

## **INTRODUCTORY NOTE TO THE AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS IN AFRICA (KAMPALA CONVENTION)**

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### **Introduction**

Known as the Kampala Convention, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa<sup>1</sup> is the first regional treaty to comprehensively address the issue of internal displacement. Having entered into force with its fifteenth ratification on December 6, 2012, the Convention tackles a major humanitarian, human rights, and development issue for the African continent, as there are more than 9.7 million internally displaced persons (IDPs) in sub-Saharan Africa alone.<sup>2</sup> The treaty builds on the 1998 Guiding Principles on Internal Displacement,<sup>3</sup> integrating international human rights and humanitarian law norms as they relate to internal displacement, and incorporating principles from African regional standards such as the African Charter on Human and Peoples' Rights, and the Great Lakes Protocol.<sup>4</sup> While rooted in these standards, the Convention also reflects recent developments and the evolution of best practice regarding IDP protection. In so doing, the Convention advances the normative standard on internal displacement in a number of important areas, including in terms of the prohibition on arbitrary displacement; the responsibilities of international and regional organizations; internal displacement linked to the effects of climate change; and remedies for those affected by displacement.

### **Background: General Principles Underpinning the Convention**

Several key principles underlie the Convention. First and foremost, the Convention is based on the recognition that states have primary, but not exclusive, responsibility for protecting and assisting those who are internally displaced within their own borders.<sup>5</sup> Under the Kampala Convention, being an IDP is not a legal status per se. Rather, the Convention recognizes that IDPs have independent rights to receive protection and assistance from their state, and/or from other actors as appropriate. Being an IDP has thus been described as a “factual state that triggers certain legal consequences”,<sup>6</sup> legal consequences that rest within and across human rights, international humanitarian and international criminal law. While premised on the notion that states are primarily responsible for those internally displaced within their borders, the agreement recognizes that in some cases, states may be unable to execute these responsibilities. The Convention therefore requires states that are unable to provide adequate protection and assistance to IDPs to cooperate with international organizations, humanitarian agencies and civil society groups to ensure IDPs can access necessary support.<sup>7</sup>

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Supplementing the core concept of state responsibility for protecting and assisting IDPs is the principle of non-discrimination, which has two main manifestations in the Convention. First, the Convention enjoins that IDPs should not be discriminated against vis-à-vis the rest of the civilian population. As human beings (and typically also as citizens of the state in which they are displaced), they are entitled to exercise their civil rights and be protected from human rights abuses just as any other non-displaced national.<sup>8</sup> Second, the Convention stresses that access to protection and assistance should be free from discrimination of any kind, and contemplates the potential vulnerabilities of, inter alia, women, children, elderly people and disabled individuals, who should be afforded special protection and assistance where necessary.<sup>9</sup>

### **Advancing the Normative Framework on Internal Displacement Through the Kampala Convention**

With these principles forming the foundation of the Kampala Convention's approach, the agreement outlines specific obligations incumbent upon states and other actors (including international organizations and humanitarian agencies, the African Union, and non-state armed groups) with respect to internally displaced populations. The Convention takes a holistic view of displacement, encompassing displacement caused by factors including armed conflict, generalized violence, human rights violations and disasters (natural and human-made). Its provisions address the prevention of internal displacement (Articles 4, 10); assistance and protection during displacement (Articles 5-9); and durable solutions to displacement (Article 11). The agreement also addresses displacement due to development projects (Article 10); redress for those affected by displacement (Article 12); documentation (Article 13); and a range of procedural issues (Articles 14-23).

