

# Why communities hosting internally displaced persons in the Sahel need stronger and more effective legal protection

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## Abstract

*In the Sahel, host communities are among those most affected by recurrent internal displacement, but they are often ignored in responses to displacement. Furthermore, their situation has attracted little attention from researchers or other observers. The present article will argue that it is essential to provide these communities with adequate protection, especially as they play a leading role in providing humanitarian protection and assistance to internally displaced persons (IDPs). The article begins by examining the legal instruments that protect populations affected by forced displacement, in order to identify and present the legal protection they offer to IDP host communities. The article will then analyze and highlight the advantages of fully applying this protection. It will show that the recurrent violence and breaches of the law that these communities suffer are impeding the full realization of those advantages. Finally, the article shall propose solutions that would overcome the deficiencies noted and hence ensure enhanced protection for IDP host communities in Burkina Faso, Mali and Niger.*

**Keywords:** host community, internally displaced persons, legal protection, Kampala Convention, Sahel, Burkina Faso, Mali, Niger.



## Introduction

The alarming scale of internal displacement<sup>1</sup> has produced a large and growing volume of literature. As far as the present author is aware, however, the extensive literature does not include a single article devoted specifically to an analysis of the legal situation of the host communities of internally displaced persons (IDPs).<sup>2</sup> Indeed, the very term “host community” is rarely defined, despite being widely used in connection with forced displacement. The African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which currently constitutes “a legal framework without precedent anywhere in the world”<sup>3</sup> as regards internal displacement, does explicitly mention IDP host communities in some of its provisions,<sup>4</sup> but without defining the concept. The definitions one very occasionally finds in certain documents are not unequivocal. In certain documents, the concept is defined in a restrictive fashion, as referring to “communities in which displaced persons are hosted if they do not live in camps or sites intended for displaced persons”.<sup>5</sup> This definition excludes communities in which IDP camps have been set up. Other documents use the term in a wider sense to mean any community that hosts families, camps, sites or any other form of accommodation where IDPs are

- 1 “Internal displacement” is “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”. See African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 52 ILM 400, 23 October 2009 (entered into force 6 December 2012), Art. 1(1), available at: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>. (As this article was originally written in French, the author originally cited this and many other sources in that language. Where possible, this English translation cites the English version of the same source. Where a French source is cited, this is because no English version exists. All internet references were accessed for the purposes of the English translation in January 2022.)
- 2 As far as we know, there have been no studies devoted specifically to IDP host communities, either in French or in English. The few reports we have identified as addressing the situation of these communities – in a somewhat piecemeal fashion – include Katherine Haver, *Out of Site: Building Better Responses to Displacement in the Democratic Republic of the Congo by Helping Host Families*, Oxfam International Research Report, 2008, available at: [www.oxfam.org/en/research/out-site](http://www.oxfam.org/en/research/out-site); Roberto Carlos Vidal López, Clara Inés Atehortú Arredondo and Jorge Salcedo, *The Effects of Internal Displacement on Host Communities: A Case Study of Suba and Ciudad Bolívar Localities in Bogotá, Colombia*, Brookings Institution–London School of Economics Project on Internal Displacement, Bogotá, October 2011, available at: [www.brookings.edu/research/the-effects-of-internal-displacement-on-host-communities/](http://www.brookings.edu/research/the-effects-of-internal-displacement-on-host-communities/); Brigitte Rohwerder, *Democratic Republic of the Congo: Internally Displaced Persons and Refugees’ Relations with Host Communities*, GSDRC Helpdesk Research Report, Birmingham, November 2013, available at: <https://gsdrc.org/publications/democratic-republic-of-the-congo-internally-displaced-persons-and-refugees-relations-with-host-communities/>; Anne Davies, *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*, Office of the UN High Commissioner for Refugees (UNHCR), Geneva, 2012, available at: [www.refworld.org/docid/4fe8732c.html](http://www.refworld.org/docid/4fe8732c.html).
- 3 Alexandra Bilak, “L’Afrique face à ses déplacés internes”, *Politique Étrangère*, No. 1, 2016, p. 43 (Review’s translation), available at: [www.cairn.info/revue-politique-etrangere-2016-1-page-39.htm](http://www.cairn.info/revue-politique-etrangere-2016-1-page-39.htm). See also Allehone Mulugeta Abebe, *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement*, Routledge, London, 2018, p. 268.
- 4 See Kampala Convention, preamble, para. 3, and Arts 3(2)(c), 5(5), 9(2)(b).
- 5 Government of Niger, Loi no. 2018-74 du 10 December 2018 relative à la protection et à l’assistance aux personnes déplacées internes du Niger, 10 December 2018 (Law No. 2018-74), Art. 2(6) (Review’s translation), available at: [www.refworld.org/docid/5ce404914.html](http://www.refworld.org/docid/5ce404914.html). See also R. C. V. López, C. I. Atehortú Arredondo and J. Salcedo, above note 2, p. 1.

living.<sup>6</sup> It is this latter definition that shall be adopted for the purposes of the present article, as it takes account of the variety of communities that offer hospitality to people who have been forced to flee their homes, for whatever reason.<sup>7</sup>

Whether or not they are directly integrated into households or living in camps, at other sites or elsewhere, IDPs in the Sahel depend heavily on host communities for their survival. The solidarity and support of those communities takes the form of many types of direct, indirect, permanent and occasional assistance. Host communities show solidarity towards IDPs by allowing them to find shelter with them, in whatever form.<sup>8</sup> They also facilitate IDPs' access to essential products and services, in particular by sharing their resources and social services with them.<sup>9</sup> Furthermore, it is sometimes thanks to host communities that IDPs have access to economic activities that allow them to regain their autonomy and hence to meet their needs themselves.<sup>10</sup> As they have been cut off from their usual support networks and original communities, IDPs rely on host communities to create new social networks<sup>11</sup> and obtain information that is essential if they are to exercise their rights or obtain basic social services.

Host communities therefore play a leading role in the provision of humanitarian assistance and protection to IDPs in the Sahel, especially in Burkina Faso, Mali and Niger, which are at the epicentre of internal displacement

6 See, for example, Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, UNHCR, Geneva, March 2010, p. 505, available at: [www.unhcr.org/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html](http://www.unhcr.org/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html). See also K. Haver, above note 2, p. 4; A. Davies, above note 2, p. 32.

7 IDPs are generally forced to flee their homes or places of habitual residence as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, natural disasters or the implementation of development projects. For information on the causes of displacement, see Internal Displacement Monitoring Centre (IDMC), *Understanding the Root Causes of Displacement: Towards a Comprehensive Approach to Prevention and Solutions*, 2015, available at: [www.internal-displacement.org/publications/understanding-the-root-causes-of-displacement-towards-a-comprehensive-approach-to](http://www.internal-displacement.org/publications/understanding-the-root-causes-of-displacement-towards-a-comprehensive-approach-to); Ann Mary Olsen, "Understanding and Addressing Root Causes of Displacement", *Devex*, 29 February 2016, available at: [www.devex.com/news/understanding-and-addressing-root-causes-of-displacement-87785](http://www.devex.com/news/understanding-and-addressing-root-causes-of-displacement-87785); Wendy Williams, *Shifting Borders: Africa's Displacement Crisis and Its Security Implications*, Research Paper No. 8, Africa Center for Strategic Studies, Washington, DC, 17 October 2019, available at: <https://africacenter.org/publication/shifting-borders-africas-displacement-crisis-and-its-security-implications/>.

8 See UN Office for the Coordination of Humanitarian Affairs (OCHA), *Mali: Aperçu des besoins humanitaires 2021*, February 2021, pp. 65, 108, available at: [www.humanitarianresponse.info/en/operations/mali/document/aper%C3%A7u-des-besoins-humanitaires-mali](http://www.humanitarianresponse.info/en/operations/mali/document/aper%C3%A7u-des-besoins-humanitaires-mali); OCHA, *Burkina Faso: Aperçu des besoins humanitaires 2021*, March 2021, p. 60, available at: <https://reliefweb.int/report/burkina-faso/burkina-faso-aper-u-des-besoins-humanitaires-mars-2021>; OCHA, *Niger: Aperçu des besoins humanitaires*, January 2021, pp. 17–18, available at: [www.humanitarianresponse.info/en/operations/niger/document/niger-aper%C3%A7u-des-besoins-humanitaires-201](http://www.humanitarianresponse.info/en/operations/niger/document/niger-aper%C3%A7u-des-besoins-humanitaires-201); UNHCR Burkina Faso, Conseil Provincial de Secours d'Urgence et de Réhabilitation, Direction Provinciale de la Femme, de la Solidarité Nationale et de la Famille, *Profilage des personnes déplacées internes dans la province du Soum, région du Sahel*, January 2019, pp. 17–18, available at: <https://data2.unhcr.org/es/documents/details/68468>.

9 See UNHCR Burkina Faso, above note 8, pp. 14, 17; OCHA, *Mali*, above note 8, p. 65.

10 It is sometimes thanks to host communities that IDPs have access to revenue-generating activities in the informal sector, including paid work in the fields of host community members or the opportunity to sell goods at local markets.

11 A. Davies, above note 2, p. 7.

in this region.<sup>12</sup> In her general study entitled *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*, Anne Davies maintains that the role played by host families and communities positions them as “an informal instrument of humanitarian aid – *de facto* NGOs critical to saving lives, building resilience and providing essential services”.<sup>13</sup>

But the negative effects of internal displacement hit IDP host communities just as hard. They are exposed to various threats as they seek to assist and support IDPs. Where resources are already scarce and economic opportunities are absent,<sup>14</sup> frequent displacement places an additional, unexpected burden on the resources of the communities where displaced populations seek refuge, increasing the vulnerability and needs of those communities.<sup>15</sup> Furthermore, mass population movements destabilize host communities, as the resulting rapid depletion of resources can lead to tension between IDPs and those communities.<sup>16</sup> In turn, this tension exacerbates localized violence, and armed extremist groups take advantage of this to recruit members from the local population and step up their attacks.<sup>17</sup>

At the same time as being among the main providers of humanitarian protection and assistance, host communities in the Sahel are severely affected by mass displacement. However, they are often ignored in responses to internal displacement.<sup>18</sup> They are constantly exposed to violence and suffer multiple violations of their fundamental rights.<sup>19</sup>

In view of the above, this article calls for better legal protection for IDP host communities in the Sahel. Providing effective legal protection for these communities

12 For details, see IDMC, *Global Report on Internal Displacement 2020*, April 2020, available at: [www.internal-displacement.org/global-report/grid2020/](http://www.internal-displacement.org/global-report/grid2020/).

13 A. Davies, above note 2, p. 11.

14 See OCHA, *Humanitarian Needs and Requirements Overview: Sahel Crisis*, 26 April 2021, available at: <https://reliefweb.int/report/burkina-faso/sahel-crisis-humanitarian-needs-and-requirements-overview-april-2021>; ICRC, “A Conflict without Borders Continues to Play Out in the Sahel”, 8 July 2020, available at: [www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel](http://www.icrc.org/en/document/conflict-without-borders-continues-play-out-sahel); Jean-Bernard Véron, “Crises et conflits au Sahel: État des lieux et enjeux économiques”, in Jean-Yves Grosclaude, Laurence Tubiana and Rajendra K. Pachauri, *Regards sur la terre 2014: Les promesses de l’innovation durable*, Armand Colin, Paris, 2014; Laurence Caramel, “Quatre raisons de s’inquiéter pour le Sahel, et de douter de l’aide au développement”, *Le Monde*, 20 October 2016, available at: [www.lemonde.fr/afrique/article/2016/10/20/quatre-raisons-de-s-inquieter-pour-le-sahel-et-de-douter-de-l-aide-au-developpement\\_5017486\\_3212.html](http://www.lemonde.fr/afrique/article/2016/10/20/quatre-raisons-de-s-inquieter-pour-le-sahel-et-de-douter-de-l-aide-au-developpement_5017486_3212.html).

15 OCHA, *Burkina Faso*, above note 8, pp. 60, 73; ACAPS, *Escalation of Armed Violence: Burkina Faso*, Briefing Note, 1 November 2019, p. 5, available at: <https://reliefweb.int/report/burkina-faso/burkina-faso-escalation-armed-violence-briefing-note-1-november-2019>; OCHA, above note 14, p. 20.

16 OCHA, *Mali*, above note 8, pp. 68–69, 80; OCHA, *Burkina Faso*, above note 8, pp. 65, 80.

17 See OCHA, above note 14, p. 8; ACAPS, above note 15, p. 4; OCHA, *Burkina Faso*, above note 8, pp. 80–81.

18 This situation is not limited to the Sahel. As Anne Davies rightly points out, “[t]he benefits of reducing vulnerability by assisting IDPs and their hosts before they fall into extreme poverty and deprivation have not yet filtered through to donors. ... Few strategies exist in the collective humanitarian toolbox to assist host families or host communities.” A. Davies, above note 2, pp. 5, 7.

19 For examples, see OCHA, *Niger*, above note 8, p. 71; UNHCR Burkina Faso, above note 8, pp. 19–20; UNHCR Burkina Faso, *Profilage des personnes déplacées internes dans la commune de Djibo, province du Soum, région du Sahel*, October 2017, p. 26, available at: [www.humanitarianresponse.info/es/operations/burkina-faso/document/unhcr-burkina-faso-profilage-des-personnes-d%C3%A9plac%C3%A9es-internes-0](http://www.humanitarianresponse.info/es/operations/burkina-faso/document/unhcr-burkina-faso-profilage-des-personnes-d%C3%A9plac%C3%A9es-internes-0). We shall return to this point in more detail later.

would bring a number of important benefits. The article begins by examining and interpreting the relevant provisions of the Kampala Convention and other legal instruments to which the States concerned are party, in order to establish the extent to which they offer legal protection to IDP host communities. Having identified and presented the protective provisions applicable to host communities, the article then analyzes them in light of the rules for interpreting treaties set out in the Vienna Convention on the Law of Treaties.<sup>20</sup> In so doing, the article shall focus on the ordinary meaning of the terms used, their context, the objectives of the instruments in which they are used, the associated *travaux préparatoires*, and other relevant rules of international law. From this, it will become apparent that these instruments provide adequate guarantees of protection for IDP host communities through the obligations they impose upon States, non-State armed groups and, to a certain degree, humanitarian organizations.

