

**THE RIGHTS OF INTERNALLY DISPLACED PERSONS IN AFRICA: THE CASE
OF COTE D'IVOIRE**

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DECLARATIONS

I, **CONDE MINATA OULEIN**, do hereby declare, certify and affirm that this research is my own original work and that to the best of knowledge, it has not been submitted nor is it currently being considered either in whole or in part, to be submitted to any other institution in fulfillment of any degree requirement or any qualification for that matter. Some of the ideas presented herein have been taken from other scholars. I however take full responsibility for all shortfalls, shortcomings and inaccuracies borne by this work, if any.

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DEDICATION

This dissertation is dedicated to my husband Oumar Bangoura and my children Oumou, Madina, Hassan and Marietou. You make my life complete. Oumar, you registered me for this course and encouraged me all along, hence no person better deserves this dedication than you.

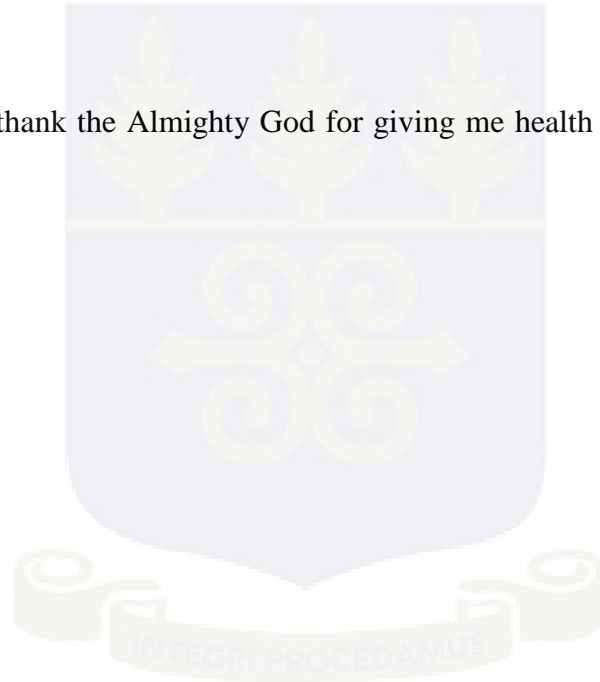


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Last but not the least; I thank the Almighty God for giving me health and strength to complete this work.



ABSTRACT

This study aims at highlighting the plight of Internally Displaced Persons (IDPs), the grave violations of human rights they are victims of and the multiple difficulties they find themselves in for being forcibly displaced, on the one hand, and the absence of internationally recognized legal instruments on the rights of IDPs and institution with the specific mandate of protection and assistance to internally-displaced persons (IDPs), on the other hand. This work focuses on Cote d'Ivoire as a case-study. It aims at finding the extent to which the absence of specific legal instruments and institutions for the protection and promotion of the rights of IDPs has affected the case of IDPs in that country. To do so, the work reviews the international bill of rights comprising the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and their implementation mechanisms. In addition, the work examines, *inter alia*, the provisions of international humanitarian law (in particular, the four Geneva Conventions and Additional Protocols) and the African human rights protection system to determine the alternate ways that can be found to ensure IDPs the full enjoyment of all their human rights. Finally, the work examines the new African Union Convention for the Protection and Assistance of Internally Displaced Persons and its effectiveness or otherwise in filling the gaps and weaknesses identified in the international system. The findings conclude that though there is no internationally recognized Convention on the rights of IDPs, IDPs' rights can be deduced from existing provisions and can be enforced through existing mechanisms. With respect to the African Convention for the Protection and Assistance of Internally Displaced Persons, the work concludes that it serves as an important instrument to anchor the rights of IDPs in treaty law and that it is an effective protective mechanism for IDPs in African and can serve as a guide for other regional systems or the UN. However, it also possesses its own weaknesses which the work seek

to expose and address. The study ends by recommending to the international community, including United Nations, its agencies and partners, governments and civil society organizations to take certain practical steps towards the elaboration of a Convention on the protection and promotion of the rights of IDPs and designate or create a UN agency with the mandate of protection of IDPs.



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ABBREVIATIONS

AU	African Union
OAU	Organization of African Unity
IDPs	Internally Displaced Persons
UN	United Nations
UNOCI	United Nations Organization in Cote d'Ivoire
OCHA	Office for the Coordination of Humanitarian Affairs
UNHCR	United Nations High Commissioner for Refugees
UNFPA	United Nations Funds for Agriculture
NRC	Norwegian Refugee Council
IFRC	International Federation of Red Cross and Red Crescent Societies
IDMC	Internal Displacement Monitoring Centre
NGOs	Non Governmental Organizations
CSOs	Civil Society Organizations
IHL	International Humanitarian Law
UDHR	Universal Declaration of Human Rights
ICCPR	the International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples' Rights

ACHPR	African Commission on Human and Peoples' Rights
COP	Commission on Peoples' rights
MPCI	Patriotic Movement of Cote d'Ivoire
NF	New Forces
OPA	Ouagadougou Peace Agreement
ENSEA	National Institute for Statistics and Economy
CATD	Temporary Reception Centre for Displaced persons



CHAPTER ONE

INTRODUCTION

1. Background

Internally displaced persons 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."¹

Internally displaced people, or IDPs, are often wrongly called refugees. Unlike refugees, IDPs have not crossed an international border to seek asylum but have remained inside their home countries. Even if they have fled for similar reasons as refugees (due to armed conflict, generalized violence, human rights violations, etc), IDPs legally remain under the protection of their own government, which in fact does not fulfill its responsibilities as it should toward them and sometimes is the cause of their flight. Their rights are ignored if not violated by those responsible for their protection. That is the case for all IDPs in Africa and especially in Cote d'Ivoire the country that is being used here as a case-study.

¹ Guiding Principles on Internal Displacement, Introduction, para. 2 and African Union Convention for the Protection and assistance of internally displaced persons in Africa, article1. K

The phenomenon of internal displacement is not new². But its recognition only emerged gradually through the late 1980s and became prominent on the international agenda in the 1990s. The chief reasons for this attention were the growing number of conflicts causing internal displacement of huge number of civilians made more vulnerable by the grave violations of their basics human rights.

According to the International Displacement Monitoring Center annual report for 2011 published in April 2012, the number of IDPs across the world occasioned by armed conflict, generalized violence and human rights violations reached 26.4 million worldwide. This number had fallen from a total of 27.5 million at the end of 2010 that represented an increase of about 400,000 IDPs since the end of 2009. The global number of IDPs has steadily increased from a total of around 17 million in 1997.

The decrease in the global number of IDPs was offset by increases of new large-scale displacements in several regions, notably in Africa and the Middle East. At the end of 2011, sub-Saharan Africa hosted the largest number of IDPs at 9.7 million, down from 11.1 million in 2010. The number of IDPs in Africa was still twice the next largest regional figure, about 5.6 million in the Americas.

The largest situation of new displacement was in Côte d'Ivoire, where up to a million people were displaced by the civil war which followed the presidential elections of late 2010. This increases the huge number of IDPs out of which only 709 000 were identified. The exact number of IDPs in this country is unknown because no comprehensive identification process covering all the country has been undertaken.

² According to United Nations Office for the Coordination of Humanitarian Affairs (OCHA, 2003) in 1949 the Greek government argued to the United Nations General Assembly that people displaced internally by war should have the same access to international aid as refugees, even if they did not need international protection.

Typically, internal displacement is characterized by the occurrence of large-scale violations of human rights. The massive violations of IDPs' rights before, during, and after their flights are widespread and permanent in any forced displacement situation. During the displacement, the new environment, the loss of property and social ties make them more vulnerable. Upon return to their home, other and more violations occur affecting their property rights in particular and other rights in general.

However, unlike refugees, IDPs' rights do not benefit from a strong legal regime. There is no convention on the rights of IDPs like the 1951 Convention on the Rights of Refugees. This leaves a big gap in the international human rights system relative to the protection and promotion of the Rights of IDPs the exception being the regional instrument adopted by African Union to deal with IDP's, that is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa in November 2009. If it enters into force the AU Convention may help in filling this gap and improve the human rights situation of IDPs in Africa. The work therefore highlights the situation in Cote d'Ivoire and examines how improvements in the mechanisms for the protection of IDP rights can ensure better protection generally for IDPs around the world.

2. Purpose

This dissertation aims to highlight some aspects of the situation of IDPs in Africa using Cote d'Ivoire as a case-study. It examines international human rights law, international humanitarian law and African human right system/law on the protection and promotion of the rights of IDPs, with particular attention being paid to the AU Convention on IDPs. Finally, the work will

suggest some possible solutions and aims to contribute to an overdue legal and political debate on one of the most challenging contemporary humanitarian problems.

3. Research Issues/Questions

The research questions raised are:

- a. Has the government of Cote d'Ivoire undertaken the required measures in order to ensure the protection of the rights of Internally Displaced Persons?
- b. Are Internally Displaced Persons adequately protected by International law, in particular, International Human Rights Law and International Humanitarian Law?
- c. Will the AU Convention on IDPs fill the gaps in the international legal protection of IDPs? What are its strengths and weaknesses?

4. Hypothesis

The responsibility to identify, protect, and promote the specific rights of IDPs can only be fulfilled by creating a comprehensive enforceable international legal regime with a specific mechanism for the protection and promotion of the rights of IDPs.

5. Literature Review

The situation of IDPs has generated significant literature. Numerous articles and books have been written on the subject mainly on the legal status of IDPs. Two main positions arise out this literature. One side supports the conception of a legal status for IDPs like refugees. This side recommends and promotes the establishment of an international treaty for the protection of IDPs rights and mechanisms to enforce these rights. The advocates of this position are convinced that IDPs face the same, and sometimes more, human rights violations as refugees do. Therefore, no concerns about states sovereignty, humanitarianism, doctrinal viability or political concerns

should impede that evolution. The other side does not support the legalization of IDPs situation. According to the partisans of this position, giving a legal status to IDPs may impede the States consideration towards refugees. It may also impede States sovereignty.

Won Kidane³ shares the view of assigning a legal status to IDPs. He found the legal status given to IDPs by the AU Convention doctrinally viable and the convention itself justified by the nature and magnitude of forced migration of persons in Africa. According to him, humanitarian considerations of deservingness are fact-specific. Categorically, IDPs cannot be said to be less deserving than refugees. Some IDPs may be more deserving of protection and assistance than some refugees, and vice versa.

Allehone Mulugeta Abebe⁴ traces the codification background of the Convention, examines its substantive scope, and identifies some of the key issues with direct bearings on its enforcement and implementation. According to him, The AU's initiative on the codification of the Convention, therefore, is a positive turn and a welcome development. This is particularly so in a region which has borne a disproportionate burden of internal displacement.

Roberta Cohen⁵ gives the main reason that leads the experts who drafted the Guiding Principles to deliberately choose not to propose a treaty to deal with IDP issue. She recommends the strengthening of the international legal framework for the protection of IDPs including intensification of the international usage of guiding principles on internal displacement.

³ Managing Forced Displacement By Law In Africa: The Role Of The New African Union IDPs Convention, Seattle University School Of Law Legal Paper Series # 11-05, Vanderbilt Journal Of Transnational Law, Vol. 44, No.1 (January 2011)

⁴ Allehone Mulugeta Abebe, The African Union Convention On Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges, Refugee Survey Quarterly, Vol. 29, No. 3 , UNHCR, 2010

⁵ Strengthening the protection of IDPs, UN's role, Georgetown Journal of International Affairs, 2006

James C. Hathaway⁶ put forward the plight of refugees and argues that the category should not be merged with other forced migrants. Professor Hathaway's point of view is a good representation of the arguments for distinct treatment of the IDP and refugee categories. According to him the international community is unable to provide protection to citizens of sovereign states inside their own territories but has an ability to provide assistance to refugees as a matter of international law. According to him, despite the often attenuated nature of sovereign power today, it remains the case that a clear guarantee of rights can only be made to persons who are outside of their own country.

David Fisher⁷ makes a step-by-step reference guide for internally displaced persons and those acting on their behalf; he sets out the legal rights that internally displaced persons enjoy, as well as the international mechanisms that have been established to protect these rights. He sets out the themes that are particularly relevant to internally displaced persons and illustrates the sources of law for these rights.

Francis Mading Deng⁸ traces the circumstances of his appointment as the SG representative for the protection of the human rights of IDPs. He recounts some of his missions around the world and their outputs. He also describes the background of the codification of the guiding principles.

Prisca Kamungi⁹, set forth the challenges of the coming into force and the implementation of the Kampala Convention, including political culture of impunity, disconnection between

⁶ Forced Migration Studies: Could We Agree Just to 'Date?', 20 J. Refugee Study. 349, 353 (2007)

⁷ . Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates, The Brookings Institution – University of Bern Project on Internal Displacement, June 2006

⁸ The Global Challenge of Internal Displacement. Journal of law policy, vol.5

⁹ Beyond good intentions: implementing the kampala convention, forced migration review, FMR34, 53-55

programming for IDPs and legal provisions, malfunctioning of state structures and gives some suggestions for civil society advocacy.

