

# Access to Justice for Internally Displaced Persons: The Global Legal Order

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## Abstract

Internally displaced persons are people who are uprooted from their social, economic, cultural and educational environment and made squatters or homeless within the jurisdiction of their own country. They consequently have no permanent place of abode. Internal displacement therefore becomes a situation that deprives individuals of access to justice and leads to violations of the human rights of categories of citizens. For example, women, children and the elderly are more vulnerable and lack social-economic assistance from their loved ones and family support because of their internal displacement. Their situation denies them access to justice from several perspectives, such as being in a state of despair, instability and uncertainty. This article examines the ways in which the domestication of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 2009 (the Kampala Convention) and clinical legal education can be used to promote access for internally displaced persons to justice and basic human rights. In this regard, the article further analyses access to justice for internally displaced persons through the teaching methodology of clinical legal education in African legal jurisprudence. Finally, the article recommends the involvement of legal clinicians and other practitioners as advocates of internally displaced persons' access to justice, respect for human rights and the rule of law as a requirement for the domestication of the Kampala Convention by Member States in Africa.

**Keywords:** internally displaced; access to justice; Kampala Convention 2009; human rights; clinical legal education.



## Introduction

The phenomenon of internal displacement has in recent times developed into a global concern that has social, political and economic implications. It is estimated that approximately 50 million persons worldwide have been displaced internally.<sup>1</sup> The majority of these are estimated to be in Africa and Asia.<sup>2</sup> These individuals, who are commonly known as internally displaced persons (IDPs), are forced to flee their homes but still remain within their country's borders. The issue of IDPs is a problem that is not dealt with directly by international legal instruments, which contributes to the temporary nature of the international community's response with humanitarian aid during an internal displacement crisis. Despite IDPs being among the most vulnerable people in Africa, internal displacement has raised and posed serious human rights challenges. Millions of people in Africa have been displaced in consequence of different factors such as political violence and natural disasters such as flooding, drought or famine.<sup>3</sup> The most recent examples are cyclones Idai and Kenneth in Mozambique, Tanzania and Zimbabwe, which have displaced tens of thousands persons. In these crises, more than 1 000 died,<sup>4</sup> adding to the global number of 50.8 million IDPs, where 45.7 million and 5.1 million IDPs were caused by armed conflicts and natural disasters respectively.<sup>5</sup>

In Nigeria, for example, the violence caused by the Boko Haram and other insurgent groups, specifically in the northern parts, has resulted in more than a million people being displaced.<sup>6</sup> Moreover, the armed conflicts in other African countries such as

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<sup>1</sup> Report on Refugees; Displace Persons and Returns, UN ESCOR, 2d Sess, Annex, Provisional Agenda Item 12, UN Doc E/109/Add 1 (1991); see P Nair, *Towards A Regime for the Protection of Internally Displaced Persons* (National Law School of India University 2012).

<sup>2</sup> R Adeola, 'The Right not to be Arbitrarily Displaced under the United Nations Guiding Principles on Internal Displacement' (2016) 16(1) African Human Rights Law Journal, 1–3.

<sup>3</sup> The term 'IDPs', as used in this article, defines internally displaced persons to mean any individual who has been forced to flee their habitual place of residence, in order to avoid the effects of armed conflict, situations of generalised violence or violations of human rights, and who have not crossed an internationally recognised border. See also Guiding Principles on Internal Displacement, UN Doc.E/CN.4/1998/53/Add.2, 11 February 1998, which defines IDPs as persons or group 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 internationally recognised state border.

<sup>4</sup> Reliefweb, 'Crisis Update: Cyclones Idai and Kenneth' <<https://reliefweb.int/report/mozambique/crisis-update-cyclones-idai-and-kenneth>> accessed 12 August 2019.

<sup>5</sup> Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2020* <<https://www.internal-displacement.org/global-report/grid2020/>> accessed 23 August 2019.

<sup>6</sup> AS Barau, 'Boko Haram: Protection Issues for Displaced and Distressed Women and Children in Northern Nigerian Cities' (2018) <<https://pubs.iied.org/pdfs/10842IIED.pdf>> accessed 12 August 2019.

Mozambique, Angola, Sudan, Liberia, Sierra Leone, the Democratic Republic of Congo (DRC), Guinea-Bissau, Côte d'Ivoire, Central African Republic (CAR), Chad, Mali, Uganda, Kenya, Rwanda, Burundi, Sudan, Eritrea, Ethiopia and Somalia have proved to be another source of internal displacements in Africa.<sup>7</sup> For this reason, in 2009, the African Union (AU) Summit which was held in Uganda adopted the Convention for the Protection and Assistance of Internally Displaced Persons (the Kampala Convention).<sup>8</sup> As at April 2016, 25 African Member States had ratified it; that number increased to 31 in October 2019.<sup>9</sup> However, most of these Member States have not domesticated the Kampala Convention into their national laws or constitutions.<sup>10</sup> Although some African states are dualist in nature and therefore the domestication of international instruments varies, countries such as Kenya and Namibia, which use the monist approach in their constitutions, have not done much to implement the Kampala Convention. Despite acknowledging the gravity of the IDPs' situation as among the causes of instability in Africa, the AU has made little commitment to respecting and promoting IDPs' rights; therefore, guaranteeing the rights of IDPs remains inadequate. As a result, IDPs' access to justice has proved to be almost impossible.

Given what is stated in the conceptual framework, this article examines the causes of IDPs in the world, with specific emphasis on Africa. It focuses on the application of the Kampala Convention pertaining to the right of access to justice and to the protection and promotion of IDPs' socio-economic rights in African jurisdictions. Furthermore, the article assesses the ways in which clinical legal education for law students and legal practitioners can mitigate the impact of internal displacement in Africa with the view to promoting human rights, access to justice and respect for the rule of law.

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<sup>7</sup> IV Bakken and SA Rustad, 'Conflict Trends in Africa 1989–2017' *PRIO Conflicts Trends* <<https://reliefweb.int/sites/reliefweb.int/files/resources/Conflict%20Trends%20in%20Africa%20C%201946%E2%80%932017%20Conflict%20Trends%20Report.pdf>> accessed 14 August 2019.

<sup>8</sup> Adopted on 23 October 2009 and entered into force on 6 December 2012.

<sup>9</sup> Angola, Benin, Burkina Faso, Cameroon, CAR, Chad, DRC, Djibouti, Equatorial Guinea, Eswatini, Gabon, Gambia, Guinea, Guinea-Bissau, Côte d'Ivoire, Lesotho, Liberia, Malawi, Mali, Mauritania, Niger, Nigeria, Republic of Congo, Rwanda, Sahrawi Arab Democratic Republic, Sierra Leone, South Sudan, Togo, Uganda, Zambia and Zimbabwe. Others such as Mozambique, Cape Verde, Ethiopia, Senegal, Sudan and Somalia either have ratified the convention recently, or close to ratification, or have expressed a strong interest in doing so recently. United Nations High Commissioner on Refugees, *UNHCR welcomes Somalia's ratification of the Kampala Convention* (UNHCR November 2019) <<https://www.unhcr.org/en-us/news/press/2019/11/5dde4fb04/unhcr-welcomes-somalias-ratification-kampala-convention.html>> accessed 12 August 2019.

