

# **Internally Displaced Persons in Africa: A Glimpse View of the Protections Accorded in the Kampala Convention**

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## **Abstract**

Internal displacement is one of the most pressing problems throughout the world. There is an influx of displaced persons within the borders of their own countries as a result of armed conflict, internal strife, serious violations of human rights, natural disasters and the like. Uprooted from their homes, separated from family and community support networks, and shorn of their resource base, internally displaced persons suddenly find themselves stripped of their most basic means of security and survival. Compounding their plight, displacement exposes its victims to additional vulnerabilities and risks. Despite these, internally displaced persons did not receive proper attention at the international level. However, the same cannot be said at the regional level, specifically for Africa. Africa has been at the forefront in developing binding legal instruments on internal displacement, the 2009 Kampala Convention. This article thus considers whether the move of African States with regard to internally displaced persons is sufficient to bring the intended result. It tries to examine the legal protections granted for internally displaced persons in the Kampala Convention. It argues that though the convention provides legal protection to internally displaced persons, the limitations in the formulation of the rights and the enforcement mechanism chosen has weakened its protection.

**KEYWORDS:** African States; Binding legal instrument; Internal displacement; Internally displaced persons; Kampala Convention; Legal protection

## **1. Introduction**

Internal displacement, which may be resulted from armed conflicts, internal strife, serious violations of human rights, national calamities and other reasons, is one of the pressing problems in many jurisdictions. Persons who flee from their homes suffer a lot of problems including

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armed attack, physical assault, sexual violence, forced conscription and shortage of adequate food, water, shelter and medical care and other terrible situations.<sup>1</sup> Thousands are displaced every year by armed conflict, disasters and environmental hazards, and large-scale development projects.<sup>2</sup> Therefore, the problems facing IDPs are as grave as those facing refugees.

Despite such facts, IDPs have not received appropriate attention in the protection of their interests at the international level. Besides, though most IDPs share similar factual circumstances with refugees, the international legal regime for the protection of refugees is not readily adaptable to their situation due to sovereignty reasons.<sup>3</sup> They have been given scant attention and thus suffering a lot. This absence of a binding legal instrument and institutional framework that specifically address the needs of the internally displaced persons, as it can be understood from the preamble of the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (hereinafter the 'Kampala Convention'), has initiated the African Union to adopt a convention for alleviating the sufferings of the IDPs and provide them better protection. Africa has thus taken a pioneering role in the promulgation of binding regional treaty for the protection of IDPs.<sup>4</sup> The Kampala Convention, which was adopted on 23 October 2009 and came into force on 6 December 2012, is the first continent-wide regional treaty governing internal displacement in Africa. The promulgation of the Convention involved a process of drafting that commenced in 2004 and culminated in the first ever dedicated African Union Assembly on forced displacement held in Kampala, Uganda between 19 and 23 October 2009.<sup>5</sup> The adoption of the Kampala Convention was a significant milestone in the evolution of the normative framework with respect to the protection of and assistance to IDPs in Africa. It adopts a very comprehensive approach where all causes and phases of displacement are addressed. It covers protection from displacement, protection during displacement, protection after displacement. The

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<sup>1</sup> Erin D. Mooney, 'Towards a Protection Regime for Internally Displaced Persons' in Edward Newman and Joanne van Selm (eds), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State* (United Nations University Press, 2003) 159.

<sup>2</sup> Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (2008), 46-47 <[https://www.brookings.edu/wp-content/uploads/2016/06/10\\_internal\\_displacement\\_manual.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/10_internal_displacement_manual.pdf)> accessed 24 February 2017.

<sup>3</sup> Won Kidane, 'Managing Forced Displacement by Law in Africa: The Role of the New African Union IDPs Convention' (2011) 44 *Vanderbilt Journal of Transnational Law* 1, 5.

<sup>4</sup> Allehone Mulugeta Abebe, '*Special Rapporteurs as Law Makers: the Developments and Evolution of the Normative Framework for Protecting and Assisting Internally Displaced Persons*' (2011) 15 *The International Journal of Human Rights* 2, 294.

<sup>5</sup> *Ibid*, 295.

Convention further recognizes the applicability of other human rights law and humanitarian law as an important legal framework for the protection and promotion of the rights of IDPs.

The first section of this article discusses some of the developments which led to the adoption of the Kampala Convention. The following section explains the characteristics relevant for identifying who IDPs are as implied in the Convention. Then the article deals the rationales for the need of separate legal framework for IDPs in Africa. The level of protection of IDPs in the Kampala Convention is addressed in the fourth section. In dealing with the level of protection the article did not focus on the specific rights included in the convention. It instead discussed the formulation of the rights as it is essential to assess the level of protection. The relationship of Kampala convention with the African Charter on Human and Peoples' Rights (hereinafter the 'African Charter') and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter the 'OAU Refugee Convention') is discussed in the fifth section. The sixth section discusses the enforcement mechanisms of the convention; and the seventh section examines the implication of the convention to the signatory States. Finally, this article ends with conclusion and a couple of recommendations.

## **2. Who are Internally Displaced Persons?**

At the international level, there is no legally binding instrument that addresses the question of 'who are the internally displaced persons?' However, at the regional level, the Kampala Convention defines IDPs in the following manner:

IDPs are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>6</sup>

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<sup>6</sup> African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention), 23/10/2009, Article 1 (k). This definition is directly taken from the 1998 UN Guiding Principles on Internal Displacement. On this point see UN Guiding Principles on Internal Displacement (hereinafter the 'Guiding Principles'), 1998, Introduction part, Para. 2.

This definition contains two decisive conditions that should be fulfilled for considering persons as IDPs; namely: the involuntary nature of the displacement and the displacement should not involve border crossing. These conditions are discussed in some detail in the following subsections.

### ***2.1. Involuntary Nature of the Displacement***

The first condition is the persons must be forced to leave their homes or place of residence. This requirement indicates the involuntary or coercive nature of the movement. That is, the persons fleeing their homes or places of habitual residence must be compelled by external forces that are beyond their control. Hence, it excludes voluntary evacuation of individuals from the ambit of IDPs. In order to show the involuntary nature of the movement, the definitional article of the Kampala Convention includes causes that results for displacement. Accordingly, armed conflict, violence, human rights violations, and disasters are identified as the possible causes of displacement. As can be understood from the definition, these causes may not necessary happen at the time of displacement. The phrase ‘...in order to avoid the effects of...’ employed in the definitional article implies that the happening of the causes is not required. What is required is the legitimate expectation of their happening.<sup>7</sup>

Here, a question as to the exhaustiveness of the lists may be raised; because having regard to the conjunction ‘or’ used to make connections between the causes of displacement and the absence of a phrase like ‘other causes’ at the end of the lists, one may argue that the definitional article is not formulated in an open-ended manner. When rules are not formulated in an open-ended manner, unless we follow purposive rule of interpretation<sup>8</sup>, it is difficult to include other possible factors that might oblige individuals to flee their homes or places of habitual residence. For instance, although there is very little information on the number of Africans displaced by

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<sup>7</sup> Internal Displacement Monitoring Centre, *Training on the Protection of IDPs, Who is an Internally Displaced Person?* 1 < <http://idp-key-resources.org/documents/0000/d04393/000.pdf> > accessed 24 February 2017.