Walter Kalin¹⁰ makes an overview of the problem, gives a situation report on the need of IDPs. To him, IDPs can fully enjoy their rights if there is a strong normative framework for the protection of their rights, sufficient political will to respect, protect and fulfil these rights, sufficient capacity to do so and the ability to swiftly respond to new protection challenges.

IDMC's 2010 Global report on IDPs¹¹ gives the figures of internal displacement all over the world. It also gives the trends of internal displacement. It shows increase in IDPs number in Africa and specifies the situation in Cote d'Ivoire.

IDMC's 2011 Global report on IDPs¹² gives the figures of internal displacement all over the world. It also gives the trends of internal displacement and show decrease in IDPs number for 2011.

The Guiding Principles¹³ is the first international standards for IDPs. It was introduced into the UN Commission on Human Rights in 1998 by Francis M. Deng, the Representative of the Secretary-General on Internally Displaced Persons. The document set forth the rights of IDPs and the obligations of governments, insurgent groups, and other actors to protect and aid them prior to and during displacement as well as during return and reintegration

¹⁰ from Darfur to Katrina: how to protect 25 million internally displaced persons more effectively? New York, march 27 2007.

¹¹ Internal Displacement Monitoring Centre, Global Report on IDPs, 2010

¹² Internal Displacement Monitoring Centre, Global Report on IDPs, 2010

¹³ United Nations, Commission on Human Rights, The Guiding Principles on Internal Displacement, UN Doc.E/CN.4/1998/53/Add.2, 1998

Roberta Cohen¹⁴, in her work on IDPs, seeks to correct at least seventeen areas of insufficient protection for IDPs and fill about eight gaps in international human rights and humanitarian law. Among these new substantive rights are the right not to be forcibly displaced or forcibly returned to the area of danger, the right to restitution or compensation for property lost because of displacement, special guarantees for displaced women and children, and rules against internment of IDPs.

In another work, Roberta Cohen¹⁵ puts forward the necessity of taking steps in strengthening the protection of IDPs. According to her, as a first step, the international community must reinforce the legal framework for the protection of IDPs. Eventually that might mean developing a legally binding instrument on the model of the Refugee Convention.

Walter Kalin¹⁶ puts forward the plights of IDPs and emphasises the obligations of states to protect and promote the rights of IDPs. He reminds states of the need to create a legal framework for the protection of IDPs. According to him, although unlike refugees, IDPs remain within the borders of their own country, they find themselves in similar situation and with similar protection needs as refugees. . He condemns cases of arbitrary displacement and invites the Commission to join him in his call to all armed actors on the African continent to fully respect and to ensure respect for the guarantees of international humanitarian law and to honor the rights of civilians. Attitudes that would reduce the number of, displacement.

¹⁴ 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting,' *Global Governance*, Vol. 10 (2004)

¹⁵ Roberta Cohen 2006

¹⁶ Statement of the Representative of the UN Secretary-General for the Human Rights of Internally Displaced Persons, Dr. Walter Kälin, on the Occasion of the 40th Ordinary Session of the African Commission on Human and Peoples' Rights 18 November 2006 Banjul, The Gambia

Simon Bagshaw¹⁷ puts forward the utility of the guiding principles as an important advocacy tool for international and regional organizations and NGOs in their work on behalf of IDPs. Moreover, it is increasingly being considered by governments as a useful guide for the development of domestic law and policy on IDPs.

Roberta Cohen¹⁸ equally describes the Guiding Principles as a means of holding authorities accountable for the way they treat IDPs. She concludes that the Guiding principles have filled a major gap in the international system for the protection of Internally Displaced Persons.

Mehari T. Maru¹⁹ analyses the Kampala Convention on IDPs and puts forward its contributions to fill the protection gaps that exist in International Law. He also highlights its achievements including the transformation of the guiding principles into a treaty provision with robust claimable rights and corresponding far-reaching duties on a large number of actors.

Cohen and Deng²⁰ put forward the plight of IDPs all over the world. They decry the absence of specific legal mechanisms for the protection of the rights of IDPs and a body to monitor compliance with such mechanisms. They invite states to incorporate provisions of the Guiding Principles into their legislative frameworks.

Roberta Cohen²¹ argues that the primary responsibility for protection of the displaced rests with their governments, but underscores the important role the international community has to play

¹⁷ Simon Bagshaw, *Developing a Normative Framework for the Protection of Internally Displaced Persons*. New York 2005

¹⁸ COHEN, R. 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting', *Global Governance*, 2004

¹⁹ . Mehari T. Maru

²⁰ Cohen and Deng *Masses in Flight: The Global Crisis of Internal Displacement*, Brookings Institution Press, 1998.

²¹ *Masses in Flight: People under Assault in their Own Countries* Inaugural Lecture by Roberta Cohen, St. Louis Lecture and Dialogue Series: Human Rights in Global Perspective, University of Missouri, January 16, 2001

when governments fail to discharge these responsibilities. According to her Governments cannot arbitrarily withhold consent when they are “unable or unwilling to provide the required humanitarian assistance”. Governments have an obligation to grant humanitarian organizations “rapid and unimpeded access to the internally displaced.

A.F. Bayefski and J. Fitzpatrick²² put forward the multidisciplinary approach of the protection of the rights of IDP while keeping the vision that the rule of law can and should be made relevant to internal displacement.

This study finds some of the above literature inadequate in relation to the protection and promotion of the rights of internally displaced persons. It intends to make findings relevant to the problem and use the literature it will come up with, to convince the reader and all stakeholders of the need to focus on the special rights of internally displaced persons.

6. Scope/Chapter

This chapter is basically **chapter 1** of the study. This comprises introduction, Purpose, issues, hypothesis, Literature Review, Scope, Methodology and Significance of the Study.

Chapter 2 analyzes the magnitude of the problem of internal displacement in Cote d’Ivoire. This will also entail identification of the causes of internal displacement in the country. **Chapter 3** comprises analysis of the international legal framework for the protection of the rights of IDPs. **Chapter 4** comes up with detailed and comprehensive recommendations as to what can be done to attain the acknowledgement, protection, and enforcement of the rights of IDPs. It will have a suitable conclusion to the study and show whether the findings of the study prove its hypotheses.

²² A.F. Bayefski And J. Fitzpatrick, Human Rights And Forced Displacement, Martinus Nijhoff Publishers,

7. Methodology

Findings for this study have been obtained through various methods. Use has been made of sources of data by way of library research and analysis of reports that touch on the subject matter. The author also utilized personal notes of interviews made with IDPs in the western part of Cote d'Ivoire, at both place of displacement and place of origin upon return. Internet sources have been used to attain the relevant latest information on the matter. Focus has been made on specific areas of IDPs in the selected country of this research.

8. Significance of the Study

This study is relevant because it shows that the rights of IDPs can be protected and be enforceable under national and international law, even though there is no specific internal legal instrument and institution on the protection of IDPs. It demonstrates that IDPs rights can be deduced from existing international binding legal instruments including treaties that States have ratified. It also exhibits that IDPs as human beings are entitled to the full range of human rights enshrined in the UDHR. As it is, they can claim all their rights by using appropriate existing human rights protection mechanisms including United Nation's and African Union's.

This work will help individual IDPS, humanitarian workers, civil society organizations, non-government organizations (NGOs), and all those concerned with the plight of IDPs and seeking remedies to end the human rights violations they are victims of for being forcibly displaced. It will help them in their search for a solution to the protection problems of IDPs in Cote d'Ivoire. It is applicable to IDPs in the rest of Africa and the world at large. That goal will be achieved by this work by researching into existing norms and mechanisms in order to deduce IDPs rights and make them enforceable, and by focusing on the stumbling blocks inherent in the AU Convention for the Protection and Assistance to ID

CHAPTER TWO

INTERNAL DISPLACEMENT IN COTE D'IVOIRE- GENERAL CONTEXT

I. Background, Causes and extent of the Internal Displacement in Cote d'Ivoire

1. Background

From 1960, the year it gained independence from French colonial rule, until December 1999, when its first-ever military coup overthrew the government and installed a military junta, Côte d'Ivoire was one of the most prosperous West African states. The country's political stability from 1960 to 1980 depended on both the political pragmatism of its leaders and a favorable economic environment. The key to the country's economic success was the development of the coffee and cocoa sectors, through policies encouraging the migration of a national (mainly from the central and northern regions) and international (mainly from Burkina Faso) workforce, particularly to the forest in the west of the country. A sharp fall in the value of coffee and cocoa on international commodities markets, coupled with an economic recession at the end of the 1980s, had a negative impact on the wealth and quality of life of coffee and cocoa farmers and also created tensions between indigenous inhabitants (autochtones) and migrant workers from abroad (allogenes) or from other areas of Côte d'Ivoire (allochtones). Tensions remained high in the west between indigenous groups and Ivoirians from other areas and West African migrants who for decades had worked (as labourers or leaseholder owners) on the local cocoa and coffee plantations. Such tensions have been exploited and heightened by politicians and military leaders preaching xenophobic Ivorian nationalism based on the concept of "Ivoirité", which reframed the rights to nationality and to ownership of land. They cited "Ivoirité" both to exclude political opponents and to mobilize political support against people of foreign origin. Thus, in the 2000

presidential elections, which were eventually won by Laurent Gbagbo, the opposition leader Alassane Dramane Ouattara was excluded from running due to his alleged Burkinabé origin.

A series of political crises took place which ultimately resulted in the break-out of an armed conflict in 2002, leading to the country's division into two and causing massive internal and external displacement of population. The north came under the control of the Patriotic Movement of Côte d'Ivoire (MPCI), later known as Forces Nouvelles (FN) rebels led by Guillaume Soro, a former student leader, and the south remained under government control²³ The FN articulated the grievances of the northerners who considered that they were treated as second class citizens because their community does not have sufficient representation in the institutions of the state. The Ivorian government was primarily composed of officials from the south and west.²⁴

2. Causes of Internal Displacement in Cote d'Ivoire

a. A conflict-induced displacement

Internal displacement in Côte d'Ivoire was caused both by the internal armed conflict that broke out in September 2002 following a failed coup by disaffected soldiers, and by localized inter-communal conflicts. Intermittent fighting between government forces and the FN continued until the signing of the Ouagadougou Peace Accord (OPA) in March 2007.²⁵ These fights caused the mass displacement of hundreds of thousands of people all over the country.

From mid-2009, tensions rose again over the electoral process and the question of Ivorian identity and nationality²⁶. In 2010, inter-communal violence continued to displace civilians especially in the western area of the country namely the districts of Moyen Cavally and Dix-Huit

²³ IDMC,NRC, Whose Land Is This? Land Disputes And Forced Displacement In The Western Forest Area Of Côte d'Ivoire, October 2009

²⁴ IDMC, NRC, Background Note on Internal Displacement and Protection Concerns in Côte d'Ivoire, 2010.

²⁵ IDMC's internal displacement profile on Côte d'Ivoire, IDMC.NRC., sept 2010

²⁶ id

Montagnes. In these districts, the increase of property disputes in coffee and cocoa-growing areas and the proliferation of small arms have contributed to the ongoing tensions and insecurity. Thus, a combination of rebel uprising and civil war and inter-communal conflicts has threatened the country's peace and stability, causing forced displacement of population, giving rise to serious human rights violations, and social and economic problems.²⁷

b. A development-induced displacement

Internal displacement in Cote d'Ivoire is primarily a conflict-induced displacement.

However, there is some case of development-induced displacement mainly in the capital city, though both are interlinked. Majority of development-induced IDPs were primarily conflict-induced IDPs. Almost 70 per cent of the IDPs in the government-held south fled to Abidjan the capital city. A profiling exercise carried out in 2007 found that between 300,000 and 440,000 IDPs were still living in the city on 17 sites. Five sites in the Bingerville, Maferie and Yopougon neighbourhoods of Abidjan have closed down, resulting in the eviction of 2,657 persons while 1,239 IDPs who remain on seven other sites in Cocody, Aboisso and Grand- Bassam face imminent eviction. In Abidjan, the capital city, the IDP population has reportedly increased by 28 per cent mainly due to evictions. The majority of evicted families come from Abobo and Yopougon. Their continued stay on sites is explained by the perceived insecurity in certain neighbourhoods, destruction, looting or occupation of their habitual places of residence.²⁸ According to the Office of the High Commissioner for Human Rights (UNHCHR), the population of IDPs on sites across five regions of Côte d'Ivoire continues to fluctuate.²⁹

²⁷ id

²⁸ Human Rights Council Eighteenth session, A/HRC/18/52, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, September 2011

²⁹ id

3. The extent of the displacement in Cote d'Ivoire

About 709,000 IDPs were identified during a process organised by UNFPA and the national statistics office (ENSEA) in Abidjan and Grand Bassam. The vast majority of IDPs in those cities were living with host families making their identification difficult. The 2007 survey in Abidjan found that host households had welcomed three IDPs each on average. In the western and central areas, in addition to host families, three camps hosted IDPs, one in Guiglo, one in Yamoussoukro and the last one in Nahibly open to receive the displaced by 2011 post electoral crisis.

