



DEVELOPMENT INDUCED DISPLACEMENT IN THE AFRICAN CONTEXT: WHAT SAYS THE AFRICAN UNION CONVENTION?

Safiya Ahmad Nuhu

Abstract

Prior to the adoption of the AU Convention for IDPs in Africa, no binding treaty existed for the protection of internally displaced persons. This gap in legal protection has for a long time posed serious human rights and humanitarian problems as the number of IDPs kept escalating while that of refugees substantially regressed. Despite the notion that conflict is the main cause of displacement, the reality is that every year, more people are displaced by natural disasters and development projects than by conflict and violence. The adoption of the AU Kampala Convention was a welcome and much applauded development in the history of internal displacement. However one notable shortfall of the Convention was the cursory nature in which it addressed development induced displacement (DID). This article traces the global problem of DID, the problem of DID in Africa, examines how the AU Convention addresses it, and the extent of protection and assistance accorded to IDPs displaced by Development Projects under the Convention.

Keywords: *internal displacement, internally displaced persons, development induced displacement, African Union Convention, involuntary resettlement*

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DEVELOPMENT INDUCED DISPLACEMENT IN THE AFRICAN CONTEXT: WHAT SAYS THE AFRICAN UNION CONVENTION?

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Introduction

The forced displacement of people from their homes is a serious universal problem that is experienced in all parts of the world. In Asia and the Pacific, in Europe and the Americas, in the Middle East, and worst of all, Africa, massive numbers of individuals are uprooted from the safety of their homes, and security of their means of livelihoods on a daily basis¹. Displaced people are forced to seek refuge from some coercive external factors, which may have induced their displacement resulting from many different causes. Internal displacement may be caused by natural disasters (Natural Disaster-Induced Displacement) such as floods or earthquakes, or because of armed conflicts, whether internal or international (Conflict-Induced Displacement)², it may also be caused by development projects (Development-Induced Displacement), such as urban development programmes, the creation of industrial parks, infrastructural projects such as roads, bridges and dams, or industrial processes such as natural resource extraction.³ Notwithstanding the cause of displacement, the difficulties suffered by those displaced are enormous, their needs overwhelming, and their vulnerabilities real. Internally Displaced Persons (IDPs) face challenges such as lack of access to basic necessities, denial of their human rights such as Right to Security, Right to Survival, Right to health, Right to Property, Right to Dignity of Human Person, Right of freedom against Exploitation, Right of freedom from discrimination. They are also susceptible to human rights abuses such as rape, forced recruitment, violence.⁴

¹ Report on the 10th AU/ICRC Joint Seminar on *Internal Displacement of Populations in Armed Conflicts and Other Situations of Violence*, (27 May 2008), www.icrc.org. Accessed 24 February, 2009

² Majority of armed conflicts are now Internal; civil wars, control over natural resources, ethnic and religious strife, etc. See Weiss, T. G., (1999) *Whither International Efforts for Internally Displaced Persons?* In *Journal of Peace Research*, in *Journal of Peace Research*, Vol. 36, No. 3 (Sage Publications Ltd, May, 1999), pp. 363-373. <http://www.jstor.org/stable/424699> Accessed: 10 April 2010

³ Making the Kampala Convention Work for IDPs: A Guide for Civil Society on supporting the Ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced persons in Africa. www.internaldisplacement.org. Accessed 15 February 2011

⁴ Article 12(3) of the International Covenant on Civil and Political Rights (ICCPR) states that the right to liberty of movement and freedom to choose one's residence "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others." See Robinson, W.C. (2003), *Risks and Rights: The Causes, Consequences and Challenges of Development Induced Displacement*. The Brookings Institution – Sais Project On Internal Displacement. www.adb.org. Accessed 8 February 2011.

Generally, all vulnerable classes of people⁵ such as women, children, minorities, and people with incapacities are conferred with special protection in international Law in addition to the protection, which they are entitled as citizens.⁶ These classes of individuals struggle with inequality, discrimination, and human rights denials and abuses. Internally Displaced Persons, just like refugees are one of such classes of protected persons. As stated by Stanley;

Development Induced Displacement and Resettlements (DIDR) raise a number of human rights questions. In particular, debates often occur over whether or not the rights of displacees are violated by forcible resettlement or by specific strategies of resettlement. Where governments or other agencies have resettled with impunity, basic rights listed in the 1948 Universal Declaration on Human Rights have often been violated. In other cases, the rights to adequate housing, education, participation in cultural life, or the advisability of measures, all listed in the International Covenant on Economic, Social and Cultural Rights, or the right to culture, listed in the International Covenant on Civil and Political Rights, have been breached.⁷

Displaced people find themselves in harsh living conditions, unable to access essential services, hindered in access to resources, further away from job opportunities, of places of work and having to bear the additional cost of transportation. In the case of People displaced by government projects, compensation for land and lost resources has particularly in Africa been inadequate, thus leading to hunger, starvation and poverty.⁸

However, despite the fact that all IDPs suffer the same or even more hardships than refugees,⁹ no distinct legal framework existed for their protection and assistance until 1992, when the United Nations (U.N.) Secretary General, Boutros Boutros Ghali appointed Francis Deng as his representative for Internally Displaced Persons. The first effort towards creating a distinctive legal framework to cater for the specific needs of IDPs came thereafter, with the adoption of the United Nations Guiding Principles on Internal Displacement (GPID) in 1998. The GPID documented and compiled existing customary and International Law rules, which addressed the needs of IDPs. However, it has been observed that although the GPID set the pace for the legal protection of IDPs, it gave more focus to conflict induced displacement.¹⁰ Although not totally disregarding other forms of

⁵ Particularly vulnerable persons are persons that are likely to be exposed to the effects/impacts of foreseeable or unforeseeable events due to the precarious conditions in which they find themselves. These precarious conditions weaken their ability to adapt to a particular situation.

⁶ Maru, M.T., The Kampala Convention and its Contribution in Filling the Protection Gap in International Law, in *Journal of Internal Displacement*, Vol. 1, No. 1, 2011.

⁷ Stanley, J. *Development Induced Displacement and Resettlement*, www.forcedmigration.org. Accessed 15/3/2011.