<sup>8</sup> This rule of interpretation allows for the inclusion of unidentified but related lists (implied causes of internal displacement), provided that such construction enables for the achievement of the intended objective of the convention. On this point see Vienna Convention on the Law of Treaties, 1969.

development projects, it is the recurrent event in Africa.<sup>9</sup> In such situations, if we apply the plain meaning rule of interpretation,<sup>10</sup> it is hardly possible to consider the persons fleeing their homes or places of habitual residence due to development projects as IDPs; because the IDP definition in the Kampala Convention does not specifically mention development projects as a possible cause of displacement.

However, such kind of construction is misleading for various reasons. To begin with, the phrase “in particular” used in the definitional article to introduce the listed examples of causes of displacement indicates the non-exhaustiveness of the lists and their illustrative nature.

Besides, one may also argue that development projects, such as the construction of hydroelectric dams, which leave communities without adequate resettlement and compensation, are a human-made disaster and a human rights violation.<sup>11</sup> Hence, since human-made disaster and human rights violations are among the specifically listed causes of displacement under the Kampala Convention, those displaced as a result of development projects fall within the definition of IDPs in the Kampala Convention. However, the argument that equates development projects as human-made disaster and human rights violations seems odd. Firstly, as noted by Walter Kälin, one of the drafters of the Guiding Principles, development projects have significant contribution in the realization of human rights.<sup>12</sup> Secondly, development is a right in itself to which all people should have access. In fact, it is a right that has got legal recognition both at the international<sup>13</sup> and regional<sup>14</sup> level as well as at the domestic level<sup>15</sup>. Nevertheless, it is equally odd to consider

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<sup>9</sup> Elizabeth Ferris, *Internal Displacement in Africa: An Overview of Trends and opportunities* (Presentation at the Ethiopian Community Development Council Annual Conference “African Refugee and Immigrant Lives: Conflict, Consequences, and Contributions, May 2-4, 2012) 5.

<sup>10</sup> This rule of interpretation advocates for the consideration of the common, unspecialized meaning of the words used in the law.

<sup>11</sup> Internal Displacement Monitoring Centre, *Training on the Protection of IDPs, Development-Induced Displacement*, 4 < [https://www.google.com/?gws\\_rd=ssl#q=Training+on+Development-induced+displacement](https://www.google.com/?gws_rd=ssl#q=Training+on+Development-induced+displacement) > accessed 24 February 2017.

<sup>12</sup> Ibid.

<sup>13</sup> See, for instance, Article 1 (1) of the 1966 International Covenant on Economic, Social and Cultural Rights, which recognizes the right to development by allowing all peoples to freely pursue their economic, social and cultural development. Besides, in 1986, the UN General Assembly adopted a Declaration on the Right to Development, which states that “every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.”

<sup>14</sup> See, for instance, Article 22 (1) of the 1981 African Charter on Human and Peoples’ Rights, which deals with the right to development. This Article states that, ‘all peoples shall have the right to their economic, social and cultural

all development projects as free from violations of human rights, because sometimes they may leave the displaced persons without adequate resettlement and compensation. Thus, just as people have a right to development, they have the right to be protected from the negative effects of development, including arbitrary eviction and the loss of other human rights.<sup>16</sup> Although people displaced by development projects may generally be seen as a necessary sacrifice on the road to development, it should be justified and lawful.<sup>17</sup> At this juncture, it should therefore be noted that what is considered as a human-made disaster and a violation of human rights is those development projects that leaves communities without adequate resettlement and compensation.

Moreover, Article 10 of the Kampala Convention explicitly covers development-induced displacement. It requires States to prevent displacement caused by projects. However, the prohibition of displacement in cases of projects is not total as the state is only required to strive as much as possible.<sup>18</sup> A similar prohibition has been found in the Guiding Principles.<sup>19</sup> However, the prohibition in the two instruments is not the same. Under Principle 6 (1) of the Guiding Principles, everyone has the right to be protected against being arbitrarily displaced from his/her home or place of habitual residence. Under sub-principle 2 of the same Principle, the Guiding Principles identifies displacements that are considered as arbitrary and thus prohibited. Accordingly, among others, displacement resulted from large-scale development projects, which are not justified by compelling<sup>20</sup> and overriding<sup>21</sup> public interests is identified as one of the prohibited arbitrary displacements.<sup>22</sup> That is, under the Guiding Principles, displacement induced by large scale development projects is permissible only if it is justified by

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development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind'. Sub-article 2 of the same Article requires States to ensure, individually or collectively, the exercise of the right to development.

<sup>15</sup> On this point see for instance Article 43 of the Federal Democratic Republic of Ethiopia Constitution, which explicitly recognized the right to development.

<sup>16</sup> W. Courtland Robinson, *Minimizing Development-Induced Displacement* (January 1, 2004) < <http://www.migrationpolicy.org/article/minimizing-development-induced-displacement/> > accessed 24 February 2017.

<sup>17</sup> Internal Displacement Monitoring Centre, (note 11 above).

<sup>18</sup> Kampala Convention, (note 6 above), Article 10 (1).

<sup>19</sup> Guiding Principles, (note 6 above), Principle 6.

<sup>20</sup> The word 'compelling' indicates the absence of other feasible alternatives.

<sup>21</sup> The word 'overriding' shows the need to balance the public and private interests.

<sup>22</sup> Guiding Principles, (note 6 above), Principle 6 (2/c).

compelling and overriding public interests.<sup>23</sup> Nevertheless, this does not mean that persons displaced by justifiable and lawful projects are not internally displaced. In fact, the Guiding Principles describe anyone as an internally displaced person if he/she is coerced to leave his/her home or place of habitual residence, regardless of whether the displacement was legal or not.<sup>24</sup>

Like the Guiding Principles, the Kampala Convention has identified arbitrary displacements that are prohibited.<sup>25</sup> However, unlike the Guiding Principles, the Kampala Convention does not consider displacements resulted from development projects as arbitrary. This omission and the inclusion of the phrase ‘as much as possible’ in Article 10 (1) of the Kampala Convention may give the impression that, under the convention, people displaced by development projects are generally seen as a necessary sacrifice on the road to development. The dominant perspective among drafters of the convention seems that the positive aspects of development projects, the public interest, outweigh the negative ones, the displacement or sacrifice of a few.<sup>26</sup>

In fact, as indicated above, the lawfulness or otherwise of the displacement has no effect regarding the status of the IDPs. Despite such fact, the consideration of the displacement as arbitrary or otherwise has legal implication especially concerning remedies available for the displaced persons. For instance, if the displacement is considered as arbitrary, the displaced persons might be able to claim to be restituted, which is not the case when displacement is not arbitrary. In the latter case, they can claim resettlement and compensation. Hence, comparatively, though it lacks legal binding effect, the Guiding Principles literally gives much

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<sup>23</sup> A similar approach is followed in the Great Lakes Protocol. On this point see International Conference on the Great Lakes Region, Protocol on the Protection and Assistance of Internally Displaced Persons, Nov. 30, 2006, Article 5 (1). This protocol is the first legally binding multilateral treaty preceding the Kampala Convention. However, it is at sub-regional level (it is adopted by eleven countries of the Great Lakes region).