Majority of IDPs, except civil servants, who left the north of the country to join the area under government control, no longer have access to their job, crops, farms or any income-generating activity as a result of their displacement. The exact number of IDPs in the country is unknown because no comprehensive identification was undertaken.

In 2004, the United Nations deployed about 6,200 UN peacekeeping forces in Côte d'Ivoire³⁰. Three peace agreements negotiated between 2003 and 2005 failed.³¹ Despite the deployment in 2004 of a strong UN peacekeeping mission (UNOCI) in addition to an established contingent of 4,000 French troops, the war continued sporadically and forced displacement of vulnerable civilians along until the signing in March 2007 of the Ouagadougou Political Agreement (OPA).³² OPA considerably calmed the situation as it gave IDPs real hope for an end to their displacement. However, in 2006, the national statistical institute (ENSEA) estimated that there were some 709,000 IDPs in the southern regions. Up to the end of 2008, around 70,000 registered IDPs returned to western Côte d'Ivoire and 18,000 civil servants were redeployed in

³⁰ Year in Review 2004, UN Peace Operations, <http://www.un.org/en/peacekeeping/publications/yir/2004/ch2.htm#unoci>

³¹ IDMC, supra note ,6

³² id

the north, and so at the end of 2008 an estimated 621,000 IDPs remained³³ This figure does not include those newly displaced who did not return within the year, or people displaced within the north and in the west.

IDPs' movements have mainly been around conflict areas, and they have settled in villages and towns near their areas of origin. In the west, Duékoué and Toulépleu have sheltered the majority of the IDPs from the western regions (97 per cent and 83 per cent respectively).³⁴ In the Moyen Cavally and Dix-huit Montagnes region and Haut Sassandra succession of displacements and returns have occurred. In 2002 first batch of displacement, 2004-2005 first spontaneous return, 2006-2007 second batch of spontaneous return. In the district of Zouan, for example, the people chased out of Zou occupied villages belonging to communities that had to flee their homes. The new arrivals were later also attacked. As one population group has chased away another and has been then itself chased away. These areas are characterized by high levels of insecurity caused by the presence of FAFN and traditional hunters coupled with grave inter-community conflict and disputes on lands and crops, situation that lead to multiple displacements of populations.

II. National legal framework for the protection of IDPs

Côte d'Ivoire signed the African Union Convention for the Protection and Assistance of Internally Displaced persons in Africa in November 2009. But as of beginning of September 2010 it had not ratified it. Elements of a national legal framework upholding the rights of IDPs, including a law defining mechanisms to compensate war victims including IDPs, were still awaiting signature in September 2010, years after they had been drafted. The likelihood of their signature was reduced by the discontinuation of the mandate of the Ministry of Solidarity and

³³ id

³⁴ NRC Rapport d'Evaluation Rapide des besoins humanitaires des problèmes de protection dans les localités affectées par le déplacement: Moyen Cavally et Dix huit Montagnes, Sept 2008.

War Victims as the IDP focal point in February 2010, following a government reshuffle. The Ministry had taken the initiative of drafting legislation on compensation and restitution issues and had set up an inter-ministerial committee on IDPs. Its functions were taken over by the new National Secretariat for Solidarity and War Victims. The Ministry of Reconstruction and Reinsertion, which had been supporting IDP return movements in the course of 2009, was also abolished on the same occasion.³⁵ Côte d'Ivoire has not developed a system of restitution or compensation for properties, mainly houses and lands, which IDPs were forced to abandon due to the conflict.³⁶

The Ivorian Constitution of August 2000 gives great prominence to the protection of Human rights and fundamental freedoms. The Preamble proclaims their adherence to the rights and freedoms defined in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981; It recognizes Côte d'Ivoire's ethnic, cultural and religious diversity and states that the Ivorian people are "persuaded that unity with respect for diversity will ensure economic progress and social well-being".

The principle of the equality of persons is established in article 2 of the Constitution, which stipulates that human rights are inviolate and that the authorities have the obligation to ensure that they are respected, protected and promoted. This article echoes Principle 5, according to which all authorities must respect their obligations under international law, including human rights and humanitarian law.

³⁵ *Fraternité Matin*, 20 April 2009

³⁶ Barbara Mc Callin et Marzia Montemurro, *A qui sont ces terres ?*, *Conflit fonciers et déplacement des populations dans l'Ouest forestier de la Côte d'Ivoire*, octobre 2009

Under article 87 of the 2000 Constitution international treaties or agreements take precedence over domestic law. Under article 86, in the event of a conflict between a provision of international law and the Constitution, the Constitution must be revised before the agreement in question can be ratified.

Côte d'Ivoire has ratified the main international human rights instruments, namely, the International Covenant on Civil and Political Rights (1992), the International Covenant on Economic, Social and Cultural Rights (1992), the International Convention on the Elimination of All Forms of Racial Discrimination (1973), the Convention on the Elimination of All Forms of Discrimination against Women (1996), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1996), and the Convention on the Rights of the Child (1991)³⁷. Although Côte d'Ivoire hosted more immigrants than any other country in the sub region, it has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It has signed but not yet ratified the Rome Statute of the International Criminal Court

At the regional level, Côte d'Ivoire has ratified the African Charter on Human and Peoples' Rights and has signed the protocol thereto concerning the establishment of the African Court on Human and Peoples' Rights (2003)³⁸. As to Côte d'Ivoire's obligations towards the bodies responsible for monitoring implementation of the conventions it has ratified, it appears

³⁷ Cote d'Ivoire Adherence to International Treaties, Geneva Academy of International Humanitarian Law and Human Rights, Switzerland, Tuesday, 29 November 2011.

³⁸ Cote d'Ivoire Adherence to regional Treaties, Geneva Academy of International Humanitarian Law and Human Rights, Switzerland, Tuesday, 29 November 2011.

that it has not yet submitted its initial reports to the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women or the Committee on Economic, Social and Cultural Rights; nor has it submitted its second and third periodic reports to the Committee on the Rights of the Child.

Côte d'Ivoire did submit a report to the Committee on the Elimination of Racial Discrimination in 2002. It has not issued any open invitation to the special procedures of the Commission on Human Rights. In 2004, the Special Rapporteur on the Right to Freedom of Opinion and Expression and the Special Rapporteur on Contemporary Forms of Racism, racial Discrimination, Xenophobia and Related Intolerance visited the country and submitted their reports to the Commission on Human Rights at its sixty-first session. In 2005, the Special Rapporteur on the question of torture submitted a request for a visit, but the authorities are yet to reply. As for its obligations under humanitarian law, Côte d'Ivoire is a party to the four Geneva Conventions of 12 August 1949 and the additional protocols thereto of 8 June 1977.

III. Human rights situation of IDPs in Cote d'Ivoire

About 709,000 IDPs have been identified. Of the identified IDPs, only a small number were in camps (approximately 1,000 people in Yamoussoukro and 8,000 in Guiglo CATD until 2008 and 4500 in Nahibly in 2011-2012³⁹). The vast majority have continued to live with host families or communities. This has made it more difficult to assess their situation and protection needs. But it has also put a considerable strain on host families. The 2007 survey in Abidjan found that host households had welcomed three IDPs each on average.

³⁹ Cote d'Ivoire the victor's Law : The human Rights situation two years after the post electoral crisis, Amnesty International Publications, 2013

Majority of IDPs, except civil servants, who left the north of the country to join the area under government control, no longer have access to their job, crops, farm or any income-generating activity as a result of their displacement⁴⁰. They face difficulties every day with regard to the full enjoyment of their basic human rights such as rights to life, food, health care and education. Their economic situation is particularly alarming⁴¹. Although the constitution of Cote d'Ivoire guarantees the rights to life, food, health care and education under its articles 2 and 7, the government do not take measures to discharge its obligations. The right to live includes the rights to food, free and equal access to health care, to clean water and environment. None of these rights were guaranteed by the government. IDPs' right to life has been threatened both by rebels groups and government forces. In the zone under FN control, civilians were arbitrary arrested at check points, despoiled and sometimes beaten. Majority of IDPs who do not have identification document and money to pay at check points could not move in violation of their right to free movement and their ultimate right to voluntary and safe return in dignity.

IDPs' movements have mainly been around conflict areas, and they have settled in villages and towns near their areas of origin. In the west, Duékoué and Toulépleu have sheltered the majority of the IDPs from the western regions (97 per cent and 83 per cent respectively).⁴² In the Moyen Cavally and Dix-huit Montagnes region, succession of displacements have occurred, as one community group has chased away another and has been then itself chased away. In the district of Zouan, for example, the people chased out of Zou occupied villages belonging to communities that had to flee their homes. The new arrivals were later also attacked. These areas are characterized by high levels of insecurity that lead to displacements. The land issue, which is

⁴⁰ Internal Displacement to Urban Areas: The Tufts-IDMC Profiling Study, Abidjan, Côte d'Ivoire: Case 2, September 2008

⁴¹ Id

⁴² Rapport d'Evaluation Rapide des besoins humanitaires des problèmes de protection dans les localités affectées par le déplacement: Moyen Cavally et Dix huit Montagnes, NRC, Septembre 2008.

sometimes the cause of inter communal conflicts, is also a source of insecurity for inhabitants. In the zone under FN controlled IDPs' houses were occupied by rebels. After the 2007 peace agreement was signed and year after, some rebels refused to leave houses they were illegally occupying. These occupations continued in violation of IDPs' property right guaranty under article 15 of the constitution in these terms: "The right of property shall be guaranteed to all. No one may be deprived of his property, unless it is for public benefit and on condition that just and prior compensation is made. "

1. IDPs' right to physical security

Physical insecurity has increased both in places of displacement and return. IDPs are consistently facing insecurity. Most of them have experienced threats to their security especially those in the western area of the country⁴³. Throughout the crisis, in fact, displaced persons who have had to flee their regions of origin for, basically, security reasons have been the victims of serious human rights violations committed both by the defence and security forces and by rebel or youth militia groups, who often go unpunished.

Ambushes and armed robberies have been consistently occurring in that region, especially between Duékoué and Bangolo.⁴⁴ Human rights violations and abuses against IDPs and returning populations, especially those non-indigens to the area are common in Moyen Cavally and Dix-huit Montagnes regions.⁴⁵ Highwaymen attack daily civilian's buses ransack and rape innocent travellers. From 14th February 2008 to 15th march ONUCI recorded every day one road block on the Axe Duekoue Bangolo Man. In every road block civilians are spoliated, all

⁴³ Author's interview with IDPs in villages of Bangolo, Kouibly, Zou, Yeaglo, Duekoue with focus groups of men, women, children and elderly. In 2007, 2008 and 2009. And in CATD camp in Guiglo in 2008.

⁴⁴ UNHCR, Rapport de monitoring de protection des PDI, Moyen Cavally et 18 Montagnes, 2008

⁴⁵ id

valuables are taken away from them and women are raped. UN peace keeping mission arrive always late and could not prevent the abuse.

The presence of armed newly-arrived migrants in state-owned protected forests (e.g. Mont Peko in Bangolo and Mont Tia in Kouibly areas) has constituted a threat to the populations living in neighbouring areas, including IDPs.⁴⁶ The joint commandants (Commandement Intégré) have not been able to disarm these groups. Due to the increase in the circulation of arms, some local populations, for example in Phing Beoua in the Zou area, have hired traditional hunters to ensure their security,⁴⁷

The High Commissioner for Human Rights notes, in his report on the situation of Human Rights in Cote d'Ivoire presented to the Human Rights Council at its 18th session held on September 20th 2011, that a joint assessment mission comprised of the protection cluster members, including the Human Rights Division, and the representative of IDPs, conducted in the west (area of Tai) on 4th August 2011, has reported continuing population movements within the zone as they fear possible new attacks by militia and mercenaries still active in the area

1.1 Sexual and gender-based violence

The rate of reported cases of rape has increased since 2007, especially in the west and in the former “zone of confidence” between the government-controlled south and the FN-controlled north.⁴⁸ Sexual assault cases against children have also increased in the west. Incidents of harassment and rape have been common at checkpoints run by government security forces or FN members and by highwaymen during ambushes. Sexual violence has been reportedly taking on more and more an ethnic dimension. The risk of sexual abuse has heightened as a result of the

⁴⁶ UNHCR, Compte rendu des reunions du GTP moyen cavally et 18 montagne, 2008 et 2009

⁴⁷ UNHCR, Supra note 20

⁴⁸ UNHCR, supra note 20

presence throughout the country of large numbers of armed combatants, whether from national forces, the FN or neutral forces.

