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Abstract

The African Union Model Law on Internal Displacement sets out to guide states on how to implement the IDP Convention. Adopted at the January 2018 Summit of Heads of State and Government in Addis Ababa, Ethiopia, the IDP Model Law provides a detailed roadmap for states in incorporating the provisions of the IDP Convention in national laws and policies. This chapter analyses pertinent strengths and weaknesses of the IDP Model Law and concludes with a way forward on how it can be improved and utilised as a guide for national laws and policies in the realisation of sustainable solutions to the challenge of internal displacement in Africa.

1 Introduction

The problem of internal displacement has been a pressing human rights concern in Africa. In addressing the issue, the African Union (AU) adopted the AU Convention on the Protection and Assistance of Internally Displaced Persons in Africa (IDP Convention) in 2009.¹ In 2012 the IDP Convention came into force and since its creation has been recognised as an important regional instrument of global significance, in that it is the first of its kind to create obligations on states with respect to addressing the root causes of internal displacement. In the same year, the AU developed a Model Law for the Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (IDP Model Law).²

1 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted at the Special Summit of the African Union Heads of State and Government in Kampala, Uganda, 19-23 October 2009 (IDP Convention).

2 Model Law for the Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (IDP Model Law) (on file with author).

The IDP Model Law was developed to serve as a guide for national legislation on internally-displaced persons (IDPs). Since its creation, the IDP Model Law has been used to sensitise relevant stakeholders in some states that are parties to the Convention, including Nigeria, Swaziland, Gabon, Zimbabwe, Rwanda, Uganda, Malawi and Sierra Leone.³ The provisions of the IDP Model Law set a standard on internal displacement for state parties to the IDP Convention by elaborating on the provisions of the Convention. As a model according to which national efforts may be assessed, this chapter considers the normative prospects of the IDP Model Law. The chapter further assesses the challenges of the IDP Model Law through an assessment of its strengths and weaknesses, and provides recommendations on how the IDP Model Law provisions can effectively be applied in addressing the issue of internal displacement in Africa.

In advancing the discourse, the chapter is divided into three parts. The first part examines the development of the norms, namely, the IDP Convention and the IDP Model Law. Following this discussion, the chapter critiques the IDP Model Law, highlighting its normative prospects and some of its challenges, and how national legislation can efficiently respond to these challenges. The chapter concludes with a way forward on how the IDP Model Law can be improved and utilised as a guide for national laws and policies in the realisation of sustainable solutions to the problem of internal displacement in Africa.

2 Development of norms

In response to the global concern about internal displacement, the former United Nations (UN) Special Representative on Internally Displaced Persons, Professor Francis Deng, developed a set of Guiding Principles on Internal Displacement in 1998.⁴ The essence of the Guiding Principles was to provide guidance to states in protecting IDPs. However, despite the existence of the Guiding Principles at the UN level, the issue of internal displacement remained a pressing concern in Africa. In 2000, for instance, more than a third of the world's IDPs found themselves in Africa.⁵ As at 2003, half of the world's IDPs reportedly were on the African continent. Because of the severity of the issue, the AU took a decisive step at the early

3 The first meeting of the Conference of State Parties to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, April 2017.

4 Commission on Human Rights Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission on Human Rights Resolution 1997/39 – Addendum – Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998.

5 See 'Trends in displacement, protection and solutions, 2005' (2007) *UNHCR Statistical Yearbook* 180-181; 'Trends in displacement, protection and solutions, 2010' (2011) *UNHCR Statistical Yearbook* 70; 'Trends in displacement, protection and solutions, 2014' (2015) *UNHCR Statistical Yearbook* 53.

turn of the century by creating a continental legal framework. The next section discusses this response.

2.1 African Union Convention on Internal Displacement

In 2004, the African Union Executive Council (Executive Council) mandated the AU Commission (AUC) to develop a lasting solution, in the form of a legal framework, to the issue of internal displacement in Africa.⁶ Within the AUC, the Division of Humanitarian Affairs, Refugees and Displaced Persons of the Department of Political Affairs was saddled with the mandate of developing this legal framework.⁷ To this end, the AUC engaged the services of independent experts, including Professor Chaloka Beyani, the UN Special Rapporteur on Internally Displaced Persons, in the development of the IDP Convention.⁸

