



**AFRICAN UNION MODEL LAW
FOR THE IMPLEMENTATION OF THE AFRICAN UNION
CONVENTION FOR THE PROTECTION OF AND ASSISTANCE TO
INTERNALLY DISPLACED PERSONS IN AFRICA**

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Printed by the African Union Commission on International Law in collaboration with the United Nations High Commissioner for Refugees, as part of the events to commemorate the 10th anniversary of the African Union Convention for the Protection and Assistance of Internally Displaced Persons In Africa and the 20th anniversary of the 1998 UN Guiding Principles on Internal Displacement.

The AU Model Law on Internal Displacement was adopted by the African Union Summit in January 2018.

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April 2018

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PROTECTION OF AND ASSISTANCE TO INTERNALLY DISPLACED PERSONS
IN AFRICA**

**CHAPTER I
General Provisions**

**Article 1
Short Title**

This legislation shall be cited as “Protection of and Assistance to Internally Displaced Persons Act”¹ and shall serve as a guideline in the drafting process of national legislation to implement the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa at the national level.

**Article 2
Definitions**

For the purpose of this legislation:

- (1) “Arbitrary displacement” means arbitrary displacement as referred to in Article 54 of this Act.
- (2) “Armed Groups” means dissident armed forces or other organized armed groups that are distinct from the armed forces of the State.
- (3) “Disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, displacement of population or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.
- (4) “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, and mental and physical integrity.
- (5) “Internal Displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised State borders.
- (6) “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, situation of generalised violence, violation of human rights or natural or human-made disasters and who have not crossed an internationally recognised State border.

¹ States may choose different titles for their legislations depending on their practices.

- (7) “Non-state actors” means private-actors who are not public officials of the State, including other armed groups not referred to in article 2(2) above, and whose acts cannot be officially attributed to the State.

Article 3 Objectives and Scope of the legislation

1. This legislation shall have the following objectives:
 - a) Provide for the prohibition of arbitrary displacement in the State.
 - b) Establish legal and institutional framework for the prevention or mitigation, and elimination of root causes of internal displacement, and protecting and assisting as well as the provision for durable solutions for internally displaced persons in the country.
 - c) Respect and ensure the respect of the human rights of internally displaced persons as provided for under international instruments to which the state is a party, the Constitution and other relevant subsidiary laws.
 - d) Give effect to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, and other relevant international and regional treaties to which the State is a party.
 - e) Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations.
 - f) Provide a basis for the development of policies, strategies and implementation plans on internal displacement.
 - g) Establish a national coordination mechanism for the implementation of this legislation and define its power and responsibilities.
2. The Provisions of this legislation shall apply to all situations of internal displacement irrespective of their causes.

Article 4 Principles

1. This legislation shall be interpreted and implemented in accordance with the following principles:
 - (1) Protection against arbitrary internal displacement.

- (2) Non- discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, place of displacement or on any other similar criteria.
- (3) Respect to the rights of IDPs provided under regional and international human rights treaties to which the State is a party. ²
- (4) The primary duty and responsibility of the State in preventing internal displacement, protecting and assisting internally displaced persons and creating conditions conducive to durable solutions.
- (5) Specific protection and assistance activities which take into account the specific circumstances and needs of marginalized/vulnerable groups such women, communities with special attachment to land, single-headed households, elderly, and children, including those unaccompanied or separated from their families, the elderly, persons living with disabilities and persons belonging to national, or ethnic, religious and minority groups.
- (6) The responsibility of every person, including public authorities, involved in the protection and assistance of internally displaced persons to act in accordance with this legislation and to give due regard to the needs of displacement affected populations and host communities.

2. The implementation of provisions of this legislation shall not be construed to grant a distinct legal status to internally displaced persons.

CHAPTER II **Prevention of Arbitrary Displacement**

Article 5 **Prevention of Arbitrary Displacement**

The competent authorities, armed groups, non-state actors and individual persons shall respect and ensure respect of their obligations under international law, including human rights and international humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to arbitrary displacement of persons. Competent authorities shall in particular:

- (1) Take measures to address factors and prevent and avoid conditions that have the potential to result in the arbitrary displacement of persons.
- (2) Review of relevant national laws and policies as well as practices to ensure that they incorporate basic international law protections as set out including in the Kampala Convention.

² Member States may maintain any national statutory provisions, which provide more favorable treatment to IDPs than this Model Law.

- (3) Undertake public awareness, sensitization, training and education on the causes, impact and consequences of internal displacement, means of prevention, early warning, disaster risk reduction and relocation.

CHAPTER III
Internal Displacement Caused by Disasters

Article 6
Disaster Induced Displacements

- (1) Competent authorities bear the primary duty to protect people and give particular attention to the special needs of the people most vulnerable to and most affected by climate change, environmental hazards, and other disasters, including IDPs, hosting communities and those at the risk of displacement.
- (2) Competent authorities shall take measures to prevent and mitigate displacement induced by effects of climate change, environmental hazards, and other disasters. These measures shall comply with human rights standards and be guided by the fundamental principles of humanity, human dignity, human rights and international cooperation, and shall be guided by consent, empowerment, participation and partnership and to reflect age, gender and diversity aspects.
- (3) Competent authorities should take specific measures to integrate internal displacement in their contingency planning and adaptation programs.
- (4) Climate change, environmental hazards, and other disasters related processes at the national and local levels should involve a meaningful and informed participation of communities likely to be affected by internal displacement.
- (5) Mitigation measures involving relocation of populations or communities shall be undertaken with full participation and consultation with affected communities and should comply with human rights standards and norms.

Article 7
Protection of internally displaced persons

Competent authorities shall:

- (1) Take measures to ensure that persons displaced by disasters have unimpeded and non-discriminatory access to basic services necessary to meet their needs.
- (2) Protect those displaced by disaster against the dangers of potential secondary hazards and other disaster risks.

- (3) Take effective measures to ensure the security of populations affected by disasters.
- (4) Establish camps only as a last resort and ensure that settlements are established as long as the possibility of self-sustainability or fast rehabilitation assistance does not exist.
- (5) Be responsible for maintaining law and order in the camps and their vicinity, evacuation sites and sites where the displaced settle spontaneously.
- (6) Take measures to grant priority access to such groups as women, communities with special attachment to land, single-headed households, the elderly, persons with disabilities, and unaccompanied and separated children.
- (7) Take measure to ensure that those displaced by disasters are given access to psychosocial assistance and social services, when necessary. Special attention should be given to the health needs of groups with specific needs, including provision of appropriate clothing and hygienic supplies, access to female healthcare providers and such services as reproductive health care.
- (8) Ensure that forced evacuations of individuals in cases of natural or human made disasters or other causes are not undertaken unless such measures are justified by considerations of the safety and health of those affected.
- (9) Ensure that internally displaced persons are provided with effective remedies as provided for under Chapter IX of this legislation.
- (10) Endeavor to establish a system to trace the fate of persons missing and cooperate with international organizations working in this area. Next of kin shall be informed of the result of ongoing investigation.
- (11) Endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next-of-kin or dispose of them respectfully.

Article 8

Protection of internally displaced persons during evacuation

In situations where the imminent natural disaster created a serious risk for the life, physical integrity or health of affected individuals and communities, the competent authorities shall, consistent with human rights standards and norms:

- (1) Take all appropriate measures necessary to protect those in danger, including in particular vulnerable groups.
- (2) Ensure that evacuation measures should be carried out in a manner that fully respects the right to life, dignity, liberty and security of all

those affected, in particular members of vulnerable groups. They shall in particular:

- a) Safeguard homes and common assets left behind by evacuated persons;
 - b) Register evacuated persons and monitor their evacuation;
 - c) Ensure that evacuated persons enjoy full access to protection and assistance provided to internally displaced persons
 - d) Guarantee that after the emergency phase, evacuated persons should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, to remain in the area to which they have been displaced, or to resettle to another part of the country.
- (3) The right of choice to return may not be subjected to any restrictions except those which are provided by law, and are necessary to protect national security, the safety and security of affected populations, public order (*ordre public*), safety, public health or morals or the rights and freedoms of others.

Article 9

Needs Assessment and Initiation of International Assistance

- (1) Immediately after the onset of or prior to a major disaster, the National Mechanism established under Chapter XII of this legislation shall, upon consultation with relevant government authorities at all levels and based on an initial estimate, shall assess the needs of internally displaced person and make a determination whether local capacities are sufficient to effectively respond to the needs of internally displaced persons and affected communities. In the event of determination that domestic response capacities are not likely to be sufficient, the National Mechanism shall, without any further delay, advice the highest executive organ to request an international assistance.
- (2) A determination that domestic capacities are likely to be sufficient and international assistance is therefore not necessary shall be regularly reviewed based on information on the needs and magnitude of internally displaced persons and the affected population.

Article 10

Termination of International Assistance

- (1) The decision to terminate international assistance including international relief efforts shall be made on the basis of effective assessment of the needs of the internally displaced persons as well as the affected population based on a broad-based and effective consultation with internally displaced persons and international organisations providing such assistance.

- (2) The termination date shall be announced three months prior to the date when the termination will be effective.
- (3) All disaster response actors shall undertake measures to minimise the negative impacts on the affected population including internally displaced persons from such termination.

Article 11
Safeguards and Relocation Procedures During Disasters

- (1) Measures to relocate the affected populations shall not involve actions more than what is proportionate and necessary.
- (2) Relocation measures shall fully take into account and be carried out in a manner that fully respects the right to life, dignity, liberty, and security of internally displaced persons and shall be based on an effective consultation and participation of these persons.
- (3) The involvement of law enforcement bodies and the military shall comply with applicable human rights standards.
- (4) All communities affected by a natural disaster shall be entitled to easily accessible information concerning:
 - a) the nature and level of the disaster they are facing;
 - b) the possible risk mitigation measures that can be taken;
 - c) early warning information; and
 - d) Information on on-going humanitarian assistance, recovery efforts and their respective entitlements, if any.
- (5) Measures should be taken to safeguard homes and assets left behind by affected populations.

CHAPTER IV
Internal Displacement Caused by Human Rights violations, Armed conflicts
and generalized violence

Article 12
Obligations of the Government and Non-state actors

- (1) The competent authorities, armed groups and any other person, irrespective of their legal status, shall respect and ensure compliance with their obligations under international humanitarian law and human rights law to prevent conditions that might lead to internal displacement of persons.
- (2) Competent authorities shall take all measures to safeguard areas where internally displaced persons are located, and protect such locations against

infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons.