Displacement has fuelled an increase in prostitution, sexual violence and sexual exploitation of women and girls, especially in urban areas such as Abidjan⁴⁹ and Danane.⁵⁰ IDPs questioned in the west especially in Danane and Zouan Hounien, said that some among them, especially single women, turned to prostitution to escape extreme poverty. This situation has led to an increase in gender- based violence and sexually transmissible diseases including HIV. Few young girls have confessed their status and are under anti retro viral treatment⁵¹.

IDPs and host population questioned said there is increase in ambushes during which women are raped.⁵²

2. The right to identification (As IDPs' civil and political rights)

The country started the identification and documentation of Ivorian prior to organization of the presidential elections scheduled for the end of 2008. Consultations were organized all over the country and everybody had the obligation to attend the one organized in his/her place of origin. This process impeded the participation of IDPs. Most of them could not take part in “audiances foraines” because they could not or would not go back to their place of origin. The “audiances foraines” or “operation d'identification” was the first step and condition for taking part into the documentation operation leading to issuance of identity and voting cards. IDPs who lost all their properties, including identity documents before or during the flight caused by civil war and massive violations of human rights, were left aside of the process in violation of their right to identity documents, and in violation of the provisions the Guiding principles, the constitution of

⁴⁹ Internal Displacement to Urban Areas: the Tufts-IDMC Profiling Study, Abidjan, Cote d'ivoire: Case 2, sept 2008

⁵⁰ UNHCR, supra note 20

⁵¹ Interview notes, Author with IDPs groups, young girls, women, Danane and Zouan Houmien.2008.

⁵² Interview notes, Author with IDPs and host community in the villages of the axe Duekoue-Bangolo-zou. 2008

Cote d'Ivoire (art.33) and the International Covenant on Civil and Political Rights ratified by Cote d'Ivoire.

3. Freedom of movement

The lack of identification documents, namely national ID card, passport, voting card, constitutes an obstacle to the enjoyment of IDPs' rights to return and their freedom of movement. The unnumbered check points put in place and controlled by rebel forces and government forces all over the country has prevented them to move and even to return to their places of origin. Roadblocks in both government and rebel-controlled areas continued to impede their freedom of movement until 2010, limiting the traffic of goods including basic supplies to the north, worsening the plights of deprived populations including IDPs and preventing the economic recovery of the country. Although checkpoints remained throughout the country, extortion was most severe in the north where, according to Human Rights Watch, FN members extorted the equivalent of several million US dollars annually through checkpoints and other rackets. In the region of Dix Huit Montagnes under FN control, racket of population at the unnumbered checkpoint was prominent and constituted an obstacle to the free movement of IDPs preventing them from the enjoyment of their right to voluntary and safe return in dignity and in violation of their rights and freedoms guaranteed under the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981, to which Cote d'Ivoire had adhered.

4. Right to registration at birth and its corollary right to an identity

The right to an identity is a fundamental human right enshrined in the UDHR and other human rights instruments. The right to registration at birth and to an identity is guaranteed under the 1989 Convention on the Rights of the Child ratified by Cote d'Ivoire in 1991. However, several hundreds of thousand children including IDPs born in the forest region of the country, namely in

Moyen Cavally and Dix-huit Montagnes cocoa and coffee crops, have not been registered at birth in violation of their ultimate right to registration at birth. From this right flow most civil and political rights, other rights such as the rights to a nationality, to a name, to a birth certificate, to an identification document, the right to vote etc.

Majority of these children and young adults are at risk of statelessness for the simple fact that they are incapable of proving their citizenship of any country. They consider themselves Ivorian while the host community sees them as foreigners. The lack of registration of birth and issuance of birth certificate also impede their access to education or to further it. The local authorities, even though informed by humanitarian workers of the situation and the legal consequences on these children and young adults, did not take appropriate action in coordination with Abidjan until the post-electoral crisis broke out.

5. The Right to education

Due to the massive displacement caused by the civil war, the education system across the country, from primary schools to university, experienced severe and multiple problems. It was estimated in 2004 that some 700,000 children had not been able to access education since the beginning of the crisis⁵³ in violation of their right to education guaranty by the Convention on the rights of the child to which the country had adhered.

School buildings were destroyed in both central and northern regions, especially in the west, and in Abidjan. Rebuilding of school facilities was one of the priorities following the Ouagadougou Peace Agreement in 2007. Schools in the south are overcrowded due to the large number of internally displaced children who continued their education there. Education in the north has

⁵³ UN Office for the coordination of Humanitarian Affairs (UNOCHA), Cote d'Ivoire - Fast Facts, December 2009.

been impacted by the shortage of qualified teachers: the Ministry of Education estimated that only 20 per cent of the government-paid teachers stayed at their posts in the north during and right after the conflict. The return of teachers was slowed down by the lack of security and the occupation and destruction of education infrastructure.⁵⁴

6. The right to voluntary and safe return in dignity

Since March 2007, with the signing of Ouagadougou Peace Agreement, IDPs started returning to their areas of origin or habitual residence, including displaced civil servants who were redeployed. The mechanisms of monitoring the return were mostly limited to the western regions of Moyen Cavally and Dix-huit Montagnes, with an extension to Haut Sassandra and Bafing in 2009⁵⁵.

Although return movements have continued spontaneously and with the support of humanitarian agencies and church aid organisations in the course of 2010, obstacles to sustainable return persist.⁵⁶ These include continuing insecurity, rampant criminality, and human rights abuses and longstanding land disputes. Land tensions continued to cause displacement and to prevent IDPs upon return from accessing their plantations.⁵⁷ Hundreds of IDPs previously hosted in the CATD (Centre for temporary reception of IDPs) in the town of Guiglo, were denied access to their place of habitual residence and crops. Questioned in Zeaglo village where they were living in the school compound, IDPs confirm that upon their arrival in the village, their journey was stopped by the youth opposed to their return in their plantations⁵⁸.

⁵⁴ UNHCR, Supra note 20

⁵⁵ USAID funded Protection Monitoring project implemented by UNHCR through a national partner A.S.A from 2007 to 2009. recruited 23 agents trained to monitor IDPs protection needs and the return in 8 districts in the west and 3 protection officers to supervise and coordinate monitoring activities

⁵⁶ UNHCR, supra note 20

⁵⁷ IDMC-NRC, Supra note 6

⁵⁸ Interview notes. Author with IDPs, upon return from CATD Camp, in Zeaglo village, January 2009

The right to voluntary and return in dignity and its corollary prohibition of forced return have been often violated in Cote d'Ivoire. That was the case of CATD s'IDPs. After the operations of return organized by the humanitarian community in 2007, a remaining case load composed by those who refuse to return because of security reasons and also those who upon a first return could not have access to their properties including crops, houses, lands, and for that reason came back to the camp, were compelled by local authorities to leave the camp. Furthermore, when the international organization for migration (IOM) stopped its activities in IDPs temporal reception centre (CATD) in 2008, majority of IDPs was forced to return to area they run away from to save their lives and which was not yet safe for return. Their houses and crops were still occupied by new arrivals or those who did not flee. The humanitarian organizations advocated on behalf of IDPs so that local and national authorities could give them much time to leave the centre. The protection cluster organised Interviews to assess the needs of the remaining case load in order to find solution to their plight and better structure their advocacy plan. Unfortunately the local authorities do not access to their request. This is one of the numerous situations within this country, where those responsible for the protection of the rights of IDPs are the first to violate or ignore them. It was also the case in 20th July 2012 in Nahibly camp attacked by FRCI soldiers, local communities and dozo. Nahibly camp was the last camp for displaced persons still open in Côte d'Ivoire. It counted at the time, around 4,500 people who had fled villages in the region during the post-electoral crisis.

6.1 Obstacles to return

In its 2010-2011 Global Appeal, UNHCR identified as the main conditions for durable return in 2010 the holding of free, fair and transparent elections, the acceptance by political parties and armed groups of their results, and the improvement of security in areas of return. At the same

time, it has identified that land disputes and poor social cohesion are the main obstacles to sustainable return. Migrant communities from other regions of Côte d'Ivoire or from other West African countries, who were internally displaced by the armed conflict, were still targeted by indigenous communities at the end of 2009 as they attempted to return to their plantations.⁵⁹

In many cases, while people were displaced the plots they had planted were either sold or leased by others to third parties. When they tried to return, many IDPs found their plantations occupied.⁶⁰ The examples of CATD IDPS stopped in the villages and prevented them from accessing their plantations/houses and of the Zou where their crops were occupied by those who did not flee are very eloquent. The government representatives in these zones were all well aware and informed of these abuse and violations of IDPs' right to voluntary and safe return in dignity, and their property right guaranty by the constitution of Cote d'Ivoire under its article 15.

According to the High Commissioner for Human Rights, in his report to the 18th session of Human Rights Council, many people who were displaced during the post-electoral crisis remain in IDP camps and are afraid or unable to return because of the security situation in some neighbourhoods of Abidjan and in the Western part of the country. Those still in the camps are facing security threats as well as a number of challenges to meeting their basic needs. Reports also allege that some IDPs are being forced to leave sites while the conditions for return in dignity are not yet in place, this was the case of IDPs located in CATD camp in Guiglo.⁶¹

In the absence of a system of restitution or compensation for land, the 1998 Rural Land Law is currently the only legal framework available to settle disputes in rural areas. The Law is designed

⁵⁹ Human Rights Watch(HRW),2010 world report: Chapter on Cote d'Ivoire, January 2010

⁶⁰ Integrated Regional Information Network (IRIN), 27 January 2010, Beyond the law on Land disputes. See also UNHCR, comptes rendus des réunions du GTP (Protection Cluster) Moyen Cavally et 18 Montagnes, 2008, 2009

⁶¹ UNHCR, Supra note 20

to recognise and formalise customary rights, and to reduce tensions over land ownership resulting from the uncertainty of customary transactions; however the formalisation of customary rights in the context of displacement complicates land disputes and increases the risk of discord⁶². Moreover the law remains little known in most of the areas of return in the west while the implementation capacity of the government remains limited.⁶³ Numerous land disputes have also arisen in the protected forest areas where many internally displaced people used to plant their crops. As the 1998 Rural Land Law only applies to the rural land domain and not to the protected forests, there is no legislative framework to resolve these disputes. While solutions to land disputes in both village and protected forests in the west have mostly been ad hoc, humanitarian agencies and national institutions agreed in May 2010 to set up a local platform in Moyon Cavally region to adopt a more consistent approach to the prevention and the resolution of disputes⁶⁴

7. Property rights/property restitution

Housing and Land

The 2002 armed conflict boosted existing land ownership disputes, due to the displacement it caused, to the increase in deaths and its corollary intra / inter-community disputes over inheritance. Several types of conflicts are linked to land. In northern Côte d'Ivoire, where rebels were occupying IDPs' houses, property restitution remains a major issue.⁶⁵ Majority of IDPs who fled the north were obliged to remain in their places of displacement because their houses were occupied by rebel forces or destroyed by the fights. IDPs did not receive any support from authorities in term of property restitution because those who are supposed to give that support are those who are unlawfully occupying the houses.

⁶² IDMC, supra note 6

⁶³ IRIN, supra note 36

⁶⁴ UNHCR, Rapport annuel de Protection, 2008 et 2009

⁶⁵ Id

In the west, disputes often broke out when displaced individuals attempted to reclaim their plantations and realized that their plots were occupied in their absence, or allocated to new migrants for exploitation without taking into account previous agreements or contracts, or without the authorization of the rightful owners.⁶⁶

In the absence of an acknowledged demarcation of plots or the identity of their farmers, the people who did not flee sometimes encroached upon displaced people's plots or transferred them to third parties, without the possibility of effective intervention by customary authorities. In this context, the gradual return of the displaced autochthones has led to confrontations with the allochtones and allogènes who remained.⁶⁷

Rural land is governed by the 1998 Rural Land Act, the prime purpose of which was to clarify land rights by providing a legal framework for them and to modernize customary land rights. Under article 1 of the Act, only the State, public authorities and individual Côte d'Ivoire nationals can own rural land. This provision represents a break with the past policy of ex President Houphouët-Boigny, under which ruling the land belonged to the person cultivating it. Moreover it is a violation of the property right of non- Ivorian owners.

Against a background of political tension linked to the power struggle, the Act aroused a sense of injustice in many non-Ivorian owners, some of whom had been cultivating the land for several generations. As it is the case for majority of IDPs from CATD camp, prevented by local communities, upon return from access to their crops, plantations and houses. They were especially worried that their non-Ivorian descendants would not be able to become owners of the

⁶⁶ Id

⁶⁷ UNHCR, supra note 20

land. In response to their fears, and in implementation of the Linas-Marcoussis Agreement, the 1998 Act was modified by a law dated 14 August 2004, under which the rights to rural land ownership acquired before 2004 can be transmitted to descendants.