At the 2006 Second African Union Ministerial Conference on Refugees, Returnees and Internally Displaced Persons held in Ouagadougou, Burkina Faso, the Ministers made a commitment to address the issue of internal displacement on the continent and, as such, emphasised 'zero tolerance' to the issue of internal displacement on the continent.⁹ The Executive Council endorsed the outcome of this meeting and requested the AUC to prepare for a Special Summit of the Assembly on the issue of refugees, returnees and IDPs. While noting the progress made in the establishment of a legal instrument on IDPs, the Executive Council requested the AUC to 'expedite ... efforts in collaboration with the PRC Sub-Committee on Refugees, Returnees and Internally Displaced Persons and with the participation of relevant partners at the appropriate instance'.¹⁰ Between 2007 and 2009, the draft IDP Convention was discussed, debated and reviewed.¹¹ At the Third AU Ministerial Conference on Refugees, Returnees and Internally Displaced Persons in 2008, the draft Convention was adopted.¹²

6 AU Executive Council, 5th ordinary session, 25 June-3 July 2004, Addis Ababa, Ethiopia, Decision on the Meeting of Experts on the Review of OAU/AU Treaties, Doc EX/CL/95 (V) para 4(i).

7 AU Economic, Social and Cultural Council (ECOSOCC) *Making the Kampala Convention work for IDPs: Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (2010) 20.

8 See C Beyani 'Recent developments: The elaboration of a legal framework for the protection of internally displaced persons in Africa' (2006) 50 *Journal of African Law* 187.

9 Beyani (n 8 above) 187 195.

10 AU Executive Council, 9th ordinary session, 25-29 June 2006, Banjul, The Gambia, Decision on the Situation of Refugees, Returnees and Displaced Persons, Doc EX.CL/254 (IX), para 9.

11 'Explanatory note on the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)' 2 [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/5A1FC4CC9028079DC12577450048DE13/\\$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/5A1FC4CC9028079DC12577450048DE13/$file/Kampala%20Convention%20-%20Explanatory%20Note.pdf) (accessed 14 March 2013).

12 As above.

Following a series of postponements, the Special Summit of the Heads of State and Government was eventually held at Kampala, Uganda, in October 2009.¹³ There were three significant outcomes of the Special Summit, namely, the IDP Convention; the Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa (Kampala Declaration); and the endorsement of the Recommendations of the African Union Ministers in Charge of Forced Displacement Matters (Ministers' Recommendations).¹⁴ While the IDP Convention incorporated the legal obligations of states in relation to the protection and assistance of IDPs, the Kampala Declaration adopted by the Assembly endorsed the recommendations by the Ministers.¹⁵ Paragraph 41 of the Ministers' Recommendations expressed a commitment by states to align domestic laws on the issue of displacement with international legal standards. Member states were obliged to fulfil this commitment through 'the African Union Commission and in collaboration with co-operating partners'.¹⁶

For the purposes of speeding up the signature and ratification of the IDP Convention and of ensuring the domestication and popularisation of the IDP Convention, the AUC developed a Plan of Action.¹⁷ With regard to domestication, the Plan of Action proposed the development of a Model Law on IDPs. The AU Commission, Members of Parliament in collaboration with specialised Agencies and Institutions were tasked with carrying out this responsibility, along with other domestication activities of the IDP Convention.¹⁸ In July 2010, the Executive Council welcomed the advancements made on the implementation of the Special Summit outcomes, particularly the Plan of Action and the Ministers' adoption of the Plan of Action.¹⁹ Subsequently, the Executive Council endorsed the Plan of Action and requested states, the AUC, AU institutions, sub-

13 AM Abebe 'The African Union Convention on Internally Displaced Persons: Its codification background, scope and enforcement challenges (2010) 29 *Refugee Survey Quarterly* 28 40.

14 IDP Convention (n 1 above); Recommendations of the African Union Ministers in Charge of Forced Displacement Matters (2009) (Ministers' Recommendations); Kampala Declaration on Refugees, Returnees and Internally Displaced Persons (2009) (Kampala Declaration).

15 Kampala Declaration (n 14 above).

16 Ministers' Recommendations (n 14 above), para 41.

17 Plan of Action for implementation of the outcomes of the AU Special Summit on Refugees, Returnees and Internally Displaced Persons in Africa, Annex to AU Executive Council, 9th ordinary session, 19-23 July 2010, Kampala, Uganda, Report of the meeting of Ministers in charge of forced displacement, Addis Ababa, Ethiopia (1-5 June 2010), Doc EX.CL/591 (XVII) 4.