⁸ Koenig, D., *Enhancing Local Development in Development Induced Displacement in the Sudan*, In Wet, C.J.D (2006), *Development Induced Displacement, Problems, Policies and People*, P.183, www.googlebooks.com, accessed 23 March 2011

⁹ This is because by staying in their countries, IDPs remain within the jurisdiction of their States (which are often unsympathetic to their hardships), and are devoid of the international protection such as the right of asylum, right of non-refoulement, etc, to which refugees are entitled. See generally, Weiss, T.G., *Whither International Efforts for Internally Displaced Persons?* In *Journal of Peace Research*, Vol. 36, No.3, (1999), pp. 363-373. At p. 363
<http://www.jstor.org/stable/424699> Accessed: 10 April 2010

¹⁰ Because of the general nature of the uproar and hostilities in armed conflict, more regard and attention is given to it, thus leading to the neglect in according legal protection to other forms of displacement. See Robinson, W. C. (2004) *Minimizing Development Induced Displacement*, www.migrationinformation.org accessed 10 March 2011

displacements, it nevertheless gave them less attention.¹¹ The subsequent International Instruments on the protection of IDPs, which followed after the GPID, namely the Great Lakes Pact¹² and the *African Union Convention*¹³ both followed suit in this approach.¹⁴

The *African Union Convention* was adopted by the AU member states to address the problem of internal displacement in Africa- the continent with the worst case of IDPs. With the adoption of the AU Convention in 2009, IDPs in Africa are thought to have an efficient binding legal regime that sufficiently focuses on their needs. Indeed, the Convention is very much applauded as an ideal framework for the protection of IDPs in Africa, during all phases of displacement. The convention is also seen as having addressed all root causes of displacement, but the question to ask is how sufficient is it in addressing the needs and peculiarities of those displaced by development projects (DIDs)? How does it balance between the state's right to embark on development activities, the IDPs' right to home and shelter, and right not to be discriminated upon or marginalized? How can the IDPs exercise both civil and political rights as well as economic, social and cultural rights, which are denied or eroded as a consequence of government projects?

Internal Displacement as a Result of Development Projects

Development Induced Displacement is the compulsory displacement or removal of persons from their homes that occurs for development reasons, to give way to or facilitate government projects. It has been described as an "...officially sanctioned act which has many harmful consequences for the affected persons or group".¹⁵ Forced displacement and

¹¹ The GPID in most of its provisions envisages conflict induced displacement and accords more protection to it, even though under Principle 6 (c) and (d), and Principle 7(3), the GPID does offer protection to displacement caused by factors other than armed conflict. Indeed the IHL regime and the International Committee of the Red Cross (ICRC) focus primarily on displacements induced by armed conflict. The ICRC does not usually interfere in development induced displacements except where the development projects result in armed conflict such as in the Niger-Delta region of Nigeria, but 'may' render humanitarian assistance in cases of natural disaster. See generally Kellenberger, J. (2009), *The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints in International Review of the Red Cross*, Vol.91, No. 875. www.icrc.org Accessed 2 May 2010

¹² The Great Lakes Pact on Security Stability and Development, signed in 2006 by the countries of the Great Lakes region with its associated *Protocol on the Protection and Assistance to Internally Displaced Persons, and Protocol on the Property Rights of Returning Populations*, endorsed the GPID and undertook to incorporate the principles contained in the GPID into national Laws, hence contributing towards the crystallization of the norms into custom.

¹³ The African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa was adopted in October 2009 by the AU Heads of State as the framework that is required for the effective and efficient protection of IDPs in Africa. It took cognizance of the provisions of both the GPID and the Great Lakes Pact, and in fact adopted some of their provisions while incorporating others in its Articles.

¹⁴ An illustration of the neglect of displacements other than conflict induced could be found in the definition of IDPs advanced by two respected scholars of IHL Marco Sassoli and Antoine Bouvier, in which they stated that "*Displaced Persons are civilians fleeing within their own Country from Armed Conflict*". This definition is somewhat narrow because it only recognized armed conflict as the only cause of displacement, and failed to acknowledge other causes such as Development Induced displacement and natural disaster induced displacement. See Sassoli, M., and Bouvier, A. (1999), *How does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*. (Geneva, ICRC) p. 151

¹⁵ See Agbola, T. and Jinadu, A.M.(1997), *Forced Eviction and Forced relocation in Nigeria: the experience of those evicted from Maroko in 1990*, Environment and Urbanization Vol 9, No. 271, <http://eau.sagepub.com/content/9/2/271>. accessed 18 March 2011

resettlement has also been described as the “often unavoidable by-product” of development projects.¹⁶ Development Induced Displaced Persons (DIDPs) were described as “forced resettlers” who have been allocated a specific area within their country in which to resettle, and who have been provided with at least a minimum of resources and services (although usually inadequate) in order to re-establish their lives.¹⁷ In many DID literature, scholars and activists consider development displacees to be those persons who are forced to move “as a result of losing their homes to development projects.”¹⁸ According to the World Commission on Dams report, DID refers not only to physical displacement, but also to livelihood displacement, which deprives people of their means of production and displaces them from their socio-cultural milieu.¹⁹

This particular class of forced migrants (DIDPs) differ from other IDPs in that they were deliberately moved by their own government in the name of “eminent domain law” which allows property to be expropriated from its owners or traditional users for the sake of a “wider public use”.²⁰ Robinson regards DID as “development cleansing”, which according to him constitutes ethnic cleansing in disguise. He opined that;

Most large forced dislocations of people do not occur in conditions of armed conflict or genocide but in routine, everyday evictions to make way for development projects. This “development cleansing” may well constitute ethnic cleansing in disguise, as the people dislocated so often turn out to be from minority ethnic and racial communities.²¹

Development Induced displacement results from projects such as natural resource extraction and mining activities, the need to build infrastructure like industries, irrigation, transportation highways, communication networks, dams and power generation systems or, for urban renewal or development programs such as industrial estates, sewerage systems, hospitals, schools, ports and airports. Natural resource conservation and reserves, such as wildlife re-introduction schemes and the creation of game parks and bio-diversity zones, also often oust communities.²² Such programs are indisputably needed. They improve many people’s lives, provide employment, and supply better services. While these are the positive effects of development projects to be enjoyed by a segment of the population, the same cannot be said of the massive numbers of people deprived not only of their homes, but also of their means of earning, their means of livelihood, and access to the basic necessities of life; this segment suffers the brunt of the development project, and unfortunately turn out to be much worse off than before the project was embarked

¹⁶ Involuntary resettlement is itself never the primary objective of a project that causes displacement. See Cernea, M.(1997), *African Involuntary Population Resettlement in a Global Context*. Environment Department Papers, Social Assessment Series No. 045. Washington, D.C.: World Bank, <http://www-wds.worldbank.org/> . Accessed 18 March 2011

¹⁷ Torton, D, *Who is a Forced Migrant?* In De Wet (2006), C.J. *Development Induced Displacement: Problems, Policies and People*, www.googlebooks.com, accessed 10 March 2011. Pp. 13-37

¹⁸ Stanley, J., op cit.

¹⁹ Ibid.

²⁰ Torton, D., op cit.

²¹ Robinson, W.C.(2003), op cit.