- (3) All parties shall refrain from attacking camps, settlements, or any other areas where internally displaced persons might be located.
- (4) All parties shall respect the right of internally displaced persons to voluntarily return in safety and dignity to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

Article 13 **Protection of Internally Displaced Persons**

- (1) All parties to armed conflicts shall not forcefully displace civilian populations unless the measure is intended to ensure the security of the civilians involved or the imperative military reasons so demand.
- (2) Internally displaced persons shall be protected from:
 - a) Genocide, murder, summary or arbitrary executions, and enforced disappearances;
 - b) Direct or indiscriminate attack or other acts of violence;
 - c) Starvation as method of war;
 - d) the use of civilians as a shield for military objectives;
 - e) Rape, mutilation, torture, cruel, inhuman, or degrading treatment, or punishment and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution, sale and trafficking in persons, illegal organ transfer and any other form of indecent assault;
 - f) Direct participation and recruitment of children in armed conflicts;
 - g) Slavery or any other contemporary forms of slavery, including sale into forced marriage, sexual exploitation, forced labour, child exploitation;
 - h) Acts of terror;
 - i) Internment or confinement into a camp;
 - j) Discriminatory forced recruitment into the military or any forms of forced recruitment in the armed groups.
- (3) In case of internal displacement, all possible measures shall be taken in order to ensure that persons are received under satisfactory conditions of shelter, hygiene, health, safety, nutrition, and that members of the family are not separated and they receive appropriate psychosocial support.

- (4) The property and possession of internally displaced persons shall be protected against:
 - a) Pillage;
 - b) Direct or indiscriminate attacks or other forms of violence;
 - c) Being used to shield military operation or objectives;
 - d) Reprisal;
 - e) Being destroyed or appropriated as a form of collective punishment, and destruction, and arbitrary and illegal appropriation or use.
- (5) Internally displaced persons should not be relocated without being given adequate information or meaningful options.
- (6) Parties to the conflict shall respect the freedom of individuals to movement including the right to freely move in and out of camps or any other forms of shelter.
- (7) Parties to the conflict shall ensure the protection of family unity in accordance with this Legislation.
- (8) Parties to the conflict shall not recruit children or allow children to take part in hostilities.

Article 14 Penalties

- (1) Any person who has caused the arbitrary displacement of individuals and groups in violation of provisions under this Chapter shall be punished in accordance with Chapter XIII of this legislation.
- (2) Order issued by the military, the police or any other law enforcement section of the government shall not be used to justify such actions.

CHAPTER V Displacement Induced by Projects

Article 15 Principles and Obligations

- (1) Competent authorities and non-state actors shall give priority to exploring strategies that minimize internal displacement.
- (2) Competent authorities, as much as possible, shall prevent displacement caused by projects carried out by public or private actors. Public authorities and non-state actors including companies involved in projects shall endeavour to prevent displacement.

- (3) Competent authorities shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects.
- (4) Competent authorities and non-state actors including companies involved in projects and with the participation of the affected communities shall carry out socio-economic and environmental impact assessment of a proposed project prior to undertaking such a project.
- (5) The Government shall ensure the rights of internally displaced persons to receive protection their right to adequate housing and without discrimination.
- (6) Internally displaced persons have the right to be resettled, including the right to alternative provision of land or housing of equal or comparable quality.
- (7) Public authorities and non-state actors including companies shall refrain from evicting or displacing individuals and communities from their land and property.

Article 16

Environnemental and Socio-economic Impact Assessment

- (1) Competent authorities shall institute comprehensive and holistic environmental and socio-economic impact assessments as a requirement prior to the initiation of any project that could result in internal displacement.
- (2) The impact assessment should also include exploration of alternatives and strategies for minimizing harm.
- (3) Impact assessments must take into account the differential impacts of forced evictions on women, children, and the elderly, and marginalized or vulnerable persons. All such assessments should be based on the collection of disaggregated data.

Article 17

Relocation

In situations where displacement from projects occurs, the following procedures and guarantees shall be applicable:

- (1) The measure shall be taken by competent authorities fully empowered by law.
- (2) Individuals and groups who will be affected by the measure shall have full access to information on the reasons and procedure for the displacement, and where applicable, also information on compensation and relocation.
- (3) Priority should be given to efforts aimed at securing free and informed consent or the cooperation of those to be displaced while reserving legitimate enforcement action as measures last recourse.

- (4) Legal protection and opportunity for those opposing the relocation measure to challenge the decision and ask for review before a body constituted for this purpose or before ordinary courts/tribunals.
- (5) Law enforcement measures, where required, shall be carried out by competent authorities and shall be carried out in full compliance with applicable human rights standards.
- (6) Identified relocation sites shall fulfil the criteria for adequate housing according to applicable human rights standards.
- (7) Relocation measures should safeguard the rights of women, children, persons with disabilities and other groups and individuals requiring particular protection, including their right to property and access to basic services and resources.
- (8) Relevant entities shall provide all necessary amenities, services and economic opportunities at the proposed site.
- (9) The relocation process should be carried out with full participation of affected persons, groups and communities. Special efforts should be undertaken to involve women, children, persons with disabilities, people with special attachment to, and dependency on land due to their particular culture and spiritual values, as well as others working on their behalf, have the right to be involved in the planning and implementation of development projects and shall be provided with adequate and timely information.
- (10) The competent authorities shall give due consideration to all alternative plans proposed by the affected persons, groups and communities.

Article 18
Protection during Project Related Displacement

- (1) Displacement or relocation resulting from projects shall not be carried out in a manner that violates the dignity and the rights of those affected.
- (2) Competent authorities shall ensure the protection of vulnerable groups. They shall take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.
- (3) Competent authorities shall take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment.

- (4) Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.
- (5) Regardless of circumstances and without discrimination, competent authorities shall ensure that all persons are provided with access to health, food, water, sanitation and health services.

Article 19 Safeguards and Procedures during Relocation

- (1) Identified relocation sites shall fulfil the criteria for adequate housing according to applicable human rights standards.
- (2) Resettlement must ensure that the human rights of women, children, and other vulnerable groups are equally protected, including their right to property ownership and access to resources.
- (3) Competent authorities shall provide all necessary amenities, services and economic opportunities at the proposed site. Relocation sites chosen must provide for economic opportunities securing livelihoods as least equal to those before relocation.
- (4) The entire resettlement process should be carried out with full participation of affected persons, groups and communities.
- (5) The competent authorities shall give due consideration to all alternative plans proposed by the affected persons, groups and communities.

Article 20 Effective Remedies

- (1) The competent authorities shall ensure that fair and just reparation is made for any loss of life, real or other property or goods, including rights or interests in property.
- (2) Decision on remedies shall be reviewed by competent legal authorities in accordance with this law.
- (3) Reparation shall be provided for any economically quantifiable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Quantum of compensation for property loss should be based on prevailing fair market value to be paid before the internal displacement or relocation.

- (4) Women and men must be co-beneficiaries of all reparation packages. Single women and widows should be entitled to their own compensation without discrimination.
- (5) Competent authorities should facilitate the provision of free legal advisory services for affected indigent persons.

CHAPTER VI
Protection of Internally Displaced Persons

Article 21
Civil and political rights

- (1) Internally displaced persons shall exercise the full civil and political rights enjoyed by persons under the jurisdiction of the State.
- (2) Internally displaced persons shall, whether they are located in camps or not, enjoy, among others, the following rights without any discrimination:
 - a) Freedom of thought, conscience, religion, or belief, opinion or expression.
 - b) The right to seek freely opportunities for employment and participate in economic activities.
 - c) civil and political rights, particularly public participation, the right to vote and to be elected to public office in accordance with the relevant laws.
- (3) The Government 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) Genocide, crimes against humanity, war crimes and other violations of International Humanitarian Law;
 - b) Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
 - c) Sexual and gender based violence in all its forms, notably rape,
 - d) Enforced prostitution, sexual exploitation and harmful practices, slavery, forced labour, and
 - e) Recruitment of children and their use in hostilities, and
 - f) Human trafficking and smuggling; and
 - g) Starvation.

- (4) No one shall be subjected to discriminatory or arbitrary detention on account of her or his displacement.
- (5) Internally displaced persons shall be protected against adverse reaction for exchanging information or expressing their opinions and concerns regarding the disaster relief, recovery and reconstruction efforts.
- (6) Competent authorities shall ensure that internally displaced persons are provided with the opportunity to conduct peaceful assemblies or to form associations.
- (7) Competent authorities should take measures to ensure that internally displaced persons can exercise their right to vote in elections and to be eligible for election. Such measures may include voter registration and arrangements for absentee voting. Competent authorities shall also take specific measures to:
 - a) Provide and facilitate procedures for internally displaced persons to be registered as voters even during displacement and for a waiver of requirements that would prevent internally displaced persons from registering at the site of displacement.
 - b) Guarantee procedures for internally displaced persons to cast their vote at the location of displacement, for either the constituency of origin or that of displacement.

Article 22 Family Reunification

- (1) Competent authorities shall take measures to realize the rights of every person to his or her family life. They shall respect the rights of family members, whose movement is temporarily restricted including in camps, to stay together.
- (2) Competent authorities shall cooperate with international and local humanitarian organisations engaged in the task of family reunification.
- (3) Competent authorities shall facilitate the reunification, without undue delay, of families separated by displacement and assist them in that regard. They shall take special measures to reunify separated and unaccompanied children with their families.
- (4) Competent authorities shall facilitate inquiries made by family members.
- (5) Competent authorities should allow members of displaced families who wish to remain together to do so during the emergency phase and in the context of return or resettlement.
- (6) Relevant actors should ensure that family reunification is conducted in the best interest of the child. Whenever there are objective reasons to believe that

there are reasonable risks that such a reunion would lead to the violation of fundamental rights of the child, it should not be pursued.

- (7) All efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views.

Article 23 Economic, Social, and Cultural Rights

- (1) Competent authorities shall respect and ensure the rights of all internally displaced persons to economic, social and cultural rights including an adequate standard of living in a progressive manner and subject to available resources as recognized under international and regional human rights instruments as well as national laws.
- (2) As a minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - a) Essential food and potable water.
 - b) Basic shelter and housing.
 - c) Appropriate clothing.
 - d) Essential medical services and sanitation.
 - e) Education, and
 - f) Animal health services.
- (3) Competent authorities shall take specific measures to ensure the full participation of women, children and persons living with disabilities in the planning and distribution of these basic services.

