

The Kampala Convention and obligations of armed groups

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The Kampala Convention imposes a number of obligations on armed groups in order to better protect IDPs; the challenge now is to encourage such groups to recognise these obligations.

The African Union Convention for the Protection and Assistance to Internally Displaced Persons, adopted in October 2009 – known as the Kampala Convention – reflects and builds on the existing frameworks of international humanitarian law (IHL) and international human rights law (IHRL), as well as on such soft law as the Guiding Principles on Internal Displacement. Thus the Kampala Convention imposes obligations on States Parties “to respect and ensure respect” for both IHL and IHRL. “Ensuring respect” means that States Parties must also ensure that non-state armed groups¹ (NSAGs) do not interfere with the enjoyment of IDPs’ human rights, and do not impede the protection of civilians, including IDPs.

In situations of non-international conflicts, the conduct of states and NSAGs alike is regulated by Common Article 3 of the four 1949 Geneva Conventions, the 1977 Additional Protocol II, and the key provisions of IHL which are considered to have become part of international customary law.²

Obligations of non-state armed groups

The Kampala Convention does not go so far as to impose positive obligations on armed groups to protect human rights. However in Article 7, entitled “protection and assistance to internally displaced persons in situations of armed conflict”, the Convention affirms the applicability of the pre-existing framework of international law, including IHL, stating that “The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law”.

It recognises that in situations of non-international conflict armed

groups often exercise significant control over civilian populations, including IDPs. Article 7(5) imposes a number of negative obligations on armed groups, prohibiting them from engaging in a range of actions:

- carrying out arbitrary displacement³
- hampering the provision of protection and assistance to IDPs under any circumstances
- denying IDPs the right to live in satisfactory conditions of dignity, including the right to security, sanitation, food, water, health and shelter; and separating members of the same family
- restricting the freedom of movement of IDPs within and outside their areas of residence
- recruiting children or requiring or permitting them to take part in hostilities under any circumstances
- forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children
- impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to IDPs
- attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of IDPs or destroying, confiscating or diverting such materials
- violating the civilian and humanitarian character of the places where IDPs are sheltered, or infiltrating such places.

Article 5(11) imposes on States Parties the obligation to “... take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7”, which in turn stipulates that “The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law” (Article 7(3)). The Convention also provides that States Parties must hold members of armed groups “criminally responsible for their acts which violate the rights of IDPs under international law and national law” (Article 7(4)).

Enhanced protection of IDPs

The Kampala Convention enhances the protection of IDPs in three important ways. First, the Kampala Convention does not provide for the possibility of derogation⁴ in times of national emergency, as the whole of the Kampala Convention remains applicable at all times. Neither States Parties nor armed groups can invoke the existence of armed conflict to avoid their human rights obligations under the Convention.

In addition, the Kampala Convention does not specify a threshold for the application of Article 7. Thus even in situations where armed violence does not reach the level of armed conflict leading to the application of Common Article 3, or the higher threshold for the application of Additional Protocol II, NSAGs are bound by their obligations under Article 7 of the Kampala Convention not to interfere with IDPs’ fundamental rights.

Finally, where displacement is caused by conflict between a state and one or more armed groups, these armed groups have a defined role to play in bringing displacement to an end. The Convention stipulates that States Parties shall “[e]ndeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable

solutions to the problem of internal displacement” (Article 3(2)(e)).

The way forward

A recent study by the ICRC found that while IHL remains an adequate legal framework for the protection of civilians in situations of armed conflict, it needs to be strengthened in some areas. One of these areas relates to the protection of IDPs at the hands of states and NSAGs alike. The incorporation into domestic law of the Guiding Principles, as required for example by the IDP Protocol of the Great Lakes Pact, is one possible mechanism for achieving this.⁵

The Kampala Convention offers another way for achieving this objective for the AU and its 53 member states. Attention must now focus on ensuring the entry into force of the Convention, which requires ratification by 15 member states⁶ and its timely implementation. At the same time,

States Parties and their partners, including UN agencies, civil society organisations and peace negotiators, must reach out to NSAGs to make them aware of their obligations under the Kampala Convention.⁷

As with other IHL instruments, the challenge will be to get NSAGs to take notice of an instrument in whose negotiation and adoption they were not involved but which nevertheless entails obligations for them. In many situations, the ICRC and national Red Cross/Red Crescent societies are best placed to engage with NSAGs to raise awareness of the existence of the Convention and the ways in which it constrains the actions of NSAGs, together with civil society organisations and advocacy groups representing people living in areas affected by internal conflicts.

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More information on the Kampala Convention is available at <http://www.internal-displacement.org/kampala-convention>

1. The Kampala Convention defines non-state armed groups as “dissident armed forces or other organized armed groups that are distinct from the armed forces of the state” (Article 1(e)).
2. ICRC, *Customary International Humanitarian Law*, Cambridge University Press, 2005 <http://www.icrc.org/eng/resources/documents/publication/pcustom.htm>
3. See also Maria Stavropoulou <http://www.fmreview.org/DRCongo/stavropoulou.htm>
4. Derogation of a law is the temporary revocation, in whole or in part, of that law under particular circumstances.
5. The Great Lakes Pact entered into force in 2008, and has been ratified by 10 of the 11 member states of the International Conference on the Great Lakes Region. <http://tinyurl.com/GreatLakes-IDP-Protocol>
6. As of January 2011, it had been ratified by four: Chad, Sierra Leone, Uganda and Zambia. See the list of signatories at <http://tinyurl.com/Kampala-Convention-status>
7. See section 5.4 of the Guide for civil society organisations on the Kampala Convention, published by IDMC and the AU's Economic, Social and Cultural Council: <http://www.internal-displacement.org/publications/au-guide> (available in Arabic, English, French and Portuguese).