²² All these projects require land, often in large quantity, and one consequence of this is the upheaval and displacement of communities. See Cernea, M.M. (2000), *Impoverishment Risks and Reconstruction: A Model for Population Displacement and Resettlement* in Cernea, MM and Mc. Dowell, C., ed. *Risks and Reconstruction: Experiences of Resettlers and Refugees*, (Washington, D.C., World Bank, 2000) pp.498. See also Stanley, J., op cit.

upon.²³The Involuntary displacements caused by such programs also create major impositions on those affected. They derogate on the exercise of some basic human rights including civil and political as well as economic social and cultural rights of those affected, who are mostly poor minority groups. According to Agbola and Jinadu, Development Induced Displacement is:

usually violent and socially, economically or racially discriminatory in nature. Such dislocation is likely to increase social and psychological “pathology” in a limited number of instances and it is also likely to create new opportunities for some and increase social mobility for others. For most people, dislocation is likely to lead most often to intense personal suffering despite moderately successful adaptation to the total situation of relocation.²⁴

Again, a study of development-induced displacement by the World Commission on Dams (WCD) concluded that impoverishment and disempowerment have been the rule rather than the exception with respect to resettled people around the world, and that the impact has been felt most heavily by marginalized and vulnerable populations.²⁵ Robinson noted that:

Development-induced displacement is problematic at best, even when a state has the best interests of the entire population at heart. Such displacement can be catastrophic when it occurs in the midst of conflict or when a state targets a particular segment of the population—be they people in poverty; ethnic, racial, religious or political minorities; indigenous peoples; or other vulnerable groups—to bear a disproportional share of the costs of development and, either through neglect, malfeasance, or outright malice, denies them a proper share of the benefits. In these instances, and they are manifold, development-induced displacement constitutes a violation of human rights and humanitarian law and calls for a response from the international community.²⁶

Michael Cernea,²⁷ a sociologist who has researched development-induced displacement and resettlement for the World Bank points out that being forcibly ousted from one's land and habitat carries with it the risk of becoming poorer than before displacement, since a significant portion of people displaced do not receive compensation for their lost assets, and do not have effective assistance to re-establish themselves productively. He identified eight interlinked potential risks intrinsic to displacement, namely; Landlessness, Joblessness, Homelessness, Marginalization, Food Insecurity; Increased Morbidity and Mortality; Loss of Access to Common Property and Social Disintegration. Other writers have suggested the addition of other risks such as the loss of access to public services, loss

²³Decent and affordable accommodation is a basic need and plays a central role in human survival. According to Cernea, M., empirical research has shown that loss of land is the main basis of impoverishment, recapitalization and pauperization. See Ibid pp. 11-55. See also Agbola, T. and Jinadu, A.M op cit, and Robinson, W.C., op cit.

²⁴ Agbola, T. and Jinadu, A.M., op cit.

²⁵ Robinson, W. C. (2004) op cit

²⁶ Ibid

²⁷ Cernea is the former senior adviser for sociology and social policy for the World Bank who engineered the World Bank's Policy on involuntary resettlement. See Cernea, M.M.(1997) *The Risk and Reconstruction Model of Resettling Displaced Populations* The World Bank Environment department, See also *Involuntary Resettlement in Development Projects: Policy Guidelines in World Bank Financed Projects*, World Bank Technical Paper No. 80, <http://www-wds.worldbank.org/>. accessed 15 February, 2011

of property without fair compensation, loss of access to schooling for school-age children,²⁸ the loss of civil rights, abuse of human rights, and violence from security forces or risks of communal violence in resettlement areas.

However, despite the fact that the negative effects of development-induced displacement may be every bit as grave as those faced by people displaced by other forces, and despite the fact that the number of people displaced by development projects is thought to be higher than that of those displaced by conflicts, IDPs who have been displaced by development projects do not receive the sympathy and attention usually accorded to those displaced by conflicts or natural disasters such as earthquakes.²⁹ This position is reinforced by the media attention accorded to conflicts and natural disasters, but which unfortunately development induced displacements do not enjoy. On this, Walter Kalin stated that;

The stereotypical image of internally displaced persons – *reinforced by media reports-remains that of people who flee conflict areas* and end up destitute in camps or collective shelters. The reality is far more complex. Every year, more people are displaced by natural disasters and development projects than by conflict and violence. The majority of the displaced live with host families or communities, or merge with the urban poor (emphasis mine).³⁰

This lack of sympathy for DIDPs may be because firstly, in the case of armed conflict, the general uproar, violence and hostilities involved in the conflict always attracts international attention and publicity, victims of war (including IDPs) are sympathized with and offered prompt assistance. Likewise, in the case of natural disasters the suddenness and the disruptive and destructive nature of the disasters attract international attention and sympathy. Whereas in the case of DIDs, the initiation of development projects by governments are usually applauded by the society as a positive development. Displacements induced by such projects are usually the private affair of those affected, as such, the plights of DIDPs tends to go unnoticed. And, if given any attention at all, such attention is usually minimal and local, except where it escalates to violence.

Secondly, another obvious hitch is the authority of the government; the exercise of “state’s eminent domain”³¹ to undertake development activities. Taking over properties for development purposes is within the powers of the state. In fact, such power can even be considered as a necessary part of discharging the duties of the state in fulfilling its

²⁸ Cernea notes that resettlement often interrupts schooling for children. In many cases, children may never return to school, instead being drafted into the labour market earlier than might otherwise have occurred. Other groups, such as the elderly and the disabled, might also face higher risk intensities in the displacement and resettlement processes. Cernea, M. (1999), *Why Economic Analysis is Essential to Resettlement: A Sociologist’s View*. In Cernea, M., (ed) *The Economics of Involuntary Resettlement: Questions and Challenges* (Washington, DC: World Bank), also in *Economic and Political Weekly*, 1999, 34:31 <http://www.jstor.org/stable/4408255>, accessed 24 January 2011.

²⁹ Robinson, W.C. (2003), op cit

³⁰ Kalin, W., Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, A/HRC/13/21, 5 January 2010

³¹ The power of a state to take private property for public use, See IDMC Training on “the Protection of IDPs: Development Induced Displacement”. www.internaldisplacement.org, accessed 28 August 2010

obligations under international treaties and conventions.³² Thirdly, in the case of DID, members of the international community, humanitarian agencies and international organizations are not likely to interfere for fear of infringing upon the sensitive sovereign power of the state- particularly where it involves an African country.³³ Fourthly, the fact that the site chosen for development projects are usually slums means that those displaced are poor masses who cannot fight for appropriate compensation or insist upon their rights to be consulted, if at all they are aware of those rights. Thus, being powerless, they face the threat of being poorer than before.