Article 24 Basic Shelter and Housing

Internally displaced persons have the right to basic shelter and housing as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Respect the right of internally displaced persons to housing and shelter.
- (2) At the minimum, regardless of the circumstances, and without discrimination, provide internally displaced persons with and ensure safe access to basic housing and shelter.
- (3) Seek and accept support from the humanitarian organizations when the needs of internally displaced persons cannot be sufficiently satisfied at the domestic level.

- (4) Establish procedures to identify and prioritize beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability.
- (5) Remove legal and administrative obstacles that could be contained in building codes and similar instruments, for the construction of transitional shelters or the rebuilding of houses in return or relocation areas.
- (6) Protect internally displaced persons against forced evictions.

Article 25 Education

Internally displaced persons have the right to education as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Take measure to ensure respect for the right of every internally displaced person to education;
- (2) Ensure that displaced persons, in particular displaced children, receive education, which shall be free and compulsory at the primary level. Internally displaced children should enjoy access to education, which respects the cultural identity, language and religion of internally displaced persons;
- (3) Undertake special efforts to ensure the full and equal participation of women and girls in educational programmes;
- (4) Undertake measures to facilitate the accessibility of education to internally displaced persons in areas where the formal school system might not be available or easily accessible;
- (5) Ensure that education and training facilities shall be made available to internally displaced persons, in particular adolescents and women.

Article 26 Health

Internally displaced persons have the right to education as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Take measures to ensure that all wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones.

- (2) Guarantee that internally displaced persons shall have access to psychological and social services.
- (3) Give special attention to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
- (4) Provide special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.
- (5) Seek and accept from the international community if needs cannot be sufficiently satisfied at the domestic level.
- (6) Establish procedures to identify and prioritize beneficiaries of health services on the basis of need and particular vulnerabilities, including the provision animal health services.
- (7) Provide for the waiver of standard and universal requirements such as specific documentation, residency requirements, health insurance coverage that limit or exclude access of Internally displaced persons to health services, and for free access to such services on the basis of needs and particular vulnerabilities.

Article 27 **Food, Water and Sanitation**

Internally displaced persons have the right to food, water and sanitation as it is recognized in international and regional human rights instruments as well as national laws. In particular, competent authorities shall:

- (1) Guarantee the rights of internally displaced persons to essential food and potable water.
- (2) Seek and accept from the international community if the needs of internally displaced persons to food and potable water cannot be sufficiently satisfied at the domestic level.
- (3) Establish procedures to identify and prioritize beneficiaries of food, nutritional aid, water and sanitation services on the basis of need and particular vulnerability.
- (4) Facilitate the importation of food aid including with exemption from import restrictions and quotas, custom duties and other taxes.

Article 28 **Employment, Economic Activities and Social Protection**

Competent authorities shall:

- (1) Take measures to recognize the right to work and the right to social security for internally displaced persons;
- (2) Take specific measures to protect internally displaced persons against discrimination in the labour market and access to social security benefits;
- (3) Promote measures such as provisional work programs, micro-credit systems, vocational training, distribution of agricultural inputs that help former Internally displaced persons to regain their livelihoods or engage in new economic activities at the locations where they find durable solutions.

Article 29 Registration and Personal Documentation

- (1) Competent authorities shall establish a mechanism for the registration and collection of information on internally displaced persons.
- (2) Competent authorities shall take all necessary measures to facilitate the registration of internally displaced persons whether they are located in urban areas, rural environment or any other forms of settlements or living within communities.
- (3) Competent authorities shall facilitate timely and efficient issuance of all necessary documentations including passports, personal IDs, birth certificates, marriage certificates, licences and education certificates which might have been lost or damaged during their displacement.
- (4) Due consideration shall be given to the special needs of women, children, and persons with disabilities. Persons with disabilities, women and unaccompanied or separated children shall be issued with the necessary documents in their own name.
- (5) The competent authorities shall elaborate a simplified, (gender, age, and disability sensitive) procedure for issuing the necessary documentations upon applications by internally displaced persons. These procedures shall be publicised to areas where internally displaced persons are located.
- (6) Competent authorities shall, as it deems appropriate, establish modalities for collaboration with international humanitarian and civic organisations in the registration and collection of data and information.
- (7) Loss or lack of personal documentation or lack of registration should not be used to justify the denial of essential food and relief services; to prevent individuals from travelling to safe areas or from returning to their homes; or to impede their access to employment opportunities.

- (8) Competent Authorities shall respect, as appropriate, the confidentiality of the documents of IDPs.

Article 30 **Access to Information**

- (1) Competent authorities shall establish procedure to allow internally displaced persons and organisations working on the promotion of the rights of internally displaced persons access to data collected.
- (2) Competent authorities shall establish procedures for sharing and exchanging of personally identifiable information concerning internally displaced persons with humanitarian organisations involved in the provision of humanitarian and protection services, inter alia, for the purpose of avoiding imminent death or physical harm to individuals, or grave harm to public health or safety, or for facilitating family reunification.
- (3) Competent authorities should provide accessible information to affected communities about the disaster, the possible risk mitigation measures that can be taken and early warning information, humanitarian aid and recovery effort, provision and their entitlements.

Article 31 **Consultation**

- (1) Internally displaced persons shall be consulted in the design; implementation and review of programs aimed at providing protection, assistance and durable solutions to internally displaced persons.
- (2) The National Coordinating and Implementation Mechanism established under Chapter IX of this legislation shall serve as the platform for consultation with representatives of internally displaced persons.
- (3) Competent authorities shall ensure that the views and special needs of children, to other internally displaced persons with special needs as referred to under Article 34 of this legislation are fully taken in account during in the consultation processes.

Article 32 **Freedom of Movement**

- (1) Internally displaced persons are should enjoy the freedom to move freely and chose their areas of residence.
- (2) Competent authorities shall ensure that a person's freedom of movement and choice of place of residence will not be subject to any restrictions save those maintained by the law as they are deemed necessary, justified and proportionate for reasons pertaining to national security, public order or health, morals or other people's rights and freedoms.

- (3) The competent authorities shall respect and ensure respect the right of internally displaced persons to seek safety in another part of the country 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.
- (4) The right of internally displaced persons to move freely in and out of camps or other settlements shall not be restricted unless it is done under transparent rules based on public necessity.
- (5) Competent authorities should abolish administrative obstacles that may hinder the possibility of internally displaced persons to reach safe areas or when conditions allow, to return to their homes.
- (6) Internally displaced persons shall enjoy the right to leave the country without discrimination and seek asylum in another country.

CHAPTER VII

Assistance to Internally Displaced Persons

Article 33

General principles for the provision of assistance

While providing assistance to internally displaced persons, competent authorities shall:

- (1) Bear the primary duty and responsibility to providing for the needs of internally displaced persons within the territory or jurisdiction of the State without discrimination of any kind;
- (2) 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;
- (3) Recognize the particular situation of pastoralist populations;
- (4) Request for international assistance when its available resource is not adequate to enable it to provide the required assistance to the affected population;
- (5) Allow and facilitate a rapid and unimpeded access by humanitarian organizations and personnel;
- (6) Refrain from persecuting, or punishing internally displaced persons for peacefully requesting or seeking assistance in accordance with relevant national and international laws.
- (7) Uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.

- (8) Ensure the participation of internally displaced persons in the planning, execution and evaluation of humanitarian assistance programs.

Article 34

Internally Displaced Persons with special needs

- (1) Competent authorities shall provide special protection for and assistance to internally displaced persons with special needs, including children, female heads of households, expectant mothers, mothers with young children, single mothers, the elderly, and persons with disabilities, the wounded and the sick or those with communicable diseases.
- (2) Assistance to persons with special needs shall take into account the specific needs required by their individual circumstance and shall take into account their health needs, reproductive health care as well as appropriate counseling including access to psychological and social counseling.
- (3) Competent authorities shall undertake, including by cooperating with relevant international humanitarian organisations, to trace and reunify unaccompanied minors with their families pursuant to Article 23 of this legislation.
- (4) The best interests of an internally displaced child, whether unaccompanied or accompanied by parents, legal guardians or close relatives, shall be a paramount consideration in providing for protection and assistance.
- (5) Competent authorities shall effectively/fully cooperate with international organizations working in tracing family members.
- (6) The Government shall adopt strategies and programs to address the problem of traditional harmful practices including those that specifically affect internally displaced women and children.
- (7) Competent authorities shall take special measures to protect and provide for the reproductive and sexual health of internally displaced women.
- (8) Competent authorities shall adopt specific measures under criminal law to combat sexual and gender based violence, and provide appropriate psycho-social support for internally displaced persons who have become victims of sexual and other related abuses.
- (9) Competent authorities should take into account all appropriate measures as quickly as possible to protect affected populations, in particular women and children, against forced or compulsory labour and human trafficking or other contemporary forms of slavery such as sale into marriage, forced prostitution, and sexual exploitation.

Article 35

Communities with special dependency and attachment to land

With respect to communities with special attachment to, and dependency on land, the competent authorities shall:

- (1) Ensure that their special interest to land is duly recognized and protected.
- (2) Ensure that land leases and agreements take into account their rights and interests.
- (3) Guarantee that they are not displaced from their land except for compelling and overriding public interest.
- (4) Endeavour to protect their particular culture and spiritual values from being displaced from such lands.
- (5) Ensure that through their representatives, they are duly allowed to participate in the process of elaboration of land leases agreements.
- (6) Take appropriate measures, whenever possible, to restore their lands of communities with special dependency and attachment to such lands upon return.

CHAPTER VIII

Humanitarian Assistance and International Cooperation

Article 36

Humanitarian Assistance

- (1) The competent authorities shall provide internally displaced persons, at the minimum and without any discrimination whatsoever,
 - a) adequate food, water, clothing;
 - b) basic shelter and housing;
 - c) essential medical services including psychosocial support.
- (2) The competent authorities shall implement these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.
- (3) The competent authorities shall ensure humanitarian assistance is delivered to internally displaced persons without discrimination and used only for its intended purpose.
- (4) All actors involved in humanitarian assistance shall carry out their activities in accordance with humanitarian principles and without distinction.

Article 37

Humanitarian Access

- (1) The competent authorities may provide technical arrangements under which humanitarian access will be permitted. These conditions should be provided in a publicly accessible instrument.
- (2) The competent authorities shall:
 - a) Allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons.
 - b) 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.

Article 38
Facilitation of the work of humanitarian actors

Based on the recommendation by the National Mechanism established under Chapter XII of this legislation, the competent authorities shall carry out specific measures to expedite the entry of humanitarian goods, personnel and transportation.

