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## Recent developments: the elaboration of a legal framework for the protection of internally displaced persons in Africa

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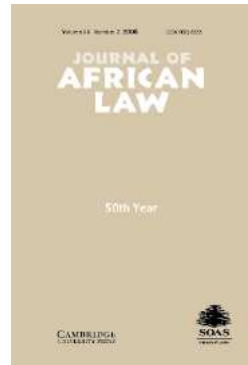
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## RECENT DEVELOPMENTS. THE ELABORATION OF A LEGAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN AFRICA

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## **RECENT DEVELOPMENTS**

# **THE ELABORATION OF A LEGAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN AFRICA**

CHALOKA BEYANI\*

### INTRODUCTION

The aim of this article is to draw on contemporary developments relating to the elaboration of a binding legal framework for the treatment of internally displaced persons in Africa. By definition, internally displaced persons 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>1</sup>

International initiatives towards improving the welfare of internally displaced persons appeared to stagnate in the late 1990s, after the appointment of the Special Representative of the Secretary General on Internally Displaced Persons,<sup>2</sup> the formulation of the Guiding Principles on Internal Displacement in 1998,<sup>3</sup> and the consequent establishment of the Inter-Agency Standing Committee on Internally Displaced Persons.<sup>4</sup>

However, major legal developments concerning the protection of internally displaced persons are currently unfolding in the African Union (AU) as well as in the Great Lakes region of East, Central, and Southern Africa. These developments coincide with the recent opinions issued by the International Court of Justice and decisions rendered by regional human rights bodies in Africa, Europe and the Inter-Americas, which have shed further light on state responsibility for internally displaced persons. State practice is also crystallizing, with states such as Angola, Columbia, Georgia, Peru and Uganda articulating national legal and policy frameworks for the protection and assistance of internally displaced persons.

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<sup>1</sup> United Nations, Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 February, 1998, para. 2.

<sup>2</sup> Res. 1992/73, approved by the United Nations Economic and Social Council on 20 July, 1992.

<sup>3</sup> Above n. 1.

<sup>4</sup> Member organizations of the of the Inter-Agency Committee are: Food and Agricultural Organization; Office for the Coordination of Humanitarian Affairs; United Nations Children’s Fund; United Nations Development Programme; Office of the High Commissioner for Refugees; World Food Programme; and World Health Organization. For further details, see United Nations, “Protecting internally displaced persons: inter-agency standing committee policy paper”, New York, 1999, available at: <<http://www.reliefweb.int/idp/docs/references/iascpolicyprotectionpaper.pdf>>.

Specialized agencies of the United Nations have also risen to the challenge of providing protection and assistance to internally displaced persons generally. In July 2004, the Office for the Coordination of Humanitarian Affairs (OCHA)<sup>5</sup> established an Inter-Agency Internal Displacement Division in the framework of the Inter-Agency Standing Committee (IASC) and, as a consequence of the reform of the United Nations in 2005, institutional protection for internally displaced persons has been streamlined by cluster, with the Office of the High Commissioner for Refugees (UNHCR) being assigned responsibility for the physical protection of internally displaced persons in camps or settlements.<sup>6</sup>

In the light of these developments, the focal point of this article rests on standard setting measures initiated by the AU under whose auspices a Convention on Internally Displaced Persons is being drafted in the aftermath of a Draft Protocol on Protection and Assistance to Internally Displaced Persons in the Great Lakes Region, 2006. Both of these have spurred the Economic Association of West African States (ECOWAS) to consider a legal framework for protecting internally displaced persons as well, although this latter effort may be overtaken by the AU's decision to elaborate a detailed and comprehensive continental instrument that will effectively meet the concerns of ECOWAS.

To this end, the article first highlights the historical commitment of the AU to addressing the problem of displacement in Africa. It then indicates the *lacunae* in the legal arrangements for the protection and assistance of internally displaced persons in Africa. Finally, the article presents the parameters of a draft legal framework for the protection and assistance of internally displaced persons in Africa, which was endorsed in successive stages by an expert group of the AU, the cooperating partners of the AU, and the ambassadors and ministers of the AU responsible for refugees and internally displaced persons.