The article will then analyze and highlight the benefits that would accrue from complying with these obligations and implementing them effectively. Four benefits will be analyzed in depth: strengthening protection for IDPs and boosting their resilience, breaking or at least limiting the cycle of internal displacement, recognizing and promoting the traditional African values of hospitality and solidarity, and preventing or resolving crises and tension. In analyzing each of these potential benefits, the article shall highlight the problems that are preventing full compliance with the legal provisions intended to protect host communities, and will show how those problems are preventing full enjoyment of the benefits listed. The article shall propose measures to help overcome these problems and thereby ensure stronger, more effective legal protection for IDP host communities in the Sahel.

## The legal obligations of various actors regarding the protection<sup>21</sup> of IDP host communities

The arguments set out below are based largely on the Kampala Convention, to which all the Sahelian States are party.<sup>22</sup> There are two reasons for this. First, the Kampala Convention is the only international legal instrument containing

20 Vienna Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969 (entered into force 27 January 1980), Arts 31, 32, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

21 Here, the term “protection” is used in a generic sense to cover several activities, each of which has its own definition. Furthermore, this article will not always make an absolute distinction between protection and assistance measures. Where such a distinction is made, it is purely for reasons of clarity. Assistance activities frequently play a protective role, and vice versa, making it impossible to separate them. See ICRC, “Le CICR, la ligue et le rapport sur la réévaluation du rôle de la Croix-Rouge III: Protection et assistance en cas de conflits armés”, *Revue Internationale de la Croix-Rouge*, Vol. 18, No. 712, 1978, pp. 205–206, available at: <https://international-review.icrc.org/fr/revues/ricr-no-712-revue-internationale-de-la-croix-rouge-08-1978>.

22 See AU, “List of Countries which Have Signed, Ratified/Acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)”, 18 June 2020, available at: <https://tinyurl.com/yu8azckd>.

specific provisions protecting IDP host communities.<sup>23</sup> Indeed, this is one of the main features that demonstrate the innovative and progressive nature of the Convention. Some of its provisions apply specifically in armed conflict, whereas others apply both to situations of armed conflict<sup>24</sup> and to other situations.<sup>25</sup> The analysis below will examine all of these provisions, especially as the temporal scope of application of many of them is unlimited.

Second, the Kampala Convention reflects – and to a large extent is based on – the general provisions of international human rights law (IHRL) and international humanitarian law (IHL),<sup>26</sup> which implicitly govern the protection of

- 23 The main universal reference on internal displacement, the *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/add.2, 11 February 1998, available at: <https://undocs.org/E/CN.4/1998/53/Add.2>, does not cover IDP host communities. The Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006, available at: [www.unhcr.org/protection/idps/5ad5a3aa4/international-conference-great-lakes-region-protocol-protection-assistance.html](http://www.unhcr.org/protection/idps/5ad5a3aa4/international-conference-great-lakes-region-protocol-protection-assistance.html), applies only to the Great Lakes region and contains only one provision regarding host communities. Article 4(1)(e) requires member States to “[e]xtend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons”.
- 24 Regarding the classification of armed conflicts, see Sylvain Vité, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”, *International Review of the Red Cross*, Vol. 91, No. 873, 2009, available at: <https://international-review.icrc.org/articles/typology-armed-conflicts-international-humanitarian-law-legal-concepts-and-actual>.
- 25 In addition to setting out provisions that specifically protect people affected by internal displacement resulting from armed conflict – including communities hosting IDPs – the Kampala Convention includes provisions protecting people affected by displacement resulting from other causes, such as generalized violence, natural disaster and the implementation of development projects. Where relevant, those provisions may also apply during armed conflict, as the Kampala Convention does not limit their temporal scope of application.
- 26 The Kampala Convention contains several references to IHRL and IHL. In its preamble, it mentions the main legal instruments that constitute each of these bodies of law. The Convention addresses human rights issues of current relevance, especially the protection of women against sexual and gender-based violence, the implementation of socioeconomic rights, the role of non-State actors including multinationals and private security companies, and the impact of extractive industries, natural disaster and climate change on human rights and forced displacement. The Kampala Convention includes numerous principles and rules borrowed from IHL – of which the purpose is to protect persons who are not or are no longer taking part in hostilities – which apply in times of armed conflict. These include the obligation to respect and ensure respect for IHL, rules regarding the provision of humanitarian assistance, war crimes, etc. In addition to reaffirming and expanding the rules of IHRL and IHL, the Kampala Convention takes care to avoid undermining those bodies of law, by including a saving clause in Article 20. Paragraph 2 of that article states: “This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples’ Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.” For further details regarding the relationship between IHL and IHRL, see Steve Tiwa Fomekong, “Reflections on Humanitarian Law Dimensions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *African Yearbook on International Humanitarian Law*, 2020; 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, 2010, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1713296](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1713296); Katinka Ridderbos, “The Kampala Convention and Obligations of Armed Groups”, *Forced Migration Review*, No. 37, March 2011, available at: [www.fmreview.org/non-state/Ridderbos](http://www.fmreview.org/non-state/Ridderbos); Stephane Ojeda, “The Kampala Convention on Internally Displaced Persons: Some International Humanitarian Law Aspects”, *Refugee Survey Quarterly*, Vol. 29, No. 3, 2010, pp. 58–61, available at: <https://academic.oup.com/rsq/article-abstract/29/3/58/1541312>; A. Bilak, above note 3, p. 44; Mehari Taddele Maru, “The Kampala Convention and Its Contribution in Filling the Protection

host communities, in peacetime and during armed conflict. We can therefore focus on these general provisions, while also establishing links with other provisions set out in these two bodies of law.

Having clarified these points, it should be noted that in its preamble, the Kampala Convention pays tribute to IDP host communities. The Convention recognizes and reiterates “the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities”.<sup>27</sup> It also provides protection for these communities in the form of obligations imposed upon States, non-State armed groups and humanitarian organizations.

### Obligations regarding the provision of humanitarian assistance

The Kampala Convention sets out obligations related to the planning, management, execution and monitoring of humanitarian assistance to IDP host communities. It requires States to “[a]dopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, *taking into account the needs of host communities*”.<sup>28</sup> In other words, all national measures aimed at addressing internal displacement must take the needs of IDP host communities into account<sup>29</sup> and must respond to those needs.

In its ordinary meaning, the word “need” refers to the things that a person must have in order to lead a satisfactory life.<sup>30</sup> This would appear to be the meaning assumed by documents dealing with the needs of populations affected by crisis, armed conflict or natural disaster.<sup>31</sup> It is therefore reasonable to use that meaning to understand and interpret the word “needs” as used in the provision mentioned above.

The specific types of need that must be addressed are numerous. It is worth noting that the word “needs” used in the above provision is not defined in any way that might limit its scope. One can therefore argue that it is used in a sense which is sufficiently broad to cover various types of need that must be met in order to ensure the survival and well-being of host communities. Seen from this point of view, a non-exhaustive list of “needs” could include such basic necessities as food, water,

Gap in International Law”, *Journal of Internal Displacement*, Vol. 1, No. 1, 2011, available at: <https://journalofinternaldisplacement.org/index.php/JID/article/view/8/6>.

27 Kampala Convention, preamble, para. 3.

28 *Ibid.*, Art. 3(2)(c) (emphasis added).

29 ICRC, *Translating the Kampala Convention into Practice: A Stocktaking Exercise*, Geneva, October 2016, pp. 46–50, available at: <https://shop.icrc.org/translating-the-kampala-convention-into-practice-pdf-en.html>.

30 “Need”, *Cambridge Dictionary*, available at: <https://dictionary.cambridge.org/dictionary/english/need>.

31 See, for instance, OCHA, *Mali*, above note 8; Humanitarian Coalition, “Humanitarian Needs”, fact sheet, available at: [www.humanitariancoalition.ca/sites/default/files/factsheet/humanitarian\\_needs-\\_english.pdf](http://www.humanitariancoalition.ca/sites/default/files/factsheet/humanitarian_needs-_english.pdf); Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, available at: <https://international-review.icrc.org/articles/legal-framework-humanitarian-access-armed-conflict>; Jakob Kellenberger, “L’action humanitaire dans les conflits armés actuels: Contexte et besoins”, ICRC, Geneva, 25 January 2001, available at: [www.icrc.org/fr/doc/resources/documents/misc/5fzhsu.htm](http://www.icrc.org/fr/doc/resources/documents/misc/5fzhsu.htm); ICRC, above note 29, pp. 46–50.

shelter, education and health care,<sup>32</sup> protection and security<sup>33</sup> (especially in view of the risks to which host communities expose themselves by helping IDPs<sup>34</sup>), economic security,<sup>35</sup> psychosocial support,<sup>36</sup> and the rights to a healthy environment and to development, as enshrined in the African Charter on Human and Peoples' Rights.<sup>37</sup> According to the provision mentioned above, all the needs that host communities are likely to face—which may vary according to the context, the environment and cultural norms—must be taken into account in the design, planning, implementation and monitoring of the laws, policies, strategies and other measures whereby States address internal displacement.

If the needs of IDP host communities are to be properly taken into account and met as effectively as possible, it is essential that they first be properly identified and assessed.<sup>38</sup> The Kampala Convention takes this into account by stipulating that “States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons *and of host communities*, in cooperation with international organizations or agencies”.<sup>39</sup> This means that States must identify the nature and scale of the needs and vulnerabilities not only of the IDPs, but also of the communities that are hosting them.<sup>40</sup> States do not enjoy exclusive competence in this area, even though they do bear primary

32 These types of need are explicitly mentioned in Article 9(2)(b) of the Kampala Convention. See also ICRC, above note 29, p. 49.

33 See ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions*, Geneva, 2019, available at: <https://shop.icrc.org/international-humanitarian-law-and-the-challenges-of-contemporary-armed-conflicts-recommitting-to-protection-in-armed-conflict-on-the-70th-anniversary-of-the-geneva-conventions.html>. On p. 38, this publication includes this type of need among those experienced by civilian populations affected by armed conflict.

34 Steve McDowell, *Internal Displacement in North Kivu: Hosting, Camps, and Coping Mechanisms*, study prepared for UNICEF DRC and CARE DRC, April 2008, p. 15; K. Haver, above note 2, pp. 25–26.

35 Economic security is defined as the ability of individuals, households or communities to cover their essential needs sustainably and with dignity. See ICRC, “What Is Economic Security?”, 18 June 2015, available at: [www.icrc.org/en/document/introduction-economic-security](http://www.icrc.org/en/document/introduction-economic-security); British Red Cross, *Household Economic Security (HES): Technical Guidance for Assessment and Analysis*, 26 February 2021, available at: <https://cash-hub.org/news-and-events/news-articles/household-economic-security-hes-guidelines-technical-guidance-for-assessment-and-analysis/> (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

36 See J. Kellenberger, above note 33, p. 38.

37 See African Charter on Human and Peoples' Rights, 1520 UNTS 217, 27 June 1981 (entered into force 21 October 1986), Arts 22 and 24 respectively, available at: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>. For an analysis of each of these rights, see Madjid Benchikh, “Article 22”, and Mohamed Ali Mekoua, “Article 22”, in Maurice Kamto (ed.), *La Charte africaine des droits de l'homme et des peuples et le Protocole y relatif portant création de la Cour africaine des droits de l'homme: Commentaire article par article*, Bruylant, Brussels, 2011.

38 Christelle Cazabat, “The Importance of Monitoring Internal Displacement”, *Forced Migration Review*, No. 59, October 2018, available at: [www.fmreview.org/GuidingPrinciples20/cazabat](http://www.fmreview.org/GuidingPrinciples20/cazabat); Joint IDPs Profiling Service, *Making Data Useful: How to Improve the Evidence-Base for Joint Responses to Forced Displacement?*, Conference Report, July 2017, available at: [www.jips.org/uploads/2018/10/JIPS-Conference-2017-report-vf.pdf](http://www.jips.org/uploads/2018/10/JIPS-Conference-2017-report-vf.pdf).

39 Kampala Convention, Art. 5(5) (emphasis added).

40 ICRC, above note 29, p. 49.



responsibility for assessing needs.<sup>41</sup> They are required to cooperate with international organizations and agencies in carrying out this assessment, especially if they lack the necessary resources to carry it out themselves.<sup>42</sup> This cooperation is all the more necessary in view of the fact that such organizations and agencies generally have both a specific mandate and extensive experience in assessing the needs of vulnerable people. They can therefore provide valuable support to a State facing the challenges of internal displacement.

However, the Kampala Convention provides no indication as to which other bodies might also be competent to conduct assessments, and whose work in this area must be facilitated by the State. Nor does the African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa (AU Model Law),<sup>43</sup> the purpose of which is to provide guidelines for fulfilling the obligations emanating from the Kampala Convention. In the interests of people in need, one must take a broad interpretation, accepting that the entities involved may include other States, humanitarian organizations or any other non-State entities<sup>44</sup> able and willing to assess the needs of IDPs and host communities, while respecting the sovereignty and laws of the State concerned. The State to which these entities offer their services must provide them with the authorizations and physical protection they require, together with whatever information they need to reach vulnerable populations and assess their needs in complete safety. This being so, one can reasonably maintain that the Kampala Convention provides a true framework for cooperation, aimed at uniting all activities in this domain, so that all concerned have as complete an understanding as possible of the needs and vulnerabilities involved.

Furthermore, while the Kampala Convention does not say so explicitly, one can argue that assessing the needs of host communities should involve consulting them. These consultations should be conducted on an ongoing basis, as the needs are likely to change as the situation evolves.<sup>45</sup> Similarly, measures should be taken

41 For a more detailed analysis of the provisions relating to humanitarian assistance in the Kampala Convention, and the division of responsibility in this area between States and humanitarian organizations, see, for example, J. O. Moses Okello, “In Lieu of a *Travaux Préparatoires*: A Commentary on the Kampala Convention for IDPs”, *International Journal of Refugee Law*, Vol. 31, No. 2–3, 2019, pp. 370–372, available at: <https://academic.oup.com/ijrl/article-abstract/31/2-3/349/5686251>; M. Taddele Maru, above note 26, pp. 118–120.