18 Plan of Action (n 17 above) 10.

19 AU Executive Council, 17th ordinary session, 19-23 July 2010, Kampala, Uganda, Decision on the Situation of Refugees, Returnees and Internally Displaced Persons Doc. EX. CL/Dec 558 (XVII), para 4 http://www.au.int/en/sites/default/files/decisions/9631-council_en_26_30_january_2009_executive_council_fourteenth_ordinary_session.pdf (accessed 5 December 2015).

regional organisations and partners to ‘work closely on the implementation of the Plan of Action’.²⁰

2.2 African Union Model Law on Internal Displacement

The development of the IDP Model Law started in 2011 under the auspices of the AUC as part of the strategy for the realisation of the IDP Convention.²¹ Within the AUC, the African Union Commission on International Law (AUCIL) was mandated to draft the IDP Model Law with the support of the Office of the Special Representative of the United Nations High Commissioner for Refugees (UNHCR).²²

The AUCIL appointed one of its members, Ambassador Minelik Alemu Getahun, as Special Rapporteur for the development of the IDP Model Law. The first draft of the IDP Model Law was presented by the Special Rapporteur to the AUCIL at its fourth session in April 2012.²³ Following the presentation of the report by the Special Rapporteur, members of the AUCIL made comments and requested the inclusion of human rights and humanitarian terminology in the IDP Model Law.²⁴ The AUCIL endorsed questionnaires for comments on the draft IDP Model Law at its seventh session in November 2013 and invited member states to comment on the draft IDP Model Law.²⁵ Between 2013 and 2014, the AUCIL examined the development of the text, including comments and observations from member states, the UNHCR, the International Committee of the Red Cross (ICRC) and the African Commission on Human and Peoples’ Rights (African Commission).²⁶

20 AU Executive Council, 17th ordinary session, 19-23 July 2010, Kampala, Uganda, Decision on the Implementation of the Plan of Action for the Outcomes of the Special Summit on Refugees, Returnees and Internally Displaced Persons Doc. EX. CL/Dec 591 (XVII), para 2 http://www.au.int/en/sites/default/files/decisions/9631-council_en_26_30_january_2009_executive_council_fourteenth_ordinary_session.pdf (accessed 5 December 2015).

21 AE Iyanda Presentation on the AU IDP Model Law for the implementation of the African Union Convention for the Protection and Assistance to Internally Displaced Persons in Africa at the training workshop on the Kampala Convention: From ratification to domestication and operationalisation – Developing national laws and policies on internal displacement, AU Headquarters, Addis Ababa, Ethiopia, 1 December 2015.

22 Iyanda (n 21 above) 2-3.

23 Report of the 4th ordinary session of the African Union Commission on International Law, Addis Ababa, Ethiopia, 4-14 April 2012, AUCIL/Legal/Rpt (IV) paras 48-50.

24 Report (n 23 above) para 49.

25 AU Commission on International Law, 9th ordinary session, 27 November-10 December 2014, Addis Ababa, Ethiopia, Report of the draft AU IDP Model Law for the implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa by Minelik Alemu Getahun (Ambassador), AUCIL Special Rapporteur (27 November 2014) AUCIL/Legal/Doc 6 (IX) para 45.

26 As above.

In the development of the IDP Model Law, the Special Rapporteur consulted various normative standards beyond the IDP Convention.²⁷ Sources included global and regional human rights and humanitarian law instruments; the Great Lakes Protocol on Internally Displaced Persons; the UN Guiding Principles on Internal Displacement; and the UN International Law Commission Framework on the Protection of Persons in the event of Disasters.²⁸ The laws and policies of countries with national frameworks, including Angola, Burundi, Liberia, Sierra Leone, Sudan and Uganda, were also consulted. The essence of the broad normative base of the IDP Model Law was to ensure a comprehensive national legal framework that fills the gaps in the IDP Convention and elaborates on provisions that are not explicit.

At its ninth session in 2014, the AUCIL adopted the draft IDP Model Law and transmitted the document for adoption by AU policy organs.²⁹ While adoption of the IDP Model Law by the Assembly had initially been slated for January 2016, this was postponed as the Ministers of Justice of member states had as at December 2015 not considered the IDP Model Law.³⁰ The draft IDP Model Law was adopted by the Specialised Technical Committee on Justice and Legal Affairs in 2017 and was transmitted to the Assembly for formal adoption. A formal adoption by the Assembly was effected at the January 2018 Summit.