#### SCOPE OF THE PROBLEM

Judicious observers have pointed out that the nature of forced displacement on the African continent and the institutional responses of the continental organization, i.e., the AU, to this phenomenon have changed over time, from a historical focus on refugees to encompassing internally displaced persons.<sup>7</sup> One of the luminary signals of this change was the outcome of a high level joint symposium of the then Organization of African Unity (OAU, now the African Union or AU) and the United Nations High Commissioner for Refugees, which was held in 1994 to commemorate the 25th anniversary of the Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969.<sup>8</sup>

The symposium tritely observed that the situation of internally displaced persons typified the crisis of displacement in Africa.<sup>9</sup> Of the world's estimated

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<sup>5</sup> Available at: <<http://ochaonline.un.org/webpage.asp?Site=idp>>.

<sup>6</sup> UNHCR, "Discussion paper on UNHCR's role in IASC humanitarian reform initiatives and in the strengthening of the inter-agency collaborative response to internally displaced persons situations", 20 September, 2005, available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=43d0dbe32>>.

<sup>7</sup> P. Tigere and R. Amukhobu, "The African Union's institutional framework for responding to forced displacement in Africa", (2006) *African Union Policy Review* 53.

<sup>8</sup> Organization of African Unity and the United Nations High Commissioner for Refugees, "Addis Ababa Symposium on Refugees and Forced Population Displacements in Africa 8-10 September 1994", (1995) *Special Issue of International Refugee Law*.

<sup>9</sup> The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, 8-10 September, 1994.

population of 26 million internally displaced persons, approximately 17 million, depending on who is counting, are in Africa,<sup>10</sup> and specifically in the Sudan, the Democratic Republic of the Congo, Ivory Coast, Uganda, Burundi and Angola.

However, far more important than the issue of the numbers and location of internally displaced persons are such factors as the sheer gravity of their situation, their precarious existence and vulnerability, and the dimensions of human rights and humanitarian law required to provide for their physical and material protection, including humanitarian assistance. These factors call for the formulation of a comprehensive legal framework designed to codify the standards of protection, provide for the means and institutions of protection and assistance, and to serve as a legal basis for coordinating various regional and international actors and agencies involved in providing protection and assistance to internally displaced persons in Africa. What is the measure of the political will to achieve this?

#### AU COMMITMENT

The African Union is historically committed to resolving the general problem of displacement in Africa. This commitment was originally rooted in the OAU's struggle against colonialism and was initially more apparent towards refugees. Thus, the Convention Governing the Specific Aspects of Refugee Problems in Africa was concluded in 1969, and a Bureau for Refugees was established as part of the institutional structure of the OAU.

It would appear that the somewhat static provisions of the Charter of the OAU, particularly those on non-interference in the affairs of other member states, prevented more robust approaches to the protection and assistance of internally displaced persons. Nonetheless, the commitment of the OAU towards internally displaced persons was evident in its decisions on the situation of refugees, returnees and displaced persons in general.

These decisions have been upheld by the African Union, culminating in the decision of its Executive Council in July 2004 to request the Commission of the African Union "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".<sup>11</sup> Institutionally, the AU has created the Division of Humanitarian Affairs, Refugees and Displaced Persons. Its profile goes beyond that of the previous Bureau for Refugees under the then OAU, and its mandate is central to working out an appropriate legal framework for the protection and assistance of internally displaced persons. The "Division is the line operational unit of the AU Commission and acts as a Secretariat to all the organs on forced displacement matters".<sup>12</sup>

In principle, the commitment of the African Union to address the plight of internally displaced persons is inherent in its founding legal instruments. One of the purposes of its predecessor, the OAU, was to coordinate and intensify the cooperation and efforts of African States to achieve a better life for the people of

<sup>10</sup> See UNHCR, *The State of the World's Refugees*, Geneva, 2006, ch. 7 "Internally displaced persons", available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.html?tbl=PUBL&id=4444d3cc11>>.

<sup>11</sup> African Union, Decision on the Situation of Refugees, Returnees and Displaced Persons, Executive Council Decision EX/CL/Dec.127.

<sup>12</sup> Tigere and Amukhobu, above n. 7, 53.

Africa.<sup>13</sup> However, it is the principles of the Constitutive Act, 2000, of the African Union,<sup>14</sup> which establish obligations that are more conducive to the protection of internally displaced persons. Amongst these are the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments (article 3(h)), and the promotion of cooperation in all fields of human activity to raise the living standards of African peoples (article 3(k)).