Article 39
Protection of Humanitarian Personnel

- (1) The competent authorities shall guarantee the security and protection of humanitarian personnel.
- (2) Humanitarian supplies shall not be an object of attacks and other acts of violence by any actor.

Article 40
Obligations relating to International Organizations and Humanitarian Agencies

International organizations and humanitarian agencies, in providing assistance to internally displaced persons, shall:

- a) Respect the rights of internally displaced persons in accordance with international law.
- b) Conduct their activities in conformity with international law and laws of the country in which they operate.
- c) Respect the relevant international standards and codes of conduct,
- d) Respect primary responsibility of the Government in protecting and assisting internally displaced persons.

- e) 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.

CHAPTER IX Remedies

Article 41 Access to Judicial mechanisms

- (1) Internally displaced persons shall have full access to judicial organs, administrative and mediation mechanisms and national human rights mechanisms to seek appropriate compensation consistent with international human rights treaties ratified by the State.
- (2) In case of forced displacement caused by projects, affected individuals and groups shall be entitled to get decisions causing their displacement reviewed.
- (3) Internationally displaced persons shall not be prosecuted, persecuted or otherwise negatively affected for seeking compensations and other remedies.
- (4) The Government shall provide legal aid scheme to assist internally displaced persons enjoy full access to judicial mechanisms and other recourses.

Article 42 Compensation and other forms of reparations

A national mechanism for the provision of fair and effective compensation and other appropriate forms of reparation consistent with applicable human rights standards is hereby established. The specific modalities of such mechanism shall be determined by implementing legislation.

- (1) Internally displaced persons have the right to reclaim any housing and/or land and properties they might have been deprived of arbitrarily or unlawfully.
- (2) The military, law enforcement agencies, the police or any agency of the government shall be liable to pay compensation where their actions and omission in the context of internal displacement results in the death of persons, physical, physiological, financial harm or any other harm.
- (3) Non-state actors whose action caused arbitrary internal displacement shall be liable to pay compensation.

Chapter X
The Right to Property

Article 43
Protection of the Right to Property

- (1) The competent authorities shall take measures to protect, to the maximum extent possible, against looting, destruction, and arbitrary or illegal appropriation, occupation or use of property and possessions left behind by displaced persons or communities.
- (2) The competent authorities shall:
 - a) Restore land deeds and property documents that are destroyed or lost to owners of land and property without undue delay. Where necessary to respond adequately to such situations, the government may temporarily enact simplified procedures in this regard and also taking into account the needs of pastoralist communities.
 - b) Facilitate access to existing procedures for owners to reclaim their original land and property without undue delay, regardless of whether ownership is based on formal land deeds and property documents or tradition of adverse possession.
- (3) The competent authorities shall facilitate access to existing procedures to consider competing claims to land and property. Where such procedures are overwhelmed by the case load, the government shall temporarily enact simplified procedures providing for due process guarantees and decision making without undue delay.
- (4) Specific arrangements shall be made to enable women, particularly widows, as well as orphans and vulnerable children to (re-)claim housing, land or property and to acquire housing or land, and get the title deeds through their legal guardian or at emancipation in their own name.

Article 44
Dispute Settlement

- (1) The competent authorities, including the local government authorities concerned, have the duty and responsibility to assist returned and or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.

- (2) When recovery of such property and possessions is not possible, competent authorities, including the local government units concerned, shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.
- (3) The Competent authorities shall ensure the rights to property restitution and compensation to all internally displaced persons, including in particular women and children, regardless of existing obstacles to ownership and inheritance. Where appropriate, legal arrangement shall be made for holding property of children in trust based on the principle of the best interest of the child.
- (4) With respect to the role of customary or traditional institution, the government shall:
 - a) Recognize their role as alternative and informal community based mechanisms and processes for resolving property disputes, with simple requirements of proof of ownership based upon reliable and verifiable testimony;
 - b) Recognize, as much as it does not violate any provisions of this legislation or other law in the State, the customary holding of land tenure system.

CHAPTER XI Durable Solutions

Article 45 Obligations

- (1) Competent authorities shall discharge the primary duty and responsibility of the Government to establish conditions that allow internally displaced persons to return voluntarily, in safety and dignity, to their homes or places of habitual residence, or to integrate locally or to resettle voluntarily in another part of the country.
- (2) Competent authorities shall ensure the protection of internally displaced persons from human rights violations, attacks or threat of attacks to their safety and security.
- (3) Competent authorities shall, where appropriate, cooperate with the African Union, the United Nations, and international humanitarian organizations, and civil society organizations in the process of finding and implementing durable solutions and shall grant rapid and unimpeded access to internally displaced persons to assist their resettlement and reintegration.
- (4) The competent authorities shall enable internally displaced persons to make 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 durable solutions.

- (5) The return of internally displaced persons to their homes or places of habitual residence should only be prohibited if these homes or places are in areas where there are real dangers of potential secondary hazards and other disaster risks. Such restrictions should only last as long as such dangers and risks exist and only be implemented if other less intrusive measures of protection are not available or possible.

Article 46
Procedure for Return, and integration

- (1) Relevant entities shall ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.
- (2) Any plan to relocate internally displaced persons shall be undertaken on the basis of the free consent of the individual concerned.

Article 47
Guarantees upon Return, and integration

- (1) Competent authorities shall ensure the following guarantees of human rights of internally displaced persons in the areas of their return and integration.
 - a) Full protection for long-term safety and security.
 - b) Enjoyment of an adequate standard of living without discrimination, including adequate shelter, housing, food, water, sanitation, as well as health and medical care, education.
 - c) Equal and unimpeded access to generally available public programmes, such as social housing or welfare measures, poverty alleviation programmes.
 - d) Access to employment and livelihoods.
 - e) Access to documentation.
 - f) Family reunification and the establishment of the fate and whereabouts of missing relatives.
 - g) Equal participation in public affairs.
 - h) Access to justice without discrimination.
- (2) Competent authorities shall take measures to eliminate gender inequality and should give special attention to claims of protection by returning spouses,

single parents, and single women with respect to disputes on the ownership of family or other property when a displaced spouse is deceased.

- (3) Competent authorities shall guarantee the full protection of children including right to inherit family property when in the event of death of parents and the establishment of legal arrangements for holding these children's inheritance of property in trust that comply with the best interests of the child principle.
- (4) The competent authorities shall recognize special protection of the property of returning communities, pastoralists and other groups whose mode of livelihood depends on special attachment to their lands in situations where such communities or groups exist. These communities, pastoralists or other groups,
 - a) shall be reintegrated in areas previously occupied them;
 - b) shall be provided in all possible cases with lands at least equal in value to those previously occupied by them;
 - c) Where alternative lands of equal value cannot be allocated, an appropriate compensation package shall be made available as provided for in the national legislation of the Member States.
- (5) Relevant public authorities shall ensure that internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. Returnee internally displaced persons shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

CHAPTER XII

National Coordination and Implementation Mechanisms on Internal Displacement

Article 48

Establishment/Designation of a National Coordinating and Implementation Mechanism³

- (1) The Government shall establish or designate a National Coordinating and Implementation Mechanism to coordinate the government's effort regarding prevention, mitigation and response to internal displacement.
- (2) The Government shall allocate the necessary funds, to the extent of available resources, for the effective implementation of the powers and responsibilities of the Mechanism.

³ The State would have a number of institutional choices, it could follow this model law with two institutions one for early warning and one for national coordination or the early warning could be subsumed under the national coordination or it could simply establish a national ministry or specific institution dedicated to this protection and assistance of internally displaced persons.

- (3) As appropriate, the government in consultation with local authorities may establish sub-national coordination mechanisms. The membership, responsibilities and powers of such mechanisms shall be determined by implementing legislation.

Article 49 Membership

- (1) The Government's highest executive decision-making organ shall designate members of the coordination mechanism. It shall also appoint the chairperson of the Coordination Mechanism.
- (2) The National Coordination Mechanism shall include as its members:
- a) Relevant ministries;
 - b) Representatives of Provincial/Regional States;
 - c) National Disaster Early Warning, Preparedness and Management Mechanism;
 - d) National human rights institution;
 - e) The Office of the Ombudsman;
 - f) National Red Cross and Red Crescent Society;
 - g) Representatives of civil society organisations;
 - h) Representatives of internally displaced persons;
 - i) Representatives to be selected by independent humanitarian agencies as observers.

Article 50 Powers and responsibilities

The National Coordination Mechanism shall have the following powers and responsibilities. It shall:

- (1) Serve as the focal point for the implementation of the Kampala Convention, including the preparation of implementation Report;
- (2) Monitor and evaluate the implementation of this legislation and other relevant laws and policies affecting internally displaced persons;
- (3) Coordinate the development of plans, policies and strategies including prevention, early warning, mitigation, and response on internal displacement;
- (4) Assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities;

- (5) Carry out, by collaborating with the national human rights institution and other relevant bodies, periodic assessment on the human rights situations of internally displaced persons;
- (6) Facilitate the provision of training and capacity building programs;
- (7) Raise public awareness and sensitization, and promote educational programs on the causes, and consequences to the internally displaced persons, rights and welfare of internally displaced persons and impact on host societies;
- (8) Facilitate the participation of internally displaced persons and other vulnerable groups in the planning, execution and monitoring of implementation of policies, strategies and programs on internal displacement;
- (9) Coordinate with relevant regional and international actors;
- (10) Facilitate humanitarian access to internally displaced persons for relief and assistance;
- (11) Determine and establish the modalities for the participation of internally displaced persons in decisions affecting them, at all levels of Government;
- (12) Determine and establish modalities for close consultation and cooperation with United Nations bodies, relevant international organizations or agencies;
- (13) Carry out such other activities that may be necessary to fully implement its powers and responsibilities.

Article 51

National Disaster Early Warning, Preparedness and Management Mechanism

- (1) As part of the National Coordination Mechanism, a National Disaster Early Warning, Preparedness and Management Mechanism is hereby established. The National Mechanism shall, inter alia, have the following functions:
 - a) Establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures.
 - b) Establish national plans for enterprises, factories, construction sites, buildings, engineering structures, transport and communication links, with potential dangerous exposure to people and the environment, with the necessary levels of safety and reliability and observance and monitoring systems.
 - c) Monitoring trends and patterns of disasters that may potentially cause arbitrary displacement.
 - d) Monitoring areas inhabited by persons at risk of displacement.