3 Provisions of the IDP Model Law

The IDP Model Law has 63 articles divided into 14 chapters that set out to explicitly detail the provisions of the IDP Convention.³¹ As with the IDP Convention, the IDP Model Law specifically recognises three main root causes of internal displacement, namely: disaster, conflict and development projects. In critiquing the norms, this chapter considers these three root causes of internal displacement and the institutional response to internal displacement specifically provided for by the IDP Model Law.

27 Report (n 25 above) paras 9-30.

28 Report (n 25 above) para 23.

29 Report (n 25 above) para 49.

30 The significance of the consideration of the IDP Model Law by the Ministers of Justice derives from the fact that as national legal advisers of states, they can provide legitimacy for the utilisation of the IDP Model Law in the domestication process of the IDP Convention.

31 Iyanda (n 21 above) 5.

3.1 Normative content on the root causes

3.1.1 Disasters

The third chapter of the IDP Model Law focuses on internal displacement caused by disasters.³² In this chapter, there are six main articles focusing on disaster-induced displacements, namely, the protection of internally-displaced persons; the protection of internally-displaced persons during evacuations; a needs assessment and initiation of international assistance; the termination of international assistance; and safeguards and relocation procedures during disasters.

Article 6: Disaster-induced displacements

Article 6 of the IDP Model Law elaborates on the obligations of states in the context of disaster-induced displacements, specifically recognising ‘climate change’, ‘environmental hazards’ and ‘other disasters’. Its emphasis on climate change as a root cause of internal displacement spotlights the provision of article 5(4) of the IDP Convention which was motivated by the need for the IDP Convention to be ‘futuristic’.

Article 6 of the IDP Model Law emphasises five significant obligations of states in the context of disaster-induced displacements. Article 6 iterates (i) the primary duty on competent authorities to protect IDPs affected by disasters; (ii) the need for competent authorities to take steps in avoiding and mitigating displacements; (iii) the pertinence for these authorities to take targeted steps in mainstreaming the issue of internal displacement in contingency planning and in adaptation strategies; (iv) the meaningful and informed participation by groups likely to be displaced in processes initiated at domestic levels relating to disasters; and (v) the full participation by and consultation of groups bound to be affected in mitigation strategies and the compliance of such strategies with a human rights framework.³³

While article 6 details significant obligations on states in the context of disasters, it does not explicitly provide for disaster risk assessment significantly within the context of climate change which is recognised under article 5(4) of the Kampala Convention.

32 In the definition section, one of the innovations of the IDP Model Law is that it offers an insight into the meaning of disasters which, although used in the IDP Convention seven times, is not defined. In line with this provision, disaster refers to a ‘calamitous event or series of events’ that as a consequence leads to ‘widespread loss of life, great human suffering and distress, displacement of population or large-scale material or environmental damage thereby seriously disrupting thereby seriously disrupting the functioning of society’. IDP Model Law (n 2 above) art 2.

33 IDP Model Law art 6.

Article 7: Protection of internally-displaced persons

Article 7 of the IDP Model Law sets out 11 specific obligations of ‘competent authorities’ in the protection of IDPs. These obligations are to ensure (i) access by IDPs to basic amenities in line with their needs; (ii) that IDPs are protected from likely hazards and disasters; (iii) the security of disaster-induced IDPs through effective strategies; (iv) that camps are created only as a final resort where self-support or fast recovery aids are not present; (v) that law and order is preserved in camps and their environs and in locations where IDPs inhabit unplanned; (vi) that specific groups, such as groups with a special attachment to land, unaccompanied and separated children, single-headed households, persons with disabilities, elderly persons and women, are afforded priority; (vii) that displaced persons have access to psychosocial help and social amenities and that the need of specific groups are accorded due attention; (viii) that natural or human-made disaster-induced displacements do not occur unless these occurrences are premised on the need to ensure the health and safety of displaced persons; (ix) that effective remedies are provided to displaced persons in accordance with the provisions of Chapter 11 on durable solutions; (x) that mechanisms are set up to track missing persons and that the next-of-kin are duly informed; and (xi) that the remains of deceased individuals are collected, identified and processes for the return to their next-of-kin or respectful disposal are accelerated.³⁴