42 This interpretation is based on a joint reading of paragraphs 5 and 6 of Article 5, and is claimed to correspond to the intention of the States party to the Kampala Convention. Paragraph 6 limits the general obligation on States to cooperate with organizations regarding protection and assistance to IDPs by stating that this obligation applies “where available resources are inadequate” to enable them to provide sufficient protection and assistance to IDPs. J. O. Moses Okello, above note 41, p. 371, reveals that this provision was included to allay the fears of certain States, expressed during the preparatory sessions, that obliging them to cooperate on a matter that fell under their primary sphere of competence impinged on the principle of non-interference in the internal affairs of States.

43 African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, January 2018 (AU Model Law), Art. 1, available at: [www.refworld.org/docid/5afc3a494.html](http://www.refworld.org/docid/5afc3a494.html).

44 M. Taddele Maru, above note 26, pp. 118–120.

45 ICRC, above note 29, p. 42.

to allow for the continued participation of these communities in decision-making and in the monitoring of measures relating to the assistance offered to them. Such an interpretation would be in line with the aims of the provisions we are examining here. To compile as complete an overview as possible of the needs and vulnerabilities of IDP host communities and respond to them properly, it is important to identify the expectations and needs of the populations who are to be the main beneficiaries. This point of view is generally accepted today, including by humanitarian organizations working in the field.<sup>46</sup>

The French version of the Kampala Convention provides that “[c]ette assistance peut être étendue, en cas de besoin, aux communautés locales et d’accueil” (“In case of need, this assistance may be extended to local and host communities”).<sup>47</sup> This formulation differs somewhat from that used in the English version of the Convention. The English version (which is equally authentic) does not include “peut être” (“may be”). Rather, it reads “States Parties shall ... [p]rovide internally displaced persons ... with adequate humanitarian assistance ... and where appropriate, [shall] extend such assistance to local and host communities” (emphasis added). The expression “peut être étendue” (“may be extended”) in the French version of the Convention is ambiguous. It could give the impression that even if it is necessary to extend humanitarian assistance to host communities, doing so remains no more than a possibility. In other words, it could be interpreted as meaning that a State is not necessarily obliged to provide assistance to host communities, even if they need it. Such an interpretation would be mistaken. A good-faith interpretation requires one to take the view that once it has been established that host communities need humanitarian assistance, States are legally obliged to provide them with it, albeit within the scope of their capacity.<sup>48</sup> Such an interpretation would be in line with the AU Model Law, which emphasizes “[t]he responsibility of every person, including public authorities, involved in the protection and assistance of internally displaced persons to act in accordance with this legislation and to give due regard to the needs of displacement affected populations and host communities”.<sup>49</sup> This provision does not make taking account of the needs of such communities subject to any conditions whatsoever.

The interpretation suggested here would also be in conformity with the provisions mentioned above, which require States to assess and take account of

46 See ICRC, *Professional Standards for Protection Work*, Geneva, 2018, pp. 28–32, available at: <https://shop.icrc.org/professional-standards-for-protection-work-print-en.html>. Regarding children, see Canadian International Development Agency, *Children’s Participation in Humanitarian Action: Learning from Zones of Armed Conflict*, Quebec, 2007, available at: <https://publications.gc.ca/site/fra/9.689421/publication.html>. Regarding IDPs, see Brookings Institution and University of Bern, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, Project on Internal Displacement, October 2008, pp. 31–32, available at: [www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/](http://www.brookings.edu/research/protecting-internally-displaced-persons-a-manual-for-law-and-policymakers/); ICRC, above note 29, pp. 8, 11.

47 Kampala Convention, Art. 9(2)(b) (*Review’s* translation, which differs from the official English version).

48 See also M. Taddele Maru, above note 26, who emphasizes on p. 118 that supplying humanitarian assistance as required by the Kampala Convention depends on the capacity of the State.

49 AU Model Law, above note 43, Art. 4(1)(6).

the needs of host communities in their response to internal displacement. It would be pointless to assess the needs of these communities without taking steps to address them as far as possible. Furthermore, under international law, States bear primary responsibility for meeting the basic needs of affected populations,<sup>50</sup> which include IDP host communities. This obligation, which emanates from the principle of sovereignty,<sup>51</sup> has been confirmed by international practice.<sup>52</sup> If a State is unwilling or unable to fully discharge its primary responsibilities, humanitarian entities can offer their services in accordance with IHL, which contains rules concerning humanitarian assistance and access to civilian populations affected by armed conflict.<sup>53</sup> An offer of assistance in conformity with humanitarian principles<sup>54</sup> cannot be seen as illicit intervention or as contravening international law in any other way.<sup>55</sup> Furthermore, while the provision of humanitarian aid is subject to the consent of the State, States may not withhold such consent for arbitrary reasons.<sup>56</sup>

## Obligations regarding the protection of IDP host communities

The Kampala Convention also contains provisions aimed at protecting IDP host communities – i.e., safeguarding them against the dangers, suffering and abuse of power to which they could be exposed.<sup>57</sup> In particular, it requires States to “[r]

50 See F. Schwendimann, above note 31, p. 996.

51 UN Charter, 26 June 1945 (entered into force 24 October 1945), Art. 2(1), available at: [www.un.org/en/about-us/un-charter](http://www.un.org/en/about-us/un-charter).

52 See F. Schwendimann, above note 31, who provides a list of resolutions supporting this practice on p. 996.

53 See Article 3(2) common to the four Geneva Conventions and Article 10 of Geneva Convention IV; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 70(1), available at: <https://ihl-databases.icrc.org/ihl/INTRO/470>; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 18(1–2), available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475>.

54 This view is based, in particular, on the principles of humanity, impartiality, non-discrimination, neutrality and independence. For details regarding these principles, see the preamble to the Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross at Geneva in October 1986 and amended by the 26th International Conference of the Red Cross and Red Crescent at Geneva in December 1995 and by the 29th International Conference of the Red Cross and Red Crescent at Geneva in June 2006 (Statutes of the Movement), available at: [www.icrc.org/en/publication/0911-statutes-and-rules-procedure-international-red-cross-and-red-crescent-movement](http://www.icrc.org/en/publication/0911-statutes-and-rules-procedure-international-red-cross-and-red-crescent-movement). See also F. Schwendimann, above note 31, p. 997; Jean Pictet, *Les Principes de la Croix-Rouge*, ICRC, Geneva, 1955.

55 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986, para. 242, available at: [www.icj-cij.org/en/case/70](http://www.icj-cij.org/en/case/70).

56 See F. Schwendimann, above note 31; Denise Plattner, “Assistance à la population civile dans le droit international humanitaire: Évolution et actualités”, *Revue Internationale de la Croix-Rouge*, Vol. 74, No. 795, 1992, available at: <https://international-review.icrc.org/fr/articles/lassistance-la-population-civile-dans-le-droit-international-humanitaire-evolution-et>; Françoise Bouchet-Saulnier, “Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, not States’ Rights”, *International Review of the Red Cross*, Vol. 96, No. 893, 2014, available at: <https://international-review.icrc.org/articles/consent-humanitarian-access-obligation-triggered-territorial-control-not-states-rights>.

57 This definition is based on the definition of “protection” in ICRC, above note 21, p. 206. See also UNHCR, “Glossary of Terms”, in *The Protection Induction Programme Handbook*, 2006, available at: [www.refworld.org/pdfid/466e71c32.pdf](http://www.refworld.org/pdfid/466e71c32.pdf).

respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons”.<sup>58</sup> It also requires them to “[r]espect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons”.<sup>59</sup> Furthermore, the Convention prohibits members of armed groups from violating the civilian and humanitarian character of the places where IDPs are sheltered and from infiltrating such places.<sup>60</sup>

It would appear that these provisions are sometimes interpreted as covering only IDP camps and the work of traditional humanitarian organizations.<sup>61</sup> However, there is nothing to require a restrictive reading of this nature. Indeed, the AU Model Law uses wording that could indicate that the provisions mentioned above do not apply exclusively to camps. After reproducing the provisions cited above,<sup>62</sup> Article 12 of the Model Law explicitly stipulates that “[a]ll parties shall refrain from attacking camps, settlements, or any other areas where internally displaced persons might be located”.<sup>63</sup> The expression “any other areas” is sufficiently broad to be seen as an indication that host communities’ places of residence also benefit from the intended protection.

As mentioned above, host communities show solidarity towards IDPs by allowing them to find shelter with them. They also offer significant humanitarian assistance to IDPs. This humanitarian action, which is in line with the African customs and traditions of hospitality and solidarity,<sup>64</sup> is explicitly recognized and underlined by the Kampala Convention.<sup>65</sup> Furthermore, such humanitarian action accords with the “absolute right” to care for and assist the wounded, sick and shipwrecked enshrined in Additional Protocol I (AP I).<sup>66</sup> This being so,

58 Kampala Convention, Art. 3(1)(f).

59 *Ibid.*, Art. 9(2)(g).

60 *Ibid.*, Art. 7(5)(i).

61 See, for example, Flavia Zorzi Giustiniani, “New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa”, *Denver Journal of International Law and Policy*, Vol. 39, No. 2, 2011, pp. 365–366, available at: <https://digitalcommons.du.edu/djilp/vol39/iss2/5/>; M. Taddele Maru, above note 26, p. 120.

62 See AU Model Law, above note 43, Art. 12(1–2).

63 *Ibid.*, Art. 12(3) (emphasis added).

64 See Michel-Cyr Djiena Wembou *et al.*, *Le droit international humanitaire: Théorie générale et réalités africaines*, Collection logiques juridiques, L’Harmattan, Paris, 2000, pp. 303 ff.; Steve Tiwa Fomekong, “La contribution de l’Union africaine au droit international humanitaire”, doctoral thesis, Université Laval, Quebec, 2020, pp. 137–140, available at: <https://corpus.ulaval.ca/jspui/handle/20.500.11794/67788>.

65 Kampala Convention, preamble, para. 3.

66 AP I, Art. 17(1): “The civilian population . . . shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.” This has been interpreted as meaning that the civilian population has an “absolute right” to care for and assist the wounded, sick and shipwrecked. See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, p. 215, para. 713, available at: [www.loc.gov/rr/frd/Military\\_Law/pdf/Commentary\\_GC\\_Protocols.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf). According to the letter of Article 17(1), and given the field of application of AP I, this right only applies in connection with the wounded, sick and shipwrecked of international armed conflicts.

nothing contradicts the idea that the provisions of the Kampala Convention discussed above also apply to host communities. Those provisions require that the humanitarian and civilian character of the humanitarian assistance and protection that host communities offer to IDPs be respected. This also applies to host communities' places of residence, if they are accommodating IDPs.

The definition of "civilian" lies at the heart of the principle of distinction enshrined in IHL. That principle requires that belligerents "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives".<sup>67</sup> Because they consist of civilians,<sup>68</sup> IDP host communities are classified as civilian populations<sup>69</sup> and therefore enjoy immunity against attack. This also applies to their places of residence, if they can be classified as civilian objects.<sup>70</sup>

To continue to enjoy protection as civilians, however, the members of a community must not participate directly in hostilities.<sup>71</sup> If they do, they lose the protection they enjoy as civilians for as long as that participation continues.<sup>72</sup> The Kampala Convention requires that States prevent this occurring. States must ensure respect for, and maintenance of, the civilian character of the dwellings of these host communities and of the assistance that they provide to IDPs. The Convention sets out specific measures that States must take to achieve this. In particular, they must safeguard IDP populations against infiltration by armed groups or elements.<sup>73</sup> If they have already infiltrated, States must disarm them and separate them from IDPs.<sup>74</sup> The presence of armed groups or elements within these communities could arouse suspicion regarding the civilian nature of the protection that host communities are providing, and hence expose them to the risk of armed attack.<sup>75</sup> Belligerents may conduct armed attacks against such areas if they realize that enemy combatants have taken refuge in them – i.e., if

67 AP I, Art. 48; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rules 1, 7, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul).

68 Civilians are persons who are not members of the armed forces. See ICRC Customary Law Study, above note 67, Rule 5.

69 AP I, Art. 50(2) states that "[t]he civilian population comprises all persons who are civilians".

70 See ICRC Customary Law Study, above note 67, Rule 9; AP I, Art. 52(2–3).

71 For details regarding the concept of direct participation in hostilities, see Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, available at: <https://shop.icrc.org/interpretive-guidance-on-the-notion-of-direct-participation-in-hostilities-under-international-humanitarian-law-print-en.html>.

72 *Ibid.*, pp. 65–73.

73 Kampala Convention, Art. 9(2)(g).

74 *Ibid.*

75 See UNHCR and ICRC, *Aide-mémoire: Operational Guidance on Maintaining the Civilian and Humanitarian Character of Sites and Settlements*, Geneva, July 2018, pp. 7–8, available at: [www.refworld.org/docid/5b55c6fe4.html](http://www.refworld.org/docid/5b55c6fe4.html). See also, to a certain degree, UNHCR, *Guidance Note on Maintaining the Civilian and Humanitarian Character of Asylum*, Geneva, December 2018, p. 8, available at: [www.refworld.org/docid/452b9bca2.html](http://www.refworld.org/docid/452b9bca2.html), which applies specifically in the fairly similar case of refugees (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

they are using those areas as bases, or using their inhabitants as human shields.<sup>76</sup> The presence of armed elements or combatants within host communities also increases the risk of mobilization of members of these communities,<sup>77</sup> physical or sexual violence, and misappropriation of humanitarian aid by members of armed forces or groups.<sup>78</sup>

Having said this, the presence of armed elements where host communities are living does not automatically lead to those locations losing their civilian character. IHL stipulates that “[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character”.<sup>79</sup> It is important at all times to make a distinction between the character or status of sites or places of residence of host communities as a whole, on the one hand, and the status of the individuals at those locations, on the other. The presence of armed elements within a host community does not deprive that community of the status of a civilian population, nor does it affect the classification of the area where the community lives as civilian property. This means that if combatants are present within host communities, the letter and spirit of the principle of distinction require that measures be taken to distinguish between those combatants and the members of those communities who are entitled to the status of civilian, so as to direct attacks exclusively against the combatants. Furthermore, once the distinction between combatants and civilians has been made, the principle of proportionality<sup>80</sup> requires that the belligerents assess the collateral damage likely to result from any attack on the combatants or military objectives located within host communities, to ensure that the harm which is likely to result from such an attack is not disproportionate to the anticipated military advantage. Even if the attack passes the proportionality test, all necessary precautions<sup>81</sup> must be taken to minimize its effects on IDP host communities.

