6; L. C. BAILEY, “Out of Africa: Toward Regional Solutions for Internal Displacement”, *supra* n. 5, 363.

²⁹⁰ Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014; B. OUVRY, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015.

²⁹¹ C. D’ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; M. VAN BEURDEN, *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, *supra* n. 211, 99-100.

could be confusing. Nonetheless, some arguments *contra* that were raised during an interview with Bart Ouvry, former Belgian Ambassador in Nairobi and the current Human Rights Director at the Ministry of Foreign Affairs in Belgium,²⁹² are debatable. Firstly, Mr. Ouvry reasoned that a complaint mechanism for IDPs would most likely not be implemented. While this may be the case, this does not seem like a satisfactory argument to refrain from establishing such mechanism, as this argument could also be used for the Kampala Convention in its entirety. Adequate implementation is absolutely a concern, but through monitoring, awareness raising and even judicial enforcement, it can be achieved (*infra* Chapter 3.3., C). Secondly, Mr. Ouvry argued that the number of complaints would be too high if such mechanism were to be created. Once again, this does not seem like a persuasive argument since the fact that there would in all probability be many complaints is, on the contrary, an argument *pro* the establishment of a complaint mechanism for IDPs, as it proves such mechanism is necessary. Thirdly and lastly, Mr. Ouvry suggested using the complaint mechanisms that are already in place, such as the procedures before the ACHPR and the ACtHPR. However, this argument was already rebutted above, as these existing procedures are not easily accessible for the vulnerable internally displaced population.

Nevertheless, although the creation of a separate complaint mechanism for IDPs could, arguably, be an improvement for the situation of IDPs, it is highly unlikely that amendments or protocols to the Kampala Convention will be produced at this stage. There is presently unquestionably a lack of political will to do so.²⁹³

3. Recommendations for future improvements

The success – or failure – of the Kampala Convention depends on whether or not the weaknesses and flaws of AU institutions and their insufficient coordination with regional human rights systems will be dealt with in an adequate fashion.²⁹⁴ Consequently, the aim of this chapter is to offer recommendations for future improvements with regard to the implementation and enforcement of the Kampala Convention.

²⁹² B. OUVRY, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015.

²⁹³ C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; B. OUVRY, Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015; E. RUSHING and J. GIORGI, Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015.

²⁹⁴ A. M. ABEBE, "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *supra* n. 123, 57.

Initially, however, it is important to reiterate that internal displacement is an internal issue. Only when national governments are unwilling or unable to provide IDPs with the necessary protection and aid, the international community should step in (*supra* Chapter 1.2. and Chapter 3.1., B).²⁹⁵

A. Improvements within the United Nations

There are three major options for the improvement of the United Nations' limited involvement with IDPs.

Firstly, a new UN body could be created with the sole responsibility of protecting and assisting IDPs, comparable to UNHCR which provides support to refugees. UNHCR is at present only minimally involved with IDPs. Nevertheless, this option is considered unlikely by the UN because of a lack of resources and political will.²⁹⁶

Secondly, an international organisation or an existing UN body, for example the Office of the High Commissioner for Human Rights (hereafter: OHCHR) or UNHCR, could be given the authority and responsibility to manage this issue.²⁹⁷ Here we encounter, once again, the debate of whether a separate category is in fact necessary for IDPs. Should there be a broader definition of refugees (*i.e.* dropping the element of border-crossing) to include the internally displaced population,²⁹⁸ or should there be a separate category for IDPs so that they get protection tailored to their specific circumstances (*supra* Chapter 1.3.)?²⁹⁹ In my opinion, it would be practical to give UNHCR the authority to help IDPs as well as refugees and, for that reason, broaden the definition of refugees since IDPs are very often in the exact same situation as refugees and have

²⁹⁵ J. MANGALA MUNUMA, "Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays", *supra* n. 50, 536.

²⁹⁶ S. BAGSHAW, "Internally Displaced Persons at the Fifty-Fourth Session of the United Nations Commission on Human Rights, 16 March - 24 April 1998", *Int'l J. Refugee L.* 1998, 553; W. COURTLAND ROBINSON, "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", *supra* n. 54, 37; J. MANGALA MUNUMA, "Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays", *supra* n. 50, 547.

²⁹⁷ J. MANGALA MUNUMA, "Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays", *supra* n. 50, 547.

²⁹⁸ R. BONAVENTURA, "How tense is the tension between the refugee concept and the IDP debate?", *Forced Migration Review* 1999, 30; C. D'ORSI, Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015; L. T. LEE, "Internally Displaced Persons and Refugees: Toward a Legal Synthesis", *supra* n. 49, 27-42.

²⁹⁹ W. COURTLAND ROBINSON, "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement", *supra* n. 54, 6; G. S. GOODWIN-GILL and J. MCADAM, *The refugee in international law*, Oxford, Oxford University Press, 2007, 27-28 and 32-35; W. KÄLIN, *Guiding Principles on Internal Displacement: Annotations*, *supra* n. 32, 7-8; E. D. MOONEY, "The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern", *Refugee Survey Quarterly* 2005, 9-36; C. PHUONG, "Internally Displaced Persons and Refugees: Conceptual Differences and Similarities", *supra* n. 46, 221-229.

similar or even identical needs.³⁰⁰ A universal, binding legal document regarding internal displacement would of course offer optimal support, but since such document currently does not exist, it is advisable to include IDPs in the assistance refugees receive (*supra* Chapter 1.3.). Nonetheless, this option is considered impossible by the UN,³⁰¹ despite the fact that the former Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mr. Francis M. Deng, expressed his support for exploring the options of either expanding the UNHCR's mandate to the protection of IDPs or creating a new corresponding UN body.³⁰²

Thirdly and lastly, another option is the development of an inter-agency monitoring mechanism for internal displacement between several UN and other organisations, such as OHCHR, UNHCR, UNICEF, the UN Development Programme, the Emergency Relief Coordinator, the Office for the Coordination of Humanitarian Affairs, the International Organisation for Migration, etc. Such monitoring mechanism could, for instance, be a comprehensive and coherent data collection system to exchange information about IDPs worldwide. This requires better collaboration between aforementioned organisations by developing frameworks of cooperation to promote protection, assistance and development for IDPs, *inter alia* by appointing focal points within these organisations. Today, the coordination of international organisations is one of the tasks of the Inter-Agency Standing Committee, which consists of both UN and non-UN organisations.³⁰³

This final option seems to be favoured above creating a new UN body or expanding the mandate of an existing UN body.³⁰⁴ Mr. Francis M. Deng expressed his support for this possibility in one of his reports as well, albeit in a rather cautious manner.³⁰⁵ However, in my view it is doubtful whether this monitoring system will suffice, since it is unclear which UN agency would have the authority to act in situations of internal displacement. Merely exchanging

³⁰⁰ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 27-29; L. T. LEE, "Internally Displaced Persons and Refugees: Toward a Legal Synthesis", *supra* n. 49, 33-34 and 39-40; UNHCR, *The State of the World's Refugees: a Humanitarian Agenda*, *supra* n. 50, 112.

³⁰¹ S. BAGSHAW, "Internally Displaced Persons at the Fifty-Fourth Session of the United Nations Commission on Human Rights, 16 March - 24 April 1998", *supra* n. 296, 553.

³⁰² F.M. DENG, "Comprehensive study of the Representative of the Secretary-General on the human rights issues related to internally displaced persons", *General Assembly* 1993, *UN Doc. E/CN.4/1993/35*, 33, par. 130.

³⁰³ Resolution 1998/50 of the UN Commission on Human Rights on Internally Displaced Persons (17 April 1998), *UN Doc. E/CN.4/RES/1998/50*, points 11 and 12; S. BAGSHAW, "Internally Displaced Persons at the Fifty-Fourth Session of the United Nations Commission on Human Rights, 16 March - 24 April 1998", *supra* n. 296, 553-554.

³⁰⁴ S. BAGSHAW, "Internally Displaced Persons at the Fifty-Fourth Session of the United Nations Commission on Human Rights, 16 March - 24 April 1998", *supra* n. 296, 553-554; Inter-Agency Standing Committee, www.humanitarianinfo.org/iasc/; J. MANGALA MUNUMA, "Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays", *supra* n. 50, 547-548.

³⁰⁵ F.M. DENG, "Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39", *ECOSOC* 1998, *UN Doc. E/CN.4/1998/53*, par. 29-33.

information seems inadequate if no one is responsible to take action, and simply relying on States to take action has proven to be insufficient.³⁰⁶

Furthermore, the Special Rapporteur of the Human Rights Council on the Human Rights of Internally Displaced Persons is presently the only position within the UN which focuses solely on IDPs. The mandate includes, *inter alia*, monitoring internal displacement worldwide, continuous dialogue with governments, undertaking fact-finding missions, coordinating with other relevant institutions, mainstreaming the human rights of IDPs and publishing reports. At this time, this position is filled by Dr. Chaloka Beyani. The position used to take on the form of a Special Representative of the Secretary General on the Human Rights of Internally Displaced Persons and was previously filled by Mr. Walter Kälin and Mr. Francis M. Deng.³⁰⁷ Since Dr. Chaloka Beyani's mandate is coming to an end,³⁰⁸ it is advisable to convert the mandate back to that of a Special Representative of the Secretary General. Indeed, Dr. Chaloka Beyani has stated that the re-designation of the mandate from that of Special Representative of the Secretary-General to a Special Rapporteur of the Human Rights Council "*has undermined the mandate holder's standing and institutional ability to play an inside role as a catalyst and to mainstream the human rights of internally displaced persons within the United Nations system. A Special Rapporteur acting in a voluntary, external and independent capacity is no longer adequate to cope with the complexity and scope of global internal displacement today. The Special Rapporteur considers that enhancing the mandate to a Special Representative of the Secretary-General on internally displaced persons, with appropriate staff and resources, working within and outside the United Nations and in dialogue with Member States and all stakeholders, would demonstrate the commitment of the United Nations and the international community to addressing internal displacement effectively*".³⁰⁹ Consequently, an improvement within the UN would be to enhance the current mandate to a Special Representative of the Secretary-General on IDPs, with adequate staff and resources.