- e) Identify and submit areas suitable for designation by the Government for settlement of internally displaced persons in the State.
 - f) Prepare periodic reports and recommendations on the situation of areas of high risk and submit them to the Government.
- (2) The competent authorities shall facilitate the involvement of internally displaced persons and relevant civil society actors in the development and implementation of early warning system, disaster reduction strategies, emergency and disaster preparedness and management measures.

Article 52
Coordination and administration of settlement areas

- (1) The National Disaster Early Warning, Preparedness and Management Mechanism of the National Coordination Mechanism shall coordinate the National Focal Point and local authorities on internal displacement with the view to fully integrating the needs of internally displaced persons in the administration of settlement areas, inter alia, in the following areas:
- a) Ensure adequate provision of basic social and health services;
 - b) Safeguard and maintain the civilian character of settlement;
 - c) Take preventive and rehabilitative measures to protect the environment of the settlement areas from degradation.
- (2) International and national actors involved in providing humanitarian assistance shall fully take into account the protection needs of internally displaced persons.

Article 53
Education, Training and Capacity Building

- (1) Public authorities shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons.
- (2) Public authorities in collaboration with all relevant actors including the national coordination mechanism including educational institutions and civil society organizations, shall provide training, sensitization and awareness programmes on the causes, impact and consequences of internal displacement, as well as on means of prevention, protection and assistance to internally displaced persons.

CHAPTER XIII

Offences related to internal displacement⁴

Article 54 Arbitrary Displacement

Whosoever;

- (1) Displaces persons 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;
- (2) Displaces civilians individually or in mass in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- (3) Intentionally displaces persons using as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
- (4) Displaces by generalized violence or violations of human rights;
- (5) Displaces by harmful practices;
- (6) Causes forceful 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;
- (7) Causes displacement using collective punishment;
- (8) Causes displacement by any act of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law;
- (9) Acts of arbitrary displacement amounting to genocide, war crimes or crimes against humanity,

shall be punishable in accordance with [to be determined according to national legal systems].

Article 55 Offences against Internally Displaced Persons

Whosoever:

⁴ Depending on the legal tradition of the country, penalties could be incorporated in a criminal or penal codes. The applicable provisions on extradition will be applicable for the offences in this chapter. This could be made more explicit in the relevant national legislation

- (1) Restricts the freedom of movement of internally displaced persons within and outside their areas of residence.
- (2) Recruits internally displaced children or requiring or permitting them to take part in hostilities under any circumstances;
- (3) Forcibly recruits internally displaced persons, kidnaps, abducts or takes hostage, engages in sexual slavery and trafficking in persons especially internally displaced women and children shall be punishable with sentences [to be determined according to national legal systems].

Article 56
Offences against Humanitarian Workers Personnel

Whosoever attacks or otherwise harms humanitarian personnel shall be punishable with sentences [to be determined according to national legal systems].

Article 57
Offences against Humanitarian Assistance

Whosoever;

- (1) Denies 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.
- (2) Impedes humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons.
- (3) Attacks or otherwise harms resources or other materials deployed for the assistance or benefit of internally displaced persons or destroyed, confiscated or diverted such materials shall be punished with sentences.
- (4) Violates the civilian and humanitarian character of the places where internally displaced persons are sheltered.
- (5) Steals, loots, destroys, abuses, misuses or diverts humanitarian assistance intended for internally displaced persons, shall be punishable with sentences [to be determined according to national legal systems]

Article 58
Penalties and procedure

The punishment for an offence under this Chapter is:

- (1) Where the offence involves the wilful killing of a person protected by this law, imprisonment (to be determined according to national legal systems); and

- (2) In any other case, imprisonment for (to be determined according to national legal systems.)
- (3) While awarding punishment, the Court shall take into account, where they exist, penalties for serious violations of the Geneva Conventions and their Additional Protocols.
- (4) An offence under this Chapter shall not be prosecuted in a court except by indictment by or on behalf of the (Attorney General/Director of Public Prosecutions, or Prosecutor General).
- (5) Liability for prosecution extends to conduct outside the territory of (xxxx) to citizens of (xxxxx).

Article 59
Breach of this law

Whosoever contravenes provisions of this legislation shall be punishable with sentences [to be determined according to national legal systems].

Article 60
Jurisdiction of Courts

The competent civilian/ordinary courts shall have jurisdiction over the offences of arbitrary displacement and offences against humanitarian assistance as penalised by this legislation.

CHAPTER XIV
Miscellaneous Provisions

Article 61
Repealing clause

All laws, decrees, executive orders, ordinances, practises or any parts thereof, which are inconsistent with the provisions of this legislation, shall be deemed repealed from the effective date of this legislation.

Article 62
Implementing subsidiary legislations

The Government may adopt policies, regulations, directives and guidelines for implementation of this legislation.

Article 63
Interpretation

- (1) This legislation shall be interpreted and implemented consistent with international law particularly international humanitarian law and international human rights treaties and the Kampala Convention, international humanitarian

law and other applicable African Union and international treaties ratified by the State.

- (2) This legislation shall not be interpreted as restricting, modifying or impairing the provisions of the Kampala Convention or any international or regional human rights or international law instruments to which the State is a party or rights granted to persons under domestic legislation.
- (3) This legislation shall be interpreted in light of the Constitution and the international and regional instruments, including the Kampala Convention, to which the State is a party. In so doing, any reasonable interpretation that favours the rights of internally displaced persons must be preferred to any adverse interpretation.

Article 64
Effective/commencement date

This legislation shall take effect on.....

**NINTH ORDINARY SESSION OF THE AFRICAN UNION
COMMISSION ON INTERNATIONAL LAW (AUCIL)
27 NOVEMBER TO 10 DECEMBER 2014
ADDIS ABABA, ETHIOPIA**

AUCIL/Legal/Doc.6 (IX)
Original: English

**Report of the Draft AU Model Law for the Implementation of the
African Union Convention for the Protection of and Assistance to
Internally Displaced Persons in Africa**

By

**Minelik Alemu Getahun (Ambassador)
AUCIL Special Rapporteur
27 November 2014**

I. Introduction

1. The plight of internally displaced persons (IDPs) has rightly received increased attention in recent years. Nevertheless, unrelenting armed conflicts and strife, disasters, effects of climate change, and gross human rights violations continue to subject millions of people around the world to forced displacement, extreme suffering and deprivation. This is felt with particular severity in Africa, affecting greater number of people, where there is high mortality rates, among IDPs, who are "...vulnerable to round up, forcible resettlement, arbitrary detention, arrest, forcible conscription or sexual assault, and suffer more often from a lack of food and health care."⁵ Increased urbanization and development projects have also posed increased risks of displacement. It is thus no wonder the African Union and Regional Economic Communities (RECs) have continued the trend set by the OAU and have taken the lead in adopting measures aimed at protecting IDPs.⁶

2. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) was adopted on 23rd October 2009 by the Special summit of the African Union held in Kampala, Uganda. The Convention came into force on 6 December 2012 following the accession to the Convention by Swaziland as the 15th ratifying State. The Kampala Convention builds

⁵ The former Representative of the UN Secretary General on Internal Displacement notes the difficulties of ascertaining the number of displaced persons due to reluctance of Governments to admit existence of the problem, lack of consistent methodology and institutional capacity and organization. A/50/558 of 20 October 1995, p 3 and 4.

⁶ The Explanatory Note by the AU Commission On the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa lists the various decisions by the policy organs of AU leading to the Adoption of the Kampala Convention.

on regional and international standards regarding the protection and assistance of IDPs in Africa. It is a demonstration of the determination of a continent disproportionately affected by internal displacement to put in place legal and institutional frameworks to better protect and assist IDPs.⁷ The Special Summit also adopted the Kampala Declaration on Refugees, Returnees, and IDPs with extensive provisions.⁸ Different regional human rights instruments provide protection to IDPs. For instance, the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa has already set higher standards for refugee protection. The African Charter on the Rights and Welfare of the Child provides protection to internally displaced children on equal level as accorded to refugee children.⁹ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also provides for protection of internally displaced women in Africa.¹⁰ The signatories of the 2006 Pact on Security, Stability and Development in the Great Lakes of Africa adopted a number of protocols relevant to the protection and assistance of IDPs, including the Protocol on Protection and Assistance to Internally Displaced Persons on 30 November 2006.¹¹

3. In 2004, the African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Refugees, Asylum-Seekers and IDPs in Africa with extensive promotional and protection responsibilities on the rights of refugees, asylum seekers and IDPs in Africa. Thus far, the Special Rapporteur has undertaken several activities and submitted Reports on the situation of refugees and IDPs on the continent.¹²

4. It is also important to note that at the national level, a number of African countries have promulgated national laws, policies and strategies on internal displacement such as Angola, Burundi (in the context of peace agreement and national program), Liberia, Sierra Leon, Sudan, Uganda and Kenya. In Nigeria, DRC and Somali, governments are working with partners in developing national policies and instruments.

5. As of October 2014, 39 AU Member States have signed the Kampala Convention, while 22 have deposited their instruments of ratification.

⁷ The Special Rapporteur of the Human Rights Council said that the Kampala Convention "...represents the will and determination of African States to address the problem of internal displacement in Africa,..." A/HRC/16/43, this and other documents cited in this report are available at

<http://www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx>. Also Allehone Mulugeta Abebe, The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope and Enforcement Challenges, *Refugee Survey Quarterly*, Vol. 29, No. 3, p. 28, September 2010, p.29., Won Kidane, Managing Forced Displacement by Law in Africa : The Role of the New African Union IDPs Convention, 44 *Vand.J.Transnat'L.*, p.34.

⁸ *Ext/Assembly/AU/PA/Draft/Decl.(I) Rev.1* <http://www.unhcr.org/refworld/publisher,AU,,,4af0623d2,0.html>.

⁹ Article 23(4) of the Charter says « The provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.»

http://www.au.int/en/sites/default/files/Charter_En_African_Charter_on_the_Rights_and_Welfare_of_the_Child_AddisAbaba_July1990.pdf.

¹⁰ For texts and status of ratification of AU Treaties : <http://www.au.int/en/treaties>.

¹¹ <https://icglr.org/spip.php?article2>.