It is arguable that the objectives of the Union establish a stronger legal foundation that can be tilted towards protecting and assisting internally displaced persons. These include: the right of the Union to intervene in a member state's affairs pursuant to a decision reached by the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity (article 4(h)); the right of a member state to request intervention from the Union in order to restore peace and security (article 4(j)); and respect for the sanctity of human life and the rejection of impunity, amongst other things (article 4(o)).

Leaving aside the founding instruments of the OAU and the AU, the commitment of the African Union towards the protection of internally displaced persons should be situated in the broader context of the international obligations concerning international cooperation. The reason for doing so is that, within its objectives, the Constitutive Act of the African Union encourages international cooperation, taking due account of the Charter of the United Nations, 1945, and the Universal Declaration of Human Rights, 1948. The Charter of the United Nations enshrines the principle of international cooperation in solving problems of a humanitarian nature, and the protection of internally displaced persons is a prime example of such a problem. Efforts undertaken by the United Nations to tackle the problem of the protection of internally displaced persons also reflect the commitment of member states of the African Union in their capacity as member states of the United Nations. These efforts are epitomized by the work of the Special Representative of the Secretary General on Internally Displaced Persons, formerly Dr. Francis Deng, and currently Professor Walter Kalin. A key recommendation of the joint AU and UNHCR symposium in 1994 was to give strong support to the efforts of the Special Representative on Internally Displaced Persons, and initiatives taken in other national, regional and international *fora*, to promote appropriate legal, institutional and operational mechanisms for the better protection and assistance of internally displaced persons.

#### LACUNAE IN PROTECTION AND HUMANITARIAN ASSISTANCE

While the framework of the Constitutive Act of the African Union is conducive to the protection of internally displaced persons, the Union does not have a specific legal instrument for protecting and assisting internally displaced persons. This major *lacunae* poses an imbalance in the African Union's commitment to resolve the problems of internally displaced persons, considering that at least a legal framework exists for the protection of refugees in Africa. The Addis Ababa document highlighted this gap whilst emphasizing the responsibilities of African states to protect internally displaced persons as their own nationals.

Attempts at filling the *lacunae* of a legal instrument for internally displaced persons in Africa must draw on wider aspects of the efforts made so far. The

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<sup>13</sup> Art. II(b), Charter of the Organization of African Unity, 1963.

<sup>14</sup> Constitutive Act of the African Union, 11 July, 2000, CAB/LEG 23.15.

initiative for these efforts arose first from the decision of the United Nations to review its capacity for delivering assistance to refugees and internally displaced persons in the early 1990s. A notable precursor was the decision of the Economic and Social Council of the United Nations on 27 July, 1990,<sup>15</sup> in which the Secretary General of the United Nations was requested to make a wide ranging review of the capacity and experience of the United Nations in coordinating the delivery of assistance to refugees and internally displaced persons. The Secretary General was also asked to recommend ways of maximizing co-operation and coordination among the various organs of the United Nations system in response to the problems of refugees, displaced persons and returnees.<sup>16</sup>

As part of this review, the Commission for Human Rights invited the Secretary General to consider the protection of human rights in the context of internally displaced persons and to submit to the Commission an analytical report on this issue.<sup>17</sup> Consequently, at its 48th session in 1992, the Human Rights Commission included an item on its agenda for submissions by United Nations agencies, NGOs and others, with respect to the protection of internally displaced persons. The Commission duly received the Analytical Report of the Secretary-General on Internally Displaced Persons entitled *Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights*.<sup>18</sup> This had the effect of placing the protection of internally displaced persons within the framework of human rights.

The momentum generated by the effort of the Secretary General led to the appointment of Dr. Francis Deng as a Special Representative of the Secretary General on Internally Displaced Persons in 1992.<sup>19</sup> The Special Representative was requested to examine existing international standards of human rights, humanitarian and refugee law, and their application to the protection of internally displaced persons. Dr. Deng's work identified existing "gaps" in the law with respect to internally displaced persons,<sup>20</sup> and compiled the relevant international instruments applicable to the protection of internally displaced persons.<sup>21</sup> This work coincided with the first ever monograph written on the subject of the protection of internally displaced persons in international law.<sup>22</sup> The monograph provided the basis for the definition of internally displaced persons and examined the substantive application of human rights and humanitarian law to the situation of internally displaced persons. It showed that the gaps were artificial and that they resulted from a lack of effort to synthesize the interplay between refugee law, human rights and international humanitarian law.