Some of the Convention's most progressive features include provisions strengthening the prohibition on arbitrary displacement in international law.<sup>10</sup> The Convention articulates a right to be protected from arbitrary displacement, an essentially strict liability concept that covers a number of acts ranging from policies of discrimination, violence, unjustified forced evacuations, to any other similarly grave acts not justified by international law.<sup>11</sup> These protections are unprecedented in their breadth and, if ultimately upheld in practice, will provide substantial protection for populations at risk of displacement. While the prohibition on arbitrary displacement is one of the Convention's central concerns, it is positioned in the Convention as a harm against which all individuals should be protected, rather than as a crime. However, the Convention does require states to criminalize those acts of arbitrary displacement that amount to genocide, crimes against humanity or war crimes,<sup>12</sup> and to "[e]nsure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law."<sup>13</sup> In particular, states are obliged to hold members of armed groups criminally responsible for acts violating IDPs' rights under national and international law, including arbitrary displacement.<sup>14</sup> More broadly, states are required to "ensure the accountability" of non-state actors, including multinational corporations and private military or security companies, for causing or being complicit in arbitrary displacement.<sup>15</sup>

The Convention also includes important and progressive provisions on the resolution of displacement and remedies for forced migration. The Convention stresses that IDPs should be able to "make a free and informed choice on whether to return, integrate locally or relocate"<sup>16</sup> and underscores states' responsibility to create conditions such that IDPs can return, relocate or locally

integrate sustainably, safely and with dignity.<sup>17</sup> These provisions reflect the standards laid out in the Guiding Principles.<sup>18</sup> However, in its treatment of durable solutions for and remedies to displacement, the Kampala Convention advances the normative framework in several significant ways. In light of the centrality of land disputes to conflict and displacement in Africa, the Kampala Convention calls on states to create appropriate mechanisms to resolve IDPs' property disputes.<sup>19</sup> Following the *Endorois* case,<sup>20</sup> the Convention indicates that states must take all appropriate measures to restore the lands of groups with a "special dependency and attachment" to land from which they were displaced.<sup>21</sup> This is an important development not only for the African region; indeed, this provision helps to crystalize a norm relevant to displaced indigenous groups in many different contexts.

Beyond its articles on property disputes and land claims, the Kampala Convention's expansive provisions on remedies for displacement are a significant progression from the treatment of this issue in the Guiding Principles, which focus on redress for the particular harm of the loss of property and possessions, reflecting a preference for restitution over compensation or other forms of redress.<sup>22</sup> In contrast, the Convention's requirement for states to "provide persons affected by displacement with effective remedies"<sup>23</sup> for "damage incurred as a result of displacement, in accordance with international standards"<sup>24</sup> provides opportunities for non-property related harms such as mental or psychological distress to be addressed, and opens the door to consider the claims not only of IDPs, but also others affected by forced migration crises, such as host and return community members. Although the Convention lacks mechanisms to ensure the enforcement of these provisions, they bolster the growing push for accountability for displacement and towards displaced persons as survivors of a range of human rights violations.

## **Conclusion: Meeting Implementation Challenges**

The Kampala Convention's formalization and advancement of norms on internal displacement is an important step for IDP protection and assistance in Africa and worldwide. The Kampala Convention provides an important precedent for future measures in other regions confronted with internal displacement challenges. More immediate, however, is the challenge to encourage more African states to sign and ratify the Kampala Convention, and to ensure effective implementation of the agreement by signatory states. The Convention calls on the African Union to share information on internal displacement across the continent with the African Commission on Human and Peoples' Rights,<sup>25</sup> and to cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers.<sup>26</sup> While these actors and institutions play essential roles in the region's human rights machinery, there is no provision under the Convention for individuals to bring claims for a state's lack of compliance. Rather, the emphasis is on ensuring implementation of the agreement by integrating it into domestic laws.

Under the treaty, States Parties are required to enact or amend legislation in line with their obligations under the Convention, and to develop appropriate strategies and policies on internal displacement at the local and national levels.<sup>27</sup> At the same time, to the extent possible, States Parties are to designate funds and appoint authorities or bodies responsible for ensuring protection and assistance for IDPs in accordance with the treaty. If it is to be effective, this approach to promoting the implementation of the Convention will require concerted, consistent attention to and support for the ongoing challenge of strengthening governance systems across the continent.