<sup>24</sup> Internal Displacement Monitoring Centre, (note 11 above).

<sup>25</sup> Kampala Convention, (note 6 above), Article 4 (4).

<sup>26</sup> This can for instance be seen from the omission of development projects in the list of causes of displacement in the final text of the convention while it was in the draft text. The Draft Kampala Convention in its reads as Article 9 (1) follows:

States parties shall prevent displacement caused by development projects by public or private actors, except where such displacement is due to the construction of large scale development projects that are justified by compelling and overriding public interest because of their contribution to the sustainable development of the country or because they are in the interest of the people, including persons or communities displaced by such projects.

On this point see Flavia Zorzi Giustiniani, ‘*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*’ (2011), 39 DENV. Journal of International Law and Policy 2, 356.

better protection to the IDPs than the Kampala Convention concerning development-induced displacement.

## ***2.2. No Border Crossing***

The second condition provided in the definition of IDPs under the Kampala Convention is the movement should take place within the borders of the State.<sup>27</sup> That is, the displaced persons should not cross the national border. This explains why IDPs are not refugees<sup>28</sup>. Refugees, by definition, are outside their country of nationality.

The displaced persons should not cross the national border to be considered as IDPs. This does not however mean that they should never cross the border; certainly they can. It rather means they should not cross to settle. This requirement should thus be understood in a broader sense. It refers to the place where the displaced persons find refuge. Such construction would enable those displaced persons who have to transit through the territory of a neighboring state in order to gain access to a safe part of their own country; first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their home or place of origin or habitual residence for reasons indicated in the definitional article; or left voluntarily to another part of their country but cannot return to their homes because of events that occurred during their absence that make return impossible or unreasonable.<sup>29</sup>

Here it has to be noted that the Kampala Convention does not refer to the notion of citizenship. Thus, foreigners may also qualify as internally displaced persons. However, the phrase "...to flee or to leave their homes or places of habitual residence" included in the definitional article of IDPs indicates that their presence in the country concerned cannot be of just a passing nature but must have reached some permanency.<sup>30</sup> Accordingly, the following categories of persons could qualify as IDPs:<sup>31</sup>

☞ Internally displaced citizens of the country concerned;

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<sup>27</sup> Ibid, Article 1 (k).

<sup>28</sup> The other difference between IDPs and refugees is that, refugees require a special legal status as result of being outside their country and without its protection, but IDPs need not to have a special legal status. The latter remain entitled to all the rights and guarantees as citizens and other habitual residents of a particular State.

<sup>29</sup> Brookings-Bern Project on Internal Displacement, (note 2 above) 12.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, 12-13.



- ☞ Former refugees who have returned to their country of origin but are unable to return to their former homes or find another durable solution through social and economic integration in another part of the country;
- ☞ Displaced stateless persons who have their habitual residence in the country concerned;
- ☞ Displaced nationals of another country who have lived there for a long time (may be even generations) and have largely lost contact with their country of nationality; and
- ☞ Displaced nationals of another country who have their habitual residence in the country concerned because they have been admitted permanently or for prolonged periods of time.

IDPs who are non-citizens, however, are not automatically entitled to rights mentioned in the Kampala Convention that may be specifically reserved to citizens under applicable international law, such as the right to public participation, and the right to vote and to be elected to public office as stated in its Article 9 (2/1/).

Refugees displaced in their country of refuge or asylum remains refugees, but it would be appropriate to apply the Kampala Convention by analogy to the extent that applicable refugee law does not address their displacement-related needs. The same is true for displaced migrants with short-term permits or in irregular situations. They remain migrants and their rights as migrants must be respected. However, to the extent that these norms do not address their displacement-related needs for humanitarian assistance and protection, the Kampala Convention may be applied by analogy.

In sum, the above definition rather than showing its normative concept indicates the characteristics of IDPs that make them inherently vulnerable.<sup>32</sup> Thus, it is more of a descriptive type that enables us to identify who is an IDP rather than what is IDP. Despite such fact, this definition is used in this article for two major justifications. Firstly, the notion is commonly used at the international level.<sup>33</sup> Besides, the main focus of this article is analyzing the Kampala Convention. Employing the definition provided therein is thus sound and justifiable.

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<sup>32</sup> Ibid, 11.

<sup>33</sup> Ibid.

### 3. Why Separate Legal Framework for IDPs?

IDPs have been compelled to leave their homes and often cannot return because they face risks at their places of origin from which State authorities are unable or unwilling to protect them, because they might have been specifically prohibited to return, or because their homes have been destroyed or are being occupied by someone else. They also may face the risk of forced return to an area that is unsafe.<sup>34</sup>

Primary responsibility for protecting IDPs and all persons within their own country rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty.<sup>35</sup> Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so and, in some cases, they may even be directly involved in forcibly uprooting civilians.<sup>36</sup> Even then, however, the role of international actors is to reinforce, not replace, national responsibility. This requires a two-pronged approach to encourage States and other authorities to meet their protection obligations under international law while also supporting the development of national and local capacities to fulfill these protection responsibilities.<sup>37</sup>

IDPs are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. International law does not specifically address the plight of IDPs, but this does not mean that they are not protected under the law. In fact, the following three bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict: international human rights law; international humanitarian law; and international criminal law. Besides, as citizens or habitual residents of their country, IDPs remain entitled to

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<sup>34</sup> Global Protection Cluster Working Group, *Handbook to the Protection of Internally Displaced Persons* (2008) 9.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.* see also Flavia Zorzi Giustiniani, (note 26 above), 348.