¹² http://www.achpr.org/english/_info/index_rdp_en.html

6. It is a landmark instrument as it codifies for the first time detailed obligations of States and other actors to prevent forced internal displacement, and protect IDPs during displacement and ensure that durable solutions around for IDPs, with their active participation. This is major progress in the development of international law on internal displacement since the publication of the United Nations Guiding Principles of Internal Displacement (hereinafter “the Guiding Principles”) in 1998.¹³ Until then, the norms protecting IDPs under international human rights law and, international humanitarian law remained scattered. The progress made since the publication of the Guiding Principles is significant. The work done to disseminate the Guiding Principles and encourage States to adopt laws and policies to implement these principles has made important progress. International organizations and mandate holders of the United Nations and the African Commission on Human and Peoples’ Rights (the Commission) have done important work in advancing the use of the Guiding principles. It is still important to point out that the specific needs of IDPs and their particular vulnerable situation is yet to be addressed by a comprehensive and global binding instrument.

Background to the Draft Model Law

7. The publication of a Model Law for the Kampala Convention is likely to generate debate on the merits of proposing a model law for countries with a variety of legal traditions. Some might think that such Model Law might water down obligations in the Kampala Convention. Others might fear that new obligations not foreseen in the Kampala Convention might be proffered in the Draft Model Law. Some have even expressed concern that the diversity of legislative traditions particularly among countries following common law and continental systems, the need for laws on internal displacement to address the specific problems faced by IDPs, and a prepared Model Law might not allow for an inclusive process of consultations with all relevant stakeholders in its development and analysis.¹⁴ While these are legitimate concerns, model laws have been increasingly used to encourage the development of national laws, both at the regional level and at the level of the United Nations.¹⁵ Such model laws are useful tools for reference and to provide wider context for national drafters. These instruments have lasting impact in allowing deeper reflections into the substance of obligations and best possible ways of devising domestic legislation.

¹³ A global first: a Convention for the displaced, <http://www.ohchr.org/EN/NewsEvents/Pages/ConventionForTheDisplaced.aspx>

¹⁴ The Manual for Law and Policymakers published by the Brookings Institution-University of Bern Project on Internal Displacement in October 2008.

¹⁵ Draft Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons, <http://www.internal-displacement.org/8025708F004BE3B1/>, Draft Model Legislation on Property Rights of Returning Persons <http://www.internal-displacement.org/8025708F004BE3B1/> of the Great Lakes Region, the Great Lakes Pact and the rights of displaced people, A guide for civil society, IDMC and the International Refugee Rights Initiative, 2008 says of the Great Lakes Model Law that “...the model legislation offers a guide to some of the possible administrative and institutional steps which could be taken in order to implement the Protocol into national law...”; Model Laws prepared by UNCITRAL http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration.html and UNODC <http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html> are good examples:

8. The Model Law will help expedite State Parties' implementation of their obligation to "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."¹⁶ It will also assist in the implementation of the Convention as a framework for regional and international cooperation with respect to which the African Union is expected to play a more proactive role in its implementation.¹⁷

II. Methodology and Sources

9. **Methodology:** The drafting of the Model Law followed a comprehensive approach to make it possible for national authorities to adapt it to a multitude of manifestations of internal displacement. Attempt has been made to be faithful to the letter and spirit of the Kampala Convention. Whenever the Kampala Convention only provides general obligations, the sources described below have been used to draft the relevant articles. As a consequence, there are a number of articles drawn from either treaty or soft law sources with only slight adjustments for national law contexts. The Special Rapporteur is convinced that the Kampala Convention provides a broader scope and that the Draft Model Law and any further supplements to the Model Law or other instruments such annotations could be used to support the implementation and wider dissemination of the emerging international law of internal displacement.

10. **International and African human rights treaties and other treaty based sources:** The Kampala Convention is the principal basis for the Model Law, which itself is adopted under the umbrella of the Constitutive Act of the African Union¹⁸. The Convention is thus founded on the objectives and principles of the African Union as enshrined in the Constitutive Act. The latter includes a number of key provisions dealing with topics relevant to the protection of IDPs such as the encouragement of international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; the promotion of democratic principles and institutions, popular participation and good governance and the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments. The Kampala Convention is thus guided by the general application of the principles enshrined in the Constitutive Act or by direct incorporation, including the right of the African Union to intervene in a Member State pursuant to a decision of the Assembly of Heads of State and Governments of the African Union in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity; respect for democratic principles, human rights, the rule of law and good

¹⁶ Article 3(2) the Kampala Convention

[http://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_\(KAMPALA_CONVENTION\).pdf](http://au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_FOR_THE_PROTECTION_AND_ASSISTANCE_OF_INTERNALLY_DISPLACED_PERSONS_IN_AFRICA_(KAMPALA_CONVENTION).pdf)

¹⁷ The Kampala Convention provides for the obligation for the African Union. Article 8(d) d states that the African Union shall "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."

¹⁸ http://www.au.int/en/sites/default/files/Constitutive_Act_en_0.htm

governance; and promotion of social justice to ensure balanced economic development; respect for democratic principles, human rights, the rule of law and good governance; respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.¹⁹

11. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union of 2002 also provides an additional important foundation for the Kampala Convention and the Model Law on IDPs. The protocol recognizes the relationship between conflict and forced displacement, provides for the role of the PSC in humanitarian coordination and also explicitly acknowledges that that conflicts have forced millions of people in Africa, including women and children.²⁰

12. The African Charter on Democracy, Elections, and Governance of 30 January 2007, under Article 8 requires State Parties to adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and other marginalized and vulnerable social groups.²¹

13. Other regional treaties with much more general scope of application such as the African Charter on Human and Peoples' Rights²² and treaties such as the African Charter on the Rights and Welfare of the Child with a provision extending to displaced children and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa are also relevant. The Great Lakes Protocol on Internally Displaced Persons has also been used in the drafting of the Model Law.

14. IDPs enjoy the protection of their human rights as accorded to nationals in the jurisdiction of that particular State. Paramount protection has been provided to all persons by the Universal Declaration of Human Rights of 1948 and global and regional human rights treaties ratified by the State as well as national laws.

15. As most African States are parties to global human rights treaties, the draft Model Law has also incorporated the rights enshrined in a number of relevant treaties. In addition to a number of other key international and regional instruments, the Special Rapporteur has consulted the following key international human rights instruments: the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the International Covenant on Economic, Social and Cultural Rights of 1967, the International Covenant on Civil and Political Rights of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Convention on the Rights of the Child of 1989, the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000, the

¹⁹ Article 3 and 4 of the AU Constitutive Act.

²⁰ The Preamble and Article 14 of the Protocol Relating to the Establishment of the Peace and Security Council http://www.au.int/en/sites/default/files/Protocol_peace_and_security.pdf.

²¹ http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf, has entered in to force 15 February 2011.

http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance_0.pdf

²² The decisions of the African Commissions on Human and Peoples' Rights on different communications with direct relations with internal displacement have been consulted, in particular Articles 18, 22 and 22 of the Charter: http://www.achpr.org/english/_info/Decision_subject.html.

Convention on the Rights of Persons with Disabilities of 2006, the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the International Convention for the Protection of all Persons against Enforced Disappearances of 2006, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, and the Indigenous and Tribal Peoples ILO Convention No. 169 of 1989.²³

16. National laws and policies: The draft Model Law has considered national laws and policies from Africa and other parts of the world whenever they exist.²⁴ Currently over 28 countries have adopted instruments on internal displacement. Mexico became the first country to adopt a sub-national policy at a regional congress in Chiapas in 2011. Kenya has adopted a major legislation in 2012. In the drafting process has consulted laws from Angola, Burundi, Liberia, Sierra Leone, Sudan and Uganda.²⁵

17. International Humanitarian Law: International humanitarian law is incorporated in the Kampala Convention, though no definition or description of international humanitarian law has been provided in the text. The generic terminology of international humanitarian law is used throughout the body of the Kampala Convention, including in reference to acts prohibited under general international law.²⁶ As most obligations of international humanitarian law are drawn from the Fourth Geneva Convention and the Additional Protocols, the implementation could follow the relevant articles.²⁷ In as much as the generic terminology of 'International humanitarian law' includes international crimes provisions of the Statutes of the International Criminal Court (ICC), the jurisprudence

²³ Some of these key international instruments are directly referred to in the preamble of the Kampala Convention.

²⁴ Laws/ policies, from around the world have been considered, for instance from Africa [Angola](#), [Burundi](#), [Liberia](#) [Sierra Leone](#), [Sudan](#), [Uganda](#) and from Latin America Colombia, and other made available at <http://www.brookings.edu/about/projects/idp/laws-and-policies/idp-policies-index>, the website also has articles on national laws and policies that should be considered. Furthermore, the discussion and recommendations on the draft bill and draft policy in Kenya by the Special Rapporteur on the Human Rights of IDPs of the UN Human Rights Council has also been considered.

http://www.ohchr.org/Documents/Issues/IDPersons/A.HRC.19.54.Add%202_en.pdf

²⁵ <http://www.brookings.edu/about/projects/idp/laws-and-policies>

²⁶ Article 3(e) of the Kampala Convention lays down as one of the General Obligations "Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons" and under Article 4(4)(b) and (c) as obligations of State Parties relating to protection from internal displacement of "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;" and "Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;" and on Obligations of States Parties Relating to Protection and Assistance during Internal Displacement, under Article 9 (1)(b) t, it provides that "Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons; and on its provision entitled Saving Clause under Article 20(2)(b) it provides that "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."

²⁷ Articles 49, 147, of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 85(4)(a), Article 85(4)(a), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Articles 4(3)(b), 17, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument/>

of the Court and of other ad hoc international criminal courts, the extent of the obligations other than those general obligations of international law binding on all states could deserve separate treatment by AUCIL. It would suffice for the purpose of the drafting of this Model Law that the terminology could be understood to include the universally applicable Geneva Conventions and their Additional Protocols, those parts of the Statutes of the ICC that incorporated in the Constitutive Act of the African Union²⁸. This discussion and the drafting process have benefited from ICRC's work on Customary International Humanitarian Law, Chapter 38 on Internal Displacement and Displaced Persons, in particular Rules 129-133.²⁹ Since these rules are prepared based on extensive State practice and a variety of sources, they provide clear guidance for national mechanisms preparing legislations.³⁰

18. The Guiding Principles: The UN Guiding Principles on Internal Displacement are considered by the United Nations General Assembly at 2005 World Summit Outcome "... as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of IDPs."³¹ The Draft Model Law is principally based on the Kampala Convention, which in turn is largely drawn from the Guiding Principles. The Kampala Convention in fact recognizes "... the inherent rights of IDPs as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of IDPs."³²

19. The Draft Model Law has also been developed based on the provisions of the Guiding Principles and work of the mandate holders on internal displacement. The appointment of Mr. Francis Deng in July 1992 as the Representative of the United Nations Secretary General on IDPs³³ led to the elaboration of the Guiding Principles and to a series of reports that provided clearer perspectives on the situation of IDPs around the world. Reports by Mr. Deng and subsequently by Mr. Walter Kälin and the current Special Rapporteur of the United Nations Human Rights Council on the Human Rights of Internally Displaced Persons, Mr. Cheloka Beyani on their country visits and legal analysis and commentaries have been comprehensively consulted. The extensive work done by these mandate holders and the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa of the African Commission on Human and Peoples' Rights, have also enhanced global and regional understanding of internal displacement, and the responsibilities of States towards IDPs.