Therefore, the owners concerned by this derogation must be on a list drawn up by the Council of Ministers. At a time when the question of identifying Ivorian citizens is at the heart of the discussions, the risks that the law will either not be applied or will be applied in a discriminatory fashion are real.



CHAPTER THREE

THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF IDPs

I. Introduction

As stated in Chapter One of the study, there is neither a convention nor mechanism specific for the protection of IDPs. And in chapter 2 it was observed that IDPs rights are ignored or violated by those responsible for their protection. IDPs are victims of grave violations of their human rights all over the world. Their conditions are worst in Africa which hosts the largest number of them. As developed above, Cote d'Ivoire is one of the African countries that hosts the largest number of IDPs. Furthermore it was the African country that witnessed in 2011 the largest number of new displacement of population.

Therefore Cote d'Ivoire has not taken any serious steps to ensure or strengthen the protection of the rights of IDPs. The legal framework of the country beside the constitution is very weak in terms of protection or promotion of the rights of IDPs. The country however hosts the largest number of new displaced persons in the continent. Yet, it has not ratified the AU Convention for the protection and assistance to IDPs. The country has not taken any legislative measure in the view of reducing the plights of IDPs. Their basic human rights are violated or ignored including by some authorities. Beside the 14 August 2004 law on land ownership, which seems to offer a possible derogation to the article 1 of the 1998 Rural Land Act, Cote d'Ivoire's national legislation does not give enough possibility to interested one to claim IDPs rights. Fortunately Cote d'Ivoire as a country is responsible in front of the international community for the protection of the rights of its citizens including IDPs. Moreover the country is party to international human rights treaties, international humanitarian conventions and regional

conventions under which it has obligations. Therefore, IDPs' rights are claimable and enforceable through these international legal instruments to which Cote d'Ivoire had adhered.

In light of this development, this chapter will analyse the international human rights law and the international humanitarian law provisions. It will also analyse the human rights mechanisms (African's and United Nations') with the objective to deduce IDPs rights from them. And to show that Internally Displaced Persons in Africa in general and in Cote d'Ivoire particularly, as every human being are entitled to the full range of human rights enshrined in UDHR and all international human rights law, international humanitarian law and African human rights bodies. And as it is, they can claim all their rights by using appropriate existing human rights protection mechanisms including United Nation's and African Union's.

In so doing, the next lines will explain who is an Internally Displaced person, what are the different causes of internal displacement and how to ensure the protection and promotion of their rights through the international legal instruments and mechanisms in addition to or to compensate insufficient national legislation?

A. Definition of Internally-Displaced Persons

To start with, it is important to give a broad definition of the expression IDP coupled with the background of the phenomenon for two main reasons. This approach will help the reader identify an IDP among those who find themselves in the same situation of human rights violation and abuse but belong to different categories and benefits from different treatments in terms of legal protection. Like refugees. The identification step is very important and from it derives all range of rights and obligations. It also provides a better understanding of the phenomenon and its evolution throughout the time.

When the issue of internal displacement emerged onto the international agenda in the early 1990s, no definition of "internally displaced persons" existed⁶⁸ even though the phenomenon was not new.⁶⁹ There was a need to identify the populations of concern and their particular needs, compile data, and frame law and policies intended to assist them. Then, upon his appointment, the first Representative of the United Nations Secretary General was mandated to develop a definition of peoples affected by internal displacement. Developing this definition was a key task of his mandate⁷⁰

In 1992, the working definition that was put forth by the UN Secretary General, defined internally displaced persons as: "persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country" Although this definition reflected a range of circumstances in which the core characteristics of internal displacement, could take place⁷¹, it did not encompass some other major causes of population displacement such as environmental change, climate changes, floods, earthquakes, famine, nuclear or chemical accidents. It also limited the concept to those "who had fled their homes suddenly or unexpectedly" and overlooked those who did not flee spontaneously. Similarly, the criterion of being "forced to flee" would exclude all those who did not flee but were obliged to leave their homes. Finally the notion of people fleeing "in large number" would exclude those fleeing in small group or on an individual basis (alone).

⁶⁸ Erin Mooney, The Concept of IDP and the case for IDPs as a category, Refugee Survey Quarterly, Vol. 24, Issue 3, UNHCR 2005

⁶⁹ It existed already in the 30s first and Second World War induced displacement of huge numbers of civilians.

⁷⁰ The United Nations Secretary-General, at the request of the commission on Human Rights (Resolution 1992/73), appointed Francis Deng as his Representative on Internally Displaced Persons in 1992. His successor, Walter Kälin, was appointed in September 2004 as Representative of the Secretary-General on the Human Rights of Internally Displaced Persons

⁷¹ id supra note at 1

Therefore, a definition that was broad enough to take all the other causes and circumstances into account was required. The definition that eventually emerged from the Representative of UN Secretary-General's deliberations and contained in the introduction to the Guiding Principles on Internal Displacement describe IDPs 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border".⁷²

However, in recognition that internal displacement was not necessarily limited to these causes alone, the definition in the Guiding Principles on IDPs prefaces the list of causes with the qualifier "in particular" so as not to exclude the possibility of other situations that meet the key core criteria of involuntary movement within one's country.⁷³

In 2008, the African Convention on Internally Displaced persons, known as the Kampala Convention, provided the same definition of IDPs as the Guiding Principles. Both highlight two core elements of the concept of internal displacement which are the coercive or involuntary character of movement and the fact that such movement takes place within national borders.⁷⁴

They also highlight the unlimited list of causes of displacement, as we already mentioned above, by prefacing the list with the expression "in particular". Therefore, we will gather them in 3 groups for the sake of our study.

⁷² United Nations Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons: Guiding Principles on Internal Displacement, UN doc. E/CN.4/1998/53/Add.2 (11 February 1998)

⁷³ Guiding principles preamble and Kampala Convention article 1.k

⁷⁴ Id supra note at `

It is however important to bear in mind that the definition of "internally displaced person" under the Guiding principles is a descriptive, rather than legal, definition. The guiding principles are not legally binding instrument unlike the 1951 Convention on the Protection of the Rights of Refugees and the African Union Convention on the Protection and Assistance for Internally Displaced Persons just entered into force on December 6th 2012.

B. The Causes of Internal Displacement

The causes of internal displacement are extremely complex and often interlinked or simultaneous (poor governance, underdevelopment, human rights violations, climate change, lack of preparedness for natural catastrophes e.g.). The reasons why people are forced to flee remain within the borders of their country are many, complex and various: safe travel to the nearest border may not be possible, or factors like age, disability, and hunger may impede their transit. Restrictions on travel or the rights to seek asylum may be imposed by external countries. Limitations of movement/travel across the country boundaries may be imposed by government or rendered impossible by the presence of uncontrolled armed elements/groups..

In Africa conflict remains the principal direct cause of displacement. Most conflicts are rooted in power struggles between the elites of various ethnic communities and in inequitable management of rights to land and to nationality as it is the case in Cote d'Ivoire.

However, it is important to note that whatever be the cause of internal displacement, persons affected share many common human rights violations and abuse. As noted by Walter Kälin, the Representative of UN Secretary-General on Human Rights of IDPs, after visiting the tsunami-

affected region: "persons forced to flee their homes share many common types of vulnerability regardless of the underlying reasons for their displacement " ⁷⁵.

As mentioned above, for the sake of this study, the work will examine three main causes: Conflicts induced displacement, natural disaster induced displacement and development induced displacement.

1. Conflict induced Displacement

Armed conflict and its corollary of human rights violations are the most commonly known causes of displacement in Africa and the world as well⁷⁶ According to the International Federation of Red Cross and Red Crescent Societies (IFRC)⁷⁷, in Africa at least half of the countries and 20 percent of the continent's population have been affected by frequent armed conflicts. The Internal Displacement Monitoring Centre's data shows that in 2008, nearly 4.6 million people were displaced in twenty-four countries as a result of new armed conflicts.⁷⁸

2. Natural disaster induced displacement

According to IFRC 2008 annual report, about two billion people were affected by natural disaster in the last decade, which is a three-fold rise from the previous decade and roughly five times the number of people affected by conflicts. The negative effects of climate change are expected to cause the movement of 50 to 200 million people in the next several decades, which

⁷⁵ . Protection of Internally Displaced Persons in Situations of Natural Disasters: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin

⁷⁶ UNHCR, 2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced And Stateless Persons 2 (2009), <http://www.unhcr.org/4a375c426.html>

⁷⁷ International Federation of Red Cross and Red Crescent Societies [IFRC], Humanitarian Trends and Red Cross and Red Crescent Future Priorities in Africa 11 (2004) (unpublished manuscript), available at <http://www.docstoc.com/docs/52285580/Humanitarian-Trends-and-Red-CrossCrescent-Future-Priorities-in-Africa>

⁷⁸ At the request of the United Nations, the Internal Displacement Monitoring Centre(IDMC), based in Geneva, maintains data on conflict-induced displacement in fifty-two countries around the world.

will be the most serious challenge of this century.⁷⁹ Most of the displacements are caused by environmental change or degradation.⁸⁰ According to IFRC,⁸¹ these environmental causes are expected to be exceptionally severe in Africa. Fortunately, the AU Convention's definition is arguably broad enough to accommodate such people.

3. Government/development induced displacement

Government/development induced displacement involves peoples displaced as a result of development projects such as electrification, roads, highways, canal, and extractive industries and so on.⁸² According to IDMC⁸³ in the case of development-induced displacement, the plight of IDPs remains largely unnoticed and they often receive even less support from their government and/or international aid agencies than people displaced by conflict or natural disasters. While citing the number of 25 million IDPs displaced by conflicts, IDMC acknowledges that the number of people uprooted by development projects is thought to be much higher.

The UNHCR expresses the concern that poor, indigenous and marginalised groups are frequently displaced without consultation to make way for grand national projects. Their rights are ignored and they are rarely offered resettlement or adequate compensation.⁸⁴

According to a World Bank study⁸⁵ indigenous people and marginalised ethnic minorities are disproportionately impacted by development. It identified eight distinct predicaments facing

⁷⁹ Walter Kälin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, Speech to Committee on Migration, Refugees and Population of the Parliamentary Assembly, Council of Europe: Climate Change, Natural Disaster, and Internal Displacement (June 24, 2009)

⁸⁰ id

⁸¹ IFRC, world disasters report, 2009

⁸² IDMC, Training On The Protection Of IDPS: Development-Induced Displacement 1, [Http://www.Internal-Displacement.Org](http://www.Internal-Displacement.Org)

⁸³ Norwegian Refugee Council, Global IDP Project, Internal Displacement: Global Overview of Trends and Developments in 2004 (Geneva: Global IDP Project, Norwegian Refugee Council, 2005), pp. 35-37

⁸⁴ UNHCR, 2008 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced And Stateless Persons, 2009

populations displaced as a result of development including homelessness, landlessness, joblessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property, and social disintegration.

II. Analysis of the international legal regime for the protection of IDPs

As stated above, the increased occurrence of internal displacement in recent years, along with a better knowledge of the severe plight of millions of people affected, has resulted in a growing concern within the international community. The concern is amply justified because all too often IDPs suffer grave human rights violations including extreme deprivation, threats to their life both during flight and while in displacement with very few opportunity to claim their right or possibility to benefit from a legal protection of the national/local authorities. IDPs rights can only be deduced from existing national and international legal instruments to which the country has adhered to.

Several initiatives have been taken to address the plight of IDPs more efficiently, including the elaboration of the Guiding Principles. In the quest for a more effective response, the international community has concentrated its efforts along two main lines: identification of an appropriate normative framework (the Guiding Principles) and development of effective institutional arrangements (cluster based approach of the protection of IDPs by UN agencies and humanitarian workers). These solutions are appreciated and are helping in solving the protection problems of IDPs. In countries where the Principles have been enacted, the full enjoyment of IDPs' rights may be guaranteed. Also in the field of humanitarian aids, the cluster -based approach gives enough solutions to IDPs' protection needs. Its effectiveness has been proved where applied adequately.

⁸⁵ Involuntary Resettlement, WORLD BANK, at <http://web.worldbank.org/wbsite/external/topics/>

Therefore, since the Guiding Principles are neither binding nor likely to be enacted within a short time by many states it would be judicious to deduce the rights of IDPs from binding international legal instruments and make states fulfil their obligations under them. In Cote d'Ivoire it is the most likely way to ensure protection of the rights of IDPs and make them enforceable (table 1). .

A. International human rights law

International human rights law is the branch of international law that affirms the universal rights and freedoms to which all human beings are entitled to including IDPs. Even though IDPs do not enjoy a special legal status under international law, they are protected by international human rights law. Thus, in addition to domestic law, IDPs, like every other human being are rights-holders. For every right there is a corresponding duty to fulfil. The duty-bearers are all States bound by human rights law and other non-state actors.