³⁰⁶ C. BAILEY, "Out of Africa: Toward Regional Solutions for Internal Displacement", *supra* n. 5, 360; J. MANGALA MUNUMA, "Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l'intérieur de leur pays", *supra* n. 50, 532.

³⁰⁷ Resolution 23/8 of the Human Rights Council of the United Nations (13 June 2013), *UN Doc. A/HRC/RES/23/8* (2013); C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2016, *UN Doc. A/HRC/32/35*, 4; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 156; Office of the High Commissioner for Human Rights, www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx.

³⁰⁸ The 2016 Report submitted to the Human Rights Council was Dr. Chaloka Beyani's last report in this mandate. C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2016, *UN Doc. A/HRC/32/35*, 3.

³⁰⁹ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2016, *UN Doc. A/HRC/32/35*, 4.

B. Improvements within the African Union

First of all, a tremendous improvement within the African Union would be to finally effectively implement Article 14.3 of the Kampala Convention by convening the Conference of States Parties for the first time and then convening it regularly in order to establish a secretariat of the States parties and to adopt a framework of implementation and operationalisation.³¹⁰

More involvement of the African Union, the ACHPR and the APRM would also greatly benefit the monitoring of the Convention, as its current monitoring mechanisms are quite weak (*supra* Chapter 3.2.).³¹¹ Article 14.1 of the Kampala Convention could therefore be revised to include these institutions, in addition to the Conference of States Parties, to monitor and review whether the Member States abide by the provisions of the Kampala Convention. Furthermore, Article 14.3 could in the future include sanctions or follow-up measures in case States do not submit the required reports, or do not submit them in a timely fashion. Examples of sanctions and follow-up measures could be a fine, a monitoring visit by a delegation of the AU or a mission by the ACHPR. These ACHPR missions can be on-site protective missions (with the aim of amicable settlements and investigating the factual circumstances regarding communications submitted against a State) or fact-finding missions (with the aim of establishing the accuracy of allegations of a more general nature or widespread reports of human rights violations).³¹² The ACHPR should moreover be encouraged to continue to make its reports and observations public, as well as a list of States that did not submit their reports.³¹³ Additionally, the AU Assembly can in this regard be encouraged to use its power to impose sanctions (*e.g.* the denial of transport and communications links with other Member States and other measures of a political and economic nature) on “*any Member State that fails to comply with the decisions and policies of the Union*”.³¹⁴

³¹⁰ Kampala Convention, *supra* n. 3, Art. 14.3; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 22; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 11.

³¹¹ A. M. ABEBE, “The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges”, *supra* n. 123, 57.

³¹² AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, *supra* n. 204, 46; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 344-345.

³¹³ R. MURRAY, *The African Commission on Human and People’s Rights*, *supra* n. 216, 21-22; F. VILJOEN, *International Human Rights Law in Africa*, *supra* n. 217, 344-345.

³¹⁴ Constitutive Act of the African Union, 11 July 2000, Lomé, www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, Art. 23.2.

Finally, as discussed above, a separate complaint mechanism for IDPs should at least be considered as well. Though there are, admittedly, some valid counterarguments, there are also many arguments *pro* the establishment of such mechanism because establishing appropriate accountability mechanisms is essential to ensure the adequate protection of IDPs (*supra* Chapter 3.2., D).³¹⁵

C. Improvements within countries

There are several interrelated issues that currently play within African countries. Firstly, some States are reluctant to sign, ratify and implement the Kampala Convention and/or adopt the required national legislation in accordance with the Convention. Secondly, some governments are still simply unaware of the Convention's existence. Thirdly, there is often a lack of communication, coordination and cooperation between central and local governments.³¹⁶ Fourthly, governments are still reluctant to gather reliable and complete data about the number of people that are displaced, which leads to the fact that a lot of IDPs are unregistered and stay under the radar.³¹⁷

The first issue is quite difficult to solve, as it is a tremendously challenging task to try to change a government's or region's way of thinking. However, awareness-raising, advocacy and peer pressure concerning IDPs' rights and States' responsibilities can be suitable actions to attempt to make governments more committed to the plight of IDPs so they, subsequently, ratify and implement the Kampala Convention (*supra* Chapter 3.1., C and 3.2., B).³¹⁸ For a guide to assist States with the adoption and content of national legislation regarding IDPs, can be referred to IDMC's elaborate technical guidelines: "*National Instruments on Internal Displacements: A*

³¹⁵ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 19.

³¹⁶ C. BEYANI, "Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council", 2014, *UN Doc. A/HRC/26/33*, 19-21; M. CATERINA and J. KLOS, "Unfinished business: Kenya's efforts to address displacement and land issues in Coast Region", *supra* n. 22, 25-27.

³¹⁷ IDMC, "Global Report on Internal Displacement", *supra* n. 6, 33-34.

³¹⁸ *Ibid.*; C. D'ORSI, "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *supra* n. 18, 113; IDMC, "Domesticating the Kampala Convention: Law and Policy Making", IDMC 2014, www.internal-displacement.org/assets/publications/2014/201407-af-kampala-convention-law-policy-workshop-report-en.pdf, 8; IDMC and BROOKINGS, "National Instruments on Internal Displacements: A Guide to their Development", *supra* n. 14, 9-10; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 41-42.

Guide to their Development”.³¹⁹ The UN Guiding Principles on Internal Displacement should be followed by States as well when responding to and dealing with internal displacement.³²⁰

The second issue (concerning the persistent unawareness of some governments) is arguably easier to solve by once again raising awareness and informing State leaders, governments, parliaments, local administrations, NHRIs, NGOs and IDPs about the Kampala Convention’s existence, IDPs’ rights and States’ responsibilities (*supra* Chapter 3.1., C). A common platform for States and non-State actors to exchange all relevant information, such as guidelines, policy plans and best practices, is an interesting idea to consider as well.³²¹

The third issue is the lack of communication, coordination and cooperation between central and local governments, which leads to uncoordinated and fragmented responses to internal displacement and a lack of preventive measures.³²² This issue can be tackled by encouraging governments: first, to adopt a holistic, coherent response to all cases of internal displacement in the form national legal and policy frameworks; second, to improve or implement comprehensive data collection systems and methods of communication and cooperation between local and national institutions; third, to take coordinated measures with regard to durable solutions; and fourth, to develop good governance strategies and take measures to prevent internal displacement, for example strategies and measures to effectively manage conflicts. Measures that have been successful when dealing with the prevention of or reaction to internal displacement are contingency strategies, early warning systems, community intervention mechanisms, integrating durable solutions into national development plans, establishing mechanisms to consult and include local administrations, NGOs, communities and IDPs in the decision-making and other processes, and so on.³²³ Furthermore, in some cases of

³¹⁹ IDMC and BROOKINGS, “National Instruments on Internal Displacements: A Guide to their Development”, *supra* n. 14, 9-81.

³²⁰ Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), point 23.

³²¹ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 19-21; M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 25-27; C. D’ORSI, “Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa”, *supra* n. 18, 113; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 41-42.

³²² C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*, 19-21; M. CATERINA and J. KLOS, “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *supra* n. 22, 25-27.

³²³ *Ibid.*; Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015); C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 9; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 240-254; IDMC, “Domesticating

internal displacement, such as development-induced displacement, guidelines for national policies already exist.³²⁴ Such guidelines may evidently be a foundation for States to adopt appropriate measures with regard to cases of internal displacement.

The fourth issue, namely that governments are still reluctant to gather data about the number of IDPs, has continually been a problem. Despite pleas from the UN General Assembly³²⁵ and NGOs like IDMC, most governments still do not have a systematic, comprehensive data collection system to provide accurate statistics about IDPs.³²⁶ In a 2015 resolution, the UN General Assembly encouraged “[g]overnments, members of the Inter-Agency Standing Committee, United Nations humanitarian coordinators and country teams to ensure the provision of reliable data on internal displacement situations by collaborating with the Internal Displacement Monitoring Centre, requesting the support of the Joint Internally Displaced Person Profiling Service and providing financial resources, as appropriate in these respects”.³²⁷ It is consequently highly recommendable that States follow this advice and collaborate with *inter alia* IDMC in order to end the lasting inaccuracy and incompleteness of data about internal displacement.

As mentioned above, creating suitable protective, support, accountability and compensation mechanisms is also indispensable to guarantee the full protection of all IDPs, including the most vulnerable people among them.³²⁸ On a national level, States should therefore consider establishing a complaint mechanism tailored specifically to the needs of IDPs, offer any necessary material and psychological help, provide housing and education, guarantee the IDPs’ safety by stopping the harassment of the camps and by taking sanitary measures, etc.³²⁹

the Kampala Convention: Law and Policy Making”, *supra* n. 318, 8; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 10.

³²⁴ Examples of guidelines concerning disaster-induced displacement: African Development Bank Involuntary Resettlement Policy, November 2003, www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF; Organisation for Economic Co-operation and Development Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, 1992, Paris, www.oecd.org/dac/environment-development/1887708.pdf; see also: W. COURTLAND ROBINSON, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *supra* n. 54, 34-35.