An indication as to what could be construed as “humanitarian” is contained in the definition of the principle of humanity.<sup>82</sup> That principle, which has been confirmed by the International Court of Justice (ICJ),<sup>83</sup> is the first of the seven Fundamental Principles of the International Red Cross and Red Crescent Movement.<sup>84</sup> One may deduce from that definition that “humanitarian” activities

76 UNHCR and ICRC, above note 75, pp. 7–8.

77 See *ibid.*, pp. 11–17; CAR Protection Cluster, *L’impératif d’établir et de maintenir le caractère civil et humanitaire des sites de personnes déplacées internes en RCA: Note d’Orientation*, April 2016, pp. 1–2, available at: [www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Central\\_African\\_Republic/files/note-orientation\\_caractere-civil-sites\\_finale.fr.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Central_African_Republic/files/note-orientation_caractere-civil-sites_finale.fr.pdf).

78 CAR Protection Cluster, above note 77, pp. 1–2.

79 AP I, Art. 50(3).

80 See AP I, Art. 51(5)(b); ICRC Customary Law Study, above note 67, Rule 14.

81 See AP I, Art. 57; ICRC Customary Law Study, above note 67, Rule 15.

82 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd edition, Cambridge University Press, Cambridge, 2016 (ICRC Commentary on GC I), para. 811, available at: <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

83 ICJ, *Nicaragua*, above note 55, para. 242.

84 See Statutes of the Movement, above note 54, preamble.

are those intended to “prevent and alleviate human suffering wherever it may be found” and of which the purpose is to “protect life and health and to ensure respect for the human being”.<sup>85</sup> Such activities include collecting and caring for the wounded, sick and shipwrecked, as provided for in AP I,<sup>86</sup> but also encompass taking in people who have no other refuge or meeting their basic needs, as such activities also aim to alleviate human suffering. It therefore follows that IDP host communities must not be harmed or suffer reprisals for carrying out such activities for IDPs.

However, certain facts or scenarios could threaten the humanitarian nature of the protection offered to IDPs and the places where they have taken shelter, even if they do not call their civilian character into question.<sup>87</sup> This is the case where civilians participate directly in hostilities sporadically while they are living in a host community.<sup>88</sup> Some activities undertaken by civilians in support of a party to the conflict without directly participating in hostilities could also undermine the humanitarian character of places hosting IDPs, without affecting their civilian character.<sup>89</sup> These include propaganda, financing or training activities connected with one of the parties to an armed conflict.<sup>90</sup> It is necessary to prevent such activities from taking place at such locations or to mitigate the potential risks involved, so as to preserve the humanitarian character of the protection provided to IDPs and the locations hosting them and ultimately to ensure effective protection for host communities.

States are required not only to “respect” but also to “ensure respect for” the humanitarian and civilian character of the humanitarian protection provided to IDPs and the locations that are hosting them. The formulations “respect” and “ensure respect for” are borrowed from IHL – as we have already seen, the Kampala Convention draws heavily on that body of law. More specifically, these terms mirror the obligation to respect and ensure respect for IHL.<sup>91</sup> If one applies the ICRC Commentaries to the provisions of the Kampala Convention by analogy, one can argue that “respecting” the humanitarian and civilian character of the protection and humanitarian assistance that host communities provide to IDPs implies both a positive and a negative obligation for States to take all necessary steps to ensure that the behaviour of their entities and of other individuals or groups acting in their name do not lead to violations

85 ICRC Commentary on GC I, above note 82, para. 811. See also Jean Pictet, “Les principes fondamentaux de la Croix-Rouge: Commentaire (I)”, *Revue Internationale de la Croix-Rouge*, Vol. 19, No. 717, June 1979, available at: <https://international-review.icrc.org/fr/articles/les-principes-fondamentaux-de-la-croix-rouge-commentaire>; Maja Janmyr, “Revisiting the Civilian and Humanitarian Character of Refugee Camps”, in David Cantor and Jean François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, International Refugee Law Series, Vol. 2, Brill Nijhoff, Leiden, 2014, pp. 242–243.

86 AP I, Art. 17.

87 UNHCR and ICRC, above note 75, p. 14.

88 *Ibid.*, pp. 14–15.

89 *Ibid.*, p. 15.

90 *Ibid.*, pp. 7, 9.

91 See Art. 1 common to the four Geneva Conventions and to AP I; ICRC Customary Law Study, above note 67, Rule 1.

thereof.<sup>92</sup> Furthermore, the duty to “ensure respect” for the humanitarian and civilian character of humanitarian aid, or to ensure that this character is maintained, implies that States have both a positive and a negative obligation to ensure that other States, non-State entities and individuals for whom they are responsible do nothing to violate or compromise that character.<sup>93</sup>

## Obligations regarding the prevention of arbitrary displacement

At first sight, the title of the Kampala Convention would seem to imply that it only regulates protection and assistance to persons who have already become the victims of forced displacement.<sup>94</sup> In reality, however, the Convention’s scope of application is broader. As well as regulating protection of and assistance for IDPs, it protects all categories of the population against internal displacement.<sup>95</sup> Indeed, one of the explicit objectives of the Kampala Convention is to “[e]stablish a legal framework for preventing internal displacement”.<sup>96</sup> The Convention aims to prevent “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”.<sup>97</sup> In other words, “rather than waiting to act until a population has been displaced and has found refuge in another part of the country ..., we should be attacking the causes of displacement”.<sup>98</sup> The Kampala Convention therefore requires States to “[r]efrain from, prohibit and prevent arbitrary displacement of populations”.<sup>99</sup> It is worth

92 ICRC Commentary on GC I, above note 82, paras 144, 120. See also Laurence Boisson de Chazournes and Luigi Condorelli, “Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests”, *International Review of the Red Cross*, Vol. 82, No. 837, 2000, p. 69, available at: <https://international-review.icrc.org/fr/articles/common-article-1-geneva-conventions-revisited-protecting-collective-interests>.

93 ICRC Commentary on GC I, above note 82, paras 144, 120, 150. See also Luigi Condorelli and Laurence Boisson de Chazournes, “Quelques remarques à propos de l’obligation des États de ‘respecter et faire respecter’ le droit international humanitaire ‘en toutes circonstances’”, in Christophe Swinarski (ed.), *Études et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l’honneur de Jean Pictet*, ICRC, Geneva, 1984, p. 24, available at: <https://archive-ouverte.unige.ch/unige:15023>. However, certain authors maintain that the obligation to “ensure respect” obliges States only to take all measures necessary to ensure respect for the Geneva Conventions on the part of government bodies and of private individuals for which the State is responsible. See Frits Kalshoven, “The Undertaking to Respect and to Ensure Respect in All Circumstances: From Tiny Seed to Ripening Fruit”, *Yearbook of International Humanitarian Law*, Vol. 2, 1999, p. 60, available at: <https://doi.org/10.1017/S1389135900000362>; Tomasz Zych, “The Scope of the Obligation to Respect and to Ensure Respect for International Humanitarian Law”, *Windsor Yearbook of Access to Justice*, Vol. 27, No. 2, 2009, available at: <https://wyaj.uwindsor.ca/index.php/wyaj/article/view/4528>.

94 The full title of the Convention is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (emphasis added).

95 Maria Stavropoulou, “The Kampala Convention and Protection from Arbitrary Displacement”, *Forced Migration Review*, No. 36, November 2010, p. 62, available at: [www.fmreview.org/DR Congo/stavropoulou.htm](http://www.fmreview.org/DR Congo/stavropoulou.htm).

96 Kampala Convention, Art. 2(b).

97 *Ibid.*, Art. 1(i).

98 Jack M. Mangala, “Prévention des déplacements forcés de population: Possibilités et limites”, *Revue Internationale de la Croix-Rouge*, Vol. 83, No. 844, 2001, p. 1067 (Review’s translation), available at: <https://international-review.icrc.org/fr/articles/prevention-des-deplacements-forces-de-population-possibilites-et-limites>.

99 Kampala Convention, Art. 3(1).



noting that the word “populations” used in this provision is not defined in any way that might limit its scope. One may therefore conclude that the protection that this provision offers covers all populations, without exception, and hence applies to IDP host communities. In particular, this implies anticipating forced displacement by taking the measures necessary to prevent its occurrence. In the specific case of IDP host communities, the aim is to reduce or limit existing internal displacement, by taking measures to prevent host communities being forced to move for whatever reason.

The Kampala Convention imposes an obligation similar to that mentioned above on armed groups. Article 7(5)(a) prohibits armed groups from “[c]arrying out arbitrary displacement”; this means that—like any other category of the population—IDP host communities must not be subjected to arbitrary displacement. Furthermore, the Convention confers upon each member of such a community the individual right to protection against arbitrary displacement.<sup>100</sup> This is described as including (but not being limited to):

- a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
- b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
- c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
- d. Displacement caused by generalized violence or violations of human rights;
- e. Displacement as a result of harmful practices;
- f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
- g. Displacement used as a collective punishment;
- h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.<sup>101</sup>

The above provisions are, to a certain extent, a reaffirmation of IHL. In particular, they reaffirm the provisions of both treaty and customary IHL, which stipulate that “[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand”.<sup>102</sup> However, the Kampala Convention does not merely reaffirm this legal principle; it takes it a step further. Firstly, to be considered “forced” within the meaning of IHL—and hence prohibited—displacement of the civilian population has to have been

<sup>100</sup> *Ibid.*, Art. 4(4).

<sup>101</sup> *Ibid.*

<sup>102</sup> AP II, Art. 17(1); ICRC Customary Law Study, above note 67, Rule 129(B).

“ordered”.<sup>103</sup> The Kampala Convention, however, prohibits a wider range of types of forced displacement, whether ordered or not. It prohibits arbitrary displacement, defining the concept in non-exhaustive terms. The fact that the Kampala Convention includes such a non-exhaustive list of acts that are deemed to be prohibited forms of displacement limits the scope for divergent interpretations. This in turn may facilitate achievement of the objectives of the provision prohibiting arbitrary displacement.

Furthermore, whereas IHL simply prohibits States from carrying out forced displacement, the Kampala Convention goes further by requiring States to take the measures necessary to “prohibit” and “prevent” such displacement.<sup>104</sup> This implies that it is not sufficient for States simply to abstain from creating situations that could lead to arbitrary displacement. They must also take the measures necessary to ensure that persons under their responsibility do not cause or create situations that could lead to such displacement. The Convention stipulates that “States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity”.<sup>105</sup> They must also take the measures necessary to ensure the “accountability of non-State actors<sup>[106]</sup> ... for acts of arbitrary displacement or complicity in such acts”.<sup>107</sup> Expressing this provision in such explicit terms is important, given that the activities of multinationals, private military and security companies and non-State actors involved in exploring and exploiting Africa’s natural and economic resources have caused – and continue to cause – many instances of arbitrary displacement, and host communities are among those displaced.<sup>108</sup> The aim here is to dissuade these entities from causing arbitrary displacement, or to ensure that they do not go unpunished if they do so.

103 See Carlyn Carey, “Internal Displacement: Is Prevention through Accountability Possible? A Kosovo Case Study”, *American University Law Review*, Vol. 49, No. 1, 1999, p. 267, available at: <https://digitalcommons.wcl.american.edu/aulr/vol49/iss1/4/>. For a somewhat opposing viewpoint, see Jan Willms, “Without Order, Anything Goes? The Prohibition of Forced Displacement in Non-International Armed Conflict”, *International Review of the Red Cross*, Vol. 91, No. 875, 2009, available at: <https://international-review.icrc.org/articles/without-order-anything-goes-prohibition-forced-displacement-non-international-armed>. According to Willms, an interpretation based on the objectives of AP II would allow one to argue that IHL prohibits forced displacement regardless of whether it is ordered. She maintains that requiring an order to have been issued could encourage States to use indirect forms of coercion to displace the civilian population. Be that as it may, the corresponding provision of the Kampala Convention, which makes no reference to an order, is much less open to differing interpretations.

104 Kampala Convention, Art. 3(1)(a).

105 *Ibid.*, Art. 4(6).

106 Article 1(n) of the Kampala Convention defines “non-State actors” as private actors who are not public officials of the State, including non-State armed groups, and whose acts cannot be officially attributed to the State.

107 *Ibid.*, Art. 3(1)(i).

108 For examples, see UN Security Council, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, UN Doc. S/2002/1146, 16 October 2002, available at: <https://undocs.org/S/2002/1146>; Özden Melik, *Transnational Corporations’ Impunity*, CETIM, 2016, pp. 44–62, available at: [www.cetim.ch/product/transnational-corporations-impunity/](http://www.cetim.ch/product/transnational-corporations-impunity/); Daniëlla Dam-de Jong, *International Law and Governance of Natural Resources in Conflict and Post-Conflict Situations*, Cambridge University Press, Cambridge, 2015, pp. 1–30.

The Kampala Convention stipulates that “States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons”.<sup>109</sup> It is generally accepted today that breaches of IHRL and IHL are the most frequent cause of internal displacement, especially during armed conflict.<sup>110</sup> If all parties to armed conflict obeyed the fundamental rules of IHL and IHRL, most arbitrary displacement could be avoided.<sup>111</sup> The Kampala Convention takes this into account by citing respect for the rules set out in those bodies of law as one means of preventing the displacement of populations, including IDP host communities. We shall return to this point later.