Human rights law is based upon customary international law and international treaties, as well as soft-law instruments.⁸⁶

The human rights of IDPs are affirmed under international treaties, binding upon the States that ratified them, including International Covenant on Civil and Political Rights (ICCPR: article 12), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC).

⁸⁶ See table 1

Furthermore, IDPs' rights are protected under regional treaties and bodies: in Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, and the European Social Charter. In Africa, the Banjul Charter on Human and Peoples' Rights; in the Americas, the American Convention on Human Rights (ACHR) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).

Like every human being, IDPs are covered by the provisions of all human rights instruments (treaty based and charter based) and their implementation mechanisms. Thus, Human Rights Council's new Complaint Procedure 1503 established by UN General Assembly resolution 60/251 of 15 March 2006 can be activated for their benefit. Moreover, States as duty bearers bound by International human rights law have the responsibility to implement effectively these protections in their national legal framework.

B. International humanitarian law

The United Nations Security Council Resolution 1296 (2000) notes that "the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection accorded to civilians under existing international humanitarian law". IDPs are part of the civilian population and therefore are entitled to the protections afforded to all civilians.⁸⁷

1. Prevention, Prohibition of displacement and the right to voluntary return

IHL contains many provisions concerning the prevention of displacement and the protection of IDPs and States have the responsibility to implement these provisions in their internal legal

⁸⁷ see Geneva Convention IV mainly Arts. 4 and 27. Other important provisions are Additional Protocol I Arts. 51 and 75; and Additional Protocol II Arts. 4 and 5.

framework.⁸⁸ The prevention of violations of IHL would lead to a reduction of internal displacement as a result of armed conflict. Forcible displacement is prohibited, whether within the borders of a country or across international borders. Displacement of civilians can be considered, exceptionally and temporarily, when justified by considerations of their security or imperative military necessity⁸⁹. IDPs shall be allowed to return to their place of origin as soon as the security concerns have ceased to exist in the affected area.⁹⁰

2. Non-discrimination

IDPs suffer from specific vulnerabilities as a result of their situation of being displaced. They must be treated humanely and shall not be discriminated against on the basis of their displacement or sorted out for less favourable treatment than the general population.⁹¹

3. Right to life, to dignity and to freedom

As all civilians, the life and dignity of IDPs shall be respected.⁹² They shall not be the object of attack unless they directly participate in hostilities.⁹³ They shall not be subject to collective punishments.⁹⁴ Their physical and mental well-being shall be protected.⁹⁵ In non-international armed conflicts, they should have the right to move freely in and out of camps or other settlements, they should not be arbitrary arrest or detained.⁹⁶

⁸⁸ See principally in Geneva Convention IV and Additional Protocols I and II.

⁸⁹ See art 17 Additional Protocol II

⁹⁰ See Geneva Convention IV Arts. 49 and 147; Additional Protocol I Arts. 51.7, 78.1 and 85.4. a; and Additional Protocol II Art. 4.3. e.

⁹¹ See Geneva Convention IV Arts. 3 and 27; Additional Protocol I Art. 75; and Additional Protocol II Arts. 2.1 and 4.1.

⁹² Geneva Convention IV Arts. 3, 27 and 32. Additional Protocol I Art 75.2 and Additional Protocol II Art. 4.

⁹³ See Additional Protocol I Art. 51 and Additional Protocol II Art. 13.

⁹⁴ See Geneva Convention IV Art. 32

⁹⁵ See Additional Protocol I Art. 75.2. a and Additional Protocol II Art. 4.2. a and c.

⁹⁶ See Additional Protocol II Art.5 .1.

4. Right to education

In situations of armed conflicts displaced children are particularly vulnerable. In non-international armed conflict children must receive an education, including religious and moral education.⁹⁷ In international armed conflict, children under fifteen, who are orphaned or are separated from their families as a result of the war, they must not be abandoned to their own and their education must be facilitated.⁹⁸

III. Analysis of the AU Convention on Internally Displaced Persons

The African Union special summit on Refugees, Returnees and Internally Displaced Persons, held on 22 and 23 October 2008, in Kampala, Uganda, adopted the African Union Convention on Internally Displaced Persons in Africa, also known as Kampala Convention⁹⁹

The Kampala Convention is a legally binding instrument which commits African States to prevent displacement, protect and assist internally displaced persons on the continent. It is the first regional convention comprehensively to address internal displacement, including prevention, response and durable solutions. It reiterates existing AU law, human rights law and international humanitarian law standards. It also puts the African Commission on Human and Peoples' Rights and its Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants at the centre of monitoring its compliance and the protection of IDPs' rights.

Adopted in Kampala on 23rd October 2008, the Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States. On December 6, 2012, thirty days after Swaziland became the 15th nation in Africa to sign and ratify it, the Convention entered into force 4 years after it was adopted. States's euphoria of it

⁹⁷ See Additional Protocol II Arts. 4.3.a and 28.2.

⁹⁸ See Geneva Convention IV, Arts. 24.1 and 50.1.

⁹⁹ African Commission On Human And Peoples'rights, Press Release,

adoption do not continue, their slow ratification of the convention delayed its entry into force. Less than 50% of States that signed the Convention have ratified it.

This section discusses some of the main provisions of the Kampala Convention to show the extent to which the convention if truly implemented could improve the protection of and assistance to IDPs, in the near future, and in a long term, prevent internal displacement in Africa in general.

A. The Convention's inputs in filling the gaps in the international legal regime for the protection of IDPs

Displacement affects all aspect of people's lives including access to food, water, shelter, health care, education, property such as land etc. Therefore, even though Africa hosts the largest number of the world's IDPs, it did not have a regional legal instrument dealing with the phenomenon. The Convention puts in place an African legal framework to prevent internal displacement, protect and assist people during displacement, and provide durable solutions for displaced people. It transforms what had remained "soft law" for more than a decade into "hard law". It clearly delineates rights and responsibilities¹⁰⁰ of states parties to protect and assist IDPs and commits them to facilitating access of international humanitarian agencies and local civil society groups in the event that the state is unable or unwilling to fulfil its protection responsibilities. This is an important step because most of the time states are unable or unwilling to fulfil their responsibilities towards IDPs. In Africa, government sometimes induce displacement, ignore the plights of IDPs and oppose international community of interventions to aid and protect IDPs. It happened in Cote d'Ivoire during 2010 post electoral crisis. Through its adoption, the AU, while acknowledging the continuing relevance and role of the guiding

¹⁰⁰ Chaloka Beyani, *The Politics Of International Law: Transformation Of The Guiding Principles On Internal Displacement From Soft Law Into Hard Law*, 102 AM. SOC'Y INT'L L. PROC. 194, 195 , 2008

principles a non binding instrument, advised a completely distinct and binding legal framework that takes into account African specificities in internal displacement.¹⁰¹ By reinforcing existing norms and bringing them together into one instrument, it offers a unique legal framework to address the specificities of internal displacement on the African continent, and provides a clearer and stronger legal basis for IDPs' protection.

1. Prevention of displacement

The Convention provides that all people have a right to be protected against arbitrary displacement and prohibited acts causing arbitrary displacement. One of its main objectives is to promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement¹⁰². To this end, it requires states to prevent displacement as a result of conflict and human rights violations, by respecting their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to arbitrary displacement.¹⁰³

In relation to displacement caused by natural disasters, the Convention requires states to plan, establish and implement early warning systems, and to adopt measures for disaster preparedness and disaster management.¹⁰⁴

In the case of development or other projects, whether carried out by public or private actors, states must ensure that feasible alternatives to displacement are explored, that the socio-economic and environmental impact of development projects are assessed prior to the

¹⁰¹ African Union, Convention For The Protection And Assistance Of Internally Displaced Persons(Kampala Convention), Adopted On 23 Oct 2009

¹⁰² see article2

¹⁰³ See article4 (1).

¹⁰⁴ See article 4 (2).

undertaking of such a project, and that people likely to be displaced are informed and consulted.

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In the same view, Article 9 of the AU IDP Convention which addresses displacement caused by development projects urges states to ensure that projects which may cause displacement in the name of development are debated fully with the participation of all and that such projects must be only implemented if beneficial to the affected communities.

2. Protection and humanitarian assistance

The Kampala Convention provides that states shall bear the primary duty and responsibility for providing protection and assistance to IDPs, without discrimination of any kind.¹⁰⁶ Accordingly, the Convention imposes obligations on states to assess the needs and vulnerabilities of IDPs and host communities (or to facilitate such assessments),¹⁰⁷ and to provide adequate humanitarian assistance to IDPs, in all phases of displacement.¹⁰⁸ Where appropriate, such assistance must be extended to local and host communities¹⁰⁹ States also shall provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities.¹¹⁰

The Kampala Convention highlights the specific needs of separated and unaccompanied children, female heads of household, expectant mothers, mothers with young children, the

¹⁰⁵ See article 10

¹⁰⁶ see article 5 (1)

¹⁰⁷ see article 5 (5)

¹⁰⁸ see articles 3, 4, 5, 9, 10 and 11

¹⁰⁹ see article 9(2)(b)

¹¹⁰ see article 9(2)(b)

elderly and the disabled¹¹¹ It shows steps that must be taken to protect displaced people against sexual and gender-based violence, harmful practices, recruitment of children as well as human trafficking and smuggling.¹¹² It promotes the principles of non-discrimination, equality and equal protection of the law, which were set out in the 1981 African Charter on Human and Peoples' Rights as well as in other regional and international instruments.¹¹³

Furthermore, it obliges States to allow the rapid and unimpeded passage of relief consignments, equipment and humanitarian personnel to IDPs. They must also enable and facilitate the role of local and international organisations and humanitarian agencies, Civil Society Organisations and other actors in providing protection and assistance to IDPs¹¹⁴

At the same time, the Kampala Convention requires international organisations and humanitarian agencies to act in conformity with international law and the laws of the country, to respect the rights of IDPs under international law and to conduct activities in accordance with the principles of humanity, neutrality, impartiality and independence, as well as international standards and codes of conduct.¹¹⁵

3. Durable solutions

The Kampala Convention commits states to seeking lasting solutions to the problem of displacement and explicitly recognises IDPs' right to voluntarily choose to return home, integrate locally in areas of displacement or relocate to another part of the country. States are responsible for promoting and creating satisfactory conditions for each of these options on a

¹¹¹ See article 9 (2)(c).

¹¹² see article 9 (1) (d)

¹¹³ See arts. 9(1)(a) and 9(2)a

¹¹⁴ See article 3(1) (j) and 5(7).

¹¹⁵ See article 6

sustainable basis and in circumstances of safety and dignity. States must endeavour to incorporate relevant principles contained in the Kampala Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.¹¹⁶

B. Implementation Challenges or Weaknesses of the Convention

As stated above, the convention's inputs in filling the protection gaps of IDPs in Africa is very big. It comprehensively covers all the aspects of the protection and assistance to IDP. If the convention is effectively implemented, it will solve all the protection problems related to displacement and at the end prevent any internal displacement in Africa. Therefore the first challenge for the convention is the completion of the process leading to its entry into force for it to be binding on all state members. The signing and ratification of the convention by AU member states is an important step toward its implementation. It entered into force on December 6th 2012 one month after the 15th ratification. However this is a major progress in the protection of the rights of IDPs in Africa, it may not be enough. All the state members must ratify it because the fullest realisation of the Convention's objectives is contingent on how institutional and enforcement hurdles are effectively tackled. It is very wrongdoing for example that a state like Cote d'Ivoire has not yet ratified it. Ensuring the Convention's widest ratification and promoting capacity-building and coordination at the domestic and regional levels emerge as key priorities for the effective realisation of the Convention's objectives.¹¹⁷

The second challenge of the convention is the weakness of AU institutions and their weak coordination with regional human rights system. Article 2 of the Convention stipulates, as one of

¹¹⁶ World Bank, *supra* note at 18

¹¹⁷ Allehone Mulugeta Abebe, *The African Union Convention On Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges*, *Refugee Survey Quarterly*, Vol. 29, No. 3, UNHCR 2010

the principal objectives of the instrument, the promotion and strengthening of national and regional measures to prevent or mitigate, prohibit, and eliminate root causes of internal displacement as well as provide for durable solutions. States are required to establish or designate national focal points and implementation mechanisms.¹¹⁸

There is, however, little indication whether such a mechanism will be an effective oversight system to monitor steps being taken by States. In the absence of any requirement for States to present a report to the Commission, it is not clear how the Commission will review the implementation of the Convention. There are no expert groups envisaged to assist the Commission in the discharging of its responsibilities. There is also limited guidance as to how the Commission will interact with regional human rights institutions such as the ACHPR, the African Court on Human and Peoples' Rights (ACHPR), and the Special Rapporteur. What is the role of the ACHPR in ensuring compliance by States with the Convention?

