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New OAS Conventions protecting IDPs against racism and discrimination

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Two new Conventions approved in 2013 have the potential to offer greater protection to vulnerable groups, including IDPs, in the Americas.

On 6th June 2013, the General Assembly of the Organization of American States (OAS) approved two new international legal instruments: the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance (the Anti-Racism Convention) and the Inter-American Convention against all Forms of Discrimination and Intolerance (the Anti-Discrimination Convention). The latter is more comprehensive in the protection of vulnerable groups and presents innovative formulations that specifically benefit IDPs in the region.

There has been long-standing and extensive racism and racial discrimination against IDPs in the Americas. This has been documented over the last two decades in numerous ways, including in reports by OAS Special Rapporteurs, Representatives of the UN Secretary-General on Internally Displaced Persons Francis Deng and Walter Kälin,¹ and Human Rights Watch, and in conferences such as the 2004 Regional Seminar on Internal Displacement in the Americas².

In 2011, the official Working Group on a proposed Inter-American Convention against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance had decided to split the draft into two different Conventions: one focusing on racism and the other on other forms of discrimination and intolerance. This decision was initially prompted by the recognition that some states would face difficulties in implementing a fully comprehensive Convention because of their domestic legal stance on the issue of sexual orientation and gender identity. Afterwards, however, the Working Group took the opportunity to make the Anti-Discrimination Convention a trailblazer – the first to explicitly acknowledge the surge in hate crimes based on sexual orientation and to prohibit discrimination based on these grounds.

According to the new Anti-Discrimination Convention:

Discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

*Discrimination may be based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; **migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition.**³ [emphasis added]*

No other treaty in international law has a more inclusive notion of the meaning and reach of the non-discrimination principle than the one presented by this Convention. Whereas other human rights treaties have had to rely on interpretations of the principle that have incrementally come to encompass the protection of certain groups, this OAS Convention has incorporated doctrinal and jurisprudential advances into its own definition.

IDPs are now included among the categories of persons most vulnerable to discrimination, with potentially greater chance now of success in claims against discriminatory practices. State obligations set forth in the Convention range from prevention, elimination and

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punishment of all kinds of discriminatory practices to the adoption of specific legislation and implementation of public policies on equal treatment and opportunity. Of specific importance to IDPs, access to housing, employment, participation in professional organisations, education, training, social protection, economic activity and public services cannot be subject to any form of restriction or curtailment of rights on the basis of discrimination and intolerance.

The Anti-Discrimination Convention foresees judicial oversight by the Inter-American Court of Human Rights and, once the Convention has entered into force, an Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination and All Forms of Discrimination and Intolerance will be established to monitor implementation of the Convention.

The Convention may also serve as an important instrument to facilitate durable solutions to internal displacement crises in the region. Even after voluntary return or local integration, IDPs may still face

discrimination through restrictions on access to public services and curtailment of rights related to employment, subsistence and political participation.⁴ All of these forms of discrimination are expressly forbidden by the Convention. The Convention can also assist in situations of discrimination against IDPs who also belong to other vulnerable groups, such as those living with HIV.

Only two ratifications are needed for the Anti-Discrimination Convention to enter into force. As of September 2013, Argentina, Brazil, Ecuador and Uruguay had signed the Convention but none has yet ratified it.

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1. See www.brookings.edu/about/projects/idp/un-mandate/francis-deng and www.brookings.edu/about/projects/idp/un-mandate/walter-kalin
2. www.brookings.edu/fp/projects/idp/conferences/mexreport.pdf
3. Art 1. Full text at <http://tinyurl.com/OAS-Discrimination-Conv>
4. A/HRC/13/21/Add.4. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Walter Kälin: Framework for Durable Solutions for Internally Displaced Persons*, 29 December 2009.