The Kampala Convention also requires States to “devise early warning systems, in the context of the continental early warning system, in areas of potential displacement”.<sup>112</sup> This involves setting up observation mechanisms to identify areas in which there is a perceptible risk of displacement, monitoring those areas and warning the authorities responsible, so that measures can be taken to prevent displacement.<sup>113</sup> The purpose is to anticipate arbitrary displacement, or to minimize the risk of it occurring. As mentioned above, mass IDP flows can render host communities vulnerable and therefore lead to their

109 Kampala Convention, Art. 4(1).

110 See Valérie Amos, “Preventing Displacement”, *Forced Migration Review*, No. 41, December 2012, available at: [www.fmreview.org/preventing/amos](http://www.fmreview.org/preventing/amos); Cédric Cotter, *Displacement in Times of Armed Conflict: How International Humanitarian Law Protects in War, and Why it Matters*, ICRC, Geneva, 2019, p. 14, available at: <https://shop.icrc.org/displacement-in-times-of-armed-conflict-how-international-humanitarian-law-protects-in-war-and-why-it-matters-pdf-en.html>. For studies of specific cases, see Agnès de Geoffroy, “Fleeing War and Relocating to the Urban Fringe – Issues and Actors: The Cases of Khartoum and Bogotà”, *International Review of the Red Cross*, Vol. 91, No. 875, 2009, available at: <https://international-review.icrc.org/articles/fleeing-war-and-relocating-urban-fringe-issues-and-actors-cases-khartoum-and-bogota>; Nancy Lozano-Gracia, Gianfranco Piras, Ana Maria Ibáñez and Geoffrey J. D. Hewings, “The Journey to Safety: Conflict-Driven Migration Flows in Colombia”, *International Regional Science Review*, Vol. 33, No. 2, 2009, available at: <https://journals.sagepub.com/doi/10.1177/0160017609336998>; Marisa O. Ensor, “Displaced Girlhood: Gendered Dimensions of Coping and Social Change among Conflict-Affected South Sudanese Youth”, *Refugee*, Vol. 30, No. 1, 2014, available at: <https://refugee.journals.yorku.ca/index.php/refuge/article/view/38599>; Gil Loescher, James Milner, Edward Newman and Gary Troeller (eds), *Protracted Refugee Situations: Political, Human Rights and Security Implications*, United Nations University Press, 2008, available at: <https://digitallibrary.un.org/record/646997?ln=en>; Sean Healy and Sandrine Tiller, “Be Near a Road: Humanitarian Practice and Displaced Persons in North Kivu”, *Refugee Survey Quarterly*, Vol. 35, No. 2, 2016, available at: <https://academic.oup.com/rsq/article-abstract/35/2/56/2223323>; Kateryna Ivashchenko-Stadnik, *The Impact of the Current Military Conflict on Migration and Mobility in Ukraine*, Robert Schuman Centre for Advanced Studies, Research Paper No. RSCAS 2015/15, 2015, available at: <https://cadmus.eui.eu/handle/1814/34804>; Patricia Weiss Fagen, *Refugees and IDPs after Conflict: Why They Do Not Go Home*, United States Institute of Peace, Special Report No. 268, April 2011, available at: [www.usip.org/publications/2011/04/refugees-and-idps-after-conflict](http://www.usip.org/publications/2011/04/refugees-and-idps-after-conflict).

111 Jakob Kellenberger, “Root Causes and Prevention of Internal Displacement: The ICRC Perspective”, statement given to the Special Summit on Refugees, Returnees and IDPs in Africa, Kampala, 23 October 2009, available at: [www.icrc.org/en/doc/resources/documents/statement/displacement-statement-231009.htm](http://www.icrc.org/en/doc/resources/documents/statement/displacement-statement-231009.htm); ICRC, *Strengthening Legal Protection for Victims of Armed Conflicts*, Geneva, 2011, p. 22, available at: [www.icrc.org/en/doc/resources/documents/report/31-international-conference-strengthening-ihl-report-2011-10-31.htm](http://www.icrc.org/en/doc/resources/documents/report/31-international-conference-strengthening-ihl-report-2011-10-31.htm).

112 Kampala Convention, Art. 5(5).

113 See Brookings Institution and University of Bern, above note 46, pp. 24, 54–58.

becoming displaced themselves. Furthermore, those communities are not always safe from violence and abuse that may lead to their forced displacement. Early warning systems must therefore be set up within host communities, to ensure that they are not also forced to flee.

From the above, we can see that IDP host communities in the Sahel are covered by a protection regime that is satisfactory overall. Respect for and implementation of the protective measures for which that regime provides would resolve some of the major humanitarian challenges that the region is facing.

## **The benefits of respecting the protection to which IDP host communities are entitled**

Respecting the protection that the above legal provisions confer on IDP host communities would have major advantages. In practice, implementation of those rules in the Sahel region is encountering numerous major challenges, and these are preventing the full realization of those advantages. However, these challenges are not insurmountable.

### **Strengthening the resilience of IDPs and their host communities**

Respecting and implementing the protections to which IDP host communities are entitled strengthens not only their resilience but also that of the IDPs they are hosting. As mentioned above, IDPs depend heavily on host communities for their survival, for access to basic necessities and for access to land. Responding to the needs of host communities allows them to both continue providing for themselves and to help the IDPs they are hosting.<sup>114</sup> Strengthening the protection and assistance provided to IDP host communities hence increases their ability to help reduce the vulnerability of IDPs. Furthermore, where resources are scarce, protecting and assisting host communities would make a major contribution to providing them with the capacity to help IDPs and would hence reduce the burden on the Sahelian countries and the humanitarian organizations operating in the region, if only to a limited degree.

In practice, however, IDP host communities in the Sahel are insufficiently protected, which is limiting their resilience and that of the IDPs they are hosting. Humanitarian aid often seems to be focused on the needs of IDPs in camps and other official sites,<sup>115</sup> at the expense of host communities, which are also in

114 See ICRC, above note 29, p. 49.

115 See Elise Shea and Marie-Françoise Sitnam, *Renforcement de la redevabilité envers les populations affectées: Burkina Faso*, Ground Truth Solutions, H2H Network and OCHA, November 2020, pp. 6–7, 22, available at: [www.humanitarianresponse.info/en/operations/burkina-faso/document/burkina-faso-renforcement-de-la-redevabilite%C3%A9-envers-les-populations](http://www.humanitarianresponse.info/en/operations/burkina-faso/document/burkina-faso-renforcement-de-la-redevabilite%C3%A9-envers-les-populations); UNHCR, *Rapport final: Consultations avec les personnes déplacées internes et les communautés hôtes au nom du Panel de haut niveau sur le déplacement interne*, September 2020, available at: [www.sheltercluster.org/burkina-faso/documents/consultations-avec-les-personnes-deplacees-internes-et-les-communaut%C3%A9s-h%C3%B4tes](http://www.sheltercluster.org/burkina-faso/documents/consultations-avec-les-personnes-deplacees-internes-et-les-communaut%C3%A9s-h%C3%B4tes).

desperate need of such support. This access to assistance explains why IDPs sometimes prefer to move into the camps.<sup>116</sup> But IDP camps – while important – are not ideal when it comes to promoting sustainable solutions. Apart from the fact that they divert the attention of the international community from the needs of other communities affected by internal displacement,<sup>117</sup> studies show that IDPs living in camps seem to be trapped in poverty, because they are less able to develop their social networks and find economic opportunities.<sup>118</sup> In some contexts, it has become clear that IDPs feel safer with host families or when they are directly integrated into the community than they do in a camp.<sup>119</sup> One can therefore argue that “[p]roviding assistance mainly through camps undermines traditional coping mechanisms that can provide safer and more effective aid, and effectively limits the choices available to displaced people”.<sup>120</sup>

Several factors explain the fact that insufficient attention has been paid to the needs of host communities in the Sahel. Firstly, there is the absence of national legislation or policies that give due consideration to the needs of these communities in certain countries of the region. Niger is the only Sahelian country that has a law devoted specifically to internal displacement: Law No. 2018-74 of 10 December 2018 on the Protection and Assistance of Internally Displaced Persons. That law does take proper account of the needs of IDP host communities,<sup>121</sup> as required by the Kampala Convention. Unfortunately, however, the term “host community” (*communauté d'accueil*) has a somewhat restrictive scope under this law, as it does not cover host communities where IDP camps are located.<sup>122</sup> Mali drew up a National Strategy for the Management of Internally Displaced and Repatriated Persons<sup>123</sup> covering the period 2015–17, but that policy contained no provisions specifically aimed at defending the interests of host communities. Burkina Faso has enacted Law No. 012-2014/AN on the Prevention and Management of Risks, Humanitarian Crises and Disasters, which constitutes the principal legal framework concerning internal displacement in Burkina Faso but makes no reference to host communities. This situation hardly ensures optimum visibility for host communities within the legal regime applicable to forced displacement, nor does it ensure a great degree of legal predictability or security as a basis for addressing the needs of these communities in a systematic fashion.

Legislation that takes into account the interests of host communities, and the specific nature of the challenges they face, would not only increase the

116 See E. Shea and M.-F. Sitnam, above note 115, pp. 16 ff.

117 ICRC, *Internal Displacement in Armed Conflict: Facing Up to the Challenges*, Geneva, November 2009, p. 12, available at: <https://shop.icrc.org/internal-displacement-in-armed-conflict-facing-up-to-the-challenges-pdf-en.html>.

118 S. McDowell, above note 34, p. 22; K. Haver, above note 2, pp. 16–22; A. Davies, above note 2, p. 10.

119 A. Davies, above note 2, p. 10.

120 K. Haver, above note 2, p. 5.

121 See Law No. 2018-74, above note 5, Arts 2(6), 17, 21.

122 *Ibid.*, Art. 2(6). See the introduction to this article for details.

123 Ministère de la Solidarité, de l'Action Humanitaire et de la Reconstruction du Nord, *Mali: Stratégie nationale de gestion des personnes déplacées internes et des rapatriés (2015-2017) (et Plan d'actions)*, May 2015, available at: [www.refworld.org/docid/5b3f40a24.html](http://www.refworld.org/docid/5b3f40a24.html).

chances of their needs being explicitly taken into account during the planning and implementation of responses to internal displacement, but would also strengthen confidence in the measures taken. It is therefore important that those States which have not yet done so take the steps necessary to include the provisions of the Kampala Convention in their domestic legislation, including the provisions concerning host communities. In 2018, Mali began drafting a law on protection and assistance for persons displaced within the country, but that process is not yet complete. However, the fact that the draft already takes sufficient account of the needs of IDP host communities is to be welcomed.<sup>124</sup> It is to be hoped that the final version will maintain or even strengthen the protection of host communities that the current draft contains. Burkina Faso should follow the examples of Niger and Mali by adopting domestic legislation on internal displacement that includes all the requirements of the Kampala Convention regarding host communities. In the absence of such legislation, it might be possible to revise Law No. 012-2014/AN mentioned above, so that it offers a more specific and appropriate response to internal displacement in that country. The AU Model Law could be useful in such an endeavour. It would also be possible to call on the expertise of international organizations specialized in this field, such as the Internal Displacement Monitoring Centre (IDMC), the Norwegian Refugee Council (NRC) and the Office of the UN High Commissioner for Refugees (UNHCR), which have already helped States draft laws and policies on internal displacement.<sup>125</sup>

The Sahelian countries lack the resources and the means to carry out regular, exhaustive assessments of the needs of IDPs and their host communities.<sup>126</sup> Humanitarian organizations willing and able to carry out such assessments are generally hampered by the chronic lack of security in these countries.<sup>127</sup> The result is that the needs of populations that have suffered forced displacement are rarely analyzed in anything approaching a comprehensive manner.<sup>128</sup> When such

124 Republic of Mali, *Avant-projet de loi portant protection et assistance aux personnes déplacées internes en République du Mali*, 30 August 2019, Arts 2(5), 21(1), 28, available at: [www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/mali\\_-\\_avant-projet\\_de\\_loi\\_sur\\_la\\_protection\\_et\\_l'assistance\\_des\\_pdis\\_-\\_revision\\_finale\\_-\\_30\\_aout\\_2019.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/mali_-_avant-projet_de_loi_sur_la_protection_et_l'assistance_des_pdis_-_revision_finale_-_30_aout_2019.pdf).

125 See IDMC and NRC, *A Review of the Normative Framework in Kenya relating to the Protection of IDPs*, Geneva, August 2015, available at: [www.internal-displacement.org/publications/a-review-of-the-normative-framework-in-kenya-relating-to-the-protection-of-idps](http://www.internal-displacement.org/publications/a-review-of-the-normative-framework-in-kenya-relating-to-the-protection-of-idps); IDMC and NRC, *Applying the Kampala Convention in the Context of Zimbabwe*, Geneva, February 2015, available at: [www.internal-displacement.org/publications/applying-the-kampala-convention-in-the-context-of-zimbabwe](http://www.internal-displacement.org/publications/applying-the-kampala-convention-in-the-context-of-zimbabwe); IDMC and NRC, *Domesticating the Kampala Convention: Law and Policy Making*, Geneva, July 2014, pp. 28–32, available at: [www.internal-displacement.org/publications/domesticating-the-kampala-convention-law-and-policy-making](http://www.internal-displacement.org/publications/domesticating-the-kampala-convention-law-and-policy-making) (regarding support for the process within Liberia of ratifying and implementing the Kampala Convention).

126 See Clémentine André, “Expert Opinion: Why More Data is Needed to Unveil the True Scale of the Displacement Crises in Burkina Faso and Cameroon”, IDMC, April 2020, available at: [www.internal-displacement.org/expert-opinion/why-more-data-is-needed-to-unveil-the-true-scale-of-the-displacement-crises-in](http://www.internal-displacement.org/expert-opinion/why-more-data-is-needed-to-unveil-the-true-scale-of-the-displacement-crises-in); A. Bilak, above note 3, pp. 41–43; ACAPS, above note 15, p. 5.

127 C. André, above note 126.

128 For instance, the report *Profilage des personnes déplacées internes, région du Sahel, province du Soum* (UNHCR Burkina Faso, above note 8), which was produced following a needs assessment conducted between 20 December 2018 and 14 January 2019, only covers the needs of IDPs, although it does give

assessments are carried out, they generally seem to focus on the needs of IDPs in camps or at other official sites<sup>129</sup> – but the needs of IDPs living with host families, and those of host communities, are no less acute. Observers point out that the official camps, with their massive populations, are only the tip of the iceberg. Needs are often more acute outside those camps, especially in host communities, where local residents – often facing difficulties themselves – are providing food and shelter for the majority of the displaced persons.<sup>130</sup> A complete and up-to-date assessment of the needs of all populations affected by forced displacement – including host communities – is essential in order to make the right decisions and mobilize the resources needed to respond appropriately.