According to Walter Kälin, development projects can contribute significantly to the realization of human rights, and therefore such displacement is not absolutely prohibited, but such developments cannot be used as an argument to disguise discrimination or any other human rights violation. He stressed that development-related displacement is permissible only when compelling and overriding public interests justify this measure.³⁴ This is because just as people have a right to development, they also have a right to be protected from development's negative effects, including arbitrary eviction³⁵ and the loss of civil and political as well as economic social and cultural rights. Therefore, in line with its duty to refrain from arbitrary/forced displacement, the state must necessarily find a way to balance the state's right of eminent domain against the DIDPs' right to home and property, etc.³⁶

The heart of the problem of Development Induced Displacement is that people displaced by development projects are generally seen as a necessary sacrifice on the road to development, since Development Induced Displacement is often regarded as unavoidable corollary of development. The dominant perspective is thus that the positive aspects of development projects, the public interest, outweighs the negative ones, the displacement or sacrifice of a few.³⁷

According to some writers, the blame for displacements caused by development projects is not entirely upon the state, but may be shared with the corporations executing such projects. From the corporate social responsibility angle, an obligation exists upon the companies to avoid causing involuntary displacements and resettlement, and to abide by standards, which can serve to certify a degree of responsible behaviour on the part of the

³² The obligation of progressive realization of economic social and cultural rights under the Universal Declaration of Human Rights (adopted 10 December 1948), and the International Covenant on Economic, Social, and Cultural Rights, (entered into force 3 January 1976). See <http://www.unhchr.ch/>, last visited 24 November 2010

³³ Owing to their colonial origins, African countries are particularly sensitive when it comes to the issue of sovereignty and exercise of sovereign powers and authority. Although the United Nations High Commission on Refugees (UNHCR) may render assistance to IDPs in situations of armed conflict and natural disaster, people who have been uprooted by development projects are among the forced migrants who are outside UNHCR's concern. See Torton, D, op cit.

³⁴ Kälin, W. (2000), *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy, No. 32 (Washington, DC: The American Society of International Law and the Brookings Project on Internal Displacement).

³⁵ Eviction is an involuntary or forceful removal of people from their homes by whatever means.

³⁶ IDMC Training on "the Protection of IDPs: Development Induced Displacement". www.internaldisplacement.org, accessed 28 August 2010.

³⁷Ibid

company where it does occur.³⁸ DIDPs are therefore entitled to be compensated adequately and promptly by the government that displaced them, so also are they entitled to the protection and assistance of the government as well as the provision of all facilities necessary to their livelihood. The key factor in resettling DIDPs should be restoring their income generating capacities.³⁹ Where adequate measures are not taken by the state, the projects that are initiated to create development may rebound and lead to more impoverishment and social disarticulation.⁴⁰

Global Trends in Development Induced Displacement

Unlike the case of conflict-induced displacements, there is a lack of reliable and updated statistics on displacement caused by natural disasters and development projects thus leading to neglect of this particular vulnerable class of IDPs.⁴¹ No institutions exist for the purpose of collating data on DIDs, nor publications dedicated to tracking overall DIDPs, either at the global or national levels.⁴² There is virtual absence of empirical data or theoretical research on DID in many areas.

However, for an indication of magnitude of displacements caused by development projects, most scholars, policy-makers, and activists rely on the World Bank Environment Department's (WBED) estimate that within the last two decades of the 20th century, the number of people displaced by development projects was about 10 million people each year since 1990, amounting to about 200 million people within the two decades.⁴³ Although this number is high, it still fails to account for large numbers of those displaced by projects not assisted by the bank, and those outside the World Bank's estimates (natural resource extraction projects, and urban development project do not feature in the WB list). Furthermore, the figures available are not the up-to-date, current statistics of DID required for policy making and reference, the most available and often relied upon statistics collated by the World Bank dates back to 1993, almost two decades ago. Thus, care should be employed on the extent of reliance to be placed on the estimates, as Stanley observed:

While these figures are likely indicative of broader trends, it is worth remembering that displacement in Bank-assisted projects accounts for only a fraction of the estimated global total – about 3 per cent of global dam displacement and 1 per cent of global displacement from urban and transportation projects.⁴⁴

³⁸ Szablowski, D. (2002), *Mining, Displacement and the World Bank: A Case Analysis of Compania Minera Antamina's Operations in Peru*, in *Journal of Business Ethics, Resource Extraction Industries in the Developing World*, Vol 39, No.3, pp.247-273

³⁹ Torton, D, op cit.

⁴⁰ Cernea, M.(1997), *African Involuntary Population Resettlement in a Global Context*. Environment Department Papers, Social Assessment Series No. 045. Washington, D.C.: World Bank,<http://www-wds.worldbank.org/>

⁴¹ There is a dearth of literature tracking development-induced displacements. See Stanley, J. op cit., p.3

⁴² For example, because of the poor monitoring, and data management system in the case of DID in the affected countries, the Internal Displacement Monitoring Center (IDMC) usually monitors cases of conflict related displacements, while the office of the United Nations High Commissioner for Refugees (UNHCR) monitor migrations beyond national borders (international migration), and has traditionally argued that it does not have "a general competence for IDPs". See Stanley, J. op cit. See also http://en.wikipedia.org/wiki/internally_displaced_person, accessed 28 May 2011

⁴³ Cernea M.M.(2003) op cit.

⁴⁴ See Stanley, J. op cit.

The Centre on Housing Rights and Evictions (COHRE), a non-governmental organization also estimated that 1.6 million People were forcibly evicted to give way to development projects in 2007-2008.⁴⁵ The rate of urban development displacements in African countries has greatly increased, with the building of new capitals, and other urban development projects within different areas of many African countries. More displacements as a result of development projects are anticipated in future. While referring to DID as an “overlooked” phenomenon of displacement, Court Robinson stated:

For the most part, underdeveloped countries and communities seek to become more developed, whether that is through improving health and livelihoods, expanding educational opportunities, or building infrastructure. But, as the citations above suggest, development does not benefit everyone equally and for some—indeed, for millions of people around the world— development has cost them their homes, their livelihoods, their health, and even their very lives. *The suffering of those displaced by development projects can be as severe, and the numbers as large, as those displaced either internally or internationally by conflict and violence*⁴⁶ (emphasis mine)

A 1994 World Bank document, which studied all World Bank-assisted development projects from 1986-1993 that entailed population displacement, found that over four million people are displaced every year from the development projects on water supply and transportation projects only.⁴⁷ African Countries are of course beneficiaries of these development projects, with the ongoing industrialization, electrification, urbanization and population redistribution schemes. This trend was captured by Robinson thus;

In the 1950s and 1960s, it may be said that the dominant view in development was informed by modernization theory, which, put crudely, saw development as transforming traditional, simple, Third World societies into modern, complex, Westernized ones. Seen in this light, large-scale, capital-intensive development projects accelerated the pace toward a brighter and better future. If people were uprooted along the way, that was deemed a necessary evil or even an actual good, since it made them more susceptible to change.⁴⁸

The World Bank estimates showed that a total number of 1, 963, 000 (one million, nine hundred and sixty –three thousand) people were displaced from ongoing projects in 1993. South Asia had the highest DIDPs with 1, 024, 000 (one million, twenty –four thousand) displacees. Africa had 113 000 (one hundred and thirteen thousand) displacees amounting to 5.3 percent of the total IDPs displaced by the World Bank projects. However, except in history, Large-scale DID is not common in industrialized countries in Europe and North America today.⁴⁹

Although development-induced displacement occurs throughout the world, two countries in particular (China and India) are responsible for a large portion of such displacements.⁵⁰ The National Research Center for Resettlement in China has calculated

⁴⁵ Robinson op cit

⁴⁶ Ibid

⁴⁷ Cernea, op cit.