<sup>37</sup> Global Protection Cluster Working Group, (note 34 above), 9-10.

full and equal protection under the State's national law, which should be compatible with the State's obligations under international law.<sup>38</sup>

Despite all these, the Kampala Convention was adopted by African States. The need for such kind of move by African States might be necessitated by many factors. To begin with, as can be inferred from the otherwise reading of the preamble of the Kampala Convention, it is intended to avert the continuing instability and tension within African States. The convention considers the gravity of the situation of IDPs as a source of continuing instability and tension for African States,<sup>39</sup> which is needed to be cured. That is, improving the situation of IDPs is essential to bring the much sought stability within the continent. This in turn calls for provision of durable solutions to the situation of IDPs, which can be achieved by establishing an appropriate legal framework for their protection and assistance.<sup>40</sup>

In addition, the second preambular paragraph of the Kampala Convention states that, 'the Heads of State and Government of the Member States of the African Union (AU) are conscious of the suffering and specific vulnerability of IDPs. Meaning, though the existing legal frameworks provide protection for IDPs as human beings like any other individuals, the general legal frameworks are not sufficient enough to address the specific needs of IDPs and thus necessitated its adoption.<sup>41</sup>

Besides, Africa is believed to be the home to around half of the global total of IDPs.<sup>42</sup> Providing a legal response to the situations of these persons is thus another factor.

Moreover, lack of binding legal and institutional framework specifically applicable for the prevention of internal displacement and the protection of and assistance to IDPs both at the regional and international level is another factor.<sup>43</sup>

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<sup>38</sup> Ibid, 20.

<sup>39</sup> Kampala Convention, (note 6 above), Preamble, Para. 1.

<sup>40</sup> Ibid, Preamble, Para. 4 and Article 2 (a).

<sup>41</sup> Ibid, Preamble, Para. 14.

<sup>42</sup> NGO Commentary endorsed by Amnesty International and et al, *The African Union Convention for the Prevention of Internal Displacement and the Protection of and Assistance to IDPs in Africa* < <https://www.fidh.org/IMG/pdf/IDPconventionAUngoComments.pdf> > accessed 12 February 2017.

<sup>43</sup> Kampala Convention, (note 6 above), Preamble, Para. 13.

Furthermore, it is obvious that an effective response to displacement require legally binding instrument. That is typically because, first, current laws pose unintended obstacles to the ability of IDPs to realize their rights or, second, they do not, on their own, provide a sufficient basis for addressing the needs of IDPs. Likewise, though international law provides relevant rules applicable to IDPs, some gaps and grey areas exist where the law does not provide sufficient protection. For instance, there is a normative gap regarding the right not to be arbitrarily displaced, the right to personal identification documents, and the right not to be forced to return or resettle.

#### **4. The Protection of IDPs in the Kampala Convention**

The determination of the level of protection of rights depends on the modalities of their incorporation as well as the usage of the terms of their formulation.<sup>44</sup> Thus, in this section the writer discusses the level of protection of rights of IDPs under the Kampala Convention by analyzing the modes of incorporation as well as the precision of their formulation.

Unlike most other regional<sup>45</sup> and international<sup>46</sup> human rights instruments that contain provisions specifically addressing rights, the Kampala Convention has incorporated the rights of IDPs in the form of an imposition of duties on the part of states. This can be understood from the close reading of most of the provisions of the convention, which contain the phrase “the states parties shall...” instead of “every IDPs has...” or other similar phrases indicating the right. The duties of the state consist of both action<sup>47</sup> and omission<sup>48</sup>; that is, some of the duties require the state to act

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<sup>44</sup> Osita. C. Eze, *Human Rights in Africa* (1984) 27.

<sup>45</sup> See for instance, African Charter on Human and Peoples’ Rights, 1981; African Charter on the Rights and Welfare of the Child, 1990; Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003.

<sup>46</sup> See for instance, International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Elimination of all forms of Discrimination against Women, 1979; Convention on the Rights of the Child, 1989.

<sup>47</sup> For instance, Article 3 (2a) of the Kampala Convention provides that, “States Parties shall incorporate their obligations under this convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, IDPs in conformity with their obligations under international law.” This indicates the duty of the state to take legislative measures for incorporating its obligations under the convention to its domestic law, which can be done only by the action of the state rather than by abstention.

<sup>48</sup> The duty to refrain from arbitrary displacement of populations under Article 3(1a) of the Kampala Convention can be cited as an example for the inaction duty of the state under the convention.

for the realization of the right, others require the state to refrain from interfering in the enjoyment of the rights.

The writer believes that this form of incorporation would weaken the level of protection due to the fact that it would create a doubt as to the exact rights of an individual, who is internally displaced, and it is difficult to prove violations of his/her rights; because the person may be required to prove the failure of the state in addition to violation of the right. That is, proving the failure of the state is more difficult as compared to that of the violations of one's right due to the existence of possibilities of violation without the existence of failure on the part of the state or without having sufficient evidence showing the failure of the state. For instance, assume that the state has provided, to the extent possible, the necessary funds for protection and assistance of IDPs as required in Article 3 (2d) of the Convention. But the funds provided may not be sufficient enough to provide the necessary protection and assistance to the IDPs. In such cases there is a possibility of violation without the existence of failure on the part of the state.

However, one may argue that this form of incorporation is preferable since the rights that could accrue to the IDPs are already incorporated in different human rights instruments including the African Charter. Hence, it is better to indicate the specific obligation of the state to the IDPs rather than what they already have due to the absence of those obligations in other human rights instruments.

Although this argument could not be disregarded as a result of its indication of the relevance of other human rights instruments to internally displaced persons, it fails to see the gaps existed in those instruments and the purposes of having a separate convention for vulnerable groups of the society. First, one of the purposes of having a separate convention is for addressing the legal gaps prevalent in the existing human rights instruments by including the specific problems of the group. Second, there also seems inconsistency in the protection of the vulnerable group of the society. This can be evidenced by the adoption of separate instrument to deal with the rights of the child and women in addition to the provisions of the African charter and other instruments applicable to them. Thus, the failure to incorporate the rights of IDPs in the form of rights rather than state obligations should not be attributed to the existence of other applicable instruments.

Another factor that would weaken the level of protection is the lack of precision of the formulations of the rights incorporated in the Kampala Convention. As we can see from the provisions of the convention, there are some rights that are formulated in general and in some cases vague terms. For instance, Article 9 (2a) of the convention contains a phrase "... with adequate humanitarian assistance." The usage of such kind of terms would create difficulty in the determination of the normative contents of the rights specially when there is no any indicative list as to what it consists of.<sup>49</sup> In order to indicate the problems of using vague terms, Philip Alston says that:

*It is generally agreed that the major shortcoming of the existing international arrangements for the promotion of respect for economic rights is the vagueness of the rights as formulated in the covenant and the resulting lack in the clarity as to their normative implications.*<sup>50</sup>

Although the usage of vague and general terms has some drawbacks, their importance should not also be underestimated. It would permit for the inclusion of implied rights by way of interpretation<sup>51</sup>, which would minimize the fear that the usage of vague terms could diminish the level of protection provided under the Kampala Convention. However, it requires two related things. First, it needs an active judiciary or any other responsible body capable of using the vaguely formulated terms to drive implied rights through interpretation. Second, it needs a system that allows the judiciary or any other responsible body to use the vaguely formulated terms to drive implied rights by interpretation.