In addition, the former Special Rapporteur on Population Transfers, Dr. Al-Khasawneh, now Judge of the International Court of Justice, issued his report on Human Rights and Population Transfer (1994 and 1997),<sup>23</sup> which laid out the

<sup>15</sup> Res. 1990/78, 27 July, 1990.

<sup>16</sup> *Report of the Secretary General on the Review of the Capacity, Experience and Coordination Arrangements in the United Nations system for Humanitarian Assistance*, UN doc. A/46/568/1991.

<sup>17</sup> Res. 1991/25, 5 March, 1991. This Resolution required the Secretary General to base his report on the information given by governments, specialized agencies and related organs of the United Nations, regional and inter-governmental organizations, the International Committee of the Red Cross, and non-governmental organizations, and to submit his report to the Commission's 48th session.

<sup>18</sup> UN doc. E/CN.4/1992/23.

<sup>19</sup> Above n. 2.

<sup>20</sup> UN doc. E/CN.4/1994/44.

<sup>21</sup> UN doc. E/CN.4/1995/50; E/CN.4/1995/50/Add.3.

<sup>22</sup> C. Beyani, *Internally Displaced Persons in International Law*, Oxford, 1994. In the light of current events, this is being developed into a book on 'State responsibility for internally displaced persons'.

<sup>23</sup> Al-Khasawneh, *Human Rights and Population Transfer: Final Report of the Special Rapporteur*, E/CN.4/Sib.2/1997/23.

relationship between human rights standards and international humanitarian law with respect to the prohibition on population transfers, a phenomenon that overlaps with internally displaced persons in the context of armed conflict and ethnic cleansing.

A significant outcome of Dr. Deng's work was the formulation of the Guiding Principles on Internal Displacement in 1998. These addressed the gaps identified in Dr. Deng's earlier report by combining as a whole the relevant standards of international refugee law, international human rights law, and international humanitarian law. Member states of the United Nations approved the use of these principles in the Outcome Report of the United Nations, 2005.

Today, the Guiding Principles stand out as the most authentic basis for providing protection and assistance to internally displaced persons. The greatest achievement underscored by the Guiding Principles is the internationalization of the internal situation of displaced persons by bringing together the broad principles of international human rights and international humanitarian law applicable especially to persons displaced within states. United Nations member states recognized the Guiding Principles as "an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons".<sup>24</sup>

Despite this high powered exhortation, the Guiding Principles do not by themselves establish binding obligations. For this reason, the approach taken by the member states of the International Conference on the Great Lakes<sup>25</sup> with respect to the protection and assistance of internally displaced persons was to devise a legal framework for the adoption and implementation of the Guiding Principles.<sup>26</sup> The Great Lakes Protocol represents a specific development that begins to address the *lacunae* of a legal framework aimed at protecting and assisting internally displaced persons. It establishes the scope of the responsibility of states for the protection of internally displaced persons; outlines the applicable principles of protection and assistance; and lays out obligations for the member states of the International Conference on the Great Lakes to adopt and implement the Guiding Principles on Internal Displacement. However, it awaits adoption by the heads of states of the Great Lakes Region later in 2006. Its scope of application is limited to the Great Lakes region, and its substantive content also reflects the realities of that region since it was designed to provide a framework for adopting and implementing the Guiding Principles.

Both the Great Lakes Protocol and the adoption of a decision by the African Union to elaborate a legal instrument on internally displaced persons show that the political will and climate exist to forge ahead with the protection of internally displaced persons in Africa. A number of reasons account for this. States of origin recognize that large numbers of displaced persons within their territories without protection and assistance ferment public disorder and internal instability. The vulnerability of internally displaced persons opens them up to manipulation and possible recruitment, or infiltration, by armed groups fighting against such states. As a result, there is a desire on the part of the states of origin to exercise control over internally displaced persons either for reasons related to their displacement or for the reasons of internal armed conflict. These interests coincide with those

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<sup>24</sup> GA Res./60/1, *2005 World Summit Outcome*, 24 October, 2005, para. 132, available at: <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>>.

<sup>25</sup> The core member states are: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of the Congo, Kenya, Rwanda, The Sudan, Tanzania, Uganda and Zambia.