⁴⁸ Robinson, W.C., op cit.

⁴⁹ Ibid

⁵⁰ The WBED report notes that, in 1993, World Bank projects in China accounted for 24.6 per cent of people displaced in Bank-assisted projects, while Bank-assisted projects in India accounted for 49.6 per cent of the Bank total. See Stanley, J. op cit, see also Robinson, WD., op cit.

that over 45 million people were displaced by development projects in that country between 1950 and 2000. While research has shown that estimates on displacement in India from dam projects alone range between 21 million and 40 million.⁵¹ Brazil is also one of the countries with the biggest ongoing involuntary resettlement projects, with its massive industrialization and electrification programs.⁵²

Development Induced Displacement in Africa

The African Continent is well known for massive displacements of all types, but of the three types of displacements, the displacements triggered by social and political causes such as wars, ethnic and religious crises, or by natural causes such as droughts and famines are the worst cases of displacements in that region.⁵³ This is perhaps, one of the reasons why issues relating DIDs are much neglected compared to other forms of displacement, thus generating more problems and higher statistics of internal displacement in the continent.

In Africa, compulsory resettlement is carried out in most countries by government agencies largely in a "policy vacuum". Laws are enacted to empower the state to expropriate land "needed for the public good" and displace the owners of those lands without making adequate provisions within the laws to effectively address the vital issues of livelihood restoration and productive reestablishment of those displaced.⁵⁴ This is due partly, to the lackluster attitude of African States towards development Induced displacement; a secondary concern as far as displacement is concerned in Africa.

However, contrary to popular knowledge, it has been noted that although countries like China and India lead the world in the number of persons displaced by development projects, the proportion of population and territory affected by even the largest of projects in these countries is much lower than in some projects in African countries.⁵⁵ Displacements such as those caused in Africa by the Akosombo, Kossou or Kariba Dams have affected a much higher proportion of the country's total population than the displacements caused in Asia by even the biggest dams of the continent *vis-a-vis* the total population of those countries.⁵⁶

Most of the major displacements in Africa, as other parts of the world were caused by the construction of dams.⁵⁷ Mining and oil exploration also leads to displacement, although such projects cause only limited displacement compared to large infrastructure

⁵¹ Stanley, J. op cit

⁵² Cernea, M.,(1997) op cit.

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Stanley, J.

⁵⁶ The Akosombo Dam displaced about 1 percent of the population of Ghana and Cote d'Ivoire respectively, while the Narmada Sardar Sarovar dam and Xiaolangdi dam were expected to displace only 0.015 percent of the populations in India and China, respectively, which is 66 times less on a percentage basis. Furthermore, in terms of total land condemned, the impacts were also higher in Africa. Akosombo's reservoir covers 3.5 percent of the land area of Ghana, compared to Narmada's 0.01 percent share of India and Xiaolangdi's 0.003 percent share of China Cernea, M. (1997), op cit

⁵⁷Based on rounded data from project sources and public sources, Cernea provides a list of major displacements from dam projects in Africa. This list includes Akosombo Dam in Ghana, which displaced 84,000; Aswan High Dam in Egypt 100,000 displacees; Bakolari Dam in Nigeria 12,000 displacees, Cabora Bassa in Mozambique 25,000 displacees; dadin kowa in Nigeria 26,000 displacees, Kainji in Nigeria 44 000 displacees; Kariba in Zambia/ Mozambique 57, 000 displacees, Kiri in Nigeria 19,000 displacees, Kossau in Cote D'Ivoire 84,000 , Manantali in Senegal 11,000, Nangbeto in Togo 11,000, Roseires in Sudan, 19,000; Selingue in Mali, 12,000. See ibid

projects, since the displacement they cause is often indirect⁵⁸ and seldom lead to formal resettlement operations.⁵⁹ For example, the oil extraction activities in the Niger Delta area of Nigeria has led to environmental displacements caused as a result of the projects' environmental impacts stemming from regular oil spills. This has led to militant groups taking up arms against the government and the corporations operating in the area. Oil explorations have also led to human rights abuses in Sudan, including the forced expulsion of tens of thousands of people from their homes. Government troops have reportedly used bombings, helicopter gunships, and mass executions as tools to ensure that people flee the region.⁶⁰

Of the 1.6 million displacees reported by COHRE in 1998, most of the victims were evicted without consultation, adequate compensation or alternatives and therefore contrary to the GPID. The Sudanese Nubians were moved about 800 kilometers away from their original homes and away from the banks of the Nile River without any compensation or resettlement provisions.⁶¹ Resettlement policies also failed in the construction of the Kariba and the Akosombo Dams. Likewise, in Zimbabwe, the land reform program which was conceived as an essential component of the national development process and accompanying political violence dislocated approximately 100,000 people by the end of 2003. The number of IDPs in the country swelled in 2005 when more than a half a million people living in urban areas became displaced due the demolition of their homes and businesses as a result of "Operation Murambatsvina", undertaken by the authorities to clear shanty towns and crack down on 'illegal' construction in urban areas.⁶² Within the Southern African Development Community (SADC) region, the legacies of development policies are still felt today by groups such as the Maasai and the San.⁶³

Forced Resettlement in some cases often gives rise to tensions and resentment, and may even lead to full blown conflicts such as in the Qeto Resettlement Area in Wellega in Ethiopia 1980, the 1957/8 displacement of Gwembe Tonga of Zambia, by the Kariba Dam, to mention a few. During the apartheid period in South Africa, The Group Areas Act of 1950 also caused the forced relocation of 'coloured communities' from Cape Town area, leading to resentments and violence.⁶⁴ However, the collapse of the apartheid system in South Africa has made possible the resettlement of many millions of black people who were displaced against their will.⁶⁵

⁵⁸ For example, seepage from an oil pipeline might cause drinking-water contamination and the destruction of farmland, leading families to abandon their homes and lands for safer conditions elsewhere

⁵⁹ Stanley, J. op cit

⁶⁰ Ibid.

⁶¹ See Stanley, J. op cit. see also Koenig, D., *Enhancing Local Development in Development Induced Displacement in the Sudan*, in Wet, C.J.D (2006), *Development Induced Displacement, Problems, Policies and People*. P.183, www.googlebooks.com

⁶²Regional Meeting on Refugees and Internally Displaced persons In the Southern African Development Community (SADC): Seminar on Internal Displacement, Gaborone, Botswana, 24-26 August 2005.

<http://www.brookings.edu/fp/projects/idp/conferences/SADCPaper.pdf>, accessed 28/12/2011.

⁶³ Ibid.

⁶⁴ Koenig, D., op cit.