While article 7 emphasises protection, it does not mention issues of assistance, which is one of the two main pillars of the IDP Convention.³⁵ Importantly, article 7 omits financial assistance to IDPs for the reconstruction of livelihood, which is an important aspect of ensuring adequate support in situations of disaster-induced displacement. The IDP Convention, however, reflects this in part by requiring states to make ‘reparation to internally-displaced persons for damage when such a state party refrains from protecting and assisting internally-displaced persons in the event of natural disasters’.³⁶

Article 8: Protection of internally-displaced persons during evacuation

Article 8 of the IDP Model Law sets out the modalities for evacuation of IDPs in situations where imminent natural disasters create ‘a serious risk for the life, physical integrity or health’³⁷ of those bound to be affected. According to article 8, competent authorities are to act consistently with international human rights standards and, as such, (i) protect vulnerable

34 IDP Model Law art 7.

35 IDP Convention (n 1 above) art 5.

36 IDP Convention art 12(3). See R Adeola & F Viljoen ‘The right not to be arbitrarily displaced in Africa’ (2017) 25 *African Journal of International and Comparative Law in Africa* 459-481.

37 IDP Convention art 8.

groups; (ii) ensure that the evacuation process is done with full regard for the 'right to life, dignity, liberty and security'³⁸ of the evacuated persons and, specifically, vulnerable groups. For this purpose, competent authorities are mandated to (a) protect the properties left behind by evacuated individuals; (b) register those evacuated and oversee evacuation; (c) ensure that evacuated persons are adequately protected and assisted; and (d) guarantee that following the emergency stage, those evacuated are afforded the freedom to determine whether to move back to their homes, to remain in the place of displacement or move to another part of the state.

However, the right of choice to return is subject to the provisions of law and to the protection of national safety, security, the preservation of public order, health, morals and the freedom of others.³⁹ Two significant omissions in this provision are the requirements that evacuation sites should have proper accommodation and that, during evacuation, families should not be separated.⁴⁰

Article 9: Needs assessment and initiation of international assistance

Article 9 of the IDP Model Law mandates the national co-ordination mechanism,⁴¹ to conduct a needs-based assessment in consultation with other relevant departments in the state in order to determine whether local capacities are adequate in responding to the needs of IDPs. Where local capacities are inadequate, the national co-ordination mechanism is mandated to advise the 'highest executive organ'⁴² to request international assistance. Thereafter, there should be a regular review of the sufficiency of local capacities and the need for international assistance to respond to the needs of IDPs and affected communities.⁴³ However, a significant omission in this provision is the fact that it fails to include IDPs in the consultation process relating to the needs-based assessments. It also fails to explicitly provide for the consultation of vulnerable groups such as women, children, persons with disabilities and the elderly.

38 IDP Convention art 8(2).

39 See art 8(3) of the IDP Model Law.

40 IDP Convention art 9(2).

41 The duties of this mechanism include appraising the needs of IDPs and host communities; conducting periodic reviews on the state of human rights of IDPs in conjunction with relevant institutions, including the National Human Rights Institution; promoting training programmes; creating awareness on internal displacement; promoting the participation of IDPs in decision-making processes on internal displacement; collaborating with relevant regional and international institutions; facilitating humanitarian assistance to IDPs; establishing rules and procedures for the participation of IDPs in decision-making processes relating to their protection and assistance; establishing rules of collaboration and partnership with relevant international agencies including the UN; and conducting other duties necessary for its effective functioning.

42 IDP Model Law art 9(1).

43 See art 9(2) of the IDP Model Law.

Article 10: Termination of international assistance

Article 10 of the IDP Model Law requires that any decision to end international assistance provided to IDPs should be based on an ‘effective assessment of the needs’ of these persons and the affected communities. This yardstick for the termination of assistance does not appear to correspond to the objective of the IDP Model Law of ensuring durable solutions for IDPs. A more durable solution-inclined yardstick would be for the termination of assistance to be based on an assessment of the sustainability of the protection and assistance provided to IDPs. This is significant given that its focus is on ensuring that IDPs can sustain themselves after international assistance has been terminated. Article 10(2) requires the termination of assistance to be revealed three months before the date of termination. However, a more appropriate time frame should be six months to a year to afford reasonable time to test sustainability. Article 10(3) requires actors providing disaster response to take measures in order to minimise the ‘negative impacts’ on IDPs and affected population.⁴⁴

Article 11: Safeguarding and relocation procedures during disasters

In line with article 11 of the IDP Model Law, measures taken to relocate persons displaced by disasters must be ‘proportionate and necessary’, must respect their rights and should be based on consultation of and participation by IDPs.⁴⁵ Although enforcement agencies are required to comply with international human rights standards in relocating IDPs,⁴⁶ the IDP Model Law fails to reference the relevant human rights standards that these agencies must adhere to.