Article 14, which exclusively deals with the monitoring of the Convention, does not provide substantial guidance on this matter. It provides that "States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention."

It is evidently clear that the articulation of this obligation is very weak. States are required only to "indicate" domestic measures in their reporting. In the case of the peer review mechanism, such reporting is required only to "the extent applicable." It is only under Article 20, where it is stated that the provision of the Convention shall not be considered as denying individuals or

¹¹⁸ See Art 2(B)

groups' protection under the 1969 OAU Refugee Convention or the African Charter on Human and Peoples' Rights.

The individual participation of ACHPR's Special Rapporteur in the development of the Convention has been promising. Since 2004, the Special Rapporteur has played a critical role in bringing problems of displacement around the continent to the attention of the Commission through his promotional visits, reports, and press releases. However, the mandate holder is noticeably overstretched and under resourced. The effectiveness of the Special Rapporteur is also undermined by lack of institutional coordination between the AU secretariat and the Commission. In recent years, regular consultations are being held to rectify such gaps.

The success of the regional legal framework can only be guaranteed if the weakness of AU institutions and their weak coordination with regional human rights system is sufficiently addressed. A robust involvement of ACHPR in the monitoring of the Convention will rectify the weakness of the Convention's provisions on follow-up mechanisms.¹¹⁹

IV. The African Human Rights System

A. The African Charter on Human and Peoples' Rights (ACHPR)

The regional African human rights system is based on the African Charter on Human and Peoples' Rights (the African or Banjul Charter) which was adopted in 1981 and came into force October 21, 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU), and its Protocol. The African Charter on Human and Peoples' Rights sets out general human rights principles applicable to all individuals in Africa, including IDPs.

¹¹⁹ UNHCR, "Revitalizing The AU Coordinating Committee".

B. The African Court on Human and Peoples' Rights

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights was adopted in June 1998 and entered into force in January 2004. The court is the judicial body charged with the responsibility of ensuring that the provisions of the African Charter on Human and Peoples' Rights, adopted on 27 June 1981, as well as other human rights treaties are respected and observed.

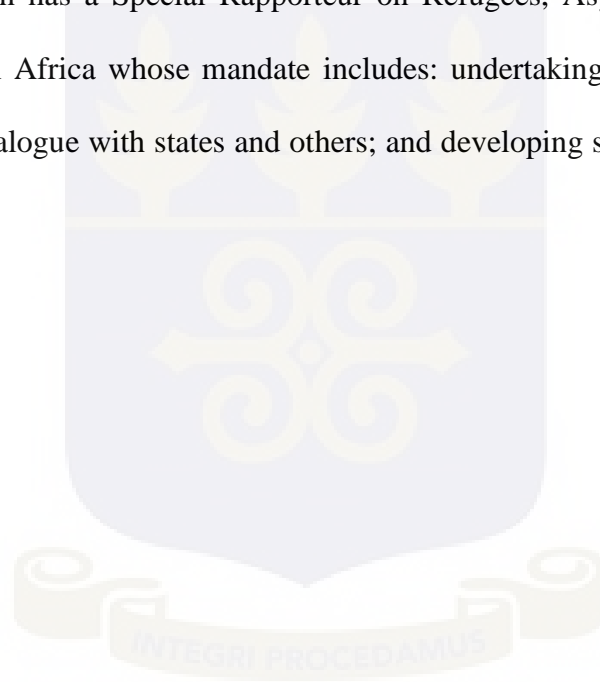
The Court has the mandate of strengthening the system of human and peoples' rights protection on the continent by complementing the protective mandate of the African Commission on Human and Peoples' Rights which was established by the African Charter on Human and Peoples' Rights.

C. The African Commission on Human and Peoples' Rights

Its functions are mainly to promote human and peoples' rights, ensure the protection of human and peoples' rights under conditions laid down by the charter, interpret all the provisions of the charter at the request of a state party, an institution of the OAU or an organization recognised by the OAU. Under article 60 of the ACHPR: "The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members."

Individuals, including IDPs, can submit individual complaint to the African Commission which acts as an entry-point for the African Court on Human and Peoples' Rights. It is important to bear in mind that, Only States Parties, the African Commission, and African Intergovernmental Organizations have automatic standing before the Court, and of these, only the African Commission is likely to refer cases to the Court. Individuals or their representatives are not competent to access the Court directly, unless the State Party concerned has declared the Court's competence to do so.

The African Commission has a Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa whose mandate includes: undertaking studies and fact-finding missions; engaging in dialogue with states and others; and developing strategies to better protect the rights of IDPs.



CHAPTER FOUR

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

I. Summary of findings

The present work set out as its mandate to examine the extent to which the existing international mechanisms for the protection of internally-displaced persons (IDPs) are adequate and what steps can be taken to bring it to standard and ensure effective promotion and protection of the rights of IDPs in Africa, using Cote d'Ivoire as a case- study.

It was observed that Cote d'Ivoire does not have a national legal framework upholding the rights of IDPs. Elements of a national legal framework upholding the rights of IDPs, including a law defining mechanisms to compensate war victims including IDPs, and to handle property restitution were awaiting signature, years after they had been drafted, when the mandate of the Ministry of Solidarity and war victims as the focal point for IDPs has been discontinued following a government reshuffle. Côte d'Ivoire has not developed a system of restitution or compensation for properties, mainly houses and lands, which IDPs were forced to abandon due to the conflict.¹²⁰

Before the law on rural land was passed in 1998, no legislation gave customary land transactions any form of legal weight and only transactions witnessed by a notary were recognised. The 1998 law broke new ground by recognising customary rights on a transitional basis, before converting

¹²⁰ Barbara Mc Callin et Marzia Montemurro, A qui sont ces terres? Conflit fonciers et déplacement des populations dans l'Ouest forestier de la Côte d'Ivoire, octobre 2009

these into formal individual rights. It was particularly ambitious, considering that about 98 per cent of rural land is subject to customary management, with only two per cent held under title deed in accordance with statutory law ¹²¹

Although the aim of the 1998 law was to reduce tensions over land ownership resulting from the uncertainty of customary transactions, some of its provisions that would normally be insignificant have a negative impact on IDPs. Therefore, in order to recover the land they left behind, returnees must assert their existing customary rights and ensure formal legal recognition of these rights. Also requests for the recognition of customary land rights and requests to formalise ownership must be made at the site where the plot of land is situated, obliging IDPs to undertake expensive and potentially difficult or dangerous journeys back to place of origin. Finally, the law only applies to the rural land domain and not to the protected forests benefiting from “forêt classée” status, where many displaced individuals had plantations. In 2004, the 1998 law was modified, so that rights to rural land ownership acquired before 2004 could be transmitted to descendants.

Cote d'Ivoire while hosting several hundred thousand of IDPs has not yet ratified the AU convention on IDPs even though it has signed the adoption document since November 2009.

Attempts to use the international mechanism to address the IDP situation in Cote d'Ivoire also revealed that, unlike refugees, there is neither a universal legal instrument specifically addressing the plight of IDPs nor a specific UN agency exclusively responsible for protection and assistance to IDPs. The international community took a long time to acknowledge the plight of IDPs and the extreme vulnerability they find themselves in for being forcibly displaced. While living in their country, their basic human rights are too often curtailed and some time by governments

¹²¹ Societe de Developpement des Forets (SODEFOR), compte rendu d'atelier, 12 May 2010

responsible for their protection. States sovereignty issue has often impeded international community effective involvement in the protection of IDPs

The appointment of Francis Deng, UN Secretary-General for Internally Displaced Persons in 1992, might be the recognition of this gap by the UN Secretary-General. It can also be considered the first significant step of the international acknowledgment of the protection concerns of IDPs. Another important step is the elaboration of the Guiding Principles in 1998, a non binding instrument; and more recently, in 2009, the adoption of the African Union Convention on Internally Displaced Persons in Africa which entered into force December 6th 2012.

The Guiding Principles unfortunately, as a non-binding instrument, does not possess any legal force on States and does not confer direct enforceable rights for IDPs. However it is a compilation of international human rights law and international customary law applicable to IDPs, the guiding principles played an important role in framing a protection tool for IDPs. Because of its non binding character, even though it received support from States and the international community as well, the guiding principle remains a limited protection tool for IDPs.

For that reason, many activities have been and continue to be carried on for the principles to be enforceable and to effectively protect the rights of IDPs. Those activities encompass: dissemination of the principle, awareness raising, information campaigns, conferences, trainings, and workshops. States are encouraged to take measures for the principles to be enforceable under their national legislations. Civil society organizations, NGOs, UN, its agencies and their international partners, Institutions like Brookings and IDMC, play an important role. Some

States took legislative measure for the principles to be enforceable under their national legislations. But more remains to be done.

Despite the fact that no universally recognized treaty on the rights of IDPs exists, they are entitled to the same human rights as all other people (citizens and residents) in their country. Moreover, the fact that IDPs belong to human species they are entitled to human rights as well as every other human being. These rights may be articulated under domestic constitution and legislation as well as international law, and customary law. Consequently, to ensure a better response to the protection needs of IDPs, their rights may be deduced from the international binding legal instruments including human rights treaties, international humanitarian law (the four Geneva convention and additional protocols); and from regional human rights binding legal instrument (ACHPR). For instance, in situations of armed conflict, IDPs are entitled to the same rights as other civilians and to the various protections provided by international humanitarian law.

Moreover, several branches of international law contain norms that are relevant for the protection of rights of IDPs: international human rights law, international humanitarian law, criminal law, and economic law and so on. All these bodies of norms must be taken into account in building up the normative content of the rights of IDPs. But studies on the right of IDPs are often limited to the human rights law provisions directly concerning them, while humanitarian operators often refer only to international humanitarian law.

At the regional level, specifically in Africa, the AU Convention for the Protection of Internally Displaced Persons was adopted in 2009 and entered into force on Dec 6th 2012. This Convention may ensure better protection of the rights of IDPs if it is effectively implemented by all African

states. It addresses comprehensively internal displacement, including prevention, response and durable solutions. It explicitly protects the rights of people displaced by natural disasters, armed conflict, generalised violence, human rights violations and development projects. But the first weakness of this convention is the lack of states interest to complete its ratification process and make it enforceable under their national legislation.

A comprehensive approach is necessary in order to strengthen respect, protection and fulfilment of the right of IDPs. This study analyses the relevant branches of international law and show the extent to which they are applicable to IDPs, with particular focus on the AU Convention on IDPs. It also examines African human rights system and shows the extent to which they are applicable to IDPs in Africa, and finally, comes out with the following suggestions/recommendations.

II. Recommendations

The people displaced by the civil war and the conflicts over land in the west of the country are in need of assistance and protection. The government authorities and all parties concerned including the United Nations, humanitarian and development organizations and donors must assume their responsibilities, in accordance with their obligations under international law, international human rights law and international humanitarian law, with a view to finding just and lasting solutions to the problems faced by internally displaced persons in Côte d'Ivoire.

A. On the part of the government authorities:

- 1) Act as quickly as possible take measures to complete the ratification processor the AU convention on the protection and assistance to IDPs.

- 2) Act as quickly as possible to identify displaced persons and assess their needs, to produce an overview of their situation and enable the appropriate policies to be adopted.
- 3) Draw up a political strategy and national plan of action on internal displacement that are in conformity with the Guiding Principles on Internal Displacement and that cover all categories of displaced persons without discrimination. This policy and plan of action should cover all phases of displacement, from preventive measures to the return and reintegration of displaced persons. The strategy should be drawn up in agreement with all the actors concerned, including displaced persons themselves, and should clearly set out institutional and administrative responsibilities. The adoption of legislative measures should be considered as a way of ensuring the implementation of the strategy. The implementation of the plan of action should go hand-in-hand with the mobilization of the resources needed to meet the needs identified
- 4) Take the appropriate steps to ensure the safety of displaced persons, particularly in the west of the country, by assigning the necessary military personnel to the task, making sure that those responsible for violating the rights of displaced persons are brought to justice, and helping those displaced persons who so wish to settle, even temporarily, in areas where their safety can be guaranteed. A particular effort should be made at harvest time, as experience has shown that many attacks on individuals and properties take place at this time. Illegal roadblocks should be dismantled as quickly as possible;
- 5) Take the necessary steps to help IDPs to recover their property and possessions, or compensate them appropriately. The process of adopting and implementing the law on compensation for war victims, in accordance with the Guiding Principles, should be speeded up, so as to provide a legal framework for such compensation.

In addition, information campaigns should be organized to publicize the measures taken to facilitate the return of property; and to raise awareness of the human rights of internally

displaced persons, and provide training in those rights for, in particular, the defence and security forces and local authorities and community leaders.