Humanitarian access remains difficult and very limited in the Sahel, because of the lack of security, the presence of explosive remnants of war and improvised explosive devices, and attacks on humanitarians and armed/security forces. In 2020, for example, 318 security incidents were reported in Niger alone, including vehicle hijackings, robberies, attacks on humanitarian workers and kidnappings.<sup>131</sup> Similar incidents have occurred in Burkina Faso and Mali.<sup>132</sup> Increasing violence, curfews and the prohibition of certain practical means of transport, such as motorbikes, are reducing humanitarian access still further.<sup>133</sup> Weapon bearers in the field must comply with the international laws to which they are subject regarding safe and unhindered humanitarian access to populations in need.<sup>134</sup> For those populations, this is a matter of survival. In zones where it is difficult for them to operate, certain international organizations have drawn up agreements with local NGOs that have greater proximity and better access to the population and can carry out humanitarian activities on their behalf.<sup>135</sup> This approach, which makes it possible to overcome

the percentages of IDPs living with host families and in other accommodation. This is also the case with the report *Profilage des personnes déplacées internes dans la commune de Djibo, province du Soum, région du Sahel* (UNHCR Burkina Faso, above note 19). See also Direction Nationale du Développement Social (Mali), International Organization for Migration (IOM) and UNHCR, *Mali – rapport de déplacement (avril 2020)*, Displacement Tracking Matrix (DTM), April 2020 (Mali DTM Report), available at: <https://dtm.iom.int/reports/mali-%E2%80%94-rapport-de-d%C3%A9placement-avril-2020>.

129 See Mali Protection Cluster, *Travailler ensemble pour la protection des personnes déplacées internes (PDI) au Mali*, 2018, available at: <https://reliefweb.int/report/mali/travailler-ensemble-pour-la-protection-des-personnes-d-plac-es-internes-pdi-au-mali>. That document sets out the main achievements of the Protection Cluster, which consists of fifty-one member organizations (four linked to the Malian government, nine civil society organizations, twenty-nine NGOs and nine UN agencies) plus thirteen observers and donors. It makes no mention of any measures specifically aimed at host communities.

130 ICRC, above note 117, p. 4. See also F. Z. Giustiniani, above note 61, p. 365.

131 OCHA, above note 14, pp. 10–11, 22; ACAPS, *Humanitarian Access Overview*, March 2018, available at: [www.acaps.org/sites/acaps/files/products/files/humanitarian\\_access\\_overview\\_march\\_2018\\_acaps.pdf](http://www.acaps.org/sites/acaps/files/products/files/humanitarian_access_overview_march_2018_acaps.pdf).

132 ACAPS, above note 131.

133 *Ibid.*

134 See, for example, Kampala Convention, Art. 5(7) and 5(10) concerning States, and Art. 7(5)(g–h) concerning non-State armed groups.

135 For details regarding this approach, see Fidèle Bakyono, “Diagnostic et analyse des stratégies d’intervention des organisations humanitaires dans les zones à risque terroristes: Cas des régions du Sahel, de l’Est, du Centre-Nord et de la Boucle du Mouhoun au Burkina Faso”, master’s diss., Université Laval, Quebec, 2021, pp. 65–67, 75–77, available at: <https://corpus.ulaval.ca/jspui/handle/20.500.11794/68551>.

access problems (at least to some extent), should be encouraged and placed on a more permanent footing. Because they are closer to the population, both geographically and culturally, local organizations have a better understanding of humanitarian issues in the field.<sup>136</sup> Drawing on their knowledge, experience and legitimacy can enhance the effectiveness of international humanitarian organizations. When local and international entities work together, they can significantly increase the survival capacity of vulnerable communities.<sup>137</sup>

Furthermore, the arrival and persistence of the COVID–19 pandemic have intensified needs in the Sahel, which were already increasing. The pandemic is seriously affecting fragile communities in Burkina Faso, Mali and Niger, which were already facing weak governance, deficient infrastructure, a shortage of resources and a lack of humanitarian funding.<sup>138</sup> COVID lockdowns and border restrictions have immobilized economies, disrupted food supply chains and caused problems for humanitarian organizations, which have had to find new ways of reaching people in need.<sup>139</sup> Restrictions continue to affect the means of survival and the food security of many communities.<sup>140</sup> In April 2020, the African agriculture ministers, acting under the auspices of the AU and the UN Food and Agriculture Organization, drew up the *Declaration on Food Security and Nutrition during the COVID-19 Pandemic*, in which they committed themselves to “[w]orking with food and agriculture system traders and transporters, and officials in other sectors and local governments to resolve any bottlenecks affecting the safe movement, transport and marketing of essential people, goods and services in the system”.<sup>141</sup> Despite this, several reports from NGOs working in these three countries reveal that the authorities very frequently force large numbers of trucks carrying food to wait at borders for several days,

136 Casey Barrs, “Preparing for Self-Preservation”, *Forced Migration Review*, No. 53, October 2016, available at: [www.fmreview.org/community-protection/barrs](http://www.fmreview.org/community-protection/barrs); K. Haver, above note 2, p. 30; Simran Singh and Jessie Thomson, “Building Forward: Localization and Decolonization of Aid”, CARE, 10 February 2021, available at: <https://care.ca/2021/02/building-forward-localization-and-decolonization-of-aid/>.

137 C. Barrs, above note 136, p. 64; K. Haver, above note 2, p. 30.

138 See, for example, AU and United Nations Development Programme, *The Impact of the COVID-19 Outbreak on Governance, Peace and Security in the Sahel*, Regional Brief, Addis Ababa, 22 January 2021, available at: <https://au.int/en/documents/20210122/impact-covid-19-outbreak-governance-peace-and-security-sahel> (the cited version of this reference is more recent than that cited in the original French version of this article, as the earlier version of the reference was no longer available when this article was translated).

139 See, for example, Clémentine André, “Expert Opinion: The Sahel: A Protection Crisis Aggravated by the COVID-19 Pandemic”, IDMC, October 2020, available at: [www.internal-displacement.org/expert-opinion/the-sahel-a-protection-crisis-aggravated-by-the-covid-19-pandemic](http://www.internal-displacement.org/expert-opinion/the-sahel-a-protection-crisis-aggravated-by-the-covid-19-pandemic); Julie Coleman, “The Impact of Coronavirus on Terrorism in the Sahel”, International Centre for Counter-Terrorism, The Hague, 16 April 2020, available at: <https://icct.nl/publication/the-impact-of-coronavirus-on-terrorism-in-the-sahel/>.

140 “Food Insecurity in West Africa Could Leave 43 Million at Risk as Coronavirus Hits”, *UN News*, 5 May 2020, available at: <https://news.un.org/en/story/2020/05/1063232>; Organisation for Economic Co-operation and Development, *When a Global Virus Meets Local Realities: Coronavirus (COVID-19) in West Africa*, 11 May 2020, available at: [www.oecd.org/coronavirus/policy-responses/when-a-global-virus-confronts-local-realities-coronavirus-covid-19-in-west-africa-8af7f692/](http://www.oecd.org/coronavirus/policy-responses/when-a-global-virus-confronts-local-realities-coronavirus-covid-19-in-west-africa-8af7f692/).

141 AU, *Declaration on Food Security and Nutrition during the COVID-19 Pandemic*, 16 April 2020, para. x, available at: <https://au.int/en/documents/20200427/declaration-food-security-and-nutrition-during-covid-19-pandemic>.



causing the food to be spoiled, or forcing the convoy to turn back.<sup>142</sup> This disruption to supply chains has meant that many vendors are unable to stock their stalls with food and goods,<sup>143</sup> denying regular and sufficient supplies of food to many people in the Sahel, including host communities. In the face of such restrictions, many businesses are increasingly tempted to resort to contraband.<sup>144</sup> Armed groups operating in the Sahel have been doing very well out of smuggling for several decades, and now they are taking advantage of this situation to boost their resources.<sup>145</sup> To avoid or reduce the associated risks, the Sahelian States must live up to their commitment to resolve the bottlenecks affecting the supply chains for these populations. They must also allow the creation of humanitarian corridors – across borders and within their countries – to facilitate the delivery of food.<sup>146</sup> According to reports from organizations in the field, a corridor has been negotiated in Niger to facilitate the movement of goods between the capital, Niamey, and rural areas of the country.<sup>147</sup> There is a need for more such corridors to be set up, wherever possible, both in Niger and in the other countries of the region.

## Breaking or limiting the cycle of internal displacement

There is a degree of unanimity today that unchecked violence and breaches of IHL and IHRL are among the principal causes of forced displacement.<sup>148</sup> Since the link between breaches of the law and forced displacement appears obvious, it is equally obvious that compliance with the law would considerably reduce – or even eliminate – the forced displacement of populations, including host communities.<sup>149</sup> One can therefore argue that complete respect for the legal protection to which IDP host communities are entitled would substantially reduce the risk that they too will be forced to flee.

Populations in the Sahel, including the communities with which IDPs have taken refuge, are constantly subject to armed attack and to violations of their fundamental rights by various armed entities.<sup>150</sup> The armed and security forces of the region's States are doing their best to prevent some of these attacks, with support from international forces present in the field.<sup>151</sup> However, they are

142 Alexandra Lamarche, *Mounting Hunger in the Sahel: The Unintended Impact of COVID-19 Prevention*, Refugees International, 11 June 2020, available at: [www.refugeesinternational.org/reports/2020/6/8/mounting-hunger-in-the-sahel-the-unintended-impact-of-covid-19-prevention](http://www.refugeesinternational.org/reports/2020/6/8/mounting-hunger-in-the-sahel-the-unintended-impact-of-covid-19-prevention).

143 *Ibid.*

144 *Ibid.*

145 *Ibid.*

146 *Ibid.*

147 *Ibid.*

148 See above note 110 for references on this topic.

149 C. Cotter, above note 110, p. 14.

150 For details, see, for instance, OCHA, *Mali*, above note 8; OCHA, *Burkina Faso*, above note 8; OCHA, *Niger*, above note 8; ACAPS, above note 15, pp. 74–75. For recent statistics concerning attacks in each of these countries, see the Armed Conflict Location and Event Data Project website, available at: <https://acleddata.com/#/dashboard>.

151 For details concerning the international forces present, see the article by Moda Dieng and Amadou G. Mfondi in this issue of the *Review*.

inadequately equipped<sup>152</sup> to prevent the attacks of jihadist groups, which are growing in scale and intensity. In addition to this, the military response of the governments concerned has led to several atrocities;<sup>153</sup> the self-defence groups to which the Sahelian States are resorting in order to make up for their armed and security forces' lack of geographical coverage<sup>154</sup> frequently commit violations.<sup>155</sup> These incidents exacerbate localized violence, and armed extremist groups take advantage of this to recruit from the local population and step up their attacks.<sup>156</sup>

The violence perpetrated by these weapon bearers is causing further internal displacement in the Sahel.<sup>157</sup> Much of the displacement in the region takes the form of to-and-fro movements, with IDPs and their host communities being forced to flee multiple times because of the continuing lack of security and the armed attacks to which they are subjected. In Burkina Faso, for example, people from the villages of Dake and Dou who were sheltering many IDPs have in turn been forced to flee to Dablo, Zambila, Perko, Doffi and Bawenne in order to escape attack.<sup>158</sup> This perpetual, cyclic displacement is contributing to the exponential increase in the number of IDPs in the Sahelian countries, as new waves of displacement add to the previous ones. Burkina Faso has recently been described as one of the countries where the conflict-related displacement crisis is growing fastest.<sup>159</sup> If this trend continues, there is a risk that the Sahelian States will end up overtaking the Democratic Republic of the Congo and Ethiopia to become the African nations with the largest numbers of IDPs.<sup>160</sup>

Helping host communities as suggested above is essential, but it is equally important to take action upstream and to try to prevent violations that could lead to

152 For details on this point, see the article by Niagalé Bagayoko in this issue of the *Review*.

153 See: United Nations, *Report of the International Commission of Inquiry for Mali*, UN Doc. S/2020/1332, 19 June 2020, available at: <https://undocs.org/S/2020/1332>; United Nations, *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/1074, 2 November 2020, pp. 4 ff., available at: <https://undocs.org/S/2020/1074>; Human Rights Watch, "Burkina Faso: Residents' Accounts Point to Mass Executions", 8 July 2020, available at: [www.hrw.org/news/2020/07/08/burkina-faso-residents-accounts-point-mass-executions](http://www.hrw.org/news/2020/07/08/burkina-faso-residents-accounts-point-mass-executions); Human Rights Watch, "By Day We Fear the Army, By Night the Jihadists": *Abuses by Armed Islamists and Security Forces in Burkina Faso*, 2018, available at: [www.hrw.org/report/2018/05/21/day-we-fear-army-night-jihadists/abuses-armed-islamists-and-security-forces](http://www.hrw.org/report/2018/05/21/day-we-fear-army-night-jihadists/abuses-armed-islamists-and-security-forces).

154 Arzouma Kompaoré, "Kaboré appelle à la 'mobilisation générale contre le terrorisme'", *VOA Afrique*, 8 November 2019, available at: <https://tinyurl.com/bddnbw7p>.

155 Human Rights Watch, "Burkina Faso: New Massacres by Islamist Armed Groups", 23 April 2020, available at: [www.hrw.org/news/2020/04/23/burkina-faso-new-massacres-islamist-armed-groups](http://www.hrw.org/news/2020/04/23/burkina-faso-new-massacres-islamist-armed-groups).

156 ACAPS, above note 15, pp. 4–5.

157 Profile reports regarding displacement in the Sahel all agree that violence and violations of fundamental rights are the main reason for arbitrary displacement, if not the only reason. See, for example, UNHCR Burkina Faso, *Profilage des personnes déplacées internes dans la commune de Djibo*, above note 19; IOM, *Niger: Suivi des urgences*, DTM, July 2021, available at: <https://dtm.iom.int/reports/niger-%E2%80%94-suivi-des-urgences-2-22%E2%80%94juin-2021>; ACAPS, above note 15, pp. 4–5; Mali DTM Report, above note 128, p. 6.

158 Government of Burkina Faso et al., *Mission conjointe d'évaluation des besoins des personnes déplacées internes et des communautés hôtes dans le Centre Nord: Rapport final*, 24 July 2019, p. 9, available at: <https://data2.unhcr.org/en/documents/download/70498>.

159 See, for example, NRC, "Burkina Faso Shattered by World's Fastest Growing Displacement Crisis", 28 January 2020, available at: [www.nrc.no/news/2020/january/burkina-faso-shattered-by-worlds-fastest-growing-displacement-crisis/](http://www.nrc.no/news/2020/january/burkina-faso-shattered-by-worlds-fastest-growing-displacement-crisis/).