<sup>10</sup> Article 9(1) of the Kampala Convention mandates states to protect the rights of IDPs in displacement situations, while Article 9(2) imposes specific obligations upon states to protect and assist IDPs.

In view of the above, this article refers to the international legal framework and critically analyses the application of the Kampala Convention. To achieve this, the first part provides a general background to internal displacement in Africa. The second part proceeds with the adoption of the convention and investigates how the non-domestication of the Kampala Convention of 2009 has hindered and failed to promote the realisation of IDPs' rights in Africa. The third part evaluates the global legal order and how clinical legal education can help to protect IDPs through advocacy of access to justice and basic human rights. Finally, the article concludes with recommendations on measures that can be put in place to promote IDPs' access to justice.

## Conceptualising IDPs

As stated above, IDPs have two distinctive characteristics, namely, that their movement is involuntarily caused by conflicts or natural disasters and that the people affected always remain within their own countries. This article refers to the definition presented by the UN Secretary General in 1992 in which he classified IDPs as:

persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violation of human rights or natural or manmade disasters, and who are within the territory of their own country.<sup>11</sup>

The definition affirms that most of the causes of refugees' crisis are the same as factors that are impetus to the internal displacements, which seems to have been framed along the broad refugee definition used under refugee laws. Therefore, IDPs flee from the armed conflicts, internal strife and systematic violations of human rights; and if they were to cross their national geographic borders, they would qualify as refugees under both under United Nations (UN) and Organisation of African Unity (OAU), now the African Union (AU), Refugee Conventions.<sup>12</sup>

A cursory observer may ask: Why are IDPs not treated as refugees, and vice versa? The problem lies with the international conceptualisation of the two phenomena. Under the refugee conventions, a refugee is a person who is outside their country of origin and is unwilling or unable to return to it owing to a well-founded fear of being persecuted for

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<sup>11</sup> Analytical Report of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/1992/23, 14 February 1992, para 17; see Article 1(k) of the Kampala Convention, which defines IDPs in the same manner 'as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border'.

<sup>12</sup> See Article 1 of the 1951 Refugee Convention as reiterated under the OAU Refugee Convention of 1969.

any of the listed grounds. Therefore, in principle, the UN and the OAU Refugee Conventions (now the AU Refugee Convention) protect only fugitives from persecution,<sup>13</sup> in contrast to the Kampala Convention, which was adopted by the AU to deal with IDPs. It appears also that persons forcibly displaced by natural disasters cannot qualify as refugees. For example, the recent decision of the Human Rights Committee (HRC) on the Kiribati refugees and climate-change refugees demonstrates this view.<sup>14</sup> The *Ioane Teitiota v New Zealand*<sup>15</sup> or *Kiribati* refugee case has set a global precedent by which a state can be held to be in breach of its human rights obligations<sup>16</sup> if such a state returns a person who flees the country of origin due to a climate-change crisis, especially if such a person's life is at risk or they are in danger of facing cruel, inhumane or degrading treatment.<sup>17</sup> In the *Kiribati* case, the applicant, Ioane Teitiota from Kiribati (the Pacific Island nation) faced land disputes and difficulties of accessing safe drinking water in his home country as a result of climate change and was therefore forced to migrate with his family to New Zealand, where he applied for refugee status after his visa had expired. He was denied asylum by New Zealand's Immigration and Protection Tribunal, the Court of Appeal and the Supreme Court. He then took the matter to the HRC on the ground that New Zealand had violated his right to life under the International Covenant on Civil and Political Rights by deporting him to Kiribati. While the HRC found that Teitiota's deportation had not been unlawful because he didn't face an immediate danger to his life in Kiribati, the HRC recognised that climate change represents a serious threat to the right to life and that decision-makers need to take cognisance of climate change when dealing with deportation. The HRC's decision suggests that future claims might be successful where the evidence shows that the effects of climate change can be added as a ground in granting asylum to refugees.

Several reasons have been advanced for such non-inclusion of IDPs under the refugee conventions.<sup>18</sup> Likewise, the role of the United Nations High Commission for Refugees' (UNHCR) role in dealing with IDPs is subject to criteria such as:

- a specific request or authorisation that must come from the UN Secretary-General or a competent principal of the UN institution;

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<sup>13</sup> Article 1 of the UN Refugee Convention and Article I(1) and (2) of the OAU Refugee Convention, which provide for the definition of a refugee.

<sup>14</sup> See 'The Paris Climate Deal May Be Too Little, Too Late for the Islanders of Kiribati'.

<sup>15</sup> CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020 <<https://www.refworld.org/cases,HRC,5e26f7134.html>> accessed 17 September 2020.

<sup>16</sup> Under Article 6(1) of the International Convention on Civil and Political Rights.

<sup>17</sup> *Ioane Teitiota v New Zealand* paras 9–10.

<sup>18</sup> UNHRR 'UNHCR's Mandate for Refugees, Stateless Persons and IDPs' <<https://emergency.unhcr.org/entry/55600/unhcrs-mandate-for-refugees-stateless-persons-and-idps>>.

- consent from a given country or other agency concerned;
- an assurance of access to the IDPs to be assisted;
- the availability of resources (material and human in terms of expertise and experience);
- its relationship with other agencies; and
- adequate staff safety.<sup>19</sup>

One of the questions that can be raised is this: If the convention were to be adopted, will IDPs be treated as a specific group? For instance, could indigenous people lodge claims to particular areas as their protected territories preserved as part of their identity? If the state does not affirm these claims as indigenous rights within a particular time or period, would they be moribund or wiped out, because the state cannot protect them any longer? Again, would IDPs then be treated or regarded as minorities, and would they have right to their cultural integrity or heritage? These are among the questions which may raise legal issues relating to the protection of IDPs' rights.

It has been argued that the treatment of refugees and IDPs should be equal because they come from similar factual situations.<sup>20</sup> Traditionally, the factual legal situation ascribed to refugees is that they have crossed internationally recognised borders, but this is not the case with IDPs, as stated before. For this reason, there is no basis for comparing them under international law. Equally, because internationally recognised borders demarcate areas of territorial sovereignty the fact of crossing the borders becomes a crucial dividing line, and therefore justifies the intervention of the international community in the refugee situations.<sup>21</sup> On the contrary, IDPs cannot qualify for international intervention because they are protected within the sovereignty of their own country. Granted, IDPs do receive humanitarian aid from the international community, non-governmental organisations (NGOs) and humanitarian agencies during their plight, but this is done on a voluntary service basis, underlined by the principles of humanity, and not as a designated UN agency such as the UNCHR, which is mandated to deal with the refugees' problems.