Moreover, the existence of provisions that acknowledge the applicability of other relevant humanitarian and human rights instruments as well as the function of the African Commission on Human and Peoples' Rights have some help in extending the protections to the internally

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<sup>49</sup> However, the existence of some indicative lists like "...which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services," under Article 9(2a) of the Kampala Convention may have some help in determining the normative contents of the right to get an adequate humanitarian existence.

<sup>50</sup> Philip Alston, 'No Right to Complain about Being Poor: The Need for an Optional Protocol to the Economic Rights Covenant' in Asbjorn Eide and Jan Helsen (ed), *The Future of Human Rights Protection in a Changing World: Fifth Years Since the Four Freedoms Address-Essays in Honour of Torkel Opsahl* (1991) 86.

<sup>51</sup> For instance, the usage of phrases like '... and any other necessary social services' under Article 9(2a) of the Kampala Convention allows for the inclusion of other implied rights that falls under the realm of this phrase. On this point see Sisay Alemayehu, 'The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia' (2008) 22 *Journal of Ethiopian Law* 2, 139-140.

displaced persons. This acknowledgement will help the convention to rectify its problems by filling the gaps existed on both its substantive content of the rights and the enforcement mechanism, which are discussed in section 5 and 6 of this article. Furthermore, the Kampala Convention is the first legally binding international instrument of its kind.<sup>52</sup> Although the United Nations Guiding Principles on Internal Displacement has tried to distil the rules and principles of national and international law most relevant to the protection of IDPs from, during and after displacement into a single framework, it lacks the legal binding nature. Thus, incorporating rights that specifically address the issues of IDPs in a legally binding instrument is a big step in the protection of their interests and in effect strength the level of protection.

Therefore, the discussion so far made indicates the existence of strong level of protection if the convention is put into practice effectively with the exception of some draw backs attributable to the form of incorporation of the rights.

## **5. Kampala's Convention Relation with other Instruments**

Despite the existence of the 1951 United Nations Convention on the Status of Refugee as modified by the 1967 protocol, the OAU has adopted the 1969 convention to govern the special aspects of refugee problems in Africa.<sup>53</sup> Similarly, although the African Charter allows all individuals to enjoy the rights and freedoms recognized therein, IDPs are most of the time at risk of multiple threats to their security and welfare, life and are vulnerable to the denial of other civil and political as well as economic, social and cultural rights. Consequently, the African Union has adopted a convention that specifically addresses the human rights of IDPs.<sup>54</sup> This section thus discusses the relationship of this convention with the African Charter and the OAU Refugee Convention.

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<sup>52</sup> NGO Commentary endorsed by Amnesty International and et al, (note 42 above); see also African Union Addressing the Challenge of Forced Displacement in Africa: African Union Special Summit of Heads of States and Government on Refugees, Returnees and IDPs in Africa (Hosted by the Government of the Republic of Uganda, Kampala, April 2009) < <http://www.africa-union.org/root/ua/conferences/2008/nov/PA/05-11nov/Joint%20Briefing%20Note%20on%20AU%20summit.doc> > accessed 11 January 2010.

<sup>53</sup> The UN Convention of 1951 on Refugee Status as modified by the 1967 protocol fails to address the specific problems of African refugees due to the restricted grounds available for claiming refugee status and the existence of 'well-founded fear of persecution' as prerequisite in the determination of refugee status. For further analysis see Osita C. Eze (Note 43 above) 166-167.

<sup>54</sup> Kampala Convention, (note 6 above).

### ***5.1. The Kampala Convention and the African Charter***

As human beings, IDPs are automatically entitled to the protection provided for under human rights law including the African Charter, which recognizes and protects the attributes of human dignity inherent to all individuals. States, in turn, are obliged to ensure respect for those recognized human rights essential to ensure the survival, wellbeing and dignity of all persons subject to their territorial jurisdiction.<sup>55</sup> This obligation is also reiterated under the African charter, which states:

*The member states of the OAU parties to the present charter shall recognize the rights, duties and freedoms enshrined in this charter and shall undertake to adopt legislative or other measures to give effect to them.*<sup>56</sup>

This provision indicates not only the duty of the states to recognize the rights, duties and freedoms enshrined in the charter, but also the duties of the state to take measures for the full realization of them. Thus, the African Charter has provided the legal framework for the protection of every one including the IDPs.

However, it is difficult to consider that the African Charter has provided an effective legal protection to IDPs due to the existence of gaps arising from the lack of an explicit provision addressing their specific needs like that of the absence of the principle of non-refoulement, and the inefficient coverage of the causes, conditions of displacement and search for solutions.<sup>57</sup> As a result, the need to have a comprehensive human rights law that addresses the gaps existed in the African Charter is thus apparent. Therefore, the adoption of the Kampala Convention is not to exclude the application of the African Charter for IDPs rather to complement the latter.<sup>58</sup>

The complementary relationship of the Kampala Convention and the African Charter can also be drawn from the reading of the provisions and preambles of the former convention. For instance, Article 20 (1) of the Kampala Convention provides that, no provision in this convention shall be

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<sup>55</sup> Erin D. Mooney (note 1 above) 161.

<sup>56</sup> African Charter on Human and Peoples' Rights (note 45 above) Article 1.

<sup>57</sup> Erin D. Mooney (note 1 above) 162.

<sup>58</sup> See Campaigning for the Rights of IDPs in Africa < <http://www.idpaction.org/index.php/news/5-whyauconvention> > accessed 11 January 2010.



interpreted as affecting or undermining the right of IDPs to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights. This article indicates that the framework of the convention is not replacing the protections granted to the IDPs in the African Charter rather providing better protection to them. Thus, it has maintained the good protections accorded to them in the African Charter. This assertion is also supported by the provision of sub article 2 of the same article since it affirms that the application of the convention should not be prejudicial to the human rights of IDPs under the African Charter. In addition, the second sentence of Article 20 (2) also indicates that the objective of the convention is providing better protection to IDPs rather than restricting, modifying or impeding existing protections accorded to them under the African Charter. The maintenance of the role of the commission to examine state reports and receive individual complaints even from the IDPs under Article 14 (4) and Article 20 (3) of the Kampala Convention respectively also shows the existence of a complementary relationship between Kampala Convention and the African Charter. Moreover, the recalling of the application of the African Charter for the IDPs under the preamble of the Kampala Convention also can help to show the existence of such relationship between the two. Last but not least, the incorporation of similar provisions dealing with the same issues in both instruments can show their complementarities.