³²⁵ Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), points 33-34.

³²⁶ IDMC, “Global Report on Internal Displacement”, *supra* n. 6, 33-34.

³²⁷ Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), point 34.

³²⁸ C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, UN Doc. A/HRC/26/33, 19-21; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 10 and 38.

³²⁹ KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 10 and 37-38.

D. Recommendations concerning durable solutions to internal displacement

The Kampala Convention sets forth that countries should provide IDPs with durable solutions, meaning “*lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity*”.³³⁰ However, the Kampala Convention only elaborates on a few of the different facets of and conditions for durable solutions, and it does not provide criteria which may be used to determine to what extent a durable solution has been achieved (*supra* Chapter 2.4., H).³³¹ The author therefore wishes to provide more detailed recommendations with regard to suitable durable solutions to internal displacement. Possible criteria to determine to what extent durable solutions have been achieved, will be provided as well.

Durable solutions should in most cases be preceded by eliminating the root cause of the displacement, otherwise a vicious circle is created. The manner in which the root cause can be eliminated, depends on the concrete circumstances of each situation of internal displacement.³³² In this subchapter, possibilities for eliminating the root causes of internal displacement will be discussed first, followed by an overview of recommendations regarding the three possible durable solutions (i.e. voluntary return, local resettlement or resettlement in a third country).

- Eliminating the root causes of internal displacement

In all cases of internal displacement – no matter what the cause may be –, consultation with IDPs is fundamental in order to first try to eliminate the root cause of their displacement, and then to plan and manage their return or resettlement (*infra*).³³³ Mechanisms to solve possible disputes concerning property rights of IDPs³³⁴ and mechanisms to restore the lands of communities with special dependency and attachment to their lands must be provided too.³³⁵

³³⁰ Kampala Convention, *supra* n. 3, Art. 11.

³³¹ E. RUSHING and J. GIORGI, Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015.

³³² THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 5-9; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 37.

³³³ Guiding Principles on Internal Displacement, *supra* n. 25, Principle 28.2; Kampala Convention, *supra* n. 3, Art. 11.2; C. BEYANI, “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*, 19-20; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 19-20.

³³⁴ Kampala Convention, *supra* n. 3, Art. 11.4.

³³⁵ Kampala Convention, *supra* n. 3, Art. 11.5.

Communities with special dependency and attachment to their lands are, for instance, indigenous peoples and pastoralists.³³⁶ It is also essential to restore and safeguard the homes, development and livelihoods of the internally displaced population.³³⁷

When situations of conflict and violence result in the displacement of people, resolving these conflicts is naturally an essential first step towards ending the displacement. Solely providing humanitarian aid will not end internal displacement if the conflict continues. Addressing the underlying causes, reconciliation efforts, promoting human rights and democratic participation, consulting IDPs and establishing training and economic programs to stimulate development, should therefore always be key elements of conflict management in order to reach lasting solutions and end internal displacement. At times, the reconstruction of both physical and societal infrastructures may be necessary as well to reinstate a sense of normalcy and community.³³⁸

In the event of displacement due to development projects, it is once again crucial to include IDPs' fundamental rights and all relevant actors in the decision-making processes, with the aim of eliminating the root cause of the displacement and subsequently organising return or resettlement. Relevant actors may be IDPs, national and local authorities, local communities, private actors, etc. When natural and man-made disasters cause displacement, reconstruction and recovery works should be started as soon as possible, and disaster risk reduction measures – such as early warning systems, preparedness, mitigation and adaptation – should be implemented in order to prevent (the harmful effects of) future disasters.³³⁹

- *Three possible durable solutions: voluntary return, local resettlement or resettlement in a third country*

³³⁶ W. KIDANE, “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *supra* n. 38, 66.

³³⁷ C. BRUN, “Research guide on internal displacement”, *supra* n. 5, 13-14; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 7.

³³⁸ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 284-285 and 291-293; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 19-20 and 24.

³³⁹ R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 239-240; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 7, 12, 15, 22 and 29; KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *supra* n. 14, 39.

Once the root causes for the situation of internal displacement have been eliminated, there are three possible durable solutions: voluntary return, local resettlement or resettlement in a third country.³⁴⁰ The purpose of these durable solutions is to restore normalcy in the IDPs' life by making sure that they become self-sufficient and independent again and by safeguarding their human rights without discrimination resulting from their displacement. This can be achieved by (re)building infrastructure and empowering IDPs to fully take part in the social and economic life of their new or old communities.³⁴¹ Establishing durable solutions is a gradual, long-term and complex process that needs adequate coordination between the different local, national, regional and international governmental and non-governmental actors.³⁴² However, the primary responsibility to provide durable solutions lies with the national authorities.³⁴³

With respect to the three possible durable solutions to internal displacement, it should be stressed that *voluntary* return or resettlement should always be promoted. It is therefore crucial that IDPs are well-informed, consulted and involved in the decision-making process, as their return or resettlement should preferably happen voluntarily.³⁴⁴ Accordingly, truthful and all-inclusive information about all aspects of durable solutions ought to be given in every language and format that is necessary to reach each layer of the displaced community, even the most vulnerable and marginalized people.³⁴⁵ IDPs, once again including the most vulnerable and marginalized people, must also be consulted in accordance with their existing customs, traditions, social structures and organizations, as long as this does not prevent certain people,

³⁴⁰ Kampala Convention, *supra* n. 3, Art. 11.

³⁴¹ C. BRUN, "Research guide on internal displacement", *supra* n. 5, 13-14; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 5-9; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 41.

³⁴² Kampala Convention, *supra* n. 3, Art. 11.3; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 7-8.

³⁴³ Kampala Convention, *supra* n. 3, Art. 11.1; Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), point 9; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 11.

³⁴⁴ Kampala Convention, *supra* n. 3, Art. 11.2; Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), points 7-8 and 16; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 12 and 19-20; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 41.

³⁴⁵ THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 15-16.

such as women or people with disabilities, from being involved.³⁴⁶ Furthermore, IDPs must continuously have safe, unhindered and timely access to all actors supporting the achievement of durable solutions and to effective mechanisms that monitor the process and conditions on the ground.³⁴⁷ On a side note, if a person chooses to be relocated, this person should not lose the right to return once return becomes possible.³⁴⁸

In addition, the safety, protection and other basic needs (*e.g.* food, water, sanitation and healthcare) of IDPs have to be of the utmost importance at all times so that they have an adequate standard of living.³⁴⁹ If it is not safe for IDPs to return to their previous homes, they should not be forced to do so.³⁵⁰ It should also be seen to that the internally displaced population, upon return or integration, is not discriminated against because of their displacement or because of any other reason.³⁵¹ IDPs should, additionally, have access to livelihoods and employment which allows them to satisfy, at minimum, their basic socio-economic needs.³⁵² Since IDPs have often lost documentation such as passports and birth certificates, they must be provided with all documentation necessary to access public services, reclaim property and possessions, exercise their voting rights, etc.³⁵³ Also, families separated because of displacement should be reunited as soon as possible, especially where vulnerable persons such as children and the elderly are concerned.³⁵⁴

It is moreover important to keep in mind that continuing animosities between certain groups of people, or against the internally displaced population in general, may linger. Efforts of reconciliation, democratic participation, continued assistance, reintegration programs and

³⁴⁶ THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 19-20.

³⁴⁷ *Ibid.*, 22-23.

³⁴⁸ *Ibid.*, 12.

³⁴⁹ Kampala Convention, *supra* n. 3, Art. 11.1; Resolution of the General Assembly of the United Nations (18 November 2015), UN Doc. A/C.3/70/L.51/Rev.1 (2015), point 7; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 32-32.

³⁵⁰ THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 12-13.

³⁵¹ *Ibid.*, 13.

³⁵² *Ibid.*, 34.

³⁵³ Kampala Convention, *supra* n. 3, Art. 13; The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, *supra* n. 64, Art. 6 (Commentary (1)); THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 38.

³⁵⁴ Kampala Convention, *supra* n. 3, Art. 9.2, h; The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, *supra* n. 64, Art. 7 (Commentary (1-2)); THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 40.

development programs can be recommended if such issues arise. Since internal displacement also places a considerable burden on host communities and their resources, these communities should be adequately assisted in order to avoid possible tensions.³⁵⁵ As mentioned above under the elimination of the root causes of internal displacement, mechanisms to solve possible disputes concerning the IDPs' property rights³⁵⁶ and mechanisms to restore the lands of communities with special dependency and attachment to their lands must be provided too.³⁵⁷ These mechanisms are indeed fundamental for the elimination of internal displacement's root causes as well as for the creation of durable solutions, because continuing conflicts over land ownership are detrimental to both.

In conclusion, according to the IASC Framework on Durable Solutions for Internally Displaced Persons, the following eight criteria may be used to determine to what extent a durable solution has been achieved: 1) long-term safety and security; 2) adequate standard of living; 3) access to livelihoods; 4) restoration of housing, land and property; 5) access to documentation; 6) family reunification; 7) participation in public affairs; and 8) access to effective remedies and justice. The principle of non-discrimination should always be a prerequisite for durable solutions as well.³⁵⁸ As a final point, the fact that IDPs have achieved a durable solution evidently does not mean that they are no longer protected by national and international human rights.³⁵⁹

³⁵⁵ Guiding Principles on Internal Displacement, *supra* n. 25, Principles 14, 15, 28 and 29; Kampala Convention, *supra* n. 3, Art. 11; C. BRUN, "Research guide on internal displacement", *supra* n. 5, 13-14; R. COHEN and F.M. DENG, *Masses in flight: The Global Crisis of Internal Displacement*, *supra* n. 1, 285-289; THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 6-17; KENYA HUMAN RIGHTS COMMISSION, "A Tale of Force, Threats and Lies 'Operation Rudi Nyumbani' in Perspective", *supra* n. 14, 41.