<sup>26</sup> Draft Protocol on the Protection and Assistance to Internally Displaced Persons, 2006. This Protocol was adopted by the ministers to the conference and now awaits ratification by the head of states later in 2006.



of the states hosting refugees. Neighbouring states that host sizeable numbers of refugees envisage the protection of internally displaced persons as one way of reducing their burden or responsibility in the absence of a regional or international system of burden sharing. There is also a view, which is the dubious opposite of the practice of alternative internal flight, that a system of protecting and assisting internally displaced persons will contribute to the promotion of the “durable solution” of voluntary repatriation or the safe return of refugees from the territories of the host states to the states of origin.

Whatever the propriety of these factors, it seems that a principled pan-African legal framework for the protection and assistance of internally displaced persons must bear on the definition of internally displaced persons as laid out in the Guiding Principles. It should also draw on the strands of law corresponding to the categories of internally displaced persons and on which the Guiding principles are based, taking into account, as stated in the introduction, the recent and relevant jurisprudence of the International Court of Justice, the African Commission, the Inter-American system, and the European Court of Human Rights.

The jurisprudence of the International Court of Justice has laid out the application of human rights and international humanitarian law in situations of armed conflict, occupation and the obligations that arise from occupation,<sup>27</sup> which are of prime importance to the protection of internally displaced persons by states, armed groups and non-state actors. The African Commission has held that displacement is unlawful and that it constitutes a breach of freedom of movement and residence as well as the right to peace and security. Mauritania’s responsibility for failing to prevent the forced eviction of persons by armed groups acting on its territory was upheld by the African Commission.<sup>28</sup>

The Inter-American Court has taken a similar but far more incisive approach, upholding the legal responsibility of Columbia for massacres and acts of displacement caused by paramilitary or armed groups on the basis of Columbia’s failure to act promptly to prevent displacement and create the necessary conditions for displaced persons to return to their homes in safety. It also endorsed the importance of freedom of movement as a standard for providing protection against forced displacement.<sup>29</sup> The European Court of Human Rights has affirmed the protection of displaced persons, as civilians, fleeing Russian military operations in Chechnya, and that the killing of such civilians by Russian armed forces breached its obligation to protect the right to life under the European Convention on Human Rights.<sup>30</sup>

These decisions show that the phenomenon of displacement is spread widely, engaging human rights protection mechanisms in Africa, Europe and Latin America. Above all, the decisions illustrate the variety of contexts in which the need for the protection of internally displaced persons and the accompanying responsibilities for states arise. While decisions by human rights bodies elucidate the law and point to the role of these bodies in protecting persons displaced within states, such protection is always likely to be patchy and cannot effectively respond to the protection and assistance needed by millions of displaced persons.

The case to be made is that riding on the back of such significant decisions by human rights bodies, the legal framework for the protection of internally

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<sup>27</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July, 1996; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July, 2004; *Armed activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December, 2005.

<sup>28</sup> *Malawi Association and Others v. Mauritania*, Communication 54/91.

<sup>29</sup> *Case of Mapiripan Massacre v. Columbia*, Judgment, 15 September, 2005.

<sup>30</sup> *Isayeva v. Russia*, Judgment, 24 February, 2005.

displaced persons in Africa should proceed on the basis of state responsibility and the responsibility of non-state actors during all phases of displacement, including return, reintegration or relocation elsewhere, reinsertion, and reparations for violations of human rights and humanitarian law, including the loss of property. It should establish institutional machinery for coordinating protection and assistance to internally displaced persons in Africa. It should further provide a means for assistance and for monitoring such protection as well as for ensuring compliance by the member states. Careful consideration should be given in this regard to the African legal experts' recommendation that a high level office within the African Union be established for this purpose.

#### OUTLINING AN AU LEGAL FRAMEWORK ON INTERNALLY DISPLACED PERSONS

The outline presented here sets out the proposed structure and content of an African Union Legal Framework on Internally Displaced Persons. The outline is based on the legal premises of state responsibility for the protection and assistance of internally displaced persons. Its content draws on the existing and applicable branches of human rights and international humanitarian law, and synthesizes these whilst seeking to incorporate directly, where relevant, aspects of the Guiding Principles on Internal Displacement.