160 IDMC, above note 12.

those communities becoming displaced and hence could cause additional suffering for populations that are already vulnerable.<sup>161</sup> There is therefore an urgent need to strengthen implementation of the measures to prevent forced movement set out above. Improving compliance with IHL and IHRL is one measure that should be implemented immediately. This is all the more important in view of the fact that breaches of these laws are the most frequent cause of arbitrary displacement in the Sahel. Naturally, this does not preclude simultaneously taking steps to address the underlying causes of forced displacement,<sup>162</sup> which is a longer-term issue.

To improve compliance with the laws governing protection of human rights, there is a need to improve both their dissemination and the imposition of penalties for breaches of those laws. This argument is based on the fact that knowledge of the laws mandating protection is known to be the most important precondition for their efficacy.<sup>163</sup> If these rules are to protect the people they are designed to protect, they must be known, implemented and respected at all times by all who are responsible for applying them or for ensuring compliance with them, especially members of the armed and security forces, political decision-makers, the judiciary, health personnel and media professionals. The public – including host communities – must be made aware of their rights so that they can identify situations in which the authorities and others are not fulfilling their obligations towards them. They must also know what mechanisms they can use to obtain reparation if they believe that their rights have been violated.

The Sahelian States should ensure that the rules related to protection are taught regularly to all officials, to the self-defence groups they use, and to the public, by increasing the number of training sessions and seminars covering IHL and IHRL. The focus should be on those topics of greatest relevance in the Sahel, including the protection of IDPs, women and children. While some effort has been made in this area, it remains insufficient<sup>164</sup> and more must be done. The joint pledge made by the government of Burkina Faso and the Burkinabé Red Cross Society to step up the dissemination of IHL in Burkina Faso between 2019 and 2023<sup>165</sup> is an example of good practice, and is to be welcomed. However, this pledge must be fully transformed into reality in order to achieve its

161 Olivier Bangerter, “Talking to Armed Groups”, *Forced Migration Review*, No. 37, 2011, available at: [www.fmreview.org/non-state/Bangerter](http://www.fmreview.org/non-state/Bangerter).

162 For an analysis of the underlying causes of forced displacement, see J. M. Mangala, above note 98; Jack Mangala Munuma, *Le déplacement forcé de population comme nouvelle dimension de sécurité: Rôle et responsabilités de l’OTAN*, research report submitted to NATO, 2001, available at: [www.nato.int/acad/fellow/99-01/munuma.pdf](http://www.nato.int/acad/fellow/99-01/munuma.pdf). See also the references cited at above note 7.

163 See ICRC, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*, Geneva, 19 July 2021, pp. 35–36, available at: [www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law](http://www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law); ICRC, above note 29, p. 9.

164 See Government of Burkina Faso and Burkinabé Red Cross Society, “Diffusion du droit international humanitaire au niveau national à travers la mise en œuvre du Plan d’action national 2019–2023 de mise en œuvre du DIH et de celui de la CEDEAO 2019–2023”, December 2019, available at: <https://rcrcconference.org/app/uploads/2019/12/33IC-Engagement-BF-Diffusion-du-DIH.pdf>, in which the government of Burkina Faso and the Burkinabé Red Cross Society acknowledge that the rules of IHL are still insufficiently well-known in Burkina Faso and jointly undertake to step up the dissemination of those rules.

165 See *ibid.*

stated aim of improving national implementation of IHL by disseminating its provisions.<sup>166</sup>

Working with local organizations and international partners, States could also set up roving teams to train these populations in the basic principles of human rights. Furthermore, in countries like Mali, where it is estimated that barely 10% of the population speaks French (the official language),<sup>167</sup> translating the instruments that protect human rights into local languages could make it easier for people to exercise their rights. States or local and international organizations could also consider producing and distributing short manuals listing the rules with which self-defence groups are required to comply in the course of their actions. These manuals should reflect the breaches of which these groups are most often accused.

Armed groups should regularly instruct their members on the human rights standards they are required to apply, and take the measures necessary to ensure that they do so. Organizations that are currently attempting to persuade these groups to better comply with the law should continue their efforts.<sup>168</sup>

Efforts to promote the laws regarding the protection of human rights should be accompanied by the imposition of penalties for all breaches of those laws. The breaches committed in all the Sahelian countries have only resulted in a very small number of prosecutions up to now.<sup>169</sup> In Mali, for instance, while a number of legal cases have been launched against members of armed groups and the Malian armed forces, they have very rarely led to trials.<sup>170</sup> This has prompted certain commentators to remark that “impunity is all too often the rule”.<sup>171</sup> Bringing prosecutions for abuses is important, not only as a means of dissuading others, but also to make it clear that such acts are unacceptable and thereby promote better compliance with the law.<sup>172</sup> For people to exercise their rights, in particular before the courts, it is also necessary to restore public confidence in the judicial system by resolving a number of notorious problems with that system, especially corruption, inaccessibility and the absence of a judicial framework that

166 *Ibid.*

167 Lawyers Without Borders Canada, *Accès à la justice au Mali: Une réalité à bâtir*, 2016, p. 40, available at: [www.ceci.ca/en/news-events/acces-a-la-justice-au-mali-une-realite-a-batir](http://www.ceci.ca/en/news-events/acces-a-la-justice-au-mali-une-realite-a-batir).

168 Regarding the way to approach this issue, see Vincent Bernard, “Editorial: Engaging Armed Groups”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011, available at: <https://international-review.icrc.org/articles/editorial-engaging-armed-groups>; O. Bangerter, above note 161, pp. 4–6.

169 See, for example, Lawyers Without Borders Canada, above note 167; Human Rights Watch, “*By Day We Fear the Army*”, above note 153, pp. 43–46.

170 Lawyers Without Borders Canada and International Federation for Human Rights, “Mali: New Project Makes the Fight Against Impunity a Priority”, 4 February 2021, available at: [www.asfcanada.ca/en/medias/news/mali-project-international-cooperation-fight-impunity-2021/](http://www.asfcanada.ca/en/medias/news/mali-project-international-cooperation-fight-impunity-2021/).

171 *Ibid.*; Lawyers Without Borders Canada, *L’Affaire Al Mahdi: Et maintenant? Les enjeux de la lutte contre l’impunité au Mali*, 2017, pp. 8–14.

172 See Anne-Marie La Rosa, “Sanctions as a Means of Obtaining Greater Respect for Humanitarian Law: A Review of their Effectiveness”, *International Review of the Red Cross*, Vol. 90, No. 870, 2008, available at: <https://international-review.icrc.org/articles/sanctions-means-obtaining-greater-respect-humanitarian-law-review-their-effectiveness>; Robert Cryer, “The Role of International Criminal Prosecutions in Increasing Compliance with International Humanitarian Law in Contemporary African Conflicts”, in Heike Krieger and Janice L. Willms (eds), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, available at: <https://tinyurl.com/mwyh2yrk>.

would facilitate access to justice.<sup>173</sup> The efforts of certain international bodies to strengthen the judicial systems of the Sahelian countries are therefore to be welcomed, and should be intensified.<sup>174</sup>

## Promoting the African cultural values of solidarity and hospitality

Protecting host communities will mean that they can continue to host and support IDPs, and hence will help to strengthen and preserve the African traditions of hospitality and solidarity. Hospitality and solidarity are deeply embedded in African traditions and social structures. “Hospitality” refers to receiving a person or welcoming them into one’s home, while “solidarity” generally refers to a mutual duty to provide assistance or cooperation free of charge to other members of the same community. These values are complementary – for instance, giving shelter to someone in distress is a form of solidarity. These two principles form part of the “major laws of African ethics”.<sup>175</sup> Every African people, every ethnic group, expresses and glorifies these values through its own sayings and concepts. In Mali, for example, the concept of *diatiguiya* is widely used to convey the idea that any stranger or visitor is a king, to whom one is duty-bound to offer genuine hospitality.<sup>176</sup> In Niger, there is a popular saying in Kanouri that means “My stranger is my God”.<sup>177</sup>

Certain commentators have expressed doubts as to whether these values are still a social and cultural reality in Africa. They maintain that the hospitality and generosity towards refugees shown by African States and peoples were the product of a specific context related to the post-colonial period, during which the continent was having to cope with an exceptionally large number of refugees.<sup>178</sup>

173 Lawyers Without Borders Canada, above note 167; Abdourahamane Oumarou Ly, *L'accès à la justice au Niger: L'autoreprésentation devant les juridictions*, L'Harmattan, Paris, 2021; Habibou Fofana, “Bringing Justice Closer to the People: An Ethnography of ‘Judicial Distance’ in Burkina Faso”, *Droit et Société*, Vol. 99, No. 2, 2018, available at: [www.cairn-int.info/journal-droit-et-societe-2018-2-page-393.htm](http://www.cairn-int.info/journal-droit-et-societe-2018-2-page-393.htm); Carolyn Logan, *PP39: Ambitious SDG Goal Confronts Challenging Realities: Access to Justice is Still Elusive for Many Africans*, Afrobarometer Policy Paper No. 39, March 2017, available at: <https://afrobarometer.org/publications/pp39-access-to-justice-in-africa>; American Bar Association, *Access to Justice Assessment for Mali*, 2012, p. 40, available at: [www.americanbar.org/content/dam/aba/directories/roli/mali/mali\\_access\\_to\\_justice\\_assessment\\_2012.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/mali/mali_access_to_justice_assessment_2012.authcheckdam.pdf).

174 See the EU Emergency Trust Fund for Africa project “Appui à la justice au Burkina Faso pour renforcer la lutte contre l’impunité au travers d’un système judiciaire plus accessible et efficace”, available at: [https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/burkina-faso/appui-la-justice-au-burkina-faso-pour-renforcer-la-lutte-contre\\_en](https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/burkina-faso/appui-la-justice-au-burkina-faso-pour-renforcer-la-lutte-contre_en). See also Lawyers Without Borders Canada and International Federation for Human Rights, above note 170.

175 M.-C. Djiena Wembou *et al.*, above note 64, pp. 303 ff (*Review’s* translation). The expression “African customs” refers to the set of unwritten rules, practices, ideologies and traditions that regulate the life and social structure of African communities.

176 Hadiya Wague, “‘Diatiguiya’: Le sens de la cordialité et de l’hospitalité malienne”, *Journal du Mali*, 15 August 2010, available at: [www.soninkara.com/societe/organisation-sociale/diatiguiya-le-sens-de-la-cordialite-et-de-lhospitalite-malienne.html](http://www.soninkara.com/societe/organisation-sociale/diatiguiya-le-sens-de-la-cordialite-et-de-lhospitalite-malienne.html).

177 UNHCR, “Mon étranger est mon Dieu”: L’hospitalité des habitants de Diffa”, video, 26 December 2014, available at: <https://unhcniger.tumblr.com/post/106224240429/mon-etranger-est-mon-dieu-lhospitalite-des>.

178 W. Gunther Plaut, *Asylum: A Moral Dilemma*, Praeger, Westport, CT, 1995; Jeff Crisp, *Africa’s Refugees: Patterns, Problems and Policy Challenges*, UNHCR Working Paper No. 28, August 2000, available at: [www.unhcr.org/research/working/3ae6a0c78/africas-refugees-patterns-problems-policy-challenges-jeff-crisp.html](http://www.unhcr.org/research/working/3ae6a0c78/africas-refugees-patterns-problems-policy-challenges-jeff-crisp.html).

Yet African States and peoples continue to show hospitality to people in distress, including the victims of forced displacement.<sup>179</sup> Despite the sociopolitical and cultural changes that have occurred in African societies, hospitality, good humour and sharing are still to be found in many parts of Africa; the assistance provided by IDP host communities in the Sahel is a prime example. However, to keep the flame of hospitality and solidarity burning brightly, we must give sufficient recognition and attach sufficient value to the fundamental role that these communities play in protecting people in distress. In other words, promoting the contribution of local communities to helping people in need is also a means of promoting the African values and customs of solidarity and hospitality, and hence of preserving them and passing them on to future generations. Maintaining and perpetuating these traditional values is even more important in view of the fact that the States concerned do not have the resources and means to meet the needs of people in distress. In a situation such as this, where there is a scarcity of resources, host community support to IDPs is a valuable complement to the efforts of States, and relieves them of part of the burden.

Measures to promote the life-saving actions of IDP host communities should include highlighting their contribution to national solidarity efforts in all official communications on the humanitarian situation in the Sahelian countries. The media of the countries concerned should also produce documentaries and other reports highlighting the solidarity networks that host communities have set up to support IDPs. Such measures would raise the profile of the fundamental role played by IDP host communities, who would feel appreciated and would be motivated to continue to show solidarity and hospitality. These measures would also draw the attention of government decision-makers and the international community to the needs of these communities and the challenges they face. Increased media output concerning host communities in the Sahel would get their predicament onto the diplomatic agenda of the international community and hence facilitate mobilization of the resources needed to improve their situation. The aim here is to use public communication as a means of pricking consciences and of convincing the international community to support the life-saving work of host communities.<sup>180</sup>

IDPs should also ensure that their behaviour does not undermine the values and customs of hospitality and solidarity. In particular, they need to avoid any

179 J. O. M. Okello, above note 41, p. 361; “Le Niger continuera à servir de pays de transit pour les demandeurs d’asile”, *Europe 1*, 8 July 2018, available at: [www.europe1.fr/international/le-niger-continuera-a-servir-de-pays-de-transit-pour-les-demandeurs-dasile-3704459](http://www.europe1.fr/international/le-niger-continuera-a-servir-de-pays-de-transit-pour-les-demandeurs-dasile-3704459). See also M.-C. Djiena Wembou *et al.*, above note 64, pp. 205 ff; Mutoy Mubiala, “The Contribution of African Human Rights Traditions and Norms to United Nations Human Rights Law”, *Human Rights & International Legal Discourse*, Vol. 4, No. 2, 2010, available at: [www.hrild.org/en/journal/hrild/4-2/the-contribution-of-african-human-rights-traditions-and-norms-to-united-nations-human-rights-law/index.html#page/210/search/](http://www.hrild.org/en/journal/hrild/4-2/the-contribution-of-african-human-rights-traditions-and-norms-to-united-nations-human-rights-law/index.html#page/210/search/); Michel Kouam, “Enjeux éthiques de l’action humanitaire en Afrique”, in Shimbi Kamba Katchelewa (ed.), *L’humanitaire: Un univers à réhabiliter*, Presses de l’Université Laval, Québec, 2011.