²⁸ Article 4(h) of the Constitutive Act of the African Union on 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity' http://au.int/en/sites/default/files/Constitutive_Act_en_0.htm

²⁹ http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38

³⁰ http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38, covers act of displacement, transfer of civilian population into occupied territories, treatment of internally displaced person, property rights. Also Jean-Marie Henckaerts, Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict, International Review of the Red Cross, Vol. 85, no 857, March 2005. http://www.icrc.org/eng/assets/files/other/icrc_002_0860.pdf

³¹ A/RES/60/1, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>

³² Preamble, the Kampala Convention.

³³ A/48/579 of 9 November 1993.

20. The wide acceptance of the Guiding Principles as a nonbinding normative framework by restating existing international law and providing clearer guidance for effective responses has become critical for any work on internal displacement.³⁴ The Reports by the Special Rapporteurs on IDPs, in addition to the detailed discussions on contemporary challenges of internal displacement, provide systematic discussions on fundamental parts of a legal framework.³⁵ These Reports also contain some examples, conclusions and recommendations, which have served as excellent sources to elaborate certain provisions of the Draft Model Law.³⁶ The adoption of additional instruments such as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters and the Framework on Durable Solutions for Internally Displaced Persons adopted by the Inter-Agency Standing Committee, are important milestones for the practical use of the Guiding Principles and for the drafting of national legal frameworks.³⁷

21. The various other documents prepared to further elaborate the Guiding Principles, principally the Annotations to the Guiding Principles and documents aimed at assisting States and other actors apply the Principles or draft and adopt national instruments such as the Handbook for Applying the Guiding Principles on Internal Displacement of 1999³⁸ and the Manual for Law and Policymakers published by the Brookings Institution-University of Bern Project on Internal Displacement in October 2008 are critical in the discussions on the Model Law.³⁹

22. Furthermore, the studies, and reports of country visits submitted by the mandate holders on Internal Displacement shed light on the gravity of the situation of IDPs and the manner in which many countries across the world have been approaching these challenges, including through national laws, strategies and policies.

23. **Disaster law:** In 2007, the United Nations International Law Commission decided to include the “protection of persons in the event of disasters” in its program of work and the General Assembly, in resolution 62/66 of 6 December 2007, took note of the Commission’s decision to include the topic in its program of work.⁴⁰ Since then the Commission has provisionally adopted a number of articles based the reports presented by the Special Rapporteur of the International Law Commission on the topic of the protection of person in the event of disasters, Mr. Eduardo Valencia-Ospina, and the Drafting Committee of the Commission, including the one on the definition of “Disaster” which was adopted by the Special Rapporteur in the Draft

³⁴ A/58/393 of 26 September 2003

³⁵ A/60/338 of 7 September 2005, for instance includes important discussion on access to assistance, non-discrimination, protection of women and children, access to education, loss of documentation, participation of internally displaced persons, durable solutions, and property issues. P 16-18.

³⁶ A/HRC/4/38 of 3 January 2007, draft bench marks discussion at p. 12. A/HRC/19/19/54 of 26 December 2011, discussions on internally displaced persons, host communities, durable solutions, and important conclusions and recommendations p.13-21., A/HRC/19/54/Add.2 of February 2012, in his Report of the Mission to Kenya, the Special Rapporteur of the Human Rights Council on the Human Rights of Internally Displaced Persons has made conclusions and recommendations with global relevance and important for consideration national framework.

³⁷ A/66/285, of 6 August 2011, A/HRC/16/43/Add.5 or A/HRC/19/19/54 of 26 December 2011.

³⁸ <http://www.brookings.edu/fp/projects/idp/resources/HEnglish.pdf>.

³⁹ http://www.brookings.edu/~media/Files/rc/papers/2008/1016_internal_displacement/10_internal_displacement_manual.pdf.

⁴⁰ <http://www.un.org/law/ilc/index.htm>

Model Law. The articles of the Commission on definition, the roles of the affected State, on the duty of the affected State to seek humanitarian assistance, consent of the affected State to the delivery of humanitarian assistance⁴¹ have been very useful in preparing the articles of the Draft Model Law.

24. The International Red Cross and Red Crescent Movement has adopted Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.⁴² The implementation of a project by the International Federation of Red Cross and Red Crescent Societies on a “Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,”⁴³ with extensive provisions on different aspects of facilitating relief work has also provided a useful resource for the drafting of the Model Law.

25. The Operational Guidelines on Human Rights and Natural Disasters⁴⁴ prepared and further development by the mandate holders on internal displacement⁴⁵ also serves as an important source for elaboration or direct application by States in situation of natural disasters.

26. **Other Legal Sources:** The Special Rapporteur has also consulted a multitude of resolutions, declarations, guidelines, and other non-binding instruments adopted by the African Union, the United Nations bodies, and other regional organizations. The African Union has adopted resolutions and decisions on internal displacement.⁴⁶ Some of these latest decisions are referred in the Preamble of the Kampala Convention. The Khartoum Declaration, which was adopted during the OAU at a Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa, in December 1998, encapsulates the different resolutions and decisions adopted by the regional organizations over the years. Some of the main points of the Declaration emphasize the need for adopting national legislation, administrative regulations and procedures to ensure the effective and full implementation of the instruments to which they have acceded, calling for durable solutions to the problem of forced population displacement, urging the protection of humanitarian workers and to ensure their safety and security and asking organizations and aid workers to abide by the national laws and regulations of the countries where they operate.⁴⁷

27. In the context of the United Nations human rights framework, the Vienna Declaration and Program of Action, of the 1993 World Conference on Human Rights provides that “in the light of the comprehensive approach, the World Conference on

⁴¹ Report of the International Law Commission Sixty-third session (26 April–3 June and 4 July–12 August 2011) <http://untreaty.un.org/ilc/reports/2011/2011report.htm>

⁴² 30th International Conference Geneva, 26-30 November 2007,

<http://www.ifrc.org/Global/Governance/Meetings/International-Conference/2007/final-resolutions/ic-r4.pdf>.

⁴³ [http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20\(English\).pdf](http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20(English).pdf).

⁴⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/105/12/PDF/G0710512.pdf?OpenElement>

⁴⁵ See Report by Special Rapporteur <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43.pdf>

⁴⁶ The African Union passes resolutions on refugees, returnees and IDPs and also within the context of peace and security related resolutions :the Executive Council of the African Union in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa,

⁴⁷ http://www.issafrica.org/AF/RegOrg/unity_to_union/pdfs/oau/keydocs/KHARTOUM_DECLARSON_REFUGES.pdf

Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.”⁴⁸

28. The United Nations Human Rights Council, consistent with the tradition of the former United Nations Commission on Human Rights has been making active contribution to the development of the protection regime on the human rights of IDPs. In addition to the central work done by the Special Rapporteur on the Human Rights of Internally Displaced Persons, different mandate holders of the Human Rights Council are contributing in their own mandate areas and directly promoting the rights and wellbeing of the internally displaced persons. The 2007 UN Declaration on the Rights of Indigenous Peoples for instance provides specific recognition to indigenous peoples with respect to their land, resources, identity and protection from dispossession and relocation, has a direct bearing on the overall protection accorded to IDPs.⁴⁹

29. The “Pinheiro” Principles on Housing and Property Restitution for Refugees and Displaced Persons 50 and the Basic Principles and Guidelines on Development-Based Evictions and Displacement submitted to the UN Human Rights Council in 2006⁵¹ of the Human Rights Council have furnished important instruction for the provisions of the Draft Model Law on these critical issues, particularly for the durable solutions for internally displaced persons. At its 19th Regular Session, held from 27 February to 23 March 2012, the Human Rights Council passed a resolution on adequate housing as a component of the right to an adequate standard of living in the context of disaster settings. The resolution “*encourages* States and relevant actors to respect, protect and fulfill the right to adequate housing as a component of the right to an adequate standard of living in their broader disaster risk reduction, prevention and preparedness initiatives, as well as in all phases of disaster response and recovery;”⁵² There are also studies, recommendations on specific situations and of general application and instruments produced by Human Rights mechanisms, including the treaty bodies and humanitarian bodies of the United Nations system that are directly relevant for the development of national legislation on IDPs.

30. Over the years, UNHCR has developed important expertise on internal displacement and issued, within the framework of the Global Protection Cluster, instruments such as a Handbook relevant for IDP operations.⁵³ This Handbook, for

⁴⁸ Vienna Declaration and Program of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <http://www2.ohchr.org/english/law/pdf/vienna.pdf>

⁴⁹ A/RES/61/295 of 13 September 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

⁵⁰ (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1), http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf

⁵¹ (A/HRC/4/18, Annex I) http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

⁵² A/HRC/19/L.4 of 15 March 2012 which includes important standards critical for further development of the protection regime for internally displaced persons. <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/119/94/PDF/G1211994.pdf?OpenElement>.

⁵³ Handbook for the Protection on Internally Displaced Persons, Global Protection Cluster Working Group, March 2010. PROTECTION RISKS: PREVENTION, MITIGATION AND RESPONSE (Action Sheets) Part V, Documentation Program for Internally Displaced Persons, Colombia, UNHCR.

instance has detailed information in terms of sources of law and background material that could serve as additional source of information for national stakeholders in the process of drafting national legislation or policy.

III. The Draft Model Law

31. The Draft AU Model Law is divided into 14 Chapters and 63 articles. The draft articles are organized to follow the structure of the Kampala Convention covering all aspects of internal displacement: prevention, protection, assistance and durable solution. It also contains provisions for compensation, remedy and penal provisions to prevent arbitrary internal displacement and prosecution of criminal acts against IDPs.