## ENDNOTES

<sup>1</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009 (entered into force Dec. 6, 2012), <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displaced-persons-africa> [hereinafter Kampala Convention or Convention].

<sup>2</sup> Internal Displacement Monitoring Centre, Internal Displacement Global Overview 2011 (2012), available at <http://www.internal-displacement.org/publications/global-overview-2011>. These figures underestimate the regional total numbers displaced, as IDMC only records those displaced by conflict, generalized violence, and human rights violations. Displacement due to factors such as natural disasters and development projects are not included in this estimate.

<sup>3</sup> See Guiding Principles on Internal Displacement, E.S.C. Res. 1998/53, Annex, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998), available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e> [hereinafter Guiding Principles].

<sup>4</sup> See International Conference on the Great Lakes Region, Protocol to the Pact on Security, Stability and Development in the Great Lakes Region on the Protection and Assistance to Internally Displaced Persons (Nov. 30, 2006), available at [http://www.brookings.edu/fp/projects/idp/GreatLakes\\_IDPprotocol.pdf](http://www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf).

<sup>5</sup> Kampala Convention, *supra* note 1, at Preamble, art. 5(1). Article 1(k) of the Kampala Convention defines IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

<sup>6</sup> Brookings Institution, Protecting Internally Displaced Persons: A Manual for Law and Policy Makers 13 (2008).

<sup>7</sup> Kampala Convention, *supra* note 1, at arts. 5(6), (7).

<sup>8</sup> *Id.* at arts. 5(1), 9(1)(a).

<sup>9</sup> *Id.* at arts. 9(2)(c), 9(2)(d).

<sup>10</sup> The Fourth Geneva Convention bans “individual or mass forcible transfers.” See Geneva Convention (IV) Relative to the Protection of Civilians in Time of War art. 49, Aug. 12, 1949, 973 U.N.T.S. 75; see also Protocol Additional to the Geneva Conventions of 12 August 1949, and see also Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 17, June 8, 1977, 1125 U.N.T.S. 609. The Rome Statute recognizes forcible population transfers as an act that may be a crime against humanity. Rome Statute of the International Criminal Court art. 7(1)(d), July 17, 1998, 2187 U.N.T.S. 90, available at <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

<sup>11</sup> Kampala Convention, *supra* note 1, at art. 4(4).

<sup>12</sup> *Id.* at art. 4(6).

<sup>13</sup> *Id.* at art. 3(1)(g).

<sup>14</sup> *Id.* at art. 7(4).

<sup>15</sup> *Id.* at art. 3.1(h).

<sup>16</sup> *Id.* at art. 11(2).

<sup>17</sup> *Id.* at art. 11(1).

<sup>18</sup> Guiding Principles, *supra* note 3, at principle 28.

<sup>19</sup> Kampala Convention, *supra* note 1, at art. 11(4).

<sup>20</sup> Ctr. for Minority Rights Dev. (Kenya) and Minority Rights Grp. Int’l on behalf of Endorois Welfare Council v. Kenya, Case No. 276/2003 (African Commission on Human and Peoples’ Rights Feb. 4, 2010), <http://www.unhcr.org/refworld/docid/4b8275a12.htm>.

<sup>21</sup> Guiding Principles, *supra* note 3, at principle 29.

<sup>22</sup> Kampala Convention, *supra* note 1, at art. 12(1).

<sup>23</sup> *Id.* at art. 12(2).

<sup>24</sup> *Id.* at art. 8(3)(e).

<sup>25</sup> *Id.* at art. 8(3)(f).

<sup>26</sup> *Id.* at arts. 3(2)(a), 3(2)(c).

<sup>27</sup> *Id.* at arts. 3(2)(b), 3(2)(d).