³⁵⁶ Kampala Convention, *supra* n. 3, Art. 11.4.

³⁵⁷ Kampala Convention, *supra* n. 3, Art. 11.5.

³⁵⁸ THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, "IASC Framework on Durable Solutions for Internally Displaced Persons", *supra* n. 169, 27.

³⁵⁹ *Ibid.*, 14.

Conclusion

Internal displacement is an important, widespread problem of our time, both in Africa and worldwide. At present, there are twice as many IDPs as refugees in the world. The extreme vulnerability, hardship and human rights violations IDPs face should be combatted, and over the past decades IDPs' plight has consistently been especially severe in Africa. With this knowledge and the stability and security of the African continent in mind, the African Union has adopted a landmark Convention on this subject: the Kampala Convention. Therefore, this thesis focussed on IDPs in the African Human Rights system, with a particular focus on the Kampala Convention.

The primary research question of this thesis was: "What rights and protections does the Kampala Convention provide for Internally Displaced Persons, and how is the Convention enforced and which improvements can be recommended for the future?"

This primary question was answered by dividing it into four sub-questions:

- 1) Who are Internally Displaced Persons and what is the difference with refugees? (*supra* Chapter 1);
- 2) What is the current state of affairs regarding the rights and protection of Internally Displaced Persons in Sub-Saharan Africa? (*supra* Chapter 2);
- 3) How is the Kampala Convention being enforced and who is enforcing it? (*supra* Chapter 3.1. and 3.2.);
- 4) Which improvements to the protection of Internally Displaced Persons can be recommended for the future? (*supra* Chapter 3.3.).

Accordingly, first, the key elements of the definition of IDPs were identified and the difference with refugees was clarified. In this context, the question was raised whether or not the element of border-crossing should be dropped from the definition of refugees so that IDPs gain the same rights and protection as refugees. While there are valid arguments for each side of this debate, the conclusion of this thesis was that a separate international legally binding instrument for IDPs would be ideal, and that the Kampala Convention could be a great leading example in this respect. However, since such instrument is currently not available, it is now time to modernise the definition of refugees to include IDPs, consistent with the current state of affairs in a lot of countries and continents.

After identifying the diverse causes of internal displacement, the current state of affairs regarding the rights and protection of IDPs in Sub-Saharan Africa was examined. Overall, the legal framework surrounding internal displacement in Africa is commendable. It consists of the Great Lakes Protocol and the Kampala Convention, supplemented by the Guiding Principles. The Kampala Convention is the first and so far the only binding continent-wide legal instrument about internal displacement, so it sets a significant precedent and marks a milestone for the protection and assistance of IDPs. The Convention applies to all situations of internal displacement and covers all stages and causes of internal displacement. Consequently, although it is not flawless, it is a comprehensive instrument that encompasses clear obligations for States and rights for IDPs.

Nevertheless, the main weaknesses of the Kampala Convention are its implementation, monitoring and enforcement mechanisms. Theoretically, IDPs are well protected in Africa, whereas in practice, their rights and States' obligations are generally not being implemented, monitored or enforced.

While signing and ratifying the Kampala Convention are essential first steps towards guaranteeing the rights of IDPs, effective implementation is the key to success in the end. The latter implies two steps. First, States must incorporate their obligations under the Convention into national law. Second, States have to respect and enforce their own laws, in this case that would mean adequately assisting and protecting IDPs in accordance with the Kampala Convention. Though States bear the primary duty and responsibility to implement the Kampala Convention, they are often unwilling or unable to do so, which is why the African Union has been designated a role as well in this regard. The international community, NGOs and NHRIs should furthermore continue to support the African region with the implementation of the Kampala Convention by raising awareness, providing support, identifying any IDP-related issues and monitoring the Member States' implementation.

The Kampala Convention provides some monitoring and enforcement mechanisms, for example the obligation for States to report to the ACHPR and APRM and the right for IDPs to lodge a complaint against a State with the ACHPR. As was concluded in this thesis, it seems advisable and logical to accept the binding character of the ACHPR's decisions regarding such complaints. In addition, the African Charter should be interpreted as implicitly allowing, or even requiring, follow-up of the ACHPR's decisions. Pursuant to the Kampala Convention, IDPs also have the right to lodge a complaint with the ACJHR. Yet for now, the ACtHPR is still operational.

The monitoring and enforcement mechanisms provided by the Kampala Convention are nonetheless insufficient, for instance because States do not submit reports or submit reports of substandard quality. The complaint mechanisms are also not suitable in the case of IDPs, because they are typically in a precarious and vulnerable position and do not have the resources or knowledge to enforce their rights. As a result, additional enforcement mechanisms have to be considered, such as peer pressure and moral obligation or bringing cases before national courts. Certain situations of displacement are moreover crimes against humanity or war crimes which can be prosecuted before the ICC. Additionally, it may be advisable to incorporate an easily accessible, specialised complaint mechanism tailored specifically to the needs of IDPs in the Kampala Convention. Although this could, arguably, be an improvement for the situation of IDPs, it is at present unlikely that amendments or protocols to the Convention will be made. Finally, some recommendations for improvements within the United Nations, African Union and countries were suggested, as well as recommendations concerning durable solutions to internal displacement. Below, a concise overview of the most important recommendations for future improvements is provided.

- *Improvements within the United Nations*

- Either create a new UN body with the sole responsibility of protecting and assisting IDPs, or give an international organisation or an existing UN body the authority and responsibility to manage this issue, or develop an inter-agency monitoring mechanism for internal displacement between several UN and other organisations;
- Convert the mandate of Special Rapporteur of the Human Rights Council on the Human Rights of Internally Displaced Persons back to that of a Special Representative of the Secretary General.

- *Improvements within the African Union*

- Convene the Conference of States Parties for the first time and then reconvene it regularly;
- More involvement of the African Union, the ACHPR and the APRM in the monitoring of the Kampala Convention;
- At least consider a separate complaint mechanism for IDPs.

- *Improvements within countries*

- Raise awareness about, advocate for and exert peer pressure concerning IDPs' rights and States' responsibilities so that States sign, ratify and implement the Kampala Convention;
 - With regard to the persistent unawareness of some governments, raise awareness and inform State leaders, governments, parliaments, local administrations, NHRIs, NGOs and IDPs about the Kampala Convention's existence, IDPs' rights and States' responsibilities;
 - With regard to the lack of communication, coordination and cooperation between central and local governments, encourage governments:
 - To adopt a coherent response to all cases of internal displacement in the form national legal and policy frameworks;
 - To improve or implement comprehensive data collection systems and methods of communication and cooperation between local and national institutions;
 - To take coordinated measures with regard to durable solutions;
 - To develop good governance strategies and take measures to prevent internal displacement;
 - Establish a systematic, comprehensive data collection system to provide accurate data about IDPs;
 - Create suitable protective, support, accountability and compensation mechanisms.
- *Recommendations concerning durable solutions to internal displacement*
- Eliminate the root causes of internal displacement through:
 - Consultation with IDPs;
 - Creating mechanisms to solve disputes about property rights of IDPs and mechanisms to restore the lands of communities with special dependency and attachment to their lands;
 - Restoring and ensuring the homes, development and livelihoods of IDPs;
 - Conflict-management;
 - Reconstructing physical and societal infrastructures;
 - Adopting disaster risk reduction measures;
 - Ensure voluntary return, local resettlement or resettlement in a third country by:
 - Informing and consulting IDPs and involving them in the decision-making process;

- Providing truthful and all-inclusive information about all aspects of durable solutions in every language and format that is necessary to reach each layer of the displaced community;
 - Giving IDPs safe, unhindered and timely access to all actors supporting the achievement of durable solutions and to effective mechanisms that monitor the process and the conditions on the ground;
 - Ensuring the safety, protection and other basic needs of IDPs at all times;
 - Preventing any form of discrimination against IDPs upon return or resettlement;
 - Giving IDPs access to livelihoods and employment;
 - Providing IDPs with documentation;
 - Ensuring family reunification;
 - Addressing and solving lingering animosities between groups or communities;
 - Assisting host communities in order to avoid possible tensions;
 - Creating mechanisms to solve disputes about property rights of IDPs and mechanisms to restore the lands of communities with special dependency and attachment to their lands;
- Use the following criteria to determine to what extent a durable solution has been achieved:³⁶⁰
- Long-term safety and security;
 - Adequate standard of living;
 - Access to livelihoods;
 - Restoration of housing, land and property;
 - Access to documentation;
 - Family reunification;
 - Participation in public affairs;
 - Access to effective remedies and justice.

In conclusion, the Kampala Convention is a huge leap forward for the protection of IDPs in the African Human Rights System. However, whether the Kampala Convention's legacy is

³⁶⁰ THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *supra* n. 169, 27.

ultimately one of success or failure will depend on whether its aforementioned weaknesses are sufficiently addressed.

Annexes

1. Countries that have signed, ratified or acceded to the Kampala Convention³⁶¹



³⁶¹ IDMC, <http://www.internal-displacement.org/assets/library/Africa/Kampala-convention/201412-map-kampala-convention-en.pdf>.