B. On the part of the International community (UN agencies and peace keeping mission, international and local NGOs, and international partners and donors) :

Improve coordination between humanitarian organizations in order to respond in a more comprehensive and effective way to the identified needs of displaced persons, and particularly the most vulnerable among them,

1. Initiate a discussion within the UN country team regarding the requirements for profiling the displaced population and the options available for launching a concerted process, with the government's support
2. Provide more training to keep local authorities abreast of international human rights law and international humanitarian law provisions related to IDPs including the Guiding Principles in order to ensure their compliance with them and that they make judicious use of them. Contribute to raise awareness and disseminate the Guiding Principles in collaboration with national institutions, i.e. law enforcement officials and other relevant authorities for effective protection of IDPs. Because majority of local authorities and community leaders in the west of the country where there is an important number of IDPs have little or no understanding of the Guiding Principles, it is easy to notice their ignorance of their responsibility toward IDPs. Most of them see IDPs as refugees and under the responsibility and protection of the international humanitarian community. It is common to hear local authorities including government officials, community leaders,

traditional chiefs, telling humanitarian workers "vos gens la" or "vos parents la" meaning your populations of concern or those under your responsibility.¹²²

3. Initiate advocacy activities to encourage the government where necessary, for the ratification of the AU Convention on IDPs and its enactment under national law. Contribute to raise awareness and disseminate the convention and subsequent national law in collaboration with the Ministry of justice, national assembly, parliamentary authorities etc. Encourage the government to strengthen existing national institutions involved in the protection of IDPs such as Ministry of Solidarity and war victims and The Ministry of Reconstruction and Reinsertion.

C. On the part of African states

1. All African states should ratify the Convention on IDPs and domesticate it into national laws, policies and plans of action and institutional and funding mechanisms to ensuring its effective implementation.
2. State governments should establish an effective system of registration, screening and documentation of IDPs for early identification of such vulnerable groups and their needs. Documentation granted to IDPs should facilitate their free movement.
3. State Governments also need to move beyond early warning to rapid and effective response to the threats posed by natural disasters, climate change and other threats to our environmental security, and as a cause of displacement.

The Government, the United Nations and all donors should cooperate with civil society organizations working on internal displacement issues and with displaced persons themselves, to ensure that their human rights are promoted and protected.

¹²² UNHCR /Cote d'Ivoire, protection Monitoring reports, FO Guiglo, 2007,2008, 2009

Conclusion

This study highlights the grave human rights violations IDPs face and the extreme vulnerability they find themselves in for being displaced. The study comes out with the finding that despite the lack of an internationally recognised binding legal instrument on IDPs' rights and an institution with the mandate for the protection and promotion of IDPs' rights (as it is the case for Refugees), IDPs' rights can be deduced from existing International Human Rights Law and International humanitarian Law provisions and mechanisms. Since IDPs are humans, they are entitled to the complete enjoyment of the full range of human rights. Moreover, now the African Union has produced the international document on IDPs, which in spite of its imperfections, can serve as a guide for the international community to come up with a comprehensive international treaty to regulate and protect the rights and dignity of IDPs across the globe.

The study ends by recommending to the international community, including United Nations, its agencies and partners, governments and civil society organizations to take step towards the elaboration of an internationally binding legal instrument on the protection and promotion of IDPs' rights and designate or create a UN agency with the mandate of protecting IDPs.

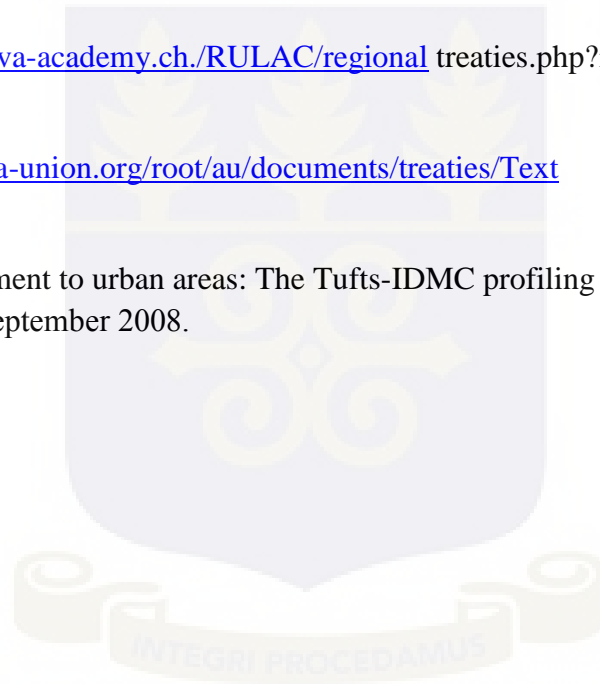
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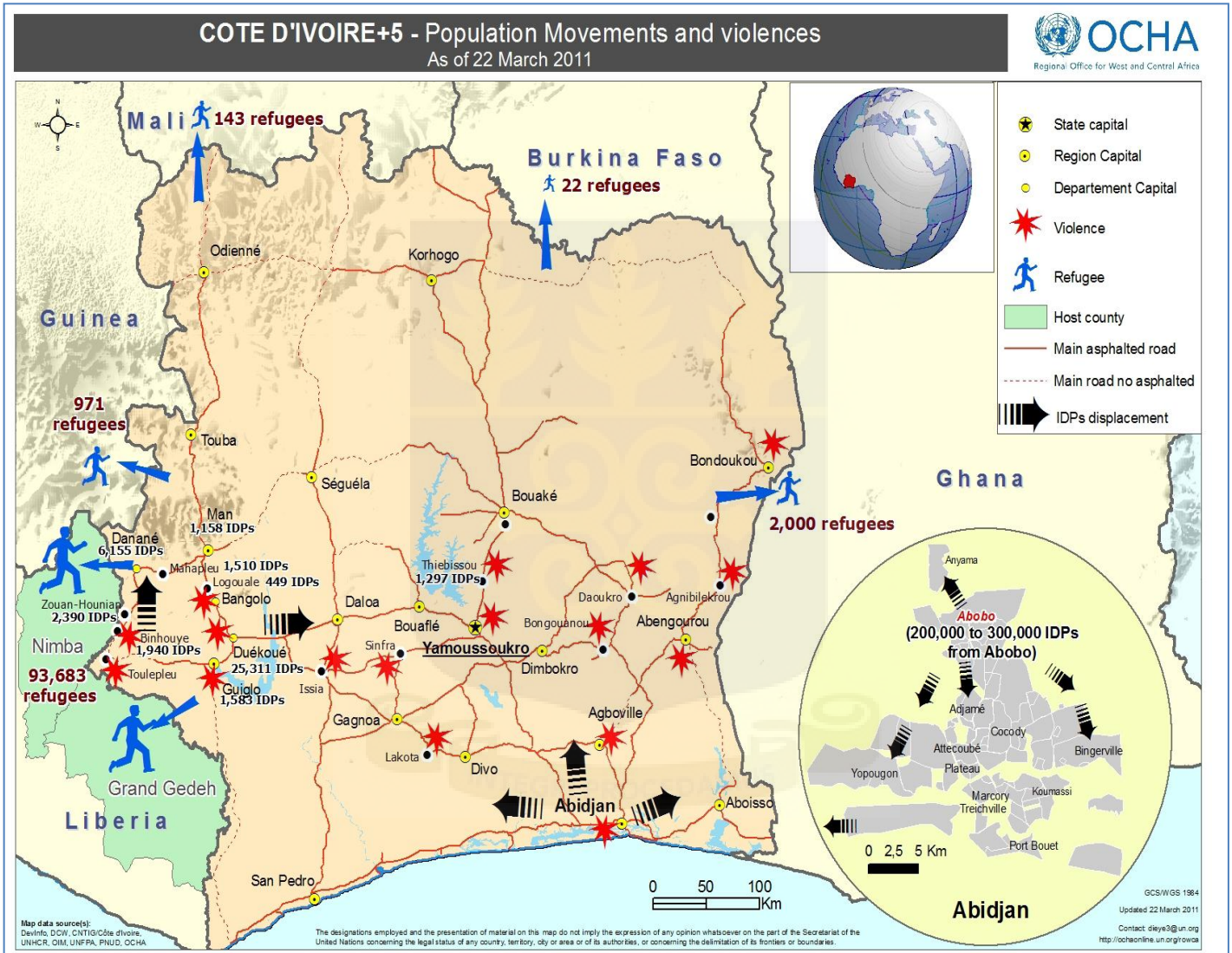
APPENDIX

Table 1: Cote d'Ivoire adherence to International Humanitarian law and International Human Rights Law Treaties

International Humanitarian Law	Adherence date	Commentary (including relevant reservations, derogations and declarations)
Geneva Conventions I, II, III, IV 1949	28.12.1961	
Additional Protocol I 1977	20.09.1989	
Additional Protocol II 1977	20.09.1989	
Additional Protocol III 2005	--	
Hague Convention 1954	24.01.1980	
Hague Protocol 1954	--	
Hague Protocol 1999	--	Signature only on 17.05.1999
ENMOD Convention 1976	--	
International Human rights Law	Adherence date	Commentary (including relevant reservations, derogations and declarations)
ICERD 1965	04.01.1973	
ICCPR 1966	26.03.1992	
ICCPR - OP1 1966	05.03.1997	
ICCPR - OP2 1989	--	
ICESCR 1966	26.03.1992	
CEDAW 1979	18.12.1995	
OP-CEDAW 1999	--	
CAT 1984	18.12.1995	
OP-CAT 2002	--	
CRC 1990	04.02.91	
CRC Optional Protocol Armed Conflict 2000	--	
CRC Optional Protocol Sale of Children 2000	--	
ICRMW 1990	--	
Disability Rights Convention 2006	--	Signature only on 07.06.2007
Convention on Enforced Disappearances [not yet in force]	--	
Weapons	Adherence date	Commentary (including relevant reservations, derogations and declarations)
Geneva Gas Protocol 1925	27.07.1970	
Biological Weapons Convention 1972	--	Signature only on 23.05.1972
Chemical Weapons Convention 1993	18.12.1995	
Convention on Certain Conventional Weapons 1980	--	
CCW Protocol I 1980	--	
CCW Protocol II 1980	--	

CCW Protocol III 1980	--	
CCW Protocol IV 1995	--	
CCW Protocol II (amended) 1996	--	
CCW Amendment 2001	--	
CCW Protocol V 2003	--	
Ottawa Treaty 1997	30.06.2000	
Convention on Cluster Munitions 2008 (not yet in force)	--	Signature only on 04.12.2008
Refugees	Adherence date	Commentary (including relevant reservations, derogations and declarations)
Refugee Convention 1951	08.12.1961	Declaration under section B of article 1 of the Convention upon signature : (b) "Events occurring in Europe or elsewhere before 1 January 1951" Notification of the extension of Ivory Coast's obligations under the Convention by adopting alternative (b) of section B (1) of article 1 of the Convention was received by the Secretary-General on 20.12.1966
Refugee Protocol 1967	16.02.1970	
International criminal law	Adherence date	Commentary (including relevant reservations, derogations and declarations)
Slavery Convention 1926	08.12.1961	
Genocide Convention 1948	18.12.1995	
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity 1968	--	
ICC Rome Statute 1998	--	Signature only on 30.11.1998
Terrorism	Adherence date	Commentary (including relevant reservations, derogations and declarations)
Convention Against the Taking of Hostages 1979	22.08.1989	
Convention for the Suppression of the Financing of Terrorism 1999	13.03.2002	
Convention for the Suppression of Terrorist Bombings 1997	13.03.2002	





CRISE EN COTE D'IVOIRE

Carte des mouvements de populations déplacées (Sources : PAM , Croix Rouge et Cellule de crise locale , autres)

Les chiffres mentionnés ne concernent que les personnes identifiées. L'estimation des déplacés varie entre 550 000 et 600 000.
Le nombre total de déplacés identifiés est : 305 472



Version - 31/01/05

LES NOMS ET LES LIMITES SUR CETTE CARTE N'IMPLIQUENT PAS
L'ENDOSSEMENT ET L'ACCEPTATION PAR LES NATIONS UNIES

LEGENDE

LOCALITES <ul style="list-style-type: none"> ● Capitale d'Etat ■ Capitale économique ■ Chef-lieu de département ■ Chef lieu de sous-préfecture 	LIMITE <ul style="list-style-type: none"> D'Etat De sous-préfecture Zone de confiance 	POPULATIONS DEPLACEES <ul style="list-style-type: none"> ■ Déplacés hors site ■ Déplacés sur site 	SOURCE Données sur les déplacés Toulepleu : Comité croix-rouge local Diékoué : Comité de crise local Guiglo : Comité de crise local Bloléquin et Bangolo : Association d'Encadrement et de Suivi des Déplacés à Man Yamoussoukro : Centre social et mission d'évaluation Bondoukou : Centre social M'Bahiakro et Priko : PAM Odienné, Touba, Séguéla : AFRICARE Man : PAM
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Produit par OCHA-CI en partenariat avec le CNTIG.

De 300 145 en septembre 2004, le nombre des personnes déplacées identifiées est actuellement de 305 472.