It has been argued further that there is no need to create a new legal status for IDPs<sup>22</sup> because International Humanitarian Law (IHL) already adopts a global approach aimed at protecting civilian populations without privileging certain groups such as persons

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<sup>19</sup> *ibid.*

<sup>20</sup> MT Ladan, *Migration, Trafficking, Human Rights and Refugees under International Law: A Case Study of Africa* (Ahmadu Bello University Press 2004).

<sup>21</sup> R Cohen and FM Dend, *The Forsaken People: Case Studies of Internally Displaced Protecting the Internally Displaced* (Brookings Institution Press 1998) 39.

<sup>22</sup> M Vincent, 'IDPs Rights and Status' *Forced Migration Review*, 8 August 2000.

who have crossed borders. Therefore, IHL usually provides for human rights protection and guarantees for all persons, including IDPs. Accordingly, the idea of creating norms aimed at the exclusive protection of IDPs is widely opposed and its protagonists' approach must be treated with great caution. Not until 2009, when the AU adopted its Kampala Convention on the protection of the rights of IDPs in Africa, was the seriousness of the internal displacement problem appreciated as one that needed regional intervention.

On the other hand, there are also political and humanitarian reasons for not privileging IDPs as a subset of human rights victims. The International Committee of the Red Cross (ICRC) generally points out that possible discrimination that may arise against other human rights victims because it acts as the guardian of IHL, a role that has its own complexities. Also, the magnitude of the internal displacement problem is beyond humanitarian aid, because the ICRC cannot go beyond the countries' political actions and inactions.<sup>23</sup> But, under IHL, which intends to protect victims of armed conflict such as IDPs, the ICRC is under a duty to protect IDPs' fundamental rights, no matter to which party they belong. That is why the principles of *jus in bello*<sup>24</sup> must remain independent of the *jus ad bellum*<sup>25</sup> or the *jus contra bellum* (law on the use of force or law in the prevention of war) when dealing with IDP matters. Therefore, it is imperative to have a system that is specifically targeted at protecting IDPs. It is acknowledged that the Kampala Convention seems to respond to the IDPs' need for protection; however, the implementation of the convention remains inadequate.

Similarly, the UNHCR, whose mandate is restricted to refugees, does not have exclusive jurisdiction to deal with IDPs; instead, it conducts operations under certain circumstances to protect and provide humanitarian assistance to IDPs, as stated in the Operational Guidelines for IDPs.<sup>26</sup> It must be emphasised that when dealing with the legal protection of IDPs, the ICRC and the UNHCR must be empowered to act beyond the confines of the law to ensure that IDPs' specific needs and rights are met adequately. The *Kiribati* case mentioned above calls for filling the gaps that are found under international human rights and IHL in responding to the needs of refugees, but also IDPs who are displaced by climate-change refugees. For instance, persons who are displaced by natural disasters would not qualify as refugees under the existing legal order, as

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<sup>23</sup> Y Sandoz, 'The International Committee of the Red Cross as Guardian of International Humanitarian Law' <<https://www.icrc.org/en/doc/resources/documents/misc/about-the-icrc-311298.htm>> accessed 15 September 2019.

<sup>24</sup> The law in waging war that defines standards by which a state may conduct war where the actions during the war should be just and fair.

<sup>25</sup> This means 'justice after war'; it is a concept that deals with the morality of the termination phase of war.

<sup>26</sup> The Operational Guidelines for UNHCR's Engagement in Situations of Internal Displacement, UNHCR/OG/2016/2.

demonstrated by the *Kiribati* case.<sup>27</sup> They, however, should be included in the definition given under refugee conventions because in some natural or man-made disasters governments respond by discriminating against or neglecting certain groups on political or ethnic grounds, or by violating their human rights in other ways. In some countries,<sup>28</sup> people have also been displaced because of a combination of natural disasters and racial, social and political factors. Therefore, including victims of natural disasters in the definition of refugee highlights the fact that persons subject to disasters may need special protection, as shown in the *Kiribati* case.

## Status of the IDPs under International Law

Over the past decade, a substantial number of IDPs have been displaced and the respect for and protection of their rights largely do not fall under the regular mechanisms of international legal frameworks. Statistics and information about their conditions are sorely needed so that strategies can be put in place in order to protect and assist IDPs.<sup>29</sup> About 50.8 million people have been displaced inside their own countries because of conflicts and armed violence,<sup>30</sup> while others can be displaced as a result of natural disasters, as indicated above. In southern Africa, cyclones and the recent Cabo Delgado insurgents in Mozambique have caused more internal displacements and increased the number of IDPs in the region. Also, there seems to be an overlap between conflicts and disasters which repeatedly cause internal displacements in many countries around the world.<sup>31</sup> In Africa, for example, countries such as Nigeria, Mozambique, Angola, South Sudan, Sierra Leone, Burundi, to mention but a few, demonstrate such an overlap.

Although IDPs have proved to be the largest risk population, especially on the African continent, ending displacement remains an intractable problem. For example, the *Global Report on Internal Displacement of 2019* has revealed that there is lack of information on how to deal with internal displacement and how to find a durable solution to the IDP crisis. Political instability, social inequalities and environmental and climate change are factors that can force IDPs to return to insecure and hazardous environments with limited socio-economic opportunities. As a result, instead of creating the conditions for

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<sup>27</sup> This is due to the fact that natural disasters are an act of God and not man-made. This is entirely different from armed conflicts between non-state actors who fight for political power, causing people to flee to other countries for safe asylum or because they are political actors whose lives are in danger.

<sup>28</sup> IDPs in countries such as Uganda, Burundi, South Sudan and Sudan are the result of the ethnic wars or political conflicts and violence that displaced them.

<sup>29</sup> Internal Displacement Monitoring Centre (IDMC) Report of 2019.

<sup>30</sup> Global Report on Internal Displacement of 2019 <<https://reliefweb.int/report/world/global-report-internal-displacement-2019-grid-2019-0>> accessed 23 August 2019. Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2020* <<https://www.internal-displacement.org/global-report/grid2020/>> accessed 23 August 2019.

<sup>31</sup> *ibid.*



a lasting solution, these factors tend to escalate internal displacements, at the same time affecting the promotion and protection of the basic human rights of IDPs. For example, the increasing number of IDPs has posed challenges relating to their access to basic rights and protection, while the capacity and willingness of governments and the international community to respond to IDPs' problems remain doubtful.<sup>32</sup> The UNHCR,<sup>33</sup> which has had powers to attend to the situations of IDPs, has, from the beginning, never considered the issue of IDPs' access to justice. Instead, the main concern of the UNHCR is to meet temporarily the IDPs' immediate need for food and shelter.

### **Access to Justice under International Legal Framework**

The Universal Declaration of Human Rights (UDHR)<sup>34</sup> gives individuals the right to a fair and accessible justice system.<sup>35</sup> Effective and efficient access to justice, in this article, means having a place or forum where an individual or group of individuals can lodge complaints or seek redress or a remedy for a violation of rights, such as eviction from housing or residence.<sup>36</sup> It also means fair treatment in the justice system's procedures and processes.<sup>37</sup> The issue of access to justice has been kept in the background and unattended to, although it is not only germane to addressing the justice concerns of IDPs, but is also considered to be the ultimate solution to the problem by reconciling parties in a conflict or in violent situations.