2. Internal Displacement statistics per African region³⁶²

NORTHERN AFRICA		
	New during 2013	Cumulative as of end 2013
Conflict, violence, human rights violations	Unknown	59,400
Rapid-onset disaster (natural hazard-related)	7,700	Undetermined (34,600 newly displaced during 2008–2013)

EASTERN AFRICA		
	New during 2013	Cumulative as of end 2013
Conflict, violence, human rights violations	1,166,800	4,835,700
Rapid-onset disaster (natural hazard-related)	772,400	Undetermined (2,062,600 newly displaced during 2008–2013)

WESTERN AFRICA		
	New during 2013	Cumulative as of end 2013
Conflict, violence, human rights violations	633,000	3,656,000
Rapid-onset disaster (natural hazard-related)	413,100	Undetermined (9,324,700 newly displaced during 2008–2013)

CENTRAL AFRICA		
	New during 2013	Cumulative as of end 2013
Conflict, violence, human rights violations	1,935,000	3,996,500
Rapid-onset disaster (natural hazard-related)	167,100	Undetermined (989,800 newly displaced during 2008–2013)

SOUTHERN AFRICA		
	New during 2013	Cumulative as of end 2013
Conflict, violence, human rights violations	Unknown	56,000
Rapid-onset disaster (natural hazard-related)	329,800	Undetermined (2,125,800 newly displaced during 2008–2013)

³⁶² AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *IDMC* 2013, www.internal-displacement.org/assets/publications/2013/201312-af-kampala-convention-progress-report-thematic-en.pdf, 8-9.

3. New displacements in Africa associated with violence, conflicts and disasters in 2015³⁶³



³⁶³ IDMC, “Global Report on Internal Displacement”, IDMC 2016, www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf.

4. Kampala Convention³⁶⁴

Preamble

We, the Heads of State and Government of the Member States of the African Union;

CONSCIOUS of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

ALSO CONSCIOUS of the suffering and specific vulnerability of internally displaced persons;

REITERATING the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

COMMITTED to sharing our common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

DETERMINED to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

CONSIDERING the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

REAFFIRMING the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

RECALLING the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions;

MINDFUL that Member States of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

³⁶⁴ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Kampala, www.unhcr.org/4ae9bede9.html.

RECOGNISING the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

AFFIRMING our primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled, without discrimination of any kind;

NOTING the specific roles of international Organizations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organizations, in conformity with the laws of the country in which they exercise such roles and mandates;

RECALLING the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

REAFFIRMING the historical commitment of the AU Member States to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa, to the effect that that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively;

CONVINCED that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purpose of the present Convention:

- a. “African Charter” means the African Charter on Human and Peoples' Rights;
- b. “African Commission” means the African Commission on Human and Peoples' Rights;
- c. “African Court of Justice and Human Rights” means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);

e. “Armed Groups” means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;

f. “AU” means the African Union;

g. “AU Commission” means the Secretariat of the African Union, which is the depository of the regional instruments;

h. “Child” means every human being below the age of 18 years;

i. “Constitutive Act” means the Constitutive Act of the African Union;

j. “Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;

k. “Internally Displaced Persons” means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;

l. “Internal displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;

m. “Member State” means a Member State of the African Union;

n. “Non-state actors” means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;

o. “OAU” means the Organization of African Unity;

p. “Women” mean persons of the female gender, including girls;

q. “Sphere standards” mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and

r. “States Parties” means African States which have ratified or acceded to this Convention.

Article 2 **Objectives**

The objectives of this Convention are to:

a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;

b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;

c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;

d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;

e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

Article 3 **General Obligations Relating to States Parties**

1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:

a. Refrain from, prohibit and prevent arbitrary displacement of populations;

b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;

c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;

d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, nondiscrimination, equality and equal protection of law;

e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons;

f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;

g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;

h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;

i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;

j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;

k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;

2. States Parties shall:

a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;

b. Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists;

c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;

d. Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;

e. Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4

Obligations of States Parties relating to Protection from Internal Displacement

1. States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;

2. States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;

3. States Parties may seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors;

4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:

a. 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;

b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;

c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;

- d. Displacement caused by generalized violence or violations of human rights;
 - e. Displacement as a result of harmful practices;
 - f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - g. Displacement used as a collective punishment;
 - h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.
5. States Parties shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
6. States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5

Obligations of States Parties relating to Protection and Assistance

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

Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.

8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.

9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.

10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.

11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.

12. Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6

Obligations Relating to International Organizations and Humanitarian Agencies

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.

2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.

3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7

Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.

2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.

4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.

5. Members of armed groups shall be prohibited from:

- a. Carrying out arbitrary displacement;
- b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
- c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
- d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
- e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
- f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
- g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons;
- h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

Article 8 **Obligations relating to the African Union**

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
 - a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
 - b. Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;

c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.

d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;

e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and,

f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9

Obligations of States Parties Relating to Protection and Assistance During Internal Displacement

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:

a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;

b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;

c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;

d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and

e. Starvation.

2. States Parties shall:

a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;

b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;

c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households,

expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;

d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;

e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;

f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;

g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;

h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;

i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;

j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;

k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;

l. Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and

m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.

3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

Article 10

Displacement induced by Projects

1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;

2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11

Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

1. States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.
2. States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.
3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction.
4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.
5. States Parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12

Compensation

1. States Parties shall provide persons affected by displacement with effective remedies.
2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.
3. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13

Registration and Personal Documentation

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.
2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.

3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.

4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14

Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.

2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.

3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.

4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

Final Provisions

Article 15

Application

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.

2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16

Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17

Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.

2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

Article 18 Amendment and Revision

1. States Parties may submit proposals for the amendment or revision of this Convention.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Conference of States Parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Conference of States Parties by a simple majority of the States Parties present and voting.
5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the States Parties with the Chairperson of the AU Commission.

Article 19 Denunciation

1. A State Party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.
2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20 Saving Clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 U.N Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.
2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.
3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.

4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21
Reservations

States Parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22
Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

Article 23
Depository

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the Government of each signatory State.

2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.

3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

**ADOPTED BY THE SPECIAL SUMMIT OF THE UNION HELD IN KAMPALA,
UGANDA, 22ND OCTOBER 2009.**

5. Dutch summary of this thesis

A. Inleiding en onderzoeksvraag

Interne ontheemding is een belangrijk, wereldwijd verspreid probleem in Afrika en in de hele wereld. Momenteel zijn er wereldwijd twee keer zoveel intern ontheemde personen als vluchtelingen. Grote kwetsbaarheid, ontberingen en mensenrechtenschendingen kenmerken de situatie van deze mensen. In Afrika in het bijzonder, is de situatie van intern ontheemden al decennialang uiterst schrijnend. Met deze problematiek in gedachten, alsook omwille van het gevaar dat interne ontheemding vormt voor de stabiliteit en veiligheid van het Afrikaanse continent, heeft de Afrikaanse Unie het Kampalaverdrag betreffende interne ontheemding gecreëerd. Deze thesis focust dan ook op intern ontheemde personen in het Afrikaanse mensenrechtensysteem, met bijzondere aandacht voor het Kampalaverdrag.

De onderzoeksvraag van deze thesis is: “Welke rechten en bescherming geeft het Kampalaverdrag aan intern ontheemde personen, hoe wordt het verdrag gehandhaafd en welke verbeteringen kunnen worden aanbevolen voor de toekomst?”

Deze vraag wordt beantwoord door ze op te delen in vier sub-vragen:

- 1) Wie zijn intern ontheemde personen en wat is het verschil met vluchtelingen? (Hoofdstuk 1)
- 2) Wat is de stand van zaken met betrekking tot de rechten en bescherming van intern ontheemde personen in Sub-Sahara Afrika? (Hoofdstuk 2)
- 3) Hoe en door wie wordt het Kampalaverdrag gehandhaafd? (Hoofdstuk 3.1.-3.2.)
- 4) Welke verbeteringen voor de bescherming van intern ontheemde personen kunnen worden aanbevolen voor de toekomst? (Hoofdstuk 3.3.)

B. Intern ontheemde personen

- Definitie

In deze thesis worden eerst de basiselementen van de definitie van intern ontheemde personen geïdentificeerd en wordt het verschil met vluchtelingen uitgeklaard. De twee basiselementen van de definitie zijn het onvrijwillige of gedwongen karakter van de verplaatsing en het feit dat men geen staatsgrenzen oversteeft, dit laatste in tegenstelling tot vluchtelingen.

- Noodzaak van een aparte categorie voor intern ontheemde personen?

In de context van het verschil in behandeling tussen intern ontheemde personen en vluchtelingen, kan men zich afvragen of het oversteken van een staatsgrens als basiselement van de definitie van vluchtelingen niet beter kan worden weggelaten zodat intern ontheemden dezelfde rechten en bescherming krijgen. Hoewel er valabele argumenten zijn voor beide zijden van dit debat, is de conclusie van deze thesis dat een apart internationaal bindend instrument voor interne ontheemding ideaal zou zijn, en dat het Kampalaverdrag hiervoor een uitstekend voorbeeld kan zijn. Maar omdat een dergelijk instrument momenteel niet bestaat, is het tijd om de definitie van vluchtelingen aan te passen door ze uit te breiden tot intern ontheemden.

- *Oorzaken van interne ontheemding*

De diverse oorzaken van interne ontheemding zijn conflicten, geweld, natuurrampen, rampen veroorzaakt door menselijke activiteiten, ontwikkelingsprojecten, willekeurige ontheemding en gedwongen uitzettingen.