Generally, from the foregoing discussion, the preamble of the convention which recalls the application of the African charter on issues of IDPs, and the deep scrutiny of its provisions, the purpose of the convention is not to create a new legal instrument that disregards the application of other international and regional human rights instruments relevant for IDPs; but to improve the legal protection provided to them in the existing human rights instruments by establishing a specific framework for the protection and assistance of them as vulnerable section of the society by virtue of their status as internally displaced. Therefore, the relationship of the Kampala Convention with the African Charter is complementary.

## ***5.2. The Kampala Convention and the 1969 OAU Refugee Convention***

The failure of the 1951 United Nations Convention on the Status of Refugee as modified by the 1967 protocol to address the specific problems of African refugees forced Africans themselves to adopt their own convention addressing those problems. Consequently, the OAU Convention Governing Specific Aspects of Refugee Problems in Africa was adopted in 1969.<sup>59</sup>

According to Article 1 of this Convention, the scope of application of the Convention is limited to those persons that fulfill the requirements necessary for the determination of refugee status. Pursuant to the provision of this article, there are four cumulative prerequisites that a person should fulfill to obtain refugee protection under the Convention. These consist of: first, there must be a well-founded fear of being persecuted; second, the persecution must be for reasons of race, religion, nationality, membership of a particular social group or political opinion; third, the person must be outside the country of his nationality; and lastly he/she must be unable or unwilling, owing to such fear, to avail him/herself of the protection of the country of origin.<sup>60</sup> However, sub-article 2 of this article extends the protection by avoiding the requirement of the existence of well-founded fear of persecution and by extending the grounds which would force persons to flee outside his country of origin.

As we can see from the provision of Article 1(1) and (2) of the OAU Refugee Convention, refugees are not under the control of their governments since they are outside the territory of their home country. This prerequisite for the determination of refugee status and the limited application of the scope of the Convention only to refugees excludes IDPs from obtaining protection under the OAU Refugee Convention. Hence, it can be said that this Convention does not apply to IDPs.

From this, one may conclude that the 1969 OAU Refugee Convention and the 2009 Kampala Convention have no any relationship. However, the deeper examination of the problems both the refugees and IDPs have confronted and the principles existed in both conventions like the principle of humane treatment indicates some commonalities between the two. That is, as

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<sup>59</sup> Osta C. Eze (note 44 above); see also OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, Article 1.

<sup>60</sup> OAU Convention Governing the Specific Aspects of Refugee problems in Africa (note 58 above) Article 1(1).

problems encountered by IDPs are very similar to those of refugees and since there are some principles relevant for the protection of internally displaced persons, the OAU Refugee Convention can serve as a point of comparison and might also inspire standard setting for IDPs.<sup>61</sup>

In addition, like that of the African Charter, Kampala Convention has maintained the application of the OAU Refugee Convention wherever it is relevant for the protection of the IDPs. This can be understood from the close reading of the preamble of the Kampala Convention, which recalls the importance of the OAU Refugee Convention, and Article 20 (1) of the Kampala Convention. As enshrined in the latter article, the application of the convention does not affect or undermine the right of IDPs to seek protection, as a refugee, within the purview of the OAU Refugee Convention. This would have the connotation that IDPs have the right to claim refugee status that would contradict the provision of the OAU Refugee Convention since the latter protects only persons outside the country of origin.

However, according to the rule of interpretation, a treaty should be interpreted in good faith according to its context, purpose and objectives.<sup>62</sup> And the purpose and object of Article 20 (1) of the Kampala Convention is providing better protection to the rights of IDPs. Hence, the provision should not be considered as contradictory to the provision of the OAU Refugee Convention; because the provisions of the latter may be applied by analogy for the protection of IDPs.

Therefore, though it is difficult to apply the provisions of the OAU Refugee Convention directly to IDPs, it is possible for analogous application of them for the protection of the latter. So, we can say that the relationship of the Kampala Convention with the OAU Refugee Convention is not contradictory rather they complement each other by analogous application of their provisions wherever they are important for the protection of the IDPs as well as refugees.

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<sup>61</sup> Catherine Phuong, *The International Protection of Internally Displaced Persons* (2004) 47.

<sup>62</sup> Vienna Convention on the Law of Treaties (note 8 above), Article 31(1).

## 6. Enforcement Mechanisms of the Kampala Convention

Unlike the African Charter<sup>63</sup> or the African Charter on the Rights and Welfare of the Child,<sup>64</sup> which establishes an independent institution to monitor and supervise the implementation of the respective instruments, the Kampala Convention does not establish an independent body. It does not also explicitly give such power to the African Commission on Human and Peoples' Rights like that of the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa<sup>65</sup>; because it is not a protocol intended to supplement the African Charter substantively or procedurally. However, in order to ensure the observance of the obligations undertaken by states parties to the convention, Article 14 of the Kampala Convention provides for the establishment of a Conference of States Parties. According to this article the Conference of States Parties has the power to monitor and review the implementation of the objectives of the convention.

Although Article 14 provides for the establishment of the Conference of States Parties to monitor and review the implementation of the objectives of the convention, there are some weaknesses which would affect the effectiveness of the supervisory body of the convention. First, unlike Article 30 of the African Charter that advocates for the establishment of the African Commission on Human and Peoples' Rights, Article 14 of the Kampala Convention does not indicate the specific functions of the Conference of States Parties.<sup>66</sup> For instance, as indicated under Article 30 of the African Charter, the African Commission on Human and Peoples' Rights is established under the African Charter to promote human rights and ensure their protection in Africa. These mandates of the commission are further elaborated under Article 45 of the African Charter. According to this article the promotional mandate of the commission consists of awareness-

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<sup>63</sup> African Charter (note 45 above), Article 30 which advocates for the establishment of the African Commission on Human and Peoples' Rights to promote human and peoples' rights and ensure their protection in Africa.

<sup>64</sup> African Charter on the Rights and Welfare of the Child, 1990, Article 32 provides for the establishment of the African Committee of Experts on the Rights and Welfare of the Child for the promotion and protection of the rights and welfare of the child.

<sup>65</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Article 26 empowers the African Commission on Human and Peoples' Rights to monitor the implementation of the protocol.

<sup>66</sup> See the African Union IDPs Convention: a Unique Opportunity to Strengthen the Protection of the IDPs in African, endorsed by Advocates International, Campaign for Innocent Victims in Conflict (USA), IDP Action (UK), Institute for Human Rights and Development in Africa (The Gambia), International Federation of Human Right, Maryknoll Office for Global Concerns (USA), PACT (USA), Refugees International, Resolve Uganda, and Zimbabwe Exiles Forum, (16 October 2009) < <http://www.refugeesinternational.org/press-room/press-release/African-union-idps-convention> > accessed 11 January 2010.

raising programs such as conferences, seminars and symposia, and standard setting involving the formulation of principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislations. The protective mandate of the commission, on the other hand, includes considering cases and communications.<sup>67</sup> But, there is no similar provision in the Kampala Convention. Thus, it would create controversy as to the actual mandate of this body. Second, Article 14 (3) says that, 'the Conference of States Parties shall be convened regularly...' It fails to clarify what 'regularly' mean. Third, the designation of political body as a treaty monitoring body will also affect the implementation of the convention; because, it will compromise the independence and impartiality of the members of the monitoring body, which is essential to secure full observance of the rights of IDPs guaranteed in the convention.