⁶⁵ Cernea, M.(1997), op cit

Legal Protection of Development-Induced Displaced Persons

Generally, the provisions of international human rights treaties and humanitarian law protecting individuals apply to those displaced by development activities. However, it is important to note that the International Humanitarian Law regime and the International Committee of the Red Cross (the custodian of IHL) focus primarily on displacements induced by armed conflict. The ICRC 'may' render humanitarian assistance in cases of natural disaster, but it does not generally interfere in development-induced displacements except where the development projects result in armed conflict.⁶⁶

The protection of Development Induced Displaced Persons is the same as the protection accorded generally to internally displaced persons under international and regional instruments.⁶⁷ In this respect, the GPID is the most instructive document for the protection of internally displaced persons. It was the first need-specific attempt to address the challenges faced by IDPs, and offered a set of guidelines developed within the context of human rights, humanitarian law and refugee law to address internal displacement and development-induced displacement. Although the major human rights treaties upon which the Principles are based do not directly refer to internal displacement, the protection these instruments provide certainly applies to displaced persons.⁶⁸

The Guiding Principles maintain that it is incumbent on the authorities first to explore all feasible alternatives to avoid displacement altogether. Where it cannot be avoided, then displacement should be minimized along with its adverse consequences. Moreover, in the case of development induced displacements, authorities must demonstrate that such displacement is justified by compelling and overriding public interest,⁶⁹ and that in situations other than during the emergency phases of disaster or armed conflict (i.e., instances of development-induced displacement), the displacement must be lawfully mandated and carried out; it must seek the free and fully informed consent of those affected, as well as their active participation; it must guarantee compensation and relocation, where applicable; and it must be subject to the right of judicial review and effective remedy. Finally, the authorities must take special care to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and others with special attachment to their lands.⁷⁰ In all instances, displacement should not threaten life, dignity, liberty, or security and it should be carried out in conditions of adequate shelter, safety, nutrition, and health.

The Basic Principles and Guidelines on Development-Based Evictions and Displacement stress in paragraph 32 that "States must give priority to exploring strategies

⁶⁶See generally Kellenberger, J., *The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints in International Review of the Red Cross*, Vol 91 No. 875, September 2009. Obtained from www.icrc.org. last visited 2 March 2011.

⁶⁷ However, whereas the peculiarities of those displaced by conflicts are taken into cognizance and specifically addressed under the GPID, and the A.U Convention, those of the DIDPs remain silently in the background.

⁶⁸IDMC Training on the Protection of IDPs: Development Induced Displacement. Obtained from <http://www.internal-displacement.org/>

⁶⁹ See Article 10 of the A.U. Kampala Convention.

⁷⁰ Robinson, W.C. op cit.

that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. 'Eviction impact' assessment should also include exploration of alternatives and strategies for minimizing harm."⁷¹

Protection of DIDPs could also be found under the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, particularly under article five,⁷² which provides DIDPs with more prospects for protection than the Kampala Convention.⁷³ The International Environmental Law regime also offers legal protection to DIDPs by preventing against displacements. It requires that before any development project is embarked upon, its effect on the environment including means of minimizing and mitigating such impact must be incorporated in the development project's plans. It also mandates states as well as multinational corporations to mitigate damages caused to the environment as a result of their activities.

Development-Induced Displacement Under the African Union Convention

Before the adoption of the Kampala Convention, many gaps and loop holes existed in the legal regime for the protection of internally displaced persons. One of the many observed loopholes was the lack of adequate protection to that class of IDPs displaced by development projects. There was therefore a felt need to create a binding instrument that will curtail the problems, and provide a more efficient legal regime that offers better protection and ensures more assistance to all classes of IDPs, including those displaced by development projects. To efficiently address these problems, it was suggested, reference should be made to the principles laid down in the GPID, as well as policies and Guidelines developed over the years to guide resettlement, as for example, the World Bank resettlement policy. While calling for the necessity of creating a binding framework for protecting IDPs, Robinson had noted that;

Such a response should incorporate the *Guiding Principles* as a normative framework and should build upon the policies and guidelines being developed by international financial institutions, UN and international agencies, and non-governmental organizations. The response, furthermore, should promote an approach to development—and to development-induced displacement—that incorporates both an “assessment of risks” and a “recognition of rights.”⁷⁴

⁷¹ Kälin, W., *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy, No. 32 The American Society of International Law and the Brookings Project on Internal Displacement, (Washington, DC., 2000) p. 55

⁷² See also article 1(5), and Article 6(2)(c).

⁷³ Article 5 provides that States shall ensure that all feasible alternatives of development are explored in order to avoid development induced displacement, and if it had to be undertaken, it must be justified by compelling and overriding public interest. And where no alternatives exist, Member States shall take all measures necessary to minimize displacement and to mitigate the adverse effects of development induced displacement by obtaining the free and informed consent of those to be displaced prior to undertaking such displacement, Informing them on the reasons and procedures concerning the project and providing adequate and habitable sites of relocation and ensure that proper accommodation is provided DIDPs in satisfactory conditions of safety, nutrition, health and hygiene

⁷⁴ Robinson, W.C., op cit, p.10.

The Kampala Convention was adopted by the African Union, to address the problem of internal displacement particularly in Africa.⁷⁵ Records show that the worst cases of Displacements in Africa are conflict induced, while Asia has the worst cases of Development induced and natural disaster induced displacements. This perhaps explains why the Kampala convention gave more focus to conflict induced displacements than any other form. However, it is argued that the failure to accord the same degree of protection to all classes of IDPs presents an obvious lacuna in the convention. This is because firstly, if the convention seeks to achieve its aim of preventing, mitigating, prohibiting and eliminating “root causes of internal displacement”,⁷⁶ there is need to focus on all “root causes” and not just on that which is considered the worst, but might not in fact necessarily be the worst⁷⁷. Secondly, it is noted that a primary purpose of the Convention as stated in the preamble is to alleviate the suffering and specific vulnerabilities of internally displaced persons.⁷⁸ This is in consonance with “*the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities*”.⁷⁹

In this regard, one can argue that for those poor marginalized people displaced by development projects, the hardships and insecurities they suffer is no less serious than that of those displaced by conflict or other causes. For them, the world revolves around the daily hardships and sufferings they encounter, and are thus, as eligible for special legal protection taking cognizance of all their peculiarities as any other vulnerable group. Thirdly, the A.U convention has expressly stipulated that it was based upon the “*principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples’ Rights, as well as under other regional and international human rights law instruments*”,⁸⁰ however, the situations of protection and assistance in the case of those displaced by conflicts and those displaced by development projects differ, and assistance is less likely to be rendered in the case of the latter. Thus one can say that the different classes of IDPs do not enjoy “*equality and equal protection of the law*” under the convention.⁸¹

An indication of the secondary position of DIDPs under the convention could be gleaned from the provision of paragraph 5 of the preamble, which while reaffirming the determination of the states to eradicate “root causes” of internal displacement further categorically specified them. The provision totally failed to acknowledge DID even by inference, despite the fact that the State parties had affirmed their “primary responsibility

⁷⁵ Statistics show that of the estimated global total of 27,100,000 IDPs recorded in 2009, Africa homes about 45percent of the global number of IDPs, with about 13 million IDPs recorded. In countries affected by internal displacement, existing data on IDPs is often incomplete, unreliable, out of date or inaccurate. Disaggregated data showing the location and size of internally displaced populations, and their breakdown by age and sex, is only available in a few countries. See *Global IDP Estimates 1990-2009*, Obtained from www.internaldisplacement.org, last visited 28 May 2011.