The UN Guiding Principles on Internal Displacement (the Guiding Principles) were developed in 1998 to study and deal with the causes and consequences of internal displacements around the world and the status of IDPs under international law. The principles restated the existing international human rights and humanitarian laws and identified the gaps in the various legal instruments that failed to deal with IDPs' situation. For example, in line with the Guiding Principles, arbitrary displacement is prohibited.<sup>38</sup> What can be noted also is the fact that, once persons have been internally displaced, they do retain a wide range of economic, social, cultural, civil and political rights. These include the right to basic humanitarian assistance such as food, healthcare services and shelter. They also include the right to be protected from physical violence,

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<sup>32</sup> International Organisation of Migration (IOM).

<sup>33</sup> <<http://www.unhcr.org/afr/history-of-unhcr.html>> accessed 20 February 2019.

<sup>34</sup> Adopted by GA Resolution 217A of 10 December 1948, UN Doc A/810/1948.

<sup>35</sup> Articles 8 and 10 of the UDHR. Article 8 provides that everyone has the right to an effective remedy for acts in violation of entrenched fundamental rights and is equally entitled to a fair and public hearing by an independent and impartial tribunal in the determination of rights and obligations and of any criminal charge against the person, inclusive of IDPs.

<sup>36</sup> Article 8(1)(3) and 8(f) of the Kampala Convention 2009.

<sup>37</sup> *ibid.*

<sup>38</sup> UN Guiding Principles on Internal Displacement, 1998 (UN Doc E/CN.4/1998/53/Add2 (1998). See Principles 5–7.

to education, to freedom of movement and residence, and to political rights such as participation in public affairs and economic activities.<sup>39</sup> In addition, IDPs have a right to assistance from competent authorities in their voluntary, dignified and safe return and their resettlement or local integration, including help to recover their lost property and possessions.<sup>40</sup> Where restitution is impossible, compensation or just reparation claims can be instituted, as stipulated under Principles 28–30 of the Guiding Principles – although the same principles are also silent on which judicial or adjudication bodies have jurisdiction to deal with IDPs’ compensation or reparation claims.

Owing to the above, the Guiding Principles were seen as a tool for states to prevent and manage internal displacement. They provided guidance to governments and international non-governmental agencies working with IDPs<sup>41</sup> on humanitarian grounds. This guidance also included provision for the security and well-being of IDPs. While international law recognises the existence of internal displacement globally, there are areas in which it has failed to provide for adequate protection of and assistance to IDPs, specifically in applying the principles relating to their return, resettlement and reintegration.<sup>42</sup> This is contrary to what is stated under section V of the Guiding Principles dealing with international human rights and humanitarian standards and access to justice requirements.

### **The IDPs Access to Justice under the AU Kampala Convention**

One of the underlying values of humanity is inherent dignity and to have the dignity of every human being respected. In this regard, Article 3(1)(c) and (d) of the Kampala Convention provides for the human dignity of IDPs and the protection of their fundamental human rights. These include IDPs’ right to non-discrimination, humane treatment, equality and equal protection before the law. Under the convention, IDPs are entitled to access to justice<sup>43</sup> and the States Parties are under an obligation to enact and amend their domestic laws in order to ensure that IDPs receive protection and assistance in conformity with international law.<sup>44</sup> It is therefore imperative for Member States who have signed and ratified the convention to ensure that their national legislation is in line

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<sup>39</sup> Principles 10–23.

<sup>40</sup> Section V of the UN Guiding Principles relating to return, resettlement and reintegration of IDPs.

<sup>41</sup> See MT Ladan, ‘Overview of International and Regional Frameworks on International Displacement – A Case Study of Nigeria’. Paper presented at a two-day multi-stakeholders conference on International Displacement in Nigeria. Organised by the Civil Society Legislative Advocacy Centre, Abuja in Collaboration with the IDMC and the Norwegian Refugee Council, Geneva. Held on 21–23 November 2011 at Bolton White Hotels, Abuja, Nigeria.

<sup>42</sup> Principles 28–30 of the UN Guiding Principles of 1992.

<sup>43</sup> Article 20(3) of the Kampala Convention provides that ‘the right of IDPs to lodge a complaint with the African Commission on Human and Peoples’ Rights or the ACJHR, or any other competent international body shall in no way be affected by this Convention’.

<sup>44</sup> Article 3(2)(a) of the Kampala Convention.

with the requirements of the Kampala Convention. For example, IDPs' ability to lodge complaints through civil society or NGOs in the form of a class action on behalf of IDPs due to the cost implications, where individual IDPs may not be able to afford the legal fees.

Furthermore, as part of ensuring that IDPs have access to justice, Member States must be able to refer their disputes or settle them through direct consultations between the states concerned or refer their disputes to the African Court of Justice and Human Rights (ACJHR).<sup>45</sup> However, IDPs' access to justice is not straightforward, thanks to State Parties' non-compliance with the Kampala Convention. This is a gap that may lead to violations of the rights of IDPs in terms of their access to justice because, by leaving these disputes in the hands of State Parties, the same may fail to perform their duties of initiating legal processes or actions for a variety of reasons, such as financial constraints, but, more importantly, the lack of political will to do so. It is submitted that civil society or NGOs can institute class actions on behalf of IDPs as a public interest claim in order for IDPs to have access to justice.

This is pertinent to Article 20(3) of the Kampala Convention, which gives IDPs the right to lodge complaints with the African Commission on Human and Peoples Rights or to the ACJHR. But it must be noted that the implementation of the convention pertaining to IDPs' right to access the justice can easily be impeded as a result of the situation they find themselves in as displaced persons – one reason being that they simply cannot afford to pay the legal costs. Also, ineffective legal and policy frameworks to hold the State Parties accountable can be among the obstacles in the way of the effective application of Article 20(3).

Normally, some AU Member States have legal aid provisions in their justice systems under their national legislation which can be used by indigent or poor citizens.<sup>46</sup> But even with those legal aid provisions, some countries do not make it available for civil cases and in fact such aid is usually limited to criminal matters, resulting in their non-compliance with the Kampala Convention. For IDPs, therefore, accessing legal aid may be worrisome and sometimes more complicated. Furthermore, ignorance or illiteracy is an issue among a large number of IDPs, who do not understand the complexities of legal procedures that ensure access to justice under the global legal systems in general or those of the regional and sub-regions in Africa in particular. Therefore, given such ignorance or a lack of knowledge about their rights and what is expected of them, IDPs'

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<sup>45</sup> Article 22(1) Kampala Convention.

<sup>46</sup> Countries such as Kenya and Nigeria have legal aid provisions in their constitutions. Although the South African Constitution of 1996 provides for legal aid in line with the Legal Aid Act 39 of 2014, which can be read together with s 166(e) of the Constitution, to date South Africa has neither signed nor ratified the Kampala Convention.

rights are regularly violated. For this reason, there is a need for IDPs to know the extent to which they can pursue their rights and obtain access to justice. Besides, even IDPs who have knowledge of their fundamental rights still have a plethora of their rights violated by states and non-state actors alike.