This approach, and the proposed structure and content of the outline, were discussed, enhanced and endorsed by an African Union expert group on Internally Displaced Persons and the cooperating partners of the African Union in Addis Ababa on 11–13 April, 2006.<sup>31</sup> The ambassadors and ministers of the African Union approved the framework at their meeting in Ouagadougou, held 29 May–2 June, 2006, and recommended that a draft Convention on the Protection and Assistance of Internally Displaced Persons be prepared and presented for consideration and adoption by African heads of states in January 2007. For this and other reasons of confidentiality, details of the full content of the framework are omitted.

The proposed structure and content is laid out in 13 parts. At the outset, a Preamble lays out the legal, political, and philosophical basis on which the proposed Convention is to be based. It also underlies the motive, concern and inspiration of the legal framework underlying the proposed Convention. Part One consists of the essential definitions that will be used throughout the proposed Convention. Use will be made of the widely accepted definitions of internally displaced persons and arbitrary displacement, which are contained in the Guiding Principles on Internal Displacement. However, the definition of internally displaced persons will not be treated as warranting a status; it is a description of displacement according to the affected categories of displaced persons, and some of these correspond to existing aspects of international law that are applicable to internally displaced persons. It will be necessary in this part to clarify the terms used in the definition of internally displaced persons by reference to international humanitarian law, the law of human rights, and where applicable, the Annotations to the Guiding Principles. The stated purpose is to contextualize the definition in the special circumstances of the phenomenon of internal displacement in Africa.

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<sup>31</sup> The author acknowledges the usefulness of the comments and ideas provided by the African Union expert group and the cooperating partners of the African Union.

The objectives of the Convention will appear in Part Two. It is common ground that under the Vienna Convention on the Law of Treaties, 1969,<sup>32</sup> such objectives are significant to the interpretation and application of a treaty, together with the Preamble. Some of the major objectives of the proposed Convention are to: establish a legal framework for protecting and assisting internally displaced persons in Africa; create an appropriate institutional framework to respond to situations of displacement; prevent arbitrary displacement; and eliminate the root causes of displacement as well as searching for durable solutions to the problem of internally displaced persons. At their meeting in Ouagadougou, the ministers resolutely affirmed “zero” tolerance for refugees and internally displaced persons in Africa and called upon member states to achieve this objective.

Part three of the proposed Convention seeks to chart the legal principles on which the Convention will be based. Foremost amongst these are the obligations of states to prevent and prohibit displacement; to suppress or repress acts of displacement by non-state actors within the jurisdiction of states; and to maintain the civilian and humanitarian character of the protection and assistance of internally displaced persons. The prohibition of arbitrary displacement will be covered in Part Four, based on the standards of international humanitarian law and the law of human rights which prohibit displacement in general and also allow exceptions in certain situations in which displacement may take place. There will be particular regard for the prohibition of arbitrary displacement according to the categories of persons displaced internally by: (a) armed conflict; (b) generalized violence; (c) violations, denial, neglect of human rights; (d) development induced displacement and displacement induced by lack of development; (e) natural or man-made disasters or factors; (e) any act, event, factor, or phenomenon of comparable gravity;

In Part Five, the framework of the proposed Convention will provide for responsibility for protection, assistance, and solutions. The basic idea is to delineate the quantum of the responsibilities for providing protection and assistance and for working out solutions to the problem of internally displaced persons. States bear the burden of these responsibilities under international law. However, some of the responsibilities are owed jointly between states and non-state actors. Accordingly, this part will determine the responsibilities of states, other entities, and armed groups towards the protection and assistance of internally displaced persons.

Part Six will make provision for the principles concerning protection during displacement. These derive mainly from the international legal standards which prohibit the displacement of the civilian population during armed conflict as well as the prohibited methods or acts of causing displacement, drawing on a synthesis of the standards of international humanitarian law and human rights, where applicable. It is proposed to link these principles to the framework of the Constitutive Act of the African Union, in particular, the right of the African Union, under the Constitutive Act to intervene in the territory of a member state in order to protect and assist internally displaced persons; and the right of a member state to request the African Union, under the Constitutive Act, to intervene to protect and assist internally displaced persons when such a state is unable to do so.

An important aspect of the proposed Convention concerns protection and assistance in areas of displacement within the states of origin. The arrival and

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<sup>32</sup> Vienna Convention on the Law of Treaties, 23 March, 1969, 1155 UNTS 331.

reception of internally displaced persons in such areas is the most critical and challenging phase of protection and assistance. Emergency preparedness and skills of disaster management are a key function of protection and assistance. At this stage, the obligations to protect and assist internally displaced persons shall necessarily engage the legal responsibilities of states, international organizations or agencies, and other non-state actors. These matters will be dealt with in Part Seven of the proposed Convention.