Furthermore, while article 11 also requires that groups affected by disasters should be informed about (a) the disaster; (b) mitigation strategies; (c) early-warnings; and (d) existing humanitarian assistance and entitlements,⁴⁷ there is no explicit obligation that groups should be informed about resettlement and the social services available in resettlement sites. However, states are required to ensure that measures are taken to protect the assets left behind by displaced persons.⁴⁸

44 While this provision within the context of art 10 relates to the termination of international assistance, it is worded vaguely as it does not explicitly provide what negative impacts should be minimised. See IDP Model Law art 10(3).

45 IDP Model Law art 11(1).

46 IDP Model Law art 11(3).

47 IDP Model Law art 11(4).

48 IDP Model Law art 11(5).

3.1.2 Conflicts

The provision in chapter 4 contains three articles relating to the obligations of state and non-state actors, the protection of IDPs and penalties. While article 7 of the IDP Convention incorporates the protection of IDPs in relation to armed conflict, the IDP Model Law expands the notion of conflict-induced displacement to include situations of internal displacement caused by human rights violations and generalised violence, in addition to armed conflict. However, it neither defines these different forms of conflict-induced displacement, nor does it set a threshold for determining when any of the three situations has occurred.

Article 12: Obligations of the government and non-state actors

According to article 12 of the IDP Model Law, ‘competent authorities, armed groups and ... other persons’ are required to respect the international human rights and humanitarian law obligations flowing from the obligation to prevent internal displacement.⁴⁹ However, the provision does not explicitly set out the obligation of these actors in relation to displacement induced by human rights violations, armed conflict and generalised violence.⁵⁰ In the context of armed conflict, for instance, reference to the provisions of article 49 of the fourth Geneva Convention would have provided clarity on the duties of actors.

Article 13: Protection of internally-displaced persons

Article 13(1) of the IDP Model Law mirrors the fourth Geneva Convention by articulating the obligation on parties to displace civilian population only for reasons of military exigency or the protection of civilians.⁵¹

While the provisions of this article seek to emphasise the protection of internally-displaced persons, it rehashes chapter six of the IDP Model Law which focuses specifically on the protection of IDPs, which tends to give

49 IDP Model Law art 12(1).

50 Generally, however, art 12 enjoins ‘all parties’ to desist from attacking settlement sites of IDPs and to respect the rights of IDPs to return to their place of residence. IDP Model Law arts 12(2)-(4).

51 Art 13(2) of the IDP Model Law requires that IDPs should be protected against certain crimes, including rape, genocide, terror, exploitation, forced conscription and starvation. Art 13(3) provides that where displacement occurs, measures should be taken to ensure that those displaced receive satisfactory shelter, health, nutrition, safety and support, and to ensure that they are not separated from their families. Art 13(4) incorporates a significant provision requiring that the property of IDPs should be protected. In line with art 13(5), IDPs must not be relocated unless informed and given options. While art 13(6) requires that the freedom of movement of IDPs should be guaranteed, art 13(7) provides that families must be protected and children must not be conscripted into hostilities. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention) art 49.

the IDP Model Law a verbose outlook. This provision should rather have emphasised situations where displacements in situations of armed conflict will be considered arbitrary and what states should do to ensure that arbitrary conflict-induced displacement is prohibited.

Article 14: Penalties

The IDP Model Law levies punishment on anyone who causes arbitrary displacement by violating the provision of chapter four.⁵² Furthermore, orders given by enforcement agencies may not be used to vindicate arbitrary displacement.⁵³

3.1.3 Development projects

Chapter 5 of the IDP Model Law, which focuses specifically on displacement induced by development projects, has six specific outlining principles and obligations, namely, environmental and socio-economic impact assessment; relocation; protection during project-related displacement; safeguards and procedures during relocation; and effective remedies.