## Access to Justice

There is no universally accepted definition of access to justice; in other words, the concept of access to justice may not easily be defined. Consequently, it can be defined in a number of ways. Yet, access to justice is the bedrock of civil and democratic society. According to Cappelletti and Bryant,<sup>47</sup> the concept denotes ‘the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards’.<sup>48</sup> According to Cappelletti and Bryant,<sup>49</sup> even though the concept of access to justice may not easily be defined, it nevertheless serves to vindicate people’s rights and/or resolve their disputes under the general auspices of the state. Ojukwu *et al* have observed that access to justice:

is a concept that embraces the nature, mechanism and even the quality of justice obtainable in a society as well as the place of the individual within the judicial matrix.<sup>50</sup>

It is a way of assessing not only the rule of law in any given society, but also of ascertaining the quality of governance in that society. Access to justice has been defined as ‘the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards’.<sup>51</sup>

From the above definitions, access to justice is a legal dimension premised on the fundamental principle of equality before the law where human rights are observed, promoted and reinforced through a constitution. For example, the Constitution of Kenya, 2010,<sup>52</sup> the Constitution of Republic of South Africa, 1996<sup>53</sup> and the

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<sup>47</sup> M Cappelletti and G Bryant, ‘Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective’ (1978) *Buffalo Law Review* 181.

<sup>48</sup> TP Maregere, ‘Justice in Transition and The Complexities of Access, Accord, Conflict Trends’ (2017) *Conflict Trends* 11–17; see also H Cisse, S Muller, C Thomas and C Wang (eds), *The World Bank Legal Review: Legal Innovation and Empowerment for Development* (World Bank Publications 2013).

<sup>49</sup> Cappelletti and Bryant (n 47).

<sup>50</sup> E Ojukwu, G Yemi-Akinseye, C Isa Hayatu, S Erugo, E Idorenyi, CK Nwankwo and A Omaka (eds), *Handbook on Prison Pre-Trial Detainee Law Clinic: Network of University Legal Aid Institution* (NULAI-Nigeria 2012); see O Bamgbose, ‘Access to Justice through Clinical Legal Education: A Way Forward for Good Governance and Development’ (2015) 15 *African Human Rights Law Journal* 378–396.

<sup>51</sup> Maregere (n 48) 11–17; see also Cisse et al (n 48).

<sup>52</sup> Section 48.

<sup>53</sup> Section 34.

Constitution of Zimbabwe, 2013<sup>54</sup> emphasise wide access to courts by allowing groups of persons to approach the courts to enforce their rights through class actions. Taking South Africa as an example, its courts have adopted a forward-looking position with respect to the certification of class actions, as demonstrated in the court cases below.

In *Children's Resource Centre Trust & Others v Pioneer Food (Pty) Ltd & Others*<sup>55</sup> (*Children's Resource Centre Trust* case), the Supreme Court of South Africa held that it is a requirement for a party seeking to represent a class in a class action first to apply to the court for certification. Furthermore, the court held that there are certain criteria that have to be met in order to deal with a certification enquiry for a class action.

In *Mukaddam & Others v Pioneer Food (Pty) Ltd & Others*,<sup>56</sup> the Constitutional Court accepted the judicial precedent set out in the *Children's Resource Centre Trust* case. However, the court focused more on the role and implications of judicial discretion and the inherent powers that courts have to regulate the process by which litigants approach the court, as stated in section 173 of the Constitution.

In *Permanent Secretary, Department of Welfare, Eastern Cape v Ngxuza*,<sup>57</sup> the court, in observing the scope and importance of class action, held that when an organ of the state invokes legal processes to impede the rightful claims of its citizens, it defies the Constitution, which commands all organs of state to be loyal to the Constitution. The court emphasised that a class action requires that public administration be conducted on the basis that 'people's needs and such needs must be responded to'.<sup>58</sup>

Following relevant examples from South African case law, as stated in the cases mentioned above, it is imperative that class action should be used among the processes of access to justice as required by the Constitution.

Consequently, access to justice implies that legal systems around the world must be organised in such a way as to ensure that every person can be engaged in the legal processes for legal redress, irrespective of their social status or socio-economic standing. Accordingly, every person should receive just and fair treatment within the legal system of a given state.<sup>59</sup> In simple legal terms, access to justice refers to the equity that those from different backgrounds are able to gain from the delivery of the justice system through the judicial process. Therefore, access to justice refers to a legal system

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<sup>54</sup> Article 45.

<sup>55</sup> 2013 (2) SA 213 (SCA).

<sup>56</sup> 2013 (5) SA 89 (CC).

<sup>57</sup> 2001 (1) SA 1184 (SCA).

<sup>58</sup> *Permanent Secretary, Department of Welfare, Eastern Cape v Ngxuza* paras 22–23.

<sup>59</sup> M Nyenti, 'Access to Justice in the South African Social Security System: Towards a Conceptual Approach' (2013) *De Jure* 901–916.

that must be equally accessible to all and lead to results that are individually and socially just. In this context, access to justice as advocated in contemporary societies implies social justice that presupposes effective access. In other words, it should be a basic tenet of the rule of law which purports to guarantee legal rights to all.<sup>60</sup>

In the context of this article, access to justice is limited to IDPs. It means the ability of a displaced person to access justice freely and to be able to overcome legal obstacles by seeking and obtaining legal remedies through the legal system for grievances in accordance with basic human rights norms and standards.

Until recently, many countries in the developing world have put their energies into and fashioned their governance tendencies and focused on governance, criminal and civil justice systems, and the role of justice in the prevention of conflicts. For this reason, there is a growing focus now on the importance of the rule of law, which is the bedrock of all aspects of life in a true democracy. For example, the rule of law is the stimulus for economic development, which can relate to anti-corruption measures, labour law, commercial and business law, human rights law, as well as the systematic conditions necessary for effective participation in the global economy. The rule of law can be bolstered by using the effective police, judiciary and prison systems. Therefore, justice should be accessible to everyone in society, particularly the poor or less privileged and marginalised. Through legislative and policy reforms, legal aid, mediation, paralegal services, cross-sector coordination and collaboration with traditional and customary justice systems and civil society organisations (CSOs), access to justice can be improved. Nyenti has observed that the legal dimension of the concept of access to justice was developed as an element of the fundamental principle that all people should enjoy equality in justice.<sup>61</sup> This includes IDPs, who should have access to justice even though they have been displaced by armed conflicts or violence or the other factors mentioned previously.