⁷⁶ See the preamble, Para 5, and Article 2 (a) of the Convention

⁷⁷ Lack of availability of statistics on DID may hide the reality of the huge numbers of persons displaced. Many writers have suggested that the number of DIDs if they will be accurately recorded is very much likely to be higher than those displaced by conflicts.

⁷⁸ Preamble, Para 2

⁷⁹ Preamble Para 3

⁸⁰ Preamble, Para 10.

⁸¹ Preamble Para 9.

and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, *without discrimination of any kind*".⁸² The paragraph stated that states parties were;

DETERMINED to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, *especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters*, which have a devastating impact on human life, peace, stability, security, and development;⁸³

Further reinforcing the lopsided focus of the convention was the definition of IDPs, adopted verbatim from the GPID thus;

"Internally Displaced Persons" means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border⁸⁴;

This definition clearly states the causes of armed conflict within the purview of the convention to be those who flee to avoid

- Armed conflict
- Situations of generalized violence
- Violations of human rights; and
- Natural or human made disasters

From the above classifications, one can note that Development Induced Displacement does not fall under any of the classes mentioned. While explaining the definition of IDPs as contained in the GPID, Court Robinson stated: "Indeed it is this group—those displaced by conflict and human rights violations –which is generally thought to constitute "the internally displaced."⁸⁵

It has been stipulated by writers that the causes covered by the above definition are not exhaustive.⁸⁶ While this is true, the categorical mention of specific examples nevertheless implies that others not specifically mentioned are less crucial, or at the very least, derogated to an inferior position, and accorded less recognition and importance. Another valid reason that reinforces the conviction that DID is accorded less importance in the convention is the controversy which followed the adoption of the definition of IDPs. Initially, it was suggested that the definition of IDPs in the Convention should include both the generally accepted definition under the GPID, as well as a second definition incorporated under the Protocol of the Great Lakes Pact, which took cognizance of those

⁸² Preamble, Para 11.

⁸³ Preamble, Para 5, emphasis mine.

⁸⁴ Article 1 (k) of the A.U. Convention

⁸⁵ Although he further explained that "natural or human-made disasters" coupled with principle 6 of the GPI takes cognizance of the DIDPs. See Robinson, C.W. op cit, p.32

⁸⁶ While explaining the definition of IDPs contained in the GPID, Walter Kälin observed that while the definition of IDPs gives examples of how internal displacement may occur, the words "*in particular*" indicate "that the listed examples are not exhaustive." See Robinson, W.C., op cit, p.13

who flee in order “to avoid the effects of large scale development projects”⁸⁷. Both definitions were incorporated in the draft A.U. Convention, however, when the final copy of the convention came for signature, the definition was conspicuously missing. It had been dropped during the negotiations leading to the adoption of the Convention.⁸⁸ In explaining this obvious preference to adopt only the definition of the GPID without the additional definition contained in the Great Lakes Protocol, Japhet Biegion and Sarah Swart stated: “Notably, since the Kampala convention adopts the definition of IDPs contained in the UNGPID, it reflects the reluctance of states to explicitly define those persons displaced by the development projects as IDPs”.⁸⁹

The writers however went on to explain that “*the failure to expressly define victims of development induced displacement as IDPs does not in any way mean that the Kampala Convention does not cover such displacement*”.⁹⁰ This argument is based upon the provision of the convention under Article 15 in its “final provisions” thus; “States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.” It is clear however that even though the convention does cover Development Induced Displacements it does so only in few sections of the convention, and even then, mostly in passing, or in other places, by inference.⁹¹

This trend could be found even in the text of the convention. Article 4 provides that every person enjoys a right to be protected against arbitrary displacement,⁹² and sets out a list of categories of internal displacements. Although it provides that the list is not exhaustive, the omission of DID is a notable blemish, especially considering the fact that other factors which could have fallen under the category of conflict induced displacement were specifically mentioned.⁹³ Article 4(4) provides:

- 4(4) All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:
- a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
 - b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians [is] involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - d. Displacement caused by generalized violence or violations of human rights;
 - e. Displacement as a result of harmful practices;

⁸⁷ The definition read thus “*Internally Displaced Persons also 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 large scale development projects and who have not crossed an internationally recognized State border*”

⁸⁸ See Biegion, J. and Swart, S., *The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa: A Panoramic View*, in African Yearbook on International Humanitarian law, 2009/2010.

⁸⁹ Ibid

⁹⁰ Under its final provisions, the Convention reinforced this position by stating that “States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes”. See also, Ibid at p.32

⁹¹ Article 10 is the only Article within the whole document of 23 Articles that categorically mentioned DIDPs in its text.

⁹² Article 4(1) and 4(4)

⁹³ For example, article 4(4) (c) and (d) are quite similar to Article 4(4)(b).

- f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
- g. Displacement used as a collective punishment;
- h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.

Also, the provision of Article 5, which deals with the “obligations of states relating to protection and assistance” seems to take specific cognizance of both conflict and natural disaster displacement, and totally failed to mention specific assistance to those displaced by development projects. Article 5(4) provides “States Parties shall take measures to protect and assist persons who have been internally displaced *due to natural or human made disasters, including climate change*.⁹⁴ Article 9 provides another example. Even though it provides that States Parties shall protect the rights of internally displaced persons “regardless of the cause of displacement” by refraining from, and preventing, certain listed acts, it failed to specifically mention development induced displacements as one of the acts, although by reference, its inclusion may be inferred from the phrase “amongst others”.

Furthermore, some of the provisions of the convention pertain more specifically to situations of conflict, and may not really be relevant to development-induced displacement. For example, Article 7 is entirely focused on conflict-induced displacement, addressing perceived problems and challenges to the assistance of IDPs in conflict situation. But no such provision is made to address peculiar problems relating to IDPs displaced by government projects, nor any specific provisions which can do away with the restrictions and challenges to the DIDPs’ access to protection and assistance.