Article 15: Principles and obligations

Article 15 of the IDP Model Law sets out specific obligations of states relating to displacement caused by development projects. While this provision mirrors the relevant provision of the IDP Convention, it does not elaborate on the phrase 'as much as possible' as used in the IDP Convention.⁵⁴ Furthermore, the IDP Model Law does not define key terms in the provision of article 10(2) of the IDP Convention, such as 'feasible alternatives', 'consultation' and 'information'.⁵⁵ However, unlike the provision of article 10 of the IDP Convention, the IDP Model Law recognises the right of IDPs to resettlement which seeks to afford IDPs legitimate and enforceable claims.⁵⁶

Article 16: Environmental and socio-economic impact assessment

Article 16 of the IDP Model Law seeks to elaborate on the IDP Convention which provides that 'states parties shall carry out a socio-

52 IDP Model Law art14(1).

53 IDP Model Law art14(2).

54 IDP Convention art10(1).

55 For a discourse on what these should entail, see R Adeola 'The legal protection of development-induced displaced persons in Africa' (2017) 10 *African Journal of Legal Studies* 91-104; R Adeola 'The responsibility of businesses to prevent development-induced displacement in Africa' (2017) 17 *African Human Rights Law Journal* 244-264.

56 IDP Model Law art 15(4).

economic and environmental impact assessment of a proposed development project prior to undertaking such a project'.⁵⁷ In doing so, the IDP Model Law mandates competent authorities to initiate 'comprehensive and holistic environmental and socio-economic impact assessments'. However, the IDP Model Law, similar to the IDP Convention, provides neither the yardstick for measuring these impacts, nor does it refer to internationally-recognised standards for impact assessments.

To its credit, the IDP Model Law requires that the assessment should comprise 'exploration of alternatives and strategies for minimising harm',⁵⁸ and proceeds to require that the differential impacts of eviction on certain categories of persons, including women, children, the elderly and vulnerable groups, should be taken into account.⁵⁹

Article 17: Relocation

The IDP Model Law incorporates certain guarantees with respect to the relocation of displaced persons in situations of displacement caused by development projects. Relocation may only be undertaken by legally-competent authorities.⁶⁰ Furthermore, prior to relocation, persons bound to be displaced must have access to information regarding the reasons for displacement; the procedure to be followed; compensation to be given and the relocation.⁶¹ While article 17(3) requires that the free, prior and informed consent of displaced persons must be prioritised, it recognises the power of the state to retain 'legitimate enforcement action as measures of last recourse'.⁶² However, the article does not indicate what legitimate enforcement actions entails, given that states often engage in arbitrary displacement which, though not lawful, can be legitimate for political or social reasons. While article 17(9) contemplates the protection of indigenous peoples and ethnic minorities, it avoids the actual usage of the term 'indigenous peoples' in a form similar to the IDP Convention. In line with article 17(10), competent authorities are enjoined to give 'due consideration to alternative plans proposed'⁶³ by IDPs. However, the IDP Model Law does not elaborate on what 'due consideration' entails.

Article 18: Protection during project-related displacement

The IDP Model Law recognises that the dignity and rights of IDPs must be protected during displacement; vulnerable groups must be protected; all

57 IDP Convention art 10(3).

58 IDP Model Law art 16(2).

59 IDP Model Law art 16(3).

60 IDP Model Law art 17(1).

61 IDP Model Law art 17(2).

62 IDP Model Law art 17(3).

63 IDP Model Law art 17(10).

forms of discrimination must be prevented; the property of IDPs involuntarily left behind must be protected; and IDPs must have access to basic services, including food, water and health services. However, while this provision explicitly states specific protective measures that must be afforded to IDPs, it is not specific about the issues resonating from displacement caused by development projects.⁶⁴ Within the context of project-related displacement, two specific provisions that should have been included in line with international human rights standards are the prohibition of demolition of property prior to full compensation, and the provision of adequate notice prior to eviction.⁶⁵ The inclusion of general provisions, while necessary in order to emphasise basic requirements, only rehashes chapter 6 of the IDP Model Law which relates specifically to the protection of internally-displaced persons and generally incorporates the rights of IDPs that should be protected in situations of internal displacement.

Article 19: Safeguards and procedures during relocation

While the title of article 19 of the IDP Model Law indicates that it provides for safeguards and procedures during relocation, it is an exact replication of the provisions of article 17. It is not clear why the drafters of the IDP Model Law deemed it necessary to duplicate this provision. Rather than replicating article 17, this provision should have detailed basic provisions that should be made available to IDPs to ensure adequate relocation. Thus, to the extent that it appears to merely recap article 17, it should ideally be dispensed with.