32. Chapter I deals with general provisions of definitions, objectives and scope of the legislation, and principles. These obligations aim at respecting and ensuring respect for international humanitarian law. Chapter II on Prevention of Internal Displacement where the substantive provisions of the Model Law start with prevention, as this is the most important responsibility of States. takes all this into account and proposes articles that could enable States to take measures to prevent internal displacement. Prevention is a stage in a displacement process with daunting challenges in terms of resources and capacity to prevent internal displacement especially in the context where the possible cause of the internal displacement is natural disaster or climate change. Chapter III deals with Internal Displacement caused by disasters with articles highlighting the primary responsibility of States to protect people and take measures to mitigate the repercussions of internal displacement on the affected people. This part has included climate change induced displacement as one important challenge. The terminology is not defined in the Kampala Convention and it is not attempted in the Draft Model Law. The elements of what constitutes climate change are most acutely known in Africa, which is suffering from persistent droughts, floods, desertification and other calamities.⁵⁴ It is thus felt important to include it in the text.

33. Chapter IV deals with internal displacement triggered by human rights violations, armed conflicts and generalized violence. Here the focus is on the protection of displaced persons during conflicts and violence. It is about recalling the obligations of States and non-state actors under international humanitarian law and human rights law. It should not be taken as reinventing the wheel. The protection of civilians, including those displaced or forcefully displaced during conflicts is well regulated under the Geneva Conventions and the Additional Protocols.⁵⁵ That

⁵⁴ <http://www2.ohchr.org/english/> the discussions at the Human Rights Council are instructive of the linkages between Human Rights and Climate Change. Also <http://www.unisdr.org/archive/21934>

⁵⁵ In the commentaries to the Geneva Convention it is stated that "...Article 49 of the fourth Convention already laid down some norms as protection against deportations, transfers and evacuations in or from occupied territories, and it was not considered necessary to supplement these rules in Protocol I... »

<http://www.icrc.org/ihl.nsf/COM/475-760023?OpenDocument> and under Protocol II Article 17, Art 17.

Prohibition of forced movement of civilians: 1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

protection system is equally applicable throughout the world. The role of the ICRC as in the protection of civilians during armed conflicts as enshrined in those instruments and its assistance work remain critical. The provisions of the Draft Model Law in this and other chapters underline the importance of international humanitarian law.

34. Chapter V deals with displacement induced by projects. This refers to the relocation of people to give way for implementation of development activities that result in relocating people to give way to these projects. As Africa endeavors to come out of deep-seated poverty and underdevelopment, this challenge will continue to be felt more acutely in the coming decades. It is thus timely for the Convention to focus on addressing displacement generated by projects. The provisions of this chapter follow the multifaceted approach of the Convention starting with finding alternatives to the proposed projects to prevent displacement and ensuring that the affected people are included in the decision making process, and when it is necessary to continue with the project to safeguard their rights. This appears to be a difficult undertaking but if Governments adopt predictable and transparent rules in advance to guide the process, it would at least lessen the burden on those likely to be adversely affected by the projects.⁵⁶

35. Chapter VI covers the protection of IDPs. To make it more meaningful in terms of the areas covered by the Kampala Convention and related instruments mentioned above as sources, this part highlights the rights that are of particular importance to IDPs due to the difficult situation they face in light of the lack of support structure that existed before their movement. It thus covers critical civil and political rights, economic, social and cultural rights, family reunification, registration issues and others that are critical for their survival and continuation of their livelihoods as productive citizens.

36. Chapter VII examines the question of assistance to IDPs with its focus being on those requiring special treatment due to their particular vulnerabilities. The primary duty of the State to provide assistance cannot be disputed. It is thus reiterated that such reaffirmation will not be enough for States with limited means. They should be able to seek assistance. They should also make it possible for those in need to receive assistance.

37. Chapter VIII on humanitarian assistance to IDPs is in effect the continuation of the previous chapter on assistance but also adds responsibilities for the humanitarian actors. The purpose is to put a proper perspective of the duty of States to seek international assistance, to receive good faith offers of assistance and give consent and facilitate this assistance whenever it is not in a position to provide this assistance for those in need in an adequate manner. It also provides minimum standards to be followed by humanitarian actors.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.
<http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument>

⁵⁶ For the World Bank's GLOBAL PROGRAM ON FORCED DISPLACEMENT
<http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1265299960363/FY11-GPFD-Annual-Progress-Report.pdf>.

38. Chapter IX is about the protection of property. When people are displaced in almost all causes considered in the Model Law, they do not have time or luxury of thinking about their property. The urgency is about saving their lives and the lives of their families. The articles in the Chapter are about the necessary protection for property and its eventual recovery. Chapter X deals with remedies—the legal mechanisms for IDPs to take their case to court or seek effective redress such as compensation or other forms of satisfaction to a particular loss they suffered due to forced displacement.

39. Chapter XI is about durable solutions—last part of the continuum from displacement, protection and assistance during displacement and finally finding a lasting solution either by way of local integration or resettlement. Here as well, the draft articles are crafted or chosen from different sources to give meaning to the word ‘durable’. Chapter XII is about national coordination and implementation mechanism as one specific requirement of the Kampala Convention and a must for any national law to have a meaning and any chance of being effectively realized to the benefit of IDPs.

40. The last substantive part under Chapter XIII is on Offences related to internal displacement and it is about defining what elements of crimes enumerated in the Convention and those that are natural outgrowths of the provisions of the Convention and necessary for its national implementation and are incorporated in the Model Law consistent with its substantive provisions. While sentencing is left for national jurisdictions and different legal traditions, some minimum elements of offences are mentioned for this law to serve as dissuasive force to ensure that abhorrent abuses are not committed against internally displaced persons.

IV. Use of the AU Draft Model Law

41. The Model Law is intended to be used as a resource in the drafting process of national legislation to implement the Kampala Convention at the national level. The Model Law is designed in a manner that allows flexible adaptation to specific situations in terms of causes and challenges of displacement of each country, making it easily adaptable for different legal systems.

42. As foreseen under Article 3(2) (c) of the Kampala Convention, national policies and strategies on internal displacement, including at local level would provide a better domestic framework for protection and assistance to IDPs. The drafting and implementation of domestic law on internal displacement would be highly facilitated by the process of developing strategies and policies, which could help the country assess the extent, causes and severity of internal displacements, their causes, the severities and degree of vulnerabilities faced by IDPs as well as in identification of laws and practices that affect rights and welfare of IDPs in the country. It would also provide the opportunity to consult with IDPs and all stakeholders on the specific situation of the country and possible needs of protection, assistance and durable solutions.

43. The Model Law recognizes the role, contribution and responsibilities of non-state actors.

44. The Model Law also envisages further subsidiary legislations to be elaborated according to the specific tradition of the legal system. Possible areas include instruments on forced evictions for different situations, consultation procedures and guidelines for large scale development projects, instrument for the establishment of stand-alone compensation and mechanisms and simplified procedure to guarantee timely access to justice, procedure on informed and voluntary consent on relocation, procedure on return, local integration or resettlement, and modalities for the registration or data collection and management. The Special Rapporteur considers it important to coordinate with AU Commission to develop sample instruments to be included as supplement to the final text of the Model Law.

V. Procedures for the finalization of the AU Model Law

45. The preparation of the attached draft Model Law enjoyed contributions from members of AUCIL, and most of the relevant personalities and institutions with experience and expertise including mandate holders at the regional or global mandate on internal displacement. The Special Rapporteur circulated electronically a revised text. The African Union on International Law conducted its first reading of the Preliminary Report and the Draft Model Law at its Fourth Ordinary Session, held from 4 to 13 April 2012, in Addis Ababa, Ethiopia. Following the presentation of the revised report and model law by the Special Rapporteur, Members of AUCIL provided comments on the text and encouraged the Special Rapporteur to submit the final draft. Some Members of AUCIL provided rewritten comments. Member States of the African Union, AU Organs and AU Partners were thereafter invited to comment on these draft articles and respond to the questioner. AUCIL then considered the evolution of the text of the Model Law in 2013 and 2014, including comments from few Member States, the African Commission on Human and Peoples' Rights, UNHCR, and ICRC. The Special Rapporteur wishes to extend its appreciation to Member States, the African Commission on Human and Peoples' Rights for their valuable inputs at meetings organized by AUC.

46. The Special Rapporteur is pleased that in addition to general comments, participants considered different parts of the Model Law and provided extensive comments. The Special Rapporteur would like to recognize that UNHCR provided substantial and very constructive comments and proposal for improvements of the Model Law. As appropriate, these comments are fully integrated in the text. Professor Walter Kaelin, former UN Special Rapporteur on the Human Rights of IDPs and ICRC provided written comments, which have been fully integrated in the text. The Special Rapporteur expresses his gratitude to Professor Kaelin and Dr. Allehone M. Abebe, for their keen interest, support and encouragement from early stages of this work.

47. At the same time, the Special Rapporteur would like to acknowledge the African Union Commission's effort in encouraging the wider ratification of the Kampala Convention. To cite a few, the Political Department of the African Union Commission on the signing and ratification of the Kampala Convention were held in Mombasa, Kenya from 11-12 June 2012, Lusaka, Zambia from 18 to 19 July 2013 and the 12 to 14 August 2014 of the meeting in Accra, Ghana. The Workshops were

held with the view of evaluating progress made in the ratification of the Kampala Convention, addressing challenges faced and identifying the way forward in domestication of the said Convention, as it “has a direct link to all international and regional instruments that have a bearing on the IDPs including Human Rights instruments, Women and children, Disasters, Development and the International Humanitarian Law among others.”⁵⁷

48. The Special Rapporteur has endeavored to incorporate into the text the various comments from Representatives of Member States, and Members of AUCIL in as much as these comments are specific, consistent with the Kampala Convention and other applicable standard. Finally, it would be advisable that further work on this matter is better coordinated to collectively advance the cause of enhancing the protection of IDPs in Africa. As such, future consultations and processes leading to the consideration and endorsement of the Model Law by the Assembly should be closely coordinated with AUCIL.

VI. Decision

49. At its 9th Ordinary Session, the African Union Commission on International Law, AUCIL:

1. *Expressed* its appreciation to the Special Rapporteur for the Report and the Draft Model Law.
2. *Also expressed* its appreciation to UNHCR and those mentioned in this Report for the support provided for this work,
3. *Submits* the Report of the Study and the annex Draft Model Law for adoption by African Union Summit, and for the subsequent publication.

⁵⁷ African Union Workshop on the Signing and Ratification of the Kampala Convention, 12-14 August 2013, Accra, Ghana, Para. 1)