C. *Relevante verdragen en soft law*

De relevante verdragen en *soft law* voor interne ontheemding in Afrika zijn de *Guiding Principles on Internal Displacement*, het *Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons* en het Kampalaverdrag. Deze verdragen en *soft law* bieden een mooi juridisch kader voor intern ontheemden. Daarenboven is het Kampalaverdrag tot nu toe het enige continentwijde bindende instrument met betrekking tot interne ontheemding. Het is derhalve een belangrijk precedent en een mijlpaal in de bescherming van intern ontheemde personen. Het verdrag is van toepassing op alle situaties van interne ontheemding, ongeacht de oorzaak, en behandelt alle fases ervan. Bijgevolg is het, hoewel het niet perfect is, vrij alomvattend en bevat het duidelijke verplichtingen voor staten en rechten voor intern ontheemden.

D. *Implementatie, monitoring en handhaving van het Kampalaverdrag*

De belangrijkste pijnpunten van het Kampalaverdrag zijn de implementatie, monitoring en handavingsmechanismen. In theorie zijn intern ontheemde personen immers goed beschermd in Afrika, maar in de praktijk worden hun rechten en de verplichtingen van staten al te vaak niet, of niet voldoende, geïmplementeerd, gemonitord en gehandhaafd.

Effectieve implementatie van het verdrag is inderdaad de sleutel tot succes en impliceert twee stappen: ten eerste moeten staten hun uit het verdrag voortvloeiende verplichtingen transponeren naar hun nationale recht; ten tweede moeten staten hun wetgeving respecteren en

handhaven. Hoewel de primaire verantwoordelijkheid om het verdrag te implementeren bij de staten ligt, zijn zij over het algemeen niet bereid of in de onmogelijkheid om dit te doen. Daarom kreeg de Afrikaanse Unie ook een rol toebedeeld. De internationale gemeenschap, Ngo's en nationale mensenrechteninstellingen moeten de Afrikaanse regio bovendien blijven steunen bij de implementatie van het verdrag door bijvoorbeeld bewustzijn te creëren en problemen te signaleren.

Het Kampalaverdrag biedt enkele monitoring- en handhavingsmechanismen, onder andere de rapporteringsplicht voor staten en het recht van intern ontheemde personen om een klacht bij de Afrikaanse Commissie voor Mensenrechten neer te leggen. Niettemin zijn deze mechanismen niet geschikt om intern ontheemden voldoende bescherming te bieden, aangezien staten hun rapporteringsplicht bijvoorbeeld niet of op ontoereikende wijze nakomen, en aangezien intern ontheemden dikwijls in een kwetsbare toestand verkeren en niet de middelen of kennis hebben om zelf hun rechten af te dwingen. Bijgevolg moeten bijkomende handhavingsmechanismen overwogen worden, zoals *peer pressure*, ethische of morele verplichtingen en zaken voor nationale rechtbanken brengen. Verder is het mijn inziens aangewezen een toegankelijk, gespecialiseerd klachtenmechanisme specifiek gericht op intern ontheemden in te bouwen in het Kampalaverdrag, maar dit zal in de nabije toekomst waarschijnlijk niet gebeuren.

E. Aanbevelingen voor de toekomst

Deze thesis biedt tevens aanbevelingen voor verbeteringen betreffende de situatie van intern ontheemden binnen de Verenigde Naties, de Afrikaanse Unie en Afrikaanse staten. Vervolgens worden strategieën voorgesteld om de oorzaken van interne ontheemding aan te pakken. Ten slotte volgen aanbevelingen voor het goede verloop van de mogelijke duurzame oplossingen voor interne ontheemding (namelijk vrijwillige terugkeer, lokale hervestiging of hervestiging in een ander land).

F. Conclusie

Samenvattend is het Kampalaverdrag een enorme stap vooruit voor de bescherming en rechten van intern ontheemde personen in het Afrikaans mensenrechtensysteem. Desondanks zal het succes of het falen van het verdrag afhangen van het al dan niet aanpakken van de hierboven uiteengezette pijnpunten.

Bibliography

1. Legislation and Soft Law

African Charter on Human and Peoples' Rights, 27 June 1981, Monrovia, www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

African Development Bank Involuntary Resettlement Policy, November 2003, www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/10000009-EN-BANK-GROUP-INVOLUNTARY-RESETTLEMENT-POLICY.PDF.

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, Kampala, www.unhcr.org/4ae9bede9.html.

Charter of the United Nations, 26 June 1945, San Francisco, www.un.org/en/documents/charter/.

Constitutive Act of the African Union, 11 July 2000, Lomé, www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf.

Convention relating to the Status of Stateless Persons, 28 September 1954, New York, www.ohchr.org/EN/ProfessionalInterest/Pages/StatelessPersons.aspx.

Decision of the AU Executive Council on the Situation of Refugees, Returnees and Displaced Persons (1 February 2010), *AU Doc. EX.CL/Dec.240* (2010).

Geneva Convention IV, 12 August 1949, Geneva, www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByTopics.xsp.

Guiding Principles on Internal Displacement, 22 July 1998, OCHA/IDP/2004/01, www.unhcr.org/43ce1cff2.html.

International Covenant on Civil and Political Rights, 16 December 1966, New York, www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, New York, www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf.

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, Addis Ababa, www.unhcr.org/45dc1a682.html.

Organisation for Economic Co-operation and Development Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, 1992, Paris, www.oecd.org/dac/environment-development/1887708.pdf.

Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 31 December 2012, Nairobi, www.refworld.org/docid/511219962.html.

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27 June 2014, Addis Ababa, www.au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights.

Protocol on Property Rights of Returning Populations, in the Pact on Security, Stability and Development in the Great Lakes Region, 15 December 2006, Nairobi.

Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lakes Protocol), in the Pact on Security, Stability and Development in the Great Lakes Region (Great Lakes Pact), 15 December 2006, Nairobi, www.refworld.org/pdfid/52384fe44.pdf.

Protocol on the Statute of the African Court of Justice and Human Rights, 1 July 2008, Sharm El-Sheikh, www.refworld.org/docid/4937f0ac2.html.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 9 June 1998, Ouagadougou, www.achpr.org/instruments/court-establishment/.

Resolution 1998/50 of the UN Commission on Human Rights on Internally Displaced Persons (17 April 1998), *UN Doc. E/CN.4/RES/1998/50* (1998).

Resolution 23/8 of the Human Rights Council of the United Nations (13 June 2013), *UN Doc. A/HRC/RES/23/8* (2013).

Resolution 68/180 of the General Assembly of the United Nations (30 January 2014), *UN Doc. A/RES/68/180* (2014).

Resolution 69/154 of the General Assembly of the United Nations (22 January 2015), *UN Doc. A/RES/69/154* (2015).

Resolution 72 of the African Commission on Human and Peoples' Rights on the Mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa (7 December 2004), www.achpr.org/sessions/36th/resolutions/72/.

Resolution of the General Assembly of the United Nations (18 November 2015), *UN Doc. A/C.3/70/L.51/Rev.1* (2015).

Rules of Court of the African Court on Human and Peoples' Rights, 2 June 2010, Arusha, http://en.african-court.org/images/Protocol-Host%20Agrtmt/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

Rules of Procedure of the African Commission on Human and Peoples' Rights, 26 May 2010, Banjul, www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf.

Rules of Procedure of the African Union Executive Council, 9-10 July 2002, Durban, www.au2002.gov.za/docs/summit_council/ropexec.pdf.

Statute of the International Criminal Court, 17 July 1998, Rome, www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

The London Declaration of International Law Principles on Internally Displaced Persons, International Law Association, October 2000, London, www.ila-hq.org/download.cfm/docid/52392D73-DED3-435F-BC0947746E68410A.

United Nations Constitution of the International Refugee Organization, 15 December 1946, New York, www.unhcr.org/3ae69ef14.html (expired 15 February 1952).

United Nations Convention and Protocol Relating to the Status of Refugees (UN Refugee Convention), 28 July 1951, Geneva, www.unhcr.org/3b66c2aa10.html.

United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 28 June 2005, *UN Doc. E/CN.4/Sub.2/2005/17*, www.refworld.org/docid/41640c874.html.

Universal Declaration of Human Rights, 10 December 1948, Paris, www.un.org/en/documents/udhr/.

2. Case law

ACHPR, *Democratic Republic of the Congo v. Burundi, Rwanda and Uganda*, 20 May 2003, Comm. 227/99.

ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 25 November 2009, Comm. 276/2003.

ACHPR, *Abdel Hadi, Ali Radi & Others v. Republic of Sudan*, 4 June 2014, Comm. 368/09.

3. Literature review

a. Books

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS and CENTRE OF HUMAN RIGHTS UNIVERSITY OF PRETORIA, *Celebrating the African Charter at 30: a Guide to the African Human Rights System*, Pretoria, Pretoria University Law Press, 2011, 65 p.

AFRICAN UNION ECOSOCC and IDMC, *Making the Kampala Convention work for IDP's - Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, Addis Ababa/Geneva, ECOSOCC and IDMC, 2010, 32 p.

ANKUMAH, E. A., *The African Commission on Human and Peoples' Rights Practice and Procedures*, The Hague, Kluwer Law International, 1996, 246 p.

BREMS, E., *Human Rights: Universality and Diversity*, The Hague, Martinus Nijhoff Publishers, 2001, 592 p.

BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and MC HUGH, G., *Integrating Displacement in Peace Processes and Peacebuilding*, Washington D.C., United States Institute of Peace Press, 2010, 80 p.