Strengthening the rule of law, ensuring access to justice and dealing with and resolving conflicts are fundamental to human security and the development of stable states in which all citizens' voices can be heard and economic opportunities realised. Furthermore, if access to justice fails to take into account the impact of socio-economic, political and cultural conditions that hinder claims to use dispute-resolution channels and processes effectively, then access to justice can remain a pipedream. In view of this,

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<sup>60</sup> *ibid*; see also S Robins and E Wilson, 'Participatory Methodologies and Victims: An Emancipatory Approach to Transitional Justice Research' (2015) 30(2) *Canadian Journal of Law and Society* 219–236.

<sup>61</sup> Nyenti (n 59) 901–916.

IDPs' access to socio-economic, legal and political justice must be prioritised in order to promote social justice holistically, since 'justice delayed is justice denied'.

### **The Global Legal Order**

The current state of internal displacement around the globe, especially in Africa, is threatening citizens and their fundamental rights. Tens of millions of IDPs are vulnerable and deprived of their rights worldwide, including the denial of access to justice. The international legal instruments and transnational justice systems set up to resolve armed conflicts that lead to the internal displacement of persons seem to be on the brink of collapse in Africa.<sup>62</sup> This is largely due to the fact that there is no legislation domesticating the Kampala Convention in most of the African countries, legislation that would force them to assume their primary duty to protect IDPs' rights as enshrined in the Kampala Convention.

The rate of armed conflicts and violence, political instability and other traits of conflicts that arise has contributed in great measure to the displacement situations in Africa where the occurrences of people being forced to leave their natural homes or places of residence to find safety continue to escalate. These have been evidenced around all the sub-regions of Africa in countries such as Liberia, Nigeria, Sierra Leone, and Mali (ECOWAS), Djibouti, Eritrea, Ethiopia and Somali (Horn of Africa), Burundi, Rwanda, Uganda, South Sudan and Kenya (EAC), Zimbabwe and Mozambique, particularly the Cabo Delgado region (SADC).

No serious and coordinated policies have been adopted by the states to provide emergency support to the IDPs, unlike in the case of refugees.<sup>63</sup> Hence, this article argues that the international community, civil society and NGOs, and other humanitarian agencies ought to take note of the appalling conditions IDPs are facing so that they can respond effectively to the situations to advance their socio-economic rights and cater to their immediate needs. IDPs are often exposed to different kinds of difficulty, such as a lack of access to safe drinking water, food, shelter and healthcare services, and in addition they often face violence. The most affected are children, the elderly and women. Based on what is stated above, the African states which are

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<sup>62</sup> Article 7(1) and (5) of the Kampala Convention, 2009. See, generally, LA Ndimurwimo, *Post-conflict Reconciliation and Transitional Justice: A Case Study of Human Rights Violations in Burundi* (Panamaline Books Distributors Limited 2020). The case of Burundi has been used to demonstrate how the lack of an effective transnational justice system has led to the failure to resolve the human rights-related issues in Burundi.

<sup>63</sup> Handbook for the Protection of Internally Displaced Persons <<https://www.unhcr.org/4c2355229.pdf>> accessed 23 August 2019.

signatories to the Kampala Convention bear the primary obligation under the international human rights and IHL to protect their citizens, including IDPs.

### **IDPs and International Agencies**

The UN Guiding Principles on IDPs spell out the factors that lead to internal displacement.<sup>64</sup> However, the lack of an internationally recognised definition and legal order for IDPs makes it difficult for UN agencies such as the UNHCR to protect IDPs, because their mandates are based on IHL and international human rights. This can be an impediment to providing assistance to IDPs. In addition, there is the issue of non-state actors who play a major role in creating IDP situations but who cannot be held liable under the rules of IHL and international human rights law. Hence, it is only the states who have signed the conventions on human rights and the protocols who may be held liable to protect IDPs.<sup>65</sup> However, the requirement for legal protection and the provision of assistance to the IDPs on humanitarian grounds can be still justified under international human rights and IHL,<sup>66</sup> and these are able to place an obligation on the states which not parties to the international conventions. In view of the above, the rules of customary international law play an important role in affording IDPs the same protection as their counterparts, refugees, since they are human beings and their problems are the same even though their situations are not clearly justifiable in the eyes of the law.

### **Human Rights Violations in the Post-Kampala Convention Era**

The Kampala Convention was promulgated to strengthen African countries' arm in solving the problems of internal displacement on the continent.<sup>67</sup> Its objectives, among other things, are to impose duties, obligations and responsibilities on the states in ensuring the protection of and providing assistance to IDPs.<sup>68</sup> The international and regional instruments are formulated in such manner that they can protect and help the IDPs and allow the interventions of individuals and actors as well as State Parties to alleviate the problems that IDPs face and to promote their basic human rights.<sup>69</sup> For

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<sup>64</sup> Analytical Report of the Secretary General on IDPs, E/CN.4/1992/23; see also M Rosenberg, 'Refugees Law and the Displacement Loophole' (2004) 2 Hertfordshire Law Journal 19–25.

<sup>65</sup> R Cohen and FM Deng, 'Masses in Flight: The Global Crisis of International Displacement' (1998) *International Review of the Red Cross* 835.

<sup>66</sup> R Cohen, 'Protecting the Internally Displaced' (1996) *World Refugee Survey* 23.

<sup>67</sup> See the Preamble to the AU Kampala Convention, 2009.

<sup>68</sup> Article 2 of the Kampala Convention 2009. Also in the Preamble to the convention the inherent rights of IDPs are recognized as provided for and protected under international human rights and the IHL, as set out in the 1998 UN Guiding Principles on Internal Displacement. These are recognised as an important international framework for the protection of IDPs.

<sup>69</sup> P Kamungi, 'Beyond Good Intentions: Implementing the Kampala Convention' (2010) 34 *Forced Migration Review* 53–55.



example, Articles 6(2) and 7(3) of the Kampala Convention state that the protection of the rights of IDPs must be in accordance with international law and in particular the IHL. However, IDPs' rights are violated regularly. Therefore, there is a need to monitor whether the Member States are complying with the requirements set out under the Kampala Convention.<sup>70</sup> In other words, it is the duty and responsibility of the State Parties to the Kampala Convention to ensure that IDPs' socio-economic rights and needs are met.

The access to justice of IDPs includes access to legal remedies when their human rights are being violated. Some of these human rights violations include, but are not limited to, sexual and gender-based violence (SGBV), including rape, assault and domestic violence, especially that against women and girls. In Article 9(2)(d), the Kampala Convention provides for the sexual and reproductive health of women to be protected and it imposes an obligation on the states to provide support for the victims in cases of human rights abuse. From the above provision it is clear that it is the responsibility of the governments of the Member States of the AU to promote access to justice for IDPs through awareness campaigns at the various IDP camps, civil societies, NGOs and the National Agency for Control of AIDs by organising free HIV screening in IDP camps.<sup>71</sup> For example, every State Party to the Kampala Convention should have an agency for the control of HIV/AIDS-related diseases and may choose to modify the name of the agency in line with national legislation.