Article 20: Effective remedies

Article 20 of the IDP Model Law provides for reparation. According to this provision, fair and just reparation must be provided, the assessment of which must be made by competent authorities. However, the IDP Model Law does not define 'competent authorities'. The IDP Model Law further provides for a list of circumstances for which reparation should be made, including 'economically quantifiable damages'⁶⁶ and 'psychological and social services'.⁶⁷ It is also explicitly provided that men and women must be co-beneficiaries of reparation packages and competent authorities must provide 'free legal advisory services for affected indigent persons.'⁶⁸ However, the article does not recognise the peculiarity of ethnic minorities

64 IDP Convention art 10.

65 Human Rights Council, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mr Miloon Kothari – Annex I – Basic principles and guidelines on development-based evictions and displacement, UN Doc A/HRC/4/18 annex I, 5 February 2007.

66 IDP Model Law art 20(3).

67 As above.

68 IDP Model Law art 20(5).

and indigenous peoples by providing that reparation must be culturally appropriate.⁶⁹

4 Institutional response to internal displacement

One of the notable provisions of the IDP Model Law is its elaboration of a National Co-ordination and Implementation Mechanism on Internal Displacement (National Mechanism) for the implementation of the IDP Convention.⁷⁰

The National Mechanism is mandated with the co-ordination of efforts geared towards the protection of IDPs and is mandated to oversee the implementation of national legislation and to co-ordinate efforts geared towards the management of IDPs.⁷¹ Significantly, the membership of the National Mechanism includes IDPs in addition to government agencies, civil society and humanitarian agencies.⁷²

While the function of the National Mechanism is elaborate, one specific function which the IDP Model Law omits is the interrelationship between the National Mechanism and the regional institutions specifically tasked with implementation in article 14 of the IDP Convention namely: the Conference of State Parties; the African Commission and the African Peer Review Mechanism.⁷³

As part of the National Mechanism, article 51 establishes a National Disaster Early Warning, Preparedness and Management Mechanism.⁷⁴ The significance of this mechanism is the emphasis on the prevention of disaster-induced displacement and the need for appropriate assistance to disaster-induced displacees, which resonates in both the IDP Convention and the IDP Model Law. However, early warning systems are equally relevant in situations of conflicts and development projects. Thus, the function of the mechanism should be expanded to include early warning of conflict and development project-induced displacements.

5 Conclusion

While the IDP Convention provides a regional framework on internal displacement, it does not expound on the modalities for the protection and assistance of IDPs. Hence the relevance of the IDP Model Law. For its

69 See Kothari Guidelines (n 65 above).

70 Art 3(2)(b) of the IDP Convention mandate states to designate a national organ to co-ordinate activities aimed at the protection and assistance of IDPs.

71 IDP Model Law arts 50(1)-(13).

72 IDP Model Law art 49.

73 IDP Model Law art 14.

74 IDP Model Law art 51.

part, the IDP Model Law provides guidance to states and fills the normative gap of the IDP Convention. However, the IDP Model Law contains certain normative weaknesses that need to be addressed for a comprehensive legal framework on internal displacement in Africa. To address these weaknesses, it is essential for the AUCIL to develop a commentary on each of the 63 provisions of the IDP Model Law. This commentary would serve two significant purposes. First, it will further detail what relevant actors should do in the context of the articles in the IDP Model Law and, by extension, the IDP Convention. Second, it will serve to fill the normative gaps that are not specifically contained in the articles. It is proposed that this commentary should be developed together with the African Commission, which has a regional mandate with respect to human rights protection and has developed norms, conducted studies and developed reports relating to various rights contained in regional human rights instruments.

As the essence of the IDP Model Law is to serve as a normative guide for states in the development of national laws and policies on internal displacement, it is important that concrete regional advocacy strategies be developed following the adoption of the IDP Model Law. These advocacy strategies should be geared towards sensitising states and relevant actors on the IDP Model Law and providing national parliaments with blueprints for the localisation of the IDP Convention in line with the IDP Model Law. As the AUC is tasked with the mandate of realising the commitment of member states to align domestic laws with international legal standards, it is important that the AU Commission performs a lead role in the process. In this regard, the consultative strategy of the African Commission's Special Rapporteur on Access to Information in the promotion of the Model Law on Access to Information for Africa can be adopted as good practice.