BROOKINGS-BERNPROJECT ON INTERNAL DISPLACEMENT and THE BROOKINGS INSTITUTION, *Protecting internally displaced persons: A manual for law and policymakers*, Washington D.C., Brookings Institution – University of Bern, 2008, 280 p.

COHEN, R. and DENG, F.M., *Masses in flight: The Global Crisis of Internal Displacement*, Washington D.C., Brookings Institution Press, 1998, 414 p.

COHEN, R., "Recent Trends in Protection and Assistance for IDPs" in *Internally Displaced People: a Global Survey*, London, Earthscan Publications Limited, 1998, 240 p.

- DENG, F.M., *Protecting the Dispossessed: A Challenge for the International Community*, Washington D.C., Brookings Institution, 1993, 175 p.
- DIXON, M., *Textbook on International Law*, Oxford, Oxford University Press, 2013, 393 p.
- FITZPATRICK, J., *Human rights protection for refugees, asylum-seekers, and internally displaced persons: a guide to international mechanisms and procedures*, New York, Ardsley, 2002, 665 p.
- GOODWIN-GILL, G. S. and MCADAM, J., *The refugee in international law*, Oxford, Oxford University Press, 2007, 786 p.
- JACQUES, M., *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge, Cambridge University Press, 2012, 277 p.
- KÄLIN, W., *Guiding Principles on Internal Displacement: Annotations*, Washington D.C., The American Society of International Law, 2008, 171 p.
- KLABBERS, J., *International law*, Cambridge, Cambridge University Press, 2013, 350 p.
- KOSER, K., “Climate change and internal displacement: challenges to the normative framework” in *Migration and Climate Change*, Cambridge, Cambridge University Press, 2011, 442 p.
- LUDLAM-TAYLOR, L., “Recent literature on IDPs” in *Internally Displaced People: a Global Survey*, London, Earthscan Publications Limited, 1998, 240 p.
- MOREL, M., *The Right not to be Displaced in International Law*, Antwerpen, Intersentia, 2014, 354 p.
- MURRAY, R., *The African Commission on Human and People’s Rights*, Oxford, Hart Publishing, 2000, 316 p.
- NMEHIELLE, V. O., *The African Human Rights System – Its Laws, Practices, and Institutions*, The Hague, Kluwer Law International, 2001, 443 p.
- PHUONG, C., *The international protection of internally displaced persons*, Cambridge, Cambridge University Press, 2005, 293 p.
- UNHCR, *The State of the World’s Refugees 2006: Human Displacement in the New Millennium*, Oxford, Oxford University Press, 2006, 229 p.

UNHCR, *The State of the World's Refugees: a Humanitarian Agenda*, Oxford, Oxford University Press, 1997, 298 p.

VILJOEN, F., *International Human Rights Law in Africa*, Oxford, Oxford University Press, 2012, 622 p.

b. Articles

ABEBE, A. M., "The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, and Enforcement Challenges", *Refugee Survey Quarterly* 2009, 28-57.

BAGSHAW, S., "Internally Displaced Persons at the Fifty-Fourth Session of the United Nations Commission on Human Rights, 16 March - 24 April 1998", *Int'l J. Refugee L.* 1998, 548-556.

BAILEY, L. C., "Out of Africa: Toward Regional Solutions for Internal Displacement", *Brook. J. Int'l L.* 2014, 353-402.

BEYANI, C., "Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa", *J. Afr. L.* 2006, 187-197.

BIRGANIE, A. B., "African Initiative for the Protection of the Rights of Internally Displaced People", *Hum. Rts. L. Rev.* 2010, 179-190.

BONAVENTURA, R., "How tense is the tension between the refugee concept and the IDP debate?", *Forced Migration Review* 1999, 29-31.

COHEN, R. and DENG., F.M., "Exodus within Borders - The Uprooted Who Never Left Home", *Foreign Aff.* 1998, 12-17.

CONTAT HICKEL, M., "Protection of internally displaced persons affected by armed conflict: concept and challenges", *International Review of the Red Cross* 2001, 699-711.

COURNIL, C., "Emergence d'un Droit Pour les Personnes Déplacées Internes", *Rev. quebecoise de droit int'l* 2009, 1-26.

D'ORSI, C., "Strengths and Weaknesses in the Protection of the Internally Displaced Persons in Sub-Saharan Africa", *Conn. J. Int'l L.* 2012-2013, 73-116.

D'ORSI, C., and NALDI, G., "Multi-Faceted Aspects of Asylum-Law Applicable to Africa: Analysis for Reflection", *Loy. L.A. Int'l & Comp. L. Rev.* 2014, 115-152.

- DENG, F.M., “Global Challenge of Internal Displacement”, *Wash. U. J.L. & Pol’y* 2010, 141-156.
- GEISSLER, N., “The International Protection of Internally Displaced Persons”, *Int’l. J. of Refugee L.* 1999, 451-478.
- GOGARTY, B., “Climate-Change Displacement: Current Legal Solutions to Future Global Problems”, *J. L. Inf. & Sci.* 2011, 167-188.
- GUISTINIANI, F. Z., “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denv. J. Int’l L. & Pol’y* 2010-2011, 347-370.
- JUMA, L., “Narrative of Vulnerability and Deprivation in Protection Regimes for the Internally Displaced Persons (IDPs) in Africa: An Appraisal of the Kampala Convention”, *Law Democracy & Dev.* 2012, 219-252.
- JUMA, L., “Normative and Institutional Approaches to the Protection of Property Rights of IDPS in Kenya's Rift Valley Province”, *Afr. J. Int’l & Comp. L.* 2012, 251-280.
- KIDANE, W., “Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention”, *Vand. J. Transnat’l L.* 2011, 1-86.
- KILLANDER, M., “African Peer Review Mechanism and Human Rights: The First Reviews and the Way Forward”, *Hum. Rts. Q.* 2008, 41-75.
- KOSER, K., “Introduction: Integrating Displacement in Peace Processes and Peacebuilding”, *Refugee Survey Quarterly* 2009, 5-12.
- LEE, L. T., “Internally Displaced Persons and Refugees: Toward a Legal Synthesis”, *Refugee Stud.* 1996, 27-42.
- MAGLIVERAS, K. and NALDI, G., “The African Union, Part III. Activities”, *Intergovernmental Organizations* 2014, 193-358.
- MANGALA MUNUMA, J., “Les enjeux normatifs et institutionnels de la protection des personnes déplacées à l’intérieur de leur pays”, *Revue Belge De Droit International* 2002, 532-550.

MANGU, A. M. B., “Assessing the Effectiveness of the African Peer Review Mechanism and Its Impact on the Promotion of Democracy and Good Political Governance”, *Afr. Hum. Rts. L.J.* 2007, 354 to 388.

MOONEY, E. D., “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern”, *Refugee Survey Quarterly* 2005, 9-36.

MOREL, M., “Environmental displacement within Kenya: a search for legal protection frameworks”, *Journal of Internal Displacement* 2010, 1-23.

MOREL, M., “Het Kampala-verdrag inzake Intern Ontheemden: een baken van hoop voor 12 miljoen Afrikanen?”, *Wereldbeeld* 2009, 1-10.

NALDI, G., “Observations on the Rules of the African Court on Human and Peoples’ Rights”, *African Human Rights Journal* 2014, 366-392.

NOBEL, P., “Refugees, Law, and Development in Africa”, *Mich. YBI Legal Stud.* 1982, 255-290.

OJEDA, S., “The Kampala Convention On Internally Displaced Persons: Some International Humanitarian Law Aspects”, *Refugee Survey Quarterly* 2010, 58-66.

PHUONG, C., “Internally Displaced Persons and Refugees: Conceptual Differences and Similarities”, *Neth. Q. Hum. Rts.* 2000, 215-230.

SCHMIDT, P., “Process and Prospects for the U.N. Guiding Principles on Internal Displacement to Become Customary International Law: A Preliminary Assessment”, *Geo. J. Int’l L.* 2003-2004, 483-520.

SKINNER, J., “State Responsibility in the Face of Environmentally Displaced Persons”, *Wake Forest J. L. & Pol’y* 2014, 417-434.

SOLOMON, S., “Updates from the Regional Human Rights Systems”, *Hum. Rts. Brief* 2011-2012, 47-48.

VINCENT, M., “IDPs: rights and status”, *Forced Migration Review* 2000, 29-30.

c. Internet sources for articles

BRADLEY, M. and ASPLET, M., “Strengthened Protection for Internally Displaced Persons in Africa: The Kampala Convention Comes Into Force”, *American Society of International Law*

2012, www.asil.org/insights/volume/16/issue/36/strengthened-protection-internally-displaced-persons-africa-kampala.

BROOKINGS and INTERNAL DISPLACEMENT MONITORING CENTRE, “Kampala Convention on Internal Displacement”, *Brookings* 2014, www.brookings.edu/about/projects/idp/kampala-convention.

BRUN, C., “Research guide on internal displacement”, *Forced Migration* 2005, www.forcedmigration.org/research-resources/expert-guides/internal-displacement/.

INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT, “Livestock and pastoralists”, *IFAD* 2009, www.ifad.org/documents/10180/0fbe4134-4354-4d08-bf09-e1a6dbee3691.

LYONS, S., “The African Court on Human and Peoples' Rights”, *ASIL Insights* 2006, www.asil.org/insights/volume/10/issue/24/african-court-human-and-peoples-rights#_edn13.

d. Reports

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS, “First Annual Report of the African Commission on Human and Peoples' Rights”, 28 April 1988, www.achpr.org/files/activity-reports/1/achpr12and3_actrep1_1988_eng.pdf.