As far as the convention is concerned, Article 10 was the only article that specifically addressed the DIDPs. This is not a new development in the legal protection of DIDPs as even the GPID incorporated that much protection to DIDPs. The convention therefore only maintained the status quo as far as legal protection of DIDPs is concerned. In the two subsections dealing with DID, the convention obliges state parties to prevent displacements caused by projects carried out by public or private actors. The Article however, does not couch DID as a prohibited category of arbitrary displacement, as does the GPID⁹⁵. The section merely stated that state parties shall “*as much as possible*” prevent displacements caused by development projects by public or private actors⁹⁶; and shall carry out a socio-economic and environmental impact assessment before undertaking the projects.⁹⁷ However, a critical look at the content of Article 10 reveals that the wordings were merely recommendatory, neither forceful, nor obliging. The Article does not infer the provision of measures or penalties if members disregarded the provisions as is often the case in most African countries. Perhaps in this respect, the international environmental law regime provides even more protection to DIDPs because not only does it oblige states to

⁹⁴ Emphasis mine.

⁹⁵ Biegon, J., and Swart, S., op cit p. 32

⁹⁶ Article 10(1)

⁹⁷ Article 10(2)

make an Environmental Impact Assessment, it imposes an obligation on states to mitigate the effects of their developmental activities where damage is caused by any such project. Article 4(5) also mentioned that States “*shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests.*”⁹⁸

The question to ask here is what will qualify as “compelling and overriding interest”? What degree of benefit or proportion of people to derive benefit will make the displacement compelling and overriding? The Convention does not stipulate a standard to be followed. If different standards are allowed to be set by different countries, then the provisions of the Convention stand to be violated. Some countries in Africa resort to burning prospective development areas to rapidly displace people for the sake of development projects.⁹⁹ An example could be seen from the Ugandan experience in the Kibale forest, in which about 35,000 people were violently expelled from the Kibale game and forest reserve using brutal methods and burning of houses, in order to compel inhabitants to depart. This was done without proper compensation, or substitute means of livelihood. Thus, the poor displaced people were left to fend for them-selves¹⁰⁰.

To ensure compliance, a standard guide has to be developed to define clearly what would qualify as “compelling” or “overriding public interest”. Without this, the fates of the poor, discriminated and often marginalized DIDPs remain in the hands of the unsympathetic, discriminatory and arbitrary governments and policy makers who initiate such projects.¹⁰¹

It clearly emerges [Kälin writes] that forced displacement of persons may be allowed in certain circumstances but that these exceptions from protection against displacement are restricted to cases of an ultima ratio which shall be resorted to only if there are no other alternatives. In this regard, the term ‘arbitrary’ implies that the acts in question contain ‘elements of injustice, unpredictability, and unreasonableness.’¹⁰²

Article 3(1) further provides for the general obligations of states, highlighting duties, obligations and undertakings of states to respect, prohibit and prevent arbitrary displacement, as well as political, social, cultural and economic exclusion and marginalisation that are likely to cause displacement of populations or persons. The sub sections there under specifically provides that state parties should ensure “individual” accountability for acts of arbitrary displacement, as well as accountability of “non-state actors”, multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts. It provides that state parties shall:

⁹⁸ This provision is similar to Principle 9 of the *GPID*, which provides that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to the land.”

⁹⁹ Robinson, op cit.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Quoted in Robinson, op cit.

- g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
- h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
- i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement...

These provisions arouse the question what happens if government (state actors) does arbitrarily displace people with obvious disregard to these provisions, which is often the case with DIDPs? Who intervenes? What sanctions exist? All these questions are not mere rhetoric, but have no definitive answers.

Also, there are other provisions in the convention which may curtail the DIDPs' access to the protection and assistance offered by the Convention, or which may make such protection or assistance difficult or impossible to access. For example, after listing the obligations of states under article 5, the last sub section went on to give a condition, which stated that *"Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states."* The issue of sovereignty and territorial integrity has always been a very delicate issue. Considering the fact that States Parties bear the primary duty and responsibility for providing protection and humanitarian assistance to internally displaced persons within their territory or jurisdiction¹⁰³, where humanitarian agencies and international organizations fear that their actions may be unwelcome, they may refrain from assisting the DIDPs, for fear that it may be regarded as interference in domestic affairs. Therefore, although Article 5(9) gives to the IDPs the right to "peacefully request or seek protection and assistance, in accordance with relevant national and international laws", and that states are "required to recognize this right", and are further required not to "persecute, prosecute or punish" the IDPs for so doing, availing themselves of this provision is not very likely for DIDPs because the African Union as well as states parties are not likely to intervene on behalf of the DIDPs even when they seek for it, for fear of encroaching on the sovereignty and sovereign authority of the state concerned.

Additionally, Article 6, which deals with obligations of international organizations and humanitarian actors, seem to give them the right to offer assistance. Yet again, one senses the restrictions upon which they can successfully operate so as not to breach the sovereign integrity of the states they operate in. Since those displaced by development projects are displaced as a result of direct government action, any interference will be seen as a challenge to the government's authority. The bottom line is that the A.U., state parties, International Organizations as well as other humanitarian organizations are curtailed from rendering assistance to IDPs displaced by development projects at all times. Thus, these provisions may be regarded as futile prospects for DIDPs.

Again, it is not possible for the DIDPs to claim and enjoy certain rights provided to IDPs under the convention. An example could be gleaned from Article 9(2)(f) which provides that states shall guarantee the freedom of movement and choice of residence of

¹⁰³ Article 5(1)

internally displaced persons, except under some few mentioned circumstances. This freedom may not be feasible for the DIDPs who were in the first instance displaced from their “residences of choice”. However, it is noteworthy to mention that the convention in its “final provisions” categorically stated that except where expressly provided in the Convention, its provisions “apply to all situations of internal displacement regardless of its causes”. This provision I believe is an acknowledgement of how much other causes of displacement appear to be overlooked, and an attempt was made in the final provisions to include these classes under the purview of the Convention.

Conclusion

The adoption of the A.U. Convention is indeed a great improvement upon the legal protection accorded to IDPs, its regional nature is an added advantage for IDPs in Africa, considering the fact that almost half of the global number of IDPs is in Africa. But despite this development, a notable observation is that perhaps in its quest to overcome the main cause of displacement in Africa (conflict induced displacement), the Convention overlooked other causes, and failed to give enough importance to them, or to provide sufficient protection in respect thereof.

The plights and sufferings of the internally displaced persons are the same, irrespective of the cause of displacement, because they share the same vulnerabilities, face the same problems and insecurities, and lack the same basic needs. Since Africa faces mass displacements caused as a result of all three main causes of displacement, it is of particular importance that all classes of IDPs are accorded sufficient protection and humanitarian relief.

If the A.U Convention is intended to cater for the suffering of IDPs because of their unique vulnerabilities, address their needs and eliminate root causes of internal displacement, then there is an impending need to give sufficient attention to all causes of displacement, sufficient in a way that measures all the peculiarities of the different classes of IDPs, and adequately addresses them. DID is certainly another area that requires more attention in the creation of an efficient legal regime that addresses all their needs. Redressing the inequities caused by displacement and enabling affected people to share in the benefits of growth is imperative.

It is concluded that although the A.U Convention undoubtedly presents better option to IDPs by being binding on the parties, it has essentially failed to satisfactorily address all root causes of displacement in the Continent.