180 Regarding this aspect of the role of media and communication in humanitarian action, see Rony Brauman and René Backmann, *Les médias et l’humanitaire: Éthique de l’information ou charité-spectacle*, CFPJ, Paris, 1996; Luc Boltanski, *La souffrance à distance: Morale humanitaire, médias et politique*, Leçons De Choses, Éditions Métailié, Paris, 1993.

behaviour that could dissuade host communities from helping others in future. While hospitality is a “major African law”,<sup>181</sup> one must not abuse it.<sup>182</sup> Those who receive help must respect their benefactors and strive to maintain friendly relations with them, in the interests of preserving traditional African values, as required by African regional instruments.<sup>183</sup>

Running awareness-raising campaigns on the nature and scale of internal displacement, and on the measures required to respond to it, could also promote national solidarity with IDPs and counteract any prejudices regarding displacement.<sup>184</sup> Such measures would also be in line with the AU Model Law, which provides as follows: “Public authorities shall promote public awareness about the causes, impact, and consequences of internal displacement as well as on means of prevention, protection and assistance to internally displaced persons.”<sup>185</sup>

## Preventing or limiting tension and crises involving IDPs and host communities

Protecting host communities and meeting their needs would also help to prevent tensions arising between those communities and IDPs, which in turn could help to maintain peace and prevent the emergence of new conflicts. Where there is a shortage of resources – natural resources, goods, or public services such as health care, education or water – the prolonged presence of IDPs can lead to competition between them and their host communities.<sup>186</sup> Such competition could create or exacerbate tensions, adding them to pre-existing cultural or ethnic problems,<sup>187</sup> all of which are used by jihadists to extend their influence and expand their destabilizing activities. Fortunately, the little information that is available seems to indicate that the vast majority of IDPs have good relations with their host communities.<sup>188</sup> Having said this, there have been cases of tensions arising between IDPs and their host communities.<sup>189</sup>

To anticipate and limit the destabilizing potential of large numbers of IDPs arriving in a host community, it is necessary to allocate more resources to the management of internal displacement. More specifically, it is necessary to support and assist host communities in order to relieve pressure on community resources

181 M.-C. Djiena Wembou *et al.*, above note 64, pp. 303 ff.

182 *Ibid.*, pp. 303 ff. See also Kampala Convention, preamble, para. 3.

183 See African Charter on Human and Peoples’ Rights, Art. 29(4), 29(7); African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/153/Rev2, 11 June 1990 (entered into force 29 November 1999), Arts 11(2)(c), 31(c–d), available at: <https://au.int/en/treaties/african-charter-rights-and-welfare-child>; Charter for African Cultural Renaissance, 24 January 2008, Art. 3(k), available at: <https://au.int/en/treaties/charter-african-cultural-renaissance>; African Youth Charter, 2 July 2006 (entered into force 8 August 2009), Art. 26, available at: <https://au.int/en/treaties/african-youth-charter>.

184 Brookings Institution and University of Bern, above note 46, p. 24.

185 AU Model Law, above note 43, Art. 53(1).

186 ICRC, above note 117, p. 4.

187 ICRC, above note 29, pp. 48–49.

188 Government of Burkina Faso *et al.*, above note 158, pp. 7–8; UNHCR Burkina Faso, above note 8, p. 21.

189 See, for example, Government of Burkina Faso *et al.*, above note 158, pp. 7–8; UNHCR Burkina Faso, above note 8, p. 21.

and hence to eliminate or reduce the tensions inherent in sharing them.<sup>190</sup> The international community should therefore show greater solidarity towards the Sahelian countries, which lack the resources needed to cope with the needs of IDPs and their host communities.<sup>191</sup> Humanitarian organizations working in the Sahel could help raise the awareness of the international community regarding the protection of IDP host communities in the region; in particular, they should produce reports that specifically recognize the contribution that these communities are making and the challenges they face. To date, the reports produced by humanitarian organizations have made very little mention of the situation of these communities, or have alluded to the issue only in passing.<sup>192</sup> Furthermore, while there are many reports on displacement in the Sahelian countries, the present author is not aware of any that specifically focus on the situation and experiences of IDP host communities. Where reports on forced displacement in the Sahel do mention host communities, the topic generally occupies no more than a few lines or, at best, a few isolated paragraphs.<sup>193</sup>

Studies and reports highlighting the contribution of host communities to humanitarian action in the Sahel, their vulnerability, their self-protection strategies and the nature of their relations with IDPs would not only promote the action of these communities but would also draw attention to their situation.<sup>194</sup> Humanitarian agencies could use these studies and reports to design and implement appropriate programmes and policies to support IDP host communities.<sup>195</sup> Ultimately, programmes and policies drawn up in this fashion would be “best practices” that could be replicated in other, similar contexts. This would be especially valuable given the dearth of humanitarian assistance strategies or policies that focus specifically on families and communities hosting IDPs.<sup>196</sup>

190 See also A. Davies, above note 2, p. 5.

191 The international funding that the Sahelian countries receive for meeting the humanitarian challenges they face is totally inadequate. For instance, the response plans for the countries of this region are still seriously underfunded: the plan for Burkina Faso is only 24% funded, the plan for Mali 26%, and the plan for Niger only 19%. For details, see OCHA, “Burkina Faso Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1037/summary>; OCHA, “Mali Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1036/summary>; OCHA, “Niger Humanitarian Response Plan 2021”, *Financial Tracking Service*, available at: <https://fts.unocha.org/appeals/1033/summary>.

192 For instance, there is no report that thoroughly documents the nature of the relationships between IDPs and host communities in any of the Sahelian countries. A survey of OCHA, *Mali*, above note 8; OCHA, *Burkina Faso*, above note 8; and OCHA, *Niger*, above note 8, does indicate that more attention is being paid to host communities by comparison with similar documents published in the past, but there is still room for improvement.

193 This problem applies not only to the Sahel but also to other regions. See Zoë Jordan, “Displaced in Cities: Who Are the Hosts?”, *Humanitarian Law and Policy Blog*, 12 February 2019, available at: <https://blogs.icrc.org/law-and-policy/2019/02/12/displaced-cities-who-are-hosts/>.

194 For instance, Fabrice Weissman, “L’éthique de l’action humanitaire”, in Jean-Baptiste Jeangène Vilmer and Ryoa Chung (eds), *Ethique des relations internationales: Problématiques contemporaines*, Presses Universitaires de France, Paris, 2013, pp. 226–227, points out, quite rightly, that NGOs and UN agencies play an essential role in alerting public opinion to crises.

195 A. Davies, above note 2, p. 8.

196 *Ibid.*, p. 7.



Raising awareness of issues related to internal displacement as suggested above is also an essential part of promoting community and social cohesion. Managing internal displacement often involves responding to the specific problems of IDPs

through special measures, such as targeted humanitarian aid or facilitated document replacement, that are not available to others. It is therefore crucial for members of the general public and especially those living in communities hosting large numbers of IDPs to understand that such measures are neither politicized nor arbitrary, but rather necessary to place fellow citizens disadvantaged by displacement in a position of legal and material equality.<sup>197</sup>

This can help to prevent or limit frustration, resentment, stigmatization, prejudice or rivalry, all of which provide fertile ground for the growth of tension and crises.

Furthermore, as pointed out earlier, humanitarian access to host communities must be guaranteed and assured. Apart from its unacceptable consequences in humanitarian and legal terms,<sup>198</sup> obstructing humanitarian access exacerbates the vulnerability of IDPs and their host communities.<sup>199</sup> If they are unable to meet their own needs, host communities may stigmatize and reject IDPs, which could lead to tensions and crises involving the two populations. Such a situation could also accentuate any grievances and suspicion towards the authorities that already exist in these communities.<sup>200</sup>

Priority should be given to providing cash assistance. Studies such as those carried out by Ground Truth Solutions in Burkina Faso appear to indicate that there is a widespread preference for this type of assistance.<sup>201</sup> The money provided to IDPs passes into local markets,<sup>202</sup> and as a result, host communities are more inclined to see the presence of IDPs not as a burden or a threat, but as an opportunity. The aim here is to create and maintain economic dependency between IDPs and local communities, in order to promote the feeling or sentiment within each group that the other is essential to them, or at least profitable. Providing cash assistance rather than food aid also avoids the risk of food spoilage. Cash assistance has been used successfully in other similar contexts,<sup>203</sup> and would be worth using more widely in the Sahel.

197 Brookings Institution and University of Bern, above note 46, pp. 24–25.

198 Failure to provide prompt and unhindered humanitarian access in accordance with the rules discussed above may constitute a grave breach of IHL – i.e., a war crime. See ICRC, above note 29, p. 49.

199 *Ibid.*

200 *Ibid.*

201 See E. Shea and M.-F. Sitnam, above note 115, p. 8.

202 See ICRC, above note 29, p. 46.

203 See the Swiss Agency for Development and Cooperation's Cash Transfer Programming website, available at: [www.shareweb.ch/site/Cash-Transfer-Programming](http://www.shareweb.ch/site/Cash-Transfer-Programming); Sarah Bailey and Steve Walsh, "The Use of Cash in Emergency and Post-Emergency Non-Food Item Programs – a Case Study from the Democratic Republic of the Congo", *Journal of Humanitarian Assistance*, 31 May 2007, available at: <https://reliefweb.int/report/democratic-republic-congo/use-cash-emergency-and-post-emergency-non-food-item-programs-case>; Pantaleo Creti and Susanne Jaspars, *Cash-Transfer Programming in Emergencies: A Practical Guide*, Oxfam GB, Oxford, 2006, available at: <https://policy-practice.oxfam.org/resources/cash-transfer-programming-in-emergencies-115356/>.

Finally, it is important to promote and strengthen interaction between IDPs and their host communities. To achieve this, the authorities in all the countries concerned could work with National Red Cross and Red Crescent Societies (National Societies) to conduct community awareness-raising campaigns on peaceful cohabitation in all places where IDPs are being hosted.<sup>204</sup> The national authorities and National Societies could also work with local authorities and the traditional leaders of the communities concerned to promote the organization of sociocultural activities that could strengthen social cohesion. These could include sports competitions, trade fairs or community hygiene and clean-up activities. Apart from their positive effect on relations between IDPs and host communities, the present author believes that activities of this sort would be an excellent opportunity for IDPs to find revenue-earning opportunities. The words of a young man who has been displaced and is currently living with a host family in the south of Lubero (Democratic Republic of the Congo) are a good illustration: “I play football. I started playing with the other players here. They told me how I can adapt to life in the village as a displaced person. I currently have a job carrying water cans, which I found out about thanks to that conversation.”<sup>205</sup>

## Conclusion

The purpose of this article was to advocate for better protection for IDP host communities in the Sahel. It was motivated by the realization that host communities in the Sahel are not receiving the protection and assistance they require to support themselves while at the same time supporting IDPs. The aim was therefore to highlight the protection to which they are legally entitled and how important it is to implement this protection, but also to suggest good practices and solutions that could strengthen their resilience and hence allow them to continue to provide their essential response to internal displacement. From the above analysis, it is clear that IDP host communities in the Sahel are covered by a protection regime which is adequate and satisfactory overall. This legal regime requires not only that the needs of IDP host communities be taken into account when measures are taken with regard to forced displacement, but also that those needs be met as far as possible. Host communities enjoy legal protection against any act likely to compromise their security or their enjoyment of fundamental rights, or to cause them to suffer forced displacement.

Respect for the protective measures identified in this article would not only reduce the vulnerability of IDP host communities in the Sahel but would also strengthen their capabilities, which could be drawn upon to complement other efforts aimed at improving the situation of IDPs, reduce the risks of tension

204 UNHCR Burkina Faso, above note 8, p. 22.

205 Oxfam International, “*We’re Here for an Indefinite Period*”: Prospects for Local Integration of Internally Displaced People in North Kivu, DRC, April 2017, p. 10, available at: [www.oxfam.org/en/research/were-here-indefinite-period](http://www.oxfam.org/en/research/were-here-indefinite-period).

between host communities and IDPs and promote the traditional values of hospitality and solidarity that are so dear to Africa. Currently, however, the violence and violations that IDP host communities are experiencing and the insufficient attention being devoted to the challenges facing these communities mean that it is not possible to take full advantage of these capabilities. To reverse this situation, there is an urgent need for all concerned to better respect human rights, including those of IDP host communities. This can only happen if the corresponding rules are well publicized, so that they become better known and more widely respected.

In view of the chronic disparity between scarce resources and huge needs in the Sahel, it is essential to mobilize the skills and resources of the various sectors and entities involved, in order to take effective action to support IDP host communities in the region. States, international organizations, civil society and the private sector must pool their efforts to constantly encourage better compliance with the law, assess the needs of these communities, devise strategies that will make it possible to respond to those needs effectively and ensure the sharing of best practices. In so doing, it would be advisable to maintain proximity with affected communities and individuals in order to “better understand their needs and protection concerns, recognizing that they are the ‘experts’ on their own situation, and taking their capacities and views into account”<sup>206</sup> when deciding what action to take, and to ensure that they participate meaningfully in measures taken to support them.

From a broader, forward-looking perspective, academia and humanitarian agencies should pay greater attention to the impact of forced displacement on host communities, the experiences and self-protection strategies of these communities and the creation of sustainable solutions. While their importance is acknowledged, these issues are still under-analyzed and hence are insufficiently understood.<sup>207</sup>

206 See also Angela Cotroneo and Marta Pawlak, “Community-Based Protection: The ICRC Approach”, *Forced Migration Review*, No. 53, 2016, available at: [www.fmreview.org/community-protection/cotroneo-pawlak](http://www.fmreview.org/community-protection/cotroneo-pawlak).

207 See A. Davies, above note 2, p. 7; Z. Jordan, above note 193. See also the summary of the conference “Impacts of Refugees and IDPs on Host Communities”, organized by the Thematic Working Group on Forced Migration of the World Bank’s Global Knowledge Partnership on Migration and Development (KNOMAD), 1–2 June 2017, available at: [www.knomad.org/event/impacts-refugees-and-internally-displaced-persons-host-communities](http://www.knomad.org/event/impacts-refugees-and-internally-displaced-persons-host-communities).