Similarly, the right to land and property ownership, especially in African traditional societies where most women do not own land, and other rights such as inheritance, are of paramount importance. Article 9(2)(i) of the Kampala Convention stipulates that State Parties should take necessary measures to protect both the individual, collective and cultural properties left behind by IDPs and those in the place to which they have been relocated. A critical overview of Article 9(2)(d) and (i) suggests that the traditional African customary legal systems of most Member States or the adjudication bodies of justice favour men more than the women because the convention is silent on how women need special protection, especially when they become victims of SGBV. Also, there is a lack of zeal to prosecute SGBV-related cases, even where there is evidence to prosecute such cases. In most cases, the victims of SGBV suffer from a lack of access to justice either because they are poor and cannot afford the legal fees to consult legal representatives or because the stereotypes they face are embedded in the customary norms, or where the states fail to perform the duties imposed on them by their citizens, irrespective of gender or gender inequality. In addition, the Kampala Convention does

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<sup>70</sup> Article 14 of the Kampala Convention.

<sup>71</sup> R Adeola, 'Boko Haram-induced Displacement: A Critique of Nigeria's Implementation of the African Union Internally Displaced Person Convention' (2017) 50(1) *Comparative and International Law Journal of Southern Africa* 41–55.

not provide for remedies for SGBV, and therefore this is a gap in the law that should be filled in order to enable SGBV cases to be prosecuted effectively.

IDPs are usually also deprived of their political rights and access to voting in election processes. This is despite the fact that Article 9(2)(1) of the Kampala Convention mandates the Member States to adopt the necessary measures to ensure that IDPs who are citizens of their respective countries or nationals enjoy their civil and political rights. But most states do not make provision for IDPs' access to basic human rights, including the right to vote or to be registered as voters. In Nigeria, for instance, during the 2015 general elections, IDPs were not allowed to vote. But in recognition of the rights of IDPs to vote in an election, the Nigerian Electoral Act has been amended to allow states, through the Independent National Electoral Commission (INEC), to enact laws that will enable IDPs to vote.<sup>72</sup> Beyani has pointed out that the implementation of the Kampala Convention may improve the situation of IDPs through specific policies and practical measures, not just mere ratification and national legislation on IDPs by the Member States.<sup>73</sup>

While each country may have its own processes for developing national laws and policies on different IDP-related issues, a consultative process about emerging state practice towards the domestication of the Kampala Convention in Africa is necessary.<sup>74</sup> For example, although Kenya is not a State Party to the Kampala Convention, the processes which that state adopted to develop a national law and policy on internal displacement serve as a baseline of good state practice that has inspired Ethiopia and South Sudan.<sup>75</sup> According to Beyani's observation, it is an indisputable fact that holding governments accountable under the Kampala Convention is necessary. Indeed, domestic measures are needed to operationalise the convention so that it benefits IDPs; mere ratification alone is not sufficient. For this reason, there is a need to sanction State Parties who have refused to implement the convention to the benefit of IDPs in their displacement locations. As set out in the human rights instruments which promote respect for human rights and humanitarian assistance and as supported by the AU

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<sup>72</sup> Adeola (n 71) 41–55.

<sup>73</sup> C Beyani, 'A View from Inside the Kitchen of the Kampala Convention: The Modernisation of the International Legal Regime for the Protection of Internally Displaced Persons' (2020) *International and Comparative Law Quarterly* 14–15. The current trend shows that emerging state practice on the development of a national law or policy on IDPs is a consultative process encompassing several stages, including the initiation, preparation, organisation, validation, adoption and implementation of the instrument. See also United Nations Human Rights Council, Report of Special Rapporteur on the Human Rights of IDPs, UN, New York, 2014 <<http://www.refworld.org/docid/5399ed54.html>> accessed 14 August 2019; see also 'Reports and Documents – Translating the Kampala Convention into Practice: A Stocktaking Exercise' (2017) 99(1) *International Review of the Red Cross* 365–420.

<sup>74</sup> Beyani (n 73) 15.

<sup>75</sup> *ibid.*

Constitutive Act of 2002, the human rights standards and justice should be made applicable and accessible to IDPs.

## Clinical Legal Education

Clinical legal education is a method of studying law that makes it more practically oriented than the usual classroom attendance where the lecturer teaches the students. It involves more research, interviews, personal interactions, consultations, planning and strategy designed to involve the students in participating in the procedures and processes of trials.<sup>76</sup> The benefits of clinical legal education have been pointed out by Grossman, who submits:

This type of program not only serves as an outlet for students whose primary emphasis is on law as a means of achieving social change, but it also focuses attention on and emphasizes the need of sound analysis and preparation without dampening student enthusiasm. It goes a long way toward preparing and ensuring the competence of what is emerging as the ‘social issues lawyer’. Students not only gain valuable insight into the factors considered in the decision-making process and come to know the time limits lawyers must work under, but they have an opportunity to see themselves under the supervision.<sup>77</sup>

Globally, clinical education is gaining more recognition in the teaching of law to undergraduate students to enable them to learn the practical interviewing process and techniques involved in trials before they graduate. This is well developed in the American legal system and in European legal education for clinicians. Clinical legal education is also being used in developing in countries. It is an effective tool for teaching law students, and the South African universities, for example, have law clinics which have played major role in advocating rights for vulnerable groups and contributing to the advancement of South African legal jurisprudence. For instance, law clinics at the University of Pretoria, the University of Cape Town and the Nelson Mandela University, to mention a few, are points of reference for clinical legal education in Africa. For instance, the African Human Rights Moot organised by the Centre for Human Rights at the University of Pretoria holds moot sessions annually in different countries in Africa. It is suggested that IDPs’ issues and their human rights violations should be included as part of these moot court simulations. This could raise more

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<sup>76</sup> MJ Anderson and GO Kornblum, ‘Clinical Legal Education: A Growing Reform’ (1971) 57(6) *American Bar Association Journal* 591–593.

<sup>77</sup> GS Grossman, ‘Clinical Legal Education: History and Diagnosis’ (1974) 26(2) *Journal of Legal Education* 162–193; see also SM Tagi, ‘Access to Justice for Internally Displaced Persons (IDPs) in North Eastern Nigeria, Possibilities through Clinical Education’. A conference proceeding on Law, Security and National Development held on 11–16 June 2017 at Nnamdi Azikiwe University Awaka, Anambra State, Nigeria, 2017 *Nigerian Association of Law Teachers (NALT) Conference* 467: 471.

awareness of the African human rights system and the challenges that Africa is still facing due to the armed conflicts and natural disasters which cause internal displacements.

However, other African legal schools should introduce law clinics that are accessible to the indigent and vulnerable groups such as IDPs. Countries such as Nigeria, Uganda, Sudan, Burundi, which have significant numbers of IDPs, ought to have incorporated the practice of law clinics into their law faculties in order to assist IDPs in their plight and in seeking redress for the violation of their basic human rights. To date, this approach has yet to be put into practice in some African universities. Although African academic institutions have started teaching law to their students by incorporating a clinical legal education approach, a majority of the universities across the continent have yet to introduce IDPs issues and deal with IDPs' vulnerability in their teaching curricula.