The AU holds its first meeting of the Conference of States Parties to the Kampala Convention in Harare, Zimbabwe, on 5<sup>th</sup> April 2017. The main objective of this meeting was to formally constitute the Conference of State Parties, as a mechanism for fostering cooperation and solidarity among States Parties in the implementation of the Convention.<sup>68</sup> At this meeting the ministerial conference of State Parties adopted the first action plan (the Harare Plan of action) for the implementation of the Kampala Convention. This meeting was driven by the need to address root causes of forced displacement to progressively eliminate the phenomenon of forced displacement on the continent altogether. Further, it focused on the humanitarian situation in Africa and introduced the AU Regulatory Framework on IDPs. It also provided the platform to deliberate how to implement the Kampala Convention and adopted recommendations on IDPs in Africa. The meeting also elected the first bureau for the Conference of states parties.

In addition to the aforementioned weaknesses, the enforcement mechanism of the convention is not clear. That is, what mechanisms should the Conference of States Parties use to monitor and review the implementation of the objective of the convention is not answered clearly. Generally speaking, there are two major types of enforcement mechanisms used in various human rights instruments. These are complaint procedure, which may be individual complaint or inter-state

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<sup>67</sup> Chidi Anselm Odinkalu, 'Analysis of Paralysis or paralysis by analysis? Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Right' (2001) 23 Human Rights Quarterly, 352.

<sup>68</sup> ICGLR's Levy Mwanawasa Regional Centre (LMRC), 2018, < <http://www.icglr-lmrc.org/index.php/news/91-au-holds-first-conference-of-states-parties-to-the-kampala-convention> > accessed 4 August 2018.

complete and state reporting procedure.<sup>69</sup> There are also some human rights instruments that adopted inquiry procedure as additional enforcement mechanism.<sup>70</sup> There is no clear provision that shows which types of enforcement mechanisms are devised under the Kampala Convention for the monitoring and reviewing of the implementation of the convention by the Conference of States Parties.

However, the deeper scrutiny of the provisions of Article 14 (4) and Article 20 (3) of the Kampala Convention shows that the state reporting procedure and the individual complaint procedure are preferred for the supervision of the implementation of the convention though the Conference of States Parties is not the body empowered to function on such procedures; because the two provisions indicate not the empowerment of the Conference of States Parties rather the implied empowerment of the African Commission on Human and Peoples' Rights to receive state reports and individual complaints, which will be discussed in the following few paragraphs.

At the first glance since the Kampala Convention is not a protocol to the African Charter, it seems that the African Commission on Human and Peoples' Rights has no role in the supervision of the implementation of this convention. However, the close reading of the provision of Article 14 (4) and Article 20 (3) indicates otherwise.

According to Article 14 (4) of the Kampala Convention the states parties are required to indicate the legislative and other measures that have been taken to give effect to this convention when they present their reports under Article 62 of the African Charter. Although this article does not require the states parties to present separate report regarding the measures taken for the implementation of the Kampala Convention, it obliged the states parties to include the measures taken for the implementation of the convention in their reports to the African Charter. Thus, the African Commission on Human and Peoples' Rights is empowered to examine the compliance of

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<sup>69</sup> Scott Davidson, *Human Rights* (1993) 166-172; Soren C. Prebensen, 'Interstate Complaints under Treaty Provisions: The Experience under the European Convention on Human Rights' in Gudmundur Alfredsson, Jonas Grimheden, Bertram G. Ramcharen, and Alfred De Zayas, *International Human Rights Monitoring Mechanisms- Essays in Honour of Jakob Th.Moller* (Vol.7, 2001) 533; Malcolm Evans and Rachel Murray, 'The State Reporting Mechanism of the African Charter' in Malcolm Evans and Rachel Murray (ed), *The African Charter on Human and Peoples' Rights: the System in Practice 1986-2006* (2<sup>nd</sup> ed, 2008) 49.

<sup>70</sup> For instance, the International Covenant on Economic, Social and Cultural Rights by its optional protocol recognize inquiry procedure as an enforcement mechanism. See The optional protocol to ICESCR, 2008, Article 11.

the state to its obligations under the Kampala Convention while reviewing the reports of the state parties to the African Charter.

As far as the individual complaint procedure is concerned, Article 20 (3) of the Kampala Convention provides that “the right of IDPs to lodge a complaint with the African commission... shall in no way be affected by this convention.” This provision does not explicitly empower the African Commission on Human and Peoples’ Rights to receive individual complaint. Nevertheless, the close examination of this provision tells us the implied empowerment of the African Commission on Human and Peoples’ Rights to receive complaints from internally displaced persons. This argument can also be supplemented by the provisions of Article 20 (1 and 2) of the same convention since these provisions exclude the convention from modifying or negatively affecting the rights of IDPs in other human rights instruments. Moreover, the main purpose of the Kampala Convention as expressed in the preamble is better protection of the IDPs in Africa, among others. Ousting the jurisdiction of the African Commission on Human and Peoples’ Rights would thus have the effect of defeating the objective and purpose of the convention.

All the aforementioned justifications imply the upholding of the rights of IDPs to lodge complaint with the African Commission on Human and Peoples’ Rights. But, the question that remains to be answered here is that whether the IDPs can base their complaint on the provisions of the Kampala Convention or not, in the circumstances where there is no indication to this effect under Article 20 or any other provisions of this convention. This can be answered by looking at the jurisprudence of the African Commission on Human and Peoples’ Rights in the case between the African Institute for Human Rights and Development vs. Guinea.<sup>71</sup> In this case the commission uses the OAU Refugee Convention to determine the merits of the case and finds the violation of Article 4 of this convention in addition to the violation of the provisions of the African Charter.<sup>72</sup> Thus, there is no reason for keeping out the IDPs from basing their complaint on the provisions of the Kampala Convention in so far as it is important for the better protection of their interest.

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<sup>71</sup> *African Institute for Human Rights and Development Vs. Guinea* (African Commission on Human and Peoples’ Rights, 2004) in Christof Heyns and Magnus Killander (ed), *Compendium of Key Human Rights Documents of the African Union* (3<sup>rd</sup> ed, 2007) 173-174.

<sup>72</sup> *Ibid*, Para. 68 and the finding of the commission.

