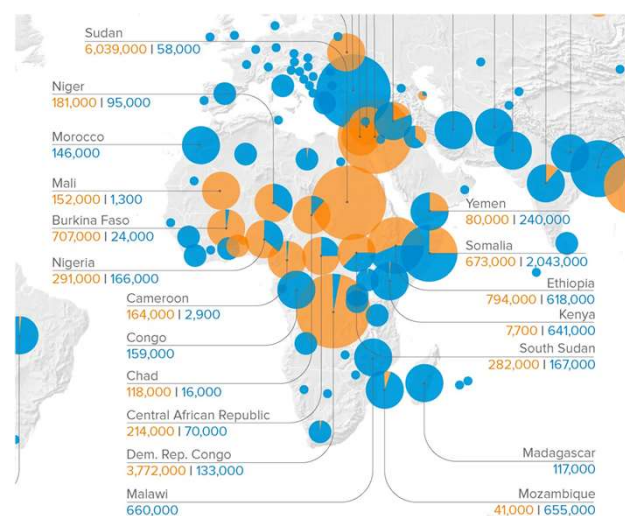


The factual perspective

- *A challenge for Africa: 34.8m (2023)*
- *Multiple contexts:*
 - Armed conflict and violence
 - Disasters and adverse effects of climate change
 - Development projects
- Often *long-term* with marginalization and humanitarian dependency
- Mainly perceived as a *humanitarian problem* with the international community as a key actor



The legal perspective

Key points:

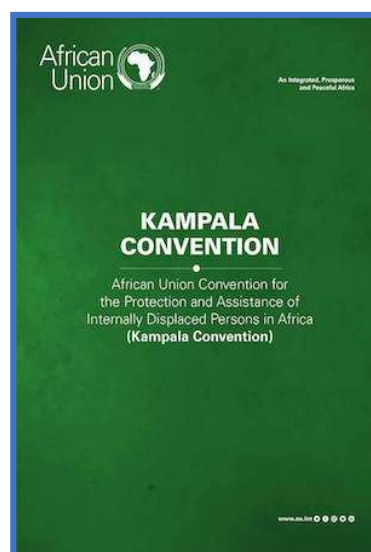
- IDPs *remain citizens* (members of the permanent population) of their country => IDP protection is *national protection* (i.e., primary responsibility of national authorities)
- IDPs remain *right holders* under international, regional and domestic law, but have *specific displacement-related needs*
- Being an IDPs is a *factual situation*, not a legal status to be granted

*Internally displaced persons (IDPs) are “persons or groups of persons who have been **forced or obliged** to flee or to leave their homes or places of habitual residence, **in particular** as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made **disasters**, and who have **not crossed** an internationally recognized State border” (UN Guiding Principles on Internal Displacement & Kampala Convention)*

The legal perspective

No international convention, but:

- IHL, international and regional human rights law
- UN Guiding Principles on Internal Displacement 1998 (soft law but recognized by UNGA as “important framework” for the protection of IDPs)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009
- Domestic laws, policies and strategies in many African countries



Prevention: Prohibition of arbitrary displacement

Kampala Convention, Article IV (4)

All persons have a **right to be protected against arbitrary displacement**. The prohibited categories of arbitrary displacement include but are not limited to:

- a) Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in **altering the ethnic, religious or racial composition** of the population;
- b) Individual or mass displacement of **civilians in situations of armed conflict**, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- c) Displacement intentionally used as a **method of warfare** ...;
- d) Displacement caused by **generalized violence or violations of human rights**;
- ...
- g) Displacement used as a **collective punishment**;

Prevention: Prohibition of arbitrary displacement

Role of the judiciary:

- Prosecution of perpetrators
- Civil/private law action
- Enforcement of administrative law

Example:

“Displacement by force, and without legitimate or legal basis . . . is a denial of the right to freedom of movement and choice of residence”

(African Commission on Human and Peoples' Rights, Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, Communications Nos 279/2003- 296/ 2005 [May 2009] para 189).

Kampala Convention Art. III (1):

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*

Protection during displacement

Role of the judiciary:

- *Public law* (e.g. discriminatory exclusion from access to protection and assistance; non-issuance of documentation; voter registration)
- *Criminal law* (e.g. sexual and gender-based violence in camps)
- *Civil/private law* (e.g. forced eviction by landlords)

Example:

60. Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, ..., the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing

61. At a very minimum, the right to shelter obliges the ... Government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes

AfCmHPR, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria No. 155/96 [Oct. 2009]

Legal aspects of durable solutions

Durable solutions:

- The process of rebuilding shattered lives through restoring rights related to physical, material and legal safety
- At the place of origin (return), local integration or relocation
- Based on a voluntary decision IDPs and with their participation and that of the communities receiving them.

Criteria	Sub criteria (IASC)
 PHYSICAL SAFETY	1. SAFETY & SECURITY/ PROTECTION/ SOCIAL COHESION
 MATERIAL SAFETY	2. ACCESS TO BASIC SERVICES 3. ACCESS TO JOB CREATION/ ECONOMIC OPPORTUNITIES 4. RESTORATION OF HOUSING, LAND & PROPERTY
 LEGAL SAFETY	5. ACCESS TO DOCUMENTATION 6. FAMILY REUNIFICATION 7. PARTICIPATION IN PUBLIC AFFAIRS 8. ACCESS TO EFFECTIVE REMEDIES AND JUSTICE

Challenges for the judiciary

- Applicable law in the absence of domestication of relevant international / regional law (but: possibility to resort to constitutional law)
- Difficulties to establish relevant facts in complex situations (but: often rather straight-forward legal issues)
- Possible political pressures
- ...



Thank you

