

The Kampala Convention and the right not to be arbitrarily displaced

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The drafters of the Kampala Convention drew heavily on the Guiding Principles on Internal Displacement, while also taking account of the African context; this is particularly evident in its recognition of the right not to be arbitrarily displaced.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons – the Kampala Convention, adopted in 2009 – owes its development in large part to the Guiding Principles on Internal Displacement. It reflects the international human rights and humanitarian law principles embodied in the Guiding Principles while also incorporating relevant aspects of norms from African regional human rights frameworks.

One way in which the Kampala Convention heavily mirrors the Guiding Principles is in its recognition of the right not

to be arbitrarily displaced. This principle is at the crux of the protection of IDPs, elevating protection from internal displacement from an ethical consideration to a legal duty for which State accountability may be demanded. Four main aspects of this right are covered by the Guiding Principles and, by extension, the Kampala Convention.

First, any act of displacement must conform to international law. Drawing on the Guiding Principles, the Kampala Convention enumerates grounds on which displacement is not permitted in international law, such as for reasons of ethnic cleansing

or religious or racial segregation. It also rejects the use of displacement as a means of collective punishment, displacement “caused by generalized violence or violations of human rights” – for example, the 2007 post-election violence in Kenya which led to mass displacement – and displacement that amounts to genocide, war crimes or crimes against humanity.

While the Guiding Principles prohibit mutilation and gender-specific violence against IDPs (Principle 11), the Kampala Convention goes further, prohibiting harmful practices as a cause of displacement. Here it owes much to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (known as the African Women’s Protocol),¹ an instrument that goes beyond other international treaties in its support for and promotion of reproductive rights. Alongside instances of girls fleeing the threat of female genital mutilation and early, child and forced marriage, in some parts of Africa girls flee their homes to avoid breast ironing – a practice that derives, in part, from the belief that promiscuity in young girls may be curbed through flattening of the breasts. The Kampala Convention’s prohibition on harmful practices such as these as a cause of displacement clearly reflects the African context.

The Kampala Convention permits certain kinds of displacement on specific grounds, for instance in situations of armed conflict for military necessity or for the protection of civilian populations. This permissible ground inspired by the Guiding Principles derives from international humanitarian law, in particular Protocol II to the 1949 Geneva Conventions. In situations of natural disaster, displacement is permitted where required for the safety and health of affected populations. However, with respect to development-induced displacement, the Kampala Convention makes a significant departure. The initial draft of the Kampala Convention reflected the Guiding Principles’ prohibition of this form of displacement “in cases of large-scale development projects, which are not justified by compelling and overriding

public interests” (Guiding Principle 6(c)) but this was subsequently modified in Article 10 of the Kampala Convention whereby States are required “as much as possible” to prevent displacement caused by projects. Only in the case of communities with special attachment to and dependency on land are States required to ensure that displacement does not occur except where “compelling and overriding public interests” exist (Kampala Convention 4(5)).

The second aspect of the right not to be arbitrarily displaced is that even if displacement in a certain instance is permissible under international law, it must still be carried out in accordance with due process of law – that is, fulfilling all minimum procedural guarantees. With respect to all forms of displacement, the Guiding Principles – echoing the Geneva Convention Relative to the Protection of Civilian Persons in Time of War² – set the minimum procedural requirement in Article 7 which requires that feasible alternatives must be explored to avoid displacement altogether and that proper accommodation should be provided to displaced populations. While there are no specific minimum standards under the Guiding Principles with respect to natural disasters and specifically climate change, these are included in the Kampala Convention. With climate change gaining recognition with the passing of time, this is one of the areas in which the Kampala Convention adds to the Guiding Principles in explicitly recognising climate change (although the Guiding Principles do broadly recognise ‘disasters’ which – though not explicitly defined – may of course be linked to the impacts of climate change).

The third aspect of the right not to be arbitrarily displaced is that displacement must not be carried out in a manner that violates human rights. As with the Guiding Principles, the Kampala Convention requires States to respect their human rights obligations pertaining to the way in which displacements are carried out, for instance, in situations of development projects.

Finally, the Kampala Convention requires States to introduce measures to address

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the negative impacts of displacement on IDPs. As with Principle 3(2) of the Guiding Principles, Article 5(9) of the Kampala Convention incorporates this provision as a right of IDPs to seek and receive assistance. Primarily, the essence of this provision – and indeed of the bulk of both instruments – is to ensure IDPs' protection and assistance, as well as to safeguard IDPs from negative consequences of displacement that may not have been foreseeable prior to and during the period of internal displacement.

The emergence of the Kampala Convention as the regional norm on internal displacement heavily reflects the significance of the Guiding Principles as an initial,

authoritative statement of international principles on the protection and assistance of IDPs. While adapted in some ways in order to better reflect the African context, the Kampala Convention is the clearest expression to date of the contribution of the Guiding Principles to successive binding norms on internal displacement.

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1. www.achpr.org/instruments/women-protocol/
2. www.refworld.org/docid/3ae6b36d2.html