In Nigeria, for instance, it is a compulsory course for all law students to undertake in their fourth year of study, and pass, before they may graduate; in it they learn the practical aspects of proceedings through moot court trials. Other countries, such as Uganda, South Sudan, Sudan, Burundi, Liberia and Sierra Leone, which have also experienced problems with IDPs, should be encouraged to adopt the same approach. Kenya, Egypt, Zimbabwe and Namibia are some of the countries with more or less the same requirements. It is suggested that the equivalent of the Nigerian course should be offered as standard in many African universities.

The essence of clinical legal education is to reduce the theoretical approach to learning and to develop more practical skills that will enable the law students to think as professionals while studying law. For example, the clinical legal education could involve prison visits, advocacy of human rights and awareness campaigns in their immediate local community or in the environment in which their institutions are located. The students should also be engaged in community service and in educating society at large about realising their basic rights. In Nigeria, a model for teaching clinical legal practice to law students and legal practitioners has been developed by the organisation Network of University Legal Aid Institutions. It uses practical and clinical courses to bring abstract notions of justice to life.

It is worth noting that law teachers also need to be trained in and embrace clinical methods of teaching. Each university in Africa that offers a law programme should have law clinic designed to help their law students contribute to national development and social change and access to social justice engineering, both as law students and then as practitioners. Law students undergoing clinical legal education are taught the 'skills' of the law so that they are better equipped to tackle legal issues in a practical manner – especially those issues that affect contemporary society. Also, they act as agents of change in the sphere of social justice through the application of the clinical legal

education because they are exposed to societal challenges and responsibilities in addition to the legal profession.<sup>78</sup>

In addition, it should be noted that in South Africa there are law clinics and clinical law (eg the street law movement) for teaching and developing clinical legal education at various universities to help clinicians with their teaching methodology and the administration of a university-based law clinic. However, IDP policy-related matters are still not being taught to law students during their legal education. It is submitted that IDP-related education should form part of the curriculum of law students so that they can begin, in the first place, to appreciate the dichotomy between IDPs and refugees in the context of IHL international human rights law and, secondly, broaden the scope of their knowledge about IDPs. In some academic institutions the IHL is taught as an elective subject, but it is suggested that the Kampala Convention should form part of the IHL course content and that it should be included in the core courses for law students in Africa.

### Clinical Legal Education on IDPs

The introduction of clinical legal education for law students as stated above is of great importance: not only to train law clinicians to deal with access-to-justice issues such as those related to IDPs, but also to enable the university law clinics to provide legal services and information during consultative sessions in IDP camps and elsewhere and to inform communities about the correct procedures to be followed should they wish to institute legal action in pursuit of their property, socio-economic, women's and children's rights if they have been violated. Similarly, where the legal regime is inadequate, the clinicians could act as IDPs' legal representatives. In this way, they would be performing an equivalent service to that offered to refugees, especially since IDPs' economic and social conditions do not allow them the necessary access to legal representation in courts of law simply because they cannot afford the high legal fees and do not necessarily understand the law and its processes. This approach could provide the law students with opportunities to equip themselves as advocates of IDPs and for providing them with invaluable legal assistance.<sup>79</sup>

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<sup>78</sup> O Bamgbose, 'Access to Justice through Clinical Legal Education: A Way forward for good governance and development' (2015) 15 *African Human Rights Law Journal* 378–396.

<sup>79</sup> The UCL Legal Advice Clinic is illustrative. The clinic provides free face-to-face general legal advice on all aspects of social welfare law, including welfare benefits and housing. It is staffed by UCL law students working under the close supervision of qualified lawyers and advisers; see also Tagi (n 77) 473.

## Conclusion

Among the issues IDPs face globally is the important one of a lack of access to justice. Since the Second World War, the world has witnessed a large number of internal displacements. The UNHCR and the ICRC are the sole<sup>80</sup> agencies that are able to deal with the provision of food and shelter during internal displacements. But this is not sufficient. As far as access to justice is concerned, their role is inadequate and has stagnated while the lacunae in international law regarding IDPs remain glaring, IDPs not having the same status under international law as refugees. This article proposes a new method to be adopted in providing access to justice for IDPs that includes clinical legal education. Including the matter of access to justice for IDPs in clinical legal education for all law students would not only benefit the IDPs, but doing so could also create and develop a new generation of legal practitioners with a passion for social justice who are intent on promoting social justice among vulnerable groups such as IDPs. However, this can be achieved only when the legal framework for IDPs is strengthened so that their legal rights can be enforced in individual states and any disputes settled under the law or their legal interests protected or defended. If individual states do not adjust their legal regimes accordingly to accommodate the needs of IDPs, the world will continue to witness a substantial increase in the number of IDPs whose rights continue to be violated.

In view of this, an alternative approach should be adopted. The African Bar Association and other national Bar associations in the sub-regions, for example, should initiate pro bono-type services for IDPs in their jurisdictions aimed at giving them access to justice, because without effective access to justice, IDPs' human rights cannot effectively be protected. This article has emphasised that effective access to justice is not merely the preserve of the rich and the economically advanced or advantaged: it is submitted that every citizen, including IDPs, should enjoy the equal protection of the law if there is to be social justice for all.

It is proposed, furthermore, that the Kampala Convention be domesticated in the national legislation of Member States as a matter of urgency, so that IDPs can have access to justice. It is understood that some African states have adopted a dualistic approach, whereas others are monistic in nature. These differences in incorporating international law into national law can lead to diverse approaches to domesticating international instruments, including the Kampala Convention. Despite these differences, though, the various law societies and Bar associations of the Member States should lobby ardently for the enactment of the domestication legislation or the amendment of their national legislation to implement the principles espoused in the

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<sup>80</sup> *ibid.*

Kampala Convention so that the socio-economic rights and needs of the growing number of IDPs in Africa can be respected.

One of the major obstacles to accessing justice we have noted is the high cost of litigation, which is unaffordable to IDPs, rendering access to justice impossible. This situation must be used to justify a more prominent role for legal clinicians in helping IDPs gain access to justice since their services would be free. The use of legal aid is an alternative means of accessing justice in which legal clinicians could also play a valuable role. Because of its immediate and long-term benefits, clinical legal education could be used to have an impact on society in general. In the first place, vulnerable and marginalised groups such as IDPs with limited financial means and minimal legal support could be supported. For this novel idea to be adopted, however, the practical training of legal clinicians and the provision of free legal services to the needy would have to be appropriately conceptualised.

The academic institutions around Africa, especially their faculties of law, should be at the forefront of developing a model that can involve law students through exchange programmes on practical advocacy skills aimed specifically at IDPs. Such practical training of law undergraduates could include moot court exercises and serving time at clinics about human rights and access to justice. These measures could, at the same time, serve to raise awareness of the African human rights system and the challenges that Africa is still facing due to the armed conflicts and natural disasters which continue to cause internal displacements. By the same token, perhaps there might be a need to establish an institution or an organ such as the UNHCR to coordinate the activities relating to the protection of and assistance to IDPs.

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