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DISPLACED PERSONS IN AFRICA (KAMPALA CONVENTION)\*

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**AFRICAN UNION CONVENTION FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY  
DISPLACED PERSONS IN AFRICA (KAMPALA CONVENTION)**

**Preamble**

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

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

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

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

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

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

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

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

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

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

**RECOGNISING** the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal

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Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

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

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

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

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

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

**HAVE AGREED AS FOLLOWS:**

### **Article 1 Definitions**

For the purpose of the present Convention:

- a. "African Charter" means the African Charter on Human and Peoples' Rights;
- b. "African Commission" means the African Commission on Human and Peoples' Rights;
- c. "African Court of Justice and Human Rights" means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);
- e. "Armed Groups" means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;
- f. "AU" means the African Union;
- g. "AU Commission" means the Secretariat of the African Union, which is the depository of the regional instruments;
- h. "Child" means every human being below the age of 18 years;
- i. "Constitutive Act" means the Constitutive Act of the African Union;
- j. "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- k. "Internally Displaced Persons" means persons or groups of persons who have been forced or

obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border;

- l. “Internal displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;
- m. “Member State” means a Member State of the African Union;
- n. “Non-state actors” means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;
- o. “OAU” means the Organization of African Unity;
- p. “Women” mean persons of the female gender, including girls;
- q. “Sphere standards” mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- r. “States Parties” means African States which have ratified or acceded to this Convention.

## **Article 2 Objectives**

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;
- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

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

1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:
  - a. Refrain from, prohibit and prevent arbitrary displacement of populations;
  - b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
  - c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
  - d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
  - e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons,;

- f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
  - g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
  - h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
  - i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
  - j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;
  - k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;
2. States Parties shall:
- a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
  - b. Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists;
  - c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
  - d. Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;
  - e. Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

#### **Article 4**

##### **Obligations of States Parties relating to Protection from Internal Displacement**

1. States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;
2. States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;
3. States Parties may seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors;
4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:
  - a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;

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

#### **Article 5**

#### **Obligations of States Parties relating to Protection and Assistance**

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

9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.
10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.
11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.
12. Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states.

#### **Article 6**

##### **Obligations Relating to International Organizations and Humanitarian Agencies**

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.
2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.
3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

#### **Article 7**

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

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.
2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.
4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
5. Members of armed groups shall be prohibited from:
  - a. Carrying out arbitrary displacement;
  - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
  - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
  - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
  - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
  - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
  - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons

- h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such violations.

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

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:
  - a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
  - b. Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
  - c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.
  - d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
  - e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and,
  - f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

**Article 9**  
**Obligations of States Parties Relating to Protection and Assistance During Internal Displacement**

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
  - a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
  - b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
  - c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
  - d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
  - e. Starvation.

2. States Parties shall:
  - a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
  - b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
  - c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
  - d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
  - e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
  - f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
  - g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
  - h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
  - i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
  - j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
  - k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
  - l. Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
  - m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

#### **Article 10** **Displacement induced by Projects**

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

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

#### **Article 11**

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

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

#### **Article 12**

##### **Compensation**

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

#### **Article 13**

##### **Registration and Personal Documentation**

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.
2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.
3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.
4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

#### **Article 14**

##### **Monitoring Compliance**

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

2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.
3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.
4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

### **Final Provisions**

#### **Article 15**

##### **Application**

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.
2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

#### **Article 16**

##### **Signature, ratification and membership**

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

#### **Article 17**

##### **Entry into force**

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.
2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

#### **Article 18**

##### **Amendment and Revision**

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

#### **Article 19**

##### **Denunciation**

1. A State Party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.

2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

**Article 20**  
**Saving Clause**

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 U.N Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.

2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.

3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.

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

**Article 21**  
**Reservations**

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

**Article 22**  
**Settlement of Disputes**

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

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

**Article 23**  
**Depositary**

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

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

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

**ADOPTED BY THE SPECIAL SUMMIT OF THE UNION**  
**HELD IN KAMPALA, UGANDA**  
**22<sup>ND</sup> OCTOBER 2009**