AFRICAN UNION COMMISSION, “The Kampala Convention One Year On: Progress and Prospects”, *IDMC* 2013, www.internal-displacement.org/assets/publications/2013/201312-af-kampala-convention-progress-report-thematic-en.pdf.

ALBUJA, S., ARNAUD, E., and OTHERS, “Global Overview 2014: People internally displaced by conflict and violence”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf.

BEYANI, C., “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2014, *UN Doc. A/HRC/26/33*.

BEYANI, C., “Report of the Special Rapporteur on the human rights of internally displaced persons to the UN Human Rights Council”, 2016, *UN Doc. A/HRC/32/35*.

BILAK, A., CATERINA, M., CHARRON, G. and OTHERS, “Global Overview 2015: People internally displaced by conflict and violence”, *IDMC* 2015, www.internal-displacement.org/assets/publications/2015/201505-global-overview-2015-en.pdf.

displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf.

BORTON, J., BUCHANAN-SMITH, M. and OTTO, R., “Support to Internally Displaced Persons. Learning from Evaluations”, *Sida* 2005, www.oecd.org/countries/eritrea/35093445.pdf.

BRADLEY, M., “The Kampala Convention: Significance and Next Steps”, *Brookings-LSE* 2014, www.brookings.edu/~media/research/files/reports/2014/04/08%20kampala%20convention%20bradley/kampala%20convention%20event%20at%20swiss%20mission%20april%208%202014.pdf.

CATERINA, M. and KLOS, J., “Unfinished business: Kenya’s efforts to address displacement and land issues in Coast Region”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201407-af-kenya-unfinished-business-en.pdf.

CATERINA, M. and SCHREPFER, N., “On the margin: Kenya’s pastoralists – From displacement to solutions, a conceptual study on the internal displacement of pastoralists” *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201403-af-kenya-on-the-margin-en.pdf.

COURTLAND ROBINSON, W., “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement”, *The Brookings Institution – SAIS Project on Internal Displacement* 2003, www.brookings.edu/fp/projects/idp/articles/didreport.pdf.

DENG, F.M., “Comprehensive study of the Representative of the Secretary-General on the human rights issues related to internally displaced persons”, *General Assembly* 1993, *UN Doc. E/CN.4/1993/35*.

DENG, F.M., “Internally Displaced Persons: Compilation and Analysis of Legal Norms”, *OHCHR* 1996, *UN Doc. E/CN.4/1996/52*.

DENG, F.M., “Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39”, *ECOSOC* 1998, *UN Doc. E/CN.4/1998/53*.

IDMC and BROOKINGS, “National Instruments on Internal Displacements: A Guide to their Development”, *Brookings* 2013, www.ohchr.org/documents/issues/idpersons/law-and-policymaking_guide-2013.pdf.

IDMC and IRRI, “The Great Lakes Pact and the rights of displaced people: A guide for civil society”, *IDMC* and *IRRI* 2008, www.refugee-rights.org/Publications/2008/GLReport.Sep2008.pdf.

IDMC and MIT DISPLACEMENT RESEARCH ACTION NETWORK, “Home sweet home: Housing practices and tools that support durable solutions for urban IDPs”, *IDMC* 2015, www.internal-displacement.org/assets/publications/2015/20150325-global-home-sweet-home/20150325-global-home-sweet-home-en-full-report.pdf.

IDMC, “Domesticating the Kampala Convention: Law and Policy Making”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201407-af-kampala-convention-law-policy-workshop-report-en.pdf.

IDMC, “Global Report on Internal Displacement”, *IDMC* 2016, www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf.

IDMC, “The Kampala Convention two years on: time to turn theory into practice”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201412-af-kampala-convention-brief-en.pdf.

IDMC, “Workshop report: The national responsibility to protect internally displaced people: The Kampala Convention”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2015/201505-af-national-responsibility-to-protect-idps-kampala-convention-workshop-report-en.pdf.

INTERNATIONAL ORGANISATION FOR MIGRATION, “Migration, Environment and Climate Change: Assessing the Evidence”, *IOM* 2009, http://publications.iom.int/bookstore/free/migration_and_environment.pdf.

INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact”, *IRRI* 2014, <http://reliefweb.int/report/world/comparison-kampala-convention-and-idp-protocol-great-lakes-pact>.

KÄLIN, W., “Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons: First Regional Conference on Internal Displacement in West Africa”, *UNHRC* 2007, *UN Doc. A/HRC/4/38/Add.4*.

KENYA HUMAN RIGHTS COMMISSION, “A Tale of Force, Threats and Lies ‘Operation Rudi Nyumbani’ in Perspective”, *KHRC* 2008, <http://resource.khrc.or.ke:8181/khrc/handle/123456789/58>.

THE BROOKINGS INSTITUTION – UNIVERSITY OF BERN PROJECT ON INTERNAL DISPLACEMENT, “IASC Framework on Durable Solutions for Internally Displaced Persons”, *The Brookings Institution – University of Bern Project on Internal Displacement* 2010, 1-46.

UN DISASTER RELIEF ORGANISATION, “An Overview of Disaster Management”, 1992, www.pacificdisaster.net/pdnadmin/data/original/dmtp_02_an_overview_dm_8.pdf.

UN GENERAL ASSEMBLY, “International Co-operation to Avert New Flows of Refugees: Note by the Secretary-General”, 13 May 1986, *UN Doc. A/41/324*.

YONETANI, M., “Global Estimates 2014: People displaced by disasters”, *IDMC* 2014, www.internal-displacement.org/assets/publications/2014/201409-global-estimates.pdf.

e. Theses

VAN BEURDEN, M., *Handhavingsmechanismen van Mensenrechtenverdragen: Een praktische toepassing op het Kampala verdrag*, thesis Law Faculty Ghent University, 2010-2011, 116 p.

3. Internet sources

African Commission on Human and Peoples’ Rights, www.achpr.org/.

African Court on Human and Peoples’ Rights, www.african-court.org/.

African Peer Review Mechanism, <http://aprm-au.org/>.

African Union, www.au.int/.

Brookings-LSE Project on Internal Displacement, www.brookings.edu/about/projects/idp.

ICC, *Application on behalf of the Government of the Republic of Kenya pursuant to Article 19(2)(b) of the Statute*, ICC-01/09-01/11-1104, www.icc-cpi.int/CourtRecords/CR2011_03107.PDF.

ICC, *Case Information Sheet: Situation in the Republic of Kenya in the Case of the Prosecutor v. William Samoeiruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC-PIDS-CIS-KEN-01-012/14, www.icc-cpi.int/kenya/rutosang/Documents/RutoSangEng.pdf.

Inter-Agency Standing Committee, www.humanitarianinfo.org/iasc/.

Internal Displacement Monitoring Centre, www.internal-displacement.org/.

International Fund for Agricultural Development, www.ifad.org/.

List of countries which have signed, ratified/acceded to the Kampala Convention, www.au.int/en/sites/default/files/treaties/7796-sl-african_union_convention_for_the_protection_and_assistance_of_internally_displaced_persons_in_africa_kampala_convention_11.pdf.

Merriam-Webster Dictionary, www.merriam-webster.com/.

Millennium Development Indicators: World and regional groupings, http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Data/Regional/africa_sub-saharan.htm.

Office of the High Commissioner for Human Rights, www.ohchr.org/.

Office of the United Nations High Commissioner for Refugees – UN Refugee Agency, www.unhcr.org/.

UN Geographical Region and Composition, <http://millenniumindicators.un.org/unsd/methods/m49/m49regin.htm>.

UNHCR Population Statistics, <http://popstats.unhcr.org/Default.aspx>.

UNHCR, “Figures at a glance”, www.unhcr.org/figures-at-a-glance.html.

4. Speeches

ABDULLAHI, A., *Speech at the African Union Workshop on the Implementation and Domestication of the AU Convention on the Protection and Assistance to Internally Displaced Persons in Africa (Kampala Convention)*, Lusaka, Zambia, 18 July 2013.

BEYANI, C., *Speech: Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention)*, Abuja, Nigeria, 7 July 2011.

DESALEGN, H., *Speech of the Prime Minister of the Federal Democratic Republic of Ethiopia and Chairperson of the African Union at the First All Africa Public Relations and Strategic Communication Summit*, Addis Ababa, Ethiopia, 8-10 May 2013.

HOLBROOKE, R. C., *Speech at Benjamin N. Cardozo School of Law*, New York, USA, 28 March 2000.

KÄLIN, W., *Speech: The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges*, London, United Kingdom, 27 September 2007.

KELLENBERGER, J., *Speech: Root causes and prevention of internal displacement: the ICRC perspective*, Kampala, Uganda, 23 October 2009.

5. Interviews

D'ORSI, C., Post-Doctoral Fellow at the Human Rights Centre of the University of Pretoria, interview on 31 October 2015.

Internally Displaced Persons in Vumilia IDP camp, interview on 20 December 2014.

NDONGO-KELLER, J., Former Translator at the International Criminal Tribunal of Rwanda, interview on 27 October 2014.

OUVRY, B., Former Ambassador at the Embassy of Belgium in Nairobi and currently Human Rights Director at the Ministry of Foreign Affairs in Belgium, interview on 7 July 2015.

RUSHING, E. and GIORGI, J., Regional Analyst for West Africa and Senior Training and Legal Officer at Internal Displacement Monitoring Centre, interview on 23 March 2015.