Part Eight will delve into the aspect of development induced displacement, i.e., situations where displacement within states is induced by the construction of large-scale projects and situations where the displacement of persons is induced by the lack of development. This phenomenon is both endemic and of comparable gravity, often disguised as rural-urban migration, when in fact desperate livelihood and living conditions compel persons to leave their places of residence and move to areas where their existence is precarious and they are vulnerable to forced removals or evictions. The experts felt that the legal framework must address both of these aspects.

Part Nine of the framework will address the legal principles governing humanitarian assistance and the institutional structure for the provision of such assistance under the African Union. These principles include neutrality, impartiality, and the provision of humanitarian assistance to save the lives and health of all in need. The framework adopts the expert group's recommendation to establish a high level office comparable in stature to that of the office of a high commissioner. This office will, amongst other functions, act to mobilize resources; monitor and coordinate protection and assistance to internally displaced persons; create institutional links between the African Union and respective national structures of protection and assistance; and liaise with international organizations and agencies that extend protection and assistance to internally displaced persons.

In Part Ten, the framework seeks to project the promotion of return as a durable solution to the problem of displacement. The return of displaced persons is an important step towards repairing and healing the past; it must therefore be promoted in durable conditions. This calls for protection and assistance during the return, reintegration or relocation, and reinsertion of internally displaced persons. Reinsertion is a state of normal existence and belonging, which follows after reintegration or relocation; it marks the point at which the situation of displacement formally ends. However, the responsibility of the state to protect never formally ends since internally displaced persons are nationals of a state. The quality of protection may change after reinsertion, but protection itself continues as the responsibility of the state of nationality.

Reparations in the form of restitution or compensation and other forms of redress, whether monetary or in kind, are significant to the proposed Convention. Such reparations, public acknowledgements of the wrongs perpetrated upon internally displaced persons, apologies for such wrongs, and guarantees of non-repetition of wrongful behaviour by the perpetrators or architects of displacement go a long way to begin to heal the pain of displacement and help to bring about reconciliation between returning persons and those who caused their flight in the first place. Part 11 will speak to the issue of reparations for internally displaced persons.

Part 12 will embrace monitoring compliance by states of the obligations to be set by the proposed Convention. This requirement is an indispensable way of securing the effective protection and assistance of internally displaced persons by the African Union. Under the framework of the proposed Convention, the key responsibility for this will rest with the high level office to be established under

Part Nine. In this respect, the high level office shall be linked to the existing role of the African Commission on Human and Peoples' Rights, particularly to the oversight work of the Commission's Rapporteur on Refugees and Internally Displaced Persons.

The provisions in Part 13 will provide for matters incidental to the entry into force, and the effect, of the Conventional legal framework on existing obligations in human rights and international humanitarian law. Under this part, the proposed Convention shall: enter into force upon ratification by 15 member states of the African Union; not be subject to any reservations; be concluded without prejudice to the human rights of internally displaced persons as specified in the African Charter on Human and Peoples' Rights or elsewhere, particularly the right to seek and enjoy asylum in accordance with the African Charter on Human and Peoples' Rights and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969; not affect the right of internally displaced persons to lodge complaints before the African Commission on Human and Peoples' Rights or the African Court on Human and Peoples' Rights; not in any way be understood, or interpreted, to undermine the substance or application of international humanitarian law.

#### CONCLUSION

The steps taken by the African Union to conclude and adopt a Convention on the Protection and Assistance of Internally Displaced Persons will lead to a legal landmark in this field of human rights and international humanitarian law. Africa will have scored a first among the regional systems by establishing such a framework. However, the Great Lakes region will justifiably claim this accolade, having concluded a Protocol on the Protection and Assistance to Internally Displaced Persons ahead of the African Union. But, this was largely made possible by the absence of any such instrument at the African or international level. For the realists, the issue goes beyond the matter of accolades and reaches deeply into alleviating the malaise of internally displaced persons in Africa, without seeking to undermine the protection of those who are compelled to flee to other states for safety. Perhaps the developments in Africa will inspire an international resolve to formulate and adopt such an instrument, if not for the world as a whole, then at least for regions such as Asia and Latin America where the problem of the protection of internally displaced persons poses similar challenges.