Therefore, for the writer, though there is weakness in the selection of the monitoring bodies of the convention, the acknowledgement of the role of the African Commission on Human and Peoples' Rights is crucial in facilitating the implementation of the convention. However, having the resource constraints and the caseloads that may exist in the commission<sup>73</sup>, it may be difficult for the commission to provide effective supervision in the implementation of the convention. Thus, the failure of the convention to set up separate independent monitoring body could have negative effect in the implementation of the convention.

## **7. Implication of the Kampala Convention to Signatory States**

Regional and international human rights instruments can only be enforced and be effective where they are ratified and states parties recognize the competence of the respective enforcement body.<sup>74</sup> However, this does not mean that the convention has no implication to the state before it has ratified the same. This can be derived from the reading of the provision of the Vienna Convention on the Law of Treaty.<sup>75</sup> According to Article 18 (a) of this treaty 'a state is obliged to refrain from acts which would defeat the object and purpose of a treaty it has signed...' That is, even if the entry into force of the convention is pending, the state has an obligation to act in good faith for respecting the object and purpose of the treaty. Thus, the signing of a treaty has some implication to the signatory state. The Kampala Convention was signed by 40 member states of the AU<sup>76</sup>, and as of June 15, 2017, ratified by 27 countries<sup>77</sup>.

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<sup>73</sup> The Commission is composed of eleven Members elected by AU Heads of State and Government, who serve in their individual capacities on a part-time basis. It is not a permanent body. As can be seen from rule 25-27 of the Commissions Rule of procedure, the Commission holds two ordinary sessions per year and may meet, if need be, in extraordinary sessions. As of May 9, 2018 there are 232 (Two Hundred Thirty-Two) Communications pending before the Commission. On this latter point see African Commission on Human & Peoples' Rights, 44th Activity Report of the African Commission on Human and Peoples' Rights, p. 6 <[http://www.achpr.org/files/activity-reports/44/actrep44\\_2018\\_eng.pdf](http://www.achpr.org/files/activity-reports/44/actrep44_2018_eng.pdf)> accessed on 13 November 2018.

<sup>74</sup> Rakeb Messele, Enforcement of Human Rights in Ethiopia (2002) 13.

<sup>75</sup> Vienna Convention (note 8 above), Article 18 (a).

<sup>76</sup> The 40 countries that signed the convention are Angola, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Côte d'Ivoire, Comoros, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea-Bissau, Guinea, Lesotho, Liberia, Madagascar, Mali, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, Somalia, South Sudan, Sao Tome & Principe, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

<sup>77</sup> The 27 countries that ratified the convention are Angola, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Congo, Djibouti, Gabon, Gambia, Guinea-Bissau, Lesotho, Liberia, Mali, Malawi, Mauritania, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, Swaziland, Togo, Uganda,



## 8. Concluding Remarks

The Kampala Convention has provided protection to IDPs by specifically addressing their needs. Although the protection provided by this convention has some weaknesses due to the modes of incorporation of the rights and the precision of their formulation as well as the enforcement mechanism chosen, it is a good move as it is the first of its kind at the regional level. Besides, though the usage of general terms has some negative effect in finding the normative framework, it has also positive effect in providing better protection for IDPs, because the usage of general terms would provide a wide margin for deriving implied rights. Moreover, the existence of provisions acknowledging the application of other human rights instruments and the African Commission on Human and Peoples' Rights is also important in strengthening the level of protection.

Although IDPs are automatically entitled to benefit from the application of the other legally binding human rights instruments, the existence of gaps in them and the failure of them to address the specific needs of IDPs forced the African Union to adopt separate convention, which resulted in the adoption of the Kampala Convention. However, this convention was not intended to affect the application of other human rights treaties including the African Charter and the OAU Refugee Convention. Thus, we can say that the relationship of the Kampala Convention with the African Charter and OAU Refugee Convention is that of complimentary. This can be derived from the reading of its provisions and the purpose of having a separate convention. However, the limited scope of the application of the OAU Refugee Convention may invite one to question the relevancy of it for IDPs as it is only applicable to persons who flee outside the border of their home country. But, although it is difficult to apply the convention to IDPs directly, there is possibility for analogous application of the relevant principles. Therefore, they have also complementary relationship like that of the African Charter though their application is different.

The Kampala Convention has provided for the establishment of a Conference of States Parties to monitor and review the implementation of the objectives of the convention. It does not specify

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Zambia and Zimbabwe. As of June 15, 2017, 11 countries (Algeria, Botswana, Cape Verde, Egypt, Kenya, Libya, Morocco, Mauritius, South Africa, Seychelles and Sudan) have neither signed nor ratified the convention.

the actual mandate of this monitoring body as well as the enforcement mechanisms. This would have the effect of flagging the implementation of the convention. However, the empowerment of the African Commission on Human and Peoples' Rights to receive state reports and individual complaints would have some help in minimizing the above problem, though the effectiveness of the Commission to supervise the convention having the limited resource and the caseloads is questionable. As far as the power of the African Commission on Human and Peoples' Rights to receive individual complaint based on the provisions of the Kampala Convention is concerned, its jurisprudence in the case between the African Institute for Human Rights and Development vs. Guinea (2004) shows the existence of such possibility.

Lastly, the convention has some implications to signatory but none ratifying states like Ethiopia. According to Article 18(a) of the Vienna Convention on the Law of Treaty, signatory states are required to refrain from acting contrary to the object and purpose of the treaty that they have signed.

Finally, based on the above discussions, the writer provides the following recommendations. Firstly, the incorporation of the rights in the form of state party obligations has a negative consequence in the protection of the IDPs since it imposes a high burden of proof as compared to the burden required for proving the violation of individual rights. Thus, it is better if the convention is amended to incorporate rights in the form of individually self-executing rights. Secondly, the making of political parties as a treaty monitoring body without identifying its mandate weakens the enforcement mechanisms of the convention. Although the acknowledgement of the role of the African Commission on Human and Peoples' Rights in the supervision of the convention is crucial, the lack of resource and the existence of caseload in the commission coupled with the limited time that the commission has to function will affect the effectiveness of the commission. In addition, it would also create inconsistency in the protection of the different vulnerable segment of the society since there is an independent committee of experts for the protection of the right and welfare of the child. Therefore, it is better if the African Union reconsiders it and establishes an independent committee for the monitoring of the convention by adopting an establishing protocol. Thirdly, the signatory states to the convention have taken good steps in the protection of the internally displaced persons. However, the mere fact of signing the convention without ratifying it would make their consent expressed through

their signatures meaningless. So, the states parties which have not ratified the Convention should ratify it without undue delay. They should also take positive measures in order to refrain from defeating the object and purpose of the convention until they ratify it. Fourthly, the different human rights treaty monitoring bodies including the African Commission on Human and Peoples' Rights should try to clarify the normative contents of the rights incorporated in the convention for bringing its implementation practical.